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**ORIGINAL**

IN THE HIGH COURT OF AUSTRALIA

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\_\_\_\_\_  
CALCRAFT AND ANOTHER

V.

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CALCRAFT

**ORIGINAL**

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**REASONS FOR JUDGMENT**

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*Judgment delivered at* SYDNEY

*on* FRIDAY, 23rd AUGUST 1963

CALCRAFT AND ANOTHER

v.

CALCRAFT

ORDER

1. Appeal allowed.
2. Order that orders numbered one, two and three of the decretal order made by the judge at first instance on the 15th day of March 1963 be set aside and in lieu thereof order
  - (a) that in addition to the right of the applicant to occupy and use Flat No. 2, 72 New Beach Road, Darling Point, as provided in the will of the testator, the executors of the testator's will, upon the applicant's notifying them in writing that she desires to surrender her use and occupancy of the said flat and upon her vacating the same, pay to her during her widowhood the sum of Six pounds (£6) per week in lieu of the sum of Six pounds (£6) per week made payable to her under the will and codicil in the event of her ceasing to make the said flat her permanent place of residence;
  - (b) that in addition to the sum of Twelve pounds (£12) per week provided for her by the will of the testator during her lifetime, the executors pay to her during her widowhood the sum of Eight pounds (£8) per week, commencing from the 15th day of March 1963;
  - (c) that the additional sum of Eight pounds (£8) per week aforesaid be charged upon the income and corpus of property of the testator situated at

Numbaa and his property situated at Miranda provided that the executors shall be at liberty to sell either or both of such properties, in which case the net proceeds of sale of the said Numbaa property shall be retained by them subject to such charge as to both income and capital, and, out of the proceeds of sale of the Miranda property, the sum of Five thousand pounds (£5000) shall be retained by them and be subject to such charge as to both income and capital.

3. Order that the costs of all parties of this appeal be paid out of the estate of the testator.
4. Order that the executors of the said will do within fourteen (14) days after the sealing of this order produce to the District Registrar the probate of the said will with a true copy of this order endorsed thereon and lodge with the said District Registrar a separate copy of this order and that the said District Registrar do endorse on each of the said copies his certificate that the same is correct and do forthwith transmit the said separate copy so certified as aforesaid to the Registrar of Probates at the Supreme Court of New South Wales.

CALCRAFT AND ANOTHER

v.

CALCRAFT

JUDGMENT  
(ORAL)

JUDGMENT OF THE COURT  
DELIVERED BY McTIERNAN J.

CORAM: McTIERNAN J.  
KITTO J.  
TAYLOR J.

CALCRAFT AND ANOTHER

v.

CALCRAFT

The Court proposes that an order, an outline of which I give, should be made in this case and that the parties should submit minutes of the order to the Court when it is convenient for the Court and that upon the consideration of the minutes and the hearing of counsel, the Court would then make the order which it thinks should be made in the appeal.

The proposals of the Court are that clauses 1, 2 and 3 of the short minutes of order, appearing at p. 41 of the Appeal Book, should be deleted and that the widow's right to the use and occupation of the flat in Beach Road be a personal one and not as provided in clause 1 and, further, should she, during her present widowhood notify the trustees that she desires to surrender her right to the use and occupation of that flat, she is to be entitled as from the date of the surrender to be paid £6 per week during widowhood. Further, in addition to all other benefits, she is to be entitled to £8 per week during her present widowhood.

With regard to the securing of the benefit, that is a matter which the parties should discuss amongst themselves. If they are unable to make some agreement, the Court should consider that at the adjourned hearing. We think that provision should be made about that in the draft minutes which we ask the parties to file.

The carriage of the matters should be in the hands of the appellant, and the Court thinks that the costs should be paid out of the estate.

Of course, if the parties cannot agree upon draft minutes, each side should submit its draft.