



OUTER HOUSE, COURT OF SESSION

2021 CSOH 113

F25/20

OPINION OF LORD BRAILSFORD

In the cause

EDITH MARGARET (known as MARGARET) TURKINGTON BRADBURY

Pursuer

against

THOMAS JOHN CRAIG (known as CRAIG) BRADBURY

Defender

Pursuer: Speir; Brodies

Defender: Brabender QC; TurcanConnell

5 November 2021

[1] This is an action of divorce with ancillary financial conclusions. At proof no defence was tendered to the pursuer's first conclusion for decree of divorce. On the basis of the pursuer's own evidence and that of her two children Emma Bradbury and Thomas Bradbury I was satisfied that the marriage had broken down irretrievably. I will accordingly sustain the pursuer's first plea in law and grant decree of divorce. The outstanding live issues were the pursuer's third and fourth conclusions seeking payment of a capital sum and of periodical allowance. The sum sought as a capital payment in the pleadings was £2,000,000 but at proof the figure was revised and a sum of £1,342,775 sought.

In relation to periodical allowance a payment of £2,000 per month was sought until the death or re-marriage of the pursuer.

Agreed facts and basic chronology

[2] Parties entered into a joint minute¹ in terms of which all items of matrimonial property were agreed. For clarity and convenience I repeat the joint minute *ad longum*:

- “1. That the parties married on 30 November 1996. They separated on 15 January 2019.
2. That the relevant date for the purposes of section 10(3) of the Family Law (Scotland) Act 1985 is 15 January 2019.
3. On the relevant date the parties’ matrimonial property included the following:
 - (1) Satchells Farm, Lilliesleaf, Melrose TD6 9JU (‘Satchells’) title to which is in the sole name of the defender. The property is burdened by a standard security. The property also includes the former matrimonial home of Satchells Farmhouse and the property known as Satchells Cottage. The value of the whole property at the relevant date was £2,000,000.
 - (2) Todrig Farm, Selkirk TD7 4PQ (‘Todrig’) title to which is in the sole name of the defender. The value at the relevant date was £1,862,500.
 - (3) 4 Mossley Cross, Ashton-under-Lyme [sic], Lancashire title to which was in the sole name of the pursuer. The value of said property at the relevant date was £85,000.
 - (4) The defender's interest in the farming business he operates as a sole trader under the name ‘TJC Bradbury Satchells Farm’ and ‘TJC Bradbury Satchells Cottage’. The livestock, implements, machinery and crops belonging to the business had a value at the relevant date of £679,148.
 - (5) The defender’s entitlement under the Basic Payment Scheme (‘BPS’) (which replaced Single Farm Payment) with a value at the relevant date of £53,217.
 - (6) The pursuer's interest in Phoenix Pension plan number [...]4255. The pension commenced on 30 March 1989 with monthly contributions of £13.34 with the last contribution being made on 30 October 1998. It had

¹ Number 106 of process

a value of £348.14 at the relevant date. The proportion of said pension attributable to the period of marriage and therefore deemed to be matrimonial property in terms of the Pension Regulations is £258.51.

- (7) The pursuer's interest in a Phoenix Pension under plan number and [...]2073. The pension was in respect of the pursuer's contracted out contributions for the tax years 1987 to 1995. It had a value of £21,088.43 at the relevant date. The proportion of said pension attributable to the period of marriage in terms of the Pension Regulations and therefore deemed to be matrimonial property is £14,680.
 - (8) The balance at credit in the pursuer's Royal Bank of Scotland account ending 2668 which balance was entirely derived from a gift to the pursuer from her mother.
 - (9) The balance at credit in the pursuer's Royal Bank of Scotland ISA account ending 2765 being £9,952.
 - (10) The balance at credit in the defender's NatWest Reward Black account number ending 1454 being £100.
 - (11) The balance at credit in the defender's NatWest Instant Saver account number ending 3716 being £2,158.78.
 - (12) The balance at credit in the defender's NatWest instant saver account number ending 3362 being around 63 pence.
 - (13) The balance at credit in the defender's Scottish Building Society instant access saver account ending 9126 being £381.34.
 - (14) The defender's Audi vehicle having an approximate value of £1000.
 - (15) The furnishings and plenishings within the former matrimonial home at Satchells Farmhouse and within said Satchells Cottage in so far as comprising matrimonial property except in so far as already divided between the parties.
 - (16) The sums due to the defender by sundry debtors. At 31 March 2019, the total sum due to him by said debtors was £12,337.
4. On the relevant date the parties' liabilities included the following:
- (1) A business loan in the name of the defender due to the Natwest in respect of loan account number ending 0473. The balance of said loan outstanding as at 11 January 2019 was £1,660,125.37. Said loan is secured over Satchells Farm.

- (2) A debit balance on the defender's Natwest Business current account number ending 8207 being £53,453.77.
 - (3) A claim by Victoria Alice Feilding [sic] in terms of the Agricultural Wages (Scotland) Act 1949 relating to the period of the marriage.
 - (4) The sums due by the defender to hire purchase creditors. At 31 March 2019, the total sum due by him to said creditors was £7,271.
 - (5) The sums due by the defender to sundry creditors. At 31 March 2019, the total sum due by him to said creditors was £92,554.
5. Copy documents lodged on behalf of either party shall be taken to be true copies and shall be treated as principals."

[3] Beyond the agreed facts in the joint minute I am satisfied on the basis of the evidence I heard that there are a number of other factual issues which are not in dispute and from which a basic chronology of the events of the marriage may be constructed. I do so to, hopefully, give a structure to the substantive part of my opinion.

[4] Prior to the parties' marriage in 1996 the defender owned a Pennine sheep farm, Fairbanks Farm, Lancashire. There is no dispute between the parties that Fairbanks Farm never constituted matrimonial property. It was acquired by the defender in 1995, half of those subjects being gifted to him and the remaining half being purchased for £128,000. Following their marriage the parties and their children lived on Fairbanks Farm until that property was sold in 2010. The proceeds of sale of Fairbanks Farm were £2,633,500. The purpose of the sale of Fairbanks Farm was to enable the expansion of the defender's sheep farming business by the purchase of Satchells Farm in the Scottish Borders. In 2012 the defender's farming enterprise expanded when he entered into an agreement to run another farm, Halliburton Farm for the owner of that property with a provision that he would manage the owner's sheep and be permitted to further stock the farm with 1,000 of his own

sheep. In 2015 the defender purchased Todrig Farm, Selkirk and thus further expanded his business.

Legal framework

[5] The legal framework within which the dispute between the parties falls to be resolved is set forth in sections 8-16 of the Family Law (Scotland) Act 1985 (“the 1985 Act”).

The following provisions are relevant in the context of the present case:

“8(1) In an action for divorce, either party to the marriage may apply to the court for one or more of the following orders —

- (a) an order for the payment of a capital sum ... to him by the other party to the action;
- (2) Subject to sections 12 to 15 of this Act, where an application has been made under subsection (1) above, the court shall make such order, if any, as is —
 - (a) justified by the principles set out in section 9 of this Act; and
 - (b) reasonable having regard to the resources of the parties.”

“9(1) The principles which the court shall apply in deciding what order for financial provision, if any, to make are that —

- (a) the net value of the matrimonial property should be shared fairly between the parties to the marriage
- (b) fair account should be taken of any economic advantage derived by either person from contributions by the other, and of any economic disadvantage suffered by either person in the interests of the other person or of the family;”

“10(4) Subject to subsections (5) and (5A) below, in this section and in section 11 of this Act ‘the matrimonial property’ means all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party)—

- (5) The proportion of any rights or interests of either person
 - (a) under a life policy or similar arrangement; and
 - (b) in any benefits under a pension arrangement which either person has or may have (including such benefits payable in respect of the death of either party), which is referable to the period to which subsection (4)(b)

or (4A)(b) above refers shall be taken to form part of the matrimonial property or partnership property.

- (5A) Where either person is entitled to PPF compensation, the proportion of the compensation which is referable to the period to which subsection (4)(b) or (4A)(b) above refers shall be taken to form part of the matrimonial property or partnership property.
- (6) In subsection (1) above 'special circumstances', without prejudice to the generality of the words, may include—
- (a) the terms of any agreement between the persons on the ownership or division of any of the matrimonial property or partnership property;
 - (b) the source of the funds or assets used to acquire any of the matrimonial property or partnership property where those funds or assets were not derived from the income or efforts of the persons during the marriage or partnership;
 - (c) any destruction, dissipation or alienation of property by either person;
 - (d) the nature of the matrimonial property or partnership property, the use made of it (including use for business purposes or as a family home) and the extent to which it is reasonable to expect it to be realised or divided or used as security;
 - (e) the actual or prospective liability for any expenses of valuation or transfer of property in connection with the divorce ..."

[6] On the basis of these provisions there was no dispute between parties that the approach which the court required to adopt in determining the issues before it fell into three stages. First to identify the parties' matrimonial property, a task made easier by the joint minute. Second to determine the value of each item of matrimonial property, again a task undertaken in the joint minute, and the net value of total matrimonial property. Third to determine a fair division of the value of matrimonial property, there being a presumption in favour of equal sharing² and to determine whether special circumstances exist to justify departure from the presumptive norm.

[7] It should also be recorded at this stage that there was no material divergence in the position of parties in regard to the approach taken by parties with regard to the division of

² Section 9(1)(a) of the 1985 Act

matrimonial property and special circumstances. It was accepted that division of value was essentially one for the exercise of the court's discretion within the framework of the statutory provisions and that other first instance decisions, being dependant on the facts of the instant case, were of little assistance in determining a decision. Each case turned on its own facts.

Evidence

(i) Pursuer's evidence

[8] The following witnesses were adduced by the pursuer, evidence in chief was given by way of affidavit and the witnesses were subject to cross-examination:

- a) The pursuer³;
- b) Thomas Bradbury, the parties' son⁴;
- c) Emma Bradbury, the parties' daughter⁵;
- d) Alice Fielding, shepherdess formerly employed in the defender's farming enterprise⁶;
- e) Tracy Walsh⁷;
- f) Anne Jones⁸; and
- g) Carl Benton⁹.

³ Affidavit number 118 of process

⁴ Affidavit number 123 of process

⁵ Affidavit number 119 of process

⁶ Affidavit number 117 of process

⁷ Affidavit number 122 of process

⁸ Affidavit number 121 of process

⁹ Affidavit number 120 of process

(a) *The pursuer*

[9] The pursuer gave extensive evidence, essentially a chronology of her marriage to the defender. Her evidence in relation to Fairbanks Farm, where the parties commenced their married life, was that at the time of her marriage the farmhouse in which she and the defender lived was, in her words, “a derelict dump”¹⁰. She said that she had at that time “about £45,000 in the bank”¹¹. She said that she utilised that money and put her own efforts in making the farmhouse fit to live in. She said this involved an enormous amount of hard work on her part. Her work in this regard involved both organising the acquisition of building materials and assistance from builders but also included personal involvement in some building works. She specifically stated that she paid for new kitchen units, white goods, carpets and curtains and this expenditure included the purchase and installation of an Aga¹².

[10] Beyond this in connection with Fairbanks Farm the pursuer gave detailed evidence of development of the buildings at or on the farm property between 1999 and the date of sale in 2010. This included the refurbishment and management of three cottage properties with the intention of letting these out to provide another income stream for the farm. Her evidence was that she undertook work both in relation to the refurbishment of these properties but also into the letting of the same. Her evidence was that the defender “had no input into the letting of the properties on Fairbanks”¹³.

[11] Beyond this the pursuer’s evidence dealt with the conversion of a formally derelict stone barn on the property. This was developed into three separate properties. The

¹⁰ Affidavit number 118 of process at paragraph 42

¹¹ Number 118 of process at paragraph 43

¹² Number 118 of process paragraphs 44 and 45

¹³ Number 118 of process at paragraph 53

pursuer's position was that an architect was engaged to provide the requisite building drawings. The pursuer accepted that "[W]hen it came to dealing with the planners, engineers or officials [the defender] would make sure he took over as he indicated that he felt he was more capable of doing so"¹⁴. The pursuer however indicated that in other aspects of this project she was involved. Essentially she claimed responsibility for the design and interior layout of the properties and "all decisions regarding all interior fittings such as light switches, radiators, plumbing, designing the kitchen and bathroom layouts and choice of units, cookers, suites, tiles etc"¹⁵.

[12] Beyond her involvement in the development of Fairbanks Farm the pursuer gave evidence in relation to other aspects of her marriage and life with the defender in the period until 2010. She acknowledged that she obtained income from properties she owned at various times. She said that towards the end of the parties' residence at Fairbanks Farm she did some work as a supply teaching assistant at a local school between October 2009 and March 2010. She indicated that occasionally she worked on her parent's caravan site, albeit this work was irregular and the income she derived therefrom was modest, being characterised by her as "just pocket money". Her position was that all income obtained from these sources was expended by her on family expenditure. Essentially her evidence was that she paid for all household shopping and in addition assumed responsibility for the purchase and payment of sports equipment, music lessons, school trips, pony club and riding club fees for the children.

¹⁴ Number 118 of process at paragraph 59

¹⁵ Number 118 of process at paragraph 58

[13] The pursuer's position was that "[T]he responsibility for household chores, and most of all the childcare, was left to me"¹⁶. On her evidence the defender had essentially no input in the children's education or extracurricular activities. Her position was that her husband was solely interested in sheep, farming and attending markets.

[14] In relation to direct involvement in farm work the pursuer gave extensive and detailed evidence. This covered her involvement in farm work both at Fairbanks Farm¹⁷ and subsequently in relation to the Scottish farms. The pursuer accepted that in terms of time her contribution to direct farm work was limited by her obligations in relation to childcare and, when applicable, such limited external employment as she had. Beyond that her position was that when available she was involved in many aspects of farm work involving sheep including dosing, dipping, scanning, vaccinating, foot trimming, feeding, loading and the gathering and wrapping of fleeces at shearing time. Beyond this she said that from 2001 and for about 4 or 5 years thereafter she sold meat produce from the farm at farmers' markets. This involved her taking lambs to slaughter and having them butchered. She packed, labelled and loaded meats into her vehicle and personally took it to markets on a Sunday where it was sold. These efforts generated income which she estimated at normally being in the region of £9,000 to £10,000 per year which was used for family expenditure¹⁸.

[15] With reference to the period after the parties moved to Scotland and took up residence on Satchells Farm the pursuer's evidence was that a farm cottage on that property was, following research carried out by the pursuer, developed to be suitable for renting for holiday lets. In order to facilitate this the property needed painting, carpeting and full

¹⁶ Number 118 of process at paragraph 145

¹⁷ Number 118 of process at paragraphs 111-144

¹⁸ Number 118 of process at paragraph 163

furnishing. The pursuer accepted that the defender assisted with the painting but beyond that she undertook the remainder of those tasks. Her position was that between 2011 and December 2018 she took sole responsibility for the management of the cottage, with the exception of bookings which was done on commission by a local agency¹⁹.

[16] The pursuer's evidence was that in Scotland she continued being involved in work on the farms in much the same way as she had been and described in relation to Fairbanks Farm. She also indicated that she was involved in the expansion of the defender's farming business from one unit at Satchells Farm in 2010 to its current state of involvement in three farming units.

[17] The pursuer on moving to Scotland did initially take employment as a supply classroom assistant in school. She did this for two 6 month periods at two schools. The income she derived from this employment she said she spent on the children.

b) *Thomas Bradbury*

[18] Mr Bradbury is the son of the parties. He was born in 1997 and at the date of proof was 23 years of age. Until 2015 he lived with his parents initially on Fairbanks Farm and thereafter on Satchells Farm. In 2015 he left his parents' home to study at university in England. He graduated in 2019 and since that period has worked on a number of farms. Mr Bradbury had memories of living at Fairbanks Farm albeit he was candid enough to admit that because of his age at the time he could not remember matters in detail. He did remember that they lived in an old farmhouse on the premises and that the property was renovated when he was about 6 years of age. He knew that the refurbishments to the

¹⁹ Number 118 of process at paragraph 199

farmhouse property were done in order that parts of it could be let out. He remembered that it was his mother who bought most of the materials and organised builders. He did remember his father, the defender taking on some manual labour although his recollection was that his father was not particularly keen on doing that. He also remembered that an old barn house was converted to provide a new farmhouse for the family and a number of other houses. He thought there were three properties made from the barn in total. He remembered going to places like B&Q and similar establishments when his mother was buying supplies for the builders for use on the site. His memory was of his mother dealing with the builders and he said that his father "didn't really do that much with the builders that I remember, he may have shifted supplies with a tractor but that was it really"²⁰. He also remembered that in relation to the tenants in the cottages on the farm it was his mother rather than his father that undertook what he called "landlords duties". As a reason for this he cited that his mother was more personable unlike his father "who is quite often rude and blunt with people".

[19] In relation to work on the farm at Fairbanks Mr Bradbury was clear that his father's role was as "the sheep farmer". He stated that his father sheared the sheep, looked after them, did the tractor work, spread fertiliser and fenced. He did however also state that his father had help from others "and a lot of the help was my mum"²¹. The tenor of Mr Bradbury's evidence was that if his mother was not involved in caring for himself or his sister then his mother would be "working outside". He also drew attention to lambing. His memory was that lambing was done outside at Fairbanks Farm and there were between 1,000-2,000 ewes in total. There was a lot of work to be done at lambing time, much

²⁰ Number 123 of process at paragraph 10

²¹ Number 123 of process at paragraph 13

of it uncomfortable if the weather was inclement. He said in relation to his mother's involvement:

"At lambing time, mum was always heavily involved. Mum would get up, before Craig, and go down to lambing shed. Mum would feed and water everything which is a lot of lifting and carrying. She'd have to drag the ewes out of pens or help those stuck lambing. Then she'd take me and Emma to school."²²

He also said that his wife would prepare breakfast for the defender and any other workers on the farm for lambing. He said that his mother would also prepare dinner for him and his sister, collect them from school and continue to work on lambing in the evening.

[20] Beyond these activities he also remembered his mother preparing lambs for slaughter and butchering and then selling the products therefrom at farmers' markets.

[21] In relation to the period between 2010 and 2015 when he resided with his parents at Satchells Farm he stated that the pursuer still continued to look after himself and his sister. He said that in addition to that work involving schooling and general care the pursuer was heavily involved in extracurricular pony club activities for his sister. He also stated that in relation to the cottage at Satchells Farm it was his mother that did most of the work in renovation of the property for holiday letting. He recalled there was some building work done and that a hot tub was installed which involved contractors but thought that in the main she did the work. He also was clear that the pursuer did the cleaning and maintenance of the property.

²² Number 123 of process at paragraph 18

c) *Emma Bradbury*

[22] Miss Bradbury is the daughter of the parties. At the date of proof she was 22 years of age. She was at the date of proof employed as an assistant environmental policy advisor by the NFU having graduated in agricultural from a university in England.

[23] Miss Bradbury could remember living at Fairbanks Farm. She remembered the conversion of the barn on that property. Her evidence was that her “mum was very hands on with all that”²³. Her memory was that the renovation of the barn at Fairbanks went on for quite a long time and she recalled her mother “painting, packing boxes, putting in bathrooms, kitchen”²⁴. She also had memories of her mother sorting out problems with tenants of the cottages on the farm. She did not think her father was involved in that aspect of matters. In relation to more directly agricultural matters she recalled her mother getting involved with taking sheep to market and that she was “always at farmers’ markets over the weekend”²⁵. Her recollection was that it was her mother who “looked after Thomas and I”²⁶. Her general impression was that when the pursuer was not looking after her or her brother then she was working on the farm. She likened her father’s role to more of the manager of the farm. Miss Bradbury also stated that she was involved in pony club activities and the care of ponies up until the time she went to university and that it was her mother who assisted her in relation to those matters.

[24] So far as Satchells Farm was concerned Miss Bradbury’s position was that her mother did all that was required for the renovation and preparation of the cottage on that

²³ Number 119 of process at paragraph 10

²⁴ Number 119 of process at paragraph 12

²⁵ Number 119 of process at paragraph 14

²⁶ Affidavit number 119 of process at paragraph 21

property for holiday let. She also recalled that in relation to farming matters the pursuer was involved as much as she had been when they lived on Fairbanks Farm.

d) Alice Fielding

[25] Ms Fielding is a shepherdess who started working for the defender on his farming properties in Scotland in 2013. In addition to the defender she knew the pursuer and both Thomas and Emma Bradbury. She worked for the defender until 2018 when she terminated her employment. She acknowledged that the parting of her ways with the defender was not on best terms. She made a number of allegations which are of no direct relevance to the subject matter of the present action. In addition she maintained that she had been underpaid by the defender as a result of which there was at the date of the proof in this action a claim by her pending before the Scottish Agricultural Wages Board in which the defender in the present action is the defender.

[26] In relation to her knowledge of the work activities of the pursuer on the defender's farming units her position was that she was "really .. always there"²⁷. She stated that the pursuer was involved at lambing, which involvement included work with sheep and lambs and feeding staff. She also stated that outwith lambing time the pursuer was involved working on sheep's feet and worming. Ms Fielding also indicated that there were a few cattle held by the defender on his holdings and the pursuer would assist with rolling bales of straw for cattle bedding on an occasional basis. Beyond this Ms Fielding recalled the pursuer doing fencing at Todrig with two farm workers. She also planted a hedge on that farm.

²⁷ Number 117 of process at paragraph 15

e) *Tracy Walsh*

[27] Ms Walsh lived close to Fairbanks Farm and had known the defender all her life. She also knew the defender's parents very well. She regarded the defender as a friend but also regarded the pursuer as a friend.

[28] She was aware of the renovations that the parties did on Fairbanks Farm when they lived there. For a period of time she lived in a cottage on Fairbanks Farm with her daughters. Her evidence was that "[Y]ou wouldn't find a harder worker than Margaret". She thought that the pursuer worked on the farm "morning, noon and night" but in addition ran the house and looked after the children. She could not recall the defender doing very much childcare. She specifically spoke about the pursuer's involvement at lambing time, the tenor of her evidence being that the pursuer was heavily involved in farm work during this period. She also said that the pursuer had a heavy involvement in the renovation of the cottages on Fairbanks Farm.

f) *Anne Jones*

[29] Mrs Jones is the pursuer's sister. She is also a farmer's wife. The tenor of her evidence was that on occasions when she and her husband visited the parties it was evident that the pursuer was involved both in domestic tasks and on the farming side of the defender's business.

g) *Carl Benton*

[30] Mr Benton knew the parties, initially the pursuer, through a mutual interest and involvement in horse riding and show jumping. For a period of time he was the tenant of

the parties in a cottage on Fairbanks Farm. For a period of time he did occasional part-time work on the defender's farm at Fairbanks. He acknowledged that the defender was a hard worker but also considered that "Margaret did everything that Craig did on the farm"²⁸. His evidence was that the pursuer was involved in all sheep activities on Fairbanks Farm. He also stated that the pursuer sold lamb at farmers' markets. His recollection of this was because he went with the pursuer to farmers' markets where he sold chickens and she sold lamb. He was aware of the renovations on Fairbanks Farm but had no knowledge of how work was allocated in these projects. He did however state that he saw both the pursuer and the defender speaking to builders about these matters. He also said that he saw the pursuer doing painting and decorating, something he never saw the defender doing.

(ii) Defender's evidence

[31] The defender adduced evidence from the following persons, evidence in chief being by way of affidavit and subject to cross-examination;

- a) The defender²⁹;
- b) Jamie Gent³⁰;
- c) Jacqueline Anne Binns³¹;
- d) Kenny Lamont³²;
- e) Philip Mushing³³; and
- f) Tom Mason³⁴.

²⁸ Number 120 of process at paragraph 11

²⁹ Affidavit number 111 of process

³⁰ Affidavit number 110 of process

³¹ Affidavit number 109 of process

³² Affidavit number 116 of process

³³ Affidavit number 114 of process

³⁴ Affidavit number 112 of process

a) *The defender*

[32] The defender confirmed that he was employed as a sole trader in the business of TJC Bradbury. He stated that he had never farmed in partnership with anyone either formally or informally.

[33] His position was quite clear in that with the addition of labour employed by him he undertook all work on the farms he had operated throughout the marriage. His evidence in relation to the pursuer's involvement in farming in the various farms he has operated throughout the marriage was stark. He stated:

“[T]he fact is, other than keeping the books for a short period, between around 2014 until 2019, she was not involved in the business and she was not actively involved or interested in the farming business. Margaret only helped with bookkeeping when we were at Satchells Farm and this only involved filling out the cash book. ... farming is not a fair weather trade. It is really hard work, in all weathers and at all times of day. This was not for Margaret as she lacked commitment. She would leave me during lambing season and go off for days at a time. This often left me in the lurch dealing with everything. I always paid for help on the farm.”³⁵

The defender confirmed that the pursuer had short-term employment at two primary schools when they resided at Fairbanks Farm and again immediately after they had relocated to the Scottish Borders. His position was that in relation to these periods of employment outwith the farm the pursuer kept her income to herself.

[34] In relation to the renovations at Fairbanks Farm the defender's position was that he was more involved in that work than was the pursuer. He acknowledged that the pursuer put some money towards the furnishing of parts of the renovated property. He also acknowledged that the pursuer derived income from rental properties she owned in

³⁵ Number 111 of process at paragraph 19

England when the parties resided on Fairbanks Farm. His position was however that she kept the rental income to herself and none of that money was put into the farming business.

[35] In relation to Satchells Farm and in particular the cottage on that property the defender's position was that on purchase it was in good condition. He said it "just required decorating and carpeted"³⁶. He did not state who was responsible for the decoration and carpeting. His position appeared to be that the pursuer did the cleaning and the handovers when it was let out. In common with the pursuer he accepted that letting was handled by an agency.

b) *Jamie Gent*

[36] Mr Gent is a farm worker who has been employed on occasion by the defender. He stated that he would regard the defender as his best friend. His evidence was confined to the period of time when the defender has owned Satchells Farm. In particular his evidence related to a number of incidents which occurred on that farm in 2019.

c) *Jacqueline Anne Binns*

[37] Ms Binns was a friend of the parties. Her evidence was confined to a number of incidents that have occurred on the defender's farm premises.

d) *Kenny Lamont*

[38] Kenny Lamont is a farm worker and contractor. He is a friend of the defender. His evidence was confined to a number of incidents on or about the defender's farm premises.

³⁶ Number 111 of process at paragraph 85

e) *Philip Mushing*

[39] Mr Mushing is a chartered accountant who has acted for the defender in the preparation of his farm accounts for many years. He spoke to the accounts of the defender's business which are lodged in process.

f) *Tom Mason*

[40] Mr Mason is a farmer and land agent who formerly worked for Strutt & Parker in their Harrogate office. He has known the defender since he was consulted by him about the sale of his farm at Fairbanks. Mr Mason prepared a funding brief for the defender in 2014. This document was based on the various books of account of the business and on information taken from the defender. Mr Mason spoke to this document.

Submissions

(i) *Pursuer*

[41] The pursuer's submission in relation to divorce was to the effect that the averments relative to that matter in article 2 of condescendence had been proven.

[42] It was recognised by counsel for the pursuer that the substantive issue for determination at proof related to financial provision, essentially the pursuer's second, third and fourth conclusions. In that regard the starting point in relation to the evidence was the proposition that the evidence of the pursuer and all six witnesses adduced on her behalf could be accepted as credible and reliable. In relation to the witnesses for the pursuer, other than the pursuer herself, the proposition was that "they were not really challenged to any

extent on" evidence in respect of the petitioner's contribution to her marriage both during the family's residence at Fairbanks and thereafter in Scotland. In relation to the pursuer herself, counsel characterised her evidence as detailed, consistent, straightforward and sensible. There was said to be vouching or testimony from other witnesses on material points of her evidence. Her upset when faced with the defender's evidence and, it was submitted, "contemptible" dismissal of her contribution to the marriage was characterised as understandable having regard to the nature of the defender's evidence. It was submitted that her evidence could readily be accepted in preference to that of the defender.

[43] Counsel for the pursuer's position in relation to the defender's witnesses was essentially to the effect that with the exception of the defender, none of the witnesses provided assistance to the defender in relation to the principal issues in the case. It was submitted that neither Mr Gent, Ms Binns or Mr Lamont were in a position to comment on the pursuer's contribution during the course of the marriage, this simply from not being present for any material time. Criticism of Mr Mushing and Mr Mason was more muted. As I understood it in essence no dispute emerged from the gravamen of the evidence tendered by Mr Mushing, counsel's position being essentially that it did not materially assist determination of the issues in the case. In relation to the evidence of Mr Mason it was pointed out that in so far as it was relevant, it related to the funding brief prepared on behalf of the defender to assist in the purchase of Todrig Farm in 2014. It was pointed out that Mr Mason confirmed that the information in that brief which he had prepared came from the defender's accountants and the defender himself. The brief was prepared by Mr Mason and was submitted to confirm the pursuer's position that she had *de facto* if not as a matter of law acted as a partner to the defender in his various farming enterprises since the parties' marriage.

[44] So far as the defender was concerned counsel for the pursuer plainly challenged the reliability and credibility of that person's evidence. Counsel went so far as to characterise the defender's evidence as "blatantly self-serving and false". He was said to have departed from and contradicted his sworn affidavit under cross-examination. In that regard parts of the defender's evidence when he maintained that the pursuer's sole involvement in his business was the keeping of his books for a short period between around 2014 and 2019 was wholly inconsistent with essentially all other evidence available. Characterisation of the pursuer's interests in farming only as a means of funding her lifestyle and supporting the children and that she was never a worker on the farm and kept all her income to herself were again characterised as contrary to other evidence available to the court. It was suggested that when confronted in cross-examination with evidence to demonstrate the falsity of those suggestions the defender sought to qualify and justify these statements in his affidavit by saying that he had not read the affidavit properly or that he did not express himself accurately. The submission was that this was plainly unacceptable given what was characterised as an "obvious difficulty" that the narrative of the affidavit was provided to his solicitors by the defender himself. It was also noted that during cross-examination the defender, under considerable pressure, eventually accepted that the running of the farming businesses throughout the marriage was in his words a "joint effort". This admission was demonstrative of the falsity of his earlier propositions. Counsel's position came to be most potently focused in relation to the funding brief. The opening paragraph of that document commenced: "Mr Craig Bradbury farms in partnership with his wife Margaret". It was said that this statement was not only true but was information provided, when the defender was seeking finance to purchase Todrig Farm, by him to Mr Mason. It plainly demonstrated the falsity of the allegations he had made in parts of his affidavit where he suggested that the

pursuer's contribution to the marriage was limited to book-keeping for a relatively short period of time.

[45] Counsel then turned to consider the evidence. A number of propositions were advanced and submitted to be justified on the evidence. First, that whilst it was accepted that Fairbanks Farm was not matrimonial property, it was established that after the marriage the parties embarked on a project to both improve and transform that farm with the ultimate aim of acquiring a larger farm to hold greater numbers of sheep. It was said that they both contributed to this endeavour. It was recognised that there was a difference between the pursuer and the defender as to their respective contributions to the joint project. Whilst in his evidence in chief the defender placed the split at 80:20 in his favour, it was later conceded in cross-examination that "it was a joint effort". In making the assessment of 80:20 it was said that the defender failed to take any account of contributions made to the marriage by the pursuer in respect of looking after children and supplementing family income through occasional employment in schools and through farmers' markets. The defender appeared to consider that only actual work on agricultural matters constituted a contribution to the business and the marriage.

[46] Second, the evidence was said to show that during the course of the marriage the pursuer's pre-marital assets were pooled with those of the defender.

[47] Third, it was said the evidence plainly showed that the pursuer was significantly engaged with improving and developing the built heritage at Fairbanks Farm. There was a significant increase in the value of these farm subjects between the date of marriage and their sale in 2010. It was submitted that the sale of the developed residential properties resulted in the significant increase in value of that property in the said period. Beyond

actual work in developing the properties, it was also pointed out that the pursuer had assumed responsibility for letting the tenanted part of the properties.

[48] Fourth, it was said to be again clearly demonstrated that the pursuer participated in a joint effort after the sale of Fairbanks to facilitate the relocation to Satchells. The sale of Fairbanks and the move to Satchells took place 14 years after the marriage. The entirety of the proceeds from the sale of Fairbanks were applied towards the purchase of Satchells and consequently the growth of the family farming business. The move marked a significant increase in terms of the number of livestock and this continued in the following years with the expansion into Halliburton and Todrig Farms. It was said that the business accounts of the farming business which were productions spoke for themselves in this regard. Beyond this it was pointed out that the evidence showed that it was the pursuer who took responsibility for the refurbishment and subsequent letting out of Satchells Cottage for holiday lets. I was again reminded in regard to this period in Scotland that the funding brief for the purchase of Todrig accurately reflected that *de facto* the parties farmed in partnership albeit that the business structure remained one of sole trader in the name of the defender.

[49] Against this background, counsel for the pursuer's submission was that there should be an equal sharing in relation to his primary submission. It was noted that the principal aim of the legislation, or the norm, was equal sharing of net value of matrimonial property. Whilst it was acknowledged that the court exercised a discretion in relation to this matter there were a number of factors which it was submitted pointed to there being no justification from a departure of the norm of equal sharing in the context of the present case.

[50] In this regard it was noted that the marriage was of 22 years duration, which was described as "comparatively long". Throughout the entire duration of the marriage, the pursuer worked alongside the defender in his farming business. Both parties contributed to

the marriage in different ways. The farming business which was commenced at the outset of the marriage on land admittedly owned by the defender underwent significant change as a result of property improvement and development, relocation and expansion. Both parties were involved in that process. That process of improvement and development began effectively immediately after the commencement of the marriage. Relocation and expansion consequent thereon took place in approximately the middle years of the marriage. On relocation the scale of the business expanded significantly. In that regard it was noted and relied upon that at the purchase of Satchells Farm and until separation, the livestock values disclosed in the accounts rose from about £78,000 to a value of about £329,000. With specific reference to the pursuer, it was submitted that she “juggled” what was described as significant contributions to the business with looking after the parties’ home and children. She contributed all her income to supporting the family and as a consequence thereof more profit could be retained in the business for the purposes of expansion. She contributed all her own premarital capital to the business. Lastly, it was submitted that the pursuer requires a sufficiently large capital sum to continue in farming with her own enterprise which will be in company with her children.

(ii) Defender

[51] Senior counsel for the defender also raised objections to the reliability and credibility of witnesses. In relation to the pursuer’s case there were said to be internal inconsistencies. In relation to the evidence of the children of the marriage, Thomas Bradbury and Emma Bradbury, both were said to have “entrenched ... disdain for their father which undoubtedly influenced their evidence.” They were criticised for claiming to have memories of facts and events which took place when they were said to be “no more than

toddlers.” They were said to have been “clearly” influenced in giving their evidence by discussions with the pursuer. Criticisms made by Miss Bradbury of her father’s treatment of animals were said to find no support from other witnesses. Both Miss Bradbury and Mr Bradbury were said to have been involved in acts of vandalism on their father’s farm since the relevant date. It was noted, correctly, that Mr Bradbury admitted the truth of that proposition in cross-examination. Lastly, they were said to have a financial interest in the outcome of the case. For these reasons their evidence was said to be neither reliable nor credible.

[52] In relation to Ms Fielding and Mrs Jones they were said to have little relevant evidence to give.

[53] In relation to witnesses adduced by the defender the submission was that the defender’s characterisation of the contribution of the pursuer to the farming enterprise given by the defender was supported by Mr Benton, Mr Gent, Mr Taylor and Mr Lamont. So far as the defender’s evidence himself was concerned, counsel confined her submission to stating that it was internally consistent. She, again correctly, anticipated that the defender’s evidence would be criticised for minimising the role he said the pursuer played in the farming work. As I understood it, this proposition was justified solely by relation to the evidence obtained from Messrs Benton, Gent, Taylor and Lamont.

[54] Turning to the substantive case in relation to financial provision it was correctly anticipated that the primary task of the court would be in relation to the division of matrimonial property. A number of propositions were advanced in support of an argument justifying an unequal division of matrimonial property in favour of the defender.

[55] First and foremost was the undisputed position that Fairbanks Farm did not constitute matrimonial property. That was developed by accepting that there were two

additions to Fairfield Farm post-marriage. These were a “tail-end” field on part of the farm and the cottage retained by the defender’s father when he gifted his portion of the farm to the defender. The tail-end field was dismissed as being of “little consequence”. In relation to the cottage it was submitted that it was purchased with a mortgage and this was repaid in full with the proceeds of sale of property inherited by the defender from his mother who died when he was a child. In any event the submission developed neither purchase changed the nature and character of Fairbanks Farm. It was a Pennine sheep farm with residential buildings when the marriage started and remained the same at the date of sale. Without the existence of Fairbanks Farm and the existing residential properties on that unit there could have been no refurbishment. It was said that “the pursuer’s contributions to same must be seen in that context”.

[56] Thereafter the submission progressed that almost the whole of the matrimonial property in the defender’s name is attributable to Fairbanks Farm. The total value of matrimonial property in the defender’s name at the relevant date was £2,699,001. The proceeds of sale of Fairbanks Farm were £2,633,500. Where special circumstances exist, the court was not required to divide matrimonial property in unequal proportions. It is a discretionary decision for the court having regard to the principal aim to divide matrimonial property in a way which achieves fairness. In the context of the present case, it was submitted that it would be manifestly unfair to ignore the source of the defender’s matrimonial property at the relevant date. Recognition ought to be given to those special circumstances.

[57] The second leg of the submission was that the defender has not gained economic advantage from the contributions of the pursuer and the pursuer has not suffered economic disadvantage in the interests of the defender or the parties’ children. In that regard it was

said that the defender was a sheep farmer at the date of marriage and remained a sheep farmer at the time of proof. He operates and always has operated as a sole trader. The accounts of his sole trading business for the whole period of the marriage were submitted as productions and were spoken to by both the defender and his chartered accountant, Mr Mushing. Examination of those documents does not disclose an economic advantage to the defender or indeed an economic disadvantage suffered by the pursuer in the interests of the defender or the parties' children.

Conclusions

(i) Credibility and reliability of witnesses

[58] I deal firstly with the pursuer's witnesses, aside from the pursuer herself. The challenge advanced by senior counsel for the defender in relation to Ms Walsh and Mrs Jones was that they had little relevant evidence to submit. I accept there is force in that submission. I saw no objective reason to discount their evidence as either incredible or unreliable, but do state at this stage that I did not consider it added materially to my determination of the outcome of the issues in the case.

[59] There was no criticism of the evidence of Carl Benton which I accept as reliable and credible.

[60] Ms Fielding's evidence was said to be of little relevance. Beyond that she was said to have had discussions with the pursuer in advance of giving evidence and that she had an "axe to grind" with the defender having regard to her claim in relation to agricultural wages. Whilst not relevant to the determination of reliability and credibility I am again prepared to state that I saw little of direct relevance to the issues for determination in much of this witness's evidence. It was largely concerned with complaints about certain behaviour

on the part of the defender which I do not consider to have relevance to the issues which I am required to determine. It is true to say that as a result of her claim currently pending in relation to agricultural wages, Ms Fielding may have issues with the defender. I am loath to characterise those issues in the language used by senior counsel for the defender for the good reason that I have insufficient evidence to judge that matter, other than the broad sense that parties in a competing litigation may have issues with each other, but that in the absence of direct evidence of animus that factor alone is an insufficient basis to justify a finding adverse to reliability or credibility. In essence I can see no objective basis for making a finding adverse to the reliability and credibility of this witness. I am prepared to hold her evidence as reliable and credible.

[61] The position in relation to Miss Bradbury and Mr Bradbury is different. In large part their evidence dealt with their recollection of their mother's contribution to both the family and the defender's farming business throughout the tenure of the marriage. The challenge to the reliability and credibility of that evidence falls into two parts. First, in relation to events in the past, defective recollection through claiming to have memory of events which took place when they were "no more than toddlers". Having regard to their respective dates of birth, this can only relate to events when they were resident with their parents in Fairbanks Farm in the early years of the 21st century. It is within judicial knowledge that children are now recognised as being capable of having memories from as young an age as 4 or 5 years. My understanding of the evidence was that both these witnesses gave testimony which could, with a reasonable degree of accuracy, be traced to times when they had reached that chronological age. They both caveated their evidence by accepting that their recollection may be vague in relation to events at that time. It also requires, in my view, to be borne in mind that they gave evidence both in relation to Satchells Farm and thereafter

from their residence in Scotland about events when they were older children and indeed teenagers or young adults. I see no reason to reject either of these persons' evidence in relation to their mother's contribution to the marriage on the basis of lack of reliability on this ground.

[62] The second leg of the challenge was said to be an entrenched position, influenced by discussion they have had with their mother, adverse to the defender. In the case of Miss Bradbury this further involved an entrenched position in relation to allegations about her father's treatment of animals which were not supported by other witnesses. It also arose from admissions of vandalism to their father's property which both witnesses admitted in testimony. In relation to the defender's treatment of animals, I am unable to be satisfied that Miss Bradbury's testimony was incredible on the basis advanced by senior counsel for the defender. She maintained that she had seen animals ill-treated. Other witnesses, speaking about unspecified times, said they had never seen animals ill-treated by the defender. I have simply no information to link either of those pieces of evidence. In my opinion both remain unproven. I am not prepared to make an adverse finding in relation to reliability and credibility against Miss Bradbury on that account. In relation to the submission that these persons' evidence should not be relied upon because, of their own admission, they have perpetrated acts of vandalism on their father's property following his separation from their mother, I am not persuaded that an adverse finding on reliability or credibility must axiomatically follow from this type of conduct. In reaching this view, I have regard to the consideration that both witnesses expressed contrition for the acts which they accept were wrong. They made no attempt to deny their involvement in them. In essence they made admissions contrary to their interests. Second, it is plain from their own testimony that they are unhappy, or put a different way, disapprove of their father's perceived conduct towards

their mother. It should also be mentioned that the same observation probably applies to their father's conduct towards their half siblings, a matter which featured in evidence but which I did not consider otherwise relevant to the determination of the issues in this case. Experience shows that, whilst regrettable, family members often "take sides" in divorce litigations. These factors do not, in my view, necessarily mean that I should discount the entire evidence of these witnesses. I accept that I require to examine their evidence with great care. I am not however prepared to disregard their evidence as being wholly incredible because of their views relative to their father or to their conduct in wilfully damaging his property.

[63] I turn to the defender's witnesses. I can be relatively brief. Any criticism of Mr Mushing and Mr Mason was muted. I can find no reason to doubt the reliability or credibility of either of these gentlemen. Mr Gent, Mr Lamont and Ms Binns all spoke to the defender being a hardworking and very able farmer. Beyond that I did not consider their evidence to be of particular assistance in my determination of the issues before me. Assessed objectively I could determine no reason to make an adverse finding in relation to their reliability or credibility as witnesses.

[64] There remains the defender whose reliability and credibility was challenged by counsel for the pursuer. My own, admittedly subjective, assessment of the defender's demeanour was that throughout his oral testimony he appeared guarded. The general tenor of his evidence displayed a reluctance to acknowledge, or indeed recognise, the pursuer's contribution to his farming business enterprise. He did acknowledge that the pursuer was a good mother and looked after the children well but beyond that was reluctant to accept, notwithstanding a considerable body of evidence supporting the proposition, that his wife had contributed in a more expansive way, such as by expenditure of money she earned, in

supporting the general wellbeing and maintenance of his family and ensuring the maintenance and upkeep of the family home. While I take those considerations into account in my overall assessment of the defender's evidence, I accept that they do not constitute a basis of themselves for an adverse finding of reliability and credibility.

[65] There are however three further aspects of the defender's evidence which must be considered in relation to the issue of his credibility and reliability. First, the defender on a number of occasions in cross-examination when faced with material or evidence which rebutted that which he had uttered in his affidavit responded by saying that he had either not read the affidavit properly or that he did not express himself accurately in the affidavit. With some hesitation I accept that the first of those explanations might be tenable albeit that having regard to the fact that the explanation was resorted to on more than one occasion it does raise serious questions as to the reliability of his evidence in those respects. The second explanation, inaccurate expression in his affidavit, I find more difficult to accept even as tenable. The affidavit was prepared on the basis of information provided by the defender to an experienced solicitor. At the beginning of his examination the defender confirmed that he had been afforded the opportunity by his solicitors to read his affidavit before signing the same. Having regard to those considerations I am not prepared to accept the second explanation he advanced when apparent errors in his affidavit were pointed out to him. I consider that the matters under this first head raise serious questions as to the reliability and credibility of the defender.

[66] The second matter is that notwithstanding his evidence in his affidavit, I have particularly in mind his statement that I quoted in para [33] hereof, to the effect that the pursuer did little by way of work in his farming business. He ultimately accepted, admittedly under rigorous cross-examination, that the running of the farming business was

throughout the marriage a “joint effort”. Even making allowances for the no doubt stressful, from the defender’s point of view, circumstances of that admission it is, in my view, hard to construe it other than as potentially destructive of his testimony that the pursuer played a very modest role throughout the marriage in the defender’s business.

[67] The third matter, and potentially the most significant in my view, is the statement stated at the very beginning of the funding brief prepared on behalf of the defender by Mr Mason in connection with the potential purchase of Todrig Farm in 2014 that “Mr Craig Bradbury farms in partnership with his wife Margaret”. In unchallenged evidence Mr Mason was clear that, in accordance with his normal practice he prepared the funding brief on the basis of information contained in the books of account of the defender’s business provided to him, further information provided by Mr Mushing the defender’s chartered accountant and following discussion and interviews with the defender. Further, he confirmed that once prepared he provided the document in draft to the defender and subsequently before finalisation went over the contents of the brief with the defender. Todrig Farm was to be purchased with the benefit of a loan from a bank. The funding brief was expressly prepared for the purposes of the bank in assessing a loan application. I consider that there are only two realistic possibilities. First, that the statement at the commencement of the funding brief was a true recollection of the factual nature of the working relationship of the pursuer and defender in the defender’s farming enterprise. Second, in the alternative, that the statement in the funding brief was false and was intended, for some reason which was not explained in the evidence, to render that brief more attractive to the bank and therefore make them more likely to look upon the application for a loan favourably. In this context I should state that evidence in the case, not least in the joint minute, shows that a bank loan was forthcoming in relation to the purchase

of Todrig Farm. Having regard to the evidence available to me I have no difficulty in forming the opinion that the first alternative is correct, that is that the statement in the brief was a true reflection of matters. I do this because that is consistent with the generality of the remainder of the evidence available to the court in this case.

[68] The implications of the preceding paragraphs are that there are a number of aspects of the defender's evidence where I can objectively find that he has been either unreliable or incredible. I require to take that into account in my overall assessment of his evidence. I make it clear that I am not prepared to reject all his evidence on the basis of that adverse finding. I do however require to consider his evidence with great care, particularly where unsupported by other reliable evidence of whatever nature.

[69] I turn to the substantive issue, that is the division of matrimonial property. As a matter of law the position is relatively straightforward. Section 9(1) of the 1985 Act makes it clear that the net value of matrimonial property should be shared fairly between the parties to the marriage. Fair account should be taken of any economic advantage derived by one spouse from contributions by the other, and of any economic disadvantage suffered by one spouse in the interests of the other spouse or of the family. In the exercise of the discretion conferred upon the court by these provisions I can, as was accepted by counsel for both parties, derive little assistance from previously decided cases. As both counsel accepted each case depends upon its own facts and no two cases are likely to have identical facts.

[70] In the present case there is no material dispute between the parties as to net matrimonial property. The pursuer's position is straightforward. Whilst acknowledging that what I might term the "seed capital" of the farming business at the relevant date came from funds which were the sole property of the defender, the pursuer's case was that by her efforts in relation to caring for and bringing up the parties' children and further her

extensive contribution in terms of labour to the defender's farming business the court would be justified in treating in the circumstances of the present case as the basis for concluding that the statutory enjoinder to share net matrimonial property fairly requires equal division of net matrimonial property. By contrast the defender's position concentrates on the source of funds, essentially that the expanded farming enterprise after 2010 and the purchase of Satchells Farm, was all derived from the proceeds of sale of Fairbanks Farm. Senior counsel for the defender suggested that there had been no real change in the position, economic or otherwise, of the defender since the outset of the marriage. He was a sheep farmer at the commencement of the marriage and remained a sheep farmer at the relevant date.

[71] In considering these submissions I accept that there is considerable force in most of the submissions put forward by counsel for the pursuer in respect of the evidence. Plainly this was a relatively long marriage, some 22 years. I am satisfied that the majority of the work in bringing up the parties' children, both domestic, scholastic and extra-curricular, fell upon the pursuer. The whole tenor of the evidence was to the effect that the defender's primary consideration was his farming business and that his involvement with his children was correspondingly smaller than that of the pursuer.

[72] I further accept, pointing in this regard particularly to the matters I have adverted to when dealing with the reliability and credibility of the defender, that throughout the marriage the pursuer made a significant contribution to the defender's farming business. The tenor of the evidence suggests that the words ultimately, and I think reluctantly, used by the defender to describe their efforts in the business was as of a "joint effort". This appears to be supported by the statement in the funding brief for the purchase of Todrig Farm I have already referred to and which I accept as having been truthful. I do not consider that there is evidence, nor would I expect there to have been such, to enable me to

reach any reliable estimate as to the relative contributions of each party to the farming business. Common sense, but also the pursuer's own testimony, indicates that the farming work was not split evenly. Essentially the farming business was the defender's full-time employment. By contrast the pursuer had other responsibilities. I have already referred to her work in rearing the parties' children. There is also the evidence that she had, albeit for, in the context of the marriage, a relatively short period, outside employment as a classroom assistant at schools and, probably even less frequently, occasional work on her parent's caravan site. The defender's original estimate of the allocation of work on the farm between the parties was 80:20 in his favour. There is no evidential basis for that view uttered by the defender. For the reasons already discussed I doubt its accuracy. That is however of no real consequence. I do not consider it productive to seek to arrive at some arithmetical division of labour. In my view the important part is that over the entire span of the marriage the pursuer made a significant contribution to the defender's farming business whilst at the same time making the major contribution to what I will characterise as the running of the parties family.

[73] Whilst the analysis I have made in the previous paragraph is persuasive in relation to the pursuer's submission for equal sharing of net matrimonial property I do not consider that it is the sole factor I require to consider. Senior counsel for the defender is in my opinion correct in her submission to the effect that the defender's farming business was able to expand, by reason of capital obtained by the sale of Fairbanks Farm in 2010. Put in another way it appears to me plain that but for the significant capital resources released by the sale of Fairbanks Farm it would not have been possible for the defender to purchase Satchells Farm and exploit the more advantageous farming opportunities afforded by that property. Moreover the evidence tends to show that the subsequent expansion of the

farming business may not have been possible if the larger business unit on Satchells Farm had not been in existence. There is accordingly, again in my view, a cogent argument that extraneous from both parties to the marriage's efforts, a significant element in the expansion of the farming business to its current scale requires to be attributed to the investment of the proceeds of sale of a non-matrimonial asset owned by the defender into that business.

[74] I am required to consider economic advantage and disadvantage in the matrix of factors relevant to a fair distribution of matrimonial property. On the evidence available to me in this case I do not find that particularly difficult. In relation to the pursuer she devoted 22 years to bringing up the parties children and, in addition, working on the business which the defender has described in evidence as their "joint effort". She is in her 50s. She has no profession or work history beyond that on the farm which would enable her to recommence a career. There was some evidence, I accept brief in nature, to the effect that she hoped to obtain a capital settlement which would enable her to purchase a farm unit and work the same with the parties' two children. Whilst there was no evidence on the practicalities of that intention, nor was there any evidence in relation to what such a unit may cost, it did appear to me to represent a relatively realistic assessment of what the pursuer might do. Having regard to all those factors I consider that it can be said that the pursuer is at economic disadvantage in relation to these matters.

[75] Turning to the position of the defender I do not consider that senior counsel's characterisation of the position that he started the marriage as a farmer and remained such at the relevant date to be entirely accurate. Whilst it is, of course, correct to say that he was and is a farmer senior counsel's characterisation ignores the evidence that at the commencement of the marriage he was a farmer with a farming unit, on his own evidence of somewhat limited potential, carrying approximately 1,000 head of sheep. At the relevant

date he was a farmer with a farming enterprise extending over three units, it should be noted on the defender's own evidence these units were spread over a fairly disparate area of the Scottish Borders, and carrying, again on the evidence, something in the order of 3-4,000 head of sheep. In addition, admittedly on an apparently modest scale, he was able to carry and operate a small herd of cattle on his current holdings; an aspect of agriculture which he appears to have a particular interest in. On the basis of the foregoing facts I am satisfied that as a direct result of the marriage the defender has accrued a considerable economic advantage.

[76] Taking all the foregoing factors into account I am satisfied that it would not be fair to, as was submitted by counsel for the pursuer, divide the net matrimonial property equally. To do so would ignore both the factor that the defender's capital contribution to the enterprise at the relevant date was significant and, further, fail to take into account that the evidence did show that the defender was a good and capable farmer and, moreover, worked hard throughout the years on the farming business. Having regard to all the circumstances I am of the opinion that a fair distribution of matrimonial property would be achieved by a payment to the pursuer of a capital sum of £900,000.

[77] I require to deal with a number of other matters. First, the issue of periodical allowance. The pursuer's claim for periodical allowance was modified in submission to seeking an order for payment of £2,000 per month "in advance until payment of full capital sum due". Whilst there was no developed argument in relation to that submission consideration of the fact that the pursuer at present has no employment or meaningful source of income and that the defender remains in receipt of the entire income of the farming business the proposition does not appear unreasonable. I also have regard to the consideration that it is only upon receipt of the capital sum I have ordered that the pursuer

will be able to proceed with the development of a farming business of her own if that is the choice she makes. In these circumstances I will make an award in relation to periodical allowance as sought.

[78] Second, during the course of proof senior counsel for the defender sought to lead evidence the tenor of which suggested that an argument might be developed to the effect that the defender did not have the resources to fund a capital award to the pursuer. This line was the subject of an objection by counsel for the pursuer. The objection was based upon an argument that there was no fair notice in the pleadings that a resources defence to a capital payment would be advanced by the defender. The response by senior counsel for the defender was that the resources available to a party to pay a capital sum is an issue envisaged in the relevant statutory provision of 1985 Act. Having regard to that no averments are required as a matter of fair notice in advance. I permitted the line subject to relevance and competence and allowed the evidence to be developed. The development of the evidence was not of a detailed nature. In particular it did not, as might have been expected if there was to be a comprehensive case on resources, include evidence from the defender's bankers, his accountant and possibly other experts in relation to raising capital. The evidence as was led would not have particularly assisted me in relation to any resources argument. In any event the resources argument was not developed in submission by senior counsel for the defender. In the circumstances while it may well be otiose I indicate that I am prepared to allow the evidence that was led to stand and formally reject the objection to the line.

[79] I will accordingly pronounce a decree of divorce in terms of the first conclusion for the pursuer. I will make an award of capital in favour of the pursuer of £900,000 payable by the defender. I will make an award of periodical allowance payable by the defender in

favour of the pursuer in the sum of £2,000 per calendar month in advance until payment of the full capital sum due. Beyond that I will as requested by both parties put the case out by order for discussion on the question of expenses, interest and any other relevant ancillary matters.