

3

Judgment 30 1971

No. **14 OF 1971**

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES IN ITS EQUITABLE JURISDICTION IN APPLICATIONS INSTITUTED BY ORIGINATING SUMMONS IN PROCEEDINGS:

- No. 1519 of 1967 (Applicant—CATHERINE EILEEN SEERY)
- No. 1210 of 1967 (Applicant—MARY JANE FAY LOUSICK)
- No. 1211 of 1967 (Applicant—EILEEN ELIZABETH SCHUHMANN)
- No. 1212 of 1967 (Applicant—MAUREEN JOAN WILLIAMS)

IN THE MATTER of the Estate of Edward Seery deceased
AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act 1916—1954 (Consolidated pursuant to Decretal Order of 26th September, 1969)

BETWEEN

ELIZABETH SCHAEFER

AND

ELLEN ELIZABETH SCHUHMANN,
MARY JANE FAY LOUSICK, MAUREEN
JOAN WILLIAMS and CATHERINE
EILEEN SEERY

AND

CORNELIUS PATRICK SEERY

AND

WILLIAM JOHN SEERY

APPELLANT (Intervener)
 INSTANTLY APPEALED
 1971
 23 NOV 1971
 LONDON Respondents (Applicants)

Respondent (Respondent)

Respondent (Intervener)

RECORD OF PROCEEDINGS

G 14831—1

BARFIELD & HUBBARD,
VICTORIA HOUSE,
SOUTHAMPTON ROW,
LONDON, W.C.1.

Solicitors for the Appellant

CHURCH, ADAMS, TATHAM & CO.,
19, LINCOLN'S INN FIELDS,
LONDON, WC2A 3EP

Solicitors for the Respondent Executor

In the Privy Council

ON APPEAL from the Supreme Court of New South Wales in its Equitable Jurisdiction in Applications Instituted by Originating Summons in proceedings:

- No. 1519 of 1967 (Applicant—CATHERINE EILEEN SEERY)
- No. 1210 of 1967 (Applicant—MARY JANE FAY LOUSICK)
- No. 1211 of 1967 (Applicant—ELLEN ELIZABETH SCHUHMANN)
- No. 1212 of 1967 (Applicant—MAUREEN JOAN WILLIAMS)

IN THE MATTER of the estate of EDWARD SEERY deceased
AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act 1916—1954 (Consolidated pursuant to Decretal Order of 26th September, 1969)

BETWEEN

ELIZABETH SCHAEFER *Appellant (Intervener)*

AND

ELLEN ELIZABETH SCHUHMANN,
 MARY JANE FAY LOUSICK,
 MAUREEN JOAN WILLIAMS,
 and CATHERINE EILEEN SEERY *Respondents (Applicants)*
 CORNELIUS PATRICK SEERY *Respondent (Respondent)*
 WILLIAM JOHN SEERY *Respondent (Intervener)*

TRANSCRIPT RECORD OF PROCEEDINGS

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No. 1

AFFIDAVIT OF MARY JANE FAY LOUSICK (PARAGRAPH 3 ONLY EXCEPT LAST TWO SENTENCES THEREOF)

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

No. 1210 of 1967.

No. 1
Affidavit of
Mary Jane
Fay Lousick.
31st May,
1968.

IN THE MATTER of the Estate of EDWARD SEERY late of Chipping Norton in the State of New South Wales, Retired Market Gardener Deceased.

10 AND IN THE MATTER of the Application of MARY JANE FAY LOUSICK of 4 Simpson Street, Wellington in the State of New South Wales, Married Woman.

AND IN THE MATTER of The Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

ON the 31st day of May, One thousand nine hundred and sixty-eight, MARY JANE FAY LOUSICK, wife of Ronald William Lousick of 4 Simpson Street, Wellington in the State of New South Wales, Company Manager, being duly sworn makes oath and says as follows:—

. . .

20 3. At the time of his death the said Edward Seery Deceased was aged Seventy-six years and the following is a true copy of the Will of the Deceased with One Codicil thereto, which said copy was forwarded to me by the Solicitors for the said Estate:

“THIS IS THE LAST WILL AND TESTAMENT of me EDWARD SEERY of Padstow in the State of New South Wales Market Gardener.

1. I HEREBY REVOKE all former Wills and Testamentary dispositions heretofore made by me AND DECLARE this to be my last Will.

30 2. I HEREBY APPOINT my wife EILEEN SEERY and my son CORNELIUS PATRICK SEERY (hereinafter called “my Trustees”) to be the Executrix Executor and Trustees of this my Will.

No. 1
Affidavit of
Mary Jane
Fay Lousick.
31st May,
1968.

3. I BEQUEATH free of all duties payable in consequence of my death legacies of ONE THOUSAND POUNDS (£1,000.0.0) to my four daughters ELLEN ELIZABETH SCHUHMAN, MAUREEN JOAN WILLIAMS, MARY JANE FAY LOUSICK and EILEEN SEERY.

4. I GIVE DEVISE AND BEQUEATH all my real and the residue of my personal Estate whatsoever and wheresoever situate after paying thereout all my debts funeral and testamentary expenses and all duties payable in consequence of my death UPON TRUST for such of my three sons CORNELIUS PATRICK SEERY, EDWARD ANDREW SEERY and WILLIAM JOHN SEERY as shall be living at my death and if more than one in equal shares.

5. I DECLARE that my Trustees may sell the whole or any part of my Estate at such time or times and in such manner as they shall in their absolute discretion deem fit.

IN WITNESS WHEREOF I have hereunto set my hand to this my last Will and Testament this twenty-third day of January in the year One thousand nine hundred and sixty-two.

SIGNED by the Testator as and for his last Will and Testament in the presence of us both present at the same time who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses:

E. Seery

20

R. A. McRostie,
A.N.Z. Bank, Padstow,
Bank Manager.

J. C. Lindsay,
A.N.Z. Bank, Padstow,
Bank Officer.

30

I, EDWARD SEERY formerly of Padstow but now of Chipping Norton in the State of New South Wales, Retired Market Gardener DECLARE this to be a First Codicil to my Will which bears date the Twenty-third day of January One thousand nine hundred and sixty-two.

NOW I HEREBY DECLARE that if my housekeeper ELIZABETH SCHAEFER shall still be employed by me as a housekeeper at the date of my death THEN but not otherwise I GIVE DEVISE AND BEQUEATH free of all duties payable in 40

consequence of my death unto her absolutely my house and land known as Number 124 Nuwarra Road, Chipping Norton, being the whole of the land comprised in Certificate of Title Volume 5425 Folio 9 together with all my furniture and household effects contained therein. In all other respects I HEREBY CONFIRM my said Will.

No. 1
Affidavit of
Mary Jane
Fay Lousick.
31st May,
1968.

IN WITNESS WHEREOF I have hereunto set my hand to this Codicil this Twenty-eighth day of June in the year One thousand nine hundred and sixty-six.

10

E. Seery,
TESTATOR

SIGNED by the Testator as a First Codicil to his Will which bears date the 23rd day of January 1962 in the presence of us both present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses:

WITNESSES:

20

Ian Walker,
13 Padstow Parade,
Padstow,
Bank Officer.

F. S. Cooksey,
13 Padstow Parade,
Padstow,
Bank Manager.

■ ■ ■

SWORN by the Deponent on the day first herein- }
before mentioned at Sydney aforesaid before me: }

J. LOUSICK.

P. J. ROBINSON, J.P.
A Justice of the Peace.

No. 2

AFFIDAVIT OF CORNELIUS PATRICK SEERY (PARAGRAPHS 10 AND 11 ONLY AND SUCH ANNEXURES AS ARE THEREIN REFERRED TO)

No. 2.
Affidavit of
Cornelius
Patrick
Seery.
17th June,
1968.

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

} No. 1519 of 1967.
} No. 1210 of 1967.
} No. 1211 of 1967.
} No. 1212 of 1967.

Consolidated No. of 1968. 10

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Acts, 1916-1954.

AND IN THE MATTER of the application of ELLEN ELIZABETH SCHUHMAN, of Ernest Avenue, Chipping Norton, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of MARY JANE FAY LOUSICK, of 4 Simpson Street, Wellington, in the State 20 of New South Wales, married woman.

AND IN THE MATTER of the application of MAUREEN JOAN WILLIAMS, of 66 Fairfield Road, Padstow, in the State of New South Wales, married woman.

AND IN THE MATTER of CATHERINE EILEEN SEERY, of 53 Sherwood Street, Revesby, in the State of New South Wales, process worker.

I, CORNELIUS PATRICK SEERY, of Moorebank, farmer, being duly sworn makes oath and says as follows:

. . .

30

10. A claim was made against the estate on behalf of Elizabeth Schaefer who had been engaged by the deceased as his housekeeper in or about May, 1966, and who is named as a beneficiary in the first codicil to the will of the deceased. The said claim was an amount of \$42,000.00 and annexed hereto and marked with the letter CP2 is a true copy of a letter dated the 22nd day of December, 1966, from Messrs David Landa, Stewart & Co., Solicitors for the said Mrs Elizabeth Schaefer.

The said cheque was one purporting to be drawn by the deceased but to have been inserted therein a date and the name of the said Elizabeth Schaefer as payee.

No. 2.
Affidavit of
Cornelius
Patrick
Seery.
17th June,
1968.

The home in which I was living at the date of my father's death was some 200 yards away from his home where he lived and I was possessed of a farm property about one mile distant from my home.

At about 11.30 a.m. on the 16th day of November, 1966, being the date of my father's death I was visited at my farm by Mr F. S. Cooksey who was then the Manager of the Padstow branch of the Australia and New Zealand Bank Limited which was my father's bank. He presented to me the said cheque and informed me that earlier that morning the cheque had been presented by a special messenger from the Rural Bank at its Liverpool branch for a special answer clearance and that there were insufficient funds to pay the cheque and that he had come to me as he knew I held a Power of Attorney from my father. I informed him that I was well aware that my father had no current account available to meet the said cheque and I knew of no reason why it should have been drawn. Whilst in the company of the said bank manager my wife drove up and informed me in the presence of the said bank manager that she had been informed that my father had died earlier on that very morning. The manager thereupon informed me that the cheque could not be paid.

I thereafter went to my father's home with my brother Edward Seery and there saw the said Elizabeth Schaefer and I said to her "I believe my father has died" or words to that effect. She replied "Yes, he died about 4 o'clock this morning and I have sent his body to Perrams Funeral Parlours". She then gave me a card from the funeral parlours.

On the 14th August, 1967, I handed to Elizabeth Schaefer a notice a true copy of which is annexed hereto and marked with the letter CP3. I am informed by the estate's solicitors that they have caused notice of intended distribution to be published in the Government Gazette and the Sydney Morning Herald on the 21st July, 1967. No reply has been received to the notice served by me as aforesaid.

11. At the request of the estate's solicitors Elizabeth Schaefer has through her solicitors supplied details of her financial position which details are set out on copies of two letters dated respectively 18th March and 26th April, 1968, from Messrs David Landa, Stewart & Co. annexed hereto and marked with the letters CP4 and CP5 respectively.

SWORN by the Deponent at Sydney on the
17th day of June, 1968.

40 Before me:

No. 2.
 Affidavit of
 Cornelius
 Patrick
 Seery.

17th June,
 1968.

Annexure CP2

187-191 Macquarie Street,
 Sydney, 22nd December, 1966

Messrs Michell & Gee,
 Solicitors,
 92 Pitt Street,
 Sydney.

Dear Sirs,

Re: Estate Late Edward Seery

Further to previous correspondence in connection with this estate 10
 we now give you notice on behalf of our client Mrs Elizabeth Schaefer of
 124 Nuwarra Road, Chipping Norton, that she claims to be a creditor in
 the Estate of the late Edward Seery for an amount of \$42,000.00 being the
 amount payable to her under and pursuant to cheque drawn by the deceased
 on the Australian and New Zealand Bank Limited, 13 Padstow Parade,
 Padstow, on the 13th November, 1966, cheque No. 968568, which cheque
 was subsequently dishonoured on presentation having been returned marked
 "drawer deceased".

Would you please acknowledge formal receipt of the above claim
 on behalf of the Executor for the Estate. 20

Yours faithfully,
 David Landa, Stewart & Co.

Annexure CP3

Mrs Elizabeth Schaefer,
 124 Nuwarra Road,
 Chipping Norton.

I, CORNELIUS PATRICK SEERY, Executor of the Will of the late Edward
 Seery, deceased, dispute the claim detailed in the letter from Messrs David
 Landa, Stewart & Co., your solicitors of date the 31st July, 1967, in the sum
 of \$42,000.00 and I call upon you to take proceedings to enforce your claim 30
 within a period of six (6) months and to duly prosecute the same.

Dated this fourteenth day of August, 1967.

Signed: C. P. Seery,
 Executor of the Will of the late Edward Seery
 deceased.
 4.15 p.m.

Annexure CP4

No. 2.
Affidavit of
Cornelius
Patrick
Seery.
17th June,
1968.

18th March, 1968

Messrs Michell and Gee,
Solicitors,
109 Pitt Street,
Sydney 2000.

Dear Sirs,

Re: Estate late Edward Seery—re Schaefer

Your Ref: JKM:EF

10 We refer to your letter of the 16th February.

We have interviewed our client and she advises us that the only assets possessed by her comprise an eight years old mare (value \$150.00) and a six months old colt (valued at \$120.00). She has clothing and personal effects of little marketable value and does not have any jewellery, bank accounts or shares. She has no liabilities of any sort whatsoever.

We anticipate that our client may seek leave to intervene in the proceedings and we shall contact you further in this regard in due course. In the meantime, it would be appreciated if you could make available to us copies of any Affidavits filed in connection with each of the applications.

20

Yours faithfully
David Landa, Stewart & Co.

No. 2.

Annexure CP5Affidavit of
Cornelius
Patrick
Seery.17th June,
1968.Messrs Michell and Gee,
Solicitors,
109 Pitt Street,
Sydney 2000.

26th April, 1968

Dear Sirs,

*Re: Estate late Edward Seery**Re: Mrs E. Schaefer. Your Ref: JKM/kh*

We refer to your letter of the 20th ultimo and would advise that Mrs Schaefer's husband has a net weekly income of \$62.00, he being employed 10 by American Flange & Manufacturing Co. Incorporated, Miowera Road, Villawood. This income is disbursed approximately as follows:

- (a) Food and household expenses \$30.00.
- (b) Travelling money and personal expenditure \$10.00.
- (c) Upkeep of horse \$6.00.
- (d) Telephone and electricity \$5.00.
- (e) Clothing, medical, dental, miscellaneous etc., \$11.00.

We would be pleased if you could make available to us copies of all Affidavits in connection with the proceedings so that we might photograph same and return them to you.

20

Yours faithfully
David Landa, Stewart & Co.

**AFFIDAVIT OF ELIZABETH SCHAEFER (EXCEPT LAST
FOUR LINES OF PARAGRAPH 2 THEREOF)**

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY

} No. 1519 of 1967.
} No. 1210 of 1967.
} No. 1211 of 1967.
} No. 1212 of 1967.

10

IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

AND IN THE MATTER of the application of Ellen Elizabeth Schuhmann of Ernest Avenue, Chipping Norton, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of Mary Jane Fay Lousick, of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

20

AND IN THE MATTER of the application of Maureen Joan Williams, of 66 Fairfield Road, Padstow, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of Catherine Eileen Seery, of 54 Sherwood Street, Revesby, in the State of New South Wales, process worker.

On the fourth day of December, 1968, ELIZABETH SCHAEFER, of 124 Nuwarra Road, Chipping Norton, in the State of New South Wales, being duly sworn makes oath and says as follows:

30

1. I am the beneficiary referred to in the codicil to the last will of the deceased which codicil bears date the 28th June, 1966. I am married to Alexander Schaefer and we live together at 124 Nuwarra Road, Chipping Norton.

2. I commenced work with Mr Seery on the 13th May, 1966, as his housekeeper. I had not known him previously. I saw an advertisement in the "Liverpool Leader" for a housekeeper which gave a 'phone number which I rang. Mr Seery answered the 'phone and gave me his address and I made an appointment to go to his home and to see him. When I arrived at

No. 3.
 Affidavit of
 Elizabeth
 Schaefer.
 4th
 December,
 1968.

the property, Mrs Smithfield who lived next door to the deceased came out to see me and we went in to see the deceased together. He was in the kitchen. He had two sticks with him, one was a walking stick and the other was a shovel handle. He said to me:

“Would you be able to clean up the place? I bought it a few months ago and have been in hospital. There’s a lot of work to do”.

Mrs Smithfield said, “Mr Seery needs good food”.

I said, “What about wages?”

Mr Seery said, “I can pay you £6 a week”.

3. I told Mr Seery that I would accept employment as his house-keeper and I started working for him on the 13th May that year. He wanted his breakfast very early, so I got up at 6.00 a.m. to prepare his breakfast. He had lunch at 12.00 noon and dinner at 6.00 p.m. and sometimes coffee in the afternoons. **10**

4. I did all the cleaning and washing and helped him to bath once a week. I helped to dress and undress him. I sawed wood and chopped it because he wanted an open fire and did not like heaters because he said they were not warm enough for him.

5. He used to have breakfast in bed and would stay there until 10.00 or 11.00 a.m., and sometimes even as late as 2.00 or 3.00 p.m. When he got up I would dress him and he would try to do some work outside, and then would come in and say he was not as strong as he used to be. Then he would sit in the kitchen or on a stump in the back yard, and when he felt cool or chilly, he would go back to bed. **20**

6. Once a week I went to Liverpool to buy household supplies. My husband came to see me once or twice a week and on these occasions he would shave Mr Seery and talk to him.

7. My husband fixed up the lino in the kitchen, cleaned the guttering around the roof, patched the roof where the fibro was damaged, and put new water pipes in the bathroom. Mr Seery paid for the materials, but my husband was not paid for his labour. **30**

8. One of Mr Seery’s sons bought a hand saw to help me cut up the firewood, but the work was too hard for me and my husband got the loan of an electric saw which I used for this purpose.

9. When I started working for Mr Seery, both his legs were paralysed and he told me that he had bad rheumatism and had been to Moree in an attempt to get cured. He could not move his arm and shoulders to put on his coat.

10. I remember Mr O'Connor, his solicitor coming to see Mr Seery to get instructions to prepare a codicil to his will. As I recall the codicil was posted to Mr Seery and I read it to him at his request. I then arranged for a taxi to take him to the bank to have it signed.

No. 3.
Affidavit of
Elizabeth
Schaefer.
4th
December,
1968.

11. Mr Seery had difficulty in sleeping, and I frequently sat up until eleven or twelve at night talking to him.

12. He became very sick some time during August suffering from severe pains and vomiting. I rang my husband and asked him to come to the house which he did about eight o'clock in the evening on this occasion. 10 Mr Seery did not get any better and we rang for the doctor at about 10.30 but he did not arrive until after midnight. After this occasion the doctor came frequently and I was present on more than one occasion when he told Mr Seery that he should go to hospital. Mr Seery said on these occasions that when he died he wanted to die in his own home.

13. From this time on he was bedridden almost the whole time. He refused to use a bedpan, so I had to assist him to go to the toilet.

14. From this time on Mr Seery stopped eating regular normal meals, and started to take small quantities of food at frequent intervals during the day.

20 15. Mr Seery paid me wages at the end of May, but at the end of June he said that he would not pay me wages any more because he had left me the house. He added, "If you need any money to help you out, let me know?" After that I was able to manage without asking Mr Seery for any money for myself.

16. During the time that I was working for Mr Seery as his house-keeper, he was visited by his son John at regular intervals and by his son Con less frequently. I never saw any of the deceased's daughters while I was at the home of Mr Seery during those 6 months.

30 17. On the 13th November Mr Seery told me he had \$42,000 in the bank which he wanted to give me because I had been of good service to him and had fixed up the place for him. He asked me to get his cheque book from the drawer where it was normally kept, and I wrote out the cheque for him at his request. Mr Seery's eyesight had been bad and on many occasions during the previous six months when housekeeping money had been required, I had written out the cheque for Mr Seery and he had signed it and given it to me, and I had taken it to Liverpool and cashed it in order to do the weekly shopping. On this occasion the same procedure was followed, and Mr Seery signed the cheque after I had written it out and given it to him at his request.

No. 3.
Affidavit of
Elizabeth
Schaefer.
4th
December,
1968.

18. I have been advised that I have no legal claim against the estate based on the said cheque, and I have accepted this advice.

19. I am married to Alexander Schaefer who now works for Ford Fibreglass Industries Pty Limited, 17 Epsom Road, Liverpool. My husband has been employed with that company for 3 weeks. My husband has a net weekly income of about \$50.00 and has been able to obtain overtime and earn about another \$7.00 per week.

20. My husband suffers very seriously from a leaking ulcer which he first suffered about 3 years ago. He was in St George Hospital, Kogarah, for about 4 weeks and did not work for 9 months after his discharge. His ulcer has recently been causing him pain and he left his job with American Flange and Manufacturing Company at about the end of August, 1968, because his ulcer burst and it was not possible for him to work.

21. About 4 weeks after leaving his job with American Flange and Manufacturing Company he obtained employment at Sefton for about 1½ weeks but found the job too difficult because it involved lifting heavy objects which caused him pain. He was then unemployed for a further 4 weeks until he commenced his employment with Ford Fibreglass Industries Pty Limited.

22. My husband and I have 3 children, Alex aged 20 years, Regina aged 18 years and Sonia aged 17 years. Alex is married and lived with his wife and child at 124 Nuwarra Road until the 15th November. He paid board of \$10.00 per week. Regina also lives with my husband and myself and is employed at Inghams Enterprises Pty Limited at Hoxton Park and pays \$10.00 per week to me for board. Sonia first commenced work in February, 1968. She is at present unemployed and has been so for the last 2 weeks. Whilst working she used to pay me \$10.00 per week board.

23. We presently owe the following monies:

- (a) Buckingham's Limited for bedroom furniture, blankets, sheets and pillows \$330.00
- (b) H. G. Palmers Limited for television, radio-gram, bedroom suite and washing machine \$700.00
- (c) Malwyn Pty Limited for refrigerator \$200.00

I am endeavouring to repay these monies at the rate of \$20.00 per week and more if I have any monies left over. My husband also owes the Housing Commission about \$150.00 for which no arrangements for payment have been made as we do not have the monies available.

24. Apart from the matters set out above my husband has no other assets apart from clothing and personal effects. He has no bank accounts, life policies or a motor vehicle.

25. Since Mr Seery's death I have been engaged in domestic duties at 124 Nuwarra Road, Chipping Norton, and have not been in receipt of wages or other remuneration. Apart from the matters set out above I have no other assets other than clothing and personal effects which are of no particular value except one colt valued at \$120.00. I have no bank accounts, life assurance policies or other investments.

No. 3.
Affidavit of
Elizabeth
Schaefer.
4th
December,
1968.

SWORN by the Deponent on the day and year first }
hereinbefore mentioned, Before me: }

No. 4.
Affidavit of
William
John Seery.

A Justice of the Peace. 15th April,
1969.

No. 4

10 **AFFIDAVIT OF WILLIAM JOHN SEERY (EXCEPTING PARAGRAPHS 3 AND 4, PARAGRAPH 7 SENTENCE COMMENCING "FROM WHAT THE DECEASED TOLD ME . . .", PARAGRAPH 9 THE LAST TWO LINES COMMENCING "I KNOW OF NO REASON . . .", AND PARAGRAPH 10 AND PARAGRAPH 11 AND THE LAST SENTENCE OF PARAGRAPH 13)**

IN THE SUPREME COURT }
OF NEW SOUTH WALES }
IN EQUITY. }
No. 1519 of 1967
No. 1210 of 1967
No. 1211 of 1967
No. 1212 of 1967

20 IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, 1954.

AND IN THE MATTER of the application of Ellen Elizabeth Schuhmann of Ernest Avenue, Chipping Norton, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of Mary Jane Fay Lousick of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

30 AND IN THE MATTER of the application of Maureen Joan Williams of 66 Fairfield Road, Padstow, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of Catherine Eileen Seery of 54 Sherwood Street, Revesby, in the State of New South Wales, process worker.

No. 4.
Affidavit of
William
John Seery.

15th April,
1969.

On the fifteenth day of April, 1969 WILLIAM JOHN SEERY of Ernest Avenue, Chipping Norton, in the State of New South Wales, farmer, being duly sworn makes oath and says as follows:

1. I am a brother of the four applicants herein.

2. I have read what purports to be an Affidavit of Elizabeth Schaefer sworn on the 4th December, 1968 (hereinafter referred to as the said Affidavit).

. . .

5. I refer to paragraph 7 of the said affidavit and say the work done by the husband of Elizabeth Schaefer, if done, was of trivial value only. 10

6. I refer to paragraph 9 of the said affidavit. It is not the case that the deceased suffered from paralysis in both legs. The deceased had for many years prior to his death suffered from osteo arthritis resulting in the stiffening of firstly one and secondly the other knee. I remember the deceased so suffering as far back as I can remember. The trip the deceased made to Moree referred to in paragraph 9 of the said affidavit was made in 1938. I dispute that the deceased could not move his arm or shoulders to put on his coat at the time Elizabeth Schaefer commenced working for him or at any time prior to his death.

7. I live not very far from the deceased, and after he bought the 20 property in Nuwarra Road, Chipping Norton, I visited him there until the time of his death never less than twice per week. From time to time the deceased would ask me to pass a message to my brother, Cornelius Patrick Seery, that he, the deceased, would wish to see my brother and that I would do.

. . .

8. By reason of my regular attendance upon the deceased during the time he was living in the property in which he died, I am well familiar with the manner of his living, the state of his health and his abilities during the whole of the time that Elizabeth Schaefer was his housekeeper. 30

9. I refer to paragraph 12 of the said affidavit and the statement that Elizabeth Schaefer rang her husband upon the occasion of the deceased becoming ill during the month of August, 1968. Cornelius Patrick Seery, son of the deceased, lived approximately 200 yards away from the deceased's home. . .

12. I refer to paragraph 23 of the said affidavit, and particularly items (b) and (c) therein. There were in the home of the deceased at the time of his death and included in his estate for the purpose of duty, the following: (i) Precedent 25 consolette television set valued for probate at \$60.00 (ii) Metters electric refrigerator valued for probate at \$120.00. 40

13. The television set was bought new for the deceased after he moved to the Nuwarra Road property, and the refrigerator was bought new for the deceased out of money supplied by the deceased by the said Cornelius Patrick Seery after he moved to the same property . . .

No. 4.
Affidavit of
William
John Seery.
15th April,
1969.

SWORN by the Deponent on the day and year first }
hereinbefore mentioned. Before me: }

W. J. SEERY.
J. G. MAITLAND, J.P.

No. 5.
Affidavit of
Elizabeth
Schaefer.
17th April,
1969.

No. 5

AFFIDAVIT OF ELIZABETH SCHAEFER

10 IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

} No. 1519 of 1967
} No. 1210 of 1967
} No. 1211 of 1967
} No. 1212 of 1967

IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, 1954.

AND IN THE MATTER of the application of Ellen Elizabeth Schuhmann of Ernest Avenue, Chipping Norton, in the State of New South Wales, married woman.

20 AND IN THE MATTER of the application of Mary Jane Fay Lousick of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of Maureen Joan Williams of 66 Fairfield Road, Padstow, in the State of New South Wales, married woman.

AND IN THE MATTER of the application of Catherine Eileen Seery of 54 Sherwood Street, Revesby, in the State of New South Wales, process worker.

30 ON the 17th day of April, 1969, ELIZABETH SCHAEFER of 124 Nuwarra Road, Chipping Norton, in the State of New South Wales being duly sworn makes oath and says as follows:

1. I am the beneficiary referred to in the codicil to the last will of the deceased which codicil bears date the 28th June, 1966.

- No. 5. 2. Since swearing my previous affidavit my circumstances have
 Affidavit of changed.
 Elizabeth
 Schaefer.
 17th April, 3. My husband left me on or about the 22nd day of February,
 1969. 1969, and has since lived apart. He is currently paying me \$20 per week
 for maintenance. There is no court order in force against him.
- No. 6. 4. My eldest daughter was married on 12th April, 1969, and has
 Reasons for left the house at Nuwarra Road, to live with her husband.
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 of
 Street, J.
 4th July, 5. In March, 1969, I had a hysterectomy operation at Liverpool
 1969. District Hospital being discharged on 23rd March, 1969. I have been advised
 by my doctor, Dr Leckie, that I should not work for at least three months 10
 after the date of my discharge.
6. My youngest daughter is staying at home to look after me and
 is not working at the present time. She no longer pays me board as she
 cannot afford to do so.

SWORN by the Deponent on the day and year first }
 hereinbefore mentioned before me: } E. SCHAEFER.

B. N. LEVY, J.P.
 A Justice of the Peace.

No. 6

REASONS FOR JUDGMENT OF HIS HONOUR 20
MR JUSTICE STREET

IN THE SUPREME COURT
 OF NEW SOUTH WALES
 IN EQUITY

Friday, 4th July, 1969

- No. 1210/67 : E. Seery (dec'd) and T.F.M. Act
- No. 1211/67 : E. Seery (dec'd) and T.F.M. Act
- No. 1212/67 : E. Seery (dec'd) and T.F.M. Act
- No. 1519/67 : E. Seery (dec'd) and T.F.M. Act

HIS HONOUR : These are four applications under the Testator's Family
 Maintenance Act brought by the daughters of the late Edward Seery. The 30
 testator died on 16th November, 1966, at the age of seventy-six, leaving a will
 made on 23rd January, 1962, and a codicil made on 28th June, 1966. He
 was at the date of his death a retired market gardener, an occupation he had
 carried on for a great many years until his retirement in 1962.

There were eight children of the testator's marriage, one of whom had died in infancy, and to whom no further importance attaches. The children in the order of their present ages as Mrs Schuhmann, aged 42; Cornelius Seery, aged 40; Mrs Williams, aged 37; Mrs Lousick, aged 33; Edward Seery, aged 30; William Seery, aged 27; and Catherine Seery, aged 24.

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The testator left an estate the gross value of which was approximately \$90,000. After allowing for duties and other expenditures there remains in the hands of the executors \$68,700. The form in which this stands comprises a cottage and contents worth \$14,500. Some other parcels of realty, and
10 moneys and investments readily realizable.

The will that the testator made in 1962 gave to each of his four daughters a legacy of \$2,000, and left the residue to be divided equally between his three sons. The codicil of 28th June, 1966, left the cottage and contents to a Mrs Schaefer, the testator's housekeeper, upon the condition of her still being employed in that capacity at the date of his death; otherwise it confirmed the terms of the will.

The testator's wife had died beforehand, namely, in October, 1962, leaving a gross estate of about \$60,000. According to the terms of her will (which was also made in 1962), this was divided so as to give about \$8,300
20 to each of the three sons, being one-third of her residuary estate to each son, and to each of the four daughters—the present applicants—a legacy of \$2,000. The source of the wife's assets was the proceeds of the sale in 1962 of an area of land at Padstow, one of the properties on which the testator had carried on his business as a market gardener.

The evidence establishes that the relatively substantial estates of the testator and his wife derived from increases in the value of the land farmed by the testator and from increasing prosperity in the market gardening business carried on by him, first of all on his own account and latterly, until his retirement in 1962, in partnership with his three sons.

30 The case has been exhaustively and carefully presented on all sides, and there is a wealth of detailed evidence concerning the personal situation as well as the family history of the four daughters and the three sons. In the course of these reasons I do not intend to canvass this evidence in full, but some broad outline is necessary in order to indicate the basis for the conclusion I have reached.

The testator did not enjoy good health. He had apparently needed a walking stick since about 1935. His temperament, which was said in evidence to be difficult, became more so after the death of his wife in 1962. In 1966 the testator, who had since 1962 been living with his bachelor son
40 Edward and his spinster daughter Catherine at Revesby in a cottage owned

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by Edward Seery, left that cottage and purchased the cottage which at the present time is held in specie by the executors. He there employed a Mrs Schaefer as his housekeeper, and by the terms of his codicil he left to her the cottage and its contents in the event of her being still employed in that capacity at the date of his death.

During his working life as a market gardener the testator apparently expected and received from his children considerable help in the growing and selling of vegetables and produce. Prior to 1956 the testator carried on the Padstow farm. In 1956 some land was bought at Chipping Norton, and this land was farmed by the testator and his three sons on the basis of an equal partnership between the four of them. Upon the sale of the Padstow land in 1962 the testator ceased to participate in the partnership activities, and the partnership was then dissolved. At the same time the three sons bought another area of land at Moorebank; the source from which this was purchased was the benefit the sons received under their mother's will.

The first applicant is Mrs Schuhmann, aged 42, the eldest of the four daughters. She married in 1948, and has two sons. One is presently aged 15, and the other is 13. Both are students at high school. Mrs Schuhmann left school at the age of 14 during the first year of her secondary education and worked in the market garden, with brief exceptions, during the next 20 7 years for a relatively minor sum by way of wages. In 1947 to 1948 she was paid a proportion of the takings of the market garden. After her marriage in 1948 she ceased to work in this business. At the present time she lives with her husband in a house on the land owned by her brothers. In respect of this a purely nominal rental is charged each week. Her husband is employed in the market garden by the brothers, and it seems that it is many years since he has followed his trade as a cheesemaker. Mrs Schuhmann herself renders some minor services to her brothers, for which she receives an amount of \$2 per week. Her husband receives a wage in the order of \$39.50 per week, and this, coupled with the wages of \$36.20 per week 30 earned by Mrs Schuhmann from employment at Woolworth's, comprises their family income. They have virtually no assets, and, in addition to some hire purchase debts, there is an amount of \$600 owing by them to Edward Seery. Mrs Schuhmann's condition is one which undoubtedly presents a picture of financial insecurity, and I shall return to state my view in relation to it, in the light of the principles that must govern applications of this nature, after referring to the factual background affecting the other applicants.

Mrs Williams, the next daughter, was born in 1931. She married in 1954. Of the marriage there are three children—a daughter presently aged 11, a son aged 9 and a daughter aged 6. One of the daughters suffers 40 from chronic asthma, and the other suffers occasionally from the same complaint. This presents some financial burden on Mrs Williams in connexion with their care. Mrs Williams, who left school at the age of 14, lived at home with her parents until she was 23. She, too, worked hard, and for modest remuneration, on the market garden. Upon her marriage she lived for some

years in a house at Padstow owned by her father, and in 1962 she purchased this house, which she still owns, from the testator, using for this purpose the \$2,000 legacy under her mother's will. At the present time its value on the Valuer-General's roll is \$7,000, and it represents the only significant asset possessed by her. It is apparently likely to be resumed in the near future, and, although at the present time it is let at an attractive rental, bringing in a gross annual sum of \$1,500, it is obvious that upon resumption of the land the income from the investment into which the \$7,000 may be put will be significantly less.

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- 10 Mrs Williams has suffered from the misfortune of having contracted an unsuccessful marriage. Her husband appears to have been unsatisfactory, both financially as well as matrimonially. He left her in 1966, and there is evidence from Mrs Williams indicating that in the early part of that year the strain under which her marriage had placed her was such that she attempted to commit suicide. She has gone to live in Wellington, and has taken part-time employment as a barmaid, a position from which she derives earnings in the vicinity of \$1,000 a year. Her health is not entirely satisfactory, and it is apparent that her future is dependent upon three relatively uncertain elements: first, her own ability to continue working, this necessarily having to
- 20 be evaluated by reference to the state of her health and the need to look after her children, as well as the availability of employment; second, the prospect of obtaining alimony and maintenance from her husband, a prospect which is far from assured, no matter what may be her legal right—there is some evidence of her husband's intention to go to New Zealand, which, coupled with the evidence of his financial instability, does not encourage optimism in regard to Mrs Williams actually collecting alimony and maintenance from him; and, third, such income as she might derive in the future from her house at Padstow, or the investments into which the proceeds thereof may be placed after its resumption. Her position in my view can be
- 30 fairly described as one of real financial need, notwithstanding that on paper she is at the present time receiving a reasonably substantial income.

- The next applicant is Mrs Lousick. She is aged 33. She left school in 1950 at the age of 15. She attended High School until third year, and obtained her Intermediate Certificate. Up until then she worked occasionally in the market garden, but thereafter she has had employment away from the family. She worked for a year or more in the Public Trustee's Office. Then she served some 3 years as a trainee nurse, this presumably being interrupted by her marriage in 1955, at the age of 19. She has three children of her marriage—a son aged 13, a son aged 11 and a daughter aged 8; another
- 40 child was expected late last month. She is married to a road haulier whose business is carried on through a company of which he and Mrs Lousick are the principal shareholders, and which they control.

Of the four applicants Mrs Lousick's position is perhaps the most assured. She and her husband jointly own a house worth some \$9,000, subject to a mortgage of over \$7,600. They are acquiring a boat and certain

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household equipment on hire purchase. They have a car, and they also have their respective interests in the company through which the road haulage business is carried on. Mrs Lousick has suffered some troubles with her health, having spent 5 weeks in hospital with a nervous breakdown in 1967, and, although during the period preceding the hearing she was in employment for wages with the company, both her health and the arrival of the baby expected in June this year will preclude her from rendering any worthwhile assistance to that company in the immediate future.

There is a great deal of evidence concerning the prosperity or otherwise of the haulage company's business, and touching its future prospects. 10 There is no doubt that the fortunes of Mrs Lousick and her husband are bound up in the success or failure of the business. It is, of course, affected by the seasonal fluctuations that govern any country road transport business, and to some extent it may be regarded as subject to hazards from which an urban transport business is free. One must be on guard against assuming that Mrs Lousick is in a state of financial security merely because her financial affairs are relatively complex, are attended to professionally by an accountant, and recorded in the manner appropriate for the recording of the financial affairs of companies. It does seem, however, upon an overall assessment of the financial position of the Lousick family, that, although 20 some additional sum of money would undoubtedly be of great use and benefit to them, they are not in a position of financial stringency.

The remaining daughter is Miss Catherine Seery. She was born in December, 1944, and is a spinster. She left school at the age of 15, when in second year at High School. Apart from some temporary absences, she lived at home and looked after her father, after her mother's death, in her brother Edward's house at Revesby. Her health has not been entirely satisfactory. She suffered from hepatitis, and for a period of about 18 months she was in a lowered state of health. She apparently suffers from some rheumatic complaint which troubles her more in the winter than in the summer. At 30 the present time she is living with her brother Edward in his house at Revesby, this being the house acquired by him as a gift from his mother.

Catherine Seery has no assets, and, indeed, she appears to have spent the \$2,000 legacy she received from her mother without having acquired anything of a permanent material value therewith. Her education is limited in the way I have mentioned. She has no training for gainful employment, and her financial position is simply that at the present time she is in employment as a process worker, earning \$44 per week. Apart from whatever rights she may have under her father's will, her future is virtually entirely bound up 40 first of all in her own earning ability, with such limited training as her father gave her, to support herself, and secondly in whatever matrimonial prospects may lie ahead of her.

The testator's three sons, Cornelius Seery, Edward Seery and William Seery, carry on in partnership the business that they took over in 1962. Their asset position is approximately the same between the three of them, these positions having been enhanced on paper by reason of the increase in value of the land owned by them at Moorebank and Chipping Norton.

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Cornelius Seery, the eldest brother, is married. He lives with his wife, with the 2½-year-old child of that marriage, and with the two children of his wife's earlier marriage, in a house situated on the market garden. As is the case with each of his brothers, his share in the value of the land that the three
10 of them own in these two areas is worth approximately \$25,300. His interest in the partnership assets other than the land amounts to about \$5,000, making in all something over \$30,000. In addition, he has other private assets worth about \$8,600, giving him, apart from his interest under his father's will, something in the order of \$39,000.

It is not necessary to recount Cornelius Seery's history in the family. Clearly enough both he and his two brothers worked hard and long for little or perhaps no remuneration over a great many years. It is apparent that their father had with them a relationship in which he had the benefit of their business association in the partnership as well as their assistance as his three
20 sons. Everything points to their having in every way fulfilled their filial obligations toward their father, and as accordingly justifying to the full whatever testamentary provisions he was in a position to make for them.

The next brother, Edward Seery, is presently aged 30. He has interests in the partnership assets similar to his brother Cornelius. He is a single man, and, in addition to the house at Revesby given to him by his mother, and worth some \$9,000, he has other assets worth approximately another \$9,000. His assets total some \$48,000 in value.

The third brother, William Seery, who is presently aged 28, married about 5 years ago. There are three young children of his marriage. He also
30 lives on the market garden, and owns a corresponding share in the partnership land and assets. In addition, he has other assets amounting to about \$5,500. His assets total some \$36,000 in value.

The income of each of the three brothers from the partnership has been analysed in the evidence. None is trained for any other occupation than market gardening, each having left school at an early age in order to assist in the family undertaking. There is evidence that the immediately past financial year will be significantly less successful in the financial sense than previous years. The respective gross income of each of the brothers in the year ended 30th June, 1966, was \$6,293; in the year ended 30th June, 1967,
40 it was \$4,465; and in the year ended 30th June, 1968, it was \$6,782. Mr Officer, Q.C., who appears for the applicants, has sought to average these

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incomes over the years at about \$5,700. Whether this be a fair 3 years to take may be a matter of speculation. In particular, I see no reason to cast any doubt upon the evidence given in the witness-box regarding the unsatisfactory season currently being undergone by this partnership. It would seem that an income of about \$5,000 would be a conservative estimate for the income of each brother from the partnership at the present time.

In the light of this family complex the question arises whether the testator has left each of his daughters in a position falling short of that in which they were entitled to be placed. The question which must be asked in each case is that enunciated by Kitto, J. in *Stott v. Cook*, quoted by Taylor, J. in *The Pontifical Society for the Propagation of the Faith v. Scales* (107 C.L.R. 9 at 25), namely, 10

“ . . . whether the testator, if he had been ‘wise and just without necessarily being also affectionate could . . . have sat down to dispose of an estate of” a net \$68,700 “without feeling driven—not by a sense of fairness for that would be irrelevant—by a sense of moral obligation to make some provision’ towards the alleviation of . . .” each applicant’s position.

So far as concerns the three married applicants it is perhaps also apposite to refer to the words of Dixon, C.J. in *Blore v. Lang* (104 C.L.R. 124 at 20 129):

“What in the end must be a decisive consideration is the ‘adequacy’ of the economic ‘provision’ with which in these circumstances she was left; that economic provision being nothing but a condition of complete dependence on her husband with no defences against the risks and contingencies to which they might both be exposed.”

I have formed the conclusion that Mrs Schuhmann is in a position of financial need in which she was entitled to expect of her father that he would make for her some provision significantly in excess of the \$2,000 legacy that he left her. He was, in my view, within the words of the question 30 I have stated, under a moral obligation to make some provision toward the alleviation of her position. He had an estate of some \$68,000-odd, and was leaving her an amount which would be quite insufficient to enable her to do anything by way of securing her future maintenance.

The same observation can be made in the case of Mrs Williams. Her husband was shown by the evidence to have been unsatisfactory. Albeit that she has this income from her occupation as a barmaid, and is in receipt of an appreciable sum of rental from this house that she acquired from her father, her future position is nevertheless alarming in some respects. She has three young children, and in my view she is clearly placed in the position 40 in which the testator owed to her the obligation to make, out of this relatively substantial estate, some provision in excess of the \$2,000 that he left to her.

A somewhat similar comment may be made in the case of the youngest daughter, Miss Catherine Seery. Her position is one in which she is devoid of assets. She has no training or experience. If this estate had been of much less worth, then she may well not have been entitled to expect a great deal from her father—perhaps nothing more than the \$2,000 legacy that he left her. Bearing in mind, however, the enhanced value of his estate, due to the increases in value in the years immediately preceding his death of his land in these outlying areas of Sydney, he left an estate of such a size as in my view to attract to him an obligation to make some worthwhile provision

10 toward the future maintenance of this applicant.

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The conflicting claims upon the testator's bounty as against the three daughters I have thus far mentioned—leaving aside Mrs Lousick—are the claims of the three sons. I have already mentioned my acceptance of the full justification for their father wishing to mark significantly his appreciation of their filial ties with him. But their positions respectively, apart from their shares under this will, although not placing any of them in a position of affluence, were significantly superior to those of the three sisters I have discussed.

I come finally to Mrs Lousick. In her case, after careful examination

20 of the whole of the evidence, and after due deliberation in the light of the fact that I am disposed to make an order in favour of each of her three sisters, I have with some reluctance reached the conclusion that I ought not to interfere in her favour with the dispositions made under the will. It is never easy to draw the boundary line between what one's sense of fairness indicates and, on the other hand, what can be seen to be a moral obligation. It would undoubtedly have been fair for the testator to have made more generous provision for Mrs Lousick. But I have reached the conclusion that if I were to intervene in her favour I would be giving way to the inadmissible process of being affected simply by a consideration of fairness, this being, as has been

30 laid down, irrelevant. It is assessment of moral obligation that is the touchstone. Mrs Lousick's position was not one which required alleviation, and, even bearing in mind the size of her father's estate and the fact that in his will her father chose to treat her equally with her three sisters, each of whom has made out a claim, I have reluctantly reached the conclusion that she has not established that her father failed to make adequate provision for her proper maintenance.

In determining the quantum of the orders that should be made for the three daughters I am of the view that Mrs Schuhmann and Mrs Williams should receive, in addition to the benefits already provided for them under

40 the will, an additional legacy in the sum of \$10,000, giving to each a total legacy of \$12,000. In the case of Catherine Seery I am of the view that she should receive an additional legacy of \$2,000, giving her a total immediate legacy of \$4,000, and that she should receive the income from a further sum of \$8,000, to be invested in investments the nature of which may be specified

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widely and set out in the short minutes to be brought in in the course of giving effect to the orders I outline in these reasons. Mrs Lousick's claim will, as I have said, be dismissed.

I proceed now to deal with the disposition of the cottage and furniture made by the testator in favour of Mrs Schaefer. This has a dual relevance. First the size of the estate available for disposition by the testator or by order of the Court under the Act is affected by the situation of that asset. And second its liability to be burdened by an order under this Act is in strong contest.

The provision made for Mrs Schaefer in the codicil was expressed in 10 the following terms :

“NOW I HEREBY DECLARE that if my housekeeper ELIZABETH SCHAEFER shall still be employed by me as a housekeeper at the date of my death THEN but not otherwise I GIVE DEVISE AND BEQUEATH free of all duties payable in consequence of my death unto her absolutely my house and land known as Number 124 Nuwarra Road, Chipping Norton, being the whole of the land comprised in Certificate of Title Volume 5425 Folio 9 together with all my furniture and household effects contained therein.”

Evidence has been given regarding Mrs Schaefer's association with 20 the testator, and I should say at once that it was purely an association of employee and employer. She commenced to work for the testator in May, 1966, after answering an advertisement in a local newspaper; she had not previously met him. Her wages were to be \$12 per week. She looked after the testator, who was then living alone in this cottage. He was elderly, and required constant attention both in the care of his cottage and in connexion with his personal wants. Mrs Schaefer in her affidavit has stated the circumstances in which this codicil came to be made :

“I remember Mr O'Connor, his Solicitor, coming to see Mr Seery to get instructions to prepare a codicil to his Will. As I recall the 30 codicil was posted to Mr Seery and I read it to him at his request. I then arranged for a taxi to take him to the bank to have it signed.”

There is no other evidence whatever regarding the actual execution of the codicil or of any discussion preceding its execution. The only other evidence relevant to the point I am about to discuss is contained in para. 15 of Mrs Schaefer's affidavit, namely,

“Mr Seery paid me wages at the end of May, but at the end of June he said that he would not pay me wages any more because he had left me the house. He added ‘If you need any money to help you 40 out, let me know?’ After that I was able to manage without asking Mr Seery for any money for myself.”

The evidence establishes that the testator did not in fact pay wages to Mrs Schaefer after that date. The codicil, as I have already stated, was executed by the testator on 28th June, 1966.

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One might perhaps mention in passing that Mrs Schaefer deposed in her affidavit to the testator having told her on 13th November, 1966—that is to say, some 3 days before his death—that he wanted to give her the \$42,000 he had in the bank. Indeed, a cheque for this amount was drawn, and in circumstances that have been investigated in cross-examination, but to which I need not now refer, it was not presented for payment until after
10 the testator in fact died, so that this sum of \$42,000 did not ultimately find its way into Mrs Schaefer's hands. This particular transaction may perhaps have some relevance in evaluating the degree of wisdom brought to bear by the testator upon the content and extent of his testamentary obligations to his daughters and sons, who had for so many years been of such assistance to him.

Mr Handley, who appears for Mrs Schaefer, has presented a powerful argument to the effect that the production to Mrs Schaefer of this codicil for her to read, coupled with her subsequent rendering of these services, constituted a contract whereby the testator bound himself to leave this cottage
20 to her if she should still be employed by him at the date of his death. The specific promise as propounded by Mr Handley was in the following terms :

“On 28th June, 1966, the testator made a written offer to Mrs Schaefer that if she would work as his housekeeper until his death he would leave to her by will the property at 124 Nuwarra Road, Chipping Norton, together with furniture and household effects therein at his death.”

A number of questions arise in connexion with this argument. The first of these is whether or not what took place between the testator and Mrs Schaefer was contractual in its nature. Mr Officer has contended that
30 the facts fall rather within the type of situation described by *Griffith, C.J.* and *Isaacs, J.* at pp. 444 and 445 of the report of their respective judgments in *Wells v. Matthews & Ors* (18 C.L.R. 440). This initial question is itself one of considerable difficulty, due in no small measure to the paucity of evidence from which one might infer that a contract had come into existence. Mr Handley contends that the testator's asking Mrs Schaefer to read the codicil aloud was a communication of the offer. Were it not for the conversation at the end of June, deposed to in para. 15, I should have had great difficulty in concluding that this was intended to be contractual on the testator's part. The inescapable fact, however, is that the testator was then
40 dependent to a large extent upon Mrs Schaefer's continuing attention to his needs. The position in which she was employed was not perhaps a very attractive one, and he may well have anticipated difficulty in filling it again. It is quite clear that on any view of the evidence he held out to Mrs Schaefer

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the knowledge that he had made this codicil in this way as an inducement to her to continue in his employment. The fact that he intended her to alter her position upon the faith of what was set forth in the codicil is borne out by the conversation towards the end of June to the effect that he would no longer pay her wages. It seems in these circumstances that one is justified in drawing the inference that his submission of the codicil to her for perusal—albeit that it was a perusal associated with it being read aloud to him—was intended by him to bring its contents to her notice, and to induce her to continue to serve him in her then capacity. I am disposed accordingly to regard the communication of this codicil to her as associated with a contractual intention on the part of the testator. The contract came into existence by reason of Mrs Schaefer having discharged the consideration contemplated in the wording of the codicil, namely, being still employed as the testator's housekeeper at the date of his death. This connotes an element of the continuity in the employment from the date the codicil was shown to her through until the death of the testator. 10

It is contended that there was not sufficient memorandum of the contract, being one falling within the Statute of Frauds, to render it the subject of recognition in this Court. I am of the view, however, that the terms of the codicil themselves, being capable of being regarded—as I do regard them—as a written communication of the offer, are sufficient in that behalf. 20

It is at this point that the major difficulty of law and principle arises. Mr Handley argues that the testator, having made an enforceable contract to leave the cottage to Mrs Schaefer in the circumstances prescribed in the codicil, became bound in equity to fulfil that obligation. He contends that the nature of the equitable rights that thereupon arose in Mrs Schaefer, subject to her performing the consideration required by the contract, were such as to take the cottage out of the testamentary dispositive power of the testator. In this regard he refers me to a passage in the judgment of Kay, L.J., in *Synge v. Synge* ((1894) 1 Q.B. 466 at 471) where, in connexion with an argument that Courts of Equity cannot compel a man to make a will, his Lordship said: 30

“They, however, can decree the heir or devisee in such a case to convey the land to the widow for life, and under the Trustee Acts can make a vesting order, or direct that someone shall convey for him if he refuses. And under the like circumstances, the Court has power to make a declaration of the lady's right.”

That admittedly was a case at common law where damages were sought. There is, however, some development of the effect of a contract to make a will in passages in the judgment of Dixon, J. (as he then was) in *Birmingham & Ors. v. Renfrew & Ors.* (57 C.L.R. 666 at 683 and 685). At p. 683 his Honour said:

“It has long been established that a contract between persons to make corresponding wills gives rise to equitable obligations when

one acts on the faith of such an agreement and dies leaving his will unrevoked so that the other takes property under its dispositions. It operates to impose upon the survivor an obligation regarded as specifically enforceable. It is true that he cannot be compelled to make and leave unrevoked a testamentary document and if he dies leaving a last will containing provisions inconsistent with his agreement it is nevertheless valid as a testamentary act. *But the doctrines of equity attach the obligation to the property.* The effect is, I think, that the survivor becomes a constructive trustee and the terms of the trust are those of the will which he undertook would be his last will." (The emphasis is my own.)

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At p. 685 his Honour quotes with apparent approval an extract from Hargrave's Judicial Arguments, including, inter alia, the statement

" . . . in equity a more perfect relief is given, by decreeing specific performance, and for that purpose, whenever the case requires, converting the party promising and all volunteers deriving under him into mere trustees of the property in question."

To similar effect are some observations in the judgments of the Court of Appeal in *In re Edwards* ((1958) 1 Ch. 168). In that case a house had been specifically devised to a number of beneficiaries jointly. Later the testatrix made a contract to leave it to one of these beneficiaries solely. A question arose whether the contract worked an ademption of the testamentary disposition to the joint beneficiaries. *Jenkins, L.J.* said of the contract to make a will in a particular form affecting the house

" . . . the effect of which was that at the time of her death the testatrix was a bare trustee of the property for the first defendant, and consequently that by the time of the testatrix's death the gift of 78 Albion Road, contained in the will had been adeemed."

Romer, L.J. said at p. 179 that the testatrix "had parted with the whole beneficial interest in the property to the first defendant. There was, therefore, no beneficial interest on which the gift in the will could operate . . .". *Sellers, L.J.* expressed the result of the contract to make the will in the particular manner mentioned as being "She had in effect sold it in her lifetime." It was there held that the subsequent contract to leave the house by will adeemed the prior testamentary gift of that house.

Mr Handley's argument then proceeds to the step that unless the property will pass under the will or codicil it cannot be affected by the jurisdiction of this Court under the Testator's Family Maintenance Act. If, as the authorities that I have thus far referred to suggest, the testator became at the instant of his death a bare trustee of this cottage for Mrs Schaefer then, so the argument runs, it should be immune from the jurisdiction of this Court. The argument is that it is only assets capable of being dealt with by the testator under his will which can be affected by the provisions of this statute (see re *Keene*, 86 W.N. Pt. I 317).

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When this argument was first foreshadowed I suggested that it could not conveniently be dealt with within the framework of this application, and that it should be the subject of separate proceedings. All counsel, however, joined in pressing me to entertain and decide the point in this application. In support of the propriety of acceding to their application I was referred to the similar course adopted in a New Zealand case which was taken through the New Zealand Court of Appeal to the Privy Council, (*Dillon v. Public Trustee of New Zealand* (1941) A.C. 294), without any apparent judicial query regarding the propriety of adopting the course of deciding a substantive point of this nature in a peripheral sense in an application under the Testator's Family Maintenance Act. I accordingly acceded to counsel's application. 10

Dillon v. Public Trustee of New Zealand is also a powerful decision, and, in my view, a conclusive decision, which precludes my giving effect to Mr Handley's argument. Their Lordships were there concerned with a somewhat similar factual situation to that in the present case. A contract had been made to leave particular realty by will, and the question arose whether that realty could be affected by the jurisdiction conferred under the New Zealand Family Protection Act. At p. 305 of the judgment it is said:

" . . . their Lordships cannot entertain any doubt that, in principle, the Family Protection Act affects the unqualified operation of a contract to make a will in a particular form, whether the contract is fulfilled or whether it is broken." 20

Mr Handley contends that the New Zealand statute is distinguishable from the New South Wales statute in that there is no provision in the New Zealand statute similar or equivalent to s. 4 (1) of the New South Wales Act, this being the subsection which gives to the provisions of an order under the Act the same effect as if it had been made by a codicil. The distinction between the statutes undoubtedly exists. But, upon a close reading of the Privy Council decision, their Lordships do not appear to have given any weight to any consideration which would justify my distinguishing this decision as not applicable to a case under the New South Wales statute. The basis of the argument submitted by Mr Handley was available to their Lordships and must have been taken into consideration by them. Reference to the report of the decision in the New Zealand Court of Appeal (1939 N.Z.L.R. 550) makes it clear that the whole problem was widely canvassed. The Privy Council has stated a general proposition. I do not consider that there is any justification for reading that general proposition down or qualifying it so far as concerns the New South Wales statute merely upon the ground that s. 4 (1) did not appear in the New Zealand legislation there under consideration. Indeed, in the case of an intestacy, the decision in Dillon's case would be directly applicable in a claim under the New South Wales Act. It would be prima facie absurd to contemplate a contract to make a will as having no effect on the Court's jurisdiction in this State in the case of an intestacy but as excluding the subject assets from its reach in the case of a testate estate. 30 40

The effect of the decision of the Privy Council is but an instance of the general proposition enunciated by *Giffard*, L.J., at p. 192 of his judgment in *In re Brookman's Trust* (L.R. 5 Ch. App. 182):

“If a testator is bound to make a will in a certain form, the law says there is no breach provided he makes a will in due form, and it is not owing to any act of his that the child does not take.”

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Where that which is promised is the making of a will in a stated form (irrespective of whether the promise is in some such terms as “I will
10 leave you Blackacre in my will” or “I will insert in my will a clause leaving you Blackacre) there is no unqualified warranty by the promisor that the gift will take effect. In particular the promisee does not, upon such promise being made to him, thereby acquire such an equity or interest in the property as to render the will a mere further assurance to him. His rights to the property are to be drawn through the will and hence are subject to certain laws affecting testamentary succession. A promisee’s rights under a contract to leave property by will may, without any breach on the part of the testator, be subject to an inroad upon the property being made without thereby giving
20 any consequential right, either to damages or otherwise, to the promisee under that contract. An order under the Testator’s Family Maintenance Act is an instance of such an inroad. There are other instances where a promise to make a will in a particular form has been held not to give a right against the estate of a defaulting testator. For example, where the promisee predeceased the testator so that the gift, if it had been made, would have lapsed there was a breach of contract but that breach “was merely an *injuria sine damno*”; the promisee’s own legal personal representatives had no right in or to the property the subject of the promise. (*McDonald & Anor. v. McDonald & Anor.* (No. 2) 35 S.R. 463. An instance of an inroad that may be made upon property promised to be left by will is where there are
30 insufficient assets in the estate to pay debts (*Jervis v. Wolferstan*, L.R. 18 Eq. Cas. 18). In effect the decision in *Dillon’s* case brings about a situation in which the promisee under a contract to make a will in a particular form must accept that, whatever equities he may have in the property the subject of that contract, be they as high as Mr Handley’s argument seeks to put them, or be they more of a personal nature, as Mr Officer’s argument would suggest, his rights are subject to inroads being made upon the property by a court exercising statutory jurisdiction under legislation such as the Testator’s Family Maintenance Act of this State or the Family Protection Act of New Zealand. He can neither resist such an inroad in reliance upon a prior
40 equitable interest said to flow from his contract, nor can he recover damages for loss of his benefits under the contract.

I am accordingly of the view the devise to Mrs Schaefer of the cottage and contents does not render that asset immune from being taken into account in examining the overall quantum of this estate, or from bearing burden

No. 6. consequent upon the orders that I have indicated an intention to make for
Reasons for judgment the three successful applicants.

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The final question then arises of determining where should fall the burden of the orders for the three successful applicants. Section 6 (2) of the Testator's Family Maintenance and Guardianship of Infants Act provides:

“Unless the court otherwise orders, the burden of any such provision shall as between the persons beneficially entitled to the estate of the deceased person be borne by those persons in proportion to the values of their respective interests in such estate:

Provided that the estates and interests of persons successively entitled to any property which is settled by such will shall not for the purposes of this subsection be separately valued, but the proportion of the provision made under this Act to be borne by such property shall be raised or charged against the corpus of such property.”

So far as I am aware there is no guidance laid down in the authorities upon the manner of exercise of the discretion conferred by s. 6 (2) or upon the considerations relevant to the exercise of such discretion. A question was raised during argument whether the discretion is to be exercised by having regard to what a wise and just testator would have done in adjusting the interests of the beneficiaries to the changed circumstances brought about by the making of an order in favour of an applicant; alternatively, the relevant inquiry may be directed to what the testator himself would have done in such changed circumstances.

The discretion given to the Court by s. 6 (2) is a discretion to displace the statutory rule laid down therein, namely, that the burden shall be borne by the beneficiaries in proportion to the values of their respective interests. The legislature has indicated what might be regarded as the ordinary consequence upon the interests of beneficiaries in the event of an applicant succeeding in obtaining an order in his favour under s. 3. The discretion given to the court by s. 6 (2) is a discretion to depart from the statutory rule. The subsection itself contains no express indication of the manner of exercise of the discretion. After careful deliberation on the point I have reached the conclusion that the discretion is not one to be restricted to one or other of the alternatives mentioned earlier. That is to say, I do not assent to having to choose, in considering whether this discretion should be exercised, between what a hypothetical wise and just testator would have done in adjusting the burden of the order or, alternatively, what the instant testator would have done. The making of an order necessarily brings about a change in the manner in which the testator adjusted his affairs. And the Court's discretion to displace the statutory rule requiring the consequent burden to be ratably distributed is a discretion exercisable with due regard to the whole

of the circumstances. Apart from discarding considerations entirely extraneous I do not consider that the Court's discretion under s. 6 (2) is to be confined by attempting precise definition. Weight may undoubtedly be given to what a hypothetical wise and just testator would have done; weight may also be given to what the instant testator would have wished; neither is exclusive of the other. The discretion is to be exercised "according to the rules of reason and justice" (*Sharp v. Wakefield*, 1891 A.C. 173 per Lord Halsbury at 179), with due regard to the whole of the surrounding circumstances.

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10 A party seeking a departure from the statutory rule in s. 6 (2) bears the onus demonstrating that the case is one appropriate for the exercise by the Court of its discretion. It may well be that in many cases before a court would feel justified in departing from the statutory rule there should be afforded to the beneficiary against whom it is sought to have the discretion exercised notice so that he may have an opportunity of being heard on the point. This need not detain me in the present case as the party against whom it is sought to have the discretion exercised is Mrs Schaefer, and she is represented by counsel.

20 I have formed the conclusion that whilst the testator, having an estate of this size, was free to make some generous provision for Mrs Schaefer, it does not in all the circumstances accord with reason and justice to leave Mrs Schaefer with so substantial a share of the portion of his estate that will remain after meeting the provisions I shall order in favour of three of the applicants. The testator himself was primarily concerned to make provision for his sons; (I leave aside his last-minute quite extraordinary escapade with the \$42,000 cheque 3 days before he died). In the changed circumstances brought about by the inroads on the estate to meet the orders in favour of the 3 successful applicants the worth of the interests of the sons must inevitably be reduced. But relatively to Mrs Schaefer the sons 30 undoubtedly had a stronger claim on the testator's bounty. On the whole it would seem to me that the requirements of fairness and of reason and of justice will permit a departure being made from the statutory rule that the burden should be borne ratably. The burden should be adjusted so as to leave Mrs Schaefer with a legacy of comparable amount to that which the testator chose to leave his daughters, and which represents all that Mrs Lousick is to get out of the estate; but she should receive in addition a sum comparable to the wages that were apparently not paid to her during the latter months of the testator's life. This would amount in all to a sum in the vicinity of \$300 for wages.

40 I am accordingly of the view that the burden of the orders for the applicants should be met in the first instance by imposing a charge upon the benefit taken by Mrs Schaefer under the will except to the extent of \$2,300, and that the remainder of the burden should be borne equally between the testator's three sons.

No. 6. I shall stand the proceedings over so that short minutes may be brought in by counsel after these reasons have been engrossed and made available for consideration. There should also be included in the short minutes provision for exhibits to be handed out. I assent to the arguments that have been put by one or other of the various counsel that in the exceptional circumstances of this case the separate representation arranged on behalf of both Mrs Schaefer and one of the testator's sons was justifiable. I have considered, but discarded, the suggestion that perhaps there should be some order for costs inter partes, and have reached the conclusion that all costs should come out of the estate. There should accordingly be the usual orders for costs out of the estate in favour of all the parties represented in the proceedings.

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Decretal Order of Street, J.
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No. 7**ORDER OF HIS HONOUR MR JUSTICE STREET**

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

} No. 1210 of 1967

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased. 20

AND IN THE MATTER of the Application of MARY JANE FAY LOUSICK of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

No. 1211 of 1967.

IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of ELLEN 30 ELIZABETH SCHUHMAN of Ernest Avenue, Chipping Norton, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

No. 1212 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MAUREEN JOAN WILLIAMS of 66 Fairfield Road, Padstow, in the State of New South Wales.

10 AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

No. 1519 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of CATHERINE EILEEN SEERY of 53 Sherwood Street, Revesby, in the State of New South Wales.

20 AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

FRIDAY the twenty-sixth day of September, One thousand nine hundred and sixty-nine.

UPON APPLICATION made the sixteenth and seventeenth days of April last the fifth day of June last the third and fourth days of July last unto this Court before the Honourable Laurence Whistler Street a Judge of the Supreme Court sitting in Equity by counsel on behalf of Ellen Elizabeth Schuhmann Maureen Joan Williams and Mary Jane Fay Lousick daughters of the abovenamed testator Edward Seery deceased in pursuance of the several Originating Summonses each filed the tenth day of October one thousand nine hundred and sixty-seven and on behalf of Catherine Eileen Seery a daughter of the said testator in pursuance of Originating Summons filed the fourteenth day of December one thousand nine hundred and sixty-seven WHEREUPON AND UPON HEARING READ the several Originating Summonses and the Affidavits particulars of which are set out in the Schedule hereto all filed in the respective applications herein AND UPON READING AND EXAMINING the Exhibits put in evidence on behalf

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of the Applicants marked "A" "B" and "C" respectively and the exhibits put in evidence on behalf of the Respondent numbered "1" and "2" respectively and the exhibits put in evidence on behalf of the intervenors numbered "3" "4" "5" and "6" respectively AND UPON HEARING the oral evidence of the said Ellen Elizabeth Schuhmann the said Maureen Joan Williams the said Catherine Eileen Seery the said Mary Jane Fay Lousick and Cornelius Patrick Seery and Elizabeth Schaefer AND UPON HEARING what was alleged by Mr Ellicot of Queen's Counsel on the sixteenth and seventeenth days of April last and thereafter by Mr Officer of Queen's Counsel with each of whom was Mr R. B. Davidson of Counsel for the Applicants by Mr Melville of Counsel on the sixteenth and seventeenth days of April last and the fifth day of June last and thereafter by Mr Melville and Miss Mathews of Counsel for the Respondent Cornelius Patrick Seery the Executor of the Will and Codicil of the said testator by Mr Handley of Counsel for the intervenor Elizabeth Schaefer and by Mr Taylor of Counsel for the intervenor William John Seery THIS COURT DID GRANT LEAVE to the said Elizabeth Schaefer a beneficiary named in the said Will and to the said William John Seery a son and a residuary beneficiary of the testator to intervene in these proceedings in each case at the said intervenor's own risk as to costs AND THIS COURT DID ORDER with the consent of all parties and of the intervenors that the said matters be and the same were thereby consolidated AND THIS COURT DID DELIVER JUDGMENT AND DID ORDER that the said matters do stand for short minutes to be brought in and the making of orders in accordance therewith AND this matter standing in the paper accordingly this day THIS COURT DOTH ORDER that in addition to the provisions made for the applicant Ellen Elizabeth Schuhmann by the Will of the testator the respondent as Executor of the said Will do pay to the said applicant a legacy of Ten thousand dollars (\$10,000.00) such legacy to carry interest at five per cent per annum from the thirty-first day of October one thousand nine hundred and sixty-nine if not paid before that date AND THIS COURT DOTH FURTHER ORDER that in addition to the provisions made for the applicant Maureen Joan Williams by the Will of the testator the respondent as Executor of the said Will do pay to the said applicant a legacy of Ten thousand dollars (\$10,000.00) such legacy to carry interest at five per cent per annum from the thirty-first day of October one thousand nine hundred and sixty-nine if not paid before that date AND THIS COURT DOTH FURTHER ORDER that in addition to the provisions made for the applicant Catherine Eileen Seery by the Will of the testator (a) The respondent as Executor of the said Will do pay to the said applicant a legacy of Two thousand dollars (\$2,000.00) such legacy to carry interest of five per cent per annum from the thirty-first day of October one thousand nine hundred and sixty-nine if not paid before that date (b) The respondent do transfer to the trustee or trustees to be appointed as hereinafter directed the sum of Eight thousand dollars (\$8,000.00) to be held by such trustee or trustees upon trust to invest the same wholly or partly in investments authorised by law as trustee investments and/or wholly or partly in shares in any company listed on the Sydney

Stock Exchange having a paid up capital of not less than two million dollars (\$2,000,000) and not being listed as a mining company and to pay to the said applicant the whole of the income of such sum during her life and upon her death the said sum and the investment or investments representing the same shall devolve as part of the estate of the Testator and in accordance with the provisions of his Will applicable thereto (c) Pending the transfer to the trustee or trustees of the sum of Eight Thousand Dollars (\$8,000.00) as hereinbefore ordered the said Catherine Eileen Seery be paid out of the estate of the testator interest at the rate of five per cent per

10 annum from the thirty-first day of October one thousand nine hundred and sixty-nine up to the date of such transfer (d) Liberty be reserved to the respondent and to the applicant Catherine Eileen Seery to apply to the Court for an order appointing the trustee or trustees to whom the aforesaid sum of Eight Thousand Dollars (\$8,000.00) is to be transferred and for such further order or direction as to the investment or other administration thereof as may seem expedient AND UPON the intervenor Elizabeth Schaefer by her Counsel undertaking not to bring any action against the respondent or the trustee or trustees of the Will of the testator for wages or otherwise howsoever in respect of or arising out of employment by the testator during

20 his lifetime with liberty to said Elizabeth Schaefer to apply to the Court to be released wholly or partly from the performance of this undertaking THIS COURT DOTH FURTHER ORDER that the burden of the said Orders in favour of the applicants Ellen Elizabeth Schuhmann Maureen Joan Williams and Catherine Eileen Seery in the first instance be met by and a charge be imposed over and upon the property comprised in the interest and benefit of Elizabeth Schaefer in the estate of the testator except as to the sum of Two thousand three hundred dollars (\$2,300.00) part of such interest and benefit aforesaid and that thereafter the remaining burden of such Orders to be borne equally by and between the three sons of the

30 testator namely Cornelius Patrick Seery Edward Andrew Seery and William John Seery AND THIS COURT DOTH FURTHER ORDER that the application of the Applicant Mary Jane Fay Lousick be and the same is hereby dismissed out of this Court THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy Master and Registrar the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of each of the Applicants and of each of the intervenors of this application and the costs and expenses of the Respondent of and incident to this application and that the said costs and costs and expenses when so taxed and certified be paid or retained out of the said estate in the manner following that is to say

40 the costs of the respective Applicants be paid to them or to their Solicitors and the costs of the intervenors be paid to them respectively or to their respective Solicitors and the costs and expenses of the Respondent be retained by him or paid to his Solicitors AND THIS COURT DOTH FURTHER ORDER that the Exhibits be handed out of Court to the parties or persons respectively entitled thereto AND THIS COURT DOTH FURTHER ORDER that the respondent do within fourteen days after service upon him of an office copy of this Order produce to the Deputy

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Master and Registrar in Equity the probate of the Will of the said testator with a true copy of this Order endorsed thereon and lodge with the said Deputy Master and Registrar a separate copy of this Order AND that the said Deputy Master and Registrar or Deputy Registrar or Chief Clerk in Equity do endorse on each of the said copies his certificate that the same is correct and do forthwith transmit the said separate copy so certified as aforesaid to the Registrar of Probates of this Court.

SCHEDULE

Affidavits filed on behalf of the Applicants.

- The Affidavit of Mary Jane Fay Lousick sworn 31st May, 1968. 10
 The Affidavit of S. F. Douglas sworn 3rd April, 1969.
 The Affidavit of Maureen Joan Williams sworn 4th June, 1968.
 The Affidavit of Maureen Joan Williams sworn 3rd April, 1969.
 The Affidavit of A. Creagh sworn 4th November, 1968.
 The Affidavit of Ellen Elizabeth Schuhmann sworn 4th June, 1968.
 The Affidavit of Catherine Eileen Seery sworn 4th June, 1968.
 The Affidavit of Helen Nicholas sworn 5th December, 1968.
 The Affidavit of Elizabeth Schaefer sworn 4th December, 1968.
 The Affidavit of John Leikvold sworn 5th December, 1968.
 The Affidavit of Norman Sidney Green sworn 5th December, 1968. 20
 The Affidavit of Reginald Thomas Findley sworn 5th December, 1968.
 The Affidavit of Ellen Elizabeth Schuhmann sworn 5th December, 1968.

Affidavit filed on behalf of the Respondent.

- The Affidavit of Cornelius Patrick Seery sworn 17th June, 1968.

Affidavit filed on behalf of the Intervenors.

- The Affidavit of William John Seery sworn 15th April, 1969.
 The Affidavit of Elizabeth Schaefer sworn 17th April, 1969.

PASSED this First day of December, 1969.

ENTERED same day.

(Sgd) A. V. RITCHIE (L.S.), 30
 Deputy Master and Registrar in Equity.

**TRANSCRIPT OF ORAL EVIDENCE BEFORE HIS HONOUR
MR JUSTICE STREET GIVEN BY ELIZABETH SCHAEFER**

(Affidavit of Elizabeth Schaefer of 17th April, 1967, filed in Court and read
by Mr Handley)

ELIZABETH SCHAEFER,

sworn, examined, deposed :

To Mr HANDLEY : My full name is Elizabeth Schaefer, and I reside at
24 Nuwarra Road, Chipping Norton.

- 10 Q. You have sworn two affidavits in connection with these proceed-
ings? That is right, is it—you have sworn two affidavits in connection with
these proceedings? A. Yes.

CROSS-EXAMINATION

Mr TAYLOR : Q. Mrs Schaefer, in the period during which you were living
with Mr Seery at your present address, Mr John Seery, as you have told
us, came to visit his father regularly, is that so? A. For the first time, yes.

Q. I beg your pardon? A. The first time, yes.

Q. Mrs Schaefer, isn't it true that up to the time that Mr Seery, Sr,
died Mr John Seery was visiting him at least twice a week? A. For the first
20 months, in May and June and July.

Q. I am sorry? A. The first three months he was visiting twice a
week, and the last month only fortnightly.

Q. We are talking about Mr William John Seery. A. Yes.

Q. Not Mr Cornelius Seery. Do you understand that? A. Yes.

Q. You see, Mrs Schaefer, you remember swearing your first affidavit
in this case, don't you? A. Yes.

Q. And do you remember saying in that affidavit : "During the time
that I was working with Mr Seery as his housekeeper he was visited by his
son John at regular intervals and by his son Con more or less frequently."
30 Do you remember saying that? A. Yes.

Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.
cross-
examination.

Q. You did not say anything about Mr John Seery's visits being earlier on, did you? (Objected to; allowed.)

Q. Mrs Schaefer, you did not say in your affidavit that Mr Seery's visits in the earlier part of the six months were more than later, did you?
A. No.

Q. Madam, I want to suggest to you that throughout the six months Mr John Seery was visiting the home on no less than two occasions a week?
A. Maybe. I am not sure.

Q. You are not sure? A. I am not sure.

HIS HONOUR : I think the witness said "maybe. I am not sure". 10

Mr TAYLOR : Q. Mr John Seery lived about a mile away, didn't he?
A. Yes.

Q. Is that right? A. Yes.

Q. And Mr Cornelius Seery lived about two miles away? A. Yes.

Q. From you? A. Yes.

Q. Is that so? A. Yes.

Q. And you had a telephone in the house, didn't you? A. Yes.

Q. And you had the number of Mrs Schuhmann in the house, is that so? A. No.

Q. Didn't you have the number of Mrs Schuhmann? A. No. 20

Q. Wasn't it put up on the wall for you to see? A. I don't know what was on the wall, because I don't know Mrs Schuhmann's name at all.

Q. You don't know who Mrs Schuhmann is? A. No, never met her.

Q. You have never met her? A. No.

Q. Was not there a telephone number in your house on a wall? A. I can't remember.

Q. You can't remember? A. No.

Q. But you would remember if there was one there, wouldn't you?
A. I didn't take any notice.

Q. You didn't take any notice? A. No. 30

Q. Now, Mrs Schaefer, when Mr Seery—Mr John Seery—came to the house, he used to spend some time with his father, didn't he? A. Maybe half an hour; maybe an hour.

Q. And he was talking to him, wasn't he? He would be talking to him? A. I suppose so.

Q. You suppose so? Didn't you hear them talking? A. No. I left.

Q. You left? A. Yes.

Q. Look, didn't Mr John Seery talk to you when he came, too?
A. He said "Goodday" and "How are you?"

Q. Didn't he talk to you about his father's state of health? A. No.
He asked where his father is, and he was most of the time in his bedroom.

Q. Mr Seery Sr was most of the time in his bedroom? A. Yes.

Q. Particularly in the latter part of his life. What I am asking you
or suggesting to you is that Mr John Seery, when he came, talked to you
10 about Mr Seery Sr's state of health? A. Yes, sometimes.

Q. And did Mr John Seery tell you in fact that he thought it would
be better if Mr Seery Sr went to hospital? A. No. I was not at the time
employed by Mr Seery when he was in hospital.

Q. I beg your pardon? A. When Mr Seery was in hospital I was
not—

Q. I think you have misunderstood me, Mrs Schaefer. You have
told us that Mr Seery Sr did not want to go to hospital. You understand
that? A. Yes.

Q. Now, when Mr John Seery came to see his father on occasions
20 he spoke to you about Mr Seery Sr not wanting to go to hospital, didn't he?
A. Yes, that is right.

Q. And Mr John Seery told you that he would have liked Mr Seery
Sr to go to hospital? A. Yes, he told me so.

Q. And, Mrs Schaefer, in fact you have been on quite friendly terms
with Mr John Seery, haven't you? A. Yes.

Q. And Mr Seery Sr died on a Wednesday I think, didn't he? Do
you remember that? A. I don't remember. I suppose it was Wednesday.

Q. You told us—I am sorry, I think it was about 4 o'clock in the
morning, is that right? A. Yes.

30 Q. And, Mrs Schaefer, Mr John Seery had been to see him on the
previous Sunday, hadn't he? Do you remember that? A. No. John Seery
was not the last four weeks in (sic).

HIS HONOUR: Q. You mean he had not been in over the last four weeks?
A. Yes.

Mr TAYLOR: Q. You say that at no time in the last four weeks of Mr
Seery Sr's life did Mr John Seery visit the house, is that right? A. Yes.

Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.

cross-
examination.

Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.

cross-
examination.

Q. I want to suggest to you that on the Sunday before he died Mr John Seery came to the home and spent about an hour with his father. A. Not in my presence. I didn't see him.

Q. You may not have been there? A. I was all the time there when Mr Seery was the last three weeks very ill. I was all the time in that house.

Q. Were you there on the Sunday morning before he died? A. Yes.

Q. Do you remember that? A. Yes. I was in.

Q. Now, Mrs Schaefer, you have told us about a cheque that Mr Seery signed in your favour for \$42,000? A. Yes.

Q. And that no doubt to you was an extremely large amount of money? A. It was. 10

Q. And, Mrs Schaefer, the cheque was signed by him on 13th November, wasn't it? A. Yes. (Objected to by Mr Handley; allowed).

Q. Mrs Schaefer, I was asking some questions about the Sunday before Mr Seery Sr died. Didn't you have someone visit you? Didn't someone visit you on that day? A. Yes, my son visited me.

Q. Your son visited you on that day? A. Yes.

Q. Were you talking to him on that morning? A. Yes.

Q. And were you talking to him outside your house on that morning? A. No. He was in the kitchen. 20

Q. I want to suggest to you that while your son was there Mr John Seery came to the home and saw his father? A. It is possible. I was a couple of times out of the house. But I did not see Mr John Seery.

Q. I want to suggest to you also, Mrs Schaefer, that in the last four weeks Mr John Seery came at least four or five times to see his father? A. In one week?

Q. During the last three or four weeks, I want to put to you? A. No. He made a mistake. It is not true.

Q. Do you still say that he did not come on any occasion in the last three or four weeks? A. No (sic). 30

Q. You still say that, do you? A. Yes. He was coming the month before. October.

Q. I was asking you about the cheque which was signed on 13th November. A. Yes.

Q. That is right, is it? It was signed on 13th November? A. Yes.

Q. Mrs Schaefer, it was not until 16th November that you presented that cheque for payment, was it? A. It was on 16th November.

Q. I beg your pardon? A. It was on 16th November.

Q. That was the date you went to the bank, wasn't it? A. Yes.

Q. And you went to the Rural Bank at Liverpool? A. Yes.

Q. And that was in the morning, I take it? A. Yes.

Q. Were you there at 10 o'clock? A. No. It was maybe a little bit later.

Q. Not very much later, I take it? A. Not very much.

Q. And that, of course, was the morning on which Mr Seery Sr had died? A. It was Mr Seery's wish to do so.

10 Q. That was on the morning on which Mr Seery had died, wasn't it? A. Yes.

Q. Mrs Schaefer, he died about 4 o'clock? A. That is right.

Q. What time did the funeral parlour people come out to take away the body? A. It was maybe half past six or 7 o'clock. I am not sure.

Q. You rang them, did you? A. I rang the doctor, and the doctor arranged us for the funeral.

Q. So that Mr Seery had been taken away by half past six or 7 o'clock? A. I am not sure of the time.

Q. About that? A. About that.

20 Q. And, Mrs Schaefer, you knew that Mr John Seery would want to know about his father's death, didn't you? A. No. I didn't know he was coming the same day, and I didn't expect him to.

Q. You must have known that Mr John Seery would be concerned to know that his father had died? A. No, I am not sure.

Q. You are not sure? A. No.

Q. Didn't you think he would be interested? A. He was his father.

Q. So that he would have been interested, wouldn't he? A. In one way, yes.

30 Q. You have told us that he talked to you about his father's health? A. When he was alive?

Q. Yes. A. Yes.

Q. And didn't it occur to you to let Mr John Seery know about his father's death? A. I don't know.

Q. And didn't it occur to you to let other members of the family know about their father's death? A. I met only——

Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.

cross-
examination.

Q. Did it occur to you to let them know? A. No.

Q. The fact is that you went to the bank with that cheque as soon as you could to get it cashed after Mr Seery Sr had died, didn't you?
A. Yes.

Q. And in fact you wanted the money straight away, didn't you?
A. No, because I knowed it was frozen.

HIS HONOUR: Q. I didn't hear that? A. I knowed it was frozen.

Mr TAYLOR: Q. You didn't tell the bank that Mr Seery Sr had died, did you? A. Yes, I told the bank.

Q. Didn't you ask for the cash straight away? A. No, I didn't ask. 10

Q. You know what a special answer is on a cheque, don't you?
A. I asked for the bank manager, and I told the bank manager it was Mr Seery—

Q. Just a moment, Mrs Schaefer. (Objected to.)

Q. Mrs Schaefer, you understood that Mr Seery's account was with the A.N.Z. Bank at Padstow? A. Yes.

Q. You knew that, didn't you? A. Yes, I knew that.

Q. Because you had cashed a number of his cheques before, hadn't you? A. Yes.

Q. And you knew that the bank had to be contacted—that that bank 20 had to be contacted if you wanted this money straight away? A. That is the bank's business. Not mine.

Q. I am suggesting to you that that is what you knew when you went to cash the cheque? A. I didn't want to cash the cheque. I was asking only the bank manager what to do with the cheque. It was Mr Seery had handed it to me.

Q. That was the bank manager at the Rural Bank? A. Yes.

Q. You didn't tell him that Mr Seery Sr was dead, did you? A. I told him that Mr Seery died this morning, and it was his wish to put the cheque in the bank. 30

Q. I want to suggest to you that you asked for this money there and then? A. I did not ask for any money.

Q. For how long were you at the bank? A. Maybe fifteen minutes.

Q. Were you waiting at the time? A. Yes. The manager called me and asked about—

Q. I am asking whether you were waiting all the time? A. I did not have to wait. He came and called me in.

Q. And after you spoke to the manager did you wait at the bank then? A. No, I left the bank.

Appellant's
Evidence.

(Luncheon adjournment)

No. 8.
Elizabeth
Schaefer.

At 2 p.m.

cross-
examination.

HIS HONOUR: Q. You are still on your oath to tell the truth, do you understand, Mrs Schaefer? A. I understand.

Mr TAYLOR: Q. Mrs Schaefer, did you come back to your home on 16th November after you left the bank? A. Yes.

10 Q. When you got home were you doing household chores? A. I had to clean up Mr Seery's room first, and clean up the house, and wash everything that Mr Seery left.

Q. You were doing household duties, were you not? A. Yes, that is right.

Q. And, Mrs Schaefer, it is a fact, isn't it, that none of Mr Seery Sr's family were told about his death until they actually came to the home themselves? A. Mr Cornelius Seery knew it—

Q. Will you answer my question? It is a fact, isn't it, that none of the family of Mr Seery were told by you about his death until they came to the home later that morning? A. Not by me, no. By the doctor.

20 Q. And, Mrs Schaefer, you mentioned in the affidavit that it was your practice to go to the bank—by arrangement with Mr Seery, Sr, it was your practice to write out his cheques, and he would sign them, is that right? A. At Mr Seery's wish, yes.

Q. I beg your pardon? A. Mr Seery's wish.

Q. His wish? A. Yes.

Q. And that is what you did? You wrote out cheques for him for shopping purposes, and he signed them, is that right? A. Yes.

Q. And you used to cash them? A. Yes.

Q. Is that right? A. That is right.

30 Q. And the money was spent on food, was it? A. Well, money was spent on food and clothing and furniture and everything I had to buy for the whole household.

Q. I only want to ask you about cheques which were for cash, you see? A. Yes.

Q. Was that money spent on food for yourself and Mr Seery? A. Not all the money.

Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.
—
cross-
examination.

Q. Not all of it? A. No.

Q. Was some of it spent on food for yourself and Mr Seery?
A. Yes.

Q. And that was right up to the time that he died? A. Yes.

Q. And, Mrs Schaefer, from June—from the beginning of June, 1966, up until the time that he died there were a number of cash cheques which were cashed for the purpose of shopping and so on, weren't there? A. Not only for shopping.

Q. I am just asking you. Were there a number of cheques?
A. Some of them. 10

Q. (Par. 10 of affidavit of William John Seery shown to witness) Will you look at the affidavit which is shown to you? Look at par. 10 of that affidavit. Will you read that paragraph? A. Yes.

Q. You will see a number of cheques listed there. A. Yes.

Q. Now, Mrs Schaefer, do you dispute that these cheques of Mr Seery's were cashed for the sums that paragraph indicates? (Objected to by Mr Handley; rejected.)

Q. Mrs Schaefer, if you look at that list—— A. Yes.

Q. Just before I come to that question, it was your habit on behalf of Mr Seery, wasn't it, to cash his cheques? A. Because he never had cash 20 money in the house.

Q. And you used to cash them for him, didn't you? A. Yes.

Q. If you look at that list in par. 10 of the affidavit which is in front of you, I want to suggest to you that with the exception of the cheque dated 28th June, 1966, that you yourself cashed the remainder. Is that right?
A. That is right.

Q. Will you have a look at these cheques which I show you?
A. Yes.

Q. Have you looked at those cheques? A. Yes. This (indicating) 30 is a different one.

Q. You are referring to a particular cheque? A. This one is a different one.

Q. Perhaps you may show me that one.

HIS HONOUR : Q. You have taken one out, and you say it is a different one? A. Yes.

(Five cheques tendered by Mr Taylor; objected to by Mr Handley; admitted and marked Ex. 3.)

(Cheque which the witness described as different m.f.i. 1.)

Mr TAYLOR: Q. In addition to cash cheques Mr Seery customarily paid a lot of accounts by cheque, didn't he? A. Yes.

Q. For example, he made payments to Nock and Kirby's? A. Yes, Nock and Kirby's.

Q. And to Buckingham's? A. Yes.

Q. That was during the period when you were his housekeeper? A. Yes.

Q. Wasn't it true that the proceeds from the cheques that were cashed was used primarily for housekeeping expenses? A. I did not cash the 10 cheques for the big stores. He paid the stores in cheque.

Q. He paid the stores himself by cheque? A. Yes.

Q. But the cash which was obtained from the cheques which were for cash was used, wasn't it, for housekeeping expenses? A. Yes.

Q. For you and Mr Seery? A. Yes.

Q. Now, madam, is there at the present time a television set in the home that was there when Mr Seery died? Is there a television set in the home that was there when Mr Seery, Sr, died? A. Yes.

Q. Do you understand that television set to be your property? A. Mr Seery—(Objected to; rejected.)

20 Q. Mrs Schaefer, Mr Seery left you under his will the home, together with household furniture, is that so? A. Yes, that is right.

Q. And was the television set, a Precedent 25-inch consolette in the home while you were living there with him? A. Yes.

Q. And was there in the home during that time a Metters electric refrigerator? A. Yes.

Q. Is that refrigerator still there? A. It is still there.

Mr MELVILLE : No questions.

Mr ELLICOTT : No questions.

RE-EXAMINATION

30 Mr HANDLEY: I tender the documents produced by the A.N.Z. Bank, Padstow, on subpoena duces tecum, together with all the cheques produced by the bank, other than ones that have already gone in.

First of all, I tender the bank records from the Padstow bank in the form of a copy of the pass sheet. (Objected to by Messrs Taylor and Melville; admitted.)

(Bank statements admitted and marked Ex. 4.)

Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.

cross-
examination.
Appellant's
Evidence.

No. 8.
Elizabeth
Schaefer.

Re-
examination.

Appellant's Evidence.

No. 8.
Elizabeth Schaefer.

Mr HANDLEY: I tender a group of cheques drawn by the deceased or on his behalf in the period before Mrs Schaefer became his housekeeper. (Objected to by Messrs Taylor and Melville; rejected.)

(Bundle of cheques m.f.i. 2.)

Re-examination.
No. 9.

Order granting conditional leave to appeal to Privy Council.

Mr HANDLEY: I tender another bundle of cheques and deposit slips in the period from after Mrs Schaefer's arrival until the death of the deceased. (Objected to by Messrs Taylor and Melville; admitted.)

(Bundle of cheques and deposit slips admitted and marked Ex. 5.)

(m.f.i. 1 tendered and admitted as Ex. 6.)

26th September, 1969.

Mr HANDLEY: I call for photostat copy of cheques in Mr Taylor's possession. (Produced by Mr Taylor.)

Mr HANDLEY: I call for any other photostat copy of cheques drawn by the deceased in this period. (Produced by Mr Taylor.)

(Photostat copy of cheques tendered; objected to by Messrs Taylor and Melville; rejected.)

(Photostat copy of cheques m.f.i. 3.)

HIS HONOUR: m.f.i.'s 2 and 3 will be attached to the subpoena from the bank.

(Witness retired)

(Further hearing adjourned to a date to be fixed)

20

No. 9

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO PRIVY COUNCIL

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

} No. 1210 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MARY JANE FAY LOUSICK, of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

No. 9.
 Order
 granting
 conditional
 leave to
 appeal to
 Privy
 Council.
 —
 26th
 September,
 1969.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

No. 1211 of 1967.

IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

10 AND IN THE MATTER of the Application of ELLEN ELIZABETH SCHUHMAN, of Ernest Avenue, Chipping Norton, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

No. 1212 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

20 AND IN THE MATTER of the Application of MAUREEN JOAN WILLIAMS, of 66 Fairfield Road, Padstow, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

No. 1519 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

30 AND IN THE MATTER of the Application of CATHERINE EILEEN SEERY, of 53 Sherwood Street, Revesby, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

No. 9.
Order
granting
conditional
leave to
appeal to
Privy
Council.
26th
September,
1969.

FRIDAY the twenty-sixth day of September One thousand nine hundred and sixty-nine.

UPON MOTION made this day unto this Court before the Honourable Laurence Whistler Street a Judge of the Supreme Court sitting in Equity by counsel on behalf of the Intervener Elizabeth Schaefer pursuant to Notice of Motion filed herein this day WHEREUPON AND UPON HEARING READ the said Notice of Motion and the Short Minutes of the Decretal Order made herein this day and the Affidavit of David Singer sworn the fifth day of September instant filed herein AND UPON HEARING what was alleged by Mr Handley of Counsel for the Intervener Elizabeth Schaefer and by Mr Melville of Counsel for the Respondent Executor Cornelius Patrick Seery THIS COURT DOTH ORDER that leave to appeal to Her Majesty in Her Majesty's Privy Council from the said Decretal Order be and the same is hereby granted to the Intervener Elizabeth Schaefer UPON CONDITION that she do within three (3) months from the date hereof give security to the satisfaction of the Master in Equity in the amount of Five dollars (\$5.00) for the due prosecution of the said appeal and the payment of all such costs as may become payable to the Respondent Executor in the event of her not obtaining an order granting her final leave to appeal from the said Decretal Order or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering her to pay the costs of the Respondent Executor of the said appeal as the case may be AND UPON FURTHER CONDITION that she do within fourteen (14) days from the date hereof deposit with the Master in Equity the sum of Fifty dollars (\$50.00) as security for and towards the costs of the preparation of the transcript record for the purposes of the said appeal AND UPON FURTHER CONDITION that she do within three months from the date hereof take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the index to the said transcript record and enabling the Master in Equity or in his absence the Deputy Master and Registrar in Equity to certify that the said index has been settled and that the conditions hereinbefore referred to have been duly performed AND UPON FURTHER CONDITION finally that she do obtain a final order of this Court granting her leave to appeal as aforesaid AND THIS COURT DOTH FURTHER ORDER that the costs of all parties of this application and of the preparation of the said transcript record and of all other proceedings hereunder and of the said final order do follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or do abide the result of the said appeal in case the same shall stand or be dismissed for non-prosecution or be deemed so to be subject however to any orders that may be made by this Court up to and including the said final order or under any of the Rules next hereinafter mentioned that is to say Rules 16, 17, 20 and 21 of the Rules of the second day of April one thousand nine hundred and nine regulating appeals from this Court to Her Majesty in Council AND THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy

Master and Registrar or the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs incurred in New South Wales payable under the terms hereof or under any order of the Privy Council by any party or parties to this suit to any other party or parties thereto or otherwise AND that the said costs when so taxed and certified as aforesaid be paid by the party or parties by whom to the party or parties to whom the same shall be certified to be payable within fourteen days after service upon the first mentioned party of an office copy of the certificate of such taxation or be otherwise paid as may be ordered AND THIS COURT DOTH FURTHER ORDER

10 that so much of the said costs as become payable by the Intervener Elizabeth Schaefer under this order or any subsequent order of this Court or any order made by Her Majesty in Council in relation to the said appeal may be paid out of any moneys paid into Court as such security as aforesaid so far as the same shall extend AND that after such payment out (if any) the balance (if any) of the said moneys be paid out of Court to the Intervener Elizabeth Schaefer AND all parties are to be at liberty to apply for an increase in the amount of security and generally as they may be advised.

No. 9.
 Order granting conditional leave to appeal to Privy Council.
 26th September, 1969.
 No. 10.
 Order granting final leave to appeal to Privy Council.
 13th February, 1970.

PASSED this Sixth day of February 1970.

ENTERED same day.

20

(L.S.) A. V. RITCHIE,
 Deputy Master and Registrar in Equity.

No. 10

ORDER GRANTING FINAL LEAVE TO APPEAL TO PRIVY COUNCIL

IN THE SUPREME COURT }
 OF NEW SOUTH WALES } No. 1210 of 1967.
 IN EQUITY. }

30

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MARY JANE FAY LOUSICK, of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

No. 10.
—
Order
granting
final
leave to
appeal to
Privy
Council.
—
13th
February,
1970.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

No. 1211 of 1967.

IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of ELLEN ELIZABETH SCHUHMAN, of Ernest Avenue, Chipping Norton, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance 10 and Guardianship of Infants Act, 1916–1954.

No. 1212 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MAUREEN JOAN WILLIAMS, of 66 Fairfield Road, Padstow, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954. 20

No. 1519 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of CATHERINE EILEEN SEERY, of 53 Sherwood Street, Revesby, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

Friday the thirteenth day of February, one thousand nine hundred and seventy.

UPON MOTION made this day unto this Court before the Honourable Laurence Whistler Street a Judge of the Supreme Court sitting in Equity by counsel on behalf of the Intervener Elizabeth Schaefer WHEREUPON AND UPON HEARING READ the Order made herein the twenty-sixth day of September one thousand nine hundred and sixty-nine granting provisional leave to appeal and the Certificate of the Master in Equity dated this day of due compliance on the part of the said Intervener with the terms and conditions imposed by the said order and filed herein AND UPON HEARING what was alleged by Mr Handley of Counsel for the said Intervener THIS COURT DOTH GRANT to the Intervener Elizabeth Schaefer final leave to appeal to Her Majesty in Her Majesty's Privy Council from the Decretal Order made herein the twenty-sixth day of September one thousand nine hundred and sixty-nine AND THIS COURT DOTH dispense with notice to the respondents of this motion AND all parties are to be at liberty to apply as they may be advised.

PASSED this third day of April, 1970.

ENTERED same day.

20

(L.S.) A. V. RITCHIE,
Deputy Master and Registrar in Equity.

No. 11

**CERTIFICATE OF MASTER IN EQUITY VERIFYING
TRANSCRIPT RECORD**

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

} No. 1210 of 1967

30

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MARY JANE FAY LOUSICK of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

No. 10.

Order granting final leave to appeal to Privy Council.

13th February, 1970.

No. 11.

Certificate of Master in Equity verifying Transcript Record.

No. 11.
 Certificate
 of Master
 in Equity
 verifying
 Transcript
 Record.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

No. 1211 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of ELLEN ELIZABETH SCHUHMAN of Ernest Avenue, Chipping Norton, in the State of New South Wales.

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No. 1212 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

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No. 1519 of 1967.

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AND IN THE MATTER of the Application of CATHERINE EILEEN SEERY of 53 Sherwood Street, Revesby, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954.

I, EDWARD NAASSON DAWES of the City of Sydney, in the State of 30 New South Wales, Commonwealth of Australia, Master in Equity of the Supreme Court of the said State DO HEREBY CERTIFY that the sheets

hereunto annexed and contained in pages numbered one to sixty-eight inclusive contain a true copy of all the documents relevant to the appeal by the appellant ELIZABETH SCHAEFER to Her Majesty in Her Majesty's Privy Council from the Order made in the above mentioned suits by the Honourable Laurence Whistler Street a Judge of the Supreme Court sitting in Equity on the twenty-sixth day of September one thousand nine hundred and sixty-nine so far as the same have relation to the matters of the said appeal together with the reasons for the said Order given by the said Judge and an index of all the papers documents and exhibits in the said suits
 10 included in the annexed transcript record which true copy is remitted to the Privy Council pursuant to the order of His Majesty in Council of the second day of May in the year of our Lord one thousand nine hundred and twenty-five.

No. 11.
 Certificate
 of Master
 in Equity
 verifying
 Transcript
 Record.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court in its Equitable Jurisdiction to be affixed this *NINTH* day of *FEBRUARY* in the year of our Lord one thousand nine hundred and seventy.*one* .

E. N. DAWES .
 Master in Equity of
 the Supreme Court
 of New South Wales.

No. 12.
Certificate
of
Chief
Justice.

No. 12

CERTIFICATE OF CHIEF JUSTICE

IN THE SUPREME COURT }
OF NEW SOUTH WALES } No. 1210 of 1967.
IN EQUITY.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MARY JANE 10
FAY LOUSICK of 4 Simpson Street, Wellington, in the State of New South Wales, married woman.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

No. 1211 of 1967.

IN THE MATTER of the Estate of Edward Seery, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of ELLEN
ELIZABETH SCHUHMANN of Ernest Avenue, Chipping
Norton, in the State of New South Wales. 20

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

No. 1212 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of MAUREEN 30
JOAN WILLIAMS of 66 Fairfield Road, Padstow, in the State of New South Wales.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

No. 1519 of 1967.

IN THE MATTER of the Estate of EDWARD SEERY, late of Chipping Norton, in the State of New South Wales, retired market gardener, deceased.

AND IN THE MATTER of the Application of CATHERINE EILEEN SEERY of 53 Sherwood Street, Revesby, in the State of New South Wales.

No. 12.
Certificate
of
Chief
Justice.

AND IN THE MATTER of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

I, the HONOURABLE SIR LESLIE JAMES HERRON, Knight of the British Empire, Companion of the Most Distinguished Order of St Michael and St George, Chief Justice of the Supreme Court of New South Wales DO HEREBY CERTIFY that EDWARD NAASSON DAWES who has
10 signed the certificate above written is the Master in Equity of the said Supreme Court and that he has the custody of the records of the said Supreme Court in its Equitable Jurisdiction.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the Seal of the said Supreme Court to be affixed this *NINTH* day of *FEBRUARY* in the year of our Lord one thousand nine hundred and seventy *one* .

L. J. HERRON,

Chief Justice

Exhibit 3.
Five
cheques
tendered by
Respondent
Intervener.
17th April,
1969.

Exhibit 3
Five cheques tendered by Respondent Intervener

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

Pay cash 26.7.19.66
or Bearer

The Sum of Ten Dollars \$ 10 00

COMMERCE BANKING CO. OF SYD.
3 AUG 66
LIVERPOOL N.S.W.
NOT NEGOT
E. Seery

0 25 023297

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

Pay cash 28.7.19.66
or Bearer

The Sum of Twenty eight Dollars \$ 28 00

28.7.19.66
MARTIN ST. SYD.
P.L. GEORGE ST.
Z.N.A.
JUL 66
E. Seery

0 25 023288

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

Pay cash 29.7.19.66
or Bearer

The Sum of Ten Dollars \$ 10 00

29.7.19.66
0030
2 AUG 66
BANK OF AUSTRALIA
COMMONWEALTH TRADING
E. Seery

0 25 023299

Exhibit 3.

Five
cheques
tendered by
Respondent
Intervener.

17th April,
1969.

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

Pay cash 10
The Sum of thirteen pounds or Bearer
COMMERCIAL BANKING LTD \$ 13 . 00
0027 31 AUG 1969
LIVERPOOL N.S.W.
NOT NEGOTIABLE *Sterry*

$\frac{1}{50}$ 968558

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

Pay cash 5.9 1966
The Sum of thirteen dollars or Bearer
COMMERCIAL BANKING LTD \$ 13 . 19
0035 15 SEP 1966
LIVERPOOL N.S.W.
NOT NEGOTIABLE *Sterry*

$\frac{1}{50}$ 968559

Exhibit 4.
Bank
statements
tendered by
appellant.
17th April,
1969.

Exhibit 4
Bank statements tendered by Appellant

AUSTRALIA AND NEW ZEALAND BANK LIMITED

LETTERS SHOULD BE ADDRESSED
"THE MANAGER"



I certify that the Bank records dated 16/11/66 show a cheque drawn for \$42,000, presented by the Rural Bank's Liverpool Branch was returned to them by us, marked "Drawer Deceased".

The payee's name is not clearly written in our records, but the initial would be F or E, and the surname Schaefer or Schaeper or Schaefer.


Presumably the payee's name should be more clearly written in our records as " E.Schaefer"



Manager at Padstow

16. April 1969.

SEERY Edward



IN ACCOUNT WITH
AUSTRALIA AND NEW ZEALAND BANK LIMITED
PALSTON, N.S.W.

DATE	DEBIT	CREDIT	BALANCE
18 Jan 66	40. 0. 0		£ 297. 4. 0
21 Jan 66	2	560. 0. 0	337. 4. 0
26 Jan 66	8 Current Account Fee	7. 6	222. 8. 6
1 FEB 66			444. 8. 5
17 MAR 66	5 5 7	1 9 4. 0 5	250. 8. 0
22 MAR 66	5 5 5	3 6 0	247. 2. 0
25 MAR 66	3	3 1. 0. 0	216. 2. 0
25 MAR 66	5 5 9	2 0. 0. 0	196. 2. 0
15 APR 66	5 6 0	2 0. 0. 0	176. 2. 0
20 APR 66	2 7 7	7 9. 5. 0	87. 5. 1
28 APR 66	2 7 6	9. 19	86. 7. 6
28 APR 66	Current B. Account Fee	7 5	337. 2. 4
28 APR 66	2 7 8	2 8 6. 0. 0	537. 2. 4
28 APR 66	2 7 9	1 3 6. 0. 0	560. 7. 0
2 MAY 66	2 8 1	2 0. 0. 0	770. 7. 0
11 MAY 66	2 8 0	2 3. 4. 6	1195. 17
18 MAY 66	2 8 2	2 1. 0. 0	1416. 5. 0
23 MAY 66	2 8 3	1 5. 4. 4. 7	1624. 3. 0
23 MAY 66	2 8 4	7 0. 0. 0	1691. 9. 8
23 MAY 66	2 8 7	2 0. 0. 0	1713. 4. 8
25 MAY 66	2 8 5	2 3. 0. 8	1763. 4. 8
25 MAY 66	2 8 6	1 9. 2. 0. 5	1104. 3. 2
2 JUN 66	2 8 8	2 0. 8. 0. 0	1164. 3. 2
6 JUN 66	2 8 9	6 7. 6. 8	356. 8
8 JUN 66	2 9 0	2 1. 5. 0	1643. 2
17 JUN 66	2 9 1	5 0. 0. 0	1763. 4. 8
20 JUN 66	2		1104. 3. 2
24 JUN 66	2 9 2	6 0. 0. 0	1164. 3. 2
28 JUN 66	2	1. 400. 0. 0	356. 8
28 JUN 66	5 2	2 0. 0. 0. 0	1643. 2
18 JUL 66	2 9 3	2 0. 0. 0. 0	1643. 2
22 JUL 66	6 4 5 2		1650. 7
	Current Account Fee	7 5	1650. 7

1-B/C OR B/E BILLS COLLECTED FOR YOU. 2-CASH OR CC. CASH AND/OR CHEQUES. 3-DRAWN ON CC. SECURE BOOK. 4-C/C OR CC. CHILD ENDOWMENT. 5-OR B/E. INTEREST ON C/WEALTH. 6-OR B/E. BONDS OR STOCK. 7-DIVID.	7-EXC. OR COM. MEANS COMMISSION. 8-FEE. CHARGE FOR KEEPING ACCOUNT OR OVERDRAFT FEE. 9-INT. OR IN. INTEREST ON ACCOUNT. 10-P/R OR P.M. PROMISSORY NOTE. 11-TR. OR TR. TRANSFERS FROM BRANCHES OF THIS BANK OR OTHER BANKS. 12-A D. ADJUSTMENT OF DEBIT OR CREDIT PORTION.
---	--

Exhibit 4.
Bank statements tendered by appellant.
17th April, 1969.

Exhibit 4.
 Bank statements
 tendered by
 appellant.
 17th April,
 1969.

IN ACCOUNT WITH			
AUSTRALIA AND NEW ZEALAND BANK LIMITED			
PAID TO			
DATE		DEBIT	CREDIT
2 AUG 66			16507 u
	298	298	
4 AUG 66		222	
	299	299	
5 AUG 66		501	
	296	296	
12 AUG 66			73907 u
15 AUG 66	Current Account Fee	500	
17 AUG 66		214	
18 AUG 66		270	
	513	513	
24 AUG 66			94981 u
29 AUG 66			102981 u
31 AUG 66			109781 u
1 SEP 66			118706 u
15 SEP 66			120089 u
	560	560	
	553	553	
26 SEP 66			123408 u
28 SEP 66	Interest	180	
4 OCT 66			133798 u
	564	564	
14 OCT 66			140798 u
20 OCT 66	Current Account Fee	75	
28 OCT 66		200	
9 NOV 66			190000
	56	56	
	963	963	
31 3 69			17627 u
			17537 u

1- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 2- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 3- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 4- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 5- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 6- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 7- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 8- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 9- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.
 10- THIS STATEMENT IS VALID ONLY IF COLLECTED BY THE BANK OR BY A CASHIER OR OTHER AUTHORIZED PERSON.

Exhibit 4.
 Bank
 statements
 tendered by
 appellant.
 17th April,
 1969.

We have been unable to locate the following cheques:-

17/3/66	\$194.05	
25/3/66	31.00	<i>Interest</i>
2/5/66	200.00	Records show this cheque cashed by E.Seery himself.
23/5/66	70.00	} There is a record of these 2 cheques being referred to the Manager.
	200.00	
2/6/66	208.00	Record show favour of Liverpool Dist.Hospital.
17/6/66	50.00	
24/6/66	60.00	
28/6/66	200.00	Cashed by Mr.E.Seery himself.
18/7/66	200.00	Cashed but records do not show by whom
5/8/66	80.00	
17/8/66	73.40	
26/8/66		
26/8/66	80.00	
31/8/66	89.25	
6/10/66	35.00	
6/10/66	35.00	
14/10/66	65.00	
28/10/66	200.00	
9/11/66	40.00	
9/11/66	10.00	

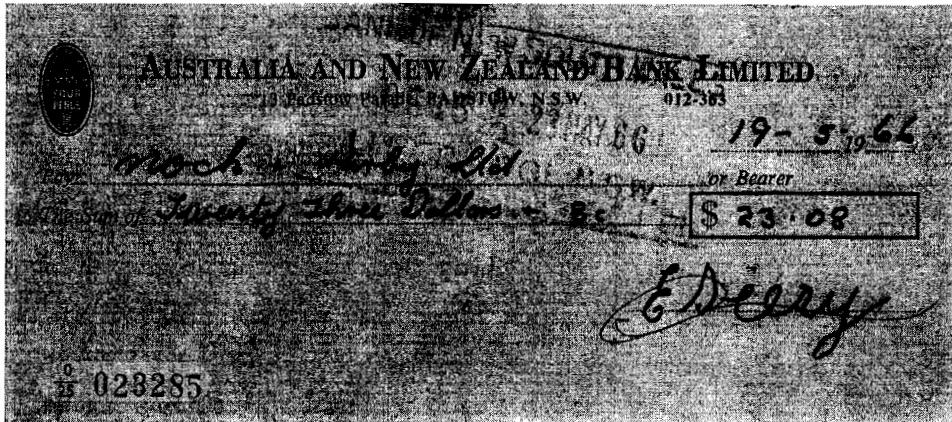
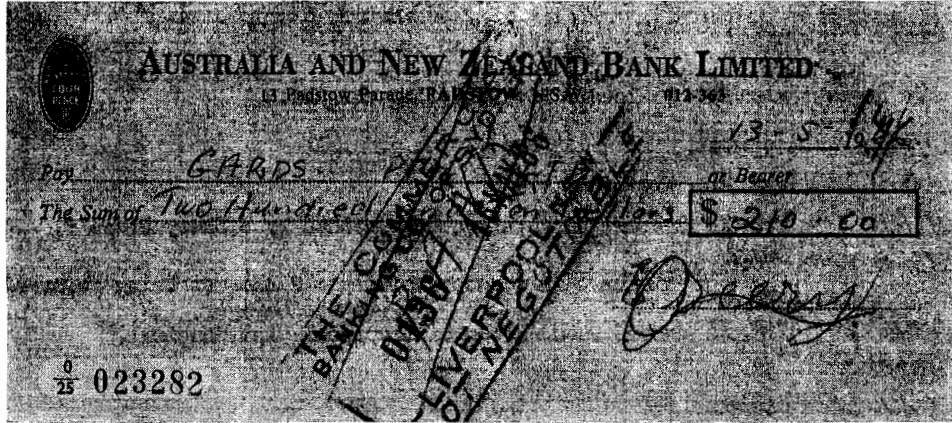
Exhibit 5.

Bundle of cheques and deposit slips tendered by appellant.

17th April, 1969.

Exhibit 5

Bundle of cheques and deposit slips tendered by Appellant



AUSTRALIA AND NEW ZEALAND BANK LIMITED
 13 Padstow Parade, PADSTOW, N.S.W. 012-363
 GAFORD ST. SYDNEY N.S.W.
 20.5.1966
 Pay *Ernesto Ghisla Ltd* or Bearer
 The Sum of *One Hundred and Ninety Eight* \$198.05
and five cents
 N.S.W.
 BANK OF NEW SOUTH WALES
 0 25 023286
E. Deery

Exhibit 5.
 Bundle of
 cheques and
 deposit
 slips
 tendered by
 appellant.
 17th April,
 1969.

AUSTRALIA AND NEW ZEALAND BANK LIMITED
 13 Padstow Parade, PADSTOW, N.S.W. 012-363
 BANK OF NEW SOUTH WALES - 6-1966
 Pay *Wick + Kirby Ltd* or Bearer
 The Sum of *Sixty Seven Dollars and 68c* \$67.68
 N.S.W.
 BANK OF NEW SOUTH WALES
 0 25 023289
E. Deery

AUSTRALIA AND NEW ZEALAND BANK LIMITED
 13 Padstow Parade, PADSTOW, N.S.W. 012-363
 BANK OF NEW SOUTH WALES 3-6-1966
 Pay *Rock + Kirby* or Bearer
 The Sum of *Twenty One Dollars and 50c* \$21.50
 N.S.W.
 BANK OF NEW SOUTH WALES
 0 25 023290
 G 37823-64
E. Deery

Exhibit 5.

Bundle of
cheques and
deposit
slips
tendered by
appellant.

17th April,
1969.

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

22-4 1966

Pay *to the order of* *PP & P Secoy* or Bearer

The Sum of *Two Hundred and Seventeen* \$217.00
00/100 Dollars

PP & P Secoy

0 25 023296

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

2260317

22-6 1966

Pay *to the order of* *Hurstville Council* or Bearer

The Sum of *Two Hundred and Twenty Nine* \$229.00
00/100 Dollars

PP & P Secoy

0 25 028295

COMMONWEALTH BANK
HURSTVILLE
0005
HURSTVILLE N.S.W.

AUSTRALIA AND NEW ZEALAND BANK LIMITED
13 Padstow Parade, PADSTOW, N.S.W. 012-363

19-8 1966

Pay *to the order of* *Metropolitan Water Board* or Bearer

The Sum of *Twenty Seven* \$27.00
00/100 Dollars

PP & P Secoy

1 50 968553

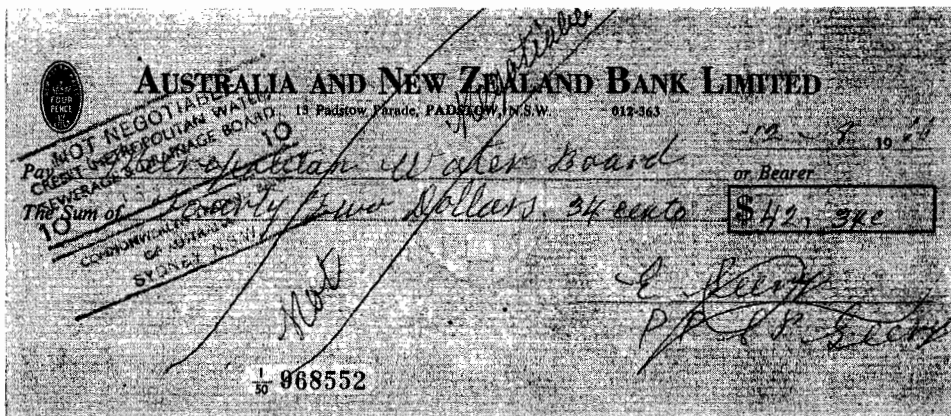


Exhibit 5.
 Bundle of
 cheques and
 deposit
 slips
 tendered by
 appellant.
 17th April,
 1969.

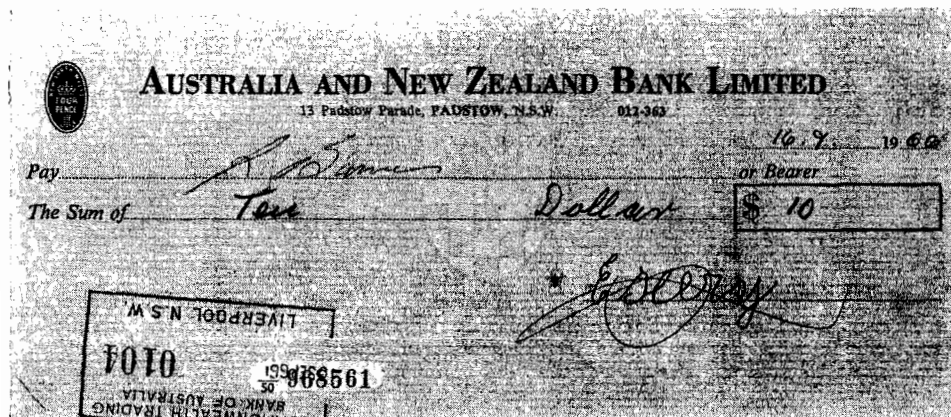
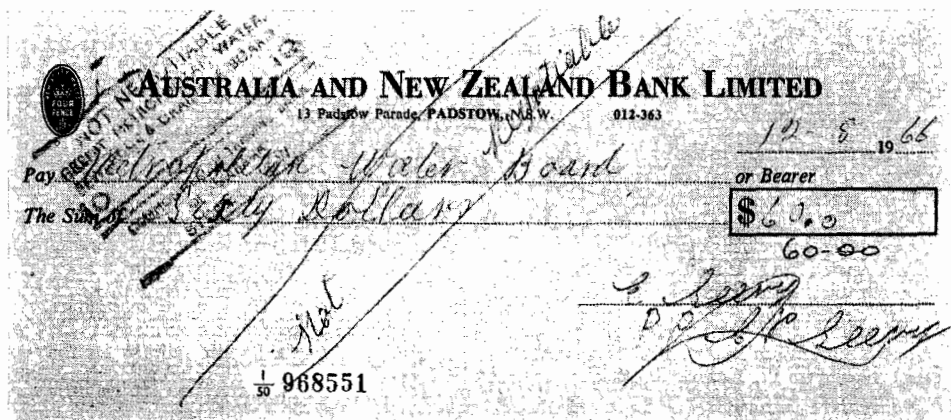


Exhibit 5.
Bundle of
cheques and
deposit
slips
tendered by
appellant.
17th April,
1969.

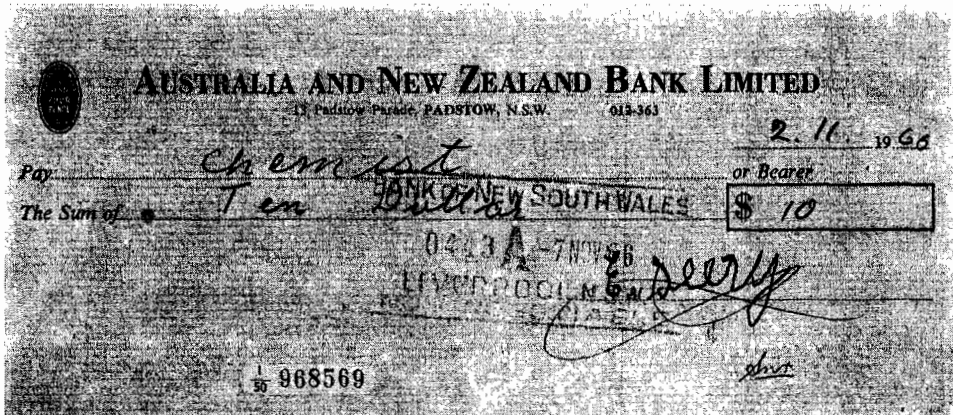
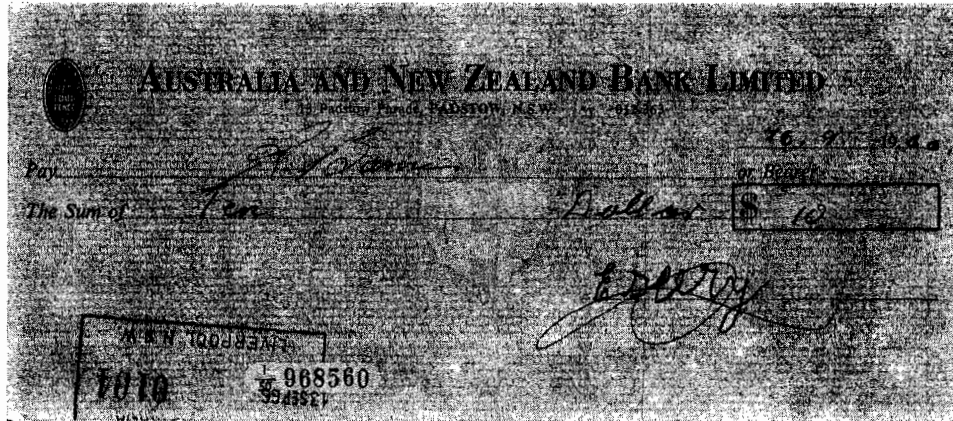


Exhibit 5.

Bundle of cheques and deposit slips tendered by appellant.

17th April, 1969.

LODGED WITH - AUSTRALIA AND NEW ZEALAND BANK LIMITED

DATE: _____ 19__

PAID IN BY (SIGNATURE) <i>E Seery</i>	COLLECTION ITEMS	NOTES	
TELLER <i>[Signature]</i>	COMMISSION	COIN	
<small>WITH RECEIPTS ON ALL DOCUMENTS, CHEQUES, ETC., INCLUDED IN THIS CREDIT NOT TO BE AVAILABLE UNTIL COLLECTED. THE BANK DOES NOT RECEIVE CREDITS MARKED TO BE APPLIED FOR ANY SPECIFIC PURPOSE UNLESS SUCH BE RECEIVED BY ANY OFFICER. THE BANK ACCEPTS NO RESPONSIBILITY FOR MISAPPLICATION.</small>		CHEQUES, ETC. (AS PER REVERSE)	1400 00
		ACCOUNT NUMBER (IF APPLICABLE)	\$ 1400 00
FOR CREDIT OF <i>Edward Seery</i> BLOCK LETTERS PLEASE			

LODGED WITH - AUSTRALIA AND NEW ZEALAND BANK LIMITED

DATE: _____ 19__

PAID IN BY (SIGNATURE) <i>Les TD's</i>	COLLECTION ITEMS	NOTES	
TELLER <i>[Signature]</i>	COMMISSION	COIN	
<small>WITH RECEIPTS ON ALL DOCUMENTS, CHEQUES, ETC., INCLUDED IN THIS CREDIT NOT TO BE AVAILABLE UNTIL COLLECTED. THE BANK DOES NOT RECEIVE CREDITS MARKED TO BE APPLIED FOR ANY SPECIFIC PURPOSE UNLESS SUCH BE RECEIVED BY ANY OFFICER. THE BANK ACCEPTS NO RESPONSIBILITY FOR MISAPPLICATION.</small>		CHEQUES, ETC. (AS PER REVERSE)	
		ACCOUNT NUMBER (IF APPLICABLE)	\$ 659 16
FOR CREDIT OF <i>Edward Seery</i> BLOCK LETTERS PLEASE			

LODGED WITH - AUSTRALIA AND NEW ZEALAND BANK LIMITED

DATE: _____ 19__

AMOUNT *Five hundred pounds*

PAID IN BY (SIGNATURE) <i>Just on JID 1/4000 June 8/12/65</i>	COLLECTION ITEMS	NOTES	<i>Interest 6%</i>
TELLER <i>[Signature]</i>	COMMISSION	COIN	
<small>WITH RECEIPTS ON ALL DOCUMENTS, CHEQUES, ETC., INCLUDED IN THIS CREDIT NOT TO BE AVAILABLE UNTIL COLLECTED. THE BANK DOES NOT RECEIVE CREDITS MARKED TO BE APPLIED FOR ANY SPECIFIC PURPOSE UNLESS SUCH BE RECEIVED BY ANY OFFICER. THE BANK ACCEPTS NO RESPONSIBILITY FOR MISAPPLICATION.</small>		CHEQUES, ETC. (AS PER REVERSE)	560
		ACCOUNT NUMBER (IF APPLICABLE)	560
FOR CREDIT OF <i>Edward Seery</i> BLOCK LETTERS PLEASE			

LODGED WITH - AUSTRALIA AND NEW ZEALAND BANK LIMITED

DATE: _____ 19__

PAID IN BY (SIGNATURE) <i>[Signature]</i>	COLLECTION ITEMS	NOTES	1900
TELLER <i>[Signature]</i>	COMMISSION	COIN	
<small>WITH RECEIPTS ON ALL DOCUMENTS, CHEQUES, ETC., INCLUDED IN THIS CREDIT NOT TO BE AVAILABLE UNTIL COLLECTED. THE BANK DOES NOT RECEIVE CREDITS MARKED TO BE APPLIED FOR ANY SPECIFIC PURPOSE UNLESS SUCH BE RECEIVED BY ANY OFFICER. THE BANK ACCEPTS NO RESPONSIBILITY FOR MISAPPLICATION.</small>		CHEQUES, ETC. (AS PER REVERSE)	
		ACCOUNT NUMBER (IF APPLICABLE)	\$ 1900
FOR CREDIT OF <i>Edward Seery</i> BLOCK LETTERS PLEASE			

Exhibit 6.
Cheque
tendered by
appellant.
17th April,
1969.

Exhibit 6
Cheque tendered by Appellant



AUSTRALIA AND NEW ZEALAND BANK LIMITED

13 Padstow Parade, PADSTOW, N.S.W. 012-363

Pay cash 17 - 4 - 1969
or Bearer
The Sum of eighty eight dollars \$ 88 - 00

[Handwritten signature and circular bank stamp]

$\frac{1}{30}$ 968555