11/1982

IN THE PRIVY COUNCIL NO.27 of 1981

ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN ANTHONY FULTON REID
Appellant

AND SUSAN ROSEMARY REID
Respondent

THE CASE FOR THE APPELLANT

Messrs BLYTH DUTTON HOLLOWAY
9 Lincoln's Inn Fields,
London. WC2A 3DW

Agents for :

W. V. Gazley Esq.,
Wilford House,
Corner Molesworth & May Street,
Wellington,
New Zealand.

Messrs COWARD CHANCE
Royex House,
Aldermanbury Square,
London. EC2V 7LD

Agents for :

Anthony F. Reid,
14 Colin Grove,
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Unless otherwise stated: References to Part 1 of Record

INTRODUCTORY

1. This appeal is brought primarily against the decision of the Court of Appeal of New Zealand made on 22 August 1979 to the effect that the proceeds of the disposition of my shares in Reid Containers Ltd were, upon sale in 1976, automatically converted to matrimonial property; i.e. during the currency of the marriage, because of the terms of s.8(e) of the Matrimonial Property Act 1976.

2. I appeal from the decision of the Court of Appeal which referred the parties back to the Supreme Court to have certain property revalued on a current basis and directing that current values be fixed "unless the parties can otherwise agree" and I appeal from the Court's orders fixing the value of our matrimonial property and from the Court's orders directing that I pay to Mrs. Reid a sum of money. p.100-l.30 p.140-l.17 p.147-l.47

3. I also appeal from the Court of Appeal's directive regarding the proportions that the matrimonial property should be divided between myself and Mrs. Reid and from the Court's order vesting our holiday home in her. p.100-l.36 p.100-l.38 p.100-l.42 p.93-l.36

4. This was the first case in which the Court of Appeal found it necessary to interpret s.8(e) of The Matrimonial Property Act 1976. The interpretation of this one section has a substantial bearing on whether certain property is "separate property" (inwhich case it belongs exclusively to the spouse who has title to it) - or matrimonial property (inwhich case it must be shared between the spouses in terms of the Act).

5. All the relevant events in the case took place before the Matrimonial Property Act 1976 came into force on 1 February 1977. As proceedings had not been commenced by that date the matter was determined and heard under the 1976 Act by reason of s.55 of the Act, and not the earlier legislation in force when the relevant events took place.

THE SUPREME COURT HELD:-

6. (a) that a substantial proportion of the property in issue was my separate property. p.95-l.10
   (b) that Mrs. Reid's interest in real estate and bank accounts held in the U.K. were her separate property. p.95-l.25
   (c) that the matrimonial home was to be divided equally. p.93-l.11
   (d) that the remaining property (being matrimonial property) was to be divided in the proportions of two thirds to me and one third to Mrs. Reid; that being the Supreme Court's assessment of the parties' respective contributions to the marriage partnership [ss.15,18] p.90-l.21

THE COURT OF APPEAL HELD:

7. (a) that nearly all the property held by the Supreme Court to be my separate property was matrimonial property; p.580-l.9 [N.Z.L.R.]
   (b) that all matrimonial property apart from the matrimonial home and "family chattels" was to be divided in the proportion of 60% to me and 40% to Mrs. Reid (by Woodhouse and Richardson JJ.) and 75% to me and 25% to Mrs. Reid (by Cooke J.) p.593-l.11 [N.Z.L.R.] p.605-l.10 [N.Z.L.R.]

HISTORY OF THE LEGISLATION

8. The history of the pre-1976 matrimonial property legislation in New Zealand was set out in detail by Your Lordship's board in Haldane v. Haldane [1976] 2 N.Z.L.R. 715, [1977] AC 673. In that case Your Lordships stated the principles which were

to operate in applying the Matrimonial Property Act 1963 (repealed by the present Act). It would not, however be correct to assume that the 1976 Act was enacted as a legislative reaction to Haldane. In fact the judgment in Haldane became availabe only at a relatively late stage of the progress of the 1976 Bill through Parliament, by which time many of the principles of the 1976 Act had already been embodied in the Bill. Neither would it be correct to assume that the new Act was brought into effect to bring about a major change from the justice of Your Lordships' finding in Haldane. The mischief of a statute "which is extrordinarily difficult to construe, as can be seen by the great diversity of judicial opinion that it has evoked" [Lord Simon of Glaisdale: Haldane v. Haldane (A.C.) p.688] is sufficient grounds alone for replacement.

9. The 1976 Act replaces the broad discretionary powers which were a feature of the 1963 Act. It contains a series of detailed provisions classifying property and specifying the way in which each classification is to be dealt.

GENERAL SCHEME OF THE 1976 ACT

10. The preamble to the Act states that it is "An Act to reform the law of matrimonial property; to recognise the equal contribution of husband and wife to the marriage partnership; . . ." However too much cannot be read into the preamble. While the concept of equality receives a certain emphasis in some provisions of the Act, it is quite clear from others that equality in sharing in the event of separation or divorce will not necessarily be "just". Nevertheless the general scheme of the Act suggests a change in approach: instead of a spouse being required to establish that he or she made any, and if so what, contribution, the starting point is an assumption that the contributions are equal unless it appears that they were not.

CATEGORIES of PROPERTY

11. The Act divides property into two major types. The separate property of either spouse, and the matrimonial property.

SEPARATE PROPERTY.

12. This is widely defined by s.9(1) as "all property of either spouse which is not matrimonial property." By s.10 property acquired by a spouse by succession or survivorship or as a beneficiary under a trust or gift from a third person is seperate property. In general, property which is separate property may become matrimonial property if it is inter-mingled with matrimonial property to the extent that it is impractical to regard it as separate. [s.9(6); s.10(1)]

THE MATRIMONIAL PROPERTY

13. This is defined by s.8. It includes, broadly, property owned jointly or "in common in equal shares" by the spouses, and specific property acquired for the common use and benefit of the parties such as the matrimonial home and family chattels.

THE DIVISION OF THE MATRIMONIAL PROPERTY

14. The matrimonial property is treated by the Act as being made made up of two parts:-
    (a) That part which comprises the matrimonial home and the family chattels. [s.11]
    (b) That part which comprises the remainder of the matrimonial property. [s.15]

    The overall division of the value of the matrimonial property depends on the value of each of the two parts for they are not necessarially divided in the same proportions.

(a) That part which comprises the matrimonial home and family chattels must be shared equally [s.11(1)] except where "there are extraordinary circumstances that in the opinion of the Court, render repugnant to justice the equal sharing between the spouses . . ." [s.14]

(b) That part which comprises the remainder of the matrimonial property is shared equally "unless his or her contribution to the marriage partnership has clearly been greater than that of the other spouse". [s.15(1)]

AGREEMENTS

15. The Act has provision for couples to make their own agreements as to their individual ownership of property [s.21] and for the older generation whose "marriage took place before the commencement of this Act" there is a transitional provision. [s.55]

A SIMPLIFIED SUMMARY OF THE PARTIES' PROPERTY PRIOR TO SEPARATION

16. There was:-

The matrimonial home and family chattels.	p.77-l.31
The family holiday home.	p.79-l.10
Sundry assets held by Mrs. Reid in bank accounts.	p.80-l.27
Assets held by Mrs. Reid on mortgage.	p.81-l.1
Interest in real estate held by Mrs. Reid in U.K.	p.77-l.27
Assets held by Mrs. Reid in bank accounts in U.K.	p.77-l.27
Sundry stock and shares held by myself.	p.80-l.32
Assets held by myself on term deposit and mortgage.	p.80 & 81
Assets held by myself in bank accounts and on loan.	p.87 & 88

Also:-

We each had a personal interest in a family partnership. Involved in that partnership were five trusts, one for each of our four children and one for Mrs. Reid (known as the S.R. Reid Trust). In all there were effectively seven partners. p.119

17. The monetary assets held by me were some $400,000. This represented the proceeds of the sale of my shares in a Company known as Reid Containers Ltd. and was my working capital. $200,000 was temporarily held in a bank term deposit and $200,000 was temporarily on mortgage. The firm of Reid Containers Ltd was, since 1972, controlled by D.R.G (N.Z.) Ltd. which owned 51% of the shares. I sold my 49% of the company shares in 1976 with the intention of starting a new business in which my children could partake as shareholders. p.7-l.54 p.8-l.14 p.6-l.18 p.7-l.4

SUMMARY OF SOME OF THE PROBLEMS

18. Mrs. Reid instigated separation proceedings in March 1976. On 17 December 1976 an agreement was made between the parties. Consistent with the agreement I handed my wife a cheque for $51,000; $50,000 of that to purchase a home of her own. After the transaction had been made and the further conditions agreed, I consented to a separation order being made. p.21 p.19 p.19-l.34

19. On 7 February 1977 I filed a notice of motion which effectively asked the Court to settle the question of the ownership of property so that I could proceed with a new business. The Supreme Court was not able to hear the case until 22 September 1977. Mr. Justice Quilliam gave judgment on 21 November 1977. His Honour found that the assets which were the proceeds of the disposition of the shares in the firm of Reid Containers Ltd were my separate property. He ordered (amongst other orders) that my term deposit account as held in the bank as at 17 December 1976 be my separate property. p.1 p.75 p.95-l.13

20. In my affidavit of 18 March 1977 I correctly stated that at that date (18 March 1977) my assets included a term deposit of $150,000 and $50,000 as an advance to Mrs. Reid. p.7-l.57 p.8-l.10

21. In Quilliam J.'s judgment he stated that he considered he had insufficient information to enable him to calculate the final result of his judgment and expected counsel for the parties to be able to cope. They could not. p.92-l.25

22. Mrs Reid's counsel would not agree to recognition of the advance of $50,000. My Counsel requested His Honour to clarify the matter. Counsel for Mrs. Reid refused to accept any suggestion of attendance before His Honour and filed a memorandum making reference to his stand. p.97-l.12 to l.23

23. In the subsequent Court of Appeal hearing counsel for Mrs. Reid submitted that by the agreement of the 17 December 1976 the question of the $50,000 was a matter that was settled by the parties prior to the enactment of the Act and therefore came under s.57(5). He also submitted that the home that Mrs. Reid bought was purchased after the separation and was property acquired in terms of s.9(4) and so separate property not to be considered by the Court.

24. Their Honours, upon hearing these submissions, referred Mrs. Reid's counsel to the term of the agreement which specifically states that the arrangements were without predudice to the parties' matrimonial claim. They made no further reference to the submissions. p.19-l.25

25. Two further submissions, both appearing minor but later proving of considerable consequence were also made on Mrs. Reid's behalf.

The first concerned the value of the matrimonial home:-

> Valuers appointed by Mrs. Reid valued the matrimonial home for the purposes of the proceedings. In the valuation they deducted a sum of some $3,000 being their assessment of the value of work that I had just had done (subsequent to separation) on some home additions and improvements. They also allowed a sum of $1000 for a small portion of land which was by prior agreement to resort to the neighbouring property. Counsel for Mrs. Reid objected to such adjustments and required another valuation. As I had already submitted to the Court, by affidavit, the value of my cash assets I accepted the new valuation and advised the court of my expenditure. His Honour made the appropriate adjustments. p.65-l.16 p.78-l.44

The second concerned the value of a vehicle:-

> While my counsel (on my instructions) made no argument nor questioned any of the facts submitted by Mrs. Reid His Honour found that he could not accept the value that Mrs. Reid's counsel had submitted for a vehicle in her posession and increased it by $1,300.00

26. In the Court of Appeal it was submitted, on behalf of Mrs. Reid, that His Honour had no right to assess the value of the vehicle and no right to make any adjustment to the value of the matrimonial home. The Court of Appeal reacted to these submissions by ordering "that current values be fixed for all matrimonial property unless the parties can otherwise agree." They could not. p.100-l.30

THE COURT OF APPEAL'S INTERPRETATION OF S.8(e)

27. The Court of Appeal's finding of s.8(e) (referred to in detail later) was to the effect that if any separate property of a spouse changed its form during the marriage the new form (the proceeds of the disposition of that property) was property acquired during the marriage and as such automatically transformed itself from separate property into p.596- 1.3 [N.Z.L.R.]

matrimonial property. This finding was regardless of any apparent provisions to the contrary that were contained in s.9

28. s.9(4) states that "all property acquired by the husband or wife while they are not living together. . . shall be separate property unless the Court considers that it is just in the circumstances to treat such property or any part thereof as matrimonial property".

29. If the Court of Appeal's interpretation of what the Act meant by "acquiring" property is correct then the same interpretation, it would seem, must also be valid for the whole Act. "Acquiring" property after the parties ceased to live together must also be the means of changing the form of that property - but this time in reverse. Any proceeds of the disposition of matrimonial property must, it would seem, transform to separate property by s.9(4) "unless the Court considers it just in the circumstances to treat such property or any part thereof as matrimonial property."

30. An extraordinary situation appeared to exist.

31. The Court of Appeal had sent the parties back to the Supreme Court to have revalued what was, by the Court of Appeal's interpretation, matrimonial property. p.593-1.3 [N.Z.L.R.]

If the Supreme Court valued the parties' property in its true current form and followed the provisions in the Act there seemed to be no problem except for the provisions of s.9(4).

If the Court of Appeal's interpretation of what constituted "acquired" property was correct then that matrimonial property which had changed its form after separation would also change its status - but this time in reverse. Matrimonial property would have changed to separate property.

If the provisions of s.9(4) were to be adhered to, the Supreme Court would, it would seem, have first to consider whether it was just or not to treat the transformed separate property as matrimonial property or not.

If it did not do that, then Mrs. Reid's home that was purchased with the $50,000 that I advanced to her would be her separate property and not valued.

If my bank account was currently valued there was the real danger that the sum would not be accounted for in any "current" valuation, for the $50,000 was obviously not in the account to be valued.

Furthermore:

If my home was revalued and Mrs. Reid's not revalued I would then suffer the division of the serious inflation on my home but Mrs. Reid, who had occupied her brand new home for exactly the same time would suffer no loss through inflation.

THE OTHER COMPLICATIONS

32. There were numerous transactions carried on by either party during the intervening years between separation and the required revaluation of property.

As examples:

(a) In accordance with the agreement of 17 December 1976 I had purchased both Mrs. Reid's interest and that of the S.R. Reid Trust in the Reid Family Partnership. That accounted for a further reduction in my term deposit of some $28,000. p.116-1.23

(b) Assets that existed as money on mortgage had been transformed into real estate. p.116-1.10. p.116-1.27

(c) Shares had been sold and insurance policies cashed up. p112-1.21

(d) Both parties had made changes to the form of the property that they held - as they were perfectly entitled to do under s19(a).

ORDERS OF THE COURT FIXING METHOD OF CURRENT VALUATIONS

33. On the 2 November 1979 the question of the method of fixing the "current" valuations came before Mr. Justice Quilliam in the Supreme Court. His Honour refused to hear my submissions that the matrimonial property as it "currently" stood must be the property that was to be valued. He dismissed my Notice of Motion and proceeded to accept without question the method proposed by Mrs. Reid's counsel. Orders were made and I appealed from those orders.

34. The reasons for the appeal from Quilliam J's method of valuation were numerous and obvious.
As examples:-
He had ordered that my term deposit had a current value of $200,000 plus the interest earned since the date of inception of the loan. p.106-l.16
(a) The date of inception of the term deposit was long before the separation date. Interest received by me from the time of inception to separation had already been expended on the family as it was having to live on such income until the proposed business became a profitable concern. p.117
(b) My term deposit had already been depleted by at least $78,000.00, some $59,000.00 having already gone to Mrs. Reid and I had used a further $19,000.00 to purchase the interest of her trust in the Reid Family Partnership. A further $74,000 had been used to purchase real estate. It was not $200,000 as ordered to be but $40,000. p.116-l.28 p.118(foot)
(c) Of the interest that had actually been received as a result of the term deposit some 58.5cents in the dollar was due tax and my tax obligations had been paid to the Inland Revenue Department. p.116-l.46

35. A similar situation existed with the $200,000 that was on mortgage in regard to the date of inception and payment of tax on interest. Further I had used some to purchase real estate in the intervening years. The current value of the asset on mortgage was not $200,000 ; it was $155,000. p.110g(foot)

36. Insurance policies that I had, had been cashed up and paid to my bank account. If my bank account was currently valued and the "non existent" insurance policy valued the effect would be the valuation of the same property twice. p.112-l.32 to 39

37. Where Mrs. Reid had paid premiums to a Building Society such payments would result in an increase in value of the Building Society Shares. Valuing her bank account at a date two years prior to the date of the valuation of the shares would value the transferred property twice.

38. There was another serious fallacy in the orders. If my home was to be revalued after years of serious inflation there should be some credit given for the costs of maintaining it over those years. If a "current" valuation of my bank account was in fact a 1976 valuation, expenditure on rates, maintenance and improvements that had supported the inflation became money that was effectively valued twice.

39. I applied for a stay of proceedings until the Court of Appeal could hear the matter but the Court of Appeal dismissed the application. The parties were therefore obliged to carry out the orders of the Court and appeared before Mr. Justice Quilliam on 11 March 1980 to have the current valuations of the matrimonial property fixed. Quilliam J. gave judgment on 11 March 1980. Index p.3 7.12.79

40. In His Honour's judgment he stated I had agreed to the order that he made on 2nd November 1979. That statement is as incorrect as the first statement of His Honour purporting that I had originally made an application under the 1963 Act. I did not. What I did agree to was the appointment of whoever valuers the Court would care to appoint to value the parties' matrimonial property. I also agreed that the date for the "current" value should be the date of the Court of Appeal's Judgment and not the then current date of that particular hearing in the Supreme Court. p.129-l.34 p.129-l.4

41. The difficulties that I had foreseen and on which I had been denied the opportunity to make my submissions had become the problems of Mr. Justice Quilliam.

42. His judgment confirms that he dismissed my interrogatories because:

> "most, if not all, of them related to assets which were said to exist but which had not been subject of consideration by me or the Court of Appeal. I was not prepared to entertain this . . ." p.131-l.58

It is part of my submissions that Quilliam J. was wrong in not accepting that the assets of the parties that were to be valued at the current date were those assets that the parties held at that date and that they were matrimonial property regardless as to whether they had previously been considered by His Honour or the Court of Appeal.

43. Quilliam J. continued:

> "The second category of assets involves those which were in existence at the time of the original hearing before me but which no longer exist . . . " p.133-l.4

and

> "A question of principle arises as to the proper course to follow . . . It did not occur to me when I made the order on 2nd November that this was a problem which might arise and it does not seem to have occurred to the parties." p.133-l.7 p.133-l.22

With respect to His Honour I had already appealed from the orders of 22 November and the matter had certainly occurred to me.

44. When His Honour came to fix the values of the matrimonial property under his own order he found that "in common fairness" he could not proceed on that basis. For some assets he adopted another method stating "This is obviously a somewhat artificial approach but the alternative may be even less realistic." p.137-l.29 p.133-l.54

45. It is submitted that there are no provisions in the Act or any other statute authorising the Court to embark on an entirely new method of establishing a current value of property and certainly not one which is quite outside the standards of international accountancy, a standard which is adopted by the New Zealand Association of Chartered Accountants.

46. I appealed from the valuations that were set by the orders of Quilliam J. of 3 April 1980 to the Court of Appeal.

47. In the judgment of the Court of Appeal Their Honours upheld my appeal to the extent that Quilliam J.'s method of assessing the current value of the matrimonial property made no allowance for any taxation paid on my investments. They allowed an arbitary figure of $20,000 to me but made no reference to any of the factual details before them. p.145-l.22

48. Quilliam J. referred in his judgment to the fact that I had clearly made a tax and a legal cost payment. He appeared to consider that these were justifiable deductions but it is submitted that his calculations defy accountancy reconciliation. (It was submitted to the Court of Appeal that there were in fact six payments for tax alone in the statements before His Honour, yet he found only one.) p.137-1.39

49. I also submitted to the Court of Appeal that the Act clearly covered the situation by making provision for the Court to accept the help of qualified accountants to look into the matters of fact. I asked the Court to appoint the firm of Clarke Menzies & Co. to that end under the provisions of s.38. The Court gave judgment without that assistance and I have appealed from all judgments.

50. Your Lordships' attention is drawn to Woodhouse J.'s statement that the Court held the view that it is only necessary to have a fair estimation of the worth of the matrimonial property and they would not readily interfere with the findings of the Court below. It is a submission to Your Lordships that, that being so, that same Court had no grounds whatsoever for not accepting the original valuations that were accepted by Quilliam J.; especially so when Cooke J. described the question of the valuation issues as trivial. Quilliam J's statement that certain valuations were not before him at the original hearing is incorrect unless he referred to Mrs. Reid's vehicle. p.143-1.32 p.593-1.43 [N.Z.L.R]

51. **THE MATRIMONIAL PROPERTY ACT 1976**

Richardson J.:-

" (Lord Simon of Glaisdale) where a statute is dealing with people in their everyday lives, the language is presumed to be used in its ordinary sense, . . " p.605-1.43 [N.Z.L.R.]

Cooke J.:

" . . it cannot be the function of the Courts to superimpose glosses on the Act. " p.594-1.44 [N.Z.L.R.]

Woodhouse J:-

". . unambiguous words in a statute must be given their natural and ordinary meaning . . . " p.579-1.39 [N.Z.L.R.]

and:

". . . I think it is important to identify the implications of five rather general but nonetheless important considerations that can influence one's approach to the interpretation of this legislation. There can be no argument about the first point. . . . the law it lays down is not a part of the law of property in any traditional sense. Instead it is social legislation. . . " p.580-1.32 [N.Z.L.R.]

52. The Act commences with a very pertinent statement.
"To reform the law . . . to recognise the equal contribution of a husband and wife to the marriage partnership . . ."
It does not refer to a business partnership.
Expressio unius est exclusio alterius. It recognises that there are other partnerships in life and that a marriage partnership is not embracing all of life.

53. S.2(1) gives an interpretation of certain words used in the Act.

"Court" means a Court having jurisdiction by virtue of s.22 and in these proceedings s.22(1) limits the interpretation to the Supreme (now High) Court.

""Property" includes real and personal property and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest; and the term "asset" has a like meaning:"

It is submitted that the word property has been mainly used in the Act as a collective noun. It embraces all of that which is included in the definition.

54. Of prime importance to the substance of the appeals is the interpretation of "Matrimonial property". [s.2(1)] It is submitted that again the Act uses the word as a collective noun. Nowhere in the Act is the plural form used. Where necessary the Act consistently refers to "that part of the matrimonial property".

MATRIMONIAL PROPERTY

55. Cooke J. detailed the interpretation of the Act in relation to matrimonial property as being (a) to (i) of s.8 He set out in detail (d) (e) and (f). (a)&(b) were quite clear and needed no comment but he neglected (c) and overlooked the importance of making a general appraisal of matrimonial property and recognising the subtleties of each subsection. p.595-1.5 [N.Z.L.R.]

56. One common factor is found in all subsections of s.8. All refer to property of which the parties have the common use or benefit; if not directly, then by interrelationship to a subsection that does. The possible exceptions are (g)&(i) but for normal situations these also comply with the common factor and the wisdom of their inclusion is self evident.

57. Woodhouse, Cooke, and Richardson JJ. neglected (c).
s.8(c) All property owned jointly or in common in equal shares. [expressio unius est exclusio alterius]
Property owned in common in unequal shares is separate property.

Property owned in common in unequal shares can only be held in such manner if through gift or inheritance (s.10 separate property) - or by agreement between the parties. By s.8(c) the Act is accepting that property falling into s10 is separate property and then, appreciating that there is no other way to hold property in common in unequal shares unless some form of agreement has been made between the parties, honours that agreement. Property held in common in unequal shares is therefore, ipso facto, separate property. [s9(1)]

There is no social change in that, despite the obsevations of Woodhouse J. p.580-1.32 [N.Z.L.R.]

58. Cooke J. made only passing reference to (d) in the confusion of efforts to interpret (e). He said:-

> "A possible explanation for the second limb of s.8(e) is that para (d) had already dealt with property acquired before the marriage and intended for the common use and benefit of the parties." p.596-1.39 [N.Z.L.R.]

S.8(d) has a very pertinent and simple place. Under s.10 a gift from a third party is separate property unless it is so intermingled with other matrimonial property that it is unreasonable or impracticable to regard that property as separate property. By the inclusion of (d), the Act has subtly removed grounds for argument over the ownership of wedding gifts if such gifts were for the intended use of both parties - yet it has not overridden the general rule that other gifts to either party remain their separate property [s.10] nor has it overridden the right of a father to give to his daughter-in-law-to-be something for herself as a gift "in contemplation of her marriage" - be it a bottle of perfume or a Rolls Royce.

There is no hint of social change in that.

59. Woodhouse, Cooke and Richardson JJ. gave their interpretations of s.8(e) and all were wrong for they missed the most fundamental and important point of all. In the drafting of the Act explicit care had been taken throughout to make a distinct difference between two very important situations.

60. **Property that is acquired**
Property that is the proceeds of the disposition of property

61. The Oxford dictionary defines "Acquired"

"'Acquire'
From Latin and old French
-- To get in addition --

(1) To gain, obtain, or get as one's own, to gain the ownership of (by ones own exertions or qualities)
(2) To receive, or get as one's own (without reference to manner,) to come into posession of.
(3) To come to attain."

[Oxford English Dictionary, 1961 Edition, Vol. 1. page 85]

62. With the understanding that "property" is used in the Act as a collective noun, s.8(e) becomes remarkably clearer when the word "acquired" is replaced with the simple words "to get/got in addition".

" Subject to subsections (3) to (6) of section 9 and to section 10 of this Act, all property got in addition by either the husband or the wife after the marriage, including property got in addition for the common use and benefit of both the husband and wife out of property owned by either the husband or the wife or both of them before the marriage or out of the proceeds of any disposition of any property so owned; "

63. In a simplified example the second limb of s.8(e) is saying:-
If a spouse owned real estate before marriage and later used the rents (that property got in addition) for the purchase of goods that were for the common use of both husband and wife then those goods are matrimonial property. If the real estate was sold and the proceeds were invested in shares, the dividends from the shares (that property got in addition) would again become matrimonial property if used for the common use and benefit of both.
What s.8(e) does not say is that the proceeds of the disposition of property are matrimonial property.

THE PROCEEDS OF THE DISPOSITION OF PROPERTY

64. Receipt of the proceeds of the disposition of property is not to "acquire" property.
If, on the 1st day of the year, the sum total of a spouse's separate property was $10,000 and the following day $5000 was spent to obtain a car of equal value the sum total of the spouse's property would still equal $10,000 on the 3rd day of the year.
No property would have been "got in addition".
No property would have been "acquired".
The proceeds of the disposition of the property remain separate property. [s.9(2)]

65. The Oxford English Dictionary (ibid) supports the argument:-
"1862 Ruskin-
If in the exchange, one man is able to give what cost him little labour for what has cost the other much, he acquires a certain quantity of the produce of the other's labour. And precisely what he acquires the other loses."

The Act itself supports the argument for it acknowledges that there is a distinct difference between receiving the proceeds of the disposition of property and acquiring property. Both are used in s8(e) but perhaps the best example is found in:

> s9(2) ". . . all property acquired out of separate property, and the proceeds of any disposition of separate property, shall be separate property"

66. If the Act expected to have the meaning of acquiring property to be interpreted as being the same as receiving the proceeds of the disposition of property then, of course, there would have been no necessity to have made any reference to the proceeds of the disposition of separate property at all.

67. Cooke J. was wrong when he stated that "the literal interpretation of s.8(e) does mean that the second limb of s.8(e), beginning with "including", was strictly unnecessary" He, (as did Woodhouse and Richardson JJ.) failed to realise that the second limb is referring to something quite different from that contained in the first limb and, with respect to Their Honours, their failure to appreciate this fact led each to a review of ss8.9 that is in an area of makebelieve. It is submitted that the only common statement made by the three judges concerning s.8(e) that could possibly be correct is to the effect that s.8(e) means exactly what it says - but it does not mean what Their Honours thought it said. p.596-l.34 [N.Z.L.R.]

68. Without that understanding, all three judges could not appreciate the fact that the Act has a pattern which treats the acquiring of property exactly as the Oxford Dictionary defines the word, namely in two distinct ways:-

(1) To gain the ownership of by one's own exertions

and

(2) To come into posession of (without reference to manner)

69. S.10 details the acquiring of property in accordance with definition (2) but puts certain limitations on the continued holding of it as separate property. These limitations precisely conform to the "mutual benefit" pattern of the subsections of s.8.

70. The Court of Appeal's interpretation of s.8(e) made the reference to income in s.9(3) superfluous and for most practical purposes it made the whole subsection redundant. It is not. S.9(3) limits the continued holding of the gains from separate property if such gains were attributed wholly or in part to the actions of the other spouse. It is submitted that in this sense actions is a very carefully and well chosen word for exertions.

71. S.9(2) now has a very pertinent and obvious place. It refers to the acquiring of property by means that can be aptly described as "unearned income". It is submitted that in N.Z. tax laws there has been much reference to "unearned income" as being distinct from that which is earned by one's own exertions. The Act is simply carrying that understanding into another situation.

72. Now the Act takes on a completely sensible and well defined approach to the whole of the problem of the division of matrimonial property. There is no conflict whatsoever between the relationship of any subsections in s.8 and those in s.9. There is not even necessity to enter into argument to demonstrate the absurdity of the situations that can be created by the application of the Court of Appeal's interpretation of "acquiring" property when applied to other sections of the Act. S.9 needs no explanation. The

ordinary meanings of the words must be taken and they mean exactly what they say when the Act talks of separate property.

73. The Act fully recognises, in a very just and fair way the rights of both parties to hold their separate property. There is no social change in that.

THE JUDGMENT OF QUILLIAM J. CONCERNING S8(e)

74. Quilliam J. made some very pertinent points in his summary of s.8(e). He appreciated that there was a pattern that developed in the Act which clearly held that matrimonial property was all that property that was "for the common use and benefit of both spouses" He said: p.82-1.50 to p.84-1.14 p.84-1.14 p.82-1.50

> " Section 8(e) presents some real problems of interpretation. The first approach to it must, of course, be to try and interpret it according to the plain and ordinary meaning of the words used. Adopting this approach it is, at first sight, possible to say that it deals with two categories of property, the first being all property acquired by either the husband or the wife after the marriage and the second being property acquired before the marriage (or out of the proceeds of disposition of such property) if it was owned by either or both of them and was acquired for their common use and benefit. This is the interpretation contended for on behalf of the wife and, as I say, at first sight one is tempted to say that this is all that is involved. A closer consideration of the subsection, however, makes it clear that no such construction can be given to it without making a mockery of the draftsmanship of a number of other provisions and without departing from the plain intention of the Act as a whole.

75. If the first part of s.8(e) relates literally to all property acquired by a spouse after marriage then there would be no need for the second part. The second part cannot be regarded as limited to property acquired before marriage. The use of the word "including" must mean that it refers to property already referred to (that is, property acquired after marriage) but which was acquired out of the property acquired before marriage. The fact that the second part is there at all means that, without it, the first part standing alone would not have achieved the result of making property acquired from assets owned before marriage into matrimonial property."

76. It is submitted that Quilliam J.s assessment has one very powerful argument in support of it. S.9(6) has been made specifically subject to s.10 yet a careful study of s10 makes the reference to it quite superflous if the first limb of s8(e) is not limited to the common use and benefit criteria. Not only that but it could produce a ridiculous contradiction of the intent. I give an example:

> A man marries a woman with cash assets (her separate property). During the marriage the man banks a small proportion of his earnings. She later transfers a large amount to his account on loan. The transfer "increases the value of . . .(the) property referred to in section 8" and her "loan" automatically becomes matrimonial property.

No such mockery of the Act is made if the first limb of s.8(e) is limited to that which is acquired by ones own exertions and used for the common use and benefit of the parties, for, in that example, the husband's bank account would be his separate property until such time as his earnings were used for the common use and benefit of both.

77. THE LONGEST SECTION OF THE ACT.
S.21 Power to make agreements.
Clearly Parliament is recognising that the terms for the settlement of property as set out in the Act may not be the the wishes of all. It is recognising that couples have the right to make their own decisions. There are certain rules and the key to those rules is s.21(6): a method of ensuring that the parties know what they are doing and that there is no possibility of an agreement being made other than with understanding and in good faith.

78. S.21 is simply an encouragement to the younger generation to settle their own affairs their way and, ironically, to avoid the bickering in the Courts that has been a feature of the past and which has already necessitated Your Lordships help. (Haldane v Haldane)

79. S.21(13) states that no agreement between the spouses affects either's ability to make agreements with third parties for the holding of property in common. Consistent with the Act's preamble there is no limitation on other partnerships.

80. S.21(14) is again quite clear in that no agreement between the parties limits their ability to make gifts between themselves and "notwithstanding any rule of law" there is no obligation to have evidence of such gift.

> It is submitted that this latter is a very strange statement to make in an Act purported to be one "not laying down a law on property in any traditional sense", as per Woodhouse J.

81. It is submitted that Woodhouse J. was wrong to even be presumptuous enough to state there could be no argument. I submit that the Act is conveying a very important message in s.21(14) -- In simple terms (and with the understanding of other provisions of the Act) it is this :-

> Even though you have made an agreement under this section, this Act will not interfere with what you, as husband and wife, care to give to each other. The Act will not change the tradition that gifts have always been part of a marriage between two people. You need not even record such gifts. There is no limitation to the size of the gifts or the use to which the recipient puts that gift providing that it is not intermingled with other matrimonial property to the extent that it cannot be reasonably identified, then it remains the recipient's property - unless, ofcourse, you both have the common use and benefit of it, and then, if you share it during the marriage partnership, you will share it after. If you have made some other agreement between yourselves to the contrary then the Courts will honour that agreement, and that agreement need not be made in writing if it was made before the commencement of this Act.

There is no social change to the title of property in that.

82. If the ordinary meaning of the words is to be of prime consideration then it is submitted that the Act is simply saying "make your own agreements - the Courts will honour them and they will honour the agreements that have already been made. If no agreements have been made then the property will be divided according to this Act."

There is no social change from past justice in that.

THE TRANSITIONAL PERIOD

83. S.55(1) Gives the Courts no discretion. "The Court shall. . . have regard to any agreement entered into before the commencement of the Act . . ."

S.57(5) "Nothing in this Act shall affect the validity of any agreement entered into before the commencement of this Act. . ."

84. Now the Act takes on a completely sensible and well defined approach to the problem of the division of matrimonial property - and it fully recognises, in a very just and fair way the rights of both parties to hold their separate property.

There is no social change in that.

OTHER IMPORTANT CONSIDERATIONS FOR AN UNDERSTANDING OF THE ACT

85. S.8, in defining matrimonial property, has already been shown to have the common factor of mutual use and benefit. The danger of assuming the reciprocal of this to be a part of the Act is very real. Property which is used for the common use and benefit of both parties is not necessarily matrimonial property.

86. There are strict rules that govern the situations when the change from separate property to matrimonial property does take place. Those rules are basically covered in s.9(2), s.9(6) and s.10(1) and the limitations contained in those subsections must be appreciated. For example:

If a spouse has used the proceeds of the disposition of separate property to purchase a holiday home, that holiday home is not property "got in addition". It may certainly be for the common use and benefit of both but while, for example, it remains "unintermingled" with other matrimonial property, it justly holds its status as separate property. Other factors could turn it into matrimonial property but "the common use and benefit" test is not one that is supported by the Act.

87. If the holiday home were a gift from a third party the same situation exists but if the holiday home is the result of a gift from the other spouse it becomes matrimonial propery when used for the common use and benefit of both parties. [s.10(2)]

88. I submit that there could hardly be a more just means of treating property of a broken marriage in a fairer way yet still conforming with the traditional rights of the individual to own his or her own property.

89. In s19(a), the Act is recognising that property that is undivided must be able to be used by the spouse who is the lawful owner of that property. It does not restrict its use in any manner whatsoever, whether it be to acquire or deal with property. This subsection could create real complications if it were not for the fact that the Act also specifies a time for the classification of the type of property.

90. The Act overcomes these problems by a very neat trio.
S.2(2) The time for the assessment of the value of property.
S.2(3) The time at which to base the assessment of contribution of the parties towards that property.
S.2(4) The time at which the use of the property is to determine its classification.

91. Quilliam J. in his judgment of 3 April 1980 referred to the difficulty " that is likely to arise frequently . . . because of the relationship between s.2(2) and s.2(3) . . ." With respect to His Honour, he appears not to have appreciated that again the Act is making reference to two quite different things. p.133-1.8

s.2(3) refers to the share of the spouse in relation to whether it should be 1/2 or 1/3 etc. of the matrimonial property. The subsection does not refer to the property in which the spouses share.

92. Quilliam J. made a statement in his judgment of 3 April 1980 which demonstrated the lack of understanding of the wisdom of the Act in this area. He said that if an endowment policy was cashed up after separation he could not accept that one spouse could go on an overseas trip on the proceeds. p.133-1.62

It is submitted that by law [Domestic Proceedings Act 1968 s.20] a separation order does not affect the rights of either party to the marriage. Therefore either parties' rights to continue to deal with his or her property is confirmed in the Matrimonial Property Act by s.19.

Quilliam J. did not deal with two important points.

93. Firstly:

While the parties cohabited together both had every right to do as they wished with their own property. In fact, in this instance Mrs. Reid took our daughter to England for a holiday just before our troubles and she is recorded as saying. ". . . it was my money and I was entitled to do what I wanted with it." I also went to America to see our youngest son but I went after separation. Quilliam J. appears to approve of one trip but could not accept the other. Vol.2 p.79

That does not match the justice of the Act.

Secondly:

There is the predicament inwhich such a rejection could put His Honour. Not all endowment policies are initiated for the sole benefit of either husband or wife. A policy that had been taken out by a young man just incase he happened to marry and have a son could well have had its roots in the hope that it would terminate at the time funds were needed for the son's education. If that time happened to be after separation and the funds were indeed used for that purpose, Quilliam J. would still, by his reasoning and action, consider that the policy existed at the time of the Court hearing, value it with an artificial value and then divide the non existent proceeds.

The Act is wiser than that.

94. S.2(2) removes all doubt as to the date of the value of the matrimonial property. With "Court" defined in s.2(1), the reference to "the hearing" can, in these proceedings, only be a reference to that hearing in the Supreme Court of the 22 September 1977 "unless the Court in its discretion otherwise decides". In these proceedings Quilliam J. confirms that the Court did not otherwise decide. p.133-1.15

95. It is submitted that the Court of Appeal was wrong not to support Quilliam J's valuations of the matrimonial property that he accepted and set at the first hearing. The orders of Quilliam J. of 21 November 1977 defined each parties respective interest in the matrimonial property and he made provisions for its division. He vested certain property in each spouse and the Court of Appeal upheld those vesting orders. That property was therefore separate property in the hands of the respective spouse after the order of that Court. [s.9(5)] As such any increase in value of any property so held is subject to s.9(3) and is also separate property. When the Court of Appeal divided such as the $22,000 that represented the inflation on the matrimonial home, it divided $22,000 of separate property. p.93 to 95

The Court has no authority to divide separate property.

THE LIMITATIONS THAT THE ACT PUTS UPON THE COURT

96. S.25 defines the circumstances inwhich the Court may make orders.
S.25(1) limits the making of orders under the subsequent paras. (a) and (b) to the provisions of the Act.
S.25(1)(a) gives the right to the Court to make an order determining the shares (proportion) of each party in the matrimonial property
S.25(1)(b) Specifically limits the Court to the provisions of the Act.
S.25(2) effectively prevents the Court from assessing the contribution of each spouse to the marriage partnership while they are living together.
S.25(3) gives the Court the power to declare the status ownership, vesting or posession of any specific property while the parties are or are not living together.

97. S.33 Ancillary powers of the Court.
S.33(1) Gives the Court the right to make any order that it thinks necessary to give effect to any order made under the provisions of s.25 to s.32. The express mention of the eight sections must exclude the general provision contained in s25(1)(b). The eight sections referred to are in a group which concerns children, occupation orders, insurance policies etc. It is submitted that the subsection s.25(1)(b) does not give the same right to the Court for other sections.
S.33(2) Gives the Court the power to change certain orders but again it limits the orders to those made under s.26 to s.32. By the specific omission of reference to s.25 this subsection has put the changing of orders made while a couple are living together on a par with those made after separation; namely the Court may not change them and it may not change an order made under s.33

98. S.33(3)(a) to (n) specify the orders that a Court may make. They are in simple language. They are precise and clear.

99. S.33(4) "Where under any order made. . one spouse . . is liable to pay to the other a sum of money, the Court may direct that it shall be paid either in one sum or in instalments, . . (including a condition requiring the payment of interest) as the Court thinks fit."

100. It is submitted to Your Lordships that s.33(4) is the only subsection in the Act that gives any authority to the Court to order the payment of interest and that authority is one which necessitates a condition. The condition is obviously related to the Court's discretion that a sum of money may be paid in instalments. The subsection limits the condition of the payment of interest to a situation where an order for the payment of money has been ordered. The Court has not the authority to calculate interest and then order that that sum be paid.

101. In the orders of the Court of Appeal made 21 November 1980 I was ordered to pay Mrs. Reid " $16,890.97 being interest at 7.1/2% on $180,668.96 from 22 day of August 1979 to 21 day of November 1980." p.147-l.49

102. It is submitted that the Court of Appeal was wrong in ordering the payment of such interest. Until that day, 21 November 1980 there had been no order of the Court ordering me to pay any sum of money to Mrs. Reid. The Court of Appeal did not order the payment of any money by instalments and it made no condition upon any order that it had made. The Court of Appeal went beyond the provisions of the Act [s.33(4)] in ordering me to pay a substantial sum of interest to Mrs. Reid.

103. Furthermore the orders of the Court of Appeal of 22 August 1979 clearly stated "are to be divided" or "is to be shared". p.100-l.36
It is submitted that the Court of Appeal was again wrong for p.100-l.39
Quilliam J. had already divided the property and made orders p93 to p95
accordingly. The Act has no provision to order the division
of any matrimonial property twice. The Court of Appeal p.100-l.42
upheld the Supreme Court's vesting orders and under s9(5) the
various parts of the matrimonial property which were covered
by the vesting orders were the separate property of either
party. Had the Court understood the Act they would have
taken the correct procedure of overriding Quilliam J's
vesting orders as a first step. The way would then have
been clear for a revaluation of the matrimonial property as
that property then stood. The inflation value of the
matrimonial home, for example, is, in accordance with s9(5)
property acquired since a time when the Court provided for
the division of the property. That value is therefore my
separate property in just the same way that the inflation on
the holiday home is, infact, Mrs. Reid's separate property
while that vesting order stands.

104. **THE SUBSTANTIVE APPEAL**
It is submitted that the assets that have resulted from the sale of my shares in Reid Containers Ltd. are not matrimonial property but are my separate property under the interpretation of the provisions of the Act. It is submitted that there are two completely separate provisions in the Act that both give that result.

THE TRANSITIONAL PROVISION S.55

105. Attention has already been drawn to the fact that the longest section of the Act is that which enables couples of the younger generation to make their own provisions as to the future of their property. For the older generation the relevant section is much shorter but very precise in its wording.

106. S.57(5) "Nothingin this Act shall affect the validity of any agreement entered into before the commencement of this Act by way of settlement of any question that has arisen in relation to matrimonial property and every such agreement shall have effect as if this Act had not been passed."
Accepting that the ordinary meaning of words must be taken and that self opinions must not put gloss upon the statute, this subsection becomes of major importance. It does not say a legal agreement. It does not say a maintenance agreement. It does not even say a written agreement. It is submitted that <u>any agreement</u> means exactly what it says.

107. Referring to the following words in s.57(5), "by way of settlement of any question that has arisen in relation to matrimonial property."
If the assets that I used to pay for the shares in Reid Containers Ltd. were matrimonial property (and I do not accept that they were) then the method of obtaining those shares must have been a question that arose over matrimonial property. It is clear from the evidence p.4-l.1
that my wife and I discussed it. Mrs. Reid typed the p.70-l.19
list covering the factual information on the assets and
that list was sent to my accountant. That information p.49
formed the basis of the payment for the shares. The
evidence confirms that Mrs. Reid paid one pound for her p.576-l.43
share and that it also became part of the capital of the [N.Z.L.R.]
company.

108. On 9 February 1960 Mrs. Reid and I signed an agreement whereby we agreed "to take the number of shares in the capital of the company set opposite our respective names." That agreement was witnessed by our family solicitor Mr. Colin Clere. It is submitted that by that agreement we settled the question of the ownership of that property and that agreement has effect as if the Act has not been passed. p123

109. It is submitted that Your Lordships have no further question to answer in relation to the shares of Reid Containers Ltd. They are not matrimonial property under the 1976 Act because of s.57(5). If the Act has not been passed, I submit that there is no law which defines "separate property". The Court of Appeal's conclusion that separate property transforms into matrimonial property if it changes its form is therefore irrelevant.

110. It is submitted that the inclusion of s.57(5) in the Act is to cover the very sort of agreement that Mrs. Reid and I made. We settled the question of the shares in the company. If we had decided to form a partnership we could very well have held that partnership in common in unequal shares. As has already been shown the Act would have then recognised that the question had been settled under s.8(c), s.9(1).

111. Should I fail in that submission Your Lordship's attention is drawn to the fact that the Court of Appeal did not overrule Quilliam J's finding that my shares in Reid Containers Ltd. were purchased with my separate property.

It is submitted that the only requirement that is upon me is to show that the Act does not support the theory that separate property transforms to matrimonial property by the interpretation of s.8(e) and that has already been done.

THE SHARES OF EACH SPOUSE IN THE MATRIMONIAL PROPERTY

112. I have appealed to Your Lordships from the decision (by majority) of the Court of Appeal which overruled Quilliam J.'s assessment of the <u>proportions</u> in which Mrs. Reid and I share in the matrimonial property (excluding the home and family chattels). Quilliam J.'s assessment was 1/3 to Mrs. Reid and 2/3. The Court of Appeal's assessmant was 2/5 to Mrs. Reid and 3/5 to me.

113. With respect I submit to Your Lordships that this is an area where the wisdom of Mr. Justice Cooke has merit.

> "I must be alive to the danger of allowing personal opinions to creep in under the guise of interpretation." p.594-l.46 [N.Z.L.R.]

On the other hand Mr. Justice Woodhouse stated:

> "In my opinion it would be contrary to the general purposes of this Act, the Matrimonial Property Act as it is called, if the plain and ordinary meaning of the opening words of s.8(e) were radically cut down in order to enlarge the definition of separate property." p.579-l.53 [N.Z.L.R.]

114. Woodhouse J. made some rather presumptous statements:-

> "Not a word of complaint has been or could be made about the domestic achievements of the wife . . . It is a classic example of a married couple assisting and encouraging one another in all the ways that matter in marriage. " p.589-l.49 [N.Z.L.R]

If His Honour had read all that was before the Court he may have realised that I had always hoped that my family would be reunited. The fact that I have refused to criticise Mrs. Reid's ability at all is no grounds for Mr. Justice Woodhouse to make a statement which he cannot possibly substantiate from the factual evidence that is before him.

115. Woodhouse J. makes much in his judgment of his theory that the Act is recognising that marriage is a partnership. He then propounds that:

> ". . . the wife brought up the four children of the marriage . ." p.589-1.15 [N.Z.L.R.]

Cooke J. was at least observant enough to take into consideration the fact that the two teenage boys both wanted to stay with their father. That is not the decision of children whose father has played no part in their upbringing or care. p.602-1.13 [N.Z.L.R.]

116. Woodhouse J. states that Mrs. Reid ". . . attended to all the normal responsibilities of such a household." I ask consideration as to whether that was an opinion or founded on the facts before His Honour. I would submit that Cooke J. used better reasoning when he referred to the fact that the husband's practical ability at business must surely be reflect in his efforts in the home. p.589-1.16 [N.Z.L.R.] p.602-1.14 [N.Z.L.R.]

117. Woodhouse J. made comparisons of monetary figures. He states that Mrs. Reid provided $4004 towards the total costs of the second matrimonial home and he lists this as $23,294. The matrimonial home is by definition inclusive of the land. It is submitted that if the 1963 relationship between the value of the land and that of the dwelling could be accepted to be similar for a 1980 comparison then the total valuation of the Matrimonial home was, in 1963, not $23,294 but $33,310. As I had provided the land, Mrs. Reid's contribution was approximately 12%. p.588-1.26 p.576-1.28 [N.Z.L.R.]

118. Woodhouse J. referred to Mrs. Reid providing furniture and posessions worth $10,526 dollars at the time of the marriage. (Cooke J. said about $15,000) He then proceeded to make three observations all incorrect because of a very fundamental mistake in the first statement. p.588-1.30 p.601-1.30 [N.Z.L.R.]

Firstly:

> The figure that Woodhouse J. quoted covers property referred to in Mrs. Reid's affidavit of 19 September 1977 as "gifts". He has no grounds to assume that they were made at the time of the marriage and he failed to appreciate that the wedding gifts which were contained in that same list were given to both parties. p.63-1.2
>
> The wisdom of s.8(d) is self evident.

Secondly:

> Woodhouse J. only considered what I would describe as the "appreciating investment assets" alleged to be Mrs. Reid's property and apparently gave no credit at all for the depreciating assets that I had provided over twenty years of marriage. **p.586-1.51 et seq. [N.Z.L.R.]**

Thirdly:

> Woodhouse J. repeated Quilliam J.'s reference to Mrs. Reid providing some $15,000 of high quality furniture and chattels derived from her family in England. Nothing supports the statement. **p.587-1.30 [N.Z.L.R.]**

119. With respect to Woodhouse J, he filled his judgments with naive statements. I give but one example:-

> ". . . apart from the trust funds, the accumulating business assets were not made available (at least in any large way) for any immediate family purposes." **p.591-1.6 [N.Z.L.R.]**

By simple reasoning, it is impossible for "currently accumulating business assets" to have been expended in the past, but:

> 51% of what was once accumulating business assets were made available for the welfare of the family in 1972. **p.6 para 23**

120. It is submitted that the Court of Appeal made an assessment of the contribution of the parties to our marriage without any understanding of the facts that were before them and without the advantage being able to assess both parties in person as Quilliam J. did, for it is submitted, that both gave evidence before him. assess both parties for, it is submitted, both gave evidence before him.

CONTRIBUTIONS OF THE SPOUSES S.18

121. Woodhouse J. stated that the eight categories set out as coming within the statutory concept of the word "contribution" must be considered. p.583-1.20 [N.Z.L.R.]

122. The marriage partnership is that which existed from the time of marriage to the time of separation. During that time the contributions of either party to that marriage are assumed by the Act to be equal. The Act provides for the equal division of that part of the matrimonial property that is also assumed to be the assets normally acquired during a marriage; namely the home and family chattels.

123. If there is additional matrimonial property to be divided then either one or both spouse must have made an additional contribution to the marriage partnership.

124. s.18(1)(a) The care of any child of the marriage . .

> The Court of Appeal was presumptuous when, in this case it assumed both parties did other than share equally in the upbringing or care of their children. The assumption that a woman is responsible for the upbringing of children has no support from any section of the Act. p.589-1.15 [N.Z.L.R.]

It is submitted that both Mrs. Reid and I brought up and cared for our children. For that we must be equally credited.

125. s.18(1)(b) The management of the household and the performance of household duties.
I submit that there is nothing to suggest that either party did not share equally in both these matters.

126. s.18(1)(c) The provision of money, including the earning of money for the purposes of the marriage partnership.
There can be no doubt that for twenty years I provided the family with the finance for their daily living from my earned income.

127. S18(1)(d) The acquisition or creation of matrimonial property: including the payment of money for those purposes.
Woodhouse J. satisfied himself that Mrs. Reid made a substantial contribution to the matrimonial property by playing with figures and in doing so made many fundamental mistakes. For example:

> He refers to the origin of the finance for 85 Nelson St. He states that the figures given by the husband "do not agree". With respect they do. Mrs. Reid paid the deposit. I paid to (Mrs. Reid) $4000 and I provided a further $2000. Her deposit was thus refunded to her. What ever credit he attributed to Mrs. Reid in that matter it was too much. p.587-1.54 p.588-1.6 [N.Z.L.R.]

128. Woodhouse J. credits Mrs. Reid with having:

> "received throughout the marriage an income from England and this . . . she was prepared to use for family purposes." p.589-1.26 [N.Z.L.R.]

I submit that there is no evidence to substantiate that Mrs. Reid did throughout the marriage receive from England her income or that she was prepared to use it for family purposes.

129. Mrs. Reid states that her income from the property that she owned in U.K to be $NZ359.77 per year yet in spite of the modesty of the amount she was able and prepared to bring to New Zealand $4,000 in December 1976 still leaving $2,543.73 in her English account. Allowing for the fact that some of this may have represented a third share in the sale of a L4,000 property some considerable time was necessary for the accumulation of such interest. There is also reference to a figure in a U.K Bank of 6461 UK pounds as at January 1976. No one has questioned the fact that it may not have been there twelve months later but it is submitted that this money could not have been accumulated by such modest rents and at the same time brought, as suggested by Woodhouse J., to New Zealand "for family purposes." p.31-l.57 p.31-l.37 p.31-l.50/ p.32-l.3 p.31-l.32 p.20-l.10

130. I submit to Your Lordships that there is no evidence to show that Mrs. Reid made any efforts to make monetary contributions to the marriage partnership other than in a manner which ensured her money was well invested. There is nothing to support even a suggestion that she assisted with the very substantial burden of a private education for all the children. I submit that Woodhouse J. missed appreciating the fundamental situation that existed in our home. I used all my earned income to maintain my family in the marriage partnership. Mrs. Reid also had an income but she did not use it at all for that purpose.

131. It is submitted that the cash assets that Mrs. Reid brought to New Zealand were effectively repaid to her many times, and that the matrimonial property that is now the consideration of Your Lordships is property that would exist today with or without any contribution from Mrs. Reid.

132. s.18(1)(e) The payment of money to maintain or increase the value of-
(i) The matrimonial property or any part thereof
It is acknowledged that I maintained the two homes. I submit that there is nothing to support any argument that Mrs. Reid made any payment related to maintenance on any matrimonial property in the 20 years of marriage. Nor did she contribute any money towards anything related to the increase in value of any matrimonial property.

133. (ii) The separate property of the other spouse or any part thereof:
(This para. is dealt with under the heading of The S. R. Reid Trust)

134. s.18(1)(f) The performance of work or services in respect of-
(i) The matrimonial property or any part thereof:
Cooke J. made a pertinent observation:-
"With his practical ability he must have been a useful husband to have about the house." p.602-l.14 [N.Z.L.R.]
It is submitted that it would be unreasonable to think that a man who appears to be credited with building almost the entire manufacturing plant for a 40,000 sq ft factory complex would not maintain his own homes and all their contents with similar ability. p.54-l.37

135. (ii) The separate property of the other spouse or any part thereof:
If Your Lordships uphold my argument that the proceeds of the disposition of my shares in Reid Containers Ltd is my separate property then it is for Mrs. Reid to show some grounds for claiming consideration for a contribution to a marriage partnership under this subsection. I know of no grounds.
(This para. is again dealt with under the heading of The S. R. Reid Trust)

136. s.18(1)(g) The forgoing of a higher standard of living than would otherwise have been available:
There has been argement submitted by counsel for Mrs. Reid that she suffered the forgoing of a higher standard of living because of the necessity of some prudence while the business was being established. Quilliam J. referred to this as being only for a brief period and he considered it to be not of any significance. It is submitted that if there was any such forgoing of a living standard it was not Mrs. Reid that suffered it. Three years later she was quite prepared to bring funds to New Zealand to invest them in the new home. p89-1.46

137. s.18(1)(h) The giving of assistance or support to the other spouse (whether or not of a material kind), including the giving of assistance or support which-
(i) (Not relevent)
(ii) Aids the other spouse in carrying on his or her occupation or business.
Much has been made by Mrs. Reid's counsel that "she had to be at home every day for twenty years to give him lunch."

138. On the 17 December 1976 Mrs. Reid was cross-examined and asked if she recalled my efforts to have marriage guidance talks in 1975. Her reply was:
"No, he was so busy at the factory that I hardly saw him and hadn't seen him for years." Vol.2 p.63
It is submitted that that is not compatible with a claim of having to be at home to get his lunch every day, and that such claims are not the sort of support that the Act is expecting to be considered in aiding the husband to carry out his business.

139. It is submitted that Their Honours made another fundamental mistake under this heading when giving consideration to contributions. Their Honours preoccupied themselves with their concern to allow for what they considered to be the giving of assistance by Mrs. Reid in relation to the support which aided me to carry on my occupation. Their Honours appeared to forget that Mrs. Reid also had an occupation. They forgot to consider whether in her occupation as a housewife she had support from the other spouse that aided her. I submit that that the evidence is there to show that she had that in total. It is acknowledged that I was a family man and probably spent more time with my family than most men. p.602-1.10 [N.Z.L.R.]

140. s.18(2) There shall be no presumption that a contribution of a monetary nature . . . is of greater value than a contribution of a non-monetary value.
With respect to Their Honours, they appear to have been mesmerised by this subsection yet the wording is very simple. "There shall be no presumption" does not say that a monetary contribution shall not be considered to be greater than a non-monetary one.

141. **THE OVERALL RESULT OF THE PROVISIONS OF S.18**
S.18(3) "In determining the contribution of a spouse to the marriage partnership any misconduct of that spouse shall not be taken into account to diminish or detract from the positive contribution of that spouse unless the misconduct has been gross and palpable and has significantly affected the extent or value of the matrimonial property. The Court may, however, have regard to such misconduct in determining what order it should make under any of the provisions of sections 26, 27, 28 and 33 of the Act."

142. Woodhouse J. made reference to a matter that was raised by my counsel, Mr. Inglis, at the hearing in the Court of Appeal of 11 June 1979. It concerned a letter that was sent to me by Mrs. Reid's solicitor a time that was almost identical to the date when payment for my shares in Reid Containers was to be made by D.R.G.(N.Z.) Ltd.. While Woodhouse J. appears confused over the submissions Cooke J. reported Mr. Inglis's submissions accurately. p.591-l.42 [N.Z.L.R.] p.602-l.30 [N.Z.L.R.]

143. In brief, the effect of that letter, coming at the time it did, was acknowledged by Quilliam and Cooke JJ. to have had the very probable consequence of the loss of a very substantial sum of money, namely some $170,000. I ask Your Lordships to consider the effect of that letter in the knowledge that the firm inwhich I had put my trust, had, amongst other things, deducted $100,000 from the calculations of a fair price because I had insured myself for that amount on conditions that gave financial security to my wife. p.602-l.31

144. I do not intend to argue as to whether such conduct was misconduct "gross and palpable" but I humbly ask your Lordships to consider whether or not it is misconduct for any wife to attack her husband at such a time and in such a way. If it is, and if it did significantly affect the extent or value of the property, I invite ask Your Lordships to give consideration to the matter when making any directives under the provisions of s.33. [s.18(3)]

145. I draw Your Lordships attention to the fact that I have objected to the inclusion in the Record of all the correspondence of the parties' legal representatives. However it is there and, while I cannot accept that the standard of correspondence of Mrs. Reid's legal adviser is necessarally hers, I submit that she must take some responsibility for the overall attitude that clearly shows money to be of more importance than our marriage or our family. Index p4

SUMMARY OF THE PARTIES' CONTRUBUTIONS UNDER S.18

146. I submit to Your Lordships that a just consideration of this section can hardly produce an answer that does not show that in this case my contribution to the marriage partnership was not just greater than Mrs. Reid's but it was many times greater.

147. I humbly ask Your Lordships to overrule the majority finding of the Court of Appeal and confirm that the assessment of the shares of the parties in the matrimonial property made by Mr. Justice Cooke, namely 25% to Mrs. Reid and 75% to me is a just division, with or without consideration as to the value of the total matrimonial property.

OTHER MATRIMONIAL PROPERTY

148. At the start of his judgment Woodhouse J. calculated the result of the decision of the lower Court. He assessed the apportioned interests as 12% to Mrs. Reid and 88% to me. I submit that those figures are misleading for they do not take into account any of the property that I had considered to be Mrs. Reid's separate property. For example: all Mrs. Reid's cash assets that were in England are, by the Court's interpretation of s.8(e), matrimonial property. [s.7(1)(b)] p.574-l.43 [N.Z.L.R.]

149. In my original notice of motion of 7 February 1977 the Court was asked to declare "the status, ownership, vesting and posession of all property. . ." The fact that the Court has failed to make any order regarding some particular property does not mean that that property is not matrimonial property and the Act contains no provision for any asumption that it is therefore separate property. [s.9(1)] p.1-l.23

THE S. R. REID TRUST

150. It is submitted that the interest that Mrs. Reid has in the S.R. Reid Trust is matrimonial property. [s.2(1) "Property"]

151. Cooke J. referred to Mrs. Reid's life interest in the trust as being acquired by gift. He was not correct. The assets that are accumulated in the trust are entirely those that comprise a capital gain on an initial zero capital: as is shown in the Capital Account of the balance sheet for year ending 31 March 1979. The trust was set up by myself and as such does not come under s.10 as I am not a third party to these proceedings. p.603-1.30 [N.Z.L.R.] p125

152. It is submitted that Mrs. Reid does not have title to the capital of that trust (our children being remaindermen) but the trust deed gives her a life interest in the income of that trust. That life interest in the income of the S.R. Reid Trust is "property" under s.2(1)"Property"

153. The fact that the Court has not made an order relating to that property does not change the status of that property. Under ss.8(g),(h)&(i) insurance, assurance and benefits from superannuation policies are matrimonial property. The reasoning behind such provisions is, it is submitted, that such are for the benefit of both parties. In the event of death the other spouse has the benefit. In relation to Mrs. Reid's interest in the S.R. Reid Trust the survivor would have benefited in the event of either of our deaths, Mrs. Reid by the receipt of the continuing income and for myself in relation to the provision for my children who were the remaindermen; such provision thus removing some of the burden of having to financially provide continuing help with their upbringing. As neither of us died and had our marriage not broken, both of us would have enjoyed the income in the marriage partnership.

154. I submit that the interest which Mrs. Reid has in the S.R. Reid Trust is matrimonial property and that the Court was wrong in not making provision for the division of that property.

155. Alternatively:
If that interest is not found to be matrimonial property it is by s.9(1) separate property. If that is so then I respectfully ask that Your Lordships take that property into account when assessing the contributions to the marriage partnership under s.18(f)(ii). Your Lordship's attention is drawn to a submission in my affidavit of 31 January 1980 to the effect that the life interest in that trust had a value of $41,920.21 as at 22 August 1979. p.114-1.35

THE BUILDING SOCIETY DRAWS.

156. Woodhouse J. referred to moneys received by Mrs. Reid from a Building Society and suggested that nothing had been advanced on my behalf which would justify the Court taking a view other than that expressed by Quilliam J. His view was that moneys received from the Building Society had been accounted for by reflection of assets in Mrs. Reid's bank accounts. I submit that Woodhouse J. overlooked the fact that my Counsel simply pointed out that money paid to Mrs. Reid after separation could not be included in valuations of her bank accounts if those accounts were valued as at the separation date. p.592-1.49 [N.Z.L.R.] p.81-1.12

157. Quilliam J. was correct when he stated that the three sums of $5,000 each were matrimonial property but he was not correct when he considered that all were reflected in the value of Mrs. Reid's bank accounts, the value ofwhich were detailed in an affidavit and said to relate to valuations as at 17 p.81-1.12 p.30-1.11

December 1976. $5000 could not have been reflected in the values given, for as Mrs. Reid stated, $5000 was not paid until after that date.

158. When the parties' property was to be revalued for a current valuation, Quilliam J. effectively ordered Mrs. Reid's moneys that were invested in, or through, solicitors' trust accounts (including her own counsel's) trust, to be that to which Mrs. Reid was agreeable. No current valuation was ever made, my interrogatories being dismissed. p.103-l.28

159. It is my submission to Your Lordships that any assets that are not brought to account do not become the separate property of one particular party simply because the Court has not defined the interests of the parties or made orders relating to the ownership of those assets. I submit that Quilliam J. was wrong in not having an independent valuation of property known to be held by counsel for one of the parties. Vol.2-p115 para. 3

160. With respect, I ask of Your Lordships, that, though the matter may seem trivial, there be a directive which will enable the value of the assets held in the trust account of Mrs. Reid's solicitor (or such investment account as he may use) to be independently ascertained as at the date of the Court Hearing, that date being the date that Your Lordships so direct.

THE REID FAMILY PARTNERSHIP

161. In the judgment of Mr. Justice Quilliam of 21 November 1977 he made reference to the property at Aglionby Street. From his detailed summary of facts he had studied the documents before him but, with respect to His Honour, he failed to appreciate that the interests of the parties are in the partnership and not in the real estate to which he refers. When the revaluation of that part of the (adjudged) matrimonial property was required, I submitted by affidavit, details of the factual situation regarding that partnership in accordance with the leave he reserved so to do. I also submitted the balance sheet of the partnership for the financial year ending 31 March 1979. p.87-l.15 to l.47 p.113-l.11 to p.114-l.5 p.106-l.8 p.126

162. It is submitted that neither of the parties' interests in this partnership is part of the matrimonial property. Being property held in common in unequal shares, the shares of both Mrs. Reid and myself in that partnership are our respective separate property. [s.8(c), s.9(1)]

THE MATRIMONIAL HOME

163. It has already been submitted that with a full understanding of the Act there is very fair and just division of matrimonial property. Equal sharing is plainly the norm [s.11] unless there is a very clear justification for departing from it, as in ss.13 and 14.

164. The Act recognises the fact that married couples almost always work together to establish their matrimonial home as a team; one may be primarily the breadwinner and the other primarily the home maker, or each may share these functions in various degrees. The equal sharing regime imposed by s.11 is a clear recognition of the concept that in the establishment of their home the parties' respective contributions will normally balance each other.

165. S.16 is a provision that gives the Court the authority to make adjustments to the division of matrimonial property (including the matrimonial home) where both spouse own a home at the time of marriage but only one of those homes (or the proceeds of the sale thereof) is used. That provision is

notwithstanding the provisions of s.14.

166. s.16 could appear a strange provision for it does not cover the situation where one spouse sells a home just prior to marriage, keeps the proceeds as separate property and then has the advantage of the immediate use of the other party's home. Clearly the Act relies on the provisions of s.14 to cover the situation. It is expecting the Courts to realise that situations where it is clear that one party does not contribute equally towards the matrimonial home is a circumstances that is out of the ordinary and to be dealt with under s.14.

167. Quilliam J did not accept that Mrs. Reid's 20% contribution was other than that which the Act expected but as has already been shown he was incorrect in his calculations and Mrs. Reid's contribution was 12%. That only came eight years after the marriage because she was impatient for a bigger and better home. 21 years after the marriage Mrs. Reid still had real estate in England. p.4-l.39 p.31-l.41 to l.45

168. I humbly submit to Your Lordships that a 12% contribution to the matrimonial property after 20 years of utilisation of the other 88% would produce a situation that is repugnant to justice if that property remains equally divided. I ask that the share in the matrimonial home be in proportion to the contributions of the parties to the marriage partnership.

THE HOLIDAY HOME AT PAIHIA.

169. I have appealed to Your Lordships from the order of the Court of Appeal which upheld the vesting orders of Quilliam J. to the extent of his order which vested our holiday home in Mrs. Reid.

170. I submit to Your Honours that Quilliam J. was wise in the manner in which he considered the vesting of the parties' property. He put into the hands of either spouse that property to which each had their individual rights. He then vested in each that property of which each had posession. There remained only one question and that was the jointly owned holiday home at Paihia. p.90-l.25

171. In his judgment he made reference to the fact that I did not, (at that time), require any payment from my wife even though I had estimated that there would probably be some due to me. p.92-l.25

172. Quilliam J., it is submitted, made his calculations on the basis of his determination of matrimonial and separate property and found that what I had said was true; Mrs. Reid owed to me a few thousand dollars.

173. I had made my calculations on the basis that I would have and continue to maintain the holiday home and that all my family including Mrs. Reid would continue to use it. With respect to Quilliam J., he made a fundamental error. He forgot to take into account the fact that I had already paid to Mrs. Reid $50,000.00 He balanced his assessment of each parties' property by vesting in Mrs. Reid the holiday home. He defeated in one blow the wisdom of his reasoning for he threw the situation of Mrs. Reid into one of debt to me to an extent of several thousand dollars greater than the value of the Paihia property.

174. He gave a reason for his decision. As I had the family home and Mrs. Reid had moved to a more modest one her need was greater and I had the capital to purchase another holiday home should I so wish. p.90-l.50

175. Quilliam J. obviously overlooked some of the facts. There is no reference to my having any qualifications (and indeed I have none.) My means of a livelihood was based on the use of my capital for the establishment of a new business. That had already been seriously depleted by the payments to Mrs. Reid and her Trust and, as I had stated, the costs of such a project needed all that was available. On the other hand Mrs. Reid had a guaranteed income and she was a qualified physiotheraist, a profession which needs no capital outlay. p.8-l.14 p.3-l.35

176. Woodhouse J. made reference to the Paihia property. He referred to Quilliam J's judgment and stated that he had given good reason for his conclusion which he thought was quite right. Woodhouse J. appeared to be quite oblivious that he, himself, had completely reversed Quilliam J.'s judgment regarding my business assets and I was not, by his judgment, in any position to afford the purchase of another holiday home let alone have the capital required to start the intended business. p.592-l.43 [N.Z.L.R.] p.592-l.47 [N.Z.L.R.]

177. I also submit to Your Lordships that not one of the four judges involved with these proceedings appears to have appreciated that I have the matrimonial home simply because Mrs. Reid decided that she did not want it. That decision is perfectly clear from her solicitors letter of the 12 March 1976. p.21 para.2

179. I also submit for Your Lordships consideration of the fact that I have had no say whatsoever in any of our family chattels. There are times when money is no compensation for those things that one owns which for sentimental or other reasons, one holds dear. Mrs. Reid made an agreement and in that agreement the contents of Colin Grove was to remain intact until the matter could be settled. There was no settlement. Mrs. Reid was entrusted with the home and all its contents but she broke that trust and she stripped that home to the bare minimum, taking every single item that was her own wish. p.19-l.7

180. At a later date she claimed to have acted on her solicitor's advice and her solicitor asserts that the contents of Colin Grove are still intact. p.58-l.31 p.124-the last line [Vol. 2]

181. Should Your Lordships have doubt as to the just ownership of the Paihia property I respectfully refer Your Lordships to the statement of Mrs. Reid in her affidavit. If ownership is not hers then she asks that both the matrimonial home and the Paihia property be sold and the proceeds be equally divided. p.27-l.43

182. I submit to Your Lordships that even Solomon, in all his wisdom, was never faced with the division of two children.

183. I humbly beg Your Lordships to overrule the vesting orders of the Court in regard to the Paihia property.

CONCLUSION

184. I humbly submit that :

(a) (i) The judgments of the Court of Appeal made on 22 August 1979 are erroneous and should be rescinded. p.574 to 612 [N.Z.L.R.]

(ii) that the orders of the Court of Appeal made on 22 of August 1979 should be declared invalid, p.100

or in the alternative:- p.100

that the orders of the Court of Appeal made on 22 August 1979 should be rescinded.

185. (b) (i) The judgment of the Court of Appeall made on 21 November 1980 is erroneous and should be rescinded. p.141

(ii) The order of the Court of Appeal made on 21 November 1980 should be declared invalid, p.147

or in the alternative:-

that the order of the Court of Appeal made on 21 November 1980 should be rescinded. p.147

186. (c) (i) that order 16(a)&(b) (referring to Mrs. Reid's interest in Aglionby Street) of the Supreme Court made on 21 November 1977 should be rescinded. p.94-1.51 to p95-1.3

(ii) that an order should be made vesting the proceeds of the disposition of the wife's interest in the Reid Family Partnership (referred to as Aglionby Street) in the wife as her separate property.

187. (d) (i) that the vesting order 2(a) (referring to the vesting of the holiday home at Paihia) of the Supreme Court made on 21 November 1977 should be rescinded. p.93-1.23

(ii) that an order should be made vesting the holiday home at Paihia in the husband and that the husband pays to the wife her share in that part of the matrimonial property.

188. (e) (i) that order 1(b) (referring to the value that the husband is to pay to the wife for her share of the matrimonial home) of the Supreme Court made on 21 November 1977 should be rescinded. p.93-1.20

(ii) that the husband should be ordered to pay to the wife her share of the matrimonial home and that her share be the share of her contribution to the marriage partnership.

189. (f) (i) that order 6(b) (referring to the Bank of New Zealand current account of the wife) of the Supreme Court made on 21 November 1977 should be rescinded. p.94-1.1

(ii) that the valuation of that part of the matrimonial property referred to in the orders of the Supreme Court of 21 November 1977 as 6(b) should be ordered to be the value as at 21 September 1977 and that the wife be ordered to pay to the husband his share of that part of the matrimonial property.

190. (g) (i) that order 7(b) (referring to the Bank of New Zealand Nationwide account of the wife) of the Supreme Court made on 21 November 1977 should be rescinded. p.94-1.7

(ii) that the valuation of that part of the matrimonial property referred to in the orders of the Supreme Court of 21 November 1977 as 7(b) should be ordered to be the value as at 21 September 1977 and that the wife be ordered to pay to the husband his share of that part of the matrimonial property.

191. (h) (i) that order 12(b) (referring to the money invested in New Zealand in the name of the wife) of the Supreme Court made on 21 November 1977 should be rescinded. p.94-1.40

(ii) that the valuation of that part of the matrimonial property referred to in the orders of the Supreme Court of 21 November 1977 as 12(b) should be ordered to be the value as at 21 September 1977 and that the wife should be ordered to pay to the husband his share of that part of the matrimonial property.

192. (i) (i) that the wife's life interest in the S.R. Reid Trust should be declared part of the matrimonial property and that the value of that part of the matrimonial property be that as at the 21 September 1977 and such value to be set by a public valuer to be appointed by the Court, unless the parties can otherwise agree.

(ii) that the wife should be ordered to pay to the husband his share of that part of the matrimonial property.

REASONS

193. Because Their Honours did not understand the provisions of the new Matrimonial Property Act 1976 and did not interperet them correctly

And

Because the Supreme Court failed to make orders regarding certain parts of the matrimonial property

And

Because the Court of Appeal made orders for which it had no jurisdiction to make under the provisions of, and with regard to, the restrictions of the Matrimonial Property Act 1976.

Anthony F. Reid.