SUPREME COURT OF QUEENSLAND

CITATION:	***Hardman v. Hobman*** **[2002] QSC 112**
PARTIES:	**DAVID JOHN HARDMAN** (Plaintiff) v **LEVINA RHODA HOBMAN** (Defendant)
FILE NO:	Mackay 93 of 2001
DIVISION:	Trial Division
DELIVERED ON:	25 March 2002
DELIVERED AT:	Rockhampton
HEARING DATES:	16, 17 October, 17 and 18 December 2001
JUDGE:	Dutney J
ORDERS:	**That after payment to the plaintiff of the sum of $16,000 the balance of the money held in the trust account of Jenny Hamilton & Associates on behalf of the parties jointly be paid to the solicitors for the defendant.** **That the caveats lodged by the plaintiff over the land described as Lots 22 and 23 on RP748731 in the county of Nares parish of Johnstone and being the whole of the land contained in certificates of title Volume N1413 folio 69 and N1413 folio 70 be removed.** **Costs reserved. In the event no written submissions concerning costs are received by 4pm on 2 April 2001 there will be no order as to costs.**
CATCHWORDS:	TRUSTS – Constructive trusts – De facto relationship – Nature and extent of relationship – Wh an intention by

the parties that their property interests remain separate is necessarily a bar to the imputation of a trust – Wh non-financial contribution to subdivision of land with a consequent enhancement of land value entitles former de facto to an interest in the land or of the profits.

Turner v. Dunne [1996] Q.C.A. 272 – FAA
Hibberson *v George* (1989) 12 Fam LR 725 - CON
Green v Green (1989) 17 NSWLR 343 – CON

COUNSEL: Mr A C Wrenn for the Plaintiff
Ms M. Pagani for the Defendant

SOLICITORS: Plaintiff self represented
Jenny Hamilton & Associates for the Defendant

[1] **DUTNEY J: The** plaintiff and the defendant were at one time involved in a de facto relationship as a consequence of which the plaintiff claims an interest in the property, the acquisition or retention of which he says he contributed to during the course of that relationship.

[2] The nature and extent of the relationship is in dispute between the parties. The plaintiff alleges that the couple lived in a de facto relationship from December 1984 until September 1993. He further alleges that subject to separations bought about by work circumstances throughout the relationship he and the defendant resided together as if man and wife and agreed, or it was their common intention, that they would devote their respective earnings to the recurrent and day to day expenses of the joint household. The plaintiff further alleges that it was their common intention to invest in and accumulate assets for the enjoyment use and benefit of both the parties. In contrast, the defendant, while admitting she enjoyed

a sexual relationship with the plaintiff during the period he alleges, says that they lived together full time only for a period of about 18 months from 1988 until 1989. She further says that any pooling of resources was conditional on the parties marrying. As the plaintiff was not prepared to marry her, the defendant says that their respective assets remained separate.

[3] The principle asset in relation to which the plaintiff makes a claim is a parcel of land at Germantown Road, Mena Creek, of approximately 84 acres described as Subdivision 10 Portion 21 County Nares Parish Johnstone ("the englobo land").

[4] The englobo land was the property of the defendant and her former husband. Sole title was transferred to the defendant in 1987 as part of the property settlement between the defendant and her former husband. This was during the period the plaintiff claims the parties enjoyed a conjugal relationship.

[5] Before examining the relationship itself it is necessary to give some consideration to the principals to be applied in the resolution of this dispute.

[6] This action predates the amendments to the *Property Law Act* dealing with de facto property and consequently comes to be resolved by reference to cases on the law of Trusts.

[7] In *Turner v. Dunne* [1996] Q.C.A. 272 Pincus JA at page 7 summarised the law as follows:

> *"The most important source of authority as to the principles upon which the Court should act in such cases is the principle judgment in Baumgartner v. Baumgartner (1987) 164 CLR 137. That establishes or confirms the first three of the following propositions which are of present relevance;*
> *1. A constructive trust may be imposed even though the person held to be trustee had no intention to create a trust or to hold property on trust.*
> *2. An intention to create a trust may be imputed where it is necessary to do so "in good faith and in conscience".*
> *3. A principle, which may be applied, is that which restores to a party contribution made to a joint endeavour, which fails, when the contributions have been made in circumstances in which it was not intended that the other party should enjoy them.*
> *4. Contributions, financial and otherwise, to the purposes of the joint relationship are relevant for this purpose.*
> *The question raised by point 4, wether contributions other than those of a financial kind have to be taken into account when determining whether a trust should be imputed, was answered affirmatively by Deane J in Muschinski v. Dodds (1986) 160 CLR 583 at 622. In the Baumgartner judgment mentioned above, there is a reference to earnings which the woman would have made during the period of three months when she was having and caring for a child of the relationship; it appears to have been accepted that the woman was entitled to be credited with that sum, although it could not possibly be thought of as a financial contribution. In Bryson v. Bryant (1992) 29 NSWLR 188 at 201, Kirby P (as he then was) quoted with approval part of the reasons of Deane J in Muschinski to which I have referred as so (as it appears to me) did Sheller JA at 219; Samuels A-JA was of contrary opinion (227)."*

[8] Pincus JA concluded that the trial Judge in *Turner v. Dunn* was correct in taking into account non-financial contributions by the parties.

[9] In the same case in a separate judgment Macrossan CJ at page 3 identified the source of the Courts power to adjust property interests in these terms:

"The authorities indicate that in cases of this kind the basis of the Courts entitlement to intervene and declare a trust must be a finding of unconscionable conduct: see eg Baumgartner v. Baumgartner (1987) 164 CLR 137 at 148-149."

[10] I consider *Turner v. Dunne* to be an authority for the proposition that non financial contributions in an appropriate case ought to be taken into account in a case such as this for the purpose of determining the respective entitlements of the parties to a de facto relationship to the property brought to or accumulated during the relationship.[1] The extent to which they should be taken into account in any alteration of the legal interests in property is however a matter to be determined by reference to the particular facts of the case. This is simply another way of saying that a constructive trust with respect to an interest in property in the name of one party to a relationship may be created in favour of the other party where the demands of equity and good conscience so require having regard to the contribution (both financial and non-financial) made to the acquisition or retention of the property by the party in whose favour the trust is declared.

[11] The defendant brought to the relationship an entitlement to a property settlement with her former husband that was later translated into the englobo land at Mena Creek which was valued at the time of the property settlement at $152,500.00. She also brought with her in the same way from her former marriage a 1983 Ford Falcon motor vehicle and a sum of approximately $6,000 in cash.

[12] At the time the plaintiff says the relationship commenced his property comprised a fishing license which was later sold for a net amount of $19,000, a 16 foot dory, "Mutchilba", a ten year old Holden Kingswood and some furniture.

[13] At the time the relationship commenced the defendant was employed on a full time basis as a physiotherapist. She remained working in that capacity throughout the relationship and still does.

[14] At the time the relationship commenced the plaintiff was unemployed and receiving unemployment benefits. He ceased claiming unemployment benefits at the end of 1987.

[15] The defendant has had two periods of self-employment during the course of the relationship. The first was a fishing venture with a vessel, "Kismet" and the second was for a period of eighteen months at the end of the relationship when the plaintiff farmed Paw Paws on the Mena Creek property.

[16] During the course of the relationship the parties acquired various pieces of property the most significant of which were the vessel "Kismet", a Jaguar motor vehicle and a 1990 Toyota one tonne utility.

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[1] Any intention of the parties that their property interests remain separate is not necessarily a bar to the imposition of a trust: Hibberson *v George* (1989) 12 Fam LR 725 and *Green v Green* (1989) 17 NSWLR 343 at 368, both of which were cited by Pincus JA in *Turner v Dunne* (supra) at page 8.

[17] At the conclusion of the relationship the parties assets comprised two of the four parcels of land into which the Mena Creek property had been subdivided, a property at Adina Street in Cannonvale, "Kismet", "Mutchilba", the 1990 Toyota utility, the Jaguar motor vehicle, a Massey Ferguson tractor, furniture and farm equipment and about $20,500 in savings. There was an argument about whether or not there was also a valuable quantity of standing timber on the balance of the Mena Creek property but I am not persuaded on the evidence that such a quantity of timber ever existed.

[18] Throughout the relationship the defendant contributed her earnings to the joint property pool. As far as the plaintiff is concerned his direct financial contribution was minimal. Mr Hardman conceded in evidence that while the fishing venture kept its head above water any profits were minimal. The paw paw growing venture was said to be profitable but Mr Hardman was unable to give any real indication of the extent of either the sales or the profit. I conclude that most of what was earned from the paw paw venture was used by Mr Hardman for his own expenses whilst he was living on the Mena Creek property. Although the income was paid into an account in the name of the defendant's son I find that it was largely used for the benefit of the plaintiff and the defendant's son drew on it in the main only in relation to the costs of farming the paw paws. The fact that the venture was either only marginally profitable or else that the profit was retained by Mr Hardman is bourn out by the continuation of the overdraft which was ultimately repaid from the proceeds of the sale of the property at Adina St.

[19] Of the property brought by the plaintiff into the relationship the fishing license was sold and $15,000 of that put towards the purchase of the Kismet. The balance of $4,000 is said to have gone to joint funds. It does not seem to me to matter whether it was then used to pay the defendant's legal expenses as stated by the plaintiff or for general household purposes. The Holden Kingswood motor vehicle was retained throughout the relationship and eventually dumped as worthless. The "Mutchilba" was ultimately sold for about $3,000 and the plaintiff retained the proceeds. The furniture always had minimal value.

[20] The only other direct financial contribution made to a specific asset was an amount of $16,000 which the plaintiff borrowed from his parents and which was applied to the purchase of the property at Adina Street, Cannonvale.

[21] The "Kismet" was purchased in 1985 with an amount of $15,000 coming from the proceeds of the sale of the plaintiff's fishing license and a further sum of about $12,000 borrowed from the bank. Eventually the "Kismet" was sunk, accidentally, in Mourilyan harbour, removed to the property at Mena Creek where it was found to be uneconomic to repair and was ultimately burnt. Apart from some salvaged equipment, which seems to be still on the property it ultimately had no value.

[22] The defendant retained the Jaguar motor vehicle.

[23] The Toyota one tonne utility was eventually sold for about $11,200 or $11,300 by the plaintiff who retained the proceeds of sale after the relationship had terminated. The Massey Ferguson tractor was also sold for about $3,000 and the proceeds retained by the plaintiff.

[24] This leaves in the way of assets of any consequence the Mena Creek Property and the property at Adina Street, Cannonvale.

[25] As I have indicated the Mena Creek Property came into the relationship as a result of being transferred to the defendant as part of her property settlement with her former husband. The property was then a single parcel of about 84 acres. After first putting the property to the market as a single parcel the parties moved to the property as their principal place of residence and commenced the process of subdividing it into four lots. This subdivision was completed in about 1989 when the property was divided into lots 21, 22, 23 and 24 on registered plan 748731.

[26] Lot 21 sold in September 1989 for a sum of $80,000. This amount was dispersed as follows:

- payment of balance owing for Kismet loan $7,000
- purchase of Jaguar motor vehicle $13,600
- costs associated with shifting a shed $5,000.

The balance was used to pay the costs associated with the subdivision including agents fees, council fees, valuers fees and solicitors fees. There was about $15,000 surplus which the defendant alleged was used as part of the paw paw venture although there is no direct evidence of this and for present purposes I propose to treat it as money applied to joint account.

[27] Lot 24 was sold on 21 September 1990 for $77,500 and ultimately $72,911.48 was deposited into the parties' joint account on that date. Out of those funds the Toyota one tonne utility was purchased for $17,300 and $50,000 was contributed towards the purchase of the Adina Street property.

[28] Lots 22 and 23 remain. They are presently subject to a caveat lodged by the plaintiff. As to the value of the remaining land there are two valuations in evidence. The first is by a Mr Eales a valuer from Townsville and the second by Mr Dickson a valuer from Cardwell. Mr Eales values the remaining land as at 10 June 2001 at $260,000 and the original parcel had it remained as a single lot at the same date at $317,500. Mr Dickson on the other hand values the remaining land at $219,000 and the whole land as a single parcel at the same date at $165,000. The apparent anomaly in Mr Dickson's valuation is explained by the state of the market. The englobo land is now too marginal to be of use as a cane farm. Its highest and best use is as rural residential land. For this purpose, the size of the block is largely irrelevant and two smaller blocks are more valuable than one larger one.

[29] Mr Eales justifies his higher value of the englobo land on the basis of its potential for rural residential subdivision. Mr Dickson points out, however, that changes to planning laws mean that it now would not be capable of subdivision into four blocks if it was still a single parcel.

[30] Having heard both valuers and having heard Mr Dickson's explanation as to why the larger parcel of land would be worth less than two smaller parcels I accept the evidence of Mr Dickson. Mr Dickson appeared to me to have an intimate knowledge of the particular area and its problems from a valuer's point of view. The valuation seems to me to be based on features of the specific land whereas Mr Eales' valuation seems more based upon a comparison with other sales and ignoring the specific features of this property. On the whole I think Mr Dickson's valuation is more reliable as an indicator of the present value.

[31] The plaintiff claims an interest in the Mena Creek land that remains by virtue of his claimed contribution to the subdivision and the consequent enhancement in value of the land. Mr Hardman says that it was originally his idea to subdivide the land and he claims that the work he put in included renovating the farm house, grass and weed eradication and control, cleaning up and cultivating ground in preparation for cultivation of crops, installing and maintaining plumbing and irrigation, renovating the derelict barracks, constructing a new shed, securing and obtaining a water supply for the property by arranging the sinking of a bore near

the old barracks, substantial improvements to the house structure erected upon the property, conducting all negotiations in relation to the subdivision, preparing all correspondence relating to the subdivision and attending to matters in relation to the subdivision including seeking advice from his father who was a civil engineer.

[32] The defendant disputes the extent of the plaintiff's contribution although it seems undoubted that he was involved in the organisation of the subdivision and I accept that he was the instigator and driving force. Documents in relation to the subdivision were necessarily signed by the defendant as the registered proprietor. Her day to day involvement was limited by the fact that she held full time employment. The realised profit from the subdivision ultimately came to be represented by the Adina Street property, the Toyota and the Jaguar. These assets were largely acquired from the surplus proceeds of sale after meeting the expenses of subdivision and sale. Having accepted Mr Dickson's evidence that the englobo land would have been worth less than the remaining two lots it follows that the assets bought with the proceeds of sale plus the increase in value of the remaining lots over the parcel as a whole represent the profit from the venture.

[33] The Adina Street property was purchased by using $50,000 of the proceeds of sale of the two lots at Mena Creek that were ultimately sold plus $16,000 that was

borrowed by the plaintiff from his father with the balance being contributed by the bank.

[34] The defendant ultimately left Mena Creek to live in Mackay at about the beginning of 1990. The plaintiff has had the sole use and occupation of the Mena Creek property since that time. That now represents a period of about 12 years during which time he has made no financial contribution to the rates or other expenses of the property and at least since 1993 has made no contribution to maintenance. Since 1994 the rates have been paid out of the proceeds of the sale of Adina Street.

[35] The Adina Street property was sold in 1994. The sale price was $135,000 of which $54,477.49 was used to pay out the mortgage to the Commonwealth Bank in addition a further sum of $19,641.13 was used to pay out a Commonwealth Bank overdraft which had been obtained to enable the plaintiff to carry on his paw paw farming venture. After payments of agent's commission and outstanding rates a sum of about $50,000 was deposited in trust to await the outcome of these proceedings. The amount held in trust is now around $65,000.

[36] I have necessarily dealt with these matters in a very broad-brush way. It seems to me that equity and good conscience does not require a precise accounting of the relationship between these parties.

[37] It does not seem to me to be necessary to resolve precisely the nature of the relationship for that part of the period from 1984 to 1993 when the plaintiff and defendant were not residing together full time. Nonetheless, the parties' separation during the balance of the period seems to me to have been a matter of their respective circumstances particularly in relation to work opportunities and did not affect the nature of their relationship. I would regard the de facto relationship as subsisting throughout the period from 1984 until 1993.

[38] In essence the case seems to me to resolve around the extent to which the plaintiff's contribution entitles him to an interest either in the remaining Mena Creek property or in the trust account proceeds of the sale of the Adina Street property. Apart from the financial contributions to which I have referred his contribution seems to comprise his working on the property at various times, his contribution to the subdivision of the Mena Creek property, his provision of fish from the fishing venture and paw paws from the farming venture to the family and teaching the defendant's son to fish and subsequently to farm when the paw paw venture was carried out.

[39] From the defendant's point of view the arguments seem principally to revolve around the fact that the plaintiff has made no significant financial contribution. That he has had 12 years use of the property, or at least 9 since the relationship terminated during which period he has made no contribution to the property or paid any rent or any other amount for the right to reside there.

[40] The defendant also relies to defeat any claim by the plaintiff on the fact that she paid the mortgage payments on the Adina Street property for a period from the termination of the relationship until the house was sold without any contribution from the plaintiff.

[41] Additionally the defendant says that the plaintiff has already obtained substantial benefits from the relationship including proceeds of sale of the Toyota utility and the Massey Ferguson tractor and any profits from the paw paw farming and fishing. As far as the contribution of the proceeds of sale of the fishing licence is concerned, the investment in "Kismet" was for the benefit of the plaintiff. That the boat was lost while under the care of the plaintiff and its loss does not entitle the plaintiff to further consideration for that contribution.

[42] The plaintiff claims an interest of 50% in the remaining Mena Creek property and seeks a declaration as to his rights in respect of other property.

[43] By way of counterclaim the defendant seeks a declaration that she is entitled to 75% of the funds presently held in the trust account together with a sum equivalent to one half of the mortgage payments made by her. She seeks a declaration that the plaintiff holds on trust wholly for her the proceeds of sale or salvage of "Kismet", the proceeds of sale of timber cut from the Mena Creek

property, the proceeds of sale of the tractor and the proceeds of sale of the Toyota utility vehicle.

[44] By way of further orders the defendant seeks an order for payment of 75% of the balance of the trust account, payment of the sum of representing one half of the mortgage payments on the Adina Street property, interest at 6% on the amount representing half the mortgage payments on Adina Street and an amount representing the total proceeds of sale of the other property about which she seeks a declaration.

[45] I should say something about the claim for the standing timber. In recent years the plaintiff has acquired a bench saw and obtained some money from milling rainforest timber. The defendant asserted that the property was well covered with valuable standing timber including, for example, 2000 20-year-old *pinus Carribean*, 100 20 year old *eucalyptus grandis*, and other commercial timbers.

[46] A Mr Croker provided a valuation of timber at $21,000. Mr Croker relied for the quantities and types of trees on a letter from a Mr Moyle from Ray White at Innisfail. Mr Moyle in turn relied for type and quantity on what he was told by the defendant.

[47] As far as the *pinus carribean* are concerned, Mrs Hobman's estimate is based on 100% survival of the trees planted by her and her husband prior to her relationship

with the plaintiff. Mr Hardman's evidence, which is supported by a valuation of a Mr Layt made in 1985, and which I accept on this point is that the great bulk of those plantings did not survive a cyclone some years ago and the number which grew was only about 600 most of which are still standing. A number of red cedar and black bean trees planted by the parties are also said to be still standing. The plaintiff further said that he did not regard the pine trees as valuable. Whether they were or not would depend on the size and other features of the trees. There is no evidence about that except from Mr Hardman. In any event he says he did cut about 10 trees for practice when he first acquired the saw. I accept this. Mr Hardman denies any other significant timber existed on the property. While he admits that sawn timber was in the shed from time to time he said that it mostly came from trees bought or "stolen" from nearby properties. There is simply no credible evidence that the timber claimed ever existed and it is for that reason I reject that claim.

[48] At this point I should say that I was not particularly impressed by either party as a witness. Mr Hardman was in my view evasive and deliberately vague in his evidence. He made many statements in relation to the nature and extent of his contributions which, when they were pursued he was unable to substantiate or quantify. Mrs Hobman on the other hand, from my observations, allowed her bitterness towards the plaintiff to colour her evidence. She was reluctant to concede any point concerning contribution from Mr Hardman. Her bitterness is perhaps understandable since she regards Mr Hardman as having enjoyed the

exclusive benefit of her land for a very long period while she has had to support herself in rented accommodation. Doing the best I can, the facts as I have set them out represent my findings in relation to the evidence.

[49] Adopting, as I said, a broad brush approach and applying the principles to which I have referred earlier it seems to me that conscience does not require that the contribution made by the plaintiff to the Mena Creek property should be represented by a legal interest in that property. My reasons for so concluding are as follows.

[50] The contribution made by the plaintiff to the property apart from in relation to the subdivision itself has been more than compensated by his having had exclusive occupation of that property for the period he has. I am further influenced in this conclusion by his failure to maintain the property by the payment of rates (which have been met from the money in trust) or by his care of the dwellings on the property during the period of that occupation. The burden of these costs has and will fall on the defendant.

[51] The contribution of the plaintiff towards the subdivision of the property and the profit derived therefrom is more than adequately represented by an interest in the funds in trust.

[52] The extent of the plaintiff's interest in the funds in trust should take account of the benefits he has already derived by obtaining for his own use the Toyota motor vehicle, the tractor, the "Mutchilba" and what if anything he retained from the salvage of the "Kismet".

[53] Accordingly I propose to declare that the plaintiff has no interest in the property described as Lots 22 and 23 on registered plan 748731 in the County of Nares Parish of Johnstone being the land contained in Certificates of Title Volume N1413 Folio 69 and N1413 Folio 70.

[54] In relation to the claims by the defendant other than in relation to the proceeds of sale of the Adina Street property I am not satisfied that there are in fact any proceeds of salvage of the "Kismet" or that the timber which the defendant claimed was on the property was in fact on the property or was cut and sold by the plaintiff at a profit. In my view, the demands of equity and good conscience are satisfied if the proceeds of sale of the Adina Street property along with the extended period of exclusive occupation of Mena Creek are used to extinguish any claim the plaintiff might have to the remaining two lots.

[55] Having regard to the duration of the relationship and such contributions as the plaintiff made during the course of it I consider he is entitled to some interest in profits that were made at least in part by his efforts. The amount presently in trust is about $65,000. Included in that is the unrepaid loan of $16,000 which the

plaintiff borrowed from his father. It seems doubtful whether that money is still repayable. The evidence suggests that the plaintiff's farther has died and the estate is not pursuing the debt. Nonetheless it is technically repayable. If the debt is not repaid to the plaintiff's father's estate it represents, after allowing the defendant credit for the mortgage payments she made at Adina Street after the relationship terminated nearly half of the realised and retained profit from the subdivision at Mena Creek. Having accepted the valuation evidence of Mr Dickson that the two remaining blocks of land at Mena Creek are worth more than the whole original parcel there remains an unrealised profit in the subdivision. The orders I propose will not give the plaintiff any interest in this unrealised profit.

[56] Allowing the plaintiff the sum of $16,000 means that from his contribution to the relationship he will have derived 9 years rent free accommodation at Mena Creek, the Toyota sold for $11,300, whatever he made from the paw paw farming venture, the proceeds of sale of the Massey Ferguson tractor and $16,000 from the sale of Adina Street. Against this he might have a liability to repay the $16,000. Whether this is so or not I consider this outcome more than recognises the contribution that I found the plaintiff made to the relationship.

[57] It follows that caveats lodged over the property by the plaintiff should be removed.

[58] I consider it appropriate that no order for costs be made.

[59] Despite being couched in trust terms the action was one for resolution of property issues consequent upon breakdown of a personal relationship. Neither party has achieved all that they set out to achieve in the litigation. If the matter involved a couple who were married and proceeded in the Family Court no costs would have been awarded.[2] But in my view that position should not depend strictly upon whether or not the parties were married. For those reasons I consider that no order as to costs ought to be made.

[60] Since I have not heard the parties on costs I will allow them the opportunity to persuade me that another order is appropriate. I propose to make the orders I have indicated but reserve the costs order for seven days. If either party wishes to make submissions on costs those submissions should be received in writing by my associate by letter or facsimile by 4pm on Tuesday 2 April 2001. If no submissions are received by that time there will be no order as to costs.

[61] The orders will be as follows:

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[2] Cost orders in the Family Court are governed by s117 of the Family Law Act which , subject to pre-trial offers, provides that in the usual case each party should pay their own. Sub-section (2A) provides a list of matters the Court is required to consider in determining whether the usual order is appropriate. These are:

- The financial position of each party.
- Whether either is legally aided
- The conduct of the parties in relation to the proceedings
- Whether the proceedings are consequent upon a beach of an order
- Whether either party is wholly unsuccessful
- Any offer made

If these criteria are applied in this case, this seems to be a clear case where no costs would be awarded.

(1) I order that after payment to the plaintiff of the sum of $16,000 the balance of the money held in the trust account of Jenny Hamilton & Associates on behalf of the parties jointly be paid to the solicitors for the defendant.

(2) I further order that the caveats lodged by the plaintiff over the land described as Lots 22 and 23 on RP748731 in the county of Nares parish of Johnstone and being the whole of the land contained in certificates of title Volume N1413 folio 69 and N1413 folio 70 be removed.

(3) I reserve the question of costs. In the event no written submissions concerning costs are received by 4pm on 2 April 2001 there will be no order as to costs.