

Judgment (7) 1973

No. **21** of 1972

**IN THE PRIVY COUNCIL**

---

**ON APPEAL  
FROM THE COURT OF APPEAL OF NEW ZEALAND**

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**BETWEEN NEW ZEALAND NETHERLANDS SOCIETY "ORANJE"  
INCORPORATED Appellant  
AND LAURENTIUS CORNELIS KUYS and THE WINDMILL  
POST LIMITED Respondents**

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**RECORD OF PROCEEDINGS  
PART 1**

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
28 MAY 1974  
25 RUSSELL SQUARE  
LONDON W.C.1

**EARL KENT MASSEY PALMER &  
HAMER**  
Auckland,  
NEW ZEALAND

Solicitors for Appellant

**SWAN DAVIES McKAY & CO.**  
Wellington,  
NEW ZEALAND

Solicitors for Respondents

No.

**21**

of 1972

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**IN THE PRIVY COUNCIL**

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**ON APPEAL**  
**FROM THE COURT OF APPEAL OF NEW ZEALAND**

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**BETWEEN   NEW ZEALAND NETHERLANDS SOCIETY "ORANJE"**  
**INCORPORATED** **Appellant**

**AND        LAURENTIUS CORNELIS KUYS and THE WINDMILL**  
**POST LIMITED** **Respondents**

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**RECORD OF PROCEEDINGS**  
**PART 1**

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**EARL KENT MASSEY PALMER &  
HAMER**  
Auckland,  
NEW ZEALAND

**Solicitors for Appellant**

**SWAN DAVIES McKAY & CO.**  
Wellington,  
NEW ZEALAND

**Solicitors for Respondents**

**IN THE PRIVY COUNCIL**

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**ON APPEAL  
FROM THE COURT OF APPEAL OF NEW ZEALAND**

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**BETWEEN NEW ZEALAND NETHERLANDS SOCIETY "ORANJE"  
INCORPORATED** **Appellant**

**AND LAURENTIUS CORNELIS KUYNS and THE WINDMILL  
POST LIMITED** **Respondents**

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Notice of Motion for Conditional Leave to Appeal to Privy Council

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Order granting conditional leave to appeal to Privy Council

Notice of Motion for grant of final leave to appeal to Privy Council

Affidavit of L. Renneberg in support of Motion for grant of final leave to appeal to Privy Council



IN THE SUPREME COURT OF NEW ZEALAND  
WELLINGTON DISTRICT  
WELLINGTON REGISTRY

A. No. 329/68

No. 1  
In the Supreme  
Court of  
New Zealand —  
Statement  
of Claim

BETWEEN LAURENTIUS CORNELIS KUYS of Auckland, Company Director, and THE WINDMILL POST LIMITED a duly incorporated Company having its registered office at Norfolk House, High Street, Auckland,

10

**Co-Plaintiffs**

AND NEW ZEALAND NETHERLANDS SOCIETY "ORANJE" INCORPORATED a duly incorporated Society under The Incorporated Societies Act 1908 having its registered office at 40 Gordon Road, Northcote, Auckland,

**Defendant**

**STATEMENT OF CLAIM**

Friday the 27th day of September 1968

20 THE PLAINTIFFS by their Solicitor IAN LLOYD McKAY state as follows:—

1. THE first mentioned Plaintiff is the principal shareholder and Managing Director of the second mentioned Plaintiff a duly incorporated Company having its registered office at Norfolk House, High Street, Auckland.

2. THE Defendant is a duly incorporated Society under The Incorporated Societies Act 1908 having its registered office at 40 Gordon Road, Northcote, Auckland.

30 3. THAT on the 12th of July 1967 the second Plaintiff was incorporated as a limited liability company and the first mentioned Plaintiff thereafter assigned to the Company all material rights and causes of action relevant hereto.

4. IN or about the months of April and May 1966 the first mentioned Plaintiff took to himself the trade name "The Windmill Post" in connection with the proposed export of goods to Holland, the formation of a social club in New Zealand and in particular the initiation of an independent Dutch newspaper for circulation in New Zealand.

5. THAT in or about the months of June to September 1966 the first mentioned Plaintiff commenced to arrange a news service and to gather other material to be used in the newspaper to be called "The Windmill Post".

40 6. THAT in February 1967 the first issue of the newspaper was published and the said newspaper has been published monthly by the first mentioned Plaintiff and latterly by the second mentioned Plaintiff in the style and format as is depicted in a copy of the said first issue attached hereto and marked "A" from that date down to the present time.

50 7. THAT on the 5th of January 1967 the Defendant Society was formed and agreed with the first mentioned Plaintiff that it would purchase a copy of the said newspaper for every member of its Society for a period of six months at a price of one shilling (1/-) a copy. In return the first mentioned Plaintiff agreed to publish items of news relevant to the Defendant's organisation and activities.

8. THAT in July 1967 and thereafter monthly down to the present time

No. 1  
In the Supreme  
Court of  
New Zealand —  
Statement  
of Claim

the Defendant through its servants or agents commenced to publish a newspaper under the name "The Windmill Post" and is selling and passing off the said newspaper as the Plaintiffs'. The Plaintiffs' newspaper is widely known to a number of subscribers and advertisers and the Defendant's newspaper is calculated and likely to deceive the subscribers and advertisers in mistaking the Defendant's newspaper for the Plaintiffs' newspaper and thereby causing damage to the Plaintiffs. All issues of the Defendant's said newspaper are in the style and format as depicted in a copy of the Defendant's first issue which is attached hereto and marked "B".

10

WHEREFORE the Plaintiffs claim as follows:—

- (a) A perpetual injunction restraining the Defendant by themselves or by their agents from publishing, distributing or selling a newspaper under the name, style or format of the Plaintiffs' newspaper "The Windmill Post".
- (b) The costs of and incidental to these proceedings.

THIS Statement of Claim is filed by IAN LLOYD McKAY Solicitor for the Plaintiffs whose address for service is at the offices of Messrs. Swan, Davies, McKay and Co., Challenge House, 105-109 The Terrace, Wellington.

**NOTICE OF MOTION FOR PERPETUAL INJUNCTION**

No. 2  
In the Supreme  
Court of  
New Zealand —  
Notice of  
Motion for  
Injunction

10 TAKE NOTICE that on Wednesday the 9th day of October 1968 or so soon thereafter as Counsel can be heard Counsel for the abovenamed Plaintiffs WILL MOVE this Honourable Court FOR AN ORDER that the Defendant by themselves or by their agents be perpetually restrained from publishing, distributing or selling a newspaper under the name, style or format of the Plaintiffs' newspaper "The Windmill Post" and FOR AN ORDER that the costs of and incidental to this application be paid by the Defendant UPON THE GROUNDS set forth in the affidavit of Laurentius Cornelis Kuys sworn and filed in support hereof.

DATED at Wellington this 20th day of September 1968.

R. A. HERON  
Solicitor for Plaintiffs

TO: The Registrar, Supreme Court, Wellington

AND TO: The Defendant.

**AMENDED STATEMENT OF DEFENCE AND COUNTER-CLAIM**

Wednesday the 4th day of June 1969

THE DEFENDANT SAYS:—

No. 3  
In the Supreme  
Court of  
New Zealand —  
Amended  
Statement of  
Defence and  
Counterclaim

1. IT admits the allegations set forth in paragraphs 1 and 2 of the Co-Plaintiffs' Statement of Claim.
2. IT admits that the second mentioned Co-Plaintiff was incorporated on the 12th day of July 1967 as a limited liability Company but denies each and every other allegation therein contained in paragraph 3 of the Co-Plaintiffs' Statement of Claim.
- 10 3. THE Defendant denies the allegations set forth in paragraph 4 of the Co-Plaintiffs' Statement of Claim.
4. INsofar as the first mentioned Co-Plaintiff undertook any work to establish a newspaper under the title of "The Windmill Post" the first mentioned Co-Plaintiff acted at all material times in his capacity as Secretary and/or a servant or agent of the Netherlands Society "Oranje" Incorporated, a duly incorporated Society having its registered office at Auckland and also of the Defendant following its incorporation hereinafter mentioned but save as is expressly herein admitted the Defendant denies the allegations contained in paragraph 5 of the Statement of Claim.
- 20 5. IT admits that the first issue of the newspaper "The Windmill Post" was published in February 1967 and admits that exhibit "A" to the Statement of Claim is that issue but except as expressly admitted herein the Defendant denies each and every allegation contained in paragraph 6 of the Statement of Claim.
6. IT admits it was incorporated on the 27th day of January 1967 (but not the 5th day of January 1967 as alleged) but save as is expressly admitted herein it denies each and every allegation contained in paragraph 7 of the Statement of Claim.
- 30 7. IT admits that exhibit "B" to the Statement of Claim was published by the Defendant but save as is expressly admitted herein it denies each and every allegation contained in paragraph 8 of the Statement of Claim.

AND BY WAY OF COUNTERCLAIM, THE DEFENDANT SAYS:—

8. THAT it is a Society duly incorporated under the Incorporated Societies Act 1908 having its registered office at 40 Gordon Road, Northcote, Auckland.
9. AT all material times the first mentioned Co-Plaintiff occupied a position of trust by virtue of his being an officer of the Defendant. He also owed duties to the Defendant by virtue of his having entered a contract of service as Secretary, and being an employee for reward. He acted in breach of his obligations in one or more of the following manners:
  - 40 (a) In failing to give faithful service to the Defendant in connection with the establishment and publication of "The Windmill Post" and more particularly in failing to ensure that the said publication was conducted for the benefit of the Defendant.
  - (b) In taking advantage and/or endeavouring to take advantage of the opportunities of his position to enrich himself both in relation to advertising moneys received in respect of the publication and in regard ownership thereof.
  - (c) In failing to take proper care of the Defendant's property.
  - 50 (d) In using and/or disclosing to third persons confidential information as to the Defendant's business, including the identity of subscribers and advertisers in the said publication.
  - (e) In canvassing the said subscribers and advertisers and otherwise

No. 3  
In the Supreme  
Court of  
New Zealand —  
Amended  
Statement of  
Defence and  
Counterclaim

inducing them to become his customers following the termination of his employment with the Defendant.

- 10 THE said Netherlands Society "Oranje" Incorporated agreed with the Defendant that the Defendant should have all the benefits, development and property which it owned regarding the establishment of the newspaper mentioned and described in paragraph 11 hereof.
11. IT is and at all material times was the proprietor of the newspaper "The Windmill Post" which was initially published in the month of February 1967 and which is the exhibit "A" to the Co-Plaintiffs' Statement of Claim.
12. FROM the date of first publication in February 1967 "The Windmill Post" was and is the official publication of the Defendant and was and is well known to members of the Defendant, advertisers, subscribers and the public under that name. There was no other publication known by that name until the first mentioned Co-Plaintiffs commenced publication of the newspaper referred to in paragraph 13 hereof.
- 20 13. IN July 1967 the first mentioned Co-Plaintiff commenced publication of a newspaper also called "The Windmill Post" in the same or similar form or style as the said newspaper of the Defendant mentioned in paragraph 11 hereof and at a later date either authorised and/or assigned the right to publish the said newspaper of the first mentioned Co-Plaintiff to the second mentioned Co-Plaintiff. The first mentioned Co-Plaintiff and/or second mentioned Co-Plaintiff under the direction or authority from the first mentioned Co-Plaintiff have continued to publish monthly such newspaper until the present time.
- 30 14. THE said publication by the Co-Plaintiffs of their newspaper under the title or name of "The Windmill Post" and the publication of it in its present form is so similar to that of the Defendant's said newspaper that the said publication of the Co-Plaintiffs is causing and tends to cause subscribers to and advertisers in the Defendant's newspaper and the members of the Defendant and the public to confuse and/or to mislead or deceive the said subscribers, advertisers, members of the Defendant and the public into confusing or mistaking the Co-Plaintiffs' newspaper for the Defendant's newspaper.
- 40 15. THE Co-Plaintiffs wrongfully sold and passed off and are wrongfully selling and passing off the newspaper which is not published by the Defendant under the name "The Windmill Post" thus misleading, confusing or deceiving the said subscribers, advertisers, members of the Defendant and the public.
16. THE second mentioned Co-Plaintiff's use of the name "The Windmill Post Limited" is so similar in title or style that it has and is likely to confuse and/or mislead and/or deceive the said subscribers, advertisers, members of the Defendant and the public into mistaking or being deceived that the second mentioned Co-Plaintiff is the proprietor of the Defendant's said newspaper.
17. BY reason of the matters complained of, the Defendant has suffered and is likely to suffer loss of goodwill, trade and damage to its newspaper business and membership of its Society.

WHEREFORE THE DEFENDANT COUNTERCLAIMS:

- 50 (a) A perpetual injunction be issued against the Co-Plaintiffs restraining them, their servants or agents or any of them from continuing to publish, distribute or vend a newspaper.
- (b) That a perpetual injunction be issued against the second mentioned Co-Plaintiff to restrain it, its servants or agents or any of them from continuing to use the words "The Windmill Post" in the name or style of the second mentioned Co-Plaintiff.

No. 3  
In the Supreme  
Court of  
New Zealand —  
Amended  
Statement of  
Defence and  
Counterclaim

- (c) Damages in the sum of \$6,000.00.
- (d) The costs of and incidental to these proceedings.
- (e) Such further or other relief as to this Honourable Court may seem just.

THIS AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM is filed by BERNARD HUGH CLARK Solicitor for the Defendant, whose address for service is at the offices of Messieurs Young, Bennett, Edgley and Co., Solicitors, 85 Customhouse Quay, Wellington, C.1.

**STATEMENT OF DEFENCE TO AMENDED STATEMENT OF  
COUNTERCLAIM**

Tuesday the 8th day of July 1969

No. 4  
In the Supreme  
Court of  
New Zealand—  
Statement of  
Defence to  
Amended  
Statement of  
Counterclaim

THE CO-PLAINTIFFS by their Solicitor state as follows:—

1. THEY admit the allegations in paragraph 8 of the amended Counterclaim.
2. THEY deny each and all of the allegations in paragraph 9 of the Counterclaim.
3. THEY deny the allegations in paragraphs 10, 11, 12, 13, 14, 15, 16 and 17  
10 of the amended Statement of Counterclaim.

THIS Statement of Defence to Amended Statement of Counterclaim is filed by IAN LLOYD McKAY Solicitor for the Co-Plaintiffs whose address for service is at the offices of Messieurs Swan, Davies, McKay and Co., Challenge House, 105-109 The Terrace, Wellington.

**AFFIDAVIT OF L. C. KUYS IN SUPPORT OF MOTION FOR  
INJUNCTION**

No. 5  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction —  
L. C. Kuys

I, LAURENTIUS CORNELIS KUYS of 45 Tiverton Road, Auckland, Company Director, make oath and say as follows:—

1. I am the first mentioned Plaintiff in these proceedings and a director of The Windmill Post Limited a duly incorporated Company having its registered office at Norfolk House, High Street, Auckland, the second mentioned Plaintiff in this action.
2. FOR a number of years prior to 1966 I have interested myself in matters affecting the Dutch community and have been responsible along with other persons for the building and strengthening of Dutch clubs and Dutch associations in Auckland and other parts of New Zealand. I have from time to time held official positions with Dutch organizations in New Zealand and in particular was Secretary of The Netherlands Society "Oranje" Incorporated. This Society was based in Auckland and was substantially an Auckland Club with branches in other districts. From the inaugural meeting of the Defendant Society I became the Secretary of this Society up until June of 1967.
3. IN April or May of 1966 in anticipation of a proposed trip to Holland I decided that I should have a trade name to apply to goods for export from New Zealand. The name "The Windmill Post" was suggested to me by Ivan Leslie Griffiths of 27 Seabrook Avenue, New Lynn, Auckland, as being a name which might be suitable for my purposes since a windmill indicates a connection with Holland and the word "Post" related to a trading post. I accordingly at about this time adopted this name but in fact I have not exported any goods. At the same time I was also interested in forming a social club in New Zealand under the name "The Windmill Post" and for a long time I had had a desire to initiate an independent Dutch newspaper in New Zealand which I intended to call "The Windmill Post". At this time there were two Dutch language newspapers in existence. These newspapers were of a cyclostyled format one of which was called the "Holland Bulletin" and published by the Auckland Society referred to in Clause 2 of my affidavit. The other was the newspaper referred to hereafter in Clause 5 of my affidavit. During the time that I was connected with the Auckland Society I had been responsible for the preparation of and editing of the "Holland Bulletin" but I had discontinued this early in 1966. The Auckland Society had been issuing the "Holland Bulletin" for at least nine years.
4. DURING the months of June to September inclusive of 1966 I travelled to Holland by way of holiday but at the same time in anticipation of commencing a newspaper I arranged for a news service and other material to be sent to me from Holland to be incorporated in the projected paper.
5. AFTER my return from Holland I immediately proceeded with the development work to introduce a newspaper which was to be called "The Windmill Post". On the 14th of January 1967 I purchased a competing news magazine called "The New Zealand Hollander" from Mr. H. P. Willemsen of Glen Eden, Auckland, for the sum of £100 and annexed hereto and marked "A" is a copy of a receipt for such payment.
6. ON the 5th of January 1967 the Defendant Society was formed and its inaugural meeting was held at the residence of H. Hoberigs. The purpose of forming a national society was in an endeavour to overcome the parochialism that had developed between Dutch groups in various parts of the country and in an endeavour to provide a unified national body. Annexed hereto and marked "B" is a copy of the Minutes of the said meeting (together with a translation) which in a general way sets out the reasons and purposes for the formation of the new organization. I desire to refer to the fourth paragraph on the second page of the translation of the Minutes where reference is made to my proposed publication. The Minutes confirm the arrangement that was then made that the Society would purchase one paper per member at the cost of one shilling (1/-).



No. 5  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction —  
L. C. Kuys

I accepted this offer because it meant immediately a guaranteed source of revenue for a period of six months and possibly longer.

10 7. I offered to place items of Society news in "The Windmill Post" and the Society officials accepted gratefully. I am certain the officials were pleased that whilst the Society had an outlet for Club news in a monthly publication the financial responsibility of the newspaper was no longer theirs. At the same meeting referred to in the above paragraph I was informed by Mr. Renneberg, who is a Solicitor, that I should form my enterprise known as "The Windmill Post" into a limited liability company as a safeguard in case it was not a financial success. I believe the words Mr. Renneberg used to me on the night of the said meeting were to incorporate a company "in case I went broke".

20 8. AFTER completing arrangements for printing and arranging for a printer to publish the newspaper the first copy was published in February 1967 and was referred to as Volume 1 Number 1. Annexed hereto and marked "C" is a copy of the first issue and subsequent issues have been published every month since this time. I direct the Court's attention to the windmill device on the top left of the front page of the newspaper and the words "The Windmill Post" therein set out. Since this time monthly issues have been published in the normal way, each and every copy bearing the device and the name in the manner set out in Volume 1 Number 1.

9. I wish to detail certain steps that I took on my own behalf as proprietor of the newspaper to complete certain formalities in connection therewith.

- 30 (a) Under Section 63 of the Copyright Act 1962 I posted copies of "The Windmill Post" Volume 1 Number 1 to the General Assembly Library and annexed hereto and marked "D" and "E" are photocopies of the two receipts obtained therefor.
- (b) That annexed hereto and marked with the letters "F" and "G" are photocopies of letters from the Alexander Turnbull Library and the Auckland Public Library in connection with the first issue of the said paper.
- (c) Annexed hereto and marked with the letter "H" are photocopies of miscellaneous receipts from the Post Office for fees paid in connection with the first issue of the said paper.
- 40 (d) Annexed hereto and marked with the letter "I" is a photocopy of a Bank statement in the name "Windmill Post" which I had opened in Sydney having regard to the possibility of exporting and requiring a Bank to receive payment and also in connection with certain news item copyright arrangements which might be received by me.

50 10. THAT as a further move towards the unity of Dutch organizations in New Zealand the Dutch Ambassador in New Zealand called a meeting of interested parties which was held in Wellington on the 16th of April 1967. I attended this meeting in my capacity as Secretary of the Defendant Society. Minutes or notes of the meeting on the 16th of April 1967 were forwarded by the Ambassador to the Defendant and were discussed by me and by Mr. Dubois and Mr. Renneberg on behalf of the Defendant. Whilst there was some alteration to the first draft of the minutes or notes forwarded by the Ambassador a final statement of the proceedings was approved by all concerned and was entitled "Summary of Discussions of the 16th April 1967 held at the Royal Netherlands Embassy in Wellington". Annexed hereto and marked with the letter "J" is a copy of the said summary of discussions with a translation in respect of Clause 7 relevant to "The Windmill Post" attached.

60 11. AS a result of differences arising from the organisation of Group Travel parties I resigned from my position as Secretary with the Defendant Society. Annexed hereto and marked with the letter "K" is a copy of minutes (in English) of a special National Executive meeting held at 21 Cleary Road, Panmure, on the 8th of June 1967. In these minutes are set out some of the difficulties which subsequently caused differences

No. 5  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction —  
L. C. Kuys

between myself and the Executive and led to my resignation. I wish to draw the Court's attention to the second page of the said minutes in which certain arrangements were made in respect of an extension of the contract earlier referred to and arranged at the inaugural meeting.

12. ANNEXED hereto and marked with the letter "L" is a copy of a letter sent by the Defendant Society on the 22nd of June to members and signed by Mrs. Leenman. This letter records my resignation and indicates that the Defendant has withdrawn its support from "The Windmill Post" and intends to publish a newspaper of its own.

10 13. IN July of 1967 the first publication by the Defendant Society was made and annexed hereto and marked with the letter "M" is a copy of the newspaper so published. The Defendant Society has continued to publish a newspaper with this style and format monthly from that date to the present time. I have lost considerable circulation and advertising as a result of the Defendant's publication.

14. ON the 20th of July 1967 I caused to be filed with the Commissioner of Trade Marks in Wellington an application for the trade mark "The Windmill Post". The following matters have occurred in respect of this application down to the present time:

20 (a) On the 1st of November 1967 the examination report of the Plaintiff's application cited an application by the Defendant for registration of the same trade mark and requested evidence to be lodged in support of the Plaintiff's application. This was my first knowledge of the Defendant's application for the trade mark.

(b) The Plaintiff's evidence was lodged with the Commissioner on the 18th of January 1968 and the Defendant's evidence was requested to be lodged by the 31st of March, 1968.

30 (c) On the 27th of March 1968 the Defendant applied for and received an extension of time for supplying evidence until the 30th of May 1968.

(d) On the 30th of July the Commissioner of Trade Marks wrote to my Trade Mark Attorney and expressed the opinion that the application of the Defendant Society should proceed on notice to the plaintiffs the matter to be finally determined by opposition proceedings, but invited further submissions before taking any action.

(e) My Attorney informed me of this letter and referred the papers to Solicitors in Wellington on my behalf for their consideration and advice.

40 (f) On the 27th of August 1968 I travelled from Auckland to consult the Solicitors in Wellington and on that date decided to commence proceedings for passing off.

50 15. I am informed by my Trade Mark Attorney that the trade mark proceedings are unlikely to be finally determined for approximately another twelve months and the continued publication by the Defendant of their newspaper is causing me financial loss. I believe the reason for the length of time before final determination of the trade mark proceedings is due to the nature of such proceedings which include inter alia publication in Trade journals and the expiration of time from such publication before matters can proceed.

SWORN at Auckland by the said  
LAURENTIUS CORNELIS KUYS  
this 16th day of September 1968  
before me:

L. C. KUYS

B. N. DAVIDSON

A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF I. L. GRIFFITHS IN SUPPORT OF MOTION FOR  
INJUNCTION**

No. 6  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction —  
I. L. Griffiths

I. IVAN LESLIE GRIFFITHS of 27 Seabrook Avenue, New Lynn,  
Auckland, Company Manager, make oath and say as follows:—

10 1. I recall in April or May of 1966 discussing with the abovenamed L. C. Kuys a suitable trade name to apply to goods for export from New Zealand. I believe that Mr. Kuys intended to seek export markets for goods whilst he was in Holland on a holiday later in that year. I suggested to him the name "The Windmill Post" because of Dutch significance in the word "Windmill" and the word "Post" which could be related to a trading post. Mr. Kuys also discussed with me the possibility of forming a social club under a similar name and I wrote to the Nagai Trading Company Limited, Manufacturers in Japan, with a view to obtaining quotes for the production of badges. Annexed hereto and marked with the letter "A" is a copy of my letter of inquiry dated the 3rd day of July 1966. By letter of the 24th of July 1966 a copy of which is hereunto annexed and marked with the letter "B" the Nagai Trading Co. Ltd. replied to my enquiry.

SWORN at Auckland this 17th day                                  IVAN L. GRIFFITHS  
of September 1968 before me:

20    C. J. ALLAN  
A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF M. H. HOEBERIGS IN SUPPORT OF MOTION FOR  
INJUNCTION**

No. 7  
In the Supreme  
Court of  
New Zealand—  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction—  
M. M. H. Hoeberigs

I, MATHIAS MARIA HENRICUS HOEBERIGS, of Auckland, Company  
Director, make oath and say as follows:—

1. THAT I recall the inaugural meeting of the abovenamed Defendant on  
the 5th of January 1967. This meeting was held at my house at 48  
Lynbrooke Avenue, Auckland.

2. IT was made quite clear by all parties concerned that Mr. Kuys could  
if he wished undertake the publication of a newspaper under the name  
"The Windmill Post" the ownership and responsibility of which would be  
that of Mr. Kuys. Indeed his ownership and responsibility for this news-  
paper was reinforced by a statement made by Mr. Renneberg in the  
presence of all persons attending the meeting that Mr. Kuys should form  
a limited liability company to protect himself in the event of the newspaper  
not being a financial success.

3. I do not know of any suggestion made that the newspaper was the  
property of the Defendant or that Mr. Kuys was publishing the newspaper  
on behalf of the Defendant Society. I am convinced that everyone was well  
aware that Mr. Kuys would own the newspaper himself and indeed the  
name "The Windmill Post" was suggested by Mr. Kuys as being the name  
of the newspaper he proposed to publish in any event.

SWORN at Auckland this 16th day  
of September 1968 before me:—

M. HOEBERIGS

B. TUNNICLIFFE

A Solicitor of the Supreme Court of New Zealand

10  
B.T.  
M.H.

20

**AFFIDAVIT OF H. C. ZEEMAN IN SUPPORT OF MOTION FOR  
INJUNCTION**

No. 8  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction —  
H. C. Zeeman

I, HENDRIK CORNELIS ZEEMAN of Hamilton, Company Director, make oath and say as follows:—

1. I was the Chairman at the Annual General Meeting of the Defendant Society held in March 1967. I can recall that there were a number of delegates from branches in New Zealand and in particular the National Executive of the Defendant's Society was represented at such meeting by Mr. Dubois and Mr. Renneberg.

10 2. One of the subjects discussed was "The Windmill Post". The discussion proceeded on the basis that this was the newspaper produced by the above-named Mr. L. C. Kuys as a private venture. However members were concerned that the proposition might not pay and consequently were concerned for Mr. Kuys. Mr. Renneberg, whom I believe to be a Solicitor, was requested by me to offer advice and guidance to Mr. Kuys so as to protect himself against any losses arising from his venture into the production of the newspaper "The Windmill Post" and I suggested that he should turn the venture into a limited liability company and Mr. Renneberg agreed with my suggestion. It was perfectly clear to me and  
20 I believe to all others present at the meeting that the newspaper to be called "The Windmill Post" was to be the sole property of Mr. Kuys or of his Company.

H.Z. 3. IN July 1967 Miss Leenman, who was the Secretary in place of Mr. Kuys, and Mr. Renneberg visited Hamilton. At this meeting at which Mr. Ingelse of Rotorua was also present Mr. Renneberg accused Mr. Kuys of various misdemeanours and also the "confiscation" of "The Windmill Post". I pointed out to Mr. Renneberg that "The Windmill Post" belonged to Mr. Kuys and that the only connection the Defendant had with the newspaper was by way of contract to purchase a copy for each member at one  
30 shilling (1/-) each for a minimum period of six months. Mr. Renneberg, however, at this meeting denied that the newspaper belonged to Mr. Kuys. On the other hand Mr. Ingelse was emphatic that the newspaper was the sole property of Mr. Kuys.

4. A short time afterwards I withdrew from the Defendant Society and any further details are unknown to me.

SWORN at Auckland this 16th day  
of September 1968 before me:

H. C. ZEEMAN

B. N. DAVIDSON

A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF F. N. WEST-WALKER IN SUPPORT OF MOTION  
FOR INJUNCTION**

No. 9  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Co-Plaintiffs  
in support of  
Motion for  
Injunction —  
F. N. West-Walker

I, FRANCIS NIGEL WEST-WALKER of Wellington, Patent Attorney,  
make oath and say as follows:—

1. I am the Patent Attorney for The Windmill Post Limited and made application on its behalf for the registration of the trade mark "Windmill Post" on the 20th of July 1967.
2. AN official examination report dated the 1st of November 1967 was received from the Commissioner of Trade Marks which raised an objection based on an application for registration of a similar trade mark made on behalf of The Netherlands Society Oranje Incorporated.
3. AFTER consultations with my client a draft declaration was prepared and forwarded to him on the 15th of December 1967. After settling the form of the declaration and compiling exhibits the declaration was engrossed and lodged in the Patent Office on the 19th of January 1968.
4. IN response to the filing of the declaration a letter was received from the Commissioner of Trade Marks dated the 30th of January 1968 a copy of which is hereunto annexed and marked with the letter "A".
5. A further letter dated the 27th of March 1968 was received by me from the Commissioner of Trade Marks extending the time for the filing of the Defendant's declaration and evidence.
6. AFTER enquiries made to the Trade Marks Office as to progress a letter dated the 30th of July 1968 was subsequently received by me and a copy of such letter is hereunto annexed and marked with the letter "B". If the procedure outlined in the above letter was agreed to then the Defendant's application would be accepted and advertised in the Patent Office Journal. The Journal is issued monthly and there could be a delay of several weeks before the application could be advertised. After the date of advertisement a period of three months is prescribed during which time a Notice of Opposition must be lodged. On receipt of the Notice of Opposition the Commissioner is directed to send a duplicate of the Notice to the Defendant who must lodge a counter-statement within two months of the date of receipt of the Notice of Opposition. From the filing of the counter-statement a further two months is given to the Plaintiff to file evidence in support of the opposition. After evidence has been filed in support of opposition the Defendant would be free to lead evidence in support of the application within two months of receipt of the Plaintiff's evidence. All these times may be enlarged by the Commissioner in his discretion.
7. I estimate that approximately one year could elapse from now before the case came to hearing even if all parties employed diligence in preparing and filing the various documents.

SWORN at Wellington by the said  
FRANCIS NIGEL WEST-WALKER  
this 7th day of November 1968 before  
me:

F. N. WEST-WALKER

O. J. WEST-WALKER  
A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF P. V. DUBOIS SWORN ON 4th DECEMBER 1968 IN  
OPPOSITION TO MOTION FOR INJUNCTION AND IN SUPPORT OF  
COUNTERCLAIM**

No. 10  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Defendant in  
opposition to  
Motion for  
Injunction and  
in support of  
Counterclaim —  
P. V. Dubois  
(sworn 4th  
December, 1968)

I, PLOON VLEESCH DUBOIS of 21 Cleary Road, Panmure, Purchasing Officer, make oath and say as follows:—

10 1. I am the National President of the New Zealand Netherlands Society "Oranje" Incorporated of 40 Gordon Road, Northcote, Auckland, a Society incorporated under the provisions of the Incorporated Societies Act 1908. I have held my present position since the incorporation of the Defendant which was the 9th day of January 1967. Prior to my assuming office as President of the Society, I was and still am the President of the Netherlands Society "Oranje" Incorporated of 24 Rata Street, New Lynn, Auckland 7, and held this office since 12th March 1963 and by reason of both offices I have held in the Society I am cognizant of the facts set out herein.

20 2. PRIOR to the incorporation of the Defendant, the function of administering the various Branches of the Defendant was carried out by the Netherlands Society "Oranje" Incorporated and that for administration purposes it was decided to incorporate a new Society known as the New Zealand Netherlands Society "Oranje" Incorporated to take over the administration of all Branches and to co-ordinate their activities and this new Society was incorporated in January 1967. In the latter part of the year 1966 difficulty was being experienced with the publication of the "Holland Bulletin" which was at this stage the official publication of the Netherlands Society "Oranje" Incorporated. These difficulties arose out of the time spent by unpaid volunteer members of the Netherlands Society "Oranje" Incorporated responsible for the editing and publishing of the Bulletin. As a result of the difficulties experienced, it was decided by the Executive of the Netherlands Society "Oranje" Incorporated to hand over the publication of the "Holland Bulletin" or any other Bulletin or Newspaper to the new Society to be incorporated on the basis that the publication would be the property of the Defendant. At the time of incorporation of the Defendant the following were appointed as the National Executive Committee:

Ploon Vleesch Dubois . . . . . President  
Laurentius Cornelis Kuys . . . . . Secretary  
Leonard Renneberg . . . . . Treasurer

40 I was chairman of a meeting of the said National Executive Committee held shortly after incorporation of the Defendant to discuss the publication of the Bulletin and then it was confirmed that the future publication should be known as "The Windmill Post". This publication would replace the "Holland Bulletin" and the "Oranje News", which were publications of the Defendant, and that the newspaper "The Windmill Post" would be available to non-members as well as members. The Secretary, Mr. L. C. Kuys, offered to be the Editor of "The Windmill Post" and after some discussion between the Defendant and Mr. Kuys it was resolved to employ Mr. Kuys for a period of six months on the basis that the Defendant would pay Mr. Kuys the sum of 1/- per member or member's family and that in addition to this payment the Secretary was to receive the benefit of any advertising revenue as remuneration for the editorial and incidental work and expenses involved and that the question of payment would be reviewed not later than six months after entering into arrangements. At all stages it was envisaged that Mr. Kuys as Secretary of the Defendant, was undertaking the additional work only as an employee of the Defendant and that no profit other than a normal remuneration for services rendered was to be envisaged. It was made clear that if difficulties were experienced in the arrangements outlined above within this period, the Defendant would relieve Mr. Kuys of his employment and make other arrangements. It was further agreed that this agreement should be reduced to writing and that Mr. Kuys should obtain independent legal advice and should submit a draft to the Defendant. No such draft was ever submitted to the Society for acceptance.

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In the Supreme  
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P. V. Dubois  
(sworn 4th  
December, 1968)

- 10 3. ON two occasions prior to my publication of the first issue of "The Windmill Post" in February 1967 I attended with Mr. Kuys as representatives of the Defendant on Mr. H. P. Willemsen, the proprietor of the "N.Z. Hollander", which was a publication containing items of interest to the Dutch community with a view to acquiring its goodwill. These negotiations did not result in any agreement being reached. I was surprised to be informed by Mr. Kuys at a committee meeting of the Netherlands Society "Oranje" Incorporated only a few days before the first publication of "The Windmill Post" that he had taken over the "N.Z. Hollander" approximately a month previously for the purpose of using items of news from the "N.Z. Hollander". Any arrangement with the said Mr. Willemsen was reached by Mr. Kuys on his own initiative without reference to the Defendant. So far as I and the said committee were concerned this did not affect the Defendant's ownership or title to "The Windmill Post" because it was understood from Mr. Kuys' statements that Mr. Kuys, as editor of "The Windmill Post", was only using the "N.Z. Hollander" for a source of information for insertion in the Defendant's publication.
- 20 4. IN the first issue of "The Windmill Post" published in February 1967 is an address written by me to the Defendant's members which was published on page 2 of the said edition; a copy of this address is contained in the copy of the "Windmill Post" which is hereunto annexed and marked with the letter "A" and in which I set out my view regarding the purposes and aims of the said newspaper as the collective undertaking of the Society.
- 30 5. AFTER publication of the first issue in February 1967 it was brought to the notice of the National Executive Committee that "The Windmill Post" was described as "New Zealand's Independent Dutch Newspaper" and when Mr. Kuys was asked at a meeting of the National Executive Committee of the Defendant at my residence in late February or early March 1967 the meaning of this description, he told me and the other members of the National Executive Committee that this meant that the Newspaper was not being published for any religious or political purposes and he did not challenge the Defendant's ownership of "The Windmill Post" or did not claim that he owned the paper. Mr. Kuys was also asked about this same matter at a meeting of the Netherlands Society "Oranje" Incorporated of which he was at that time the Secretary.
- 40 6. I was present at a meeting on the 15th April 1967 in Wellington under the chairmanship of Mr. K. J. Stadtman, the First Secretary of the Netherlands Embassy at Wellington; the question of ownership of "The Windmill Post" was discussed and at the meeting the aforesaid position was conveyed to the persons attending this meeting. Mr. Kuys did not dispute the aforesaid and confirmed the position. The purpose of the Wellington meeting was to have prepared written statements of intent of both the Defendant and the Federation of New Zealand Netherlands Societies Incorporated intentions regarding co-operation. "The Windmill Post" was discussed and it was there asserted that the paper was the sole property of the Defendant, and Mr. Kuys, who was there present, did not dispute this statement. The written statements of intent were not completed at this meeting and another meeting was subsequently arranged to commence on 10th June 1967.
- 50 7. THERE was a further meeting held at the Poenamo Hotel, Birkenhead, on the 10th June, 1967. The Federation of New Zealand Netherlands Societies was represented by Messrs. D. Everse, W. H. P. Obers and B. H. Klap and the Defendant was represented by Messrs. L. C. Kuys and L. Renneberg, Miss N. Leenman and myself. "The Windmill Post" was again discussed for the Federation of New Zealand Netherlands Societies was interested in taking some space in the publication for its Federated clubs news. The Federation was therefore concerned in the identity of the owners of the papers. It was there maintained that "The Windmill Post" was the sole property of the Defendant by Mr. Renneberg and myself.
- 60 Mr. Kuys, who was then present, neither confirmed nor denied nor commented on that statement.



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(sworn 4th  
December, 1968)

8. ON 12th June 1967 the statement of intent above referred to was put to Mr. Kuys at a National Executive Committee meeting at my residence for his signature. The statement of intent was intended to bind the Federation of New Zealand Netherlands Societies and the Defendant's Officers as to co-operation and further it specifically referred to the ownership of "The Windmill Post". Mr. Kuys signed the statement of intent on co-operation but refused to sign the statement relating to the ownership and publication of "The Windmill Post". Because of Mr. Kuy's refusal, the original statement was re-typed, divided now into two parts. The original of this statement together with a translation thereof into English are hereunto annexed and marked with the letters "B" and "C" respectively. This statement was signed on the 16th June 1967. The fact that Mr. Kuys refused to sign the statement relating to the publication of "The Windmill Post" attracted comments of rebuke from myself and Mr. Renneberg at the time indicating that Mr. Kuys had no grounds to refuse signature to it. Mr. Kuys explained his action on the basis that other persons had advised Mr. Kuys that "The Windmill Post" was in fact his property and it was on this basis that Mr. Kuys refused to sign the statement. This was the first occasion that Mr. Kuys unequivocally asserted his claim to ownership of the paper to the National Executive Committee of the Defendant. The Treasurer, Mr. L. Renneberg, then declared to all present that there could be no question about the fact that "The Windmill Post" was the newspaper belonging to the Defendant and no other person. Mr. Kuys insisted that a further meeting be held together with those present at the meeting of members on 5th January 1967 at which the incorporation of the New Zealand Society "Oranje" Incorporated was proposed in order that the ownership of "The Windmill Post" could be established. Mr. Kuys made no mention of minutes of this previous meeting being in existence. Mr. Kuys' request for this meeting was clearly denied by the other office holders, who stated that Mr. Kuys should consult a Solicitor with a view to having the arrangement between the Defendant and Mr. Kuys in relation to the editing and publication of "The Windmill Post" recorded in documentary form as previously stipulated. Mr. Kuys failed to do this. In the presence of myself and Miss Leenman, Mr. Renneberg moved a vote of no confidence which was duly seconded and carried by all present. Mr. Kuys said he would not resign but would hold office till the National Council of the Defendant meeting to be held in October 1967 at which representatives of all Branches and clubs would be present. The Defendant's letter of the 17th June, 1967, advised it was proposed to vote to dismiss Mr. Kuys from his Secretaryship of the Defendant. A copy of this letter is annexed hereto and marked with the letter "D". This letter was intended to and by its context referred to the meeting of the National Executive Committee of the New Zealand Netherlands Society "Oranje" Incorporated and not the Netherlands Society "Oranje" Incorporated.
9. MR. KUYS was in his position of Secretary appointed organiser of group travel amongst other duties and received \$3.00 for every full fare handled by him in this capacity. This payment commenced some time in December 1964. This arrangement with Mr. Kuys included payment for all secretarial duties, but in March 1967 a salary of \$1,100.00 was offered to him "all in". When settlement of Mr. Kuys' remuneration as Secretary until the date at which he relinquished his duties in June 1967 was discussed, Mr. Kuys refused to accept the salary but demanded payment of the \$3.00, pointing out that this was more. A circular letter to members at that time pointing out these facts is hereunto annexed and marked with the letter "E". Available figures disclose that Mr. Kuys received for his services between December 1964 and June 1967
- 527 x \$3.00  
194 x \$1.50 (half fares)
- 10 In addition, he received the commission for all insurance affected relating to group travel organised by him for the members.

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10 10. SUBSEQUENTLY Mr. Kuys, in spite of his earlier assertion that he would not resign, resigned from office and advised us of this by letter from his Solicitor. The National Executive Committee then decided to approach long-standing advertisers in "The Windmill Post" and ascertain whether they too had been under the impression that "The Windmill Post" had been the official publication of the Defendant. Attached hereto and marked with the letter "F" is a copy of a letter dated 22nd June 1967 signed by me on the Defendant's behalf and sent to Canadian Pacific Airlines Limited, Russell and Somers Limited, and KLM Royal Dutch Airlines. Attached hereto and marked with the letters "G" and "H" and "I" are the respective replies received by the Defendant from these companies indicating that they understood the Defendant to be the owner of "The Windmill Post". These Companies have continued to date, to advertise in "The Windmill Post" published by the Defendant.

20 11. ORIGINALLY in the said letter written by me dated the 22nd June 1967 it was stated that the Defendant was going to bring out a successor to "The Windmill Post" because the Defendant then assumed that Mr. Kuys had registered his paper under the Newspapers and Printers Act 1955 in the Supreme Court and had notified the Post Office that "The Windmill Post" publication was registered for postage under his own name. This was because Mr. Kuys had retained all the records and copies of correspondence of the Defendant. However, further research by the Defendant showed in fact that Mr. Kuys had not registered his publication at that time and that "The Windmill Post" had not been registered under the Act at all.

30 12. SINCE the 22nd June 1967 when I wrote a letter referred to in the preceding paragraph, I ascertained from the General Post Office at Wellington that the Defendant had the registration of the "Holland Bulletin" with the Post Office as a newspaper under Permit No. 2324 converted to "The Windmill Post". The registration of the change of this was effected by letter dated the 27th January 1967, a copy of which is hereunto annexed and marked with the letter "J", written on the Defendant's behalf and signed by Mr. Kuys himself. The Defendant on the 22nd June 1967 enquired by letter from the Registrar of Newspapers of the General Post Office under whose name the "Windmill Post" was registered. The reply to this letter was made by letter from the Director-General of the General Post Office dated the 30th June 1967, a copy of which is hereunto annexed and marked with the letter "K", indicating that the registration of "The Windmill Post" as a newspaper was in the  
40 Defendant's name.

13. BECAUSE of the facts revealed by this additional research, the Defendant decided to retain the name of "The Windmill Post" for its monthly newspaper and to make application for its registration under the Newspapers and Printers Act 1955.

50 14. APPLICATION by the Defendant to the Supreme Court at Auckland for registration of "The Windmill Post" as a newspaper under the provisions of the Newspapers and Printers Act 1955 was made on the 5th day of July 1967. A copy of the Affidavit made on behalf of the Society on the 4th day of July 1967 is hereunto annexed and marked with the letter "L", which was sworn and filed in the Supreme Court in support of the said Application. "The Windmill Post" has been ever since the 5th July 1967 registered under the said Act as the Society's newspaper.

60 15. I am informed and verily believe from search notes made of the appropriate public records that an Application for registration of "The Windmill Post" and the windmill device in conflict with the above Application of the Defendant has been lodged by Windmill Post Limited, a Company incorporated on the 12th day of July 1967 under the Companies Act 1955. The capital of this Company is \$400.00 divided into 400 Ordinary shares of \$1.00 each, of which the said Mr. Kuys and one, Ivan Leslie Griffiths of Auckland, Company Director, hold 200 shares each. Both Mr. Kuys and the said Mr. Griffiths are Directors of this Company.

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P. V. Dubois  
(sworn 4th  
December, 1968)

16. I have no knowledge or grounds for belief that the said Netherlands Society "Oranje" Incorporated or the New Zealand Netherlands Society "Oranje" Incorporated or any Officer or Officers in that behalf has incorporated into any contract, assignment, transfer or other transaction whatsoever which would vest "The Windmill Post" or any proprietary interest therein in either of the said Messrs. Kuys and Griffiths or the Windmill Post Limited.
17. I was present and presided as Chairman at both the meetings referred to in clause 6 and 11 of Mr. Kuys' Affidavit sworn on the 16th day of September 1968, but doubt the correctness of the date of the meeting said to have been held on the 10th day of June 1967. At no stage were exhibits "B" and "K" annexed to Mr. Kuys' said Affidavit submitted to me for signature or to any meeting for ratification and if they had been I would have opposed the acceptance of these minutes on the grounds that they are an incorrect record. Despite repeated demands by the Defendant made directly to Mr. Kuys by both myself and the Solicitors for the Defendant, Mr. Kuys did not produce copies of any minutes of meetings of this Society in compliance with those requests until the 1st day of July 1968. Annexed hereto and marked with the letters "M" and "N" and "O" and "P" are copies of letters dated 23rd June 1967, 30th June 1967, 12th June 1968 and 27th June 1968, in which requests were made to the Solicitors then acting for Mr. Kuys, Messrs. Kensington, Haynes and White, for the presentation of the correspondence and records of the Defendant. Attached hereto and marked with the letters "Q" and "R" are copies of letters received from Messrs. Kensington, Haynes and White dated the 5th July 1967 and the 1st July 1968, the latter of which covered the enclosure of a book which contained the documents referred to in clauses 6 and 11 of the said Affidavit of Mr. Kuys.
18. I was present at a meeting on the 1st June 1968 at which Mr. Kuys produced copies of documents which he alleged had been passed and accepted regarding the business discussed at the meetings referred to in clauses 6 and 11 of the said Affidavit of Mr. Kuys. I took particular note that these minutes merely had the initials "L.C.K." and were only written in the right-hand bottom corner of each page. The documents produced at the meeting on 1st June 1968 appear to be the same ones referred to in Mr. Kuys' said Affidavit with the exception of the completion of Mr. Kuys' signature and the addition of the other signatures on exhibit "B" to Mr. Kuys' Affidavit.
19. ON occasions it has been necessary for me to converse with various branches and clubs which are associated or affiliated with the Defendant and which are existing or potential subscribers to the Defendant's newspaper. During the course of these discussions it has been apparent that such a similar rival publication by the Co-Plaintiffs has created a bad impression of the purposes and aims of the Defendant which are to serve the Dutch and New Zealand communities. In instances support of the Defendant's publication by these bodies has disappeared. Also the publication of the said Co-Plaintiffs has conveyed and conveys an undesirable image to both intending members of the Defendant and subscribers to and advertisers in the Defendant's newspaper. Further, the operations of the Co-Plaintiffs' said newspaper has caused at times the payment of accounts with the Defendant being disputed arising out of the confusion resulting from the similarity of the form and title of the two newspapers.

SWORN at Auckland this 4th day  
of December 1968 before me:—

P. V. DUBOIS

J. W. SMITH

A Solicitor of the Supreme Court of New Zealand

**FURTHER AFFIDAVIT OF P. V. DUBOIS SWORN ON 17th FEBRUARY  
1969 IN OPPOSITION TO MOTION FOR INJUNCTION AND IN  
SUPPORT OF COUNTERCLAIM**

No. 11  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Defendant in  
opposition to  
Motion for  
Injunction and  
in support of  
Counterclaim —  
P. V. Dubois  
(sworn 17th  
February, 1969)

I, PLOON VLEESCH DUBOIS, of 21 Cleary Road, Panmure, Purchasing Officer, make oath and say as follows:—

1. I am the President of the Defendant and am the Deponent of the Affidavit sworn on the 4th December 1968 and filed in the above proceedings. Subsequent to the making of the said Affidavit on the 4th December 1968 it was ascertained that copies were available from the Royal Netherlands Embassy of correspondence between the Embassy and the Defendant. Annexed hereto is a photo copy of the Embassy copy letter addressed to myself dated the 21st April 1967 together with a Draft of the Statement of Discussions held at the Embassy on the weekend during the 15th and the 16th April 1967. Such Documents having been marked with the letters "A" and "B". Also annexed are translations of the respective Documents which are annexed and marked with the letters "C" and "D". In the said Draft Statement of Discussions the Defendant is referred to as the "Netherlands Society 'Oranje' Incorporated" and as the "N.S.O." 10
2. I wish to refer to paragraph 6 of Exhibit "B" where the "Windmill Post" is mentioned in the Draft "for the time being, until the end of July, the private property of Mr. Kuys who carries the sole risk of profit and loss and is personally responsible for the editorial policy". This statement does not accurately define the position between both the Defendant and the Co-Plaintiff, Mr. Kuys, as there was no intention for the Defendant to part with the ownership of the "Windmill Post". It does, however, quite clearly indicate that Mr. Kuys was to carry on the editorial distribution and business management of the paper for a limited time only. When I received this Draft I presented this to the next meeting of the National Executive Committee which discussed the contents of the Draft and in particular clause 6. At this meeting both myself and Mr. Renneberg indicated that the precis in this regard was not correct and clearly outlined the terms of our discussions on the 15th and the 16th April 1968 at the said Embassy on the topic, the particulars of which I have deposed to in clause 6 of my Affidavit sworn on 4th December 1968 and filed herein. Mr. Kuys was instructed to prepare a draft incorporating these amendments, but so far as I was aware Mr. Kuys had not done this, thus necessitating the meeting of the 10th of June 1967 at Auckland, the particulars of which I have deposed to in clause 7 of my said Affidavit sworn on 4th December 1968. 20 30
3. ANNEXED hereto are copies of a letter dated the 2nd June or July 1967 signed by Mr. Kuys addressed to Mr. te Winkel of the Royal Netherlands Embassy, together with a precis of the discussions held on the 15th and 16th April at the Embassy. Such Documents are marked with the letters "E" and "F" respectively. Also annexed and marked with the letters "G" and "H" are translations of these Documents. Mr. Kuys was not authorised by the Defendant either to write the letter, exhibit "E", or prepare the draft of the precis of discussions in those terms, exhibit "F", which was sent to the Embassy. In fact, I knew nothing of the amended terms as contained in exhibit "F", and these amendments were never mentioned at any of the National Executive Committee meetings at which I was present, and I verily believe that I was present at all National Executive Committee meetings until the time of Mr. Kuys' resignation as Secretary of the Defendant. Further, the Post Office Box Number 19-107, Auckland 7, referred to in exhibit "E", is a Post Office Box to which only Mr. Kuys had direct access as opposed to the Defendant's other Post Office Box, namely number 2738, to which other officers of the Society had access. 40 50
4. IN June 1967 I received the letter which is annexed hereto and marked with the letter "I" and signed by Mr. Kuys. I have seen copies of this letter addressed to and in the possession of other members of the Defendant. I understand from the terms of this letter that while it states 60

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Mr. Kuys was formerly editor of the newspaper the "Windmill Post" he wished to induce members of the Defendant to subscribe to a newspaper publication of his own under the title of the "Windmill Post" and also induce them to join another club known as the "Windmill Post Club". From the context of this letter I consider that its effect is to mislead or at least confuse its readers of the true position as regards the ownership of the "Windmill Post" and by whom subscriptions were properly receivable.

10 5. I crave leave to refer to paragraph 12 of my said Affidavit sworn on the 4th day of December wherein I mentioned that the Defendant by letter dated 22nd June 1967 made an enquiry of the Registrar of Newspapers at the General Post Office regarding the registration of the "Windmill Post". Annexed hereto and marked with the letter "J" is a carbon copy of the said letter which I signed on behalf of the Defendant.

20 6. MY family has now returned to Holland where it is planned for me to join them within the next two weeks. It is anticipated that I will not be returning to New Zealand for some considerable time as I will be residing in Holland permanently. I am prepared to make myself available for cross-examination by the Co-Plaintiffs at any time, prior to my departure from New Zealand, at the Supreme Courthouse at Auckland.

7. I am informed by the Solicitors for the Defendant and verily believe that the above proceedings have not been set down for trial and it will not be possible to do so for some three weeks at least as another Deponent for the Defendant, Mr. B. H. Klap, is absent from New Zealand at the moment and is not expected to be available for cross-examination until the expiration of that time.

SWORN at Auckland this 17th day  
of February 1969 before me:—

P. V. DUBOIS

N. H. BOGLE

30 A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF L. RENNEBERG IN OPPOSITION TO MOTION FOR  
INJUNCTION AND IN SUPPORT OF COUNTERCLAIM**

No. 12  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Defendant in  
opposition to  
Motion for  
Injunction and  
in support of  
Counterclaim —  
L. Renneberg

I, LEONARD RENNEBERG, of Auckland, Solicitor, make oath and say as follows:—

1. I am a Barrister and Solicitor of the Supreme Court of New Zealand and an Associate Registered Accountant of New Zealand and an Associate of the Chartered Institute of Secretaries.

2. THAT in or about the month of September 1966 I was requested to assist the Committee of the Netherlands Society "Oranje" Incorporated and attended a meeting at the request of Mr. L. C. Kuys, the Secretary of the said Society.

3. AT this meeting it was evident that the said Society was experiencing difficulties with the various branches and clubs throughout New Zealand who were affiliated to the said Society and this appeared to be due to the fact that the central administration was being carried out by the Auckland Club of the said Society who, for this purpose, had established a National Executive Committee consisting of Mr. P. V. Dubois as President and the said Mr. L. C. Kuys as Secretary.

4. THAT a number of branches and clubs had either disaffiliated from the said Society or had indicated their intention to do so and the following clubs were amongst these:

J.A. Christchurch, Dunedin and Whangarei.

One of the principal reasons was that the various breakaway clubs were dis-satisfied with the rules governing them and with the unsatisfactory management of the said Society's business.

5. IT was decided at the said meeting that in order to obtain a better structure that a new club should be formed for the purposes of carrying out the central administration of all clubs in New Zealand and that this new club take over the assets and liabilities of that part of the Auckland Club which was responsible for the management and administration of the affiliated branches and clubs.

6. IN or about the month of November 1966 I attended a Committee meeting of the Netherlands Society "Oranje" Incorporated and there a discussion took place as to the future of the "Holland Bulletin", which was at this time the official publication of the said Society. The Editor, Mrs. C. E. Leenman, pointed out that she was no longer able to carry on with the publication due to lack of time on her part. The said Mr. Kuys, in his capacity as Secretary of the Netherlands Society "Oranje" Incorporated, indicated that it would be more convenient for the new club to take over the publication of the "Holland Bulletin" but that he would prefer to see it published in the future as a newspaper rather than a bulletin. This was agreed to in principle by the said Netherlands Society "Oranje" Incorporated but on the clear understanding that the future publication would remain in the hands of the new club to be incorporated. A further issue of the "Holland Bulletin" was published in or about the month of December 1966 and after incorporation of the New Zealand Netherlands Society "Oranje" Incorporated, the name was changed to "The Windmill Post" and future publications were made in the form of a newspaper.

7. THAT I prepared draft rules which were later submitted to a meeting and were accepted for the purposes of registering the new club named the said New Zealand Netherlands Society "Oranje" Incorporated, and such registration was effected on the 27th day of January 1967. The National Executive of the new club consisted in the early time of Mr. P. V. Dubois as President, the said Mr. L. C. Kuys as Secretary and myself as Treasurer, and at a later stage Miss N. Leenman was appointed to the National Executive Committee as Assistant Treasurer.

J.A.

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L. Renneberg

10 8. ON the 5th day of January 1967 I attended a meeting, under the Chairmanship of Mr. P. V. Dubois, of various persons who had a connection with the Dutch community in Auckland for the purpose of considering the prospect of incorporating a national Society to be known as the New Zealand Netherlands Society "Oranje" Incorporated. Of the various matters discussed at this meeting, the establishment of a club newspaper to be operated by the new Society was entered upon and the position of the Netherlands Society "Oranje" Incorporated, which owned and operated the news bulletin known as the "Holland Bulletin", to agree to its assets including printing machinery, equipment and blocks becoming the property of the Society to be incorporated was discussed. At no stage were there any resolutions or agreements reached with the said Netherlands Society "Oranje" Incorporated or with any other person regarding the publication of the newspaper, but in this regard the arrangements were to be considered and finalised by the executive of the new organisation to be formed. Mr. Kuys offered to be Editor of the newspaper as this new publication was beyond the existing resources and staff of the said Netherlands Society "Oranje" Incorporated and arrange its distribution. Whilst it was not clear exactly what revenue the paper would produce and the cost of publication operating the same, Mr. Kuys volunteered to undertake the work on a temporary basis for the remuneration he would receive from advertising, together with 1/- for each copy posted to members and subscriptions for the paper by non-members and that he would meet all outgoings in respect of the publication. This would initially enable the Society, when formed, and after a period of publication, to ascertain what would be expected to be returned to it as the new club could not involve itself in heavy financial responsibility and wanted to have a defined basis upon which it would plan its future financial commitments for the overall conduct of its activities. Further, I suggested that Mr. Kuys may well consider forming a limited liability Company with which a contract of employment could be entered into by the Defendant. This would allow Mr. Kuys some protection against indebtedness should he enter into financial difficulties arising out of this unusual arrangement. However, I explained to Mr. Kuys that he should consult his Solicitor in this regard and submit an Agreement for acceptance by the Defendant. To the best of my knowledge and belief this was not done.

J.A. 30

40 9. I crave leave to refer to clause 6 of the Affidavit of LAURENTIUS CORNELIS KUYS of Auckland, Company Director, sworn on the 16th day of September 1968 and in particular the exhibit "B" referred to in the said paragraph which Mr. Kuys maintains is a copy of minutes of the meeting which he alleges is a true and accurate record. At no stage were these documents submitted to me for signature or approval nor had I sighted the same until the meeting on the 1st June 1968 between Mr. Kuys and the Defendant which was represented by Mr. P. V. Dubois and myself over which Mr. Jonkers of the Netherlands Embassy presided. At this meeting Mr. Kuys produced copies of documents which he maintained were the full and accurate record of all the meetings of the Defendant. I noticed in the right-hand bottom corner that the only hand writing was that of the initials "L.C.K.". Photostat copies of these documents are  
50 hereunto annexed and marked with the letter "A". To the best of my belief and knowledge, these documents exhibited hereto are not full and true minutes of the meetings they purport to record and have never been accepted as such nor have they ever been presented or read at a meeting. Further, the meetings of the Defendant, including that of the 5th January 1967 abovementioned and the National Executive Committee of the Defendant which I attended, were conducted in English and not Dutch.

60 10. THAT I prepared draft rules which were accepted for the purposes of registering the new club named the said New Zealand Netherlands Society "Oranje" Incorporated and such registration was effected on the 27th day of January 1967. The National Executive of the new club consisted in the early time of Mr. P. V. Dubois as President, the said Mr. L. C. Kuys as Secretary and myself as Treasurer and, at a later stage,

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J.A. Miss N. Leenman was appointed to the National Executive Committee as Assistant Treasurer.

10 11. FOLLOWING the incorporation of the Defendant, I was present at a meeting of the National Executive Committee held late in January 1967 at which the said Mr. Kuys was also present. The financial structure of "The Windmill Post" was discussed and it was agreed by all officers present that whatever form the publication took the said New Zealand Netherlands Society "Oranje" Incorporated in which the ownership of "The Windmill Post" would vest on that Society's incorporation could not expend more than 1/- for each copy of the newspaper posted to its members. Also discussed at this meeting was the question of who would undertake the editing and managing of the publication and distribution of the newspaper. The said Mr. Kuys again offered to undertake the responsibility for this work for the said New Zealand Netherlands Society "Oranje" Incorporated on a temporary basis that he would receive the gross proceeds from advertising together with 1/- for each copy posted to members and subscriptions for the paper by non-members and that he would meet all outgoings in respect of the publication. It was found on the basis of the then membership that this would give the said Mr. Kuys a small remuneration for his services to the Society. This arrangement was to be adopted for a period of six months as it was visualised that as a result of increased membership and subscriptions for the newspaper and additional revenue from advertising, the cost to the said New Zealand Netherlands Society "Oranje" Incorporated could be reduced and I personally pointed out to the said Mr. Kuys that it was not intended that this arrangement would become a full-time job and that the benefit of any growth would belong to the said Society. It was resolved at the meeting that this verbal financial arrangement was to be made with the said Mr. Kuys in connection with the editing and publication of "The Windmill Post" and that this arrangement should be reduced to writing. The said Mr. Kuys agreed to consult his Solicitor with a view to submitting a contract which would be referred to the Society's Solicitors. The said Mr. Kuys neglected or refused to have this arrangement evidenced in writing.

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J.A.

40 12. THAT the said Netherlands Society "Oranje" Incorporated authorised the offer through its Secretary, the said Mr. Kuys, of advertising contracts as principal revenue earners of Airlines and Travel Agents who receive the benefit of group travel undertaken by members of the Defendant and associated clubs. These offers were made mainly by circular letter dated the 6th day of January 1967 on the said Netherlands Society "Oranje" Incorporated's letterhead and signed by the said Mr. Kuys as Secretary to the Society, a copy of which is hereunto annexed and marked with the letter "B".

50 13. THAT after the first publication I noticed that Mr. Kuys inserted the words "New Zealand's Independent Dutch Newspaper" under the name "The Windmill Post" at a meeting of the National Executive Committee of the Defendant held at the home of the President of the Defendant, Mr. P. V. Dubois, in late February or early March 1967. I asked the said Mr. Kuys what was the meaning of this term and in reply Mr. Kuys said that this conveyed that it was an independent newspaper and that it was not the property of one particular branch or club connected or affiliated to the Society or connected with any religious or political group. I requested, with the agreement of the other committee members present, that Mr. Kuys refrain from adding this extra line, but this request was subsequently not carried out by him.

60 14. THAT I visited the said Mr. Kuys at his residence in or about the month of March 1967 and discussed his secretarial position with him and also matters relating to the editing and publication of "The Windmill Post" and failure to keep and present proper minutes and that I pointed out to him that he should bear in mind the fact that the arrangements which



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were to be implemented were only for a limited time and could be changed at any time and that for this reason he should remain in other employment as the Society could not be looked upon as being able to give him full personal employment as Editor of "The Windmill Post" and Secretary of the said Society.

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15. I was present at the meeting of the National Executive Committee mentioned and referred to in paragraph 11 of the said Affidavit of Mr. Kuys. The documents attached to Mr. Kuys' said Affidavit and marked with the letter "K" are not a true and correct record of what was discussed or resolved at that meeting. No minutes of the previous meeting were read and accepted as the Secretary, the said Mr. Kuys, did not have a proper record available. In particular, so far as the statement attributed to me as having been made that Mr. Kuys was the owner of "The Windmill Post" is concerned, this statement was not made by me nor did I dictate a letter in the form mentioned on the last page of the said minutes which describes Mr. Kuys as the owner of the newspaper. It was mentioned at this meeting that it appeared that it would be possible for Mr. Kuys' remuneration per copy to be reduced from 1/- per copy to 9d. per copy per month which was mailed to members of the Defendant. I did not see or know of these purported minutes until the meeting on the 1st June 1968 referred to in paragraph 9 hereof.

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16. THAT during the period from January to May 1967, while the said Mr. Kuys was the Secretary of the Defendant, Mr. Kuys received moneys as Secretary from members of the Defendant and its affiliated clubs on account of their fares for travel undertaken as mentioned in paragraph 11 hereof. Requests were made by me and other committee members at various meetings for Mr. Kuys to transfer the said fare moneys and all other funds of the Defendant held in a Bank Account in his own name into an account in the name of the New Zealand Netherlands Society "Oranje" Incorporated. Further, he was asked by myself and other members of the National Executive Committee to keep minutes of all Committee meetings and to present them in the proper manner. Mr. Kuys refused or omitted or neglected to carry out these duties and at one future meeting at which minutes were read out, these were disputed by those present at the meetings and Mr. Kuys was requested to present proper typewritten minutes of the said meetings for acceptance. It was for these reasons that a vote of no confidence in Mr. Kuys was passed by the committee at which I was present and his resignation from his Secretaryship of the New Zealand Netherlands Society "Oranje" Incorporated and the Netherlands Society "Oranje" Incorporated was sought. To the best of my knowledge and belief no proper minutes were ever presented. After Mr. Kuys' resignation, it was only at the threat of legal proceedings that he handed over, in August 1967 to myself and Mr. Dubois, the documents and other property of the said Society and its affiliated clubs which did not contain any minutes of the meetings referred to in this clause.

J.A.

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17. THAT during the time from the initial discussions of the said Netherlands Society "Oranje" Incorporated regarding the formation and publication of "The Windmill Post" until the date of the making of this Affidavit, I have no knowledge or grounds for belief that a transfer, assignment or contract or any act by either of the New Zealand Netherlands Society "Oranje" Incorporated or the Netherlands Society "Oranje" Incorporated or any body or person authorised in that behalf being executed or performed which would vest the ownership of or any proprietary interest in "The Windmill Post" newspaper, its title or format in the said Mr. Kuys or the said Windmill Post Limited.

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18. THAT since the Co-Plaintiffs' publication in July 1967 the Defendant has sustained damage to its image amongst the Dutch community and Dutch clubs who have been reluctant to associate themselves with the Defendant or subscribe for its newspaper as they do not wish to be involved with a Dutch paper which is in argument with another one of a similar form and title. In particular, I would refer to the Defendant's association

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with the Nelson and Rotorua branches. Further, the Co-Plaintiffs' newspaper was offered membership in a club known as the combined Netherlands Society Incorporated to prospective subscribers and has offered group travel facilities similar to those operated by the Defendant, and in instances persons have been misled. In addition, existing and prospective advertisers have withdrawn their support in cancelling advertisements or declining to advertise in the Defendant's publication.

J.A. 19. IN order to protect its rights to publish its newspaper, the Defendant has incurred to date expenses by way of legal advice, application for trade mark and incidental expenses in the vicinity of \$750.00.

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SWORN at Auckland this 3rd day  
of December 1968 before me:—

L. RENNEBERG

J. ANGLAND

A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF A. M. M. HOPMAN IN OPPOSITION TO MOTION  
FOR INJUNCTION AND IN SUPPORT OF COUNTERCLAIM**

No. 13  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Defendant in  
opposition to  
Motion for  
Injunction and  
in support of  
Counterclaim —  
A. M. M. Hopman

I, ABIGAELE MARIA MARTINA HOPMAN of Auckland, Married Woman,  
make oath and say as follows : —

10 1. I WAS present at a meeting on the 5th January 1967 at the home of  
Mr. M. M. H. J. Hoeberigs of 48 Lynbrooke Avenue, Blockhouse Bay, at  
which Mr. L. Renneberg, Mr. P. V. Dubois, the said Mr. Hoeberigs and his  
wife, Mrs Van Kampen and Mr. L. C. Kuys were also present for the  
purpose of discussing the formation of a National Club to be formed, known  
as the New Zealand Netherlands Society "Oranje" Incorporated.

20 2. ONE of the matters discussed at this meeting was the publication of a  
newspaper by the new Society aforesaid. Mr. Kuys volunteered to edit and  
arrange the distribution of the paper which was to be known as "The  
Windmill Post". My understanding of the position as discussed at this  
meeting was that the paper was to be owned by the new Society, but in  
order to keep its financial commitment, at least initially to within defined  
limits, Mr. Kuys would be paid for his services by the said Society at a  
payment per copy upon terms to be agreed upon whilst Mr. Kuys would  
meet the expenses of publication and distribution and, as an additional  
payment, receive the revenue from advertising. This arrangement was to  
be operated over a trial period since, if this did not work out, the Society  
would resume direct responsibility for the publication and distribution. At  
no stage was it mentioned that the paper was to be an "Independent One"  
or that Mr. Kuys had any proprietary interest in it.

SWORN at Auckland this 3rd day  
of December 1968 before me : —

A. HOPMAN

R. G. HAMMOND

A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF F. F. VAN IMPELEN IN OPPOSITION TO MOTION  
FOR INJUNCTION AND IN SUPPORT OF COUNTERCLAIM**

No. 14  
In the Supreme  
Court of  
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Affidavit of  
Defendant in  
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in support of  
Counterclaim —  
F. F. Van Impelen

I, FELIX FRANCISCUS VAN IMPELEN of Auckland, Printer, make oath and say as follows:—

1. I AM a Director and the Manager of a Printing Company, namely, Impex Press Limited, which has its registered office at No. 19 Virginia Avenue, Auckland.
2. IN March 1959 my Company printed for the Netherlands Society "Oranje" Incorporated 6,000 covers for that Society's monthly publication then called "Holland Bulletin". The art work for the Windmill device was designed and executed by a Mr. Ru Doff, an Artist. This Windmill design featured on the cover of the issue of the "Holland Bulletin" for the month of July 1959, of which cover a copy is hereunto annexed and marked with the letter "A". A copy of my Company's Invoice to the Netherlands Society "Oranje" Incorporated for the printing work, manufacture of printing blocks, design and drawing of the device and dated the 31st March 1959 and rendered to the Society by my Company is hereunto annexed and marked with the letter "B". My Company received payment of the said Invoice from the said Netherlands Society "Oranje" Incorporated.
3. ANNEXED hereto and marked with the letter "C" is a copy of a poster printed by my Company for the Netherlands Society "Oranje" Incorporated in the month of March 1966. For this work my Company rendered the Society its Invoice, a copy of which is hereunto annexed and marked with the letter "D". Again my Company received payment of the said Invoice from the said Netherlands Society "Oranje" Incorporated.
4. FROM the month of July 1965 onwards I, on my Company's behalf, dealt with a Mr. L. C. Kuys as Secretary of the Netherlands Society "Oranje" Incorporated and he came to the Company's registered office with the orders and we there discussed the work to be done. In this time, the heading for the "Holland Bulletin" was changed a number of times as was the colour of the paper on which the Bulletin was printed. As regards the Windmill device, the same printing block was still used but on occasions the black background was cut away and on other occasions the Windmill device was cut on the square. For an example, there is annexed hereto and marked with the letter "E" a copy of the design of the cover of the "Holland Bulletin".
5. IN either October or November 1966, Mr. L. C. Kuys approached my Company for a quotation for a periodical having the format of a newspaper rather than that of a Bulletin. Mr. Kuys advised me that Society now wanted a newspaper and he asked me what size my Company's printing machinery could print such a newspaper and how it might be laid out. I was not enthusiastic about the proposal for printing a newspaper because at that time my Company was not equipped for such a job and it did not then have a press large enough to do so. However, hearing of the requirements of the Society, my Company bought a larger printing press and gave a quotation for the printing work involved in the bringing out of a monthly newspaper. Mr. Kuys told me that he himself had been appointed by the Society to edit the newspaper and my Company commenced to produce the first issue of "The Windmill Post". The first issue of "The Windmill Post" was to appear in the month of February 1967, a copy of which is marked with the letter "A" and annexed to the Co-Plaintiffs' Statement of Claim. My Company also printed the wrappers for "The Windmill Post" newspaper with the Society's postal permit number on it and my Company wrapped the papers itself ready for posting. A copy of the newspaper wrappers I refer to above is hereunto annexed and marked with the letter "F". Mr. Kuys then uplifted the newspapers and posted them.
6. NEITHER myself nor my Company had any doubts as to the ownership by firstly the Netherlands Society "Oranje" Incorporated and latterly by its successor the New Zealand Netherlands Society "Oranje" Incorporated of "The Windmill Post", its title and the Windmill device for its newspaper.

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F. F. Van Impelen

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On my understanding, doubts as to the ownership of this title and device only arose in May or June 1967 at which time the New Zealand Netherlands Society "Oranje" Incorporated was having some disagreement with its then Secretary, Mr. L. C. Kuys, in the matter of the ownership of the newspaper "The Windmill Post". Until June 1967, there had been no doubt in my mind that such printing work as my Company had carried out at the request of the respective Societies from March 1959 until June 1967 in connection with, first, the "Holland Bulletin" and later with "The Windmill Post" had been carried out solely upon the request of those Societies which I considered to be the owners at the respective times of the title "The Windmill Post" and its device, namely, the Netherlands Society "Oranje" Incorporated in the first instance and after January 1967 the New Zealand Netherlands Society "Oranje" Incorporated.

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7. AT all times I and my Company acted towards the Society and Mr. Kuys in accordance with the accepted principles of the printing trade that the printer only uses the printing blocks supplied by a customer for the work to be performed for that customer. If Mr. Kuys had at any stage prior to June 1967 indicated that he was the owner of the newspaper or the device, I and my Company would have declined to have used the inside and outside blocks used in the publication of "The Windmill Post" which had been ordered and paid for by the Netherlands Society "Oranje" Incorporated and were its property and subsequently the property of the New Zealand Netherlands Society "Oranje" Incorporated. On this basis I considered that the respective Societies were the owners at the times mentioned above of "The Windmill Post" and that Mr. Kuys at all times acted as their servant. This is borne out by the fact that when I ascertained in June 1967 Mr. Kuys was claiming proprietorship of "The Windmill Post" and had claimed the issue for June 1967 to be published as his own newspaper, I, on my Company's behalf, declined to print "The Windmill Post" under his direction. My Company continued and is continuing to print "The Windmill Post" in accordance with directions received from the executive officers of the New Zealand Netherlands Society "Oranje" Incorporated.

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SWORN at Auckland this 21st day  
of November 1968 before me:—

F. F. VAN IMPELEN

W. A. DUNCAN

A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF W. J. VAN DONGEN IN OPPOSITION TO MOTION FOR INJUNCTION AND IN SUPPORT OF COUNTERCLAIM**

No. 15  
In the Supreme  
Court of  
New Zealand —  
Affidavit of  
Defendant in  
opposition to  
Motion for  
Injunction and  
in support of  
Counterclaim —  
W. J. Van Dongen

I, WILHELMUS JOHANNES VAN DONGEN of Auckland, Airline District Manager, make oath and say as follows: —

1. I HAVE been at all material times and now am the Auckland District Manager of KLM Royal Dutch Airlines.
2. ON the 13th January 1967 a Miss M. M. Nola, Sales Secretary at the Airline Auckland District Office, advised me that the then existing monthly magazines "New Zealand Hollander" and "Holland Bulletin" were to be merged into one new monthly publication to be called "The Windmill Post". As it has always been our Company's policy to assist the Dutch community as much as possible and to the best of our ability I decided to take advertising space on behalf of KLM Royal Dutch Airlines in the new monthly publication.
3. ON the 16th January 1967 a letter dated 6th January 1967 was received by KLM Royal Dutch Airlines from Mr. Kuys, the Secretary of the New Zealand Netherlands Society "Oranje" Incorporated. A letter was written to the New Zealand Netherlands Society "Oranje" Incorporated's Secretary by me dated the 23rd January 1967 which confirmed the placing of an order for advertising space in the new monthly publication. Copies of the letters dated 6th January 1967 and 23rd January 1967 are hereunto exhibited marked "A" and "B" respectively.
4. THE original arrangement for the placing of advertising by KLM Royal Dutch Airlines with the monthly journal "The Windmill Post" was for half a page per issue but it was our intention to increase this to three-quarters of a page or possibly a full page — any such increase to depend upon the success of the new monthly publication. Written communication dated 31st March 1967 of my company's intention was sent to Mr. Kuys as the New Zealand Netherlands Society "Oranje" Incorporated Secretary to which my company received his written acknowledgment dated the 11th April 1967. Copies of both these letters are hereunto exhibited marked "C" and "D" respectively.
5. ALTHOUGH my Company had at the 16th January 1967 no doubt that the new monthly publication "The Windmill Post" was solely owned by the New Zealand Netherlands Society "Oranje" Incorporated, I was subsequently advised that there was a difference of opinion between the New Zealand Netherlands Society "Oranje" Incorporated on the one hand and its Secretary Mr. Kuys on the other as to the ownership of the new publication. Because of the policy of KLM Royal Dutch Airlines to assist the Dutch community I wrote to the New Zealand Netherlands Society "Oranje" Incorporated's Secretary dated the 18th May 1967 postponing the decision to increase the required amount of advertising by the Company for a period of three months. My Company was concerned to assist the Dutch community as a whole but the same attitude did not apply to a commercial publishing enterprise carried out by any one particular person although any such person might be a member of the Dutch community. It was this point last raised that caused me to write to Mr. Kuys a letter of the 18th May 1967 a copy of which is hereunto exhibited marked "E".
6. IN the months of May and June both Mr. Dubois (the President) and Mr. Renneberg (the Treasurer) informed me that there was a profound difference of opinion regarding the ownership of the "Windmill Post" between the New Zealand Netherlands Society "Oranje" Incorporated and its Secretary Mr. L. C. Kuys. I later received from the Society a letter dated 22nd June 1967 a copy of which is hereunto annexed marked "EE". I then decided that as it was a matter of doubt as to whether advertising support by my Company of "The Windmill Post" was indeed assisting the Dutch community as a whole I decided to rescind any arrangement for the placing of further advertising by my Company with "The Windmill Post". Mr. Kuys was informed of my decision in my letter dated 30th June 1967 a copy of which is hereunto annexed marked "F".

W. J. Van Dongen  
A. R. Short

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7. BY reason of the apparent conflict referred to in the last two preceding paragraphs over the ownership of "The Windmill Post" we instructed our advertising agents Messrs. J. Illott Limited to pay the sum of \$83.20 to the Solicitors acting on behalf of the New Zealand Netherlands Society "Oranje" Incorporated, Messrs. Earl, Kent, Massey, Palmer and Hamer, P.O. Box 222, Auckland. This amount was made up as to \$63.20 by the advertising charges in respect of the June issue and the surcharge of \$4.00 per issue on the uncompleted contract in respect of the issue of "The Windmill Post" between February and June 1967 amounting to a further \$20.00. Such sums are held on trust pending resolution of the dispute.

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8. NOTWITHSTANDING the contents of the letter written on my Company's behalf dated 30th June 1967 Mr. Kuys' rival journal "The Windmill Post" contained in its July issue an advertisement for KLM Royal Dutch Airlines. I wrote to Mr. Kuys on the 4th August 1967 drawing his attention to my Company's letter of 30th June 1967 having previously cancelled advertising space on behalf of KLM Royal Dutch Airlines and further complaining that the issue of Mr. Kuys' newspaper in July contained what was in fact an unauthorised advertisement. A copy of my letter of the 4th August 1967 is hereunto annexed marked "G". On my instructions the Company has declined to pay any purported advertising charges in respect of the July advertisement to Mr. Kuys.

W. J. Van Dongen  
A. R. Short

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9. APPARENTLY as a result of the refusal of KLM Royal Dutch Airlines to pay Mr. Kuys for advertising space in June and July 1967 and the surcharge for the uncompleted contract in respect of the issues February to June 1967, which refusals are referred to in paragraphs 7 and 8 of this affidavit, J. Illott Limited received a letter demanding payment from Solicitors instructed by Mr. Kuys and they handed that letter to me. On behalf of the Company I immediately wrote to the Solicitors concerned, Messrs. Kensington, Haynes and White, saying that the refusal of payment was wholly the responsibility of my Company. That letter was subsequently acknowledged by Messrs. Kensington, Haynes and White dated 30th August 1967 advising me that the refusal of payment to Mr. Kuys and our alleged justification for so doing were to be tested by bringing a claim against the Company in Court. I thereupon retained the services of Mr. Alan R. Short, Solicitor, of Auckland, to act as the Company's legal advisor. To the date of making this affidavit neither the Company nor Mr. Short has received service of any legal process instituted by Mr. Kuys.

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10. THE transaction culminating in an arrangement for the buying by KLM Royal Dutch Airlines of advertising space in "The Windmill Post" was initiated by a letter appearing on the Society's letterhead and signed by one whom I knew of my personal knowledge was the Society's then Secretary. Had it been made to appear in January 1967 that "The Windmill Post" was in fact a commercial venture of a single Dutch person I myself (for KLM Royal Dutch Airlines) would have been much less concerned to support such a journal. This attitude by my Company was shown by the cancellation of advertising space when it became apparent to the Company that there was some doubt as to the true ownership of "The Windmill Post" which doubt became apparent to the Company in about mid-June 1967.

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SWORN at Auckland by the said  
WILHELMUS JOHANNES VAN DONGEN                      W. J. VAN DONGEN  
this 4th day of December 1968 before me :—  
A. R. SHORT  
A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF N. LEENMAN IN OPPOSITION TO MOTION FOR  
INJUNCTION AND IN SUPPORT OF COUNTERCLAIM**

No. 16  
In the Supreme  
Court of  
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Affidavit of  
Defendant in  
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in support of  
Counterclaim —  
N. Leenman

I, NEELTJE LEENMAN of Auckland, Shop Assistant, make oath and say as follows : —

1. I AM the Assistant Treasurer of the New Zealand Netherlands Society "Oranje" Incorporated, the Defendant in the above proceedings, and am conversant with the matters hereinafter deposed to.

2. I WAS a member of the Executive Committee of the Netherlands Society "Oranje" Incorporated, a duly incorporated Society having its registered office at Auckland, and was present at committee meetings of the said Netherlands Society "Oranje" Incorporated at which the above-mentioned Mr. L. C. Kuys was present. At meetings of the said Committee in November and December 1967, the difficulties of the Society's publication the "Holland Bulletin" were discussed and it was decided to discontinue this publication and allow a new national club to be formed under the name of the New Zealand Netherlands Society "Oranje" Incorporated to take over the assets of the said Netherlands Society "Oranje" Incorporated in printing a journal. Of the various names discussed for the new publication at these meetings were "Tulip Times", "Lowland Gazette" and "The Windmill Post", this latter name being, as I recollect, suggested by the said Mr. Kuys. At these meetings, Mr. Kuys indicated his willingness to assume responsibility for the editing, printing and distribution of the newspaper for a suitable remuneration, but at no stage did he mention that he would consider himself to be the proprietor of the new paper. In particular, I refer to the minutes of the meeting of the said Committee held on the 6th December 1966 at which amongst other matters the conduct of the future administration of the club's monthly publication was discussed. Annexed hereto and marked with the letter "A" is a copy of the matters of this meeting prepared and circularised by the said Mr L. C. Kuys and I refer to paragraph No. 4 of the said minutes which, translated into English, reads —

'4. A PAID Secretary shall be appointed forthwith on a "part-time" basis to carry out the day by day activities (monthly publication, secretarial work and club travel).'

3. I WAS present at all meetings of the National Executive Committee of the Defendant held at 21 Cleary Road, Panmure, from the beginning of May 1967 until the 17th June 1968. I have perused the document marked with the letter "K" and attached to the Affidavit of the said Mr. Kuys sworn on the 16th day of September 1968 in the above proceedings. This document is not a true and correct statement of the business conducted at this meeting and is completely in error in so far as any statement was made by those persons present that Mr. Kuys owned the newspaper known as "The Windmill Post". At no stage were these documents presented for acceptance at following meetings of the National Executive Committee while Mr. Kuys was Secretary and I did not see these documents until the 1st June 1968 when they were presented at a meeting in Auckland at which I attended and at which Mr. Jonkers of the Netherlands Embassy presided as Chairman.

4. I WAS present at a meeting of the National Executive Committee of the Defendant held on or about the 24th May 1967 in which Mr. Renneberg suggested that Mr. Kuys form a Company to undertake the editing, printing and distribution work presently carried on by Mr. Kuys in his capacity as Secretary in order to afford Mr. Kuys some protection against possible liability arising from the nature of his peculiar form of employment. This would, however, be subject to Mr. Kuys submitting an appropriate contract of employment for approval by the Defendant. This to the best of my knowledge and belief was never done.

5. I WAS present at a meeting commencing on the 10th June 1967 between the Federation of New Zealand Netherlands Societies which was represented by Messrs. W. H. P. Obers and B. H. Klap and the Defendant was

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J.W.S.

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J.W.S.

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represented by Messrs. P. V. Dubois, L. C. Kuys, L. Renneberg and myself. The purpose of this meeting was to reach an agreement on a statement of intent for co-operation and affiliation between the two groups which had been discussed previously in April 1967 at the Netherlands Embassy in Wellington. During the course of the meeting Mr Dubois and Mr Renneberg put forward proposals (inter alia) that members of the said Federation should subscribe for issues of the Defendant's newspaper, namely, "The Windmill Post" which they maintained was the sole property of the Defendant. It was also stated that the Defendant, as owner of the said newspaper, would be principally liable for any statements made in this publication including editorials written by Mr. Kuys. Mr. Kuys did not challenge these statements until the prepared statement of intent was presented to him for his signature. It was only at that stage Mr. Kuys made any claim to ownership of "The Windmill Post" and this was on the basis that he had been informed by other persons that the newspaper was his. Finally, a further statement of intent was prepared which Mr. Kuys signed as regards the principles of co-operation but declined to sign a statement in respect of the ownership of the said newspaper, this latter portion having been signed by the other delegates.

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6. FROM January to June 1967, Mr Kuys was paid by the Defendant for secretarial expenses during those months. Annexed hereto and marked with the letters "B", "C" and "D" are statements rendered to the Defendant by Mr. Kuys which included a claim for payments to the said Mr. Kuys in respect of his work regarding publishing and distribution of "The Windmill Post".

J.W.S. 30

7. IN late August or early September 1967, I went to the residence of Mr Laurentius Cornelis Kuys, the former Secretary of the Defendant, at 45 Tiverton Road, Avondale, for the purpose of uplifting papers and other property of the Defendant and the Netherlands Society "Oranje" Incorporated which were in Mr. Kuys' possession.

8. OF the various papers unlifted, there were not amongst the items collected any records of minutes of meetings of the Defendant and when I departed from Mr. Kuys' residence, he indicated that I had collected all of the property that he had in his possession.

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J.W.S.  
N.L.

9. IN September of this year, I made enquiries at the Auckland Savings Bank at Avondale and Auckland regarding the existence of a Bank Account in the name of the Netherlands Society "Oranje" Incorporated as I was desirous of confirming certain payments which had been made by members of the Defendant to Mr. Kuys for fares for travel groups going to Europe. In the course of my investigations, I ascertained that a National Savings Account was held by the Bank in the name of the said Netherlands Society "Oranje" Incorporated from September 1965 to June 1967, during which period moneys had been paid into the account from remittances received from members of the Defendant and in particular I noticed a withdrawal for £100. I ascertained that the withdrawal slip had been signed by Mr. Kuys on the 13th day of January 1967 and a cheque, No. 31417, drawn on the Bank of New Zealand, had been issued by the Auckland Savings Bank in pursuance of this withdrawal order payable to a Mr. H. P. Willemsen. This cheque was noted as having been cleared through Mr. Willemsen's account. Photostat copies of the ledger card of the said Savings Account, withdrawal slip and the cheque are hereunto annexed and marked with the letters "E", "F" and "G".

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10. ON the 3rd day of April 1967 a cheque was drawn on the account of the Defendant with the Bank of New Zealand for the sum of £56 4. 7., of which the sum of £55 was in payment of an Olympia typewriter which Mr. Kuys had sold to the Defendant as the Defendant was at that time desirous of purchasing such a machine.

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11. I HAVE at all times believed the publication initially made in February 1967 under the title of "The Windmill Post" as being the exclusive property of the Defendant and do not know of or have grounds for belief that the

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said Netherlands Society "Oranje" Incorporated or the Defendant or any person authorised in that behalf assigning, transferring or performing any act which would convey the ownership or any proprietary interest in the said "Windmill Post" or its title or format or any portion thereof to one or both of the Co-Plaintiffs above-mentioned.

SWORN at Auckland this 4th day  
of December 1968 before me :—

N. LEENMAN

J. W. SMITH

A Solicitor of the Supreme Court of New Zealand

**AFFIDAVIT OF B. H. KLAP IN OPPOSITION TO MOTION FOR INJUNCTION AND IN SUPPORT OF COUNTERCLAIM**

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Counterclaim —  
B. H. Klap

I, BOYD HUBERT KLAP of Christchurch, Company Manager, make oath and say as follows :—

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1. I AM the Chairman of the Executive Committee of the Federation of the New Zealand Netherlands Societies Incorporated (hereinafter called "the Federation") which is a body comprised of various Dutch clubs throughout New Zealand. In 1967 I was Vice-Chairman of the said Executive Committee and conversant with matters hereinafter proposed to.

B.H.K.  
A.J.C.

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2. DURING the early part of 1967 the Federation and the Defendant were in communication with a view to co-operation and a possible affiliation in a national body of Dutch clubs throughout New Zealand and for the dissemination of Dutch culture and other matters of common interest. It was to this end that a meeting was arranged at Wellington, commencing on the 15th April 1967 under the Chairmanship of Mr. K. J. Stadtman at the Royal Netherlands Embassy. This meeting was attended by Messrs. G. Kamstra, W. H. P. Obers and myself who represented the Federation and Messrs. L. C. Kuys, L. Renneberg and P. V. Dubois. During the meeting there were discussions concerning the defendant's publication "The Windmill Post" newspaper and at all times during these discussions my understanding was that the defendant was the sole proprietor of "The Windmill Post" which was a club newspaper. At no stage did Mr. Kuys assert that he owned the said newspaper.

B.H.K.  
A.J.C.

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3. HOWEVER, the negotiations referred to in the preceding paragraph were not fully completed and were later taken up at a subsequent meeting at the Poenamo Hotel, Birkenhead, Auckland, on the 10th June 1967. Again I represented the Federation together with Messrs. D. Everse and W. H. P. Obers and the defendant was represented by Messrs. L. C. Kuys, L. Renneberg, P. V. Dubois and Miss Leenman. At this meeting "The Windmill Post" was also discussed as the Federation was interested in taking some space in the publication for its federated club news. The Federation as such was concerned with the identity of the owner of the paper as it would not have been interested in participating in a private enterprise which was not owned by the defendant since it was envisaged that the newspaper may well become self-supporting with revenue from advertisers and non-club members. In addition proposals were discussed for the amalgamation of advertisers who were publishing any papers owned by the clubs belonging to the Federation as the benefit from the association with the advertisers in these papers would be given to "The Windmill Post" which would be indirectly returning the benefits to the affiliated clubs by way of reduced or non-subscription for the paper. It was mentioned to the meeting by Mr. Renneberg and Mr. Dubois that "The Windmill Post" was the sole property of the defendant; these statements were made in the presence of the representatives including Mr. Kuys who neither denied nor commented on them. It was also stated by Mr. Renneberg that as the owner of the paper the defendant would be liable for any statements made in the newspaper including the editorials.

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B.H.K.  
A.J.C.

B.H.K.  
A.J.C.

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5. A STATEMENT of Intent was later submitted to me for signature after I had departed from Auckland. I signed this Statement which was in a text which appeared rather unusual in that Mr. Kuys did not sign the portion thereof relating to the ownership of "The Windmill Post", in view of the fact that I understood from the conduct of the representatives of the defendant including Mr. Kuys at both the above-mentioned meetings that "The Windmill Post" was owned by the defendant and that Mr. Kuys was the editor and person responsible for circulation of the paper. When the Federation learnt of the differences which existed between the defendant and Mr. Kuys over the ownership of "The Windmill Post" the Federation declined to agree to subscribe for the newspaper for circulation to its members and to co-operate regarding the amalgamation of advertisers and associated resources and the Federation is reluctant to do so until the issue is resolved.

SWORN at Christchurch this 31st day of January 1969 before me :—

A. J. COTTRELL

A Solicitor of the Supreme Court of New Zealand

**CERTIFICATE OF EXAMINING REGISTRAR**

No. 18  
In the Supreme  
Court of  
New Zealand—  
Certificate of  
Examining  
Registrar

I certify that pursuant to an order of this Honourable Court dated the 4th day of March 1969 Ploon Vleesch Dubois of Auckland, Purchasing Officer, a witness for the above-named defendant this day attended for cross-examination before me, and that the deposition annexed hereto consisting of nineteen (19) pages numbered consecutively from one (1) to nineteen (19) and signed by the witness is the record of such cross-examination. The following documents were produced as exhibits by consent :

- 10 "A" — Declaration by witness made in support of application for Trade Mark by N.Z. Netherlands Society "Oranje" Incorporated.  
"B" — Minutes of N.E.C. Meetings held on 5 January 1967, 9 February 1967, 2 March 1967, 12 April 1967 (all recorded in Dutch) and on 24 May 1967 and 8 June 1967 (recorded in English).

Mr. R. A. Heron appeared for the Plaintiffs and Messrs. Clark and Marsh for the Defendant.

DATED at AUCKLAND this 7th day of March 1969.

W. R. RIGG  
Registrar

EXAMINATION OF P. V. DUBOIS : 4th March 1969.

BEFORE : Mr. Registrar Rigg at Auckland.

COUNSEL : Heron for Co-Plaintiffs  
Clark and Marsh for Defendant

**NOTES OF EVIDENCE**

Clark calls PLOON VLEESCH DUBOIS at 11.00 a.m.

PLOON VLEESCH DUBOIS sworn saith :

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You have made affidavits in the proceedings pending before this Court between Mr. Kuys and Windmill Post Limited as Co-Plaintiffs and New Zealand Netherlands Society "Oranje" Incorporated as Defendant. Do you now confirm the correctness of what you have sworn to in these affidavits?

Yes I do.

I believe that you will be leaving New Zealand next Thursday, 13 March, for Holland? At this stage I am not sure when or even definitely whether you will be back?

That is correct.

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Now in connection with other proceedings pending before the Commissioner of Trade Marks you made a statutory declaration on 24 May of last year exhibiting that declaration certain original documents you now produce by consent and declaration and the exhibits. Do you also now swear that the matters set forth in your declaration are true and correct?

Yes I do.

Now will you answer any questions put to you by my learned friend.

**Cross-examined by Mr. Heron**

I take Mr. Dubois that your journey overseas may be of a permanent one? Yes.

You are disposing of your property and interests in this country before you go?

Yes.

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Has the fact of these proceedings influenced you in making up your mind in leaving?

Nothing whatsoever.

You are aware aren't you that Mr. Kuys and his Company have always claimed that they have suffered financial loss as a direct result of your publication of the Windmill Post?

(Mr. Clark objects to the question on the ground that it assumes that the witness has done something which is beyond the allegations set forth and the pleadings.)

That, Sir, I have read in Mr. Kuys' Affidavit.

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You understand that when I said you I meant the defendant society?

Yes.

Your Society on one occasion offered to pay Mr. Kuys compensation did it not?

No Sir.

You yourself offered a sum of money on part of the society at a meeting in a Hotel in this city did you not?

No Sir.

Was a figure of £2,500 not mentioned by you to Mr. Kuys?

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Sir, as President of the Society I am not in a position to offer on my own accord any money to anybody.

But on the occasion that I am referring to when I alleged that you offered money in compensation you had already discussed it with your Committee did you not?

(Mr. Clark objects to this question also on the ground that there is no specification as to the occasion the Counsel is referring to.)

No Sir, neither me nor my committee had the intention of paying Mr. Kuys anything at all.

Talking now in or about June or July 1967 did you nevertheless discuss with Mr. Kuys the possibility of your ceasing to publish a newspaper

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- Do you not now recall that it was at this meeting that Mr. Kuys suggested the idea of a newspaper as opposed to a bulletin?
- Mr. Kuys may have stated that now was perhaps the time to change to a newspaper as was our policy for a long time and I personally at every inaugural meeting of every club through New Zealand had shown a copy of the Dutch Australia Weekly emphasising that it was one of the society's intentions to publish a similar newspaper.
- But the enthusiasm for a newspaper had been communicated to you by Mr. Kuys for many years up to this time had it not?
- 10 As I have stated before when we conceived the idea of establishing a nation-wide club publishing a newspaper was one of our aims.
- Would it be about November 1966 when you got together for the purpose of forming a nation-wide club?
- No Sir, we got together for the first time on the subject in 1965.
- Counsel read to Mr. Dubois Clause 6 of the Affidavit of L. Renneberg from the words "The said Mr. Kuys . . . to be incorporated".
- Are you saying that you previously agreed in principle to this?
- Yes.
- Why was it necessary to agree in principle again?
- 20 A pure formality Sir.
- Mr. Renneberg — was he a member of your executive in 1965?
- No.
- When did he become a member of your executive for the first time?
- Nineteen sixty-six.
- When?
- Very late 1966.
- Well would you say this meeting in November was Mr. Renneberg's first meeting?
- No.
- 30 You are aware that you have filed an affidavit setting out the documents which you hold in this case?
- Yes.
- Do you disclose that you have possession of a Dutch Australian Weekly in those documents?
- No.
- You do not in fact in your possession one?
- No Dutch Australian Weekly.
- Does it surprise you that Mr. Kuys has a copy in his possession?
- That could quite well be possible.
- 40 Because he drew the fact of this publication and its form to your attention did he not?
- Yes.
- You thought it was a good idea?
- Yes.
- He had been at you for some time had he not for the Society to publish a newspaper prior to November 1966?
- This has been covered by previous answers to publish a newspaper.
- The idea of this came from Mr. Kuys did it not?
- It may well have been.
- 50 The name the Windmill Post was first mentioned to your executive at the inaugural meeting held on 5 January 1967?
- No.
- When did you first hear this name as a name for a newspaper?
- Late 1966.
- You heard it from Mr. Kuys?
- That is correct.
- Did he tell you that he had come other matters that he wanted to do under the name of Windmill Post?
- Definitely not.
- 60 Well this was his name for the newspaper wasn't it?
- This is a compound question.
- When Mr. Kuys mentioned the name Windmill Post to you for the first time he suggested that it should be the name for the forthcoming newspaper?

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- This was the reason why Mr. Kuys mentioned this name.  
Mr. Kuys had run the Holland Bulletin for your Society for three years—  
that right?  
Not quite three years. The running of the Holland Bulletin was part of  
secretarial duties.  
Then it was run by Miss Leenman for a year?  
Less than a year.  
And through personal difficulties could not continue?  
Yes.  
10 Therefore to get over the difficulty of the publication there had to be a  
newer approach?  
Yes.  
You mentioned some of the previous difficulties being volunteer members  
being responsible for publication?  
Yes.  
Mr. Kuys in publishing the Windmill Post certainly was not going to a  
volunteer member was he?  
Partly yes.  
But you had difficulty in volunteer members in the past. Why did you take  
20 that sort of thing on again?  
Because Mr. Kuys felt he was able to do this.  
But the advantage to the Society was they would not have to see that  
deadline was being met but they would hand it over to an independent  
person to take that responsibility from them?  
Yes.  
I think your Society agreed to give some initial assistance to Mr. Kuys to  
pay him 1/- per newspaper per member?  
The idea was that Mr. Kuys would edit the Windmill Post on a sub-  
contracting basis.  
30 Are you aware that is the first time you used that expression as far as  
affidavits are concerned?  
What is contained in the affidavits comes to the very idea of sub-contracting.  
Now Mr. Kuys was going to have to pay for the printing and material  
required?  
Yes.  
The postage required?  
Yes.  
To pay all labour that he might have to employ to get this publication  
published?  
40 Yes.  
To pay for setting up of printing blocks and equipment?  
No. He did not have to pay for the blocks as the blocks were supplied by  
the Advertising firm and the printing equipment was the Printer's property.  
You didn't have to pay anything for this publication other than 1/- per  
week per member?  
That is correct.  
What happened to the 1/- if your membership fell off?  
Do you mean would we increase the 1/- if the membership decreased? We  
would have to reconsider the position if that happened.  
50 You didn't have to did you?  
Yes.  
You say you are some contractual obligation to increase the price of 1/-  
if membership decreased?  
A verbal contract agreement.  
But this figure of 1/- has been set down to last six months had it not?  
Yes.  
Well I put it to you, you could have increased it if you wanted to your  
1/- rate but you didn't have to?  
No we didn't have to we actually thought of reducing it.  
60 But you couldn't have reduced it either for six months?  
That is correct.  
And it depended how Mr. Kuys was going after six months as to whether  
you increased or reduced?  
Yes.

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Mr. Heron reads from Page 2 of Mr. Dubois' affidavit "At all stages . . . for acceptance".  
Do you now say that instead of the word employee one should say sub-contractor — that right?  
No.  
You can't have them both.  
(Mr. Clark objects to this question as to the matter of law rather than fact. Mr. Heron withdraws the question.)  
Mr. Dubois were you at the time of these negotiations going on a self employed man?  
10 No.  
What was your position? What job did you hold?  
I was production manager.  
Did you have any idea what Mr. Kuys' running expenses for the newspaper were?  
Yes.  
What did you have in mind as the normal remuneration for Mr. Kuys' services?  
20 Mr. Clark objects to this question on the grounds that what was in the witness's mind is surely irrelevant.  
The normal remuneration for Mr. Kuys' services consisted of a gross taking of 1/- per copy a week of the Windmill Post plus £1.10.0 for every traveller participating in group travel plus a percentage on insurance for insurance for insuring participants in the group travel. That is what you regard as the normal remuneration for running this newspaper?  
The sentence does not entirely refer to the newspaper alone but refers to the total remuneration for services.  
I want to get clear what you regard as normal remuneration for the additional work?  
30 The word additional would have referred to the newspaper.  
That remuneration was to be 1/- per copy plus advertising?  
That is correct.  
Well the Society was taking no financial risk at all in this venture?  
What do you mean by that?  
The only account you had to meet for the Windmill Post was 1/- per member which in turn was covered by subscriptions from that member?  
Yes.  
So that if Mr. Kuys contracted debts in getting this newspaper off the ground that was his responsibility?  
40 Partly.  
Well it wasn't any responsibility of the Society was it?  
Morally and in actual fact.  
When you say in actual fact do you mean that the Society would feel honour bound to meet any debts of Mr. Kuys in getting newspaper under way?  
For the period of six months, yes.  
Are you aware of what commitments Mr. Kuys entered into to purchase news?  
No, Mr. Kuys, partly we did know and partly we didn't know.  
50 You left that to him?  
Yes.  
Did you at any time during the six months of publication make a check on indebtedness incurred by Mr. Kuys in setting up this paper?  
Mr. Renneberg supervised the books and came to the conclusion after the six months period that a substantial profit had been made.  
You mean he looked at the situation after six months had gone?  
No I believe he had all the facts to hand from the beginning.  
Who told you that?  
Mr. Renneberg.  
60 And after six months he came up with the view that there was money to be made in the Windmill Post?  
That a substantial profit had been made.  
It was a very successful publication for a short period was it not?  
It appeared to be.



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- Only part of the newspaper was taken up with club news?  
Yes.  
And the other part of the paper was taken up with feature articles and the like?  
Yes.  
Some of the articles originated from sources in Holland did they not?  
I think so.  
For which Mr. Kuys paid money?  
I suppose so.
- 10 Did it come as a surprise to you that after six months the newspaper had been so successful?  
Yes.  
Would you say part of the success was due to the newspaper get-up? I mean publishing it as a newspaper.  
Yes.  
You put a limit of £100 on the amount you would pay Mr. Kuys for members did you not?  
Not that I am aware of.  
You say that it was 1/- per member whatever the limit?
- 20 Yes.  
Mr Dubois, what you are saying is that Mr. Kuys had the right to operate this newspaper incurring all liability himself for the financial risk at the same time developing the circulation of the newspaper and after six months the Society was to be in a position to take it all away from him again?  
(Mr. Clark objects to the question on the ground that it implies the plaintiff had something which was being taken away — the witness has not indicated in his evidence that this was the position.)  
(Mr. Heron objects to the manner in which this objection is worded to the extent that it gives some assistance to the witness in a possible answer to the question.)
- 30 First of all the circulation was already established by the number of members the Society has. There was no need to build up circulation. Furthermore Mr. Kuys never owned the newspaper so it was therefore impossible to take it away from him. But you expected the newspaper to be successful and increase its circulation did you not?  
The increase was purely governed by the number of members we had and was therefore not dependent upon the newspaper at all.  
The bigger the circulation however the greater attraction for advertising is that not right?
- 40 Not quite in this case because the advertising in the magazine of this nature is to be considered by any business to be form of donation to the Society. We could therefore only expect advertising from firms who wanted to support the Society.  
But when the Windmill Post was set up it was contemplated that it would be used to increase membership and would therefore grow larger?  
No. I would say to a very limited degree.  
Mr. Heron reads from Page 2 of Volume 1, No. 1, of the Windmill Post in which you as National President addressed a letter to members.  
Tell me what the last paragraph of the letter written by you means?
- 50 As I said before to a limited degree.  
Did the circulation of Windmill Post increase in the first six months?  
Well I have no figures to hand. I can only suppose — I do not know.  
What do you suppose?  
(Objection by Mr. Clark.)  
You want my supposition? I suppose slightly increased.  
You are aware I suppose that there is a lot of work getting the first edition of the paper out?  
Yes.
- 60 Mr. Kuys would have done the bulk of it?  
Yes.  
It was thought that there was some risk to Mr. Kuys in taking on this venture?  
Not much because in the period in which the six months of trial occurred was in the last part of the financial year and therefore the subscriptions

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- had already been paid the income from subscriptions was more or less a standard figure. The advertising was basically the same as the Holland Bulletin therefore accurate statement of costs and expenditure had been made up and the effective risk would have been greatly diminished.
- Mr. Renneberg considered it was risky enough to warrant the cost of a limited liability company—do you not agree?
- The risk Mr. Renneberg was talking about was the risk of publishing articles that were considered to be libel.
- 10 From what you say the Society would have regarded Mr. Kuys as liable for libel?
- (Mr. Clark objects the question calls for conclusion from the witness.)
- Yes.
- Finally on this topic, it was agreed you say that Mr. Kuys should submit a draft agreement to you?
- That is correct.
- Would you agree with me on the arrangement as you understand he had more to lose than you — I mean the Society?
- In which way?
- Financially.
- 20 If any financial difficulties had occurred the Society would have considered these on its merits.
- Well there must have been difficulties of Mr. Kuys that they would be considering?
- That is correct.
- Mr. Renneberg in his evidence has described this as an unusual arrangement. Do you agree with this?
- Yes.
- Mr. Renneberg didn't write a letter as far as you know in his capacity as a solicitor to record this unusual arrangement at the time did he?
- 30 I am not aware of this.
- Well I put it to you that Mr. Kuys had everything to lose and the Society everything to gain if your version of the arrangement is accepted. Do you agree with this?
- Not particularly.
- Mr. Renneberg didn't say to you, This is an unusual arrangement; we had better get the terms to writing?
- Yes he did.
- Did he say this earlier in the piece?
- Yes.
- 40 Of course the only written evidence of the arrangement is what is contained in the minutes of the meeting compiled by Mr. Kuys?
- Definitely not.
- What other written evidence is there of this arrangement?
- Nothing else.
- You say Mr. Dubois that in fact you went with Mr. Kuys to see Mr. Willemsen to discuss the New Zealand Hollander?
- Yes.
- That was a long time before the inaugural meeting was it not?
- If you are referring to the inaugural meeting held in January 1967 yes it was.
- 50 When was it that you went to see Mr. Willemsen?
- Early 1966.
- So about a year had elapsed from that time to the time when Mr. Kuys bought out the business?
- You mean he purchased the New Zealand Hollander?
- Yes.
- I am not quite sure in my own mind that Mr. Kuys did purchase the New Zealand Hollander, because the cheque for this was paid out of the account of the Society at the Savings Bank at Avondale.
- 60 Do you know the name of the account at Avondale to which you have just referred?
- Yes I do.
- Would you tell us what it is called?
- It is called the Netherlands Society Oranje.

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- Do you say that it did not have the words Group Travel Account as well?  
I could not say.  
It did not have the word incorporated in the name did it?  
From memory I think it had.  
No members of your executive had signing authority on this account?  
We were not aware of this account until recently.  
It was the account that Mr. Kuys had been using for group travel for some time?  
If that is the case it was quite incomplete.  
10 He had always undertaken the banking of monies for the group travel account did not he?  
Yes.  
You must have known that they were going into some account?  
Yes.  
For every person that Mr. Kuys attracted into group travel he received 30/- and your Society received 70/-?  
Yes.  
You know that the payment of £100 was merely an accumulation of the 30/- that Mr. Kuys was entitled to?  
20 No I was not aware of that at all.  
If that is the explanation it is a perfectly innocent one?  
I would say that I couldn't answer that question yes or no as the bank account comprises of so many items private, club and other accounts that it will be impossible to say.  
Was it Mr. Renneberg or you that thought it was necessary to tell the police about this account?  
This was a committee decision.  
Let me take you back some years before inaugural meeting. Mr. Kuys was the original organiser of what we know as Group Travel on behalf of the  
30 Society?  
Yes.  
No one else would have the job on?  
We haven't tried to get anyone.  
He made a lot of money for the Society up to this period in organising Group Travel?  
Yes.  
You knew he collected money from Dutch people going overseas for the fares didn't you?  
Yes.  
40 In what account was the money being banked to your knowledge?  
It was to be banked in the savings bank account but we were told it was a trading account.  
Did you make any enquiries about the signatories on that account would be?  
To my knowledge Mr. Kuys.  
Did it not occur to you that this account might have other monies belonging to Mr. Kuys?  
No. I would say that would be highly irregular.  
More than irregular : in the view of your committee it was criminal was it not?  
50 If you refer to pocketing the interest — yes.  
How often up until the inaugural meeting did you check the bank statements of the Group Travel run by Mr. Kuys?  
Well we had extreme difficulties in getting the balance sheet audited by our Accountant because Mr. Kuys refused to submit the Group Travel accounts. The Auditor statement specified that he had not seen the Group Travel account.  
Mr. Kuys' short answer to this was that it was his concern and not the Society's?  
60 Is that a statement or question?  
Question.  
I have no knowledge of this.  
The Society was happy up until early 1967 with the manner in which Mr. Kuys had been handling Group Travel and with the revenue it had brought

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- the Society?  
Yes.  
I want to take you to Clause 6 of your affidavit.  
(Quotes . . . .)  
Why was the ownership of the Windmill Post discussed?  
This was mainly caused by the fact that Mr. Kuys had put in the heading of the paper the phrase Independent Newspaper whereas this was not an independent but a members' paper.  
So did you think that Mr. Kuys had been making some claim for ownership at that stage?  
10 I was merely stating that the phrase Independent Newspaper caused confusion.  
You say on Page 5 of your affidavit that the 16th June was the first occasion that Mr. Kuys unequivocally asserted his claim to ownership paper? Do you still say that is the true position?  
Mr. Kuys told us at a meeting that according to some other people the Windmill Post was his property.  
That is the first time?  
Yes.  
20 Witness is referred to Exhibit "E" of W. J. Van Dongen.  
Counsel quotes.  
Who told Mr. Van Dongen about that claim?  
Well it is difficult to remember by whom he was told first.  
You got a copy of that letter didn't you?  
Yes.  
That letter is dated 18 May. Do you recall that?  
I accept that.  
Well it is not the truth to say that this was the first occasion Mr. Kuys unequivocally asserted his claim?  
30 I think this is largely a matter of date not facts.  
Have you heard the claim made by Mr. Kuys to ownership prior to 16 June?  
Yes. It was at a meeting in my home in April or May. I am not too exact about the date.  
You would report that to your executive would you not prior to 16 June?  
Mr. Kuys made that statement at an executive meeting in my house.  
In April or May?  
Yes.  
Was that a National executive?  
That is right.  
40 Well if that is the case the 16th June wasn't the first occasion at which the claim was made?  
Well apparently not.  
You have taken a lot of your information from Mr. Renneberg haven't you as to what was going on?  
No. I think not.  
Do I take it from you that you do not accept the minutes of the inaugural meeting as recorded by Mr. Kuys being accurate in every respect?  
That is a complete fabrication.  
You say that all the items of business discussed haven't been properly recorded?  
50 I would not say that. Mainly because these minutes were sighted by us in June 1968 for the first time.  
Some minutes were forwarded to the Ambassador were they not?  
These minutes were shown to the Embassy on the same day as we saw them.  
That is June 1968.  
That is right.  
You know however that a number of people signed those first minutes don't you?  
60 I know of one of these people signed these minutes about the same time as we sighted them in June 1968.  
Are you suggesting that the people who signed them signed them without reading them?  
I am not suggesting anything.

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- Mr. Kuys suggested that they get all those people together again to ascertain what did go on at the meeting of 5 January 1967 — that right?  
Yes.  
And you and your executive refused?  
That is right.  
It was at that meeting however that this unusual arrangement is contended by you to have been made?  
This is incorrect.  
In what way?  
10 The meeting you are referring to is solely for the purpose of inaugurating the National Society and consisted of 15 people taken at random and the Windmill Post was only briefly discussed. The business side of the Windmill Post had been discussed by the National executive committee long before this meeting.  
Some reference was made to the Windmill Post was it not?  
That information I sadly missed in the minutes.  
But there was some information in the minutes about the Windmill Post?  
Yes, but that information was incorrect.  
20 So you say the arrangement relating to the Windmill Post was all decided at a National Executive Committee meeting before the inaugural?  
Yes.  
How do you explain your evidence when you say on Page 2 (Counsel quotes) . . . ?  
It was discussed before and after.  
It was only the name that was discussed?  
The name was discussed on several occasions both before and after.  
Witness shown document dated 22 June 1967 signed by Miss Leenman the Secretary.  
Was that authorised by the National Executive?  
30 The general idea, yes.  
Referring to the second to last paragraph (Counsel quotes) . . . : At last we are getting the glimmer of the truth I suggest. How do you withdraw your support from a publication which you already own?  
We were under the impression that Mr. Kuys had registered our Windmill Post in his name in the Supreme Court. We therefore thought that we had lost our Windmill Post and that we had to look for a different publication. After having published this circular we found out that the paper had not been registered in Mr. Kuys' name and it was therefore decided to reclaim it.  
40 The words decided to revert to a publication of its own can only mean that Miss Leenman thought the newspaper belonged to someone else other than the Society. Don't you agree?  
(Mr. Clark objects to this question as to involving what Miss Leenman may or may not have thought.)  
No.  
When you made this decision to go ahead with the Windmill Post under that name it was as a result of discovering that Mr. Kuys had not attended to certain legal formalities?  
I would rather say at this stage Mr. Kuys had not legally acquired the  
50 ownership of Windmill Post.  
The Society would of course have been entitled to publish a newspaper under any name at that time?  
Yes.  
It in fact copied exactly the format of the previous Windmill Post?  
If you mean that the Windmill Post set up was exactly the same as Mr. Kuys did the editing the answer is yes.  
The decision to continue with the Windmill Post was made after Mr. Renneberg told you how profitable the newspaper had been?  
No. The question of profits had nothing to do with it.  
60 In point of time however Mr. Renneberg had discovered this information before you made your decision?  
Yes. But it had no relation to the decision.  
You know don't you that Mr. Kuys had printed letterhead under the name of Windmill Post with a different box number than that of the Society?

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- I know that he advised people to write him under a different box number. But that box number is on the newspaper as the address of the publisher. Is that right?
- Yes. Mr. Kuys printed it on the newspaper.
- Was Mr. Renneberg acting in a private profession capacity as far as you know for Mr. Kuys on matters of accountancy?
- I can't answer the question.
- You know Mr. Griffiths has said on oath that he was associated with Mr. Kuys on this venture in 1966? Are you aware of this?
- 10 The first time the name of Mr. Griffiths was mentioned when we received a complaint from the manager of Canadian Pacific Airlines that Mr. Kuys had visited him accompanied by Mr. Griffiths to ask the manager for a private bribe for Mr. Kuys' dealings in Group Travel. Discussing the Windmill Post with Mr. Kuys at a meeting in my home in about April or May 1967 we asked Mr. Kuys the connection between Mr. Griffiths and the Windmill Post or Mr. Kuys we were then told on Mr. Kuys' word of honour that Mr. Griffiths had absolutely nothing to do with the Windmill Post and that he had only assisted him to get the first copy on the way. Just accept it from me that Mr. Griffiths has been actively interested in
- 20 the Windmill Post since it started. Accepting that you would expect would you not Mr. Renneberg to have run into him when getting all this information which you said he got about the business?  
(Mr. Clark objects to the question as presupposing personal knowledge of Mr. Renneberg's movements which the witness has not claimed to have.)  
I can't answer this question.  
Turning to the meeting held on 16th June I think at the Poenamo Hotel — it could be the 10th? Can you remember whether that was a week-end meeting?
- Yes, I remember that very well.
- 30 Mr. Kuys was not there on the Sunday was he?  
Neither was I. I was sick in bed.  
But the Windmill Post was put on the agenda for Sunday?  
No. In actual fact when the Windmill Post was discussed it was a Saturday. Mr. Kuys would say he wasn't there when the statement about the ownership was made?  
Mr. Kuys was present and made no comment whatsoever when this question was dealt with.  
Do you still that in light of the fact that Mr. Van Dongen knew about this some two months before you still say that?
- 40 (Mr. Clark objects to this question is not clearly defining "about this" refers.)  
Do you still say this notwithstanding Mr. Van Dongen knew about Mr. Kuys' claim to the ownership of the paper some two months before?  
(Mr. Clark objects to this question on the ground that the letter referred to by Mr. Van Dongen contains no reference to any dispute about ownership.)  
Yes.  
You have told us that there was some objection to the word independent on the newspaper but that notwithstanding six issues were made by Mr.
- 50 Kuys and were paid for by the Society?  
Yes.  
Who prepared the draft of the statement of discussions held in the Dutch Embassy on 15 and 16 April 1967?  
Mr. te Winkel.  
(Objection by Mr. Marsh to this question on the ground that the witness has not stated that he was present when the draft was prepared.)  
You knew that he prepared it and that he was something of an arbiter between you?  
No, he was not an arbiter, he was merely listening in.
- 60 He seemed to have thought from what is written that Mr. Kuys was the owner of the newspaper?  
(Objection by Mr. Marsh to the question on the ground that he is asking the witness what Mr te Winkel thought.)  
Mr te Winkel's recollection of this particular meeting was very confused

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and also a week or so after the meeting he rang me and read out a statement of what he thought had transpired. During this phone conversation I had to correct Mr. te Winkel's statement regarding several matters we had discussed. Unfortunately it seems that he was not clear about Windmill Post as otherwise this statement may have been influenced by correspondence between Mr. Kuys and Mr. te Winkel.

You say in other words that he was wrong twice?  
Well I think he was only wrong once.

10 What business remained to be done on the Sunday at this meeting at the hotel?  
As I stated before I was sick in bed.  
You must have known what the agenda was?  
Yes, I did know that.  
What items remain to be covered?  
Well, I couldn't say from memory which items were left for discussion on the Sunday but the Windmill Post was certainly discussed on the Saturday.  
Finally did you keep minutes of the National Executive Committee meeting up to December 1966?  
20 The duty of making minutes is the Secretary's and Mr. Kuys was the Secretary. And his failure to make minutes was one of the reasons asking for his resignation.

Hearing: November 10, 1969.

Counsel: Mr. Heron for Co-Plaintiffs

Mr. Clark and Mr. Marsh for Defendants.

NOTES OF EVIDENCE TAKEN BEFORE THE  
HONOURABLE MR. JUSTICE SPEIGHT

2.20 p.m.

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L. C. Kuys

LAURENTIUS CORNELIS KUYIS (Sworn)

Of 45 Tiverton Road, Auckland, Company Director.

Plaintiff in these proceedings, director and shareholder of Windmill Post Limited, an incorporated company?

Yes.

When did you first become connected with the Auckland Club?

In October 1962.

Before that were you a member of that Club for some time?

Yes, I think for about one year.

Did you take other offices in the Club after that time?

I went to the General Meeting in 1962 and afterwards became a member of the Committee.

Did you at one stage become Secretary of the Society?

20 Yes, in February 1963 I became Acting Secretary.

After six months you became the permanent Secretary?

Yes, of the Auckland Club.

Were you Secretary down to the end of 1966 or was there some period when you did not hold that position?

I was Secretary till the end of 1966 — sorry, till early 1967.

When did you first become connected with Group Travel?

Half way between 1963 it came to my notice that Group Travel was possible to our Society, then I started advertising and tried to form a group, and the first group was in 1964.

30 Who did the work for the Group Travel on behalf of the Society?

I contacted the people who applied and who showed interest. I always organised and tried to get groups together. I gave advice or information on the Group Travel conditions laid down by airlines.

Did the Society make any charge for the service they did?

Not for the first two groups.

After that did they decide to make a levy to members who went on Group Travel?

At a Committee Meeting because fares were increasing and we thought it was not fair that those who were not Committee members should obtain a substantial discount for this group. We decided to make a charge of \$10.00 per member.

40

Was it decided as to how — whether that amount would be split up between the work you did and some charge to the Society?

Yes.

What was it?

£3.10.0 to the Society and £1.10.0 for my services.

Who was doing the work to get these groups away and organised, and collecting the money?

I did.

50 You started this work in 1963 and the first group went in 1964?

Correct.

To whom was the money paid for the fares?

To me. I discussed it in committee and they didn't want to have this money coming into the Society's account. The Treasurer or Assistant Treasurer didn't want to have this money in the Society's Club as it wouldn't be the right balance of the Society's account.

Did you and your wife have signing authority?

Yes.



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- Did you do this from the end of 1964 to June 1967, or have you carried it on since then?  
No. With the first group I handed over the cheque direct to the travel agent, and after that when we collected the administration fee and insurance I opened up an account.  
JUDGE: How long did that carry on for?  
Until July 1967.  
COUNSEL: Had there been Annual Meetings of the Society over that period where accounts were passed?  
10 No.  
Had anyone made complaint about your operating this account in your own name?  
No.  
Did you use it from time to time as your own account to pay moneys to yourself from what had accumulated?  
Yes.  
Was it from that account you would have paid the Society their £3.10.0? From that account and also a private account.  
Did any other member of the then Auckland Society assist you in any  
20 material way?  
Only during my absence for three months when I was away in Holland. That would be some time in the year 1966?  
Yes, 1966.  
On top of this 30/- you received, what did that cover as far as expenses were concerned?  
The normal expenses, travel, parking, except telephone accounts.  
Was that paid by the Society?  
Yes.  
Did you get a large number of people travelling overseas as a result of  
30 Group Travel in the years you handled it?  
Yes, 900 passengers.  
As far as your secretarial work was concerned, did you till June 1967 receive any remuneration?  
No.  
As a result of your connection with the Dutch community, Group Travel and the Club, did you form any views about having a Dutch national newspaper?  
Yes.  
Tell us.  
40 I had seen several times the Dutch Australian Weekly from Australia and with the increase of membership I thought it fit that our Society should produce a newspaper instead of the Holland Bulletin. I think our Society membership increased from 300 member to nearly 2,000. This Holland Bulletin was done by Committee members who spent a lot of time on it, and I thought it was time they got it done by professionals.  
Had you yourself at one stage been responsible for the publication of the Holland Bulletin?  
Yes.  
Did Miss Leenman take over from you at one stage?  
50 Yes.  
When was that?  
I think in February or March 1966, prior to my return to Holland.  
Prior to that time how long had you been editor or responsible for the publication of the Holland Bulletin?  
More or less right from the start when I joined the Society because they were always short of members willing to do this.  
Had you at any time mentioned to members of your Committee that you would like to see a newspaper rather than the Holland Bulletin?  
Yes.  
60 When would you have said that to them in relation to January 1967?  
I think it was two months before we had a discussion with Mr. Schuurman, who is Managing Director of the Dutch Australian Weekly, who was at that time in Auckland for a visit. Mr. Dubois, the President, Miss Leenman

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- and myself had a discussion with Mr. Schuurman about how we could produce a newspaper similar to the Dutch Australian Weekly.  
What was about two years, early 1965?  
Roughly yes.  
After that did you mention it again?  
I mentioned it several times, but to meet the cost of this publication we would have had a shortage of £1,500 a year and Mr. Schuurman was going back to Australia to discuss this with KLM to see how much they would be prepared to sponsor us.
- 10 When did you last persuade the Committee to take on responsibility of newspaper?  
In February-March of 1966.  
What was their reply — Mr. Dubois' reply?  
Financially it was impossible for us to attempt such an undertaking.  
What was your answer on the question of it being financially impossible?  
I thought the cost they put down was on the very high side, in regard the news, printing etc.  
Did you think the advertising revenue could support the paper once it got going?
- 20 Yes.  
Did you tell Mr. Dubois your views on that?  
Yes  
Were the Society prepared to take on the paper at that time up till 1966?  
No, no more discussions. Never more discussed till December 1966.  
You had been away for a period of three months during 1966. When did you return?  
Middle of September.  
What had happened to the Holland Bulletin during your absence?  
Miss Leenman produced it, from March 1966 to December 1966. Then she notified the Committee that she was unable to carry on and the December issue of 1966 would have been her last one.
- 30 At this time you were a member of the National Executive Committee?  
Yes.  
Which was the Committee to set up the Oranje Society on a national basis?  
We were more or less organiser for the National Society in March 1966 when we called the first national unofficial meeting.  
You had some differences about getting unity in the community?  
Yes. When it became a Society in Auckland, the Club organised a couple
- 40 of evenings, but the attendance was very poor — we got only 22 members.  
Mr. Dubois suggested to wind up the Netherlands Society. I thought it is a pity because so many Dutch people in Auckland wouldn't have a Netherlands Society where other people could call on us. At that time I discussed with Dubois the possibility to set up a kind of national organisation with the other two clubs in New Zealand in existence, the Wellington and Invercargill Clubs. From the Wellington we drafted out a letter showing our intention and we thought it would be better that we would combine and maybe help to set up other Societies in places in New Zealand where there was not a Dutch Club. The Wellington
- 50 Committee never replied to us, and from the Invercargill Society I received a letter that they thought the idea very good, but had no time to spare; their Committee members also to sit in the National Society.  
Some objection to Clubs that Auckland setting up as a national body?  
Not at that time. We carried on for a while, and we thought if the Wellington Club and Invercargill Club were not interested we would set up branches, especially after we received a request from Tauranga. After this had been discussed in committee they agreed that Dubois and myself would call for a meeting in Tauranga and try to set up a branch.  
Was this then — you were doing this in your capacity as a member of
- 60 the National Executive Committee?  
Not at this time.  
When did the National Executive Committee come into being?

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I can't recall. I think it came after we received several more requests and set up branches in Christchurch, Rotorua, etc. Can't recall the year, but made a break on 1st July, the start of our financial Auckland Society year, to separate the incomes from the Auckland Society and I think more or less the National Executive Society formed or came into being.

You confirm that the National Executive Committee up till the end of 1966 was involved in getting the national group separate from Auckland formed?

Yes.

10 How did the newspaper fit into this development as far as you were concerned?

The idea of a newspaper for the Society? After we started, after several branches were formed, then the prejudice against the Auckland Club started in Wellington and Invercargill. The first unofficial meeting from all the branch delegates were also delegate from Wellington and Invercargill Clubs were present. We didn't succeed to form this National Executive Committee.

The newspaper in your view entered into this?

20 This is why I thought a newspaper and a new Society would take prejudices away and really necessary for national organisation.

Unable to get your National Committee to agree?

That's right.

When overseas, deposed you collected news and news contacts with what in mind?

I knew how much the managing director of the Dutch Australian Weekly would charge us, and I thought while overseas I would investigate to see if I could get news from Holland at maybe a cheaper rate

That view to help Society for yourself?

For myself.

30 In fact make some contacts over there?

Yes. News and photos.

That trip was after your last effort to persuade Dubois to publish a newspaper?

Yes.

JUDGE: When were you away?

From June 1966 to mid-September 1966.

COUNSEL: You deposed to having some contact with Griffiths about this publication idea of Windmill Post, the name?

40 Yes. Not so much for start, using name for a newspaper. Before I left he also told me to make use of your time and investigate the possibility of news service from Holland.

When would it be in time that you finally committed yourself to publishing a newspaper on your own?

After I came back from Holland I had a discussion with Griffiths and we discussed about this publication and news service from Holland, and cost also of the publication in general. He ask me at time if I really determined to start a newspaper and I said yes, and he said "Well, you've been thinking long enough about it and if you're not doing it through the Society, start. I will help you in any way and as much financially as possible.

50 When did you finally commit yourself to it?

Then I had another discussion with Mr. Wilhelmsen, who at the time was commercial paper the New Zealand Hollander. This was in existence for about 16 years.

Had previously you and Dubois gone to Mr. Wilhelmsen before with this view in mind?

Yes, about 12 months before.

On behalf of the Society?

Yes, we had about three meetings with him in case the Society would publish newspaper.

60 You prompted those meetings with Wilhelmsen, you persuaded Dubois to go to Wilhelmsen?

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Yes. We had another discussion with Mr. Allison, the Advertising Manager of the New Zealand Herald. This discussion was held at Griffiths' home. I had a copy of the Dutch Australian Weekly and advertising of several suburban newspapers in Auckland. We discussed at that time the format, the eight pages, the costing, and set a rate for this newspaper at one column per inch. An advertising rate.

This prior to the inaugural meeting of January?

Yes.

10 Have any discussion with any other person who was responsible for publishing a club or society paper?

Yes, McNamara, the President of Combined Irish Societies, who had just started the Irish Reporter in October 1966. From him also I got the advertising rates and same format as I started off in February 1967 from the Evening Post. He told me that his publication was printed at North Shore Printers. He gave me more advice and after this I went to North Shore Printers and got a quotation for newspaper.

This all in the latter part of 1966?

20 Yes. This quotation was \$10 or \$15 higher than the Irish Reporter as it had to be in the Dutch language. I had another discussion with Griffiths, and we both agreed we should proceed, that this publication be printed by North Shore Printers, I think Mr. Phillips.

Did you give any thought to the support or otherwise you might get for this newspaper from this Society or the Society that was to come into being?

The Auckland Society I thought would be quite happy to take over the newspaper for the members. It had always been a burden and also financial burden to the Society. I thought if I could get — if the Society would take the bulk from me, the newspaper plus buying out the New Zealand Hollander, with their subscriptions, I would have made say a first start.

30 At what rate did you contemplate the Society take the subscriptions?

(Objection.)

Any rate — did you go to Dubois or a member of the Committee with any rate in mind in so far as the price of the paper to a member would be?

Yes. This happened between Christmas and New Year, 1966. I told Dubois I was prepared to start my own newspaper.

Where was that discussion held?

40 I can't remember. It was not a Committee meeting. I was prepared to start a newspaper and asked support of Society to take off a copy for each member at 1/-. He more or less told me I was mad to print this kind of publication, especially in view of previous six months several branches broke away from the Oranje Society and in September 1966 the Federation in South Island was formed. However he said it is possible for you to start a newspaper when it's not possible for the Society.

Was a meeting arranged for the 5th January at Hoeberigs' home?

Yes.

Was this part of the continuing desire to form a national body?

50 When I came back from Holland I already learned from Dubois that he and Miss Leenman kept up to be members of the National Committee, and when I came back I couldn't speak over National Executive Committee any more except that I was the only person left on his Committee. This letter from Dubois and Miss Leenman was sent to all branches in Auckland in 1966.

JUDGE: What was the effect of this letter — that they were no longer on the Committee?

Yes.

COUNSEL: Did it come back into existence after you came back?

Dubois was still President of the Auckland Society and Miss Leenman still Treasurer.

60 During this period, the time that you came back to the end of December, did you, Miss Leenman and Dubois meet?

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Yes. I felt at that time we should have a kind of board of directors. Dubois agreed to this and a meeting called at my place, Mr. Hoeberigs being a business man at this time, Mr. Renneberg an accountant, and Mr. Hendrikse and a teacher from the North Shore.

That was a meeting at your place, the result of which you called a subsequent meeting on 5th January.

No.

Tell us?

10 Mr. Hendrikse left and called me outside, and told me . . . The only one who stayed was Mr. Renneberg. He had been very helpful and saw need for work for the national organisation. Had several discussions with him, who drafted out a new set of rules for the Society. In December 1966 Mr. Renneberg came with those rules to the Auckland Club and discussed them. Then a meeting was called for at Auckland. Meeting was held on 5th January 1967.

Is that the letter you referred to from Dubois when you were overseas? That's right.

(Exhibit A.)

20 Mark with a pencil the part where Dubois speaks of resigning from the National Executive Committee. (Witness does so.)

Letter tells me that Dubois and Miss Leenman have resigned from the National Executive Committee.

As a result of all that, this meeting of 5th January was called at Hoeberigs' residence?

Yes.

The main item of agenda that concerned Windmill Post of new national body?

The main purpose was to explain why the new Society was formed and the rules which had been drafted out.

30 By Mr. Renneberg?

Yes.

Was the question of a national publication or newspaper mentioned?

No, it came at a later stage. Because the proposition came up. . . .

Who introduced the topic first of the newspaper?

Mr. Dubois.

What did he say?

40 He explained the position about the Holland Bulletin, that Mrs. Leenman produced the last issue in December 1966, and that something should be done to get news to our members in February. In January there never was an issue of the Holland Bulletin.

There had never been an issue?

No. Then I said I was going to start a newspaper and he discussed with me about taking over the newspaper for the members, at 1/- per copy. This was at a reduced rate, as the charge at that time was 1/3d.

When you say charge at that time, what do you mean?

Price for a single copy was 1/3d. Yearly subscription was 15/-.

Tell me what Dubois said, prepared to undertake a newspaper, 1/- per copy for member at reduced rate?

50 Yes, or that I would publish Society news in a special place, in return. It was discussed and agreed Mr. Hoeberigs make a 1/- to £100 per month. In other words, the Society would increase the membership and would require more copies, we would get more than £100.

Did you know prior to that meeting what the membership was of the national body?

Yes.

What was that?

Also included members of the Auckland Club. Membership at the time was 3,500 to 3,600.

Throughout New Zealand?

60 Yes.

What else was discussed about that?

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- After the discussion, after it was agreed, the motion by Hoerberigs and announced the named, I said I was going to call the new publication The Windmill Post.
- Told anyone about that name before?
- No, except Griffiths.
- Had you told Dubois you had with him between Christmas and New Year?
- No, definitely not.
- What was the reaction to that amongst people here?
- We discussed a couple of other names and I said I'll stick to Windmill Post.
- 10 Likely to have been persuaded to take another name at that stage?
- No.
- Was there any discussion about your — the legal position you were in?
- Yes. Pointed out that I should form a limited company to protect myself. Were you approached after the meeting by anyone to do with the company?
- Yes, I was approached by Renneberg, who told me he was quite happy, he was working in a solicitor's office in town, to help me form a limited liability company. He invited me to come over to his place, and I think it took place about a week after the inaugural meeting.
- Go to his place?
- 20 Yes.
- Give him any particulars as to shareholders would be?
- No. He suggested to take my wife and children into it. He asked for the ages and full names of the children and wife.
- Did he record those somewhere?
- Yes, on a scrap of paper.
- Did you obtain approval for the name of the company from the company's office?
- Yes, I think on 8th January 1967 — 12th January 1967.
- Now produce telegraphic reply received from company's office.
- 30 Yes.
- (Exhibit B.)
- That addressed to you or someone else? Name appears to be erased
- It's been on all the time.
- Come in an envelope, and was it stuck down, or did you receive the telegram?
- Yes.
- Was that before or after you met Renneberg, you received the telegram?
- Straight after the inaugural meeting.
- Before you met Renneberg the second time?
- 40 Is — I applied for the names straight after the meeting.
- At this meeting of 5th January, was there any remark about your having something now or to that effect?
- Yes. After this motion was passed by Mr. Hoerberigs, Mrs. Hoerberigs made a remark that now at least I have got something of my own.
- Did she say anything else about that?
- Another sitting, sitting by Mr. Dubois, talk is going on. I only got half sentence. I leaned forward and said, "Beg your pardon?" Everyone quiet, then Hoerberigs repeated the same remark. That I had something for myself now.
- 50 You say no comment was made about that?
- Nothing.
- After you had got the approval of the Committee, what did you do next, apart from sending a telegram to get newspaper under way?
- Several things. I went to the North Shore Printers again and they asked me about blocks for advertisements and bringing copy for the newspaper as soon as possible. Saw Mr. Allison and paid him for taking over the New Zealand Hollander. He took me to his secretary, introduced me, who kept Mr. Williams' subscription records from the past. After that . . .
- Did he have a list of subscribers?
- 60 Yes. After that I left.
- Paid him £100 and he gave you all he had?
- Yes, gave me all the information, all the news he had received last month or two months.

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Did you then endeavour to organise a printer? Then went round to organise whatever was necessary for the publication?

I went to the printer, the North Shore Printers, and he told me to get the blocks and bring in the copy as soon as possible.

Blocks what for?

For advertisers, so he could lay out advertisements and get ready. Then to Mr. Van Impelen, Managing Director of Impex Press Ltd.

What did you go to him for?

10 To discuss about his blocks he was holding from the advertisers who had been advertising in The Windmill Post. He held them from the Holland Bulletin.

You went with Mr. Griffiths?

20 No. He asked me if I was going to publish a newspaper and he said I can do it for you, and I asked him I thought it could only be up to a certain size and he explained he bought or shortly he was going to receive a bigger machine which could handle this size of publication. I told him the first publication had to come out early in February. I said if you can do it, give me a price. He quoted me a price; it was lower than North Shore Printers. As I was on my way to town, I went straight away to Mr. Griffiths, told him that I had a meeting with Impex and he gave me a price, so we discussed about finances and it did take long. First his price was a little bit cheaper than North Shore Printers, and it would save me a lot of time as being closer to my home and he understood the Dutch language. Mr. Griffiths said, "All right, I will come, and you introduce me to Mr. Impex or Mr. Van Impelen," and I introduced him as partner in the Windmill Post publication to Mr. Van Impelen, and he agreed to print for us the publication and also made the remark about finance. Mr. Griffiths backed me up and said I will be responsible for six months for finance if Kuys can't pay the bills.

30 Was there some discussion about setting out and format of the newspaper at that time?

No, the size of format and size of columns had all been arranged with the New Zealand Herald Advertising Manager, Mr. Allison.

When you had settled the layout, format, etc., did you contemplate having a windmill in the left-hand corner?

40 Yes. At that time he suggested a Dutch chap had just received an award for Tea Council. Mr. Van Impelen suggested I see the chap who had won an award for Tea Council. I went over and saw him, made the layout, but not happy with the windmill, although I had some samples. I bought in copy and Mr. Van Impelen started on the newspaper.

What about the block for the windmill?

We had to wait a couple of days to get the block back. Paper almost ready, we still didn't have a suitable heading. We didn't even have the windmill postmark. One stage Griffiths came with me to Van Impelen, and as time was pressing Griffiths asked him if he could do something, a letter type which he had in stock. So he made up several trials and we picked the one out.

JUDGE: This only of type you speak of?

50 Yes, we picked the type which appeal. We still had no windmill and decided to leave it blank for the time being, then he said, "Wait a moment," and went to the back of his workshop and came back with a block of this windmill covered with dust and cleaned it just before he showed it to us and told us we could use this windmill. I didn't like the design very much, but as time was pressing we decided to use it and he suggested that after a couple of months we could have the competition for a new layout for a new windmill.

Printed with that windmill and with that block down to June 1967?

Yes, that's right.

It's not the same block but same layout now as it was?

60 Yes, that's right.

Tell the Court what arrangements you made to get a postal permit to distribute this newspaper?

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20 I overlooked this postal permit completely, and about a week before the paper was going to be ready I went to the Avondale Post Office to get the newspaper registered by the Post Office as a newspaper and to apply for a permit. The Assistant Postmaster told me I had to write a letter to the Chief Post Office in Wellington, to apply for registration, and that would take about three weeks. I told him next week I wanted to bring in this newspaper for posting and what to do about it. He couldn't help me until he had the agreement from the Chief Post Office. I discussed this with Dubois by telephone, and asked if it would be all right to use the Society's permit number, so I could get the discount by the Post Office. He asked me if this permit number was any use to the Society, and I said well if the Society want to use it by sending out letters and books we both can use it, no objection by the Assistant Postmaster in Avondale, and as the — as my main book of newspapers was going to the Society's members, I saw no objection to this, from Dubois. I typed out a letter sending it to the Chief Postmaster, Wellington, enclosing the 5/- registration fee which I paid for myself.

COURT ADJOURNS: 3.48 p.m.

—o—

COURT RESUMES: 4.05 p.m.

20 On account of this letter Assistant Postmaster sent, accepted for posting under normal New Zealand conditions.  
Newspaper duly came in February — something has been said by affidavits in reply about your writing to KLM in particular on Society's letterhead advising them of the change to The Windmill Post. Why did you do that? In particular letter?  
I felt it my duty as Secretary of the Oranje Society to inform the advertisers about the change, as they had supported it in the past. Also I set down the publisher's charge for columns and size of newspaper, etc. Income from advertising was going to be yours?

30 Yes.  
Second paragraph: "You as a                      each edition." That right?  
Yes.  
You make distinction between publishers and Society?  
Yes.  
The National Executive held monthly meetings from January's inaugural meeting down to June?  
Yes.  
Whose function was it to take minutes at those meetings?  
I did.

40 When did you write them up?  
I always take notes during the meeting and drafted them out afterwards. The minutes of the first meeting prepared by you in that way?  
Yes.  
Did you write up all the monthly National Executive meetings by writing them out after the meeting?  
Yes.  
During the six-month period, were the minutes read at the following meeting or that sometimes omitted?  
Omitted for first three meetings.

50 Why?  
Partly by lack of time.  
Renneberg in his affidavit says that the minutes were never read. What do you say about that?  
Incorrect.  
During the period between March and June, 1967, did you have a disagreement with KLM and with Dubois and Renneberg over patronising KLM for Group Travel?  
At a later stage.



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Nearer June than March?

Yes.

You thought you could obtain a better service for group travellers through other airlines?

Yes.

Did the National Executive Committee direct you to put all your bookings with either KLM or CPA?

Yes.

What did you do about that?

10 Prior to this Group Travel, this agreement was some dissatisfactory with KLM about certain things, and we asked Mr. Van Dongen, the Manager of KLM for New Zealand, for clear up certain matters between KLM and the Oranje Society, and we have asked him to get the General Manager from Australia now for New Zealand. That time he was very committed and couldn't come to New Zealand, so KLM offered me to go down to Sydney. This was discussed with Renneberg and Dubois, who said if you can afford the time go to Australia.

These points relating to number of stop-overs?

Not at that time.

20 What was the problem?

Doing several things for the Society, bringing out group of artists and also a comedian. After this first Windmill Post publication, out I went for four or five days to Australia, had discussions with KLM head office and several committees in Australia. They agreed after all to bring out to Dutch clubs in Australia, this Dutch comedian and also we discussed . . . Later on you had a disagreement with them?

Yes, also discussion about more stop-overs for our flights.

Disagreement with KLM about stop-overs?

Yes.

30 Changed bookings to some other airlines?

By changing to other carriers we could — our members could get more free stop-overs. Before I did this, I rang Dubois and asked his opinion because KLM were getting less revenue out of the Society. He agreed, saying that KLM were not sticking to their work. We on our part had no obligations either. Then I lodged an application for the groups which provided seven stop-overs. After that KLM told me also possible for KLM to give stop-overs, especially one in Bangkok.

These differences — can you tell us briefly what led to your resignation as Secretary of the National Society?

40 Several matters. The one was concerning about the Group Travel, Mr. Van Dongen, KLM, out of a meeting in his office invited Renneberg and Dubois. I was not invited, being Group Travel organiser or as Secretary of the Society. On the next Committee meeting the Committee demanded to cancel the flights I had booked and referred back to KLM and CPA only. I told them it was in breach of the truth with the travellers. Breach of faith, I mean. They had received their itineraries and paid me, and if I had to refer back to KLM and CPA only they would only have three stopovers — two free. I pointed out, of course, KLM being our national carrier it is only possible for the groups after July to change back to this itinerary. Dubois and Renneberg were not happy and I told them if they were prepared to send approximately 120 members a letter explaining and answering complaints on telephone they could alter back to KLM. They pointed out as I was Group Travel organiser that was my responsibility. Other things came in, and I was accused of a lot of things. They started to pinprick and telling me that I was not good as a Secretary and I learned that Renneberg had been in contact with the Federation who arranged a meeting in Wellington.

50 Do some of the differences that occurred between you and the Committee set out in minutes of meeting of 8th June?

60 Yes.

Did you receive a later notice from the Society saying a meeting was to be held to have you removed as a member?

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- I received notice. We had a Committee meeting on Wednesday afternoon and another letter delivered by Miss Leenman to my place on Friday afternoon for a meeting to be held that evening, I presume at Renneberg's place. At Friday night didn't come home for dinner, and was unaware of this short notice meeting, also that night two groups were leaving for Holland and as the Committee know, especially Dubois, I always went to the airport to organise the groups, so I could not have attended this meeting. Then on Saturday afternoon Miss and Mrs. Leenman delivered the letter, first to collect money from group travellers, then they left the letter behind that at the previous meeting, the night before, it was decided the Committee put a vote of no confidence. I could attend another meeting on the Monday night to remove me from Secretary of the Society.
- 10 You prior to that meeting sent in your resignation?  
Yes, I discussed it with Griffiths, and he . . . I recall — I went to see my solicitor, Mr. Haynes. He drafted a letter on Monday morning. I discussed the whole situation with him, which was sent to Dubois. I sent a letter to the Auckland Club of resignation.
- 20 So much for the National Committee. You attended on 18th March a general meeting of the New Zealand Netherlands Society?  
Yes.  
That was the first general meeting the Society had had since it had become incorporated in January?  
Yes.  
Were you at any stage asked to leave the meeting whilst matters were discussed?  
Yes.  
That relating to what remuneration you should be paid?  
Yes.  
When you returned you were offered a sum of money for being Secretary of the National Society?  
30 Yes, a sum of £550 per annum was offered.  
You accepted that at the time?  
Yes.  
Was any date fixed for the commencement of this?  
No.  
Prior to your resignation, did you discuss with Renneberg receiving your salary?  
Yes. I asked him when it was going to be started.  
Have you at any time received your salary from the Society?  
40 No.  
Did Renneberg suggest a date when your salary could commence?  
He said on the telephone 1st January 1967. I didn't agree with this, and asked him to start it on a new Club financial year which started on 1st July.  
Been suggested that you didn't take your salary because you could get more out of Group Travel for the six months January to June. Have you in fact worked out what the difference would be?  
Not at the time, no. Renneberg sat down and he started working this out. I told him I was not interested and I thought it was too much bother to  
50 start paying me 1st January, even before the Society formed and delegates had approved it.  
Now in light of suggestion made, calculated what six months' salary at £550 and 30/- per Group Travel member would be?  
Yes, first time I worked it out was this morning.  
Is there a difference?  
(Witness refers to notes.)  
1st January to 1st July 1967 would have been \$670.  
Your salary would have been \$550 for the same period?  
Yes.  
60 Was the \$3 per person a gross amount, out of which you had to pay tax?  
Yes. As I now understand it, I would have had to give up my Group Travel income in exchange for this salary.

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- Were you told at the meeting whether you would have to give up your Group Travel arrangements?  
No. Not in March.  
Was it discussed as far as you were aware whether the \$10 charge to the traveller continued and the Society received it?  
Yes. I think one said to increase it, but they decided to leave it at \$10.  
At that meeting was a vote of confidence in you passed as Secretary?  
Yes.  
10 Was the difficulties that were being experienced with another national group, the Federation, were they the subject of a meeting on 16th April 1967 at Wellington.  
Yes. Conciliation meeting.  
Who presided at that meeting?  
Mr. Stadtman and also Mr. te Winkel. Immigration Attache was present.  
Mr. te Winkel — Mr. Stadtman acting in chair?  
Yes.  
What was his position then?  
First Secretary and Acting Ambassador.  
20 Know anything about his qualifications?  
I believe he was a doctor of law.  
He sent a resume of the discussions that took place there to you and Dubois and Renneberg?  
Before he sent out his resume te Winkel rang Dubois and read out what they had drafted out. Dubois was not happy with this letter and they discussed over the telephone several points. Then he sent the resume to Dubois, who kept it in his possession for several weeks. I was approached by te Winkel by telephone that he could please get ours rectified if necessary back and when he had changed it for Federation he would draft out a new one for us before signing. This resume Dubois took it to one of our meetings and discussed it point by point. First resume Dubois received. I didn't receive it. Dubois had only copy. That had in it, paragraph 7, "The newspaper ... this matter" (Dubois' affidavit).  
30 Both organisations being National Federation and Oranje Society?  
Yes.  
Do you now produce copy that was — original that was in Dubois' possession in Dutch?  
Yes.  
40 Some red ink writing on that paper, in handwriting of Dubois?  
Yes, he discussed it point by point and he made the alterations.  
JUDGE: Did you understand that the resume sent to Dubois was the same as Mr. te Winkel had read over the telephone?  
It was because Dubois had been unhappy that te Winkel re-typed it, sent it to Dubois — he had it for several weeks — and then it was discussed point by point at one of our National Executive Committee meetings.  
It is this that you've now got?  
Yes.  
Which you believe to be the thing which Mr. te Winkel re-typed?  
Yes.  
50 COUNSEL: Who was at this meeting of April, with the Ambassador?  
Mr. Kempstra from Invercargill, Mr. Klap from Dunedin, Mr. Obers from Invercargill, Mr. Dubois, Renneberg and myself.  
Pursuant to His Honour's question about the telephone conversation that referred to in Exhibit D of Mr. Dubois' second affidavit?  
Yes.  
Going on to say that comment in red ink in handwriting of Dubois?  
Yes.  
Why are there three diagonal strokes across the page relating to Windmill paper?  
60 Those were made by me, because I thought although it has been discussion on this we, but not on agenda, it — this was not on agenda for meeting — it came in in conversation.

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- During your discussion with Mr. Dubois discuss clause 7?  
Yes we did. He felt because we talked about it in Wellington that we should leave it in, then they objected to the way it was phrased. He said that is why I had this telephone conversation with te Winkel because as Dubois explained it. as Ambassador - Embassy language it could go both ways, that is why discussion beforehand about that point. This clause about Windmill Post was exactly the same, saying my private property, and on the other hand it was saying only for six months.  
Those deletions that appear on the copy you are about to produce, are in your handwriting?  
10 Yes, all those points were discussed except point 7, and as I read them out we altered the sentence.  
Renneberg there on this occasion?  
Yes.  
When you were discussing this and Dubois made these written comments?  
Yes.  
After this meeting, during meeting with Renneberg and Dubois, were the alterations you said you made, made in their presence?  
Yes.  
20 Did you send the document back amended, typed out in Dutch, to the Ambassador?  
Yes, I gave it to the typist and mailed it back.

JUDGE: You gave it to the typist in your capacity as Secretary?  
Yes.  
You had a copy made and off it went to Wellington?  
That's right.  
(Exhibit C.)

COURT ADJOURNS: 5.10 p.m.

TUESDAY, 11th NOVEMBER, 1969.

- 30 COURT RESUMES: 10.15 a.m.
- After the March general meeting I think you had a conversation with Renneberg?  
Yes, I did.  
Did that — in that conversation did Renneberg suggest to you that Zeeman and Inglese were interested in taking over the President and Secretary of the national organisation?  
Yes. They came to my place in March or early April to warn me that he had had a visit from Zeeman at his residence. I indicated to him that they were both proposing to stand at the next election in October as President and Secretary. I was not very much concerned about this and told them if they were prepared to take on this job I was happy for them to do so. He said, "Yes, but you will be out and that is why I have come here to tell you, although Zeeman told me to keep it confidential." He also mentioned that whatever visitors or business people got at his place, his wife never made any remarks, but this time she did and Zeeman left. I told him I was not that worried and that I still had Windmill Post if I was in any way out-voted at the next general election.  
40 Renneberg says that he visited you in March of 1967 and discussed your secretarial position and matters relating to editing and publication of the Windmill Post, failure to keep proper minutes, and the fact that the arrangements which were to be intimated were only for a limited time and could be changed at any time, and for this reason you should remain in other employment as the Society could not be called upon to give you full personal employment as editor of the Windmill Post and Secretary of the Society. What do you say about that?  
50 He mentioned it to me, but not on that night.  
When did he discuss that?  
I can't give you the date.

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- Did you have — was this at the same time you had a discussion about the Windmill Post, that discussion and this one at the same time?  
No.  
Elaborate on that — accept that's what he said to you?  
Yes. But not on that night, when he came out to my place. I was fully aware that the Society would never employ me full-time.  
How did you feel about the Windmill Post?  
I told him on that night that if I was out-voted at the next general meeting I would carry on with the Windmill Post as Mr. Willemsen had done for the past 15 years when he has been issuing the New Zealand Hollander.  
10 Had the New Zealand Hollander ever become for any time the official publication of the Netherlands Society?  
Yes. Before I was Secretary of the Society the Oranje Society had a contract with the New Zealand Hollander for about four to six months. The New Zealand Hollander had included the Society's news in their bulletin for that period.  
How long a period was that?  
  
JUDGE: Was that four to six months immediately before?  
No, it was years ago — I think in 1960.  
  
20 COUNSEL: You were aware of this in December 1966 and January 1967?  
Yes, from records of the Society and from Mr. Dubois I was also aware of it.  
JUDGE: Had the Holland Bulletin been in existence at that time in 1960?  
Yes, and after they stopped this arrangement they started again with the Holland Bulletin, and Willemsen carried on with the New Zealand Hollander.  
COUNSEL: When you formed the company known as Windmill Post Limited, you and Mr. Griffiths were equal shareholders and directors?  
Yes.  
30 Did you assign to the new company the newspaper and other assets you had under the name of Windmill Post?  
Yes, the name, copyright and the take-over from the New Zealand Hollander.  
What was the consideration for that?  
The name £5, New Zealand Hollander £100, and not sure about the copyright.  
These all regarded as assets of the Windmill Post?  
Yes.  
There is a resolution to this effect?  
40 Yes, a resolution and minutes of the company.  
You approached the Dutch Australian Weekly to get copyright from them to get news?  
Yes.  
How much did you have to pay for that?  
For the first 12 months \$125.  
Any part of that paid in the initial stages?  
First initial, \$75 and \$450.  
The first payment of \$75 was made in January or February of 1967?  
50 I think it may have been in March. I had discussions to take over the copyright from this Australian Weekly and stayed a couple of days in Sydney, and also visited them again in February.  
When the Committee of the National Executive became aware you had purchased the New Zealand Hollander for £100, did they ever offer to pay you for that or refund you the money?  
No, it was not their concern.  
After six months' trading as the Windmill Post before incorporation, your accounts show a net profit of £13.1.8. Is that right?  
Yes.  
That was after all initial setting up expenses had been taken into account?  
60 Yes.  
That regarded by you as satisfactory?

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Yes, very good. Because I realised to start something or a business for the first six months always have to carry it at a loss.

Since that time you got one set of accounts out for the year ended 1st July, 1968. That right? Yes.

Have you made a loss there of \$5947?

Yes.

You continued on with the publication of the Windmill Post right down to the present time?

Yes.

10 Had to reduce number of pages of it?

Yes.

To what do you attribute this large loss?

Loss of advertising, because the advertisers when approached by officers of the Oranje Society had been asked not to support me but to support their own publication. I had been carrying this newspaper for eight or nine months without any advertising and as the financial burden became too heavy I had to reduce four pages.

As a result of the confusion between the two newspapers, have you lost subscribers to your paper?

20 I lost subscribers.

Did you lose all the N.S.O. members?

Yes. At the last meeting of the Oranje Society, Renneberg cancelled the contract because I wouldn't sign that the Windmill Post belonged to the Oranje Society. Then he made a statement that now I cancel the contract and he can sue me if he wanted to. On top of the loss of advertising and income for the Post from the Oranje Society I also lost individual subscribers.

Have those subscribers presented any reasons to you? (Stopped.)

#### CROSS-EXAMINATION:

30 You describe yourself as a company director. Tell the Court what you do to make a living?

At the moment—I make a living from insurance, from a company, Broadway Health Clinic.

What sort of insurance—selling side I take it?

Life insurance, fire.

With which company are you an agent for in life insurance?

At the moment I'm not for life insurance. I have got connections. Deal through agents for life insurance. An agent for Neville Newcombe and Cornhill Insurance Company.

40 Was that the same as what you did in 1966, this selling of life insurance for Neville Newcombe and Cornhill?

Yes, life insurance.

I think you would agree with me, that the purpose of the Netherlands Society, or both of them, is primary that of a social and cultural group or club. Correct?

Yes.

With elected officers in the main giving voluntary services. Correct?

Yes, sometimes.

50 And that both Societies are very different from being profit-making companies?

Yes.

In fact as Secretary you would know that the objects of the defendants are set forth in its rules?

Yes.

You would recognise the documents that I now put to you as being firstly a certificate of incorporation and secondly a copy of the Society's rules? yes.

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(Exhibit 1 — Certificate of Incorporation.)

(Exhibit 2 — Society's Rules.)

Every officer in participation of the Society would have it as his duty to fulfil these Society's objects as set out in Rule 4 in the manner provided in the rules generally? (Objection.)

They are rules?

Yes.

I think you would agree with me, that every officer of the Club, although the rules may not prescribe it, is required to act constitutionally — Secretary, for example, takes instruction from his Committee. That correct? And even if the rules aren't specific, such things as loyalty to the organisation, not competing with it for example, that would be taken for granted, would it not?

10

Yes.

You would not expect any officer to enter into competition with the Club while he was an officer, would you?

It all depends what you mean by competition.

Well, would you agree . . .

Being a social organisation and not a profit-making one, how can you talk about competition.

20

I put it to you that you can have competition between social clubs and that has been the case within the Dutch community in New Zealand.

Is that right or wrong?

I don't call it competition.

As Secretary you would be the person most informed about the organisation's organisation, membership, contacts, source of funds and general management. You would be the organisational brains. Correct?

Yes.

Would you agree that in that position you have duties of trust and confidence placed upon you?

30

Yes.

This would be partly the case in regards money matters, would it not?

Yes.

Would you agree that making a profit out of your office as Secretary, in an underhand way, would be contrary to your true obligations to the Society? (Conceded.)

Would you agree that demanding or taking a secret commission for, e.g., from an airline by you or, say, your wife, without disclosing it ever to the Committee or organisation would be grossly improper?

40

No, I don't think so.

Would you agree that to approach a Society supporter requiring a personal profit or bribe would be grossly improper?

That is improper, yes.

You've done that though, haven't you?

No.

Both those things, asking a bribe from a member and taking secret commission from an airline, you or your wife? Have you done either of these things?

My wife had an agreement with the airlines — that is totally different. Until June 1967 your wife, as a matter of fact, was in receipt of somewhere in the area of \$50 per month from KLM, was she not?

50

Yes.

This was never disclosed to any member of the Committee on which you served as Secretary?

I don't think so. I didn't think it necessary to inform them of my wife's agreement.

In answer to Mr. Heron yesterday you told the Court that in relation to Group Travel you did all the work. Is that not what you said?

Yes.

60

This \$50 per month, it ceased as a matter of fact as soon as you ceased to be the Oranje Secretary in June 1967?

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Maybe a month or two months afterwards. The contract was for monthly cancellation on both sides.

It is correct I think that you and your wife and family for that matter have visited Europe at airline expense?

Yes.

That was known to your Committee members,, who raised no objection. Correct?

Mr. Dubois knew. I don't know about the others.

10 In fixing your remuneration of \$3 they did not know that Mrs. Kuys was receiving a monthly payment because they were never told?

They could have been told because this agreement came about three years after \$3 was fixed.

Did you not go in the company of Mr. Griffiths to CPA to see Mr. Prentice in June 1967?

Yes, I did. I think June.

Did not you and Griffiths ask of CPA that some valuable consideration should be afforded to you for the patronage that the Oranje Society directed to CPA?

No.

20 Did you and Griffiths seek a bribe from CPA?

No. We went to make an arrangement, not a bribe.

Prentice I will call now, and I would like you to tell the Court what arrangement you tried to make?

30 Before we departed to Holland the Committee always expressed the wish to get these artists out to New Zealand or even a big orchestra, and asked me while I was overseas to arrange something for the Society. I spent a considerable time of my ten-week stay in Holland. I think this must amount to nearly over two weeks—went round the country to make arrangements for artists, concerts, sculptures or exhibitions to get to New Zealand and Australia. As I said, I spent a considerable time, not including cost of transport, hotel accommodation in The Hague and Rotterdam. Eventually I succeeded to get a group of artists willing to come to New Zealand and Australia in July - August the next year, 1967. When I came back I discussed this in committee. They looked at the plans and thought they couldn't take this kind of risk. I told them you can't expect a group of artists and orchestra coming out to Australia and New Zealand for only a couple of hundred pounds, so they advised me to go and get in contact with Kerridge Odeon because he had facilities and theatres to handle this kind of group. They were not concerned about making money out of it as long as the members or non-members that this party was arranged through the Oranje Society. I was very disappointed about this, that I had spent so much time in Holland trying to arrange this group. Then I saw Mr. Clover of Kerridge Odeon, but they were not interested. I also approached Benny Levin, Auckland entrepreneur. After having not succeeded with those two parties, I discussed it several times with KLM and it was left by the Committee and especially by Dubois at that. So then, after six months and having discussed it we then went to CPA and put forward, Griffiths put forward a proposition that I could get a set of artists out by way of advertising on milk bottle advertising.

40 50 Mr. Griffiths, he's not a member of any Dutch Society, is he?

No.

He's not an officer of any Dutch Society either?

No.

Business partner of yours. Correct?

Yes.

What was he doing going to CPA with you on behalf of any Oranje Society?

He was not going on behalf of the Oranje Society. Did I say so?

Was he on his own account to promote his business or make some money?

60 No. He realised that this whole undertaking would cost money, but he was prepared because I was so determined after all the time and money I had spent to get this group to Australia and New Zealand to help me.



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Was he helping you on this occasion to help the Oranje Society, or helping you to help yourself?

Altogether. Oranje Society, me, all members.

JUDGE: Was it to help you for the pleasure you would get of seeing this scheme come off, or the profit you would get from the scheme?

For the pleasure, not the money, as we both thought we would lose on it or break even.

10 COUNSEL: Mr. Prentice in his evidence will say that you and Griffiths went to him to obtain personal gain by virtue of your proposition as Oranje travel organiser. You would say Prentice was lying?

No, I wouldn't say that. After all, with any position there could be a profit in it.

You know that Prentice, after you and Griffiths called on him, immediately complained to Dubois, the President of the National Society?

No.

You know that your Committee gave you its specific instruction to retain the national Dutch airline and CPA travel arrangements, in face of your opposition?

Yes.

20 You said yesterday that the money for Group Travel was paid to you?

Yes. In most cases cheques were made out to me or people came to my home and paid cash.

Your attitude in relation to the Society was that all moneys in connection with Group Travel were paid to you in your private capacity?

They made it so, the Committee did.

That's what your solicitor also said of 5th July 1967 which is in evidence that "any moneys paid to our client in his private capacity"?

It was a private arrangement, yes.

(Exhibit 3.)

30 I put it to you that the original arrangement is contrary to what you've said, that it probably constituted a meeting of the Society in 1965, you and Mrs. Kuys were authorised to open an account under the name of Netherlands Society Oranje Group Travel Account. That is the true position?

Yes. Because it was required by the bank to have an account opened, the Committee didn't want to have anything to do with Group Travel and I was told over and over again by the Committee and Dubois that it was my baby and I was to look after it. They were not prepared to give me a hand to write, answer or collect money or anything else. Every group  
40 who left for Holland I went to the airport and it wasn't until the seventeenth group left, which was a full plane, by CPA, that 39 members aboard, that I told Dubois it was his duty as President of the organisation to be present when such a large amount of members left the country. It was the first time he ever came to the airport. The second time was a month later because I left with the family and I didn't see him afterwards any more.

Was the fu — were the funds for Group Travel held in a private account or Netherlands Society Oranje account?

Both a private and a group account.

50 JUDGE: Two accounts?

I had a private account as well, yes.

COUNSEL: I show you a document which has your signature on it dated 1st September 1965. That is your signature?

Yes.

(Exhibit 4.)

I put it to you that that was a Society's bank account, was it not?

No, not in that sense, sir. It was only opened to clear the cheques.

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JUDGE: What cheques?  
For the Group Travel.

COUNSEL: Would I be correct for, e.g., a donation of £250 — I show the cheque from KLM Dutch Airlines on 15th December 1966 was received by you?

Yes.

(Exhibit 5.)

Did you pay that donation into your personal account?

Yes.

10 Would I be correct that you sold a KLM complimentary ticket to Mr. J. M. Kampsters of Te Awamutu for some £336.10.0?

Yes.

Did you pay that into your personal account?

Yes.

Would I be correct if I refer to the balance sheet of the . . . auditor of the Netherlands Society Oranje tagged the Society's balance sheet due to lack of information and that is referred to in the printed statement of account? That is not correct.

20 Is this document I put before you the balance sheet of the Netherlands Society Oranje for the year ended 30th June 1966, and the printed signature of A. A. Kuimat that of the Society's auditor?

Yes.

That the balance sheet reads with a proviso by the auditor that no due to lack of information?

That is on the statement, but that is an incorrect assertion.

(Exhibit 6.)

Did you not through Mr. Haynes, at least in June 1967, decline to give an accounting in regard the moneys received by you into the Group Travel account?

30 Yes.

Is it not correct that the Society has never received accounts in relation to moneys you received as Secretary for Group Travel?

That's correct. I point out that I do not agree that I was running Group Travel in my capacity as Secretary because there was an arrangement made with the Society that I run it privately.

Were there not complaints made repeatedly by Mr. Renneberg, accountant, and other members of your Committee as to your failure to pass over the £250 donation and the £336 Kampsters finance?

40 No. One is correct, one is incorrect. Renneberg complained about the Kanters matter. The £250 received by KLM in December was discussed with Dubois and he advised me to bank it in the meantime because he didn't want it into the Auckland Club Society's kitty, but to put it later on in the new national organisation because as he explained the organisation was to start without much money. His idea was to get the £250 in the new National Society's funds when they got under way. When Mr. Van Dongen came to one of our meetings, March 1967, we discussed this matter and I think on that night Dubois wrote out a receipt for him. Later on this money was handed over, or I handed it over to the Netherlands Society. I held this money on the request of Dubois in one of the bank accounts, but never the intention to retain it for myself.

50 I would be correct, wouldn't I, that the KLM money was paid over finally in May 1967 and the Kanters money in June 1967?

That might be correct, yes.

That there had been considerable dissention within the Committee as to your accounting for moneys before you finally did?

It was only because of Kanters. There was substantial interest . . .

COURT ADJOURNS: 11.30 a.m.

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COURT RESUMES: 11.50 a.m.

10 The Society received two tickets from the KLM inaugural flight. When I received this notice I rang Dubois and he said straight away, It's very nice so I can send my wife to Holland. Mr. Dubois' wife. Then I rang Renneberg and told him about those two tickets available to the Society and also mentioned to him that I had been in contact with Dubois who suggested to use the one ticket for his wife. Renneberg said, You can't do this, it will have to be discussed in committee. He also mentioned if Mr. Dubois insisted on it, I think it's fair that the other ticket will be  
20 made available to you. I think a couple of days or week later we had a Committee meeting and those two tickets were discussed and agreed that the one ticket was given to Mr. Dubois' wife and the other ticket for me. I thought it would be all right because I was not really or my wife to travel personally on the ticket, to sell. In the meantime we also discussed with Dubois and especially Renneberg it would be a good idea to use the two tickets for member raising or fund raising. I was in contact with Van Dongen of KLM, and he asked me if I could get in contact with head office in Sydney. I think I had two or three phone calls, made them to Sydney, and after they had investigated this they informed me that only  
30 the Iata regulations it was not permitted to use it for fund raising or a membership drive. Later on they became aware, or I told them, that I had sold the ticket to Mr. Kanters, who couldn't participate in the Group Travel scheme because he wanted to stay where he was for nine to twelve months and he didn't have group flight for that length of time. Then Renneberg demanded because I sold the ticket to give back the money to the Society. I was not too happy about this because the ticket was given to me with no restrictions. I thought it was quite proper that I could dispatch this ticket or sell it or do what I liked, that why a little bit of discussion or argument, and in the end I gave the Society this money, also asking Dubois to put fines in the kitty for his ticket. Finance in the kitty in part for ticket, a contribution.

JUDGE: Who was present at the Committee meeting when it was agreed that you could have one of the tickets, and that Mrs. Dubois would have one?

Must be in May. Mr. Dubois present, me and Mr. Renneberg.

Three of you?

Yes.

COUNSEL: I will put it to you that neither Dubois or Renneberg ever agreed to your having the proceeds of the KLM ticket?

40 That's correct. I admit it.

This National Savings Account with the ASB in the name of the Netherlands Society Oranje Incorporated, would I be correct that there were very at various times, quite large sums of money in that account, up to \$10,000 and over?

Yes.

Would I be correct in saying that the Savings Bank on National Savings Accounts give interest to its depositors?

50 Yes. I seek interest for deposits, but to state that \$10,000 was in the kitty was only for a short period and was paid to me more or less agreeing that I use it within two weeks and write out and pay for group or groups. If I put it to you that as at 1st June 1967 the Savings Bank passed an interest credit of £65.8.10, would you dispute that?

No.

£62.12.4 in June 1966?

That's right.

Would I be correct if I said that the £100 paid to Mr. Wilhelmsen, owner of the New Zealand Hollander, was drawn by you and Mrs. Kuys from this Netherlands Society National Savings Travel Group Account?

Yes, that's correct.

60 Would I be correct that in saying you had at this time never accounted to the Society for any interest on the moneys that lay in that account? No, because I never regarded it as the Society's account.

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- Would I be correct in thinking that you had an account in the Rotterdam Bank in Amsterdam which has received Group Travel moneys?  
Yes.  
As an example of that, the amount of 8,500 guilders, what would that be in New Zealand?  
Roughly four guilders to the dollar.  
Was credited to your account in Amsterdam on 1st June 1967?  
No. I had no Rotterdam Bank arrangement.  
Did you receive into any bank account in Holland on 1st June 1967, 8,500 guilders?  
10 I don't know about those dates.  
I'm asking you . . .  
I can't remember the date when it was paid into my account or into what account.  
Have you not an account No. 5725105 personal account?  
Yes.  
In Amsterdam branch of the bank at Rotterdam?  
Yes.  
Did you round about . . . receive into that account 8,500 guilders?  
20 I can't remember at the moment. I can't say yes until I get the full particulars. I'm sorry.  
As Group Travel organiser or Secretary, have you not disposed of currency, overseas currency, from — received from Group Travel operations?  
(Objection.)  
Have you in connection with Group Travel sold overseas funds to any person?  
JUDGE: Have you had funds overseas which have come to you from Group Travel sources which you have sold to persons wishing to get money overseas?  
30 I decline to answer this question on the grounds that it might incriminate me.  
Griffiths paid moneys into the Group Travel account, Savings Bank, did he not?  
I don't know. Might be, can't remember.  
If I put it to you that on 2nd May 1967 you lodged a cheque in that account an amount of £800, would you dispute that?  
I don't know without seeing the papers.  
(Witness refreshed from bank deposit slip.)  
That is my wife's handwriting.  
40 That refers to deposit of £800 on 2nd May 1967 from Griffiths into the Oranje Savings Bank account?  
Yes.  
This Mr. Griffiths, you now tell us, was your partner prior to the incorporation of Windmill Post Limited. Correct?  
Yes.  
At the beginning of 1967 did you disclose to the Committee of either Netherlands Society that you had a partner?  
Yes, I introduced Mr. Griffiths to Mr. Dubois before my departure to Holland. But I can't say that I introduced him as my partner or not.  
50 You are already aware that Dubois and Renneberg say that as late as May 1967 you denied to them that Griffiths had any connection with the contract with the Society over the Windmill Post. Did you?  
I can't recall. It would be impossible for me to say no, I had no partner, because I was in contact with Griffiths all the time. I introduced Griffiths as my partner in January 1967 to Mr. Van Impelen.  
Renneberg will say you used in May 1967 a Dutch phrase equivalent to "On my word of honour", no partner?  
I couldn't have made that statement.  
In 1966 you were the Secretary of the Auckland Oranje Society?  
60 Yes.  
You had close experience of the Society's publication, the Holland Bulletin?  
Yes.

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- There was specifically a meeting in December 1966 concerning the future of the Society's publications and your future as Secretary, wasn't there? Could you tell me the date please.  
On 6th December 1966?  
I thought you would refer to the 6th December. It was not a meeting. It was an arrangement made by me issued to branches of what happened and what a general idea of me and the Auckland Club was going to happen. I would like you to translate for His Honour, paragraph 4 to affidavit of Miss Leenman of 4th December, 1968.
- 10 That is a satisfactory translation in paragraph 2. I agree with Miss Leenman's affidavit of paragraph 4 of circular of 6th December, 1966. I point out that those are not minutes as she says they are—a circular by me. Yesterday telling us of your plans and reasons for the future, if that circular was prepared by you, which I take it was?  
Yes.  
Would it not be fair to suggest that that is an indication of what you were proposing as to the future publications of the Auckland Oranje Society?
- 20 No. I don't think it was improper for me because it is still the Society was prepared to start on a newspaper. they could do so, but as the situation and the time prevailing in the Oranje Society when the Federation in the South Island was formed. Mr. Dubois and Miss Leenman had this information from August and the breaking of the different branches I thought it would be impossible for the Oranje Society to think about a newspaper now. I underline newspaper, and I mentioned in this circular on 6th December, I was referring to the Holland Bulletin type of thing. There had been complaints from Rotorua.  
Do you now appreciate that in relation to a publication, you can have a printer, publisher and an owner, appreciate that?
- 30 Owner and publisher is one I think.  
If you were the American owner of the Saturday Evening Post . . .  
I have not been in the publishing world, but I cannot appreciate such a situation.  
Mr. Hoeberigs, who you say with Mrs. Hoeberigs on 5th January 1967 complimented you on having something of your own, remember?  
Yes.  
Is that the same chap who pleaded guilty last year of 42 charges of uttering? (Objection.)  
Forty-two charges of uttering and forgery?
- 40 Yes, he was in Court for some trouble with the law, for forgery or something—don't know details.  
On 5th January, is it not a fact that from the very outset your publication at least in so far as it was on behalf of any Oranje Society, was limited both in time six months, and in amount, namely, maximum of £100 per month?  
Correct.  
As soon as the first publication came out, is it not correct that on page 3 under title Dutch for "Editor" you begin your personal message with a sentence in Dutch?
- 50 (Witness translates first sentence of four lines: "Success of your paper, Windmill Post, depends on great percentage of the advertisers because they guarantee the publication of this paper.")  
Under the editorial banner on page 2 you have something which is in both Dutch and English which Dubois wrote. Correct?  
Yes.  
In that first message Dubois, does he not, speak of the Windmill Post being a monthly newspaper which fulfils the promise made by the Society to its members at an earlier time?  
Yes. That is a free translation from the Dutch.
- 60 I put it to you that Dubois at this time, immediately after the meeting of 5th January, obviously considered the paper to be an Oranje Society service to its members by virtue of what he has said there?  
No.

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By the time we get to the May issue of the Windmill Post, still under your publication, am I not correct on page 5 where I find that under the heading of the Netherlands Society Oranje you have one box number and under heading of Group Travel by Air we have another box number and no reference at all to the Society?

That's quite correct.

Would you not agree with me that so far as Group Travel is concerned you were still acting as Secretary and Group Travel organiser of the Society in May 1967?

10 Yes.

This is the same time that you and Griffiths . . . In May, you and Griffiths, your partner, were visiting at least one airline?

Yes.

Would I be correct in saying that immediately following your resignation in June, you and Mr. Griffiths operated Group Travel facilities completely personally?

Me and Griffiths, no.

Have you carried on Group Travel?

Yes, not with Griffiths.

20 You have continued in the Group Travel field on your own personal account, have you?

Yes. (Objection.)

You have used the information and names that you got as Secretary to promote your own personal business in Group Travel?

Of course.

As a personal venture you circularised the members of the Oranje Society with both Group Travel offers and a publication?

Yes, most of them.

30 You said in your evidence yesterday that you didn't receive any payment for your secretarial work?

No, no salary.

I put it to you that it was as Secretary that you did the Group Travel work?

No.

In writing to KLM or to anyone you would sign yourself as you were entitled to do as Secretary?

Yes.

40 Would you agree that the trips overseas you made, including one to Holland and the one to Australia, were either paid for by the Society or because of your Society office?

Yes, partly both.

Would you agree that while you remained Secretary you had certain advantages not only in travel, but getting information for Dutch club promotional activity? When you went to Australia you went as Oranje Society Secretary. You claimed the fares from the Oranje Society, didn't you?

Yes.

And your presence there was made possible because of your office as Secretary?

50 Yes, as the trip was offered by KLM.

Don't you think that you owed some obligations to the Society to give it the benefit of what you found out when travelling at its expense? While you stayed in Sydney, stayed in hotel. Correct?

Yes.

Claimed on the Society for board and lodging?

Yes. Hotel first night was supposed to be paid by KLM, but they didn't. So you claimed on the Society?

Yes.

60 Having had the benefit of the trip and lodging, if you could find out anything about Dutch news wouldn't it occur to you that you were doing this for the Oranje it was paying you?

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News service arrangements which I might have made in Australia would be in February 1967 and by then Windmill Post was none of the Oranje Society's business, so I had no obligation to the Oranje Society for that, and it must be remembered that apart from expenses it was costing me money to be away from work.

You said yesterday that you were thinking about this newspaper idea in 1966. Do you agree?

No, 1965 — early 1965.

10 Would you agree with me that you were thinking of it because you were head of the organisation of a very large Dutch society which in turn had a national link up — that's what brought you on to it?

To the idea of a newspaper, yes. I think I explained it yesterday.

JUDGE: Because of your official position with the Oranje Society, that right?

No. It was because the Society had increased so much that I thought it was time to get a paper printed by a professional man.

20 COUNSEL: The windmill that appears on the first copy is one and the same windmill that is annexed to the affidavit of Mr. Van Impelen which the Society had paid out its members' money to have designed about 12 months before it went onto the Windmill paper?

Yes. It is the same windmill from the same printer.

You've no doubt read what Van Impelen said in his affidavit — that you had approached him in 1966 as to a newspaper for the Society. Remember him saying that?

1965/1966. He was unable at that time because he couldn't print it.

Van Impelen says that because of the Society's interest in a newspaper communicated by you as Secretary, that he ordered a bigger press?

I'm confused. I went to Mr. Van Impelen for the Society late 1965 or early 1966. I thought you were referring to that.

30 I am referring to the period after you came back from Holland in 1966 and Van Impelen says that you approached him about the production of a newspaper for the Society and that he or his company proceeded to get a bigger press to be able to do the work?

No, that's not true. I never approached him and never mentioned about the press.

COURT ADJOURNS: 1 p.m.

COURT RESUMES: 2.17 p.m.

40 In 1967 — you said in evidence yesterday, that shortly after the meeting in Auckland on 5th January 1967 you went to Renneberg's and he took information from you relative to the formation of the company. Is that what you said?

Yes.

I will put it to you that the correct position is that Renneberg was brought into the Society at your introduction actually?

Yes. His only accepted or proper qualifications at the time he came in was that of accountant as you described him.

He wasn't then a solicitor?

Yes.

50 That it was not until after a couple of issues at least of the Windmill Post had been published that Renneberg had any discussion with you in, so to speak, a professional nature, and those discussions turned on the question of your tax returns, Renneberg being something of an expert in that field. Might that be correct?

Yes.

He did take from you the names and ages of your children, but if he were to say his preliminary interest was on account of taxation and children, being matters that are important for tax deduction, that could well be right?

No. Not for ages. This particular meeting was to form the company

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and bringing my wife and children as shareholders.

Asked the ages of your children?

Yes.

The ages of your children, I put it to you, were wanted by Renneberg if he was to help you with tax matters?

No.

You told us quite a bit yesterday about having written to KLM, I think other advertisers, and the Post Office, all on Oranje Society notepaper, in regard to the inception of the Windmill Post. Remember?

10 Yes.

It seems to be a fact that regardless of this dispute as to who owned the Windmill Post it came up in official business of firstly the Auckland Oranje Society and then the National Oranje Society, and thirdly the meetings at Wellington and Poenamo of the National Dutch Clubs. Would you go along with me at least to this extent that the National Society and Dubois and Renneberg and Miss Leenman, as soon as anything happened in the paper that they didn't like, or as soon as the disagreements between you and your Committee began to occur, were at all times vitally interested in the future of the Windmill Post, it was a constant source of discussion.

20 Correct?

Yes.

Would you also agree with me that in the year 1967 Renneberg on a number of occasions expressed unhappiness with the way in which you were treating Group Travel funds as though they were your private responsibility?

Yes.

The success of the Windmill Post, I think you've agreed today, appears to be largely dependent, if not totally so, on the support of the advertisers who, in turn, are the airline and travel agent folk?

30 In general, yes.

Had you reached any clear-cut agreement, on the 5th January, with anyone? Wouldn't the natural thing for you to have done to be to tell these advertisers that there had been a complete change from the situation as it had gone on for some time and the situation as you now claim it to be? I did so, verbally.

Have you seen what Van Dongen has said in his affidavit?

Yes.

40 Say that he is not telling the truth? (Counsel reads from 4th December 1968 Van Dongen's affidavit, paragraph 10.) "Had it been made to appear such a journal."

How could Van Dongen think that if your evidence is that you told him that it was your own newspaper?

50 I went to Van Dongen's office and I discussed it with him, the layout for the new advertisement, and also his secretary, Miss Nola, changed the nameplates what they used for sending out the KLM news. They took out the nameplate of the Holland Bulletin, Box 2738; the nameplate for the New Zealand Hollander at Glen Eden, and they were going to make a new nameplate for the Windmill Post to the Post Office Box 199 which I had opened in Avondale in early January. About a week later I got a copy from Ilott Advertisers for KLM about a half-page KLM advertisement for the first issue. I showed it to Van Dongen and he was happy with the layout, and also present were there Miss Nola and Mr. Bakker, who is a representative of KLM. Something strike Van Dongen in the advertisement because the advertisement read as follows: That KLM congratulate on issue of this new publication. He mentioned how could I congratulate or who, I should put down the name who to congratulate. Then he inserted the publisher or the publishers. If he thought it was the Oranje Society newspaper he certainly would have inserted congratulate the Oranje Society. In addition I discussed this with Mr. De Roo, travel agent of Complete Travel Service, and with Mr. Billington of CPA. 60 As soon as you ceased to be Secretary, you ceased also to receive his patronage. Correct?

Yes.



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The same goes for CPA?

Yes, only KLM had a contract with me for 12 months. I also point out to you that KLM for years never advertised in the home bulletin and asked by several secretaries of societies that they were the national carrier and they should support this publication. Until 1964 when I started a formation of group flights.

Is it not correct that the Holland Bulletin was specifically referred to at a meeting of the Auckland Society held on 23rd January 1967?

I don't know.

- 10 I put it to you that at that meeting advice was given to the Auckland Committee, following 5th January, that a paper would be published instead of the Holland Bulletin. The cost would be borne by National Council funds, the trial period to be six months. Would you agree that that was the advice given to the Auckland Society?

Cannot recall.

Remember that Mr. Tyrans was then appointed as delegate of the Auckland branch to the National. Remember that?

Yes, that's right.

You at that meeting?

- 20 I must have been at that meeting.  
Remember telling the meeting that Mr. Wilhelmsen had handed over the New Zealand Hollander to Oranje?

No.

As soon as the paper was published, remember people, including Renneberg, objecting to the statement on the masthead on the front page of the newspaper referring to the Post as being a New Zealand independent Dutch newspaper?

- 30 No. The discussion about this happened while I was out of the room at the March meeting in 1967, I think by Mr. Millward of Napier. He first drew the attention of this word independent in the heading.

I put it to you that in point of fact this question of the title was raised at a meeting of the Auckland Society on 23rd February 1967? Would you deny that? Do you remember a meeting on 23rd February at Rembrandt Hotel, Auckland?

Yes.

Were you present at that meeting?

Can't hear.

Mr. Ankersmith acted as Minute Secretary, didn't he?

Yes.

- 40 I put it to you that immediately following the first publication at that meeting the Auckland Society raised objection to any implication from the title New Zealand's Independent Dutch Newspaper?

No. As I pointed out, the first I can remember of the discussion took place over "independent" in the March.

You told us yesterday, in regard to the postal permit situation, your explanation of writing to the Post Office on Oranje paper was that you had come to a special arrangement by ringing Dubois because of shortage of time. That's your story?

Yes. He had no objection to using it.

- 50 You were present when Dubois was thought to be going overseas and cross-examined?

Yes.

Nothing of that line of explanation was suggested by him, was it?

(Conceded.)

Where do you say you rang Mr. Dubois, to what place?

At work, I think. I was always in contact with him over the phone because we lived so far apart.

Who actually paid the postage pursuant to the permit?

- 60 There is no, as far as I can recall, any payment made for the permit, but I paid 5/- for the registration fee.

Does this mean you get your papers sent out, all of them, at no charge to yourself other than the 5/-?

No. Still had to pay for each newspaper you bring in, pay postage on it.

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- JUDGE: Who paid for the bundles of newspapers when posted?  
I did.
- COUNSEL: By the time you got to your second issue in March there was a meeting, was there not, of the National Council of the National Oranje Society 18th March?  
Yes, in Auckland. This was the first official one.  
There is here a cyclostyled four-page document at least purporting to be minutes of that meeting?  
Yes. At this meeting we had Mr. ——— taking notes.  
10 Miss Salmon, wasn't it, from Earl Kent Massey, wasn't it?  
No.  
On page 3 it is recorded that it was decided to offer you as Secretary \$1100 per annum, with the proviso that amount would be revised at every general meeting. That's the same as your evidence yesterday?  
Yes.  
Then goes on to say, "It was resolved and agreed . . . Windmill Post." Do you accept or dispute that as a record of the meeting?  
I dispute this record.  
20 Dealing first with the \$1100.  
That's correct.  
Wouldn't it also be right, that if that was in lieu of \$3 a time for group travellers?  
That was not mentioned at all.  
That it would have spread your income quite nicely through the year, that \$1100 for Group Travel would have spread your income instead of you having nothing much in the middle of a Dutch winter?  
If I had accepted and would have been elected in October, it would have had that effect.  
30 I would be right. I suppose the northern winter, say February, would not be a good month for travel from New Zealand to Holland by way of group journeys?  
Yes, that's correct.  
So that Renneberg's proposal to you after this March national meeting had its good sides so far as you were concerned if your viewing the position as and from March when the meeting was held?  
Financially yes, but not in principle.  
On 16th April you told us yesterday there was the meeting in Wellington under the auspices of the Dutch Consul?  
Yes.  
40 You once again travelled there on Club business, at Club expense?  
Yes.  
You've read no doubt the affidavit of the gentleman from the South Island, Mr. Klap?  
No.  
He was there at that Wellington meeting, wasn't he?  
Yes.  
I can tell you that Klap is not going to be cross-examined in this Court because there has been no request for it here. (Objection.)  
50 He was there at Wellington on the 15th and he says that at no time at that meeting did you ever say that you owned the paper. You disagree with him I take it?  
Yes.  
Would you agree that ownership of something is an indication that something is yours for as long as you want it till you give it away or sell it?  
Yes.  
You had discussions with te Winkel about this time about the varying records of the Wellington meeting. Correct?  
No.

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- You now know which of the two versions Dubois considers to have been the correct one and you disagree with it, you disagree with Dubois in putting a qualification on ownership for six months as far as you are concerned. That's wrong?
- The one we crossed out, yes.
- The one you crossed out?
- Yes. (Objection.)
- Yes. (Objection.) I do not agree that the six months' limitation applied to ownership. It applied to the period for which they would buy from me in bulk.
- 10 You do agree that the maximum personal reward you would get out of the Society for six months, first issue February, was £100 a month?
- Yes.
- You also agree that quite early in the piece Renneberg, as he said, indicated that if the arrangement was to continue it would continue, but the price would have to come down to, I think he said, 9d. Remember that?
- No. It was not stated that way. It has been discussed at the 5th January meeting that I could reduce the price to 9d. per copy or even so if possible to 8d. at the loss at that time, was the Holland Bulletin to the Society.
- 20 But Mr. Hoeberigs pointed out that it also could be possible instead of decreasing the price after six months, I had to increase it to cover the cost. Renneberg is going to say, has said already, that from back in January to your resignation, he wanted there to be a proper contract drawn up between you and the Society and that you could go to your solicitor to get that done. That would have been the sensible thing to do, wouldn't it?
- Yes. But he mentioned that at a much later stage. And if I can remember rightly he was asked by delegates to do this — Mr. Hoeberigs to do this. You say that was at the first meeting of delegates at the National Conference held on 18th March?
- 30 Yes. I had been waiting for the articles for this limited company, was going to be discuss with Renneberg, and also the contract for this newspaper, but, as he stated in March, it was left over to the meeting because he didn't want to enter into a contract to put in delegates at the fait accompli. Then I realised that something had to be done and I went to an accountant, Mr. Brown, of Maybee Halstead and Kiddle, to get the articles for the incorporation on the way.
- Do I understand you correctly, then, that you got some principles agreed upon on 5th January and Renneberg then said we will leave off having a contract till the national delegates meet, and then when the national delegates met it was decided that there should be some sort of proper agreement?
- 40 No, never mentioned.
- Weren't you telling me that Renneberg didn't want the national delegates confronted — a fait accompli?
- That is correct.
- Didn't you also say at that stage Renneberg wanted you to enter into some proper form of written contract?
- No. Renneberg was told by delegates to do this.
- 50 Your accounts will doubtless be compared with other accounts during the course of this hearing, and there is an item, so I've been told, of expense in relation to Group Travel. You may recall in your accounts 30th June 1968 — Windmill Post accounts — you make a reference to \$478 administration charges received. That sounds like Group Travel, doesn't it?
- Yes, that's right.
- That's Group Travel, is it?
- Yes.
- For some little time you weren't able to indulge in Group Travel I believe?
- Yes.
- 60 After you resigned as Secretary?
- Yes, that is correct.

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The company had quite high expenses in this same period of \$504, for example, on telephone and tolls. When one compares these accounts with the Society's accounts, telephone and tolls appear to be primarily a Group Travel thing too in the Windmill Post Profit and Loss Account?  
They wouldn't be primarily Group Travel.

RE-EXAMINED:

Been asked by myself about your conversation and general backing and filling with the Avondale Post Office, do you now produce letter written to you giving you some information about registration?

10 Yes.

Standard information, but at any rate read the address to whom it is addressed: "Laurentius Kuys, P.O. Box 799, Avondale . . ."

(Exhibit D.)

When you set out your letter of 6th December 1966, to whom did that letter go?

To the committees, branches of the Oranje Society.

What was the purpose of your sending that letter?

20 After all the trouble we had had and after my absence from New Zealand, when I returned Dubois was on a trip to Holland, I thought I would try to get the branches together again and give them some information as to what was going on.

Any asking them for their views in that letter?

Yes, I did, and asked them to return them by 20th December so we could have minutes and views back and put it together before the end of January to send out the agenda for this coming meeting. In the meantime Dubois and ———— decided not to do this because Renneberg said, We have had two failures trying to establish a National Society. Better get 50 persons together to do it and then form the branches.

30 Was that also the attitude in so far as entering into this arrangement with the news?

He never mentioned, it might have been in his mind, but he never mentioned it.

There were two editions of the Windmill Post before you had the March meeting?

Second one just mailed before I took the second copy to the meeting.

The purpose, you told myself, of trip to Sydney in February was to iron out some difficulties that occurred over Group Travel?

That was one of them.

40 The Society were they not getting \$7 for every adult that travelled?

Yes.

After you received the direction from your Committee that all Group Travel was to go through KLM or CPA, did you in fact book people for future flights through them?

On certain sectors.

JUDGE: The account at the Avondale branch of the Auckland Savings Bank was in the name of the Netherlands Society?

Yes.

50 Into it went money received from people who were going to go on Group Travel?

Yes, and for other travel bookings, insurance.

Did money go into it for anything else except travel purposes?

Not as far as I know, no. Definitely not for the Society.

No Society money?

No.

You also had a private account into which similar money went?

Yes.

And did I understand correctly that the purpose of having this account was to enable you to handle cheques which were made out to the Society from intending travelling people?

60 Yes.

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- If they paid you in cash, where did the money get banked?  
All depends, sometimes went into my own bank and sometimes went to this bank, but it never went to both accounts.  
Depended on which bank you happened to be going to?  
That's right.  
From what money did you pay the \$7 to the Society?  
Several times out of the Auckland Savings Bank, but most of the time out of my private cheque because Miss Leenman usually visited me at night or week-end and worked out how many travellers and we worked out the \$7 and I wrote out a cheque.  
10 Did you keep a record of how much you owed the Society — for their \$7?  
Yes. We worked out the travellers in one group on the official application and . . .  
How did you know how many to pay them, from forms?  
Yes.  
Did you tick the forms when you paid the \$7?  
No, we never did that.  
How did you know how many \$7 to pay Miss Leenman?  
20 I gave her the names and children and we worked out how many adults and infants.  
Then keep a record of which ones you had paid Miss Leenman for?  
Sometimes, yes.  
When Miss Leenman came to your place, how could you know how much to pay her? You had hundreds of travellers, didn't you?  
We had groups.  
Did you pay for the whole group?  
Yes, sometimes one group, sometimes two groups.  
When you paid £100 to Mr. Wilhelmsen you paid him out of the Auckland Savings Bank account?  
30 Yes.  
Whose money were you using?  
My own money.  
How was it your money?  
I put away \$3 left . . .  
Accumulation of your \$3 profits?  
Yes.  
You also had at one time £250 belonging to the Society in that account.  
That so?  
Can't say whether it was in my private account or in that account. It  
40 was in one of them.  
Was there any other Society money in either of these accounts?  
No Society money.  
To whom did the interest in this account belong?  
I regarded it as mine. Or if there was any claim on it it would be by the travellers.
-

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DANIE INGELSE (Sworn).

Architect employed by the Ministry of Works.

You were at some time the President of the Rotorua Oranje Society at Rotorua?

Yes.

You took part, did you not, in discussions involving the National Executive Committee of the Auckland Oranje Society?

I was a delegate, yes.

You attended a meeting on 18th March 1967 in Auckland?

10 Yes.

Did you take with you a tape recorder which you recorded the meeting? I did.

Did you later take hand-written notes of that tape recording?

Yes.

Had them typed out?

That's correct.

Do you recall the Windmill Post being discussed at this meeting?

Quite clearly. It was a special meeting.

Can you tell us what was discussed, and you may refer to your notes if His Honour allows this, about the Windmill Post?

20

It all started with on the special meeting which was called to discuss the rules of the national body. We were able to put forward agreements, changed the rules. Prior to that we had received one issue of the Windmill Post. On the meeting that day we got the second copy. Rotorua had sent a remit that in the rules of the Society was that they, among other things, they would like some other social activities published in the Holland Bulletin. At one stage of the meeting we were going to discuss the possible remuneration of the Secretary, Mr. Kuys. That means we sent out of the room and also Dubois, President at that time, so we could have a discussion without him being present. To start the ball rolling I was the one that said we should look at Kuys' activities and split them up into four: Secretary, Group Travel organiser, publisher of the Windmill Post, and also his private job as insurance agent. It was then Mr. Renneberg stood up and said he wanted to explain about the Windmill Post.

30

Witness reads from his notes. Renneberg said: Holland Bulletin had always lost, then decided in committee. Executive Committee explained that the Oranje Society . . . no one interested in running the Bulletin and lack of personal interest.

40

Apparently Kuys took over the Bulletin on the basis of 1/- per copy per member, also stated he lost substantially on this, but he could make, by getting advertising, £80 or £90 per issue. Apparently on that particular Committee meeting Kuys was prepared to take the responsibility, and the Committee worked this out and said if he could make something out of this by raking in enough advertising and a few pounds, that's O.K., but don't cry on our shoulders if you don't.

Who used those words?

Mr. Renneberg.

50

This was Renneberg reporting what had been said at a Committee meeting with Kuys at the end of 1966 or the beginning of 1967: Renneberg stated that the first couple of issues were definitely a loss, but that Kuys took it on himself to keep it going for three to six months. Renneberg hopes for Kuys' sake that he will do better and make a profit or break even. As far as the Society was concerned, this was an ideal solution, as it put the responsibility fair and square on the shoulders of a person who would take the financial burden at least off the Society's hands. After this Renneberg stated no one appeared to be prepared to take the Bulletin on except Kuys, and he hoped he would be able to make a few pounds on it. He also mentioned that he had suggested that after six months the position had to be looked at again and if it showed that a substantial profit was made, then the Club had reviewed its part of the contribution of 1/- to the cost of the production. It was not the idea that someone would make a lot of money out of the Club's Bulletin. After that all hell broke loose.

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Can you say what people were concerned about as far as Kuys is concerned?

10 We understand that Kuys was taking over the Holland Bulletin of the Club as part of his Windmill Post paper. Whether he was going to call it the Holland Bulletin, Club News or Society News . . . few of us knew at least that Kuys had been for years had been concerned with providing a Dutch newspaper in the Dutch language. He had tried to suggest this a year before at an inaugural meeting. Kuys was very much busy from 1965 on to try and organise all round New Zealand Dutch clubs to become a big body, instead of individual ones without authority.

What were the — what were the delegates concerned about?

Concerned about the fact that Kuys published a paper of which all Holland Bulletin news was taken up and without having the Club any control over it.

COURT ADJOURNS: 3.49 p.m.

COURT RESUMES: 4.05 p.m.

Read on from where you were.

20 We were also concerned what would happen if Kuys went bankrupt, and Renneberg said that there was no particular contact with Kuys and it would be up to the meeting to decide. Out of the discussion it became clear no one liked the situation, but Renneberg did his best to defend it. It was felt the Club in fact had no control and that we should have control. Renneberg stated that this was quite clear that we had control and that we had no competition from Kuys.

You mean control over news?

If news came through from Kuys — the members worried that there was no control over the wording that Kuys used on Society matters. Renneberg said we would have control.

30 Was it suggested that — any suggestion made that there was control, as result of contract to buy from the Society, contract for Society to buy from the paper, or was it suggested that Society had control because they owned the paper?

This didn't come up at all really. We were all very much concerned about it — it was not really said how we had control. Mr. Millward, one of the delegates, was quite sure we had no control at all and stated bluntly that this was not to his liking and would be making history today if it was set up as proposed.

Before you go on to the next — were the members concerned about Mr. Kuys' own financial fragility?

40 That's right. We all felt, Mr. Kuys up to that time — we were concerned on his financial position as to the Secretary's remuneration and of the Windmill Post. One of the delegates had a bit of experience in producing a paper and he had always maintained that it was financially impossible for one person to produce a paper like we wanted. His explanation made everyone much more aware of the fact that — we were more convinced that protection should be given to Kuys in case he went bankrupt and also to the Society lest it become involved.

You left in any doubt as the result of this newspaper as to whom owned this newspaper?

50 I was left in no doubt and I don't think others were, that he owned the Windmill Post and he was only publishing the Holland Bulletin as part of his paper.

Read on.

Renneberg stated that he had suggested to Kuys that he should form a company. Upon a question it was stated by Renneberg that there was no official contract as yet, but that was in the minutes of that meeting, the meeting referred to earlier, that the actual contract was left over until that particular meeting.

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You mentioned the question of minutes. Gather whether Renneberg was in possession of the minutes, or had seen the minutes?

I gathered he meant the minutes of the inaugural meeting. Never questioned him whether he had seen the minutes. No doubt in my mind that — I assumed there were minutes.

Did he by virtue of what he said, ask the members present to rely on minutes as recording the situation as sufficient?

10 Yes. He mentioned this to more or less strengthen there was some sort of contract between the Society and Kuys, even if it wasn't a written contract, it was recorded in the minutes.

Read on.

Mulder in particular mentioned the use of the word "independent" which led me to confirm my view that it was Kuys' paper.

Motion then put?

Yes. Chairman of that meeting, Zeeman, then put the motion that the National Executive be authorised to draw up a legal binding contract with Kuys for a duly incorporated company for the publication of the Windmill Post.

20 You say with Kuys for a duly incorporated company, that result of Kuys' individual position?

Yes. Provided that such certificate shall remain under the supervision of the National Executive and that position be looked at again at the next annual general meeting. This motion was seconded by Mulder, and upon voting was carried. The supervision relate (stopped).

What do you understand — prior to motion being passed what supervision was contemplated by the members present?

30 The National Executive should be able to clearly define its — whatever the Society wanted to publish in the Windmill Post they had full control and have some sort of promise from Kuys that he would not alter anything of those articles and if it was necessary to shorten it or add something to it, that he would refer it back to the National Executive to get their O.K. This was matters required to be published?

Yes.

Wh — It was resolved to pay Kuys £550 per annum on a part-time basis? Yes.

Did — Was it discussed at the meeting whether this would include Group Travel?

40 The delegates have asked on several occasions whether Kuys was getting any remuneration for his part, all work in organising Group Travel. Even at this particular meeting it was asked because we felt it was necessary to determine the remuneration he should have. The question — Renneberg answered that one, and found it could not be done as such, but that this meeting could include this remuneration. On being questioned Renneberg gave us to understand that Kuys had so far had no reward as such for his Group Travel work. The proposed amount was then discussed, amount for remuneration for Secretary which Renneberg suggested could include recompensation for his Group Travel work (part-time).

Do you remember whether any commencing date for this salary made?

50 No, we didn't, but the Society's financial year runs from June to June, July to June, and understanding this would run from the next financial year.

Did you attend the annual general meeting of the National Society in October 1967?

Yes.

Were the minutes presented to the members for confirmation?

Yes, they were.

Of the members that had been at the March meeting, how many of those delegates were at the October meeting?

60 Not very many. Were only five delegates and Executive members together at that October meeting which had also been present at the March meeting. How many delegates at the October meeting?

Sixteen.



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Did you vote against the resolution to adopt the minutes?  
I did. In fact there were two. The whole Rotorua delegation voted against it.  
But carried nevertheless?  
Yes.  
Did people vote who were not at the earlier meeting, the March meeting?  
Yes.  
Is — you got a copy of what purports to be the minutes. Is the resolution you've read out that recorded there or anything like it?  
10 No, it's not.

CROSS-EXAMINED:

I gather that at the October meeting you were in a minority and standing against the President, Dubois, for that office?

Correct.

You were in a minority on that, you failed to get the Presidential seat?  
That's right.

Your branch, Rotorua, alone that voted against acceptance of the minutes?  
Correct. The minutes weren't read out. We got them when we started the meeting and was actually an objection passed by the Rotorua branch that we should have had those minutes before the meeting was held so delegates could have read them. We received an apology for this.

20

It would be an understatement for me to suggest the topic of the Windmill Post by this stage was a matter on which there was very considerable interest and discussion at this October meeting?

Yes.

Mr. Griffiths had sent propaganda (Objection) to people before the meeting and there was by this stage an element of controversy as to what had taken place in earlier days?

30

Griffiths had sent material. Yes, there was an element of controversy over Kuys. Between October and March the whole thing had blown up. As I understand your evidence, two things were made clear by Renneberg at the last meeting, first being that the arrangement with Kuys was for six months only, and, second, that a proper contract should be drawn up after you all had considered the situation, this being your very first meeting. Correct?

Was it made quite clear that the arrangements proposed with Kuys were for a six months' trial period only?

40

Yes, I understood that the arrangement made with the Committee with Kuys was that they would support his Windmill Post to the tune of sending off a copy to each member of the Society at a cost of 1/- per copy for a trial period of six months, after that it was going to be reduced. We understood from that the Society would be backing Kuys' venture up to the tune of 2,000 - 2,500 at 1/- per month.

You told us that you understood that this was for Kuys' paper. I put it to you that if Kuys had been paid 1/- per copy to produce the Holland Bulletin, that in terms of ownership and control you would have known that the Society, through its officers, still retained ownership and control? I would think that would be right.

50

Renneberg at least went out of his way to assure the meeting that the Society would retain control?

Yes.

You've also said that ownership as such was never discussed?

No.

In fixing Kuys' remuneration, did you not know that he had been in receipt of moneys for arranging group bookings?

Not before that meeting, no. It was months after that meeting I was informed of that fact that Kuys got some money for it.

You now know that Kuys was in fact receiving \$3 per person travelling on Group Travel?

60

Yes, that has been stated in all letters to all members of all branches. Did you know whether Mrs. Kuys was also receiving \$50 per month from an airline in connection with Group Travel?

No.

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Did you confer or stay with — visit Kuys before the October meeting?  
Yes.

Which was it?

I just visit him.

RE-EXAMINED :

When the March meeting was held, did Dubois indicate whether he wished to continue as National President and for how long?

He indicated he wished to relinquish his position.

You persuaded him to stay on till the next meeting?

10 Yes, I did.

JUDGE: In 1965 and 1966 had Mr. Kuys been interested in getting the different Dutch organisations to combine as a national organisation?

The first time I met Kuys was in 1965. For several years Kuys and Dubois had been interested in a national body, but there had been difficulties. In the same time were you aware that Kuys was interested in a newspaper?

Yes. He had mentioned this as his intention in Tauranga and Rotorua during these periods.

Would it be a newspaper put out by the national body or by him?

20 No. I don't think at that time I had the impression it would be his personal paper.

In March 1967 the information came from Renneberg as to what the Committee had agreed with Kuys?

Renneberg said that the Committee were confident that they could keep control of what went in the newspaper?

Yes.

What were the things said that made you believe it was now Kuys' paper because there are two copies out, with the Society merely having the right to get some of the things in it?

30 The fact that we only talked about the Bulletin being farmed out to Kuys, we all knew that for the last year at least. The Holland Bulletin was informative sort of, hardly call it a magazine, a news sheet printed in book form from stencils which gave information about activities of different clubs, hardly an article of any general interest, no one liked it, it cost a lot of money to produce it, we knew that Mrs. Leenman had been doing it for a year and had to give it up for personal reasons, and I and several others must have also known that Kuys had been for many years had been trying to get a national paper. We were confronted with this Windmill Post these two issues, stating "independent".

40 Couldn't it have been that the National Executive which met on 5th January had decided to start a paper and pay Mr. Kuys to produce it for them? What made you think that was not what happened?

At previous meetings delegates had been against that. One of our delegates had experience of one-man work and he also knew about the New Zealand Hollander, which was monthly.

What did you know about that?

He told us some production costs of that one.

At the meeting you realise how expensive it was?

50 Yes. We decided as a Society we just could not afford it. At the March meeting there were already two copies out. From what Renneberg discussed as to the control which he believed the Committee had over Kuys, and from what I was told about the way Kuys would be paid by the Oranje Society, it never occurred to me that the Oranje Society had taken the step of launching its own newspaper with Kuys as its editor. From all the background and from what was said I could only decide it was a Kuys venture without our people having some rights in return for what they paid Kuys.

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HENDRICK CORNELIS ZEEMAN (Sworn)

Of Hamilton, Company Director.

That's your signature on that affidavit and confirm the contents as true and correct?

Yes.

You chairman at the meeting of 18th March?

I was.

At some stage the Windmill Post was discussed?

It was.

10 In your affidavit you have said that the discussion proceeded on the basis that this was a newspaper. . . . Tell the Court what was specifically mentioned which made you say that.

Basically, one of the things was that there was a lot of concern expressed that Kuys would go bankrupt or lose a lot of money on this venture. Somebody at the meeting knew quite a bit about publishing costs. It was agreed the Society would obtain copies of the Windmill Post at 1/- per issue. Objections were raised at the meeting as to the cost, but it was agreed to accept this for six months. In six months' time the whole position was to be revised, whether we would pay 1/- for it or less. The ownership of the Windmill Post did not come into the discussion at all. This is about all I can recall of the discussion at that time.

20

Recall Renneberg saying anything about Kuys' financial undertaking?

I recall that he indicated that the first three issues. I think, were operating at a loss. I also recall that I instructed Renneberg as a solicitor to protect Kuys and form the Windmill Post as a limited company. This Renneberg agreed to do.

Did Renneberg say anything about whether the Holland Bulletin could be carried on?

30 Not sure about this, but I seem to remember the discussion about the Holland Bulletin was that this was an unprofitable venture. This is about the only thing I remember about the Holland Bulletin.

Was anything said as to who would have the financial responsibility of running this newspaper during this period?

There certainly was. Kuys was warned at the time that it was no use him coming back to the Society. I think words were crying on my shoulder were used, if the Windmill Post venture operated at a loss.

Who said that?

Not sure whether it was Renneberg or myself.

CROSS-EXAMINED:

40 Thinking about it now, and I note you are a company director, would you agree that if you owned a paper we call Dutch Best Bets and wanted to go to Holland for six months over the summer you could get me or anyone else to take the entire responsibility of it for the entire six months, couldn't you?

I don't quite follow.

If you were the owner of a paper, just suppose it was called the Dutch Best Bets, and you wanted to go away for six months, you could get someone to publish it at their risk profit or loss for the period you were away?

50 I can't give an answer to that. I have never had anything to do with running a paper.

I put it to you that the question of making a profit or loss out of running a business can be quite separate?

I would agree.

In the absence of any discussion about ownership, if you look at it now you would be guessing to know who the parties intending to own something if you were merely concentrating on the profitability? (Stopped.)

COURT ADJOURNS: 5.15 p.m.

WEDNESDAY, 12th NOVEMBER 1969.  
COURT RESUMES: 10.00 a.m.

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LESLIE GRIFFITHS (Sworn)

Company Director of Auckland, Shareholder and Director of Windmill Post Limited.

Prior to that company's incorporation, were you a partner in an enterprise known as the Windmill Post?

Yes.

10 Recall in April - May 1966 discussing with Mr. Kuys a trade name for possible import and export of goods?

Oh yes, very well actually.

What names were, if any, discussed at this time?

A number of names were discussed, but we settled on the name of Windmill Post because of the idea of a Dutch windmill and also Post because of trading post.

You have already deposed as to your correspondence with a Japanese friend?

Yes, but that's nothing to do with trading business. It's something to do with the Club which Kuys was going to have and Windmill Post dye.

20 At that time did Kuys express any interest in publishing a newspaper?

Not only then, but this was his favourite subject. He was always saying to me. You should know how to do it, and this sort of thing, with my background, and he was from what he told me, he had been trying for years to get the Society, of which he was Secretary, to go into the newspaper business.

In what form was this newspaper to take?

30 There never had been so, he said, any newspaper as such, all sorts of papers, but no sort of news, which was his main concern. He also had by way of illustration the Australian one, the Dutch Australian Weekly, more or less to prove to me that this could be done.

As the result of this interview you give him any advice?

Yes. Just commonsense really. All very well to have an idea, but he had nothing at that point, and as he was going overseas I suggested he make contact with news service people in his own country and arrange if he could to get some photographic contacts.

Were you aware late in 1966 of the proposed formation of a new National Dutch Club?

40 Only in a vague sort of way, because I was continually in contact with him. Did you know ow the fate if that's the right word, of the Holland Bulletin at about this time?

No. The Holland Bulletin is the one Mr. Wilhelmsen had.

No, the official Society bulletin?

That as far as I know, he being away and so on, was just not being produced. He also told me he wasn't going to be involved in it any longer. At about this time, end of 1966, how far if at all had his plans for the newspaper progressed?

He succeeded pretty well in making necessary contacts overseas, he was pretty concerned that this newspaper was going to take place, then it became necessary to get prices for printing, etc.

50 You assisted him with that?

Oh yes, naturally. I tried the Herald — I had contacts then — but the run was below the number required and I asked another printer friend of mine and he said he wasn't set up for newspapers. Kuys got in touch with people over North Shore, and that was the beginning of that part of it. Now it became necessary to find out cost. For that I got the best advice I could from John Allison, advertising manager of Herald, and he sat down with this Australian Dutch paper and Irish paper and one or two others, and got the best looking, and laid it out, worked out number of columns and from that got a charge for advertising on estimate of how much advertising we could  
60 get on basis he couldn't have too much anyway.

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This before meeting of 5th January?

Oh yes, before Christmas anyway. I would say end of November.

Were you aware that there was to be inaugural meeting on 5th January?

Yes.

Give Kuys any advice as to what he ought to do?

I suggested a very natural thing — the success of newspaper is its circulation and one of the best things that we could do would be able to sell in quantity to a ready-made market, namely the new Society that was going to cover all New Zealand.

10 What advice did you give him?

I suggested he try to get an order either on behalf of all the members or to have their mailing list available to us or better still sell a block quantity. This would give us near enough 2,000 straight away. He told me he didn't want to get this fellow behind his back, and he discussed with me Mr. Wilhelmsen and this Wilhelmsen was at this stage talking about giving up publication of his newspaper. We bought his; one, it was fair to him; and, two, it gave us 200 circulation from him.

You weren't at the meeting of 5th January?

No, I'm not a member.

20 Spoke to Kuys after 5th January?

Yes. He came back and was as pleased as Punch and I was too, because they agreed . . .

As a result of what he told you, did you and he do certain other work in regard to this newspaper?

Yes, we got busy and produced it. In between times we had gone further afield with the looking and searching for these things. I should tell you that we weren't all that happy with the difficulties we had had and the problems with language, and a few days after this meeting Kuys found a friend, a Dutchman . . .

30 Did you some time in the month of January go to the premises of Impex Press Limited and see Van Impelen?

Yes, I did, more than once actually, and he was quite keen to print the newspaper. He was even pleased to know it was going to take place and he himself printed the newspaper.

Did you say anything to him about the financial side of this venture, to Van Impelen?

He asked Kuys.

Were you there at this time?

40 Yes. He asked in English. "Well, how are you going to pay for this, because don't forget it's not just one issue you're paying for, it's twelve times". I said to him, "Well, for the first six months anyway I'll be backing Kuys", and I felt pretty confident about that, and Kuys told me that the Society had arranged to take the newspaper for each and every member and our first asking price was to be a shilling and he accepted that without any further question. Quite frankly he didn't know me in any way and had no reason to take me, other than I was a second person I suppose.

The publication duly came out in February?

Yes.

Were you there when the question of the Windmill motif was discussed?

50 Yes, I was there more than once on that because the name Windmill Post is a long one and there was several designs . . .

Tell us about the — what happened in relation to a windmill block?

It was very difficult thing to decide upon. Dutch artist made one. Kuys got me a book on Dutch windmill and I tried my hand at it but didn't succeed, and then Van Impelen said "Why not use this one in the meantime?" and he got a block which was very old indeed and he said, "I have no more use for this and as far as I'm concerned you have can have it, and until you decide otherwise you can continue to use it".

Where did he get the block from?

60 He went over — can't say for sure he got it . . . but when he came out he was dusting it off and it was a thing that had been lying there for a long, long time.

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After this paper had got under way did you go to your accountant Maybee, Halstead and Kiddle?

Yes, I asked them to ——— one, because my part in this was to help Louis with the advertising in any of those ways, but he was because it was Dutch newspaper attending to copy and that sort of thing. He was a business really for him, and I was a background number really, at the same time I asked the accountant to do these things, to get in touch with my solicitor to start a company called Windmill Post.

You would be a joint shareholder?

10

Yes.

You produced a copy of a letter dated 21st April addressed to Mr. P. J. Doull?

Yes, as far as I can remember.

(Exhibit E)

Doull didn't carry out that, another firm of solicitors?

Doull had to go overseas but he had drawn up something and I picked those up and took them to Mr. Haynes. He got it under way.

The company finally incorporated in July?

That's right.

20

You've told us not a member of the Dutch Club?

That's right.

CROSS-EXAMINED:

You are a business associate of Kuys, he runs or is closely associated now with immigrant groups such as Combined Netherland Society? And the Link?

Yes.

What's your relationship to those groups?

Occasionally I have helped Kuys because of amount of work involved in it.

30

That's my only real connection. I'm interested because I didn't know about it before.

You benefit financially from the promotion for e.g. Group Travel?

No. And I don't know what it concerns myself as far as an income is concerned.

You've described yourself as company director. Tell us what specific activities you are engaged in?

40

I've been involved in a number of things both here and overseas. I introduced milk bottle advertising in New Zealand and the printing on glassware. Electronic circuitry, manufacture of radio by silk screen process. Documentary on Monday night an instrument which I introduced from Japan, namely the Castro Camera. Also Director of Pest Control Company which has to do with export product protection — combating bird problem at airport, etc.

When did your financial dealings with Kuys first start?

I was committed I suppose when I said I would help him with the newspaper. In point of fact I did. It didn't cost me anything, but I did offer to give him the money to buy the Dutch newspaper the New Zealand Hollander, but he purchased because he said he had the money and he could manage it, and at odd times Kuys has said there's not enough in kitty to pay an account and I have helped out.

50

I'm correct, I think, that Kuys almost twelve months before he resigned as Secretary of Oranje Society was conferring with you about a social club and called Windmill Post Social Club?

This is one of these ideas — yes, we talked about it.

Very obvious that club discussed was a different club to Oranje Club of which Kuys was Secretary?

Yes, and to do a lot of other things which I don't think the Society does in fact do.

You told the Court this morning that Mrs. Kuys found Van Impelen?

Mr. Kuys.

60

Were you not then aware that the Impex Press had been a long standing printer for the Oranje Society?

I don't feel that he ever was. I rather feel I might be wrong, but I rather feel . . . he gave me the idea that he hadn't been.

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- 10 Your profit sharing arrangement with Kuys prior to any incorporation was that of a fifty-fifty partnership?  
When you say . . . You must realise that I know a lot of people who would be interested in exporting their goods. Kuys was going overseas and we discussed possibility of opening up export to Holland and he felt sure he could do something about that so I told him to find out certain things. I said, "You make the sales and we split the operation down the centre" was my way of putting it, and he really did try and he got one or two agencies from here, Holland wanting to sell here, instead of other way round. It was let down this end because when it came to organise things people were committed.  
In relation to Windmill Post was your partnership before incorporation a fifty-fifty?  
The Windmill Post before Kuys went away, he was not obsessed but always at the idea he wanted a newspaper.
- 20 JUDGE : It was a meeting in January when as you understand it he had certain guarantees of purchase from what was to be the new Netherland Society?  
Yes.  
This was the turning point to persuade him and you that the project was now worth launching — would that be fair?  
No, I don't think that would be quite right, it was a thing that made us get a newspaper out in three weeks.  
The final spur?  
Yes.  
Windmill Post Limited was not incorporated until after several copies had been published. Is that true?  
No. It wasn't until June or July.
- 30 What was the arrangement December-January-February as to what would be your share of profits from this operation?  
It wasn't confirmed but as it ended up it was fifty-fifty and it would have been incorporated too as a company much before it was. I understood . . . Kuys also told me that Renneberg told him he should form a limited company and this is natural thing to do anyway and he had also said he would help form this company, but it never got to that.  
Do I understand that the proportion of the split was never discussed in actual figures?  
The task of getting in one was more occupying really.
- 40 COUNSEL : How much money did you advance and when to Kuys?  
I couldn't tell you exactly but . . . I might be exaggerating, but about a couple of thousand dollars.  
How much did you advance to Kuys after he resigned as Secretary of the Society in June 1967; how much approximately and when approximately?  
I don't know in terms of dates.  
Got a record you could refer to?  
I have a cheque book.  
Are there not accounts for your partnership which would give the answer to what I've been asking?  
The accountants would I am quite sure have those figures. As for dates, I
- 50 couldn't give you dates.  
Group Travel, you know, was an activity that Kuys was conducting for the Oranje Society?  
I don't know whether he conducted it for or by himself. Because it was Mr. and Mrs. Kuys on every occasion I visited him who were deeply involved in correspondence. I became interested in the why and wherefore of it myself.  
Did you have any financial interest in any of the Kuys family travel activities?  
I don't know that I did really.
- 60 You say there is something in company account about Group Travel?  
Well I'm also part of the company but I don't know what it's about.  
Did you while Kuys was still the Secretary go visit airlines with Kuys?  
Yes.

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Did you in part go visit a Mr. Eddie Prentice, manager in Auckland of CPA?

Yes.

Were you — when was that?

Possibly about February or somewhere like that. I can't recall.

Did you visit Prentice more than once?

Yes.

The purpose, or one of them, of calling on him was Group Travel arrangements which CPA were doing?

10 That's a funny way to say it, but whilst Kuys was away in Holland he arranged with a group of people (this was main cause of seeing Prentice), he wanted to bring them out to New Zealand because Australia managed to get these entertainers, but never got as far as New Zealand. He went to see KLM and put a proposition to bring them out to New Zealand and they wouldn't have any part of it. And I might tell you that he also went to Kerridge and Benny Levin and some other person, they couldn't undertake any part of them, he was dead keen to have them as they ranked amongst world's best and we discussed ways and means so we went to see Prentice, and he thought it was a great idea, there would be advertising, we discussed  
20 with Prentice tour of entertainers, accompanied by Windmill Post and CPA publicity. Then . . . I had discussions with Prentice which related to methods of getting entertainers already in Australia to New Zealand. This involved studying eight artists to be brought across the Tasman and methods of paying for their fares and included considerations of such matters as channelling CPA advertising.

I'll be calling Prentice and his evidence will be that you and Kuys and you in particular went to see him in June of 1967?

It might be June.

30 And that you and Kuys were trying to get a personal benefit out of the fact that Kuys as Group Travel organiser for Oranje, recommended Society members to CPA?

The benefits we were after was the benefits to get these entertainers down here. This is a million miles from a personal gain to me.

You deny in any way you put the bite on CPA for personal gain?

That's true. I am sure Prentice would not say that about me for we have known each other for a long time and I don't engage in that class of thing.

You've told us about your various business acts. Have they extended to trading with Dutch currency?

No.

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MATHIAS MARIA HENRICUS HOEBERIGS (Sworn)

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M. M. H. Hoerberigs

Of Auckland, Company Director.  
You work for Air New Zealand?  
I do.  
Clerk there?  
Yes.  
You were — you are here on subpoena?  
Yes.  
You were here in the back of Court yesterday?  
10 Yes.  
Would you tell the Court what Mr. Renneberg said to you yesterday?  
He mentioned to me at lunchtime that if I was called up as a witness not to take any offence personally but as far as the courtroom was concerned he would tear me to pieces.  
You know what he is referring to?  
I would say this particular case.  
You were at he inaugural meeting of the Society of 5th January, National Executive?  
20 Yes I was, it was held at my place.  
What was the purpose of the meeting?  
As far as I know, was a general meeting and I can't recall that we were given any specific details before the meeting started.  
How did it all start?  
The meeting was called what I understood was for to draft up new Rules for the Society.  
JUDGE : Who was it who asked if your house could be used?  
Mr. Kuys.  
COUNSEL : You said the purpose of discussing new Rules was the subject of a newspaper or public discussion?  
30 Yes, that was discussed at the meeting.  
Was that at beginning or end?  
I would say it was at the beginning as well as the end.  
Recall who introduced the subject and what did they say?  
It was brought up that seeing the Society's little bulletin wasn't running satisfactorily it was suggested by Kuys that he could produce a far better newspaper in which the Sociey could put their news, print their news. And when this was suggested they said that it would be far too expensive for the Society to run a newspaper like that and too risky. After other discussions it was then suggested by Renneberg that Kuys should form a  
40 limited company and take all the responsibility of the paper on his own shoulders.  
Was a question of the price of newspaper or who was to purchase newspaper mentioned?  
Not the purchase of newspaper but Society would pay for so much per paper to Kuys.  
Know how much that was?  
I'm not sure, either 1/- or 1/6. I can recall that a much higher figure was mentioned because of the cost structure of the paper but that a lower sum was then set and it was out of this discussion that they mentioned Kuys  
50 should have the responsibility of the paper by himself.  
Was the — was any limit placed on the amount that Kuys might receive or time for which he might receive any payment from the Society?  
I can't recall that in detail, there was some talk about a sum or certain sum per month, but can't recall.  
The limit as to time that this arrangement was to continue?  
As far as I understand it was going to be taking place more or less straight away.  
How long would it continue?  
If I'm right time limit set for six months for time being, and then again  
60 reviewed for further time.

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What would they review?

For purchasing further lot of newspapers and at same time they would also review whether they would increase or decrease the price of the paper.

What would that depend on, was th — what would increase or decrease depend on?

As far as I know depend on Kuys' goodwill as to whether he would be able to low price to Society.

Was anything said at that meeting as to the actual ownership of the paper?

10 The word "ownership" itself perhaps was not mentioned, but it was made clear that Kuys should form his own business and take full responsibility for the paper which I understood would be the ownership.

Was it ever said that the ownership belonged to someone other than Kuys?

No.

Do you recall any comment at the end of the meeting or during the meeting made by your wife who was present, to Kuys?

20 Yes, I do. That came about because it was also discussed briefly whether Kuys would have a salary. No further discussion went into that, but my wife then mentioned "Well at least Louis if you don't get anything for what you've done for the Society at least you now have your own business".

Did anybody comment on that?

Nobody commented on that.

Would Renn — where were Renneberg and Dubois in relation to your wife and Kuys, were they in earshot?

Yes, we were all sitting within a twelve-foot circle.

Were they engaged in conversation at that time, you recall?

I wouldn't know.

What is your view as to whether they heard the comment made by your wife?

30 I don't know whether they have heard the comment by my wife.

Is that all you want to say on that?

Yes.

Was there any discussion at this meeting of the name of the newspaper?

Yes, certainly. I don't know what names were put forward but in the end the name Windmill Post was suggested and it was left to Kuys' own discretion to use it or not.

Who suggested that name, you recall?

Mr. Kuys himself.

CROSS-EXAMINED :

40 You have told us that ownership of the newspaper was not mentioned.

You may recall that there were contracts mentioned frequently?

I can't remember whether the word "contract" was mentioned.

You are familiar with that term?

Yes, I am.

Is it not the case that the arrangement then discussed was for a six-month period only?

I don't think it was for six months only, the impression I got that it was going to be reviewed, the price was going to be reviewed after six months.

50 Would you agree with me, what the people there thought they were doing was making a contract : that be a fairway of describing?

Contract to what — yes, contract to the price of taking so many newspapers to the Society.

This publication was absorbing on the Bulletin?

No, it was not taking the place of Bulletin, the Holland Bulletin wasn't functioning properly and it was suggested that Kuys would start his own paper. Kuys even gave examples of Australian papers doing the same thing and that gave his clear intentions of his.

I put it to you that Holland Bulletin had been functioning and this publication being discussed was taking its place. Please answer yes or no?

60 No, it was not taking its place.

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You had the misfortune recently to plead guilty to some 48 charges of uttering and forgery?  
Your Honour, I made a mistake some time ago . . . By law I was found guilty but the Judge could clearly see that I had no criminal intentions of doing it. I was placed on two years probation.  
JUDGE: Look at this document which is affidavit of Kuys, in which he attaches a sheet of paper (Exhibit B) which he says is a translation and the original of the Minutes of the meeting of the 5th January at your house. Look at it, you will find that top one is in English and immediately below it in Dutch?  
10 Yes, I have seen that before.  
How many people were at the meeting at your house?  
Ten, I think.  
How many people have signed that sheet of paper?  
Five by the look of it.  
Including yourself?  
No. I have definitely signed the Minutes.  
But aren't they the Minutes there?  
. . . . .  
20 If you look at first two sheets in English, they have typed at the bottom of them a number of persons' names?  
That's right, including mine and my wife's.  
But if we look at the Dutch original they are signed by some of the people, aren't they? Mrs. Van Kampen, she was there; Hopman, she was there; Kuys, he was at the meeting and Mrs. Kuys was at the meeting; the other name I can't read. But it's not your signature?  
My signature is not on there, but I have signed the Minutes.  
  
COURT ADJOURNS : 11.40 am  
COURT RESUMES : 12 noon  
  
30 If we look at the book which is said to be the Minute Book is that the same sheet of paper as is photographed and attached to the affidavit in your right hand?  
That's correct.  
'Turn to the English translation, starting at the top that appears to be the Minutes of 5th January, is that right?  
Yes.  
Mr. Dubois was appointed to the chair at that meeting?  
Yes.  
Who was the Secretary according to the record? Isn't it either yourself or your wife?  
40 No.  
Do you know who recorded the Minutes of that meeting?  
No, I do not.  
When were you asked to sign the thing which is in your left hand that's got your signature on it in the book?  
Not sure. I would say that would be within five or six weeks.  
Mr Dubois hasn't signed that, has he?  
No, he hasn't.  
He was the chairman of the meeting?  
Yes.  
50 The people who have signed it are Kuys — who else? Mrs. Hopman?  
Yes. Mrs. Kuys, Mrs. Van Kampen, Mrs. Hoeberigs and myself.  
Was it in a book when you were asked to sign it, pasted in a book as it now is?  
I'm not sure.  
How did it come about that you were asked to sign it, where and who?  
I was meant to know that apparently they had some differences because of this meeting and would I please sign that the statement was put in front of me was correct.  
Who was it who asked you to do that?  
60 Mr. Kuys.  
You think that was about five or six weeks after the meeting?  
Within five or six weeks I would say, but I'm not quite sure.

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CROSS-EXAMINED : Mr. Clark

I put it to you now that Kuys sought you out long after the dispute with the Oranje Society to get your signature on his Dutch record. Is that not correct?

I wouldn't know. As I said before, I'm not entirely sure what time Kuys actually asked me.

I put it to you that your signature was placed on that piece of paper after Kuys had collected other signatures from the other people?

There again I'm not sure how many signatures were already on the paper.

10 There were one or two, but whether they were all there as at present, I'm not sure. I wasn't interested whether anything was wrong with it; all I was asked to do was to sign the statement.

Are you aware that at a certain time in 1967 Kuys ceased to be Secretary of any Oranje Society?

I am not aware.

RE-EXAMINED : Mr. Heron

When asked to sign the document did you read it through?

Yes.

20 You thought there were some other signatures there at the time you signed it?

Yes, I do, but I don't know how many.

You said that th — you were led to believe there had been disagreement or dispute?

Yes, that's right.

Translation — you've seen a fair translation?

From what I have seen it is, yes.

PLAINTIFF'S CASE CONCLUDED : 12.15 pm

(Apart from one witness)

COURT ADJOURNS : 12.50 pm

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COURT RESUMES : 2.15 pm

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HENDRIK PETER WILHELMSSEN (Sworn)

Were you up till the end of 1966 the proprietor of a newspaper or bulletin known as the New Zealand Hollander?

Yes.

You were the owner?

I was, yes.

Had you been approached at any time by the Secretary of the Netherlands Society Oranje to sell your business to them or be taken over by them?

10 Yes, I had quite a few sessions with the Society as such. Going back perhaps three years already before the last publication. We came to agreement whereby the Society would take space in my paper. It was roughly three years before 1966, but only lasted perhaps six months, then Society cancelled the agreement and I just carried on. Later on I was approached by Kuys to have one or two sessions with the Committee itself. We had lengthy discussions about transferring the paper to the Society. After discussion the matter would be referred to meeting — I don't know which meeting — of Committee. That was the end of it.

Any reasons for not going on presented to you?

20 No. I don't know what the feelings were. I know personally that Kuys was personally interested.

Late in 1966 did you receive an approach from Kuys?

That's right.

We — how many actual meetings there were with him?

No, but it can't have been many, certainly have been two and could have been three, but can't be sure.

Did Kuys say anything to you as to what capacity he was now appearing?

30 I knew he had been Secretary of the Society, but I remember well him saying that the Society as such couldn't come to a decision but he personally was interested. At that moment I had no doubts whatsoever in my mind whether Kuys would be . . .

Did you reach an agreement on the price — what did Kuys offer to take over from you?

The paper and such subscribers, the advertisers, and even talked about the sideline of the paper, the export of magazines. He came very soon to decision because I wanted to sell the paper and my price went down quite a bit, my price was about half.

Did you finally set on price?

Yes, £100.

40 Received payment of that, say whether that was end of 1966 or beginning of 1967?

I have been thinking about it, and almost certain it was after the holidays at beginning of year. In the early New Year I think we finalised it.

When he rang back say anything about what Society had agreed with him or anything to that effect?

No.

Who did you have advertising contracts with?

CPA, at certain stage KLM; I can give you list of advertisers.

How many subscribers did you have at that stage?

50 A nominal number, perhaps six or seven hundred, but not more than five hundred paying I'm sure.

Do you produce a copy of your November 1966 issue which must have been one of the last?

That's right.

That shows advertisements from CPA and KLM?

Yes.

(Exhibit F)

CROSS-EXAMINED :

60 Recollection that for this £100 you sold some equipment, would that be right?

Typewriters, subscribers' cards, etc.

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In your subscribers would you expect that a good number of them would have been members of the Auckland Oranje Society?

In Auckland, yes, quite well, because my paper published all over the country.

The name of Dubois, is it not unknown to you?

No.

Dubois had seen you at an earlier stage?

That's right.

He was president of the Society?

10 Yes.

Would you have any doubt as to Dubois speaking on behalf of the Society?

No, none whatsoever.

Did you regard it as of concern to you at the time, whether Kuys was acting for or with the Oranje Society?

Didn't make any difference to me.

PLAINTIFF'S CASE CONCLUDED : 2.27 pm

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DEFENDANT CALLS :

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L. Renneberg

PLOON VLEESCH DUBOIS (Sworn)  
Of 21 Cleary Road, Panmure, Purchasing Officer.

LEONARD RENNEBERG (Sworn)

Of Auckland, Solicitor

Of Northcote, Auckland.

Admitted as solicitor in 1967?

Correct.

You are a chartered accountant as well?

10 Correct.

You possess qualifications for membership of the Chartered Institute of Secretaries?

Correct.

You are not a member of the Chartered Institute?

No.

Employee of the Auckland Finlay Shieff Angland and McLaren?

Correct.

I show to you an affidavit that you have sworn in this matter, only made on affidavit?

20 Before these proceedings, yes.

Are you — of the mind of the matters deposed to in that affidavit?

I have.

Are you prepared to reaffirm the matters set out in my affidavit?

I do.

Did you have any active participation in any Dutch club in this country prior to the middle of 1966?

I became a member of the Dutch Club in 1964 for the purposes of taking advantage of the reduced fares, as I intended to visit my family in Holland. After my return I remained a member but never attended any function of the Club whatsoever. I was approached by Kuys in either October or November 1966 to assist him in connection with the Rules of the Club.

30

Have you since October or November 1966 taken any active part in the social organising functions of the Auckland Oranje Society?

I have not because I advised both Dubois and Kuys that I did not have the time available to sit in on the numerous meetings of the committee. I have, however, been a member of what is known as the National Executive Committee of the newly formed club, the New Zealand Netherlands Society Oranje Incorporated since January 1967. And I have remained a member of that National Executive Council down to today.

40

You are at the moment the President of the New Zealand Netherlands Oranje Society?

Correct.

How long have you held that office?

Since Dubois left some time earlier this year for what was at that time thought a permanent departure. I was subsequently re-elected at the October General Conference.

I show to you the Rules of the National Society. Who prepared these Rules?

I did.

50

I draw to your attention the provision of Rule 4 (f) of the Objects dealing with the acquisition of the assets of what was a national organisation?

Yes. At the time when I was approached by Kuys I was given the Rules of what I shall call the Auckland Club, and in particular that branch of it which was dealing with the national organisation, that is the administration relating to all the branches. There had been considerable strife prior to this, so I was informed, as it was felt that Auckland was trying to dictate its terms to other branches and independent clubs.

Did you have personally any part whatsoever in any of that strife?

None whatsoever. I made the suggestion that by forming a completely independent club which would take over the administration of the branches and all clubs, this in-fighting as between various clubs could possibly be averted. This was agreed upon and I then prepared a draft set of Rules for a club to be formed.

60

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- Did you receive — ever receive any monetary payment for either the work in preparation of the Rules or for your services in various capacities of the National Society?
- No. In connection with the Rules I borrowed some precedents from one of my employers and used these at evenings at home. No charge was either made by myself or by my employer.
- Dealing with the National organisation, been here throughout the trial, did you attend yourself to the registering of the papers leading to the National Society's incorporation on 27th January?
- 10 I did not attend to the registration but I may have witnessed the declaration which was filed at the company's office but I have never checked on this position as such.
- We have heard, and imagine it is correct, that on 18th March a Special General Meeting of the National Society was convened and in fact the cyclostyled form of Minutes as approved at a subsequent meeting of the National Council has been put in as an exhibit?
- Correct.
- At that meeting you were elected to the office of Treasurer of the National Society?
- 20 Correct.
- When did you — Also at that meeting it has been said that you addressed the meeting on the subject of discussions that had been had prior to incorporation touching on the position of Kuys, his emoluments and his publication of the newspaper Windmill Post?
- The question of Kuys' remuneration was raised and the Chairman asked Kuys and Dubois to leave the room. Some discussion took place on the question of remuneration and I pointed out that although to the best of my knowledge Kuys had had no remuneration in the past, he was now in a position to make something from his job as editor of the Windmill Post
- 30 which had been contracted out to him for a period of six months. Quite a lengthy lot of across the table talk took place subsequently as to what the arrangements were. I explained that the Windmill Post had been contracted out to him for a period of six months at 1/- per copy which fixed our outgoings at least for that period. I also indicated that this price as agreed had to be reviewed at the expiration of the six months.
- I take it that the explanation you then gave related to the discussion we have heard about in this trial at Hoeberigs' home on 6th January?
- Correct. The question of control was then raised by one of the other members present at the 18th March meeting and I told them that in my
- 40 opinion there was not the slightest thing to worry about as far as control was concerned. Because if Kuys did not adhere to what he was told, then at the end of six months that would be the end of the road for him. The question of ownership, however, was never, at least at that stage, in my mind, because the suggestion of ownership had never been made in my presence until some time in May of that year at a meeting of the National Executive Council.
- It would appear from the evidence already heard, that subsequent to the first meeting of the National Council of the National Society differences arose between the National Executive Committee and Kuys which were
- 50 given a vote of no confidence finally and Kuys' note of resignation about 20th June?
- Yes. The first time I saw the accounts for year ended 30th June 1967 was on the morning of conference. And I noticed that . . .
- You said 30th June 1967?
- I mean 1966. I noticed these accounts had been audited by one Kooiman and the balance sheet had been tagged in connection with Group Travel. Is that the document that was produced yesterday through Kuys?
- That is true. The document produced was the actual document I had at that meeting.
- 60 Does Kooiman have any qualifications to be an auditor?
- I understand that he is a qualified accountant.



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You've told us you saw the tagged accounts March 1967. Tell us what you did?

10

At that meeting itself which went on until approximately one o'clock in the morning, very little was mentioned in connections with the accounts as such. At the expiration of the meeting, Kuys approached me outside White Heron Lodge and advised me that he had received a donation of £250 from KLM. And that did I have any objection if he accepted this cheque in view of the fact that he had now been voted a salary. I mentioned to Kuys that if this donation was made to him personally it was little of my concern, and his reply was, "That's not quite so". I then asked him to whom the cheque had been made payable. On being advised that the cheque was payable to the Society I asked Kuys to whom the accompanying letter had been addressed. On receiving the reply that it was addressed to the Society I told Kuys not to be so stupid.

The actual letter copy dated 15th December has subsequently come into the Society's possession, and you now produce it?

Yes.

(Exhibit 7)

20

JUDGE: What date was this conversation with Kuys?

Would be about half past one on the morning of 19th March outside White Heron Lodge.

COUNSEL:

30

The next meeting of the Club or possibly the one after, I made inquiries whether this money had been accounted for and on receiving advice that this had not been done, I was somewhat irate and said certain unpleasant words. At the same meeting I made inquiries as to whether there was any interest receivable in connection with bank accounts relating to Group Travel. This was because of the audit tag. Mr. Kuys advised me that all the finances relating to Group Travel were handled through a trading account in the Bank of New Zealand at Avondale which was conducted by him and/or his wife. In view of the very substantial sums of money involved I expressed my surprise that this state of affairs was in existence and pointed out to Dubois and Kuys that in the event of the funds disappearing there might well be a possibility of personal liability, on our behalf personally. It was then moved and seconded that the Group Travel funds were to be transferred to an account in the name of the Society without any further delay. And that the signing authority should be with Kuys and one other member of the National Executive Committee. Kuys made the observation that this would give him considerable difficulty as he would have to run to somebody else each time he wanted a cheque. I ignored this part of it and said we are dealing with somebody else's funds, and that's the way it should be.

40

In the — the meetings which took place in the next couple of months, April, May, what satisfaction was given by Kuys?

50

None. On each subsequent occasion Kuys was asked where the £250 was and why he had not transferred the Group Travel account. At that point of time I was not aware that there was already a Group Travel account in existence at the Auckland Savings Bank at Avondale. Of this position I only became aware some time late last year. The next problem which arose, arose out of two inaugural flights made available by KLM. Kuys telephoned me at my home and said that there was an inaugural flight ticket available and what did I think about raffling this ticket in a competition in the Windmill Post as this would give us additional members as the competition could be open to say, members only. In view of the amount involved, I said, "Don't be silly, a bird in the hand is better than dead in the bush, sell it for club funds and let it be brought up at the next meeting". Contrary to what has been said by Kuys, I was only informed by Dubois that a second ticket was in existence, which had been tentatively allocated to Mrs. Dubois. This was then discussed at the meeting and because of what was said by Dubois one of the tickets was allocated to his wife. It was agreed that the other ticket should be sold for club funds. It was in a matter of days I was informed that a suitable buyer had been found and that KLM had agreed to let the ticket be sold for club funds. At

60

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the next meeting the £250 plus the proceeds of the ticket had not been accounted for. At that stage the meeting became rather lively. Kuys then made the claim that he saw no reason why he should keep the £336.10.0 as somebody else had taken the actual ticket. I told him that as far as the club was concerned this was the club's money and he should account for it. Eventually the £336.10.0 was paid over to the club. Remember when it was received?

10 That sum was paid over some time in June after a formal demand signed by all members of the National Executive had been delivered to Kuys' residence. In addition demand was made for considerable arrears of administration fees which had not been paid over. It is another factor which was discussed at the meetings that he was accounting properly or regularly for administration fees due to the club. From memory I think there was a sum of some £500 or £600 outstanding.

20 I will be calling both Van Dongen and Prentice of KLM and CPA?  
In connection with KLM and CPA, the suggestion has been made by Kuys that this agreement related to the carriers that we were using. Van Dongen expressed his disappointment with the club some time in January that he was not getting a fair share from Group Travel when they were financing largely the Martailleur, Dutch show, and as things had not improved as far as he was concerned he asked us to attend at his office. After some two hours it was agreed that we had possibly been a bit unfair to them in connection with the groups which were leaving in the future and we would revise our itineraries a little more fairly. Within a matter of days I received a telephone call and was asked to attend a further meeting at KLM office. I telephoned Kuys and advised him that we had received a rather serious complaint and that a meeting was to be held at the office of KLM that night at 5.30. Kuys told me that he was too busy and was not going to attend. I advised him that it had been agreed, whether he attended or not,  
30 that the meeting would proceed. On receiving a report from Prentice, Dubois and myself decided that we would call an urgent committee meeting and Kuys attended at this meeting. At this meeting Kuys was asked whether he had approached Prentice of CPA for purposes of obtaining a personal bribe. His answer was that this was putting things rather strongly. He was then asked whether he did see Prentice in the presence of Griffiths and whether money had been asked for. He did mention something about advertising and he was then asked what the connection was of Griffiths with the Society. Kuys' answer was, This is all a very unfortunate thing, or words to that effect, and this will never happen again. By this time  
40 there was a rumour about Griffiths having a connection with the Windmill Post. Kuys was specifically asked whether Griffiths was in any way connected with the Windmill Post. And to use his exact term, Opmynerewoord, which translated means On my word of honour, Griffiths does not have any connection with the Windmill Post. It is only on the first issue that he gave me a bit of a hand as a friend.

Would I be correct that on this occasion strong language was used partly by you in relation to matters you have just been speaking of?

50 Not only by myself but Kuys was ordered that in future he was only to use KLM and CPA in connection with Group Travel and complete travel service and Russell & Somers as travel agents. The term blackmail was used to him by me and possibly by others. I was concerned about the playing off of airlines that was going on, after I had received the report at the KLM office. Kuys asked however whether one group which had been finalised could go as had been arranged. This was approved, so long as all other arrangements with other carriers were cancelled.

I want you to go back in time to a meeting held in Wellington under the auspices of the Dutch Legation, on 16th April 1967?

Correct.

60 You were present, and you've heard Kuys tell us the general purpose of this meeting involving attempt to resolve difficulties partly between the Federation in South Island Clubs and National Oranje Society?

That was sole purpose.

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- Are you able to tell us whether after that time there had been any controversy over the proprietary interest or title of the Windmill Post?
- Up to that time and in fact till May some time, there had been never the slightest controversy on the question of ownership. I do remember some brief discussions at a subsequent meeting after a letter from te Winkel had been received and even at that point of time as far as the committee itself was concerned, there wasn't the slightest misunderstanding about it, it had never in fact been raised except in an offhand sort of way in connection with the New Zealand something independent newspaper.
- 10 What had happened in connection with that?
- This matter was raised at some fairly early time, and this was brushed off very casually by Kuys, by it is now independent, it now breaks away from Auckland. There was also small talk about it had a religious affiliation. But that conversation was in a fairly offhand sort of a way.
- Were you present at a meeting of the National Executive when the first text of the Wellington Legation meeting was discussed?
- Frankly I cannot recall the instance but to my knowledge I never did miss any of the meetings. To some extent surprises me is the fact that I cannot recollect the alterations and if I had been present I would have expected
- 20 to see some of my writing on the document. I do really recollect a discussion about phone calls to te Winkel from Dubois and Kuys.
- The upshot of which was the meeting subsequently at the Poenamo. You were there?
- Yes.
- That took place as I recall on 10th June, it being a continuation of the reconciliation efforts initiated in Wellington?
- That is true.
- What did you say to that meeting concerning the Windmill Post?
- This meeting was a very cordial sort of meeting and discussions took place
- 30 rather at length about the wastefulness of having about five or six different club papers and it was suggested that if it could be worked all of us would have the same paper and pool the advertising, in other words, we weren't going to give the airlines of pooling, that this would be a good idea. All these airlines at this point are advertising in all these papers. It was then canvassed whether there was any difficulty in any of these clubs such as Wellington, Christchurch, Dunedin, Invercargill and Whangarei, having their club news published. It was made quite clear to the members by both myself and Dubois who were the spokesmen that there was no problem about this as we were in the position to say what happened to the paper
- 40 or what didn't happen to the paper. Kuys was present throughout this meeting and never voiced one word to the contrary.
- Was a formal statement of intent brought up to the National Executive fairly shortly after the Poenamo meeting?
- A statement of intent was prepared and submitted to the National Executive Council and was discussed part by part and passed. When the last part the Windmill Post came up, this is the first occasion that I ever heard Kuys asserting any suggestion of ownership. I then told Kuys that if he had done what had been asked of him, that is to keep proper Minutes which had been asked for time and time again, and had submitted a
- 50 contract to the Club, as he should have done, this type of thing could never arise. I then mentioned the type of thing like the controversy over the £336.10.0. The complaint we had had about him from Prentice, the failure to transfer Group Travel money, and finally suggested to him that in view of the fact that he had lost sight of the difference between mine and thine, I moved a vote of no confidence in him as Secretary. To which he said that even if we did so it could not remove him because this would have to be done by a National Council meeting. It is for that reason that a further meeting was held for the purpose of preparing the notices convening a Special General meeting.
- 60 In passing, have you had an opportunity recently of perusing an affidavit of Boyd Hubert Klap?
- I have.

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Is that or is it not in accord with your recollection?

That is exactly in accord with my recollection.

Regarding formal contract — care to tell us whether the evidence of Mr. Ingelses as to National Council proving Kuys' emoluments and his Windmill Post relationship being to be the subject of agreement?

The question was discussed at the conference, at the March meeting, and I do recollect saying that I was aware of the approximate revenue of the paper and that it should not be thought for one minute that we would stand by and let the paper become a racket. But that I saw no objection in Kuys making a reasonable profit and if I remember correctly I said that anything up to £10 I wouldn't begrudge it to him.

10

£10 what?

On a weekly basis.

It was said yesterday that you spoke to the meeting National Council in March was not fait accompli; recall whether that was your phrase?

Yes, this refers to earlier discussions where the suggestion had been made that Kuys should form a company and submit an agreement to us for approval at the next conference because I said I would not like to put him before a fait accompli. I did mention to him that I would be quite happy to look at it from the club's point of view. I did not offer to form a company for Mr. Kuys.

20

Have you ever formed a company in your life?

No, I have not.

In the days subsequent to the bust up I think you have made a study of the Secretary's working expenses, also a study of the accounts of the Windmill Post?

Yes.

I think that when asked to do it first thing you did was to go through various bills or vouchers relating to the conduct of the Windmill Post. How is it done these days?

30

We at present pay Van Impelen to do the whole lot for us, except possibly the wrapping.

COURT ADJOURNS : 3.45 pm

COURT RESUMES : 4.08 pm

Did — when did you become aware of what Kuys said that his wife was in employment of KLM?

First time I became aware of this was last Thursday.

When do you first remember hearing the name Windmill Post mentioned : where and when?

40

The first time I heard name Windmill Post mentioned was at a meeting of the Auckland Committee in December 1966 where I had been invited to attend and explain to them what the idea was in connection with the new club that was being formed. I cannot remember who mentioned the name Windmill Post but I should imagine it would be Kuys.

You said you were not ever solicitor for Kuys. Did you offer or was it mooted you should help him on taxation returns? If so, when? Did the question of taxation returns ever arise and if so how?

I was asked or offered, I'm not quite sure, to do tax returns for Kuys. He saw me some time after 31st March at home and I made out the details of his income and expenditure for two issues of the Windmill Post ending 31st March 1967. I used, as would be my custom, a tax return form, and obtained full details of his name, address, his wife's name, the names of his children. I would have asked him what life insurance he was paying, what if any his wife's income was. The reason for asking the dates of birth of the children would be for the purposes of tax exemption. I never did see Kuys in my capacity as a solicitor nor did I ever take any instruction for the purposes of forming a company.

50

At the time of seeing Prentice, was your organisation contemplating sponsoring any tour of theatrical Dutch artists?

60

Certainly not. I was aware that this matter had been discussed and scrubbed and it certainly was never raised at an Executive meeting that I personally attended, but during this particular time negotiations are going on with KLM for the Maxilleur show that I have referred to and from memory that

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show was in Auckland in April 1967. That is the only group that was being discussed. If Kuys was dealing in connection with another group it was certainly not with the blessing or knowledge of the Committee and must have been a private venture.

You were quoted by the Court yesterday of addressing the March meeting on the losses Kuys had made on issues up to that time. Was your recollection correctly quoted?

10 At the time of conference on 18th March only one edition had been out and I cannot see how I would have talked about the cost of the three previous issues.

On the subject of the Minutes of committee meetings, you recall yesterday that I put it to Kuys this was subject of controversy. Tell us briefly what controversy there was, when it took place and whether you accept the record's Minutes to be correct?

20 From the second meeting of the National Executive Committee, and for this purpose I am including the 5th January, I complained about the non-availability of Minutes. These were always promised but never produced. Some time in May after some fairly heated arguments had been going on about Minutes, Kuys saw me in the office and asked me to show him what to do. I told him what the normal headings were and he produced to me a rough draft of some Minutes and I rewrote part of it for him. That same night there was a meeting at the home of Dubois and I challenged him fairly directly about the contents of the Minutes. In fact, I said to him that he had even played around with what I had written. I do not accept the Minutes which have been produced by Kuys as a true record, the first time that I ever saw these Minutes or became aware of their alleged existence was in June 1968 when the meeting took place with the Secretary of the Embassy.

Is this what you are referring to?

30 I am not sure whether these are the Minutes because the Minutes which purport to be those of the 5th January. I have subsequently encountered that they were signed by a number of persons.

Coming to the question of loss or diversion of income to the Society, you have derived four major items of loss, specific loss, the document has been typed — you produce what you claim to be a summary of losses?

That's true.

(Exhibit 8)

Give the Court a brief explanation as to what you — why you so claim?

40 The first mentioned amounts totalling \$2438.50 are loss of advertising revenue after June 1967. The National Insurance Company advised that pending settlement of the argument between the Society and Kuys, who was their agent, they would stop advertising. After three months they recommenced their advertising. In connection with KLM, we were aware that as from July issue they would increase their advertising to one whole page instead of a half page and this has remained so down to the present time. The loss — the fact that we lost the half page. KLM said they would not give us the full page because of the way Kuys had deceived them. They also lost the Norfolk Island money order advertising, who immediately discontinued after the trouble started. Lockwood Homes were advertising  
50 in our paper but we lost that but as far as we are aware they continued in Kuys' paper for eight issues subsequently. We had also been informed by Kuys that Air New Zealand were going to give us three full pages. We never did get this advertising but Kuys' first three issues did. In connection with the membership loss, if I may suggest it, our Treasurer who will be giving evidence may be in a better position to explain how these figures are arrived at. The balance of the claim relating to duplicating and circulars is due to the fact that we had to advise our members as to what was going on. Mr. Kuys received the wrappers for his Windmill Post from the Secretary each month giving him full names and addresses of our members.  
60 These were run off on our addressograph. Kuys sent his Windmill Post to each one of the Society's members and asked them for renewal of their membership, or subscription. His — this caused considerable confusion to members and for this reason a total of four circulars were prepared. The amount of \$8.10 in respect of duplicating expenses because Kuys had

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possession of our typewriter and duplicator which were not handed over until later. The rest of the expenses consist of postages and the cost of paper in connection with these circulars.

On an even more general basis able to tell the Court whether or not the Poenamo reconciliation produced its intended result?

I have no doubt that if this paper which was intended had been available to the members both north and south, that not only would the paper have been a paying proposition, it would have shown quite a handsome profit to most organisations.

10 You might then have reduced the price, might you?

I think this is precisely what would have happened. This might be slightly confusing in that once the club continues on with the publication there is no such charge per copy ever since the time of the publication has come out of general club funds and to my knowledge because of the controversy we do not send the Windmill Post to anyone but members except perhaps the South Island or the Embassy.

CROSS-EXAMINED :

20 Did you say at the meeting of 18th March that it was decided in committee that the New Zealand Society Oranje contract . . . . . of the bulletin to Kuys roughly to extent of cost that the bulletin has been to club?

I did not say that because the bulletin has never been under contract to Kuys.

Did you say that no one was interested in running the bulletin previously and that you were losing on it because no one had a personal interest in it?

That is true, but words to that effect. I have never had the benefit of four minutes of that meeting.

If you used the words "personal interest" what do you mean by that?

It would have been mentioned along the line that everybody is getting sick and tired . . .

30 What do you mean by that?

In its context would have been used, it would mean that they had lost interest in it.

To give them a "personal interest" would be giving them what?

To give anybody a personal interest in bulletin what? Give them an interest in publishing the thing and if it was so intended ownership.

Did you recommend at the meeting of 5th January that Kuys form himself into a limited liability company?

Definitely.

40 At the end of six months the rate of newspaper rate was open to negotiation, was it not, the price?

Certainly.

If Kuys as publisher and yourselves had been unable to agree on the price, do you say that you would have been free to deal with some other person.

I would say that if this had occurred that that would have been in my opinion as a committee meeting the end of the road for Kuys and we would have carried on as a committee or found someone else to do it.

You knew that Kuys who started this newspaper would have to incur a number of capital costs?

50 I cannot think of any real capital costs involved because the paper was being printed for him. Kuys and myself had discussed the possible revenue from existing advertisers. I was aware of the rate that was being charged and in fact it is on the basis of this estimated cost and estimated revenue, for a period, for an initial period, that the shilling per issue was fixed.

You say then that there would have been no capital cost?

Offhand I cannot think of any real capital costs.

60 If you and — if the Society and Kuys failed to reach agreement at end of six months Kuys on your advice would have had a company for six months with no use for it thereafter?

That is quite correct.

You took some instructions from him in your capacity as an accountant?

That is correct.

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Did you offer him any advice as to his tax?

I presume I would have.

Would you recommend the incorporation of a company with the possibility that it may only be used for six months?

At that stage it was visualised that if the arrangement worked out satisfactorily that it would continue. I did not base my suggestion of a company on the six months only, but the possibility of it continuing was definitely in my mind if the arrangement worked out satisfactorily.

10 But it was the end of the road for Kuys at that time as far as you were concerned if you couldn't agree on price?

Correct.

That is a very unusual contractual arrangement, is it not? The whole concept of yours? That is a six months trial period but a company formed for the purpose, do you agree that is an unusual arrangement?

That would be an unusual arrangement if I had visualised it would cease after six months.

But you did visualise that it might cease after six months?

20 I did not. I fully hoped and expected that the arrangement running satisfactorily there wasn't the slightest animosity at the time, the idea of terminating an arrangement frankly never entered my head.

But you've told us that it was in your mind at the time, that if there wasn't agreement of price it was the end of the road for Kuys?

That is correct because if he was not prepared to renew his contract on an acceptable basis then we would have to go somewhere else.

But what if you were not prepared to renew the contract on the same basis?

The same would apply.

30 In giving your answer on capital cost, are you suggesting that with the rate of 1/- per member there was no financial risk?

To Kuys? As I had worked it out with Kuys in fact I was expecting a slight gain to him right from the word go if he acted prudently.

Answer my question. Did you expect that there would not be a financial loss to Kuys?

I did not visualise at that stage a financial loss.

Did you say at the meeting of 18th March words to effect that if he makes a few pounds on it that's OK but don't come crying on our shoulders if he doesn't?

Yes.

That must have meant for the six month period, mustn't it?

40 Yes.

Did you know that Kuys intended to have — to invite subs. from persons who were not members?

At a later stage I became aware of this. In the initial stages I either was not aware of it or did not attach any significance to it because it is essentially a paper limited to the Dutch community.

You yourself as part of the Society in respect of your paper now invite similar subs.?

No. I wasn't aware of it.

Do you invite subs. from persons other than members?

50 To my knowledge, no. We invite for membership as far as I know.

Do you accept that Kuys was enthusiastic for a national Dutch newspaper many months if not years before the inaugural meeting of January 1967?

I will go with you as far as October or November 1966. Before that I had practically no contact with Kuys or anyone associated with the Dutch club. I would agree as to October/December 1966.

Do you agree that there were problems with the Holland Bulletin?

I am aware that Miss Leenman indicated that she was sick and tired of doing it.

60 Do you agree that after December there would have been no Holland Bulletin?

Depends what was in the minds of the committee.

Did you at the March meeting speak of the problem of the Holland Bulletin and a solution to the problem?

Correct.

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- Did you say further as far as the Society was concerned this was an ideal solution as it put the responsibility fair and square on the shoulder of a person that would take the financial burden at least?
- I think that is not quite what I said but what I would have said is that this would be a solution which at least limited our liability in respect of each issue. So that the club would know where it stood at any time.
- Did I understand your evidence as saying the question of ownership was not mentioned at the March meeting?
- I am fairly certain that it was not mentioned because the question of ownership as far as I was concerned was never questioned.
- 10 JUDGE : But did others ask about it?
- The questions asked by others related more to what control we had once I gave them to understand that the paper had been contracted out for a period of six months.
- COUNSEL : Did you say that you had control and that it was recorded in the Minutes?
- I did not say it was recorded in the Minutes because I had never seen any Minutes. What I would have said is that the thing was adequately covered by what took place on 5th January 1967.
- 20 Are you saying that ownership was mentioned at the meeting of 5th January?
- I would say that the question of ownership also was not mentioned at meeting of 5th January 1967. What I said at that meeting was that the publication had been contracted out for a period of six months, and this is the same term as I've always used.
- So that the distinction which your Counsel drew between publisher and proprietor was not made at that meeting on 5th January?
- There was no need to make the distinction and it was not made.
- You worked on the assumption that it was implicit in the arrangement?
- 30 Quite.
- Do you accept having regard to all the circumstances that to the layman it might have appeared that ownership in the new creation belonged to the creator?
- I do not accept that. There was no basis for any such assumption.
- There was the basis of a problem of the Holland Bulletin that had to be solved?
- Yes.
- There was the acknowledged enthusiasm of one man to start a newspaper?
- Of one Secretary.
- 40 Of one person?
- Yes.
- There was a lack of personal interest in the previous publication?
- Yes. But not lack of personal financial interest.
- You made a suggestion to a layman that he should now incorporate a company?
- That is correct. I would certainly at the time of the year when most of this took place that nobody was interested in — I would give my time in January 1967 to the Secretary but not to a private individual.
- 50 You are aware, are you not, of the affidavit, one of yours, where — one of the Defendant's affidavits where someone thought your reference to a company was to protect Mr. Kuys from damages for libel?
- This may even have been mentioned by someone.
- Was in it your mind?
- It may have been but my principal concern was for him in case he went a bit too far in his enthusiasm and I was concerned with the possibility of him finishing up personally in something he could not handle.
- You would accept however that notwithstanding incorporation one can still suffer financial loss?
- Depends on the capital of the company.
- 60 But if a company acquires assets it must have funds to do so and if it loses those assets shareholders lose funds, don't they?
- In general this is correct. There were no assets to acquire in this case.
- But you wanted to be relieved of Kuys crying on your shoulder?
- That's right.



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JUDGE: That's debts incurred, isn't it?

What was in my contemplation at the time that we would fix our liability on a monthly basis and if we went off further than we expected he would do, then we would not finish up holding the baby. I am somewhat fortified when I look at his 1968 balance sheet.

COUNSEL: You assured your members at the March meeting that you had control?

Yes.

10 And you've said that the reason you had control was that in six months time the matter came up for review?

Yes.

That's the only control you say you had?

No. I have already said that the control consisted of the fact that if he didn't toe the line that that would be the end of the line for him at the expiration of six months.

The members at the meeting were concerned about interference or the editing of club news?

I think there was some mention about club news, yes, and it was made clear that the club news would go in the paper.

20 How did you make it clear, what did you say, if he doesn't do this we will sack him in six months?

I think that to some extent there is too much emphasis on 5th January. The fact that Kuys was quite happy to print their news and after all that was the whole purpose of the paper. What I did mention was that if two lines go over the page and he chops it round to some extent, you've got to give the man a certain amount of discretion. I myself had every confidence at the time in Kuys that he would carry out the bargain he had made with us.

30 But you've denied that you said you had control because it was within the Minutes, you've denied you said that, but I read to you what it says in Kuys' version of the Minutes (translation of Exhibit A). "Mr Dubois further says . . . . . club news". Would you not agree that that gives you control to extent that you've got a page reserved for club news?

No. This was not the purpose of this discussion. What this comes out of is, we were trying to work out the advertising content of the paper, the content taken up with Group Travel and that taken up with club news. Because we were conscious of the fact that between the two or three airlines and three travel agents, three pages are taken up with advertising. The page per issue was the minimum we felt should be held aside for club news. This was essentially a matter of general layout of the paper as a whole.

40 Layout of paper was never discussed on 5th January?

But as between Kuys, Dubois and myself there had been a number of discussions about the Windmill Post. Before and after the 5th January and before 18th March.

You said that you've used the term "contract" as being the decisive term in this whole case, describing relationship between you and Kuys? You were here when Marsh opened his case this morning?

Yes.

50 You are now taking the position that because the Society had not been incorporated you need not admit any contract existing on 5th January? (Objection)

I put it to you that your solicitors are now taking the position that this meeting on 5th January did not have the capacity to enter into any contractual relationship, is that the position?

I would not like to take the position speaking from a personal point of view, but if the Society's solicitors advised me as President of the Club to take the position I would certainly not go against their advice, but from a personal point of view I would not like to do so.

60 Do you have that view because people might have acted on the basis of what was said at that meeting?

No, that has no relevance.

Do you accept that people might have changed their position legally as

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what occurred at that meeting?  
Yes, quite possibly.

COURT ADJOURNS : 5.20 pm

THURSDAY 13 NOVEMBER 1968

COURT RESUMES : 10.04 am

10 Look at your affidavit, page 3, paragraph 8, in that you say referring to 5th January meeting "At no stage was there any resolution or agreement reached with the Netherlands Society Oranje nor with any other person regarding publication of the newspaper but in this regard the arrangements were to be considered and finalised by the Executive of the new organisation to be formed" — is that what you said?

Yes.

In your evidence yesterday you spoke about the 18th March meeting, and you said "I explained that . . . . . six months at 1/- per copy . . . . . for that period", and then further you said I take it explanation you gave then related to discussion we have heard in this trial related to meeting at Hoeberigs' home on 5th January?

20 Yes, it would have been mentioned there and it would have been mentioned on a number of occasions before 5th January and it would have been mentioned and discussed on a number of occasions after 5th January.

Did you enter into an agreement on 5th January?

I think the agreement . . . . .

Did you enter into agreement on 5th January with Kuys?

I would say no.

When did you contract the business out?

I would say that the arrangement had been made some time before this but the exact date I would not be sure of, it would be some time in the late December period.

30 The arrangement had been made, been discussed and agreed upon — the contracting out of the publication was made before 5th January?

I would say that. The fact which should not be overlooked is that this was a club matter and took place fairly informally.

You regarded it as a contract, didn't you?

Yes.

What you are saying in your affidavit is that 5th January no resolution or agreements were reached. Do you say they had already been reached?

I would say the arrangement had already been made, and the idea was there and what was said at this meeting is virtually what we intended to do.

40 So it had already happened?

Yes.

But you say at "no stage . . . . . to be formed". Was there a contract out or wasn't there?

Yes, there was a contract out because time was getting short for the next issue and one could say that the — it went ahead without any formal contract having been made; it was rather a sort of friendly arrangement.

In paragraph 11 of your affidavit you refer to a further meeting in January but after incorporation. That right?

Yes.

50 It could possibly have been early February. The dates are estimates to the best of my ability.

In that paragraph you say "Mr. Kuys again offered . . . . . work", that what you say?

Yes.

On page 5 "It was resolved that . . . . . writing"?

That's correct.

This question of reducing it to writing I think had also been raised at 5th January. Why had it been raised at 5th January if nothing was agreed upon there?

60 Because always in my contemplation that the arrangement should be reduced to writing.

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- Why was it necessary to mention on 5th January that it be reduced to writing when no arrangement had been reached on that date?  
The arrangements were fully in contemplation of the members, Dubois and Kuys. I was not a member of any committee and I was merely assisting them, but most of my discussions would have taken place with Kuys whom I saw rather frequently at this time and everybody considered the solution a workable one but at all times it was in my contemplation that at a later stage the arrangement would be reduced to writing.  
You yourself as a solicitor did not think it necessary to record anything in writing yourself?  
10 I was not a solicitor at the time.  
Applied for admission as solicitor at that time?  
No.  
When?  
I was admitted in March 1967, I applied for admission I think on 23rd December 1966.  
That's what I asked you . . . .  
To answer your question, I had no official standing in this club whatsoever, I was giving my services voluntarily to assist.
- 20 JUDGE: When did you first acquire any official position?  
5th January, which was virtually confirmed on 18th March.  
COUNSEL: On your own evidence discussions were still going on at this stage?  
Yes, both before and after.  
You say meeting could be late January or early February that Kuys had this newspaper ready to go about this time?  
I did — when the first issue came out, from memory it came out about second week of February.
- 30 In the same paragraph 11 you say "The financial . . . . . to its members".  
Do I take it that ownership was discussed or just the assumption taken?  
I don't think ownership was ever discussed as such . . . ownership was not discussed, this is just my explanation in the middle of the sentence about ownership.  
Dubois in his affidavit, first affidavit, describes at page 2, "At all stages it was . . . . . envisaged", do you agree that it was master and servant relationship?  
I always visualised it as such except that the arrangement is somewhat unusual for this type of thing.
- 40 His remuneration depended on what he could make out of it, how many he could sell?  
That is correct.  
Dubois goes on to say "it was made clear . . . . . arrangements". You don't think you had that right, do you?  
It wasn't a question of a right, it was a friendly arrangement, and if Kuys found that the idea couldn't work it was envisaged that we might have to make some other arrangements. I envisaged that if the idea didn't work we could get him off the hook.  
That's a long way from saying Don't come crying on my shoulder?  
That would only have applied to the future. I say that what was in mind
- 50 early February was that if he got into difficulties we would come to his rescue, and make other arrangements.  
You told the March meeting that this was the ideal solution because it put the financial question fair and square on the shoulder of another person?  
That's correct.  
But notwithstanding the now friendly nature of the arrangement he should obtain independent legal advice?  
As far as any contract with the Society was concerned, yes.  
And he should incorporate himself into a limited liability company?
- 60 Yes.  
Do you think that legal relationship was ever precisely applied?  
Unfortunately no.

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You were most anxious to unite the Dutch Society throughout New Zealand?

I wouldn't go as far as that. I was aware of a lot of unnecessary squabbling as a result of the particular set-up, and Rules. It was for that purpose that Kuys tried to get Hendrikse and both myself to assist him. I had never personally up to that time taken any interest in any of the clubs.

But you were called in to try to provide a national body for these fighting Dutch, were you not, Kuys called you in?

This was in contemplation I realised after some time.

10 If you had lost a national paper, that would have put the movement back somewhat?

I doubt it.

JUDGE: Holland Bulletin went to whom?

To Auckland Club members and Auckland branches' members. At that point of time the paper was also still going to the South Island members who had paid their membership for that particular year.

COUNSEL: Paid up till June?

Yes.

20 Was it not going also to some people who were paid up to June 1966 but had not renewed their subscriptions?

That has always been the policy.

Did the problem arise as to what to do, those people who had renewed their subscriptions, but to whom Kuys wanted to continue sending Windmill Post?

I can't recollect much of a discussion about this but if Kuys says that there was one, I have no reason to dispute that.

But you dispute dictating the letter saying, you can dictate letter on your own letterhead but don't use the Society's?

I can't recollect that.

30 In your affidavit you denied it as it appears in Minutes of 8th June, you say now you just don't recollect?

I would say I do not recollect. My instinctive reaction would be to deny anything contained in those Minutes.

The Minutes read "It is agreed . . . . . to me"?

I would certainly not have dictated the note as you read out.

Did you dictate any note?

I may well have assisted him. But I cannot recollect the occasion. The fact that owner is mentioned at a time where there was considerable argument between us makes me doubt that I assisted him. But certainly in writing  
40 what he has put there.

Might you have had said something to this effect, It's Kuys' concern, not mine or the Society's?

Quite possibly, as far as we are concerned they don't get a copy any more, we are not going to pay 1/- per copy amounting to so much a year for which we had nothing back because at that stage they would already have had a paper for a full six months without having paid a penny for it, plus six months of the Holland Bulletin.

Yesterday you said in answer to a question of mine that you did not know Kuys intended to invite subscriptions from persons who were not members,  
50 became aware of that at a later stage, that right?

Yes.

Paragraph 8 which refers to 5th January meeting, you say "Whilst it is . . . . . by non-members . . . . . publication"?

It may well be that at the time of this affidavit I am genuinely of the opinion that this was raised on 5th January because at the time of this affidavit I was fully aware that this had been going on.

You say aware of it at time, 5th January, in your affidavit, you would assume subscriptions would be for a year from start of paper for private people other than members?

60 I never gave that matter any thought.

What would have happened to those subscribers had you taken the newspaper back after six months?

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- I don't think that I ever considered this aspect but I imagine that we would have sent them a copy if we were aware who they were. It would make very little difference to the Society apart from postage whether 1300 or 1600 copies went out as the initial costs are the highest costs.
- If Kuys' company had gone into liquidation, assuming he formed it as soon as you told him to, and O.A. had a buyer for the title Windmill Post, would you have allowed that to go to creditors of Windmill Post Limited?
- The O.A. would have a similar argument as we are having now.
- You think he would be just entitled to claim the property as we are?
- 10 (Stopped)
- You weren't there or in Society when this arrangement to set up Group Travel account was made, were you?
- No.
- You may well have objected to it being set up with two signing authorities? In view of the amount involved, certainly yes.
- It was done and it had been going on for a long time?
- I am aware of that, yes.
- Something like if there had been 900 travellers like Kuys said something like half a million dollars would have gone through that account?
- 20 Yes.
- The saving to an individual in Group Travel is about \$300?
- Thirty per cent whatever the fare was at the time. I accept \$300.
- You partook in this too, didn't you?
- Yes.
- Pay your cheque through Kuys?
- Can't remember. It's unlikely, but I may well have done so.
- The 900 at \$300 has been a saving to Dutch community of about \$27,000?
- Yes.
- Income to the Society for lending its name in the order of \$6,500?
- 30 I cannot accept your statement lending its name. . . . Yes, gross.
- This Group Travel has been responsible for making the Oranje Society grow tremendously over the years?
- Yes, it is partially responsible for it.
- I put it to you that it was 95 per cent of hard work and ingenuity of Kuys that built the Society up and provided it with this set-up?
- I think it was largely due to his work but not to extent that you say. Miss Leenman has for years had a tremendous burden in financial administration of the Club.
- Not Group Travel?
- 40 For some periods, yes.
- When Kuys was overseas?
- Yes.
- Kuys was editor of the Bulletin for a long time?
- I am not aware of that — of the period of time, but I do understand that he did it for some period and received payment for doing so on occasions.
- On this question of Minutes, dealing with the six lots of Minutes we've got, you say none of these were read at the meeting?
- That's true. I only recollect one occasion which may have been at the last meeting where he started to read out Minutes and I abused him of even falsifying what had been discussed during the lunch hour.
- 50 He had altered your draft?
- I think so, yes. And he started to read it as if it was mine.
- But you write in your own handwriting?
- Yes.
- Referring to meeting 24th March 1967 the Minutes of previous meetings were read?
- Yes.
- Were they read or were they not?
- They were not read.
- 60 Why did you write they were?
- Because Kuys came to see me to give him an idea as to what should be contained in Minutes.
- Setting out headings?
- Yes, then I think I went on one particular topic and I said, carry on along those lines.

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- But why did you use the word “meetings” plural?  
I think what I might have had in mind is that Minutes for previous meetings were to be produced because none had been produced previously, there had been considerable argument about this and it is on basis of that argument we had that Kuys saw me at the office and what I possibly had in mind is that the Minutes of the meetings were to be tabled. I particularly recollect my statement that if Minutes had been produced as they should have been the argument would never had arisen.  
The Minutes had never been read before?
- 10 That is correct.  
You know the distinction between being read and accepted?  
Yes.  
Is that your handwriting?  
That is.  
Kuys has added some words to that, “and accepted” where you’ve said “and read”?  
Yes. I have not seen this document since that day in the office.  
You admit it’s your handwriting?  
Yes, it’s mine.
- 20 It’s not true to say that Minutes were not read at previous meeting is it?  
The Minutes were not read at previous meeting.  
Were they read at that meeting 24h May of which that is the minutes?  
The only recollection I have of Minutes being read is on the day I prepared this document and that after we had started I accused him of changing what I had written on the day.  
You didn’t finish the Minutes?  
I did not, no.  
This refers to meeting of 24th May?  
Correct, yes.
- 30 At which, if your statement is correct, Minutes of previous meetings were read?  
My statement there is not correct. Because it was never intended as such, it was merely intended to give him an idea as to what was wanted in writing up minutes.  
But there is a matter before that which is a particular matter, asking Dubois to produce Minutes of April with the Ambassador? It’s not a heading as such?  
No, it is not a heading, but I referred to a specific matter for the sake of convenience.
- 40 In other words, to a real fact? Telling me it was necessary to tell Kuys, having been Secretary for as long as he had, how to write out previous minutes were read?  
I would say it was definitely necessary.  
Suggesting that wording had to be explained to him? Just setting out a heading?  
Because he had never produced minutes as far as I am aware and told me that he had never done proper minutes for anything. Nor were any Minutes made available to the club when he handed over the club’s property.  
This was created at some point of time before the split, wasn’t it?  
Yes.
- 50 If you say you already had previous arguments with him about minutes being produced, pretty dangerous thing to let go?  
I did not say I had had arguments over previous Minutes which had been produced. No, I said the arguments had been over the fact that no Minutes had been produced.  
You now say matter of producing and not reading?  
I never saw any or heard any.  
You are aware, are you, of letter of 22nd June that went under the name of Miss Leenman?  
Yes, I am.
- 60 Read passage with brackets “The National Executive . . . . publication”.  
(Kuys affidavit — Exhibit L)

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- Was that decision of National Executive Committee?  
Yes.  
Have you the Minutes for that meeting?  
I think they are about.  
Would it have been a meeting prior to 22nd June?  
I think this would be the meeting of 19th June.  
Are there any Minutes of that meeting?  
Yes.  
That's the meeting that passed a vote of no confidence?
- 10 This was the meeting that — which confirmed the vote of no confidence and I think by memory it was decided to send out notices convening the special meeting for the purpose of removing him as Secretary.  
To decide to revert to a publication of its own?  
That is a terminology that was used, yes.  
Of a standard similar to the Windmill Post?  
Yes.  
That indicates a — you regard that as a high standard as compared with Holland Bulletin?  
Frankly I don't.
- 20 You don't agree this had very favourable impact on Dutch community when it came out?  
It never affected me that way.  
What about the Dutch community?  
I can't speak for them.  
As result of your position with the Society have you ever had any free travel to anywhere?  
Yes.  
Where was that to?  
Holland.
- 30 And return?  
Yes.  
Offered to you by KLM?  
No.  
Who by?  
CPA.  
These airlines are pretty concerned to please the Dutch community who travel, aren't they?  
Yes, they are.
- 40 You might agree they compromise some people?  
Unfortunately, yes.  
You've produced balance sheet to 30th June 1966?  
Yes.  
Know whether the balance sheet for June 1965?  
I don't know, I've never seen it.  
Responsibility of an auditor to make sure he gets the exact relationship of the fund to the Society before he makes such a statement?  
Yes.  
Know what this account is called, The Netherlands Society Oranje Group Travel Society?
- 50 Yes.  
Mr. Kooiman calls it a trust account?  
He calls it such and I consider it as such.  
But you haven't seen the Minutes or know the manner in which it was constituted?  
There are no Minutes for National Executive going back to before 1967 whatsoever.  
Do you say as part of your claim for damages that you might have got Rotorua and Tauranga involved if there hadn't been argument?
- 60 I was referring to Whangarei, Wellington, Invercargill, Christchurch and Dunedin, at that point of time Tauranga was and still is in the full, Rotorua was and no longer is in the full.  
Base claim that they might have been but for this?  
Quite definitely.  
Some of the Societies come and go, don't they?  
The smaller branches, yes.

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Little for e.g. in Palmerston North?

Agree.

Excepting what you say about the situation in June, when the break came, you could have put Kuys effectively to the background by merely withdrawing your support of his paper and changing name to some other?

We could have done so, but saw no reason why we should do so. We considered it our paper.

But you would agree that the taking away of these subscriptions and access to club news must have been very detrimental?

10 Naturally.

What was apparently always a very friendly arrangement has ceased to be?

Up to March I regarded Kuys as a personal friend in whom I had the utmost trust, in June both of these had changed.

RE-EXAMINED :

Mr. Heron referred you to Minutes of committee meetings held in June 1967 but didn't put to any other Minutes in is that your handwriting?

No.

(Exhibit 9)

20 I want to know whether or not you either drafted or saw the letter that Mrs Leenman sent out before it was sent?

No. I didn't see it.

JUDGE :

According to your view of the matter, you had an arrangement with Mr. Kuys which was temporary to running the Windmill Post?

Correct.

You would review the situation at the end of six months?

Correct.

30 And if he didn't fall in with your Society's wishes he could be relieved of his position?

That is correct.

What do you claim gave you the power to relieve him of his position as editor/publisher of the Windmill Post?

The fact that the Windmill Post was a club paper. It was not contemplation of anyone to my knowledge that he should have any or ever did have any proprietary rights in the paper.

Did you recognise in February/March that it might be necessary to terminate his position if things went wrong?

40 No, it was never actually contemplated as such, because on the face of it there would be no difficulty over the first issue, the second issue came out, no trouble or difficulties, and it never actually gave me any concern.

At the meeting in March some members questioned this word "independent", did they?

That's true.

What did you understand was worrying them?

Some question of control over the paper.

Were they apparently anxious that Kuys might take the bit between his teeth and run it in a way not acceptable to the Society?

50 Yes, I think that was in the mind of one or two of them.

Did it then appear to you that there might be something in this point that was worrying these people and that Kuys might get out of hand?

No, I had most utmost trust in him at that time.

Was anything reduced to writing to evidence the fact that he was under your control?

I did mention to the meeting that I had expected that a contract would have been favourable to produce to the meeting, but this had not been available at this stage.

What had led you to believe that?

60 Because the suggestion had been made by me at an earlier time.

When?

Possibly before 5th January, certainly on occasions after that. And I'm fairly certain that mention was made of this on 5th January.



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Did you press him after the March meeting for this contract?

Yes. There were a number of items for which he was being pressed at each meeting and in fact I went and saw him personally one day and told him that I could not longer hold my hand above him if he did not improve his ways.

When Mrs. Leenman wrote that the National Committee had decided to withdraw support from the Windmill Post and revert to a publication of its own, is that a fair expression of what the National Committee had decided to do?

10 Yes, we intended to actually cancel that arrangement with Kuys and go back to the old idea of the Society publishing its own paper.

And abandoning the name Windmill Post to him?

At that point of time it was felt that Kuys had covered his tracks to—which would enable him to hold on to the name.

In what way did you think he had covered his tracks?

We expected that he would have registered the name in the Supreme Court or in Wellington.

Did you regard the name Windmill Post as being of value?

20 As such no value except that it had become recognised as the club's — as the name of the club's paper. That is the only value that I saw in the name myself.

Was that then of any value to your club?

Yes.

The fact that it was recognised?

Yes.

Would you then have preferred to keep the name Windmill Post for use by your club rather than surrender it?

Yes, and this is why we continued publishing the paper with the name Windmill Post.

30 But at one stage you thought that he would have covered his tracks — is that so?

Yes. In fairness to Kuys I do not want to use the exact words.

So you resigned yourself to the fact that although you'd like the name Windmill Post you couldn't have it?

We didn't resign ourselves to fact but we considered the possibility.

Was this discussed in the middle of June?

This was discussed.

At what sort of a meeting?

At meeting of National Executive in the absence of Kuys.

40 What decision was reached as to how you would republish as far as name concerned?

The final decision was made as far as I recollect but the new Secretary was asked to see the Society's solicitors next morning to make inquiries as to what our position was.

By the time Mrs. Leenman wrote her circular of 22nd June, had it been decided to abandon Windmill Post as a name?

I would not say it had been decided, it was visualised that we might have been beaten to it.

Did you think to check up in Supreme Court office?

50 I did not personally, I have never had any contact with newspaper regulations.

In a letter of 22nd June to KLM, Dubois says in soliciting advertising "We would appreciate . . . (Exhibit F) . . . Windmill Post"?

Yes.

Had you people more or less realised that you would have to use a different name? probably?

We were aware that the position did exist, that we might have to change because of acts on his part.

And what later changed your mind?

60 Our solicitors advised to the fact that no trademark had been registered, no application had been made in the Supreme Court and that on the basis of what we call tem . . . we felt no reason to continue on with publishing the Windmill Post.

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Were you at the meeting at the Dutch Embassy in Wellington?

Yes.

Were you at committee meetings afterwards in Auckland when te Winkel's material was received?

I cannot recollect the occasion. What I do recollect is some talk about telephone conversations by Dubois and Kuys to te Winkel.

As you recollect it, what was said in Wellington when the Federated Clubs were there about ownership or control of Windmill Post?

As I recollect it very little was said about the Windmill Post as this matter was discussed more or less in passing at that point. The purpose of the meeting was altogether different.

COURT ADJOURNS : 11.35 am

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P. V. Dubois

PLOON VLEESCH DUBOIS (Sworn)

You've made affidavit, and cross-examined on this affidavit?

Correct.

When you were cross-examined before you expected to be out of the country without knowledge of when or if you would return?

Correct.

You are back in Auckland and living in this country permanently?

Correct.

With no intention of moving out?

10 That's correct.

It is correct that at least in the Auckland Society of which Kuys was the Secretary, Minutes were prepared and circulated to all members of the committee?

Correct.

Further to the other evidence, do you now produce as (Exhibit 10) the Minutes of a meeting of the Auckland Society of 23rd January and translate for the Court the two paragraphs under Holland Bulletin and . . . ?

20 Under Holland Bulletin, "In February instead of Holland Bulletin a newspaper may be published the costs of which are carried by the National Finance. Trial period six months".

JUDGE: What's the date?

23rd January 1967. "The National organisation Mr. Tryens is nominated as Auckland delegate for the National Council meeting, Mr. Kuys informs the meeting that Mr. Wilhelmsen has sold the New Zealand Hollander to Oranje".

Are you able to tell us whether or not that Minute would have been circulated before the next meeting some time February?

It would have been circulated before the next meeting.

30 Griffiths has been mentioned in the course of this hearing, as a reminder, did you have any discussion with Kuys as to his having seen a Prentice in the company of this Griffiths in May or June 1967?

Well, as I have said before in previous cross-examination that Prentice rang us about fact that Griffiths and Kuys had visited him to ask for a bribe for continuation of CPA in Group Travel.

JUDGE: Whose initials are these?

Mrs. Ankersmith.

CROSS-EXAMINED:

Do you say that in these Minutes that it was stated that the Oranje Society had bought the Hollander?

40 That's what it states in the Minutes.

You didn't think that though, did you?

As I explained in my affidavit, I understood it was bought by Mr. Kuys.

Know that when this meeting was held? Did Kuys tell you he had bought the paper himself?

I understood myself that Kuys had bought it but Mrs. Ankersmith understood that Oranje bought it.

What was your position in Auckland Society at that time?

President.

Your position also President of National Executive?

50 That's right.

If it had been said at meeting that Oranje had bought it, it would have been without your knowledge?

I was present but at that time I probably didn't pay enough attention to that particular part.

You don't recall the Auckland Society or National Executive authorised Kuys to buy it?

No.

You would know, would you have not?

If it had been authorised by committee I would have known.

60 You speak of meetings of National Executive after the 5th January, when do you say whatever arrangements were made with Kuys, they were finalised?

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- The arrangements about the newspaper were completed after the meeting of 5th January 1967.
- How long after?  
A few weeks.
- Agree that knowing what you know of date of first publication some work must have been done prior to these arrangements being completed?  
Yes.
- By Kuys?  
By the committee and Kuys.
- 10 Did you have a discussion with Kuys at about this time, about the use of the postal permit?  
No.  
Would the Society have had any use for that permit now that it was not publishing the Holland Bulletin?  
The permit was still valid for our new paper.  
No recall Kuys telephoning you when newspaper getting close to production and asking you about the permit?  
He definitely did not.
- 20 Are you aware that it has been said by Kuys that he did?  
No, I am not aware of that.  
You say you were all taking part in this production of this newspaper up till end of January, say?  
I didn't say I was completely involved in production of this newspaper.  
Were you doing any of that work, organising advertising, seeing printer?  
No, I did not.
- JUDGE: What do you mean by work by the committee?  
Policy as to size and frequency but not the work of production.
- COUNSEL: What do you mean size, size of paper?  
Size, appearance, etc.
- 30 You didn't take those to the printer yourself?  
No, I did not.  
Agree with me that one of the primary objects of the new Society was to unify and discipline elements in the Club as far as Dutch community was concerned?  
To a certain extent perhaps.  
Was a newspaper or national publication regarded as very important to achieve that objective?  
No, because newspaper idea was well before any difficulties between the clubs.
- 40 Not suggest it would help to support the Society?  
Not in that sense I would say.  
Kuys had been at the Society to put out this newspaper for some time?  
The idea was an idea that was with us since 1963. It was a matter of policy.  
Your Society had declined to do it on ground of cost?  
We felt that at that stage we had to look into matter of cost a little bit more carefully perhaps.  
It was deferred on a number of occasions, wasn't it?  
It was not deferred in the end because we decided that because Kuys could find the time . . . it was Kuys' offer that really got the thing under way,
- 50 to edit the paper that got it on the way. Else we would have to find another editor.  
Another editor who would have to take it on at his own risk?  
The risk was partly Kuys'. The agreement made with Kuys that part of the risk was with Kuys.  
What part of the risk was yours?  
If the paper somehow would not pay for itself, we would morally have to stand by Kuys to make sure the accounts were paid.  
Did you attend meeting of 18th March?  
Yes.

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Did you hear Renneberg tell the members there that so far as the Society was concerned, talking about Windmill Post, it put the responsibility fair and square on the shoulders of the person and take the responsibility out of our hands?

Part of the meeting I was out of the room by request.

Agree that to some extent people at that meeting had to ratify the arrangements you had made earlier with Kuys?

They could rectify them if they wished to do so.

Recall whether you heard in relation to Kuys taking responsibility words to effect Don't come crying on the shoulders of the Society?

I can't recall.

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E. S. Prentice

EDDIE SHANNON PRENTICE (Sworn)

Of 43 Dudley Road, Mission Bay, Auckland.

Occupy the post of Branch Manager of CPA?

Manager for New Zealand.

Your appearance in this Court is pursuant to a subpoena?

Correct.

You haven't been here before, but cast your mind back to the year 1967 and tell the Court whether you were then acquainted with a Mr. Kuys, Mr. Dubois and Mr. Griffiths and Mr. Renneberg?

10 I was.

All four?

Yes.

Your airline had for some time done considerable transportation business in relation to Auckland Oranje Society?

Yes.

Who were your dealings with over the years?

Mr. Kuys, Secretary of the Oranje Society.

When did you first become acquainted with Griffiths, in what capacity did you so become acquainted?

20 In January 1967 when he called upon us in company with Kuys.

Tell the Court as to what capacity he was coming to see you at that time?

I'm not quite sure what capacity he came, possibly as adviser to Mr. Kuys, this is only my surmise.

Later in the year 1967 were you in touch with Dubois following any further occasion by Griffiths and Kuys?

Not after a further visit by Griffiths and Kuys but later, not sure of date. Reason for getting in touch with Dubois was that our airline haul was being roaded and the Netherlands Society traffic was being directed to other lines.

30 When Griffiths and Kuys were in touch with you did you form any clear view as to what they were wanting from your airline?

(Stopped)

What was said to you when Griffiths and Kuys called on you?

They called upon us making a proposal for the carriage of entertainers from the Netherlands to New Zealand initially. How could we help them in bringing these entertainers to this country.

What did you say to that?

40 There was quite a deal of discussion on Group Travel at this particular stage. This discussion was led mostly by Mr. Griffiths as I recall and during this discussion it was mentioned that because Kuys had worked so hard in development of Dutch group traffic from New Zealand he thought that some retainer should be considered.

What did you say to that?

We were very non-committal at this particular stage. Also developed at that particular meeting was a proposition of a mileage credit. This I understood to be a credit in cash for miles flown by CPA.

This credit in cash, was that for the . . .

(Stopped)

This credit in cash, who for?

50 I understood this to be for Kuys as Secretary of Oranje Society.

What did you say to that?

At this particular stage again we were most non-committal.

Anything else said?

Another proposition put to us by Griffiths which was that we as a company should take advertising in a company called Milk Ads in Japan of which Griffiths had the franchise.

What did you say?

Again we were most non-committal. This proposition had to be studied.

60 Did you think it proper on your behalf to report to Dubois as to the approach made to you by these gentlemen?

Not at this particular stage.

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Did you do so subsequently and if so, when?

Difficult to lay down, but I believe it could have been about May.

Tell us what you said to Dubois and what action if any resulted?

(Objection)

Did you tell Dubois effect of what had taken place?

At this stage I did.

With what result as far as CPA was concerned, if any?

At a subsequent meeting which was called, the whole routine operation of the Netherlands Society was discussed.

10 JUDGE : Meeting of whom?

Dubois, Renneberg, Van Dongen of KLM and possibly one other; not sure whether Miss Leenman present at that stage.

Kuys?

No.

Griffiths?

No.

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N. Leenman

NEELTJE LEENMAN (Sworn)

Of Auckland, Shop Assistant.

I swore an affidavit on 4th December 1968.

You now swear that the contents of the affidavit are true and correct?

Except for two errors in dates in paragraphs 2 and 3 when I overlooked when signing it. November and December 1967 should be 1966; paragraph 3 should be May-June 1967.

You recognise the handwriting on Exhibits B, C and D?

10 It is the handwriting of Mr. Kuys. On B and C, Kuys at the top and mine on the bottom and say for D.

Who was responsible for payment of those invoices?

I was.

How did you pay them?

20 By cheque. B and C were paid by cheque. £122.13.7 on 26th May 1967 to Mr. Kuys for expenses incurred for the Society, all different expenses, and also the April issue of the Windmill Post, which was £98. It says April Windmill Post, that would be 1/- a copy (Exhibit B). On Exhibit C is also again different expenses and May issue of the Windmill Post, 1/- a copy to a total of £112.8.0, but as I did the wrappers to go round the Post I know I had given him an amount of £104.10.0 and I deducted the difference. Because we couldn't understand why he was sending out more copies than we had authorised him to do. Exhibit D was again telephone expenses, Windmill Post issue of June. This was not paid by the Society, but deducted from the amount owed to us. He deducted his expenses and Windmill Post for June.

Also you have made a check of the Society's records as to membership from the time that Kuys resigned?

Yes.

30 And for the same period of time, could you tell the Court what membership was actually recorded as having been lost or been reduced?

I worked this out. It was just over 230 members—230 couples members of the New Zealand Netherlands Society we lost between the period June and August 1967.

What were the fees for those couples?

\$3.00 per annum.

During the years 1966 and 1967 did it come to your knowledge that Kuys and Griffiths were partners in any commercial venture?

No.

What was your understanding of Griffiths in (objection)

40 Were you told by Kuys who Griffiths was or what he had to do with things?

No.

CROSS-EXAMINED:

In Exhibit B there is shown 100 Windmill Post Napier and 160 Windmill Post Wanganui. Is that right?

Yes.

You know why they were sent to those places, don't you?

Long time ago I can't quite recall.

50 I now suggest the Society were interested in putting this newspaper in front of the two clubs, Wanganui and Napier?

That's only postage.

He hasn't asked you to pay for those because they are not going to members?

They may have been included, but I'm not sure.

Are you prepared to say they are included in this cost down here?

I couldn't say.

You think— if it was at the Society's request these papers go to those clubs they should pay the postage?

I don't know.

60 In paragraph 9 of your affidavit you refer to going to the Avondale bank? I did.

You discovered a National Savings Account in the name of the Netherlands



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Society Oranje Incorporated?

Correct.

Look at the photostat copy of that account (Exhibit E), read the name of that account—Oranje Society Group Travel Account. Big difference between what you said on oath today?

Oh well.

It's just a mistake?

So many things happen it's very hard to remember.

Did you ever receive a private cheque of Kuys in respect of Group Travel?

10 I remember receiving the cheque referred to Exhibit D, one cheque in June I received and that was from his own personal account.

Claiming administration expenses?

Bank administration fee. Also £336 for the ticket that had been sold.

How long have you been a member of the Auckland Society?

Since 1960.

Kuys has always been responsible for Group Travel organisation?

Yes.

Was it you who suggested you wanted the money kept out of the ordinary Society account?

20 No. I was never asked anything like that.

Didn't present a problem to you at any time?

No, except at one stage we did discuss that two signatories should be put on cheques, but Kuys said the suggestion was not convenient to him.

You who was responsible for publishing the Holland Bulletin?

No, my sister-in-law, Mrs. Leenman.

Is she overseas?

She is, yes.

Has she been overseas for some time?

She left at the end of August of this year.

30 COURT ADJOURNS: 12.55 p.m.

COURT RESUMES: 2.19 p.m.

WILHELMUS JOHANNES VAN DONGEN (Sworn)

No. 20  
In the Supreme  
Court of  
New Zealand —  
Notes of  
Evidence of  
witnesses for  
Defendant  
at hearing —  
W. J. Van Dongen

- Of Auckland, Airline District Manager for KLM Dutch Royal Airlines.  
You are appearing under subpoena?  
Yes.  
You did make an affidavit on 4th December 1968 after referring to your company's own solicitor?  
That's correct?  
Can you tell the Court whether or not you are familiar with what you said in your affidavit?  
10 I can.  
Are you prepared at this time what was there said was and is correct?  
I will.  
One matter — is Mrs. Kuys personally known to you?  
She is.  
Has she been in receipt of any emolument?  
Yes, she has.  
What amount and for what period?  
20 If my memory serves me right, from April 1965 until the middle of 1967 — July 1967. Amount of £25 per month.  
Did she enjoy any title in respect of that regular payment within your airline's terminology?  
She was appointed temporary sales representative for my company — I meant part-time.  
Did this lady actually attend on your offices or on your customers to your knowledge?  
30 Not in actual fact. When this Group Travel system started in 1963 I approached Kuys as he was then Secretary of the Netherlands Society Oranje and suggested to him that this might be a good idea for his organisation. He wholeheartedly agreed to it, and for a period obtained various groups through his work. At a certain stage he mentioned to me on numerous occasions that there was no remuneration for him despite he did all that work. I mentioned this to my superiors and I understand he also did it himself whenever one of my superior officers visit us in New Zealand. Correspondence developed between myself and my head office through our general manager in Sydney on this subject, and if my memory serves me right in April 1965 I received approval from my head office to appoint Mrs. Kuys as a part-time sales representative or, as it is called in airline jargon, consul.  
40 From what you said, tell us why the appointment was Mrs. rather than Mr.?  
In accordance with the International Transport Association regulations an airline is able to appoint a part-time sales representative, the remuneration to be decided on between the two parties. Two categories: (1) part-time salesman who has other employment; (2) part-time salesman who has no other employment. The persons in the second category who have no other employment are entitled to staff travel privileges. Consequently we decided that it would be advantageous to Mr. and Mrs. Kuys to appoint Mrs. Kuys to enable them to enjoy the staff travel privileges.  
50 When did the arrangement for Group Travel terminate?  
In July 1967 if my memory serves me right.
- CROSS-EXAMINED:
- Been suggested that this arrangement you have spoken of was a bribe or a secret commission. Agree with that?  
No.  
It's an arrangement, is it not, that can be determined on one month's notice on either side?  
Correct.  
60 In February, not before, of 1967 — if not before, Mr. Kuys changed from your airline to another airline a large portion of Group Travel business?  
Yes. I heard about this approach in the middle of March 1967.

No. 20  
In the Supreme  
Court of  
New Zealand—  
Notes of  
Evidence of  
witnesses for  
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at hearing—  
W. J. Van Dongen

- He was putting in jeopardy his wife's arrangement?  
Oh definitely.  
It was because, in Mr. Kuys' view at any rate, your airline was unable to provide sufficient free stopovers? Do you have any knowledge of that?  
That was a statement made to me by Mr. Kuys.  
You would accept as a Group Travel organiser that he was free to use what airline he wished?  
Most certainly.  
As you were free to terminate your arrangement with Mrs. Kuys?  
10 Depending on circumstances, yes.  
In a letter of 18th May 1967, addressed to Kuys, you say (Exhibit E), third paragraph: "When we were ..... Oranje", that what you said?  
That's right.  
Go on to say "We now find ..... Oranje" — understand that?  
Yes.  
Who told you that?  
To be quite honest I can only guess. It's several years ago and at that time no one realised which way this thing was going. I would think it was the Committee consisting of Dubois and Miss Leenman.  
20 They certainly made it clear that Kuys was claiming ownership?  
Yes, that's correct.  
You go on, "Further more ..... services". I'm suggesting to you that that's the reason for not increasing the advertising at that stage — it's got nothing to do with the Windmill Post?  
I beg to differ there. When I was informed in March 1967 that Kuys had placed all the business as far as my company is concerned to another company, I told him shortly after, after consultation with my superiors, that we would increase our advertising because at that stage I was not aware that the Windmill Post was supposed to be the property of Kuys.  
30 My understanding has always been that this paper was issued by the Dutch Oranje Society.  
If the newspaper was independent of the Oranje Society, but was under contract to supply — to print Oranje Club news, would you have not supported it with advertisements?  
I couldn't reply these years later. From my understanding from Kuys was that it was the Society's paper. It was my understanding — it was written on the Society's letterhead and signed by him as Secretary.  
Your answer is that you would not have supplied such a newspaper under contract because that's what you say you now discover?  
40 I couldn't answer that question definitely because it all depends on circumstances.  
You didn't at that time cancel all your advertising? He was still Group Travel organiser and Secretary?  
Yes.  
It — know when he resigned as Secretary?  
I think it was somewhere in July 1967, that's what I was notified by the President of the Society.  
Were you aware that the Society was to appoint another Group Travel organiser?  
50 I was informed at the same time.  
So he would be a Group Travel organiser without a Society?  
Mr. Kuys, yes.  
Under the I.A.R.T.A. rules anybody who organises Group Travel, provided they have a group who complies?  
Yes.  
Was it those matters, that is the resignation as Secretary and appointment of a new Group Travel organiser, that you withdrew all advertisements from the Windmill Post?  
I withdrew advertising arrangements from the Windmill Post as it was then and immediately reinstated all arrangements with the Oranje Windmill Post.  
60 Recall at the insertion of an advertisement in the first issue of the Windmill Post congratulating the publishers?  
I do.

No. 20  
In the Supreme  
Court of  
New Zealand—  
Notes of  
Evidence of  
witnesses for  
Defendant  
at hearing—  
W. J. Van Dongen

Some problem whether it should be the Society or the publishers who should be congratulated?

That never arose at that stage.

Did you not instruct advertising agents to alter it to publishers and not the Society?

I can't remember.

J. Illot?

Yes, they were our advertising agents.

Look at those two letters, that letter from J. Illot—read that.

10 "We understand ..... (Exhibit G) ..... urgent."

Dated 22nd January?

To be quite honest I can't remember. Yes, I quite agree with that.

What did you cross out?

Nothing. Original text was ..... congratulate Windmill Post.

There was nothing crossed out. The original advertisement did not have the words "the publishers" on.

Did you no doubt see a copy of the Windmill Post after?

I received it every month as an advertiser and as a member of the Society.

You still assumed that the publishers were the Society?

20 Most definitely. I didn't assume it. I took it for granted in the original communication from Mr. Kuys—the reason I have already given.

Take any particular note of the second paragraph where it says "Circulation ..... edition" letter of 6th January?

When this letter was received by me I did not really read it word from word to find out exactly what it meant. To me the Society and the publishers were one.

If you had read that carefully you wouldn't have come to that conclusion, would you? (stopped)

30 You had supported by advertisements the New Zealand Hollander, had you not?

That's right.

Privately owned Dutch newspaper?

Yes.

You say in your affidavit, "Had it been made to appear ..... such a journal." That's not consistent with the support of the New Zealand Hollander?

Each case should be judged on its own merits.

Why say then that you wouldn't support this individual?

It would depend upon the circumstances if I supported him.

40 In your last paragraph, aren't you making a moral judgement you don't believe in?

I disagree.

RE-EXAMINED:

My learned friend suggested that one man can be a Group Travel organiser if he can find a group which qualifies?

Yes.

Are there not qualifications for that group, specifically affinity?

Are you referring to qualifications of group organiser or actual group.

Whether or not the group qualifications has to have affinity?

50 That's quite correct, yes.

JUDGE: Is it permissible under I.A.R.T.A. regulations for an airline to appoint a Group Travel organiser as a part-time sales representative?

No.

But a Group Travel organiser will have quite a lot of work to do?

Oh yes.

What reward does a Group Travel organiser usually get for his trouble?

Depends on set-up of the organisation for which he works.

But the carrier may not award him?

Not necessarily, no.

ABIGAEL MARIA MARTINA HOPMAN (Sworn)

No. 20  
In the Supreme  
Court of  
New Zealand —  
Notes of  
Evidence of  
witnesses for  
Defendant  
at hearing —  
A. M. M. Hopman

Of Auckland, Married Woman.

You have made an affidavit in this case on behalf of the Oranje Society?

Yes.

Read that affidavit recently?

Yes, I have.

Are you able to tell this Court is and remains true?

Yes.

10 Both before and since you swore that affidavit you had visits from Kuys to your home?

Yes.

How many times did Kuys visit your home since you filed your affidavit?

Once.

Who was with him?

Mr. Griffiths.

Tell me in relation to the minutes of a meeting held on 5th January 1967 when you were asked to put your name on them and by whom?

I don't know exactly when Kuys resigned.

20 About how long after 5th January 1967 it was before you were asked to put your name on the minutes?

Must have been ten months or nearly a year afterwards.

CROSS-EXAMINED:

Read those minutes through?

Yes.

In Dutch, were they?

Yes.

Appear to be correct to you, did they?

Yes.

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No. 20  
In the Supreme  
Court of  
New Zealand —  
Notes of  
Evidence of  
witnesses for  
Defendant  
at hearing —  
F. F. van Impelen

FELIX FRANCISCUS VAN IMPELEN (Sworn)

Of Auckland, Printer.

I am director-manager of Impex Press Ltd., 19 Virginia Avenue, Auckland.  
You have read an affidavit sworn on 28th November 1968?

Yes.

Do you confirm that the affidavit was correct and remains correct?

Yes, I do.

CROSS-EXAMINED:

Look at these two invoices. You print those for Kuys?

10 Yes, I did. (Exhibit H.)

Those for — that describes him as publisher and promoter?

Yes.

The Windmill motif is the Holland Bulletin motif, is it not?

Yes.

What did you understand he was promoting, or didn't you?

Not really.

Could he be promoting other than — did you think he was promoting something other than his own newspaper?

I never thought about it.

20 This was a — you say ethics are in printing only to use the customer's blocks for customer's work?

Yes.

Did you regard these as one and the same thing, Holland Bulletin and the Windmill Post?

Yes.

Send account to Kuys for this work?

Yes.

Recall attaching this poster to your affidavit showing the windmill?

Yes. (Exhibit C.)

30 That same windmill that's on the Windmill Post?

Yes, it's the same.

Is it the same windmill as that?

Yes, looks like the same. I think it's the same. I have no other one. I have only one. That's in respect of a publication on 5th June 1965 called "Ouehap", meaning The Old Bite.

Recall in — look at Exhibit B. That says 2,000 posters . . . . . the block?

Yes.

What block?

This block.

40 The windmill?

Yes.

You already had it in existence then?

Yes.

Who paid for it then?

It was a block I had made for myself. What we call a stock block.

So you charge it twice?

Twice, three times, four times.

Hireage charge?

Sometimes.

50 Kuys in evidence, when he came to you about this newspaper, you got a block out of the file and rubbed it on your coat and said I have got one?

Yes.

Was it the Society's or was it yours?

That particular one was mine.

Recall signing this affidavit?

Yes.

Who prepared it — you take part in preparation of it?

Solicitor wrote it out.

You say that "I and my company . . . . . (paragraph 7) . . . . .

60 Incorporated" — that's not correct, is it?

No, that's not correct. Only applies to the inside block in this case.

No. 20  
 In the Supreme  
 Court of  
 New Zealand —  
 Notes of  
 Evidence of  
 witnesses for  
 Defendant  
 at hearing —  
 F. F. van Impelen

- JUDGE: Who do you say owned the inside block?  
 The Society, the small one.  
 In that respect the affidavit is correct?  
 Yes.  
 But the outside block, who did that belong to?  
 It was one of mine.  
 When had the Society acquired the inside block?  
 It would be about eight years ago, maybe ten, I can't say from memory —  
 it should say here, 1959.
- 10 COUNSEL: Look at another edition of The Old Bite — same little block?  
 Yes.  
 Using the Society's block for The Old Bite?  
 Yes.  
 Their permission for that?  
 Yes, we had a friendly arrangement and they don't mind if we use them.  
 Is that an advertisement for a Presbyterian Fair?  
 Yes, Dutch Fair, indicating it was a Dutch Fair.  
 Look at paragraph 7 of your affidavit. "At all times . . . . . customer"?  
 Yes, that's right. But I said many times, they borrow blocks, lend blocks  
 20 and they borrow blocks, and the blocks go from printer to printer.  
 If I've understood the affidavit correctly, it's been suggested that Kuys  
 has done something very wrong using those two blocks—you suggest  
 that's true?  
 Depends on what point of view you look at it. I produced that print  
 for the Netherlands Society and Kuys, Secretary of the Society.  
 You know Griffiths?  
 Yes.  
 He came with Kuys to your premises in the month of January 1967 before  
 the first issue went out?
- 30 I don't think that date is right. I don't think he came that early. I think  
 he came after the first issue.  
 Talk to him about who was paying for the newspaper?  
 No.  
 Did he not tell you he would stand by Mr. Kuys?  
 He told me that six months later or four months or three months maybe,  
 but not to start with.  
 This was after the magazine got under way?  
 Yes.  
 You said in your affidavit that you bought a printing press for this job?  
 40 Yes.  
 Were you not intending to buy a printing press in any event?  
 I was not intending to buy a machine that big really because I had no  
 work for it.  
 Did you know that that arrangement — did you know that the newspaper,  
 whoever it was to be published by, was to be for a trial period of six  
 months?  
 Yes.

**Hearing:** 10, 11, 12, 13 November 1969

**Counsel:** Mr. Heron for Co-Plaintiffs

Mr. Clark and Mr. Marsh for Defendant

**Judgment:** 22 December, 1969

JUDGMENT OF SPEIGHT, J.

No. 21  
In the Supreme  
Court of  
New Zealand—  
Judgment of  
Speight J.

10 The Plaintiffs, Kuys and The Windmill Post Limited, claim an injunction against the Defendant to prevent the extraordinary situation whereby two almost identical newspapers are published by rival organisations. There is no doubt that the Company with Kuys as its proprietor, initiated the publication of the paper, invented its title and elected to use the windmill devices.

After six months, the Defendant also launched a similar publication and deliberately copied the Plaintiff's format, and the two papers are circulating simultaneously—only distinguished by sub-headings—one of which (the Plaintiff's) claims to be an "Independent" paper and the other claims to be the official organ of the Oranje Society.

Claims and counter-claims are made for injunction and also a counter-claim for damages which I will refer to later.

20 The dilemma the Court is faced with is trying to unravel a volume of conflicting testimony—each of which is supported by documents which, it is claimed, verify or corroborate the account given by the respective parties. Unfortunately few of these documents bear the hallmark of contemporaneous authenticity. They are, in large part, post hoc versions of what each party has believed is a true record and in respect of which attempts have been made to have supporting witnesses aver to be a correct record. For the most part, I disregard these documents—not as untrue fabrications, but as stale and unreliable reconstructions.

30 I am driven to trying to assess the credibility of the witnesses who were present at the time of the important phases of the negotiations—a difficult task because both parties have so enthusiastically espoused their respective causes that even in their own minds, truth and wishful thinking are sometimes blurred. In some respects, however, particularly in the evidence of Kuys, I have found powerful support from his demonstrated conduct which would be difficult to reconcile with the versions of the negotiations which the Defendant's witnesses contend for.

Secondly, I have received help from the impressions gained at the appropriate time by witnesses whom I regard as impartial and intelligent, who made enquiries as to the arrangements which had recently been entered into and whose conclusions as to what had been negotiated I regard as sound.

40 I say that I acquit any witness of deliberate dishonesty—but in many instances I believe the Defendant's witnesses have by reconstruction persuaded themselves that things were arranged merely because that is how they now believe they ought to have been arranged.

50 In particular, there has been a great deal of conflict of evidence between Kuys on one hand, and Renneberg on the other, and it might be a difficult problem if I were required to choose one from the other on the question of honesty, but this is, in my view, not necessary. The arrangement which was made was a loose one when one looks for any substantiating evidentiary material. As I have said, much of what has been produced since, I view with hesitation. To name two phases of this, Mr. Kuys was neglectful of his duty in writing up proper minutes of meetings when he was secretary. Subsequently he has produced minutes initialled only by himself or has had certain other persons present sign that what he has later produced as a correct record, whereas



in the applications made by Mr. Du Bois to the Trademarks Commissioner, there are signed forms verifying opposite versions of the same affairs. If the proper procedure of recording minutes of meetings had been adopted, this difficulty would not have arisen, but I do not think that in either case they have been deliberately falsified.

10 On the other hand, Mr. Renneberg vehemently protests that he took a certain stand when certain questions were asked of him, and I think he is unconsciously supplementing his memory by what he now thinks ought to have been the situation. Again, as with Kuys, he is not free from criticism as its business  
 10 adviser for failing to have the arrangements between the Society and Kuys properly documented. Indeed, because of the unusual nature of the arrangement he now contends for there would have been the greater need.

My difficulty, therefore, is to turn back to the meetings of December, 1966, January, February, March, 1967, and attempt to see what was the arrangement between the parties. From April onwards the situation becomes more difficult because discord was beginning to emerge and each party thereafter was trying to shape documentary records in a direction favourable to his own view of what had gone on.

20 From my assessment of the witnesses, a particularly favourable impression was made upon me by Mr. Ingelse and Mr. Zeeman. Admittedly they were not present at the January meetings when the original negotiations took place, but they appear to have asked sensible questions at the March meeting, and I accept as correct the evidence they give as to what explanations were made to them, and I also accept as valid the conclusions they came to based on Mr. Renneberg's explanations as to what the arrangement was. Also I think Mr. Hoeberrigs is substantially correct and Mrs. Hopman is truthful when they say that they believe the minute which Kuys produced is substantially accurate as to January 5.

30 I make it clear that I am not imputing untruthfulness to Mr. Du Bois and Mr. Renneberg, but I believe they were uncertain in their minds as to just what arrangement they were agreeing to and, indeed, some matters which should be clarified were left vague, perhaps because they did not then appear of great consequence. That being so, there is room for the view that the Defendant's representatives did not clearly have in their minds the full implications of what might eventually happen to the newspaper. This in part is explicable by the fact that the newspaper did not figure over-prominently in the January negotiations — they were more interested in national unity and group travel arrangements. But the fact that they did not necessarily understand that they were consenting to a situation does not prevent the Court from determining the sense of the promise if it can ascertain what a sensible third party would have  
 40 understood the arrangements to mean.

My summary of the facts at that time is as follows: It had, for some years, been the desire of the Auckland Netherlands Society, which subsequently became the National Society, to have a proper paper, but this had appeared to be difficult of attainment. The moving spirit behind this thought was Mr. Kuys, who had struggled with the Society's bulletin, and it met with the approval of Mr. Du Bois and others, but they were less optimistic than he of the prospect of success. In particular there had been trouble with some of the branches in 1965 and 1966, and the publication of the Holland Bulletin was becoming more and more difficult — to the extent that in December, 1966, it was almost doomed  
 50 to extinction.

Kuys had made inquiries in Holland in the latter part of 1966 for news and photo services which had persuaded him that these things could provide a practicable basis for a paper. I do not take any point of the fact that he had obtained his air trip to Holland as a complimentary one from K.L.M., for he was simultaneously running the group travel service and was receiving no remuneration, at that time, from the Society for his secretarial activity.

10 The first substantial matter of significance is that it was he who negotiated with Mr. Wilhelmsen for the purchase of the N.Z. Hollander, and the cheque for that was drawn on November 13, 1966. It has been claimed against Kuys that this was on a Society account called Netherland Society Oranje Group Travel account and that he was therefore paying for this purchase with Society funds. On the contrary, I think this argument is in Kuys' favour for it is clear that the Society wished him to keep the group travel funds separate from Society funds. I accept his explanation that the account was only so called because, naturally, many of the cheques from potential travellers were made out in the Society's name. No claim was made on him for interest from this account. Of every £5 which was the super-charge to intending travellers, he faithfully paid £3 10/- to the Society and kept £1 10/- as his allowed share.

20 Undoubtedly, therefore, a substantial amount of the money in this account was his, and this £100 paid for the purchase of the Hollander in November, 1966, was, in effect, out of his pocket. It is apparent, and Mr. Clark has enlarged upon it, that Kuys never hesitated to claim every penny he thought he was entitled to from the Society, but no claim was made for a refund of £100 so that it is obvious he was treating this disbursement, made as early as the end of 1966, as a debit to him personally. Subsequently, in about March, he debited it to his own Company.

30 Turning to the January situation, and in particular the meeting of January 5, it is apparent that primarily this related to the establishment of a National rather than an Auckland body. With the prospect of harmony spreading there would be a more assured market for Kuys' pet scheme—a proper newspaper. Others may have recognised this, but it was, in my view, almost exclusively Kuys who took any constructive steps. I also accept that he naturally wanted sufficient guaranteed circulation, and hence his concern to secure a certain number of initial subscriptions from the as yet to be formed National Society. His conduct at that meeting and subsequently in his dealings with Mr. Van Impelen, clearly indicate that he was assuming responsibility for the format and, to a large extent, the content of the paper, saving to the Society, as a reward for its support, the right to have its news printed as it wished. It would be a most unusual arrangement if he were to launch this venture which would initially lose money, that he could persuade the printer to enlarge his equipment, that he could spend his own money in acquiring the N.Z. Hollander and have suggested to him and go to the trouble of forming a limited liability company bringing in a partner to give him financial support, if at the end of six months he could have it all taken away from him at the whim of the Society should he not consent to their terms for payment after the initial six months. I think he then had clearly in his mind the arrangement for which he now contends and from the remarks made by the Defendant's witnesses at that time, it was a justifiable belief. On the other hand, Messrs. Renneberg and Du Bois claim that it was a hiring out, for a limited period only, of the right to publish. Viewed from a third party's point of view, this would seem to be a strange arrangement if it led Kuys to act in the way he did. There would need to be something more conclusive than exists to persuade me that such an arrangement had been consented to by Kuys. With Mr. Renneberg's legal training, one would have expected something on paper if they were to be able to resume that with which, on the face of things, they were parting. All the indications, even at that stage, pointed the other way.

50 There is, of course, now a deal of conflict between persons who were present at the January meeting, but I am little impressed by the explanation made on behalf of the Defendant, of the remark admittedly made by Mrs. Hoeberrigs to Kuys that "he had something of his own now". This remark sounds to me to confirm that which Kuys now claims, i.e., that it was then understood that this was a proprietary venture on his part.

I agree with the submissions made by Mr. Heron that the relevance of the meeting of March 18 is not so much as to any decision made, but is evidentiary value as to what had gone before. In particular, I prefer the explanation as to the use of the word "Independent" given by Mr. Ingelse, namely that its use suggested to him that it was Kuys' newspaper, and I do not accept the evidence of the Defendant's witnesses that it was explained away as indicative of absence of religious or local affiliations. Although Ingelse cannot remember exactly what was said, he was persuaded by all that took place, that it was Kuys' paper with certain obligations to the Society to publish its news. And  
 10 Ingelse impressed me as a sensible man; and similarly with Zeeman.

Again, the suggestion of incorporating a company for Mr. Kuys' protection was repeated at that meeting which is significant in his favour, and it seems unlikely, if the Defendant's understanding were the true arrangement, that the matter of agreement was still not pursued by Mr. Renneberg. Having had the question of "Independent" raised, it seems strange to me that some steps were not taken to ensure that everybody clearly understood that Kuys was only acting as an agent under contract.

I have given considerable thought, as I was urged to do, to the impressions formed by outsiders, such as airline representatives, and representatives of  
 20 Dutch clubs from the South Island. It is perfectly understandable that persons such as Mr. Van Dongen should misunderstand the situation and assume that it was the Society's paper, for no steps were taken by anybody to advise him otherwise. I do not think that of great significance. Similarly, I doubt whether the South Island people found it necessary to question the arrangement. They took it for granted, and, being somewhat at a distance, were not made aware of the developments.

It is, however, of substantial significance in Kuys' favour, to consider the initial impression made on Mr. Te Winkel of the Dutch Consul's office at the Wellington meeting. He initially recorded that the Windmill Post was the  
 30 private property of Mr. Kuys—albeit "for the time being". This last phrase is perhaps explained by his final comment in the same paragraph when he says "that after this trial period both organisations shall again discuss this matter". This I believe is the state of mind—a rather woolly state of mind—that the officers of the Society were in from the beginning: That Kuys could start it on his own account. They wished him well, but would have no part of it. If by chance it succeeded, then they would have another look at it and perhaps negotiate a long-term arrangement. In the event, by the time June/July came around, no such negotiations were practicable and Kuys had unexpectedly succeeded. That being so, in the absence of new arrangements, the paper re-  
 40 mained his.

Finally, paragraph 7 of Exhibits (b) and (c) to Mr. Du Bois' second affidavit, is, I think, the most definite version of what had happened, namely that Kuys intended this to be his own newspaper and understood the Defendant's representatives to be agreeing to this; that the Defendant's representatives did not perhaps at the time appreciate the full significance of it and because all the parties were at that stage on good terms, anticipated that if Kuys could succeed in making the publication endure for that period, they would be able to re-negotiate with him. Certainly this is the view which I, attempting to be the officious onlooker, take from such facts as I feel are firmly established.

50 For these reasons, therefore, I favour the view contended for by the Plaintiff from this conflicting material.

There are, indeed, many confusing matters which have, from time to time, distracted me one way or the other in reaching this conclusion. Most of these are explicable upon the basis they were misunderstandings by persons who were not parties to the original arrangement or are genuine but mistaken reconstructions by the Defendant's representatives.

The true situation I find to be that Kuys understood the arrangements made in January to be that he was authorised to start a paper as his own enterprise. He bought out one other paper in the field. He had been already running the Society's earlier publication which had collapsed. The others were luke-warm and unwilling to take any steps, but were happy to let him try. Nothing which was said or done in December, 1966, or January, 1967, would have led him or an independent third party to believe otherwise.

10 As far as the Society representatives were concerned, I do not think they ever turned their mind to what would happen if they fell out with Kuys in six months' time. In the interim, they thought it a good idea that such a paper should be attempted and hoped it would be a success. But they were not prepared to run it, and, if it was a failure, then that was Kuys' responsibility, and, in Renneberg's words, "it was no use him crying on their shoulder".

Why they did not attempt to tie Kuys more definitely to renewal terms for the continuation of their news in the paper must remain speculation. Probably as these publications had previously led such a hand-to-mouth existence, and as the Society's affairs in general were by no means businesslike, they never thought that far ahead.

20 If they did believe that they still held control so that they could dictate policy in the future, then they were mistaken — and no independent person witnessing the negotiations and the situation which Kuys created could have reasonably inferred that they were the owners of the paper. On the contrary, terms which they assented to led Kuys reasonably to assume that they were agreeing to him launching the paper as his own enterprise, as he had so long been urging.

30 Some of the activities of the Plaintiff in relation to group travel have been subject to criticisms, and if they were relevant I am not sure that I would be very happy about the ethics of his behaviour in those matters. They are not, however, the subject of these proceedings. They do not go to the point of affecting his credibility on the issues which I have to decide, for I do not completely reject his explanations of some of them. It is, of course, clear that a party seeking an equitable remedy must come with clean hands. But this must relate to the matter before the Court and I do not find Kuys at fault in any relevant matter. The conflict between these two parties is crying out for a remedy one way or the other, and, in my view, Kuys has established his case.

Notwithstanding the Society's mistake, I hold that the paper and its title are the Plaintiff's property.

40 One minor factor which emerges is that it is now clear that the small block which is inside page two of the Post was the property of the Society and the Plaintiff has no right to its use. It is now conceded, however, that the main device on the outside was Mr. Van Impelen's own property and was willingly provided by him to Mr. Kuys and has become the Plaintiff Company's recognised symbol, having paid the printer for its use. Most importantly, however, the name "Windmill" and "Post", used either separately or in conjunction, have now become so closely associated with the newspaper as to constitute the Plaintiff's property for publication purposes.

Accordingly, there is an injunction restraining the Defendant by itself or its agents, from publishing, distributing or selling a newspaper under the name or style of The Windmill Post or any use of the words "Windmill" or "Post" or from the use of the large windmill device on the front page.

50 Consequently I have no need to deal with the supplementary claims for damages made by the Defendant. Even if this were sustainable from a procedural point of view, I was little impressed by the evidence in support of it, and it is dismissed along with the other relief sought by the Defendant.

I award costs to the Plaintiff of \$500 and Court disbursements and witness expenses to be fixed by the Registrar.

G. D. SPEIGHT, J.

**FORMAL JUDGMENT OF SUPREME COURT**

No. 22  
In the Supreme  
Court of New  
Zealand —  
Formal judgment  
of Supreme  
Court of  
New Zealand.

10 This action coming on for trial on the 10th, 11th, 12th and 13th days of November 1969 before His Honour Mr. Justice Speight **UPON READING** the Notice of Motion for a perpetual injunction, the Statement of Claim, the amended Statement of Defence and Counterclaim, the Statement of Defence to amended Statement of Counterclaim and the Affidavits of L. C. Kuys, I. L. Griffiths, M. M. H. Hoeberigs, H. C. Zeeman, F. N. West-Walker and of P. V. Dubois (sworn 4th December, 1968), P. V. Dubois (sworn 17th February, 1969), L. Renneberg, A. M. M. Hopman, F. F. Van Impelen, W. J. Van Dongen, N. Leenman, B. H. Klap filed in support and in opposition thereto **AND UPON HEARING** Mr. Heron of Counsel on behalf of the Co-Plaintiffs and Mr. Clark and Mr. Marsh of Counsel on behalf of the Defendant and the evidence then adduced **IT IS ORDERED AND ADJUDGED** that a Writ of Injunction do issue to the Co-Plaintiffs to restrain the Defendant by itself or its agents or any of them perpetually from publishing, distributing or selling a newspaper under the name or style of The Windmill Post or any use of the words "Windmill" or "Post" or from the use of the large windmill device on the front page **AND IT IS**

20 **FURTHER ORDERED** that the Defendant **DO PAY** to the Co-Plaintiffs the sum of \$500 by way of costs and disbursements and witnesses expenses in the sum of \$214.00, in terms of the Schedule attached hereto.

Dated the 22nd day of December, 1969.

M. J. HAWKINS,  
Deputy Registrar.

## IN THE COURT OF APPEAL OF NEW ZEALAND

No. 8/70

BETWEEN NEW ZEALAND NETHERLANDS SOCIETY  
"ORANJE" INCORPORATED a duly  
incorporated Society under the Incorporated  
Societies Act 1908 having its registered office  
at 40 Gordon Road, Northcote, Auckland,

**Appellant**

AND LAURENTIUS CORNELIS KUYS of  
Auckland, Company Director, and  
10 THE WINDMILL POST LIMITED a duly  
incorporated Company having its registered  
office at Norfolk House, High Street, Auckland.

**Respondents****NOTICE OF MOTION OF APPEAL**

No. 23  
In the Court  
of Appeal of  
New Zealand —  
Notice of Motion  
of Appeal.

20

TAKE NOTICE that this Honourable Court will be moved at the first sittings thereof to be held after the expiration of fourteen days from the date of service of this Notice or so soon thereafter as Counsel can be heard on behalf of the abovenamed Appellant by way of appeal from the whole of the judgment of the Supreme Court of New Zealand (in its Northern District, Auckland Registry) given and made by the Honourable Mr. Justice Speight, Judge of the Supreme Court of New Zealand, on the 22nd day of December, 1969 in the matter of an action numbered 329/68 in the Wellington District, Wellington Registry of the Supreme Court of New Zealand wherein the Appellant was the Defendant and the Respondents were the co-Plaintiffs, UPON THE GROUNDS that the said judgment is erroneous in fact and law.

DATED at Auckland this 24th day of February, 1970.

B. H. CLARK  
Solicitor for the Appellant

30

TO : The Respondents, LAURENTIUS CORNELIS KUYS and  
THE WINDMILL POST LIMITED and their Solicitor, Mr. R. A. Heron.

TO : The Registrar of the Court of Appeal.

TO : The Registrars of the Supreme Court of New Zealand at Auckland  
and Wellington.

THIS NOTICE OF MOTION is filed by BERNARD HUGH CLARK,  
Solicitor for the Appellant, whose address for service is at the Offices of  
Messieurs Young, Bennett, Edgley and Co., Solicitors, 85 Customhouse  
Quay, Wellington, 1.

During the course of the hearing before the Court of Appeal the Appellant was requested to provide the Court with a chronological summary of facts. The following is such summary which was provided. The Respondents for their part not necessarily accept the description of the factual situation as submitted and reserve leave to comment on the summary if required.

The Appellant for its part may wish to refer to other factual matters and the list as provided is not to be regarded as exhaustive.

#### CHRONOLOGICAL SUMMARY OF FACTS

- 10 1. 1949 — Netherlands Society "Oranje" incorporated under Incorporated Societies Act 1908 (hereinafter referred to as "Auckland Society").  
E. 6, Paragraph 5.
2. 1962 — October. Kuys becomes member of Auckland Society and afterwards member of Committee.  
Page 50, Line 18.
3. 1963 — February. Kuys appointed acting Secretary, Auckland Society.  
Page 50, Line 20.
- 20 4. 1963 — August. Kuys becomes permanent Secretary, Auckland Society, and continues to do work until 1967.  
Page 50, Line 21.  
Page 51, Line 7.
5. 1964 — Kuys undertakes group travel activity on behalf of Auckland Society.
6. 1965 — Kuys apparently authorised to open special account in Auckland Savings Bank.
7. 1965 — September 1st. Mr. and Mrs. Kuys open special account at Auckland Savings Bank under category "not for purposes of trade or profit" and in name Netherlands Society "Oranje" Group Travel Account.  
30 E. 176.
8. 1963/1968 — Dubois holds position of President of Auckland Society.  
Page 16, Line 11.
9. 1963/June, 1966 — Holland Bulletin published by Society and edited by Kuys.  
Page 51, Line 57.
10. 1966 — December. Miss Leenman produces last Holland Bulletin.
11. 1966 — December 6th. Committee meeting Auckland Society envisaging appointment of part-time Secretary on paid basis to carry out monthly publication, secretarial work and club travel.  
40 Page 33, Lines 25 et seq.
12. 1966 — December 15th. Cheque drawn by K.L.M. in favour of Auckland Society.  
E. 177.  
  
This cheque banked into private account Kuys.  
Page 68, Line 8.
13. 1966 — Christmas to New Year. Kuys alleges discussion with Dubois.  
Page 54, Line 35.
14. 1967 — January 5th. Informal meeting at Hoeberig's house.  
50 Page 55, Line 16.
15. 1967 — January 13th. Cheque drawn for £100 payable to Willemsen re payment for N.Z. Hollander.  
E. 98 and E. 99.

No. 24  
In the Court  
of Appeal of  
New Zealand—  
Chronological  
Summary of  
Facts.

16. 1967 — January 6th. Circular letter from Kuys to advertisers.  
E. 76.
17. 1967 — January 27th. Letter Kuys to Post Office requesting change of name from Holland Bulletin to Windmill Post.  
E. 43.  
N.Z. Netherlands Society “Oranje” incorporated.  
E. 168.
18. 1967 — February. First publication of Windmill Post.  
E. 1.
- 10 19. 1967 — March 18th. National Conference held at Auckland.  
Page 60, Line 18.
20. 1967 — June 16th. Vote of no confidence in Secretary passed.  
E. 36.
21. 1967 — June. Kuys tenders resignation as Secretary.  
E. 37.
22. 1967 — Resignation accepted.  
E. 46.
23. 1967 — July 4th. Application under Newspapers and Printers Act 1955 lodged by N.Z. Netherlands Society “Oranje” Inc. in Supreme Court at Auckland.  
20 E. 45.
24. 1967 July/July 1968 — Submissions to Commissioner of Trade Marks.
25. 1968 — July. Interim decision received from Trade Mark Commissioner.  
E. 28.
26. 1968 — September. Proceedings issued by Kuys against N.Z. Netherlands Society “Oranje” Inc.



### REASONS FOR JUDGMENT OF TURNER J.

I am asked by the President to deliver the first judgment. This is an appeal from a judgment of Speight J., granting an injunction to plaintiffs, the publishers of a newspaper called "The Windmill Post", restraining defendant Society from publishing another newspaper under an identical style and title. Except as to one crucial conference, about which there is a sharp dispute, the essential facts were hardly the subject of argument. They may be quickly summarised as below.

10 Defendant Society is a duly incorporated non-profit-earning Society, whose membership is largely or entirely derived from the Dutch community in New Zealand. Respondent Kuys, who was one of the plaintiffs in the Court below, was at all material times the Secretary of this Society. Actually there were two Societies, the Auckland Society, and later the National Society, which is a party to this action; Kuys was the Secretary of both. Before 1967 the Auckland Society published a "Bulletin". It had been proposed that this Bulletin should be taken over by the New Zealand Society. In 1966 Kuys (then, as at all material times, secretary of the Auckland Society) visited Holland. While he was there he made some inquiries as to sources of news which might be useful in conducting the Society's publication. On his return he found the Bulletin in the last stages of collapse. The number for December, 1966, appeared likely to be its last. Calling to mind the material to which he had acquired access while in Holland, Kuys suggested to Mr. Dubois, the President of the Auckland Society (the National Society was still in process of being incorporated) that he could expand the old Bulletin into a newspaper with every chance of success. On 5th January he had a conference with Dubois, and it is as to what happened at this conference that the parties were in sharp conflict before the Court. Dubois was admittedly very sceptical of the chances of success of the suggested new venture, and clearly indicated that the Society was not prepared to underwrite it financially except to a very limited extent. Just exactly what was said on both sides, beyond this, is a matter of dispute, and it will perhaps be most convenient if I set out in short summary the versions put forward before Speight J. for each side.

20

30

Before Speight J. respondents (Kuys and the newspaper company which he later formed) alleged that the effect of the conversation of January 5th was (1) It was agreed that the Society's Bulletin was moribund, and that it had little or no chance of resuscitation. (2) Kuys put forward a new project: that he should publish in place of the old Bulletin a newspaper to be called "The Windmill Post", in which the property should be his. (3) 40 The Society should have the right to publish the Society's news in the new paper. (4) The Society would underwrite the venture to this extent, and no more, that it would guarantee for six months the purchase of the new newspaper at a price of 1/- per copy by 2,000 of its members. (5) At the end of six months those terms — including indeed the question whether the Society's support was to be renewed on any terms — were to be re-discussed.

The Society, on the other hand, contended before Speight J., and before us, for quite a different effect of the conversations of 5th January. It said that what was agreed in those conversations was (1) that the Society's 50 Bulletin should rise from its ashes with a new body, changing into the new "Windmill Post", now a newspaper and not merely a Bulletin; (2) that this newspaper should be the property of the Society; (3) that Kuys should be the editor and publisher of the new newspaper; (4) that the Society should in the first place have no financial responsibility for the publication of the new paper, the risk of profit or loss being borne entirely by Kuys, who would look to sales and advertisements to recoup him for his outlay and labour in publication; (5) that for six months the Society would guarantee purchases by its members of 2,000 copies at one shilling per copy; (6) that after six months the whole terms upon which Kuys was to continue 60 to edit or publish the Society's newspaper (if indeed it continued to be published at all, and if he continued as its editor) should be reconsidered.

There is no great dispute about what happened after this conversation.

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Turner J.

Kuys had already bought out the only other Dutch journal circulating in competition.— the “New Zealand Hollander” — for the sum of £100. He now took in a partner, who it may be mentioned was not an officer or even a member of the Society. With their joint finances they ultimately formed a company — The Windmill Post Limited. The name “The Windmill Post” was held by Speight J. to be Kuys’ invention, and it had in fact been mentioned between him and the Society before and at the interview of 5th January. The two partners proceeded to found and publish the newspaper “The Windmill Post”. This was “an independent newspaper”.  
10 It announced in its heading that it “incorporated” the New Zealand Hollander (the paper which had been purchased) and the Holland Bulletin (the Society’s former publication). This last statement, it must be pointed out, was clearly untrue if the “Windmill Post” was the property of the partners, for any property remaining in the old “Holland Bulletin” must have continued to be in the Society. The publishers canvassed by letter those who had advertised in the old Bulletin, asking, in the name of the Society, for their support of the new paper. At last there arose a dispute as to who owned the new newspaper. The Society contended that the new venture, started by Kuys when secretary, founded under its auspices  
20 and/or of the Auckland Society, should be its own; Kuys rejected this contention and recalled Dubois’ refusal to take any share in the responsibility in the event of financial failure. The Society then began to publish its own newspaper (as it was clearly entitled to do, provided it used a different name), but it published its paper under the same name or style as had been adopted by Kuys and his company, and it was this copying of the name or style of the Windmill Post which led to the application for an injunction before Speight J.

The statement of claim filed by plaintiffs (Kuys and his company) rested their claim to an injunction simply on the allegations of fact made  
30 by them as above set out. They contended that Kuys had founded and published a newspaper, and that defendant Society had copied it. The statement of defence of defendant Society set up that in so far as Kuys had founded and published the newspaper, he had done so as secretary or officer of the Society, and on its behalf, and that he had never had or acquired any beneficial interest in the publication.

The learned Judge held that “The Windmill Post” was the property of the plaintiffs, Kuys and his company, and granted their application for an injunction restraining the Society from publishing a paper under the name or style of “The Windmill Post”. In the course of his judgment he  
40 had occasion, naturally, to examine with some care the different accounts of the conference of January 5th. As to this conference he held that Kuys, for his part, actually intended in his own mind that the paper should be his own, and that he understood the Society’s representatives to agree that this should be so; the Judge said that possibly the Society’s representatives did not appreciate to the full the implications of their own words and actions as they were understood by Kuys. The effect of the judgment is that if the proposals of the two parties at the interview are examined subjectively, it must be concluded that their minds never came together; if they are examined objectively, the result is that the arrangement  
50 contended for by the Society was not established, and that the effect of the conversations was reasonably understood by Kuys to be as his counsel had submitted.

Before us Mr. Clark felt bound to accept these conclusions of fact. But he said that in concluding as to their legal effect, the learned Judge had decided the matter by a wrong approach in law. Instead of regarding the rights of the parties as determined by their relationship one to the other at the material times — a matter of status — the Judge, he said, had decided the matter by inquiring whether they had effectively contracted one with the other at the conference of January 5th, and if so, what were the terms  
60 of their contract? Into this inquiry, he said, he injected the notion of the officious bystander, one, so Mr. Clark submitted, inappropriate to such an inquiry, and appropriate only in the course of determining, in cases where

contract was already proved or conceded, whether or not an unexpressed term should be implied in that contract. Mr. Clark submitted as the essence of the matter that, contract or no contract, Kuys at all material times owed a fiduciary duty to the Society by virtue of his position as secretary, and that the newspaper which was born from the conference of January 5th, 1967, was from the beginning, and remained, by reason of this fiduciary relationship, always the property of the Society.

10 To the appeal ultimately put forward before us on this succinct submission Mr. Heron made one reply. This was that if — as he did not admit — Kuys stood before the conversations of January 5th in such a fiduciary relationship to the Society that without those conversations he must have held any newspaper started by him as trustee for the Society, the effect of the conversations was to give him a dispensation from the fiduciary relationship, with the result that the newspaper born out of those conversations was from the beginning his property, and not, as would otherwise have been the case, that of the Society.

I have no doubt that the two ultimate submissions made by Mr. Clark and Mr. Heron, summarised as above, posed the crucial question on which this appeal must turn.

20 Mr. Heron — perhaps a little under pressure from members of the Court — was disposed to concede that if nothing had been said between the parties at the material time the relationship in which Kuys stood to the Society might have resulted in the newspaper which he started, under the Society's auspices, while still its secretary, being the property of the Society; and that it was necessary, if plaintiffs were to succeed (as they did succeed) before Speight J., for them to show affirmatively that the Society had granted the necessary dispensation, either expressly or by implication, at the conference of January 5th. But Mr. Heron contended that this had been shown, and that it had been so found as a fact by Speight J., on  
 30 whose judgment he took his stand. Having reflected on this submission, I accept it. It is true that the expressions actually used by the learned Judge in his judgment did not include either of the words "fiduciary" or "dispensation"; and the expressions that he did use do appear, at least at first sight, to give some support to Mr. Clark's determined submission that he applied the test of the officious bystander to a question to which that test was not applicable at all, and decided the matter as one to be governed by the implication of a term. Mr. Clark emphasised particularly the passage in Speight J.'s judgment in which the learned Judge said:

40 "The fact that they did not necessarily understand that they were consenting to a situation does not prevent the Court from determining the sense of the promise if it can ascertain what a sensible third party would have understood the arrangements to mean."

But I take the really crucial passage to be the one, near the end of his judgment, in which after re-examining the pros and cons of the matter Speight J. thus purported to determine the dispute between the parties:

50 "The true situation I find to be that Kuys understood the arrangements made in January to be that he was authorised to start a paper as his own enterprise. He bought out one other paper in the field. He had been already running the Society's earlier publication which had collapsed. The others were luke-warm and unwilling to take any steps, but were happy to let him try. Nothing which was said or done in December, 1966, or January, 1967, would have led him or an independent third party to believe otherwise.

60 "As far as the Society's representatives were concerned, I do not think they ever turned their mind to what would happen if they fell out with Kuys in six months' time. In the interim, they thought it a good idea that such a paper should be attempted and hoped it would be a success. But they were not prepared to run it, and, if it was a failure, then that was Kuys' 'responsibility', and, in Renneberg's words, 'it was no use him crying on their shoulder'.

“Why they did not attempt to tie Kuys more definitely to renewal terms for the continuation of their news in the paper must remain speculation. Probably as these publications had previously led such a hand-to-mouth existence, and as the Society’s affairs in general were by no means businesslike, they never thought that far ahead.

10 “If they did believe that they still held control so that they could dictate policy in the future, then they were mistaken — and no independent person witnessing the negotiations and the situation which Kuys created could have reasonably inferred that they were the owners of the paper. On the contrary, terms which they assented to led Kuys reasonably to assume that they were agreeing to him launching the paper as his own enterprise, as he had so long been urging.”

In a word, I read the judgment, even though the words “fiduciary” or “dispensation” do not appear therein, as finding as a basic essential fact that the effect of the conversations of 5th January was to give Kuys a dispensation from the fiduciary duty which without that dispensation he might have owed. Once this conclusion is reached, the appeal must necessarily fail.

20 A word about merits before I conclude. Mr. Clark urged merits upon us. This is an argument to be received with some care in this Court, in which we do not have the advantage enjoyed by the trial Judge of seeing and hearing the witnesses. Nevertheless, certain matters of merit did leap to the eye. Mr. Clark was not slow to point out to us the fact that Kuys’ wife had received a secret commission from one of the airlines, the consideration for which doubtless was Kuys’ willingness to put business in the way of that airline; and the matter did not stop there, because when at last the Society changed the airline, the new airline to whom the business was then offered was apparently prepared to pay Mrs. Kuys a similar private commission. Then there was his use of his position and title as  
 30 secretary in the letters which he wrote, upon the Society’s paper, promoting the interests of his newspaper to, for instance, the advertisers in the former Bulletin; and his announcement in the heading of the new newspaper that it “incorporated” the former Bulletin (which it most decidedly did not). All these facts and others like them, said Mr. Clark, showed how willing Kuys was to use his position as secretary to make profits to which a more scrupulous secretary would not have considered himself entitled. For myself I listened with some sympathy to these submissions. They may well have their relevance in other litigation between these same parties if, as appears possible, the present proceedings  
 40 are followed by others where different relief is canvassed; but I have been unable to be brought by any of them to reverse Speight J.’s decision as to who owned, at the times material in this action, the “Windmill Post”. Some of the matters I have put on one side in determining the present appeal, as irrelevant to it; others, though passing the test of relevance, seemed to me to lose much of their cogency on this aspect of the case in the light of submissions made by Mr. Heron on particular facts.

For the reasons which I have given I would dismiss the appeal.

### REASONS FOR JUDGMENT OF HASLAM J.

This appeal is brought by the defendant in the Court below against the judgment of Speight J. delivered on December 22nd, 1969, wherein he granted an injunction as prayed “restraining the defendant by itself or its agents, from publishing, distributing or selling a newspaper under the name or style of the Windmill Post or any use of the words ‘Windmill’ or ‘Post’ or from the use of the large windmill device on the front page”.

Proceedings were initiated by statement of claim and motion under RR. 462 and 467 of the Code of Civil Procedure. The plaintiff, Kuys, alleged that he was the principal shareholder and managing director of the second plaintiff, the Windmill Post Limited, to which he had assigned all relevant material rights. During the year 1966, he averred that he had taken to himself the trade name of “The Windmill Post” in connection with the proposed export of goods, the formation of a social club and the initiation of an independent Dutch newspaper for circulation in New Zealand. In February, 1967, the first issue of this newspaper was published under the name of “The Windmill Post” with the emblem of a windmill exhibited thereon. He further alleged that on 5th January, 1967, the defendant Society was formed and agreed with him to purchase a copy of the newspaper for every member of this Society for a period of six months at a price of 1/- per copy, and that in return he agreed to publish items of news relevant to the defendant’s organisation and activities. From July, 1967, and monthly down to the date of hearing, the defendant published a rival newspaper under the name “The Windmill Post” which it was selling and passing off as the newspaper of the two plaintiffs. He therefore claimed the injunction which was eventually granted.

The statement of defence and counterclaim allege that the first plaintiff was at all material times the servant or agent of the defendant and that in breach of his position of trust as an officer thereof, he had established and published the newspaper referred to in the statement of claim. The defendant counterclaimed for an injunction against the plaintiffs to restrain them from continuing to publish their newspaper or to use the words “The Windmill Post” in connection with the second named plaintiff.

It was agreed before us that the counterclaim for damages was procedurally unsustainable, and it therefore was not pursued. The above summary from the pleadings masks a long history of mutual dealings ending in discord. An action for damages in separate proceedings at the suit of the same plaintiffs against the defendant, but arising out of the same facts, awaits a hearing after the disposal of this appeal.

This dispute may well have received forensic presentation on appeal differing from the approach adopted at the trial in the Court below. The pleadings set up allegations of tort, contract and breach of fiduciary relationship. The expression of reasons by the learned Judge suggests that he may only have followed the phraseology of counsel during argument about an implied term arising from the legal relationship of the parties. In particular, Speight J. used such phrases as “what a sensible third party would have understood the arrangement to mean” and “attempt to be an officious onlooker”. In my respectful opinion, the learned Judge did not employ such words with implicit reference to any legal principle, but merely as convenient expressions of the technique which, as trial Judge, he had to invoke to eliminate a vast mass of irrelevant material and to select the essential features of a confused narrative.

Before us, it was conceded that as secretary of the defendant, the respondent Kuys was under a duty to the appellant Society to serve it loyally and not to take unfair advantage of his position for his own private profit. It was contended for him that he received, at the material time, a dispensation from the Society entitling him to set up “The Windmill Post” at his personal risk and as his own venture, and his counsel acknowledged the onus of establishing that the requisite authority had been conferred. Both sides accepted the primary findings of fact by the learned Judge, but there was considerable dispute about the correctness of certain inferences

which, it was submitted, he had drawn therefrom. Subsidiary argument by junior counsel for the defendant was directed to the issue of an injunction on any interpretation of the facts, but this contention was in effect abandoned at the early stages. I respectfully adopt the comments of the President (which I have had the advantage of reading in advance) upon this aspect of the argument in this Court.

10 In 1949 Netherlands Society "Oranje" Incorporated was registered under the Incorporated Societies Act 1908, with its office and main activities centred in Auckland. Its primary purpose was to further the welfare of Dutch residents in that area. In 1962 the plaintiff Kuys joined as a member, and afterwards was elected to the committee and in the following year became secretary. He filled this office until 1967. In 1963 he inaugurated a group travel scheme for use by members of the Auckland Society, which was designed to facilitate tours by members back to their homeland at reduced rates. He and his wife were authorised by the Auckland Society in the following year to open a special account in the Auckland Savings Bank designated "Netherlands Society 'Oranje' Group Travel Account", to which reference will be made again. A leading witness, Mr. Dubois, was  
 20 President of the Auckland Society from 1963 to 1968, and from 1963 onwards the Society published a newsletter for the benefit of its members known as "The Holland Bulletin", of which the plaintiff, Kuys, was the editor. The last publication of this journal occurred in December 1966, shortly after Kuys's return from a trip abroad. It was obvious that the paper was by that time in financial difficulties, and was unlikely to be revived without a radical change in management and organisation.

At a crucial meeting of members of the Dutch community held on 5th January, 1967, at the house of the witness Mrs. Hoerberigs, it was decided, at Kuys's instigation, to form the appellant Society to operate on a national basis in the interest and for the welfare of the Dutch community in New Zealand. At the same meeting, approval was given to  
 30 Kuys's project to launch the newspaper which he claimed, in the present proceedings, to be his individual property. The learned Judge has found that many of the relevant documents, including minutes of meetings from that time onwards, were unreliable or inadequate in content. He therefore had to decide chiefly on the oral evidence whether in coming forward with this proposal, Kuys was acting as a philanthropic society member wishing only to confer a benefit on his fellow countrymen, or whether it was clearly understood by all parties present that the former newspaper, as an enterprise, had completely ceased, and that the new proposal was  
 40 to be a private venture and exclusively the property of Kuys. It was clear that, in either event, Kuys was entitled to expect the Society to purchase copies of each publication of the newspaper for all its members at the initial rate of one shilling. With an expectation of 2,000 members, this arrangement ensured a minimum revenue of £100 per month. Furthermore, Speight J. accepted the witnesses, Mrs. Hoerberigs and Mrs. Hopman, as offering a reliable version of what occurred at that meeting, with particular reference to the minute of 5th January, 1967, exhibited to Kuys' affidavit. Although Messrs. Ingelse and Zeeman were not present at that first meeting, Speight J. also found valuable circumstantial evidence in their  
 50 versions of the inaugural meeting of the appellant Society held in March, 1967. They were able to inform him then of what had been said by various persons who had been prominent at the earlier meeting on 5th January and recounted their recollection of the arrangement then made with Kuys.

"The Windmill Post" was published from the outset by Kuys, bearing beneath its headlined title on the front page the words in bold capitals "New Zealand's Independent Dutch Newspaper". The learned Judge accepted the evidence of witnesses who spoke of the use of the word "independent" as giving emphasis to the crux of the initial arrangement, viz. that from the outset this new publication was the exclusive property  
 60 and responsibility of Kuys. There are various passages in the evidence which, if considered in isolation without the prior support of oral evidence, might suggest to the reader a different interpretation of the facts. Kuys's

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10 letter of 6th January, 1967, on the notepaper of Netherlands Society "Oranje" Inc. (i.e. the old Auckland Society) was circularised to all interested persons, and was signed by Kuys as secretary. It advised recipients about the enterprise, and added: "circulation is assured, the Society and publishers having agreed that all members will receive regular copies of each edition." This letter contained no reference to Kuys's exclusive ownership. It also appears curious at this stage to note that the cheque for £100.00 paid to one H. Willemsen on or about 14th January, 1967, for the newsletter "N.Z. Hollander", of which the latter was proprietor, was drawn on the group travel account in the Auckland Savings Bank, which the appellant operated under the name "Netherlands Society 'Oranje'."

20 On the other hand, he had always retained the bank interest upon this account as it accrued, and no one had ever suggested that he was accountable for these sums. As the learned Judge has found, this feature of their business relationships could be explained upon the footing that, so long as Kuys disbursed moneys therefrom strictly as members were entitled to expect, the remainder of the funds in that account were his separate property, and included his agreed remuneration for operating the travel scheme. On his credibility as a witness, there was his failure to disclose until pressed that, while he held office with the respondent and its predecessor, his wife was receiving £25.0.0 per month from an airline with which he was doing business on behalf of the Society's members. He also refused, upon the grounds of self-incrimination, to tell the Court candidly about the use to which he had diverted certain group travel funds while he was overseas. The learned Judge no doubt concluded that a person with such a constant and vigilant awareness of his own financial advantage could be expected to act consistently from motives of self interest, and that it was unlikely that such a person would have run the risk of launching the newspaper on a basis which meant that any benefit earned above his limited remuneration from sales to members would accrue to the appellant Society. Equally, Speight J. was able to find on the evidence before him 30 that Kuys's fellow countrymen were under no misapprehension about his intentions, and on 5th January, 1967, freely approved his inaugurating this venture on his own account.

40 The learned Judge accepted Kuys's explanation for the letter of 27th January, 1967, to the Chief Postmaster, G.P.O., Wellington, written over the designation "Editor", but on the notepaper of Netherlands Society "Oranje" Inc. Kuys claimed to have written this letter in this manner to accelerate his enjoyment of the reduced postal rates for newspapers, by invoking the old permit already in existence for the former publication called "The Holland Bulletin". After hearing Kuys's explanation, the learned Judge did not find anything sinister in this communication.

50 There are other facets of the evidence which strongly support the plaintiff's version. On 12th July, 1967, the second respondent was incorporated, and took over from Kuys all his interest in "The Windmill Post". He had been prompted to form this company to protect himself against liabilities on the advice of a solicitor member of the appellant Society, Mr. Renneberg. As a project, the registration of "The Windmill Post Limited" suggests an independent enterprise already embarked upon by Kuys on his own behalf, than a mere revival by him as agent or servant of a defunct newspaper owned by the appellant. If the latter course had been intended in January, 1967, then either Mr. Renneberg or some other officer could reasonably have been expected to insist that a letter be sent to Kuys recording fully and accurately the new arrangement. It is interesting to note that when Kuys's resignation as secretary on 8th June, 1967, followed an acrimonious dispute about the whole venture, the incoming secretary, Mrs. C. A. Leenman, despatched a circular to each member of the appellant Society (which had been registered on 26th January, 1967). After informing them of her accession to office, she said:

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"The National Executive Committee has decided to withdraw its

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Society's support from the 'Windmill Post' and has further decided to revert to a publication of its own of a standard similar to that of the above-mentioned publication."

10 While that sentence accurately forecast the subsequent course of events that gave rise to the present litigation, the passage is perhaps hardly consistent with a claim by the appellant to ownership throughout of Kuys's newspaper, nor with the suggestion that Kuys had inaugurated and expanded that publication in breach of his duty as a secretary of the appellant Society. The subsequent expressions of attitude by members are possibly the natural result of the confusion that can arise in any incorporated body which depends for its decisions on policy partly upon popular vote, but chiefly upon the decisions of its officers or more active members. The reference to "a review of the situation in six months' time", while possibly a reservation made by both sides, is consistent with a mutual arrangement, fully understood for the plaintiff's exclusive proprietorship from the outset, which entailed his bearing losses which he expected in any event for the first few months, and the retention of any surplus ultimately earned, but with the prospect of the Society being free after six months to alter the extent or nature of its support of "The Windmill Post".

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I therefore agree that there was ample evidence to support the findings of the learned Judge that the plaintiffs had discharged the onus of proof, and that this appeal must fail.



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I too agree that this appeal fails. However, in deference to the argument we heard from Mr. Clark for the appellant Society, and in view of the fact that it would seem that this case has excited a good deal of interest amongst immigrants to New Zealand from Holland, it is perhaps as well that I should express in my own words the principal reasons why I am of that opinion.

As the learned Judge in the Court below has stated, the task that he was confronted with was by no means an easy one, for a great deal of the evidence he heard added little, if anything, in the way of providing an answer to the crucial question: what was the arrangement agreed to in the discussions in December, 1968, and January, 1969, between Mr. Kuys on the one hand, and the President of the Auckland Society, Mr. Dubois, and other officers of the Society. To add to his difficulties, a mass of documentary material was submitted to him, as indeed it was again to us in this Court. In result, for the reasons he endeavoured to express as clearly as he could, he reached the conclusion that the ownership of the newspaper which was first published in February, 1967, belonged to Mr. Kuys, and not to the appellant, the National Society, which had taken over the assets and affairs of the Auckland Society.

In this Court Mr. Clark very wisely did not attempt to persuade us to depart from findings of fact arrived at by Speight J. in the Court below. He said that he was prepared to accept these findings, though not necessarily all of the inferences which the Judge drew from those facts. In short, his submission was that the learned Judge went wrong on matters of law. He made three submissions, the first two being dealt with by him and the third by junior counsel, Mr. Marsh. They were these: (i) The learned Judge had wrongly introduced the "moorcock principle" into the case when it was plain that no contract had been shown to exist between Mr. Kuys and the Auckland Society, and this being so there was no room for the implication of a term that the newspaper was to belong to Mr. Kuys. (ii) In the alternative, this was a case in which "status" governed the relationship between the parties, and as it had been shown that Mr. Kuys was an officer and servant of the appellant Society at the relevant times, then by virtue of an implied term in his contract of service he must be deemed to be a trustee, both in respect of the name and goodwill of the newspaper for the appellant, the National Society. (iii) In any event, as the granting of an injunction is a discretionary remedy, relief in that form should have been refused in this case.

I agree that it is a little unfortunate that the learned Judge in the Court below used language which was more appropriate to a case where a contract had been made out in circumstances in which the law will draw an implication from what must obviously have been the intention of the parties with the object of giving efficacy to the transaction. But like my brethren, I think the learned Judge really meant no more than this: a newspaper was published for the first time in February, 1969 in respect of which all the work had been performed by or under the direction of Mr. Kuys. In the nature of things this newspaper must either belong to the man who published it, or to the Society. On the whole, he formed the opinion as he said that "the paper and its title are the plaintiff's property". Unfortunately too, Speight J. did not in express terms at all events, go on and consider whether the fact that Kuys was the secretary of the Society at the time stood in the way of him claiming ownership of the newspaper.

The principles of law which require to be applied in a case like this were well stated, if I may respectfully say so, by Lord Reid in **Sterling Engineering Co. Ltd. v. Patchett** [1955] A.C. 534, 547, where that learned Judge said:

"No doubt the respondent was the inventor and in the ordinary case the benefit of an invention belongs to the inventor. But at the time

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10 when he made these inventions he was employed by the appellants as their chief designer, and it is, in my judgment, inherent in the legal relationship of master and servant that any product of the work which the servant is paid to do belongs to the master. I can find neither principle nor authority for holding that this rule ceases to apply if a product of that work happens to be a patentable invention. Of course, as the relationship of master and servant is constituted by contract the parties can, if they choose, alter or vary the normal incidents of the relationship, but they can only do that by express agreement or by an agreement which can be implied from the facts of the case. The question in the present case, therefore, is whether there is anything to justify a finding that the parties agreed to alter the normal incidents of the respondent's contract of employment, for it was not disputed that if the ordinary rule applies the patents in question belong wholly to the appellants."

20 Now it is true that the evidence showed that Mr. Kuys was the secretary of the Auckland Society and later too became the secretary of the National Society. But in my opinion it would be a serious over-statement to suggest that there is any evidence that he was paid to do the considerable amount of work involved in producing this newspaper. The truth of the matter as I see it and as Speight J. saw it in the Court below, is that the Auckland Society was not prepared to undertake the financial responsibility of starting this newspaper. The Society had got into trouble enough with its modest "Holland Bulletin" and was unwilling to incur the very considerable financial obligations which would be involved in the ambitious programme proposed by Mr. Kuys. Therefore, as I see the matter, the arrangement clearly enough was that if Mr. Kuys cared to undertake the responsibility of publishing a newspaper from which the Society would derive benefits, then it would be at his risk, but the Society would help him to the extent of undertaking to purchase for a period of six months, 30 2,000 copies of each publication at a price of one shilling per copy.

40 It may be that the Society did not have in mind the full implications of what might require to be done at the end of the six months' period if the paper proved a success. But in the events which happened before that period expired, a quarrel had developed between Mr. Kuys and a Mr. Renneberg, who is both a solicitor and an accountant and now is President of the National Society, and Mr. Kuys resigned his office as secretary. This gentleman appears to have taken a very considerable interest in the matter, but the one step he did not take, rather surprisingly in view of his qualifications, was that he did not tie up the loose ends of the arrangement between Mr. Kuys and the Society. Among all the witnesses who were called on one side or the other, two witnesses who in particular made what the Judge described as "a particularly favourable impression" upon him, were a Mr. Ingelse and a Mr. Zeeman. As he said, "admittedly they were not present at the January meetings when the original negotiations took place, but they appear to have asked sensible questions at the March meeting and I accept as correct the evidence they give as to what explanations were made to them, and I also accept as valid the conclusions they came to based on Mr. Renneberg's explanation as to what the arrangement was." Now what Mr. Ingelse in particular said was this: "I was 50 left in no doubt, and I don't think others were, that he (Mr. Kuys) owned the 'Windmill Post' and he was only publishing the 'Holland Bulletin' as part of his paper."

60 I agree that it might have been better if the learned Judge had said in express terms that Mr. Kuys had discharged the burden of showing that the fact that he was the secretary of the Auckland Society and later of the National Society did not in the circumstances require him to hold that he was trustee of the newspaper and its title for the Society. Nevertheless, in result that is what I understand the learned Judge really decided. I should add that on my own examination of the facts, I would undoubtedly have come to the same conclusion, for it is beyond my powers of credence to contemplate that Mr. Kuys would have been willing to incur all the

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risks which everybody knows are attendant on commencing the publication of a newspaper and then be obliged to hand over the newspaper to the Society at the end of six months if, as proved to be the case, he ceased to be the secretary of the Society. Accordingly, I am of opinion that Mr. Clark's second and alternative submission fails.

10 As to the third submission, I do not think that it is necessary for me to say any more than this: I cannot accept Mr. Marsh's submission that the Court should have refused to grant the respondents the injunction they sought. Here we have two groups publishing a newspaper under the same title and format. That situation should not be allowed to continue once the question of ownership has been determined.

The members of the Court being unanimously of opinion that the appeal fails, it is dismissed accordingly with costs to the respondent 400 dollars and all reasonable disbursements.

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**FORMAL JUDGMENT OF COURT OF APPEAL**

Wednesday, the 7th day of April, 1971.

Before The Right Honourable Mr. Justice North, President of the Court,  
 And The Right Honourable Mr. Justice Turner  
 And The Honourable Mr. Justice Haslam.

**THIS APPEAL** coming on for hearing on the 3rd and 4th days of March, 1971, and **UPON HEARING** Mr. Clark and Mr. Marsh of Counsel for the Appellant and Mr. Heron of Counsel for the Respondents **THIS COURT HEREBY ORDERS** that the appeal brought by the Appellant against the judgment of the Honourable Mr. Justice Speight delivered in the Supreme Court at Auckland on the 22nd day of December, 1969, be and is hereby dismissed **AND DOETH FURTHER ORDER** that the Appellant pay to the Respondents the sum of **FOUR HUNDRED DOLLARS** (\$400.00) by way of costs and disbursements in the sum of \$12.00, in terms of the Schedule attached hereto.

BY THE COURT

L. S.

D. JENKIN,  
 Registrar.

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

Monday, the 6th day of September, 1971.

Before The Right Honourable Mr. Justice North, President of the Court,

And The Right Honourable Mr. Justice Turner

And The Honourable Mr. Justice Woodhouse.

10 **UPON READING** the Notice of Motion for Grant of Final Leave to Appeal to the Privy Council filed herein **AND UPON HEARING** Mr. Edgley of Counsel for the Appellant and Mr. Williams of Counsel for the Respondents **THIS COURT HEREBY ORDERS** that the above-named Appellant be and is hereby granted final leave to appeal to Her Majesty in Council from the judgment of this Honourable Court pronounced herein on the 7th day of April, 1971.

BY THE COURT

L. S.

D. JENKIN,  
 Registrar.

**IN THE PRIVY COUNCIL**

**ON APPEAL FROM THE COURT OF APPEAL  
OF NEW ZEALAND**

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BETWEEN NEW ZEALAND NETHERLANDS  
SOCIETY "ORANJE" INCORPORATED  
Appellant  
AND LAURENTIUS CORNELIS KUYS and  
THE WINDMILL POST LIMITED  
Respondents

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**RECORD OF PROCEEDINGS  
PART 1**

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