

1967/5

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 -

THE CHEMISTS' SERVICE GUILD  
OF NEW ZEALAND INCORPORATED Respondent

- and -

WILFRED FOSBERREY STILLWELL Pro-forma Respondent

AND 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

- and -

WILFRED FOSBERREY STILLWELL Pro-forma Respondent

---

R E C O R D      O F      P R O C E E D I N G S

---

SLAUGHTER AND MAY  
18, Austin Friars  
London, E.C.2.

Agents for:-

BELL GULLY & CO.,  
Wellington,  
New Zealand.

Solicitors for Boots the  
Chemists (New Zealand)  
Limited and Boots Pure  
Drug Company Limited.

WRAY, SMITH & CO.,  
1, King's Bench Walk,  
London, E.C.4.

Agents for :-

LUKE CUNNINGHAM & CLERE,  
Wellington,  
New Zealand.

Solicitors for The  
Chemists' Service Guild  
of New Zealand  
Incorporated.

CLASS MARK

ACCESSION NUMBER

91400

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

(i)

IN THE PRIVY COUNCIL

No. 19 of 1966

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 -

THE CHEMISTS' SERVICE GUILD  
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WILFRED FOSBERREY STILLWELL Pro-forma Respondent

AND B E T W E E N

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OF NEW ZEALAND INCORPORATED Appellant

- and -

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

- and  
WILFRED FOSBERREY STILLWELL Pro-forma Respondent

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON

INSTITUTE OF ADVANCED

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91400

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Certificate of Registrar of Court of Appeal of New Zealand

IN THE PRIVY COUNCIL

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

10 THE CHEMISTS' SERVICE GUILD OF NEW  
ZEALAND INCORPORATED Respondent  
and WILFRED FOSBERREY Pro-forma  
STILLWELL Respondent

AND B E T W E E N :

THE CHEMISTS' SERVICE GUILD OF NEW  
ZEALAND INCORPORATED Appellant

AND

20 BOOTS THE CHEMISTS (NEW ZEALAND)  
LIMITED and BOOTS PURE DRUG  
COMPANY LIMITED Respondents  
and WILFRED FOSBERREY Pro-forma  
STILLWELL Respondent

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM IN SUPREME COURT

A.62/63

IN THE SUPREME COURT OF NEW ZEALAND  
WELLINGTON DISTRICT  
WELLINGTON REGISTRY

30 B E T W E E N : THE CHEMISTS' SERVICE  
GUILD OF NEW ZEALAND  
INCORPORATED a body  
duly incorporated  
under the Incorpor-

In the Supreme  
Court of New  
Zealand

No. 1

Statement of  
Claim

26th March,  
1963

In the Supreme  
Court of New  
Zealand

          
No. 1

Statement of  
Claim,

26th March,  
1963

- continued

ated Societies Act  
1908 and having its  
registered office at  
220 Vivian Street,  
Wellington.

Plaintiff

AND

WILFRED FOSBERREY  
STILLWELL of  
Wellington in his  
capacity as Pharmacy  
Authority constituted  
by the Pharmacy  
Amendment Act 1954

10

First Defendant

AND

BOOTS THE CHEMISTS  
(NEW ZEALAND) LIMITED  
a company duly  
incorporated under the  
provisions of the  
Companies Act 1953 and  
having its registered  
office at Wellington,  
Chemist and Druggist.

20

Second Defendant

AND

BOOTS PURE DRUG  
COMPANY LIMITED a  
company incorporated  
and registered in  
England and having its  
head office at Station  
Street, Nottingham  
England, wholesale  
drug merchants.

30

Third Defendant

STATEMENT OF CLAIMTuesday the 26th day of March 1963THE PLAINTIFF by its solicitor WALTER RICHARD BIRKS says :-In the Supreme  
Court of New  
ZealandNo. 1Statement of  
Claim,26th March,  
1963

- continued

1. THAT the Plaintiff is a body duly incorporated under the provisions of the Incorporated Societies Act 1908 and having its registered office at 220 Vivian Street, Wellington.
- 10 2. THAT the First Defendant is the Pharmacy Authority duly appointed under the provisions of Section 6 of the Pharmacy Amendment Act 1954.
3. THAT the Second Defendant is a company duly incorporated in New Zealand under the provisions of the Companies Act 1955 and having its registered office at 119 Ghuznee Street, Wellington, and carrying on there and elsewhere in New Zealand the business of chemist and druggist.
- 20 4. THAT the Third Defendant is a company duly incorporated and registered in England having its head office at Station Street, Nottingham, England and carrying on there and elsewhere in the British Commonwealth the business of wholesale dealer in drugs.
- 30 5. THAT on or about the 2nd day of November 1962 the Second Defendant applied to the First Defendant under the provisions of Sections 3 and 4 of the Pharmacy Amendment Act 1954 for the consent of the Pharmacy Authority to the establishment and carrying on by the Second Defendant of a business in a pharmacy in premises to be erected at Site 4, Porirua.
6. THAT the Plaintiff having been notified by the Pharmacy Authority of such application, as being a person who might be materially affected by the decision of the Pharmacy Authority in respect of that application, has notified the Pharmacy Authority of its intention

In the Supreme  
Court of New  
Zealand

No. 1

Statement of  
Claim

26th March,  
1963

- continued

to oppose the application.

7. THAT the Second Defendant is a wholesale dealer in drugs in New Zealand and the Third Defendant is a wholesale dealer in drugs and supplies drugs to retailers in New Zealand.

8. THAT the capital of the second defendant is 60,000 shares of £1 each of which 59,920 shares are held by the third defendant.

9. THAT by Article 17 of the Articles of Association of Boots the Chemists (New Zealand) Limited (the abovenamed second defendant) no person may be appointed Managing Director of that company without the approval of Boots' Pure Drug Company Limited (the abovenamed third defendant); and no such appointment can be terminated or its terms varied without the approval of the said Boots' Pure Drug Company Limited.

10

10. THAT the carrying on by the second defendant of a business in a pharmacy at Porirua would give to the second defendant, 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.

20

11. THAT the first defendant as Pharmacy Authority has no jurisdiction to consent to the establishment and carrying on by the second defendant of a business in a pharmacy at Porirua, in that such consent would constitute a consent to a breach by the second defendant as a wholesale dealer in drugs, of the provisions of the said sections 13 and 15 of the Pharmacy Amendment Act 1954.

30

AND AS A SECOND AND ALTERNATIVE CAUSE OF ACTION the plaintiff repeats the allegations contained in paragraphs 1 to 9 hereof inclusive and says :-

12. THAT the carrying on by the second

defendant of a business in a pharmacy at Porirua would give to the third defendant, 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.

In the Supreme  
Court of New  
Zealand

          
No. 1

Statement of  
Claim

26th March,  
1963

- continued

10 13. THAT the first defendant as Pharmacy Authority has no jurisdiction to consent to the establishment and carrying on by the second defendant of a business in a pharmacy at Porirua, in that such consent would constitute a consent to a breach by the third defendant, as a wholesale dealer in drugs, of the provisions of the said sections 13 and 15 of the Pharmacy Amendment Act 1954.

WHEREFORE the plaintiff prays:-

20 (a) for an order that a writ of prohibition directed to the said Wilfred Fosberrey Stilwell as Pharmacy Authority do issue to prohibit him from taking further steps to hear and determine the application of the second defendant for consent to its establishing and carrying on business in a pharmacy at Porirua

OR

30 (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 the second defendant, and declaring the rights of the parties hereto in respect of the hearing of the said application.

AND

40 (c) for an order declaring that the establishment or carrying on by the second defendant 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.

In the Supreme  
Court of New  
Zealand

No. 1

Statement of  
Claim

26th March,  
1963

- continued

AND for a further order directing that the costs of this application and any order thereon be fixed and paid by one or both of the second and third defendants to the Plaintiff AND for such further or other order as to this Honourable Court may seem just.

No. 2

Amended Motion  
for Writ of  
Prohibition

28th March,  
1963

No. 2

AMENDED NOTICE OF MOTION FOR  
WRIT OF PROHIBITION

TAKE NOTICE that on Friday the 5th day of April 1963, at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard, Counsel for the abovenamed Plaintiff will move this Honourable Court at Wellington FOR AN ORDER that a writ of prohibition, directed to Wilfred Fosberrey Stilwell as Pharmacy Authority, do issue to prohibit him from taking any further steps to hear and determine the application of the second defendant, made under the provisions of Sections 3 and 4 of the Pharmacy Amendment Act 1954, for consent to its establishing and carrying on business in a pharmacy at Porirua or 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 the second defendant, and declaring the rights of the parties hereto in respect of the hearing the said application AND FOR A FURTHER ORDER declaring that the establishment or carrying on by the second defendant 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 AND FOR A FURTHER ORDER directing that the costs of the Plaintiff

10

20

30

of and incidental to this motion and the order made thereon be fixed and be paid by one or both of the second and third defendants to the plaintiff AND FOR SUCH FURTHER OR OTHER ORDER as may appear just UPON THE GROUNDS that the giving of such consent by the first defendant would constitute a consent to a breach or breaches by the second and third defendants or either of them of the provisions of Sections 13 and 15 of the Pharmacy Amendment Act 1954 AND UPON THE FURTHER GROUNDS appearing in the Statement of Claim filed herein and the affidavits of Leon James Mauger and Mark Bradbury Horton, sworn and filed herein.

10

DATED this 28th day of March, 1963.

"W.R. Birks"  
Solicitor for the Plaintiff.

No. 3

AFFIDAVIT OF MARK BRADBURY HORTON  
FOR PLAINTIFF (RESPONDENT)

20

I, MARK BRADBURY HORTON of Wellington, Law Clerk, make oath and say as follows :-

1. THAT on the 21st day of March 1963 at the office of the Registrar of Companies I searched the file relating to the company Boots the Chemists (New Zealand) Limited, and ascertained from the records contained in the said file that

30

- (a) the said company was incorporated under the Companies Act 1908 as a private company on the 29th August 1923 with a capital of One hundred shares of £1 each;
- (b) the capital of the said company was increased in the month of December 1949 to Sixty thousand shares of £1 each, and a company known as Boots Pure Drug Company Limited subscribed for 59,900 of such shares;

In the Supreme  
Court of New  
Zealand

No. 2

Amended Motion  
for Writ of  
Prohibition

28th March,  
1963

- continued

No. 3

Affidavit of  
Mark Bradbury  
Horton for  
Plaintiff  
(Respondent)

26th March,  
1963

In the Supreme  
Court of New  
Zealand

No. 3

Affidavit of  
Mark Bradbury  
Horton for  
Plaintiff  
(Respondent)

26th March,  
1963

- continued

(c) the Annual Return as at the 18th day of May 1962 shows the following persons as shareholders, namely:-

William Hollis Cocker of 124 Grafton Road, Auckland	50 shares	
Clarence Henry Thornton of 5 Falkirk Avenue, Wellington	25 "	
Harold Tetley Milnes of Station Street, Nottingham, United Kingdom	2 "	10
Boots Pure Drug Company Limited of Station Street, Nottingham, U.K.	59920 "	
Robert Allan Davison of Jubilee Road, Wellington	1 share	
Andrew Wellington Boyce of 1 Dekka Street, Wellington	1 "	
John Boisieux Bullock of 369 Karaka Bay Road, Wellington	1 "	20

(d) The registered office of the company is at 119-125 Ghuznee Street, Wellington.

2. THAT the Articles of Association of Boots the Chemists (New Zealand) Limited as amended and registered in the month of September 1940 and still current provides in Article 17 as follows :-

"The directors may from time to time appoint one of their body to be managing director of the company either for a fixed term or otherwise and may fix his remuneration and the directors may from time to time remove or dismiss any managing director and appoint another in his stead PROVIDED that no person shall be appointed managing director unless and until the directors shall have satisfied themselves

that Boots Pure Drug Company Limited whose head office is at Nottingham England, approve of such appointment and the terms thereof, including the rate of remuneration. The terms of appointment shall not be amended nor shall the appointment be terminated unless and until the directors shall have satisfied themselves that such amendment or termination has been approved by Boots Pure Drug Company Limited."

10

3. THAT I was unable to find any record of the incorporation or registration in New Zealand of the company known as Boots Pure Drug Company Limited

SWORN at Wellington this )  
26th day of March 1963, ) 'M.B.Horton'  
before me:-

'M.J.Prosser'

A Solicitor of the Supreme Court of  
New Zealand

20

No. 4

AFFIDAVIT OF LEON JAMES MAUGER  
FOR PLAINTIFF (RESPONDENT)

I, LEON JAMES MAUGER of Wellington, Secretary, make oath and say as follows :-

1. THAT I am the Secretary of Chemists' Service Guild of New Zealand Incorporated, the abovenamed plaintiff.

2. THAT the plaintiff is a society duly incorporated under the provisions of the Incorporated Societies Act 1908 and having its registered office at 220 Vivian Street, Wellington. Annexed hereto and marked with the letter A is a true copy of the registered rules

30

In the Supreme Court of New Zealand

No. 3

Affidavit of Mark Bradbury Horton for Plaintiff (Respondent)

26th March, 1963  
- continued

No. 4

Affidavit of Leon James Mauger for Plaintiff (Respondent)

26th March, 1963.

In the Supreme Court of New Zealand

No. 4

Affidavit of Leon James Mauger for Plaintiff (Respondent)

26th March, 1963  
- continued

of the plaintiff Society.

3. THAT as full-time Secretary of the plaintiff society I am aware of the facts alleged in paragraphs 1, 2, 5 and 6 of the Statement of Claim filed herein, and the facts so alleged are true.

4. THAT with regard to the matters alleged in paragraph 7 of the said statement of claim, I was present at the Supreme Courthouse, Invercargill on the 6th September 1960 upon the hearing of an application by the second defendant for the consent of the Pharmacy Authority to its establishing and carrying on business in a pharmacy at 87 Dee Street, Invercargill, and I recollect that Andrew Wellington Boyce, the Assistant General Manager of the second defendant, in evidence informed the Authority that Boots Pure Drug Company Limited was a wholesaler in drugs and that Boots the Chemists (New Zealand) Limited also sells drugs as a wholesaler. Annexed hereto and marked with the letter "B" are true extracts from the official record of the said hearing, in particular from pages F.6, F.7, F.8, and G.1 of such record.

10

20

SWORN at Wellington this )  
26th day of March 1963, ) 'L. James Mauger'  
before me:-

'P.D. McKenzie'

A Solicitor of the Supreme Court of New Zealand

30

No. 5

EXHIBIT "B" TO AFFIDAVIT OF LEON JAMES MAUGER  
SWORN THE 26TH MARCH 1963

In the Supreme  
Court of New  
Zealand

No. 5

Exhibit "B" to  
Affidavit of  
Leon James  
Mauger sworn  
26th March,  
1963

"B"

F 6

Mr. A.W.Boyce  
Assistant General Manager,  
Boots the Chemists (N.Z.)  
Ltd.

10 XXD by  
Dr. Richardson

Now your associated companies are manufacturers and wholesalers as well as retailers? ... Our associated companies?

Well, your parent company? ... Our parent company, the Boots Pure Drug Company?

Yes ... They are manufacturers and wholesalers.

20 That is right, and as you say in your evidence a substantial percentage of your turnover is with respect to your own lines? ... Yes.

F 7

Now you are wholesalers and manufacturers? ...The New Zealand Company?

Well, either the New Zealand company or your parent company? ... We are not manufacturers in New Zealand. We do wholesale certain lines.

30 As wholesalers are you prepared to compete on equal terms with the other wholesalers? ... With certain of our own lines, ethical lines, which we must sell through druggist wholesalers, not direct to the chemists.

I am afraid I just don't follow you, Your firm is a wholesale firm as well as a retail firm. As a wholesale firm why can't you

In the Supreme  
Court of New  
Zealand

          
No. 5

Exhibit "B" to  
Affidavit of  
Leon James  
Mauger sworn  
26th March,  
1963

- continued

sell to local chemists? ... Perhaps I could make it clearer if I stated we are wholesalers of ethical products. We are not wholesalers of patent medicines, which the public buy direct themselves.

G 1

In respect of those patent medicines, I take it that the English company is the wholesaler? ... Yes.

The English company as a wholesaler could quite readily sell its lines direct to local chemists? ... Yes. 10

Cutting out the other wholesalers? ... Cutting out in fact Boots the Chemists (N.Z.) Limited. You are saying Boots Pure Drug Company in England could easily sell direct to the private chemists in New Zealand?

Yes, They are wholesalers operating in New Zealand as well as in England, are they not? ... No. I must make that point clear. Boots Pure Drug Company do not operate in New Zealand at all. 20

Who purchase the patent medicines? ... Boots the Chemists (N.Z.) Limited have the agency for distribution of the Boots Pure Drug Company range.

Then as distributors of these patent medicines the New Zealand company can wholesale them to the local chemists, can they not? ... We would not. 30

Why not? ... Because with our retail establishments we prefer - and we have the right to prefer - to sell those direct to the public.

Yes? ... But as I mentioned this morning, if a chemist has received a request for any of our lines we will supply him. It shows no profit for himself but he can satisfy that request.

No. 6

AFFIDAVIT OF IAN DAVID OGDEN FOR  
PLAINTIFF (RESPONDENT)

In the Supreme  
Court of New  
Zealand

No. 6

I, IAN DAVID OGDEN of Wellington, Public  
Servant, make oath and say as follows :

Affidavit of  
Ian David  
Ogden for  
Plaintiff  
(Respondent)

1. THAT I am Secretary to the Pharmacy  
Authority.

25th February,  
1964

10 2. THAT annexed hereto and marked with the  
letter "A" is a true copy of the application of  
Boots the Chemists (New Zealand) Limited dated  
the 2nd day of November 1962 for the consent of  
the Pharmacy Authority to its establishing and  
carrying on business in a pharmacy to be  
erected at Site 4, Porirua, but omitting the two  
plans, namely the plan of the proposed pharmacy  
and the street plan showing the location of the  
said pharmacy, annexed to the said application.

20 SWORN at Wellington this )  
25th day of February 1964 ) 'I.D.Ogden'  
before me:

'K.H.Rigby'

A Solicitor of the Supreme Court of  
New Zealand

---

In the Supreme  
Court of New  
Zealand

No. 7

EXHIBIT "A" TO AFFIDAVIT OF IAN DAVID OGDEN  
SWORN THE 25TH FEBRUARY 1964

No. 7

Exhibit "A" to  
Affidavit of  
Ian David  
Ogden sworn  
25th February,  
1964

"A"

PHARMACY AUTHORITY

The Minister of Health,  
P.O.Box 5013,  
WELLINGTON.C.1.

APPLICATION FOR CONSENT TO ESTABLISH OR CARRY  
ON BUSINESS IN A PHARMACY

10

I hereby apply for consent to establish or carry on business in a pharmacy, as described below, and in support of this application submit the following information:

1. PARTICULARS OF APPLICANT(S)

p.p. BOOTS THE CHEMISTS (NEW ZEALAND)  
LTD. 'C.H.Thornton' (Managing  
Director)

2. PARTICULARS OF PROPOSED PHARMACY:

(I) SITUATION: TOWN PORIRUA  
STREET & NUMBER Portion  
of Site 4.

20

(II) DESCRIBE PREMISES AND PROPOSALS, IF ANY, IN REGARD TO MODERNISATION New premises to be erected on site - 18½ft. frontage by 57ft. deep overall. (Plan of shop layout and trading area enclosed).

(III) WHAT STAFF IS TO BE EMPLOYED?  
Manager and three assistants

(IV) WHAT HOURS PROPOSES TO BE OBSERVED?  
Usual Chamists hours

- (V) WHAT SPECIAL SERVICES, IF ANY, TO BE UNDERTAKEN? Full dispensing, surgical, Medicinal, Toiletries, Photographic services.

In the Supreme  
Court of New  
Zealand

No. 7

3. FINANCIAL

Exhibit "A" to  
Affidavit of  
Ian David  
Ogden sworn  
25th February,  
1964

- (I) IS PROPERTY FREEHOLD OR LEASEHOLD?  
Leasehold
- (II) IF LEASEHOLD, STATE
- (A) RENT: £780 PER Year
- (B) CONDITIONS: (I.E. TERMS OF LEASE OR TENANCY) 10 years and right of renewal further 10 years

- continued

(III) CAPITAL EXPENDITURE PROPOSED:

- (A) STOCK: £7000
- (B) FITTINGS: £3500
- (C) RENOVATIONS (OR OTHER) £ -
- TOTAL £10,500

(IV) HOW FINANCE PROPOSED:

- (A) TOTAL AMOUNT OF CAPITAL £10,500
- (B) AMOUNT OF APPLICANT'S OWN CAPITAL £ TOTAL
- (C) AMOUNT OF CAPITAL OTHER THAN APPLICANTS £ NIL
- (D) AMOUNT OF LOANS OR ADVANCES £ NIL
- (D) (i) By Whom NIL
- (D) (ii) How Secured -
- (D) (iii) Terms, Interest, Repayments etc. -

4. INTEREST IF ANY, IN ANY OTHER PHARMACY

- (A) NATURE OF APPLICANT'S INTEREST

In the Supreme  
Court of New  
Zealand.

No. 7

Exhibit "A" to  
Affidavit of  
Ian David  
Ogden sworn  
25th February,  
1964

- continued

Established Boots The Chemists (N.Z.)  
Limited, pharmacies at Wellington,  
Auckland, Palmerston North, Dunedin,  
Hamilton, Lower Hutt, Christchurch,  
Wanganui

(B) NATURE OF INTEREST OF ANY OTHER  
PERSON ASSOCIATED WITH THE APPLICANT:

NIL

5. ANY ADDITIONAL INFORMATION WHICH APPLICANT  
IS ABLE TO SUBMIT I.E. A GENERAL  
DESCRIPTION OF THE DISTRICT CONCERNED,  
INCLUDING ITS POPULATION, ACCESS, MEDICAL  
SERVICE, DETAILS OF OTHER SHOPS, (NUMBER  
AND KIND) ALREADY ESTABLISHED NEAR THE  
PROPOSED SITE, ETC., AND ANY PERSONAL FACTS  
THE APPLICANT DESIRES TO BRING UNDER NOTICE.  
(CONTINUE ON SEPARATE SHEET IF NECESSARY). 10

New development - shops and services  
as allocated to applicants on plan.

Established Pharmacies: 20

(1) Elsdon Pharmacy Limited -  
(Elsdon)

(2) Porirua Pharmacy Limited -  
(Porirua East)

I ENCLOSE (A) A SKETCH PLAN SHOWING THE  
LOCATION OF THE PROPOSED  
PHARMACY, AND THE RESPECTIVE  
NAMES AND DISTANCES APART OF  
THE OTHER PHARMACIES IN THE  
VICINITY. 30

NOTE: A LITTLE TIME PUT INTO THIS  
PLAN WOULD ASSIST CONSIDERA-  
TION OF YOUR CASE.

(B) A STATUTORY DECLARATION IN  
THE FORM ATTACHED.

BOOTS THE CHEMISTS (NEW ZEALAND) LTD.

Signature of applicant:  
'C.H.Thornton'  
DATE: 2/11/62.

In the Supreme Court of New Zealand

No. 7

Exhibit "A" to Affidavit of Ian David Ogden sworn 25th February, 1964

- continued

"A" (continued)

DECLARATION

p.p. BOOTS THE CHEMISTS (NEW ZEALAND) LTD.

10 I, Clarence Henry Thornton (Managing Director) OF Wellington DO SOLEMNLY AND SINCERELY DECLARE :-

- 1. THAT THE STATEMENTS MADE BY ME IN THE FOREGOING APPLICATION ARE SO FAR AS THEY RELATE TO MATTERS OF ASCERTAINED FACT, TRUE FULL AND CORRECT IN ALL PARTICULARS AND SO FAR AS THEY RELATE TO MATTERS OF FACT NOT YET ASCERTAINED, ARE MY ESTIMATE OF THE MATTERS STATED, MADE TO THE BEST OF MY PRESENT KNOWLEDGE, INFORMATION AND BELIEF.
- 2. THAT THERE IS NO UNDISCLOSED AGREEMENT BETWEEN MYSELF AND OTHER PERSON OR PERSONS RELATING TO THE OWNERSHIP OF THE BUSINESS REFERRED TO IN THE SAID APPLICATION OR TO THE SHARING OF THE PROFIT ARISING THEREFROM.

AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING THE SAME TO BE TRUE, AND BY VIRTUE OF THE OATHS AND DECLARATIONS ACT 1957.

'C.H.Thornton'.

DECLARED AT Wellington THIS 2nd DAY OF November 196 .

BEFORE ME 'R.S.V.Simpson'

20

30

In the Supreme  
Court of New  
Zealand

No. 8

AFFIDAVIT OF NOEL MERVYN CANTWELL FOR PLAINTIFF  
(RESPONDENT)

No. 8

Affidavit of  
Noel Mervyn  
Cantwell for  
Plaintiff  
(Respondent)

9th April,  
1964

I, NOEL MERVYN CANTWELL of Silverstream,  
Chemist, make oath and say as follows :-

1. I am the Trading Manager for the Hutt  
Valley Consumers Co-operative Society Ltd. and  
prior to October 1963 I was the manager of the  
pharmacy operated by the said Society at Lower  
Hutt. 10

2. IN May 1963 while I was manager of the  
said pharmacy I received through the mail at  
the pharmacy an envelope containing certain  
literature as follows :-

- (a) Circular letter from Boots the Chemists  
(N.Z.) Ltd. dated 15th May 1963 addressed  
to Pharmacists, drawing attention to  
certain products
- (b) Brochure advertising "Strepsils Antiseptic  
Lozenges" manufactured by Boots Pure Drug  
Co. Ltd., England 20
- (c) Brochure advertising "Tussils" manufactured  
by Boots Pure Drug Co. Ltd., England
- (d) Brochure advertising "P.R.Spray"  
manufactured by Boots Pure Drug Co. Ltd.,  
England
- (e) Brochure advertising "Fenox" nasal drops  
manufactured by Boots Pure Drug Co. Ltd.,  
England
- (f) Business reply envelope addressed to Boots  
The Chemists (N.Z.) Ltd., P.O.Box 160,  
Wellington C.1. 30

3. THE documents referred to in the preceding  
paragraph are hereunto annexed marked 'A', 'B'  
'C' 'D' 'E' and 'F' respectively.

4. ABOUT the same time as I received the literature referred to in the preceding paragraphs, the card, a copy of which is hereunto annexed marked 'G', was left at the pharmacy in my absence, indicating that a representative of the Medical Sales Division of Boots the Chemists (N.Z.) Ltd. had called.

In the Supreme Court of New Zealand

No. 8

Affidavit of Noel Mervyn Cantwell for Plaintiff (Respondent)

9th April, 1964

- continued

10 SWORN at Wellington this )  
9th day of April 1964 ) 'N.Cantwell'  
before me:-

'J.C. Hooper'

A Solicitor of the Supreme Court of New Zealand

No. 9

EXHIBIT "A" TO AFFIDAVIT OF NOEL MERVYN CANTWELL  
SWORN THE 9TH APRIL 1964

No. 9

Exhibit "A" to Affidavit of Noel Mervyn Cantwell sworn 9th April 1964

20 The  
B O O T S  
Chemists  
New Zealand Limited

'A'  
119-125 Ghuznee Street  
WELLINGTON  
Telephone: 57-760 - PO.  
Box 160  
Telegrams: "PUREDRUG"  
LBJ:DMB  
15th. May, 1963.

Dear Pharmacist,

The following products are drawn to your attention for consideration when ordering your winter lines :-

Strepsil Antiseptic Lozenges.

30 The popularity of these lozenges are such that we recommend you order early to avoid shortages that may develop due to import restrictions. Cost 32/- doz. Retail 4/-.

Tussils - double action.

A cough suppressant in a convenient form,

In the Supreme Court of New Zealand

recommended for excessive coughing whatever the etiology. Cost 36/- doz. Retail 4/6.

P.R.Spray

No. 9

A revolutionary method of relieving pain due to reflex muscular spasm.

Exhibit "A" to Affidavit of Noel Mervyn Cantwell sworn 9th April 1964 - continued

Gives prompt and effective relief in cases of Lumbago, sprains, fibrosites and dysmenorrhoea.

P.R.Spray unlike Ethyl Chloride is suitable for home use being non-inflamible and does not produce cold burns.

10

Aerosol container, 5 fluid oz. Cost 8/9. Retail 13/3.

- Fenox Spray.
- Fenox Drops.
- Fenox Cough Arrestive.

The introduction of Fenox Cough Arrestive (Phenylephrine and Pholcodine), completes the range of Fenox preparations offering a safe and effective means of alleviating the distressing symptoms of the common cold, hay fever, sinusites, and many other catarrhal conditions.

20

Fenox Cough Arrestive pack contains a plastic cup for the patients use.

- Cost Spray 2/10. Retail 4/3.
- " Drops 2/4. " 3/6.
- " Cough Arrestive 4/4. " 6/6.

A descriptive brochure is enclosed for your information together with a reply paid envelope for your convenience when ordering.

30

Yours faithfully,  
BOOTS THE CHEMISTS (N.Z.) LTD.

No.10

No. 10

Exhibit "G" to Affidavit of Noel Mervyn Cantwell sworn 9th April 1964

EXHIBIT "G" TO AFFIDAVIT OF NOEL MERVYN CANTWELL SWORN THE 9TH APRIL 1964

'G'

Peter H. Vincent

representing  
MEDICAL SALES DIVISION

40

BOOTS THE CHEMISTS (N.Z.) LTD.  
P.O. BOX 160 WELLINGTON

PHONE  
57-760



In the Supreme  
Court of New  
Zealand

                      
No. 11

Statement of  
Defence of  
Second  
Defendant  
(Appellant)  
5th December,  
1963 -  
continued

paragraph (9) of the Statement of Claim.

7. IT denies each and every the allegations contained in paragraphs (10) and (11) of the Statement of Claim.

8. IT denies each and every the allegations contained in paragraphs (12) and (13) of the Statement of Claim.

9. IT denies that the plaintiff has any just right or cause for the Orders or for judgment as are sought in the prayer to the Statement of Claim. 40

B. AND FOR A FURTHER AND ALTERNATIVE DEFENCE  
the second defendant, by its solicitor, says:

10. IT repeats the admissions denials and allegations contained in paragraphs (1) to (9) both inclusive herein.

11. AT and prior to the commencement of the Pharmacy Amendment Act 1954 on the 1 day of October 1954 the third defendant held the capital in the shares of the second defendant in or in approximately the same number as is alleged in paragraph (8) of the Statement of Claim. 50

12. ~~THE~~ second defendant says that by reason of the estate or interest as aforesaid of the third defendant in the business of the second defendant and by reason also of the proviso to Section 13 (1) of the Pharmacy Amendment Act 1954 the said subsection does not apply to the third defendant. 60

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No. 12

STATEMENT OF DEFENCE BY THIRD DEFENDANT

STATEMENT OF DEFENCE BY THIRD DEFENDANT

Thursday the 5th day of December, 1963.

THE THIRD DEFENDANT by its solicitor, EDWARD DENIS BLUNDELL, says:

A. FOR A FIRST DEFENCE

1. IT admits the allegations contained in paragraphs (1) (2) and (3) of the Statement of Claim.

10 2. IT denies the allegations contained in paragraph (4) of the Statement of Claim save and except that it admits that it is a company duly incorporated and registered in England and having its head office at Station Street, Nottingham, England And in particular the third defendant denies that it is a Wholesale Dealer in Drugs as is alleged in the said paragraph (4) and it further denies that it is a Wholesale Drug Merchant as is stated incorrectly in the intitulement to this action. The third defendat further says that it is a manufacturer of drugs and other pharmaceutical goods.

3. IT admits the allegations contained in paragraphs (5) and (6) of the Statement of Claim.

20 4. IT denies each and every the allegations contained in paragraph (7) of the Statement of Claim.

5. IT admits the allegations contained in paragraph (8) of the Statement of Claim and further it says that the number of shares it now holds in the second defendant is 59,970.

30 6. IT admits that as at the date of the filing of the Statement of Claim herein a proviso to Article 17 of the Articles of Association of the second defendant contained provisions as are alleged in paragraph (9) of the Statement of

In the Supreme Court of New Zealand

No. 12

Statement of Defence by Third Defendant (Appellant) 5th December, 1963.

In the Supreme  
Court of New  
Zealand

            
No. 12  
Statement of  
Defence by  
Third  
Defendant  
(Appellant)  
5th December  
1963. -  
continued

Claim but it says that by Special Resolution of the second defendant passed on the 28 day of May 1963, a memorandum of which was lodged with the Registrar of Companies on the 29 day of May 1963, the said Article 17 was amended by deleting therefrom the said proviso And accordingly it denies the allegations contained in paragraph (9) of the Statement of Claim.

7. IT denies each and every the allegations contained in paragraphs (10) and (11) of the Statement of Claim. 10

8. IT denies each and every the allegations contained in paragraphs (12) and (13) of the Statement of Claim.

9. IT denies that the plaintiff has any just right or cause for the Orders or for judgment as are sought in the prayer to the Statement of Claim.

B. AND FOR A FURTHER AND ALTERNATIVE DEFENCE  
the third defendant by its solicitor says: 20

10. IT repeats the admissions denials and allegations contained in paragraphs (1) to (9) both inclusive herein.

11. AT and prior to the commencement of the Pharmacy Amendment Act 1954 on the 1 day of October 1954 the third defendant held the capital in the shares of the second defendant in or in approximately the same number as is alleged in paragraph (8) of the Statement of Claim.

12. THE third defendant says that by reason of its estate or interest as aforesaid in the business of the second defendant and by reason also of the proviso to Section 13 (1) of the Pharmacy Amendment Act 1954 the said subsection does not apply to the third defendant. 30

No. 13

AFFIDAVIT OF CLARENCE HENRY THORNTON  
FOR SECOND DEFENDANT (APPELLANT)

In the Supreme  
Court of New  
Zealand

No. 13

I, CLARENCE HENRY THORNTON of Wellington,  
Company Director make oath and say as follows:-

Affidavit of  
Clarence Henry  
Thornton for  
Second  
Defendant  
(Appellant)  
17th January  
1964

1. THAT I am Managing Director of Boots the Chemists (New Zealand) Limited the abovenamed second defendant and I have held that position since 1946. I am also a qualified and registered pharmacist.

10 2. THE details relating to the second defendant as are set forth in paragraph (1) of the affidavit of Mark Bradbury Horton dated the 26 day of March 1963 and sworn and filed herein were correct as at that time but at the present time the third defendant holds 59,970 shares in the second defendant. It was not until 1936 that the second defendant actively commenced business in New Zealand as a Chemist and Druggist. In that year it operated two retail pharmacies, one in Auckland and one in Wellington, and at the present time the second defendant operates nine  
20 retail pharmacies.

3. THE whole of the actual or the beneficial interests in the shares of the second defendant has always been held by the third defendant. As at the 1 October 1954 of the total of 60,000 £1 shares of the second defendant, 59,920 shares were in the name of the third defendant.

30 4. PRIOR to the 28 May 1963 Article 17 of the Articles of Association of the second defendant was in the form as set out in paragraph (2) of the said affidavit of Mark Bradbury Horton. By Special Resolution of the second defendant passed on the 28 day of May 1963, a memorandum of which was lodged with the Registrar of Companies on the 29 day of May 1963, the said Article 17 was amended by deleting therefrom all words after the word "PROVIDED".

5. THE third defendant is not registered in New Zealand and to the best of my knowledge and

In the Supreme  
Court of New  
Zealand

            
No. 13  
Affidavit of  
Clarence Henry  
Thornton for  
Second  
Defendant  
(Appellant)  
17th January  
1964 -  
continued

belief has never carried on business in New Zealand.

6. IN the period since my appointment as Managing Director of the second defendant the third defendant has taken no part in the management or control of the business of the second defendant either generally or in relation to the business carried on in any of our pharmacies. The Board of Directors of the second defendant and myself as the principal executive officer have unfettered discretion in the conduct of the business. 10

7. THE business of the second defendant is carried on under three general headings as follows:-

- (a) That of a retail pharmacy in each of the nine retail shops. Such business includes the sale of drugs, making up prescriptions, the sale of other pharmaceutical goods, chemists' sundries and photographic materials and goods and providing the service and advice as normally available in any pharmacy in this country. 20
- (b) A medical sales section. Through this organisation the second defendant sells only the preparations manufactured by and imported from the third defendant and it sells these in bulk to wholesalers, various hospitals and to a limited extent direct to other retail chemists. This part of the business I regard as wholesale in that to this limited extent the second defendant 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. 20
- (c) An agricultural section. Through this section the second defendant sells various agricultural and horticultural preparations manufactured and supplied by the third defendant to Stock and Station agents and other merchants. 30

By far the greatest proportion of the business of the second defendant is that conducted through

its retail pharmacies. For the last five years the percentage of drugs, as this term is defined in the Pharmacy Act 1939, which the second defendant sells wholesale has averaged approximately 8% of the total sales of the second defendant.

8. THE second defendant is not a manufacturer of drugs or of any other goods. In respect of drugs for human use its policy is to maintain a wide range in each of its retail pharmacies. These drugs it purchases in the main direct from the third defendant or from other manufacturers, such as Imperial Chemical Industries Limited and Parke Davis Limited, or from wholesalers within New Zealand, such as Kempthorne Prosser & Co. Limited, or from manufacturers' agents within New Zealand. As a matter of internal organisation within the second defendant these purchases are made in bulk through the head office in Wellington and are invoiced to the various retail pharmacies at a fixed retail price.

SWORN at Wellington this }  
17th day of January 1964 } 'C.H. Thornton'  
before me:

'Kevin J. Bell'

A Solicitor of the Supreme Court of New Zealand

In the Supreme Court of New Zealand

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No. 13  
Affidavit of  
Clarence  
Henry  
Thornton for  
Second  
Defendant  
(Appellant)  
17th January  
1964. -  
continued

No. 14

AFFIDAVIT OF ANDREW WELLINGTON BOYCE FOR  
SECOND DEFENDANT (APPELLANT)

30 I, ANDREW WELLINGTON BOYCE of Wellington,  
Company Director make oath and say as follows:-

1. THAT I am a Director and the Assistant General Manager of Boots the Chemists (New Zealand) Limited the abovenamed second defendant. I have been Assistant General Manager since 1951 and I am also a qualified and registered pharmacist.

No. 14  
Affidavit of  
Andrew  
Wellington  
Boyce for  
Second  
Defendant  
(Appellant)  
17th January,  
1964

In the Supreme  
Court of New  
Zealand

No. 14  
Affidavit of  
Andrew  
Wellington  
Boyce for  
Defendant  
(Appellant)  
17th January,  
1964 -  
continued

2. I have never been employed by the third defendant. In 1949 and again in 1959 and at the direction of the second defendant I visited the United Kingdom to study retail marketing conditions and trends in the pharmaceutical industry. In the main I did this through the third defendant but on each visit I also visited several other companies in the United Kingdom from which the second defendant purchases direct drugs and other pharmaceutical goods. At no stage was I concerned with nor was I informed of the internal organisation of the third defendant or its United Kingdom subsidiaries. My concern with the third defendant was to discuss our mutual problems and interests and to benefit from its experience in the retail trade. 10

3. IN regard to the extract from the written record of my evidence given before the Pharmacy Authority at Invercargill on the 6 day of September 1960 which is attached as Exhibit "B" to the affidavit of Leon James Mauger dated the 26 day of March 1963 and sworn and filed herein I admit that this correctly records that part of what I said in my evidence. At that time and until recently when I have become better informed as to the business of the third defendant I believed that the third defendant, while primarily a manufacturer of drugs and other pharmaceutical goods, also carried on a wholesale business in drugs in what I understand 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. I did not gain this belief from any personal knowledge of the third defendant's business. I feel sure my belief was acquired simply by reason of the fact that in my work with the second defendant I have been closely associated with the Wholesale and International Division of the third defendant and have simply assumed from this name that this meant that the third defendant did carry on some business of a wholesale nature. I feel sure that if I had known in September 1960 what I now know of the business of the third defendant I would not have answered the questions put to me by counsel in cross-examination in the way that I 30 40

did.

4. ALL purchases of drugs as that word is defined in the Pharmacy Act 1939 which the second defendant makes from the third defendant are made direct from the third defendant as the manufacturer thereof in the same way as the second defendant purchases other drugs from other manufacturers. I was aware at all times that the second defendant was not purchasing these drugs from the third defendant as a wholesaler but I simply assumed that in respect of the other aspects of its business the name of the Wholesale and International Division implied that some of this business was of a wholesale nature.

10

SWORN at Wellington this )  
 17 day of January 1964 } 'A.W.Boyce'  
 before me:-

'Kevin J. Bell'

A Solicitor of the Supreme Court of New Zealand

In the Supreme Court of New Zealand

No. 14  
 Affidavit of Andrew Wellington Boyce for Second Defendant (Appellant)  
 17th January, 1964.-  
 continued

20

No. 15

AFFIDAVIT OF HAROLD TETLEY MILNES FOR THIRD DEFENDANT (APPELLANT)

No. 15  
 Affidavit of Harold Tetley Milnes for Third Defendant (Appellant)  
 18th December 1963.

I, HAROLD TETLEY MILNES, of Hecadeck Cottage, Nether Broughton in the County of Leicester, Solicitor, make oath and say as follows:-

30

1. I am a Solicitor of the Supreme Court and the Secretary of Boots Pure Drug Company Limited (hereinafter referred to as "the third defendant") and its Associated United Kingdom Subsidiary Companies, a position which I have occupied since the 1st January 1949. Within our organisation the combination of the third defendant, the said United Kingdom Subsidiary Companies and the retail shops and branches owned and operated by the Subsidiary Companies and to which reference is made in paragraph 3 herein are collectively known as "the Group".

In the Supreme Court of New Zealand

No. 15  
Affidavit of Harold Tetley Milnes for Third Defendant (Appellant) 18th December, 1963. - continued

2. I am duly authorised by the third defendant and its United Kingdom Subsidiaries to make this affidavit and the facts hereinafter deposed to are from knowledge and information acquired during the course of my duties as aforesaid.

3. THE third defendant was incorporated on the 7th November 1888 and carries on business as a manufacturer of drugs, fine chemicals and pharmaceuticals. In addition it is the beneficial owner of the whole of the issued Share Capital of Boots The Chemists (Northern) Limited, Boots The Chemists (Southern) Limited, Boots The Chemists (Eastern) Limited, Boots The Chemists (Western) Limited and Boots The Chemists (Lancashire) Limited. These five latter Companies own and control some 1289 retail shops or branches carrying on the retail business (inter alia) of selling drugs. In addition the third defendant beneficially owns the whole of the issued Share Capital of a number of overseas Subsidiary Companies including, inter alia, Boots The Chemists (New Zealand) Limited, the abovenamed second defendant. 10 20

4. THE third defendant owns and operates a number of factories of which the principal ones are at Nottingham, Beeston and Airdrie and at which it carries on the business of a manufacturing chemist. At these factories are produced a wide range of drugs and other pharmaceutical products. These are sold as follows:- 30

- (a) Direct to the retail shops or branches of the United Kingdom Subsidiary Companies.
- (b) To persons or companies who are recognised in the United Kingdom as wholesalers in the sense that they are middlemen buying in bulk from the Drug Company and from other manufacturers or distributors and then reselling at a mark-up price to non-affiliated retailers. 40
- (c) A small proportion direct to other retail

outlets than within the Group.

- (d) To buyers from outside the United Kingdom, including the second defendant.

In the Supreme  
Court of New  
Zealand

—  
No. 15  
Affidavit of  
Harold Tetley  
Milnes for  
Third  
Defendant  
(Appellant)  
18th December,  
1963 -  
continued

10 5. Because of the size of the business of the Group the third defendant is organised into a number of service departments and divisions. One such Division of the Group is known as the "Wholesale and International Division". Through this Division are channelled the various sales as are enumerated in paragraph 4 herein except those referred to in sub-paragraph (a) of that paragraph. The third defendant does not purchase any drugs or other pharmaceutical goods for resale to independent chemists or any other independent retailer. I have never regarded the third defendant as a wholesale dealer in drugs in what I understand to be the meaning of "wholesale" as commonly accepted in business in the United Kingdom and I believe it correct to assert that it is not so regarded in the pharmaceutical industry in the United Kingdom.

20

30 6. THE direct sales to retail shops of drugs from pharmaceutical goods manufactured by the third defendant as are referred to in paragraph 4 (a) herein are on the same basis as any sale direct from a manufacturer in that there is no intervening middleman and no mark-up for his services. In the same way the sales internationally, including those to the second defendant, are on the same basis of being a direct sale from a manufacturer.

40 7. WHILE the third defendant is the principal Shareholder in the second Defendant 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 the second defendant in New Zealand. That is left exclusively to the Directors and the management of the second defendant. In particular, the second defendant decides exclusively what

In the Supreme  
Court of New  
Zealand

No. 15

Affidavit of  
Harold Tetley  
Milnes for  
Third  
Defendant  
(Appellant)  
18th December  
1963 -  
continued.

purchases it makes from the third defendant.

SWORN this 18th day of December  
1963 at the City of Nottingham  
in the County of Nottingham,  
England Before me,

'H.T.Milnes'

'Arthur B. Perkins'

Notary Public,

Nottingham, England.

No. 16

Affidavit of  
Godfrey  
Charles  
Dutton for  
Third  
Defendant  
(Appellant)  
18th December  
1963.

AFFIDAVIT OF GODFREY CHARLES DUTTON  
FOR THIRD DEFENDANT (APPELLANT)

10

I, GODFREY CHARLES DUTTON of "Penrhyn House",  
Clumber Road East, The Park, Nottingham in  
the county of Nottingham, Accountant, make  
oath and say as follows:-

(1) I am a Fellow of the Institute of  
Chartered Accountants in England and Wales. I  
joined the staff of Boots Pure Drug Company  
Limited (hereinafter called "the third  
defendant") in June 1936 and its associated  
United Kingdom Subsidiaries, and am now the  
Chief Accountant of the third defendant and its  
United Kingdom Subsidiary Companies, a position  
which I have occupied since October 1953.

20

(2) I am duly authorised by the third defendant  
and its United Kingdom Subsidiary Companies to  
make this Affidavit and the facts hereinafter  
deposed to are from knowledge and information

acquired by me during the course of my duties as aforesaid.

(3) THE entire issued share capital of the United Kingdom Subsidiaries, namely -

Boots The Chemists (Northern) Limited  
 Boots The Chemists (Southern) Limited  
 Boots The Chemists (Eastern) Limited  
 Boots The Chemists (Western) Limited  
 Boots The Chemists (Lancashire) Limited

1 is beneficially owned by the third Defendant. These Subsidiaries between them own and operate 1,289 retail outlets.

(4) ALL purchases by the third Defendant's United Kingdom retail Subsidiary Companies are invoiced by the third Defendant at retail selling price including purchase tax. I crave leave to refer to the specimen invoice attached and marked "A". The Directors of the third Defendant agree annually with the Directors of the United Kingdom Subsidiary Companies two common overall rates of discount to be deducted from such invoice prices; one for goods manufactured by the third Defendant, the other for manufactured goods of all description. This again is a domestic arrangement to keep a check upon the trading performances of each such subsidiary. In particular does this apply to drugs. As the retail Companies are wholly owned subsidiaries of the third defendant this invoicing is no more than an inter-company transfer.

(5) AS Manufacturing Chemists, the third Defendant also sells goods of its own manufacture to wholesalers and non-affiliated

In the Supreme Court of New Zealand

                      
 No. 16

Affidavit of  
 Godfrey  
 Charles  
 Dutton for  
 Third  
 Defendant  
 (Appellant)  
 18th December  
 1963. -  
 continued

In the Supreme  
Court of New  
Zealand

retailers. Such sales are charged and  
invoiced at normal trade discounts as set out  
in the Company's trade price lists.

          
No. 16  
Affidavit of  
Godfrey  
Charles  
Dutton for  
Third  
Defendant  
(Appellant)  
18th December  
1963 -  
continued

SWORN this 18th day of December )  
1963 at the City of Nottingham }  
in the County of Nottingham } 'G.C.Dutton'  
England before me, }

"Arthur B. Perkins"

Notary Public,  
Nottingham, England. 10

No. 17.

AFFIDAVIT OF SIDNEY MICHAEL PERETZ  
FOR THIRD DEFENDANT (APPELLANT)

In the  
 Supreme Court  
 of New  
 Zealand

No 17

Affidavit of  
 Sidney Michael  
 Peretz for  
 Third  
 Defendant  
 (Appellant)  
 18th December  
 1963

I, Sidney Michael Peretz of "White Gates",  
 Tollerton Village, in the County of Nottingham,  
 Pharmacist and Company Director, make oath and  
 say as follows: .

1. I have been employed by Boots Pure Drug  
 Company Limited (hereinafter referred to as "the  
 10 third defendant") since 1934 and have been  
 engaged in the Wholesale and International  
 Division of that Company since 1955. I was  
 appointed Head of that Division in April 1959,  
 which position I have held since then. I am  
 a Director of Boots The Chemists (Southern)  
 Limited and also a Director of Boots The Chemists  
 (New Zealand) Limited; and am a member of the  
 Executive Committee of the third defendant and its  
 20 United Kingdom Subsidiary Companies, which body  
 conducts the day to day management of the Group.

2. I am duly authorised by the third defendant  
 and its United Kingdom subsidiaries to make this  
 Affidavit and the facts hereinafter deposed to  
 are from knowledge and information acquired by  
 me during the course of my duties as aforesaid.

3. The third defendant, together with its wholly  
 owned Subsidiary Companies, Boots The Chemists  
 (Northern) Limited, Boots The Chemists (Southern)  
 30 Limited, Boots The Chemists (Eastern) Limited,  
 Boots The Chemists (Western) Limited and Boots  
 The Chemists (Lancashire) Limited, carries on the  
 business of manufacturing and retail chemists.

4. As a manufacturing chemist the third  
 defendant sells its own manufactured goods, for  
 instance medical specialities, produced in its  
 three major groups of factories situated in  
 Nottingham, Beeston and Airdrie. These factories,  
 which employ over 11,000 personnel produce a  
 range of pharmaceutical products, including  
 40 antibiotics, corticosteroids and insulin; these  
 products are sold either through recognised  
 unaffiliated wholesalers or direct to the retail  
 trade. These are the normal channels of sale used  
 by pharmaceutical manufacturers in the United

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No. 17

Affidavit of  
Sidney Michael  
Peretz for  
Third  
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(Appellant)  
18th December,  
1963  
Continued.

Attached hereto and marked 'A' is the current Trade Price List of Medical Products published in May 1963 by the third defendant. This is distributed to retail chemists in the United Kingdom other than those within the Group and the products referred to therein are exclusively those manufactured by the third defendant. I crave leave to refer to the reference in the Notes therein on page 2 and again at the end of the Trade Price List to the words "Orders may be sent to your usual wholesaler or direct to Wholesale Division Boots Pure Drug Company Limited". Chemists other than the retail shops within the Group are invited to send their orders direct to their usual wholesaler to whom the third defendant has sold in bulk some or all of the Listed products or to the Wholesale Division of the third defendant. I crave leave to refer to and to confirm what is recorded in paragraph (5) of the Affidavit of Harold Tetley Milnes sworn and filed herein regarding the operations of the Wholesale and International Division of the third defendant.

10

20

For efficient and ready distribution these chemists are encouraged to buy from the ordinary wholesaler but if they wish to deal with the third defendant as such their purchases are direct from the third defendant as a manufacturer. Such purchases represent about 1% of sales compared with about 99% through ordinary wholesalers. The goods sold direct to retailers through the Wholesale Division of the third defendant are invoiced at the current wholesale price as this is necessary for the stability of the wholesale side of the industry in the United Kingdom. This is the price appearing in the List as the "Trade" price. The prices under the heading of "Retail" are those fixed by the third defendant as a manufacturer. In respect of this Trade List the third defendant is adopting similar practices as are followed by other manufacturers in the United Kingdom of drugs and other pharmaceutical goods such as Burroughs Wellcome Limited and Glaxo Limited.

30

40

5. The third defendant also supplies both its own manufactured goods and goods made by other manufacturers to the 1,289 retail branches in the United Kingdom of the third defendant's Subsidiary Companies. These supplies are made on the strict understanding that they are not for resale except to the public. Such re-sale is on normal retail terms but some retail sales are made by the third defendant at special preferential terms to large users, such as Industrial Health Units of factories.

Attached hereto and marked 'B' is a current Industrial Price List published in 1962 for distribution to such large users. I crave leave to refer to the paragraph on page 3 of this List which states "Resale- All products offered under these terms are for use within the customer's own Industrial Health Units, Offices or Factories, and are not for resale".

6. I regard as wholly erroneous the description of the third defendant in the intitulement to this action as "Wholesale Drug Merchants". The third defendant 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 the third defendant has never regarded itself as such.

7. I have been informed of the definition of "drug" as provided by Section 11 of the Pharmacy Act 1959 of New Zealand. The third defendant does not carry on in New Zealand any business relating to the sale of drugs. It sells it drugs direct to the second defendant simply as a manufacturer from which the second defendant obtains such orders as it alone determines.

SWORN this 18th day of December 1963 at the City of Nottingham in the County of Nottingham, England Before me,

'S.M.Peretz'

'Arthur B. Perkins'  
Notary Public,  
Nottingham, England.

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of New  
Zealand

No. 17

Affidavit of  
Sidney Michael  
Peretz for  
Third  
Defendant  
(Appellant)  
18th December,  
1963  
-ccntinued.

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Supreme  
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No. 18

AFFIDAVIT OF ALLAN DUCKWORTH FOR  
THIRD DEFENDANT (APPELLANT)

No. 18  
Affidavit of  
Allan  
Duckworth  
for Third  
Defendant  
(Appellant)  
10th January,  
1964.

I, ALLAN DUCKWORTH of 25 Beech Avenue, Ruislip,  
in the County of Middlesex, Secretary, make oath  
and say as follows:-

(1) I am the Secretary of the Association of the  
British Pharmaceutical Industry (hereinafter  
referred to as the A.B.P.I.) which is the  
recognised trade association for the Pharmaceutical Industry in the United Kingdom. 10

(2) The A.B.P.I. has four Divisions :

- Division A Standards Drugs Division
- Division B Medical Specialities Division
- Division C Veterinary Division
- Division D Pharmaceutical Wholesalers  
Division

Attached hereto and marked with the letter "A" is  
the current Directory of Members of the said  
Association as published in February 1963 and  
showing the amendments made up to the 1st  
January 1964. I crave leave to refer to the  
Divisions of the Association as are printed inside  
the front cover. Boots Pure Drug Company Limited  
(hereinafter called the third defendant) is a  
member coming within Divisions A, B and C but is  
not included in Division D relating to  
Pharmaceutical Wholesalers. 20

Pharmaceutical Wholesalers are defined in  
this Directory as follows:

"Wholesale Distributors of the products  
of members of Divisions A, B and C, and  
of other goods supplied under the  
National Health Service". 30

At no time has the third defendant ever been  
a member of Division D, the Pharmaceutical  
Wholesalers Division, and in my opinion could  
not be accepted as a member of that Division if it

applied to join because it does not function as a Pharmaceutical Wholesaler as defined above.

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Affidavit of  
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Duckworth for  
Third  
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-continued.

10 (3) Attached hereto and marked with the letter "B" is a print of the Constitution and Rules of the A.B.P.I. as at February 1961 and shewing amendments made thereto in April 1961 in red ink and in May 1963 in black ink. At the 1st January 1964 the total A.B.P.I. membership consisted of 151 Companies and the total membership of Division D, the Pharmaceutical Wholesalers Division, consisted of 53.

(4) I would estimate that the membership of the Wholesalers Division is responsible for not less than 90% by value of the total U.K. wholesale trade in drugs and medicines.

SWORN this 10th day of  
January 1964 at No. 195 }  
Knightsbridge S.W. in the } 'A. Duckworth'  
County of London }

20 Before me,  
'F.C.Giles'  
Notary Public.

No. 19.

No. 19

SECOND AFFIDAVIT OF CLARENCE HENRY THORNTON  
FOR SECOND DEFENDANT (APPELLANT)

Second  
Affidavit of  
Clarence  
Henry  
Thornton for  
Second  
Defendant  
(Appellant)  
1st May, 1964

I, CLARENCE HENRY THORNTON of Wellington,  
Company Director make oath and say as follows:-

30 1. THAT I have perused a copy of the affidavit of Noel Mervyn Cantwell dated 9 April 1964 and sworn and filed herein and of the exhibits annexed thereto.

2. IT is correct that through the Medical Sales Division (or Section) of the second defendant or personally by one of our travellers letters and brochures such as are referred to in paragraph (2) of the said affidavit of Noel Mervyn Cantwell are sent or delivered to retail chemists in New Zealand. In doing so the second

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Second  
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Clarence  
Henry  
Thornton for  
Second  
Defendant  
(Appellant)  
1st May, 1964  
-continued.

defendant makes extensive use of brochures and other printed material supplied by the third defendant. It is correct also that if as a result of this the second defendant receives orders it supplies them from stocks which it has purchased from the third defendant and are manufactured by the third defendant. This is the type of business carried on by the second defendant as is referred to in paragraph (7) (b) of my affidavit dated 17 January 1964 and sworn and filed herein. Drugs and other pharmaceutical goods which the second defendant obtains from sources other than the third defendant are sold only through our retail shops.

10

3. THE second defendant is the sole agent in New Zealand for the pharmaceutical products manufactured by the third defendant. In this respect the second defendant is in a position similar to others in the trade who act as sole agents for other manufacturers overseas of like products.

20

4. THE only drugs or other pharmaceutical goods which the second defendant purchases from the third defendant are those which are manufactured by the third defendant.

SWORN at Wellington this }  
1st day of May 1964 before } 'C.H.Thornton'  
me:-

'Kevin J. Bell'

A Solicitor of the Supreme Court of New Zealand.

30

No. 20

Second  
Affidavit of  
Sidney  
Michael  
Peretz for  
Third  
Defendant  
(Appellant)  
29th January,  
1965

No. 20

SECOND AFFIDAVIT OF SIDNEY MICHAEL PERETZ FOR  
THIRD DEFENDANT (APPELLANT)

I, SIDNEY MICHAEL PERETZ, of "White Gates", Tollerton Village, in the County of Nottingham, Pharmacist and Company Director, make oath and say as follows:-

1. I am authorised on behalf of the third defendant to reply to the list of questions

40

submitted by the solicitors for the plaintiff to the solicitors for the third defendant. I do so on the basis advised the third defendant by their solicitors in New Zealand that the word "drugs" as used in the questions is confined to that term as is defined by the Pharmacy Act 1939. Unless otherwise stated the word is used with a like meaning in the answers.

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No. 20

Second  
Affidavit of  
Sidney  
Michael  
Peretz for  
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-continued.

10 2. Q. Does the third defendant Boots Pure Drug Company Limited 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 the third defendant and at the same time requires a small quantity of drugs manufactured elsewhere. The third defendant 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

30 condition of this service is that the goods be not resold.

Such sales as aforesaid amount to approximately 0.3% of the total drugs manufactured and sold by the third defendant.

40 3. Q. Does Boots Pure Drug Company Limited purchase drugs from any other person, firm or company for supply to its English subsidiaries?

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4. A. Yes
- Q. If so, on what terms does it supply such drugs to its English subsidiaries?
- A. The answer to this question appears in general form in paragraph (4) of the affidavit of Godfrey Charles Dutton and in paragraph (5) of my affidavit each dated the 18th December 1963 and sworn and filed herein. In particular and in respect of drugs which the third defendant has purchased for resale through the retail outlets provided by its United Kingdom subsidiary companies for the purpose of inter-company accounting a common overall discount is agreed between the third defendant and the said subsidiary companies in the same way, for the same amount and for the like purpose of domestic arrangement as occurs in respect of the sale to the subsidiaries of drugs manufactured by the third defendant. 10 20
5. Q. On what terms does Boots Pure Drug Company Limited supply to its English subsidiaries drugs of its own manufacture?
- A. This question is answered in paragraphs (3) and (4) of the said affidavit of Godfrey Charles Dutton and in paragraph (5) of my said affidavit. 30
6. Q. Does Boots Pure Drug Company Limited sell drugs of its own manufacture to wholesalers for resale?
- A. Yes. I refer to paragraph (5) in the said Affidavit of Godfrey Charles Dutton and to paragraph (4) in my said former Affidavit. The reference in the last-mentioned paragraph to "manufactured goods" includes drugs. 40



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A. Although there is no reference herein to drugs the questions are treated as referring only to these. The third defendant is not prepared to disclose by way of amount the value of such sales and it considers any useful comparison would require the disclosure also of the value of total sales of drugs. This information the third defendant regards as confidential. Accordingly the questions (a) and (b) are answered in terms of percentage and in relation to the total sales of drugs manufactured by the third defendant. On that basis questions (a) and (b) are answered as follows:-

10

(a) approximately 0.02%

(b) approximately 2.00%.

20

SWORN this 29th day of January 1965 at the City of Nottingham, in the County of Nottingham, England, } 'S.M.Peretz'

Before me,

'Arthur B. Perkins'  
Notary Public,  
Nottingham, England.

No. 21

Third  
Affidavit of  
Clarence  
Henry  
Thornton for  
Second  
Defendant  
(Appellant)  
8th February,  
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No. 21

THIRD AFFIDAVIT OF CLARENCE HENRY THORNTON FOR SECOND DEFENDANT (APPELLANT)

30

I, CLARENCE HENRY THORNTON of Wellington, Company Director make oath and say as follows:

1. THAT on behalf of the second defendant I am replying to the list of questions submitted by the solicitors for the plaintiff to the solicitors for the second defendant. I do so on the basis which to the best of my knowledge and

belief has been advised to the solicitors of the second defendant that the word "drugs" as used in the questions is confined to that term as is defined by the Pharmacy Act 1939.

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Affidavit of  
Clarence  
Henry  
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Defendant  
(Appellant)  
8th February,  
1965  
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2. Q. On what terms does Boots the Chemists (New Zealand) Limited obtain from Boots Pure Drug Company Limited drugs manufactured by the latter company?

10 A. On F.O.B. terms in accordance with the Current Export Price List the third defendant sends to all its agents overseas. The second defendant independently fixes its own retail and wholesale prices within New Zealand.

3. Q. Does Boots the Chemists (New Zealand) Limited obtain from Boots Pure Drug Company Limited drugs manufactured by any other manufacturer? If so, upon what terms? Does the New Zealand company buy on wholesale terms, or as a bulk consumer or as a retailer?

20

In what quantity, expressed as a value per annum, does the New Zealand company obtain from the English company drugs manufactured by any other manufacturer?

30 A. Yes but only to the limited extent as stated hereinafter.

For the purpose of its own trading the second defendant does not obtain from the third defendant drugs manufactured by any other manufacturer. It does use the facilities of the third defendant to obtain through it drugs from other manufacturers in the United Kingdom if requested to do so by our retail shop customers. In practice these requests come from our customers

40

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who were formerly resident in the United Kingdom and were in the habit of using a particular proprietary medicine not available in New Zealand and not manufactured by the third defendant.

At their request the second defendant seeks the services of the third defendant in obtaining the particular article rather than we ourselves writing direct to the manufacturer thereof. The goods so sought normally are sent direct to the second defendant by the manufacturer and on the ordinary wholesale terms. Occasionally and because the quantity required is so small the goods are included in a package of its own manufactured goods sent by the third defendant to the second defendant and there would be included in that package the appropriate invoice. The article is then sent to the branch concerned as an individual order with a small mark-up on the invoice cost for the retail price. 10 20

The second defendant regards this purely as a customer service. It is not encouraged by the second defendant because of its effect upon our own import licences, the trouble involved in any small transaction and the negligible profit. 30

The average value of such purchases during the last five years has been approximately £275 per annum.

4. Q. Does Boots the Chemists (New Zealand) Limited buy drugs from Boots Pure Drug Company Limited on the same terms as other New Zealand buyers (if any) of drugs 40



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the position?

A. The term "total sales" in that context relates to the total sales of the second defendant excluding those in its agricultural section, which includes veterinary services, and all photographic materials.

Figures or a certificate verifying the position could be supplied.

10

7. Q. In its Price List of Medical Products, 1959-60, Boots the Chemists (New Zealand) Limited lists a large number of "medical products". Are all the products listed manufactured by Boots Pure Drug Company Limited?

If any of the products so listed are manufactured by a manufacturer other than Boots Pure Drug Company Limited which products listed are so manufactured and by what manufacturer was each manufactured? From whom and on what terms did Boots the Chemists (New Zealand) Limited obtain each of the products listed?

20

A. To the best of my knowledge and belief all medical products offered in the 1959/60 Price List of the second defendant are manufactured by the third defendant with the exception of those items listed under the heading "Viule Syringe Equipment". The equipment is supplied to the second defendant by the third defendant at current export F.O.B. prices quoted to all overseas agents.

30

8. Q. Are all the products so listed

40

drugs within the meaning of the Pharmacy Act 1939? It is noted that some thirty of the products listed qualify to be charged against the Social Security Drug Fund.

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10 A. All the products so listed except those which are equipment are drugs within the meaning of the Pharmacy Act 1939. The medical products of the third defendant other than those which qualify as a charge against the Social Security Drug Fund, in our experience have a limited sales potential in New Zealand. Consequently the majority of the drugs imported are those which qualify against the Fund.

20 9. Q. Are all the "medical products" listed in its Price List of Medical Products 1962-63 manufactured by Boots Pure Drug Company Limited? If not, which products are manufactured by other manufacturers and by whom is each manufactured?

From whom and on what terms did Boots the Chemists (New Zealand) Limited obtain each of the products listed?

30 A. To the best of my knowledge and belief all the "medical products" offered in the 1962-63 Price List of the second defendant are manufactured by the third defendant but with the same exception referred to in the answer to Question (6) in regard to "Viule Syringe Equipment".

10. Q. Are all the products so listed "drugs" within the meaning of the Pharmacy Act 1939? If not, please specify.

A. Yes but with the same exception as regards the said "Viule Syringe Equipment".

40 11. Q. The 1959-60 Price List listed "basic wholesale" prices and "retail" prices. The 1962-63 Price List listed "trade" prices and "retail" prices. What is the significance of the change of terminology? Is the "trade" price available to:-  
(i) wholesale resellers

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- (ii) retail resellers
- (iii) bulk consumers
- (iv) any other category, and if so, what?

A. There is no difference whatsoever in the meaning of "basic wholesale" and "trade" prices in the Lists mentioned. The later list was altered to read "trade" prices to conform to the usual heading in Price Lists issued by other drug firms to indicate their prices to retailers. 10

The "trade" price is available to:-

- (i) wholesale resellers-(less 15% discount)
- (ii) retail resellers- (at "trade" price)
- (iii) bulk consumers → (at "trade" price, less quantity discounts)
- (iv) there is no other category.

SWORN at Wellington this 8 day } 'C.H.Thornton'  
of February 1965 before me: }  
'L. Dunphy' 20

A Solicitor of the Supreme Court of New Zealand

No. 22

Order for  
removal into  
Court of  
Appeal 9th  
March, 1965

No. 22

ORDER FOR REMOVAL INTO COURT OF APPEAL

Tuesday the 9th day of March, 1965.

BEFORE THE HONOURABLE MR. JUSTICE HASLAM

UPON READING the Originating Summons and Amended Notice of Motion for a Writ of Prohibition filed herein and the Notice of Motion of the second and third defendants dated the 5th day of March 1965 and UPON HEARING Mr Blundell of Counsel on behalf of the second and third Defendants and Mr Birks of Counsel on behalf of the plaintiff consenting hereto and Mr Haughey of Counsel on behalf of the first defendant consenting hereto this Court HEREBY ORDERS that the Motion for a Writ of Prohibition in the above entitled proceedings be removed into the Court of Appeal and HEREBY FURTHER ORDERS that the costs of the second and third defendants of and incidental to this application and Order are reserved. 30

By the Court

'M.J.Hawkins'

Deputy Registrar. 40

REASONS FOR JUDGMENT OF NORTH, P.

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No. 23  
Reasons for  
judgment of North  
P.  
8th February, 1966

10 On or about 2 November 1962, the second  
defendant, Boots the Chemists (New Zealand)  
Limited, a company incorporated in New Zealand  
and carrying on business here, which is a sub-  
sidiary of the third defendant, Boots Pure  
Drug Company Limited, a company incorporated  
in England and carrying on business in that  
country, applied to the first defendant, in  
his capacity as Pharmacy Authority constituted  
by the Pharmacy Amendment Act 1954, for his  
consent to the establishment and carrying on  
by it of a business in a pharmacy in premises  
to be erected in the new town of Porirua.  
The plaintiff, the Chemists' Service Guild  
of New Zealand Incorporated, was notified by  
the Pharmacy Authority of this application as  
20 being a person who might be materially  
affected by the decision of the Pharmacy  
Authority in respect of the application. The  
plaintiff, being desirous of opposing the  
application of the second defendant, then  
decided to institute proceedings in the  
Supreme Court at Wellington for the purposes  
of challenging the jurisdiction of the  
Pharmacy Authority to hear and determine the  
application, alleging that the Pharmacy  
Authority had no jurisdiction to consent to  
30 the establishment and carrying on by the  
second defendant of a pharmacy at Porirua in  
that such consent would constitute a consent  
to a breach by the second defendant as a  
wholesale dealer in drugs of the provisions  
of sections 13 and 15 of the Pharmacy  
Amendment Act 1954. As a second and alter-  
native cause of action, the plaintiff alleged  
that the carrying on by the second defendant  
of a pharmacy business at Porirua would give  
40 to the third defendant, being a wholesale  
dealer in drugs, a direct or indirect estate

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or interest in such business in breach of the provisions of sections 13 and 15 of the Pharmacy Amendment Act 1954, and that accordingly the first defendant, as Pharmacy Authority, had no jurisdiction to consent to the establishment and carrying on by the second defendant of a business in a pharmacy at Porirua in that such consent would constitute a consent to a breach by the third defendant of the earlier mentioned provisions of the Act. The plaintiff accordingly sought, in the first instance, a Writ of Prohibition, directed to the first defendant as Pharmacy Authority, prohibiting him from taking further steps to hear and determine the application of the second defendant or, 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 application of the second defendant and declaring the rights of the parties hereto in respect of the hearing of the application, and for an order declaring that the establishment or carrying on by the second defendant of business in a pharmacy 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 same Act. These proceedings were, by consent, removed into this Court.

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20

30

In this Court, counsel for W.F. Stilwell, Esquire, the Pharmacy Authority, intimated that he did not desire to take part in the argument, and he was accordingly given leave to withdraw.

As the argument we heard from Mr McKay proceeded, it became apparent to us that the present proceedings had been misconceived, for, in our opinion no question of the jurisdiction of the Authority arose as it was apparent that the application was properly before the Authority: see Van de Water v Bailey and Russell, (1921) N.Z.L.R., 122. Upon the Court expressing this view, all counsel joined in requesting us to treat the plaintiff's motion as if it were an originating summons under the Declaratory Judgments Act 1908, and on this basis the plaintiff sought the following declaratory orders:

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50

(1) 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 and illegal by virtue of the provisions of section 15 of that Act.

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(2) An order declaring that the third 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 having by the third defendant of an interest in the business of a pharmacy proposed to be established by the second defendant at Porirua would, by reason of the admitted shareholding of the third defendant in the second defendant, 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 that Act.

We have, with some reluctance, decided to accede to counsel's request in view of the fact that all parties are desirous of knowing where they stand as soon as possible and that a good deal of time and expense has already been incurred in submitting to the Court the information regarding the activities of both defendants.

Both questions depend on the meaning and effect of section 13 (1) of the Pharmacy Amendment Act 1954. It reads thus:

"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,

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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."

The principal Act, the Pharmacy Act 1939, as the long title shows, was enacted "to make better provision for the registration and control of pharmaceutical chemists". Its provisions were considered by Hutchison, J., in In re an Application by Boots the Chemists (New Zealand) Limited, (1961) N.Z.L.R., 662, and I agree with the view he expressed that a central theme of the Act is "that pharmaceutical chemistry is a profession". All chemists are required to be members of the Pharmaceutical Society of New Zealand. A Pharmacy Board was established to consider applications for registration of chemists, and finally a disciplinary committee was appointed, to which the Board could refer cases of alleged grave impropriety or infamous conduct in any professional respect. 10 20

The Pharmacy Amendment Act 1954 imposed a number of restrictions on persons desiring to establish or carry on a business in a pharmacy. Provision was made for the appointment of a Pharmacy Authority, its purpose being the consideration of applications under the amending Act in respect of any matter where the consent of the Authority was required. Section 3 imposed a restriction on companies desirous of establishing pharmacies. No company, unless at least 75 per cent of the share capital was owned by chemists, could lawfully establish or carry on a business in a pharmacy except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority. Section 4 imposed a restriction on persons carrying on business in more pharmacies than one. It provided that no person, either alone or in partnership, should, except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority, establish or carry on business in more 30 40 50

pharmacies than one. The functions of the Authority are contained in section 7, where it is provided (subsection (2) ):

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10 "In the exercise of its functions the Pharmacy Authority shall have regard to the public interest and the interests of the pharmaceutical profession, and for those purposes shall ensure, as far as its authority under this Act extends, and as far as is consistent with the provisions to the 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."

20 It will be seen, then, that section 13 is aimed at preventing the proprietor of a pharmacy or a wholesale dealer in drugs circumventing the provisions of the amending Act by acquiring an estate or interest in a pharmacy so as to affect "the ownership, management, or control of the business carried on in that pharmacy".

30 Now, the first question turns exclusively on whether the words in parenthesis "other than a pharmacy of which he is lawfully the proprietor" apply alike to the proprietor of a pharmacy and to a wholesale dealer in drugs. Mr. McKay, for the plaintiff, submitted that the words in parenthesis were restricted to the proprietor of a pharmacy and did not apply to a wholesale dealer in drugs, with the result that the plaintiff, being admittedly a wholesale dealer in drugs, is absolutely prohibited from acquiring an interest in a pharmacy. This argument was considered and rejected by McGregor, J., in In re an Application by Boots the Chemists (N.Z.) Limited,  
40 (1956) N.Z.L.R., 31, and the purpose of removing this case into this Court was to enable counsel to argue that the earlier case was wrongly decided. McGregor, J., said this:

50 "In my view, the matter in issue depends on the 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 disqualificat-

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ion provided by the section in respect of the proprietor of a pharmacy or a wholesale dealer in drugs. Omitting the parenthetic 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 parenthesis, 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."

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In my opinion, the conclusion reached by McGregor, J., was clearly right, and I see no justification for adopting Mr McKay's submission that the words in parenthesis apply only to the first of the two categories, namely the proprietor of a pharmacy. I agree that there is some force in his submission that the words in parenthesis were necessary in the case of the proprietor of a pharmacy for otherwise the prohibition would be directly contrary to section 4 and would prevent a person applying to establish or carry on business in a second pharmacy; but I am not prepared to accept his submission that the Legislature intended to rule out a wholesale dealer in drugs acquiring a pharmacy and carrying on business therein. The word "he", in my opinion, applies to both categories. If the wholesale dealer is a

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company, then, of course, it is required to obtain the consent of the Pharmacy Authority. But, in my opinion, it is quite contrary to the ordinary rules of construction to limit the words in parenthesis to the first of the two prescribed categories when, as a matter of arrangement, they clearly apply alike to both categories. Accordingly, I am of opinion that the first declaratory order sought by the plaintiff should be refused.

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Turning to the second question, Mr McKay, for the plaintiff, submitted that the admitted facts clearly showed that the third defendant, Boots Pure Drug Company Limited, was a wholesale dealer in drugs and therefore was caught by the section. Mr Blundell, for the third defendant, made four submissions in reply. First, he submitted that the third defendant was a manufacturer of drugs and not a wholesale dealer in drugs. In developing this argument, he placed reliance on certain affidavits which had been obtained from executive officers of the English company. In England there appears to be some ground for the contention that, in certain circles at all events, a distinction is drawn between a manufacturer and a wholesaler, the latter description applying only to persons who both buy and sell goods in gross or in bulk. In my opinion, whatever the position may be in England, there is 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. Import restrictions, for one thing, have necessarily tended to encourage wholesale dealers to manufacture their own goods. But, even if the distinction urged by Mr Blundell has a solid foundation, the fact remains that the admitted facts clearly show that the third defendant has a wholesale division. Their "Trade Price List of Medical Products" makes that quite clear. It is issued by what is described as "Wholesale Division, Boots Pure Drug Company Limited". 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 the third defendant from others for sale in bulk may be, I am not prepared to assume that it does not amount to a substantial

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sun. I do not think that any distinction can be drawn between "a wholesaler" and "a wholesale dealer", particularly in view of the fact that the term "a wholesale dealer" is a descriptive term earlier used in the principal Act: see section 33 (1) (e), which excludes from a restriction imposed on the sale of drugs "any wholesale dealer in so far as he sells, or holds himself out as selling, drugs in the ordinary course of wholesale dealing". Mr Blundell conceded that, in this section, no distinction is drawn between a wholesaler who buys for sale in bulk and a manufacturer who sells in bulk his own product. Both, he agreed, are exempted from the provisions of section 32. I am of opinion, then, that the third defendant falls within the general description "a wholesale dealer in drugs".

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Mr Blundell's next submission was that the words "the proprietor of a pharmacy or a wholesale dealer in drugs" both referred to persons or companies carrying on such businesses in New Zealand. It is this branch of the case which, in my opinion, presents some difficulty, and in result I have found myself unable to go with my two brethren in the view they have taken. The second defendant, Boots the Chemists (New Zealand) Limited, has carried on business as the proprietor of a number of pharmacies in New Zealand for some years. It commenced its operations long before the Pharmacy Amendment Act 1954 was enacted. Throughout it has been known perfectly well to all concerned that the New Zealand company was a subsidiary of the English company. The local chemists, quite understandably, resent its presence. I think that it is generally recognised that the Pharmacy Amendment Act 1954 was enacted by way of a compromise between opposing interests and, in result, from 1954 onwards the second defendant, whenever it wished to open a new pharmacy, had to apply for leave from the Pharmacy Authority constituted under the amending Act and from time to time its applications have been opposed by independent chemists. I have earlier referred to In re an application by Boots the Chemists (N.Z.) Limited (supra) which came before McGregor J., in 1956. On that

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occasion the question I am now called upon to determine was raised, but on the information before him McGregor, J., was unwilling to express an opinion. The next occasion when an application by the New Zealand company came before the Courts was in 1961 - see In re an Application by Boots the Chemists (New Zealand) Limited, (1961) N.Z.L.R., 662; (1963) N.Z.L.R., 268; and on appeal (1962) N.Z.L.R., 341. On this occasion the opposing chemists did not raise this question. Now we have a serious attempt made by the Chemists Guild to gain its objective by arguing that, even if the New Zealand company is entitled to apply for a licence to establish a new pharmacy in New Zealand, the English company commits an offence once the pharmacy is established for, being a "wholesale dealer in drugs" in England, sections 13 and 15 prohibit it from having a controlling interest in a pharmacy carried on in New Zealand. It is submitted that the words "a wholesale dealer" apply to persons who have that status in any part of the world. The ruling from this Court is, of course, sought for the purpose of enabling the objectors - if successful - to press upon the Pharmacy Authority that it should not accede to the application of the New Zealand company, for to do so would be to facilitate the commission of an offence by the English company.

I find it very difficult indeed to believe that it was ever the intention of the Legislature, in passing the amending Act, to bring to an end any extension in the operations of the New Zealand company. On the contrary, I think its plain purpose was to control, but not to prohibit, the operations of Boots the Chemists (New Zealand) Limited.

I do not think that Mr Blundell can complain that the New Zealand Parliament is endeavouring to exercise extra-territorial jurisdiction, for on any view of the case the amending Act is dealing with conduct taking place within New Zealand. The only safe rule to apply is the rule of construction that "the persons on whom a particular statute is intended to operate are to be gathered from the language and purview of that statute": 36 Halsbury,

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3rd edn., 429. In my opinion, an examination of "the language and purview" of this statute supports the conclusion that section 13 of the Pharmacy Amendment Act 1954 was intended to apply only to the proprietor of a pharmacy or a wholesale dealer in drugs who traded as such in New Zealand. An initial difficulty in the way of the opposing construction is the meaning to be attributed to the words "a wholesale dealer in drugs". Is this expression to be interpreted by having regard to local conditions or to conditions as they obtain in the country where the shareholder carries on business? It would seem to me to be odd if an English company was accepted as a manufacturer in its own country and not as a wholesaler, yet is designated a wholesaler for the purposes of the New Zealand Act.

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There are two factors which, in my opinion, justify a narrower interpretation of the words "a wholesale dealer in drugs". In the first place, I think it is plain that the words "the proprietor of a pharmacy" refer exclusively to the proprietor of a New Zealand pharmacy: see section 2 of the Pharmacy Act 1939, where the words "pharmacy", "proprietor", and "chemist" are defined. I think, then, it may be accepted that, so far as the proprietor of a pharmacy is concerned, the prohibition is against the proprietor of a New Zealand pharmacy acquiring a controlling interest in another pharmacy of which he is not the lawful proprietor. If this be so, then in my opinion there are strong grounds for similarly limiting the words "a wholesale dealer in drugs". Mr McKay submitted that to so hold would in a measure frustrate the purposes of the section, but it could be argued with equal force that, if there is no prohibition against the proprietor of an overseas pharmacy acquiring a controlling interest in a New Zealand pharmacy, there is no reason why a wholesale dealer in drugs should be differently treated. Next, section 13 must be read with section 15, 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". In my opinion, it is clear beyond words that the English company,

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having no place of business in New Zealand, could not be made the subject of a prosecution. On the whole, then, I prefer the view that the object of section 13 of the Pharmacy Amendment Act 1954 was to ensure that the proprietors of pharmacies and wholesale dealers in drugs trading in New Zealand did not obtain a controlling interest in a business carried on in a pharmacy of which they were not the legal owners, and accordingly section 13 should be so interpreted.

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For these reasons I would refuse the second declaratory order, too.

Before parting with the case, it is perhaps desirable that I should say a few words about Mr Blundell's third and fourth submissions. His third submission was that, now that the Articles of Association of the second defendant have been altered, leaving it free from the control of the third defendant in the appointment of its managing director, its shareholding alone should not be regarded as bringing it within the purview of the section. In my opinion, there is nothing in this submission for, while the third defendant continues to own substantially the whole of the shares in the second defendant, it is in a position at any time to exercise control by virtue of its shareholding. Mr Blundell's fourth submission was that the words of the proviso, namely, "Provided that nothing in this section shall apply to any estate or interest in existence at the commencement of this Act", in any case relieved the third defendant from liability. In my opinion, this submission also fails. It is immaterial that "the estate or interest" which the third defendant possesses by virtue of its shareholding in the second defendant was in existence in 1954. The proviso, in my opinion, applies only to pharmacies in existence in 1954 and therefore can have no application to the proposed Porirua pharmacy.

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In accordance with the unanimous view of the members of the Court, the first declaratory order sought is refused. As to the second declaratory order, in accordance with the views of the majority an order is made as sought but omitting the concluding words "and illegal by virtue of the provisions of section 15 of that Act".

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Both parties have succeeded in some degree, but, the result being substantially in favour of the plaintiff, it is entitled to some costs, which are fixed at £75.0.0. and all proper disbursements.

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REASONS FOR JUDGMENT OF TURNER, J.

The first part of the arguments of all parties was directed to the decision of McGregor, J. in In Re an Application by Boots (N.Z.) Limited (1956) N.Z.L.R. 31, construing section 13 (1) of the Pharmacy Amendment Act 1954. This sub-section is in the following terms:

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"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:

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

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McGregor, J. held that the words in parenthesis created an exception applicable alike to proprietors of pharmacies and to wholesale dealers. Mr McKay attacked McGregor, J.'s decision; Mr Greig supported it. In my opinion the construction of the section which McGregor, J. accorded to it

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was the correct one, and for the reasons which he gives in his judgment. There is nothing in the language of the section to support Mr McKay's submission that the words in parentheses in Section 13 refer back to "the proprietor of a pharmacy" but not to "a wholesale dealer in drugs"; these are equally and simultaneously the subjects of the prohibition in the section, and the exception in parentheses must in my opinion equally apply to both. When the words of a statutory provision are plain and unambiguous the Court will not be astute to seek out possible constructions leading to ambiguity, using such an ambiguity in turn to invoke the "spirit of the Act" in aid of a construction which the plain language will not easily bear. Here the plain language seems to me to lend itself only to one construction - that favoured by McGregor, J. Even if one were to accede to Mr McKay's exhortation to inquire into "the purposes of the Act", I am by no means sure that these can be summed up in a few concise sentences as he suggested - and if one permits oneself to ask what such sentences should be, a wide field is open for exploration. It might, indeed, not be easy for reasonable persons to reach agreement as to precisely what was the "central purpose of the Act", if indeed it can be said to have one central purpose. I prefer, as did McGregor, J., to read the section giving the words their plain and ordinary meaning, but remembering the specific provisions in sections 3 and 4, which preclude an interpretation of section 13 involving a categorical prohibition of pharmacists owning more than one pharmacy in any circumstances. I think McGregor, J.'s construction was plainly right.

This conclusion, of course, does not dispose of the whole of Mr McKay's argument. It leads, however, to the conclusion that a "wholesale dealer in drugs" may be the lawful owner of a pharmacy. In so far, then, as Boots N.Z. (for so I will refer to second defendant, referring in turn to third defendant for the purposes of clarity as "Boots U.K.") is a wholesaler, it is not ipso facto prohibited from making application for a licence, or, having made an application, from being granted one. But Mr McKay says that Boots U.K. is a wholesale dealer in drugs,

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and that on this account Boots N.Z. will be precluded from receiving a licence, because of the interlocking shareholdings of the companies. There is no doubt, on the agreed facts, that Boots U.K. is the beneficial holder of all the shares in Boots N.Z. It is consequently plain that, if Boots N.Z. is granted a licence, Boots U.K. will have an interest in a pharmacy, by way of shares in a company (Boots N.Z.), so as to affect the management and control of the business in respect of which the licence is granted, (for, as will be seen later, I reject Mr Blundell's supplementary submissions on this point). A wholesale dealer in drugs is prohibited by section 13, on the construction which I have given it, from having such an interest. The question whether Boots U.K. is a wholesale dealer in drugs within the meaning of the subsection therefore becomes crucial. The argument for the defendants in this regard centres around two submissions: (1) (made by Mr Blundell) that Boots U.K. is not a wholesale dealer in drugs for the purposes of the Act. (2) (Made both by Mr Blundell and Mr Greig) that even if it is, this fact will not preclude the grant of a licence to Boots N.Z.

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Mr Blundell strongly submitted that Boots U.K. was not a wholesale dealer in drugs for the purposes of this section. His argument may thus be summarised - (a) In the context of section 13(1) the words "wholesale dealer in drugs" are restricted to such dealers as carry on such a business in New Zealand, and as Boots U.K. is not registered in New Zealand, nor does it carry on business here, it is outside the definition. (b) Alternatively the words "wholesale dealer in drugs" import a middleman engaged both in buying and in selling, and are not apt to catch a manufacturer; that, if its business is examined in the light of reality, Boots U.K. will be found to be a manufacturer, and not a wholesale dealer. As regards the first of these submissions, I thought that Mr Blundell's argument involved some confusion between two distinct principles. When he

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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 35 Halsbury (3rd Ed.) 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 by Mr. Blundell from Halsbury 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. But the section now under examination makes no attempt to provide that wholesalers, or anyone else, shall not do some act outside New Zealand; what it prohibits is the acquisition in New Zealand of certain interests by a wholesale dealer. I see no reason why the inquiry as to whether a given person is or is not a wholesale dealer should not be directed to his acts or conduct wherever he may be. A person seems to me to be no less a wholesale dealer because his wholesale dealings take place out of New Zealand. And, being by this test found to be a wholesale dealer, he may then be prohibited by the statute from doing certain acts in New Zealand. This seems to me to be what the section purports to do.

Mr. Blundell, in the court of his submissions, emphasised the close combination of the words "the proprietor of a pharmacy" and "a wholesale dealer in drugs" where they occur in Section 13 of the Pharmacy Amendment Act 1954. He argued that since the words "the proprietor of a pharmacy" must be read as applying only to the proprietor of a pharmacy in New Zealand the same qualification should attach to the words "a wholesale dealer in drugs". I would regard this argument with reserve even if it were uncomplicated by the fact that the meaning of the first of these phrases is

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modified by the definitions contained in Section 2 of the Pharmacy Act 1939. But as matters stand the reason why the words "the proprietor of a pharmacy" have to be read as applying only to pharmacies in New Zealand is plainly to be found in the definitions of "proprietor" "pharmacy" and "pharmaceutical chemist" in that section. No such consideration applies to the phrase "wholesale dealer in drugs", which is unmodified by any statutory definition. I see no reason why the limited meaning to be given to the first of these phrases, as a consequence of applying statutory definitions, should extend to the other of them to which no statutory definitions are applicable. And I do not propose to speculate on what might have been my conclusion on this argument if there had been no statutory definition applicable to the words "the proprietor of a pharmacy"; for that is not the case before the Court.

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I think that there is no room accordingly for Mr. Blundell's first submission, and I turn to his second. This was that a wholesale dealer imported a person whose transactions comprised buying and selling, and not one who manufactured his product and sold it, whether in bulk or not. I was not impressed by Mr. Blundell's reference to buying in the definition of "wholesale" in the Oxford New English Dictionary (1928) Vol. X pt. II. p.93; for, as Mc. McKay answered (and it seemed to me effectively), the reference to buying in this passage does not refer to the act of the trader whose transactions are being examined, but to the acts of those who buy from him - if such persons buy in bulk they buy wholesale. The person from whom they buy no doubt sells wholesale, and I think that he does this whether he buys the goods from someone else in turn, or whether he has made them. 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

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of this term accepted in New Zealand manufacturers who make their own product and then dispose of it in bulk. Can the word "dealer", then, make any difference? Is it necessary to buy as well as to sell to be a dealer? Looking at the definition of this word in the Shorter Oxford Dictionary, I have not found in the definitions there given of "deal", "dealer" and "dealing" anything to compel me to exclude the manufacture-cum-seller. And in Section 33 (1) (e) of the principal Act, as Mr. Blundell fairly pointed out, the words "wholesale Dealer" obviously include a manufacturer who sells. I give to these words then, the wider connotation contended for by Mr McKay. And even if (as is not the case) I favoured Mr Blundell's primary submission on this particular point, the question would still remain to be considered whether, although Boots U.K. manufactured by far the greater part of the products which they sell, their residuary trading transactions (in which they buy drugs and sell them again) does not make them "wholesale dealers", notwithstanding that the volume of such trading constitutes only a small percentage of their total transactions. If I had to decide the question on this point I would be compelled to say that, although the volume of these transactions is relatively small, it is not so small that it can properly be overlooked, and the maxim de minimis non curat lex cannot properly be invoked. On this supplementary ground also, then Mr Blundell's submissions must in my opinion be disallowed.

I hold accordingly that Boots U.K. is on the agreed facts properly to be described as a "wholesale dealer in drugs".

Mr Blundell made two supplementary submissions which I must mention in conclusion. First he submitted that in view of an alteration to the Articles of Association of Boots N.Z. since these proceedings were instituted, Boots U.K. was no longer the proprietor of a shareholding in Boots N.Z. such as to affect the control of any business carried on by the latter company. I reject this submission; if

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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. Mr Blundell's last submission concerned the proviso to Section 13 (1). He submitted that this saved the shareholding in Boots N.Z. Ltd. held by Boots U.K., since this shareholding (except for a few shares) related back to a time before the passing of the Act. I am of opinion that the proviso does not refer to shareholdings: it refers to the estate or interest in a pharmacy, the acquisition of which it is the purpose of this section to prohibit. For these reasons I reject this submission also

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Mr McKay invited us, if we reached a conclusion such as that to which I have come, (a) to grant a writ of prohibition restraining the Pharmacy Authority from considering the application of Boots N.Z. in these circumstances, (b) to make, in lieu of granting such a writ, a declaration as to the jurisdiction of the Pharmacy Authority in these circumstances, (c) to grant a declaration that the establishment or carrying on by Boots N.Z. of business in a pharmacy at Porirua would contravene the statutory provisions. To these applications he added at the hearing, by consent, a fourth:

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"For an order declaring that the third 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 having by the third defendant of an interest in the business of a pharmacy proposed to be established by the second defendant at Porirua would by reason of the admitted shareholding of the third defendant in the second defendant 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"

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The first three of these applications

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10 may be very shortly dealt with. As to the  
first, I accept Mr Greig's submission that  
the conclusion which I have reached does  
not itself disable the Pharmacy Authority  
from considering the application of Boots  
N.Z. Limited. Whether the application be  
granted or not is quite another matter,  
but this question is clearly one within  
the jurisdiction of the Authority. Prohib-  
10 ition must accordingly be refused. Nor do  
I think it fitting that any declaration  
should be granted such as Mr McKay asked  
for in the second place; I think when  
dealing with this first point I have said  
all that is necessary or desirable as to  
the jurisdiction of the Pharmacy Authority.  
As to Mr McKay's third application, I see  
grave difficulties in the way of the  
20 declaration which is asked for. Mr. Greig  
pointed out - in my opinion correctly -  
that it is not the carrying on by second  
defendant of business in a pharmacy at  
Porirua which the section, on any reading  
of it, makes illegal; but assuming that  
such a business is being legally carried on,  
the section in certain circumstances  
purports to make illegal the acts of certain  
shareholders in the company carrying it on,  
in acquiring or holding their shares. Mr  
30 McKay's third application must be refused.  
As to the substituted application; the  
terms of which are set out above in full, I  
am of opinion that, the parties in this  
case all asking for an expression of opinion  
by the Court on this subject, a declaration  
should be made substantially in the terms  
sought. I would omit from the declaration  
however, the concluding words of Mr McKay's  
draft - "and illegal by virtue of the  
40 provisions of S. 15 of the said Act", upon  
which I do not recall any argument being  
submitted. I would require more to be said  
on the subject before deciding whether, and  
when, notwithstanding that the "having" of  
shares is prohibited by S. 13, an offence  
is committed under S. 15 when the shares are  
acquired first, and the pharmacy subsequently,  
the shareholder being a company resident  
abroad. This point appears to me full of

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difficulty and I would limit the declaration  
made by omitting from it all reference to  
the provisions of S.15.

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10 The Pharmacy Act 1939 established the  
Pharmaceutical Society of New Zealand. It  
provided for registration of all pharmaceutical  
chemists, and it enacted that every such chemist  
would automatically be a member of the society  
which was then given extensive disciplinary  
powers to be exercised through a Board  
constituted by the Act. The Act is still in  
force. As Hutchison J. said in In re an  
20 Application by Boots Ltd. (1961) N.Z.L.R. 662,  
its framers were mainly concerned to establish  
a pharmaceutical profession; but it also deals  
with a number of other incidental matters, such  
as restrictions on the sale of drugs (ss. 32  
and 33), and it makes it an offence for a  
chemist to keep, or permit to be kept, any  
pharmacy not under the immediate supervision and  
control of himself or of a manager enrolled  
under the Act (s.35). No attempt was made to  
restrict rights of ownership or of control of  
pharmacies, no doubt because the industry was  
then subject to the controls provided by the  
Industrial Efficiency Act 1936. But the purpose  
of the Amendment Act passed 15 years later in  
1954, was, I think, to deal in a positive way  
with the problems of ownership and control,  
30 problems which by then had become issues between  
wholesalers, chain pharmacies, and the owners  
of individual pharmacies who had banded together  
into an organisation known as the Chemists'  
Service Guild of New Zealand Incorporated (the  
plaintiff in this action). It is interesting to  
see how those issues were dealt with in the  
1954 Act, and in a later amendment passed in  
1957.

40 There can be little doubt that some of the  
provisions of the 1954 Act were a compromise of  
the claims of the opposing factions. The Act  
set up a Pharmacy Authority whose function is to  
consider applications for consent to the  
establishment or operation of pharmacies in  
those instances where, pursuant to other sections

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of this Act, consent is required (s.6). In exercising that function the Authority is to have regard to the public interest and the interest of the Pharmaceutical Profession, and is to ensure, as far as is consistent with the provision to the 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 (s.7 (2)). This, plainly, is a primary objective of the Act. The various matters which must be considered by the Authority in arriving at its decisions are detailed (s.9): I need not enumerate them. In earlier sections certain prohibitions against establishing or carrying on business in a pharmacy without the prior consent of the Authority are declared. I will sketch them in very broad terms. The first prohibits companies and other bodies corporate from doing so (s.3). Those companies which on the passing of the Act had been granted licences under the Industrial Efficiency Act 1936 to conduct pharmacies, but had not established them, are exempted. It seems that the necessity to exempt those already established in business was overlooked. That omission, however, was corrected in 1957. In 1957, too, a further limitation of this particular prohibition was effected by the addition of a new section to the 1954 Act as s.3 (1A). That section exempts companies where at least 75% of the share capital is owned by chemists and no member of the company is a proprietor or part proprietor of any other pharmacy. The second prohibition applies to the acts of establishing or carrying on without the consent of the Authority, alone or in partnership, business in more pharmacies than one (s.4). Exemptions of this particular prohibition protect persons who were lawfully carrying on business in more than one pharmacy at the date of the passing of the Act, and also those who had obtained licences under the Industrial Efficiency Act but had not actually commenced business. The Amendment Act of 1957 produced a third and important prohibition when it added s.3A to the 1954 Act. That section prohibits any

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person other than a chemist without the consent of the Authority, either alone or in partnership, establishing or carrying on business in a pharmacy. Companies are exempted from this section.

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10 The overall situation produced by these sections is not easy to capture quickly. I have outlined them mainly to make the point that the restrictions which were imposed in 1954 on the common law right to establish or carry on business in a pharmacy were complex, but not total. Even after they had been made more extensive in 1957 they still were short of all embracing. To give an example, the right of an individual pharmaceutical chemist to open one pharmacy without obtaining consent was preserved throughout; it is only when he wishes to open his second that he comes up against the restriction imposed by s.4. Moreover, I desire to show that it became apparent soon after the 20 1954 Act was passed that there were many holes and uncertain areas in it, so much so that an extensive amending Act was required three years later. One may question whether even that remedied all the defects.

30 So much for overt ownership or control. I come now to s.13 of the 1954 Act, a section designed, obviously, to deal with interest not publicly revealed. As it is on that section that the argument in this case was centred, I will set it out in full:

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

40 (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, loans, guarantee, indemnity, or otherwise, so as

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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."

Subsection (2) added in 1957 widens the effect of subsection (1).

"(2) Without affecting the generality of the foregoing provisions of this section, 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."

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The President has already stated the course which this litigation has taken and the declaratory orders which we are now asked to make. The first of those orders relates to the second defendant, Boots The Chemists (New Zealand) Ltd. whom I shall call Boots N.Z. The order sought is one

"declaring that the second defendant, by reason of the admitted facts, is a whole-sale 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 and illegal by virtue of the provisions of section 15 of that Act."

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A request for a similar declaratory order was refused by McGregor J. in In re Boots the

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Chemists (N.Z.) Ltd. (1956) N.Z.L.R. 31 where the same argument was advanced as has been advanced to us, namely that the words in parenthesis in s.13 (1) should be read as relating to the words "proprietor of a pharmacy" but not to the words "wholesale dealer" in the opening passage of the section. McGregor J. rejected that submission. He held that the word "he" in the parenthetical phrase relating equally to the alternative persons described; that that was the primary reading from which there was no reason to depart; and that consequently the fact that the present second defendant, Boots N.Z., was a wholesale dealer in drugs did not prevent it seeking the Authority's consent to open a pharmacy. I have reached the same view as McGregor J. There can be little doubt that a normal, grammatical reading of the section makes the parenthetical phrase apply to both a proprietor of a pharmacy and to a wholesaler, The ground upon which Mr McKay urged us to read it differently was this: that with that reading the legislation fails to exclude wholesale dealers completely from interests in retail pharmacies which, so he said, was one of the central purposes of the Act. It would fail to do that because a wholesale dealer (not being a company) could open a pharmacy (but not a second) if he were himself a pharmaceutical chemist. I agree that that appears to be a result of the reading which I put on s.13 (1), but I cannot accept that result as a reason for rejecting that reading. I accept no obligation to assume that the Legislature intended to prohibit an individual wholesaler registered as a pharmaceutical chemist from conducting a pharmacy as well as his wholesale business, especially as any abuse of that right can be sufficiently checked by the provisions of s.4, requiring the Authority's consent if a second or later pharmacy is involved. As I sought to show earlier, the prohibitions contained in the legislation are not all embracing. I see the purpose of s.13 as being the prohibition of "sleeping" interests (as McGregor J. put it), not the building of the complete prohibition for which Mr McKay contends.

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I think it a preferable conclusion that the Legislature's general intention was not a total prohibition of the ownership of retail outlets by wholesalers, but control by the Authority. Had complete prohibition of ownership of wholesalers been intended, Parliament could, and in such a matter should, have said so in plain terms. I would therefore refuse the first declaration sought.

The second order we are asked to make touches the third defendant, Boots Pure Drug Company Limited, whom I shall call Boots U.K. It is an order

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"declaring that the third 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 having by the third defendant of an interest in the business of a pharmacy proposed to be established by the second defendant at Porirua would, by reason of the admitted shareholding of the third defendant in the second defendant, 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 that Act."

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If Boots U.K. is a wholesale dealer in drugs within the meaning of s.13 (1), then as it is the de facto owner of all of the shares in Boots N.Z. (59,920 of a total of 60,000 £1 shares are registered in its own name and the remainder in the names of trustees), it has a direct or indirect estate or interest by way of shares in Boots N.Z. so as to affect the ownership, management or control of the business carried on in the pharmacies owned and operated by that company., As I understand Mr. Blundell, he does not contend that there is not such a direct or indirect estate or interest. His contention is that Boots U.K. is not covered by the words, in subs. (1), "Wholesale dealer in drugs", primarily because an examination of the activities of

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Boots U.K. shows that it is a manufacturer and not a wholesale dealer; a dealer is a trader who buys and sells and Boots U.K., generally speaking, manufactures and sells. To support this meaning Mr Blundell referred us to a number of dictionary definitions. Some of those definitions included both the act of the buying in quantity and the act of selling in quantity; some covered only the latter. All included that. But I do not think that these definitions are very helpful for whatever may be the limitations placed on "wholesale" or "dealer" in dictionaries which illustrate their use overseas, and whatever may have been the position in the early days of this Dominion when a more rigid demarcation between manufacturer, wholesaler and retailer was observable, I have no doubt at all that in 1954 a manufacturer selling in quantity direct to the retail trade was covered by the words "wholesaler" or "wholesale dealer" when those words were used in this country. Moreover, a distinction was not, and is not now, drawn between these two words; they were, and are, used synonymously. I concur, therefore, in the observations of the President on this aspect of the case. I also concur in what he has said of the regard which we must pay to the meaning of the word "wholesale dealer" in the context of s.33 (1) (e) of the 1939 Act.

Mr Blundell's second ground for contending that Boots U.K. is not a "wholesale dealer" is that the words should be read as restricted to wholesale dealers carrying on business in New Zealand, and as Boots U.K. is neither registered nor carrying on business in this Dominion the section does not cover it. The props to this submission were -

- (a) that the word should be given a territorial limit because a statute should be read primarily as operating only within a territorial limit; and
- (b) that the first of the two categories of persons affected by the section, namely a proprietor of a pharmacy, does not include a person carrying on a retail business of a

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chemist outside New Zealand and, therefore,  
a like limitation should be applied to the  
words "wholesale dealer".

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I discard the first of these props because it appears to me to be based on a misapplication of the authority quoted in support, 36 Halsbury's Laws of England p.429, par. 650. There Halsbury does no more than state a well-known rule of English private international law: "The persons on whom a particular statute is intended to operate are to be gathered from the language and purview of that statute, but the presumption is said to be that Parliament is concerned with all conduct taking place within the territory or territories for which it is legislating in the particular instance, and with no other conduct." Relying upon this rule Mr Blundell submitted that s.13 (1) does not catch the actions of a wholesaler resident in England. But the answer to that submission is, surely, that the section aims at conduct in New Zealand, the holding by a wholesale dealer, wherever he is resident, of an interest in a New Zealand pharmacy in defiance of the statute. The Act is not concerned with such a dealer's conduct outside New Zealand. Boots N.Z. is a company incorporated and trading in this country. Its head office is in New Zealand, and its shares are registered here and therefore situated in this country. Dicey's Conflict of Laws, 7th Ed. 506. What is asserted against Boots U.K. is that it holds, in New Zealand, the controlling interest in a New Zealand company which operates pharmacies in the Dominion. The section does not seek to touch a non-resident unless his conduct in New Zealand is in breach of the section. Such a provision is plainly within the competency of the New Zealand legislature and does not call for other than a normal literal reading. The prohibition, let me repeat, is not against a person being a wholesaler in England; it is against a person who answers the description of a wholesale dealer, wherever he may be resident, holding in New Zealand an interest in a pharmacy contrary to the Act. I can see no justification for departing from the normal unrestricted meaning when the words are

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used, as they are here, merely to describe a prohibited class. Whether a person is within that class - whether he is a wholesale dealer or not - is not decided by the locality of his residence, but by the nature of his business activities. The rule quoted by Mr Blundell seems to me to have no application.

10 I move on now to the alternative prop to Mr Blundell's submission, namely the influence which the limitation placed by the Act on "proprietor of a pharmacy" must have on our reading of the linked words "wholesale dealer". I am not at all positive that in the setting of s.13 the former phrase is to be confined to proprietors of New Zealand pharmacies; indeed I suspect having regard to the clear purpose of the section that a wider and literal meaning could be justified. But nonetheless I am prepared to assume, for the purposes of this argument, that it should be so confined because 20 of the definitions contained in the 1939 Act of "pharmacy" and "pharmaceutical chemist", definitions which were inserted originally for reasons which are much wider than the matter dealt with in s.13. But I cannot accept the view that because one phrase has, purely as a result of a restricted statutory definition, a somewhat limited operation, a like limitation is obligatory for other words, which, though in 30 close proximity, are of a general character and are not controlled by a similarly restricting express definition. Whether that is or is not the result depends always on the context. Mr Blundell says that here the context requires that result, since not to import the limitation would produce an anomaly; then a wholesale dealer resident in the United Kingdom would be barred from holding an interest in any New Zealand pharmacy of which he is not the lawful owner, yet an operator of pharmacies in the United 40 Kingdom could legitimately acquire such interests. Accepting that to be so, I am not persuaded by that anomaly to depart from the ordinary meaning of the words, especially as a much greater anomaly materialises if we adopt the reading advocated by Mr Blundell. Then the result would be that whereas a New Zealand

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wholesaler could not acquire those interests, yet the drug houses of the United States, Great Britain and the Continent, manufacturers and wholesalers alike, providing only that they have no place of business here, could freely obtain undercover control of New Zealand pharmacies. That presents an unacceptable situation. Moreover the result would clearly be contrary to the intent and purpose of the section which was so obviously designed to prevent the domination of the pharmaceutical retail trade by powerful wholesale interests and chain organisations. In my view this is a case where s.5 (j) of the Acts Interpretation Act 1924 is mandatory. This section, which in my respectful view often receives insufficient weight in our Courts, must in cases where the object of the legislation is clear, be given its full dominant effect. To restrict the words "wholesale dealer" to wholesalers operating in New Zealand, would not give such a "fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act". It may possibly be, as Mr Blundell contends, that the Legislature has failed - for the reasons which I have touched on earlier - to bar overseas retail organisations from acquiring these particular interests but in that event I prefer to think that the draftsman overlooked the effect on "the proprietor of a pharmacy" of the statutory definitions in s.2 of the 1939 Act, of the component words, rather than that he intended the results which follow from the other construction. Failure by the draftsman, if there was such, to meet a particular situation must not deter us from taking the Act as far as we reasonably can along the path of Parliament's obvious intention.

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There is another aspect of this argument concerning which I should say something. It has been suggested that when the 1954 Act was passed the ownership of Boots N.Z. by Boots U.K. was well known, and that it is not reasonable to believe that Parliament intended s.13 (1) to be applied in a way which would obstruct the expansion of Boots N.Z. into further

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pharmacies. But why should we not? 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. Moreover, the Act of 1954 has proved to be a patch work quilt; it has already been necessary to add various patches. The Act of 1957 added some, particularly by ss.3 (2) and 4 (2), and no doubt some further patches would be an advantage. If it was Parliament's intention to exempt the interests of Boots U.K. in the New Zealand company from the operation of s.13 (1), then clearly, in my view, another is needed. The adding of that is the responsibility of Parliament.

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Two further submissions were made by Mr Blundell but more briefly. The first related to the fact that Boots U.K., as a result of an amendment of the Articles of Boots N.Z., no longer holds a power of veto over the appointment of the Managing Director of the latter company and, therefore, it was said, Boots U.K. does not possess the "ownership, management, and control" of the business carried on in pharmacies owned by Boots N.Z. I cannot accept that. It is the ownership of the shares which gives control and brings the English company within the words of the section. The second was that the proviso in s.13 (1) should be read so as to relieve Boots U.K. of all consequences of such shareholding in Boots N.Z. as it held at the date of the coming into operation of the 1954 Act. But that submission requires a substantial gloss on the language, a gloss for which no justification is apparent. In terms the proviso relates to and exempts an estate or interest in a business carried on in a pharmacy at that date and so does not assist in respect of the pharmacy which Boots N.Z. now hopes to establish at Porirua.

I am therefore in favour of making the second declaratory order sought by the plaintiff,

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but I would limit it in the manner suggested by  
Turner J., namely by omitting all reference to  
illegality pursuant to s.15.

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Formal  
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No. 26

FORMAL JUDGMENT OF COURT OF APPEAL

TUESDAY the 8th day of February 1966.

Before the Honourable Mr. Justice North,  
President  
The Honourable Mr. Justice Turner  
The Honourable Mr. Justice McCarthy.

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This Notice of Motion dated 28th day of March  
1963 for Writ of Prohibition and other orders  
coming on for hearing on the 11th and 12th days  
of November 1965 and UPON HEARING Mr. McKay of  
Counsel for the Plaintiffs and Mr. Blundell and  
Mr. Greig for the second and third defendants  
THIS COURT HEREBY ORDERS AND DECLARES that the  
third 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  
having by the third Defendant of an interest in  
the business of a pharmacy proposed to be  
established by the second Defendant at Porirua  
would by reason of the admitted shareholding of  
the third Defendant in the second Defendant be in  
contravention of the provisions of Section 13 of  
the Pharmacy Amendment Act 1954 AND THIS COURT  
FURTHER ORDERS that all the other applications  
of the Plaintiff in the proceedings be and the  
same are hereby refused and doth FURTHER ORDER

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that the second and third Defendants pay to the Plaintiff the sum of £75:0:0: for costs and £63:17:0: disbursements.

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By the Court  
"G.J. Grace"  
Registrar

L.S.

Formal Judgment of Court of Appeal

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No. 27

No. 27

ORDER OF THE COURT OF APPEAL GRANTING FINAL LEAVE TO SECOND AND THIRD DEFENDANTS TO APPEAL TO HER MAJESTY IN COUNCIL

Order of Court of Appeal granting final leave to second and third Defendants to Appeal to Her Majesty in Council.

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MONDAY the 4th day of July 1966

Before the Honourable Mr Justice North,  
President  
The Honourable Mr Justice Turner  
The Honourable Mr Justice McCarthy.

4th July 1966

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UPON READING the notice of motion for grant of Final Leave to appeal to Her Majesty in Council filed herein and the affidavit filed in support thereof AND UPON HEARING Mr Greig of Counsel for the second and Third Defendants and Mr McKay of Counsel for the Plaintiff THIS COURT HEREBY ORDERS that the abovenamed Second and Third Defendants be and they are hereby granted final leave to appeal to Her Majesty in Council from the Judgment of this Honourable Court given and made on the 8th day of February 1966.

By the Court  
"G.J. Grace"  
Registrar

L.S.

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No. 28

ORDER OF THE COURT OF APPEAL GRANTING FINAL  
LEAVE TO PLAINTIFF TO APPEAL TO HER  
MAJESTY IN COUNCIL

No. 28

Order of  
Court of  
Appeal grant-  
ing final  
leave to  
Plaintiff to  
appeal to Her  
Majesty in  
Council.  
4th July 1966.

MONDAY the 4th day of July 1966

Before the Honourable Mr Justice North,  
President

The Honourable Mr Justice Turner  
The Honourable Mr Justice McCarthy

UPON READING the notice of motion for grant of  
Final Leave to appeal to Her Majesty in Council  
filed herein and the affidavit filed in support  
thereof AND UPON HEARING Mr McKay of Counsel  
for the Plaintiff and Mr Greig of Counsel for the  
Second and Third Defendants THIS COURT HEREBY  
ORDERS that the abovenamed Plaintiff be and it  
is hereby granted final leave to appeal to Her  
Majesty in Council from that portion of the  
judgment of this Honourable Court delivered on  
the 8th day of February 1966 in this action  
whereby this Honourable Court refused the  
application of the Plaintiff for an order  
declaring

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"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"

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By the Court

"G.J. Grace"  
Registrar

L.S.

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 -

THE CHEMISTS' SERVICE GUILD  
OF NEW ZEALAND INCORPORATED Respondent

- and -

WILFRED FOSBERREY STILLWELL Pro-forma Respondent

AND 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

- and -

WILFRED FOSBERREY STILLWELL Pro-forma Respondent

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R E C O R D     O F     P R O C E E D I N G S

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SLAUGHTER AND MAY  
18, Austin Friars  
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Agents for:-

BELL GULLY & CO.,  
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Solicitors for Boots the  
Chemists (New Zealand)  
Limited and Boots Pure  
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WRAY, SMITH & CO.,  
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Agents for :-

LUKE CUNNINGHAM & CLERE,  
Wellington,  
New Zealand.

Solicitors for The  
Chemists' Service Guild  
of New Zealand  
Incorporated.