

JUDGMENT
23, 1970

IN THE PRIVY COUNCIL

No. 3 of 1970

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :-

OWEN THOMAS MANGIN

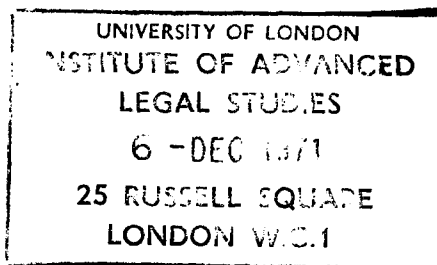
Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE

Respondent

RECORD OF PROCEEDINGS



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O N A P P E A L
FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N :

OWEN THOMAS MANGIN

Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE

Respondent

RECORD OF PROCEEDINGS

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O N A P P E A L
FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N :

OWEN THOMAS MANGIN Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE
Respondent

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pursuant to section 32 of the Land and Income Tax Act 1954.

1. AT all material times the Objector resided at Methven where he carried on the business of a farmer.

2. BY deed dated 15 April 1965 Albert Leicester Mangin the father of the Objector created a trust called "The Mangin Family Trust" for the benefit of his grandchildren being the children of his son the Objector. The trustees of the said trust were Marjorie Anne Mangin the wife of the Objector and Pyne, Gould, Guinness Limited. A copy of such deed is annexed hereto and marked "A".

3. THE Objector and the said trustees entered into an agreement also dated 15 April 1965 to lease to the said trustees a certain piece of land being one paddock of 25 acres approximately forming part of the Objector's farm property at Methven for a term of one year. A copy of such agreement is annexed hereto and marked "B".

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(continued)

4. BY deed dated 20 August 1965 the said Albert Leicester Mangin created another trust called "The O.T. Mangin Trust" for the benefit of his daughter-in-law Marjorie Anne Mangin and his grandchildren being the children of his son the Objector. The trustees of such trust were the said Marjorie Anne Mangin and Pyne, Gould, Guinness Limited. A copy of such deed is annexed hereto and marked "C".

5. BY deed dated 30 August 1965 the trustees of the Mangin Family Trust assigned to the trustees of the O.T. Mangin Trust in consideration of the sum of one shilling the residue of the said lease. A copy of such deed is annexed hereto and marked "D".

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6. BY deed dated 30 August 1965 between the said Albert Leicester Mangin and the trustees of the Mangin Family Trust the date of distribution of the said trust was appointed 1 September 1965 pursuant to Clause 2 of the deed creating such trust marked "A" annexed hereto. A copy of the deed of appointment is annexed hereto and marked "E".

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7. THE said land comprising the land subject to the agreement to lease marked "B" referred to in paragraph 3 hereof was cultivated, sown in wheat and harvested by the Objector during the year ended on 31 March 1966.

8. THE Objector and the trustees of the O.T. Mangin Trust entered into an agreement to lease to the said trustees a certain other piece of land being one paddock of 24 acres approximately forming part of the Objector's farm property at Methven for a term of one year from 18 April 1966. A copy of such agreement is annexed hereto and marked "F".

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9. THE land referred to in the agreement to lease marked "F" was cultivated, sown in wheat and harvested by the Objector during the year ended on 31 March 1967.

10. IN furnishing returns of income to the Commissioner of Inland Revenue (hereinafter referred to as "the Commissioner") for income tax purposes it was declared on behalf of the Objector that the assessable income derived by him during the years ended on 31 March 1966 and 1967 was £1,699.3.0. and £1,608.0.0 respectively. Copies of the financial statements furnished in support of the

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said returns are annexed hereto and marked "G" and "H" respectively.

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(continued)

10 11. IN furnishing returns of income to the Commissioner for income tax purposes it was declared on behalf of the trustees of the O.T. Mangin Trust that the assessable income derived during the years ended on 31 March 1966 and 1967 was £739.11.3 and £631.0.10 respectively. Copies of the financial statements furnished in support of the said returns are annexed hereto and marked "I" and "J" respectively.

12. THE Commissioner considered -

20 (a) That the transactions between the Objector and the Trustees in respect of the said land and the said wheat grown thereon and the transactions between the Objector, the trustees and the purchaser of the said wheat fall within the provisions of section 108 of the Land and Income Tax Act 1954, and alternatively

(b) That the amount returned by the trustees as income of the O.T. Mangin Trust was received by the trustees under a disposition which applied to such income after it had been derived by the Objector.

30 Accordingly the Commissioner on 26 January 1968 made amended assessments of the amounts on which in his judgment income tax ought to be levied on the Objector in respect of the years ended on 31 March 1966 and 1967 and the amount of such tax for those years as follows -

Year ended 31 March 1966

Income returned	£1,699. 3. 0.
Add Trust Income from cropping	739.11. 3.
Assessable Income	<u>£2,438.14. 3.</u>
Income Tax	£ 478.12. 9.

In the Supreme
Court

Year ended 31 March 1967

No. 1	Income returned	£1,608. 0. 0.
	Add Trust Income from cropping	631. 0.10.
		<hr/>
Case Stated	Assessable Income	£2,239. 0.10.
		<hr/>
18th October 1968 (continued)	Income Tax	£ 414. 7. 7.

13. THE Objector objected to the said assessment referred to in the previous paragraph hereof on the grounds set forth in his solicitor's letters dated 12 October 1967 and 13 February 1968. Copies of such letters are annexed hereto and marked "K" and "L" respectively. 10

14. UPON such objections being disallowed the Commissioner was required to state this case.

15. THE Objector contends

(a) That the said transactions do not and none of them does constitute arrangements or an arrangement having or purporting to have the purpose or effect of altering the incidence of income tax or relieving the Objector from his liability to pay income tax within the meaning of section 108 of the Land and Income Tax Act 1954. 20

(b) That if the transactions or any of them are an arrangement or arrangements within the said section 108 (which is denied) and are annihilated by the application of the said section (which is denied) the result is not to increase in any way the assessable income of the Objector.

(c) That no part of the income referred to in paragraph 11 hereof was derived by the Objector. 30

(d) That no part of the income referred to in paragraph 11 hereof was received by the trustees under a disposition of such income after it had been derived by the Objector.

(e) That the assessments referred to in paragraph 12 are incorrect and ought not to have been made. 40

16. THE Commissioner contends -

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(continued)

(a) (i) That the said transactions between the Objector and the trustees and the transactions between the Objector, the trustees and the purchaser of the said wheat constitute an arrangement or arrangements having or purporting to have the purpose or effect of altering the incidence of income tax or relieving the Objector from his liability to pay income tax within the meaning of the said section 108.

(ii) And that the effect of the application of the said section 108 was to increase the assessable income of the Objector by the said amounts of £739.11.3 and £631.0.10 for the years 1966 and 1967 respectively and in particular and without limiting the generality of the foregoing contention that the effect of the application of the said section 108 was to annihilate the purported leasing of the said land, the purported arrangement for the trustees to recompense the Objector for his work in respect of the cultivation of the said land, the sowing, and harvesting of the wheat, and the purported arrangement for the sale and delivery of the wheat to the purchaser, and the purported arrangement with the purchaser for the receipt by the trustees of the proceeds of sale, with the result that the assessable income of the Objector was to be increased by the said proceeds of sale with a deduction therefrom of the amounts recorded for general expenses and farm purchases, manure needs etc. in the said financial statements of the O.T. Mangin Trust and to be reduced by deduction of the amounts included in the said financial statements of the Objector as income from contracting and rent.

(b) That the said income referred to in

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paragraph 11 hereof was received by the trustees under a disposition of such income after it had been derived by the Objector.

Case Stated
18th October 1968
(continued)

17. THE question for the determination of this Honourable Court is whether the Commissioner acted incorrectly in making the assessments referred to in paragraph 12 hereof and if so then in what respects should such assessments be amended.

Dated at Wellington this 18th day of October 1968

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C.F. O'CONNOR
Deputy Commissioner of Inland Revenue

Annexure "A"

ANNEXURE "A" TO CASE STATED

15th April 1965

THIS DEED made the 15th day of April 1965 BETWEEN ALBERT LEICESTER MANGIN of Christchurch, Retired Farmer, (hereinafter referred to as "the Settlor") of the one part AND MARJORIE ANNE MANGIN of Methven, Married Woman, and PYNE GOULD GUINNESS LIMITED a duly incorporated Company having its registered office at Christchurch (hereinafter referred to as "the Trustees") which expression shall be deemed to include the Trustee or Trustees for the time being of the other part WHEREAS the Settlor desires to create a trust for the benefit of his grandchildren being the children of his son OWEN THOMAS MANGIN and in pursuance of such desire has contemporaneously with the execution hereof paid to the Trustees the sum of Five pounds (£5) (which sum together with any other moneys funds and assets which may be paid or transferred to the Trustees to be held upon the trusts hereinafter set out is hereinafter referred to as "the Trust Fund") and has requested the Trustees to hold the same upon the trusts hereinafter declared

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AND WHEREAS the Trustees have accepted the said sum and have consented to assume the duties and powers in relation to the Trust Fund as aforesaid

NOW THIS DEED WITNESSETH as follows:-

1. THE Trust Fund herein referred to shall be

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called "The Mangin Family Trust" and shall comprise the said sum of Five Pounds and all other moneys funds investments insurance policies and other property at any time hereafter taken up by or paid or transferred to the Trustees together with all accretions and additions thereto (whether made by the Settlor or any other person at any time hereafter and acknowledged by the Trustees to be subject to the provisions of this Deed) and includes the income thereof and the proceeds of realisation thereof and all and any investments insurance policies and money for the time being representing the same.

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Annexure "A"

15th April
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(continued)

10 2. THE "date of distribution" hereinafter referred to shall be the day on which shall expire the period of twenty-one years commencing upon the date of the execution of this Deed or such earlier date as the Trustees may at any time in writing appoint to be the date of distribution.

20 3. UNTIL the date of distribution the Trustees shall stand possessed of the annual income arising from the Trust Fund UPON TRUST:-

30 (a) To pay such premiums as the Trustees in their absolute discretion think fit on any insurance policies for the time being forming part of the trust Fund and to pay all expenses and outgoings relating to the Trust or any part thereof or its administration or incurred in connection or in relation to the working and management and maintenance of the Trust Fund or any part or parts thereof whether for rates taxes insurance premiums depreciation charges repairs and maintenance interest rent wages salary or other outgoings whatsoever or howsoever payable or chargeable in connection with the Trust or any part or parts thereof.

40 (b) To set aside such part or parts of the said annual income as the Trustees shall in their absolute discretion determine for the purpose of establishing or increasing a reserve fund or funds for redemption of debts or other charges, for depreciation, for capital expenditure of any kind and for any other purpose the Trustees may deem advisable AND any reserve fund or funds so created shall become part of the capital of the Trust fund and follow the disposition thereof.

- In the Supreme Court

 No. 1
 Case Stated
 Annexure "A"
 15th April
 1965
 (continued)
- (c) To pay and apply the said annual income then remaining in or towards the maintenance education or upkeep of such of them the children of the said Owen Thomas Mangin now living or born hereafter in such proportions whether exclusively of one or more of them or not as the Trustees within seven days before the end of each financial year (as hereinafter defined) in writing appoint AND in default of such appointment and in so far as such appointment shall not extend then UPON TRUST for such of them the children of the said Owen Thomas Mangin as shall be living on the last day of each financial year and if more than one as tenants in common in equal shares the child or children of a deceased child to take and if more than one in equal shares the share of income that his her or their parent would have taken had he or she been living. 10
- (d) The Trustees in their absolute discretion may accumulate the whole or any part of the income to which any infant would but for this provision have been entitled and may add such accumulated income to the capital of the expectant share of such infant to follow the disposition thereof. 20
4. AT the date of distribution the Trustees shall stand possessed of the Trust Fund UPON TRUST for such one or more of the children of the said Owen Thomas Mangin living at the date of distribution in such shares as the Trustees shall by Deed or Deeds revocable or irrevocable appoint and in default of appointment and in so far as such appointment shall not extend then for such of them the children of the said Owen Thomas Mangin living at the date of distribution and if more than one as tenants in common in equal shares PROVIDED HOWEVER that should any child or children of the said Owen Thomas Mangin die before the date of distribution leaving a child or children who shall be living at the date of distribution such child or children shall take and if more than one as tenants in common in equal shares all the share and interest which his her or their parent would have taken had such parent been living at the date of distribution. 30 40
5. THE expression "the end or last day of each financial year" where used herein shall mean the

31st day of March in each year or such other date as the Trustees substitute therefor.

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Court

10 6. THE Trustees shall not be liable for any loss to the Trust Fund arising by reason of any improper investments made in good faith or from the negligence or fraud of any agent employed by them although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by the Trustees or by reason of any other matter or thing except wilful and individual fraud or wrong doing or any act known by the Trustees to be in breach of trust.

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Case Stated

Annexure "A"

15th April
1965
(continued)

7. THE Settlor hereby authorises and empowers the Trustees in the execution of the trusts hereby created to exercise at their discretion in addition to any powers conferred on them by statute the following powers and authorities or any of them namely:--

- 20 (a) To sell all or any part of the Trust Fund including freehold or leasehold land either by public auction or private contract in either one lot or in parcels or in such manner and subject to such terms and conditions as the Trustees shall in their absolute discretion think fit with power to allow the whole or such part of the purchase money as they think fit to remain on mortgage of the property sold.
- 30 (b) To let lease or bail or to grant rights or licenses to any person or persons corporation or corporations any freehold or leasehold property and/or any plant or chattels or interest in the same respectively forming part of the Trust Fund either from year to year or for any term of years or otherwise howsoever at such rent or royalties and subject to such covenants and conditions as the Trustees think fit including if the Trustees think fit an optional or compulsory purchasing clause and also to accept
- 40 surrenders of leases and tenancies and generally to manage the same as they think fit.
- (c) To carry on the business of farming or any other business either alone or in partnership with any person or persons for such time or times as the Trustees shall think fit with

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Annexure "A"

15th April
1965

(continued)

power to use and apply any part of the Trust Fund as capital in such business and with further power to employ in such business all such managers agents servants clerks workmen and others at such remuneration and upon such conditions generally as the Trustees deem expedient and to sell bail purchase and deal in all articles and things necessary or expedient in the conducting of such business and generally to conduct such business in all respects as if the Trustees were the absolute owners thereof AND THE SETTLOR HEREBY DIRECTS that the Trustees shall be absolutely indemnified by and out of the Trust Fund for and in respect of any losses which they may sustain by reason of them so carrying on any such business or businesses as aforesaid AND HE FURTHER DIRECTS that should any loss or losses occur in any year or years by reason of such business being carried on as aforesaid then at the discretion of the Trustees such loss or losses may be borne by the capital of the Trust Fund.

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- (d) To take on lease sub-lease or licence any estate or interest in land and/or any plant live and dead stock on such terms at such rent and upon such conditions as the Trustees shall think fit and either with or without any provision for compensation for improvements and generally subject to such covenants and conditions as they shall think fit and to surrender any such lease or agree to the variation of any of the terms thereof.
- (e) To raise on mortgage of the whole or any part or parts of the Trust Fund or by way of overdraft on current account all or any moneys which may be required for the purpose of administering the Trust Fund or for any of the purposes of this Deed and to secure the repayment of any moneys so raised as aforesaid with interest at such rate as they think fit by mortgage of the property to be charged therewith with such powers and provisions and upon such terms in all respects as the Trustees shall think fit and also to agree to the renewal extension or variation of any mortgages for such periods and on such terms and conditions as the Trustees shall think fit.

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- (f) To acquire by way of purchase gift transfer assignment or any other manner any business undertaking or venture or any share therein as the Trustees shall think fit (without limiting the Trustees' discretion) including freehold or leasehold land goodwill stock including livestock and plant of all descriptions stock-in-trade book debts patents patent rights or any other assets of any kind whatsoever which may be necessary or incidental or advantageous to any business undertaking or venture in which the Trustees may be interested and to hold deal with or dispose of any such real and personal property in such manner as they may think fit and to have in all respects the powers of absolute owners of any such real and personal property.
- (g) To acquire by way of purchase gift transfer assignment or any other manner and to hold deal with or dispose of any policy or policies of life insurance on the life of the said Owen Thomas Mangin or any other person or persons in such manner as they may think fit and to have in all respects the power of absolute owners of any such policies and to deal with the same or any moneys to be received on mortgage surrender maturity or otherwise in such manner as they shall consider most beneficial to the beneficiaries under the trusts herein contained.
- (h) To purchase or acquire any freehold or leasehold land with or without improvements and with or without stock plant or implements on such terms and conditions as the Trustees shall think fit and all powers of mortgage in this Deed or in any Act contained or implied shall extend to the raising of moneys to effect such purchase and any lands and chattels so purchased shall be deemed an authorised investment for the purpose of the trusts hereby created.
- (i) To subdivide at such time or times and in such manner as the Trustees think fit the whole or any part of land forming part of the Trust Fund, to employ surveyors, builders, land agents, architects or contractors to prepare plans, carry out roading, channelling and draining and do all such other acts and things

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Case Stated

Annexure "A"

15th April
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(continued)

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Annexure "A"

15th April

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(continued)

as the Trustees may deem desirable or necessary for the proper carrying out of such subdivision or for complying with the requirements of any authority set up by law.

- (j) To lend money either with or without security and particularly by way of contributory mortgages and upon such terms as the Trustees shall in their absolute discretion think fit. In particular they may lend money with or without security to any person or persons presumptively or expectantly interested in the Trust hereby created (or to the Trustees of any estate in which such persons may be or become beneficiaries). 10
- (k) To expend such moneys as they may from time to time think fit for the repair maintenance up-keep or renovation or improvement of any part of the Trust Fund and for the demolition of any existing buildings the erection of new buildings or the extension re-erection or restoration of existing or new buildings and generally to exercise the same powers of managing improving and developing the Trust Fund as if the Trustees were the absolute owners thereof and to apportion the cost thereof between capital and income or otherwise among the persons beneficially entitled to the Trust Fund in such manner as to the Trustees shall seem equitable. 20
- (l) To retain all investments transferred or assigned to the Trustees under the preceding provisions hereof in their present form as at the date of such transfer or assignment notwithstanding that such investments may not be authorised by the general law for the investment of trust moneys. 30
- (m) To invest such ready moneys as may from time to time be available for investment in any of the modes of investment for the time being authorised by law in New Zealand for the investment of trust funds and upon contributory second or later mortgages of freehold or leasehold lands or charges or chattels and personal property in New Zealand and in debentures or debenture stock preference ordinary or deferred shares or preference ordinary or deferred stock issued or guaranteed by any company incorporated in New Zealand or 40

elsewhere and whether bearing any liability for uncalled capital or not and to give security for any unpaid purchase money owing in respect of any such investments and to take up bonus shares or other rights or benefits in any company in which the Trustees may be interested or concerned and to determine whether such bonus shares or other rights or benefits are capital or income and to vary or transpose such investments into or for others of any nature hereby authorised.

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(n) To distribute either in cash or in specie or partly by one method and partly by another and retain the expectant share of any person or persons who may for the time being be under a disability.

(o) To guarantee loans or advances made to any beneficiary hereunder or to any other person.

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(p) At any time or times to appropriate and allot any real and personal property forming part of the Trust Fund or any undivided interest in such property in or towards satisfaction of the share of any person or persons (whether sui juris or not) under the trusts hereinbefore contained and to charge any such property interest or share with such sums by way of equality of partition as the Trustees may think fit and for that purpose to fix the value of any real or personal property or interest therein so appropriated and the value of any other property forming part of the Trust Fund as they think fit AND every such valuation appropriation and allotment shall be final and binding on all persons beneficially interested in the Trust Fund AND to transfer to any person beneficially interested in the capital of the Trust Fund upon his or her becoming absolutely entitled thereto the property or interest therein so appropriated and allotted subject to such mortgages or charges and on such conditions as the Trustees shall consider necessary PROVIDED ALWAYS that any property or interest therein so appropriated or allotted shall until the same is transferred to some person absolutely entitled thereto remain subject (so far as the nature of the property and circumstances will permit) to all of the powers by these presents

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Court

No. 1

Case Stated

Annexure "A"

15th April
1965

(continued)

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15th April
1965

(continued)

conferred upon the Trustees as if no such appropriation or allotment had taken place and may be dealt with by the Trustees accordingly.

(q) To apply the whole of the capital of the expectant or contingent share of any beneficiary hereunder in or towards the advancement in life or otherwise for the benefit of such beneficiary notwithstanding that the share of such beneficiary may be subject to the possibility of diminishment by an increase of the class to which he or she belongs by later births AND for the purpose of calculating the value of the share of the beneficiary at the time of such advancement the Trustees may have the Trust Fund valued in such manner as they think proper and any such determination of value by the Trustees at the time of such advancement shall be binding on all persons interested hereunder notwithstanding that any advancement so made may later prove to have been an overpayment. 10

(r) To settle and determine all questions whatsoever which may arise in relation to the Trust Fund or any part thereof AND ALSO to determine whether any produce arising from the carrying on of any business or any moneys for the purpose of this Deed is to be considered as income or capital respectively and also to apportion blended funds AND every such determination or apportionment shall be final and binding on all persons beneficially interested under this Deed. 20 30

8. EVERY discretion or power conferred by these presents on the Trustees shall be an absolute and uncontrolled discretion or power and the Trustees shall not be held liable for any loss or damage accruing as a result of their concurring or refusing or failing to concur in an exercise of any such discretion or power. 40

9. IT is declared that on paying any money or transferring any property to the Trustees for the purpose of these presents the Settlor shall be deemed thenceforth to have deprived himself of any beneficial interest therein.

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Case Stated

Annexure "A"

15th April 1965 (continued)

10 10. THE Trustees may reimburse themselves or pay or discharge out of the Trust premises all expenses incurred in or about the execution of the Trusts and powers of these presents and every Trustee of this Settlement who may be engaged in any profession or business shall be entitled and is hereby authorised to retain and receive out of the trust funds his usual professional costs and charges as well by way of remuneration for business trans-
 20 acted by him or his partner or partners personally and by his or their clerks or agents (including all business of whatever kind not strictly profes-
 sional but which might have been performed or would necessarily have been performed in person by a Trustee not being a member of such a profession or other person as aforesaid) as costs and charges out of pocket in the same manner as if the said Trustee had not been a Trustee or Trustees hereof but had
 30 been employed in the manner of the Trust and the Trustees shall be further entitled to receive for their services commission on income or capital at the rate for the time being charged by trust companies in New Zealand.

11. THE Settlor reserves the right by supplementary Deed to abandon exclude or add to any of the powers or authorities conferred in Clause 7 herein.

12. THE Settlement hereby created shall be irrevocable.

30 13. THE Statutory power of appointment of new Trustees hereof shall be vested in the said Owen Thomas Mangin of Methven, Farmer, during his life-time and after his death in his personal representa-
 tives.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED by the said ALBERT LEICESTER)
MANGIN in the presence of:-)

THE COMMON SEAL of PYNE GOULD)
GUINNESS LIMITED was hereunto)
 affixed in the presence of:-)

40 SIGNED by the said MARJORIE ANNE)
MANGIN in the presence of:-)

In the Supreme
Court

ANNEXURE "B" TO CASE STATED

No. 1

Case Stated

Annexure "B"

15th April
1965

AN AGREEMENT made this 15th day of April 1965, BETWEEN OWEN THOMAS MANGIN of Methven, Farmer (hereinafter called "the Lessor") of the one part AND MARJORIE ANNE MANGIN of Methven, Married Woman, and PYNE GOULD GUINNESS LIMITED a duly incorporated Company having its registered office at Christchurch (hereinafter called "the Lessees") of the other part WHEREBY it is agreed and declared as follows:-

1. THE Lessor agrees to let and the Lessees agree to take all that parcel of land situated in Block VIII of the Spaxton Survey District containing 25 ACRES or thereabouts being part of Lot 1 on Deposit Plan 3908 and part of Rural Sections 26904, 26905, 26906 and 26906X and being part of the land in Certificate of Title Volume 430 Folio 16 (Canterbury Registry) and being more particularly shown on the plan annexed hereto and thereon bounded in green for a term of One (1) Year from the 15th day of April 1965 at a rental of Three Pounds (£3) per acre payable on the 15th day of April 1966. 10
2. THE Lessees agree with the Lessor as follows:-
 - (a) That they will pay the rent hereby reserved in accordance with the covenant implied in leases by virtue of Section 106 of "The Property Law Act 1952".
 - (b) That they "will cultivate" in accordance with the covenant implied by the use of those words by virtue of Section 155 and the Fourth Schedule of "The Land Transfer Act 1952". 30
 - (c) That they will comply with the provisions of "The Noxious Weeds Act 1950" and "The Rabbit Act 1955" and all amendments thereto.
 - (d) That they "will not without leave assign or sublet" in accordance with the covenant implied by the use of those words by virtue of Section 155 and the Fourth Schedule of "The Land Transfer Act 1952".
 - (e) That the powers given to the Lessor by virtue of Section 107 of "The Property Law Act 1952" shall be implied herein as fully and effectively as if the same were expressed herein. 40

3. THE Lessor agrees with the Lessees as follows:-

In the Supreme Court

No. 1

(f) That the covenant for quiet enjoyment and other covenants implied in leases by virtue of Section 72 of "The Property Law Act 1952" shall be implied herein as fully and effectively as if the same were expressed herein.

Case Stated

(g) That the Lessor shall pay all rates taxes and other outgoings levied upon the said land.

Annexure "B"

15th April 1965

10 IN WITNESS whereof these presents have been executed the day and year first hereinbefore appearing.

(continued)

SIGNED by the said OWEN THOMAS MANGIN in the presence of:-) O.T. Mangin

J.E.F. Moon
Solicitor
Ashburton

SIGNED by the said MARJORIE ANNE MANGIN in the presence of:-) M.A. Mangin

J.E.F. Moon
Solicitor
Ashburton

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THE COMMON SEAL of PYNE GOULD GUINNESS LIMITED was hereunto affixed in the presence of:-)

G. Francis Director
A.H. Gould Director
H. Warren Secretary

Farm Plan

O.T. Mangin

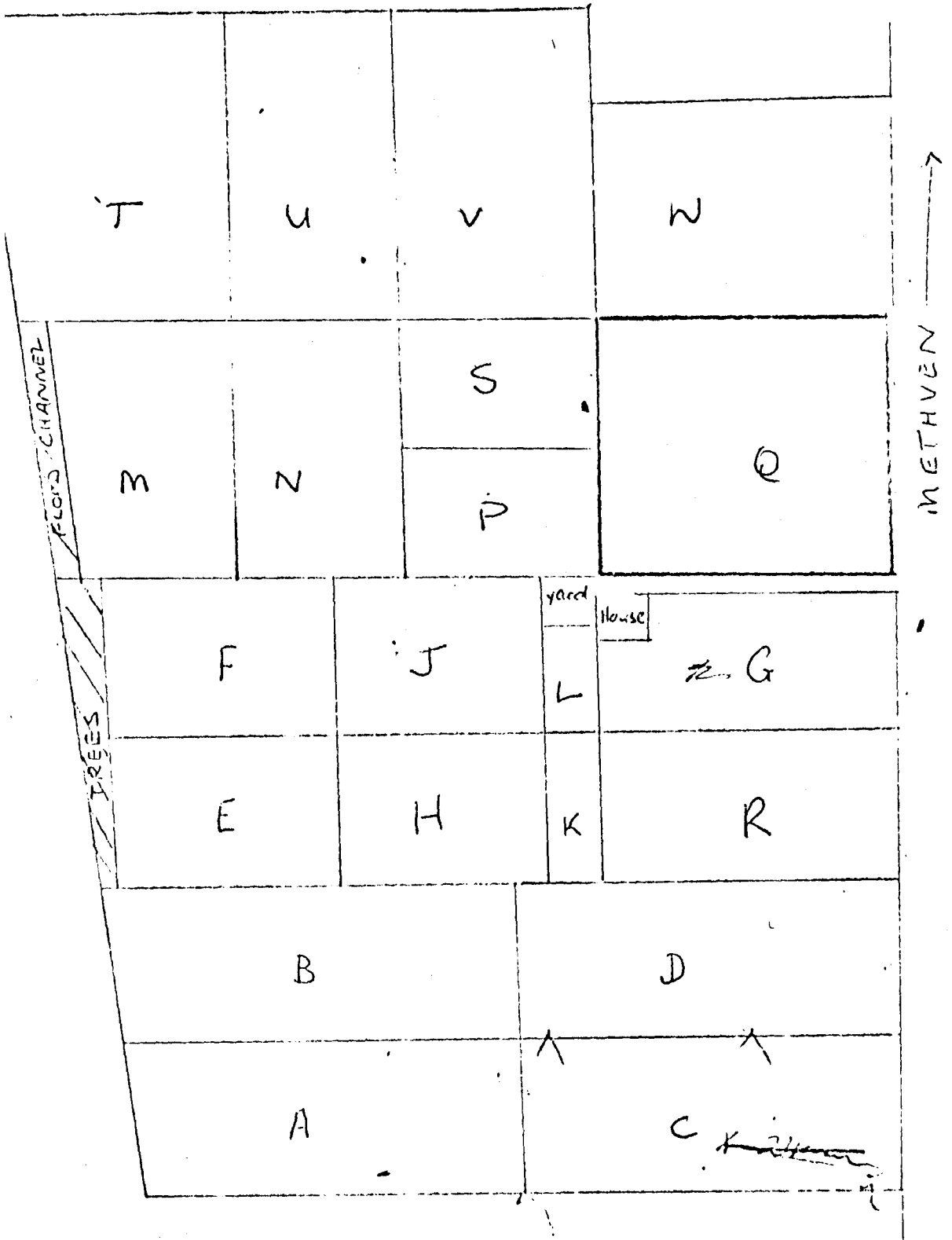
In the Supreme Court

No. 1

Case Stated

Annexure "B"

15th April
1965
(continued)



ANNEXURE "C" TO CASE STATEDIn the Supreme
Court

No. 1

Case Stated

Annexure "C"

20th August
1965

THIS DEED made the 20th day of August 1965 BETWEEN
ALBERT LEICESTER MANGIN of Christchurch, Retired
 Farmer (hereinafter referred to as "the Settlor")
 of the one part AND MARJORIE ANNE MANGIN of Methven,
 Married Woman, and PYNE GOULD GUINNESS LIMITED a
 duly incorporated Company having its registered
 office at Christchurch (hereinafter referred to as
 "the Trustees") which expression shall be deemed
 10 to include the Trustee or Trustees for the time
 being of the other part WHEREAS the Settlor is
 desirous of creating a trust for the benefit of
 his daughter-in-law the said Marjorie Anne Mangin
 and the children of his son OWEN THOMAS MANGIN and
 in pursuance of such desire has contemporaneously
 with the execution hereof paid to the Trustees the
 sum of Five Pounds (£5) (which sum together with
 20 or transferred to the Trustees to be held upon the
 trusts hereinafter set out is hereinafter referred
 to as "the Trust Fund") and has requested the
 Trustees to hold the same upon the trusts herein-
 after declared AND WHEREAS the Trustees have
 accepted the said sum and have consented to assume
 the duties and powers in relation to the Trust Fund
 as aforesaid

NOW THIS DEED WITNESSETH as follows:-

1. THE Trust Fund herein referred to shall be
 30 called "The O.T. Mangin Trust" and shall comprise
 the said sum of Five Pounds and all other moneys
 funds investments insurance policies and other
 property at any time hereafter taken up by or paid
 or transferred to the Trustees together with all
 accretions and additions thereto (whether made by
 the Settlor or any other person at any time here-
 after and acknowledged by the Trustees to be
 subject to the provisions of this Deed) and includes
 the income thereof and the proceeds of realisation
 thereof and all and any investments insurance
 40 policies and money for the time being representing
 the same.

2. THE "date of distribution" hereinafter referred
 to means the day on which shall expire the period of
 thirty-five (35) years from the date of the execution
 of this deed PROVIDED ALWAYS that the Trustees may at
 any time upon such grounds as they in their absolute

In the Supreme
Court

No. 1

Case Stated

Annexure "C"

20th August
1965

(continued)

and uncontrolled discretion shall think fit by instrument in writing executed by them resolve that in respect of the whole or any specified part or parts of the Trust Fund the "date of distribution" shall be such earlier date than that hereby provided as they shall thereby nominate and in such case the date so nominated shall become the date of distribution for the Trust Fund or the part or parts thereof so specified as the case may be and the provisions of these presents shall be construed accordingly and the Trustees shall be entitled to effect distribution without regard to or provision or indemnity for or insurance or arrangement against any possibility or contingency which might arise after the actual date of distribution so nominated.

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3. UNTIL the arrival of the date of distribution the Trustees shall stand possessed of the annual income arising from the Trust Fund UPON TRUST:

- (a) To pay such premiums as the Trustees in their absolute discretion think fit on any insurance policies for the time being forming part of the Trust Fund and to pay all expenses and outgoings relating to the Trust or any part thereof or its administration or incurred in connection or in relation to the working and management and maintenance of the Trust Fund or any part or parts thereof whether for rates taxes insurance premiums depreciation charges repairs and maintenance interest rent wages salary or other outgoings whatsoever or howsoever payable or chargeable in connection with the Trust or any part or parts thereof.
- (b) To set aside such part or parts of the said annual income as the Trustees shall in their absolute discretion determine for the purpose of establishing or increasing a reserve fund or funds for redemption of debts or other charges, for depreciation, for capital expenditure of any kind and for any other purpose the Trustees may deem advisable AND any reserve fund or funds so created shall become part of the capital of the Trust Fund and follow the disposition thereof.
- (c) To recoup such losses as the Trustees in their absolute discretion think fit incurred in the administration of the Trust Fund in prior financial years.

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(d) To pay and apply the said annual income then remaining in or towards the maintenance education or upkeep of such of them the said Marjorie Anne Mangin and the children of the said Owen Thomas Mangin now living or born hereafter in such proportions whether exclusively of one or more of them or not as the Trustees within seven (7) days before the end of each financial year (as hereinafter defined) in writing appoint AND in default of such appointment and in so far as such appointment shall not extend then UPON TRUST for such of the children of the said Owen Thomas Mangin as shall be living on the last day of each financial year and if more than one as tenants in common in equal shares the child or children of a deceased child to take and if more than one in equal shares the share of income that his her or their parent would have taken had he or she been living.

(e) The Trustees in their absolute discretion may accumulate the whole or any part of the income to which any infant would but for this provision have been entitled and may add such accumulated income to the capital of the expectant share of such infant to follow the disposition thereof.

4. AT the date of distribution the Trustees shall stand possessed of the Trust Fund UPON TRUST for such one or more of the children of the said Owen Thomas Mangin who shall be living at the date of distribution in such shares as the Trustees shall by Deed or Deeds revocable or irrevocable appoint and in default of appointment and in so far as such appointment shall not extend then for such of them the children of the said Owen Thomas Mangin living at the date of distribution and if more than one as tenants in common in equal shares (except that each son shall take twice the share of each daughter) PROVIDED HOWEVER that should any child or children of the said Owen Thomas Mangin die before the date of distribution leaving a child or children who shall be living at the date of distribution such child or children shall take and if more than one as tenants in common in equal shares all the share and interest which his her or their parent would have taken had such parent been living at the date of distribution.

In the Supreme Court

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Case Stated

Annexure "C"

20th August
1965
(continued)

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In the Supreme
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Case Stated

Annexure "C"

20th August
1965

(continued)

5. THE expression "the end or last day of each financial year" where used herein shall mean the 31st day of March in each year or such other date as the Trustees substitute therefor.

6. THE Trustees shall not be liable for any loss to the Trust Fund arising by reason of any improper investments made in good faith or from the negligence or fraud of any agent employed by them although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by the Trustees or by reason of any other matter or thing except wilful and individual fraud or wrong doing or any act known by the Trustees to be in breach of trust. 10

7. THE Settlor hereby authorises and empowers the Trustees in the execution of the trusts hereby created to exercise at their discretion in addition to any powers conferred on them by statute the following powers and authorities or any of them namely:- 20

(a) To sell all or any of the Trust Fund including freehold or leasehold land either by public auction or private contract in either one lot or in parcels or in such manner and subject to such terms and conditions as the Trustees shall in their absolute discretion think fit with power to allow the whole or such part of the purchase money as they think fit to remain on mortgage of the property sold. 30

(b) To let lease or bail or to grant rights or licenses to any person or persons corporation or corporations any freehold or leasehold property and/or any plant or chattels or interest in the same respectively forming part of the Trust Fund either from year to year or for any term of years or otherwise howsoever at such rent or royalties and subject to such covenants and conditions as the Trustees think fit including if the Trustees think fit an optional or compulsory purchasing clause and also to accept surrenders of leases and tenancies and generally to manage the same as they think fit. 40

(c) To carry on the business of farming or any

other business either alone or in partnership with any person or persons for such time or times as the Trustees shall think fit with power to use and apply any part of the Trust Fund as capital in such business and with further power to employ in such business all such managers agents servants clerks workmen and others at such remuneration and upon such conditions generally as the Trustees deem expedient and to sell bail purchase and deal in all articles and things necessary or expedient in the conducting of such business and generally to conduct such business in all respects as if the Trustees were the absolute owners thereof AND THE SETTLOR HEREBY DIRECTS that the Trustees shall be absolutely indemnified by and out of the Trust Fund for and in respect of any losses which they may sustain by reason of them so carrying on any such business or businesses as aforesaid AND HE FURTHER DIRECTS that should any loss or losses occur in any year or years by reason of such business being carried on as aforesaid then at the discretion of the Trustees such loss or losses may be borne by the capital of the Trust Fund.

(d) To take on lease sub-lease or licence any estate or interest in land and/or any plant live and dead stock on such terms at such rent and upon such conditions as the Trustees shall think fit and either with or without any provision for compensation for improvements and generally subject to such covenants and conditions as they shall think fit and to surrender any such lease or agree to the variation of any of the terms thereof.

(e) To raise on mortgage of the whole or any part or parts of the Trust Fund or by way of overdraft on current account or in such manner as the Trustees think fit all or any moneys which may in the opinion of the Trustees be necessary or desirable and to secure the repayment of any moneys so raised as aforesaid with interest at such rate as they think fit by mortgage of the property to be charged therewith with such powers and provisions and upon such terms in all respects as the Trustees shall think fit and also to agree to the

In the Supreme
Court

No. 1

Case Stated

Annexure "C"

20th August
1965
(continued)

In the Supreme
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No. 1

Case Stated

Annexure "C"

20th August
1965

(continued)

- renewal extension or variation of any mortgages for such periods and on such terms and conditions as the Trustees shall think fit.
- (f) To acquire by way of purchase gift transfer assignment or otherwise howsoever any business undertaking or venture or any share therein including freehold or leasehold land, goodwill, stock-in-trade, book debts, patents, patent rights or any other assets of any kind whatsoever and to hold deal with or dispose of any such real and personal property in such manner as they may think fit and to have in all respects the powers of absolute owners of any such real and personal property. 10
- (g) To take out effect acquire by purchase or otherwise hold transfer surrender mortgage or otherwise deal in policies of insurance on the life or lives of any person or persons including any person beneficially interested under the trusts hereof. 20
- (h) To purchase or acquire any freehold or leasehold land with or without improvements and with or without stock plant or implements on such terms and conditions as the Trustees shall think fit and all powers of mortgage in this Deed or in any Act contained or implied shall extend to the raising of moneys to effect such purchase and any lands and chattels so purchased shall be deemed an authorised investment for the purposes of the trusts hereby created. 30
- (i) To subdivide at such time or times and in such manner as the Trustees think fit the whole or any part of land forming part of the Trust Fund, to employ surveyors, builders, land agents, architects or contractors to prepare plans, carry out roading, channelling and draining and do all such other acts and things as the Trustees may deem desirable or necessary for the proper carrying out of such subdivision or for complying with the requirements of any authority set up by law. 40
- (j) To lend money either with or without security and particularly by way of contributory mortgage and upon such terms as the Trustees

shall in their absolute discretion think fit. In particular they may lend money with or without security to any person or persons presumptively or expectantly interested in the Trust hereby created (or to the Trustees of any estate in which such persons may be or become beneficiaries).

In the Supreme
Court

No. 1

Case Stated

Annexure "C"

20th August
1965

(continued)

- 10 (k) To expend such moneys as they may from time to time think fit for the repair maintenance upkeep or renovation or improvement of any part of the Trust Fund and for the demolition of any existing buildings the erection of new buildings or the extension re-erection or restoration of existing or new buildings and generally to exercise the same powers of managing improving and developing the Trust Fund as if the Trustees were the absolute owners thereof and to apportion the cost thereof between
- 20 capital and income or otherwise among the persons beneficially entitled to the Trust Fund in such manner as to the Trustees shall seem equitable.
- (l) To retain all investments transferred or assigned to the Trustees under the preceding provisions hereof in their present form as at the date of such transfer or assignment notwithstanding that such investments may not be authorised by the general law for the investment of trust moneys.
- 30 (m) To invest such ready moneys as may from time to time be available for investment in any of the modes of investment for the time being authorised by law in New Zealand for the investment of trust funds and upon contributory second or later mortgages of freehold or leasehold lands or charges or chattels and personal property in New Zealand and in debentures or debenture stock preference ordinary or deferred shares or preference ordinary or deferred stock
- 40 issued by any company incorporated in New Zealand or elsewhere and to give security for any unpaid purchase money owing in respect of any such investments and to take up bonus shares or other rights or benefits in any company in which the Trustees may be interested or concerned and to determine whether such bonus shares or other rights or benefits are capital

In the Supreme
Court

No. 1

Case Stated

Annexure "C"

20th August
1965
(continued)

or income and to vary or transpose such investments into or for others of any nature hereby authorised.

- (n) In respect of any company or companies in which the Trustees hold or are entitled or propose to hold shares:-
- (i) To act as a Director of such company either alone or in conjunction with others and to receive and retain without being liable to account for the same any Directors fee or other remuneration payable to them as such Director. 10
- (ii) To provide out of the Trust Fund further capital for such company either by way of advance loans (with or without security) deposit or current account or otherwise or guarantee (with or without security) or by taking up shares or further shares in such company or in such manner and on such terms as the Trustees may think fit. 20
- (iii) To concur on such terms as the Trustees think fit in the winding up reconstruction or amalgamation of such company or in the modification of the regulations thereof; and to concur in the modification of or to surrender any of the rights attaching to all or any of its shares; and to exercise in such manner as the Trustees think fit any powers which by the regulations of such company are vested in the Trustees as a Director or member thereof or otherwise; and on any winding up reconstruction or amalgamation to accept fully paid or partly paid shares or debentures or other interests in or securities of any company as the consideration or part of the consideration for such winding up reconstruction or amalgamation; and generally to act in relation to such company in such manner as the Trustees think best calculated to benefit the Trust Fund. 30
- (o) To guarantee loans or advances made to any person beneficially interested hereunder or to any other person. 40

- (p) To apply the whole of the capital of the expectant or contingent share of any beneficiary hereunder in or towards the advancement in life or otherwise for the benefit of such beneficiary notwithstanding that the share of such beneficiary may be subject to the possibility of diminishment by an increase of the class to which he or she belongs by later births AND for the purpose of calculating the value of the share of the beneficiary at the time of such advancement the Trustees may have the Trust Fund valued in such manner as they think proper and any such determination of value by the Trustees at the time of such advancement shall be binding on all persons interested hereunder notwithstanding that any advancement so made may later prove to have been an overpayment.
- 10
- (q) At any time or times to appropriate and allot any real and personal property forming part of the Trust Fund or any undivided interest in such property in or towards satisfaction of the share of any person or persons (whether sui juris or not) under the trusts hereinbefore contained and to charge any such property interest or share with such sums by way of equality of partition as the Trustees may think fit and for that purpose to fix the value of any real or personal property or interest therein so appropriated and the value of any other property forming part of the Trust Fund as they think fit AND every such valuation appropriation and allotment shall be final and binding on all persons beneficially interested in the Trust Fund AND to transfer to any person beneficially interested in the capital of the Trust Fund upon his or her becoming absolutely entitled thereto the property or interest therein so appropriated and allotted subject to such mortgages or charges and on such conditions as the Trustees shall consider necessary PROVIDED ALWAYS that any property or interest therein so appropriated or allotted shall until the same is transferred to some person absolutely entitled thereto remain subject (so far as the nature of the property and circumstances will permit) to all of the powers by these presents conferred upon the Trustees as if no such appropriation or
- 20
- 30
- 40

In the Supreme
Court

No. 1

Case Stated

Annexure "C"

20th August
1965

(continued)

In the Supreme Court

No. 1

Case Stated

Annexure "C"

20th August 1965

(continued)

allotment had taken place and may be dealt with by the Trustees accordingly.

(r) To settle and determine all questions whatsoever which may arise in relation to the Trust Fund or any part thereof AND ALSO to determine whether any produce arising from the carrying on of any business or any moneys for the purpose of this Deed is to be considered as income or capital respectively and also to apportion blended funds AND every such determination or apportionment shall be final and binding on all persons beneficially interested under this Deed.

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8. EVERY discretion or power conferred by these presents on the Trustees shall be an absolute and uncontrolled discretion or power and the Trustees shall not be held liable for any loss or damage accruing as a result of their concurring or refusing or failing to concur in an exercise of any such discretion or power.

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9. IT is declared that on paying any money or transferring any property to the Trustees for the purpose of these presents the Settlor shall be deemed thenceforth to have deprived himself of any beneficial interest therein.

10. THE Trustees may reimburse themselves or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts and powers of these presents and every Trustee of this settlement who may be engaged in any profession or business shall be entitled and is hereby authorised to retain and receive out of the trust fund his usual professional costs and charges as well by way of remuneration for business transacted by him or his partner or partners personally and by his or their clerks or agents (including all business of whatever kind not strictly professional but which might have been performed or would necessarily have been performed in person by a Trustee not being a member of such a profession or other person as aforesaid) as costs and charges out of pocket in the same manner as if the said Trustee had not been a Trustee or Trustees hereof but had been employed in the manner of the Trust and the Trustees shall be further entitled to receive for their services commission on income or

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capital at the rate for the time being charged by trust companies in New Zealand.

In the Supreme Court

No. 1

Case Stated

Annexure "C"

11. THE statutory power of appointment of new trustees hereof shall be vested in the said Owen Thomas Mangin of Methven, Farmer, during his lifetime and after his death in his personal representatives.

20th August 1965 (continued)

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12. IN pursuance of Section 6 of "The Perpetuities Act, 1964" it is hereby provided and specified that the perpetuity period applicable to this settlement shall (instead of being of any other duration) be the period of eighty years from the date hereof.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED by the said ALBERT LEICESTER MANGIN in the presence of:-) A.L. Mangin

J.E.F. Moon
Solicitor,
Ashburton

20 THE COMMON SEAL of PYNE GOULD GUINNESS LIMITED was hereunto affixed in the presence of:-) S E A L

G. Francis Director
A.H. Gould Director
H. Warren Secretary
8379

SIGNED by the said MARJORIE ANNE MANGIN in the presence of:-) M.A. Mangin

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J.E.F. Moon
Solicitor,
Ashburton.

In the Supreme Court

ANNEXURE "D" TO CASE STATED

No. 1

Case Stated

Annexure "D"

30th August 1965

THIS DEED made this 30th day of August 1965 BETWEEN MARJORIE ANNE MANGIN of Methven, Married Woman, and PYNE GOULD GUINNESS LIMITED as Trustees of a Deed of Trust dated the 15th day of April, 1965, and known as "The Mangin Family Trust" (hereinafter called "the Assignors") of the one part AND MARJORIE ANNE MANGIN of Methven, Married Woman, and PYNE GOULD GUINNESS LIMITED as Trustees of a Deed of Trust dated the 20th day of August 1965 and known as "The O.T. Mangin Trust" (hereinafter called "the Assignees") of the other part

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WHEREAS by Agreement to Lease dated the 15th day of April, 1965, OWEN THOMAS MANGIN of Methven Farmer, did demise and lease unto the Assignors all that parcel of land therein described for a term of One Year at the rental and upon and subject to the covenants conditions and provisions therein set out

AND WHEREAS the Assignors by verbal agreement have agreed to assign their interest as Lessee under the said Lease

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NOW THIS DEED WITNESSETH in pursuance of the said agreement and in consideration of the sum of One shilling (1/-) paid to the Assignors by the Assignees (the receipt whereof is hereby acknowledged) the Assignors DO HEREBY ASSIGN unto the Assignees for the residue yet to come and unexpired of the said term created by the said lease all that parcel of land described in the said lease.

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IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED by the said Marjorie Anne)
Mangin as Assignor in the)
presence of:-)

THE COMMON SEAL of PYNE GOULD)
GUINNESS LIMITED as Assignor was)
hereunto affixed in the presence)
of:-)

ANNEXURE "E" TO CASE STATED

In the Supreme
Court

No. 1

Case Stated

Annexure "E"

30th August
1965

THIS DEED made the 30th day of August 1965 BETWEEN
ALBERT LEICESTER MANGIN of Christchurch, Retired
Farmer, of the one part AND PYNE GOULD GUINNESS
LIMITED and MARJORIE ANNE MANGIN of Methven, Married
Woman, of the other part

10 WHEREAS the said Albert Leicester Mangin is the
Settlor and the said Pyne Gould Guinness Limited
and Marjorie Anne Mangin (hereinafter referred to
as "the Trustees") are the Trustees of a Deed of
Trust dated the 15th day of April, 1965, and known
as "The Mangin Family Trust"

20 AND WHEREAS the said Deed of Trust contained the
following provision as Clause 2: "The date of
distribution hereinafter referred to shall be the
day on which shall expire the period of twenty-one
years commencing upon the date of the execution of
this Deed or such earlier date as the Trustees may
at any time in writing appoint to be the date of
distribution."

AND WHEREAS the Trustees desire to wind up the said
Trust and appoint the 1st day of September 1965, to
be the date of distribution as provided in the said
Clause 2

30 NOW THIS DEED WITNESSETH that the date of distribu-
tion for the said Deed of Trust dated the 15th day
of April, 1965, known as the Mangin Family Trust
shall be the 1st day of September 1965 and the
provisions of the said Deed shall be construed
accordingly.

IN WITNESS whereof these presents have been executed
the day and year first hereinbefore written.

SIGNED by the said ALBERT LEICESTER
MANGIN in the presence of:-)

SIGNED by the said MARJORIE ANNE
MANGIN in the presence of:-)

THE COMMON SEAL of PYNE GOULD
GUINNESS LIMITED was hereunto
affixed in the presence of:-)

In the Supreme
Court

ANNEXURE "F" TO CASE STATED

No. 1

Case Stated

Annexure "F"

16th May 1966

AN AGREEMENT made this 16th day of May 1966,
BETWEEN OWEN THOMAS MANGIN of Methven, Farmer (here-
inafter called "the Lessor") of the one part AND
MARJORIE ANNE MANGIN of Methven, Married Woman, and
PYNE GOULD GUINNESS LIMITED a duly incorporated
Company having its registered office at Christchurch
(hereinafter called "the Lessees") of the other part

WHEREBY it is agreed and declared as follows:-

1. THE Lessor agrees to let and the Lessees agree to take all that parcel of land situated in Block VIII of the Spaxton Survey District containing 24 ACRES or thereabouts being part of Lot 1 on Deposit Plan 3908 and part of Rural Sections 26904, 26905, 26906 and 26906X and being part of the land in Certificate of Title Volume 430 Folio 16 (Canterbury Registry) and being more particularly shown on the plan annexed hereto and thereon bounded in green for a term of One (1) year from the 18th day of April, 1966 at a rental of Four Pounds (£4) per acre payable on the 18th day of April, 1967. 10
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2. THE Lessees agree with the Lessor as follows:-
 - (a) That they will pay the rent hereby reserved in accordance with the covenant implied in leases by virtue of Section 106 of "The Property Law Act, 1952".
 - (b) That they "will cultivate" in accordance with the covenant implied by the use of those words by virtue of Section 155 and the Fourth Schedule of "The Land Transfer Act, 1952". 30
 - (c) That they will comply with the provisions of "The Noxious Weeds Act, 1950" and "The Rabbit Act, 1955" and all amendments thereto.
 - (d) That they "will not without leave assign or sub-let" in accordance with the covenant implied by the use of those words by virtue of Section 155 and the Fourth Schedule of "The Land Transfer Act, 1952".
 - (e) That the powers given to the Lessor by virtue of Section 107 of "The Property Law Act, 1952" 40

shall be implied herein as fully and effectively as if the same were expressed herein.

In the Supreme Court

3. THE Lessor agrees with the Lessees as follows:-

No. 1

(f) That the covenant for quiet enjoyment and other covenants implied in leases by virtue of Section 72 of "The Property Law Act, 1952" shall be implied herein as fully and effectively as if the same were expressed herein.

Case Stated

Annexure "F"

16th May 1966
(continued)

10 (g) That the Lessor shall pay all rates taxes and other outgoings levied upon the said land.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore appearing.

SIGNED by the said OWEN THOMAS MANGIN in the presence of:- } O.T. Mangin

J.E.F. Moon
Solicitor
Ashburton

20 SIGNED by the said MARJORIE ANNE MANGIN in the presence of:- } M.A. Mangin

J.E.F. Moon
Solicitor
Ashburton

THE COMMON SEAL of PYNE GOULD GUINNESS LIMITED was hereunto affixed in the presence of:- }

G. Francis Director
A.H. Gould Director
H. Warren Secretary
 8848



FARM PLAN

O. T. MANGIN

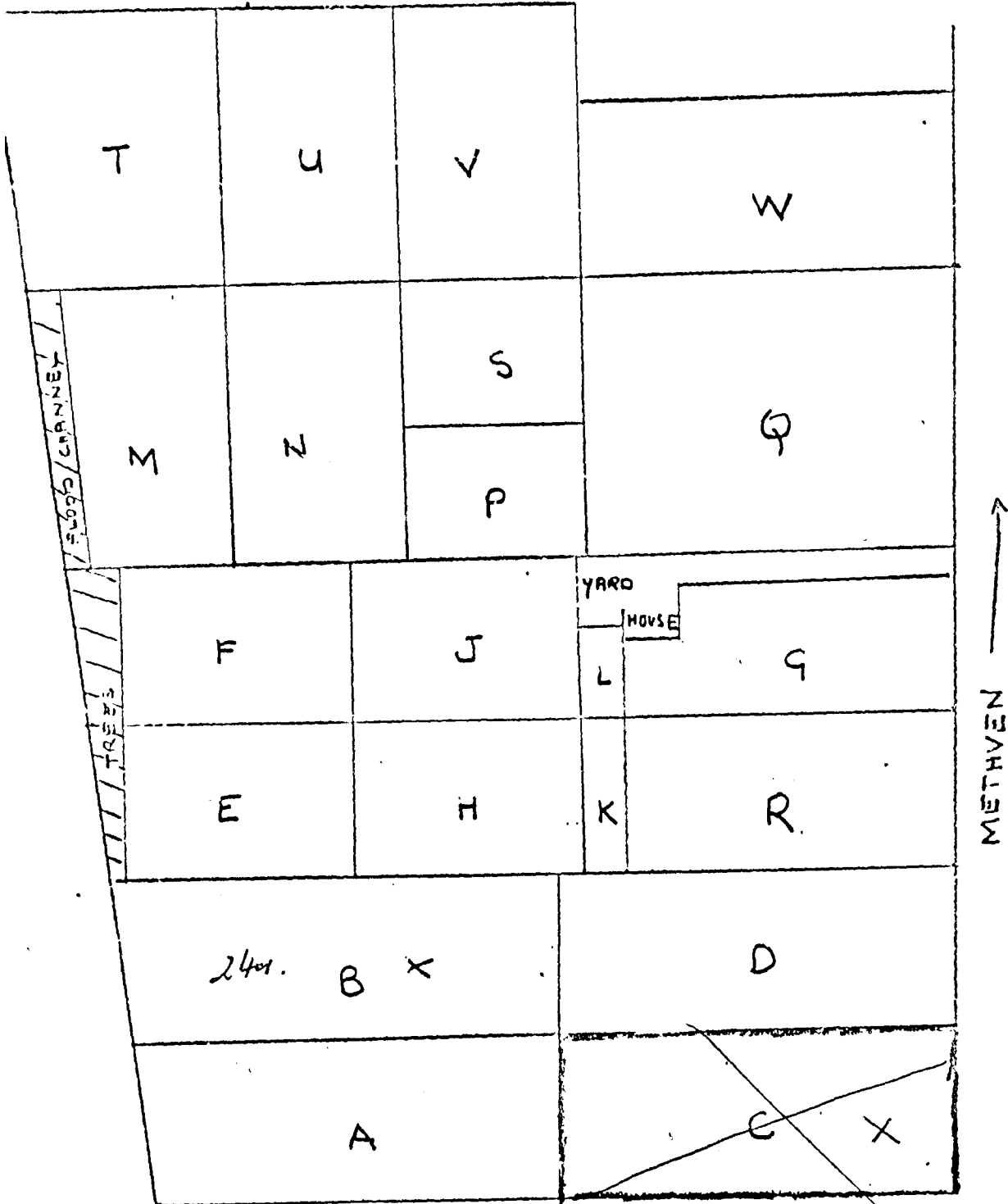
In the Supreme Court

No. 1

Case Stated

Annexure "F"

16th May 1966
(continued)



ANNEXURE "G" TO CASE STATED

In the Supreme Court

The Farm Accounting Assn. of N.Z. Ltd.

ASHBURTON

Branch

No. 1

Case Stated

Annexure "G"

MR. OWEN THOMAS MANGIN,

NO. 2. R.D., PAKATA.

SUBSIDIARY ACCOUNTS

SHEEP ACCOUNT

Stock at 1/4/65:-
 965 @ 30/-
 Purchases (529 0)
 Income, transferred to Farm Working Account

1447	10	-
2034	9	9
1554	19	7
5035	19	4

Sales (1534)
 Stock at 31/3/66:-
 838 @ 30/-
 150 @ 50/-

1257	-	-	3404	19	4
375	-	-	1632	-	-
			5036	19	4

CATTLE ACCOUNT

Stock at 1/4/65:-
 2 @ £10
 Purchases ()
 Income, transferred to Farm Working Account

20	-	-
17	-	-
37	-	-

Sales (2)
 Stock at / / :-
 @

			37	-	-
			37	-	-

OTHER STOCK ACCOUNT

Stock at / / :-
 Purchases ()
 Income, transferred to Farm Working Account

--	--	--

Sales ()
 Stock at / / :-
 @

WOOL AND SKINS ACCOUNT

On Hand at / /
 Income, transferred to Farm Working Account

--	--	--

Sales
 On Hand at / /

			1574	17	10
--	--	--	------	----	----

PRODUCE ACCOUNT

On Hand at 1/4/65
 Income, transferred to Farm Working Account

1500	-	-
4358	11	9
5858	11	9

Sales 1534
 On Hand at 31/3/66

			4458	11	9
			1400	-	-
			5858	11	9

TRADING ACCOUNTS for the Year ended 31st MARCH, 1967

Nos.		Nos.		SHEEP ACCOUNT		Nos.		Nos.			
		Purchases:-				Sales:-					
	293	Ewes	753			Lambs	718			1511	
	256	Lambs	557			Ewes	84			110	
	3	Rams	30	1340		Hoggets	148			466	2087
	970	Natural Increase				Deaths and Killings	146				-
	-	Cash Surplus, carried down									
		Stock on Hand, 1. 4. 66				Cash Surplus, brought down					
785		Ewes @ 30/-	1177			Stock on Hand, 31. 3. 67					
150		Wether Hoggets @ 50/-	375			Ewes @ 30/-	1399				
15		Rams @ 30/-	23			Wether Hoggets @ 40/-	916				
38		Killers etc. @ 30/-	57			Rams & Wethers @ 30/-	35				2350
	988	Total Stock		1632		Total Stock					
		Gross Profit, to Farm Working A/c.		1465							
	2510		£	4437						£	4437
		WOOL ACCOUNT				Sales:-					
		On Hand,				On Hand,					1325
		Gross Profit to Farm Working A/c.									
		CATTLE ACCOUNT				Sales:-					
		Purchases:-				Deaths					-
		Natural Increase									
		Cash Surplus, carried down									
		Stock on Hand,				Cash Surplus brought down					
		Gross Profit, to Farm Working A/c.				Stock on hand,					
		PRODUCE ACCOUNT									
		Sales: Wheat	Bushels	Acres	£						
		Peas			2445						
		Chou			1037						
		Clover			218						
		Grass Seed			319						
		Hay			294						
		less on hand 1. 4. 66			11	4324					
		Wheat			180						
		White Clover			450						
		Grass Seed			400						
		Chou			200						
		Peas			170	1400					
		plus on hand 31. 3.67:-				2924					
		Wheat			150						
		Grass			200						
		Chou			2000						
		Cocksfoot			180	2530					
		Gross profit, to Farm Working A/c.			£	5454					

MR. OWEN THOMAS MANGIN,

NO. 2 R.D., RAKATA.

In the Supreme
Court

No. 1

Case Stated

Annexure "H"
(continued)

FARM WORKING ACCOUNT for the Year ended 31st MARCH, 1967

1967 \$		1967 £		1967 \$		1967 £	
838		419		2930		1465	
88	926	44	463	2650		1325	
200		100		10908	16488	5454	8244
76		38					
60		30					
62	398	31	199				
180		90			230		115
42	222	21	111		232		116
688		344			78		39
204		102			192		96
624		312			40		20
198		99					
38		19					
228		114					
378		189					
108		54					
584		292		338			169
284	3334	142	1667	14			7
280		140					
860		430					
900	2040	450	1020				
288	288		144				
	1282		641				
	540		270				
172		86					
276		138					
3440	3888	1720	1944				
	286		143				
	1192		596				
	3216		1608				
\$	17612	£	8806	\$	17612	£	8806
							1608
1196		598					
320		160					
466		233					
174		87		812			406
				10			5
1882		941					
\$	4038	£	2019	\$	4038	\$	2019

BALANCE SHEET as at 31st March, 1966

LIABILITIES				ASSETS			
				Land			
				Buildings			
				Less Depreciation			
				Implements and Plant			
				Less Depreciation			
Creditors			6 6 -	Motor Car (Cost £)			
				Less Depreciation			
Capital Account			5 - -	Truck (Cost £)			
				Less Depreciation			
				Tractor (Cost £)			
				Less Depreciation			
				Pyne, Gould, Guinness Ltd.,			93 17 3
				Sundry debtors			5 - -
BENEFICIARIES ACCOUNTS							
Mrs. M.A. Mangin	52	-	-				
Less drawings for year	52	-	-				
Mr. R.O. Mangin	343	15	8				
Less drawings for year	300	-	-				43 15 8
Mrs. C.M. Mangin	343	15	7				
Less drawings for year	300	-	-				43 15 7
			£ 98 17 3				£ 98 17 3

ANNEXURE "J" TO CASE STATED

O.T. MANGIN TRUST

Farmer NO. 2 R.D., RAKALA.

PROFIT and LOSS ACCOUNT for 12 Months ended 31st MARCH, 1967

In the Supreme Court

No. 1

Case Stated

Annexure "J"

Stock at / / :- Sheep @ Cattle @						Proceeds - Sheep & Lambs (No.) Other Stock (No. Cattle) Wool & Skins Dairy & Milk Grain & Produce							
Produce Unsold						Stock at / / :- Sheep @ Cattle @							
Stock Purchased - Sheep (No.) Other Stock (No. Cattle)						Produce Unsold							
Balance - Gross Profit carried down						Meat & Produce Used							
Wages						Gross Profit brought down						942	8 10
Contract Work	117					Petrol Rebates							
Farm Purchases, Manure, Seeds, etc.	79	10	-			Interest							
Cartage													
Repairs and Maintenance													
Stores and Rations													
Car, Truck and Tractor Expenses													
General Expenses	18	18	0										
Insurance													
Rates													
Interest													
Rent	96	-	-	311	8								
Land Tax													
Depreciation:- Farm Buildings @ 5% Farm Dwelling @ 5% Implements & Plant @ 5% Motor Car @ 5% Truck @ 5% Tractor @ 5%													
Income (for Taxation) carried down				631	-	Loss (for Taxation) carried down							
				942	8							942	8 10
Loss (for Taxation) brought down						Income (for Taxation) brought down							
Personal Drawings													
Life Insurance Premiums													
Income Tax and Social Security Income Tax													
Depreciation on Motor Car (Personal Proportion)													
Surplus for Year transferred to Capital Account						Deficiency for year transferred to Capital Account							

BALANCE SHEET as at 31st MARCH, 1967

LIABILITIES

ASSETS

Creditors				6	6	-	Land							
							Buildings							
							Less Depreciation							
CAPITAL ACCOUNT:				5	-	-	Implements and Plant							
							Less Depreciation							
BENEFICIARIES ACCOUNT:- Mrs. M. Mangin							Motor Car (Cost £)							
Share of Income	52	-	-				Less Depreciation							
Less Drawings	52	-	-				Truck (Cost £)							
Tax	3	-	-				Less Depreciation							
Dr. balance to Contra	3	-	-				Tractor (Cost £)							
							Less Depreciation							
- R.O. Mangin	43	15	8											
Add Share of Income	289	10	5				Pyne Gould Guinness Limited				248	18	1	
	333	6	1				M.A. Mangin				3	-	-	
Less Drawings	195	-	-											
1967 Provisional Tax	18	-	-	120	6	1								
- C.M. Mangin	43	15	7											
Add Share of Income	289	10	5											
	333	6	-											
Less Drawings	195	-	-											
1967 Provisional Tax	18	-	-	120	6	-								
				£	251	18	1				£	251	18	1

ANNEXURE "K" TO CASE STATEDIn the Supreme
CourtRUSSELL & MOON
Barristers & SolicitorsWest Street,
Ashburton, N.Z.
12th October 1967.

No. 1

Case Stated
Annexure "K"
12th October
1967.The Senior Examiner,
Inland Revenue Department,
Private Bag,
10 TIMARU.

Dear Sir,

re: Cwen Thomas Mangin

We are instructed on behalf of Mr. O.T. Mangin to object to the amended assessment made for the year 1966. The reassessment includes the addition of £779.11.3. This additional amount is not part of the income of Mr. O.T. Mangin but is part of the income of the trustees under the O.T. Mangin Trust.

20 The Trustees earned this income from their business of farming. They were lessees of a defined area under a stamped and properly executed lease at a realistic rental. They paid contracting rates for work done and were free of the control of Mr. Mangin. The lease and the trust are real transactions and the trustees received the income in their own right and not after it had first been derived by Mr. Mangin. The income producing asset (the land) had been
30 transferred to the trustees under the lease and no power exists under the lease or the trust deed for Mr. Mangin to exercise any control over the business of the trustees. Furthermore the trustees did not derive their income under an arrangement subject to Section 108 of the Land and Income Tax Act 1954: the transactions are real and are common in both family and business dealings in the Ashburton County.

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Yours faithfully,
RUSSELL & MOON

per: "J.E.F. Moon"

In the Supreme
Court

No. 1

Case Stated

Annexure "L"

13th February,
1968.

ANNEXURE "L" TO CASE STATED

RUSSELL & MOON
Barristers and Solicitors

West Street,
Ashburton, N.Z.
13th February 1968.

The District Commissioner of Taxes,
Taxes Division,
Inland Revenue Department,
Private Bag,
TIMARU.

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Dear Sir,

re: Owen Thomas Mangin -
O.T. Mangin Trust
Your Ref. TU/Est/M/-

Further to your letter of the 24th January
we advise that the new assessments have now
been checked by Farm Accounting. We confirm
that we object to both the new assessments on
the same grounds as those set out in our
letter to you of the 12th October, 1967.

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Yours faithfully,

RUSSELL & MOON

Per: "J.E.F. Moon"

No. 2
NOTES OF EVIDENCE TAKEN BEFORE WILSON J.

Hearing: 21 November 1968

In the Supreme
Court

No. 2

Examination OWEN THOMAS MANGIN (Sworn)

Evidence of
Objector

Examination.

21st November
1968.

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I am a farmer residing at Methven and I am the objector in these proceedings and I am married aged 33 years and I live with my wife and 3 children who are 4 years 3 years and 6 months. My farm at Methven is 385 acres and I farm sheep and mixed cropping and there is an emphasis on cropping. From memory I was at my accountant's office preparing trial balance in January and February of 1965. I was acquainted of amount of tax expected to be paying that year and my comment was that it is a bit much can you do anything about it. Mr. Leighton my accountant. There was a discussion with him and he is Mr. Leighton of Farm and Accounting Association and as a consequence of a discussion I then had I discussed the matter with Mr. Leighton and I then went to Mr. Evans of Farming of Department of Agriculture in Ashburton and I was verified what I was told by Mr. Leighton and I then went to Mr. Moon my solicitor in Ashburton. At this point before going to Mr. Moon the general nature of discussion was suggested I form a trust for my own part. needs. A simple paddock trust would fill my needs. I discussed the matter with Mr. Moon and as a result of that discussion I Mr. Moon

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told ... I considered I would take steps by forming trust. Before - I discussed the matter with my father but not before the meeting but after and I asked him if he would be the settlor in this trust and in the event he did that I also discussed the matter with Pyne Gould Guinness Ltd. and I spoke to their Trust Manager Mr. Templeton and I asked them to act as trustee. I did that because the man who was Trust Manager and no one man is fully responsible in Trust Department and it was important that there should be an enduring trustee and I considered it so. I discussed the matter with my wife and asked her if she would be a trustee and an explanation was given by me as far as my knowledge went to her of the matter. Consideration was given by me to the question of the practical management of the trust - I assumed that I would be doing actual physical work. Consideration was given by me as to

In the Supreme
Court

No. 2

Evidence of
Objector

Examination

21st November
1968.

(continued)

mang. trust business that would be trustee. I then completed the trust on the 15 April... A trust was completed on 15 April 65 - the first trust. A paddock lease was considered. I had an explanation of such a lease from my solicitor. I discussed the question of the lease with Pyne Gould Guinness - I think I would have but have not accurate recollection but question of paddock lease was certainly mentioned and lease was completed on 15 April 1965 the date of the first lease. I had discussed with the trustees how the paddock would be farmed. To give a reasonably secure income to trustees of trust I considered it best for paddock to be drilled in wheat at guaranteed price and guaranteed yield with a reasonably assured yield. That would give adequate return for trust and that would also suit purpose for which trust was started. This discussion at the time the lease was entered into I think. This matter arose initially from a discussion about tax and that was the only matter that concerned me at the time. When I had the question of trust explained to me by Mr. Moon it was even more attractive and it could be extremely useful provision for my children later on. The accounts of the trust are kept by the Farm Accountants Assn. and the money received and held by Pyne Gould Guinness of Ashburton. There was discussion between me and the trustees concerning the charges I was informed that I would be obliged to charge contracting rates for work done and I made that clear as they were expecting to be charged for my work as trustees. After the Trust was completed I felt some dissatisfaction with its form. After the Trust Deed had been drawn up and sent to me my farm adviser on his regular visit and I showed him the Trust Deed with his knowledge of what happened to 40 farmers he visits he advised me that a better trust could be drawn bringing my wife and children in it and that appealed to me. I discussed that with my father, with Mr. Moon and eventually a new Trust was formed. Attached to the lease there is a plan (Exhibit B) - I prepared that plan. The paddock defined on the map is defined by fences and that paddock is fenced off separately from other paddocks and I had no need to check paddock myself had been working it for years. The condition of the paddock at the date of the lease in April 1965. It had been skim ploughed and rolled.

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The surface grass had been turned over. After the lease was executed the normal cultivation work had been done harrowing ploughing deep ploughing normal and natural farming work in preparation for cropping wheat and is normal farm practice.

In the Supreme Court

No. 2

Evidence of Objector

Examination

21st November 1968

(continued)

BENCH: What have you used the paddock for before? Grass and for Grazing. You now prepared it for cultivation? Yes.

10 COUNSEL: On the 18 June I drilled and sowed the wheat and it was sown with 50 bushels of Archa wheat and manured and eventually headed on the 5 February 1966 - I assume that is correct date and it yielded 1600 bushels and that work was done physically by me. Witness shown account, (Exhibit 1). This is the account which I rendered to Pyne Gould Guinness as one of trustees and I have obtained it from that firm for the purpose of this action. There are some pencilled

20 alterations on that account. My own bad addition I charged sacks at the return value what I assumed returned value and in actual value was 2/8d and when I found my mistake I charged 3/8d for new sacks and total of that account of £401.11.4. On the account I have items for skim ploughing heavy rolling grubber harrowing, harrowing, deep ploughing, grubbing and drilling and opposite those items there are amounts which I have charged and they were ascertained - to

30 charge Trust normal contract fee to return actually approximately £1 per hour. I charged a £1 an hour for my work and that as far as I am aware in line with commercial contract. rates. I have debited the Trust with wheat at 15/- per bushel this was wheat that I had on hand from the year before and I fixed the price by the fact that I had sold that wheat and received 13/6 per bushel and obtained wheat for seed purposes and it was dressed and for which it cost me 1/6d per bushel but the total cost was 15/-

40 per bushel. The manure was charged at 10/- cst to best of my knowledge at the time and the heading is charged at 1/- per bushel and normal contractors charged that and the sacks are charged at 3/8 and that was cost to buy them. The rent is charged and fixed in lease at £3 per acre and that figure was arrived at and I think formula 5% of unimproved value. I was paid by Pyne Gould Guinness £401.11.4. on that account by them. I received no other moneys in that year

In the Supreme
Court

No. 2

Evidence of
Objector

Examination
21st November
1968
(continued)

from that paddock. I was under no particular directions by trustees I was not under directions. My wife as trustee at the time knew what I was doing and there was no dissent and agents of Pyne Gould Guinness were on the property quite frequently. The wheat was sold to Duncan Macfarlane Ltd.

BENCH: Who decided what use would be made of field? I decided even before trust was drawn up. The paddock was in due for sowing and I had the seed it was natural progression. 10

COUNSEL: The preliminary steps had been taken at the date of the lease because it had been skim ploughed and I told them and made the Trustees aware of what I was intending to do and that I considered was suitable paddock for lease. The wheat was sold to Duncan Macfarlane Limited and I sell to both Pyne Gould and Duncan Macfarlane and occasionally others. There was discussion with trustees and I discussed matter with my wife at the time when the paddock was sown and no contract drawn up to sell wheat to any part firm. At the time wheat was difficult to sell and Duncan Macfarlane being smaller firm - I don't know what difference in financial resources but for some reason or other they could pay out quicker than Pyne Gould Guinness and the reason for this being so important that part year the money of the Trust had to be paid out and divided between beneficiaries before 31.3. and on basis of knowledge of season and way wheat was being shifted I advised Mrs. Mangin to get the wheat away quicker and prompter Duncan Macfarlane would be better to deal with. After that being explained she agreed. The wheat on my property was bagged by carriers of Duncan Macfarlane Ltd. and taken separately from any other wheat of my own. Eventually Duncan Macfarlane issued a Credit Note (witness shown) that is the note (Exhibit 2). I have obtained that note from Pyne Gould Guinness for the purpose of this action. That Credit Note is addressed to Mangin Trust care of myself and at the same time I received another one for wheat sold on my own account and I received a cheque and there was only one cheque for the lump sum and both accounts. That was the total of my own personal credit note and trust credit note and as 20 30 40

the cheque was drawn to me and banked it and then drew cheque from my own account for exact amount credited to Trust and that cheque I took straight to Trust Department. After the receipt of that cheque by Pynes I was paid the amount of own account £401.11.4. I shortly thereafter received a letter from Pynes 18 March 1966 (witness shown letter) that is the letter. (Exhibit 3.) In that letter there is a reference £652 of cheque for Mrs. Mangin and I gave it to her and made out to M.A. Mangin. In the following year that is to say year 1966 I entered into further lease to Trustees of another paddock and this paddock is defined on plan paddock C and that paddock is I imagine drawn by me. I know my paddock sizes and that paddock C is fenced and I am confident of area of 24 acres. The rent on this occasion was £4 per acre there had been revaluation. I produce the revaluation certificate (Exhibit 4). This paddock was again used for growing wheat and the trustees were aware before the lease was entered into that wheat would be grown for same reason as last year it was due in rotation and give adequate yield. At the end of the year I debited the trustees with account for my work (witness shown account). That is the account I prepared (Exhibit 5). The work of grubbing and ploughing was carried out by me and the amount of £57 fixed was by the same methods as before at £1 an hour and that was consistent with contractors rates to the best of my knowledge. On this account the amount for grubbing and harrowing is £57 while on previous account the amount was higher. There was less work to prepare the work for suitable sowing but the rates are the same. The seed this year is charged at 18/6 and is different variety of seed and higher price and the price was fixed in the same way as previous year and the value of the seed plus and the cost of dressing. The price of the manure was fixed at £24 was what it cost me and it was the market price. The item heading cartage and I was harvesting wheat in bulk and as such being carted to my own shed and using my own tractors and bulk trailers so that this year I was charging for harvesting and cartage and the amount of £60 compared with previous £80 there was a lower yield of variety of wheat and there

In the Supreme
Court

No. 2

Evidence of
Objector

Examination

21st November
1968

(continued)

In the Supreme
Court

No. 2

Evidence of
Objector

Examination
21st November
1968

(continued)

was 1622 bushels first year and 932 bushels the second year. When the bulk wheat was carted by me to my store it was kept in separate bay from other wheat and at all times I was able to identify wheat that came from paddock C and this wheat was again sold to Duncan Macfarlane Ltd. and other wheat off my farm that year I do not think was sold to Duncan Macfarlane in order to keep trust separate from my own. There was discussion with trustees for the same reason the first time with my wife. Again wheat was very difficult to shift and sell and they offered best opportunity of selling and getting the money to the trustees. On this occasion a Credit Note was sent to me by Duncan Macfarlane for the wheat but I have not got that note with me. It was I recall - the wheat was sent down as Mangin Trust wheat and I cannot recall how the Credit Note was sent. That particular year I think it would be sent to me because he debited me with account of my own. He sent cheque with Credit Note and the cheque was in the name of the Mangin Trust and there was a deduction of £166.5.0. and the net cheque was therefore £776.3.10. That deduction was in respect of an item which I owed Macfarlanes I owed for seed. The cheque was not sent to Trust but made out to me I was in error, and that cheque was taken to Pyne Gould Guinness by me and I did not bank it and Pynes took it away and negotiated it and the amount of my account to the Trustees debited by sum of £166.5. and is shown on the account.

Adjournment 11.30 a.m.

Resumed: 11.55 a.m.

When I first entered into the original lease it was explained to me by my solicitor the first lease and I understood the position of the trustees under the lease - I leased the paddock to them and they had control of it.

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CROSS-EXAMINATIONIn the Supreme
Court

No. 2

Evidence of
ObjectorCross-
examination.21st November
1968.

Was it you who decided which paddock would be leased to the Trust in the first year? Yes. Before you leased that paddock had you decided yourself that it should be used for wheat? Yes. In the same way was it you who decided which paddock would be leased the second time? Yes. Was it you who decided that it should be used for wheat the second time? Solely for the purpose of getting adequate income for Trust. It was my decision to lease the paddock.

BENCH: And to sow with wheat? Yes.

COUNSEL: At the time you leased the first paddock to the Trust did you have seed wheat on hand? I did. Who decided what type of wheat you would sow under the second lease? The paddock the first year which is Aroha which is not particularly popular. The Hillegendorf wheat is more popular with millers and more easily sold and that is why I made the decision. Would it be fair to say that you fitted in the farm work on this paddock each year in general farming timetable? Yes. Would it be fair to say so far as the farming of the farm is concerned the lease in each case made no difference to the practice side of it? No. Lease or no lease it was just normal practice. Did you arrange the sale of the wheat to Duncan Macfarlane each year? With concurrence of my wife and because I was dealing with them negotiating other deals and so on.

BENCH: More experience in Pyne Gould? More experience than my wife. She was one trustee? Yes. Question of who pays out quickest. Who made the decision and how far you directed the decision?

COUNSEL: Reverting to the actual farm work did you decide each step taken in cultivation of paddock? The question is purely academic with farm husbandry as I saw it. Turning to the wheat as a crop is the sale price of wheat of fair average quality fixed by the Government before the harvest began. Yes. Does - is there a Government guarantee that any unsold wheat will be purchased at that price? If suitable milling quality yes. Am I correct that since the War the Government fixed price in any year has

In the Supreme Court

No. 2

Evidence of Objector

Cross-examination.

21st November 1968

(continued)

never been less than the previous? Yes. Would it be correct to say that there is virtually no risk so far as the price of wheat is concerned or the possibility of sale? Very little. Would it be fair too to say that wheat is the safest crop to grow? Yes. Is it recognised as a steady reliable crop? I would think so yes. Is it recognised as providing a reasonable assurance of yield? Climatic conditions come into that but apart from that yes. In the Trust Account for the first year the expenses of the Trust are shown as £407. I was referring to accounts in first year showing expenses of £407 and from the letter to you by Pyne Gould of 18 March 66 it seems that £401 in respect of purchases was reimbursed to you. Was the difference accountancy expenses?.....(Bench: they are). It is not stated expressly in the evidence but was it the position that first cheque from Duncan Macfarlane was made out in your name? Yes. Can you tell us how the Trust income which was paid out to your wife for herself and the children was spent? That money was paid out to Mrs. Mangin and put in Post Office Savings Account and she has bought clothing for children and other family expenses. I have no control over it whatsoever I do not know where it goes to but as far as I know it is used for family purpose.

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Re-examination

RE-EXAMINATION

You were asked by His Honour whether it was your decision to sow wheat and you said yes this intention was known before this? The paddock in question in each case was due in rotation.

EVIDENCE FOR OBJECTOR.



REASONS FOR JUDGMENT OF WILSON J.In the Supreme
CourtNo. 3

Hearing: November 21 1968

Counsel: Somers for Objector
Richardson for CommissionerReasons of
Wilson J.4th February
1969.

Judgment: 4 February 1969

Case stated under s.32 of the Land and Income
Tax Act 1954.

I find the facts proved to be as follows:-

10 The objector is, and at all material times
was, the owner of a farm of 385 acres at Methven
used for sheep farming and mixed cropping, with
the emphasis on cropping. In January or
February 1965 he conferred with his accountant
on the subject of the amount of income tax which
he would have to pay that year and sought
advice as to whether anything could be done to
reduce the amount payable in the future. As
the result of the advice he then received he
20 consulted his solicitor and the following
transactions were put in train: First, the
objector's father created a trust by deed
dated 15 April 1965 for the benefit of the
objector's children. The trustees were the
objector's wife and Pyne, Gould Guinness Ltd.
On the same day the objector and the trustees
agreed in writing that the objector would lease
to the trustees part of his farm, being a
paddock of about 25 acres, for one year at a
30 rent which was a realistic one. The trustees
then employed the objector to prepare and sow
this paddock in wheat and to harvest and sell
the crop, and this he did. In August, however,
it was decided that the trust was not
satisfactory in that the objector's wife was
not a beneficiary thereunder. A new trust
was then created by the objector's father with
the same trustees but for a longer term, under
which the beneficiaries were the objector's
40 wife and children. The lease was assigned
by the trustees of the first trust to the
trustees of the second trust and the first
trust was wound up in accord with a special
provision in that behalf therein contained.

In the Supreme
Court

No. 3

Reasons of
Wilson J.

4th February
1969

(continued)

On 18 April 1966 the objector agreed in writing to lease another paddock to the trustees of the second trust for one year at a rental which was also a realistic one and he was again employed by the trustees to prepare and sow the paddock in wheat and to harvest and sell the crop. This arrangement was duly carried out. In both years the objector, after selling the crop from the respective paddocks (which I shall refer to as the "paddock" crops), rendered to the trustees an account for the amount due to him for rent, for the cost of seed and other necessary items, and for his own work at rates charged by contractors for similar work in the district, and received a cheque for such amount. In the first year the merchants who bought the paddock crop sent the objector one cheque which included the amount due for that crop, (which they invoiced separately) as well as an amount due to the objector personally and the objector paid to the trustees the full amount received for the paddock crop. In the second year, the merchants invoiced the price for the paddock crop to the objector and deducted from the amount a debt owing by him personally sending him a cheque for the balance. In this case the objector handed the cheque to the trustees and gave them credit for the amount deducted in the account for rent and other moneys due to him. I do not regard these matters of accounting by the merchants as being of any importance, nor do I regard as significant the manner in which the objector passed on to the trustees the amounts due for the paddock crops in terms of his arrangements with them. The nett income of the trust for the first year was £739.11.3. Of this sum £652 was distributed within the income year by paying that amount to the objector's wife, apportioned as to £52 to herself and as to £300 each to the objector's two infant children, then aged two and one year respectively. The second year the nett income of the trust was just over £631 and this year £442 was paid to Mrs. Mangin, apportioned £52 to her and £195 each to the two children. The objector deposed that the sums received by his wife were put into a Post Office Savings Bank account from which she has drawn sums required for clothing for the children and other family expenses. He has no control over it.

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In furnishing returns of his income for the years ended 31 March 1966 and 31 March 1967 respectively the Objector did not include the income of the trust, which was returned separately by the trustees. On 26 January 1968 the Commissioner amended his assessments of the income tax payable by the objector in respect of his income for each of those years by treating the trust income as the objector's on the basis that the transactions above-described fell within s.108 of the Land and Income Tax Act 1954 or, alternatively, that it was income received by the trustees under a disposition which applied to such income after it had been derived by the objector. The objector's objection to such amended assessments having been disallowed by the Commissioner, the latter was required to state this case. The question for the Court is whether the Commissioner acted incorrectly in making such amended assessments and if so in what respects they should be amended.

At the hearing I held, on the facts, that the trust income had not been derived by the objector before the trustees received it. Section 92 of the Act, upon which Mr. Richardson relied, has no relation to the facts of this case. In my opinion that section merely makes it clear that when the Act refers to assessable income as being profits, gains, etc. "derived" by a taxpayer it includes all income "credited in account, or reinvested, or accumulated, or capitalised, or carried to any reserve, sinking or insurance fund, or otherwise dealt with in his interest or on his behalf" notwithstanding that it has not actually come into his hands. If it has been applied for his benefit it is deemed to have been derived by him regardless of the mode of its application for that purpose of the means adopted. On the evidence I held that the objector genuinely leased the paddocks to the trustees and farmed and managed them as their paid employee or contractor. The resultant income was not derived by him but by the trustees, and the fact that the merchant who purchased the crops of grain paid the proceeds, for its own convenience, to the objector does not affect the position. The Commissioner's alternative contention cannot, therefore, be supported.

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His primary contention, that the transactions constituted an arrangement which was void by virtue of s.108 of the Act raised questions which I have found to be of considerable difficulty. The section reads thus:

"108. Every contract, agreement, or arrangement made or entered into, whether before or after the commencement of this Act, shall be absolutely void in so far as, directly or indirectly, it has or purports to have the purpose or effect of in any way altering the incidence of income tax, or relieving any person from his liability to pay income tax."

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The cognate provision in the Australian statutes has been the subject of a considerable number of decisions in the High Court of Australia and at least two in the Privy Council.

Mr. Somers pointed out, in the course of his argument, that almost all of the cases in which it²⁰ has been held that the "arrangement" was void under the Australian section were decided on the ground that it had the purpose or effect of "avoiding" liability for income tax and that there is no such ground in s.108. In Purdie v. Commissioner of Inland Revenue (1965) 9 A.L.J.R. 603 I took the view that the words "relieving any person from his liability to pay income tax" in s.108 referred to an existing liability and not a prospective one such as is contemplated by the words "avoiding ... liability" in the Australian section and that the cases decided in the latter provision were distinguishable on that ground. This view did not find favour with the Court of Appeal in Elmiger v. Commissioner of Inland Revenue (1967) N.Z.L.R. 161 (per North P. at p.182) and I think that it is clear that that court held that, for the present purposes, there is no difference in the effect of the two sections. Turner J. (at p.187) applied the principle laid down by the Privy Council in Newton v. Federal Commissioner of Taxation (1958) A.C. 450 (decided under the "avoiding" provision of the Australian section) by substituting the "relieving" provision of s.108. Mr. Somers' distinction, therefore, cannot be upheld.

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The principle enunciated on Newton's case is, accordingly, applicable to the instant case. With the substitution made by Turner J. (ubi cit) it is this:

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10 "In order to bring the arrangement within the section you must be able to predicate - by looking at the overt acts by which it was implemented - that it was implemented in that particular way so as to (relieve from liability to pay income tax). If you cannot so predicate, but have to acknowledge that the transactions are capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to (relieve from liability to pay income tax), then the arrangement does not come within the section."

20 This statement of the principle sets out the limitations of the application of s.108. It seems to me that when Lord Denning enunciated the principle in Newton's case he was careful to preserve, as far as was consistent with the language of s.260 of the Australian Statute, the recognised right of a taxpayer to order his affairs so as to minimise his tax liability, and to reject any suggestion that the taxpayer must conduct his business and family dealings in the manner which will attract the greatest amount of tax. This emerges clearly from the care with which he distinguished "motive" from "purpose or effect", his reference to "ordinary business or family dealing" and his use of the adverb "necessarily" in modifying the phrase "being labelled as a means to avoid tax." If, by looking at the overt acts by which the arrangement was implemented, it is necessary to conclude that it was implemented in that particular way so as to escape liability for income tax, then it is rendered void by the section. If, on the other hand, examination of those overt acts does not necessarily lead to that conclusion, but the transactions are explicable as ordinary business or family dealing, the arrangement is not rendered void by the section. It follows that the section does not make void an ordinary business or family transaction by a taxpayer which results in a diminution of the amount of tax payable by him

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so long as the means adopted - the overt acts - are not such as to lead to the necessary conclusion that the transaction was implemented in that way so as to relieve him from liability to pay income tax. Subject to that condition a taxpayer may still order his affairs in such a way as to minimise his liability to pay income tax.

In every case in which s.108 is involved, therefore, the following questions arise:

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1. Do the transactions which are said to be void by virtue of the section constitute a "contract, agreement, or arrangement"?
2. If so, do they in any way alter the incidence of income tax or relieve any person from his liability to pay income tax?
3. If so, was such alteration or relief achieved in a way which necessarily leads to the conclusion that it was adopted so as to effect such alteration or relief otherwise than as an incident of ordinary business or family dealing?

20

The Act places on the taxpayer the onus of establishing that one or more of these questions must be answered in the negative. Having regard to the very wide meaning which has been given to the term "arrangement" it is scarcely possible to postulate any transaction which would not come within its scope, so that it must be rare indeed for the taxpayer to secure a favourable answer to the first question.

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The second is one where, again, the scope for argument must be very limited. In the instant case Mr. Somers on behalf of the objector did not argue that either of these questions should be answered "no". The argument therefore related almost entirely to the answer which should be given to the third question.

Mr. Somers submitted that the transactions which I have set out in my narrative of the facts were explicable as ordinary family dealing without necessarily attracting the label of a means to relieve the objector from liability to pay income tax, while Mr. Richardson submitted that the unusual mode of providing for his wife

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and children chosen by the objector rendered the arrangement incapable of explanation as "ordinary family dealing" and the complexity of the means of implementing the scheme inevitably labelled it as a means to relieve him from liability to pay income tax.

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10 These conflicting submissions make it necessary to consider what is meant by "ordinary family dealing". It is significant, I think, that Lord Denning used the word "dealing" in its primary sense as a gerund, not in its derivative sense as a noun. He was referring not to "a dealing" or to "dealings" but to "dealing". Used in this sense "ordinary family dealing" comprehends all arrangements between members of a family which are usual in the circumstances, of which provision for the maintenance and advancement of a man's wife and children are the most common. It is the category of the arrangement which must be looked at in deciding whether it comes within the description of "ordinary family dealings", not the details of its implementation. Such details are most important (as Lord Denning said) in deciding whether a particular example of ordinary family dealing must nevertheless be labelled as a means to relieve the taxpayer from liability to pay income tax, but they do not affect its character as such.

30 In the instant case what the objector did was to make provision for the maintenance and advancement of his wife and children. The transactions into which he entered are, therefore, capable of explanation by reference to ordinary family dealing, but can they escape being necessarily labelled as a means to relieve from liability to pay income tax? The answer to that question must be found by examining the details of the overt acts by which the arrangement which secured the provision for the objector's wife and family was implemented. The fact that the method adopted is novel does not necessarily attract the label. The whole of the circumstances must be considered.

40 The accounts of the objector for the fiscal years with which I am concerned show that he had no income-producing asset other than his farm. If he were minded to provide for

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his wife and children an income separate from his own (which, as I have held, comes within the description of ordinary family dealing) it was necessary to make such provision either from his tax-paid income from the farm or by transferring to them, or their trustees, part of his farm from which they could derive an income. If the size of the farm and the type of farming for which it was adapted permitted, the obvious way to implement his object would be by way of subdivision and transfer of part to (in this case) the trustees, but that was not practicable with a farm of 385 acres used predominantly for cropping. The only practicable method was the one which he adopted, namely, that of leasing a paddock which was ready, in the normal rotation, to be sown in wheat the crop from which could be expected to provide a reasonably assured income. The fact that he himself did the work was dictated by circumstances - he was readily available and, with his knowledge of the land, he was the person most likely to achieve the most profitable result. I am satisfied that he charged a proper rent for his land and a proper rate for his services. When they are fully understood in relation to the circumstances these overt acts do not compel the conclusion that they were devised as a means of relieving him from his liability to pay income tax. The resulting distribution of income from the farm between himself and his wife and children does not lend colour to such a conclusion because he still received more than two-thirds of such income.

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What weight, if any, should be given to two matters to which I have so far made no reference - namely, the fact that the arrangements had their genesis in the objector's inquiry as to how he could reduce his tax liability, and the fact that the trust for his wife and children was not constituted by him, but by his father, at his request?

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In my opinion, the first of these matters is irrelevant. It preceded the arrangements and therefore cannot be an overt act by which they were implemented. At most it could only add colour to any such overt acts as might

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10 themselves point in the direction of a means
to relieve him of income tax liability. It
furnished the original motive for the
arrangements but motive, as Lord Denning
observed in Newton's case (supra, at p.465) is
irrelevant - it is the end in view or achieved
which must be considered. The second matter
the procurement of the objector's father as the
settlor of the trust for his wife and children,
20 was obviously a step taken, on advice, in order
to avoid losing the deduction by way of special
exemption for his children through the
operation of s.84A. It was a normal precaution
to take in the circumstances and neither alone
nor in conjunction with the other overt acts was
it sufficient, in my opinion, to attract the
voiding label. It is proper to record that
neither of these matters was relied upon by
Mr. Richardson in support of his argument that
s.108 applied to the arrangements.

The matters indicative of a purpose to
avoid tax upon which Mr. Richardson placed
reliance were as follows :-

1. The emphasis of the arrangement was on the
income aspect. He submitted that there
was no possibility of capital gain to the
trust, that its prospective gain was wholly
of an income nature.
- 30 2. The possibility of the trust's deriving
income depended almost entirely on the
actions of the objector in granting a
short term lease, farming the land, and
providing such plant and labour as he
thought requisite.
3. The only capital of the trust was the
original £5 provided by the settlor.

40 I think that the first two matters are fully
explained without any necessary reference to
tax avoidance, by the fact that the method
adopted was dictated by the nature of the
objector's farm to which I have already
referred. The third is also explicable by
reference to those circumstances, for the
arrangement itself by its very nature required
no capital.

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Mr. Richardson listed four effects of the arrangements which, he submitted, pointed in the same direction.

They were:

1. No change occurred in the practical operation of the farm as a whole.
2. A substantial part of the income from the farm was syphoned off to the trust.
3. The objector's wife (who was one of the trustees) controlled the use and destination of the trust income and used it for family purposes, to the relief of the objector. 10
4. The amount of tax payable on the profits from the whole farm was substantially diminished.

The first is explained by the nature of the objector's assets; the second and third are, in themselves referable to ordinary family dealing; and the fourth does not bring the arrangements within the section unless the end in view was to escape liability for income tax. Every disposition of an income-bearing asset is liable to result in an overall diminution of the tax payable if the recipient's income is taxable at a lower rate than that of the disposer but that fact, in itself, does not necessarily stamp the transaction as tax-avoidance and, as the arrangements in this case were capable of explanation by reference to ordinary family dealing, I am not prepared to draw that inference here. Neither individually nor collectively, in my opinion, do these matters bring the arrangements with s.108. 20 30

It is perhaps relevant at this point to advert to the situation in which arrangements are found to have more than one "purpose or effect". It is not necessary, as was pointed out by North P. in Elmiger's case (at p.178, citing Newton's case at p.467) that tax avoidance should be the sole purpose or effect - the section can still work if that was one of the purposes or effects. Nevertheless, as far as my researches go, it has not been held 40

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(continued)

10 sufficient to avoid the arrangement unless it was the predominant purpose or effect. It may well be, of course, that in deciding whether the relevant overt acts were capable of explanation by reference to ordinary business or family dealing without necessarily attracting the tax-avoiding label the Courts have had regard to the importance of the element of tax-saving which in this sophisticated tax-conscious age must always
10 be present. In this connection it is pertinent to remember that the section does not purport to avoid all arrangements which result in a diminution of the income tax payable in consequence thereof.

20 Since the decision in Elmiger's case (supra) the principles applicable to cases of this sort are for the most part well settled. The decision in each individual case depends on its own facts, with the result that decisions
20 in other cases, on different facts, are of little assistance to a Court in determining the case before it. For that reason I have not referred to the facts of the numerous cases cited to me in argument, none of which bore more than a superficial resemblance to those of the instant case. I wish to make it clear that although Mr. Richardson referred to this as being a test case on the effect of
30 s.108 on "paddock trusts" (arrangements by which a relatively small portion of taxpayer's farm is leased for a short term to trustees of a family settlement and farmed by the trustees with the assistance of the taxpayer during the term of the lease) the infinite variety possible in such arrangements precludes any attempt on my part to lay down any principle which would apply to all of them. The only principles universally applicable are those laid down by the Court of Appeal in Elmiger's case

40 In the instant case an examination of the overt acts by which the arrangements were carried out has satisfied me that they were capable of explanation by reference to ordinary family dealing and, notwithstanding the fact that they resulted in a substantial diminution of the amount of tax payable by the objector and of the amount of tax payable on the whole income derived from the farm, that they were not necessarily a means to relieve any person from liability to pay income tax.

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This conclusion has been reached without reference to Mr. Somers' alternative submission that s.108 does not apply to the case where the taxpayer has completely divested himself of a particular source of income. This question was expressly left open by Turner J. in Elmiger's case, (supra, p.185) and I prefer to leave its solution to a case where its decision is necessary. For the purposes of this case I have treated the fact that the objector had completely divested himself of the source of the income which is the subject-matter of the case stated as a circumstance - and an important one - to be taken into consideration in reaching my conclusion.

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For the foregoing reasons I answer the question in the case stated thus:

The Commissioner acted incorrectly in making the amended assessments of the objector's income tax in respect of the years ended on 31 March 1966 and 31 March 1967 respectively. Such assessments should be amended by assessing his income tax on the income returned by the objector for those years respectively, without the addition of the income returned by the trustees.

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I allow the objector costs in the sum of £100 with disbursements and witness's expenses as fixed by the Registrar.

Solicitors:

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Champion & Somers, Christchurch, for Objector.
Crown Law Office, Wellington, for Commissioner.

No. 4

In the Supreme
Court

FORMAL JUDGMENT OF SUPREME COURT

No. 4

Before the Honourable Mr. Justice Wilson

Formal
Judgment

Tuesday the 4th day of February 1969

4th February
1969

10 UPON READING the Case Stated filed herein AND
UPON HEARING Mr. E.J. Somers of Counsel for the
Objector and Mr. I.L.M. Richardson of Counsel
for the Commissioner of Inland Revenue and the
evidence of the Objector on Thursday the 21st
day of November 1968 IT IS ORDERED AND DETERMINED
that the question set out in the Case Stated
be answered thus:

20 The Commissioner acted incorrectly in
making the amended assessments on 26th day
of January 1968 of the Objector's income tax
in respect of the years ended on the 31st
day of March 1966 and the 31st day of March
1967 respectively and that such assessments
should be amended by assessing his income tax
on the income returned by the Objector for
those years respectively without the addition
of the income returned by the trustees AND IT
IS FURTHER ORDERED that the Commissioner of
Inland Revenue pay to the Objector the sum of
\$100 for costs together with disbursements
and witnesses' expenses as fixed by the
Registrar.

BY THE COURT

W. L'ESTRANGE

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L.S.

DEPUTY REGISTRAR

68.

In the Court
of Appeal

No. 5

No. 5

NOTICE OF MOTION ON APPEAL TO
COURT OF APPEAL

Notice of
Appeal.

25th February
1969

TAKE NOTICE that this Honourable Court will be moved at the first sittings thereof after the expiration of fourteen days or so soon thereafter as Counsel can be heard on behalf of the above named appellant ON APPEAL from the whole of the judgment of the Supreme Court of New Zealand delivered herein by the Honourable Mr. Justice Wilson on the 4th day of February 1969 on Case Stated Number M.166/68 UPON THE GROUNDS that such judgment is erroneous in fact and in law.

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DATED at Wellington this 25th day of February
1969

E. J. CARROLL

Solicitor for the Appellant

TO: The Registrar of the Court of Appeal

TO: The Registrar of the Supreme Court at
Christchurch

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TO: The Respondent and his solicitors,
Messrs. E. C. Champion and Somers,
P.O. Box 663, Christchurch.

REASONS FOR JUDGMENT OF NORTH P.

An appeal from the judgment of Wilson J. on a case stated under s.32 of the Land and Income Tax Act 1954.

The facts in the present case bear a close resemblance to the facts in Marx's and Carlson's cases which were heard by this Court in the same week, but on this occasion the learned Judge in the Court below came to the conclusion that s.108 of the Land and Income Tax Act 1954 did not render void the arrangement made by the respondent whereby he set up or arranged to have set up a family trust for the benefit of his wife and children. In this case Wilson J. was content to examine the facts on the basis that there was no substantial difference in effect between the Australian section and the New Zealand section. He reserved the question whether s.108 applied to cases where the taxpayer had completely divested himself of a particular source of income. On that basis he went on to consider whether the 'alteration' or 'relief' was achieved in a way which necessarily led to the conclusion that it was adopted so as to effect such alteration or relief otherwise than as an incident of ordinary business or family dealing. In limiting the case to this one question, counsel are agreed that Mr. Somers for the respondent did not concede - as the Judge stated - that if the arrangement was to be regarded as an arrangement to escape tax it was caught by s.108 in spite of the difference in language between the Australian section and the New Zealand section.

It will be convenient, however, to begin by considering whether the learned Judge was right in concluding as he did that the arrangement made by the respondent was capable of explanation by reference to an ordinary family dealing and was not, therefore, necessarily to be regarded as a means of relieving the respondent from his liability to pay income tax.

The principles which require to be

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considered in determining whether the purpose of the arrangement was the avoiding of taxation or whether the arrangement is capable of explanation by reference to ordinary business or family dealing without necessarily being labelled as a means of avoiding tax have been considered in a number of Australian cases, the most authoritative being the judgment of the Judicial Committee of the Privy Council in Newton v. The Commissioner of Taxation of the Commonwealth of Australia (1958) A.C. 10
450. Some of these references have been referred to in my judgment in Marx's and Carlson's cases and what I there said need not be repeated. It has always been recognised that the Australian section does not extend to the case of a bona fide disposition of property even although the motive of the taxpayer has been to relieve himself of the burden of income tax. Thus in Deputy Federal Commissioner of Taxation v. Purcell (1920) 29 C.L.R. 464, Gavan Duffy and Stark JJ. in their joint judgment said (p.473) : 20

"The section, as the Chief Justice says, does not prohibit the disposition of property. Its office is to avoid contracts, &c., which place the incidence of the tax or the burden of tax upon some person or body other than the person or body contemplated by the Act. If a person actually 30
disposed of income-producing property to another so as to reduce the burden of taxation, the Act contemplates that the new owner should pay the tax."

That was a case in which the Commissioner attacked a settlement made by a taxpayer for the benefit of his wife and children.

The approach that the Court is called upon to adopt was fully discussed by Lord Denning in delivering the judgment of the Board in Newton's case where he pointed out that the word "purpose" means, not motive but the effect which it is sought to achieve - the end in view": 40
(p.465). A little lower down on the same page, Lord Denning said:

"The answer to the problem seems to their

Lordships to lie in the opening words of the section. They show that the section is not concerned with the motives of individuals. It is not concerned with their desire to avoid tax, but only with the means which they employ to do it... In applying the section you must, by the very words of it, look at the arrangement itself and see which is its effect - which it does - irrespective of the motives of the persons who made it."

He continued (p.466) :-

"In order to bring the arrangement within the section you must be able to predicate - by looking at the overt acts by which it was implemented - that it was implemented in that particular way so as to avoid tax. If you cannot predicate, but have to acknowledge that the transactions are capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax, then the arrangement does not come within the section."

Now in the present case, it is of course abundantly clear that the respondent sought the advice of his accountant and solicitor to see whether anything could legally be done by him to reduce his burden of income tax. He was the owner of a farm of 385 acres situated at Methven in the Canterbury District used for sheep farming and mixed cropping, with the emphasis on cropping and he was told by his advisers that there was a method open to him, namely, by creating what he described as "a simple paddock Trust". It was not necessary for him to transfer any part of his farm to trustees for the benefit of his wife and children. All that he required to do was to set up a family trust and then each year lease to the trustees a paddock upon which it was intended to grow wheat. Under this arrangement he was paid for all the work involved in preparing the paddock for cropping; he was to sow the crop and he was to harvest it on behalf of the trust and out of the proceeds of the crop he was to receive rent and wages to cover the work he did. In accepting the lease the trustees virtually ran no risk; they were not called

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(continued)

upon to provide any capital, and all that happened was that when the crop was harvested and sold the proceeds went to the trustees less the rent, labour costs and the cost of the seed. A significant circumstance is that there is a Government guaranteed price for wheat operating in New Zealand and the only risk the trustees ran was that the crop might conceivably fail - a very unlikely happening. In result in the first of the two years with which we are concerned, the trustees' share of the proceeds of the sale of the crop amounted to £739.11.3d. and in the second year £631.0.10d. Wilson J., in his reasons for his judgment, laid emphasis on the fact that the rent charged by the respondent was a proper rent and the wages he received were at normal rates. This may be so, but I find it quite impossible to accept the argument for the respondent that the arrangement was capable of explanation as an ordinary business dealing. No sensible farmer would dream of entering into an arrangement of such a nature. Can it be capable of explanation as an ordinary family dealing? In my opinion it certainly cannot. No change occurred in the practical operation of the farm as a whole and all that happened was that a substantial part of the income from the farm was (in the words of Mr. Richardson) "siphoned off to the trust" with the result that the respondent paid considerably less income tax and the trustees probably escaped liability for any income tax. In my opinion, with all respect for the views expressed by Wilson J. this arrangement was obviously an attempt by the respondent to escape payment of income tax on what was really in truth his income. I am accordingly of opinion that if the New Zealand section is to be interpreted in a similar fashion to the Australian section the arrangement made by the respondent in each of the two years in question is caught by s.108 of the Land and Income Tax Act 1954.

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This being the view I take, I turn now to consider Mr. Somers' argument as to the true interpretation of s.108. In opening his submissions Mr. Somers, like Mr. Barton in the Marx and Carlson cases, made it plain that he desired formally to submit that Elmiger's case

10 ((1967) N.Z.L.R. 161) was wrongly decided, presumably with the object of being free to take this point if the case went further. He agreed of course, as he was bound to do, that we could not successfully so contend in this Court. His remaining argument proceeded on similar lines to the submissions that were made by Mr. Barton in the Marx and Carlson cases and I do not think it necessary to repeat what I there said. For the reasons I have given in those cases, in my opinion, the present arrangement is caught by the two limbs of the New Zealand section as it now stands.

20 In conclusion there are two matters which it is desirable I should mention. In the first place Mr. Richardson in this Court did not pursue the submission he had made in the Court below that the trust income had been derived by the respondent before the trustees received it. Secondly, Mr. Somers said that he did not propose to base any argument founded on the effects of the annihilation of the arrangement. Presumably he took this course because on the facts of this case it is plain that the disputed income did pass through the hands of the respondent.

For these reasons I am of opinion that the appeal should be allowed.

30 The members of the Court being unanimously of that opinion the appeal is allowed. The appellant will have his costs which are fixed at two hundred dollars (\$200.00) and all necessary disbursements, including the cost of printing.

"A.K. North P."

Solicitors for Appellant:

Crown Law Office, WELLINGTON.

Solicitors for Respondent:

Russell and Moon, ASHBURTON.

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No. 7

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REASONS FOR JUDGMENT OF TURNER J.

Reasons of
Turner J.

26th August
1969

For the reasons which I have given in my judgment in Marx v. Commissioner of Inland Revenue and Carlson v. Commissioner of Inland Revenue I am of opinion that the provisions of section 108 are not apt to catch the transactions proved in this case, since it, like Carlson's case and Marx's case, is a case in which the income for which it is sought to assess respondent was not in the event derived by him at all. I have expressed this view, and my reasons for it, in the judgment to which I have alluded, in which I conclude that the words "relieving any person from his liability to pay income tax" are not apt to catch such transactions. I adhere to that opinion. But since I am bound by the view of the majority against that which I have expressed, I must deal with this appeal upon the foundation afforded by the judgments of my brothers in the two earlier cases, and must proceed, accepting this, to consider whether, on this basis, Wilson J. was right in his inferences of fact when he concluded in the Court below that the transactions proved were capable of explanation by reference to ordinary family dealing. I agree with the President that Wilson J's view of the facts was untenable, for the following reasons. The lease of the 24-acre paddock was a lease for one year only. A disposition of an income-earning asset, if the primary reason for it were to provide income for members of the settlor's family might confidently be expected to be a disposition for a longer period than this. It was an essential part of this scheme that while the lease of the wheat paddock was for one year, in the following year another paddock was to be leased - and again another the following year. It was the rotation of crops, of course, which made this kind of thing necessary - but which at the same time made this kind of transaction one particularly unfitted to be the basis of a family trust providing assured regular income for its beneficiaries. I cannot think that successive one-year leases of that particular paddock of the farm which by crop rotation

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happened to be the wheat paddock can be described as an ordinary family dealing, a typical family trust. I find it difficult, too, to accept Wilson J's conclusion that the rent charged for the paddock was realistic. The profit made undermines such a conclusion. It may well be that the rent, calculated on a basis of arithmetical average with reference to the area involved and the comparative area of the whole farm may appear justifiable; but it is to be remembered that the paddock leased was always the very paddock which in the particular year under consideration was ready for wheat - a highly profitable crop - and it seems to me that the rent charged for such a paddock in a particular year should have been greatly in excess of a mere arithmetical average. The whole scheme smacks of such business unreality that I cannot accept the conclusion of Wilson J; and for myself I am convinced that the only proper inference to be drawn from the facts of the arrangement, and of the profits resulting therefrom, is that this scheme was devised for the sole purpose, or at least the principal purpose, of bringing it about that this taxpayer should escape liability on tax for a substantial part of the income which, without it, he would have derived.

For myself, as I have said, I would not have thought the words of the New Zealand section apt to catch such a transaction; but being now bound in this regard by the decision of my brothers, I apply the test proposed by Lord Denning M.R. in Newton v. Commissioner of Taxation of the Commonwealth of Australia 1958 A.C. 450 on page 466, with the amendment which I myself proposed to meet the words of the New Zealand section in Elmiger v. Commissioner of Inland Revenue 1967 N.Z.L.R. 161 at page 187, and, applying that test, I have no hesitation in agreeing with the President that this appeal should be allowed.

"A.K. TURNER, J."

Solicitors for Appellant: The Crown Law Office,
WELLINGTON.

Solicitors for Respondent: Russell and Moon,
ASHBURTON.

In the Court
of Appeal

No. 7

Reasons of
Turner J.

26th August
1969

(continued)

In the Court
of Appeal

No. 8

No. 8

REASONS FOR JUDGMENT OF McCARTHY J.

Reasons of
McCarthy J.
26th August
1969

I agree with the other members of the Court that when the facts are looked at it is manifest that this is a case where it can be predicated that the arrangement was implemented in the way it was for the purpose of altering the incidence of and relieving the respondent from his liability to pay income tax. In this I differ from the conclusion of Wilson J., but I think that inescapable. 10

That leaves only the legal submissions which Mr. Somers advanced on the section when he argued that in any event it had no application when the income is diverted before receipt. These arguments covered the same ground as those we heard in the appeals of Marx v. Commissioner of Inland Revenue and Carlson v. Commissioner of Inland Revenue, and for the reasons I gave in those cases I reject them. 20

I would allow this appeal.

Solicitors for Appellant:

Crown Law Office,
Wellington

Solicitors for Respondent:

Russell and Moon,
Ashburton

FORMAL JUDGMENT OF COURT OF APPEAL

BEFORE:

THE RT. HON. SIR ALFRED NORTH, PRESIDENT
THE RT. HON. SIR ALEXANDER TURNER.
THE RT. HON. SIR THADDEUS McCARTHY.

TUESDAY, THE 26th DAY OF AUGUST, 1969.

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UPON READING the Case on Appeal filed herein and
UPON HEARING Mr. I.L.M. Richardson of Counsel for
the Appellant and Mr. E.J. Soners of Counsel for
the Respondent IT IS ORDERED that the
Commissioner acted correctly in making the
assessments referred to in paragraph 12 of the
case stated and that this appeal therefore be
allowed AND IT IS FURTHER ORDERED that the
abovenamed Respondent do pay to the abovenamed
Appellant the sum of Two hundred dollars for
costs and Fifty-seven dollars for disbursements.

By the Court

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G. J. GRACE

L.S.

Registrar

In the Court
of Appeal

NO. 10

No. 10

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

Order
Granting
Final Leave
21st November
1969.

Friday 21st November 1969

Before the Rt. Hon. Mr. Justice North President
the Rt. Hon. Mr. Justice Turner
the Rt. Hon. Mr. Justice McCarthy

UPON READING the notice of motion of the Respondent dated the 14th day of November 1969 and the affidavit of John Barry O'Regan 10
AND UPON HEARING Mr. O'Regan of Counsel on behalf of the Respondent and the Solicitor-General and with him Mr. Cain of Counsel on behalf of the Appellant THIS COURT HEREBY ORDERS that final leave to appeal to Her Majesty in Council upon the judgment of this Honourable Court delivered 26th day of August 1969 be and the same is hereby granted to the Respondent.

By the Court

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C. J. GRACE

L.S.

Registrar

E X H I B I T SEXHIBIT 1ACCOUNT OF APPELLANT

Exhibit 1

Account of
Objector.

Dr. to O. T. Mangin
Costs incurred in providing land,
working and heading 25 ac. wheat

	18.3.65/23.3.65	Skim Ploughing	£25.	0.	0.
	3.4.65	Heavy Rolling	6.	5.	0.
	19.4.65/21.4.65	Grubb Harrowing	12.	10.	0.
10	29.4.65	Grubb Harrowing	6.	5.	0.
	1.5.65	Harrowing	3.	2.	6.
	13.5.65/20.5.65	Deep Ploughing	25.	0.	0.
	17.6.65	Grubbing	6.	5.	0.
	18.6.65	Drilling	8.	0.	0.
		Seed 50 bus Arawa at 15/-	37.	10.	0.
		Manure 36 cwt at 10/- cwt.	18.	0.	0.
20	5.2.66	Heading 1/- bus 1608 bus	80.	8.	6.
		Sacks 536 at 3/8	98.	5.	4.
		Lease of Field £3 per acre	75.	0.	0.
		Total cost:	£401.	11.	4.

Exhibit 2

EXHIBIT 2

Credit Note

CREDIT NOTE

2nd March 1966

Post Office Box 207 CASSELL STREET, Telephones
 969
 CHURCHURCH 1, 2nd March 1966. Office 42-556
 Private 518-275
 Codos:
 Bentleys Acme
 Telegraphic Address:
 "BLACKSCOT", Ch.Ch.

Mangin Trust,
 c/o Mr Owen T. Mangin,
 No 2 R.D. RAKAIA.

No 2034.

CREDIT BY . . .

D U N C A N M C F A R L A N E L T D .

Duncan McFarlane Limited take the utmost care to supply seeds true to name and genuine quality, but give no warranty and will not in any way be responsible for the crop. It is on these strict terms only that all offers are made and orders executed. In ordering the goods it is clearly understood their customers implicitly acknowledge these strict terms as binding, whether they receive this notice before or after receipt of the goods

By:					
536 sacks	2/3	71	9	4	
Arawa Wheat = 1622 ¹² / ₁₀₀ bushels	14/4	1162	11	6	
		1234	0	10	
Less: Weighing £1/10/-.					
Levies £11/8/3.					
Cartage £73/14/-		86	12	3	
Gross weight 44T. 1 cwt.					£ 1147 8 7

EXHIBIT 3LETTER OF PYNE GOULD GUINNESS LTD.

Ashburton, N.W.

18th March 1966

Exhibit 3

Letter.

18th March
1966

Mr. O.T. Mangin,
No. 2 R.D.,
RAKATA.

Dear Mr. Mangin,

We enclose the following cheques:-

- 10 (a) £401.11.4. made out in your own name being
the expenses of working and heading 25
acres of Wheat. You will recall that
when you submitted to us figures and
costs of this work a figure of
£421.11.4. was mentioned. On checking
the figures it was found that they
totalled only £401.11.4. Perhaps
there was an item missed from your list
of costs. As only £20 is involved
20 the matter is not important but we
could perhaps discuss this with you
next time you are in town. If the
correct amount is £421.11.4. the payment
of the extra £20 can easily be arranged.
- (b) £652.0.0. in the name of Mrs. Mangin. This
cheque is made up of a payment of
income of £52 to your wife and a payment
of £300 to each of your two children.
30 The payment of the latter amount is made
to Mrs. Mangin as parent of the children.

It would be appreciated if you would ask
Mrs. Mangin to sign in her capacity as our
Co-Trustee and return to us the enclosed
minute of appropriation.

From perusal of our records we note that
we do not have details of the names and dates
of birth of your two children. If you would let
us have this information it would be
appreciated and we would then be able to put

Exhibit 3

Letter

18th March 1966
(continued)

the childrens correct initials on the minute
of appropriation.

Yours faithfully,

PYNE, GOULD, GUINNESS LTD.

"R. D. McGurk"

Trust Manager

RDMcG/JJH

EXHIBIT 4

GOVERNMENT VALUATION CERTIFICATE

Exhibit 4

Valuation
Certificate

Please read the other side of this notice.		VALUATION REFERENCE		OCCUPIER WITHIN THE MEANING OF THE RATING ACT	
It will be helpful if this reference is quoted in all matters or inquiries relating to this property or valuation.		2439	MANGIN, Owen Thomas, Farmer, No.2 R.D. RAKATA.		13467
		440	2439/503,502/1 ASHBURTON RABBIT DIST		
THE VALUATION		C/Ts. 886/17	SOUTH CANTERBURY CATCHMENT DIST.		
Value of the improvements	7330	14660	130	Fg Cg Gg	
Unimproved value	28430	56860	Trees £		
Capital value	35760	71520	260		
	Pounds £	Dollars \$	Trees \$	Nat.of Impts.	
Abbreviations used in this notice are: "Trees" - "Planted trees (other than fruit trees and live hedges) and trees preserved for shelter or ornament" - (non-rateable). "Timber" - "Millable trees of commercial worth." "C/Ts." - "Certificate of Title(s) - Vol./Folio." "Nat. of Impts." - "Nature of Improvements." "Dwg." - "Dwelling." "Bdgs." - "Buildings." "O/Bs." - Other Buildings." "Fg." - "Fencing." "Gg." - "Grassing." "Dg." - "Draining." "Ct." - Cultivation." "Cg." - "Clearing." "O/I." - "Other Improvements."		2439 440	Owner OCCUPIER.		Cl
Description		Lot 1 D.P.21623, Lot 2 D.P.21623 Pt R.S.26904 Blk VIII Sparxton.		3467	
		385-1-33		AREA	
		(Acres, roods, perches, or poles)			

THE following is a very general explanation of terms used in this notice which are defined in full in section 2 of the Valuation of Land Act 1951:

UNIMPROVED VALUE is the market value at the date of valuation, as if no improvements had been made on the land.

IMPROVEMENTS include buildings, fences, grassing, etc., and generally all work done or paid for by any owner or occupier which, at the date of valuation, adds to the value.

VALUE OF THE IMPROVEMENTS is the added value the improvements give to the land at the date of valuation.

CAPITAL VALUE is the market value at the date of valuation.

EXHIBIT 5ACCOUNT OF APPELLANTExhibit 5Account of
Appellant.

O. T. Mangin Family Trust

Paddock C 24 ac. Hilgendorf Wheat

Account to 31.3.67

Rent £96. 0. 0.

Contracting Charges

Preparation of Ground

Grubbing, Harrowing, Ploughing
etc. 57. 0. 0.

10 Seed 60 bus Dressed 55. 10. 0.

Super 48 cwt 24. 0. 0.

Heading - Cartage to Bulk Shed 60. 0. 0.

£292. 10. 0.

Less Amount Owing

by O. T. Mangin

Charged in Error by D. McF. £166. 5. 0.

£126. 5. 0.

Certificate of
Registrar of
Court of Appeal
as to Accuracy
of Record.

CERTIFICATE OF REGISTRAR OF COURT OF
APPEAL AS TO ACCURACY OF RECORD

I, GERALD JOSEPH GRACE, Registrar of the Court of Appeal of New Zealand DO HEREBY CERTIFY that the foregoing 83 pages of printed matter contain true and correct copies of all the proceedings, evidence, judgments, decrees and orders had or made in the above matter, so far as the same have relation to the matters of appeal, and also correct copies of the reasons given by the Judges of the Court of Appeal of New Zealand in delivering judgment therein, such reasons having been given in writing: AND I DO FURTHER CERTIFY that the appellant has taken all the necessary steps for the purpose of procuring the preparation of the record, and the despatch thereof to England, and has done all other acts, matters and things entitling the said appellant to prosecute this Appeal.

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AS WITNESS my hand and Seal of the Court of Appeal of New Zealand this 20th day of January 1969.

(sgd) G. J. GRACE

L.S.

Registrar

IN THE PRIVY COUNCIL

No. 3 of 1970

O N A P P E A L
FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N :-

OWEN THOMAS MANGIN

Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE

Respondent

RECORD OF PROCEEDINGS

BLYTH, DUTTON & CO.,
Hastings House,
10 Norfolk Street,
Strand,
London, W.C.2.
Solicitors for the
Appellant.

MACKRELL & CO.,
31 Bedford Street,
Strand,
London, W.C.2.
Solicitors for the
Respondent