

11/82

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

RECORD OF PROCEEDINGS

PART I

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,
Lower Hutt,
New Zealand.

IN THE PRIVY COUNCIL

NO. of 1981

ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

ANTHONY FULTON REID
Appellant

AND

SUSAN ROSEMARY REID
Respondent

RECORD OF PROCEEDINGS

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,
Lower Hutt,
New Zealand.

PIDX.24

IN THE PRIVY COUNCIL

NO. of 1981

ON APPEALFROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN ANTHONY FULTON REID
Appellant

AND SUSAN ROSEMARY REID
Respondent

RECORD OF PROCEEDINGSINDEX OF REFERENCEPART 1

DOC.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<u>IN THE SUPREME COURT OF NEW ZEALAND</u>			
1	Matrimonial Property Application by Anthony Fulton Reid	7 Feb 1977	1
2	Affidavit of Anthony Fulton Reid in support Exhibit "A" thereto Exhibit "B" thereto	18 Mar 1977	2 19 21
3	Answer of Anthony Fulton Reid to interrogatories.	28 Apr 1977	22
4	Affidavit of Diana Elizabeth Jones in support	6 May 1977	24
5	Affidavit of Susan Rosemary Reid in answer Exhibit "A" thereto Exhibit "B" thereto [file of correspondence]	18 May 1977	25 34 Vol 2 124 Vol 2 125 Vol 2 126 Vol 2 127 Vol 2 128
	Exhibit "C" thereto [file of correspondence] Exhibit "D" thereto	Vol 2	129 36a
6	Notice of motion by Susan Rosemary Reid re Matrimonial property	5 Aug 1977	37
7	Affidavit of Anthony Fulton Reid in reply Exhibit "A" Document 1 thereto. Exhibit "A" Document 1c, 1e thereto. Exhibit "A" Document 1b thereto Exhibit "A" Document 1d thereto Exhibit "A" Document 3 thereto Exhibit "A" Document 4 thereto	2 Sep 1977	38 49 50 50a 50b 51 52
8	Affidavit of John Stephenson Prigg in support.	2 Sep 1977	53
9	Affidavit of Peter Eugene Bowen in support	7 Sep 1977	54
10	Second affidavit of Susan Rosemary Reid in support Exhibit "A" thereto	19 Sep 1977	55 64a
11	Affidavit of Anthony Fulton Reid re matrimonial property	21 Sep 1977	65
12	Evidence of Anthony Fulton Reid. Examination-in- Chief: Cross-Examination	22 Sep 1977	67
12A	Memorandum for Quilliam J. by counsel for Anthony Fulton Reid	17 Oct 1977	70

DOC.	DESCRIPTION OF DOCUMENT	DATE	PAGE
13	Affidavit of Ian Moore Fanselow in support of Anthony Fulton Reid	11 Oct 1977	71
	Exhibit "A" thereto		72
	Exhibit "B" thereto	Refer to Exhibit, Doc le at	50
	Exhibit "C" thereto		73
14	Reasons for Judgment of Quilliam J.	21 Nov 1977	75
15	Formal Order of Court	21 Nov 1977	93
16	Memorandum for Quilliam J. by Counsel for Susan Rosemary Reid	8 Dec 1977	96
----- IN THE COURT OF APPEAL OF NEW ZEALAND -----			
17	Notice of Motion on Appeal	19 Dec 1977	98
18	Notice of Motion on Cross Appeal	13 Feb 1978	99
--	REASONS FOR JUDGMENT : Reported [1979] 1 NZLR 572 :	22 Aug 1979	--
18a	Formal Judgment	22 Aug 1979	100
----- IN THE SUPREME COURT OF NEW ZEALAND -----			
19	Notice of Motion for order to fix current values of matrimonial property	11 Sep 1979	101
20	Notice of Motion for order to fix current values of matrimonial property	14 Sep 1979	101
21	Affidavit of Susan Rosemary Reid in support of motion for valuations	13 Sep 1979	102
22	Order fixing methods of assessing current valuations	2 Nov 1979	105
23	Affidavit of Susan Rosemary Reid re valuations	5 Dec 1979	107
23	Exhibit "J" thereto		110a
23a	Affidavit of Ross Mitchell Crotty	7 Dec 1979	110f
23a	"Statement of Investments" annexed thereto		110f
23a	"Schedule of Investments" annexed thereto		110g
24	Further affidavit of Susan Rosemary Reid re valuations.	12 Dec 1979	111
25	Affidavit of Anthony Fulton Reid re valuations	31 Jan 1980	112
	Exhibit - page 1 documents to Registrar		117
	Exhibit - page 30 documents to Registrar		118
	Exhibit "D" thereto		119
	Exhibit "E" thereto		120
	Exhibit "H" thereto		121
	Exhibit "J" thereto		124
	Exhibit "K" thereto		126
27	Second affidavit of Anthony F. Reid re valuations	4 Feb 1980	128
28	Reasons for Judgment of Quilliam J.	3 Apr 1980	129
29	Formal Judgment of Quilliam J. fixing values	3 Apr 1980	140
----- IN THE COURT OF APPEAL OF NEW ZEALAND -----			
30	Reasons for Judgment of Woodhouse and Richardson JJ	21 Nov 1980	141
31	Reasons for Judgment of Cooke J.	21 Nov 1980	147
32	Formal Judgment	21 Nov 1980	147
33	Order granting Final Leave to Appeal	30 Mar 1981	148
----- DESCRIPTION OF DOCUMENTS WHOLLY OMITTED -----			
In terms of list in Case on Appeal C.A. 151/77: -----			
Notice of Motion for Interrogatories and/or Particulars (Respondent)			
Interrogatories.			
Affidavit Susan Rosemary Reid in Support of Notice of Motion for Interrogatories and/or Particulars.			
Affidavit of Anthony Fulton Reid re interrogatories			
Address for Service (Respondent)			
Notice of Motion for Order for Discovery (Applicant)			
Notice of Motion for Order for Discovery (Respondent)			

 DESCRIPTION OF DOCUMENTS WHOLLY OMITTED (continued)

Order for Discovery against Applicant.
 Affidavit by Respondent as to Documents.
 Affidavit by Applicant as to Documents.
 Applicant's grounds for Appeal.
 Ready list Application.

Omissions from above list.

Notice of Motion for declaration that Appellant (wife) has abandoned appeal.	23.11.78
Affidavit of Anthony F. Reid as to documents.	15. 6.77
Affidavit of Anthony F. Reid re clasification of property	15. 9.77
Affidavit of Gordon James Black	15. 9.77
Notes of evidence of Mihael David Bayley	22. 9.77
Notes of evidence of James Frederick Cooper	22. 9.77
Exhibits 1, 2	
Notes of evidence of Matthew Stuart Reid	21. 9.77
Memorandum for Quilliam J. by counsel for Anthony F. Reid	11.10.77

In terms of list in Cases on Appeal C.A. 149/79 & 42/80:

Memorandum for Registrar (Respondent)	24.10.79
Notice of Motion for leave to deliver interrogatories to applicant.	6.12.79
Affidavit of respondent in support of notice of motion for leave to deliver interrogatories to the applicant.	5.12.79
Interrogatories (Respondent's)	5.12.79
Notice of Motion under rule 206 for examination of Hedly Robert Gibson	6.12.79
Affidavit of Christine Mary Cotton in support of notice of motion under rule 206 for examination of Headly Robert Gibson.	6.12.79
Affidavit (Appellant) in response to Notice of motion under rule 206 for examination of Hedly Gibson.	11.12.79
Notice of Motion (Appellant) for Stay of valuation proceedings. (Court of Appeal)	7.12.79
Affidavit (Appellant) in support for Stay of valuation proceedings. (Court of Appeal)	7.12.79
Memorandum to Registrar (Appellant) re transfer of Notice of Motion for Stay of valuation proceedings to Court of Appeal	7.12.79
Notice of Motion under rule 206 for examination of Lee Lowe	28. 1.80
Affidavit of Christine Mary Cotton in support of Notice of Motion under rule 206 for examination of Lee Lowe	28. 1.80

Omissions from above list.

Notice of Motion for Conditional Leave to appeal to Her Majesty in Council by Anthony F. Reid	6. 9.79
Formal Judgment dismissing Notice of Motion by Anthony F. Reid for order valuing matrimonial property	2.11.79
Notice of Motion on Appeal by Anthony F. Reid from Judgment of Quilliam J. of 2 November 1979	29.11.79
Memorandum for the Registrar by Anthony F. Reid	17.12.79
Notice of Motion for leave to deliver interrogatories by Anthony F. Reid	4. 2.80
Affidavit of Anthony F. Reid re interrogatories	4. 2.80
Interrogatories	4. 2.80
Notice of Motion on Appeal by Anthony F. Reid from Judgment of Quilliam J. of 3 April 1980	18. 4.80
Memorandum of Grounds for appeal to Court of Appeal from Orders of 2nd November 1979. (by Husband)	26. 9.80
Notice of Motion for leave to Appeal to the Privy Council from Judgment of Court of Appeal of 21 November 1980	27.11.80

OBJECTIONS TO THE INCLUSION OF DOCUMENTS
(under Rule 9)

The APPELLANT, Anthony Fulton Reid, objects to the inclusion of:-

Memorandum for Quilliam J. by counsel for Anthony Fulton Reid	17 Oct 1977	page 70
Exhibit "D" to affidavit of Susan R. Reid		page 36a
Exhibit "A" to affidavit of Susan R. Reid		pages 64a & 64b
Exhibit "J" to affidavit of Susan R. Reid		pages 110a,b,c,d,e
Schedule of investments. Attachment, Crotty affidavit		pages 110g/h/i/j
Evidence-in-chief of Susan R. Reid.	Vol 2. pages	1 to 24
Evidence-in-chief of Diana Elizabeth Jones.	Vol 2. pages	25 to 26
Cross-Examination of Diana Elizabeth Jones.	Vol 2. pages	26 to 44
Evidence-in-chief of Susan R. Reid. (re sworn)	Vol 2. pages	44 to 56
Cross-Examination of Susan R. Reid	Vol 2. pages	56 to 91
File of correspondence	Vol 2. pages	92 to 195

The RESPONDENT, Susan Rosemary Reid, objects to the inclusion of:-

Exhibit "A" to affidavit of Anthony Fulton Reid	page 52
Exhibit "J" to affidavit of Anthony Fulton Reid	pages 124 to 126

PART II
EXHIBITS:-

being documents placed before the Court of Appeal and included in this Record by the order of the Court of Appeal granting final leave to appeal, dated 30 March 1981. [Part I, Vol.1 page 148]

MAGISTRATES' COURT EVIDENCE.	DATE	VOL. 2 PAGE
Evidence for Susan Rosemary Reid.		
Evidence-in-chief of Susan R. Reid.	16 Dec 1977	1
Evidence-in-chief of Diana Elizabeth Jones.	16 Dec 1976	25
Cross-Examination of Diana Elizabeth Jones.	16 Dec 1976	27
Evidence-in-chief of Susan R. Reid. (re sworn)	17 Dec 1976	44
Cross-Examination of Susan R. Reid	17 Dec 1976	57

FILE OF CORRESPONDENCE

Letter - W.V. Gazley to A.F. Reid	[reproduced at Vol 1 page 21]	
Letter - W.V. Gazley to A.F. Reid	3 May 1976	92
Letter - W.V. Gazley to Phillips, Shayle-George & Co	1 Jun 1976	93
Letter - W.V. Gazley to Phillips, Shayle-George & Co	14 Jul 1976	94
Letter - Phillips, Shayle-George & Co to W.V. Gazley	21 Jul 1976	95
Letter - Phillips, Shayle-George & Co to W.V. Gazley	23 Jul 1976	96
Letter - W.V. Gazley to Phillips, Shayle-George & Co	27 Jul 1976	97
Letter - W.V. Gazley to Phillips, Shayle-George & Co	2 Aug 1976	98
Letter - W.V. Gazley to Phillips, Shayle-George & Co	12 Aug 1976	99
Letter - Phillips, Shayle-George & Co to W.V. Gazley	9 Aug 1976	100
Letter - Phillips, Shayle-George & Co to W.V. Gazley	8 Sep 1976	101
Letter - Phillips, Shayle-George & Co to W.V. Gazley	24 Sep 1976	102
Letter - Phillips, Shayle-George & Co to W.V. Gazley	11 Oct 1976	104
Letter - W.V. Gazley to Phillips, Shayle-George & Co	19 Oct 1976	105
Letter - Phillips, Shayle-George & Co to W.V. Gazley	5 Nov 1976	106
Letter - W.V. Gazley to Phillips, Shayle-George & Co	23 Nov 1976	107
Letter - Phillips, Shayle-George & Co to W.V. Gazley	1 Dec 1976	108
Letter - Phillips, Shayle-George & Co to W.V. Gazley	14 Dec 1976	109
Letter - Phillips, Shayle-George & Co to W.V. Gazley	22 Dec 1976	110
Letter - Phillips, Shayle-George & Co to W.V. Gazley	11 Jan 1977	111
Letter - Phillips, Shayle-George & Co to W.V. Gazley	17 Jan 1977	112
Letter - Phillips, Shayle-George & Co to W.V. Gazley	20 Jan 1977	113

FILE OF CORRESPONDENCE (continued)	DATE	VOL. 2 PAGE
Letter - W.V. Gazley to Phillips, Shayle-George & Co	1 Feb 1977	114
Letter - W.V. Gazley to Phillips, Shayle-George & Co	7 Feb 1977	115
Letter - Phillips, Shayle-George & Co to W.V. Gazley	undated 1977	116
Letter Replacing above undated letter	17 Feb 1977	118
Letter - Phillips, Shayle-George & Co to W.V. Gazley	17 Feb 1977	120
Letter - Phillips, Shayle-George & Co to W.V. Gazley	25 Feb 1977	121
Letter - Phillips, Shayle-George & Co to W.V. Gazley enclosing - various documents	3 Mar 1977	122
Letter - W.V. Gazley to Phillips, Shayle-George & Co	4 Mar 1977	124
List of Furniture removed from Colin Grove		127
List of Furniture Silver etc. from U.K.		128
Letter - Phillips, Shayle-George & Co to W.V. Gazley	10 Mar 1977	129
Letter - W.V. Gazley to Phillips, Shayle-George & Co	11 Mar 1977	130
Letter - Phillips, Shayle-George & Co to W.V. Gazley	28 Mar 1977	131
Letter - W.V. Gazley to Phillips, Shayle-George & Co	1 Apr 1977	132
Letter - Phillips, Shayle-George & Co to W.V. Gazley	4 Apr 1977	134
Letter - W.V. Gazley to Phillips, Shayle-George & Co	5 Apr 1977	135
Letter - Phillips, Shayle-George & Co to W.V. Gazley	15 Apr 1977	136
Letter - W.V. Gazley to Phillips, Shayle-George & Co enclosing - Letter A. F. Reid to W.V. Gazley	19 Apr 1977	137
	13 Apr 1977	138
Letter - W.V. Gazley to Phillips, Shayle-George & Co enclosing - Letter A. F. Reid to W.V. Gazley	18 Apr 1977	143
	13 Apr 1977	138
Letter - Phillips, Shayle-George & Co to W.V. Gazley	22 Apr 1977	144
Letter - Phillips, Shayle-George & Co to W.V. Gazley	28 Apr 1977	145
Letter - Phillips, Shayle-George & Co to W.V. Gazley	28 Apr 1977	146
Letter - W.V. Gazley to Phillips, Shayle-George & Co	2 May 1977	148
Letter - Phillips, Shayle-George & Co to W.V. Gazley	3 May 1977	149
Letter - Phillips, Shayle-George & Co to W.V. Gazley	9 May 1977	150
Letter - W.V. Gazley to Phillips, Shayle-George & Co	9 May 1977	151
Letter - W.V. Gazley to Phillips, Shayle-George & Co	16 May 1977	152
Letter - Phillips, Shayle-George & Co to W.V. Gazley enclosing - Letter A. F. Reid to Mrs Reid	31 May 1977	154
Letter - W.V. Gazley to Phillips, Shayle-George & Co	9 Jun 1977	155
Letter - Phillips, Shayle-George & Co to W.V. Gazley	16 Jun 1977	156
Letter - W.V. Gazley to Phillips, Shayle-George & Co	17 Jun 1977	157
Letter - W.V. Gazley to Phillips, Shayle-George & Co	20 Jun 1977	158
Letter - Phillips, Shayle-George & Co to W.V. Gazley enclosing further copy of A.F.Reid's letter to Mrs.Reid.	24 Jun 1977	159
		160
Letter - W.V. Gazley to Phillips, Shayle-George & Co	30 Jun 1977	161
Letter - W.V. Gazley to A.F. Reid	30 Jun 1977	162
Letter - Phillips, Shayle-George & Co to W.V. Gazley	6 Jul 1977	163
Letter - Phillips, Shayle-George & Co to W.V. Gazley	12 Jul 1977	164
Letter - W.V. Gazley to Phillips, Shayle-George & Co	12 Jul 1977	166
Letter - Phillips, Shayle-George & Co to W.V. Gazley	13 Jul 1977	167
Letter - Phillips, Shayle-George & Co to W.V. Gazley	20 Jul 1977	168
Letter - W.V. Gazley to Phillips, Shayle-George & Co	25 Jul 1977	169
Letter - W.V. Gazley to Phillips, Shayle-George & Co	5 Aug 1977	172
Letter - Phillips, Shayle-George & Co to W.V. Gazley	11 Aug 1977	173
Letter - Phillips, Shayle-George & Co to W.V. Gazley	18 Aug 1977	177
Letter - W.V. Gazley to Phillips, Shayle-George & Co	22 Aug 1977	179
Letter - W.V. Gazley to Phillips, Shayle-George & Co	30 Aug 1977	182
Letter - Phillips, Shayle-George & Co to W.V. Gazley	1 Sep 1977	184
Letter - W.V. Gazley to B.D. Inglis	5 Sep 1977	188
Letter - W.V. Gazley to Phillips, Shayle-George & Co	5 Sep 1977	189
Letter - W.V. Gazley Wellington District Law Society	5 Sep 1977	190
Letter - Phillips, Shayle-George & Co to W.V. Gazley	7 Sep 1977	192
Letter - Phillips, Shayle-George & Co to W.V. Gazley	8 Sep 1977	194
Letter - W.V. Gazley Wellington District Law Society ...end of file of correspondence.	16 Sep 1977	195
Letter - AMP Society to A.F. Reid	23 Oct 1980	196
Certificate of Registrar of Court of Appeal as to accuracy of Record		197

Supreme Court :
No. 1: Matrimonial
Property Application:
by Anthony Fulton Reid:
7 February 1977 :

**IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

No. M39/77

IN THE MATTER of the Matrimonial
Property Act 1976

BETWEEN: **ANTHONY FULTON REID**
of Lower Hutt,
Company Director
Applicant

10

AND **SUSAN ROSEMARY REID**
of Lower Hutt,
Married Woman
Respondent

TAKE NOTICE that on Wednesday the 23rd March, 1977 at 10 o'clock
in the forenoon or as soon thereafter as counsel can be heard
counsel for the abovenamed applicant **WILL MOVE** this Honourable
Court at Wellington **FOR ORDERS**

20

(1) determining the respective shares of the applicant and the
respondent in the parties' matrimonial property and the
respective contributions made to it by each party;

(2) dividing the said matrimonial property between the parties in
such shares as shall seem just;

(3) declaring the status, ownership, vesting, and possession of
all property of the applicant and the respondent respectively
and in particular declaring which such property of each and
either of them is matrimonial property, and which of them is
the owner of property which is held not to be matrimonial
property;

30

(4) granting to the applicant the right personally to occupy the
former matrimonial home known as 14 Colin Grove, Lower Hutt;
AND FOR SUCH FURTHER OR OTHER ORDER, including an order for
costs, as to this Honourable Court shall seem just **UPON THE
GROUNDS** that the applicant and the respondent are living
apart pursuant to a separation order made in the Magistrate's
Court at Lower Hutt **AND UPON THE FURTHER GROUNDS** set forth in
the affidavit of the applicant and in other affidavits to be
sworn and filed herein.

DATED at Wellington this 7th day of February, 1977.

40

B.D.Inglis.
Counsel for the Applicant.

TO: The Registrar of the Supreme Court at Wellington,
AND TO: The Respondent and her solicitor, W.V. Gazley Esq.

THIS Notice of motion is filed by MICHAEL ROBERT CAMP Solicitor
for the Applicant whose address for service is at the offices of
Messrs. Phillips, Shayle-George & Co., Solicitors, Government
Life Building, Customhouse Quay, Wellington.

Supreme Court :
No. 2: Affidavit of
Anthony Fulton Reid
in support :
18 March 1977 :

I, ANTHONY FULTON REID of Lower Hutt, Company Director MAKE OATH and say:

1. I am the applicant in [both of]* the above intituled applications and the respondent is my wife.

2. MY wife and I were married on 19 November 1955 at St. James Church Lower Hutt. I was born in New Zealand and my wife in London. My age is 52 on 25th March, 1977 and my wife is 47 years of age. There are four children of our marriage;

Philip now aged 20,
Matthew now aged 18,
Timothy now aged 16, and
Carolyn now aged 12.

10

3. IN 1976 my wife applied to the Magistrate's Court at Lower Hutt for a separation order and other ancillary orders. After approximately ten months' delay, her application was finally heard on 16 and 17 December 1976 before F.W.Bremmer Esq. S.M. I had throughout been adamantly opposed to a separation, but my wife insisted. The long delay in the Court proceedings had meant that we had continued living under the same roof under conditions of great stress. After I had listened to my wife's evidence, which consisted almost entirely of her detailed and very slanted version of the events of that ten month period, I was advised that a further seven days of hearing would be needed for my side of the case to be properly put. That would have meant the adjournment of the hearing well into 1977. That delay would have been intolerable. I therefore very reluctantly consented to a separation order believing that there was no acceptable alternative under the existing systems of the law. A separation order was made accordingly on 17 December 1976. At the same time, as a result of discussions between counsel, agreement was reached on certain matters. A true copy of the heads of agreement which both my wife and I signed, together with the schedule to which they relate is hereto annexed marked "A". One result of the agreement was to make it clear that assets worth approximately \$62,000 were available for my wife's wellbeing. Such assets were mostly derived from my efforts for my wife during the marriage. I also undertook to advance the sum of \$50,000 so that another home might be purchased. It was also agreed that the assets referred to in the heads of agreement would be re-invested with the intent that the income from them available to my wife should be increased, and I agreed to pay any shortfall below \$6,880 per annum.

20

30

40

4. I also consented to my wife having custody of Carolyn. I did this against my better judgment, as it appeared to me that up to then the atmosphere in the home, due to my wife's insistence on a separation and her activities in trying to bring it about, were so prejudicial to the child's interests that a quick decision on her custody had to be made. It was only too clear that if I had disputed custody, as I had fully intended to do, the litigation would have dragged on well into 1977. I hoped that in view of the separation order, and in view of the provision made for my wife under the heads of agreement, the extreme bitterness on my wife's part - which I am still unable fully to account for - would subside, that we would reasonably co-operate over Carolyn, and that Carolyn would in fact see a great deal of both of us. That has not turned out to be the case.

50

* Reference to Gardianship Application heard jointly.

Supreme Court :
 No. 2: Affidavit of :
 Anthony Fulton Reid :
 in support :
 18 March 1977 :

5. OUR third son Timothy is at Boarding School and has expressed a decisive preference to live with me in our normal home during his holidays and when he leaves school. Our second son Matthew is living happily with me at home and for reasons which will appear is very antagonistic towards his mother. I believe that our eldest son, Philip, may now be in England. My wife knows his whereabouts, but is unlikely to disclose it. The breakdown of our marriage was, as I firmly believe, mainly due to the inability of my wife and me to reach agreement on how to bring up Philip, and now that he is 20 our continued inability to present a united mother and father stand in the overcoming of his problems is the only real stumbling block.

6. At the time of our marriage my older and only brother Peter and I, owned a property at what is now 14 Colin Grove, Lower Hutt. It was part of my deceased father's estate. On my marriage my brother generously sold his half of the property to me at Government Valuation, after first persuading me to object to the valuation (which had only recently been made), which resulted in the Government valuation being lowered to L2,775, very much below the market value. I paid Peter for his half share (L1,387.10s) by paying him L15. per month by automatic bank transfer. I later sold some shares I had in J.J.Niven & Co.Ltd. for L117, which I paid to my brother, and later still he and I sold some more shares we owned jointly, and I paid my brother my share of the proceeds, amounting to L554. Later still I paid my brother L350. in cash, and shortly after that increased his monthly payments to L25. per month. By August, 1959, I had repaid him L1,065. I repaid the balance of L322.10s. on 9th June, 1961. At no time did my brother charge me interest, and he left the mode of repayment entirely to me. My wife made no financial contribution of any kind to the acquisition of my brother's share in the property, and the payments I made were made entirely from my own income, apart from the sale of shares I have mentioned.

7. MY wife was brought up and educated in England. She trained and qualified as a physiotherapist at St. Thomas's Hospital, London, and I met her when she came to New Zealand on a working holiday. Since the marriage she has not made use of her training as a Physiotherapist.

8. AT the time of our marriage I was working for J.J.Niven & Co.Ltd. at a salary of approximately L1,150. a year. The home we moved in to was an old one, and one of the first things I did was completely to rebuild the kitchen. In 1958 I added a concrete garage to the property at 14 Colin Grove. To meet the expenses of construction I sold some shares and borrowed L400. from my joint bank account with my brother. My wife made no financial contribution to that construction work, although she assisted with a little of the physical work when I poured the floor.

9. IN 1958 I moved to another firm at an approximate annual salary of L1,300.

10. DURING 1957-1958 I introduced my wife to a number of sideline activities which we carried on together, the last of which was making very small polythene bags at home. I believe my wife received all the profits from these ventures.

11. IN September, 1959, I left my employment and decided to set up in business on my own and rented a small factory building in Nelson Street, Petone. I formed a Company called Reid Containers Limited. Its nominal capital was \$3,000. in 1500 \$2.

Supreme Court :
 No. 2: Affidavit of
 Anthony Fulton Reid
 in support :
 18 March 1977 :

Shares. My wife paid \$2. for one share; and I paid up my 1499 Shares with my tools and equipment which I had collected over the years prior to our marriage. My Mother gave me \$1000 to establish the business and with this I purchased a power press, and I was given other equipment. For the next six months I worked at a variety of engineering jobs and at night and in my free time, built machinery for the factory. My wife made no financial contribution to the establishment or the running of the business, apart from her \$ 2. share capital.

12. IN 1959 my wife acquired interests in English property as a result of a gift or gifts from her father. I believe these assets then provided her with an income of approximately \$1,150. a year. There was little discussion about my wife's use of that income, my view being that unless my wife needed to draw on those assets and income for any particular purpose of her own, they might as well accumulate to her credit in England. We had enough to live on from my own income, and it seemed to me sensible that my wife should conserve her own English assets. I think that at that early stage she might have assisted with finance for the business if I had asked her to. 10
20

13. WHEN the business was set up my wife agreed to do the wages. That was a job for which she was paid in cash, a weekly wage, by the business, and she continued to do the wages for some years. That job was never very demanding: in the first period of the business' operation there was only one woman employee. She would usually do them on Wednesday evening and pay the staff on Thursday.

14. VERY soon after the business was launched it became clear that it would be successful. Its expansion was rapid and the tax paid profits were in the main ploughed back into capital development. I drew \$200. per month and the family's requirements were met from that. School Fees, Rates and other regular outgoings were drawn from my personal account with the Company. My wife was an economical housekeeper and we did not go short of anything. In all fairness I do not think that my wife would assert that she did more than the normal amount that a housewife would do in the home. 30

15. IN 1963 the business had reached a reasonably successful level. Upon my wife's urging it was decided to demolish the existing house and rebuild. At the time of its demolition the market value of the original home was approximately \$12,000. The total cost of the work done in demolishing the original house and erecting a new house was \$23,294. Of this I paid by cash or by my own cheques \$12,290. I drew a further \$3,000 from the business, and my wife advanced me \$4,000. which I repaid on 27th June, 1966. The balance, \$4,004. was contributed by my wife out of her own English funds. The source of my wife's funds for her contribution and advance was: \$3,583. from her deposit account at Lloyds Bank, Richmanworth; \$1,500 being the proceeds of 1,000 National Savings Units; \$390. cash in New Zealand. The balance was funds accumulated to her credit with the company. 40
50

16. MY wife had earlier in 1961 brought out from England \$784. as the overseas exchange content of a new car for herself. To the best of my recollection the balance was derived from undrawn funds to her credit in the company's books.

17. IN 1966 a property at 85 Nelson Street, Petone, came on the market. My Company had already purchased 79, 81 and 83 Nelson Street (in area five times that of No. 85) and I suggested to my wife that it might be prudent for the additional property (No.

Supreme Court :
 No. 2: Affidavit of :
 Anthony Fulton Reid :
 in support :
 18 March 1977 :

85) to be purchased in her name. The purchase price was \$6,000. My wife paid the deposit of \$1,000. from her English funds. I repaid to her the \$4,000. which she had advanced to me from her own funds to assist with the rebuilding of the matrimonial home. I provided a further \$2,000. The property at 85 Nelson Street was purchased in my wife's name. It was rented to the Company, and she took the rents.

10 18. IN 1968 I set up a series of trusts, one for each of our four children, and one for my wife for life with the four children as remaindermen. The shareholding in the Company was re-organised so that there were now 3,000. \$1. A & B. Shares, and I transferred to each of the five trusts 300 of my B shares in the Company in consideration in each case of the sum of \$9,900. in each case secured by a mortgage back over the shares. I progressively forgave the amounts so secured until the shares were sold by the trusts in 1973. That sale resulted in cash and further shares to the value of \$35,196. being paid to each trust.

20 19. AT a somewhat later stage another property in Nelson Street (No.87) came on the market, and again I suggested to my wife that it be purchased in her name. The purchase price was \$9,500. From accumulated rents from 85 Nelson Street, together with money paid out by the Company in the form of accumulated dividends and salary, my wife contributed \$2,460. From Dividends paid to my wife's trust a further \$595. was contributed. The Company advanced to my wife a further \$6,445 free of interest, to be repaid out of future dividends and salaries.

30 20. IN 1970 I suggested to my wife that a building be constructed on the property at 85 Nelson Street, and she agreed. My Accountant, Mr. I.M.Fanselow, arranged finance, \$20,000. on first mortgage from the Northern Building Society, which I guaranteed. The Company made a further advance to my wife. Shares in the Northern Building Society were taken out in my wife's name. The Company rented the building at a rental of \$5,000. per annum, and an Account was set up known as the "S.R.Reid Property Account".

21. THE Nelson Street dealings just mentioned were arranged by me for three reasons:

- 40 (1) Had my death occurred the very rapid build-up of assets in my Company would have resulted in death duties that could have crippled the Business and put the jobs of my staff in jeopardy. It was prudent to minimise the risk and do what I could to help my wife in such a situation.
- (2) By arranging for some of the Company assets to be in my wife's name I hoped to encourage her to take more interest in the business itself.
- 50 (3) I wanted to be able to produce for her an income which she could consider hers and spend as she wished, for I was conscious of the fact that my income was spent providing for our family and little surplus was available for her personal use.

In view of the substantial income and capital gains that were derived from those dealings, I believe I was right to suggest that she become involved in them. However, without in any way seeking to belittle her, I believe that, since she did not have experience in business or financial matters, she would not have had the initiative to think of such prospects for herself.

Supreme Court :
 No. 2: Affidavit of
 Anthony Fulton Reid
 in support :
 18 March 1977 :

22. IN 1971 my wife and I purchased a property at Paihia in our joint names for a price of \$18,000. A mortgage of \$10,000. was raised on the matrimonial home at Colin Grove. The balance of the purchase price came from the S.R.Reid Property Account which at that time had made no repayments of the earlier advance by the Company. A total sum of \$5,588. was paid by me out of my own funds for various improvements, renovations and outgoings. The mortgage over the Colin Grove property was later discharged from funds resulting from a Northern Building Society draw of \$5,000. which my wife received as a result of shares in the Northern Building Society being acquired in her name in the course of financing the construction of the building on the Nelson Street property. The balance required to repay the mortgage came from the S.R.Reid Property Account. It was intended from the outset that the Paihia property should be a holiday home for the whole family. I unquestioningly paid all outgoings for maintenance and upkeep. 10

23. BY 1972 the continuing expansion of my Company was starting to become a burden to me, and I entered into negotiations with D.R.G.Limited in the United Kingdom for a partial acquisition of the shareholding in my Company. I am not sure how far those negotiations or their outcome are relevant or material in these proceedings, but the result was that a total of 1530 of the 3,000 shares in my Company were sold to D.R.G. New Zealand Limited. Of those shares 1500 were owned by the trusts and the trusts received between them cash and shares to the value of \$175,980.39. My wife's two shares realised \$234.64. The remaining 28 shares were my personal shares and they realised \$3,284. I remained as a Director and as an employee of the Company. That transaction also involved the sale of 85-87 Nelson Street, and the new building which after repayment of the outstanding liabilities resulted in a further \$23,000. approximately going to my wife. Over and above this, a further \$60,000. approximately was made over by D.R.G. New Zealand, Limited for the benefit of my staff. 20 30

24. IN 1973 my wife had another draw of \$5,000. in the Northern Building Society and in 1976 yet another draw of \$5,000.

25. AS a result of the transaction with D.R.G. Limited my wife and I and the five trusts had funds for re-investment. To that end I arranged the purchase of an industrial property at Aglionby Street, Lower Hutt, now valued at \$246,850. To achieve the purchase a mortgage was raised with the A.M.P. Society of \$75,000. A balance sheet relating to the Aglionby Street property shows that as at 31st March, 1976, the capital account of the various interests in the property was as follows: 40

A.F.Reid	\$32,720.26	
S.R.Reid	\$ 7,536.26	
S.R.Reid Trust	\$15,848.37	
P.M.Reid Trust	\$21,169.26	
T.J.Reid Trust	\$21,169.26	50
C.R.Reid Trust	\$25,403.19	

TOTAL	\$145,015.86	

The recent valuation of the property (as at 22nd November, 1976) after allowing for the A.M.P. mortgage means that there has been a capital gain of 20.57% and accordingly the current value of the interests of my wife personally, and my wife's trust are respectively \$9,086. and \$19,109. By the agreement reached on our separation I undertook to purchase the interests of my wife, and my wife's trust in the Aglionby Street property at their

current value, and accordingly my wife will receive from that source the sum of \$9,086. and her trust will receive the sum of \$19,109.

10 26(a) IN August, 1975 I gave D.R.G. New Zealand Limited six months' notice of my retirement. At that time the true assets of the Company were probably about \$1,300,000 and its earning capacity in excess of \$300,000 per annum before tax. In terms of the agreement I had made in 1972, with D.R.G. New Zealand Limited, that Company was obliged to purchase my remaining 49% shareholding on my retirement. This unexpectedly caused difficulties with D.R.G.'s English parent Company. The price offered was \$414,000. - well below a fair and reasonable value.

20 (b) My wife was neither interested in the resulting problems, nor did she give me any support. It was a serious situation, because the price to be paid by D.R.G. New Zealand Limited represented my working capital, built up since I started the business, and some of it represented plant and machinery which I had made myself. I was bitterly hurt at this time to overhear my wife telling our cleaning woman (why she had to confide in her I do not know) that the thing she loathed about me was my wish always to "get the better of people".

30 (c) Five days later I received what I consider a despicable letter from my wife's solicitor, Mr. W.V.Gazley, demanding a separation and substantial financial provision for my wife. A true copy of that letter is hereto annexed marked "B". Although my wife denied that she had ever instructed Mr. Gazley to make those demands, I could not help feeling there was more than a co-incidence between the timing of those demands and the fact that my wife knew I was negotiating for what would have seemed to her to be a very substantial sum in cash.

(d) At all events my wife's complete lack of appreciation for my efforts over the years to provide a good standard of living for her and our children wilted me, and I settled for a price which netted me a Toyota Land Cruiser, the Toyota Corona, and approximately \$426,000.

40 (e) Prior to my wife's demand for a separation I had intended to use that working capital to set up another business, and had ordered machinery from overseas. However, although I have been advised that in the circumstances, there is no reason why I should not start another business, I am not prepared to undertake responsibility for the continued employment of staff unless I can be absolutely assured by the Court's decision of complete control of the situation. It would be totally wrong to invite staff to join me in developing a new business and then find I could not guarantee them complete security.

50 (f) Excluding the matrimonial home (which is registered as a joint family home) the Government Valuation of which is \$84,000. the home at Paihia, the Government Valuation of which is (I believe) \$24,000, and our joint household assets which I value at \$10,000, my asset position is as follows:

Personal Interest in Aglionby	
Street property	\$30,913.00
Unsecured loan to J.Sutherland	\$16,000.00
On deposit with Bank of New Zealand, Lower Hutt	\$150,000.00

Supreme Court :
 No. 2: Affidavit of
 Anthony Fulton Reid
 in support :
 18 March 1977 :

Amount placed on mortgage with Chapman Tripp & Co.	\$200,000.00	
Equity Shares and Local Body Loans	\$10,157.00	
Toyota Corona	\$ 4,000.00	
Toyota Landcruiser	\$ 3,000.00	
Boat	\$ 9,000.00	
Machinery	\$10,000.00	
A.M.P. Life Policy - approximate Surrender value	\$ 3,000.00	
Advance to wife	\$50,000.00	10

TOTAL	\$486,070.00	

I would like to make it quite clear that the setting up of another business will take very considerably more than that sum. In the last two years the price of machinery alone has escalated. With the exception of some Fletcher's Shares given to me by my mother, the life policy, and the boat which was purchased with Company funds in partial satisfaction of monies owed to me, the assets listed above were derived from the sale of my shares in the Company. All the above assets, I am advised, are my separate property.

20

27. I have no precise idea of my wife's asset position, except to the extent to which it has been increased by my efforts for her and the accretions resulting from those gifts. I believe that her income declared for tax purposes in 1971 was \$5,894; in 1972, \$8,328; and in 1973 \$7,334. I believe that since our marriage her total taxable income has amounted to not less than \$50,000.

28. I now deal with the history of our marriage so far as it is relevant to property matters and custody of Carolyn. Our marriage was a happy one until the end of 1974 when our eldest son, Philip, left school. Apart from her assistance with the wages for the business, my wife had not worked during our marriage. She had a comfortable home, help with the housework, she had her own car and she lived a very active social life. She carried this on right up to the time of our separation, as her diary notes show: golf, swimming parties, Mah Jong, and so on, together with some voluntary work at the Citizens' Advice Bureau.

30

29. I have mentioned that the deterioration in our marriage coincided with Philip leaving school, because I believe the basic cause of our disharmony was disagreement over what was in Philip's best interests. From the time he started school it was always clear to me that Philip had very low powers of reasoning, great difficulty in learning and great difficulty in communicating. It was also clear to me that he tended to be rather unco-ordinated physically, and had difficulty with sporting activities, although he was strong and big for his age. It seemed to me that we had a special responsibility to be careful with his education and upbringing if we were to avoid trouble for him later on. The problem was that even at that early stage my wife seemed quite unable to accept that there was any reason to have any anxiety about the boy. She seemed to think that my concern was quite unnecessary. She did not agree that he needed any special attention. As Philip progressed through school it became quite clear that his capacity was very limited. At Secondary school he was invariably bottom or near bottom of the lowest class. This created a difficulty for Philip, because our second son, Matthew was reasonably bright, and Philip must have noticed the contrast between his performance

40

50

and that of his younger brother. I should make it clear that I had always made a point of discussing all family affairs with my wife before taking any action. I am afraid that in the case of Philip my wife frequently acted without consulting me at all and often secretly. I believe that in almost every instance in regard to Philip her actions were unwise, as events have shown. One such incident occurred while Philip was at Secondary school: acting on the advice of one of his masters (and his wife) I arranged special remedial speech coaching for him in the hope that he might be able to communicate better. My wife knew of this and agreed. From the reports I had it seemed that Philip was responding to this coaching. I later learned, some considerable time after the event, that my wife without telling me, had arranged for that coaching to be cancelled and her explanation for doing that was in her view, that Philip did not need any special help. Philip's School Certificate marks were: Biology 37%; Commercial Practice 31%; Geography 31%; English 18%; History 17%.

30. BECAUSE of later events I now believe this fundamental disagreement between my wife and myself concerning Philip was of much greater importance than I thought it was at the time. As I have said, our marriage was in other respects happy, and we were a happy family. My wife's refusal to accept that Philip has a lower than normal intelligence and capacity was something which worried me, but I grew to accept it as part of the give and take of married life.

31. ANOTHER example of our difficulties with Philip which I now realise was significant occurred when he was learning to drive. I wanted to teach Philip how to drive, but my wife made it very clear that her view was that no parent could ever teach their children to drive properly: she did not want me to teach him. She wanted him to have lessons from someone independent. I did however give him a few lessons, and he seemed to be getting on very well. I later discovered that my wife was herself giving Philip driving lessons in Paihia while I was out in the boat with the other children. It was done without my knowledge and I could not understand it in view of her previous statements. I then tried again on our return to Lower Hutt, but suddenly found that my wife had arranged for Philip to have paid lessons with a driving school. I believe from this and other instances that Philip very quickly learned in a naive way how easily he could play his mother off against his father to what (he thought) would be to his own benefit. Over the next year or two he did this frequently.

32. A further incident shows my wife's attitude at or around that time. I had helped Philip to purchase a small second-hand car. I thought it wise for Philip to learn the simple things about car maintenance and tried to help him grease it, and carry out other maintenance work which he was quite capable of doing, but my wife discouraged this. I would find that (without letting me know) she had arranged with Philip to take the car to the garage and that she had paid herself for maintenance work which had to be done on it. She gave no explanation for this kind of conduct except that I was "too hard" on Philip.

33. FROM these examples it will be seen that it was quite impossible to obtain any co-operation from my wife in presenting a united front to Philip. He was by that time strong and heavily built, but without the mental capacity or the experience, to successfully do very much on his own, or to make important decisions for himself. He needed to be helped and guided tactfully and kindly. Over the years I have had one or two

Supreme Court :
No. 2: Affidavit of
Anthony Fulton Reid
in support :
18 March 1977 :

employees in my business of much the same capacity as Philip, and I never had any difficulty in getting the best out of them. One of the things I learned was that such people need consistency in dealing with them. The fact that my wife and I did not seem to be able to agree on how to handle Philip was in my view, the worst thing that could have happend to him.

34. IT was arranged that Philip was to take up farm work and a place was found for him on a farm. Shortly after that he had to move because the head shepherd apparently did not have the patience to deal with him, and a further farm job was secured for him, largely, this time, through my wife's efforts. After nine months I arranged for him to attend the Outward Bound Course and arranged for his admission later at the Telford Farm Training Institute in Otago. 10

35. DURING that year Philip had got more and more out of hand. He was rude, abusive and when at home often terrified the other children with his violent temper. His language and general conduct in the home was appalling. On a number of occasions he threatened me pysicaly, on one occasion threatening me with a large spanner, so that the Police had to be called to subdue him. I am sure that my wife really was as concerned as I was about Philip, but instead of backing me up in any of my attempts to try to moderate his behaviour, she would lecture me on my being "Victorian" and rigid and that boys should find their own way and please themselves in what they did. I am quite sure that his mother's failure to back me up only made the situation worse, and I became very worried indeed about how that sort of conflict might affect Philip's development, expecially since he needed positive guidance. I should add that there was none of that sort of trouble with any of the other children; my wife seemed to be particularly indulgent towards Philip. 20 30

36. AT the end of one holiday Philip wanted to take his car back down to Telford. I believed that I knew Philip well enough to know that he would use the car as a means of being the "big tough lad" among his mates and I was very against it. However, my wife thought it a good idea, and said in no uncertain terms that my fears were quite groundless. Inside three weeks the Principal of Telford rang me. There had (as I had expected) been serious trouble with Philip at Telford through his use of the car: the Principal had demanded his car keys, but Philip had run away with the car and no-one knew where he was. Philip duly arrive home and for the first and only time my wife and I were able to present a united front to him. I was able to talk the Principal at Telford into having Philip back and I remember clearly my wife saying what a good job I had done because in Philip's state, Philip could not possibly have lived at home with the other children. 40

37. A few weeks later Philip arrived home again. His explanation (which turned out to be untrue) was that the Principal knew he was in Wellington and that arrangements had been made for him to visit Somes Island as part of his training course. He wanted to borrow \$360. as he intended to buy the necessary gear to get a job on an Otago Station as soon as he had finished at Telford. I told him that when he had completed his course at Telford I would look at the question of money. My wife told me that I did not have any of the faith in the boy that she had. A few hours later on the same day, the Principal at Telford rang me and wanted to know if we had seen Philip: he said he had "lost" him and did not know where he was: Philip had left Telford without leave. The Principal was very annoyed and ready to kick the boy out, but in the end I was able to persuade 50 60

Supreme Court :
 No. 2: Affidavit of :
 Anthony Fulton Reid :
 in support :
 18 March 1977 :

him to take him back.

38. PHIIP lasted about three more weeks at Telford. The Principal rang me and told me that he was sending Philip home. The Principal said that he found Philip too deceitful, disinterested and untruthful and he was not prepared on any account to have him back.

39. PHILIP duly arrived home, apparently with the intention of staying indefinitely. Again he was rude, violent and disagreeable. He did not seem to have any idea of what he
 10 wanted to do and I was not surprised, because he seemed to be incapable of coping sensibly with his own affairs. First he wanted to get a job in the Wairarapa. Next he wanted a new car: "why shouldn't he have one" was my wife's attitude. Then he was going to do a shearing course. Next it was a farming job. He ended up in the Gear Meat Company Abattoir where according to my wife he would earn big money which would be a good thing as he wanted to prove he could earn enough for a better car without my help. He wanted to be independent.

40. SHORTLY after that my wife suddenly announced that she
 20 proposed to go to England to see her parents and take Caralyn with her. I did not object to her going although I was disappointed and I did tell her that I was hoping it would be possible for us all to go as a family in the following year, when in any event, I would need to go to England on business. However my wife insisted. The day she was to leave for Auckland by air I had word that our second son, Matthew was being sent home from Boarding School the same day because of some drinking escapade he had become involved in. My wife refused to take
 30 any interest in the situation. She took the quite unreasonable view that I wanted her to delay her departure simply because I had objected to her going in the first place. That was untrue, but I thought her attitude unreasonable because I knew myself that there is no difficulty at all in delaying overseas air travel in cases of emergency. In the event she left, and I think it only added to the distress of our second son when he arrived back in Wellington only to find that she had gone five minutes earlier the same day without waiting to see him.

41. IN the meantime Philip acquired a job in a shearing gang and worked on Erewhon Station, Taihape, as a wool presser. He
 40 later applied for a job as a shepherd. He approached me for money to buy some dogs and I met this request with what I believe was a sensible approach. In conjunction with a friend I made some enquiries as to the requirements of a young shepherd, and offered to purchase two dogs provided the money was paid direct to the sellers. Philip was not satisfied and became unbalanced when I suggested ringing the farm manager at Erewhon. He drove off in a rage (although he had no licence having by this time been disqualified from driving). He bought five dogs, and
 50 arrived at Erewhon with four of them, having lost the fifth on the way. It was obvious that he could not control them, and eventually his manager became cross and gave him a month to rectify the situation. The poor boy in desperation, talked one of the local boys into selling him a "trial" dog for \$1,000., but he could not control that either and later sold it back for \$550. In the period between 27th October, 1975 and 17th January, 1977. he and/or his mother bought and sold two cars and two motorcycles and (I believe) nine dogs; a Ford Escort, which my wife lent him \$1,000. to purchase, also guaranteeing his hire purchase commitments and which he sold nine months later at a loss of
 60 \$1,400; a Suzuki motorcycle for which he paid \$650, which my wife surreptitiously sold for him two months later for

Supreme Court :
No. 2: Affidavit of
Anthony Fulton Reid
in support :
18 March 1977 :

approximately \$250. - a loss of \$400.; a Honda 750 motorcycle for which he paid \$1,665, sold three months later for \$1,100 - a loss of \$665; a Holden Utility for which my wife secretly paid \$2,935, the balance to be paid by Philip in monthly instalments, the total cost of the Utility being \$4,400. - Philip said he "rolled" the Utility, but that was untrue and it was sold approximately one month later at a loss of approximately \$700. I believe that over that period my wife lent or gave to Philip for his dogs, cars and motorcycles sums in excess of \$5,000. She did this from her own funds (although on two occasions she tried to charge certain items against Philip's trust), and on each occasion I found out only after the event. I am quite certain that these transactions were deliberately concealed from me. I am sure that my wife believed that she was acting for the best and I am sure she believed (as was the case) that had I known of any of these transactions, I would have tried to stop them. She was at that time in a state of mind in which my own opposition simply encouraged her to act unwisely in regard to Philip. Philip could not have helped getting the impression that I was opposing almost everything he wanted to do and I am sure that that is what my wife told him. On the other hand, when I was able to speak to him alone to explain my attitude to him, he did seem to understand and appreciate the reasons for my concern. But he would not have had the capacity to judge whose approach was truly in his best interests.

10

20

42. I am afraid that this course of action on my wife's part had consequences for Philip which I can only describe as disastrous. On one occasion he sent her down part of a receipt slip for a money order (with the number torn off) saying that he had sent the money order in payment of a hire purchase instalment for his Escort car. My wife, thinking that the money order had been lost, paid the instalment herself, although I warned her that there was a "smell" about the matter. I later discovered, through my own enquiries, that the money order had not been lost but had been sent to a man in the Wairarapa and not in connection with the car at all. I am quite sure also that my wife deliberately encouraged Philip to conceal all these transactions from me. When I found out and (as I thought, tactfully) let him know I knew about them, there were no less than three incidents where Philip lost control of himself completely. He has assaulted Matthew and me and caused damage to the house. One occasion was so serious that I felt there was nothing else to do but to call in the Police and lay charges against Philip: he had to be stopped, or I do not know where it might have ended. The last thing I wanted was to see my own son in Court, but I saw no alternative. It seemed to me that Philip simply had to be taught the hard way that violence would not get him anywhere. My wife was bitterly opposed to Philip being charged. I would like to add that I consider the whole matter regarding Philip a tragedy. On the very few occasions when I was able to get him by himself, I was able to talk to him, and we seemed to get on very well. On one occasion, at a fairly late stage, he said to me - "Dad, I've been a proper bastard to you haven't I? - I am sorry I caused you so much trouble". I believe he is basically a good boy, but I am sure that most of the trouble involving him has arisen because of my wife's unwise indulgence of him and her complete inability to recognise his limitations and I am sure that she has tried to hit at me through him. One of his complaints at times when he has become violent is that I will not leave him alone and that I am interfering in his life. He would not have thought of that for himself and I am sure that is what my wife has told him as a reason for keeping his various transactions secret.

30

40

50

60

Supreme Court :
 No. 2: Affidavit of :
 Anthony Fulton Reid :
 in support :
 18 March 1977 :

43. PHILIP (I think) left for England in January, 1977 on board the Australis. I do not know who paid for his fare, but I must say that I am relieved that he is away from his mother's influence and the resulting tension which has caused him so much difficulty. I doubt if I will hear anything about his progress because I am sure that my wife has told him and her relations in the United Kingdom that if I find out where he is I will only interfere.

10 44. I am sorry to say that my wife's attitude has alienated both our other sons from her. Our youngest son, Timothy, has been bitterly resentful ever since he arrived back for his school holidays on 6th May, 1976, only to find that his mother had gone away on holiday with Carolyn earlier the same day without waiting to see him. I know that he was particularly distressed by this, not only because he missed seeing his mother, but because there had been a strong bond between him and Carolyn, and he would have liked to have spent his holidays with her as well.

20 45. I do not want to recite at length any of the numerous incidents which have happened during the last two years, which I am afraid reflect little credit on my wife. I mention only three of them by way of example. It came to my notice that my wife had been telling friends that my brother was a homosexual, which I know to be totally untrue. I was extremely upset on my brother's account and confronted her with this: I also mentioned my brother's generosity in establishing us in our home on our marriage. When she saw that I was upset she taunted me with having a homosexual brother, not once but on many occasions, and once in front of a neighbour. She also said - obviously saying it to hurt me - that she did not want Timothy to go on my brother's boat with him unless someone else was present, and that she did not think I was fit to look after Carolyn because of my homosexual brother. I challenged her to produce the slightest shred of evidence to support what she said but she would not. I am afraid that on these occasions when she taunted me by making allegations that my brother was a homosexual, I slapped her face and I am sorry that I lost control to that extent. I was also concerned to stop her making those allegations in gossip with neighbours and her friends.

30

40 46. ANOTHER incident occurred regarding Matthew. This account is taken from her own diary notes, which were exhibited in evidence by her during the separation hearing. "Matthew has finished his meal and stands menacingly in the bathroom doorway. I asked him at least five times to move out of the way but he refuses to do so, so I put the tray down and catch him between the legs not hard and with that he retorts that his girlfriends haven't done that and I say 'maybe your boyfriends'....I leave a short note for him apologising for pulling his balls... Philip notices my black eye and I try to make light of it by saying that I provoked Matthew by pulling his balls". Matthew told me about 50 that incident, with understandable embarrassment and distress. The note referred to by my wife is hereto annexed marked "c". She must have known that a note worded like that was quite inadequate. I am afraid that I can only regard that incident as shedding a very unsatisfactory light on the way my wife conducted herself with her own teenage son, and I can only say that I am not surprised that Matthew now sees little good in his mother.

60 47. THERE was, by way of example, a further incident affecting Timothy which I think has added to his resentment against my wife. In 1976 he was nominated for an American Field Service Scholarship. He asked me if I would "write him up" as a

Supreme Court :
 No. 2: Affidavit of
 Anthony Fulton Reid
 in support :
 18 March 1977 :

parents' reference would have to accompany the other forms that made up the application. I told him that I thought he should ask his mother to write one as well. I heard him do so, and I heard my wife's reply, given very ungraciously, "Your father always thinks he can do these things so well - ask him to do it". Timothy replied that he had already asked me to do it and was now asking her. Her reply was "Then if your father is going to do it you won't want me as well". Over the next few weeks my wife showed to me (and I am sure to others) what I believe was resentment over the idea of an American Field Scholarship for Timothy. She took the view that he should not go to the United States unless he first got his University Entrance; that an accredited University Entrance wasn't any good; he should sit the Exam and get definite marks; that the "parents' reference" I had written for Timothy was a load of rubbish: she had told others what I had written and they agreed it was rubbish; she had been in touch with the American Field Scholarship Authorities in Wellington and she had put them straight about me; she was Tim's mother and had every right to know what was going on and most certainly intended to be involved when the interviewers came to see the parents.

10

20

48. IN August when Timothy came home for the School Holidays the American Field Scholarship Representatives in Wellington rang and spoke to him on the telephone to arrange the parent interviews. While still on the telephone Timothy called out to me to ask if it would be all right if the interviewers called on the Wednesday evening. My wife heard and came downstairs near the the phone, saying "I have already been in touch with them and it concerns me too - I am going to be at the interview - you are not going to do this without me". It seemed to me that her tone of voice and her words must be clearly audible to the person on the other end of the line. I therefore suggested to Tim that he call them back in a few minutes. With that my wife went straight to the telephone and cut the line off. This was very unfortunate because Tim had not had time to find out who was calling so that he could call them back. The matter was very important to him and he was very embarrassed and upset; he thought his chances had been prejudiced, and that seemed to be borne out by the fact that the American Field Scholarship Interviewer did not ring back for another one or two days. (I note that my wife in her diary notes for 21st August, 1976 says that the American Field Scholarship Interviewer rang back almost immediately - that is not so). I have recently learned that Tim is so far without a Host family for an American Field Scholarship, although nearly all the other candidates are placed. The American Field Scholarship President in Christchurch has intimated to me that conditions in the home may have been one of the causes for Tim's present difficulty. Whether that is so or not I do not believe that I am ever going to be able to persuade Tim that the foolish and unnecessary telephone incident which I have described did not have a great deal to do with his failing to obtain finality with an American Field Scholarship.

30

40

50

49. I have mentioned my wife's diary notes which purport to record daily events from 23rd February, 1976 to 8th December, 1976. I believe my wife typed these notes periodically and sent them to her Solicitor, Mr. W.V.Gazley, in instalments. Half these notes were produced by my wife during the Separation Hearing on 14th July, 1976 and the remainder in the Magistrate's Court on 16th and 17th December, 1976. They present a highly coloured and self-serving version of alleged day to day incidents in our home, a great many of which I dispute. I was saddened at the Magistrate's Court Hearing to hear passages read out and later to read those diary notes in full. They represent a

60

Supreme Court :
 No. 2: Affidavit of :
 Anthony Fulton Reid :
 in support :
 18 March 1977 :

depressing history of my wife's fixed determination to end the marriage and her failure to consider sensibly the interests of any of the children. I see now why all the efforts I made to obtain counselling for us both and all the efforts I made towards a reconciliation, were completely useless from the outset and I am bound to say that I very much blame my wife's Solicitor's brash approach and callous advice, for the situation we now find ourselves in. I simply do not believe that my wife would have gone to the trouble to type out 99 pages of notes over a period
 10 unless she had been directed to do so by her Solicitor and I believe, from some passages in the diary notes, that her Solicitor instructed her to stay on in the house so that she would accumulate sufficient evidence to have a good case for a separation. I am afraid I find that sort of advice despicable, especially when the diary notes reveal so clearly the effect my wife's actions and my re-actions were having on the children.

50. I recall at the separation hearing the Magistrate questioning my wife at some length about the reason for some of the face slapping incidents my wife alleged against me. The
 20 substance of the Magistrate's questioning was that there must have been some reason for these incidents and my wife's reply was that there was no reason. The Magistrate pressed her by saying, in effect, that such incidents do not happen unless there is some reason, but my wife still persisted in saying there was no reason. I find it hard to believe that on even two occasions when I did slap her face, she could not recall that it was because she was making her completely unfounded allegations about my brother, I am sure, with the motive of upsetting me. In
 30 view of my brother's generosity to us in the early years of our marriage, and in view of the fact that he had throughout our difficulties, refused to take sides in our troubles, I felt that her unfounded accusations were inexcusable.

51. I understand that it is likely to be alleged that I consented to a Separation Order during the second day of the Hearing in the Magistrate's Court because I had no answer to my wife's detailed allegations. If such a suggestion is made it will be completely unfounded. There were two reasons why I finally consented to a Separation Order being made. First,
 40 there had been what I considered inordinate delays in bringing the matter to a hearing. My Counsel, (Mr. M.R.Camp) told me that if the hearing continued it would be likely to occupy at least another seven days and that the hearing could not possibly be concluded until a further fixture had been obtained some time in 1977. The situation had become quite intolerable and it was to my mind, essential that finality be reached then and there. Secondly, and up to the time of the Court hearing, I had always hoped that my wife might change her attitude and that we might become reconciled: the whole sordid affair seemed to be so unnecessary. However, her evidence at the hearing and her
 50 diary notes convinced me that she had no intention whatever of ever considering becoming reconciled and was determined to pursue a separation, regardless of the cost in human terms or the consequences. My true feelings for my wife are expressed in a letter I wrote to her just before the hearing dated 8th December, 1976. I kept a copy of that letter and it is hereto annexed marked "D". The feelings expressed in that letter are still my true feelings.

52. I have mentioned all these matters because of my concern for the future of our only daughter, Carolyn, now aged 12. I agreed
 60 to my wife having custody of her at the Separation Hearing, much against my better judgement. However, I did feel that once my wife had got her separation, which she seemed to want so badly,

Supreme Court :
No. 2: Affidavit of
Anthony Fulton Reid
in support :
18 March 1977 :

she would be restored to a more reasonable and balanced frame of mind and that no real harm would come to Carolyn if Carolyn lived with her. I was, however, wrong about a change in my wife's state of mind.

53. DURING the hearing my wife said on oath that she would be pleased to have our two boys, Matthew and Timothy in her home at any time, provided they were not rude to her. By the agreement which was reached during the hearing, my wife was to have sole occupancy of the matrimonial home from 17th December, 1976 to 8th January, 1977. Her first action was to throw both Matthew and Timothy out. By the same agreement the contents of the matrimonial home were to remain intact, pending settlement of matrimonial property matters. When my wife left the matrimonial home on 8th January, she stripped it of most of the furniture and chattels. Since then there has been a variety of correspondence between my Solicitor and Mr. W.V.Gazley. That correspondence can be produced if necessary. Mr. Gazley's letters, written no doubt on the instructions of my wife, have been rude and extremely unhelpful. I am advised that I cannot expect any reasonable negotiations to take place with him.

54. UNTIL the start of 1976 my relationship with Carolyn had been a warm and loving one. I remember particularly a letter which she wrote to me when she was in England with her mother. I remember also the love and pleasure which she greeted me with when I met them at the airport on their return. I remember too, her coming to me crying and heartbroken when my wife had told her that we were going to separate. I remember how distressed the poor little girl was when she had to listen to my wife bickering and nagging. It was a miserable household for the child.

55. MY wife met this situation by getting herself closer and closer to Carolyn, organising and dominating Carolyn's life so that Carolyn was divorced as much as possible from any contact with her brothers or with me. I recall one occasion when Tim wanted to go and pick Carolyn up from some Sports function: his mother would not tell him where Carolyn was. She would more and more have meals together with Carolyn in a separate room. She would take Carolyn away on holidays and on week-ends without saying that she was going until after the event. I would like to believe that her sole motive in doing this was to isolate Carolyn from the atmosphere in the home. But I am very much afraid that her main motive was to keep Carolyn to herself and away from her brothers and from me. There were some distressing incidents: on one occasion Carolyn was ill and I remember her calling out for me during the night even though her mother was sleeping with her in the same room. I can remember my wife encouraging incidents in front of and involving Carolyn, and I am afraid I believe that these incidents were to attract Carolyn's sympathy.

56. I am glad to say however, that on the two occasions on which I have seen her at our home since our separation, Carolyn has shown signs of again responding to me in the same warm and loving way. However, because of what I can only consider to be my wife's disastrously unwise interference in Philip's affairs, and because of her conduct which has almost totally alienated our other two children from her, I must say with great regret, that I do not consider that my wife is the better person to have the responsibility for bringing up Carolyn. She has not shown responsibility with the other children. Quite apart from anything else, I draw attention to the way in which my wife has throughout the past two years, discussed her version of our family dispute and gossiped about it with our neighbours, our

Supreme Court :
 No. 2: Affidavit of :
 Anthony Fulton Reid :
 in support :
 18 March 1977 :

friends and even our cleaning woman, trying to attract their sympathy and often doing so.

57. I am very concerned about Carolyn's future upbringing and I would like to see her placed either in Boarding School, which was in any event, our original intention, or with me in her normal home. She is now at Chilton St. James School, Lower Hutt, and living with her mother in an Own Your Own Unit, which her mother has purchased. I do not want Carolyn to grow up with the idea that money will always buy success or that if she wants money, all she has to do is ask for it (factors which I deplore about my wife's dealings with Philip). I want her to grow up with a proper sense of values. I realise that Carolyn's future is now entirely a matter for this Honourable Court, but if I were asked to state my proposals for her, they would be that she go to Boarding School for the rest of her education - preferably Nga Tawa - and that she should know by this Court's Order, that she may live with me and her brothers, my wife having liberal access. I feel however, that it would be in Carolyn's interests if I had sole charge of her general upbringing.

58. I am also worried that Philip may return from England no wiser in his ways. My wife has taken all Philip's furniture and belongings from his room and presumably has offered him a home in her present house. Should Philip stay or live with his mother, I know the environment would be disastrous for Carolyn's upbringing.

59. THERE would be great benefit for Carolyn living in close contact with her two brothers, Matthew and Timothy. They are fine boys and they are fond of her. She is going to be a very attractive girl and as she moves into her teens, there will be situations where her brothers can help her. I am sure they would be a stabilising influence on her. I am afraid that I cannot accept that my wife, living on her own, would deal with Carolyn's teenage problems in a sensible way.

60. I believe that my wife will continue to do everything she can to keep Carolyn away from me and her brothers. If custody is altered, I believe that the formerly very close relationship will be restored without any great difficulty. If my wife continues to have custody of Carolyn, I can see every possibility of Carolyn losing track of her brothers. I do not believe that even now my wife understands what a great wrong it is to divide a family of children for no good reason. What I want to do, if I can, is to re-unite the children and restore the family.

61. I am sorry to have had to disclose distasteful facts in an Affidavit when the whole matter could have been resolved at the outset, by commonsense, understanding and forbearance. I am still quite unable to understand the reasons for my wife's attitude, although I readily accept that there must be some fault on my side. I can only say that I believe that my wife's attitude has been encouraged by her Solicitor's approach to this matter, and his advice. I am even now ready and willing to resume our marriage, although I realise that it is probably hopeless to expect the kind of change of attitude which would be necessary on my wife's part. I believe that Matthew, Timothy and Carolyn would greatly benefit by our resuming the marriage. and in their interests, I have tried to put aside any bitterness I might feel myself. Although Matthew and Timothy still feel resentful towards my wife, I am sure that she could soon take away that resentment if she would act towards them as a proper mother should.

Supreme Court :
No. 2: Affidavit of
Anthony Fulton Reid
in support :
18 March 1977 :

62. I have made it quite clear that I am prepared to enter into any reasonable negotiations over matrimonial property, but I believe the provision already made for my wife, both in the past, by way of my efforts, and more recently as a result of the agreement reached at the conclusion of the separation proceedings (exhibit "A") is a sufficient discharge of my duties in regard to matrimonial property. The provision made for her maintenance, mostly from capital resulting directly or indirectly from my efforts for her, I have guaranteed at \$6,880. per annum. Carolyn's maintenance is assured by her own trust fund. I feel that I have more than adequately discharged any obligations that I may have in regard to my wife's maintenance. She is relatively comfortably provided for without working, but of course, she is quite capable of working.

10

SWORN at Wellington)
this 18th day) Anthony. F. Reid.
of March, 1977.)
before me:

Yvonne C. Lousen
A Solicitor of the Supreme Court of New Zealand

Supreme Court :
No.2 : Affidavit of
Anthony Fulton Reid :
in support :
18 March 1977 :
Exhibit "A" thereto :

EXHIBIT "A"

Husband and wife will realise on the assets listed 2,3,4,5,6,7 and 9.

As to 2. Wife's share to be the fraction her contribution bore to the total price of land and building into current valuation. Wife to sell her share to husband at that price and transfer property to his name at that time.

As to 5

10 (i) Subject to \$19101 being current valuation - but in any event no less than 19109.

(ii) Trustees to invest same at their discretion but at current 1st Mortgage interest rates - All nett income to be paid to wife. All assets above to be invested at current first mortgage interest rates.

Provided that the husband guarantees to the wife from these items \$6880. per annum gross and will personally pay any shortfall from the gross figure.

20 This income to be produced by 17.3.77. In the interim, husband to pay to wife forthwith, sum of \$1000. and Carolyn's trust to pay to wife for Carolyn's maintenance \$300.

Thereafter, Carolyn's trust to pay for Carolyn's living expenses \$20.00 per week to Mrs. Reid and trust is to meet all schooling expenses, this to enure whilst Carolyn in wife's custody and not at Boarding School.

This arrangement is without prejudice to the matrimonial property claim of either party.

Contents of 14 Colin Grove to remain intact pending settlement between the parties

30 Wife to occupy 14 Colin Grove from mid-day 18.12.76 to and including mid-day 8.1.1977; thereafter wife occupy Pahiia property. Each party to occupy to the exclusion of the other. Husband meet all outgoings on both properties meantime.

Husband to advance \$50,000. to wife (as part of her matrimonial property claim) to be applied to a property of her own.

The wife to covenant that the above items or their present equivalent value shall so far as lies within her power, remain in existence towards a maintenance provision for her.

Maintenance to be fixed at 17.3.77 by Court or agreement.

"SUSAN R. REID"

17.12.76

"ANTHONY F. REID"

Supreme Court :
 No.2 : Affidavit of
 Anthony Fulton Reid
 in support :
 18 March 1977 :
 Exhibit "A" continued:

EXHIBIT "A" (continued)

ESTIMATE OF INCOME PRODUCING ASSETS OF MRS. S.R.REID

	Available Income	

1. Northern Building Society Shares \$3280. These are now unnecessary and could be sold - say \$2,000. at 12%.	240.00	
2. Invested in Aglionby Street - \$7000. A.F.R will buy at current valuation \$ 8934 invested at 12%.	1072.00	
3. Jan. 1976 had 6461 UK pounds in Bank UK. Say \$11,960 . N.Z. invested at 12% \$4,000. N.Z.	1435.00	10
4. Invested in N.Z. at least \$ 6,000. Invested at 12%.	960.00	
5. S.R.R. Trust - invested in Aglionby Street \$ 14,973. A.F.R. will buy at current valuation \$ 19109 invested at 12%.	2293.00	
6. S.R.R. Trust shares in D.R.G. 9146 Sell at current price \$0.85 . \$ 7,682. invested at 12%.	922.00	20
7. From shares of rents in UK say	1000.00 (7922) 640.00	
8. From her own efforts as a part-time Physiotherapist say	3000.00	

	\$10,922.00	
Available from Carolyn's Trust. Cost of all schooling and clothes. Plus living costs say \$15. per week.	780.00	

	\$ 11,702.00	

9. \$5,000. ex Northern Building Society	600.00	

Supreme Court :
No.2 : Affidavit of
Anthony Fulton Reid
in support :
18 March 1977 :
Exhibit "B" thereto:

P.O. BOX 12217
Wellington
TELEPHONE
739-529
(4 Lines)

BARRISTERS & SOLICITORS
W. V. GAZLEY, LL.B.
G. J. BLACK, LL.B.

WILFORD HOUSE,
Corner MOLESWORTH &
MAY STREET,
WELLINGTON, N.Z.

12 March 1976

Mr A. F. Reid,
14 Colin Grove,
LOWER HUTT.

Dear Sir,

I act for your wife. The circumstances are such as to demand a separation,; and, I apprehend, that is your wish. Lest, however, there be delay in implementing agreement, I have entered separation proceedings in the Lower Hutt Magistrate's Court.

In anticipation of a separation, division of matrimonial property is required. At the present time the position with some assets is obscure, and enlightenment is required from you. Separation and property deed must be as follows:

1. Separation forthwith; your wife to leave the home and obtain accommodation for herself elsewhere on compliance by you with terms herein.
2. If you wish to retain the matrimonial home at 14 Colin Grove, the same to be valued by an acceptable valuer; and one-half of the market value to be paid by you to your wife.
3. Of the contents of 14 Colin Grove, Mrs Reid requires the antiques and wedding presents given by members of her family and including the following:
 - Oak chest in hall
 - Oak chest of drawers in sitting room
 - Oak bureau
 - Dining room oak gate-legged table
 - Three-legged and one other stool.
 - Two mirrors
 - The two-seat chesterfield and two wing-backed chairs in sitting room
 - All the solid silver
 - Two clocks
 - One lamp and shade
 - Assorted ornaments.
4. The Paihia property is vested solely in your wife.
5. Subject to his genuine expression of preference, custody of Timoth to be with you with reasonable access to your wife.
6. Custody of Carolyn to your wife with reasonable access to you. Carolyn to continue at private school, with that expense to be your responsibility.
7. Maintenance: for your wife, \$135 per week
for Carolyn, \$15.00 per week.
If application to the Court is necessary, maintenance in excess of these figures will be claimed, as it is considered to be properly claimable.
8. There be a lump sum of \$6,000 paid to Mrs Reid to enable shifting, and furnishing of premises to which she may shift.
9. I to be satisfied, on any sale of shares of your wife in Reid Containers Limited, that your wife received and receives her due entitlement; and that the proceeds of any sale were and are credited properly to her.
10. The terms, history and accounts of the wife's and family trusts are made available to me to assure that Mrs Reid has received, and receives her due entitlement.
11. There be settlement of claims by Mrs Reid to all matrimonial property not expressly determined herein.
12. The Maxi motor car remains Mrs Reid's property; the boat remains your property.
13. Life policy on your life, and paid for by Mrs Reid be vested in you; that on your life, paid for by Mrs Reid in her name, be vested in her.

I must have your advice within 14 days of this date.

Yours faithfully,


W. V. GAZLEY

Supreme Court :
 No. 3: Answer of
 Anthony Fulton Reid
 to interrogatories :
 28 April 1977 :

The answer of the abovenamed Applicant to the interrogatories for his examination by the abovenamed Respondent:

In voluntary answer to the said interrogators and without prejudice to my objections that such interrogatories cannot be ordered in these proceedings, are oppressive and relate exclusively to the evidence in support of my application, I the above named ANTHONY FULTON REID make oath and say:

1. WHAT is, according to the Applicant, the matrimonial property and what is the separate property of the Applicant and the Respondent? 10

ANSWER: To the best of my knowledge and belief the following

- (a) items in my present possession are matrimonial property:
 - (i) The matrimonial home at 14 Colin Grove, Lower Hutt.
 - (ii) The furniture and chattels therein save and except the personal property and effects of my sons Matthew and Timothy, property acquired by me since 17th December, 1976, certain hand and electric hand tools, machinery both electronic and mechanical stored in the garage and a shed on the property.

(b) The following items in the Respondent's present possession are matrimonial property. 20

- (i) The home unit now occupied by Mrs. Reid and situated in Lower Hutt to any value in excess of \$50,000. (being the advance of separate property made by me to Mrs. Reid).
- (ii) The furniture and chattels removed by her from the home at 14 Colin Grove in breach of an agreement made between her and me on 17th December, 1976 and which she has, in breach of such agreement, refused or failed to restore.
- (iii) Any funds as at 17th December, 1976 in an account known as the S.R.Reid Property Account or any assets resulting from the funds accumulated in that account by or before 17th December, 1976 less funds represented by item (e) (ii) below. 30
- (iv) Funds in the Respondent's possession as at 17th December, 1976 derived from the sale of properties known as 85 and 87 Nelson Street, Petone.
- (v) The accumulated capital of a trust known as the S.R.Reid Trust, subject to such interest as the remainderman thereof may have.

- (vi) The interest (amounting to \$8,544.) of the Respondent in a property at Aglionby Street, Lower Hutt, as at 17th December, 1976. 40
- (vii) The accumulated capital of the shares in the Respondent's name held in the Northern Building Society and assets in the Respondent's possession as at 17th December, 1976, derived from the Society's draws by the Respondent.
- (viii) The Austin Maxi car registered in the name of the Respondent and presently used by her.

(c) The following item in the possession of both the Respondent and me is matrimonial property: 50

- (i) A house property situated at Paihia and the contents thereof.

(d) The following items in my possession are my separate property:

- (i) Those items listed in paragraph 26 (f) of my affidavit sworn on 18th March, 1977 and filed herein.

(e) The following items in the Respondent's possession are her separate property:

- (i) Certain properties situated in the United Kingdom and certain shares and monies, all of which were gifts or 60

Supreme Court :
 No. 3: Answer of
 Anthony Fulton Reid
 to interrogatories :
 28 April 1977 :

bequests to her from her parents, of the nature and extent of which I have no precise knowledge, but which I believe to be of substantial value.

(ii) Funds in the Respondent's possession as at 17th December, 1976, derived from her share in Reid Containers Limited registered in her name.

2. WHAT contributions (specifying the same) does the Applicant say that he made to matrimonial property?

10 3. WHAT contributions (specifying the same) does the Applicant say the Respondent made to matrimonial property?

ANSWERS TO QUESTIONS 2 AND 3: To the following items, referred to in my answers to Question 1 the following or financial contributions respectively.

Item	Applicants Contribution	Respondents Contribution
(a) (i)	The total cost thereof less the Respondent's contribution	\$4,004.00
(a) (ii)	The total cost thereof.	NIL
(b) (i)	The total cost thereof.	NIL
20 (b) (ii)	Not at present ascertainable	The Applicant does not know precisely what items were removed, this being a matter within the Respondent's own knowledge. The Applicant believes that many of such items are chattels acquired by the respondent from her family in England, to which he made no direct contribution but which were used by both parties and their children as family chattels.
30 (b)(iii)	The total amount thereof.	NIL
(b) (iv)	The parties' respective contributions are set out in paragraphs 17,19,20 & 21 of the Applicants first affidavit.	
40 (d) (i)	The total cost or value thereof.	NIL
(e) (i)	NIL	NIL
(e) (ii)	See note (2) below	\$2.00

NOTES:

- (1) Contributions of the Respondent other than financial are set out in the Applicant's first affidavit: See paragraphs 8 and 14.
- 50 (2) With the exception of the Respondent's assets referred to as item (e) (i) above and referred to also in paragraph 12 of the Applicant's first affidavit, the assets of which the respondent at present has possession, the use or the income were derived principally from the Applicant's own work and labour.

SWORN at Wellington)
 this 28th day of) Anthony F. Reid.
 April, 1977.)
 before me: C.Clere.

A Solicitor of the Supreme Court of New Zealand

Supreme Court :
No. 4 : Affidavit of
Diana Elizabeth Jones
in support of
Susan Rosemary Reid :
6 May 1977 :

I, DIANA ELIZABETH JONES, of 2 Manuka Avenue, Lower Hutt, married woman make oath and say as follows:

1. THAT I gave evidence to the Magistrate's Court at Lower Hutt between these parties in December, 1976. Such evidence consisted in part of a written statement made by me; and then of oral evidence and cross examination by the solicitor for the applicant. That I confirm as truthful the whole of the evidence given by me to the Magistrate's Court at Lower Hutt; and, to avoid repetition, I ask that such testimony be available to this Honourable Court.

10

2. THAT to my personal knowledge the respondent was of unlimited assistance to the applicant in establishing and running the business in which he was engaged.

3. THAT to my knowledge at night time with her husband's help, and by day on her own - and even whilst still nursing their son, Phillip - the respondent packed screws for Woolworths and made polythene bags.

4. THAT I know that the respondent was excited when she found a property in Petone which was suitable for the container business and which was ultimately purchased for that business.

20

5. THAT I know that the respondent typed for the business, made up the wages for the business for many years, that on many occasions when I called at the parties' home at Colin Grove, the respondent was busily engaged at the typewriter on factory work.

6. THAT of more recent years the respondent was required to entertain employees from the factory and other persons. That on all occasions the respondent was an immaculate hostess. I know that when the factory first started in operation the respondent suffered humiliation as a hostess through being unable, because of lack of funds, to entertain adequately.

30

7. THAT in the early days of the Petone Factory the respondent often drove the applicant to the factory in the morning if the respondent needed the car during the day. There was at that time only the one vehicle. The respondent's own social life was greatly restricted by reason of her being required to be at home daily at lunch time to have a meal prepared for the applicant. The applicant was satisfied not merely to have a meal prepared and left for him, but expected that the respondent be there with him whilst he had his meal.

8. THAT the home was also inconvenienced by and the respondent suffered the inconvenience of the applicant's constructing machinery at the home.

40

9. THAT having known the applicant for 35 years it has saddened me in the last seven or eight years to see him become, in my mind, more and more highly strung and unreasonable in his behaviour both to the respondent and to others.

SWORN at Wellington this
6th day of May, 1977
before me:

'Diana Jones'

"G.J. Black"

50

I, SUSAN ROSEMARY REID of Lower Hutt, Separated, make oath and say as follows:

1. THAT I am the respondent herein.

Paras 1 & 2

2. THAT I agree with the facts stated in paragraphs 1 & 2 of the applicant's affidavit.

Para 3.

3. THAT (Paragraph 3 of his affidavit):

- 10 (a) I agree that on 17th December, 1976 a separation order was made by consent in the Magistrate's Court at Lower Hutt; that Exhibit "A" represents the agreement reached and its attachment (I rely on the words and figures in the said documents): that \$ 50,000. was advanced in terms of Exhibit "A" (as part of my matrimonial property claim)
- (b) I depose that what assets are available to me depends on realisations under Exhibit "A" and on the property available to me as a result of my application herein.
- 20 (c) I am advised by my Solicitor to refrain from referring to, or answering any other allegation in the said paragraph 3 as being irrelevant to any consideration before this Honourable Court in the present application (or applications). That I respectfully ask that, if at any time it is shown that any allegation is relevant, I have leave of this Honourable Court to reply thereto; and I depose that I do contest and have answer to allegations of the applicant.

Paras 4 & 5

4. THAT (paragraphs 4 & 5 of his affidavit) I agree that a Custody Order was made on the said 17th December, 1976, in my favour and with reasonable access to the applicant. That to the remainder of the said paragraphs 4 & 5, I give the answer in 3(c) above. That should the same be relevant and to avoid repetition, I request that there be available to this Honourable Court the record of the proceedings - M.59/76 - in the Lower Hutt Magistrate's Court. That I confirm the evidence I there gave. That, if the applicant does not consent to this, then it may be availed of under affidavit from the Registrar of the Lower Hutt Magistrate's Court.

Paras 6 - 11

5. THAT (paragraphs 6 - 11) I give my paragraph 3 (c) answer: and, if they are in any way material, I put the applicant to proof of the allegations in these paragraphs.

Para 12

6. THAT I give 3 (c) answer to paragraph 12 of the applicant's affidavit; but, so far as it relates to this application, I set out hereafter my "English property".

Paras 7 - 17

7. THAT (paragraphs 7 - 17 of the applicant's affidavit) I give answer 3 (c) above.

Para 18

50 8. THAT (paragraph 18 of the applicant's affidavit) I say that the moneys used by the applicant to form the trusts were and are matrimonial property.

Paras 19 - 21

I give answer 3 (c) to paragraphs 19 - 21 of the applicant's affidavit.

Supreme Court :
No. 5: Affidavit of
Susan Rosemary Reid
in answer :
18 May 1977 :

Para 22

I deal with the Pahlia property (paragraph 22 of the applicant's affidavit) in paragraphs 15 & 16 hereof (below)

Para 23

9. THAT I put the applicant to proof of the allegations in paragraph 23 of his affidavit; the classification of the property therein; and the use made by the applicant of the disposal of the moneys that were my property, viz. the \$ 23,000.

Para 24

10. THAT (paragraph 24 of the applicant's affidavit) I give answer 3 (c) above. 10

Para 25

11. THAT (paragraph 25 of the applicant's affidavit) I put the applicant to proof of the allegations therein; and say that the moneys used by the applicant were and are matrimonial property. I ask particulars from the applicant of his interest in Aglionby Street; and I respectfully ask it be classified as matrimonial property.

Para 26

12. THAT (paragraph 26 of the applicant's affidavit) I deny: 20
(a) In sub-paragraph (b) lack of interest or support. I give 3 (c) answer to the allegations in this sub-paragraph.
(b) In sub-paragraph (c), that I "denied" to the applicant my instructing my Solicitor to make the "demands" he did in Exhibit "B". I depose that the letter was written after full discussion with my Solicitor, and the letter has my full approval. In other respects I give 3 (c) answer to this sub-paragraph.
(c) Sub-paragraph (d) I regarded the applicant as niggardly in his provision for the household. I put the applicant to proof of his allegations in this sub-paragraph. 30

I depose that the property in sub-paragraphs (a) and (d) and any machinery under (e) was and is matrimonial property. I give paragraph 3 (c) answer to sub-paragraph (e) of this paragraph of the applicant's affidavit. I put the applicant to proof of all allegations in this said paragraph 26; and in particular I ask the applicant to trace the said \$426,000. and to provide any justification for his alleging the assets in sub-paragraph (f) are separate property. That I contend the same are all matrimonial property by virtue of s.8(e) of the Matrimonial Property Act, 1976. 40

Para 27

13. THAT (paragraph 27 of the applicant's affidavit). I put the applicant to proof of the allegations therein. I ask full particulars of the extent to which the applicant's efforts for me have increased my "asset position".

Paras 28 - 61

14. THAT paragraphs 28 to 62 of the appellant's affidavit:
(a) I require of the applicant particulars of the manner in which the allegations in these paragraphs are relevant to his "Matrimonial Property Act Application" or to his "Notice of Motion for Orders as to Custody, Access and Education". 50
(b) I give 3 (c) answer to these paragraphs.
(c) That whatever the allegations the applicant makes against me, he nonetheless, and despite the Separation Order, requested his being reconciled with me. This was at and to the Magistrate's Court at Lower Hutt on 4th March, 1977. I will not be reconciled to the applicant.

(d) That I have been from the very first letter, that of 12th March, 1976 (Exhibit "B" to the applicant's affidavit), and I remain, anxious to achieve a settlement with the applicant rather than engage in the rancour and expense of Court proceedings. That correspondence relative to settlement is: Exhibit "A" hereto: letter from Phillips, Shayle-George and Company to W.V.Gazley dated 25th February, 1977.

10 Exhibit "B" hereto: copy of letter of 4th March, 1977 from W.V.Gazley to Phillips, Shayle-Goerge and Company. I draw attention in particular to the final paragraph thereof.

20 Exhibit "C" hereto: letter dated 10th March, 1977 from Phillips, Shayle-George and Company to W.V. Gazley. I depose that this correspondence belies the statement of the applicant in paragraph 62 of his affidavit; and that it is typical of the applicant to countenance as a "settlement" no terms other than those propounded by him; and for him to adopt, if his terms are rejected, a peevish attitude. I remain willing - with the aid of my present Solicitor - to endeavour to negotiate a settlement. That I accordingly proceed to deal with PROPERTY:

PROPERTY

and, in this regard I direct attention (inter alia) to paragraphs 12, 23, 25 and 26 of the applicant's affidavit of 18th March, 1977, and his affidavit "... in answer to Interrogations" of 28th April, 1977.

30 15. THE matrimonial home is a joint Family Home at 14 Colin Grove, Lower Hutt. The legal description is all the parcel of land containing one rood thirty six and fifty eight one hundredths perches more or less situate in the Borough of Lower Hutt being part of Section 25 of the Hutt District and being also Lot 2 on Deposited Plan No. 10842, and all the land in Certificate of Title Volume 453 Folio 74 (Wellington Registry). I ask that the applicant join with me in obtaining a valuation thereof.

40 That I claim from the applicant, presently residing therein, my one half share; and I say we ceased living together at 17th December, 1976. For my part I am anxious to have transferred to me the Paihia property hereinafter mentioned. If the applicant will transfer that to my sole name, I am agreeable to accept his half share in Paihia towards the half share I am entitled to from Colin Grove; and I would transfer Colin Grove to his sole name. If the applicant is unwilling to transfer Paihia to me then I am constrained to ask that both properties be sold and the net proceeds be divided equally.

50 16. THE Paihia property is at Davis Crescent, Paihia and it is all that parcel of land containing 1 rood, 18 perches more or less situate in Block 4 Kawakawa Survey District being Lot 36 on Deposited Plan No. 15984 (Town of Paihia Extension No. 2) and part of the block originally granted to Robert Burrows and others by Crown grant dated 23rd December, 1851 and being the land in Certificate of Title Volume 739 Folio 88 (Auckland Registry) subject to the provisions of Sections 16, 17 of Land Act, 1924, and agreement as to fencing in Transfer 329597, This preperty is jointly owned by the applicant and by me. I am willing that this property and its contents be valued - and I ask the applicant to join with me in its valuation. I acknowledge that the applicant and I are entitled to have this property divided equally. That if the applicant desires, to the exclusion of me, to continue to occupy the matrimonial home at 14 Colin Grove then

60

Supreme Court :
 No. 5: Affidavit of
 Susan Rosemary Reid
 in answer :
 18 May 1977 :

I ask that I may have the sole occupancy (and ownership) of Davis Crescent, Paihia. That, in the hope that the applicant will agree to his having Colin Grove transferred to him and I have Davis Crescent transferred to me, with suitable equality of exchange, I defer evidence as to purchase, use and of my greater need of Davis Crescent.

17. THE "family chattels" include the contents of 14 Colin Grove. That I have provided in Exhibit "B" hereto, copy of letter of 4th March, 1977 from W.V.Gazley to Phillips, Shayle-George and Company and, as attachments A and B to that exhibit, Lists of property removed by me from the matrimonial home. That I claim as separate property (under Section 10 (1) of the 1976 Act) the property in List B. That I am willing to join with the applicant in a valuation of the property in List A (excluding that in B) and the balance of the "family chattels" remaining in 14 Colin Grove, those chattels not having yet been listed by the applicant. That I wish to retain the value of the share of the applicant in List A (excluding B) towards my share in the valuation of the chattels remaining in the matrimonial home. 10 20

18. THAT there is stored in the garage and in a shed at 14 Colin Grove "certain hand and electric hand tools, machinery both electronic and mechanical: (his affidavit of 28th April, 1977, under Question 1). I claim under s.8(e) that the same is matrimonial property; and that it be listed and valued and one half of its value paid to me.

19. THAT I claim as "family chattels" the Toyota Corona motor car and the Toyota Landcruiser, and the boats. These last are a 27ft. vessel and a dinghy. I agree to all being valued and my receiving one half of their value. 30

20. THAT I claim as matrimonial property, under particularly S.8 of the 1976 Act the following (listed in paragraph 26 (f) of the applicant's affidavit of 18th March, 1977.

- (a) The applicant's personal interest in Aglionby Street
- (b) Unsecured loan to J.Sutherland.
- (c) On deposit with the Bank of New Zealand at Lower Hutt.
- (d) The amount placed on mortgage with Chapman, Tripp & Co.
- (e) Equity shares and Local Body loans
- (f) Machinery. In this regard I made a list of items at the matrimonial home at 17th December, 1976. Thus: 40

- Colchester Master 2500 lathe (replacement value is, I believe, \$12 - 13,000.)
- Electric Welder
- Gas Welder
- Kid Garrett plane
- Round Saw
- Circular Saw
- Electric Saw
- Drill Press
- Electric Hand Grinder 50
- Black & Decker Jig Saw
- Black & Decker heavy duty Drill
- Black & Decker Sander
- Heavy duty Grinder
- Small Lathe

I verily believe the value of these items above to be grossly in excess of the \$10,000. the applicant places against "machinery".

I further claim as matrimonial property:

- (g) Any balance of the \$426,000 in paragraph 26 (d) of his affidavit and which is not reflected in (a) to (f) above.
- (h) The balances in any banking accounts of the applicant at 17th December, 1976 and which have not been revealed by the applicant.
- (i) The A.M.P. Policy.
- (j) Any other property not revealed by the applicant.
- 10 In this respect I refer to the A.F.Reid interest in Aglionby Street property as being \$32,720.26 (paragraph 25 of his affidavit of 18th March, 1977. and to a reduced interest therein of \$30,913.00 in paragraph 26 (f) of that affidavit. I ask particulars of the applicant's interest in this property, as to whether the above figures relate to the same property, and of any accounting for the difference. I further verily believe that the applicant is entitled to a share in the estate of his mother, Ada Marie Reid. That her estate has land
- 20 at Hautana Street, Lower Hutt. This is I believe worth at least \$ 80,000 and is presently, I believe, revenue-producing.

In respect of the property (a) to (j), I ask that the applicant:

- (i) Provide full particulars thereof.
- (ii) Provide any facts and circumstances for alleging that they are "separate property" (paragraph 26 (f) of his affidavit of 18th March 1977). If they be, as I contend they are, matrimonial property, I seek my half share thereof.
21. THAT I say the \$50,000 in paragraph 26 (f) of the applicant's affidavit of 18th March, 1977, was paid pursuant to Exhibit A to that affidavit. That I ask particulars of the source of such \$50,000 as I contend the same is matrimonial property and that I am entitled in my own right to one-half thereof.

22. THAT as to the contentions of the applicant of matrimonial property of mine (paragraph 1 (b) of his affidavit of 28th April, 1977) I depose:
- (i) The home unit is a Town House, Unit 6 on Unit Plan 43720 Certificate of Title Volume 16B folio 1284 (Wellington Registry) and was purchased for \$37,000 following 17th December, 1976. This is, I depose (under s 9 (4) of the 1976 Act) separate property. If the applicant considers it otherwise, I seek from him the circumstances under which he would ask this Honourable Court to regard it as matrimonial property.
- (ii) This is referred to in paragraph 17 of this my affidavit.
- (iii) THAT the properties 85 and 87 Nelson Street, Petone, were (and) sold; and proceeds of sale were paid to the S.R.Reid
- (iv) Property Account. That account was closed by withdrawal
- 40 of \$25,107.05 on September 27th, 1973, and this was paid to my current account. This money was applied (inter alia) by payment to Reid Containers Limited on 1st October, 1973 of \$ 8,501.77 (repayment of loan); \$12,000 to Luke Cunningham and Clere on 1st October, 1973 (mortgage advance); and transfer of \$ 3,500 to my savings account on the same 1st October, 1973. The \$12,000 was repaid on
- 50 24th September, 1974. This sum was paid into my Savings Account. From this \$7,120. was paid out of that Account. I believe it represented my share in Aglionby Street (now subject to the applicant's Exhibit "A") The rest of my
- 60 Savings Account was applied as hereinafter mentioned. I

Supreme Court :
 No. 5: Affidavit of
 Susan Rosemary Reid
 in answer :
 18 May 1977 :

say that my monies were used for my car-running expenses, for clothing for the applicant, for me and the family, the Northern Building Society monthly payments, for furniture for the matrimonial home; \$ 349. for the celebrations for the applicant's fiftieth birthday; subscriptions to Church and Golf Clubs; personal Insurance Premium on the applicant's life - generally, for the applicant; the family; for me and for the home. My bank statements are available to confirm such use of my monies. That at 17th December, 1976 there was, in my Savings Account the sum of \$2,307.47; in my current account, \$389.85 and in my Post Office Savings Account, \$35.48. 10

(v) THAT the S.R.Reid Trust resulted from "gift by the applicant (his affidavit, paragraph 18) but I say it was established from matrimonial property; but is, even if it resulted from the property of the applicant, separate property in terms of s 10 (2) of the 1976 Statute. That the capital of the Trust and the terms of the Trust are known to the applicant and I ask that he inform this Honourable Court thereof. That if the applicant claims interest therein, I ask particulars of the manner in which the "gift is used for the benefit of both the husband and the wife" pursuant to Section 10 (2) of the 1976 Statute. Further (Exhibit "A" to the applicant's affidavit of 18th March, 1977) the applicant regards the Trust's Aglionby Street interest as being an "Income Producing Asset of Mrs. S.R.Reid". That, if this Honourable Court, bestow on the applicant an interest in monies derived from this Trust, I respectfully ask that that fact be taken into account when maintenance is determined. That I ask from the applicant particulars of settlement of the said purchase and the investment of resulting funds; and in what if any manner the property, be it original or altered, is matrimonial property. That under his Exhibit "A" the applicant was to pay to me \$1000. for my maintenance. That I find that in the minutes of the Trust of 2nd March, 1977 and which appear on proceedings M.82/77 in this Honourable Court that the applicant was to have refunded to him the \$1000 he so paid. That I ask that the applicant justify his personal liability for maintenance being re-imbursed to him from my Trust; and whether the further \$1000 paid pursuant to agreement of 4th April, 1977, has been paid from my Trust and, if so, the justification for such payment. 20 30 40

(vi) THAT this represents item 2 on Exhibit "A" of the applicant's affidavit of 18th March, 1977. My Solicitor is yet awaiting receipt from the applicant of the funds. I ask from the applicant particulars of the source of the funds, the purchase by him, payment of funds to my Solicitor on my behalf; the manner in which the property, original or altered, is matrimonial property. I ask too, the applicant's advice as to whether the funds are to be revenue-producing towards my maintenance or whether only that part not claimed by him is to be. That I respectfully ask this Honourable Court to take into account any share of this property it may give to the applicant in fixing maintenance for me. 50

(vii) THAT I have received draws from my Bulding Society Shares as follows:

- (a) \$5,000. November, 1971, paid to my savings Account. (Used to repay Paihia mortgage) 60
- (b) \$5,000, July, 1975, paid to my current Account. (Used for U.K.trip and remainder invested with Agar Keesing).

(c) \$5,000., November, 1976, paid to my Savings Account.

10 (a) and (b) were used as indicated in paragraph 22 above; (c) was received by me after 17th December, 1976 and is revenue producing in conformity with the applicant's Exhibit "A"/ If the applicant regards any of (a), (b) or (c) as being matrimonial property, and not separate property under e.g. SS 10 (1) and 9 (A) of the 1976 Statute, I ask particulars he may rely on for so contending; and I ask the manner his so contending is consistent with his entering into his Exhibit "A". That I must ask this Honourable Court for a larger provision of maintenance from the applicant if he be permitted any share in Building Society draw (c) above. That at 17th December, 1976 my payments to the Building Society stood at \$3,320. Does the applicant, and in what manner, claim this represents matrimonial property? That I can point to no assets in my "possession as at 17th December, 1976 derived from the Society's draws" by me other than such as may appear herein.

20 (viii) My Austin Maxi motor car was purchased by a withdrawal from my current Account of \$50. on 17th May, 1973; and a payment from my property account of \$3,805.44 on 12th July, 1973. If the applicant persists in contending this motor car is matrimonial property, I ask for him particulars of his so alleging.

23. THAT at the 17th December, 1976, beyond what I have already stated, I depose that I had the following'

30 (a) A one-third interest in nine typical "Coronation Street" houses in Portsmouth. I have no value of these houses, but - as an indication of their value, the tenth (the best of all, with shop premises added, was sold about August, 1976 for about 4000 pounds sterling. These houses were gifted to my sister, brother and me by our father. That the three of us also share the rents; and I have been accustomed to having my share paid to my English Bank Account. That, in accordance with Exhibit "A" (the applicant's affidavit of 18th March, 1977) I repatriated to New Zealand the sum of \$4000 (N.Z.). That sum was paid to my Solicitor and is invested with his nominee company. I refer to the income from this sum in paragraph 29 below. That at 17th December, 40 1976, there should have been to my credit, in England, and, with the repatriation to New Zealand, left therein at January, 1977, the sum of \$1416.70 pounds sterling. That I calculate my 1977-78 English income as follows:

Rent from 10 houses for the 4 quarters to	L
January, 1977	1417.89
1/3 share each (before tax)	472.63
The 10th house (now sold) brought in	
per week L 4.	208.00
50 Loss in income to each before tax	69.00
Annual income to each from 9	
houses only (L472.63 - 69)	
before tax =	403.63
I expect that one half is applied to tax.	
Therefore, there remains to me some	200.00
This at present rate of Exchange is	
roughly	\$359.77

(b) Lloyds Bank (England) at 17th February, 1977, balance of rents (after repatriation

Supreme Court :
 No. 5: Affidavit of
 Susan Rosemary Reid
 in answer :
 18 May 1977 :

of the \$4000. (N.Z.) to this country)
 and gifts of L600. from my parents,
 L1416.70 (stg) - \$ 2543.73

(I regard \$400. from my parents as being only a loan)

24. THAT if the applicant has any information of "shares and monies" (11(e)(1)) in my possession which are gifts or bequests to me, I am anxious to learn of them. I ask particulars thereof. I know of none. I ask too for his grounds of belief that they are of "substantial value".

25. THAT I must ask from the applicant particulars of funds in my possession at 17th December, 1976 "derived from (my) shares in Reid Containers Limited..." I do not know of any. 10

26. THAT I must ask from the applicant any grounds of opposition he proffers against my classification of property and of my entitlement to it.

27. THAT contemporaneous with its determination of my entitlement to matrimonial property, I ask this Honourable Court to assess the applicant's liability for maintenance for me and for the child, Carolyn Rosemary Reid, in terms of s 32 of the Matrimonial Property Act, 1976. 20

28. THAT the following is my assessment of maintenance required for me, and for Carolyn Rosemary Reid (born 18th August, 1964) so far as she is not otherwise provided for from her Trust:

	Annually	Weekly	
Provisions	3,224.00	62.00	
Electricity (\$40. per 2 months)	240.00	4.61	
Telephone Rental (\$16.90 per 2 months)	101.40	1.95	
Tolls \$25. per 2 months	150.00	2.88	
Baby Sitters	312.00	6.00	
Clothing (including additional for Carolyn)	1,040.00	20.00	30
Pocket Money (Carolyn)	78.00	1.50	
Dry Cleaning	156.00	3.00	
Newspapers (60 cents) and periodical and book purchases	291.20	5.60	
Television Licence	45.00	.87	
Rates (1977-1978)	303.90	5.84	
House Insurance (\$40.)	120.00	2.31	
Insurance, (Contents \$13,000)	93.98	1.81	
Motor car Austin Maxi. (A.A. estimates 23 cents per mile to cover registration, insurance, repairs, maintenance, depreciation, Petrol, 10,000 miles)	2,300.00	44.23	40
Doctor and Dentist	200.00	3.85	
Chemist	100.00	1.92	
Hairdresser	72.00	3.00	
Entertainment	156.00	3.00	
Subscriptions, Golf Club \$123.00			
Church 50.00			
Guides 30.00			50
\$203.00	203.00	3.90	
Gifts	300.00	5.77	
Holidays \$500.	500.00	9.62	
Linen & Crockery etc. Replacements	235.00	4.52	
Electrical maintenance	52.00	1.00	
House maintenance	500.00	9.62	
Furniture & furnishings	250.00	4.81	
Maintenance of common drive	200.00	3.85	

Supreme Court :
 No. 5: Affidavit of
 Susan Rosemary Reid
 in answer :
 18 May 1977 :

Depreciation on car	400.00	7.69
Gardening implements, and house tools	320.00	6.15
Seeds, plants, manures etc.	275.60	5.30
Accountant in New Zealand and England	400.00	7.69
Northern Building Society	481.68	9.26
	\$13,100.76	\$253.55

29. THAT currently my income is:

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| | | Weekly |
| 10 | (a) \$1,000 from the applicant being his contribution to my maintenance to 17.6.77; and a further \$300. for Carolyn Rosemary Reid (from her Trust) This, in accordance with written agreement photocopy of which is attached hereto and marked "D". This is subject to its coming in fact from my Trust. | say \$ 80.00 |
| 20 | (b) Interest on \$3000. at 12.1/2% p.a. Both per Agar Keesing, Mcleod & Co. Solicitors, Lower Hutt (This is 4 of Exhibit "A" of applicant's affidavit of 18th March, 1977) = \$174.57 per quarter (last due on 7th May, 1977) | say \$14.55 |
| | (c) Interest on \$9000. with W.V.Gazley, G.J.Black. This \$9000. represents 3 and 9 of the above Exhibit "A" Interest is due next on 1st and 15th June and is \$270. per quarter. | say \$22.50 |
| 30 | (d) The rents etc. in paragraph 23(a) above but these remain in England | |
| | (e) THAT other items of income in the applicant's said Exhibit "A" have not yet been realised. That I am currently using my banking accounts to provide further for our daughter and for me. | |

PARA 62

40 30. THAT (paragraph 62 of the applicant's affidavit) I await the applicant's entry "into any matrimonial property". That, as to maintenance, if the maintenance is in fact coming from my Trust, the applicant seeks to discharge "his" obligations by using without my concurrence what is, I depose, my own property.

SWORN at Wellington this)
 18th day of May, 1977) ' S.R.Reid'
 before me :)

'G.J.Black'

A Solicitor of the Supreme Court of New Zealand

Supreme Court :
No. 5: Affidavit of
Susan Rosemary Reid
in answer :
18 May 1977 :
Exhibit "A" :

EXHIBIT "A"

PHILLIPS, SHAYLE-GEORGE & CO.
BARRISTERS & SOLICITORS

G.P.O. BOX 2791

TELEPHONE 726-289 (9 LINES)
CABLE ADDRESS: "MEEKIRK"

GEORGE COLEMAN PHILLIPS
COMMISSIONER FOR AFFIDAVITS
FOR ALL AUSTRALIAN STATES
STEPHEN JOHN SHAYLE-GEORGE, LL.B.
PETER JOHN BURROWS, LL.B.
TERRY LAWRENCE COLES, LL.B.
PATRICK JAMES DOWNEY, M.A., LL.B.
DENIS GRENVILLE THOM, LL.B.
WILLIAM ROSS MULHOLLAND, LL.B.
MICHAEL ROBERT CAMP, LL.B.
MURRAY GEORGE HOPKINSON, LL.B.
JOHN RUSSELL STRAHL, LL.B.

PETONE OFFICE: CHR. JACKSON AND BUICK STREETS
TAWA OFFICE: 123 MAIN ROAD (VISITED FRIDAY AFTERNOONS)

*Government Life Insurance Building
Customhouse Quay,
Wellington, N.Z.*

IF CALLING PLEASE ASK FOR
MR. Camp

25 February 1977.

W V Gazley Esq
Solicitor
PO Box 12217
WELLINGTON

Dear Sir

REID v REID

We have now completed our investigation into the capital situation of the parties.

During the marriage Mrs Reid has received from her husband capital which amounts to at least \$103,848. This includes the sum of \$50,000 paid to her in terms of the agreement dated 17 December 1976. It also includes the capital of the S R Reid Trust.

Our client considers that assets to that order are all that she can reasonably expect. That does not take account of her other assets (of a capital value probably in excess of \$60,000) which were not derived from her husband.

Our client is prepared to consider a settlement of the matrimonial property claim on the following basis :-

- (1) The Witako Street property to be vested in Mrs Reid absolutely.
- (2) The Colin Grove property to be vested in Mr Reid absolutely.
- (3) The Paihia property is to be vested in Mr Reid, provided that Mrs Reid will be entitled to reasonable occupation of the Paihia property while that property remains in his ownership. However Mr Reid may well be prepared to consider some other arrangement regarding the Paihia property, such as :-
 - (a) The property to be vested in Mrs Reid

EXHIBIT "A" (continued)

PHILLIPS, SHAYLE-GEORGE & Co.

PAGE No. 2

until her remarriage or death subject to her paying all outgoings, then to be held on trust for the children equally; or

- (b) the property be vested in the children equally on trust.

In both cases Mr Reid to have reasonable occupation rights.

- (4) The capital sum of \$50,000 already paid to Mrs Reid to vest in her absolutely.
- (5) The S R Reid Property Account and assets resulting therefrom to vest in Mrs Reid absolutely.
- (6) With the exception of the items referred to in (7) below, the chattels removed from the Colin Grove property by Mrs Reid to be vested absolutely in her.
- (7) All family photographs (framed and unframed) now in the possession of Mrs Reid to be returned forthwith to Mr Reid. Mr Reid will undertake to provide any copies of the same which Mrs Reid may reasonably require.
- (8) All other property, real or personal, currently held by either party to vest absolutely in the present holder thereof.
- (9) Both Mr & Mrs Reid to retire as trustees of the Philip Reid Trust and both parties to undertake not to advance to Philip any sum in excess of \$200 in any one year until 31 March 1982 without the express consent in writing of the other (see further comment below).
- (10) The above terms or such terms as may be agreed to be embodied in a Deed complying with s.21 of the Matrimonial Property Act 1976.

Your client will understand the reasons for term (9) above. The difficulties which have arisen from Philip being given money have caused great concern, especially since he becomes violent when he is thwarted. It is in his interest, and in the interests of the safety of his parents, that he know that he cannot call on either of his parents for large sums of money. Our client is particularly anxious that Philip should know that he cannot influence the trustees of his trust to disburse substantial capital.

On the question of the custody of Carolyn, our client is not satisfied with the present arrangements, and his present intention is to reopen them in the child's interests. However his mind might be set at rest if he could be assured that there has been a change in your client's attitude from the bitterness

.....3

Supreme Court
 No. 5: Affidavit of
 Susan Rosemary Reid
 in answer
 18 May 1977
 Exhibit "A"

EXHIBIT "A" (continued)

PHILLIPS SHAYLE-GEORGE & CO.

PAGE No. 3

and spitefulness which appeared so clearly from her diary notes. Both parents have much to offer this child, but the child's mind cannot be allowed to be poisoned by bitter and malicious remarks concerning either parent, or deliberate confrontations.

On the issue of maintenance our client is concerned to know how any provision beyond that already made for your client could be justified. In earlier correspondence some reference was made by you to a demand for maintenance which would have resulted in your client, with her own present resources, being put into an income bracket of \$24,000 per annum. Our client cannot be expected to take such suggestions seriously, and if your client proposes to make any further demands they must be realistic and fully justified.

There are two other points to be made on the question of maintenance. First, our client understands that the D R G Board is to resolve on tax free dividends. If such resolution is passed that will mean that the income from the D R G shares will increase, but it will also mean that their market value will increase from the present level of approximately 0.75¢.

Secondly it will be understood that any part of the \$50,000 not used by the wife in the purchase of a home of her own is to be invested as a maintenance provision for her.

Your client is of course bound to make the best use of the capital at her disposal to produce an income, and our client cannot be held to his guarantee of \$6880 per annum if she fails to do so.

Our client has not lost sight of the possibility of a reconciliation, but recognises that any such possibility requires a major change of attitude on your clients part. Our client recognises that further litigation can only drive them further apart, but leaves it for your client to decide whether litigation is necessary.

This letter is not written "Without Prejudice". Our client feels that if any of the matter referred to proceed to litigation the Court is entitled to have his attitude to settlement on record.

Yours faithfully
 PHILLIPS SHAYLE-GEORGE & CO

Per 

(EXHIBIT "B" refer file of correspondence Vol 2)
(pages 124 to 128)
()
(EXHIBIT "C" refer file of correspondence Vol 2)
(page 129)

EXHIBIT "D"

THIS is a true copy of the written agreement marked
"D" and referred to in the AFFIDAVIT OF SUSAN ROSEMARY
REID sworn before me this 18th day of May 1977.

A Solicitor of the Supreme Court of New Zealand

Misc for wife
\$1000 to 17.6.1977
+ \$300 for Carolyn
misc to be
fixed by Court
on 17 June 1977
or by agreement
(without prejudice
to defendant's
contention that
there is no jurisdiction
to fix maintenance)

Susan Reid

Anthony Kluit.

4.4.77

This page blank

Supreme Court :
No. 6: Notice of motion by :
Susan Rosemary Reid :
re Matrimonial property :
5 August 1977 :

TAKE NOTICE that on Thursday, the 22nd day of September, 1977 at 10 O'clock in the forenoon or so soon thereafter as counsel can be heard, counsel for the abovenamed Respondent WILL MOVE this Honourable Court at Wellington FOR AN ORDER:

- (a) THAT the matrimonial home at 14 Colin Grove, Lower Hutt, be vested in the applicant subject to payment by him to the respondent of one-half of the value thereof.
- 10 (b) THAT the holiday home at Davis Crescent, Paihia being more particularly described as all that parcel of land containing 1 rood, 18 perches more or less situate in Block 4 Kawakawa Survey District being Lot 36 on Deposited Plan No. 15984 (Town of Paihia Extension No. 2) and part of the block originally granted to Robert Burrows and others by Crown grant dated 23rd December, 1851 and being the land in Certificate of Title Volume 739 Folio 88 (Auckland Registry) subject to the provisions of Sections 16, 17 of Land Act 1924 and agreement as to fencing in Transfer 329597 be vested in the respondent with her crediting to the applicant one-half of the value thereof.
- 20 (c) THAT the applicant do pay to the respondent one-half of all other the matrimonial property of the parties.

AND DIRECTING that the costs of the respondent of and incidental to this application and the order thereon be fixed and the costs of the respondent in any event **AND** for such further or other order as in the circumstances may be just.

UPON THE GROUNDS that the respondent is entitled to one-half of the matrimonial property of the parties

AND UPON THE FURTHER GROUNDS appearing in the affidavits filed herein and in any that may be filed herein.

30 DATED at Wellington this 5th day of August, 1977.

'W.V.Gazley'
Solicitor for Respondent

Supreme Court :
No. 7: Affidavit of
Anthony Fulton Reid
in reply :
2 September 1977 :

I, ANTHONY FULTON REID of Lower Hutt, Company Director, MAKE OATH
and say:

1. I have read the following affidavits sworn and filed herein.

(a) The affidavit of the respondent, sworn on 18th May, 1977 in
answer to my affidavits sworn on 18th March, 1977 and 28th
April, 1977, relating largely to the proceedings under the
Matrimonial Property Act (hereinafter called "the
respondent's matrimonial property affidavit").

(b) The affidavit of DIANA ELIZABETH JONES sworn on 6th May,
1977, relating to the Matrimonial Property Act proceedings 10
(hereinafter called "Mrs. Jones' affidavit").

(c) The affidavit of the respondent, sworn on 9th May, 1977,
relating to my application under the Guardianship Act, 1968,
in relation to our daughter Carolyn. (hereinafter called
"the respondent's Guardianship Act affidavit").

I wish to reply to the allegations in those affidavits.

1. I also wish to add to the evidence in my first affidavit,
both in regard to the Matrimonial property proceedings and the
Guardianship Act proceedings. The reasons are as follows:

(a) Matrimonial property. It has been a major task to 20
assemble and sort out the documents and papers relating to
complex financial dealings over many years. That task was
not made easier by the respondent's or her solicitor's
refusal to make available to me certain papers and records
which the respondent removed from our home in 1976. She was
ordered to make discovery of these in maintenance proceedings
in the Magistrate's Court at Lower Hutt, but it was only when
an order for discovery was made much later in the present
proceedings that she finally acknowledged that they were in
her possession and copies were supplied to my solicitors. 30
Prior to that she had, through her solicitor, denied that
those records were in her possession. The respondent
applied unilaterally for a fixture for the hearing of these
proceedings, and although I would have preferred more time to
assemble and analyse the necessary material, I have done the
best I can.

(b) Guardianship Act Proceedings. I am advised that the Court
should be informed of events that have happened regarding
Carolyn since my last affidavit in relation to her was sworn
on 3rd May, 1977. In particular it is now urgent that a 40
decision be made about Carolyn's future education before the
start of the 1978 school year. The matter of access to
Carolyn has also become urgent. There have been unusual
difficulties in that respect, and for Carolyn's sake they
need to be resolved.

3. BECAUSE of the volume of exhibits, true copies of the relevant
documents have been collected in a separate folder, now produced
and shown to me and marked "A". I depose that the documents in
that folder, numbered consecutively 1 to 18, are true copies of
the originals. For convenience I refer to such documents in 50
this affidavit as "Document(number)"

MRS. JONES' AFFIDAVIT

4. I desire to reply to Mrs. Jones' affidavit as follows:
 First, I do not believe that Mrs. Jones has been in any position to depose to any of the events she refers to which took place between late 1958 and 1975. In late 1958 Mr. & Mrs. Jones left Wellington and thereafter lived in New Plymouth. They resided there for two years, leaving New Plymouth for England where they remained until mid-1975. During that time they occasionally visited New Zealand and during those visits came to Wellington for very short periods, usually not more than one or two days. My business was not established until 1959, which was after Mr. and Mrs. Jones had left Wellington. Their return in mid-1975 was very shortly before I gave notice of my retirement from the business.

5. BEING puzzled by Mrs. Jones's apparent detailed personal knowledge of events which happened at our home while she was in New Plymouth and in England, and thus unable to know anything about the general pattern of events at first hand, I instructed my solicitors to make enquiries. As a result of those enquiries I believe that Mrs. Jones' husband, Warren Jones, who is now Manager of Shaw Savill in Wellington, if called to give evidence, would say:

- (a) That he and his wife had known me for many years; that both couples saw a reasonable amount of each other after my marriage, since we were all involved in a small part-time enterprise of packing screws in small plastic bags for Woolworths. That the Jones' garage (it was in fact Mrs. Jones' parents' garage) was used as a store-room, from where the materials were taken by the Jones, us, and another couple, for packaging at home by hand; that I invented a machine for automatic packaging. That Mr. Jones does not know whether the respondent assisted after that stage, or whether she was inconvenienced by the operation of the machine. (The machine was in fact kept in a shed on my mother's property. It never worked properly.)
- (b) That the Jones left for New Plymouth in late 1958, and lived there for two years. That in 1960 they travelled to England where they remained until mid-1975.
- (c) That thereafter they occasionally visited New Zealand, with one or two days in Wellington. They saw the respondent and me on those occasions, but he does not know how my business was developing because he was overseas and he does not know whether the respondent participated in the business or not.
- (d) When they returned to New Zealand in 1975 he found visits to my home rather unpleasant because of the tensions that then existed. He knew there were problems over Philip but is unaware of their nature.
- (e) He knows or understands from what he has heard that the respondent did some part-time bookkeeping at home in the early stages, but knows nothing more than that (in fact she did no more than keep the wages). He was out of contact from 1958 until 1975 when contact with the respondent and me was rare due to the unpleasantness in our home.

I confirm that this account of events appears to be accurate, with the exception of some matters which I have explained in the bracketed passages.

6. I do not wish to embarrass Mr. Jones by calling him as a

Supreme Court :
No. 7: Affidavit of
Anthony Fulton Reid
in reply :
2 September 1977 :

witness to give evidence which would appear to show that his wife could not have had first-hand knowledge of many of the facts deposed to in her affidavit. I understand Mrs. Jones is presently in England and thus not available for cross-examination. I believe that Mrs. Jones, who has always since her return from England in 1975 lent a very sympathetic and (I am afraid) uncritical ear to my wife's account of events in the home, has permitted herself to swear her affidavit out of a feeling that she would thereby be assisting my wife.

7. THE screw-packing enterprise was a very minor one, and I believe that my wife took the profits which our household earned. I have already deposed to my wife's work in keeping the wages records for the business, for which she was paid by the business at a rate well in excess of that of any other woman employed. That was a very minor job which took very little of her time. Searching my memory as best I can, I can recall her doing only one item of typing for the business: that is the memorandum setting out the assets of the business when it first began in 1959, a true copy whereof is produced as Document 1. Anything I wanted typed after I started the business I took to a public typist, more particularly the Copy Centre in Petone, and then used Margaret Lane, one of the machine operators of the factory, for the occasions typing was needed. There was no typewriter in our house until 1959, after Mrs. Diana Jones had gone to New Plymouth. The Invoices and Statements for the business and other paperwork, apart from the wages records, were done by me and I am able to produce, if required, all the Invoices and Statements from 1960 on which are in my own handwriting. My wife never showed any real interest in the business - although her lack of interest disappointed me and I do not criticise her for it - and it was quicker and easier for me to do the paperwork myself.

THE RESPONDENT'S MATRIMONIAL PROPERTY AFFIDAVIT

8. AS to paragraph 5 (in which the respondent purports to put me to proof of the means by which the property at 14 Colin Grove was acquired) I repeat what I deposed in paragraph 6 of my first affidavit. I could not have acquired a sole interest in that property had it not been for my brother's generosity in selling me his half share at very substantially less than the market value (which in fact represented a gift to me of some thousands of dollars) and by allowing me to buy him out over a period, free of interest. At that time I was aware that my wife had assets of her own in England and I believe she could have contributed towards the purchase of my brother's interest. In fairness to her, however, I never suggested that she should make any financial contribution and in fact she made none of any kind out of her own resources until 1963 when she wished to demolish the original home and rebuild, as explained in paragraph 15 of my first affidavit. In the event her sole financial contribution to the property at 14 Colin Grove during the whole period of our marriage was \$ 4,004.00.

9. I wish to add, in regard to the property at 14 Colin Grove, that not all the land which appears to be appurtenant to the home could be sold with the house in the event of a sale. I produce as Document 2 a true copy of an agreement which binds me to transfer part of the land in the event of the property being sold.

10. IN her matrimonial property affidavit my wife does not suggest that her financial contribution to the Colin Grove property was greater than that specified in paragraph 15 of my

first affidavit. If she seeks to contend that her financial contribution was greater, I put her to proof of it.

11. IN regard to what I deposed in paragraphs 10 and 11 of my first affidavit, relating to our sideline activities during 1957 and 1958, and my establishment of Reid Containers Limited in 1959, my wife gives in paragraph 5 of her matrimonial property affidavit what she describes as her "paragraph 3 (c) answer", meaning thereby that what I have deposed is irrelevant. I wish to add the following:

10 (a) As to the "sideline activities", these were as described in paragraph 5 of this my present affidavit. I was at that period working in Wellington in full time employment, and the sideline activities were really no more than a kind of hobby. It is true that I built a small machine which automatically made polythene bags. By the time I started Reid Containers Limited the screw-packing activity had finished. My wife wanted to stop the polythene bag making at home: she said, "Get the girls down at the factory to do it". In fact that activity was never adopted seriously by Reid Containers Limited and finished very shortly after I formed the Company.

20 (b) As to the establishment of Reid Containers Ltd. In September, 1959. I refer to document 1, typed (to the best of my recollection) by my wife, which lists the assets which the Company had on its establishment. All those assets were (had the tests prescribed by the Matrimonial Property Act 1976 then been relevant) my separate property: they were tools and equipment which I had collected prior to our marriage, and further equipment acquired by a gift from my mother. Documents 3 and 4 are documents relating to that gift. There is further reference to that gift in my mother's will. My wife's sole contribution was \$ 2.00 for her one share in the Company, although I now know (though without criticising her) that she would have been able at that stage to provide more finance than that. I did not, of course, ask her for it, although she knew that I was starting from nothing.

40 12. AS to paragraph 12 of my first affidavit (relating to discussions about my wife's assets and my knowledge of them), to avoid misunderstanding I should make it clear that I do not believe I ever told my wife what my own thoughts were about her use of her income and assets. She did not offer to assist financially, but that was not because I had told her that I considered she should keep her own income and assets for her own use. It is quite possible that she could have thought that if I needed assistance from her I would ask for it.

50 13. AS to paragraph 13 of my first affidavit, I should make it clear that the payment by Reid Containers Limited to my wife of a weekly wage in cash for "doing the wages" for the Company's employees was really no more than a "perk" for her. Documents 5 and 6 consist of true copies of pages from Reid Containers Ltd.'s paybook in my wife's writing, showing that in the first period of the Company's operations my wife was receiving a wage of L4.0s.0d. per week for doing the wages and showing what women employees were receiving for many more hours work, this wage was quite separate from the "salary" my wife was later paid by the Company: this is shown in Document 7. It was a gratuitous payment: she did no work for it.

14. AS to paragraph 15 of my first affidavit, in which I deposed to the rebuilding of 14 Colin Grove undertaken on my

Supreme Court :
No. 7: Affidavit of
Anthony Fulton Reid
in reply :
2 September 1977 :

wife's urging. This was the first and only occasion on which my wife volunteered to contribute substantial monies from her English assets to property used for the purposes of our marriage (apart from her car) and I believe she did so because she also wanted a house which she considered more suited to our needs and to counter my own doubts whether I could at that stage, afford to undertake rebuilding of the kind she wanted. I wish to add that my wife had also provided some furniture and chattels which her parents sent out from England, and which were used in the home. These are the assets which, to the best of my recollection, are listed in the annexure to Exhibit "B" of her matrimonial property affidavit, and are the assets which she wrongfully removed from 14 Colin Grove at the end of 1976 in breach of her agreement that the contents of 14 Colin Grove were to remain intact pending settlement: Exhibit A to my first affidavit. 10

15. AS to paragraph 17 of my first affidavit (relating to the acquisition of 85 Nelson Street, Petone, in my wife's name on my suggestion) I wish to add that the reason for my suggestion, which I explained to my wife, and to which she agreed, was that her money in England was not giving her any significant return, and that it would be better invested in New Zealand. 20

16. IN paragraph 8 of my wife's matrimonial property affidavit, the allegation is made that the trusts referred to in paragraph 18 of my first affidavit, were set up by me with monies that were "matrimonial property". I do not understand that allegation. The sole initial assets of all the five trusts were shares in Reid Containers Limited, which were my shares, and transferred by me to the trusts. I do not understand on what basis it is alleged that my shares in Reid Containers Limited were not my separate property, since my shares were paid up in 1959 with tools and equipment which I had collected over the years prior to our marriage. My wife knew that the trusts were being set up and how they were being set up, and she fully agreed. Since they were for her and the children's benefit I would have been surprised if she had not agreed. The monies owing by the children's trusts were progressively forgiven, but this was not done in the case of the S.R.Reid Trust as I thought it more important to clear the children's first: instead the income accruing to the S.R.Reid Trust was, with my wife's consent, capitalised to meet the debt. 30 40

17. IN paragraph 20 of my first affidavit, there appears the first reference to what was set up as the "S.R.Reid Property Account", and references to that account appear later in my first affidavit. To avoid misunderstanding I wish to make it clear that the "S.R.Reid Property Account" was not set up with any idea that any assets in that account from time to time, were to be regarded as my wife's sole property. The account was set up, first, as a convenience to provide for the collection and transfer of monies used for the purposes of the whole family: it was used as a sort of family bank. Secondly, I felt that it was important to operate such an account so that if anything happened to me, my wife could have immediate access to cash without death duties. It would have crippled my wife financially and destroyed the Company if anything had happened to me, and I had not taken those and other precautions. Much later in our marriage my wife put that account to use for the family and for herself; I raised no objection to the latter. 50

18. IN paragraph 9 of her matrimonial property affidavit my wife:

(a) Purports to put me to proof of the allegations in

paragraph 23 of my first affidavit.

- (b) Asks the clasification of the property therein;
- (c) Asks what use was made by me or as to the disposal of the monies alleged by her to be her property, namely \$23,000. (it was in fact \$ 28,938.60)

As to (a) the documentary evidence as to the sale of the 1530 shares in Reid Containers Limited is produced as Document 8.

10 As to (b) my 30 shares sold to D.R.G. New Zealand Ltd., were my separate property. The 1,500 shares sold to D.R.G. New Zealand Ltd. by the trusts were the trusts' property. My wife's two shares were her separate property. As to (c) Messrs. Luke, Cunningham & Clere, Solicitors, Wellington, accounted to my wife direct for the \$ 28,938.60, being the net proceeds of the Nelson Street properties in her name, by letter addressed to her personally, dated 7th September, 1973, which is produced as Document 9 (obtained on discovery from my wife's solicitor) I am advised that technically, such net proceeds are matrimonial property.

20 19. IN paragraph 11 of her matrimonial property affidavit, referring to paragraph 25 of my first affidavit, my wife purports to put me to proof of what I there deposed; she alleges that the monies used by me to purchase the Aglionby Street property were and are matrimonial property and she ask particulars of my interest in that property.

30 I produce as Document 10A-J a complete breakdown of all payments made relating the Aglionby Street purchase. The sum of \$ 30,913. which I originally invested in that purchase was derived from monies repaid to me by the five trusts as the balance of the purchase price owing by the trusts for the earlier purchase by the trusts of my shares in Reid Containers Limited and secured by mortgages over those shares, less the amounts which I had by then forgiven the children's trusts' debts to me. The figure of \$ 32,720.26 given in paragraph 25 of my first affidavit (the balance sheet figure for the year ended 31st March, 1976) included accrued income for that year. I have since purchased the interest of my wife and of my wife's trust in the Aglionby Street property pursuant to the Agreement exhibited to my first affidavit as Exhibit "A", the monies for such purchase being derived from the sale of the balance of my Reid Containers Limited shares to D.R.G. New Zealand Ltd. My total investment in Aglionby Street is separate property.

40

20. AS to paragraph 12 of my wife's matrimonial property affidavit:

50 (a) I maintain that my wife did not offer me any support at the time referred to in paragraph 26 (b) of my first affidavit. Indeed I will go further than that and say that the difficulties created in the home at that time, when my wife must have realised how concerned and worried I was about the transactions with D.R.G., were a direct cause of my losing heart and agreeing to accept from D.R.G. much less than I know I could have obtained from them. I believe that I could have achieved a sale of my remaining shares to D.R.G. at a greater figure of approximately \$ 600,000., that is, some \$ 170,000. more than I actually received. I do not blame my wife entirely for this, because I do not think that she deliberately set out to destroy my confidence: but if she had not been so wrapped up in her own ideas of what was happening in the home, I think she would have realised that

Supreme Court :
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 2 September 1977 :

she ought to provide support. If, therefore, the proceeds of sale of my remaining Reid Containers Limited shares are matrimonial property (and I cannot understand how they can be anything other than separate property) I must reluctantly say that my wife's conduct at the material time was the direct and principal cause of a loss of approximately \$ 170,000.

I wish to add that my wife has never had any understanding of financial matters and she may therefore not have appreciated the importance of the negotiations with D.R.G. That is illustrated by one earlier incident: I had taken the car, not realising that her golf clubs were in the back of it. She rang me at work and insisted that I drop what I was doing and take her golf clubs home, because she was due at the Golf Course. I felt obliged to help her, in spite of the inconvenience. I mention this incident not in any spirit of criticism, but to illustrate that my wife based her priorities on an outlook that did not include business matters as an important item: that is only one illustration, and that is the way she was. 10

(b) In paragraph 12(b) of her affidavit my wife, replying to paragraph 26(c) of my first affidavit, deposes that her solicitor's first letter, making a series of "demands" on me (Exhibit "B" to my first affidavit) was written after full discussion between her and her solicitor, and has her full approval. That is not what she told me and our children when I received the letter: she told us that she did not know what was in the letter, that she had not seen it, that the demands made in the letter were not her wishes, and that the demands were not what she wanted but what her solicitor thought she should have. I can understand at this stage that my wife may have wished to represent to me and the children that she was neither as greedy nor as vindictive as the letter appeared to indicate. I still believe, whatever the true explanation, that the letter was tactless and brash in the extreme, and totally inappropriate to put my wife and me on better terms. Rightly or wrongly, I accepted my wife's word that the letter did not represent her wishes or her attitude, and I felt no inclination to co-operate in any way with a solicitor who could write such a letter. If the tone of the letter was in fact fully approved by my wife and did in fact fully represent her wishes (in spite of her denial) then I apologise to her solicitor for describing his letter as "despicable", but I am still very disturbed at its tone and content. 20 30 40

(c) In her reply (paragraph 12(c) to paragraph 26 (d) of my first affidavit, my wife says I was "niggardly" in my provision for the household. I deny that allegation. I believe that my wife, in making that allegation, shows her lack of understanding of the financial situation of Reid Containers Limited and the transaction with D.R.G. 50

Following the sale of 51% of the shares in Reid Containers Limited to D.R.G. in 1972, I received no dividends on my remaining 49% shareholding, but was placed on a salary of \$ 12,000. plus a bonus of \$3,000. In the last year this was increased to \$18,000. After 1972 it was of course no longer possible to obtain advances against my account with the Company for capital expenses for the family, and we had to live on my salary. I know, of course, that this was only temporary, because when I sold further of my shares to D.R.G. I would be in a much better financial position. I was never able to make my wife understand why it was that we had to be 60

Supreme Court :
 No. 7: Affidavit of :
 Anthony Fulton Reid :
 in reply :
 2 September 1977 :

restricted to my salary, although in fact there was never any reduction in the amount I made available from my income for housekeeping, and no purchase of any real use and value to the household was ever refused.

21. AS to the remainder of the allegation in paragraph 12 of my wife's matrimonial property affidavit:

10 (i) I repeat that I do not understand the basis for my wife's assertion that my shares in Reid Containers Limited were matrimonial property. The phenomenal increase in their value since the Company was formed was due solely to my own efforts in building up and developing the Company and in that my wife took no part at all. My shares, and the proceeds of sale of them, were never dealt with in such a way as to justify their classification as matrimonial property. The machinery referred to in paragraph 26 (e) of my first affidavit was acquired from the proceeds of the sale of my shares, and was not acquired for the purposes of the family but as part of the working capital for a new business.

20 (ii) The "\$426,000" referred to in the last paragraph of paragraph 12 of my wife's matrimonial property affidavit was derived solely from the sale of my shares in Reid Containers Ltd. to D.R.G.

22. IN regard to paragraph 27 of my first affidavit, I wish to correct the first sentence thereof. That sentence should read:

"I have no precise idea of my wife's asset position, except to the extent to which it has been increased by my efforts for her and the accretions resulting from those efforts".

30 The last word in the sentence was originally mistyped as "gifts" and by an oversight that was not corrected when my affidavit was sworn.

40 23. IN paragraph 13 of my wife's matrimonial property affidavit (relating to paragraph 27 of mine) she seeks full particulars of the extent to which my efforts for her have increased her asset position. I believe that my wife at present has received capital assets which have resulted entirely from my efforts for her to the extent of approximately \$ 95,124. This does not include balance sheet value of the assets of the S.R.Reid Trust, which stands at present at \$ 32,868.35. from which she is entitled to the income. Document 11 is a table of the capital assets at my wife's disposal resulting from my efforts. Document 12 is the most recent statement of account of the S.R.Reid Trust. Document 13 is a folder containing copies of my wife's tax documents for the years 1966 to 1974 inclusive.

24. IN reply to paragraph 14 of my wife's matrimonial property affidavit I say in regard to the following sub-paragraphs thereof:

50 (c) It is true that on 4th March, 1977 I requested the Magistrate's Court at Lower Hutt to make an order referring questions at issue between my wife and me to reconciliation. As far as I am concerned I have always been ready and willing to be reconciled with my wife, and wish only that her attitude was the same. I was present in the Magistrate's Court on 4th March, 1977 and heard my counsel submit that even if a reconciliation was not possible, it was hoped that at least my wife and I could, with the help of an experienced conciliator, talk with each other about matters affecting our own future and that of our children. I also heard my

Supreme Court :
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 2 September 1977 :

wife's counsel strenuously and vehemently oppose that application, on jurisdictional grounds. The Magistrate, in his decision, held that he had no jurisdiction to order reconciliation. There was no response whatever on my wife's side to my urgent request for conciliation.

(d) My wife's solicitor's idea of "settlement" is, and has throughout been, in my understanding, simply my meeting his demands. As to maintenance, although as a result of the settlement reached in the course of our separation proceedings (Exhibit "A" to my first affidavit) she is guaranteed an annual income of \$ 6,880 gross, she insists through her solicitor over and above this on maintenance which would put her into a gross income bracket of approximately \$ 25,927 per annum. That is more than any gross annual income that I ever had in my married life and I cannot and will not agree to any proposal as unrealistic and unreasonable as that. To illustrate the unreasonable attitude over maintenance adopted either by my wife or on her behalf, I arranged for maintenance for Carolyn at \$ 20. per week to be paid from her Trust into a special bank account which my wife could draw upon to meet Carolyn's needs. For some reason unknown to me, my wife's solicitor persists in declining to allow my wife to sign the forms which would enable her to operate that account. The money is there, and I have now had to make other arrangements for ensuring that she get it. I am at a loss to know what to do in the face of what appears to be a completely unreasonable refusal to deal with me. If my wife is sincere in wanting to negotiate a settlement, I wait anxiously for some sign that she or her solicitor are prepared to do so reasonably and amicably.

I say further that in December, 1976 I was always ready and willing before the Court hearing to discuss any proposals for settlement of the issues then before the Magistrate's Court. My wife or her solicitor would not agree. I offered to meet them at my home with my solicitor to discuss settlement. They would not agree to that.

On my instructions my solicitors put forward further proposals for settlement by their letter dated 25th February, 1977, addressed to Mr. W.V.Gazley (Exhibit "A" to my wife's matrimonial property affidavit). The reply (Exhibit "B" to my wife's matrimonial property affidavit) was duly referred to me by my solicitors. It appeared to me, rightly or wrongly, to be phrased in such discourteous and arrogant terms that it seemed to me that any hope of reasonable negotiation was impossible and I instructed my solicitors to withdraw any offer contained in their earlier letter, which they did. I wish to add that I take the strongest exception to letters written apparently on the assumption that I am not prepared to negotiate in good faith and that I am not prepared to be fair to my wife. Notwithstanding that, I am anxious to ensure that she is fairly treated. If my wife is anxious, as she says, to avoid the "rancour and expense of Court proceedings", I only ask that she ensure that negotiations are conducted on a reasonable and realistic footing. I ask leave to say that it is ridiculous to assert that I am ready to "countenance as a settlement no terms other than those propounded by me". That is not, and never has been my attitude.

25. AS to the items referred to in paragraphs 15 to 21 of my wife's matrimonial property affidavit"

Supreme Court :
 No. 7: Affidavit of :
 Anthony Fulton Reid :
 in reply :
 2 September 1977 :

- Paragraph 15. I do not concede that my wife is entitled to a half share in 14 Colin Grove.
- Paragraph 16. I would like the Paihia property to be kept so that it can be used for the benefit of all our children. It is a beautiful property and it would not now be possible to buy similar property in that area.
 Document 14 is a photograph of that property.
- Paragraph 17. My wife's claim to separate property is disputed.
- 10 Paragraph 18. These items are my separate property, having been purchased with the proceeds of sale of my Reid Containers Ltd. shares.
- Paragraph 19. The Toyota motor car and Landcruiser were transferred to me by D.R.G. as part of the purchase price for my Reid Containers Ltd. shares and are therefore my separate property.
 The boat and dinghy were bought with my funds in Reid Containers Ltd. and the proceeds of the sale of my shares therein.
- 20 Paragraph 20. (a) to (d) result from the proceeds of sale of my Reid Containers Ltd. shares and are my separate property.
 The items in (e) are: shares in Fletcher Holdings Ltd. a gift from my mother and my separate property. The Local Body loans were loans necessary to obtain boatshed rights, and are matrimonial property, set off against rent paid for the boatsheds. The items in (f) I have already dealt with in paragraph 18 hereof. I do not believe that the items are correctly described in my wife's affidavit. The sum in (g) represents the proceeds of the sale of my shares to D.R.G. Ltd. As to (h) the balance in such banking accounts represents income or unspent capital resulting from the sale of my shares in Reid Containers Ltd. To D.R.G. As to (i) the difference in the figures relating to Aglionby Street has already been explained. My interest as stated in paragraph 25 of my first affidavit, should be increased to reflect the 20.57% capital gain referred to in that paragraph. As to my interest in my mother's estate, (which is in any event separate property) I have renounced that in favour of my brother in gratitude and as a small return, for his willing assistance in helping me get established.
- 30
- 40
- 50 Paragraph 21. I have never sought to dispute that the \$50,000 I have paid to my wife was paid pursuant to the agreement exhibited as Exhibit "A" to my first affidavit. The source of those monies was, like most of my other capital, the proceeds of sale of my Reid Container Ltd. shares. I made that amount available to my wife so that she could purchase a new home to live in.
26. AS to paragraph 22 (i) of my wife's matrimonial property affidavit, in which my wife seeks from me the circumstances under which I would ask this Court to regard her new house as matrimonial property, this is a further example of the

Supreme Court :
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 2 September 1977 :

misunderstandings that seem to have been injected into this case. I have never sought to have my wife's new house treated as matrimonial property. As far as I am concerned it is an advance against her share of the matrimonial property. I accept also that, after she had paid for that new house, she was entitled to use a reasonable amount of the balance of the \$50,000. to set it up with carpeting, curtaining, etc. As to the remainder of the \$50,000. not reasonably required for those purposes, I believe that I am entitled to expect that she will not fritter it away, but invest it prudently so as to add to her income.

10

27. AS to paragraph 22 (iii) and (iv) of my wife's matrimonial property affidavit, it appears from my wife's figures that the balance remaining in her savings account as in September, 1974, (\$3880) compared with the balance of \$2307.47 as at 17th December 1976, means that in a little over two years my wife had expended only \$1573 (less than \$786 per annum) from the proceeds of the sale of the Nelson Street properties on the expenses she mentions. I draw attention to the fact that the investment in Aglionby Street from the S.R.Reid Property account (\$7120) was increased to \$9086 (see paragraph 25 of my first affidavit). The latter amount should have been paid to my wife very much earlier than it was; the delay was caused by my wife's solicitor not being able to attend to completing the necessary documents. In terms of Exhibit "A" to my first affidavit, this item is a maintenance-producing item, and I am disturbed that there should have been any unnecessary delay on my wife's part in obtaining those monies for the purpose of re-investment.

20

28. AS to paragraph 22 (v), the S.R.Reid Trust resulted from my efforts: I have already deposed that the word "gift" in paragraph 18 of my first affidavit is an uncorrected typing error. I do not understand how my wife can assert that she does not know the terms of the trust, since she is a co-trustee and a true copy of the Deed of Trust has been in the possession of her solicitor since early 1977. The proper use of the trust income is to provide my wife with maintenance. In agreeing by Exhibit "A" to my first affidavit that she should in the interim have \$1000 for maintenance it never occurred to me that the reference was to anything other than an advance of accrued income from the trust: my agreement was required to that payment, and since my wife refuses to have anything to do with the mechanics of payments from the trust, although she is herself a trustee, my agreement is still required for payments.

30

40

29. IN regard to the remainder of paragraph 22 of my wife's matrimonial property affidavit, I do not propose to join issue on technical arguments which are for the Court to decide. I say my wife's Austin Maxi motor car is a family chattel.

30. IN regard to paragraph 23 of my wife's matrimonial property affidavit, I am in no position to dispute what my wife says about her English assets, but I do say that my wife has resorted to them to a surprisingly small degree for the purposes of our family. The statement of her income appears to be a nett figure and I draw attention to returns (Document 13).

50

31. AS to paragraph 24 of my wife's matrimonial property affidavit, I know only what my wife told me about "shares and monies" which were gifts or bequests to her. If she now says there were no such gifts or bequests, I will accept that.

32. AS to paragraph 28 of my wife's matrimonial property affidavit, I dispute the figures given in an attempt to justify maintenances at an annual rate of \$13,100 (representing an

Supreme Court :
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 2 September 1977 :

income, before tax, of \$25,927 per annum). For instance, depreciation on my wife's car is claimed twice. Carolyn's maintenance is assured from the income from her trust, and I have already deposed to the complete lack of co-operation on the part of my wife and/or her solicitor in collecting it. I have already guaranteed maintenance for my wife from the investments referred to in Exhibit "A" to my first affidavit to the extent of \$6880. per annum: at \$1,040 per annum that would bring the total amount available to my wife to \$7,920. per annum. And she has
 10 a brand new house built in permanent materials, free of mortgage.

33. THOSE of my wife's allegations in her matrimonial property affidavit which I have not specifically answered or referred to in this my present affidavit, I deny and I put her to proof of them.

[Omission. Guardianship Reference]

SWORN at Petone
 this 2nd day of
 September, 1977
 before me:

"Anthony F. Reid"

(Not Readable)

A Solicitor of the Supreme Court of New Zealand

 Supreme Court :
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 Exhibit "A" Doc. 1
 2 September 1977 :

23 June 1960

Dear Sandy,

I am very sorry that this has taken so long to arrive but at least I think it is now all complete.

- 1 My ER 12 covering earnings at Press Tool Engineers
- 2 Listing of income from spare time work.
- 3 Deductable expenses from 2 but not including any provision for use of residence for business purposes. To help you strike a rate I have supplied
- 4 Gov valuation of 8 Colin Grove.
- 5 Peter and I hold some joint shares from which we receive occasional dividends, these are equally divided and my share is shown all in NZ curancy.
- 6 Sue has obtained from England a listing of her interests and has given what explanation she can.
- 7 A listing of Reid CONTainers Ltd capital account.
- 8 An explanation of the tube winding machine.

If you sort things out like this for a living I admire your skill

Yours sincerely

Supreme Court :
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 2 September 1977 :
 Exhibit "A" Doc. 1c:

EXHIBIT "A" [Document No.1c]

Share of Income from Shares held by P.A. and A.F. Reid
 1.4.59 to 31.3.60

NZ Motor Bodies	8	17	6
Clyde Engineering	18	0	0
Griffin	6	7	6
Dunlop Ltd	14	10	7
Waltons Ltd	25	13	2
Kauri Timber	9	10	10
	<hr/>		
	82	19	10

Supreme Court : EXHIBIT "A" [Document No.1c]
 No. 7: Affidavit of
 Anthony Fulton Reid
 in reply :
 2 September 1977 :
 Exhibit "A" Doc. 1c:

REID CONTAINERS LTD.CAPITAL ACCOUNT

Amount in cash paid into bank		
By A.F.R.	100.	0.0
By S.R.R.	1.	0.0
Hacksaw Machine	20.	0.0
Share of Tube Winder (see page)	250.	0.0
Glue Baths 2 only @ £55.0.0. each	110.	0.0
Tube Trimmer	90.	0.0
Compressor	65.	0.0
Seamer	200.	0.0
Lift Truck	25.	0.0
18 Platforms for Truck	12.	0.0
Tinplate Stock	94.	14.8
Electronic Equipment & Photo Cell	50.	0.0
Bliss Power Press & Cartage	355.	15.4
Lid Curler - Materials & Work prior to formation of Co. (Completed Value £135)	100.	0.0
Southbend Lathe complete with; 3 Jaw Pratt Chuck 4 " Crown Chuck Motor Switch Gear	140.	0.0
Isolating Transformer	12.	0.0
Polythene Stock	14.	0.0
Wolf ½" Electric Drill	10.	0.0
Wolf Electric Drill Stand	5.	0.0
Wolf Portable Electric Saw	20.	0.0
Venner Time Switch	8.	10.0
Plastic Drawer Cabinet	8.	0.0
Bench	7.	10.0
Zip & Factory Fittings	30.	0.0
Winding Belts	5.	16.3
Rent for Factory prior to Reid Containers Ltd. taking over less amount paid for part sublease	109.	11.4
Prestolite Gas Bottle	10.	0.0
4 Core Flex (42 yds.)	1.	4.9
3 Core Flex (100 yds.)	5.	13.3
Record Vice	3.	17.6
Rayrolle 400 volt sockets etc.	3.	11.0
Austin 12-4 1938	200.	0.0

2073. 12.1

Supreme Court :
 No. Affidavit of :
 Anthony Fulton Reid :
 in reply :
 2 September 1977 :
 Exhibit "A" Doc 1b :

EXHIBIT "A" [Document No.1b]

Anthony F. Reid Income from spare time work 1.4.59 - 31.3.60.

This consisted of repairing Numbering Boxes, making Polythene bags and small engineering jobs.

<u>Receipt No.</u>	<u>Amount</u>
48	23. 12. 3
49	17. 10. 0
50	17. 0. 0.
51	14. 9. 0.
52	11. 0. 0.
53	19. 10. 0.
54	3. 17. 0.
55	17. 16. 3.
56	2. 10. 0.
57	18. 4. 0.
58	21. 4. 6.
59	8. 10. 0.
60	1. 7. 6.
61	17. 15. 0.
62	1. 15. 0.
63	10. 10. 0.
64	2. 10. 8.
65	20. 10. 0.
66	9. 10. 0.
67	19. 5. 0.
68	2. 2. 0.
69	4. 17. 0.
70	5. 10. 0.
71	26. 1. 0.
73	5. 2. 1.
76	18. 6. 6.
77	31. 9. 3.
78	15. 5. 0.
79	11. 17. 6.

378. 7. 6.

Supreme Court :
 No. Affidavit of :
 Anthony Fulton Reid
 in reply :
 2 September 1977 :
 Exhibit "A" Doc id :

EXHIBIT "A" [Document No.1d]

Deductable Expenses from earnings by sparetime work1st April 1959 - 31st March 1960

Polythene	£25	0	0
Spare parts for numbering boxes	27	12	6
Casting	1	15	0
Die Block	1	15	6
Galvanized wire	2	17	9
Car Allowance	25	0	0
Proportion of Telephone	8	0	0
Postage	3	0	0
Use of residence as place of business			

Government Valuation (15th March 1956)

House and Property capital value £2775

Since valuation a 400 sq. ft workshop-garage has been built at a cost of approx. £700.

Tube Winder

The Tube Winder belongs to Rotowax but when I took it over it was not usable and it was mutually agreed the value of it was about £200. The work required to make it serviceable was estimated to be of about the same value i.e. £200. Rotowax supplied the main Motor - I have supplied the Saw Motor. With all the air attachments necessary to drive the saw (but excluding the electronic and photoelectric equipment) I value my share of the machine at £250.

Supreme Court :
No. 7: Affidavit of
Anthony Fulton Reid
in reply :
2 September 1977 :
Exhibit "A" Doc. 3 :

EXHIBIT "A" [Document No.3]

LETTERS TO BE ADDRESSED TO
"THE MANAGER"

Bank of New Zealand

P.O. Box 323,
LOWER HUTT,
NEW ZEALAND

5th October, 1959

Mrs. Ada M. Reid,
c/- Bank of New Zealand,
54 Regent Street,
London,
ENGLAND.

Dear Mrs. Reid,

We are in receipt of your letter of the
26th of last month and as requested we have today
forwarded to your son, Anthony, our cheque for £100.
Balance of your account after making this payment is
Cr. £235.13.3

We hope that you are enjoying your stay
in England.

Yours faithfully,

Smith

p. Manager.

*yes for Aunt
£350 = ? (Jan 1960)
Cheque*

(If anything is enclosed, this form must be sent at rate for Air Mail Letters.)

Supreme Court :
No. 7: Affidavit of
Anthony Fulton Reid
in reply :
2 September 1977 :
Exhibit "A" Doc. 4 :

EXHIBIT "A" [Document No.4]

LENTUNE
61 HAUTANA STREET,
LOWER HUTT, N.Z.

I have received from the
estate of Ada Marie Reid
the sum of —
100 in 1959 ^{sent out from England}
350 " 1960.

Signed

Anthony F. Reid.

Jan 15th 1960

<p>HB 77975² Dec 28 1964 Peter</p> <table border="1"> <tr><td>Balance Forward £</td><td></td><td></td></tr> <tr><td>Since Paid in £</td><td></td><td></td></tr> <tr><td>£</td><td></td><td></td></tr> <tr><td>This Cheque £</td><td></td><td></td></tr> <tr><td>Balance £</td><td>100</td><td></td></tr> </table>	Balance Forward £			Since Paid in £			£			This Cheque £			Balance £	100		<p>H 189505 Mar 11 1964 Peter</p> <table border="1"> <tr><td>Balance Forward £</td><td>941</td><td></td></tr> <tr><td>Since Paid in £</td><td></td><td></td></tr> <tr><td>£</td><td></td><td></td></tr> <tr><td>This Cheque £</td><td></td><td></td></tr> <tr><td>Balance £</td><td>500.00</td><td></td></tr> </table>	Balance Forward £	941		Since Paid in £			£			This Cheque £			Balance £	500.00	
Balance Forward £																															
Since Paid in £																															
£																															
This Cheque £																															
Balance £	100																														
Balance Forward £	941																														
Since Paid in £																															
£																															
This Cheque £																															
Balance £	500.00																														

Oct. 24th 1965 -
In addition to above I
have also promised Peter
another £100 when he is
ready for it -

Supreme Court :
No. 8: Affidavit of :
John Stephenson Prigg :
in support of :
Anthony Fulton Reid :
2 September 1977 :

I, JOHN STEPHENSON PRIGG, of Auckland, Company Director MAKE OATH and say:

- 1. I have known Mr. Reid for approximately 15 years. I am well acquainted with the development of his business, Reid Containers Limited.
- 2. HE started in a very small humble way with old secondhand pieces of machinery. He worked hard in the business, and it is no exaggeration to say that he clawed his way up from the bottom.
- 10 3. THE business was developed with his own brains and ingenuity: he had outstanding inventiveness and ingenuity in mechanical and electronic fields. Later on he was able to employ staff, and he showed considerable skill in selecting able Engineers who were the right men in the right job. His success has been due to his own personal qualities and efforts, which have been outstanding.
- 20 4. ONE of the fields in which Mr. Reid has shown particular inventiveness is in the building of machinery to meet local needs. I should explain that much imported machinery designed for printing or for container manufacture is built to accommodate much larger runs than are ever needed in New Zealand, and accordingly, with much imported machinery, it is difficult to operate it economically to deal with the relatively small runs that are required for New Zealand purposes. I recall one example in particular of Mr. Reid's ingenuity: my Company had been printing foil wrappers for particular containers his Company was manufacturing. Mr. Reid took the view that the wrappers could be printed far more economically on a much smaller gravure printer than my Company was using, and he asked if he might inspect our machine. To my amazement he built himself a very
30 much smaller gravure printer which was able to handle his Company's needs very economically indeed. I must emphasise that the building of any gravure printer is a most complex and difficult job, especially when Mr. Reid had to build many of the parts himself because none were available elsewhere in the size he required. He built the cylinders for the printer himself, which is a very difficult operation and which called for inventiveness and ingenuity of a high order.
- 40 5. MR. Reid is exceptional in his field, in that he is able to see that there is a mechanical problem, and is able himself to find highly imaginative ways of solving it. I have the greatest respect for his ingenuity and his imagination.
- 6. DURING the time I have known him I frequently visited Mr. Reid's home. I am aware from family discussions that Mrs. Reid did the wages for the business and got paid for it. But I am not aware of any other involvement in the business.

SWORN at Auckland this
2nd day of September, 1977 'J.S.PRIGG'
before me :

50 Signature illegable
A Solicitor of the Supreme Court of New Zealand.

Supreme Court :
No. 9: Affidavit of
Peter Eugene Bowen :
in support of
Anthony Fulton Reid :
7 September 1977 :

I, PETER EUGENE BOWEN of Wellington, Managing Director make oath and say as follows:

1. I have known Mr. Reid for approximately 20 years. I am well acquainted with the development of his business Reid Containers Limited.

2. I have always been very impressed by the ability Mr. Reid has shown in the field of specialized packaging.

3. IN the early 1960's my Company was experiencing difficulty in obtaining supplies of spiral wound canisters. Mr. Reid learnt of our problem and starting from scratch and without any prior knowledge, devised a method for their production. He rummaged around and was able to find odds and ends of machinery which he put together to do the winding and laminating of the cardboard bodies of the cans. Similar ingenuity was displayed in pressing the metal tops and bottoms and applying them to the can. As can be imagined this initial plant was rather crude but as each month went by further refinements and improvements were made. Initial daily output was under 100 cases per day and was quite labour intensive. Within a few years as a result of Mr. Reid's skill and understanding of mechanical processes, this output had reached almost 1000 cases a day with a line crew of only three

10

20

4. MR. REID always rose to a challenge. This particular canister had a printed foil label which was at that time imported from England. Registration on the label was critical and could only be printed by a very specialized method of printing which makes use of etched cylinders. Not only did Mr. Reid build his own rotograve printing press capable of printing in five colours in one pass but he also devised a process to engrave his own printing cylinders. Previously any cylinders used in New Zealand had been engraved in England or Australia.

30

5. MR. REID'S ability to handle this method of printing led him into other fields. To take the printing ink the foil had to be key lacquered so in his own small workshop Mr. Reid produced a machine to handle the key lacquering. For certain end uses the foil had to be laminated to a paper backing - again Mr. Reid drew up plans and from these produced a liminator.

6. FROM a small beginning in an old house Mr. Reid built up his business to a 40,000 square foot complex with practically every piece of plant being designed and made by him or under his guidance.

40

7. IN the same period personnel numbers grew from 1 to over 40.

8. IN all the years I have known Mr. Reid I have never ceased to be amazed by the ingenuity and inventiveness that he has displayed. In fact it always gave me great pleasure to take some of our overseas specialists to his plant for them to see for themselves the product of this man's ability and effort and needless to say these people have been impressed and I do know that some have later written for help in solving their own problems.

9. THAT in the development of Reid Containers I have not known Mrs. Reid to be involved in the factory at all and my only knowledge of her assisting Mr. Reid is that prior to the business being set up Mrs. Reid helped her husband pack screws into plastic bags from their home.

50

SWORN at Petone this 7th day of September 1977 'P.E.BOWEN'
Before me : P.C. GILBERT
A Solicitor of the Supreme Court of New Zealand

Supreme Court :
 No. 10: Second :
 Affidavit of :
 Susan Rosemary Reid :
 in support :
 19 September 1977 :

I, SUSAN ROSEMARY REID of Lower Hutt, Separated, make oath and say as follows:

1. THAT (paragraph 2 (a) of the applicant's affidavit) I say the allegations against me and my solicitor are untrue: that I produce to this Honourable Court the whole of the correspondence that has passed between the solicitors to the applicant and my solicitor. That I do not apprehend that this Honourable Court need be concerned to refer to the correspondence; but I proffer it in anticipation of the applicant's raising, or causing to be raised, points already dilated upon in correspondence. That I say further that throughout the period of applications to any Court - and indeed from a much earlier date - the applicant has been without employment and with the whole of each day available to himself and his affairs.

2. THAT (paragraph 4, applicant's second affidavit) the deponent Mrs. Jones gave evidence for me at the Lower Hutt Magistrate's Court. Her evidence at that time (and that includes her cross-examination) is available to this Honourable Court. That the affidavit of Mrs. Jones and the Magistrate's Court file are introduced by me through inability to determine the limits of the applicant's case; and again against the possibility of points being raised by the applicant or on his behalf.

3. THAT (paragraph 7 of the applicant's second affidavit) though the screw-packing was a very minor enterprise it was, with other minor enterprises - fish-hook packing, polythene bag-making and box numbering for Globe Print - a precious and frugal source of income for the applicant, for me and the children we then had. This, during the period the applicant was setting up, and commencing in business as, Reid Containers Ltd. The applicant was not earning and was devoting his time to his intended business and then its development. That without my engaging in the above activities we could not have subsisted, let alone the applicant commence and operate Reid Containers Ltd. That each day he was at Reid Containers Ltd. I had to be home, at the requirement of the applicant, to have his lunch ready for him, and have lunch with him. He would discuss with me the business of Reid Containers Ltd., and I was most anxious to, and I did, maintain an interest in it. Not only was I housekeeper wife and mother but I was at the end of the day yet required to prepare, and be the fresh and gracious hostess at dinners for business purposes. Further, I would, as required, during the day, hostess lucheons for persons involved with the business. I knew that the business was our only source of income. I was proud of him that the business was a success. That wages I received from Reid Containers Limited were intended as a tax savings and as a means of providing housekeeping for us. The monies were used for housekeeping.

4. THAT (paragraphs 11(b) and 16 of the applicant's affidavit) I depose that when the Company, Reid containers Ltd. was formed the applicant acquired his shareholding for the purposes of replacing his earnings from employment and providing for him and for me, for our living and for that of our family and providing for our home. That when the applicant gave up outside employment there was, to my knowledge, nothing but the shareholding intended for our use and benefit; or that could or did, benefit the applicant and me, or was used for our benefit. I do know that at the time of our marriage the applicant did have a lathe and miscellaneous tools but in the period of some four years before he entered into business he used the lathe and tools

Supreme Court :
 No. 10: Second
 Affidavit of
 Susan Rosemary Reid
 in support :
 19 September 1977 :

- anything he had before marriage - for the benefit of us both and for and about our home, and for convenience in our living. During the four years of marriage prior to the formation of the Company, the applicant purchased tools, and at times when I considered the money could be more properly applied to personal articles for us and for children. These tools - as any tools and equipment he had before marriage - were used for purposes in and for our marriage, and home, for example, the re-building of kitchen and bathroom. I have perused the list of assets set out in "Reid Containers Ltd. Capital Account" (his document one) and say that the only assets from this list that to my knowledge the applicant had before marriage were the Southbend lathe, Wolf Portable Saw, the Wolf 1/2 inch electric drill and its stand, and the Austin 12-4. This last asset was owned jointly by the applicant and his brother. The applicant took this Austin whilst his brother retained a Consul car. The Austin was used as our family car. There was a Venner switch which as a married pair we used in our bedroom to turn the radio on in the morning to wake us, but this remained in our bedroom after the formation of Reid Containers Ltd. I say that such articles as the hacksaw machine, the tube winder, the glue baths, the tube trimmer and seamer were constructed in the home between our marriage and the applicant's entering business; and, in the case of all, prepared specifically at the matrimonial home in anticipation of entering business - the hacksaw machine being constructed for the easier manufacture of other articles. Pieces of tube winder were brought to our home by the applicant and in the Austin car. I say too that the applicant did not have before marriage the compressor, lift truck, the 18 platforms, the tin plate stock, the Bliss power press, lid curler, transformer, polythene stock, the drawer cabinet, the bench, the zip and factory fittings, the winding belts, and the Prestolite gas bottle. I say that all these article were acquired or constructed following marriage. As to the flex, I know that the applicant did purchase flex during the marriage for purposes of work about the home; including concreting, and I know that he did purchase a vise during the Marriage. That I have no knowledge of his having Rayrolle sockets prior to marriage. The Bliss power press was shipped back from England by Peter Reid during the marriage and for the business of Reid Containers Ltd. The press was specifically required for making the tops and bottoms of "Ajax" containers. In the course of the company's operations it was given a wider use. That the applicant would have, and I ask him to produce, any agreement whereby the company accepted tools and equipment in payment of shares; and production of any minute or minutes of the company recording the company's agreement to accept tools and equipment in lieu of cash.

5. THAT (paragraph 23 of the applicant's second affidavit) I say that the allegations as to capital assets are untrue. That I have requested, but have not received from the S.R.Reid trust - despite undertaking given by D.B Inglis, Q.C., at the Magistrate's Court at Lower Hutt on 17th June, 1977 that some \$ 2,500. of accumulated income was available for me.

6. THAT (Paragraph 24 of the applicant's second affidavit) it was after the applicant's agreeing on 17th December, 1976, to a separation order that there is application on 4th March, 1977, for a reconciliation. That I was present in Court on the said 4th March and say that the applicant is untrue in alleging my counsel "strenuously and vehemently" opposed the application. My counsel opposed the application in a respectful, cogent and compelling fashion. I can find no reason relevant to these proceedings for attempts to denigrate the solicitor and counsel

Supreme Court :
No. 10: Second :
Affidavit of :
Susan Rosemary Reid :
in support :
19 September 1977 :

acting in my interest unless, as appears from the applicant's letter attached hereto and marked "A" to further his personal animus against that solicitor. I ask of the applicant and his advisers any other reason for the incorporation of such material in the applicant's affidavit.

10 7. THAT (paragraph 24(d) of the applicant's affidavit) on the very first and only occasion the applicant showed any willingness to settle any aspect of our problems, a settlement with my solicitor was then and there achieved - and the applicant has never expressed any disapproval of that settlement from his point of view. This was on 17th December, 1976, and resulted in Exhibit A to the applicant's first affidavit. I ask then from the applicant particulars of "demands" my solicitor has made and of their having been made "throughout" the period he has acted for me. As recently as 22nd August, 1977 my solicitor wrote to the applicant's solicitors:

20 "Is it not time this matter was brought to its fundamental and determined without even recourse to the Court instead of the needless, and dangerous for you, proliferation of proceedings with its baseless personal attack? If your client is not of his own volition, prepared to face realities, is it not your responsibility to ensure he does so rather than his "lead you by the nose" as I suspect has been the case?"

30 There has, since this letter, yet been no approach to settle this matter. If the applicant will inform what sign he is anxiously awaiting I will endeavour to have it given. All that is required is the applicant to give effect to the presently empty words he is wont to express. I deny the allegations of the applicant as to his willingness to discuss settlement in December, 1976 and of offer to meet in the home to discuss settlement. I say these statements by the applicant are untruths; and I say that the one and only occasion the applicant was amenable to a settlement of any aspect of our problems was on 17th December, 1976; and then agreement was reached (exhibit A to his first affidavit). If the applicant is minded to settle he could apply, or have applied to more congenial purposes, the \$2,000. the applicant has estimated his legal expenses to be. If, however, the applicant maintains the stand of paragraph 25 of his second affidavit, I see no possibility of settlement. So there be no misunderstanding:

I am ready through my solicitor to entertain any reasonable proposals for settlement the applicant is minded to make through his solicitors and or through his counsel.

50 I depose that if the applicant is prepared to accede to my wish that the Paihia property pass to me as part of my entitlement, I am minded to accept in settlement less than that I claim I am entitled to receive - and yet free me of any requirement to proceed for a maintenance order against the applicant. If the applicant is not prepared to negotiate a settlement which can be more in his favour then I ask of this Honourable Court all that to which the law entitles me. The applicant can be in no doubt what is alleged on my behalf to be my entitlement under the Matrimonial Property Act, 1976, and I refer particularly to paragraphs 14(d), 15 to 21 of my affidavit of 18th May, 1977. I am, as I always have been, ready to negotiate.

8. THAT as to paragraph 25 of the applicant's second affidavit:

Supreme Court :
 No. 10: Second
 Affidavit of
 Susan Rosemary Reid
 in support :
 19 September 1977 :

- (A) 14 COLIN GROVE - the matrimonial home"
 (a) Attached hereto and marked "B" is a photocopy of the title of the matrimonial home.
 (b) That no record appears on the title of any agreement of 20th July, 1956 with the applicant's mother, the there-stated Ada Maria Reid. The said Ada Maria Reid died in 1975; and I verily believe that the applicant and his brother are the sole beneficiaries in her valuable estate.
 (c) Attached hereto, marked "C" is a valuation and its supplementary report I obtained of the matrimonial home. This valuation has cost me the sum of \$ 152. 10

- (B) DAVIS CRESCENT, PAIHIA
 (a) Attached hereto and marked "D" is a photocopy of the title of Davis Crescent, Paihia.
 (b) Attached hereto and marked "E" is valuation of Paihia. This valuation cost me \$ 129.50.
 (c) That, if I have Paihia, I am willing, indeed anxious, that the children enjoy my ownership of it. They are welcome to, and are expected to make all proper and reasonable use of it. 20

(C) FAMILY CHATTELS, GIFTS TO ME; PROPERTY (CHATTELS) ACQUIRED AFTER MARRIAGE; PROPERTY (CHATTELS) ACQUIRED BY ME AFTER SEPARATION.

That all assets removed by me from 14 Colin Grove, following the separation order, have been kept intact by me, in my present home; and are all accounted for by me. The contentions of the applicant in paragraph 14 of his affidavit that I "wrongfully removed" the articles from 14 Colin Grove has been a subject in the correspondence available to this Honourable Court and I acted on my solicitor's advice in so removing the articles. I refer to the said paragraph 14 for the applicant's acknowledgement that List B to Exhibit B of my affidavit of 18th May, 1977 are "furniture and chattels why (my) parents sent out from England..." As to assets being "used in the matrimonial home", I acknowledge the numbers 41, 41, 43 and 44 were so used, but in any case had come to our home from my own home in England where I had used them before my marriage. Other assets, such as silver, did receive limited use on special occasions, but generally the assets were for display and effect and the admiration of the beholder. 30 40

I refer to List B of Exhibit B of my affidavit of 18th May, 1977 and set out hereunder the List B and, against it, the values attached to those assets pursuant to a valuation obtained on behalf of the applicant and copy of which was supplied to me by the valuer: I also provide particulars of the donor:

Asset	Value	Donor	
Oak chest	\$500.	From my home in U.K.	50
Oak chest of drawers	\$650.	From my home in U.K.	
Oak Bureau	\$750.	From my home in U.K.	
Oak gatelegged table	\$650.	From my home in U.K.	
Lamp and Shade (Scotch)	\$ 50.		
3 legged Stool	\$ 75.	Presents from my parents from home in U.K.	
Rectangular Stool	\$ 45.	Present from my parents from home in U.K.	

Supreme Court :
 No. 10: Second :
 Affidavit of :
 Susan Rosemary Reid :
 in support :
 19 September 1977 :

	Round Mirror (not valued)		
	Wrought Iron Mirror	\$ 25.	Present from my parents from my home in U.K.
	Copper Kettle	\$175.	Present from my parents from my home in U.K.
	Coal scuttle	\$125.	Present from my parents from my home in U.K.
	Silver Tea Caddy	\$200.	Mrs. Cecil and Miss Trouncer
10	Sheffield Plate Candlesticks	\$200.	From my parents on a visit to New Zealand.
	2 Silver plated Trays	\$140.	Left to me by my Godmother.
	1 Gold coloured Tray	(there for valuation but not valued)	
	1 Brass Tray	\$30.	Present from my maternal grandparent's home in Wales.
	12 China Dessert Plates	)\$100.	Gift from my Aunt Mrs. Thompson.
20	Gold & White Tea Service	)	Left to me by my Godmother.
	Assorted china)	
	Plates & Ornaments)	
	Old china child's Dinner Set	\$50.	Left to me by my Godmother.
	1 Beader Picture	(There for valuation, but not valued)	
	Maple framed Picture	" " " " " "	
	2 Persian rugs (old and worn)	\$300.	(Value of one rug) Present from my home in U.K.
30	2 Clocks	\$450.	Present from my parents from my home in U.K.
	1 Carriage Clock	\$350.	Present from my parents from my home in U.K.
	1 Silver Tray	\$400.	Wedding present from old family friends, Sir Frederick and Lady Harmer.
40	Georgian Table Silver and bone handled knives	\$2070.	Given to me by my parents and one of my godmothers
	Silver Dressing Table	\$450.	One of my mother's presents from my father since given to me
	Silver Powder Bowl	\$75.	Personal (21st) presents from Aunt, boyfriend and friend.
	1 x 4 Silver Tea Service	\$600.	One of my mother's wedding presents given to me.
50	1 Silver Christening Mug	\$50.	Christening present to me from an Aunt, Mrs. Morgan.
	1 Silver Porringer	\$50.	Christening present to me from my Uncle and Godfather.
	1 Silver Sauce Boat	\$60.	Wedding present from Uncle and Aunt, Mr. & Mrs. Meyrich Thomas.
60	1 Georgian Silver Mustard Pot	\$175.	Left to me by one of my Godmothers.
	6 Silver Salt Cellars	\$340.	Left to me by my Godmother and wedding presents from personal friends.

Supreme Court :
 No. 10: Second
 Affidavit of
 Susan Rosemary Reid
 in support :
 19 September 1977 :

1 Silver Rose Bowl	\$500.	Left to me by my Godmother Miss Leah Thomas.	
1 Silver plated dish Entree	\$35.	Present from my parents	
1 Plated muffin Dish			
6 Silver handled bread and butter knives	(There for valuation, but not valued)		
Assorted spoons	\$20.	Given to me by my parents	
Butter knives	\$2.	One was a wedding present from charwoman in U.K.	10
7 Pickle forks	\$2.		
2 Silver Ladles	(there for valuation but not valued)		
Mother of pearl fruit knives and forks			
Bone handled fish and fruit knives & forks	(There for valuation but not valued. Given to me by my parents. Very secondhand)		
Kings pattern forks and spoons	\$197.	Some of these were a present from Uncle & Aunt, Mr. & Mrs. Morgan; Some have been bought newsince separation.	20
1 Victorian Cream Jug	\$75.	Wedding present from old family friend, Miss Askew.	
3 Sheffield Plate Coasters	\$280.	Left to me by my Godmother.	
1 Victorian openwork silver dish	\$200.	Wedding gift from old family friends, Mrs. & Mrs. Robin Fisher.	30
Silver snuffers	\$75.	Wedding present from family friends, Mrs. & Mrs. Jacobs.	

That I offer as evidence that the said assets did not become intermingled with other matrimonial property the fact that I was able to uplift the articles in specie from their position in 14 Colin Grove and place them in their identical state in their new home. I offer the same also as evidence that it is not impracticable to regard this property as separate property. That I persist in my claim to exclusion of these assets from consideration of this Honourable Court as being, as I depose them to be, acquired by me "by gift from...third person(s)". 40

- (c) That the further articles removed by me from 14 Colin Grove are listed as A to Exhibit B of my former affidavit and the value of these articles (based on the valuation obtained by the applicant's valuer) are as follows:

Article	Value	50
1 small garden fork		
1 pair cutters		
1 pair grass edge cutters		
1 plastic watering can		
1 oil can		
1 saw		
1 Enamel bowl and Jug		
1 Long handled broom		
1 Tarpaulin		
Old rugs for packing and moving		60

Supreme Court :
 No. 10: Second :
 Affidavit of :
 Susan Rosemary Reid :
 in support :
 19 September 1977 :

	2 shopping baskets	
	1 two seater sofa	\$745.
	2 wing back chairs	\$500.
	1 tub chair, 1 small chair	\$745.
	1 oak carver chairs, 6 oak matching dining chairs	\$400.
	1 Hostess trolley	\$150.
	3 Electric Heaters (one not working)	\$ 20.
	3 Canvas chairs (valued 1 only)	\$ 2.
10	1 Card table	\$ 2.
	1 May of Hertfordshire (framed) - not valued	
	2 beds from Caroly's bedroom	
	1 secondhand wire bed	
	2 rubber mattresses	\$216.
	Blankets, pillows and bedspreads from 3 beds	
	Secondhand table and dressing table from Carolyn's bedroom	\$100.
	1 child's wicker chair	\$ 5.
20	1 Scotch Lamp	\$ 20.
	1 Black & White T.V. (8-10 years old)	
	1 secondhand compactum, bookcase and chair	\$ 70.
	3 Wastepaper baskets	
	2 small bedroom painted stools	\$ 5.
	1 secondhand chair with pink cover and cushions	
30	7 bath towels, 2 bath mats, 5 bathing towels	
	2 Eiderdowns	
	8 pairs single sheets	
	1 pair double sheets	
	12 pillow cases	
	5 linen hand towels	
	3 Tablecloths (from U.K.)	
	Assorted table mats, table napkins	
	1 wooden salad bowl	
40	Coffee Grinder	\$ 20.
	Hand Heater	
	Electric mixer with attachments	\$ 25.
	Electric frypan, preserving pan	
	Pressure Cooker*	\$ 50.
	Assorted china and glass	
	4 Vases, 2 Candlesticks	
	*Steamer, small poacher, 2 small Saucepans, 1 Frying Pan, baking Tins, Mixing Bowls, Ovenware,	
50	1 Corning Ware Coffee Percolater	
	1 Secondhand Radio	\$ 5.
	1 triple Dressing Table Mirror	\$ 15.

I acknowledge that these are matrimonial property and I claim a one-half share therein.

(d) That the following assets should also have appeared in List B to my previous affidavit of the 18th May, 1977:

Asset	Value	Donor
Electric Toaster	\$ 5.	Gift from my Aunt, Mrs. Thompson
Electric Kettle	\$ 5.	Gift from my Aunt, Mrs.

Supreme Court :
 No. 10: Second
 Affidavit of
 Susan Rosemary Reid
 in support :
 19 September 1977 :

Hoover Vacuum Cleaner	\$ 10.	Thompson Gift from my Aunt, Mrs. Thompson	
Cane clothes basket	\$ 10.	Gift from my Aunt, Mrs. Thompson	
Some blankets & Linen		Gift from my Aunt, Mrs. Thompson	
Silver beaker	\$ 65.	Gift to Philip from his Grandparents for his christening	10
Small bamboo and leather stool	\$ 10.	Gift to Carolyn from Philip	

(e) That the applicant had his valuer value in my home assets purchased by me since the separation and which I respectfully depose as being my separate property. They are as follows and relevant to those values provided against that valuation the relevant costs of such assets:

Asset	Value	Cost	
Brass table lamp with shade	\$ 50.	\$ 61.85	
Fire Extinguisher	\$ 5.	\$ 39.80	20
Whiteway Washing machine	\$330.	\$415.	
Whiteway Drying machine	\$140.	\$169.	
Radiator	\$ 25.	\$ 27.	
White toilet mirror	\$ 15.	\$ 42.50	
2 Stained bar chairs	\$ 50.	\$ 43.10	
Pair stained bookcase	\$200.	(paid similar price)	
Stained Bureau Bookcase	\$350.	\$120.	
Stained Chest Drawers	\$250.	\$ 99.	
Stained Desk	\$200.	\$ 62.	30
Pair side chairs - green plastic	\$ 50.	(paid similar price)	
Bean chair	\$ 25.		
Pair white chests	\$200.	\$131.& \$67.	
White bedside table	\$ 70.	\$ 90.	
White Desk (with chair)	\$100.	\$ 62.	
Pair folding chairs	\$ 30.	\$ 48.55	
Red plastic Occasional Table	\$ 5.	\$ 8.	
Mahogany chest	\$300.	(paid similar price)	40
Stained bedside table(4 drawer)	\$275.	\$ 85.	
Mahogany Welsh Dresser	\$450.	\$700. Nest 3	
tables with leather tops	\$250.	\$153.28	
One divan only			
4 Bedspreads			
Drapes	\$250.		
Body Carpet and vinyl	\$1500.	\$2795.19	
Not in the valuer's list are:			
Kelvinator fridge and freezer	\$399.		
Television - Sanyo Colour	\$776.		50

(f) That attached hereto and marked with the letter "F" is valuation obtained by me of assets at 14 Colin Grove

(g) That, in the result, I respectfully claim a half share in:

(a) Chattels at 14 Colin Grove "Family Chattels"
 (a) (i) and (ii) under the Matrimonial property
 Act, 1976 \$38,739.00

(b) The chattels in my home, 26 Witako Street,
 Lower Hutt (being all the chattels in that
 home) - \$20,015

Supreme Court :
 No. 10: Second :
 Affidavit of :
 Susan Rosemary Reid :
 in support :
 19 September 1977 :

LESS				
(a) Gifts	\$10,526.			
(b) Purchases since separation	\$ 5,215	\$15,741	\$4,274.	
		TOTAL	\$43,013.	

The one-half share I claim is \$21,506.50; and as I already have chattels, which I ask I may be permitted to retain, of a value of \$4,274. I respectfully suggest the applicant should pay me \$17,232.50.

10 I depose that it was necessary for me to have the expense of the valuation of 14 Colin Grove (Exhibit "F") and that valuation cost me \$387.39. I respectfully ask that order for costs may be made against the applicant to re-imburse me for the cost of that valuation as I would have been willing to negotiate settlement with the applicant on chattels and without the expense of valuations. That, what chattels the applicant may seek to eliminate as family chattels are, I say, "property acquired...after the marriage".

20 9. THAT (paragraph 26 of the applicant's second affidavit) if there are "misunderstandings that seem to have been injected into this case" I say they are of the applicant's making. Thus, in this paragraph 26 he says:

"I have never sought to have my wife's new house treated as matrimonial property".

I refer to the applicant's affidavit in answer to interrogatories herein, sworn by him on 28th April, 1977, wherein he deposes (commencing at the foot of the first page thereof)

"(b) The following items in the Respondents present possession are matrimonial property:

30 (i) The home unit now occupied by Mrs.Reid and situated in Lower Hutt to any value in excess of \$50,000.

10. THAT (paragraph 28 of the applicant's second affidavit) I refer this Honourable Court to the words in Exhibit A; and ask now that "the...husband...pay" to me the said sum of \$1,000. in accordance with the express terms of Exhibit "A",

11. THAT (Paragraph 31 of the applicant's second affidavit) I have never told him about "shares and monies(sic). The applicant, to my knowledge, was well aware of all that I had in England.

40 12. THAT (paragraph 32 of the applicant's second affidavit) I deny lack of co-operation, complete or otherwise. I was present in Court on 17th June, 1977, and heard Mr. Inglis, Q.C., for the applicant, undertake to Mr. Bremner, S.M. that the C.R.Reid Trust would pay to the wife to meet the daughter Carolyn's living expenses, the sum of \$ 20. per week. Such undertaking appears in Mr. Bremner's judgment of 19th July, 1977. Instead of the C.R.Reid Trust paying to me the \$ 20. in accordance with that undertaking, the applicant persisted in endeavouring to have me operate on a banking account in the joint names of the applicant and me. I would not do so. For one thing, I should be subjecting myself to the control of, and contact with the applicant from which I was relieved with a separation order. I resent the insinuations against me and my solicitor and ask that

50

Supreme Court :
No. 10: Second
Affidavit of
Susan Rosemary Reid
in support :
19 September 1977 :

an award of costs be made against the applicant for introducing and putting me and my solicitor to the trouble, time and expense in reading and endeavouring to deal with irrelevancies. I have no wish to provide my opinion of the applicant and regale the Court with his behaviour. That can only exacerbate the situation; but to endeavour to terminate the applicant's harassment of me I depose:

(a) The separation order gives me welcome relief from the conduct of the applicant, which conduct appears in my diary notes and evidence before the Magistrate's Court at Lower Hutt. I ask that, if necessary, those notes and evidence be read by this Honourable Court. 10

(b) The applicant's behaviour since the order convinces me that so much as to endeavour to maintain "talking terms" with him, will subject me to a repetition of conduct I complained of on my application for a separation order. Accordingly I cannot and will not even endeavour to have any oral communication with the applicant; nor will I engage in any transaction where I needs have oral communication with the applicant. 20

(c) That any oral communication between the applicant and me is in any event unnecessary.

(d) Applicant, if there is decency and dignity about you, leave me alone, leave me in peace - but give me the address of our Son, Timothy, so that I may, as his mother, write to him and may we use our efforts, even though we are irrevocably apart, to unite and preserve united, all our children. Do not you maintain your division from Philip and his brothers - you have it readily in your power to heal these divisions. Do not allow the two boys under your influence to remain deprived of their mother. If you would but allow it, these boys would have their mother restored to them. Our working separately but with and through all the children, may allow a renewed and respectful association with each other. 30

SWORN at Wellington this)
19th day of September, 1977) 'S.R.Reid'
before me:)

'G.J.Black'
A Solicitor of the Supreme Court of New Zealand

Supreme Court :
 No. Affidavit of :
 Susan Rosemary Reid :
 in support :
 19 September 1977 :
 Exhibit "A" thereto:

EXHIBIT "A"

"A"

14 Colin Groat
 9th July 77

Susie Reid

Tom is not involved with Gazley and I have not seen the letter you mentioned in the few words you spoke on the phone.

Gazley will deal in no matters of my children that can be avoided by my own efforts.

He neither warrants nor has my respect.

Tom leaves very soon. I would give anything for him to leave knowing your bitterness is dying and that Gazley's letter of 1st April was not a joke.

"Mrs Reid would welcome being able to associate in amity - -"

I have no bitterness left now -
except towards Gazley - and will help you build some sort

Supreme Court :
 No. Affidavit of :
 Susan Rosemary Reid
 in support :
 19 September 1977 :
 Exhibit "A" thereto:

EXHIBIT "A" (continued)

of a relationship with Jim —
 if you so wish.

I tried but failed when you
 hung up the phone. I shall not
 try again.

Please Susie, for Jim's sake
 do not allow the boy to go away
 without an effort from you.

Passing your responsibilities
 off on to Gazley will only make the
 lad see you in a rather shameful
 light.

Jim is nothing to do with
 Gazley — but you, as his mother
 are.

It is you who have told me
 Jim should not be involved with
 your solicitors distasteful correspond-
 ence —

Are you now involving Jim?
 Put away your bitterness — at least
 till he goes to his new mother.
 For God's sake Sue — Please Jim.

Supreme Court :
 No. 11 : Affidavit of
 Anthony Fulton Reid re
 Matrimonial Property :
 21 September 1977 :

I, ANTHONY FULTON REID of Lower Hutt, Company Director, MAKE OATH and say:

1. TO assist the Court a schedule has been prepared, hereto annexed marked "A", listing the property at issue in these proceedings, as it existed at the time of separation, identifying the category pursuant to the Matrimonial Property Act, 1976, into which I would place each item of property, with notes indicating the origins of and respective contributions to each item. In each case, where blanks appear in the column marked "valuation" no valuation has been supplied. I believe the statements of fact in the notes to the schedule to be true and correct.

2. I have recently seen the valuation obtained by my wife's solicitor in regard to 14 Colin Grove, including a supplementary valuation in respect of improvements carried out since the date of the separation. These improvements were as follows"

	Painting house	\$1,001.37
	Alterations -	
	Builder	\$1,861.00
	Electrician	\$ 189.00
20	Doors and window	\$ 413.61

3. TO the best of my knowledge and belief the annexed Schedule A is a complete list of all property at issue as it existed at the time of separation. I believe the respective values to be correct, and I am advised and believe that the categories into which the items are placed are correct.

4. HERETO annexed marked "B" is a Schedule B, showing the items of matrimonial property I would wish to retain and the items of matrimonial property I agree to my wife retaining. By way purely of illustration, I have calculated what the result would be if such property were divided equally. I do not however, concede that there should be an equal division because I believe that my contribution to the marriage partnership was by far the greater.

The total allowances which would be due by me to my wife on a equal division would be \$69,144.50. The total allowances which would be due by my wife to me would be \$72,668.50 (excluding the unvalued items), leaving a balance in my favour of \$3,524. On what I believe would be an appropriate division, with my share exceeding that of my wife, the balance in my favour would be proportionately greater. I wish the Court to know that I do not wish my wife to pay or refund me anything, and if there is such a credit balance in my favour I hereby waive it.

5. AS to new material contained in my wife's second affidavit sworn on 19th September, 1977, I reply as follows:

Paragraph 3: In the short period between my leaving my employment and Reid Containers Limited commencing business, I took in numbering boxes for repair from a friend, Eric Bellman, who could not get them repaired elsewhere. This provided a substantial source of income. It was far from "frugal". In any event I had shares which I could have sold in an emergency.

My wife was not "required" to prepare, and be the "fresh and gracious hostess", at dinners or luncheons for the Company, with any regularity. If it were necessary to entertain business contacts, I would normally do this at a restaurant, although there were some occasions when my wife provided meals at home, and did so very well. There were occasions

Supreme Court :
No. 11 : Affidavit of
Anthony Fulton Reid re
Matrimonial Property :
21 September 1977 :

when I would invite business friends, as distinct from business contacts, home for a quick scratch lunch in the kitchen, but nothing elaborate was expected or provided on such occasions.

Paragraph 4: As to the tools of trade and equipment used in payment for my shares in Reid Containers Ltd., I am grateful to my wife for reminding me that some equipment was acquired after our marriage. I cannot identify particular items with any certainty at this stage, but all (apart from gifts, such as the tube winder) and equipment bought from the gift from my mother, were of trivial value. Of those items acquired after marriage I believe the majority were acquired by me as the Company's employee and agent after the formation of the Company, and many items I made myself on the Company's behalf. I do not know whether the Venner Time Switch used in our bedroom was used for Company purposes; but I had worked for Venners in England and was for a time the Manager of their New Zealand agent and had a number of those switches at my disposal. But in any event my wife - who herself actually typed out the list of items in question (p.4 of Document 1) - well knew that these items were my property and were used for payment of my shares and she agreed to that. If she had any interest in any of those items - by virtue of a statute passed 17 years after the event or otherwise - she clearly made a gift to me of that interest.

Paragraph 5: My wife has now received the income due to her from the Trust. There was, unfortunately, some delay while the Trust Accounts were prepared to ensure that she would receive her true entitlement.

Paragraph 7: I am afraid that my wife's notion of her "entitlement" and mine are very different. At this very late stage I believe it would be better if the Court decided what her "entitlement" is, and then both she and I will know that there has been a definitive and independent ruling.

Paragraph 8(c) (a): (Silver etc.) I do not agree that the articles referred to at the foot of p.4 and the top of p.5 were used largely for "display and effect, and the admiration of the beholder", but even if they were so used, they were still used for the purposes of the family. The same applies to the articles listed in subpara.(b) (pp.5-7)

As to the paragraph at the foot of p.10, I did not understand that my wife was prepared to negotiate over chattels.

SWORN at Wellington
this 21st day
of September, 1977
before me:

ANTHONY F. REID

(Not readable)

A Solicitor of the Supreme Court of New Zealand

MR INGLIS CALLS:

ANTHONY FULTON REID (SWORN): I am a Company Director, retired Company Director. I live at Lower Hutt, the applicant. I have sworn four affidavits in the Matrimonial Property Act proceedings and I confirm their contents. Do you have any hesitation in seeing your wife get her full entitlement under the Act? None whatsoever.

10 XXM: MR GAZLEY: In your first affidavit you set out the property which you claimed to be entitled, did you not? Yes. Did you at p.15 there state - "AMP Life Policy - approx. surrender value \$3,000.00"? I think I did. If I had a look I could be more sure. (Shown Affidavit p.15) Yes that is correct. Is there only one AMP policy? No, there are more. How many more? I think there are two more. What are the particulars of those two? Well I cant give you the full particulars, one covers my life or my my wife, I think thats correct, it is a reducing one, the full particulars I cant give you. The third? A policy, I am afraid I do not know the details, I do not know if it is redemable in two or three years or continues on.

20 you tell us that there are three AMP policies to which the Court should be concerned? I don't know whether one has run out. In any event there are three policies about which the Court should know? Yes. In your fourth affidavit you swore yesterday there were two such policies mentioned? Correct. Today there are three? There are two in my name, one in my wife's, it is in her name, the premiums I believe have run out, there are no more, whether there is any surrender value I am unaware. Can you tell us why at the time of your first affidavit in March there was revelation of one policy only? I always thought there were two,

30 I classed one as being the one referred to in your original letter to me. What original letter? I think the letter is dated 12 March 1976. Does it mention a policy or policies? Yes. Can you tell us why there is only the one mentioned in your first affidavit? Because that is all I thought I had as policies. When did you realise that ther were two? About three weeks or so ago when I rang Mr. Ross at the AMP and asked for all details of any policies that were left. You swore an affidavit on 15 September 1977 less than three weeks ago? Yes. Any reason why you shouldn't have mentioned the extra policy then? I only had

40 the information when it was delivered to me from the AMP. Three weeks ago you said. No, I said I rang Mr. Ross who then said I think there are two. At the same page 15 of your first affidavit you speak of equity shares and local body loans? Yes. Your wife's first affidavit asked for particulars did it not of that item? Well that's possible, I'm not sure. Page 8 of her first affidavit, didn't she claim matrimonial property amongst other things equity shares and local body loans? That's possible, I havent got it in front of me. Your answer to that came in your second affidavit of 2 September did it not? (Shown to witness - p.24). That's correct. "The items in (e) are: shares in Fletcher Holdings Ltd, a gift from my mother and my separate property"? That is correct. In your affidavit delivered last evening Schedule A you set out shares other than Fletchers' shares? That is correct. Did you have those at the time you swore that second affidavit? Yes I would. Why did you not mention them there. I quite frankly forgot about them. When did you remember about them? When I went through a list I have at home of the documents that I have filed in the bank at Lower Hutt looking for the certificate for the AMP quite

60 recently. In your second affidavit, at p.12 where you say that the shares in Reid Containers Limited "were paid up in 1959 with tools and equipment which I had collected over the years prior to our marriage." I did say that. Is that now correct? To all intents and purposes I would still say yes, correct. There were

Supreme Court :
No.12 : Evidence of
Anthony Fulton Reid :
Cross-Examination :
22 September 1977 :

minor things which could possibly be questioned. Those tools and equipment were intended were they not as the tools and equipment set out in your document No.1? I dont think so. I would like to see document No.1 (in folder of documents). Yes, that is correct. It is correct the tools and equipment which were bought by Reid Container shares are those shown in document 1 is that right? That bought some some of the Reid Container shares, a proportion if you wish. How many of the Reid Container shares were bought with the tools and equipment in document 1? That point was never actually settled was it. The number would have never actually been settled, it was never sorted out by the accountant. You see the the value attached to the articles, all the articles there, is L2,073 odd? Correct. Your share holding was only L1,499.0.0 was it not? Correct. Which then of these assets purchased your 1499 shares? As I understand it and I am not an accountant those are the balance sheets made up to 31st March 1960. The Company was started a few months prior to that and I think my accountant could confirm that the Inland Revenue Department did not require a listing of what equipment made up the L1,499. so I would be unable to say exactly which piece did. Of what? Which proportion of this (indicates Document 1). You wouldn't know which proportion of document 1 was used to purchase your shares is that right? That would be correct. If you say that document 1 was to purchase only part of your shares how do you account for the difference in value? A profit. Would there not have been a profit perhaps. Do you know anything of any agreement between you and your intended company that you should sell to it, tools and equipment, in return for shares? I understand that was acceptable from the company's officers. Do you know of any agreement whereby your intended company agreed that it would accept tools and equipment in payment for shares? I know of no written agreement. Have you got the minute book of your company from its inception? I have not. Is it in existance? I would believe so. Could you provide it to His Honour? No I don't think I could. Why not? It is not in Wellington, I would think it would be in Auckland. I would have no jurisdiction over it. Do you realise your wife in her second affidavit suggested the existance of minutes to approve of such a purchase, paragraph 4 of her second affidavit? Did your wife in her second affidavit state that "The applicant would have, and I ask him to produce, any agreement whereby the company accepted tools and equipment in payment of shares; and production of any minute of the company recording the company's agreement to accept tools and equipment in lieu of cash." Are you aware of those words? I might have thought them irrelevant because I did not have the minute book. You have told me, I am now aware and conscious they are there. You have had every affidavit that has been filed on behalf of your wife handed to you as soon as it is received by your solicitor haven't you? I think I have had every one. There is no reason why you wouldn't be aware of this requirement at 19 September, some three days ago? Consciously aware, perhaps read it, no, because its only three days ago which is a point I had missed. I suggest that your solicitors have missed it to? I am suggesting nothing. Does it occur to you now the minute book is considered by your wife or her advisers as of consequence? I think that's an opinion. If that be the opinion is there any reason why you could not ring for the minute book? If it is I can ring, I can ask. Will you do so. (OBJECTION BY MR INGLIS) Will you do it? I am prepared to try.

Reading that same affidavit of your wife she indicates that the only assets you had before marriage in that list were"the Southbend lathe, Wolf Portable Saw, the Wolf 1/2 inch electric drill and its stand, and the Austin 12/4"? No there would be

10
20
30
40
50
60

things there over and above that, it would not be the only thing. would you point to anything on document 1 other than those articles your wife stated that you had before marriage? Yes, I had the gas bottle, the Venner time switch, the Wolf electric stand, the isolating transformer, I think the other things - I think I had the vice. Did you ever suggest to your wife that she agree that the remaining articles should be used for payment of shares? I could not answer that, Susie and I talked all this over. But you cannot say that she agreed to articles acquired

10 after marriage being used to purchase your shares? I didn't say that. No I am not agreeing that. I didn't say that. We talked over how to start this company and I had been informed that we could make up the value of the amount we had formed the company to, by applying those assets which I had. I can never remember Sue disagreeing, presumably I think it would be fair to say we were in agreement. Was it intended that the shares were for the use and benefit of both of you? I don't think that question ever came up. Think now, was it intended by you that the shares should be for the use and benefit of both of you and of your

20 family? I don't think it was. For whose use and benefit were then the shares? I remember Sue saying to me and actually giving to me L1 for her share and I think there was never a question that this was basically to be my company. Whether your company or not for whose use and benefit were the shares? I don't think I am capable of answering that directly. Answer it indirectly? The shares formed the company, the company employed many employees including myself, everybody benefited from the way the company progressed. Come back to your shares, for whose use and benefit did you intend the shares to be? ...

30 Are you able to tell us for whose use and benefit the shares were intended? If I am very honest I would say for the Government because it was a requirement necessary to become an incorporated, sorry not incorporated, a limited company. Is that your whole answer? I don't think I can give a clearer answer. Your counsel mentioned this morning that your wife has received some \$92,000 in capital assets from you, did you hear him? I don't think that is quite correct what he said. What did he say? I think he said \$92,000 capital assets taking account or the benefit from the, I think he meant the trusts that were set up

40 as well for her. I think he said \$92,000 in capital assets or was deriving the benefit from them, referring I think also to the money that was in the trust and to the benefit of Susie. Can you tell His Honour now where there are \$92,000 capital assets for your wife provided by the husband? Or the benefit of it- there is I think 30 something in the trusts. If your counsel was able to give us a figure of \$92,000 this morning can you tell us what that \$92,000 is. I think there is a considerable sum in the trusts. Your counsel extracted from somewhere \$92,000, that was the figure you heard this morning? Yes. Can you tell us what

50 that \$92,000 consists of? Can I ask the help of my counsel.
 TO BENCH: Can you as best you are able try and reconstruct that figure? I am not quite sure which is being referred to. There might be the \$50,000 I have made as an advance to my wife, coupled with 33,000 in a trust.
 TO COUNSEL: Which trust? Susan R. Reid Trust (Refer document 11) Yes? It is the \$50,000. That was given to your wife on 17 December? Advanced in terms of the agreement, proceeds from the sale of Nelson Street properties \$29,000. When did that eventuate? Approximately 1972, I think it was paid in 1973.

60 The agreement was reached in England in 1972. The building Society draws, they were simply ballots that were received from the Building Society? That I arranged for her. What do you mean by that? To cover financial efforts that I had made to help my wife in property speculation, shares in the Northern Building

Supreme Court :
No.12 : Evidence of
Anthony Fulton Reid :
Cross-Examination :
22 September 1977 :

Society were arranged and there were three very lucky draws. Of shares in your wife's name? Yes. What did you have to do with those? In what way, did I spend the money? In what way were you responsible for your wife having shares in the Building Society and gaining \$15,000 in draws? Every way it was organised with my accountant so that it covered the building that I had arranged that was required by Reid Containers that was built in my wife's name.

REXM: MR INGLIS Is it the position that all the shares in Reid Containers Limited were sold by you and your wife? Yes. Does Reid Containers still survive with different shareholders? I believe they have changed the name but the business operates. As far as you know is the minute book you have spoken of still in possession of the company by whatever name it is known? I would only say as a businessman yes it is. Do you now have any control or interest in the affairs of that company? None whatsoever. You were asked about your wife's agreement to these various chattels being used to pay up your shares, is it a fact that she was the one who typed the list that has been produced? Yes I think so. As far as you can tell did she know what the list was for? Oh yes. Were you one shareholder and she was the other? That is correct

Supreme Court :
No.12A : Memorandum for
Quilliam J. By Counsel for
Anthony Fulton Reid :
17 October 1977 :

MEMORANDUM FOR THE HONOURABLE MR JUSTICE QUILLIAM

In the course of the applicant's two principal affidavits certain passages appear which are critical of Mr Gazley's handling of this matter as solicitor for the respondent wife. In particular, passages in the first affidavit (18 March 1977), relating principally to custody and access issues, suggest that Mr Gazley's advice encouraged the separation and the wife's attitude generally.

After hearing the evidence on 23 September 1977, and on reflection, I believe such allegations were unjust to Mr. Gazley. I must take the responsibility for having settled the affidavits in question as counsel on instructions, and if I had to settle them now I would not permit the references to Mr Gazley to be included.

I have already apologised to Mr Gazley personally, and believe that it would be wrong to leave the Court with the impression that the passages in question are relied on by me as part of the applicant's case. Although the custody and access issue has now been disposed of, Your Honour might consider it appropriate, in delivering judgment on the matrimonial property issues, to intimate that passages in the affidavits critical of Mr. Gazley's conduct are not relied on and that no justifiable reflection could be made on Mr. Gazley's professional integrity in handling the respondent's case.

Mr. Gazley has seen this memorandum prior to it being filed.

"D. B. Inglis"
Counsel

I, IAN MOORE FANSELOW of Wellington, Chartered Accountant, MAKE OATH and say:

1. I advised and assisted the above-named ANTHONY FULTON REID in his proposals for the formation and in the formation of Reid Containers Ltd. ("the Company") and am therefore familiar with the events leading up to the formation of the Company. I undertook the office of Secretary of the Company, and acted as such for some years.

10 2. MR. REID discussed with me his proposals for forming the Company some time before he resigned from his previous employment. It was decided, before he so resigned, that he would in the period between his resignation and the incorporation of the Company, assemble plant and equipment on behalf of the Company and rent premises so that the Company could commence business immediately on incorporation.

3. THERE was, as I recall it, some unforeseen delay while approval was being sought for the Company's name.

20 4. MR. REID already had some items of plant and equipment. He acquired others during the period mentioned in paragraph 2 hereof by way of gift, from a gift of money from his mother, and otherwise from his personal resources. During the same period Mr. Reid was to my knowledge in receipt of a relatively substantial income derived from taking in specialised repair work.

30 5. MR. REID paid the rental of the premises later taken over by the Company from his own resources. His payments, both in respect of rent, and in respect of plant and equipment for the Company, were made on the basis that when the Company was finally incorporated he would be credited in the Company's books with the amounts so expended and with the value of the plant and equipment so assembled by him, and that that credit would be applied to paying up his shares in the Company.

6. THE Company was finally formally incorporated on 10th February, 1960, and immediately started trading. It was agreed with the Inland Revenue Department that for tax purposes all trading would be incorporated into the 1960/1961 financial year, and the Company's books were prepared accordingly.

40 7. HERETO annexed marked "A" is a true photocopy of the first page of the Company's journal, the first 10 lines of which were prepared on the basis referred to in paragraph 5 above. The schedule referred to in that page from the Company's journal is the schedule already exhibited, but for the Court's convenience a further copy thereof is hereto annexed marked "B".

8. HERETO annexed marked "C" is a true copy of the Company's first annual return pursuant to sections 130 to 133 of the Companies Act, 1955, and which was prepared by me. On page 2 the 1500 ordinary shares in the Company are shown as issued subject to payment wholly in cash, and the journal entries referred to effected payment for Mr. Reid's shares in cash.

50 SWORN at Wellington this 11th
day of October, 1977 before me:

I.M.FANSELOW

(Not readable)

Supreme Court :
 No. 13 : Affidavit
 of Ian Moore Fanselow:
 Exhibit "A" thereto :
 11 October 1977 :

"A"

This is the true copy of the first page of Reid Containers Ltd's journal marked "A" and referred to in the annexed affidavit of IAN MOORE FANSELOW sworn at Wellington this 11th day of October 1977 before me: *[Signature]* 288

A Solicitor of the Supreme Court of New Zealand

1961 mch 31	Plant for installation	13.	1508 16 1		
	Purchases	14.	108 14 8		
	Furniture & fittings purchased	17.	125 10 .		
	Rent	24.	109 11 4		
	Loss	31.	200 . .		
	To Authorized Capital	1.	1992 12 1	1500 . .	
	" A.S. Ltd's contribution			1472 12 1	
	(Being Plant Furniture & general fixed and introduced by A.S. Reid to Company)				
	Wages	114.	95 3 7		
	Insurance	78.	12 . .		
	Purchases	14.	2658 18 1		
	Furniture & fittings	17.	11 7 .		
	Repairs & maintenance	78.	9 11 .		
	General expenses	70.	14 14 5		
	Plant	13.	5 1 2		
	Storage	102.	21 18 3		
	Light & Heat	82.	3 11 . .		
	Machine Hire	62.	50 . .		
	Accounting	52.	150 . .		
	Freight & Cartage	66.	50 . .		
	To Sunday Excursion	34.		3187 13 4	
	(Being of 21/3/61)				
	Sundry Debtors	37.	2225 16 9		
	To Sales	46.		2225 16 9	
	(Being of 21/3/61)				
	Div on Hand	58.	110 . .		
	To Div Account	58.		110 . .	
	(Being Value of Div as at 21/3/61)				
	Depreciation	56.	486 5 .		
	To Plant - 10%	13.		333 10 .	
	" Furniture & Fittings - 10%	17.		38 5 .	
	" 20%	31.		40 . .	
	" Building - 24%	5.		74 10 .	
	(Being before for year)				

Supreme Court :
No. 13 : Affidavit
of Ian Moore Fanselow:
Exhibit "B" thereto :
11 October 1977 :

[Please refer page 50 - already Exhibited
as "document 1c"]

Exhibit "C" thereto :

No. of Company: N. 1960/39.

Form 18
290

"C"

This is the true copy Annual Return referred to
in the annexed affidavit of IAN MOORE FANSELOW
sworn at Wellington this 11th day of October 1977
before me:

[Signature]
A Solicitor of the Supreme Court of New Zealand
The Companies Act, 1955

LAND & DEEDS	
Nature:	
Firm:	
24 MAY 1962	
Time:	
Fee: £	5/-
Abstract No.	DC51885

COPY ANNUAL RETURN

Pursuant to Sections 130 to 133

5/-
Registration
Fee

Name
of
Company:

REID CONTAINERS LTD.

Delivered for
Filing by:

24 MAY 1962

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL (As required by Sixth Schedule of The Companies Act, 1955, Section 130)

ANNUAL RETURN of REID CONTAINERS LTD.

Limited, made up to the 19th day of JULY, 1961

(being the date of the annual general meeting for the year 19.....).

1. Address.

81 NELSON STREET PETONE

(Address of the registered office of the company.)

2. Situation of Register of Members.

(Address of place at which the register of members is kept, if other than the registered office of the company.)

Supreme Court :
 No. 13 : Affidavit
 of Ian Moore Fanselow:
 Exhibit "C" continued:
 11 October 1977 :

291

3. Summary of Share Capital and Debentures

(a) Nominal Share Capital
 Nominal share capital £ 1500 divided into—
 (Insert number and class)

1500 ORD shares of 1 each
 shares of each
 shares of each

(b) Issued Share Capital and Debentures.

Number of shares of each class taken up to the date of this return.

(Which number must agree with the total shown in the list as held by existing members unless the list is made up to a different date.)

Number	Class	shares
<u>1500</u>	<u>ORD</u>	shares
.....	.....	shares
.....	.....	shares

Number of shares of each class issued subject to payment wholly in cash.

<u>1500</u>	<u>ORD</u>	shares
.....	.....	shares
.....	.....	shares

Number of shares of each class issued as fully paid up for a consideration other than cash.

<u>NIL</u>	<u>NIL</u>	shares
.....	.....	shares
.....	.....	shares

Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.

Issued as paid up to the extent of £ NIL per share
 shares

Issued as paid up to the extent of £ NIL per share
 shares

Number of shares (if any) of each class issued at a discount.

<u>NIL</u>	.....	shares
.....	.....	shares

Amount of discount on the issue of shares which has not been written off at the date of this return. £ NIL
 Amount called up on number of shares of each class.

Number	Class	shares
<u>1</u>	<u>ORD</u>	shares
.....	.....	shares
.....	.....	shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited. £ 1500

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.

£ <u>NIL</u> on	.....	shares
.....	.....	shares
.....	.....	shares

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.

£ <u>NIL</u> on	.....	shares
.....	.....	shares
.....	.....	shares

Total amount of calls unpaid £ NIL

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures since the date of the *last return. £ NIL

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the *last return. £ NIL

Total number of shares of each class forfeited and not sold or otherwise disposed of.

Number	Class	shares
<u>NIL</u>	shares
.....	shares
.....	shares

Total amount paid (if any) on shares forfeited. £ NIL

Total amount of shares for which share warrants to bearer are outstanding. £
 Total amount of share warrants to bearer issued and surrendered respectively since the date of the *last return.

Issued; £ NIL
 Surrendered; £

Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind. NIL

4. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all charges which are required to be registered with the Registrar of Companies under the Companies Act 1955, or which would have been required so to be registered if created after 23 November, 1903. £ NIL

* In the case of the first annual return, the date of the *last return is the date of the first annual return.

REASONS FOR JUDGMENT OF QUILLIAM J.

HEARING: 22nd and 23rd September, 1977.

Counsel: B.D.Inglis Q.C. and C.P.Brosnahan
 for Applicant husband
 W.V.Gazley for Defendant wife.

JUDGMENT: 21st November, 1977.

These are two sets of proceedings heard together by consent.

10 There is first an application commenced under the Matrimonial Property Act, 1963 but heard under the Matrimonial Property Act, 1976. There is also an action for a declaration concerning maintenance. For convenience I refer to the parties as the husband and the wife.

20 The parties were married on 19th November, 1955 and there have been four children whose ages now range from 21 to 13 years. At the time of the marriage neither party had assets of any consequence apart from some furniture and chattels owned by the wife. Two or three years after the marriage the husband commenced a business under the style of Reid Containers Ltd. Apart from one share paid for by the wife the husband was the sole shareholder. He was unusually gifted in mechanical matters and displayed a remarkable ability for inventing methods of dealing with mechanical problems. He started with nothing but some old machinery and a gift of \$1,000. from his mother. His success was such that seventeen years later he sold out his business in two stages for a total of over \$500,000.

30 The first matrimonial home was a modest house in Colin Grove in Lower Hutt. This house had formerly belonged to the husband's parents and at the time of the marriage was owned by the husband and his brother in equal shares. The brother, who was evidently in a satisfactory financial position, agreed to sell his half share to the husband at the Government valuation of \$2,775., which was well below the market value. Payment was made over a period and no interest was required to be paid. Improvements were then carried out but within four years of the commencement of the husband's business, the house was demolished and a new house built in its place. This was done largely at the wife's instigation. That house remained the matrimonial home and the husband still lives there.

40 The husband's financial progress was such that he later established trusts for each of his children and for his wife. He was also able to place the whole family in a position of considerable comfort and financial security. The wife had some assets of her own which she had derived from her parents and relatives. She herself came originally from England and she brought to the marriage a substantial quantity of furniture and chattels. It is not clear when the marriage started to founder and it may be that there were increasing problems over a period as is so often the case. It seems likely that what produced the major breakdown which occurred was a difference between them as to the way in which the eldest son, Philip, should be handled. This came to a head when Philip left Boarding School. He had always been something of a problem but there developed between the parties a very deep rift as to what should happen to him. Notwithstanding this, the parties continued to live together. In March, 1976, however, the wife consulted a solicitor who, on 50 12th March, wrote to the husband a letter which was bitterly resented by him and which was certainly abrasive in its terms. Unhappily, that letter also induced the husband's legal advisers to enter the fray so that every step thereafter has been attended

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J.:
21 November 1977 :

by a constant crossfire of recrimination. I propose to say no more on this subject beyond expressing deep concern that the matter was ever permitted to descend to the level that it did. I have tried to ensure that what happened in this regard has had no bearing on the conclusions I have reached.

There is a substantial number and value of assets which require determination in these proceedings. There is also an application included in the wife's first affidavit for the Court to fix maintenance for herself and the youngest child. It seems that the wife later considered that maintenance should be determined in the Magistrate's Court and this prompted the action (No. 142/77) in which the husband seeks a declaration that the Magistrate's Court has no jurisdiction to entertain an application for maintenance. Following the letter of 12th March, 1976, proceedings were issued by the wife in the Magistrate's Court for separation, maintenance and custody orders. Those proceedings commenced on 16th December, 1976, and on the following day a settlement was reached which resulted in orders being made by consent for separation and for custody of the youngest child to the wife. There was also an interim settlement of matrimonial property matters. The principal features of this settlement were as follows:

1. The husband guaranteed the wife, from various assets, an income of \$6,880. per annum gross, and undertook to meet from his own resources any deficiency in that amount. He also provided for payment to her from the trust created for the youngest child, Carolyn, the sum of \$ 20. per week in respect of Carolyn's maintenance.
2. The contents of the matrimonial home were to remain intact pending final settlement and these included the wife's original contribution of furniture and chattels which were of value of approximately \$ 15,000.
3. The wife was to occupy the matrimonial home for a short period.
4. The husband advanced to the wife \$ 50,000. as part of her matrimonial property claim and that sum was to be applied by her in the purchase of a property of her own.
5. The wife covenanted that the various assets listed in the settlement document, or their present equivalent value, should, so far as lay within her power, remain in existence towards a maintenance provision for her.

The wife did not entirely adhere to this arrangement but she did proceed with the purchase of a home unit for \$ 37,000. There would have been additional expenditure required for carpets and curtains and the like, but no doubt there remained a fairly substantial balance out of the \$ 50,000. I deal now with the present matrimonial property application.

I first set out a list of the property in respect of which a determination is necessary. I have taken this list from the schedule attached to the husband's last affidavit but have rearranged it in order to keep the various items into categories. First are those items which are acknowledged by both parties to be matrimonial property but the husband claims to be his separate property.

Matrimonial Property.

1. The matrimonial home 14 Colin Grove, Lower Hutt.
2. Holiday home, Paihia.
3. Family chattels at Colin Grove.
4. Family chattels at Witako Street.
5. Austin Maxi and trailer.
6. Wife's B.N.Z.current Account at 17th December, 1976.
7. Wife's B.N.Z.Nationwide Account at 17th December, 1976.
8. Husband's shares in N.Z.T.S. and A.B.Con., and Wellington
10 Harbour Board stock and Marlborough Harbour Bd. Stock.
9. Husband's two A.M.P.policies.
10. Wife's A.M.P.Policy.
11. Wife's Northern Bulding Society shares.
12. Wife's money invested in New Zealand.
13. Wife's proceeds of Northern Building Society draws.

Disputed Property

14. Other chattels at Colin Grove
15. Land cruiser, Toyota car and boat.
16. Property at Aglionby Street.
- 20 17. Husband's B.N.Z.current Account at 17th December, 1976.
18. Husband's B.N.Z.Nationwide Account at 17th December, 1976.
19. Husband's B.N.Z.term deposit at 17th December, 1976.
20. Husband's share in D.R.G. (N.Z.) Ltd.
21. Husband's shares in Fletchers.
22. Husband's unsecured loan to Sutherland.
23. Amount invested with Chapman, Tripp & Co.

In addition there are the wife's bank account and real estate in the United Kingdom, both of which are conceded by the husband to be her separate property. I now deal with these various
30 assets in order.

1. Matrimonial Home

Two questions arise in respect of the matrimonial home. The first is as to the respective interests in it of the parties, and the second as to its value.

The Court must, in terms of s.11 of the Act, award an equal share to each party unless, under s.14, there are extraordinary circumstances that in the opinion of the Court, render an equal sharing repugnant to justice. It is argued for the husband that there are such extraordinary circumstances here. It is
40 necessary, first, to recount the way in which the matrimonial home was acquired. As I have already mentioned the first matrimonial home was, at the time of the marriage, owned by the husband and his brother in equal shares. The husband was able, through the generosity of his brother, to buy the other half interest on very favourable terms. The purchase was made at Government valuation which, for the half share, was \$ 2,775. This was paid wholly by the husband over a period, without interest. Improvements and additions were then carried out. These were done by the husband with some small assistance from
50 the wife although she made no financial contribution.

In 1963 at the wife's instigation, the house was demolished and the present matrimonial home built on the same site. The total cost of demolition and erection was \$ 23,294. Of this the husband paid \$12,290. from his own resources and drew \$3,000. from his business. The wife advanced \$ 4,000. which was repaid in 1966 and contributed a further \$ 4,004. from her own English funds. The husband's contention that this is a case of extraordinary circumstances is based on two submissions. One

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J.:
21 November 1977 :

is that upon any basis the wife's contribution to the acquisition and building up of the matrimonial home is very small and that it is an extraordinary circumstance that such a small contribution should be increased by the transitional provisions of the new Act with no opportunity to avoid their effect. It was said that under the old Act the wife could never have justified a share in excess of 20%. I am unable to regard a change in the legislation as an extraordinary circumstance. This was just the kind of result which the legislature must have had in contemplation when the new Act was passed, and already experience has shown that much widely differing results are the normal and not the exceptional. It must, I think, be accepted that Parliament was well aware that spouses, who under the old Act could expect to receive only a small interest, would now be receiving an equal share. This was no doubt intended to benefit wives but it has also, in some cases, benefited husbands. I cannot regard the change in legislation as an extraordinary circumstance and do not accept this submission.

10

The second submission is that in any event there is such a wide disparity in contributions that the circumstances must be regarded as extraordinary. It is true that this is a case where the wife's financial contribution is small and that the generosity of the husband's brother was a material factor in the acquisition of the home in the first place. It was argued for the husband that upon the basis of contributions alone, the wife could not justify a share in excess of 20%. The question for determination is the point at which unequal contributions become so unequal as to make it repugnant to justice that there should be an equal sharing. No doubt there will be cases where one spouse has made no contribution at all, or so trifling a contribution as to make it plain that an equal sharing would be altogether wrong. In the large majority of cases, however, it is likely to be found that the contributions are unequal but there must still be an equal sharing. Adopting the approach taken on the husband's behalf I find myself quite unable to say that a contribution of 20% involves such a gross disparity as to come within the contemplation of the legislature when it used the word "extraordinary". I consider the present case is not one to which s.14 should be applied and that each party should share equally in the matrimonial home.

20

30

40

It is necessary, therefore, in terms of s.2(2) to arrive at the value of that property as at the date of hearing. A valuation made by registered valuers amounts to \$ 95,500. This, however, includes improvements at a cost of \$ 3,465. carried out since the date of separation and also a portion of the land which the husband has contracted to sell for \$ 1,000. and on his behalf it is argued that the valuation should accordingly be reduced by the total of these two items. As to the improvements, these come within the provisions of s.9(4) and are to be regarded as separate property unless the Court considers it just in the circumstances to treat them as matrimonial property. The way in which that subsection is expressed means that the Court will start by assuming that such improvements should be separate property. That, I think, is the way they are to be regarded here. I can see no basis upon which I ought to take them out of that category and treat them as matrimonial property. The other deduction claimed is related to a deed entered into on 20th July, 1956, between the husband and his mother, who owned and occupied the property adjoining the matrimonial home. The deed provides that the mother should have the right to use two defined pieces of the land comprised in the title to the matrimonial home and that in the event of the husband selling the matrimonial home, he would transfer those two pieces of land to his mother. It was accordingly argued for the

50

60

husband that he had no right of disposal of the pieces of land and could not include them in any sale, and accordingly that they should be excluded from the value for present purposes. I have no doubt this is correct and I therefore exclude them. This means that the value of the matrimonial home, for the purpose of these proceedings, is \$ 91,035. Each party is entitled to one-half, namely \$ 45,517.50.

2. Holiday Home, Paihia.

10 This is acknowledged to be matrimonial property and is owned by the parties jointly. Its value, at the date of hearing, is agreed to be \$ 44,000. Two questions require determination in respect of this property. The first is whether, under s.15, the husband's contributions to the marriage partnership have been clearly greater than the wife's so as to require an unequal division between them. The other is, in any event, in which of them should the property be vested. These are both matters which require determination upon a more general consideration of the whole case and I will deal with them in that way later.

3. Family Chattels at Colin Grove.

20 These are listed in the valuation of a Mr. Neal. The list includes, however, a number of items which are claimed by the husband not to be family chattels. This is because either they are the property of someone other than the husband or the wife, or they are the husband's separate property. I find it convenient to adopt the method followed by the husband who has attached a copy of the list to his affidavit of 15th September, 1977 and who has indicated on that list, by the use of letters against each item, the category into which he says each falls. All those items marked in this way with the letters "MP" are 30 acknowledged by him to be family chattels. Those marked "SP" are claimed by him to be separate property, and I will deal with them under item 14. The others are said to be the property of the persons indicated by the letters used. The wife claims a half share in the whole of the items on the list. So far as those said to belong to other persons are concerned, I accept the husband's evidence on this. The only item in this category which was the subject of oral evidence before me was a billiard table which the husband had claimed belonged to his son, Matthew. This was contested but the evidence established clearly that the 40 husband was right about it. I therefore feel that I can, with confidence, accept his affidavit as to the other items in the same category. I therefore accept that only the items on the list marked with the letters "MP" are, indeed, family chattels. The position regarding those items marked "SP" is, of course, to be considered separately. The shares in the items marked "MP" will depend upon whether the contribution of one spouse to the marriage partnership has been clearly greater than that of the other and I refer to this later.

4. Family Chattels at Witako Street.

50 The home unit which the wife has purchased for her own occupation is at Witako Street and she has removed to that property a considerable amount of furniture and other chattels. In an exhibit to her first affidavit she has divided these into two lists, the first of which she considers to be family chattels (and therefore matrimonial property) but the second of which she claims to be her separate property. This is upon the basis that they were acquired by her as gifts within the meaning of s.10(1). In view, however, of the provisions of s.10(3) this contention cannot succeed. Section 10(3) specifies that family chattels 60 are matrimonial property notwithstanding that they may result

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J. :
21 November 1977 :

from gifts as referred to in s.10(1). The chattels in question here are family chattels within the meaning of that expression in s.2 of the Act as being "...chattels owned by the husband or the wife... and which are (i) household furniture or household appliances, effects or equipment, or, (ii) articles of household or family use or amenity or of household ornament..." Accordingly all the chattels in both lists referred to, as they are more particularly set out in Exhibit B to the husband's affidavit of 15th September, 1977 (but excluding therefrom the items referred to in para. 8(e) being articles acquired since separation) are family chattels and so matrimonial property and will require division under s.15 of the Act. 10

5. Austin Maxi and Trailer.

These are agreed to be family chattels and will need to be shared in whatever may be regarded as the appropriate shares. They should vest in the wife with an allowance to the husband in respect of his interest in them. The only question under this item is as to the value. The only evidence on this is that the car cost \$ 3,085. in July, 1973. I assume it was then new. I can only make an estimate of what it might be worth now and in doing so I must assume that it has been maintained in reasonable condition and has not done an excessive mileage. For the wife it is suggested the value now would be \$ 1,200. From a general knowledge of the used car market I should be surprised to find it was worth as little as that. I think \$ 2,500. would be a more realistic value. 20

6 & 7. The wife's B.N.Z. Accounts

These are conceded to be matrimonial property and the total amount to the credit of the Accounts at 17th December, 1976 was \$ 2,733., which will require division under s.15. The husband's accounts are disputed and will be considered later. 30

8. Husband's Shares and Stock

It is conceded that certain shares and stock are matrimonial property. These are cryptically listed as 625 N.Z.T.S., 1000 A.B.Con., 2300 W.N.H.B. and 1400 Marlborough Harbour Board. There are other shares which are claimed by the husband to be separate property and I deal with those later. I am at a loss to know what value should be placed on the shares and stock referred to as there is no clear evidence to assist on this. The total value will need to be apportioned under s.15. As to what that value is I must leave it to counsel to agree if they can. If not, there will have to be leave to adduce further evidence. 40

9 & 10. A.M.P.Policies

There are three policies - two on the husband's life and one on the wife's. These are all acknowledged to be matrimonial property and the surrender value of them requires to be divided under s.15. The surrender value for the two on the husband's life is shown as totalling \$ 7,320. No indication is given of the surrender value of the third policy. Presumably this is a matter which can readily be resolved by counsel. 50

11. Wife's Bulding Society Shares.

These also are matrimonial property and will require to be divided. There is no indication of value but again counsel will no doubt be able to resolve this.

12. Wife's Money invested in New Zealand

As nearly as I can ascertain this represents a sum of \$ 6,000. shown as one of the sources of the wife's income as agreed on 17th December, 1976 (Item 4 on Exhibit A to husband's affidavit of 18th March, 1977). I do not understand it to be disputed that this is matrimonial property and is accordingly for division under s.15.

13. Wife's proceeds of Northern Building Society Draws

10 Neither counsel referred expressly in their submissions to this, but I understand the position to be that the wife received three sums, each of \$ 5,000. from ballots in the Building Society. As far as I can make out these sums, which would have been matrimonial property, are now reflected in other assets each of which is matrimonial property. These proceeds do not, therefore, require separate consideration.

Disputed Property

20 The items I have listed under this heading are disputed upon the basis that the husband claims they are separate property, but the wife claims they are matrimonial property. They represent assets which the husband says have been acquired out of the proceeds of sale of his business, Reid Containers Ltd. That business, that is, the shares in the Company and all the assets of the Company, was sold in two stages for a total sum of about \$ 500,000. The question of whether the husband's shares in that Company were separate property, and, if they were, whether the assets purchased with the proceeds of sale are also separate property is a matter of major importance requiring an interpretation of the Act.

30 It is necessary, first, to determine the origin of the shares in question. The Company was incorporated on 10th February, 1960 and this was when the husband first set up his own business. The nominal capital of the Company was \$ 3,000. divided into 1,500 \$ 2. Shares. The husband took all the rest and his evidence was that he paid for them by contributing to the Company the tools and equipment he had accumulated prior to the marriage. In addition, his mother gave him \$ 1,000. to assist him in setting up the business. The way in which he says he acquired the Shares is challenged by the wife and it was argued that the matter could have been resolved by production of the Company's Minute Book, but that this has not been done. The fact that the husband sold all his interest in the Company has meant, however, that he no longer has access to the Minute Book. It occurred to me that, upon the formation of the Company, if Shares were allotted otherwise than for cash, then there would be a return to this effect filed in the Company's Office. I reserved leave for further evidence to be given on this point and I now have the evidence of Mr. Fanselow, a Chartered Accountant, who was the first Secretary of the Company. He has produced a copy of an extract from the Company's first journal, which shows 40 that the total value of Plant, purchases, fixtures and fittings, rent paid by the husband, and a car was \$ 3,985.21. This was applied as to \$ 3,000. in payment for Shares and as to the balance to the husband's capital account. This entry was regarded as an allotment of the Shares for cash and the first return made to the Company's Office accordingly shows that the Shares were allotted for cash. It was contended for the wife that it was unlikely the Shares were paid for by means of the tools because the value of the tools, according to a list compiled at about the time, was \$ 4,146., while the amount 50 required to pay for the Shares was only \$ 2,998. and there was 60

Supreme Court :
 No. 14 : Reasons for
 Judgment of Quilliam J.:
 21 November 1977 :

nothing to indicate that any particular selection of tools had been made at the time in order to meet just the amount required for the Shares. It was also said that he had acknowledged in oral evidence that so few of the tools were owned before marriage as to have meant that he could not have had enough in value to meet the nominal value of the Shares. The records now produced show how the matter was carried out. This was by means of a journal entry recording an indebtedness of the Company to the husband, and by the use of the credit so established to provide the funds for the purchase of Shares. It was contended for the wife that this kind of accounting procedure was not in accordance with the provisions of the Companies Act, 1955, and particularly that it did not comply with s.61(1)(b) of that Act. I do not consider, however, that the provision has any application for present purposes. There only remains the question of whether the tools and equipment used for the purchase of the husband's Shares were his separate property at the time. I cannot doubt that they were. Some at least, were his before the marriage. There is confirmation from Mr. Fanselow that others were acquired by the husband for the express purpose of establishing the business. Some were gifts and others were from his own earnings, but there is nothing to suggest that any of them were acquired for the use of both husband and wife. All of them went to the Company when it was formed and are unlikely to have been of a kind which were for use in the matrimonial home. I am satisfied that the husband's Shares were acquired, as he says they were, by the application of his separate property.

10

20

There is no doubt that the Shares were acquired by the husband after the marriage and this brings me to the principal matter in dispute in this case which is the effect, in the circumstances, of s.8(e) of the Act. That subsection in defining what is regarded as matrimonial property, provides:

30

"(e) Subject to subsections (3) to (6) of Section 9 and to section 10 of this Act, all property acquired by either the husband or the wife after the marriage, including property acquired for the common use and benefit of both the husband and the 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".

40

The contest on this issue can be shortly expressed. For the wife it is argued that the expression "all property acquired...after the marriage" means just what it says. For the husband it is argued that it cannot mean this in a literal sense and must be qualified by treating the word "acquired" as meaning "acquired from assets which are not separate property", or, alternatively, as applying only to property acquired for the common use and benefit of both spouses.

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

50

60

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.

10 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.

If s.8(e) is unlimited in its operation then it completely negates s.9(2). That subsection provides"

20 "Subject to subsection (6) of this section and to sections 8(e) and 10 of this Act, all property acquired out of separate property, and the proceeds of any disposition of separate property, shall be separate property".

If any acquisition of property after marriage is automatically included within the scope of s.8(e) then s.9(2) cannot be made to apply to any property acquired from the proceeds of separate property during marriage, particularly as s.9(2) is expressed to be subject to s.8(e).

30 Apart from the fact that any interpretation which would make s.9(2) ineffectual is unlikely to be correct, any such result would have the further effect of making nonsense of s.9(6). That subsection expressly provides (in summarised form) that any separate property used for increasing the value of the interest of either spouse in matrimonial property becomes, itself, matrimonial property. That, however, could not be so if the proceeds of the disposition of separate property, part of which are used to increase the matrimonial property, are also matrimonial property. That would be the case if s.8(e) made all property acquired during marriage (including the sale of proceeds of separate property) matrimonial property.

40 On behalf of the wife it was argued that the dominant intention of s.8(e) was simply to embrace all property acquired after marriage within the scope of matrimonial property, but that argument did not, as I understood it, attempt to meet the result on s.9(2) and (6) to which I have referred. A hypothetical situation was envisaged by counsel for the wife in which it was possible to achieve a situation which would produce a completely unfair result. Without setting out that example I acknowledge readily that such a situation could occur, particularly where the facts, as in the example given, are somewhat extreme. It may well be that the Act is capable of achieving some surprising results and indeed, some cases already contested under it have demonstrated this. If, however, a normal process of interpretation produces such results then it is for the legislature to correct and not for this Court. I think, for the reasons I have indicated, it is necessary to conclude that the first part of s.8(e) cannot be given the unlimited effect which at first sight it appears to have. The next problem is accordingly to decide in what way it must be limited. It was argued that there are two ways in which this could be achieved. One is to treat the word "acquired" in s.8(e) as meaning "acquired from assets which are not separate property". The other is regard s.8(e) as applying only to property acquired for

50
60

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J.:
21 November 1977 :

the common use and benefit of both spouses. It was suggested that the latter was the more appropriate because it made more sense in the general context of the Act. Certainly such an approach would provide an explanation as to why s.9(2) is expressly made subject to s.8(e). The effect of what is now proposed would be to ensure that property acquired out of separate property for the common use and benefit of both spouses would not be regarded as separate property. If s.9(2) were not subject to s.8(e) then it seems that result would not be achieved.

10

Perhaps the most attractive argument for reading s.8(e) as applying only to property acquired for the common use and benefit of both spouses is that this is consistent with the scheme of ss.8, 9 and 10 read together. All the property classified by s.8(a) to (d) and (f) to (k) as matrimonial property is, either by express words or because of its very nature, property which is held for the common use and benefit of both spouses. It requires no unusual feat of interpretation to say that s.8(e) was intended to be similarly regarded. In terms of s.9 (leaving aside for the moment the reference to s.8(e), separate property remains separate property and cannot become matrimonial property except in the special cases provided by sub ss.(3), (4) or (6). Under s.10 gifts or bequests cannot become matrimonial property and remain separate property unless, first, they are from a third person and are intermingled with matrimonial property or, secondly, they are from a spouse and are used for the common use and benefit of both spouses.

20

Form this consideration of ss.8, 9 and 10 a pattern emerges. Matrimonial property is property used for the common use and benefit of both spouses or acquired for that use. Separate property, however it acquires that status, remains separate property until something happens to convert it into property used for the common use and benefit of the spouses. Viewed in this way s.8(e) will apply to property acquired either before or after marriage by either the husband or the wife for the common use and benefit of both of them. This is the interpretation of the subsection which appeals to me as being correct and I now consider the rest of the assets in that light. I have already held that the husband acquired his shares in Reid Containers Ltd. out of tools and equipment owned by him before marriage or which were his separate property, together with a gift made to him by his mother for the purpose of the establishment of the business. Two matters now require consideration. The first is as to whether the shares acquired by the husband were matrimonial property as having been acquired for the common use and benefit of the parties. The other is as to whether assets acquired from the proceeds of sale of the shares are matrimonial property. As to the first of these matters, it was argued for the wife that the shares were acquired for their common use and benefit because the establishment of the business was the substitute which the husband made for his previous salaried employment. I do not think this is correct reasoning. There can be little doubt that the husband established the business in order that he could derive from it an income which was to be for the common use and benefit of himself and his family, but this does not mean that the shares in the Company were themselves acquired for that use. They were acquired from separate property and in the husband's own separate name and represented his working capital. In terms of s.9(2) they became his separate property.

30

40

50

Shortly before the separation the husband sold his shares in Reid Containers Ltd. for a total price of about \$ 500,000. With the proceeds of sale he acquired most of the assets which I have listed as Nos. 14 - 23. For the wife it is argued that even if

60

the shares were separate property then the assets acquired from the proceeds of sale of them become matrimonial property. This is on the basis that the matter is governed either by s.9(2) or S.9(3). If s.9(2) applies, then that subsection is made subject to s.8(e) and the assets acquired from the proceeds of sale are property acquired after marriage. I have already given my interpretation of that provision and consider that the status of the property acquired from the proceeds of sale of the shares is to be determined according to whether or not the property was acquired for the common use and benefit of both spouses. Alternatively, it was argued that if s.9(3) applied, then the requirements of both paras. (a) and (b) of that subsection had been complied with. I deal with the latter question first.

Section 9(3) is as follows:

"Subject to subsection (6) of this section, any increase in the value of separate property, and any income or gains derived from such property shall be separate property unless the increase in value or the income or gains (as the case may be) were attributable wholly or in part -

- (a) To action of the other spouse - or - -
(b) To the application of matrimonial property -

In either of which events the increase in value or the income or gains (as the case may be) shall be matrimonial property".

For present purposes subs. (6) has no application.

There is little doubt that s.9(3) applies to the increase in value of the shares and to the gains derived from them. So far as the income from them is concerned, that - of course - is reflected in what has been acknowledged to be matrimonial property. The increase in value of the shares, as reflected in the selling price, is separate property unless it was attributable wholly or in part to the actions of the wife or to the application of matrimonial property.

It is necessary to refer to the nature and growth of the husband's business. This business involved the making of containers and included a number of processes required for that purpose. In particular, it appears that a variety of printing problems were encountered from time to time and had to be overcome. There is ample independent evidence that the husband had a skill amounting perhaps to genius in devising methods of resolving the problems which arose. He designed and built machinery of various kinds for the performance of the different functions required. This ingenuity seems to have been the real basis for the undoubted success of the business. During the early stages of the establishment of this business the husband's fertile mind led him to think up a number of ventures altogether unconnected with Reid Containers Ltd., but from which a useful addition to the family income was derived. These ventures included such things as the making of polythene bags, the packaging of screws and fish hooks, and so on. Returning to s.9(3) it is the wife's case that she is entitled to share in the increase in value of the husband's business because that increase was attributable in part to her actions. Her argument is that she assisted in the ancillary ventures to which I have referred so as to have helped the family finances and in this way to have enabled the husband to concentrate on Reid Containers Ltd. It was argued further that she fulfilled faithfully her obligations in the home as wife and mother and provided the right atmosphere in which the husband could entertain his business acquaintances

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J.:
21 November 1977 :

to the ultimate advantage of the business. In these ways it was said the growth and success of the business was partly attributable to her. I do not think these things are what is contemplated by s.9(3). It may well be that the wife assisted the husband in the ways she has said. Up to a point the husband concedes it, although they differ on the extent of that assistance. This kind of assistance is, of course, one of the matters which needs to be considered when it is necessary to determine, under s.18, the respective contributions of the parties to the marriage partnership. That, however, is a different thing from deciding that the wife's efforts were partly responsible for the increase in the value of the business. The growth in this business and the success it achieved are plainly referable to the skill and efforts of the husband. When looked at purely as a matter of the increase in value of the business it does not appear to me that the actions of the wife contributed at all to that increase. 10

The other limb of s.9(3) relates to whether the increase in value was attributable wholly or in part to the application of matrimonial property. I am not aware of any evidence which would suggest that is the case here. I accordingly hold that the provisions of S.9(3) do not assist the wife in her claim for a share in the proceeds of sale of the shares. Any right which the wife may have to share in the proceeds of sale must depend upon whether the assets acquired out of the proceeds were acquired for the common use and benefit of both spouses. This involves a consideration of the remaining assets I have listed (Nos. 14 - 23 inclusive) individually. I should first however, set out the necessary circumstances relating to the sale of the shares. There were 3,000 shares in Reid Containers Ltd. The business was sold in two stages. The first stage took place in 1972 and involved the sale of 1,530 shares. Of these, 1500 were owned by the trusts created by the husband and the proceeds of sale of those shares duly went to those trusts and do not require consideration here. The wife owned two of the shares and received for them \$ 234.64. The remaining 28 were owned by the husband and yielded him \$ 3,284. It was part of the arrangement that the purchaser was required to purchase the remaining shares at a later date and this occurred in 1975. An offer was made for those shares at a price which the husband considered well below their real value. Before he had made a decision upon that offer he received the letter of 12th March, 1976, from the wife's Solicitor, to which I have already referred. That letter and the hostility which succeeded it so discouraged the husband that he was not prepared to try and drive the bargain which he would otherwise have done. A sale of the remaining shares (all of which belonged to the husband) was in the end completed for a price of \$ 426,000. and the transfer to him of a Toyota Land Cruiser and a Toyota Corona car. 20 30 40

I resume now a consideration of the listed assets individually. 50

14. Other Chattels at Colin Grove

These are the items shown in the valuation made by Mr. Neal attached to the husband's affidavit of 15th September, 1977 and which have been marked by the husband with the letters "SP" (excluding, however, the boat, Toyota Land Cruiser and Toyota Corona Car to which I refer separately). These items are all tools, machinery and equipment. There seems no suggestion that any of these things were acquired for the common use and benefit of the parties. By their nature this is unlikely, particularly as they were acquired after the wife had already proposed a separation. 60

15. Land Cruiser, Toyota Car and Boat

As I have already said, the Land Cruiser and Toyota Car were part of the consideration received by the husband for the sale of his shares. The wife claims an interest in them as family chattels. They could only be family chattels if, in terms of the definition in s.2, they were used wholly or principally for family purposes. There is no suggestion in the evidence that this was the case and accordingly they are not family chattels. Alternatively, the wife claims them under s.8(e), but again there is no evidence to show that they were acquired for the common use or benefit of both parties. The boat was purchased by the husband out of the proceeds of sale of his shares. Again the wife claims an interest either on the basis that they are family chattels, or alternatively, under s.8(e). For the same reasons as apply to the two vehicles she cannot succeed in that claim.

16. Property at Aglionby Street.

Following the sale of the share in Reid Containers Ltd. the husband, the wife and the five trusts had money available for investment. It was accordingly decided to purchase an industrial property in Aglionby Street, Lower Hutt. The capital cost involved was \$ 217,741. Of this \$ 90,000. was raised on mortgage. The husband contributed \$ 30,913. and the wife \$ 7,120. The balance came from the five trusts. As at the date of separation, the husband's capital account in the property had risen to \$ 32,720.26. and the wife claims an interest in this as being matrimonial property. This again however, is an asset of his acquired by him out of the proceeds of sale of his shares and which he kept separate upon the purchase of the Aglionby Street property and which has remained separately recorded since then. It is his own separate property.

The same conclusion cannot be reached, however, as to the wife's interest in that property. Her initial contribution was \$ 7,120. and that, following revaluation, increased to \$ 9,086. The husband claims this to have been matrimonial property and there seems no doubt that it was. The wife's initial contribution to this property came from her share of the proceeds of sale of some properties in Nelson Street, Petone. These properties had been acquired in the wife's name at the husband's suggestion in order to make some provision for the wife in case of his death. They were financed largely by Reid Containers Ltd. They were sold in the first stage of the sale of the shares in Reid Containers Ltd. and the wife's interest yielded her \$ 20,437. It is not clear what happened to the balance of those proceeds apart from her interest in Aglionby Street, but it must be assumed she either spent it or it is reflected in other matrimonial property in her name.

17, 18 & 19. Husband's Bank Accounts at 17th December, 1976.

The husband had three accounts at the date of separation. The amounts in each account were part of the proceeds of the sale of shares and in this regard they differ from the amounts in the wife's bank accounts. There is nothing to suggest that these bank accounts were held by the husband for the common use and benefit of both of them. By the time these amounts were received, the parties were already at arms length. The largest of the three accounts was the term deposit. It was from this account that the husband withdrew the \$ 50,000. which he paid to the wife on 17th December, 1976, on account of his liability towards her. The husband's bank accounts remain his separate property.

Supreme Court :
 No. 14 : Reasons for
 Judgment of Quilliam J.:
 21 November 1977 :

20. The husband's Shares in D.R.G.

D.R.G. (N.Z.) Ltd. was the Company which purchased the shares in Reid Containers Ltd. Part of the payment for the first part of the purchase comprised shares in D.R.G. These were transferred to some at least of the trusts, but were then transferred to the husband in consideration of amounts owing to him by these trusts. There is nothing to suggest that these shares were acquired by the husband for the common use and benefit of both parties and they remain his separate property. 10

21. Husband's Shares in Fletchers

These were a gift to the husband from his mother. There is no indication that they were intermingled with matrimonial property so as to have lost their character as separate property.

22. Husband's unsecured Loan to Sutherland

This was an investment made by the husband out of part of the proceeds of sale of his shares and remains his separate property.

23. Amount Invested in Chapman, Tripp & Co.

This is in the same category as the loan to Sutherland. Accordingly none of the amounts included in Items 14 - 23 inclusive are matrimonial property except the wife's interest in the Aglionby Street property. 20

It is necessary now to determine the basis of division of those assets which are matrimonial property (apart of course, from the matrimonial home). These assets are, in terms of s.15, to be divided unless the contribution of one spouse to the marriage partnership is clearly greater than that of the other. Those provisions must be considered in the light of the provisions of s.18(1). I now deal with those provisions separately. 30

(a) The care of any child of the marriage.

It was said for the husband that his contribution to the care of the children was, notwithstanding his successful attention to building up his business, a good deal greater than that of the average husband because he made time to spend with his family. It was also said that as the three boys went to boarding school the wife's contribution in respect of them was rather less than the usual. While making dual allowance for these matters there is no doubt, I think, that the wife's contribution must be appreciably greater than that of the husband. This must certainly have been the case in the earlier years. 40

(b) Management of the household and the performance of household duties.

It is conceded by the husband that the wife's is the major contribution in this regard.

(c) The provision of money including the earning of income for the purpose of the marriage partnership

There is no doubt that the provision of money has been almost entirely that of the husband. Apart from a little part-time work at about the time the husband's business was being established and for which she was amply rewarded, the wife has 50

not been required to take any employment. The husband has met all household expenses and has provided a very high standard of living for his family. Whatever income the wife may have received from her own separate property, or from assets provided by the husband she has been able to use for her own purposes. The husband's contribution under this head must be regarded as very much greater than the wife's.

(d) The acquisition or creation of matrimonial property.

10 The wife's contribution in this respect was primarily that of family chattels derived by her from her family in England. This was by no means a trifling contribution and consisted of high quality furniture and chattels of various kinds having a total value of about \$ 15,000. Ignoring the matrimonial home which has been considered separately, all the rest of the matrimonial property has been supplied from the earnings of the husband. The total value of his contribution in this way considerably exceeds that of the wife.

20 (e) The payment of money to maintain or increase the value of matrimonial property or any part thereof or the separate property of the other spouse or any part thereof.

There is no suggestion that either of them paid money to maintain or increase the value of the separate property of the other. So far as the maintenance and increase in value of the matrimonial property is concerned, virtually the only source of this could have been the husband's earnings. I do not understand it to be suggested that any income of the wife's from her separate property was applied towards the maintenance or increase in value of matrimonial property. The husband's contribution must predominate in this regard.

30 (f) The performance of work or services in respect of the matrimonial property or any part thereof or the separate property of the other spouse or any part thereof.

This probably has little application as a matter distinct from that discussed under (e) above and does not require further consideration.

(g) The foregoing of a higher standard of living than would otherwise have been available.

40 There was only a brief period during which this could have had any application, namely the time when the husband was establishing his business. So immediate was the success of that business that within four years of its commencement the matrimonial home was demolished and a new one built in its place. It may be that for a very short time it was necessary for the wife to accept some limitation in her standard of living, although even then she had available her separate property to which she could have resorted. This consideration is not one of any significance.

(h) The giving of assistance or support to the other spouse (whether or not of a material kind)

50 This must refer to something different from matters which come under the other express provisions of s.18(1) and it is difficult to know what it might include in the present case which has not already been considered. It may be that there was some additional assistance given by the wife in the earlier years and I think some allowance should be made for that.

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J.:
21 November 1977 :

In an assessment of the result of the various matters referred to the provisions of s.18(2) must be kept clearly in mind. That subsection provides:

"(2) There shall be no presumption that a contribution of a monetary nature (whether under subs. (1) (c) of this section or otherwise) is of greater value than a contribution of a non-monetary nature".

It needs to be observed that this provision is not to be interpreted as requiring the Court to give a non-monetary contribution a greater value than a monetary contribution. I think however, it is intended to ensure that the fullest consideration is to be given to non-monetary contributions lest they somehow be lost sight of by comparison with the expenditure of money. Giving to all the matters in s.18(1) the best consideration I can, there is no doubt at all that one finds a substantial predominance of contribution on the part of the husband. It is always difficult to assess respective contributions of this sort in percentages, and if I am to err on the one side or the other, I prefer to think that I shall have erred in favour of the wife because her contribution may be less easily assessed than the husband's. Looking at the matter in this way I conclude that the husband's interest in the matrimonial property (other than the matrimonial home) should amount to two-thirds and the wife's to one-third.

Finally, on the subject of matrimonial property, it is necessary to determine in whom the various assets should vest. This is a matter which, for the most part, has already been resolved. The matrimonial home should vest in the husband together with such of the family chattels as are in that home. The family chattels in the wife's home should vest in her. Allowances must, of course, be made in the final calculation between them. The one asset which is still very much in dispute in this regard is the holiday home at Paihia. Each party wishes to have the ownership of this property. There seems little doubt that the purchase of the property was financed by the husband or from funds which originally came from him. The decision as to who should have it is not, however, to be determined on the basis only of cash contributions. The family is now divided completely in half. Two of the sons, Matthew and Timothy, live with the husband. The other son, Philip, and the daughter, Carolyn, live with the wife. There is, unfortunately, very little communication between the two halves of the family and so far as the husband and wife are concerned, none at all. There is therefore, no clear advantage to the children as a whole in the house at Paihia, going to one parent or the other. I think the only way to resolve this matter is by reference to the overall position resulting from these proceedings. There were two residences used by the family when they were together, namely the matrimonial home and the house at Paihia. The husband has retained the matrimonial home and the wife has moved to a rather more modest residence. I think it reasonable that the wife should have the house at Paihia. It is also a consideration that the husband's financial position as a result of these proceedings, will be substantially better than that of the wife. He, therefore, is in a better position than the wife to acquire another holiday home if he should want one. I accordingly find that the house at Paihia is to vest in the wife alone. An appropriate allowance will, of course, need to be made between them.

I summarise my findings in respect of the matrimonial property claim as follows:

1. The matrimonial home is to vest in the husband alone. The wife is entitled to payment of one half of the value, namely \$ 45,517.50.
2. The holiday home at Paihia is to vest in the wife alone. The husband is entitled to payment of two-thirds of the value, namely \$ 29,333.
- 10 3. Those family chattels in the matrimonial home which I have specified as matrimonial property are to vest in the husband, but subject to payment to the wife of one-third of their value. On this, as on a number of other items, I am leaving it to Counsel to make the necessary calculations.
4. Those family chattels in the wife's home which I have specified as matrimonial property are to vest in the wife, but subject to payment to the husband of two-thirds of their value.
5. The Austin Maxi and Trailer are to vest in the wife, subject to payment to the husband of two-thirds of their value.
- 20 6-12 inclusive - All of these are matrimonial property and require division between the parties on the basis of two-thirds to the husband and one-third to the wife.
13. This requires no Order.
- 14-24 inclusive - These are all separate property of the husband except for the wife's interest in Item No. 16 (Aglionby Street property) which is matrimonial property and in respect of which the husband is entitled to a two-thirds share.

MAINTENANCE

On 17th December, 1976, when the Separation Order was made by consent, the parties also agreed upon the maintenance provision for the wife and the youngest child. The agreement was that the wife was to receive the income from certain specified assets which were estimated to yield \$ 6,880. per annum. The husband guaranteed to meet any deficiency in that sum in order to ensure a minimum annual income to her of that amount. It was also agreed that she would receive maintenance for Carolyn of \$ 20. per week from Carolyn's trust. That trust also meets Carolyn's school fees and uniforms. In addition the wife has such income as investments of her own produce. Included in these there will presumably be some balance (estimated on behalf of the husband to be about \$ 8,000.) from the payment of \$ 50,000. made by the husband.

In her first affidavit in the present proceedings the wife applied for this Court to fix maintenance. This was a somewhat informal application but it appears to be in accordance with s.32 of the Matrimonial Property Act. It was considered by both Counsel that the question of maintenance should logically be dealt with by this Court at the same time as matters of matrimonial property were dealt with. For some reason, however, it was said, on the wife's behalf, that maintenance should be fixed by the Magistrate's Court and in the course of the hearing before me Counsel for the wife informed me that the application contained in her affidavit was withdrawn. It was argued for the husband that the application could not be withdrawn in this way, although I do not understand why. The wife made a application and has now abandoned it, and I do not think it would

Supreme Court :
No. 14 : Reasons for
Judgment of Quilliam J. :
21 November 1977 :

be proper for me now to deliver a judgment on the application, particularly as Counsel for the wife has not addressed argument to me on the subject.

I am left then with the second proceedings which consisted of an action in which the husband seeks a declaration that the Magistrate's Court has no jurisdiction to entertain an application for maintenance. Broadly speaking, this was based on the submission that, having regard to the income to which the wife is now entitled because of the agreement made on 17th December, 1976, it cannot be said, in terms of the Domestic Proceedings Act, that she is in need of maintenance. I do not propose to pursue this matter any further. I do not think this is a question of jurisdiction at all. Plainly a Magistrate will always have jurisdiction to entertain an application for maintenance made by a wife against her husband. Whether, upon the facts, he should make an order in her favour and if so for what amount, will depend on the circumstances. I am not prepared to say that the wife may not make any such application. If application is made and dealt with and the husband disagrees with the result, then he has his normal remedy in appeal. Accordingly I decline to make the declaration sought. 10 20

As to costs, these require consideration in the light of the effect of the decisions I have made. I have insufficient information to enable me to calculate the final result, although I anticipate that the amount of \$ 50,000. already paid by the husband will more than cover any liability of his. I understood that if this proved to be the case he did not seek any refund of the balance. It may well be that this is a case where no order should be made for costs. In case Counsel are unable to agree upon it, I reserve leave to both parties to apply in respect of costs. 30

Solicitors

Phillips, Shayle-George & Co., Wellington for Applicant husband.

W.V.Gazley, Wellington, for Defendant wife.

BEFORE THE HONOURABLE MR JUSTICE QUILLIAM
Monday the 21st day of November, 1977

UPON READING the Notices of Motion respecting matrimonial property and the affidavits filed in support thereof and in opposition thereto **AND UPON READING** the Statement of Claim for a declaration herein and the Statement of Defence thereto **AND UPON HEARING** Mr. B.D. Inglis, Q.C. and Mr. C.P. Brosnahan of Counsel for the applicant (plaintiff) and Mr. W.V. Gazley of counsel for the respondent (defendant)

10 **THIS COURT HEREBY ORDERS:**

1. (a) That the matrimonial home at 14 Colin Grove, Lower Hutt and being all that parcel of land containing one rood thirty six and fifty eight one hundredths perches more or less situate in the Borough of Lower Hutt being part of Section 25 of the Hutt District and being also Lot 2 and Deposited Plan No. 10842 and being all the land comprised and described in Certificate of Title Volume 453 Folio 74 (Wellington Registry) be and the same is **HEREBY VESTED** in the applicant.
- 20 (b) That the applicant forthwith pay to the respondent one-half of the value of the matrimonial home, namely the sum of \$ 45,517.50.
2. (a) That the holiday home at Davis Crescent, Paihia being all that parcel of land containing one rood and eighteen perches more or less situate in Block IV of the Kawakawa Survey District being Lot thirty-six (36) on a plan deposited in the Land Registry Office at Auckland as No. 15984 (Town of Paihia Extension No. 2) and being part of the block originally granted to Robert Burrows and others by Crown Grant dated 23rd December 1851 and being all the land comprised and described in Certificate of Title Volume 739 Folio 88 (Auckland Registry) Subject to the provisions of Section 16.17 of the Land Act 1924 and agreement as to fencing in Transfer 329597 be and the same is **HEREBY VESTED** in the respondent alone.
- 30 (b) That the respondent forthwith pay to the applicant two-thirds of the value of the said property namely the sum of \$ 29,333.
3. (a) That the family chattels in the matrimonial home be and the same are **HEREBY VESTED** in the applicant.
- 40 (b) That the applicant forthwith pay to the respondent one half of the value thereof, namely \$1638.
4. (a) That the family chattels in the home of the respondent at Unit 6, 26 Witako Street, Lower Hutt, be and the same are **HEREBY VESTED** in the respondent.
- (b) That the respondent forthwith pay to the applicant one half of the value of the said chattels, namely the sum of \$7450.
5. (a) That the Autin Maxi Motorcar and its trailer be and the same are hereby declared to be family chattels and be and the same are **HEREBY VESTED** in the respondent.
- 50 (b) That the respondent forthwith pay to the applicant one half of the value of the said property, namely the sum of \$ 1250.
6. (a) That the Bank of New Zealand current account of the respondent be and the same is **HEREBY VESTED** solely in her.

Supreme Court :
 No. 15 : Order
 of Court :
 21 November 1977:

- 6. (b) That the respondent forthwith pay to the applicant one third of the credit therein at the 17th day of December, 1976.
- 7. (a) That the Bank of New Zealand Nationwide Account of the respondent be and same is **HEREBY VESTED** solely in the respondent.
 (b) That the respondent forthwith pay to the applicant one third of the credit therein at the 17th day of December, 1976.

That the credit in the accounts in 6 and 7 above be and the same is together the sum of \$2733 and the respondent do therefore pay to the applicant in satisfaction of Orders 6 and 7 above the sum of \$1822. 10

- 8. (a) That the shares and stock of the applicant, namely 625 NZTS shares, 1000 AB Con Shares, 2300 WNHB securities and 1400 Marl.H.B. securities be and the same are the sole and absolute property of the applicant.
 (b) That the applicant forthwith pay to the respondent one third of the value of the said shares and stock, namely the sum of \$1516.
- 9. (a) That the two AMP policies on the life of the applicant, namely 4011084 and 262651 be and the same are hereby vested solely in the applicant. 20
 (b) That the applicant forthwith pay to the respondent one third of the surrender value thereof, namely the sum of \$2440.
- 10. (a) That the AMP policy unknown on the life of the respondent be and the same is hereby vested in the respondent.
 (b) That the respondent forthwith pay to the applicant two thirds of the surrender value of the said policy as at the 22nd day of September, 1977. 30
- 11. (a) That the Northern Building Society shares in the name of the respondent be and the same are vested solely in the respondent.
 (b) That the respondent do forthwith pay to the applicant two thirds of the value of the said shares, namely the sum of \$2480.
- 12. (a) That money invested in the name of the respondent in New Zealand be and the same is hereby vested solely in the respondent.
 (b) That the respondent do forthwith pay to the applicant the sum of \$4000 being two thirds of the value thereof (namely \$6000). 40
- 13. That no order of this Honourable Court be made in respect of the draws paid to the respondent from the Northern Building Society.
- 14. That the chattels at No. 14 Colin Grove aforesaid other than those as family chattels abovementioned are and remain the separate property of the applicant.
- 15. That the Land Cruiser, Toyota Car and Boat are and remain the separate property of the applicant. 50
- 16. (a) That the interest of the respondent in the Aglionby Street property is the sum of \$9086 and the same is matrimonial property.

- (b) That the respondent forthwith pay to the applicant two thirds of the value of that interest, namely the sum of \$6057.
 - (c) That the interest of the applicant in the Aglionby Street property is and remains the separate property of the applicant.
17. That the current bank accounts of the applicant at the Bank of New Zealand at the 17th day of December 1976 is and remains the separate property of the applicant.
- 10 18. That the Bank of New Zealand Nationwide Account of the applicant at the 17th day of December 1976 is and remains the separate property of the applicant.
19. That the Bank of New Zealand Term Deposit of the applicant at the 17th day of December 1976 is and remains the separate property of the applicant.
20. That the DRG (N.Z.) Limited shares in the name of the applicant are and remain the separate property of the applicant.
- 20 21. That the Fletchers shares in the name of the applicant are and remain the property of the applicant.
22. That the unsecured loan from the applicant to Sutherland is and remains the separate property of the applicant.
23. That the monies invested by the applicant with Chapman Tripp & Co. are and remain the separate property of the applicant.
24. That the assets of the respondent being bank accounts and an interest in real property, all in the United Kingdom, are and remain the separate property of the respondent.
25. That no judgment be delivered in respect of the application by the respondent for maintenance.
- 30 26. That the claim by the plaintiff (applicant) in action 142/77 for a declaration be and the same is hereby declined.
27. That the question of costs be and the same is hereby reserved.

BY THE COURT

L.S. 'D.J.Mangos'
DEPUTY REGISTRAR

Supreme Court :
No. 16 : Memorandum
for Quilliam J. :
by Counsel for :
Susan Rosemary Reid:
8 December 1977 :

1. Draft order was submitted to the applicant's solicitors on 1st December, 1977 with request that any objections be notified within three days.

2. Mr. Brosnahan requested the three days be extended to include Monday last, 5th December, 1977. That was agreed.

3. There being no objection by Tuesday, 6th December, 1977, my draft order was assumed acceptable; it was engrossed and so far as the appellant is concerned, sealed. It is the formal judgment against which appeal has been taken.

4. That order from me and already in Court is in accordance with your Honour's reasons for judgment and it must stand. The basis of appeal is that your Honour's judgment is wrong and right of appeal is not to be denied in any respect by post-judgment concessions to the Supreme Court by counsel for the opposite party that that is so. If those concessions are to be made they can be on the appeal. 10

5. If there is to be attack on your Honour's reasons for judgment it must be done in its formal way. Attrition by memoranda and attendance before the Judge is vexatious and dangerous. 20

6. The circumstances in which reasons for judgment may be recalled are circumscribed and no authority is proffered to render the applicant (plaintiff's) present application genable. Reference is made to Horowhenua County v. Nash (No. 2)[1968] N.Z.L.R. 632 and the words of Wild C.J., at p.633:

"Generally speaking, a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise, there would be great inconvenience and uncertainty. There are, I think three categories of cases in which a judgment not perfected may be recalled - first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled. 30

I do not think the present case falls within any of those classes. Mr. Barton's written submission amounts rather to an extension or elaboration of an argument already put at the hearing and I think it more in accord with good order that the judgment given on the argument presented should stand. If it is wrong it will readily and speedily be corrected on appeal". 40

7. Specifically with denial that the Court has jurisdiction to review its reasons for judgment:

(a) Family Chattels: Post judgment concession by one party does not entitle the Court to alter its adjudication. My order at numbers 3 and 4 correctly records your Honour's decision.

(b) Monies (sic) invested... in New Zealand

The Court determined the matter on the evidence it had at the hearing. Paragraph 12 of my order correctly records your Honour's reasons. 50

(c) Appellant's A.M.P.Policy: It is rather late now to concede

Supreme Court :
No. 16 : Memorandum
for Quilliam J. :
by Counsel for :
Susan Rosemary Reid:
8 December 1977 :

essentially the non-existence of a policy given to your Honour by the (now) respondent to adjudicate on as an existing policy, and on which your Honour did adjudicate. My order correctly records what your Honour determined. That, in paragraph 10 (a) (b) of my judgment.

10 (d) Northern Building Society Shares: The appellant requires no concession on value. She says the correct value requires payment (on your Honour's judgment) of \$2480 to the respondent. That is what your Honour ordered; and whilst your Honour's judgment stands it is to that that she is bound and not to any (now) "concession" from the respondent.

(e) The \$50,000 advance: There was no adjudication by Your Honour - and indeed none necessary - on the \$50,000. It is not competent for an adjudication on it to be made post-delivery of reasons for judgment. If there were any doubt on your Honour's mention of the \$50,000, the Court of Appeal could ensure there was, at the behest of the respondent, apt direction - if the same were at all necessary.

20 8. My order records your Honour's reasons for judgment; the applicant has not offered any suggestion it fails to record correctly Your Honour's reasons for judgment. I should not, and do not, accept any suggestion of attendance before Your Honour. Contemporaneously with its filing, copy of this memorandum is served on the solicitors for the applicant (plaintiff, respondent).

SIGNED: W.V.GAZLEY

COUNSEL FOR RESPONDENT (DEFENDANT, APPELLANT)

Court of Appeal :
No. 17: Notice of
Motion on Appeal :
19 December 1977 :

TAKE NOTICE that this Honourable Court will be moved by counsel on behalf of the abovenamed appellant on Wednesday the 1st day of February 1978 at 10 O'clock in the forenoon or so soon thereafter as counsel can be heard **ON APPEAL** from the following orders of the Supreme Court of New Zealand at Wellington made on the 21st day of November 1977 by the Honourable Mr. Justice Quilliam in action M 39/77 in which the appellant (wife) was respondent and the respondent (husband) was applicant.

Order 1, the vesting in the respondent, only should the vesting in the appellant in Order 2 be disturbed; valuation at \$91,035. 10

Order 2(b), the payment of two thirds of value, \$29,333, to the respondent.

Orders 3 and 4, relating to family chattels.

Order 5(b), relating to the appellant's Austin car and trailer.

Orders 6(b) and 7(b), relating to the appellant's banking accounts.

Order 8(b), payment to the appellant of but one third the value thereof.

Order 10, the existence of any A.M.P. policy, the property of the wife; and the payment to the respondent of two thirds of the value thereof. 20

Order 11(b), the payment to the respondent of two thirds of the value of the appellant's Building Society Shares.

Order 12, relating to the appellant's money invested in New Zealand - any finding it is matrimonial property; and payment of two thirds thereof to the respondent.

Orders 14 - 23, that the same are separate property of the respondent; and that the appellant's share in the Aglionby Street property in Order 16 is matrimonial property and the respondent is entitled to two thirds thereof. 30

Order 25, the refusal of a maintenance order in favour of the appellant.

Order 27, costs.

UPON THE GROUNDS that the said orders are erroneous in fact and in law.

DATED at Wellington this 19th day of December 1977.

"W.V. Gazley" 40
Solicitor for Appellant

TAKE NOTICE that this Honourable Court will be moved by counsel on behalf of the abovenamed Respondent on Monday the 3rd day of April 1978 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard by way of cross-appeal.

(a) from the judgment of the Supreme Court of New Zealand at Wellington given on 21 November 1977 by the Honourable Mr. Justice Quilliam in application M.39/77 in which the Appellant (wife) was respondent and the Respondent (husband) was applicant.

10 Order 1: that the Respondent pay to the Appellant one-half of the value of the matrimonial home, namely the sum of \$45,517.50, **UPON THE GROUNDS** that such order was erroneous in fact and in law, there being (within the terms of s.14 of the Matrimonial Property Act 1976) extraordinary circumstances that rendered repugnant to justice equal sharing between the parties of the said matrimonial home;

20 Order 2: relating to the vesting in the Appellant alone of the parties' holiday home at Davis Crescent, Paihia, **UPON THE GROUND** that such order was erroneous in fact and in law in that

(i) the purpose for which the said property was acquired was to provide the Appellant, the Respondent and their four children with a holiday home, which purpose will be defeated if the said property is vested solely in the appellant;

30 (ii) the evidence established that the Appellant is financially incapable of maintaining the said property as a holiday home for the whole family or for herself and any child or children in her custody and would accordingly, if the said property were vested in her, be obliged to rent it or sell it;

40 the Respondent undertaking that while the said property, contrary to the said order, remains vested in him and the appellant jointly, he will pay all outgoings in connection with the said property and maintain it in proper condition and allow the Appellant and any child or children of the Appellant and the Respondent to use the said property as a holiday home at such time or times and for such periods as he and the Appellant may agree upon but so that the use of the said holiday home is divided as nearly as possible to equally between the Appellant and the Respondent.

Order 13: that no order be made in respect of draws paid to the Appellant from the Northern Building Society **UPON THE GROUND** that the refusal to make an order was erroneous in fact and in law;

50 Order 25: that no judgement be delivered in respect of the application by the Appellant for maintenance, in that the refusal to deliver such judgement was erroneous in fact and law **UPON THE GROUND** that although the Appellant herself formally applied for a maintenance order but withdrew that application during the hearing in the Supreme Court, the Respondent himself during the said hearing applied for an order pursuant to s.32(1) of the Matrimonial Property Act 1976. which application the Supreme Court inadvertently failed to consider or entertain;

Court of Appeal :
No. 18: Notice of
Motion on Cross Appeal:
13 February 1978 :

(b) From the failure or refusal of the Supreme Court in its said judgement to make any order in relation to an advance of the sum of \$ 50,000 made by the Respondent to the Appellant on 17 December, 1976. **UPON THE GROUND** that such failure or refusal was erroneous in fact and in law;

(c) Orders 2,5,6,7,10,11, and 12 but only if orders 14-23 (declaring certain assets to be the Respondent's separate property) that if it is determined that the Appellant has any interest in the assets referred to in orders 14-23, the award of the one-third share to the Appellant by the first-mentioned orders is manifestly excessive and erroneous in fact and law.

10

DATED at Wellington this 13th day of March, 1978

'M.R.Camp'
Solicitor for the Respondent

Court of Appeal :
No. 18a : Formal Judgment:
22 August 1979 :

BEFORE: THE RIGHT HONOURABLE MR. JUSTICE WOODHOUSE (PRESIDING)
THE RIGHT HONOURABLE MR. JUSTICE COOKE
THE RIGHT HONOURABLE MR. JUSTICE RICHARDSON

20

WEDNESDAY THE 22ND DAY OF AUGUST 1979

THIS APPEAL coming on for hearing on the 11th and 12th days of June 1979

UPON READING the case on appeal herein

AND UPON HEARING Mr W.V. Gazley of Counsel for the appellant and Mr B.D. Inglis, Q.C., and Mr C.P. Brosnahan for the respondent

THIS COURT HEREBY ORDERS that the appeal be allowed and the cross appeal be dismissed AND FURTHER ORDERS:

1. THAT current values be fixed for all matrimonial property unless the parties can otherwise agree. In the case of the matrimonial home suitable allowance is to be made for the burden upon the title given in favour of the mother of the respondent. For the purpose the case is remitted to the Supreme Court. 30
2. THAT the matrimonial home and family chattels are to be divided equally.
3. THAT all other matrimonial property in the hands of either party and as defined in the judgment of this Court is to be shared in the proportions 60% to the respondent and 40% to the applicant. 40
4. THAT the vesting orders made in the Supreme Court are to stand.

AND THAT the respondent do pay to the appellant Costs in the sum of \$500 and **DISBURSEMENTS** of \$1,743.90 as follows:

Filing Motion on Appeal	\$20.00
Printing Case on Appeal	\$1,653.90
Setting Down	50.00
Sealing Order	20.00

	\$1,743.90

BY THE COURT
"D. Jenkins"
REGISTRAR

50

Supreme Court :
No.19 : Notice of
Motion for order to
fix current values of
matrimonial property:
11 September 1979 :

TAKE NOTICE that on Wednesday the 19th day of September, 1979 or as soon thereafter as the (Applicant*) can be heard the above named (Applicant*) will move this Honourable Court at Wellington for an Order valuing the Matrimonial Property in terms of the Court of Appeal Judgments under CA 151/77 dated the 22nd day of August, 1979, namely the valuation of :-

- 1. The Matrimonial Home at 14 Colin Grove, Lower Hutt.
- 2. Holiday Home, Paihia.
- 3. Family Chattels at Colin Grove.
- 10 4. Family Chattels at Witako Street.
- 5. Austin Maxi and Trailer.
- 6. Wife's BNZ Current Account as at 17th December, 1976
- 7. Wife's BNZ Nationwide Account as at 17th December, 1976
- 8. Husband's shares in NZTS and AB Consolidated and Wellington Harbour Board Stock and Marlborough Harbour Board Stock.
- 9. Husband's two AMP Policies.
- 10. Wife's AMP Policy.
- 11. Wife's Northern Building Society Shares.
- 12. Wife's money invested in New Zealand.
- 20 13. Wife's proceeds of Northern Building Society draws.
- 14. Wife's property, Witako Street, Lower Hutt.

AND for such further or other Order as in the circumstances appears just.

UPON THE GROUNDS that the Judgments of the Court of Appeal have remitted the valuation of Matrimonial Property back to this Honourable Court for determination.

DATED at Wellington this 11th day of September, 1979.

Anthony F. Reid
(Applicant*)

30 * incorrectly shown as Respondent in original

Supreme Court :
No. 20 : Notice of
motion for order to
fix current values of
matrimonial property:
14 September 1979 :

TAKE NOTICE that on Monday, the 8th day of October, 1979 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard, counsel for the above-named respondent **WILL MOVE** this Honourable Court at Wellington **FOR AN ORDER** (pursuant to order of Court of Appeal on C.A. 151/77) that current values be fixed for all matrimonial property herein.

40 AND DIRECTING that the costs of the respondent of and incidental to this application be fixed and be costs of the respondent in any event.

AND for such further or other order as in the circumstances may appear just.

UPON THE GROUNDS:

- 1. That the applicant will not otherwise agree to values to such property.
- 2. Appearing in the affidavit of Susan Rosemary Reid sworn and filed herein.

DATED at Wellington this 14th day of September, 1979.

W.V.GAZLEY

50 Solicitor for Respondent

TO: The Registrar of the Supreme
Court at Wellington and
TO: The above-named Applicant.

Supreme Court :
 No. 21 : Affidavit of
 Susan Rosemary Reid
 in support of motion
 for valuations :
 13 September 1979 :

I, SUSAN ROSEMARY REID of Lower Hutt, Staff Physiotherapist, make oath and say as follows:

1. THAT I am the appellant before Court of Appeal on appeal No. C.A. 151/77 from the judgment of His Honour, Mr. Justice Quilliam herein.

2. THAT I refer to the order of the Court of Appeal herein.

3. THAT pursuant to the statement of the Court of Appeal I am minded to agree, in the interests of terminating this matter, and avoiding further expense, to acceptance of existing valuations if the applicant on his part were minded to proffer settlement on that basis. 10

4. THAT settlement on that basis would require the applicant paying to me \$ 147,964.84 calculated as follows:

		to me -----	to applicant -----
Matrimonial home and family chattels, valued at \$111,711. (Group 1, Judgment of Woodhouse J. at p2)	1/2	\$55,855.50	1/2 \$55,855.50
Held to be matrimonial property, valued at \$76,809 (Group 3, judgement of Woodhouse J. at pp2-3)	2/5	\$30,723.60	3/5 \$46,085.40
Assets representing sale of applicant's shares, valued at \$485,811.84 (Group 2, judgment of Woodhouse J. at p2.)	2/5	\$194,324.74	3/5 \$291,487.10
		-----	-----
		\$280,903.84	\$393,428.00
		-----	-----

That of the sum of \$280,903.84 due to me, I have, on existing valuations, already received: 30

Chattels	\$14,900
Austin	\$ 2,500
Paihia	\$44,000
Bank of New Zealand	\$ 2,733
Building Society	\$ 3,720
Invested in New Zealand	\$ 6,000
Aglionby Street	\$ 9,086
Paid at Magistrate's Court Lower Hutt	\$50,000

	\$132,939

Balance due to me \$147,964.84

I invite the applicant to proffer \$147,964.84, and give us the opportunity of bringing property matters to finality. 40

5. THAT on the basis the applicant refuses to settle this litigation I depose that "all matrimonial property" in issue between the applicant and me was that the subject of the judgment of His Honour Mr. Justice Quilliam; and that same property and only that same property, carried into the Court of Appeal for its adjudication. That such property, now to be currently valued pursuant to the order of the Court of Appeal, is as follows:

Supreme Court :
 No. 21 : Affidavit of
 Susan Rosemary Reid
 in support of motion
 for valuations :
 13 September 1979 :

Group 1, Woodhouse J.: Value before Quilliam J.

1. Matrimonial home (Colin Grove)	\$ 91,035.
2. Family chattels (Colin Grove)	\$ 3,276.
3. Family chattels (Witako Street)	\$ 14,900
4. Family chattels - Austin Maxi and Trailer	\$ 2,500

	\$111,711

Group 3, Woodhouse J.:

5. Holiday home (Paihia)	\$ 44,000
6. My B.N.Z. Accounts	\$ 2,733
7. My Building Society Shares	\$ 3,720
8. My money invested in New Zealand	\$ 6,000
9. My share in Aglionby Street	\$ 9,086
10. Applicant's shares and stock	\$ 4,550
11. Applicant's A.M.P. policies	\$ 6,720

	\$ 76,809

Group 2, Woodhouse J. Value before Quilliam J.

12. Other chattels at Colin Grove	\$ 9,765
13. Landcruiser, Toyota car, and boat	\$ 18,200
14. Property at Aglionby Street	\$ 32,720.26
15. Applicant's B.N.Z. Account	\$ 2,855.34
16. Applicant's B.N.Z. Nationwide Account	\$ 2,557.24
17. Applicant's B.N.Z. term deposit	\$200,000
18. Applicant's DRG Shares	\$ 3,714
19. Applicant's Sutherland loan	\$ 16,000
20. Applicant's investment with Chapman Tripp & Co.	\$200,000

	\$485,811.84

6. THAT I am agreeable to valuations as follows of the assets in Groups 1, 2 and 3 hereof:

- 30 (A) That Rolle Pyne & Co.
value assets numbered 1 and 14
- (B) That J.D. Robinson & Associates (p245 of Case of Appeal)
value asset numbered 5.
- (C) That Wellington Valuations Limited (p249 of case on appeal)
- (D) That Max Wall Limited, Motor Consultants, 1 Kent Terrace,
Wellington, value assets 4 and 13.
- (E) That I give this Honourable Court copy of my Bank of New
Zealand Accounts (asset 6) from 17th December, 1976 to the date
of the order of this Honourable Court; and explanation of
40 deposits and withdrawals therefrom.
- (F) That I obtain from Building Society letter of value of my
shares (asset 7).
- (G) That with my money invested in New Zealand that asset
remains the same; and I provide this Court with the interest
earned thereon (asset 8).

Supreme Court :
No. 21 : Affidavit of
Susan Rosemary Reid
in support of motion
for valuations :
13 September 1979 :

(H) That my share in Aglionby Street (asset 9) was sold to the applicant. If it would expedite a settlement I am ready to consider accepting interest at 12% thereon from date of purchase to bring it to current value.

(I) That I ask that the current value of the applicant's holdings of shares and stocks (asset 10) and asset 18, his D.R.G. shares, be determined by valuation of Finch Webster and Nathan, Sharebrokers, Wellington.

(J) That the applicant obtain from the A.M.P. a letter of the current surrender value of his life policies (asset 11). 10

(K) That the current valuation of "other chattels at Colin Grove" (pp317 and 207 et seq of case on appeal) be determined by the applicant (in the case of new chattels) providing the price thereof; and those prices be available to a representative of Cory Wright & Salmon Limited, or such other machinery valuer as is appointed by the Registrar of this Court, who shall be given access to all such chattels by the applicant to enable valuation thereof.

(L) That (assets 15 and 16) the applicant's banking accounts be valued by the applicant providing copies of the stated bank statements from 17th December, 1976, to the date of the order of this Honourable Court and the applicant give explanation of deposits and with drawals appearing therein. 20

(M) That (Asset 17) the applicant's term deposit be valued by the applicant obtaining from the Bank of New Zealand its record of such term deposit and interest thereon from the date of inception of the deposit.

(N) That (asset 19) the Sutherland loan be valued by the applicant providing to the Registrar of this Court and to the Security for the loan, the terms thereof and interest thereon from the time the loan was made. 30

(O) That (asset 20) the Chapman Tripp investment be valued by the said Chapman Tripp certifying to this Honourable Court and to me the capital of \$200,000. and the interest thereon from the inception of the loan or loans to the date of the order of this Honourable Court.

That if the applicant wishes some other means of valuation of assets, I am ready, through my solicitor, to consider and approve proper alternative methods of valuation.

7. THAT the applicant, by letter from him of 5th September, 1979, to my solicitor states that: 40

"There appears to be no basis upon which settlement is possible in regard to Matrimonial Property and in the light of the Court of Appeal judgment",

SWORN at Wellington this)
13th day of September, 1979) S. R. Reid
Before me:)
G.J.Black

A Solicitor of the Supreme Court of New Zealand

Supreme Court :
 No. 22 : Order fixing
 method of assessing
 current valuations of
 Matrimonial Property:
 2 November 1979 :

UPON READING the respondent's motion dated 14th September, 1979 filed herein for an order (pursuant to order of the Court of Appeal on C.A.151/77) that current values be fixed for all matrimonial property and the affidavit of the respondent in support thereof

AND UPON HEARING Mr. W.V.Gazley of counsel for the respondent in support thereof and the applicant appearing in person

THIS COURT HEREBY ORDERS:

- 10 1. THAT the current value of the matrimonial home be and is its market value at 22nd August 1979 as determined by Rolle Pyne & Co., Wellington.
2. THAT the current value of the holiday home (Paihia) be and is its market value at 22nd August, 1979 as determined by J.D.Robison & Associates, Whangarei.
3. THAT the current value of family chattels at 14 Colin Grove and at 26 Witako Street, Lower Hutt at 22nd August, 1979 be, and be determined by, the valuation of Wellington Valuations Limited.
- 4, (a) THAT the respondent's car and trailer be and the same is accepted by the parties as having the current value of \$ 1,895.
- 20 (b) THAT the current value of the Landcruiser, Toyota car and Boat at 22nd August, 1979 be and be determined by the valuation of Max Wall Limited, Motor Consultants, 1 Kent Terrace, Wellington.
5. THAT the respondent's BNZ Accounts be determined by her providing to this Honourable Court copies of her bank statements from 17th December, 1976 to 22nd August, 1979, and with her giving explanation of deposits thereto and withdrawals therefrom.
6. THAT current value of the respondent's Northern Building Society Shares be and is the value thereof at 22nd August, 1979
30 as certified in a letter to be obtained by the respondent from the said Society.
7. THAT the current value of the respondent's money invested in New Zealand and including therein \$ 9086, her share in Aglionby Street, be and is \$15,086. and the interest thereon to be determined by the respondent's providing the interest earned on any of such monies from 17th December, 1976 to 22nd August, 1979.
8. THAT the current value of the applicant's shares and stock (cryptically listed, page 305 of case on appeal, as 625 NZTS, 1000 AB Con, 2300 W.N.H.B. and 1400 Marl. H.B.) and of the
40 applicant's DRG shares be, and be determined by the valuation at 22nd August, 1979 of the same made by Finch Webster and Nathan, Sharebrokers, Wellington.
9. THAT the current value of the applicant's A.M.P. policies be the surrender values of the same at 22nd August, 1979, to be determined by the applicant's obtaining from the A.M.P. Society a letter of such surrender values at the said date.
- 50 10. THAT the current value of other chattels at Colin Grove be, and be determined at 22nd August, 1979 by the valuation of a representative of Cory Wright & Salmon Limited or (in its default) of such other machinery valuer as is appointed by the Registrar of this Honourable Court; and, whoever the valuer, he (in the case of new chattels) be supplied by the applicant with the purchase price of such new chattels, and (in the case of all

Supreme Court :
No. 22 : Order fixing
method of assessing
current valuations of
Matrimonial Property:
2 November 1979 :

such other chattels) be given by the applicant access to those other chattels.

11. THAT the market value as at 22nd August, 1979. of the property at Aglionby Street be and be determined by the valuation of Rolle Pyne & Co., unless the respondent's counsel (W.V.Gazley) accepts the valuation proffered to him by the applicant; and that leave be and the same is hereby reserved to either party to apply further determining interests in that property following valuation as aforesaid.

12. THAT the current value of the applicant's B.N.Z. Account and the applicant's Nationwide Account be determined by the applicant providing to this Honourable Court copies of his bank statements from 17th December, 1976 to 22nd August, 1979, and with his giving explanation of deposits and withdrawals therefrom. 10

13. THAT the current value of the applicant's BNZ term deposit be and is the sum of \$200,000. and the interest thereon from the date of inception of such deposit to 22nd August, 1979, and for the purposes of determining such interest the applicant obtain from the Bank of New Zealand its record of such term deposit and the interest paid or payable thereon for the period aforesaid. 20

14. THAT the current value of the applicant's Sutherland loan be and is the sum of \$16,000. and the interest thereon from the time the loan was made to 22nd August, 1979; and the applicant provide to the Registrar of this Honourable Court the security for the said loan, the terms of the loan, and the interest on the said loan from the time the loan was made to 22nd August, 1979.

15. THAT the current value of the applicant's investment with Chapman Tripp & Co. be and is the sum of \$200,000. and the interest thereon from the inception of such investment to 22nd August, 1979, and, for the purposes of determining such value, Chapman, Trip & Co. certify to this Honourable Court and to the respondent's counsel the existence of the capital sum of \$200,000. and the interest paid or payable thereon from the inception of any loan or loans constituting such investment to 22nd August, 1979. 30

(Court Seal)

BY THE COURT
(signed)
DEPUTY REGISTRAR

I, **SUSAN ROSEMARY REID** of Lower Hutt, Physiotherapist, make oath and say as follows"

1. THAT I am the abovenamed respondent.

2. THAT pursuant to the order of His Honour, Mr. Justice Quilliam, I report on valuations directed by that order.

Matrimonial Home
\$114,000
10

3. **Order 1: Matrimonial Home (14 Colin Grove).** Attached hereto and marked "A" is Rolle Pyne & Co. valuation. The valuation for the purposes of these proceedings is \$ 114,000. Earlier valuation was \$ 91,035.

Paihia
\$51,700

4. **Order 2: Holiday Home (Paihia).** Attached hereto and marked "B" is valuation of J.D.Robison & Associates at \$ 51,700. The previous valuation was \$ 44,000.

Family Chattels

5. **Order 3: Family Chattels**

14 Colin Gr.
\$ 3,055
20

(a) **14 Colin Grove, Lower Hutt.** I attach hereto as Exhibit "C" Wellington Valuations Ltd's valuation of **family chattels** at 14 Colin Grove. That valuation is \$ 3,055. as against former valuation of \$ 3,276.

26 Witako St
\$14,541

(b) **26 Witako Street.** Attached hereto as Exhibit "D" is Wellington Valuations Ltd's valuation of **family chattels** at my home, 26 Witako Street, Lower Hutt. That valuation is \$14,541. Previously, valuation was \$ 14,900.

6. **Order 4:**

Car & trailer
\$ 1,895
30

(a) My car and trailer is accepted at \$ 1,895. They were formerly \$ 2,500.

Landcruiser & Toyota
\$ 8,525

(b) That the Landcruiser and Toyota car have been valued by Max Wall Limited. Attached hereto and marked "E" is the valuation of that Company. The valuation is \$ 8,525. (as against \$ 9,700. as formerly). The **boat**, Max Wall Limited did not feel competent to value. That, my solicitor accordingly requested of the applicant, his agreement to a Maurice Crisp valuing the same. The Applicant's reply was that he "will extend every courtesy to who ever you wish to make your valuations". Mr. Crisp has accordingly been available I will exhibit it to this Honourable Court.

40

My BNZ accs.

7. **Order 5: My B.N.Z. Accounts.**

\$ 231.22

(a) Attached hereto and marked "F" are 45 pages of Bank Statements as required by the order of this Honourable Court. That at 22nd August, 1979, my **current account** was in credit in the sum of \$231.22.

50

(b) Attached hereto and marked "G" is the pass book to my **savings account**, and the credit in that account at 22nd August, 1979 was \$ 2,023.69. That \$ 2,000. of this figure was a transfer of my

Supreme Court :
 No.23 : Affidavit of
 Susan Rosemary Reid
 re valuations :
 5 December 1979 :

separate English property to this account so that I may apply part to a motor car to replace the vehicle in order 6 (a) above. That I duly used \$ 1,500. from my savings account for that purpose. That I respectfully suggest that the balance in my account that was matrimonial property was (at 22nd August, 1979) \$ 23.69.

\$ 23.69

BNZ Shares **8. Order 6: My Northern Building Society Shares.** Attached hereto and marked "H" is a letter from the Society as required by the order of this Honourable Court. The valuation of my shares is accordingly \$ 4,720. (as against \$ 3,720. former figure). 10

\$4,720

My money invested in New Zealand and my share in Aglionby Street **9. Order 7:** This order incorporates under one heading the assets dealt with by this honourable Court as **wife's money invested in New Zealand (\$6,000.) and wife's share in Aglionby Street (\$9,086.)**. That the \$ 6,000. was invested at 17th December, 1976, and interest thereon from 17th December, 1976, to 22nd August, 1979 at 12% has been (from Agar Keesing McLeod & Co.) \$ 1,910.70. The \$ 9,086. was received by my solicitor on 24th May, 1977 and was invested with other monies. That I have accordingly calculated interest on \$ 9,086. from the time of its investment, 1st June, 1977 to 22nd August, 1979 at the rate of 12%, the rate of interest earned on the whole sum invested, and that interest (on \$ 9,086.) is (from W.V.Gazley, G.J.Black) \$ 2,381.72. That valuation therefore under Order 7 is, I depose: 20

(a) \$ 6,000. plus interest, \$ 7,910.70
 (b) \$9,086. plus interest, \$2,381.71 \$11,467.72

 \$19,378.42 30

Applicant's shares and stock and DRG shares **10. Order 8:** That attached hereto and marked "I" is the valuation from Finch Webster & Nathan of the **applicant's shares and stock and his DRG shares.** They total \$ 8,622. (as against \$ 8,264. formerly). \$ 8,622

That I depose that absent are:

(a) The proceeds of sale of 1000 AB Consolidated Shares \$ 500.
 (b) The proceeds of sale of Marlborough Harbour Board stock (reference is made to the letter from the applicant attached to Finch Webster valuation) \$1,400. 40

\$ 1,900

11. Order 9: The applicant's **A.M.P.Policies.** That the only information from the applicant of which I am aware pursuant to this order is the sentence in a letter dated 21st November, 1979 from him to my solicitor. That sentence reads:
 "The A.M.P. Policies do not exist"

12. Order 10: Other chattels at Colin Grove 50
 That Cory Wright & Salmon Ltd., by letter of 13th November, 1979, preferred the valuation be done by W.Macaulay, that Company stating that Mr. Macaulay "would be able to give a more accurate assessment of the goods under consideration than ourselves..."

10 That on request to the respondent that Mr. Macaulay effect the valuation, his answer (in letter of 21st November, 1979) was that "I will extend every Courtesy to who ever you wish to make your valuations". In consequence, Mr. Macaulay was requested to make the valuation and my solicitor duly instructed Mr. Macaulay to make his valuation. I am informed and verily believe that he has arranged with the applicant to make his valuation to-morrow, 6th December, 1979. That I will exhibit such valuation to this Honourable Court when it is received.

Applicant's
share in
Aglionby
Street

13. Order 11: Aglionby Street. Attached hereto and marked "J" is the valuation of Rolle, Pyne & Co. of that property. It totals \$ 261,000. (as against \$ 246,850 formerly). That, based on the applicant's figures in paragraph 25 of his affidavit of 18th March, 1977, herein, I depose that the valuation of the applicant's interest be -

20
$$\begin{array}{r} 32,720.26 \\ \hline 145,015.86 \end{array} \quad \times \quad \$ 261,000.$$

$$= \quad \$ 58,881.60.$$

14. Order 12: Applicant's

- (a) B.N.Z. Account
- (b) B.N.Z. Nationwide Account.

The respondent has not, to the time of my swearing this affidavit, taken any step known to me to comply with this order.

30 **15. Order 13: Applicant's B.N.Z. Term Deposit.** That the applicant, by his letter of 21st November, 1979, says no more relative to order 13 than:

"The original BNZ Term Loan does not exist".

16. Order 14: The applicant's Sutherland Loan. Also, in this regard, and in his same letter as in 15 above, the applicant says no more relative to order 14 than:

"The Sutherland loan does not exist".

40 **17. Order 15: The applicant's investment with Chapman Tripp & Co.** In the same letter as paragraph 15 above, the applicant states only:

"\$200,000 does not exist at Chapman Tripp for valuing as such".

That my solicitor sent letter dated 7th November, 1979 to Chapman, Tripp & Co., copy of which is attached hereto and marked "K". That I am informed and verily believe that that firm of solicitors will certify, as requested, to this Honourable Court.

50 **18. THAT** having regard to the applicant's apparent failure to comply with orders where the obligation of compliance is on him, and having regard to the

Supreme Court :
No.23 : Affidavit of
Susan Rosemary Reid
re valuations :
5 December 1979 :

answers he gives in respect of specific assets, I am advised that the proceedings now before this Honourable Court may be assisted by interrogatories to the applicant. I ask accordingly that such interrogatories may be administered to the applicant.

19. THAT I am informed by my solicitor and verily believe that there was received at his office on 29th November, 1979, at 1505 hours, copy of the applicant's Notice of Motion on Appeal against the orders of His Honour, Mr. Justice Quilliam, herein. 10

20. THAT in complying with the said order of 2nd November, 1979 herein, I have incurred valuation fees as follows:

- (a) Rolle Pyne & Co. (Aglionby Street and Colin Grove) - photocopy of account attached hereto as Exhibit "L" \$ 433.25
- (b) W.J.D.Robison & Associates (Paihia property) and photocopy of account is attached hereto ad marked "M" \$ 116.00 20
- (c) Wellington Valuations Ltd. (photocopy of account attached hereto as Exhibit "N") \$ 175.96
- (d) Finch Webster & Nathan (photocopy of account attached hereto as Exhibit "O" \$ 17.25
- (e) Max Wall Limited (photocopy account is attached as Exhibit "P" \$ 30.00
- (f) W.Macaulay
- (g) Maurice Crisp 30

I ask that the applicant be ordered to pay 60% of such valuation fees.

SWORN at Wellington this)
5th day of December) (Susan R Reid)
1979 before me:)

(Mark G Gazley)

A Solicitor of the Supreme Court of New Zealand

Supreme Court :
No. 23 : Affidavit of
Susan Rosemary Reid
re valuations :
5 December 1979 :
Exhibit "J" thereto :

EXHIBIT "J"

"J"

61

Rolle, Pyne & Co. PUBLIC VALUERS

Alan Frederick Pyne FNZIV
Mervyn Leonard Svensen ANZIV
David John Masters Perry ANZIV

Registered under the Valuers Act 1948.
120 Lambton Quay. Telephone 721-120. P.O. Box 384 Wellington.

Consultant R.H. Rolle FNZIV

16 November 1979

W.V.Gazley, G.J.Black,
Barristers and Solicitors,
P.O.Box 12217,
WELLINGTON

ATTENTION: MR GAZLEY

Dear Sirs,

2 - 4 AGLIONBY STREET - LOWER HUTT
LOT 1, D.P. 40486, C.T. 12A/1399
A.F. AND S.R. REID

As requested we have inspected the above property on order to ascertain its current market value as at 22 August 1979. We report as follows:

LOCATION: Aglionby Street runs in a north easterly direction off Railway Avenue which is the road between the Lower Hutt railway station and the Ewen Bridge. This is only a short street which runs through to Bridge Street connecting it almost adjacent to the Normandale over ramp. This general area is an industrial area and very handy.

LAND: The title shows a section containing 1,209 square metres with the frontage measuring 40.355 metres and an average depth of 29.88 metres. We do notice that the rear boundary is not exactly a straight line so that we must assume that the building which is on the back boundary is in fact in part just in off that boundary. It is zoned Industrial "B" and the building occupies about 80% of the land. Because the front portion of the building does not come out to the road frontage and in turn is in from both side boundaries, vacant land has been created and suitably developed. At each side of this front portion of the building the land is sealed both for vehicle access into the warehouse as well as carparking. This carparking has also been allowed just in front of the office block but the main part of that land at the front of the office block is a garden with well developed shrubs which are in turn a suitable screen for privacy purposes. In all a very attractive looking layout.

BUILDING: This building was erected in 1974 and was carried out by Stresspan. The building itself is in two parts namely a warehouse across the complete rear width of the property and attached to the front is an office and showroom block.

The warehouse is rectangular shaped and the external walls are pre cast concrete columns with horizontal reinforced concrete prefabricated slabs as an infill. The asbestos sheathed roof is carried on steel members with metal purlins and within the roof

THIS is valuation of Rolle Pyne & Co. marked "J" and referred to in the annexed affidavit of SUSAN ROSEMARY REID SWORN at Wellington this 5th day of December 1979 before me:-

Mervyn G. Svensen
A Solicitor of the Supreme Court of New Zealand

Supreme Court :
 No. 23 : Affidavit of
 Susan Rosemary Reid
 re valuations :
 5 December 1979 :
 Exhibit "J" thereto :

EXHIBIT "J" (continued)

- 2 -

62

2-4 Aglionby Street, Lower Hutt (contd.)

are panels of translucent material to aid natural lighting. The floor is concrete and at the moment the warehouse is divided into two and the division wall is a timber frame wall lined with plasterboard. Into each of the two parts of this warehouse there is a vehicular access doorway each with a roller type door. The infill panels are taken up beyond the base of the roof as a parapet across the rear and along each side. In the case of the north eastern wall that wall has been painted which is not possible for the other wall as there is another building very close to that wall. We did notice on the back wall that there is a crack on one of the columns of which there are nine in evidence along this back wall as the warehouse is in 8 bays.

Internally the join between the upper and lower infill panel has had a metal plate attached to it to overcome any movement due to earthquakes as there was some slight trouble when these pre cast members were installed. We have been advised that there is some cracking in the concrete floor but this is not unusual with a large area of concrete. The double pitched roof rises from a stud height at the side of just under 4 metres to a stud height at the apex of approximately 6 metres.

The second part of this building, namely the office and showroom block, is of a slightly different construction. In the case of the side walls which are both adjacent to the vehicular access way to the warehouse at the rear we once again have, what appear to be pre cast concrete walls. For about a third of the length of this wall the finish is that of an exposed aggregate style, whilst the balance of the side walls has been painted. Within these walls there are windows plus a small doorway and in the case of the south western wall there is a door giving access to the power mains. It appears as if the whole of the front wall which is set back slightly from the end of the end walls is of joinery type construction. The window and door joinery is of aluminium construction. With regard to the roof this has been made a feature to aid the design. The rear part of the roof is probably flat and covered with Brown built and near the front this Brown built rises then falls so at the part near the road is that of a double pitched roof sheathed with Brown Built. The eaves projection out over the front of the building acts like a verandah and at the same time keeps out the glare of the sun.

It is not clear whether or not the burglar alarm belongs to the landlord or tenant and it does appear as if the gas heaters in the part occupied by Valley Wholesalers Limited was put in by the landlord. In the case of the heating in the smaller rented space this does appear to belong to the tenants.

Details of the space allocation and fittings within the two tenancies within this building are as follows:

Supreme Court :
No. 23 : Affidavit of
Susan Rosemary Reid
re valuations :
5 December 1979 :
Exhibit "J" thereto :

EXHIBIT "J"

2 - 4 Aglionby Street, Lower Hutt (contd.)

VALLEY WHOLESALERS LIMITED

WAREHOUSE: The vehicular access is as previously described. This warehouse is just under two thirds of the total warehouse space on this property.

SHOWROOM: This is open to the warehouse and concrete columns are in evidence. The ceiling height is about 2.75 metres and the ceilings are lined with fibrous plaster type tile. Double doors give access from this showroom to the street.

OFFICES: There are two offices created by demountable type partitioning and there is one on each side of the entrance doors from the street.

LUNCHROOM: Once again created by demountable type partitioning and within it there is a sinkbench unit plus electric hot water service.

GENTS CONVENIENCES: A door opens into this area where there is a screened handbasin and off that area there is a s.s. urinal plus a separate toilet.

LADIES CONVENIENCE: This area is slightly larger and contains a small rest area plus a screened handbasin and two separate toilets.

CAPITAL SALES:

WAREHOUSE: This warehouse is the remaining third of the total warehouse space on this property and also has vehicular access into it.

SHOWROOM: At the moment this showroom is separate from the warehouse but the division wall was put in by the tenants so that for purposes of this report this showroom like the other showroom is open to the adjacent warehouse. Within this showroom however, is located the sinkbench unit and electric hot water service so there is no distinct lunchroom as such. Once again the ceiling is fibrous plaster type tiles.

MENS TOILET: This is in two parts, the first part containing the handbasin and off it in turn is the separate toilet.

LADIES TOILET: as for the above.

OFFICE: Built with demountable type partitioning and the access door comes off a small foyer which is separate from the showroom and could have been made separate by the tenant because the other space has the front access going directly into the showroom space.

LEASE DETAILS: We understand this lease began on the 15 January 1975 for 15 years with the first rent review in 1978 and thereafter at 4 yearly intervals. There appears to be no rights of renewal after expiry of 15 years. The initial rental we understand was \$19,800 with the tenant paying the rates and internal maintenance.

Supreme Court :
No. 23 : Affidavit of
Susan Rosemary Reid
re valuations :
5 December 1979 :
Exhibit "J" thereto :

EXHIBIT "J" (continued)

2 - 4 Aglionby Street, Lower Hutt (contd.)

We have also ascertained that the 1978 renewal rental was fixed at \$26,000. We understand that the drapes and carpets belong to the landlord so that some of the rent is for these chattels but with the passage of time these usually merge as part of the building therefore to all intents and purposes the \$26,000 is the rent for the property.

The head lease is held by Valley Wholesalers Limited who sub-lease the small part of the property to Capital Sales.


VALUATION:

Land as an occupied industrial site	78,000
Building: 976.5 sq.mtrs.	180,750
Other improvements allowance	2,250

\$261,000
=====

MARKET VALUE: A fine building so that an investor purchase would be satisfied with a 10% nett return. Working on the assumption that the landlord pays for insurance plus external maintenance it would signify around \$25,000 nett return per annum. This would therefore signify a market value on todays market at around \$250,000.

Yours faithfully,
ROLLE, PYNE AND CO.
Public Valuers

per: 

M.L.SVENSEN,
F.N.Z.I.V, F.R.E.I.(N.Z.).
Registered Valuer

Supreme Court :
 No.23a : Affidavit of
 Ross Mitchell Crotty
 re value of investments:
 7 December 1979 :

I, ROSS MITCHELL CROTTY of Wellington, Solicitor, make oath and say as follows :

1. I am a partner in Chapman Tripp & Co, solicitors, Wellington.

2. ANNEXED hereto is a schedule of the investments of the applicant in the name of Chapman Tripp Securities Limited (a nominee company holding on his behalf) showing a balance on mortgage as at 7 December 1979 of \$155,000.

SWORN at Wellington this)
 7th day of December 1979) (signed) R M Crotty 10
 before me:)

(not readable)

A Solicitor of the Supreme Court of New Zealand.

Supreme Court :
 No.23a : Affidavit of
 Ross Mitchell Crotty :
 Statement of investments
 annexed thereto :
 7 December 1979 :

ANTHONY F. REID 20
 STATEMENT OF INVESTMENTS
 FROM 31 MAY 1976 TO OCTOBER 1979

Capital received from Anthony F. Reid on 31 May 1976 for investment on his behalf initially at call with the Commercial Bank of Australia Limited and then on first mortgage in the name of Chapman Tripp Securities Limited. 200,000.00

Payments of capital to Anthony F. Reid since that date -

To Macalister Mazengarb Parkin & Rose, solicitors on his behalf: 30

- on 21 June 1978	10,000.00
- on 17 July 1978	21,000.00
- on 8 August 1978	9,000.00
	<u>40,000.00</u>

To Anthony F. Reid -

- on 9 July 1979	5,000.00
	<u>45,000.00</u>
	<u>155,000.00</u>

All transactions have been recorded in the Trust Account of Chapman Tripp & Co - Matter No. 139076

ANTHONY F. REID

STATEMENT OF INVESTMENTS

FROM 31 MAY 1976 TO OCTOBER 1979

<u>DATE</u>	<u>MORTGAGOR</u>	<u>PRINCIPAL</u>	<u>REPAYABLE</u>	<u>INTEREST RATES</u>
1. Advanced 31.05.76 Renewed 30.06.77 Renewed 30.06.78 Renewed 30.06.79	Faine Brooklyn Trust	40,000.00	30.06.77 30.06.78 30.06.79 30.06.80	14% - 12% 14½% - 12½% 15% - 13% 15½% - 13½%
2. Advanced 02.06.76 Renewed 01.06.77 Repaid 31.03.78	Whitby Townhouses Ltd	16,000.00 <u>16,000.00</u>	30.11.76 on 2 mths notice 2 mths demand	14% - 12% 15% - 13%
3. Advanced 02.06.76 Repaid 15.07.76	R.G. Hall	10,000.00 <u>10,000.00</u>	31.08.76	13% - 11%
4. Advanced 02.06.76 Repaid 19.08.76	Clifton Estate & W. Goodwin	20,000.00 <u>20,000.00</u>	01.12.76 on 2 mths notice	14% - 12%
5. Advanced 08.06.76 Renewed 31.05.77 Renewed 01.03.79 Advanced 21.03.79	I.G. Bracey & B.M. Brooke I.G. Bracey & B.M. Brooke	79,000.00 <u>1,000.00</u> 80,000.00	31.05.77 30.11.77 28.02.81 28.02.81	14% - 12% 15% - 13% 16% - 14% 16% - 14%
6. Advanced 15.06.76 Renewed 31.05.77 Renewed 30.11.78	W.D. Dobson Co Ltd	35,000.00	31.05.77 30.11.78 30.11.79	14% - 12% 14% - 12% 15% - 13%
7. Advanced 14.10.76 Renewed 01.06.77 Repaid 14.06.78 Repaid 31.07.78	Fytfield Farm Partnership	30,000.00 <u>15,000.00</u> <u>15,000.00</u> <u>15,000.00</u>	28.02.77 on 2 mths demand	14% - 12% 15% - 13%
BALANCE on First Mortgage 25.10.79		<u>\$155,000.00</u>		

Supreme Court :
 No.23a : Affidavit of
 Ross Mitchell Crotty :
 Schedule of investments
 annexed thereto :
 7 December 1979 :

74

ANTHONY F. REID
INTEREST RECEIVED FOR YEAR ENDED
31ST MARCH 1977

Mortgages:

J.G. Bracey and B.M. Brooke: 12% on \$79,000 from 1.6.76 to 28.2.77		7,110-00
Clifton Estate Ltd & B. Goodman: 12% on \$20,000 from 1.6.76 to 31.8.76		600-00
W.D. Dobson & Co. Ltd: 12% on \$35,000 from 1.6.76 to 28.2.77		3,150-00
Faine Brooklyn Trust: 12% on \$40,000 from 31.5.76 to 31.3.77		4,000-00
Fytfield Farms: 12% on \$10,000 from 1.8.76 to 31.8.76 and 12% on \$30,000 from 1.9.76 to 28.2.77		1,900-10
R.G. Hall: 11% on \$10,000 from 1.6.76 to 31.7.76	150-00	
Plus Short Term Deposit Interest	<u>27-62</u>	177-62
Whitby Townhouses Ltd: 12% on \$16,000 from 1.6.76 to 28.2.77 Plus additional interest on late payment		<u>1,520-00</u>
		\$18,458-72
<u>Less</u> Collection, Accounting, Administration and other charges relating to income.		<u>1,120-00</u>
<u>Net Income from interest received</u>		<u>\$17,338-72</u>

PP CHAPMAN TRIPP & CO.



23 June 1977

Distbn:-
 AFR - 2 -
 → RWB
 GEB - Accts

Supreme Court :
 No.23a : Affidavit of :
 Ross Mitchell Crotty :
 Schedule of investments :
 annexed thereto :
 7 December 1979 :

- page 4 -

75

ANTHONY F. REID
INTEREST RECEIVED FOR YEAR ENDED
31st MARCH 1978

Mortgages:

J.G. Bracey and B.M. Brooke: 12% on \$79,000 from 1.3.77 to 31.5.77 & 13% from 1.6.77 to 28.2.78	10,072.50
W.D. Dobson & Co. Ltd: 12% on \$35,000 from 1.3.77 to 28.2.78	4,200.00
Faine Brooklyn Trust: 12% on \$40,000 from 1.4.77 to 30.6.77 & 12½% from 1.7.77 to 31.3.78	4,950.00
Fytfield Farms: 12% on \$30,000 from 1.3.77 to 31.5.77 & 13% from 1.5.77 to 28.2.78	3,825.00
Whitby Townhouses Ltd: 12% on \$16,000 from 1.3.77 to 31.5.77 & 13% from 1.6.77 to 31.3.78 (Date Mortgage repaid) <u>Plus:</u> Additional interest on late payments of \$160.00 and additional interest on early re- payment of \$250.74	2,627.40
	\$25,674.90
<u>Less</u> Collection, Accounting, Administration and other charges relating to income.	<u>1,630.00</u>
<u>Net Income from interest received</u>	<u>\$24,044.90</u>

pp CHAPMAN TRIPP & CO.

22 May 1978

Distbn:
 AFR - 2
 RWB
 GEB - Accts.

Supreme Court :
 No.23a : Affidavit of
 Ross Mitchell Crotty :
 Schedule of investments
 annexed thereto :
 7 December 1979 :

76

ANTHONY F. REID
INTEREST RECEIVED FOR YEAR ENDED
31st MARCH 1979

<u>Mortgages:</u>	<u>\$</u>
J.G. Bracey and B.M. Brooke: 13% on \$79,000 from 1.3.78 to 28.2.79	10,270.00
W.D. Dobson & Co. Ltd: 12% on \$35,000 from 1.3.78 to 28.2.79	4,200.00
Faine Brooklyn Trust: 12½% on \$40,000 from 1.4.78 to 30.6.78 & 13% from 1.7.78 to 31.3.79	5,150.00
Fytfield Farms: 13% on \$30,000 from 1.3.78 to 31.7.78	1625.00
<u>Less</u> shortpaid on settlement	48.35
	1576.65
<u>Less</u> credit for short term deposit interest received on \$15,000 from 13.6.78 to 31.7.78	147.95
	1,428.70
The Commercial Bank of Australia Ltd - Short Term Deposit.	623.35
	21,672.05
<u>Less</u> Collection, Accounting, Administration and other charges and disbursements relating to income	1630.00
<u>Less</u> Deduction for interest not collected	48.35
	1,581.65
<u>Net</u>	\$20,090.40

PP CHAPMAN, TRIPP & CO.

Anthony F. Reid
 12 April 1979

Distbn:
 AFR - 2
 RWB
 GEB - Accts.

I, SUSAN ROSEMARY REID of Lower Hutt,
Physiotherapist, make oath and say as follows:-

1. THAT I am the respondent herein and, with this
affidavit, supplement that sworn by me on 5th
December 1979.

The boat.
\$10,000
10

2. THAT (further to paragraph 6 of my affidavit
of 5 December 1979) attached hereto and marked "A"
is valuation of the **boat** by Maurice Crisp and his
letter of 3rd Decemeber 1979 with his qualificat-
ions there stated.

3. THAT the valuation fee of Mr. Crisp is \$35,
and I am responsible for that payment.

Other
chattels at
Colin Grove
\$13,003
20

4. THAT (further to paragraph 12 of my affidavit
of 5 December 1979) attached hereto and marked "B"
is the valuation of **Other chattels at Colin Grove**
as received from Macaulay Machinery Limited. This
company's valuation totals \$13,003 as against the
original valuation of \$9,765.

5. THAT the valuation fee of Macaulay Machinery
Ltd is \$45; and I have, at present, the liability
for that fee.

6. THAT the fee of Chapman Tripp & Co. in
complying with Order 15 of this Court is **\$150**; and
I have, at present the sole responsibility for that
fee.

SWORN at Wellington this)
12th day of December 1979) Susan R Reid
before me:-)

30
(not readable)
A Solicitor of the Supreme Court of New Zealand

Supreme Court :
No.25 : Affidavit of
Anthony Fulton Reid
re valuations :
31 January 1980 :

I ANTHONY FULTON REID of Lower Hutt, retired, make oath and say as follows:

- 1. THAT I am the above-named applicant in these proceedings.
- 2. THAT pursuant to the Orders of this Honourable Court and the undertaking given to their Honours in the Court of Appeal on 14th December, 1979, I report on the valuations and status of property currently under my jurisdiction.
- 3. THAT I ask that this affidavit be read in conjunction with the documents filed on 17th December, 1979, under cover of my memorandum to the Registrar of that date.

10

4. ORDER NO. 8: My shares and stock ("cryptically" listed page 305 of case on appeal).

THAT I supplied photocopies of the certificates to Messrs. Finch, Webster & Nathan under cover of my letter to them of 16th November, 1979. Exhibit "A".

THAT a copy of the share valuation was sent to me by Mr. Gazley. Exhibit "B".

(a) THAT the shares shown as Endeavour Services Corporation are in fact N.Z.T.S.shares. This Company recently changed its name.

20

(b) THAT A.B.Consolidated shares were sold at 50c per share. \$500. was paid to my current Bank of New Zealand account on 29th November, 1978, and the money now reflects in the current value of this account.

(c) Marlborough Harbour Board Stock. This was originally procured to obtain rights to a boatshed in Picton. The licence to occupy the shed was terminated as from 15th March, 1978, and early redemption of the stock was offered in March, 1979, accepted and paid by cheque on 1st November, 1979. I attach copy of Marlborough Harbour Board's letter 27th September, 1979. Exhibit "C"

30

5. ORDER NO. 9: A.M.P. Policies.

(a) THAT Policy Z0.252651 was paid up on 14th February, 1978 and the deposit of \$3,595.76 is shown on page 115 of my bank statements.

(b) THAT Policy 4011084Z was paid up on 5th July, 1978 and the deposit of \$3,914.60 is shown on page 118 of my bank statements.

(c) THAT the value of both these policies now reflect in the current value of my bank statement.

(d) THAT the third policy to which the Respondent appears to attach some importance (Court of Appeal, Page 271, L20) is a reducing policy, which I believe was owned by my wife but covered my life. To the best of my knowledge it has now expired.

40

(e) THAT I have no specific details of the policy referred to in the A.M.P.'s letter of 23rd November, 1979, as one being assigned to Reid Containers Ltd. but to the best of my knowledge it was(or is) one on my life for \$100,000. This policy was instigated by D.R.G. (N.Z.) Ltd. after they purchased 51% of my Company's shares in 1972. It was to cover their loss in the event of my death. I agreed to this cover on the basis that in such an event the cash would be immediately available to my wife as part payment for the remaining shares. When I resigned in 1976 D.R.G. used this policy as one argument for reducing the true share value. They alleged I had agreed my knowledge and services were valued at \$100,000 and therefore deducted that amount from their offer. This was the main reason for the

50

statement in my affidavit of 18th March, 1977, page 14(d) (Court of Appeal, P.21).

10 (f) THAT I was unaware that I was the owner of two children's policies. That I was aware that each of my four children have a policy with the A.M.P., and I assume that as my two elder boys have reached the age of 20 the reference is to those belonging to the two minors. These policies are purely for the children's benefit and if I have any legal right to an interest in them I make no claim. I ask that the Respondent similarly disclaims any right.

6. ORDER NO. 11: The interests of the parties in the Aglionby Street property.

(a) THAT the interests of the parties in the Aglionby Street property at the 17th December, 1976 are shown in the Reid Family Partnership accounts for the year ending 31st March, 1976. Exhibit "D".

20 (b) THAT the Respondent's interest in the Partnership (and hence the property) by virtue of her interest in the S.R.Reid Trust is shown in the Balance Sheet of the Trust as at 31st March, 1976. Exhibit "E".

(c) THAT the property at Aglionby Street was valued on 22nd November, 1976 by P.R.Holmes and Associates at \$246,850. Exhibit "F".

(d) THIS was updated on 9th April, 1979 by the same firm showing a value at that time of \$250,000. Exhibit "G".

30 (e) THAT on 17th December, 1976, before any separation order was made, an agreement (Court of Appeal, P.48) was made to purchase both interests of the Respondent. Title to the property was held at that time by both the Respondent and myself in two capacities: each as individuals and each as Trustees of the five trusts involved with the Partnership. The agreement was conditional to the property being transferred to my name. The transfer was delayed because the Respondent insisted on a deed which also relinquished her from any liability for the \$74,250. mortgage on the property. While the Respondent remained a Trustee of each of the remaining four trusts, I became liable for the total encumbrment upon the property while still holding a minority of shares in the Partnership and being only one of three trustees. I respectfully suggest that any valuation of any share in the Partnership must take account of the total liability
40 involved with the mortgage.

(f) THE terms of the Partnership entitle the partners to capital, assets and profit in proportion to capital invested by them, and in the past all profits have been divided on this basis. The partners are entitled to the capital and assets of the partnership in the following proportions:

	As at 31.3.76 (Includes Current Account)	As at 31.3.79 (Excludes Current Account)
50 A.F.Reid	\$ 32720.26	\$ 53006.00
S.R.Reid	\$ 7536.26	
S.R.Reid Trust	\$ 15848.37	
P.M.Reid Trust	\$ 21169.26	\$ 20000.00
M.S.Reid Trust	\$ 21169.26	\$ 20000.00
T.J.Reid Trust	\$ 21169.26	\$ 20000.00
C.R.Reid Trust	\$ 25403.19	\$ 24000.00

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid
 re valuations :
 31 January 1980 :

(g) **ACCORDINGLY** the partnership property is owned by the partners in common in unequal shares. At the time of the separation the shares of the parties in the partnership were unequal, with the result, as I contend, that there is no matrimonial property to value that the Respondent can have any interest in under the Act.

(h) **FURTHERMORE** the interest that the Respondent had in the S.R.Reid Trust's share of the partnership is an interest that has been derived from the same source as all other partners, including myself, namely the sale of the shares in Reid Containers Ltd. The original share holdings in the Company are as shown in the Memorandum of Association of the Company dated the 4th day of February, 1960. Exhibit "H". 10

(i) **THAT** in 1968 the pound shares in the Company were converted into 3000 dollar shares, divided into two types, namely A and B. At approximately the same time I made provision for my wife by forming the Trust known as the Susan Reid Trust. Exhibit "I".

(j) **THAT** 300 B. shares were sold to the Trust for a consideration of \$ 9,900, which became a debt in the form of a mortgage. That no interest was charged on the mortgage and it was paid off by the eventual sale to D.R.G. (N.Z.) Ltd. of the shares. The money resulting from the capital gain acquired was invested in the Reid Family Partnership until that share was once more sold to the Applicant as per the agreement of 17th December, 1976. Under the terms of the Act the Respondent's interest in this Trust is matrimonial property. 20

(k) **THAT** under the terms of the agreement of 17th December, 1976 the Respondent has agreed to accept the income from this trust, as is her right.

(l) **THAT** the accounts for the trust for the year ending 31st March, 1979, are submitted. Exhibit "J". 30

Net taxable income for year	\$ 2218.75
Non taxable dividends	\$ 617.38
	\$ 2836.13

(m) **THAT** on the basis that the Respondent was born on 9th March, 1930 and has a life interest in this trust, I submit that it had a present value of \$ 41920.21 as at 22nd August, 1979 according to the tables set forth in the Second Schedule to the Estate and Gift Duties Act, 1968, assuming that the income remains unchanged at \$ 2836.13 per annum. 40

(n) **THAT** the money paid for both the Respondent's interest in the Partnership came from my Bank of New Zealand term deposit account.

(o) **THAT** the situation of the Reid Family Partnership as at 31st March, 1979, is shown in the Balance Sheet of that date. Exhibit "K".

7. **ORDER NO. 12:** (i) Applicant's Bank of New Zealand current cheque account.

(a) **THAT** on 17th December, 1976 the account stood in credit \$2855.34. On that same afternoon and before a separation order was made a cheque was given to the Respondent for \$51,000 so creating liability to that account effectively giving a debit balance of \$48,144.66. At the time of separation the Respondent had an interest by way of cheque to the value of 50

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid :
 re valuations :
 31 January 1980 :

\$51,000. I ask the Respondent to account for that money.

(b) ON 24th December, 1976 a transfer of \$ 50,000 was made from the Applicant's Bank of New Zealand term deposit account, then standing at \$ 200,000, so reducing the term deposit account to \$150,000 and increasing the current account to a credit of \$1855.34.

(c) THE cheque which was given to the Respondent of \$ 51,000 was in effect \$ 50,000 in terms of the agreement of 17th December, 1976, and \$ 1000 for maintenance, being a payment made by the husband as an advance on behalf of the S.R.Reid Trust. This \$ 1000 was refundable from the Trust and was therefore not deducted from the amount of credit in the Applicant's current account. The statements submitted to this Honourable Court regarding the Applicant's balance, being \$ 2855.34, are correct, and I ask the Respondent to show where the \$ 1000 is declared by her in the documents before the Court.

(d) FROM that time on to 22nd August, 1979, all monies received by me from all sources were deposited in this account and are recorded on the bank statements submitted to the Court, with the exception of the interest received on my Nation Wide Savings Account (which remained in that account) and my interest in the Reid Family Partnership which has remained in the Bank of New Zealand Account known as A.F.Reid Property Account.

(e) THAT at 22nd August, 1979 my current account with the Bank of New Zealand was in credit \$ 25.72.

7. ORDER NO. 12 (ii) Applicant's Bank of New Zealand Nation Wide Account.

(f) THAT on 17th December, 1976 the balance in this account was a credit of \$ 2557.24. That on 22nd August, 1979 it was in credit \$ 3891.90. Monthly automatic transfers of \$ 100 have been made to this account from my current bank account. The total interest credited to this account is \$ 134.66. On 4th March, 1977, \$2000 was transferred to my current account to meet a tax commitment on 7th March, 1977 of \$ 8346.29.

8. ORDER NO. 13: Applicant's Bank of New Zealand term deposit.

(a) THAT I have submitted to this Honourable Court under cover of my memorandum to the Registrar of 17th December, 1979, copies of the Bank of New Zealand record of the term deposit which is involved with these proceedings and that I have tabulated the details and submit the table as Exhibit "L".

(b) THAT all the interest paid on this term deposit was credited directly to my Bank of New Zealand current account and reflects in the current balance of that account.

9. ORDER NO. 14: Applicant's Sutherland loan.

THAT this was a loan made by me to a friend in need. There was no security asked for or given and there is no documentation. A total of \$ 1940 interest was paid and this was deposited in my Bank of New Zealand current account. That the loan was repaid on 6th March, 1979 and the money was deposited in Bank of New Zealand current account as shown on page 126 of the bank statements. It now reflects in the current value of that account.

10. ORDER NO-15: Applicant's investment with Chapman, Tripp & Co.

THAT I refer to the affidavit of ROSS MITCHELL CROTTY of 7th December, 1979 and to the current valuation of the investments

Supreme Court :
No.25 : Affidavit of
Anthony Fulton Reid
re valuations :
31 January 1980 :

made through Chapman, Tripp & Co. as being \$ 155,000. That the original loan of \$ 200,000 was broken in mid-1978 to repurchase from my brother the original Reid family home (my late Mother's) which adjoins the matrimonial home at Colin Grove. I originally disclaimed all rights to my parents' property in favour of my only brother, Peter Reid, as I felt this may make up to him for the gossip my wife was spreading about his life as a bachelor. I was also aware of his very serious illness after the war years and his generosity (when he could ill afford it) to my wife and myself when we were married in 1955. However, the property became a burden to him and he offered it back to me. I paid him \$ 40,000 in cash and took the remainder of the valuation on an interest free mortgage, the majority of which has by now been eliminated by various deeds of forgiveness. That this purchase accounts for \$ 40,000 reduction in the investments with Chapman, Tripp & Co.

10

THAT the \$ 5000 paid to me on 9th July, 1979 was paid to my Bank of New Zealand current account.

THAT all the interest received from Chapman, Tripp & Co. was paid to my current Bank of New Zealand cheque account.

20

11. THE disposition of the property held as the term deposit with the Bank of New Zealand has resulted in my holding certain other property. From the \$ 150,000 that remained after payment to my wife of \$ 50,000, some \$ 28,000 was used to purchase my wife's interests in the Reid Family Partnership. I have purchased a property adjoining the Aglionby Street property. This property had some old flats upon it which have since been removed. Total cost approximately \$ 74,000. I have made further machinery purchases of approximately \$ 12,000. I have purchased a second-hand caravan, having lost access to the family's holiday home in Paihia.

30

12. THAT furthermore I have at various times obtained other term deposits with the Bank of New Zealand at at 22nd August, 1979, these stood at \$ 40,000. I submit a copy of a bank statement as Exhibit "M".

13. THAT with regard to the disposition of the income from and to some further extent, the capital of, both the investment with Chapman, Tripp & Co. and the term deposit account with the Bank of New Zealand, I say that it is all recorded in the copies of my cheque entries submitted with my memorandum to the Registrar of 17th December, 1979.

40

THAT it includes normal living expenses, the support of my two boys, the modest refurnishing of our home, the alterations to the matrimonial home, its upkeep, maintenance and rates, the upkeep, maintenance and rates on the holiday home at Paihia for almost a year, extremely heavy legal expenses and my obligations for taxation.

SWORN at Lower Hutt)
this 31st day of)
JANUARY 1980)
before me:

(Anthony F Reid)

signed (not readable)

A Solicitor of the Supreme Court of New Zealand

50

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations. Exhibit page 1:
 Documents to Registrar :
 31 January 1980 :

STATEMENT OF ACCOUNT WITH

HAND TO MANAGER

BANK OF NEW ZEALAND

N LOWER HUTT
 NEW ZEALAND

528

ACCOUNT NAME

REID, ANTHONY FULTON

PAGE No. 102 ACCOUNT No. 044503-00

IMPORTANT: PLEASE ADVISE ANY CHANGE OF ADDRESS OR OCCUPATION

Fold

		DATE 30 DEC 76		BALANCE OF LAST STATEMENT DATED 29 NOV 76		3,524.75				
NAME OF OTHER PARTY	MTS.	PARTICULARS	CODE	REFERENCE	DEBIT/CHEQUE	CREDIT/DEPOSIT	DATE	BALANCE		
PARTICIPATION SAVINGS	AP	AUTO PAYMENT		443170	100.00		DEC 6	3,524.75		
				443171	25.80		DEC 7			
				443172	100.00		DEC 7	3,399.95		
				443173	59.30		DEC 10	3,339.65		
				443175	176.30		DEC 16			
				443181	107.38					
WILLIAMS R D	AP			443181	5.00					
				443181	42.42		DEC 16	2,907.55		
				443182	100.00		DEC 17	2,855.34		
				443174	52.21		DEC 20			
TEAM DEPOSIT	AP			443178	28.10		DEC 20			
				443178	17.54		DEC 20	2,624.70		
				443179	185.00		DEC 21			
				443176	5.00		DEC 21	48,380.30 OD		
				443183	51,000.00	1,250.00	DEC 21	47,230.30 OD		
				443184	100.00		DEC 22	47,250.30 OD		
				443185	20.00	50,000.00	DEC 23			
				443186	28.20		DEC 24	2,575.50		
				443187	145.00	189.04	DEC 29			
				443188	27.95		DEC 29	2,713.59		
OTHER BALANCES				443190	23.00		DEC 29	2,690.99		
				443177	22.60		DEC 30			
OTHER BALANCES					SAV	42,557.24	TDP	150,000.00	BALANCE	2,690.99

OD - OVERDRAFT

FOR EXPLANATION OF ABBREVIATIONS SEE OVER

Debit and credit items listed within the last few business days of the date of this statement may be subject to clearance because of the timing of processing. Any of these items subsequently not paid will be adjusted, and you will be advised should an item credited to your account be withdrawn by reversal entry.

TO RECONCILE YOUR CHECKBOOK WITH THIS STATEMENT SEE OVER

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations. Exhibit page 30
 Documents to Registrar :
 31 January 1980 :

STATEMENT OF ACCOUNT WITH

MR A F REID
 14 COLIN GROVE
 LOWER HUTT

BANK OF NEW ZEALAND
 N LOWER HUTT
 NEW ZEALAND

528

ACCOUNT NAME
 REID, ANTHONY FULTON

PAGE No. 131 ACCOUNT No. 044503-00

IMPORTANT: PLEASE ADVISE ANY CHANGE OF ADDRESS OR OCCUPATION

NAME OF OTHER PARTY	MTS.	PARTICULARS	CODE	REFERENCE	BALANCE OF LAST STATEMENT DATED		DATE	CREDIT/DEPOSIT	BALANCE
					DATE	2 AUG 79			
NATIONWIDE SAVINGS	AP	AUTD PAYMENT		170693	41.92		AUG 3	102.00	2,445.57
				170692	100.00		AUG 6	542.92	
				170700	43.90				
				170694	100.00				
				170696	22.80		AUG 6		2,846.59
				170697	774.16		AUG 7		
				170698	811.77				
				170701	755.36				
				170701	18.62		AUG 7		463.88
				170691	23.00		AUG 8	33.97	
TERM DEPOSIT				170699	50.00		AUG 8		424.85
				170695	29.90		AUG 9		394.95
				170702	100.00		AUG 13		294.95
					0.50		AUG 20		
					0.50				
					35.30				
					11.90				
					100.00		AUG 20		146.75
					64.25		AUG 22		25.72
					56.78		AUG 22		
					505.00	SEP 3			
					3,800.00	SEP 3			
OTHER BALANCES									
SAV					\$189.13				
TDP					\$40,000.00				
BALANCE									\$4,330.72

FOR EXPLANATION OF ABBREVIATIONS SEE OVER

Debit and credit items listed within the last few business days of the date of this statement may be subject to clearance because of the timing of processing. Any of these items subsequently not paid will be adjusted, and you will be advised should an item credited to your account be withdrawn by reversal entry.

OD - OVERDRAFT

TO RECONCILE YOUR CHECKBOOK WITH THIS STATEMENT SEE OVER

Supreme Court
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations.
 Exhibit "D" :
 31 January 1980 :

77

"D"

REID FAMILY PARTNERSHIP

Property Revenue Account
for the year ended 31st March 1976

This is the Reid Family Partnership accounts for the year ending 31st March 1976 marked with the letter 'D' and referred to in the annexed affidavit of ANTHONY FULTON REID sworn at Wellington on this 31 day of JAN 1980 before me: A Solicitor of the Supreme Court of New Zealand

To	Interest	7360.11	By Gross Rentals Received	19800.00
	Repairs & Maintenance	260.16		
	Insurances	800.00		
	Sundry Expenses	469.30		
	Depreciation			
	Building	1474.25		
	Fixtures & Fittings	<u>1425.44</u>		
		11790.22		
"	Net Profit	<u>8009.78</u>		
		19800.00		<u>19800.00</u>

<u>Division of Profits</u>	<u>CHEQUE No.</u>	
A.F. Reid	927	1807.26
S.R. Reid	928	416.26
S.R. Reid Trust	929	875.37
P.M. Reid Trust	930	1169.26
M.S. Reid Trust	931	1169.26
T.J. Reid Trust	932	1169.26
C.R. Reid Trust	933	<u>1403.11</u>
		+ 8 cents short Paid 1975 - Pay \$1403.19
		<u>8009.78</u>

Balance Sheet as at 31st March 1976

Mortgage	74250.00	Bank Account	6497.26
Sundry Creditors (Interest Capital)	1800.00	Land	62735.00
	145015.86	Buildings	145581.84
		Prepayments	550.00
		Fixtures & Fittings	<u>5701.76</u>
	<u>221065.86</u>		<u>221065.86</u>

Partners Capital Accounts

A.F. Reid	32720.26
S.R. Reid	7536.26
S.R. Reid Trust	15848.37
P.M. Reid Trust	21169.26
M.S. Reid Trust	21169.26
T.J. Reid Trust	21169.26
C.R. Reid Trust	25403.19
	<u>145015.86</u>

Depreciation Summary

Buildings Balance 1976	147056.09
Less Depreciation 1% C.P.	<u>1474.25</u>
Balance 31/3/76	<u>135581.84</u>
Fixtures & Fittings Bal. 1975	6133.00
Plus Additions 1st 6 months	<u>997.20</u>
	<u>7122.20</u>
Depreciation 20%	<u>1425.44</u>
Balance 31/3/76	<u>5701.76</u>

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations. :
 Exhibit "E" :
 31 January 1980 :

"E"

S.R. REID TRUST

Summary of Income for the year ended 31st March 1976.

D.R.G. Dividend to 31.12.75	\$274.38
" " to 31.12.75	\$228.65
	<hr/>
Total Dividends Received	\$503.03
	<hr/> <hr/>
Interests B.N.Z.	\$ 75.28
	<hr/>
Share of Profits Aglionby Street (Rents)	\$875.37
	<hr/>
TOTAL INCOME	\$1,453.68
	<hr/> <hr/>

Balance Sheet as at 31st March 1976

Capital Profit Sale		Shares D.R.G. N.Z. Ltd.	\$10,000.00
of Shares R.C.L. Ltd.	\$25,214.58	B.N.Z. Savings Bank a/c	\$ 3,368.45
		Advance Property	
Accumulated Income	\$ 3,126.87	Partnership	\$14,973.00
	<hr/>		<hr/>
	\$28,341.45		\$28,341.45
	<hr/>		<hr/>

This is the balance sheet of the Trust as at 31 March 1976 marked with the letter "E" and referred to in the annexed affidavit of ANTHONY FULTON REID sworn at Wellington this 31 day of JAN 1980 before me:

LR HUTI

NJ SMITH

A Solicitor of the Supreme Court of New Zealand

Supreme Court :
No.25 : Affidavit of
Anthony Fulton Reid re
valuations.
Exhibit "H" :
31 January 1980 :

No. 25 of 1980

The Companies Act, 1955

MEMORANDUM OF ASSOCIATION

of

REID CONTAINERS LIMITED

(A Private Company limited by shares and registered under the Companies Act 1955).

LAND REVENUE
Number
Firm
19 FEB 1980
13

I. THE NAME of the Company is "REID CONTAINERS LIMITED".

II. THE COMPANY is a private Company.

III. THE OBJECTS for which the Company is established are:-

(1) TO CARRY ON in all or any of the branches thereof all or any of the businesses of manufacturers of containers, tubes, drums, boxes, bags, canisters, timplate and metal goods of every descriptive bag and sack makers, manufacturers of and dealers in metals of every kind and description, paper, cardboard, wood, plastics and other synthetic materials, glass, cotton and linen flax, hemp and jute, wool,merchants, wool combers, spinners, bleachers and dyers.

(2) TO CARRY ON the businesses of engineers, die makers, toolmakers iron founders, machanical engineers, sheet metal workers, brass founders, metal workers, tinsmiths, boilermakers, fitters and turners, millwrights, machinists, iron and steel converters, smiths, woodworkers, instrument makers, electrical engineers, printers, painters, carriers and merchants to buy, sell, manufacture, repair, convert, alter, let on hire and deal in machinery, implements, hardware and to carry on any business whether manufacturing or otherwise which may seem to the company capable of being conveniently carried on in connection with the above or otherwise calculated either directly or indirectly to enhance the value of any of the company's property and rights for the time being.

(3) TO ACQUIRE by purchase, lease, exchange, hire or otherwise, houses, buildings, lands, and hereditaments of any tenure, or any interest in the same in New Zealand.

(4) TO ERECT and construct houses, buildings or works of every description on any land of the company, or upon any other lands or hereditaments, and to pull down, rebuild, repair, maintain,

Handwritten initials/signature

Supreme Court :
No.25 : Affidavit of
Anthony Fulton Reid re
valuations. :
Exhibit "H" continued:
31 January 1980 :

-2-

renovate, decorate, enlarge, alter and improve existing houses, buildings or works thereon, to convert and appropriate any such land into and for roads, streets, squares, gardens and pleasure grounds and other conveniences, and generally to deal with and improve the property of the Company.

(5) TO SUBDIVIDE lands and to construct and dedicate streets and rights of way and to grant party wall rights light air and other easements.

(6) TO HOLD, occupy, sell, lease, let, underlet, mortgage or otherwise dispose of or deal with the lands, houses, buildings, hereditaments and other property of the Company.

(7) TO CARRY ON business as the proprietors of residential flats and to let on lease or otherwise apartments therein either furnished or unfurnished and to provide for the tenants or occupiers thereof all or any of the conveniences or services usually provided by hotels or residential clubs and for the purposes of the foregoing to purchase lease or otherwise acquire any land buildings or other property and also to build erect and construct upon any of the land so occupied buildings and fixtures suitable for residential flats and apartments and to provide furnishings and fittings for the same.

IV. THE incidental and ancillary objects and powers set out in the Second Schedule of the Companies Act 1955 and directed by Section 66 of that Act to be implied in any Memorandum of Association shall be and be deemed to be included herein as if the same had been fully set out at length herein except in so far as they or any of them shall have been extended or modified by the terms hereof.

V. THE objects specified in each of the Paragraphs of Clause III herein and the objects directed to be implied in the said Memorandum of Association shall be deemed to be principal objects and not be limited or restricted by reference to or inference from the terms of any other paragraph or object

VI. THE liability of the members is limited.

VII. THE capital of the Company is ONE THOUSAND FIVE HUNDRED

-3-

POUNDS (£1500) divided into One thousand five hundred shares of One Pound (£1) each.

WE, the several persons whose names, addresses and descriptions are subscribed, are desirous of being formed into a Company :
 pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names descriptions and addresses of subscribers	Signature of Subscribers	Number of shares taken
Anthony Fulton Reid, 8 Colin Grove, Lower Hutt. Engineer.	<i>Anthony Reid</i>	1499
<i>One thousand four hundred & ninety nine shares</i>		
Susan Rosemary Reid, 8 Colin Grove, Lower Hutt. Married Woman	<i>Susan R. Reid</i>	1
<i>One share</i>		

DATED this *4th* day of *February*, 1960

WITNESS to both the above signatures.

.....
[Signature]

[Signature]

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations. :
 Exhibit "J" :
 31 January 1980 :

Clarke Menzies & Co.
 Chartered Accountants

96
 PAGE 1a.

SUSAN ROSEMARY REID TRUST
 NOTES TO THE FINANCIAL STATEMENTS
 For the Year Ended 31 March, 1979

1. STATEMENT OF ACCOUNTING POLICIES

The general accounting principles as recommended by the New Zealand Society of Accountants for the measurement and reporting of income and financial position on an historical basis have been followed by the Trustees.

2. TAXATION

The Taxation provided is the estimated liability calculated on the 1979 income.

3. INVESTMENTS (a)

Shares in DRG (New Zealand) Limited. The shares were acquired under a certain agreement entered into for partial settlement of the debt on the sale of Shares in Reid Containers Limited (refer Note 4).

8000 \$0.50 Ordinary shares @ \$1.25	\$ 10,000.00
May 1973 1 for 7 Bonus Issue	
1146 \$0.50 Ordinary Shares - -	
<u>9146</u>	<u>\$ 10,000.00</u>

The fractions from the Bonus issue in May from the other 4 Reid Family Trusts were allocated to this Susan Rosemary Reid Trust.

(b) Chapman Tripp & Co. Mortgage. Secured over property at 20 Lincoln Road, Henderson owned by the Brownlee Trusts; for a term of two years expiring 31 May 1979.

Interest at 14½% reducible to 12½% payable quarterly on the last days of February, May, August and November.

4. CAPITAL PROFIT ON SALE OF SHARES IN REID CONTAINERS LIMITED

Originally settled as per the Deed of Trust dated 25 March 1968.

300 Ordinary B. Shares of \$1.00 each in Reid Containers Limited for \$9900.00	
Sold to DRG (N.Z.) Limited for	\$ 35196.00
Less Costs and Stamp Duty on Share Transfers etc.	81.42
	<u>35114.58</u>
Less Cost of Reid Containers Limited Shares as settled	9900.00
	<u>\$ 25214.58</u>
As per Capital Account (Page 4)	

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations. :
 Exhibit "J" continued:
 31 January 1980 :

Clarke Menzies & Co.
 Chartered Accountants

NOTE 4

SUSAN ROSEMARY REID TRUST
 CAPITAL ACCOUNT
 For the Year Ended 31 March, 1979

	<u>Notes</u>	
Initial Capital		- -
Capital Profit on Sale of Shares in Reid Containers Limited	4	25214.58
Capital Profit on Sale of Interest in Aglionby Street - Reid Family Partnership	5	4136.00
		<hr/>
BALANCE 1 APRIL 1977		29350.58
PLUS DRG (N.Z.) LIMITED DIVIDEND		
Ex Share Premium Reserve Account		342.96
		<hr/>
BALANCE 1 APRIL 1978		29693.54
PLUS DRG (N.Z.) LIMITED DIVIDEND		
Ex Share Premium Reserve Account		617.38
		<hr/>
BALANCE 31 MARCH 1979		\$ 30310.92
		<hr/> <hr/>

The attached notes form part of and are to be read in conjunction with these financial statements.

Supreme Court :
 No.25 : Affidavit of
 Anthony Fulton Reid re
 valuations. :
 Exhibit "K" :
 31 January 1980 :

McKinnon & Co.
 Chartered Accountants

REID FAMILY PARTNERSHIP
 BALANCE SHEET
 As at 31 March 1979

CURRENT ASSETS	Notes		<u>1979</u>	<u>1978</u>
Bank of New Zealand Limited		5963.46		12509
S R Reid Trust	5	122.00		-
Prepayment		679.56		550
N Z Government Saving Stock	4	15000.00		-
			<u>21765.02</u>	<u>13059</u>
LESS CURRENT LIABILITIES				
Sundry Creditor		1089.21		1800
S R Reid		-		342
Current Portion of AMP Mortgage	3	3000.00		3000
			<u>4089.21</u>	<u>5142</u>
			17675.81	7917
PLUS FIXED ASSETS				
As per Schedule - Page 3			207048.00	209217
			<u>224723.81</u>	<u>217134</u>
LESS TERM LIABILITY				
A M P Mortgage	3	65250.00		68250
Less Amount due for repayment in the next year		3000.00		3000
			<u>62250.00</u>	<u>65250</u>
NET ASSETS			<u>\$ 162473.81</u>	<u>151884</u>
REPRESENTED BY:				
Partners Accounts - Page 4				
A F Reid			61697.43	58402
P M Reid Trust			24182.09	22889
M S Reid Trust			25979.72	23701
C R Reid Trust			28228.49	26897
T J Reid Trust			22386.08	19995
			<u>\$ 162473.81</u>	<u>151884</u>

Anthony Reid
J. M. Farnell

The attached notes form part of and are to be read in conjunction with these financial statements.

WELLINGTON, N.Z.
 20 April 1979

This page blank
document removed from
record

Supreme Court :
No. 27 : Second
affidavit of
Anthony Fulton Reid
re valuations :
4 February 1980 :

I, ANTHONY FULTON REID of Lower Hutt, make oath and say as follows:

1. THAT I am the applicant herein.

2. THAT subsequent to the preparation of my affidavit of the 31st January 1980(79*)I have received further information from the A.M.P. Socierty covering the insurance policies in question.

3. THAT I submit the whole of the information received as Exhibit "A" attached.

4. THAT the following is a tabulation of the total valuations of the policies in question:

10

Surrender Value (amount received)	\$7510.36
(2nd Feb 1978)	
(& 30th June 78)	
Value for Supreme Court Hearing	\$7320.00
(22nd Sept 1977)	
(CofA P.259)	
Value at time of seperation	\$7021.70
(17th Dec 1976)	
Value at time of C of A hearing	Not applicable
(22nd Aug 1979)	

20

5. THAT in reply to the Respondent's affidavit of 5th December 1979 and in particular Para. 20 being a request for an order that the applicant pay 60% of valuation fees I say:

i That all requests for valuations were made immediately following the sealing of the Court Orders, that they were forwarded by the respondent's solicitor without any attempt to obtain agreement on any items.

ii That I had advised the Court, when the respondent's solicitor was present, that I already had current valuation of the Aglionby Street property. (Exhibit "F" & "G" Applicant's affidavit of 30th January 1980.(79*) And that I was prepared to accept all certified valuations. And that if the respondent required the revaluation of Colin Grove only then did I require the revaluation of the Paihia property.

30

iii That I wrote to the respondent's solicitor disclaiming any responsibility for the costs of valuations when I found myself in a position of having to accept all valuations (including "respondent's money invested in N.Z." (with Gazley & Black)) or none. That I attach a copy of that letter as Exhibit "B"

40

6. THAT I ask that the Court make no order with regard to any costs involved with the revaluations.

SWORN at Wellington)
this 4th day of February) Anthony F Reid
1980 before me:-)
A Solicitor of the Supreme Court of New Zealand

* incorrectly shown as"1979"

50

Hearing: 11th March 1980
Counsel: Applicant in person
W.V.Gazley for Respondent wife.

10 On 21st November 1977 I delivered a judgment upon the application brought by Mr. Reid under the Matrimonial Property Act 1963 but which was heard under the Matrimonial Property Act 1976. In that judgment I held that a substantial number of assets, which represented the proceeds of sale by Mr. Reid of his business, were his separate property. Upon appeal from that judgment the Court of Appeal held that the assets in question were matrimonial property and not separate property. It then became necessary that valuations should be made of those assets because I had not attempted to attribute any value to them. Accordingly the order made by the Court of Appeal on 22 August 1979 was, in part, "That current values be fixed for all matrimonial property unless the parties can otherwise agree. In the case of the matrimonial home suitable allowance is to be made for the burden upon the title given in favour of the mother of the respondent husband. For the purpose the case is remitted to the Supreme Court."

20 Each party then filed a motion in this court for the fixing of values of the assets and those motions came before me on 2 November 1979. The matter was disposed of upon the wife's application. This was mainly because the husband's application sought to deal with assets which were not precisely the same as those dealt with by me and by the Court of Appeal. It was necessary for me to explain to the husband, who appeared in person, that I could not, in effect, re-open the case so as to deal now with assets which had not been included in the proceedings already disposed of. The wife's application was supported by an affidavit made by her in which she listed all the assets and made proposals as to the values to be attributed to each or as to the way in which those values should be ascertained. This affidavit was a convenient basis for the discussion which took place. The result was that the husband, appearing in person, and counsel for the wife agreed to the order which I then made in the following terms:

40 "The assets are to be valued as at 22/8/79 in the manner proposed in para. 6 of Mrs Reid's affidavit of 13/9/79 (as altered by me in ink), except that in place of subpara. H of that para: order that Aglionby St. be valued by Roll, Pyne & Co. unless Mr. Gazley accepts an existing valuation proffered to him by Mr. Reid. Leave reserved to apply further determining interests in that property following valuation."

50 It is unnecessary to set out para.6 of Mrs Reid's affidavit because the order which was then sealed achieves the same result. That order forms part of the file, but notwithstanding its length it is convenient, for ease of reference, to set out the operative part of it in full:

"THIS COURT HEREBY ORDERS:

1. THAT the current value of the matrimonial home be and is its market value at 22nd August 1979 as determined by Rolle Pyne & Co., Wellington.

2. THAT the current value of the holiday home (Paihia) be and is its market value at 22nd August 1979 as determined by J.D. Robison & Associates, Whangarei.

Supreme Court :
No.28 : Reasons for
Judgment of
Quilliam J. :
3 April 1980 :

3. THAT the current value of family chattels at 14 Colin Grove and at 26 Witako Street, Lower Hutt at 22nd August 1979 be, and be determined by, the valuation of Wellington Valuations Limited.

4. (a) THAT the respondent's car and trailer be and the same is accepted by the parties as having the current value of \$1895.

(b) THAT the current value of the Landcruiser, Toyota car and Boat at 22nd August 1979 be and be determined by the valuation of Max Wall Limited, Motor Consultants, 1 Kent Terrace, Wellington.

10

5. THAT the respondent's BNZ accounts be determined by her providing to this Honorable court copies of her bank statements from 17th December 1976 to 22nd August 1979; and with her giving explanation of deposits thereto and withdrawls therefrom.

6. THAT current value of the respondent's Northern Building Society shares be and is the value thereof at 22nd August 1979 as certified in a letter to be obtained by the respondent from the said Society.

20

7. THAT the current value of the respondent's money invested in New Zealand and including therein \$9086, her share in Aglionby Street, be and is \$15,086 and the interest thereon to be determined by the respondent's providing the interest earned on any of such moneys from 17th December 1976 to 22nd August 1979.

30

8. THAT the current value of the applicant's shares and stock (cryptically listed, page 305 of case on appeal, as 625 NZTS, 100 AB Con., 2300 W.H.B. and 1400 Marl H.B.) and of the applicant's D.R.G. Shares be, and be determined by, the valuation at 22nd August 1979 of the same made by Finch Webster & Nathan, Sharebrokers, Wellington.

40

9. THAT the current value of the applicant's A.M.P. policies be the surrender values of the same at 22nd August 1979 to be determined by the applicant's obtaining from the A.M.P. Society a letter of such surrender values at the said date.

10. THAT the current value of other chattels at Colin Grove be, and be determined at 22 August 1979 by the valuation of a representative of Cory Wright & Salmon Limited or (in its default) of such other machinery valuer as is appointed by the Registrar of this Honourable Court; and, whoever the valuer, he (in the case of new chattels) be supplied by the applicant with the purchase price of such new chattels, and (in the case of all such other chattels) be given by the applicant access to those other chattels.

50

11. THAT the market value as at 22nd August 1979 of the property at Aglionby Street be and be determined by the valuation of Rolle Pyne & Co. unless the respondent's counsel(W.V. Gazley) accepts the valuation proffered to him by the applicant; and that leave be and the same is hereby reserved to either party to apply further determining interests in that property following valuation as aforesaid.

10 12. THAT the current value of the applicant's B.N.Z. account and the applicant's Nationwide account be determined by the applicant providing to this Honourable Court copies of his bank statements from 17th December 1976 to 22nd August 1979; and with his giving explanation of deposits and withdrawals therefrom.

20 13. THAT the current value of the applicant's B.N.Z. term deposit be and is the sum of \$200,000 and the interest thereon from the date of inception of such deposit to 22nd August 1979; and for the purposes of determining such interest the applicant obtain from the Bank of New Zealand its record of such term deposit and the interest paid or payable thereon for the period aforesaid.

30 14. THAT the current value of the applicant,s Sutherland loan be and is the sum of \$16,000 and the interest thereon from the time the loan was made to the 22nd August 1979; and the applicant provide the registrar of this Honourable Court the security of the said loan, the terms of the loan, and the interest on the said loan from the time the loan was made to 22nd August 1979.

40 15. THAT the current value of the applicant's investment with Chapman Tripp & Co. be and is the sum of \$200,000 and the interest thereon from the inception of such investment to 22nd August 1979; and, for the purposes of determining such value Chapman Tripp & Co. certify to this Honourable Court and to the respondent's counsel the existance of such capital sum of \$200,000 and the interest paid or payable thereon from the inception of any loan or loans constituting such investment to 22nd August 1979."

50 When the matter came before me again there were four motions which had been filed. Three of them were filed on behalf of the wife and arose out of matters which had passed between the parties during the course of the process of valuation. There were two motions for the examination of valuers and a motion for leave to deliver interrogatories. It was not sought to pursue any of those motions and they are accordingly dismissed. The motion filed by the husband was for leave to deliver interrogatories to the wife. It is apparent on the face of the proposed interrogatories, and it was conceded by the husband, that most, if not all, of them related to assets which were said to exist but had not been subject of consideration by me or by
60 the Court of Appeal. I was not prepared to entertain this

Supreme Court :
 No.28 : Reasons for
 Judgment of
 Quilliam J. :
 3 April 1980 :

motion because I considered that the issue of matrimonial property between these parties has already been the subject of a judgment in this Court and may not simply be re-opened as was proposed. That application is therefore also dismissed.

I was then informed that counsel for the wife was ready to proceed with his argument as to valuations which I should now fix for the various assets. It seemed that the husband had not expected that matter to be dealt with at this hearing. In the end I decided to hear counsel for the wife and then, if he wished it, to allow the husband an adjournment to enable him to prepare his reply. I think I should place on record that while the husband appeared in person and is not a lawyer, he is a man of considerable intellectual ability who has so immersed himself in the law relating to matrimonial property (and to certain other aspects of the law) that I did not consider he was in any particular disadvantage in being unrepresented. The argument for the wife was concluded just before luncheon adjournment and I then gave the husband the election of proceeding after lunch or having an adjournment. He chose to proceed after lunch. I have thought it necessary to set out the sequence of events in such detail because of the unusual nature of the case and the fact that I fear litigation between these parties is far from coming to an end.

I come now to the task that I imposed upon myself by my order of 2nd November 1979. Parts of it are relatively straight forward but other parts present real difficulties. The assets fall into two categories, those which are the subject of what I might call conventional valuations and those which are not. The first category comprises the assets referred to in paras. 1, 2, 3, 4, 6, 7 and 10 of the order, and the second category comprises the rest. I deal first with the first category in respect of which I did not understand there to be any real dispute.

1. **Matrimonial Home**

In accordance with the order this has been valued by Rolfe Pyne & Co. and the amount of the valuation is \$114,000.

2. **Holiday Home.**

The valuation of J.D. Robison & Associates is \$51,700.

3.(a) **Family Chattels, Colin Grove.**

The valuation of Wellington Valuations Ltd is \$3055.

(b) **Family Chattels, Witako Street.**

The valuation of Wellington Valuations Ltd is \$14,541.

4.(a) **Car and Trailer.**

A value of \$1,895 was accepted by the parties.

(b) **Land Cruiser, Car and boat.**

The valuation of Max Wall Ltd of the landcruiser and car totals \$8,525. As Max Wall Ltd. did not feel competent to value the boat it was proposed that the valuation of a Mr Crisp be obtained. The husband appears to have agreed to this. Mr Crisp's valuation is \$10,000.

6. **Building Society Shares.**

A letter from the Northern Building Society establishes the value at \$4,720.

7. **Wife's Money Invested in New Zealand.**

This was agreed to be \$15,086. It comprises two sums each invested through different firms of solicitors. The total investment, including interest, is established at \$19,378.42. These investments include the wife's share in the Aglionby Street property.

10. **Other Chattels at Colin Grove.**

The valuation of Macaulay Machinery Ltd is \$13,003. The Husband appears to have agreed to that firm making the valuation.

10 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. They were treated by the Court of Appeal as existing as I treated them. A question of principle arises as to the proper course to follow in such a situation. This is likely to arise frequently in matrimonial property applications because of the relationship between s2 (2) and 2 (3) of the Act. Section 2 (3) directs that the share of a spouse in matrimonial property should be determined as at the date on which the parties ceased to live together. Section 2(2) directs that the value of that property is to be its value as at the date of hearing unless the Court otherwise decides. In this case the Court has not otherwise decided. It has specified that the values that are to be ascertained are to be "current values" and it was for that reason that the order of 2nd November 1979 referred to values as at 22nd August 1979 which was the date of the judgment of the Court of Appeal. The question now is as to what happens when the asset in which the shares have been determined has ceased to exist by the date the value is to be fixed. 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. The result has been that where an asset has ceased to exist or changed its form the precise words of the order cannot be complied with. Where an asset has simply changed its form so that it can now be seen that it appears in identifiable form as another asset a practical course would obviously be to treat that other asset as though it were the original asset. Where, however, an asset has been realised and the cash simply paid to a bank account which has continued to be operated for a variety of purposes then a difficulty plainly arises. That is the situation which arises in some of the assets in the second category. There are other problems as well which will appear as I deal with the individual assets but I think desirable to consider first the type of approach which ought to be taken in such cases.

40 It was argued that the matter can be resolved upon the basis that the husband, before the Court of Appeal, has accepted that the assets were still in existence and that he ought now to be estopped from advancing any argument based on the proposition that they are not. I do not consider this is a matter to which any question of estoppel properly applies. If, in the present case, it is necessary for me to depart from the strict terms of my own order so as to do justice between the parties then I think I must do so. In this regard it should perhaps be observed that the direction of the Court of Appeal to ascertain the values ought to outweigh the precise terms of the order which I made in a preliminary endeavour to comply with that direction. It is, I think, possible to proceed on the basis of there being something akin to a notional asset, that is, by arriving at what would have been the value of the asset if it had continued in existence. This is obviously a somewhat artificial approach but the alternative may be even less realistic. There is not, I think, anything wrong in principle with saying that as certain assets were undoubtedly in existence at the time of separation then those assets may be deemed to have remained in existence for the purpose of assessing their value. The alternative is to trace each asset through to the time of the valuation. The difficulty in this is that it may be so changed in character as to be no longer identifiable at all. As an example would be an endowment assurance policy which existed at the date of

Supreme Court :
No.28 : Reasons for
Judgment of
Quilliam J. :
3 April 1980 :

seperation but which had matured prior to the date of hearing and the proceeds paid to the husband. I cannot accept that the husband could, by the simple device of spending those proceeds on an overseas trip, put it beyond the power of the Court to arrive at the value of what ought to be there so as to make an order apportioning the appropriate amounts to the parties. In such case I see no objection in principle to treating the policy as still in existence and placing a value on it which has regard to the time involved and to the application of normal interest rates.

10

The husband has objected to any such course in this case. He says that certain assets have been realised and the proceeds paid to his bank account. These have been applied in various ways so that some are to be regarded, in his view, as separate property and accordingly ought to be excluded. The husband referred to s9(4) of the Matrimonial Property Act which provides:

" All property acquired by either the husband or the wife while they are not living together as husband and wife 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. "

20

His argument, as I understood it, was that some of the proceeds of realisation of assets had been used by him to acquire property which had, by virtue of s9(4), become separate property or which ought to be treated by the Court as having done so.

The order of 2 November 1979 required that the value of the various bank accounts be determined by obtaining the bank statements and explanations as to deposits and withdrawals from those accounts. The husband points out that this has been done by each of them and says that the result ought to be traced through as contemplated. He argues that if this were done it would involve decisions as to separate and matrimonial property. Apart from the fact that this poses a formidable task, it seem to me to be outside the scope of what I am required by the Court of Appeal to do. It involves really a reopening of the general question of what is and what is not matrimonial property. The husband considers that any other course introduces a danger of including certain assets twice. I recognise that there must be a possibility of this occurring but I think it applies to each party and, in any event, is unlikely to apply in any wery large amount. I regard the question of the proper course to follow to be one of considerable difficulty but I conclude that in the end the method which involves least speculation and the best chance of a fair result is, where possible, to treat assets as subsisting to the date of valuation, and, in the case of bank accounts, to take the amounts which were in them before any question of the proceeds of realised assets being paid to them arose.

30

40

I deal now with the second category of assets in turn.

50

5. Wife's Bank Accounts.

In accordance with the order made the wife has produced all her bank statements for the period concerned and has noted on them the explanations for the withdrawals and deposits. The credit balance in her account at 22 August 1979 was \$231.22. It is not suggested on her behalf that this is the figure at which her account should be valued. What is proposed is that the account of each of them should be dealt with in the same way,

that is , by taking them at the amounts at which they were put before the Court for the purpose of the original hearing before me. The same amounts were used for the purpose of the hearing before the Court of Appeal. In the wife's case the amount of her bank account was taken as \$2733. I accept that the only sensible course is to treat her account at the date of hearing as being the same ammount. This could only be a realistic approach if both parties were treated in the same way and this is what I propose to do.

10 **8. Husband's Shares and Stock**

A valuation made by Finch, Webster & Nathan, as provided in the order, shows a valuation of \$ 8,622.84. To this needs to be added the proceeds of sale of A.B. Consolidated shares, namely \$500. The sale had taken place in August 1978 and the proceeds paid to the husband. In accordance with what I have said earlier I consider the proper course is to treat those shares as still owned by the husband. No doubt he still has the cash or other assets which represent the proceeds of the sale. The wife claims to add also \$1,400 for Marlborough Harbour Board stock which the husband says has been repaid to him. But as the stock is included in the valuation the wife's proposal would mean that it was included twice. The total amount for shares and stock should therefore be \$9,122.84.

9. A.M.P. Shares

Here again the husband says that both the policies in question have matured and the proceeds paid to him. In one case this was on 14 February 1978 and in the other on 5 July 1978. If I am to continue the approach I have already adopted these policies should be treated as having subsisted. There would then, however, be a difficulty in valuing them. The normal method of valuing life insurance policies is by reference to their surrender value which, as I understand it, is a calculation based upon the amount of premiums paid and is normally a good deal less than the face value of the policies. What the wife proposes here is that the value should be the amounts actually paid to the husband together with interest at a reasonable rate from the date of payment. It would be more consistent with the approach I have been endeavouring to apply if I were to take the notional value on the assumption that the policies have remained in existence. I find myself, however, unable to do this because I have no valuation of the policies on the basis of surrender values, nor have I the ability to calculate what those values might be . I therefore conclude that the only course open to me is to take the amount of the proceeds paid to the husband together with reasonable allowance for interest.

The total of the amounts received by the husband on the policies is \$7,510.36. Of this \$3,595.76 was received on 14 Feburary 1978 and \$3,914.60 on 5 July 1978. On behalf of the wife it was proposed that the interest should be calculated on these amounts at a rate of 8%. There can be little doubt that this is a very modest rate and I am prepared to adopt it. I therefore calculate the value of the policies in this way:

\$3,595.76 with interest at 8% from	
14 February 1978 to 22	
August 1979 (\$436.64)	\$ 4,032.40
\$3,914.60 with interest at 8% from	
5 July 1978 to 22 August	
1979 (\$354.34)	4,268.94

	\$ 8,301.34

Supreme Court :
 No.28 : Reasons for
 Judgment of
 Quilliam J. :
 3 April 1980 :

11. Husband's Share in Aglionby Street.

This property was acquired as an investment out of the proceeds of sale of the husband's business. At the time of the original hearing before me there was a partnership which owned the property. There were seven partners, namely the husband, the wife, and five trusts to which interests the property had been transferred. What I am concerned with now is the value of the husband's interest in that partnership. In his affidavit filed in respect of the present proceedings as to valuations the husband has set out an argument from which he concludes that "there is no matrimonial property to value that the (wife) can have any interest in under the Act." I do not need to examine his argument to that effect because I can in no circumstances entertain it. The decision of the Court of Appeal accepts that there is such an interest and I must endeavour to arrive at a valuation of it. I start from the value accepted by me and by the Court of Appeal of that interest as at the time of separation, namely, \$32,720.26. That sum represents the amount of the husband's capital account in the partnership at the time of separation.

10

20

In his recent affidavit the husband confirms that the amount of his capital account was then \$32,720.26 and he says that his capital account now stands at \$53,006 and that the total of the capital accounts of all the present partners amounts to \$137,006. On the wife's behalf it was contended that the present value of his interest in the partnership is accordingly arrived at by calculating the proportion of the husband's interest in the present value of the property. The valuation of Rolle Pyne & Co. is \$250,000 and the calculation which it is said should be made is:

$$\begin{array}{r} 53,006 \\ \hline 137,006 \end{array} \times 250,000 = \$96,470.92$$

30

This calculation, however, overlooks the reason for the increase in the husband's capital account. In his affidavit he explains this. At about the time of the separation he offered to purchase the interest of the wife in this partnership which she held both in her own right and by reason of her entitlement under one of the trusts (the S.R. Reid Trust). That offer was accepted but there was a delay in completion of sale. Eventually it was completed and payment was made to the wife out of the proceeds of a term deposit in the Bank of New Zealand. The result of this transaction was that two of the original seven partners dropped out and the interests which had previously been reflected in the capital accounts of those partners were now reflected in the capital account of the husband. It is therefore apparent that to take the husband's capital account now without qualification would be wrong unless at least a corresponding adjustment is made to the husband's term deposit. No such adjustment is made in the claim by the wife in respect of the term deposit (para. 13 of the order). It seems to me that following the reasoning I have adopted earlier it is necessary to preserve a consistent approach and treat the husband's interest in the partnership as continuing on the same basis as before and then to treat his term deposit in the same way.

40

50

The question then is how to calculate the value now of his interest in the partnership after ignoring his purchase of his wife's share. The only real asset in the partnership is, as I understand it, The property itself. The total of the capital accounts of the partners at the time when the husband's account was \$32,720.26 was \$145,015.86. Accepting the value of the property at \$250,000, and apportioning that among the partners

Supreme Court :
 No.28 : Reasons for
 Judgment of :
 Quilliam J. :
 3 April 1980 :

on the basis of the capital accounts prior to the purchase of the wife's interest, the calculation to be made will be:

$$\begin{array}{r}
 32,720 \\
 \hline
 145,015
 \end{array}
 \times 250,000 = \$56,407.96$$

12. Husband's Bank of New Zealand and Natiowide Accounts

I follow the same procedure for these accounts as I have done under para. 5 for the wife's accounts. The amount of these accounts was not referred to in the judgment which I originally gave or in the judgments of the Court of Appeal. The amounts are, however, given by the husband in his recent affidavit as being, on 17 December 1976, \$2,855.34 and \$2,557.24 respectively. The total of these is \$5,412.58. Notwithstanding the many fluctuations in those accounts since then I consider the position as between the parties is fairly represented by my accepting this figure as the amount of these two accounts.

13. Husband's Term Deposit.

For the purpose of the original hearing the amount of this deposit was taken as the credit which existed at 19 December 1976, namely, \$200,000. On behalf of the wife it is argued that as the husband adopted that figure for the hearing in the Court of Appeal it ought to be regarded as having continued as that amount. In fact the account was reduced on several occasions and finally closed on 14 March 1978. I have been supplied with details of the account and I have been able to trace the way in which most of the withdrawals have been dealt with. The result of this is that I find myself unable to assume that the full amount of \$200,000 should be regarded as having continued in existence. I am aware that the order I made on 2 November 1979 says that the term deposit "be and is the sum of \$200,000 and the interest thereon....", but in common fairness I cannot proceed on that basis.

The first reason for this is that a withdrawal of \$50,000 made on 24 December 1976 plainly represents the payment of that amount made to the wife at the time of the separation. What has been proposed on the wife's behalf is that the full \$200,000 (together with interest thereon) should be treated as in existence for the purpose of ascertaining the respective shares and that credit then be given for the \$50,000 already paid. The calculation of interest, however, is made upon the total sum notwithstanding the payment already made. I also observe that two of the withdrawals seem clearly to relate to a payment of tax and a payment of legal costs. There is also a withdrawal which is apparently related to the payment to the wife for her interest in the Aglionby Street partnership, but I should not make any adjustment for that as I have already allowed for it in fixing the amount of the husband's interest in that partnership.

After making the allowances for those matters to which I have referred I arrive at a nett balance for the term deposit of \$130,000. This, in effect, was the sum which ought to be regarded as having continued in existence. I observe that following the closing of the term deposit a substantial sum (apparently \$63,000) was paid to Chapman Tripp & Co for investment. I cannot see that this sum is reflected anywhere else in the husband's assets and I feel I can conclude that by treating the deposit as continuing I am not bringing it into account twice.

Supreme Court :
 No.28 : Reasons for
 Judgment of
 Quilliam J. :
 3 April 1980 :

It is then said that in order to arrive at a proper valuation there should be interest added. I think that this must be correct because, whether it remained as a term deposit or was invested in some other way, there would have been interest received on it. By not including the actual bank balance over the latter period it seems that I am again able to avoid the possibility of that interest being reflected twice. The rate of interest proposed is 9% which was the rate actually earned for the later period of the deposit. I think it is likely a higher rate may be more appropriate since the closing of the deposit (that is, 14 March 1978) and so I adopt the proposed rate of 9%. The way in which this asset is then to be valued:

10

Capital	\$130,000
Interest @ 9% from 14 March 1978 to 22 August 1979	16,575

Total	\$146,575

14. Sutherland Loan.

This was a private loan made by the husband to a friend. It was repaid on the 6 March 1979 and the proceeds were paid to the husband's bank account. In accordance with what I have said earlier, and in view of the fact that the bank account is not taken into consideration after the 17 December 1976, I treat this loan as having remained in existence. The order made by me in para 14 required the husband to inform the Court of the security for the loan, the terms of the loan, and the interest from the time the loan was made down to 22 August 1979. He has done this. He says there was no security and that a total of \$1940 only was paid by way of interest. I am prepared to accept this as being correct. I note that the principal repayment which went to the bank account was apparently part of a substantial withdrawal made shortly after. I think it is reasonable to assume that this was an investment and that in valuing the loan I should regard it as still in existence and bearing interest. I can only make an arbitrary assessment of interest and accept the submission of the wife that a reasonable rate would be 12%. That rate should, however, only be charged from the date of repayment of the loan, namely, 6 March 1979. To this should be added \$1,440 being payments of interests actually made and deposited to the bank account. The husband says that a total of \$1,940 was paid for interest but \$500 of this must have been before 17 December 1976 as only \$1,440 appears in the bank statements after that date. I accordingly value this loan as follows:

20

30

40

Capital	\$16,000
Interest payments made	1,440
Interest @ 12% from 6 March 1979 to 22 August 1979	970

Total	\$18,410

15. Investments with Chapman Tripp & Co.

50

The order specifies that the amount of this deposit is \$200,000. Infact \$45,000 was repaid to the husband. He used most of that, however, to repurchase from his brother the original family home. It is therefore an asset which has simply changed its form and in accordance with the reasoning previously set out I consider it should properly be treated as having re-

Supreme Court :
 No.28 : Reasons for
 Judgment of
 Quilliam J. :
 3 April 1980 :

10 maintained in existence as the full sum. The question is as to the interest which should be added to achieve a valuation at the appropriate date. A member of the firm of Chapman Tripp and Co. has made an affidavit giving details of the individual loans in which the money has been invested. This shows that the interest rates vary from 11 to 14%. On behalf of the wife it is argued that a reasonable approach would be to take a rate of 12% overall. Having regard to the fact that a substantial part of the investment has been on a higher rate than that I think this is a satisfactory approach. I am not aware whether the house property purchased by the husband from his brother has yielded income, but I think I must assume that it will have done. On that basis it is appropriate to calculate interest on the total investment not withstanding the partial repayment. The value of this investment is accordingly:

	Capital	\$200,000.00
	Interest @ 12% from 17 December 1976 to 22 August 1979	88,306.80
20	Total	<u>\$288,306.80</u>

I summarise my findings by reference to the paragraphs in the order of 2 November as follows:

1. Matrimonial home - \$114,000.
2. Holiday Home - \$51,700
3. (a) Family Chattels, Colin Grove - \$3,055.
- (b) Family Chattels, Witako Street - \$14,541.
4. (a) Car and Trailer - \$1,895.
- (b) Land Cruiser, Car and Boat - \$18,525.
5. Wife's Bank Accounts - \$2,733.
- 30 6. Building Society Shares - \$4,720.
7. Wife's Money invested in New Zealand - \$19,378.42.
8. Husband's Shares and Stock - \$9,122.84.
9. A.M.P. Policies - \$8,301.34.
10. Other Chattels at Colin Grove - \$13,003.
11. Husband's share in Aglionby Street - \$56,407.96.
12. Husband's BNZ and Nationwide Accounts - \$ 5,412.58.
13. Husband's Term Deposit - \$146,575.
14. Sutherland Loan - \$18,410.
15. Investments with Chapman, Tripp & Co. - \$288,306.80.

40 I assume that the fixing of these values will enable the parties to make their own calculations as to the final result.

I do not consider there should be any Order as to costs, but the wife has had to incur Valuation Fees amounting to \$1,002.46. These were incurred for the benefit of both parties and should be shared in the same proportions as the majority of the matrimonial property. There will accordingly be an Order for payment by the husband of three-fifths of that sum, namely, \$601.48.

Solicitors: W.V.Gazley, WELLINGTON, for Respondent.

Supreme Court :
No.29 : Formal
Judgment of
Quilliam J. :
Fixing values :
3 April 1980 :

UPON THE ORDER of the Court of Appeal of New Zealand of 22nd August, 1979 - "That current values be fixed for all matrimonial property unless the parties can otherwise agree. In the case of the matrimonial home suitable allowance is to be made for the burden upon the title given in favour of the mother of the respondent husband. For the purpose the case is remitted to the Supreme Court."

AND UPON READING this Court's order of 2nd November, 1979.

AND UPON READING the affidavits of the respondent sworn on 5th December, 1979 and on 12th December, 1979; the affidavits of the applicant sworn on 31st January, 1980 and on 4th February, 1980 and the applicant's memorandum for the Registrar of 17th December, 1979 and the affidavit of Ross Mitchell Crotty sworn on 7th December, 1979. 10

AND UPON HEARING the applicant in person and Mr. W.V. Gazley for the respondent.

THIS COURT HEREBY ORDERS that current values of all matrimonial property be and are:

- 1. Matrimonial home - \$ 114,000.
- 2. Holiday Home - \$ 51,700. 20
- 3. (a) Family Chattels, Colin Grove - \$ 3,055.
(b) Family Chattels, Witako Street - \$ 14,541.
- 4. (a) Car and Trailer - \$ 1,895.
(b) Land Cruiser, Car and Boat - \$ 18,525.
- 5. Wife's Bank Accounts - \$ 2,733.
- 6. Building Society Shares - \$ 4,720.
- 7. Wife's Money invested in New Zealand - \$ 19,378.42.
- 8. Husband's Shares and Stock - \$ 9,122.84.
- 9. A.M.P. Policies - \$ 8,301.34.
- 10. Other Chattels at Colin Grove - \$ 13,003. 30
- 11. Husband's Share in Aglionby Street - \$ 56,407.96.
- 12. Husband's BNZ and Nationwide Accounts - \$ 5,412.58.
- 13. Husband's Term Deposit - \$ 146,575.
- 14. Sutherland Loan - \$ 18,410.
- 15. Investments with Chapman, Tripp & Co. - \$ 288,306.80.

AND THIS COURT HEREBY FURTHER ORDERS that the Applicant pay to the respondent the sum of \$ 601.48, being three-fifths of valuation fees (totalling \$ 1,002.46).

BY THE COURT

K.Kesenberg 40
DEPUTY REGISTRAR

Court of Appeal:
 No. 30 :
 Judgment of
 Woodhouse and
 Richardson JJ :
 21 November 1980:

Coram: Woodhouse J. (Presiding)
 Cooke J.
 Richardson J
 Hearing: 23 and 24 October 1980
 Counsel: Appellant in Person
 W.V.Gazley for Respondent
 G.P.Barton - Amicus Curiae
 Judgment: 21 November 1980

**JUDGMENT OF WOODHOUSE AND RICHARDSON JJ
 DELIVERED BY WOODHOUSE J.**

10

ON 22 August 1979, for purposes of the Matrimonial Property Act 1976 this Court made orders affecting property of the parties which will be found at p. 593 of the report of the case, [1979] 1 NZLR 572. They provided -

20

- "(1) That current values be fixed for all matrimonial property unless the parties can otherwise agree. In the case of the matrimonial home suitable allowance is to be made for the burden upon the title given in favour of the mother of the respondent husband. For the purpose the case is remitted to the Supreme Court.
- (2) That the matrimonial home and the family chattels are to be divided equally.
- (3) That all the other matrimonial property in the hands of either party and as defined in this judgment is to be shared in the proportions 60 percent to the husband and 40 percent to the wife.
- (4) That the vesting orders made in the Supreme Court are to stand."

30

Those orders are in accord with the unanimous opinion of the members of the Court except for the apportionment of "the other" matrimonial property as provided by paragraph (3) which is in terms of the opinion of the majority.

The present appeal has been brought by the husband. It arises from the inability of the parties to agree in terms of paragraph (1) upon the current values of the matrimonial property; and because he was dissatisfied with the consequential orders made by Quilliam J. for the purpose of fixing the values. The Judge has described in his judgment how the matter developed after it became necessary to seek the assistance of the Court:

40

"Each party then filed a motion in this Court for the fixing of values of the assets and those motions came before me on 2 November 1979. The matter was disposed of upon the wife's application. This was mainly because the husband's application sought to deal with assets which were not precisely the same as those dealt with by me and by the Court of Appeal. It was necessary for me to explain to the husband, who appeared in person, that I could not, in effect, reopen the case so as to deal now with assets which had not been included in the proceedings already disposed of."

50

Pausing there, it may be said that in the course of argument on the present appeal the husband again attempted on one ground or another to reopen the earlier determination of this Court concerning the classification as matrimonial property of the assets which were then in issue. That is something which cannot possibly be done and except for a short reference to the matter in a different context we say no more about it. The judgment continues -

Court of Appeal:
No. 30 :
Judgment of
Woodhouse and
Richardson JJ :
21 November 1980:

"The wife's application was supported by an affidavit made by her in which she listed all the assets and made proposals as to the values to be attributed to each or as to the way in which those values should be ascertained. This affidavit was a convenient basis for the discussion which took place. The result was that the husband, appearing in person, and counsel for the wife agreed to the order which I then made in the following terms:

'The assets are to be valued as at 22/8/79 in the manner proposed in para. 6 of Mrs. Reid's affidavit of 13/9/79 (as altered by me in ink), except that in place of subpara.H of that para: order that Aglionby St. be valued by Rolle, Pyne & Co. unless Mr. Gazley accepts an existing valuation proffered to him by Mr. Reid. Leave reserved to apply further determining interests in that property following valuation.'

It is convenient at this point to remark upon a ground of appeal to the effect that the Judge was wrong in law to adopt 22 August 1979 as the date at which the "current values should or could be fixed". That is the date on which the earlier decision of this Court was given. Despite the fact that the order set out by Quilliam J. at the end of the foregoing extract from his judgment was made by consent the husband now wishes to contend that the correct date must be 21 November 1977 when judgment was originally delivered in the Supreme Court. He relies on section 2 (2) of the Act as follows:

"For the purposes of this Act the value of any property to which an application under this Act relates shall, subject to sections 12 and 21 of this Act, be its value as at the date of the hearing, unless the Court in its discretion otherwise decides."

The argument turns upon the meaning in that sub-section of the words "the date of the hearing". In the present context there can be no doubt that the date contemplated by the order of this Court was the date upon which that order was made. That is the position whether the statutory reference to "the hearing" is adopted as referable to the date of the order or whether the order is read as an exercise of the Court's discretion in terms of the concluding words of section 2(2). Accordingly, Quilliam J. was quite right to take the relevant date as 22 August 1979. In his judgment the Judge proceeded to set out the operative part of the order he had made on 2 November 1979 by enumerating 15 items of property and the method by which values were to be achieved in each case. Then he said this:

"When the matter came before me again there were four motions which had been filed. Three of them had been filed on behalf of the wife and arose out of matters which had passed between the parties during the course of the process of valuation. There were two motions for the examination of valuers and a motion for leave to deliver interrogatories. It was not sought to pursue any of those motions and they were accordingly dismissed. The motion filed by the husband was for leave to deliver interrogatories to the wife. It is apparent on the face of the proposed interrogatories and it was conceded by the husband, that most, if not all of them related to assets which were said to exist but had not been subject to consideration by me or by the Court of Appeal. I was not prepared to entertain this motion because I

considered that the issue of matrimonial property between these parties has already been the subject of a judgment in this Court and may not simply be reopened as was proposed. That application is therefore also dismissed"

For the reasons already indicated Quilliam J. was right to deal with such an issue in this fashion and accordingly this part of his decision must stand.

10 Then Quilliam J turned to consider what findings should be made following the argument he had heard concerning each of the 15 items of property in respect of which the necessary professional valuations or factual material had been prepared and brought before him. Thus, the former matrimonial home of the parties, formerly considered to have a value of \$ 91,035. had been valued at a higher figure of \$ 114,000. as at the appropriate date two years later. Similarly changes appear in respect of the holiday home at Paihia, and for family and other chattels. And for one reason or another the husband has argued that the various figures adopted by Quilliam J in his judgment are wrong. In the case of the matrimonial home - to take that asset as an example - one 20 argument is that certain work done on the place after the separation and at a cost to him of \$ 3,464. is included in the value of the property as at 22 August 1979 without a deduction of that amount from the items covering cash funds held by him. It is claimed that the amount has been counted twice against him: on the one hand within the value of the home which is now vested in him and on the other by taking the cash funds he has held without making the deduction. However the short answer to this point will be found at page 592 of the report of the case. It is quite clear that the issue has been raised already in this 30 Court and decided on the basis that the matter did not justify an adjustment in favour of the husband.

It needs to be emphasised in this type of case that the overall purpose of having various assets valued is to produce in a global sense a fair estimation of the worth of matrimonial property so that its subsequent division will be achieved in a way which will be just as between the husband and wife. Accordingly this Court will not readily interfere with findings made in the Court below in the broad area of the valuation of property involving, as those findings must do, an element of 40 discretion in deciding whether one rather than another method of valuation should be adopted and whether, for one reason or another, particular kinds of adjustment should be made.

With such considerations in mind it is necessary to examine a second category of assets in the present case which involve implications arising from the fact that following upon the separation of the parties or even since the hearings in Court, changes were made in the form or nature of certain property. To some extent this has resulted from reinvestment and to a degree from the movement of some assets between the husband and the 50 wife. In order to deal with these issues Quilliam J was of the opinion that it would be more appropriate to assume that property of a particular kind in the hands of one or the other of the parties as at the date of separation had continued to be so held and then to make appropriate adjustments to take account of changing values in regard to that notional situation rather than to recognise all the various transactions that had occurred with the consequential and difficult problem of tracing to a conclusion in each case the changed form and value of the asset concerned.

Court of Appeal:
 No. 30 :
 Judgment of
 Woodhouse and
 Richardson JJ :
 21 November 1980:

In this second area the husband has raised what he claims is an important question resulting from calculations of the value of his interest in a family partnership. It holds, as its substantial investment, a commercial building at Aglionby Street, Lower Hutt. At the time of the separation there were seven partners: the husband, the wife and five individual trusts. But immediately prior to the separation she had agreed to transfer her share to him for \$ 9,086 and she had also agreed that the trustee of one of the trusts in which she had a life interest should transfer to the husband the share of that trust in the partnership in return for the sum of approximately \$19,000 which would then be invested in terms of the trust provisions. Effect was not given to these arrangements until some time later. Accordingly at the original hearing in the Supreme Court the interests of the husband and the wife in the partnership for the purpose of the Matrimonial Property Act were taken to be \$9,086 in her case (that being the amount agreed between them as the cash value of her share); and an amount equivalent to the figure shown against his name in the partnership accounts as at 31 March 1976 which of course related to his original share, all he held at that time. In other words, because payment of the sum of \$9,086 to the wife was not made until 24 May 1977 the husband was not regarded as holding the combined shares of his wife and himself and together with the share purchased from the trust. By 22 August 1979 the book-keeping position had of course changed so that the accounts for the year ended 31 March 1979 do recognise the larger (combined) holding of the husband in the partnership. The question is, therefore, upon what basis "the current value" of his interest in the partnership should be assessed: the value at 22 August 1979. It is a matter that is influenced by a revaluation of the fixed assets of the partnership which it is accepted have a value as at 22 August 1979 of \$42,952 above the comparable figure shown in the accounts as at 31 March 1979. And as mentioned, in addition to the share earlier held by the wife in the partnership, the husband had acquired by then the trust interest as well.

In the 1979 accounts, the husband is shown to have a combined interest of \$61,697.43 in the total net assets of the partnership at that time amounting to \$162,473.81. Then, if his pro rata share in the extra value of the partnership assets above book value (the additional sum of \$42,952) is taken into account the 1979 accounting figure of \$61,697.43 becomes \$78,007.92. That calculation could well be regarded as "the current value" of that item of property so held by the husband although there would need to be an adjustment against the figure of \$78,007.92 in order to reduce his cash investments by the \$19,000 paid to purchase the trust share. If that adjustment were to be applied directly to the present calculation then the current value of his holding in the family trust would be \$59,007.92.

In contrast Quilliam J felt it necessary to act throughout on the general approach he had decided upon and to disregard changes in this as in other items of matrimonial property that had occurred after the separation. Accordingly he made a calculation be reference to the original interest of the husband as shown in the partnership accounts for the year ended 31 March 1976 and arrived at a figure of \$56,407.96. That approach did not require any consequential adjustment in respect of the other cash assets held by the husband because it purported to disregard the further shares paid for by the husband after the separation. The mathematical basis for the calculation made by Quilliam J has been challenged by the husband as being erroneous and he also contends that the result effectively ignores a substantial

Court of Appeal:
 No. 30 :
 Judgment of
 Woodhouse and
 Richardson JJ :
 21 November 1980:

commitment he has in respect of an advance on mortgage secured over the fixed assets of the partnership. However, the answer to the second point is to be found in the partnership accounts themselves. Quite clearly provision is made for the amount due on the mortgage as a liability which has reduced the net value of capital. And although it seems that the husband has assumed a personal responsibility akin to that of a guarantor in respect of the mortgage commitment of the partners it is most improbable that he will ever be called upon personally to meet any part of the amount involved. In any event to the extent that this contingent liability could be quantified it is one which should properly be put to one side in the context of this case. As to the mathematical calculation itself we would merely remark that the result (which has been accepted on behalf of the wife) works in favour of the husband to the extent of \$2,599.96 when put beside the figure of \$59,007.92. No doubt, a number of different formulae could be advanced in order to arrive at a fair assessment in relation to this asset as indeed to the matter of valuation in general. The result arrived at by Quilliam J. clearly provides a figure which is entirely fair to both sides. We would not interfere with it.

There are two different and quite substantial matters that should be mentioned. First, in order to assess the value to each of the parties of invested funds Quilliam J made calculations of interest during the relevant period to 22 August 1979 and added the amount involved to the capital investments. The husband has submitted that if such an approach is to be made it ought to be taken into account in his favour that the interest so received by him had been subject to income tax at a high rate so that inadvertently the Judge has calculated a gross rather than a net figure as the amount to be regarded as having accrued to capital. In one instance such a calculation affects the wife but we are asked to take the view that in her case the implications of tax must be much less severe. If an appropriate adjustment were to be made it may be that a deduction for tax in the order of \$50,000 would be involved. If that sum should be taken into account and if it is considered in terms of an allocation of "other" matrimonial property on the basis of 60 percent to the husband and 40 percent to the wife, it will be seen that the balance due by the husband to the wife on the Judge's calculations would be reduced by \$20,000: it would be necessary for her to give him credit on such a basis for that last amount.

The second substantial matter relates to a payment made by the husband to the wife immediately prior to the separation. The amount of \$50,000 was paid as the result of arrangements made between them at that time and was stated to be part of her claim to matrimonial property. The amount involved, or part of it, was used by the wife for the purchase of a home which was not included in the items of property dealt with by Quilliam J at the original hearing in the Supreme Court. In this area of the case Mr. Gazley, for the wife, while not conceding the husband can insist that this sum must be brought to account, has indicated in effect that if we were to think it right the wife would not object to some appropriate adjustment being made. That is a proper attitude for her to take and we propose to act upon it. In that regard, because the amount was paid from a term deposit in the name of the husband and accordingly was itself matrimonial property, it is clear that to make the adjustment in favour of the husband he should be given credit for \$30,000. If that last amount is added to the adjustment for tax of \$20,000 then a total deduction of \$50,000 would need to be

Court of Appeal:
No. 30 :
Judgment of
Woodhouse and
Richardson JJ :
21 November 1980:

made from any sum regarded as due by the husband to the wife in terms of Quilliam J's judgment as it presently stands.

We do not find it necessary to discuss other disputed details of the various valuations fixed by Quilliam J for the general reason that all the figures are both justified in themselves and when taken together achieve a result which does justice to both parties. Insofar as the husband would wish at this stage to introduce items of property which he contends are held by the wife and which had been regarded earlier as separate property we repeat that this is not something which can become part of the assessment to be made in the proceedings now before the Court.

10

Before parting with the appeal it is right to acknowledge the conscientious and useful assistance we have been given by Mr. Barton in his capacity as amicus curiae.

We turn to the matter of judgment. In the course of argument, calculations were put before the Court by Mr. Gazley which disclose that pursuant to Quilliam J's judgment the amount of matrimonial property in total has a current value of \$776,086-94. Equal division of the current value of the matrimonial home and family chattels together with a division of the value accorded other matrimonial property in the proportions 60 percent to the husband and 40 percent to the wife would provide for him an interest of \$450,450.16 in the total current value and for her an interest of \$325,636.38. Within those same figures she holds property worth \$94,967.42 and if that last amount is deducted from the gross sum due to her on the Judge's figures she would be entitled to receive from the husband the further sum of \$230,668.96. Justice will be achieved if an additional amount of \$50,000 is deducted from that last figure in order to make provision for the two substantial matters of tax and the interim payment made at the time of the separation. The resultant figure is \$180,668.96. To that extent we think the appeal should be allowed.

20

30

There will be judgment in favour of the respondent wife in the sum of \$180,668.96, together with the proportion of valuation fees ordered to be paid to her of \$601-48 and also the costs as ordered at the earlier hearing in this Court of \$2,243.90. Like Quilliam J in the High Court when dealing with the present issues we make no order for costs in respect of this appeal. We were asked to award interest on the judgment as from 22 August 1979 to the date of entry of judgment at 11% per annum. Interest is awarded on the judgment as from 22 August 1979 but taking into account the incidence of tax in the case of each of the parties the calculation is to be made at the lesser rate of 7.1/2%.

40

SIGNED: Woodhouse J

Court of Appeal :
No. 31 : Reasons for
Judgment :
Cooke J. :
21 November 1980 :

Coram: Woodhouse J. (presiding)
Cooke J. Richardson J.
Hearing: 23 and 24 October 1980
Counsel: Appellant in Person
W.V.Gazley for Respondent
G.P.Barton as Amicus Curiae
Judgment: 21 November 1980

JUDGEMENT OF COOKE J.

10 I agree with the judgment prepared by Woodhouse J. - except
only of course that a different result would follow from my view
that, while the matrimonial home and the family chattels should
be divided equally, the other matrimonial property should be
divided in the proportions of 75 per cent to the husband and 25
per cent to the wife.

20 On that basis of division my previous judgment mentioned
(1979 1 N.Z.L.R. at p.605) that in very round figures the wife
might be expected to receive in all about \$ 205,000. leaving the
husband with about \$495,000. As compared with the total figure
of approximately \$700,000. that I then had in mind, the
revaluations have produced a total figure of \$776,086.94. It is
unnecessary to set out the details. On the same basis of
division the wife would now be entitled to \$232,025.73, the
husband to \$544,061.21.

As Woodhouse J. explains, the total for division,
\$776,086.94 is not altered by the fact that \$ 50,000 paid by the
husband to the wife in December 1976 has not been included,
because the addition of that figure to the total may be regarded
as offset by a tax liability falling on the husband of
approximately the same amount.

30 Mr. Gazley for the wife accepts that she has in fact
received \$144,967.42. In the result I would order the husband
to pay the wife \$87,058.31, with incidental orders about
valuation fees, costs and interest as in the majority judgment.

"R. B. Cooke J"

Court of Appeal :
No. 32: Formal Judgment:
21 November 1980 :

UPON READING the Notices of Motion on Appeal filed by the
appellant herein

40 AND UPON HEARING the appellant in person; Dr. G.P.Barton, Amicus
Curiae; and Mr. W.V.Gazley of counsel for the respondent

IT IS THIS DAY ADJUDGED that the respondent (with her receiving
in specie assets worth \$94,967-42) recover against the appellant
the sum of \$200,405-31 being

- (a) \$180,668.96
- (b) \$601.48 being proportion of valuation fees
- (c) \$2,243.90 being the costs awarded by this Honourable
Court in its judgment of the 22nd day of August 1979
- (d) \$16,890.97 being interest at 7.1/2% on \$180,668.96 from
50 the 22nd day of August 1979 to the 21st day of November
1980.

BY THE COURT

REGISTRAR

Court of Appeal :
No. 33 : Order Granting
Final Leave to Appeal to
Her Majesty in Council
30 March 1981 :

BEFORE THE RIGHT HONOURABLE MR. JUSTICE WOODHOUSE (PRESIDING)
THE RIGHT HONOURABLE MR. JUSTICE COOKE
THE RIGHT HONOURABLE MR. JUSTICE RICHARDSON

MONDAY THE 30TH DAY OF MARCH 1981

UPON READING the Notice of Motion respecting Final Leave to
Appeal to Her Majesty in Council and the affidavits filed in
support thereof and in opposition thereto

AND UPON HEARING the Appellant in person and Mr. W. V. Gazley of
Counsel for the Respondent

THIS COURT HEREBY ORDERS

10

- (a) THAT Final Leave To Appeal to Her Majesty in Council from
the whole of the judgments of this Court bearing the Dates
22nd day of August 1979 and 21st day November 1980 be and
the same is hereby granted to the Appellant.
- (b) THAT the Record shall, except in so far as the parties have
agreed otherwise, be everything earlier placed before this
Court whether in the cyclostyled case itself or by reference
through the index.
- (c) THAT there is to be an appropriate indication (in terms of
Rule 9 of the Privy Council Rules) where there has been
objection to the inclusion of a document by one side or the
other. 20
- (d) THAT there be no order for costs of and incidental to the
said Notice of Motion.

L.S.

By the Court

"W. D. L'Estrange"

REGISTRAR