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IN THE PRIVY COUNCIL

NO. 19 of 1966

UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED**  
 LEGAL STUDIES  
 FROM THE  
**15 MAR 1968**  
 25 RUSSELL SQUARE  
 LONDON, W.C.1.

ON APPEAL  
FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N:

~~BOOTS THE CHEMISTS (NEW ZEALAND)~~  
LIMITED and BOOTS PURE DRUG  
COMPANY LIMITED Appellants

- and -

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THE CHEMISTS' SERVICE GUILD  
OF NEW ZEALAND INCORPORATED Respondent

- and -

WILFRED FOSBERREY STILLWELL Pro Forma Respondent

A N D B E T W E E N:

THE CHEMISTS' SERVICE GUILD  
OF NEW ZEALAND INCORPORATED Appellant

- and -

BOOTS THE CHEMISTS (NEW  
ZEALAND) LIMITED and BOOTS  
PURE DRUG COMPANY LIMITED Respondents

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- and -

WILFRED FOSBERREY STILLWELL Pro Forma Respondent

CASE FOR THE APPELLANTS BOOTS THE CHEMISTS  
(NEW ZEALAND) LIMITED and BOOTS PURE DRUG  
COMPANY LIMITED

1. This is an Appeal (brought pursuant to final leave granted by the Court of Appeal of New Zealand by Order dated 4th July 1966) against a judgment of the Court of Appeal given and made on 8th February 1966 (in an action removed by consent from the High Court to the Court of Appeal) whereby it was ordered and declared that the Second-named Appellants Boots Pure Drug Company Limited (the Third Defendants in

p.82

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the action) were by reason of the admitted facts a wholesale dealer in drugs within the meaning and application of Section 13(1) of the Pharmacy Amendment Act 1954 and that accordingly the having by them of an interest in the business of a pharmacy proposed to be established by the First-named Appellants Boots the Chemists (New Zealand) Limited (the Second Defendants in the action) at Porirua would by reason of the admitted shareholding of the Second-named Appellants Boots Pure Drug Company Limited in the First-named Appellants Boots the Chemists (New Zealand) Limited be in contravention of the provisions of Section 13 of the Pharmacy Amendment Act 1954 and whereby it was further ordered that all the other applications of the Respondents The Chemists' Service Guild of New Zealand Incorporated (the Plaintiffs in the action) be refused and whereby it was further ordered that the First-named and Second-named Appellants should pay to the Respondents the Chemists Service Guild of New Zealand Incorporated the sum of £75 for costs and £63.17.0d. for disbursements. There is also a Cross-Appeal herein (brought pursuant to final leave granted by the Court of Appeal of New Zealand by Order dated 4th July 1966) whereby the Respondents the Chemists Service Guild of New Zealand Incorporated (the Plaintiffs in the action) are appealing against that portion of the said judgment of the Court of Appeal which refused their application for an order declaring "that the Second Defendant by reason of the admitted facts is a wholesale dealer in drugs within the meaning and application of Section 13(1) of the Pharmacy Amendment Act 1954 and accordingly the establishment or carrying on by the Second Defendant of business in a pharmacy at Porirua would be in contravention of the provisions of that section".

p.83

per Turner J.  
p.63,1.1.45-48

per McCarthy J.  
p.73,1.1.26-27

p.75,1.1.11-12

2. In this Case the abbreviations adopted by two of the learned Judges in the Court of Appeal will hereafter be followed and accordingly the First-named Appellants Boots The Chemists (New Zealand) Limited will be called "Boots N.Z." and the Second-named Appellants Boots Pure Drug Company Limited will be called "Boots U.K."

p.15,1.1.31 and  
p.16,1.1.14-15

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Boots N.Z., which has at all material times been the proprietor of several pharmacies in

ibid.

10 New Zealand, on 2nd November 1962 made written application to the Minister of Health pursuant to the provisions of the Pharmacy Amendment Act 1954 for consent to establish and carry on business in a pharmacy at Porirua. The proposed pharmacy was to form part of a new development in that town. An application for consent was made necessary by the provisions of Sections 3 and 4 of the Pharmacy Amendment Act 1954. So far as material these sections provide:

"3. Restriction on companies establishing pharmacies.

20 (1) Except as otherwise provided by this Act, no Company shall, except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority, establish or carry on business in a pharmacy:  
 ....."

"4. Restriction on persons carrying on business in more pharmacies than one.

30 (1) Except as otherwise provided by this Act, no person, either alone or in partnership, shall, except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority, establish or carry on business in more pharmacies than one:  
 ....."

40 Pursuant to Section 8 of the said Act the Minister transmitted Boots N.Z.'s aforementioned application to the Pharmacy Authority, that is to say to the Pro Forma Respondent Wilfred Fosberrey Stillwell who was and is the person appointed to the office of Pharmacy Authority pursuant to Section 6 of the said Act and whose statutory duty it is to consider such applications for consent. In exercising its functions the Pharmacy Authority is required to have regard to the public interest and the interests of the pharmaceutical profession and for those purposes is to ensure, as far as its authority under the Act extends, and as far as is consistent with the provision to the

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public of a full, efficient, and economic service in respect of the supply of drugs and pharmaceutical goods, that pharmacies are carried on by independent chemists owning and conducting their own businesses. It is also the duty of the Pharmacy Authority to give notice to the applicant and to all such other persons as in its opinion will be materially affected by its decision, of the date when and the place where any application forwarded to it by the Minister will be considered. Under the foregoing provision notice was given to the Respondents, the Chemists' Service Guild of New Zealand Incorporated (hereinafter called "the Guild"), which is a body duly incorporated under the Incorporated Societies Act 1908 and is an organisation formed by the owners of individual pharmacies who have banded together. The Guild thereupon gave notice of their intention to oppose the aforesaid application by Boots N.Z

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per McCarthy J.  
p.70, 1.1.30-33

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4. On 26th March 1963 the Guild launched in the Supreme Court of New Zealand (Wellington District Wellington Registry) the action out of which this appeal arises and by their Statement of Claim they sought (inter alia) the issue of a Writ of Prohibition directed to the said Wilfred Fosberrey Stillwell as Pharmacy Authority prohibiting him from taking further steps to hear and determine the said application by Boots N.Z. for consent to its establishing and carrying on business in a pharmacy at Porirua.

pp.1-6

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5. The Guild's action was brought against 1. the said Wilfred Fosberrey Stillwell in his capacity as Pharmacy Authority constituted by the Pharmacy Amendment Act 1954; 2. Boots N.Z; and 3. Boots U.K. The said Wilfred Fosberrey Stillwell filed no Defence and took no part in the said action save that at the hearing before the Court of Appeal on 11th November 1966 he appeared by counsel and his counsel having intimated that he did not desire to take part in the argument was given leave to withdraw.

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6. As the Guild's case against all the Defendants rested on Section 13(1) of the Pharmacy Amendment Act 1954 it will be convenient to set out its terms here:

"13. Certain persons not to have interest in pharmacy.

(1) The proprietor of a pharmacy or a wholesale dealer in drugs shall not have or acquire, whether in his own name or in the name of any nominee or by means of any device or arrangement whatsoever, any direct or indirect estate or interest in a business carried on in a pharmacy (other than a pharmacy of which he is lawfully the proprietor) whether by way of shares in a company, or by way of charge, loan, guarantee, indemnity, or otherwise, so as to affect the ownership, management, or control of the business carried on in that pharmacy:

Provided that nothing in this section shall apply to any estate or interest in existence at the commencement of this Act."

- 20 7. By their Statement of Claim the Guild alleged (Paragraph 3) that Boots N.Z. carried on in Wellington and elsewhere in New Zealand the business of chemist and druggist. This was admitted in the Statement of Defence of Boots N.Z. (Paragraph 1) and in the Statement of Defence of Boots U.K. (Paragraph 1). The Guild further alleged that Boots N.Z. was a wholesale dealer in drugs in New Zealand. This allegation was denied (Paragraph 4 of the respective Statements of Defence). In relation to Boots U.K. the Statement of Claim alleged (Paragraphs 4 and 7) that it carried on in England and elsewhere in the British Commonwealth the business of wholesale dealer in drugs and that it was a wholesale dealer in drugs and supplied drugs to retailers in New Zealand. These allegations were denied (Paragraphs 2 and 4 of the respective Statements of Defence). It was admitted that Boots U.K. holds 59,970 out of the 60,000 £1 shares issued by Boots N.Z. (Paragraph 5 of the respective Statements of Defence). It was further admitted that at the date of the filing of the Statement of Claim in the action Article 17 of Boots N.Z.'s Articles of Association had contained a Proviso to the effect no person might be appointed Managing Director of
- p.3  
p.21  
p.23  
pp.21 and 23  
pp.3 and 4  
pp.21 and 23  
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- p.21 and  
pp.23-24
- Boots N.Z. without the approval of Boots U.K. and that no such appointment could be terminated and its terms could not be varied without the approval of Boots U.K. But in fact the said Proviso was deleted from Article 17 by a special Resolution of Boots N.Z. passed on 28th May 1963 a memorandum of which was lodged with the Registrar of Companies on the following day. This fact was pleaded in Paragraph 6 of the respective Statements of Defence of Boots N.Z. and Boots U.K. and was never challenged by the Guild. 10
- p.4
8. The Guild's Statement of Claim went on to allege (Paragraph 10) that the carrying on by Boots N.Z. of a business in a pharmacy at Porirua would give to Boots N.Z. "being a wholesale dealer in drugs" a direct or indirect estate or interest in such business in breach of the provisions of Sections 13 and 15 of the Pharmacy Amendment Act 1954. The first of these sections has been quoted above. Section 15 is the offence-creating section and provides that any person who fails to comply with or does any act in contravention of any of the provisions of the Act, or any condition or obligation to which any power or authority granted under the Act is subject, commits an offence. By Paragraph 11 of the Statement of Claim it was alleged that the Pharmacy Authority had no jurisdiction to consent to the establishment and carrying on by Boots N.Z. of a business in a pharmacy at Porirua, in that such consent "would constitute a consent to a breach by Boots N.Z. as a wholesale dealer in drugs, of the provisions of the said Sections 13 and 15 of the Pharmacy Amendment Act 1954". (As hereinafter appears the Court of Appeal were of the opinion that this claim was misconceived in that the Pharmacy Authority had clear jurisdiction to deal with the said application of Boots N.Z. which was properly before it.) As a "second and alternative cause of action" the Statement of Claim alleged (Paragraph 12) that the carrying on by Boots N.Z. of a business in a pharmacy at Porirua would give to Boots U.K. "being a wholesale dealer in drugs" a direct or indirect estate or interest in such 20 30 40
- p.4
- e.g.per North P.  
p.52 1.1.38-44
- pp. 4 and 5

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business in breach of the provisions of the  
aforementioned Sections 13 and 15 and Paragraph  
13 of the Statement of Claim raised the no  
jurisdiction point in relation to the alternative  
plea.

p.5

9. The relief claimed in the Statement of  
Claim was as follows:-

10           "(a) for an order that a writ of  
prohibition directed to the said Wilfred  
Fosberrey Stillwell as Pharmacy Authority  
do issue to prohibit him from taking  
further steps to hear and determine  
the application of Boots N.Z. for  
consent to its establishing and carrying  
on business in a pharmacy at Porirua

p.5

20           OR (b) in the alternative for a  
judgment under the provisions of the  
Declaratory Judgments Act 1908 declaring  
the jurisdiction of the First Defendant  
in relation to the said application of  
Boots N.Z., and declaring the rights  
of the parties hereto in respect of the  
hearing of the said application

30           AND (c) For an order declaring that the  
establishment or carrying on by Boots  
N.Z. of business in a pharmacy in  
premises to be erected at Porirua would  
be in contravention of the provisions of  
Section 13 of the Pharmacy Amendment Act  
1954 and illegal by virtue of the provisions  
of Section 15 of the said Act\*.

The Guild also claimed their costs from one or  
both of Boots N.Z. and Boots U.K.

40           10. On 29th March 1963 the Guild issued a Notice  
of Motion for leave to serve Boots U.K. outside  
New Zealand. (The said Notice of Motion and the  
affidavit in support are not reproduced in the  
Record). In the event Boots U.K. instructed  
Messrs. Bell Gully & Co. to accept service on  
their behalf.

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- pp.7-9  
pp.9-10
11. The Statement of Claim was supported initially by two affidavits filed on behalf of the Guild, namely, those of Mr. M.B.Horton, law clerk, and Mr. L.J. Mauger, Secretary of the Guild, both sworn on 26th March 1963. Mr. Horton's said affidavit dealt merely with the shareholding of Boots U.K. in Boots N.Z., the terms of the former Proviso to Article 17 of the Articles of Association of Boots N.Z., and the fact that there was no record of the incorporation or registration in New Zealand of Boots U.K. Mr. Mauger's said affidavit apart from dealing with the constitution of the Guild and other formal matters put in evidence certain questions put to and answers given by Mr. A.W. Boyce, Assistant General Manager of Boots N.Z., in other proceedings which took place before the Pharmacy Authority at Invercargill, New Zealand, in September 1960. These answers were relied on as showing that Mr. Boyce had on that occasion stated that Boots U.K. was a wholesaler in drugs and that Boots N.Z. also sold drugs as a wholesaler. Mr. Boyce further stated that Boots U.K. did not operate in New Zealand at all. 10
- Exhibit B  
pp.11-12
- p.12,1.1.20-22
12. On 5th December 1963 the Statements of Defence of Boots N.Z. and of Boots U.K. were served. Their contents have already been sufficiently indicated save that it should be noted that by Paragraph 12 of the respective Statements of Defence reliance was placed on the Proviso to Section 13(1) of the Pharmacy Amendment Act 1954. This sub-section has already been quoted. By the said Proviso it is enacted: "Provided that nothing in this section shall apply to any estate or interest in existence at the commencement of this Act." 20
- pp.21-24
13. In support of the Statement of Defence of Boots N.Z. two affidavits were filed initially, namely, those of Mr. C.H. Thornton and of the said Mr. A.W. Boyce. Mr. Thornton deposed that he was and had since 1946 been the Managing Director of Boots N.Z. He said that Boots N.Z. operated nine retail pharmacies in New Zealand (Paragraph 2). He dealt with the shareholding of Boots U.K. in Boots N.Z. and with the 30
- pp.25-27  
pp.27-29
- p.25
- 40

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aforementioned deletion of the Proviso to Article 17 of the Articles of Association. He said (Paragraph 7) that the business of Boots N.Z. fell into three categories :-

p.26

(a) the retail pharmacy business carried on in the nine retail shops;

10 (b) a medical sales section, through which Boots N.Z. sold preparations manufactured by and imported from Boots U.K. and sold them in bulk to wholesalers, various hospitals and to a limited extent direct to other retail chemists;

(c) an agricultural section through which Boots N.Z., sold various agricultural and horticultural preparations manufactured and supplied by Boots U.K. to Stock and Station agents and other merchants.

20 In relation to (b) above he said. "This part of the business I regard as wholesale in that to this limited extent Boots N.Z. is in the position of a middleman buying in bulk and re-selling in bulk at a mark-up on the cost price of the goods". He said that the retail pharmacy business represented by far the greatest proportion of the total business of Boots N.Z. and that for the last 5 years the percentage of drugs (as defined in the Pharmacy Act 1939) which Boots N.Z. had sold wholesale had averaged approximately 8% of their total sales. As regards Boots U.K. he said that this Company was not registered in New Zealand and to the best of his knowledge and belief had never carried on business in New Zealand (Paragraph 5) and on the question of management and control he said this (Paragraph 6):-

p.26,1.1.20-25

p.26,1.1.32-33  
and p.27,1.1.1-6p.25,1.1.38-39  
and p.26,1.1.1-2

40 "In the period since my appointment as Managing Director of Boots N.Z. Boots U.K. has taken no part in the management or control of the business of Boots N.Z. either generally or in relation to the business carried on in any of our pharmacies. The Board of Directors of Boots N.Z. and myself as

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the principal executive officer have unfettered discretion in the conduct of the business".

pp.27-29

p.28

p.28,  
l.1.24-40

The said Mr. A.W. Boyce in his said affidavit stated that he was a Director and Assistant General Manager of Boots N.Z. He said that he had never been employed by Boots U.K. In Paragraph 3 he commented on the above-mentioned evidence which he gave in the Invercargill proceedings. He said that at the time when he gave his evidence and until recently when he became better informed he believed that Boots U.K. while primarily a manufacturer of drugs and pharmaceutical goods, also carried on a wholesale business in drugs in what he understood to be the meaning of the wholesale business of buying in bulk from a manufacturer or distributor and reselling to other wholesalers or to retailers with a mark-up. He said he did not gain this belief from any personal knowledge of Boots U.K.'s business but it had been founded on the fact that in his work for Boots N.Z. he had been closely associated with a division of Boots U.K. which bore the title Wholesale and International Division.

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pp.29-39

p.30, l.16

p.30,  
l.1.7-9

14. The Statement of Defence of Boots U.K. was initially supported by affidavits from Mr. H.T. Milnes, Mr. G.C. Dutton, Mr. S.M. Peretz and Mr. A. Duckworth the first three affidavits being sworn on 18th December 1963 and the fourth on 10th January 1964. Mr. H.T. Milnes deposed that he was a solicitor and was and had been since 1949 the Secretary of Boots U.K. and of its associated United Kingdom subsidiary companies. He stated that the 1289 Boots retail shops or branches in the United Kingdom were owned and controlled by five subsidiaries of Boots U.K. He further stated that Boots U.K. itself carried on business as a manufacturer of drugs, fine chemicals and pharmaceuticals and owned and operated a number of factories. Boots U.K. sold the products which it manufactured as follows:-

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p.30, l.32

- (a) Direct to the retail shops or branches of the United Kingdom subsidiaries;
- (b) To recognised wholesalers, i.e. middle-men buying in bulk and reselling at a profit;

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(c) A small proportion to retail outlets other than the Boots Group; and

(d) To buyers from outside the United Kingdom including Boots N.Z.

10 A division known as the Wholesale and International Division of Boots U.K. handled these sales (other than the sales mentioned in (a) above). Boots U.K. did not purchase any drugs or other pharmaceutical goods for resale to independent chemists or any other independent retailer. On the relationship between Boots U.K. and Boots N.Z. he said:

20 "While [Boots U.K.] is the principal Shareholder in [Boots N.Z.] it has long been the accepted practice that it does not interfere with or in any way seek to exercise control over the business of [Boots N.Z.] in New Zealand. That is left exclusively to the Directors and the management of [Boots N.Z.]. In particular [Boots N.Z.] decides exclusively what purchases it makes from [Boots U.K.]".

p.31, 1.1.32-40  
and p.32, 1.1.

15. Mr. G.C. Dutton in his said affidavit deposed that he was the chief accountant of Boots U.K. and its United Kingdom subsidiary companies. He dealt with the invoicing and discount procedures followed by Boots U.K. when selling manufactured products (a) to its United Kingdom retail subsidiaries and (b) to wholesalers and non-affiliated retailers. Mr. S.M. Peretz in his said affidavit deposed that he had been engaged in Boots U.K.'s Wholesale and International Division since 1955 and had been the Head of that Division since April 1959. He was also a director of Boots N.Z. and a member of the Executive Committee of the Boots Group in the United Kingdom. In relation to Boots U.K. he explained how it circulated a Trade Price List of Medical Products consisting exclusively of products manufactured by Boots U.K. to retail chemists in the United Kingdom other than those within the Boots Group. The said Trade Price List included an invitation to chemists to send their orders direct to their usual wholesaler or

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p.32

p.33.1.1.13-31

pp.35-37

p.35, 1.12

p.36

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p.37, ll.1-4 to the Wholesale Division of Boots U.K. In practice about 99% of sales were made through ordinary wholesalers and only about 1% through orders placed direct with Boots U.K. as a manufacturer. He said Boots U.K. supplied to the 1289 retail branches of the United Kingdom subsidiaries both goods manufactured by Boots and goods of other manufacture. He further stated in Paragraph 6:

p.37, l.20 "I regard as wholly erroneous the description of [Boots U.K.] in the intitlement of this action as "Wholesale Drug Merchants". [Boots U.K.] does not purchase drugs in bulk for resale at a mark-up price to any retailer. It is not regarded in the pharmaceutical industry in the United Kingdom as a wholesaler in drugs or any other products and to my knowledge [Boots U.K.] has never regarded itself as such." 10

pp.38-39 16. In his said affidavit Mr. A. Duckworth stated that he was the Secretary of the Association of the British Pharmaceutical Industry (hereinafter referred to as "A.B.P.I.") which was the recognised trade association for the Pharmaceutical Industry in the United Kingdom. A.B.P.I. had four divisions namely: 20

Division A Standard Drugs Division

Division B Medical Specialities Division

Division C Veterinary Division

Division D Pharmaceutical Wholesalers  
Division

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p.38, ll.28-33 A.B.P.I. in its Directory defined Pharmaceutical Wholesalers as "Wholesale Distributors of the products of members of Divisions A, B and C, and of other goods supplied under the National Health Service". Boots U.K. had never been a member of Division D of A.B.P.I. and in his opinion was not eligible because it did not function as a Pharmaceutical Wholesaler as defined above.

p.38, ll.34-37 and p.39, ll.1-2

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17. After the Statements of Defence of Boots N.Z. and Boots U.K. had been served and after receipt of the aforesaid supporting affidavits the Guild put in two further affidavits. The first (sworn on 25th February 1964) was a formal affidavit by Mr. I.D. Ogden, the Secretary of the Pharmacy Authority, exhibiting the aforementioned written application made by Boots N.Z. on 2nd November 1962 seeking consent to its establishing and carrying on business in a pharmacy at Porirua. The second (sworn on 9th April 1964) was an affidavit by Mr. N.M. Cantwell who was then the Trading Manager for the Hutt Valley Consumers Co-operative Society Limited and who had been prior to October 1963 the manager of the pharmacy operated by the said Society of Lower Hutt. He said that while manager of the said pharmacy he had received in May 1963 a circular letter from Boots N.Z. addressed to pharmacists, drawing attention to certain products manufactured by Boots U.K. The said letter was annexed marked 'A'. The brochures describing the particular products are not reproduced in the Record but copies will be found in the pocket at the end of the Record. Mr. Cantwell also exhibited a card which was left at his pharmacy in or about May 1963 indicating that a representative of the Medical Sales Division of Boots N.Z. had called.
18. The said Mr. C.H. Thornton answered Mr. N.M. Cantwell's said affidavit in a second affidavit sworn on 1st May 1964. He said that Boots N.Z. made extensive use of brochures and other printed material supplied by Boots U.K. Boots N.Z. was the sole agent in New Zealand for pharmaceutical products manufactured by Boots U.K. Boots N.Z. supplied retail chemists out of stocks which it (Boots N.Z.) had purchased from Boots U.K. Drugs and other pharmaceutical goods which Boots N.Z. obtained from sources other than Boots U.K. were sold only through Boots N.Z.'s own retail shops. The only drugs or other pharmaceutical goods which Boots N.Z. purchased from Boots U.K. were those which were manufactured by Boots U.K.
19. Subsequently the Solicitors for the Guild submitted a list of questions to be answered by Boots N.Z. The answers were given in a third affidavit by the said Mr. C.H. Thornton sworn on

p.13

pp.14-17

pp.18-19

pp.19-20

p.20

pp.39-40

pp.44-50

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8th February 1965. The questions and answers related in the main to goods acquired by Boots N.Z. from Boots U.K. and goods sold by Boots N.Z. in New Zealand but it is not thought necessary to make extended reference to these questions and answers here.

pp.40-44 20. The Solicitors for the Guild also submitted a list of questions to be answered by Boots U.K. The answers were given in a second affidavit by the said Mr. S.M. Peretz sworn on 29th January 1965. Paragraph 2 of the said affidavit contained the following question and answer: 10

p.41, 1.9 Q. "Does [Boots U.K.] purchase drugs from any other person, firm, or company, for resale otherwise than to its subsidiaries? If so, what is the extent of that business? To what class or classes of buyers are such drugs resold?"

A. "Yes, but only to the limited extent as stated hereinafter. 20

Such purchases are made on behalf of a restricted and special number of bulk consumers such as Government authorities and hospitals. They arise mainly when such a customer places an order for drugs manufactured by [Boots U.K.] and at the same time requires a small quantity of drugs manufactured elsewhere. [Boots U.K.] obtains these additional drugs as a service to such customers and it sells to them at a lesser price than the normal retail price. A condition of this service is that the goods be not resold. 30

Such sales as aforesaid amount to approximately 0.3% of the total drugs manufactured and sold by [Boots U.K.]."

p.50 21. On 9th March 1965 the Honourable Mr. Justice Haslam in the Supreme Court of New Zealand on the application of Boots N.Z. and Boots U.K. ordered that the Guild's Motion for a Writ of Prohibition in the action be removed into the Court of Appeal. Counsel for the Guild and Counsel for Mr. Stillwell, 40

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the Pharmacy Authority, consented to the making of such Order. The costs of Boots N.Z. and of Boots U.K. of and incidental to the said application and Order were reserved.

22. The case came on for hearing before the Court of Appeal on 11th and 12th November 1965. As stated above Counsel for Mr. Stillwell, the Pharmacy Authority, appeared and stated that he did not wish to take part in the argument and he was thereupon given leave to withdraw. While Counsel for the Guild was presenting his argument to the Court of Appeal it became apparent to the Court that the proceedings were misconceived, for, in the opinion of the Court, no question of the jurisdiction of the Pharmacy Authority arose as it was apparent that the said application of Boots N.Z. was properly before the Pharmacy Authority. Upon the Court expressing this view all counsel joined in requesting the Court to treat the Guild's Motion as if it were an originating summons under the Declaratory Judgments Act 1908 and on this basis the Guild sought the following declaratory orders:

p.52,11.33-37

per North P.  
p.52,11.38-45

"(1) An order declaring that [Boots N.Z.], by reason of the admitted facts, is a wholesale dealer in drugs within the meaning and application of Section 13(1) of the Pharmacy Amendment Act 1954, and accordingly the establishment or carrying on by [Boots N.Z.] of business in a pharmacy at Porirua would be in contravention of the provisions of that section and illegal by virtue of the provisions of Section 15 of that Act.

p.53, 1.1

(2) An order declaring that [Boots U.K.], by reason of the admitted facts, is a wholesale dealer in drugs within the meaning and application of Section 13(1) of the Pharmacy Amendment Act 1954, and accordingly the having by [Boots U.K.] of an interest in the business of a pharmacy proposed to be established by [Boots N.Z.] at Porirua would, by reason of the admitted shareholding of [Boots U.K.] in [Boots N.Z.], be in contravention of the provisions of Section 13 of the Pharmacy Amendment Act 1954

p.53, 1.12

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and illegal by virtue of the provisions of Section 15 of that Act".

per North P.  
p.53,1.29

The Court decided to accede to Counsel's request but it stated that it did so "with some reluctance".

23. For the Guild it was argued that Boots N.Z. was a "wholesale dealer in drugs" within Section 13(1) of the Pharmacy Amendment Act 1954 (hereinafter called "the 1954 Act") and that accordingly it would be illegal for Boots N.Z. to have any interest in the proposed pharmacy at Porirua. They argued that the exempting words in the sub-section "(other than a pharmacy of which he is lawfully the proprietor)" could only be applied in relation to the first of the two categories specified in the opening words of Section 13(1): "The proprietor of a pharmacy or a wholesale dealer in drugs shall not have or acquire ..... any .... estate or interest ....". The Guild's unsuccessful argument on this point forms the subject of their cross-appeal herein. The Guild further argued that the words "wholesale dealer in drugs" referred to any person whose business involved the sale of drugs in quantity, (whether of his own manufacture or whether purchased from another manufacturer) or at least such sales as are made for the purposes of resale. Accordingly they contended that the words applied to Boots U.K. although it was primarily a manufacturer. They said that the evidence showed that Boots U.K. sold its manufactured drugs to its United Kingdom subsidiaries at retail price less a discount fixed annually, to other wholesalers for resale and to independent retail chemists to a limited extent, to bulk users, to industrial users and to its New Zealand and other overseas subsidiaries and that Boots U.K. bought drugs from other manufacturers or wholesalers and resold them to its United Kingdom subsidiaries at retail price less a discount fixed annually, to bulk users to a limited extent and to Boots N.Z. to a very limited extent. All these sales were wholesale dealings. They also argued that the words in Section 13(1) "so as to affect the ownership, management, or control of the business carried on in that pharmacy" qualified the words "estate or interest" by describing the nature of the estate or interest referred to and

therefore referred to a power of control without there necessarily being an actual exercise of control. Finally they argued that the Proviso to Section 13(1) ("Provided that nothing in this Section shall apply to any estate or interest in existence at the commencement of this Act") referred to the estate or interest in the particular business in the particular pharmacy so that the mere fact that shares were held in a company prior to 1954 did not entitle it to open new pharmacies.

24. For Boots N.Z. it was argued on the first point that as a matter of construction it was impossible to read the words in brackets in Section 13(1) as applying only to the first of the two categories specified in the sub-section. For Boots U.K. in answer to the contention that Boots U.K. was a "wholesale dealer in drugs" within the meaning and application of Section 13(1) it was argued that these words must in the context of the Act be intended to apply only to a person carrying on business as a wholesale dealer in drugs in New Zealand and that as Boots U.K. did not carry on that business in New Zealand and were not registered there the sub-section had no application to them. It was argued in the alternative that the words "wholesale dealer" imported the element of a middleman engaged both in buying and selling, and thus did not include a manufacturer such as Boots U.K. Such buying and selling as was carried out by Boots U.K. was not of the type nor sufficient in extent to justify the conclusion that Boots U.K. was a wholesale dealer in drugs within the scope of Section 13(1) of the 1954 Act. With regard to the words "so as to affect the ownership, management, or control of the business carried on in that pharmacy" it was argued that the shareholding interest of Boots U.K. in Boots N.Z. was not sufficient to give rise to an estate or interest which satisfied these words. It was pointed out that Article 17 had been changed and that Boots U.K. was no longer in a position to appoint the Managing Director of Boots N.Z. Reliance was also placed on the Proviso to Section 13(1) and it was argued that as Boots U.K. had been holding its shares in Boots N.Z. at the

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commencement of the 1954 Act the Proviso afforded a defence to the Guild's claim.

25. The Court of Appeal gave judgment on 8th February 1966. The Court refused to make the first of the two declaratory orders sought (the terms of which are set out in Paragraph 22 above), but by a majority (Turner and McCarthy J.J., North P. dissenting) the Court made the second of the said two declaratory orders save that it deleted the last 13 words, namely, the words "and illegal by virtue of the provisions of Section 15 of that Act". Accordingly the Order appealed against reads as follows (so far as is material):- 10

p.81,  
11.17-18

"THIS COURT HEREBY ORDERS AND DECLARES that the third Defendant [Boots U.K.] by reason of the admitted facts is a wholesale dealer in drugs within the meaning and application of Section 13(1) of the Pharmacy Amendment Act 1954 and accordingly the having by the third Defendant [Boots U.K.] of an interest 20 in the business of a pharmacy proposed to be established by the second Defendant [Boots N.Z.] at Porirua would by reason of the admitted shareholding of the third Defendant [Boots U.K.] in the second Defendant [Boots N.Z.] be in contravention of the provisions of Section 13 of the Pharmacy Amendment Act 1954."

26. North P. rejected the Guild's first point and held that the words "(other than a pharmacy of which he is lawfully the proprietor)" are apposite both in relation to "the proprietor of a pharmacy" and "a wholesale dealer in drugs". Accordingly Boots N.Z. as a wholesale dealer in drugs could lawfully own a pharmacy as proprietor thereof. In so holding North P. was following the earlier judgment of McGregor J. in In re an Application by Boots the Chemists (N.Z.) Limited [1956] N.Z.L.R. 31 North P. held that the Guild's argument on this point was quite contrary 30 to the ordinary rules of construction. In relation to the point that Boots U.K. was not a "wholesale dealer in drugs" North P. thought that while in England there might be some ground for the distinction drawn between a manufacturer and 40

pp.55-56

p.56,  
11.34-53  
and p.57,  
11.1-10

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a wholesaler, there was no justification for drawing that distinction in New Zealand, "where it is a matter of common knowledge that many wholesale dealers have found it necessary to manufacture the goods they sell in bulk". He was impressed by the fact that Boots U.K. had a division described as its Wholesale Division. He added:-

p.57, 11.30-36

10 "It may be true that a very large part of the company's total turnover comes from its own manufactured goods; but, small though the percentage of goods which are purchased by [Boots U.K.] from others for sale in bulk may be, I am not prepared to assume that it does not amount to a substantial sum."

p.57,11.47-53

20 He further held that the term "a wholesaler dealer in drugs" in Section 13(1) of the 1954 Act must have the same meaning as the term "any wholesaler dealer" as used in Section 33(1) (e) of the Pharmacy Act 1939 in which context it must clearly include a manufacturer of drugs

27. On the question whether "a wholesale dealer in drugs" connoted exclusively a person carrying on that business in New Zealand North P. held that it did have this limited meaning. In so holding he dissented from his brethren. He said that the 1954 Act represented a compromise between opposing interests. At the time when it was enacted it was well known that Boots N.Z. was a subsidiary of Boots U.K. The plain purpose of the Act was to control but not to prohibit any extension in the operations of Boots N.Z. He rejected the argument of counsel for Boots N.Z. and Boots U.K. that on the Guild's construction of Section 13(1) the New Zealand Parliament was endeavouring to exercise extra-territorial jurisdiction "for", he said, "on any view of the case the amending Act is dealing with conduct taking place within New Zealand". But he held first that the pharmacy referred to in the words in Section 13(1) "the proprietor of a pharmacy" must refer to a New Zealand pharmacy. This followed from the definitions of "pharmacy" "proprietor" and "chemist" in Section 2 of the

p.58,11.40-44

p.59, 11.33-41

p.59,11.42-47

p.60,11.29-39

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- p.60,11.36-39 Pharmacy Act 1939. He considered that this afforded strong grounds for similarly limiting the words "a wholesale dealer in drugs".
- p.60,11.47-53 Secondly he relied on Section 15 of the 1954 Act which makes it an offence if any person "fails to comply with, or does any act in contravention of, any of the provisions of this Act". He held that it was "clear beyond words" that Boots U.K. having no place of business in New Zealand could not be made the subject of a prosecution. 10
- p.61,11.23-28 28. North P. rejected the arguments of Boots N.Z. and Boots U.K. on the words "so as to affect the ownership, management, or control of the business carried on in that pharmacy" and on the Proviso to Section 13(1). As to the first of these submissions he held that there was nothing in it "for while [Boots U.K.] continues to own substantially the whole of the shares in [Boots N.Z.], it is in a position at any time to exercise control by virtue of its shareholding". 20
- p.61,11.39-42 As to the Proviso submission he held that the Proviso applied only to pharmacies in existence in 1954 and therefore could have no application to the proposed Porirua pharmacy.
- p.62,1.39 29. Turner J. agreed with North P. in rejecting the Guild's first submission (as set out in Paragraph 23 above) which was to the effect that Boots N.Z. could not rely on the exempting words in parenthesis in Section 13(1), namely, "(other than a pharmacy of which he is lawfully the proprietor)". He agreed that the judgment of 30
- p.63,1.38 McGregor J. in the above-mentioned 1956 case was correct on this point ([1956] N.Z.L.R. 31). He held next that Boots U.K. was "a wholesale dealer in drugs" within the meaning of Section 13(1). He rejected the submission that the Section was dealing only with wholesalers carrying on business within the jurisdiction. In connection with this submission he said of counsel for Boots N.Z. and Boots U.K. :- 40
- p.64,11.50-53 "When he argued (as he did) that there was a presumption that the legislature intended the provision to apply only to wholesale dealers carrying on business as such in New Zealand, citing 36 Halsbury (3rd Ed.)

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pp pp.429-430 in this respect, he appeared to me to have regarded a rule as to prohibition of conduct as one applicable to descriptions of persons. The passage quoted .... deals with the conduct which a statutory provision will be deemed to prohibit, and not with the description of the persons who are deemed to be made subject to the prohibition".

p.65,1.1.1-11

10 He said that the section was prohibiting the acquisition in New Zealand of certain interests by a wholesale dealer. Anyone answering the description wherever situate was caught by the section if he did the prohibited act in New Zealand. He also rejected the defence submission that a manufacturer was not a wholesale dealer.

p.65,1.1.11-29

20 "Having regard, as I may, to such knowledge of affairs as I possess, I would not myself in using the term "wholesaler" exclude from the connotation of this term accepted in New Zealand manufacturers who make their own product and then dispose of it in bulk".

p.66,1.1.34-40

30 He also referred to what he called Boots U.K.'s residuary trading transactions in which they buy drugs and sell them again and said that if he had to decide the question on this point he would be compelled to say that although the volume of transactions was relatively small it was not so small that it could properly be overlooked. The maxim de minimus non curat lex could not be invoked.

p.67,1.1.1-20

40 30. On the argument on the words "so as to affect the ownership, management, or control of the business carried on in that pharmacy" Turner J. held that if one company beneficially owns all the shares in another it is, as regards the latter company, within the words of the prohibition in the section. He also rejected the argument on the Proviso on the ground that the Proviso was not referring to shareholdings but was referring to an estate or interest in a pharmacy. As regards the relief claimed Turner J. was of the opinion that no case had been made out for a declaration that the Pharmacy Authority had no jurisdiction to hear the case. He also considered it unnecessary to make any declaration as to the

p.67,1.1.24-36

p.67,1.1.36-47

p.68,1.1.30-38

p.68,1.1.39-45

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- jurisdiction of the Pharmacy Authority. The third heading of the relief claimed (see Paragraph 9 above) was misconceived in that it was not the carrying on of the pharmacy by Boots N.Z. that was illegal. Turner J. held that the Guild were entitled to a declaration substantially in accordance with the second declaration asked for at the hearing (see Paragraph 22 above) but there should be omitted therefrom the words "and illegal by virtue of the provisions of Section 15 of that Act". He said that he would require more to be said on the subject before deciding the difficult point whether and when, notwithstanding that the "having" of shares is prohibited by Section 13, an offence is committed under Section 15 when the shares are acquired first, and the pharmacy subsequently, the shareholder being a company resident abroad. 10
- p.68,1.1.46-52  
and  
p.69,1.1.1-6  
p.69,1.1.8-19  
p.69,1.1.19-26
31. McCarthy J. began his judgment with a consideration of the general policy of the 1954 Act. He agreed with his brethren in approving and following the judgment of McGregor J. in the 1956 case and in rejecting the Guild's argument founded on the words in parenthesis in Section 13(1) (see Paragraph 23 above). As to the defence contention that Boots was a manufacturer and hence not a "wholesale dealer in drugs" within the section he said that he did not doubt that in 1954 a manufacturer selling in quantity direct to the retail trade was covered by the words "wholesaler" or "wholesale dealer" as used in New Zealand. A distinction was not drawn between the words; they were used synonymously. He further rejected the contention that "wholesale dealer in drugs" must be restricted to a person carrying on such a business in New Zealand. He did not accept the territorial limitation argument. "The section does not seek to touch a non-resident unless his conduct in New Zealand is in breach of the section." Nor did he accept the argument based on the juxtaposition of the words "the proprietor of a pharmacy" and "a wholesale dealer in drugs." This would lead to the anomalous result that whereas a New Zealand wholesaler could not acquire an interest in a New Zealand pharmacy "yet the drug houses of the United States, Great Britain and the Continent, 20
- p.70-72  
p.76,1.1.10-29  
p.77,1.1.34-36  
p.78,1.1.25-32  
p.79,1.1.2-7 30 40

manufacturers and wholesalers alike, providing only that they have no place of business here; could freely obtain undercover control of New Zealand pharmacies". In his view it was a case in which it was necessary to apply the provisions of Section 5(j) of the Acts Interpretation Act 1924 which enacts as follows:-

p.79,1.1.13-23

10 "Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning and spirit".

20

In the learned Judge's view the intention of Parliament was "obvious". He would not accept the suggestion that the Legislature was very well aware in 1954 of the link between Boots U.K. and Boots N.Z. and did not intend by Section 13(1) to obstruct the expansion of Boots N.Z. He said:

p.79,1.38

30 "Provision for the protection of its existing pharmacies was made in the proviso, and Parliament may have thought that that was sufficient. We should not speculate as to the intention of Parliament, particularly as this whole matter must necessarily have been very much a question of policy".

p.80,1.1.1-8

In order to exempt the interests of Boots U.K. in Boots N.Z. from the operation of Section 13(1) another enactment would be necessary.

p.80,1.1.13-18

40 32. McCarthy J. also rejected the defence submission on the words "so as to affect the ownership, management or control of the business carried on in that pharmacy". He held that it was the ownership of the shares which gave control and which brought Boots U.K. within the words of

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p.80,1.1.31-43 the section. He rejected too the submission on the Proviso to Section 13(1) holding that the argument for Boots N.Z. and Boots U.K. required a substantial gloss to be placed on the words in the sub-section. He was accordingly in favour of making the second declaratory order sought by the Guild at the hearing (Paragraph 22 above) though he concurred in the limitation suggested by Turner J. namely, the omission of all reference to illegality pursuant to Section 15. 10

p.80,1.1.44-45  
and  
p.81,1.1.1-3

33. The Appellants respectfully submit that it is wrong to construe the words "a wholesale dealer in drugs" so as to cover a manufacturer. There was no evidence before the Court of Appeal to suggest that so far as concerns drugs the difference between a Manufacturer and a wholesaler was non-existent. Indeed there was unchallenged evidence to the effect that Boots U.K. was considered in the trade to fall outside the description "wholesaler". (The first affidavit of Mr. Peretz and the affidavit of Mr. A. Duckworth - paragraphs 15 and 16 above). No reliance should have been placed on the very small percentage of transactions in which Boots U.K. buy for resale in bulk. (The evidence in this point appears in paragraph 20 above). Having regard to the scale of its operations the de minimis maxim could properly have been applied to these transactions. The Appellants rely on the fact that McCarthy J. did not take any such point against them. The word "dealer" in the phrase "a wholesale dealer in drugs" points to a person whose business consists of or at least includes to a dominant or substantial degree the buying of drugs in bulk for resale in bulk to any retailer. If the Legislature had required an extended interpretation of the term they could have supplied it in a definition section. But this was not done. At best the construction point is ambiguous and, as the matter is one involving criminal sanctions, the narrow interpretation should be preferred. 20 30 40

34. It is respectfully submitted that North P. was right in holding that Section 13(1) is

concerned with New Zealand wholesale dealers in drugs and not with persons who answer the description but who carry on their wholesale business outside New Zealand (Paragraph 27 above). No contrary conclusion can safely be founded on any presumption about the intention of Parliament because this intention is not sufficiently apparent. It is significant that the two learned judges who were prepared to make the second declaration sought by the Guild at the hearing, specifically deleted all reference to illegality under Section 15. But if they were right in thinking the "having" or "acquiring" by Boots U.K. of the prohibited interest involved an infringement of Section 13(1) it would appear to follow that this was an act in contravention of a provision of the Act and hence involved criminal liability under Section 15(1). The fact that the majority were not prepared to make a declaration to this effect, it is submitted, casts grave doubts on the validity of their reasoning on the whole of this part of the case. The Appellants also rely on the fact that the words "The proprietor of a pharmacy" in Section 13(1) must point to the proprietor of a New Zealand pharmacy in view of the fact that Section 2(1) of the Pharmacy Act 1939 defines "pharmacy" as "a shop or place of business in which the business of a pharmaceutical chemist is carried on" and defines the term "pharmaceutical chemist" as "a person for the time being registered as a pharmaceutical chemist under this Act". By Section 1 of the 1954 Act it is provided that the 1954 Act "shall be read together with and deemed part of the Pharmacy Act 1939". The words "a wholesale dealer in drugs" follow immediately after "The proprietor of a pharmacy" and should, it is submitted, be read as being confined to New Zealand wholesale dealers.

35. It is further respectfully submitted that all the learned judges in the Court of Appeal gave no weight to the words "so as to affect the ownership, management, or control of the business carried on in that pharmacy". These words require one to look at the particular business carried on in the particular pharmacy. It could not be suggested

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that Boots U.K. would own the business carried on in Boots N.Z.'s pharmacy at Porirua. This would plainly be fully and beneficially owned by Boots N.Z. Similarly the shareholding interest of Boots U.K. would not be such as to affect the management or control of the business carried on in the Porirua pharmacy. No attempt was made by the Guild to challenge the evidence of Mr. C. H. Thornton in his first affidavit (Paragraph 13 above) where in speaking of the period since he became Managing Director of Boots N.Z. he said that Boots U.K. had taken no part in the management or control of the business of Boots N.Z. either generally or in relation to the business carried on in any of their pharmacies, the Board of Boots N.Z. having unfettered discretion in the conduct of the business. To the same effect was the uncontradicted evidence of Mr. H.T. Milnes (Paragraph 14 above). If this is accepted, as it is submitted it must be, it is plain that the policy of the Act is not infringed by the fact of Boots U.K.'s shareholding in Boots N.Z. A further reason for thinking that Section 13(1) should be construed as dealing with estates or interests which actually affect management or control and not ones which theoretically might do so is afforded, it is submitted, by Section 13(2) which was added to the Section by the Pharmacy Amendment Act 1957. It is fair to point out that this opens with the words "Without affecting the generality of the foregoing provisions of this section" but the substantive provision is as follows:

".....it is hereby declared that any covenant, condition, or stipulation expressed or implied in any contract or agreement whereby the proprietor of a pharmacy is restricted in the purchase of his pharmaceutical requirements or other stock

in trade shall, for the purposes of this section, be deemed to be a device or arrangement affecting the management and control of the business carried on in that pharmacy"

10 This provision indicates the type of mischief at which Section 13(1) is directed. Further-  
more the words "a device or arrangement affecting" indicate clearly that the phrase  
in Section 13(1) "so as to affect" should be  
construed as meaning "which actually do  
affect."

20 36. It is submitted finally that the proviso to Section 13(1) afforded a complete answer to the Guild's case. The relevant estate or interest (if contrary to the Appellants' contentions set out above, the section has any application at all) was Boots U.K.'s shareholding in Boots N.Z. this existed at the commencement of the Act. It is submitted that it is unreal to hold that a new estate or interest comes into existence on each occasion that Boots N.Z. extends its business to a new pharmacy.

30 37. AS TO THE CROSS-APPEAL the point raised by the Guild as Appellants is the point set forth in Paragraph 23 above. The views expressed on this point by North P., Turner J. and McCarthy J. in rejecting the Guild's argument are set out in Paragraphs 26, 29 and 31 above. As indicated these learned judges followed the decision of McGregor J. in In re an Application by Boots the Chemists (N.Z.) Limited /1956/ N.Z.L.R. 31. Boots N.Z. and Boots U.K. will submit that the Court of Appeal were right on this point and that the true view of Section 13(1) is correctly expressed in the following passage from the judgment of McGregor J. (ibid 32):

"In my view, the matter in issue depends on the

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construction and application of the words in parenthesis contained in the section '(other than a pharmacy of which he is lawfully the proprietor)'. These words, to my mind, create an exception to the general disqualification provided by the section in respect of the proprietor of a pharmacy or a wholesale dealer in drugs. Omitting the parenthetical words, the section disqualifies the proprietor of an existing pharmacy or a wholesale dealer in drugs from having any direct or indirect interest in a business carried on in another pharmacy. But the expression 'pharmacy' is qualified by the words in parentheses, which, to my mind, create an exception to the general rule and, in effect, provide that such rule shall not apply to a pharmacy in respect of which the proprietor is the real proprietor or the lawful proprietor, as opposed to the situation when the interest he possesses is a direct or indirect interest, but one which might perhaps be described as a 'sleeping' interest or one not obvious to the general public. It seems to me that the word 'he', in the parenthetical phrase, in the literal reading of the section applies equally to the alternative persons originally described in the section - 'The proprietor of a pharmacy' or 'a wholesale dealer in drugs' - just as, in the same way, the earlier expression 'in his own name' must apply to both such persons".

The Appellants humbly submit that this Appeal should be allowed, and that the Declaratory Order made by the Court of Appeal should be set aside and that the Guild should be ordered to pay the Appellants' costs and disbursements for the following among other

R E A S O N S

- (1) BECAUSE the Appellants Boots U.K. are not "a wholesale dealer in drugs" within the meaning and application of Section 13(1) of the Pharmacy Amendment Act 1954 having

regard to the facts proved and the true construction of the Section

- 10 (2) BECAUSE the Appellants Boots U.K. would not have by reason of their shareholding or otherwise any estate or interest in the business proposed to be carried on by Boots N.Z. in the proposed pharmacy at Porirua so as to affect the ownerships, management or control of the business to be carried on in that pharmacy
- (3) BECAUSE in any event the proviso to Section 13(1) of the 1954 Act exempts the shareholding estate or interest in question from the provisions of the section
- (4) BECAUSE the judgment of North P. was right on the point on which he was in the Appellants' favour and the judgments of the Court of Appeal were wrong in so far as they rejected the Appellants' arguments.
- 20 AND the Appellants humbly submit that the Cross Appeal should be dismissed for the following among other

R E A S O N S

- (1) BECAUSE the construction of the words in parenthesis in Section 13(1) for which the Guild contend does violence to the language of the Section and is erroneous.
- 30 (2) BECAUSE the judgment of McGregor J. in the case cited and the judgments of the Court of Appeal on this point in the present case are right and should be upheld to that extent.

F. P. NEILL

IN THE PRIVY COUNCIL

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ON APPEAL  
FROM THE COURT OF APPEAL OF NEW  
ZEALAND

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B E T W E E N:

BOOTS THE CHEMISTS (NEW ZEALAND)  
LIMITED and BOOTS PURE DRUG COMPANY  
LIMITED

- and -

THE CHEMISTS' SERVICE GUILD OF NEW  
ZEALAND INCORPORATED

- and -

WILLIAM FOSBERREY STILLWELL

AND BETWEEN:

THE CHEMISTS' SERVICE GUILD OF NEW  
ZEALAND INCORPORATED

- and -

BOOTS THE CHEMISTS (NEW ZEALAND)  
LIMITED and BOOTS PURE DRUG COMPANY  
LIMITED

- and -

WILLIAM FOSBERREY STILLWELL

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C A S E FOR THE APPELLANTS BOOTS  
THE CHEMISTS (NEW ZEALAND) LIMITED  
and BOOTS PURE DRUG COMPANY LIMITED

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