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IN THE PRIVY COUNCIL

Judgment
Kenya
11/1959

No. 8 of 1957

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N

BARON UNO CARL SAMUEL AKERHJELM
and OLE BEYER (Defendants) Appellants

- and -

ROLF DE MARE, GUY MAGNUS ALEXANDER
FAUGUST and BARBRO WILHELMINA
ELISABETH FAUGUST (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

CLIFFORD-TURNER & CO.,
11 Old Jewry,
London, E.C.2.
Appellants' Solicitors.

GORDON DADDS & CO.,
80 Brook Street,
London, W.1.
Respondents' Solicitors.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

12 MAR 1960

25 RUSSELL SQUARE
LONDON, W.C.1.

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IN THE PRIVY COUNCILNo. 8 of 1957ON APPEALFROM THE COURT OF APPEAL FOR EASTERN AFRICAB E T W E E N

BARON UNO CARL SAMUEL AKERHIELM
and OLE BEYER (Defendants) Appellants

- and -

ROLF DE MARE, GUY MAGNUS ALEXANDER
FAUGUST and BARBRO WILHELMINA
ELISABETH FAUGUST (Plaintiffs) Respondents

 RECORD OF PROCEEDINGS

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No.	Description of Document	Date
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1.

No. 1.

PLAINT

In the
Supreme Court
of Kenya.

AMENDED pursuant to the Order of Mr. Justice Corrie
made on the 31st January 1955

No. 1.
Plaint.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1055 of 1951

17th September,
1951.

ROLF DE MARE
GUY MAGNUS ALEXANDER FAUGUST
BARBRO WILHELMINA ELISABETH FAUGUST Plaintiffs

(Amended 31st
January 1955).

10

vorsus

BARON UNO CARL SAMUEL AKERHJELM
ERIC VON HUTH
OLE BEYER Defendants

PLAINT

1. The first Plaintiff is a business man residing at Kiambu, the second is a farmer also residing at Kiambu aforesaid and the third Plaintiff is his wife. Their address for the purpose of this suit is care of J.A.Couldrey, Advocate, Nairobi.

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2. The Defendants are business men and the address for service of the first and second Defendants is care of Mervyn J.E.Morgan, Advocate, Nairobi aforesaid. The address for service of the third Defendant is care of Messrs. Stephen & Bickerton Williams, Advocates, Nairobi.

30

3. In or before February 1948 the Defendants conceived the idea of forming a company to manufacture a type of cold process tile in Kenya. The Defendants accordingly promoted and registered a company called "Dantile Limited" on the 20th March 1948.

4. The Defendants, in order to induce the Plaintiffs to purchase shares in the said company, then in process of formation, made the following representations and statements to them, viz:-

(a) "The tile has been produced and sold successfully in Denmark";

In the
Supreme Court
of Kenya.

No. 1.

Plaint.

17th September,
1951 -
continued.

(Amended 31st
January 1955).

(b) "We have procured the patent rights for most countries in Africa, India and Pakistan";

(c) "About a third of the capital has already been subscribed in Denmark".

5. The said representations were contained in a letter dated the 23rd February, 1948, which was signed and issued by the Defendants for the purpose of inducing persons to apply for and purchase shares in the said company and copies of this letter were sent to each of the first two Plaintiffs. 10

6. The said representations were, and each of them was, false and untrue. In particular, the Defendants had not procured the patent rights for most countries in Africa, India and Pakistan, nor had one third of the capital already been subscribed in Denmark.

7. The Defendants also omitted to state in the said letter that free shares were to be issued to each of them as well as to other persons.

8. The Defendants and each one of them at the time when they made or caused to be made the said representations knew them to be false and untrue, or made them recklessly not caring whether they were true or false. 20

9. The Defendants and each of them made or caused to be made the said representations in order to induce the Plaintiffs to buy and become the holders of the shares in the said company hereinafter mentioned.

10. By means of the said representations and acting on the faith thereof and in the belief that the same were true, the Plaintiffs were induced to purchase and did purchase shares in the said company as follows :- 30

First Plaintiff	500	Ordinary Shares for Shs. 10,000/-	
Second Plaintiff	1000	Ordinary Shares for Shs. 20,000/-	
Third Plaintiff	500	Ordinary Shares for Shs. 10,000/- and	40
	250	Preference Shares for Shs. 5,000/-	

Alternatively, the Second Plaintiff purchased 1500 Ordinary Shares and 250 Preference Shares for Shs. 30,000/- and Shs.5,000/- respectively, of which he gave to the Third Plaintiff 500 Ordinary Shares and 250 Preference Shares

In the
Supreme Court
of Kenya.

No. 1.

Plaint.

17th September,
1951 -
continued.

(Amended 31st
January 1955).

10 11. In the alternative, the said letter was a prospectus and the Defendants or each one of them had not up to or at the time of the application for and purchase by the Plaintiffs of the said shares in the Company reasonable ground to believe that the said statements in the prospectus herein referred to were true.

20 ~~12. The said shares so purchased by the Plaintiffs were and have ever since been worthless or worth much less than the price which the Plaintiffs were induced by the said representations to pay and did pay for the same, and the Plaintiffs have lost the said Shs. 10,000/-; Shs. 20,000/- and Shs. 15,000/- which were respectively paid as aforesaid and the interest thereon and use thereof, and were and are otherwise injured.~~

12. The said Shares were and have ever since been worthless or worth much less than the price which the Plaintiffs paid for the same in the circumstances aforesaid, and by reason thereof the Plaintiffs have suffered damage as mentioned hereunder:-

The First Plaintiff	...	Shs. 10,000/-
The Second Plaintiff	...	Shs. 20,000/-
		or alternatively Shs. 35,000/-
The Third Plaintiff	...	Shs. 15,000/-
		or alternatively Nil.

and they have also lost the interest thereon and the use thereof and were and are otherwise injured.

WHEREFORE the Plaintiffs pray for:-

- 40 (1) Damages.
(2) In the alternative, compensation under Section 38(1) of the Companies Ordinance Cap. 288.
(3) Interest thereon at Court Rates.
(4) The cost of this suit.
(5) Such further and other relief as may be just.

DATED at Nairobi this 17th day of September, 1951.

J.A. Couldrey
ADVOCATE FOR THE PLAINTIFFS.

In the
Supreme Court
of Kenya.

No. 2.

DEFENCE OF THE FIRST DEFENDANT-APPELLANT

No. 2.

Defence of the
1st Defendant/
Appellant.
(Baron
Akerhielm)

1st February,
1952.

1. The first Defendant does not deny the contents of the first paragraph of the Plaint save that the first Plaintiff resides in Europe and not at Nairobi and the second Plaintiff is a farm manager rather than a farmer.

2. The first Defendant admits the contents of paragraph two of the Plaint.

3. The first Defendant admits the date of the Incorporation of Dantile Limited (hereinafter called "the Company") as set out in paragraph three of the Plaint. 10

4. The first Defendant, with the qualifications hereinafter appearing, admits the contents of paragraph four of the Plaint except to assert that the representations and statements were sent out in the form of a circular letter to friends whom it was thought might be interested.

Included in the number of addressees were the three Plaintiffs. 20

There was no intention or even desire to persuade any particular person - or for that matter anyone at all - to take up shares against their free wishes - and the word "induce" is therefore objected to and the first Defendant denies "Inducement".

5. With regard to paragraph five of the Plaint the first Defendant admits the statement of facts contained therein but here again objects to the word "inducing" and repeats the last sub-paragraph of paragraph four hereof and denies "inducement". 30

6. (1) (a) With regard to paragraph six of the Plaint:

(b) The first representation was neither false or untrue. Since there were contracts for all relevant Patent Rights in existence which could be enforced at any time the admitted use of the words "have procured" by the Defendants was no real overstatement let alone any material misrepresentation. 40

(c) The third representation was neither false nor untrue.

(ii) It will be contended that the Plaintiffs relied on their own judgment in subscribing for the shares.

7. (i) As to paragraph seven of the Plaint the first Defendant denies that any free shares were allocated but states that if any there were they were in consideration for and in reward of services rendered to the Company.

(ii) Alternatively the alleged omission was not a material omission.

8. The first Defendant denies the contents of paragraph eight of the Plaint and puts the Plaintiffs to the proof of the allegations contained therein.

9. (i) The first Defendant must admit that the object of their letter was to raise interest in such of the friends of the three Defendants as might care to invest money in the project but he objects to the word "induce" used in paragraph nine of the Plaint and does not admit that the Defendants made any misrepresentations for the purpose of persuading the addressees in taking up shares or for any purpose at all.

(ii) Paragraph six (ii) hereof is repeated.

10. With regard to paragraph ten of the Plaint the first Defendant does not deny the fact that the three Plaintiffs took up the numbers of shares as recited therein but states that they did this of their own free will and because they thought the proposition was likely to be a profitable one and were not induced to do so either by false and/or untrue representations and/or statements or by reckless representations and/or statements or by any representations and/or statements.

11. (i) The said letter did not constitute a prospectus.

(ii) If, which is denied, any of the said representations and/or statements contained in the letter were false or untrue

In the
Supreme Court
of Kenya.

No. 2.

Defence of the
1st Defendant/
Appellant.
(Baron
Akerhielm)

1st February,
1952 -
continued.

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In the
Supreme Court
of Kenya.

No. 2.

Defence of the
1st Defendant/
Appellant.
(Baron
Akerhielm)

1st February,
1952 -
continued.

the first Defendant had reasonable grounds to believe and did up to the time of the allotment of shares and thereafter believe that each and every such representation and statement was untrue and also says that he acted in all the matters alleged in perfect good faith and neither fraudulently nor with intent or desire to deceive or mislead.

12. It is not admitted that the said shares are now worthless - and if they have dropped in value this is very largely due to the actions of the three Plaintiffs. 10

13. The first Defendant claims that the Plaintiffs have been guilty of laches and delay and also acquiescence disentitling them to any relief as claimed in the Plaint or otherwise.

14. With regard to the prayers set out in the Plaint:

(i) As to the Plaintiffs' prayer for damages the first Defendant does not admit any claim for damages or that any damage has been suffered. 20

(ii) The first Defendant denies that there is any claim for compensation as claimed and says that in any event the Plaintiffs' claim under this heading is time barred.

15. Save as is hereinbefore expressly admitted the Defendants deny each and every the allegations in the Plaintiffs' Plaint contained as though the same were set out expressly herein and specifically traversed seriatim. 30

REASONS WHEREFORE the Defendant prays that the Plaintiffs' suit be dismissed and that the Defendants be given judgment against the Plaintiffs for all the Defendants' costs of this action.

DATED at Nairobi this 1st day of February, 1952.

(Sgd.) Mervyn J.E.Morgan,

ADVOCATE FOR THE FIRST DEFENDANT.

No. 3.

DEFENCE OF THE THIRD DEFENDANT/APPELLANTIn the
Supreme Court
of Kenya.

No. 3.

Defence of the
3rd Defendant/
Appellant.
(Ole Beyer)20th February,
1952.

1. Save that this Defendant admits his address for service and the date of incorporation of Dantile Limited (hereinafter called "the Company") this Defendant makes no admissions upon paragraphs 2 and 3 of the Plaint.

10 2. This Defendant claims that the terms and contents of the letter dated 23rd February, 1948, are not correctly or sufficiently stated in paragraphs 4 and 5 of the Plaint (and particularly as regards the memorandum referred to in the said letter), and this Defendant will at the trial refer to the said letter and the said Memorandum for their full terms and effect. Further this Defendant denies that the representations and statements specified in paragraph 4 (and referred to in paragraphs 4, 5 and 9 as having been made to induce persons to purchase shares in the Company) were made with the intent to induce any person nor were the Plaintiffs or any of them thereby induced to purchase shares in the Company or at all.

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30 3. This Defendant also denies that copies of the said letter were sent to the first and second named Plaintiffs or either of them as alleged in paragraph 5 of the Plaint, and if, which is denied, the Plaintiffs or any of them received a copy of the said letter this Defendant denies that as alleged in paragraphs 6 and 8 any of the representations and statements contained in paragraph 4 of the Plaint were false or untrue. The said representations and statements were and each of them was true as the Plaintiffs are well aware. Further, the Plaintiffs relied on their own judgment and not upon the said letter in subscribing for shares in the Company.

40 4. This Defendant denies each and every allegation contained in paragraphs 7, 8 and 10 of the Plaint save that the Plaintiffs were severally allotted shares in the Company of the number and value stated in paragraph 10.

5. Further, or alternatively, this Defendant says that none of the said representations or statements was material nor was the alleged omission referred to in paragraph 7 of the Plaint material.

In the
Supreme Court
of Kenya.

No. 3.

Defence of the
3rd Defendant/
Appellant.
(Ole Beyer)

20th February,
1952 -
continued.

6. With regard to paragraph 11 of the Plaint this Defendant denies that the said letter was a prospectus and says that if, which is denied, any of the said representations and statements were false or untrue, this Defendant had reasonable ground to believe and did up to the time of the allotment of shares and thereafter believe that each and every such representation and statement was true and also says that he acted in all the matters alleged in perfect good faith and neither fraudulently nor with intent or desire to deceive or mislead. 10

7. This Defendant also denies that the said shares are worthless and says that if the said shares are worth less than the amounts subscribed by the Plaintiffs respectively, this is substantially due to the conduct of the first and second Plaintiffs themselves.

8. This Defendant claims that the Plaintiffs and each of them have been guilty of delay and acquiescence disentitling them respectively to any relief as claimed in the Plaint or otherwise. 20

WHEREFORE this Defendant prays that the Plaintiffs' suit against him be dismissed with costs.

DATED at Nairobi this 20th day of February, 1952.

F.R.STEPHEN
STEPHEN & BICKERTON WILLIAMS,
ADVOCATES FOR THE THIRD DEFENDANT.

No. 4.

Reply to Defence
of 1st Defendant

4th June, 1952.

No. 4.

REPLY TO DEFENCE OF FIRST DEFENDANT.

30

1. The Plaintiffs join issue with the First Defendant upon his defence save insofar as the same consists of admissions.

2. The Plaintiffs deny that they relied on their own judgment in subscribing for the said shares as alleged in para. 6(ii) of this Defendant's defence but upon the truth of the said representations as mentioned in paragraphs 4 and 10 of the Plaint.

3. The Plaintiffs deny that any drop in the value of the said shares was in any way due to the alleged or any actions on their part, as mentioned in para.12 of this Defendant's defence or in the particulars thereunder contained in the letter of this Defendant's advocate to the Plaintiffs' advocates dated the 22nd April 1952 or at all.

In the
Supreme Court
of Kenya.

No. 4.

Reply to Defence
of 1st Defendant

4th June, 1952 -
continued.

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4. The Plaintiffs severally deny the allegations contained in paragraph 13 of this Defendant's defence.

WHEREFORE the Plaintiffs pray for judgment as prayed in the Plaint.

DATED at Nairobi this 4th day of June, 1952.

(Sgd.) J.A.Couldrey.

WALKER & COULDREY
ADVOCATES FOR THE PLAINTIFFS.

WALKER & COULDREY
ADVOCATES
NAIROBI.

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No. 5.

No. 5.

REPLY TO DEFENCE OF THIRD DEFENDANT

Reply to Defence
of 3rd Defendant

4th June, 1952.

1. The Plaintiffs join issue with the Third Defendant upon his Defence save insofar as the same consists of admissions.

30

2. The Plaintiffs deny that the said representations or statements or any of them were true or that they or any of them so knew, as alleged in paragraph 3 of this Defendant's Defence or at all. They further deny that they relied upon their own judgment as alleged or at all and they repeat paragraphs 4 and 10 of the Plaint.

3. The Plaintiffs deny that any depreciation in the value of the said shares as subscribed by them respectively was substantially or at all due to the alleged or any conduct on the part of the First or Second Plaintiff as alleged in paragraph 7 of this Defendant's Defence or at all.

In the
Supreme Court
of Kenya.

4. The Plaintiffs severally deny the allegation contained in paragraph 8 of this Defendant's Defence.

No. 5.

WHEREFORE the Plaintiffs pray for judgment as prayed in the Plaint.

Reply to Defence
of 3rd Defendant

DATED at Nairobi this 4th day of June, 1952.

4th June, 1952 -
continued.

(Sgd.) J.A. Couldrey
WALKER & COULDREY
ADVOCATES FOR THE PLAINTIFFS.

No. 6.

No. 6.

10

Further and
Better
Particulars
of Defence of
1st and 2nd
Defendants.

FURTHER AND BETTER PARTICULARS
OF DEFENCE OF FIRST AND SECOND DEFENDANTS

By consent
filed on 17th
January 1955.

The contracts referred to in Paragraph 6(b) of the Defence of the first and second Defendants are as follows :-

(a) A contract between Muritas and Erik Von Huth constituted by correspondence giving the said Erik Von Huth an option expiring 31st August, 1947, on the invention for Kenya, Uganda and Tanganyika and other districts.

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(b) A contract between the same parties constituted by a letter from Muritas to Erik Von Huth dated 25.9.47.

(c) A contract between the same parties constituted by a letter from Muritas to Erik Von Huth dated 1.10.47.

(d) A contract constituted by correspondence in November 1947, between Muritas and Erik Von Huth.

(e) A contract between D.G. Stewart and Erik Von Huth relative to the said invention constituted by correspondence exchanged in Copenhagen commencing November 27th, 1947, relative to Abyssinia, Union of South Africa, Rhodesia Nyasaland, India, Ceylon and the Congo.

30

(f) A contract dated 29.11.47 between Muritas of the one part and Erik Von Huth of the other part.

This agreement was made in Denmark and is in the Danish language.

(g) A contract constituted by two letters from D.G. Stewart to Ole Beyer dated 26th and 27th January, 1948, respectively.

(h) A transfer dated 2nd April, 1948, by Erik Von Huth to Dantilo Ltd.

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Further and Better Particulars of Defence of 1st and 2nd Defendants. - continued

By consent filed on 17th January, 1955.

No. 7.

GUY MAGNUS ALEXANDER FAUGUST

Plaintiffs' Evidence.

No. 7.

10 MONDAY 17th JANUARY 1955

MR. CLIVE SALTER, Q.C.,)
MR. J.A. COULDREY) for the PLAINTIFFS

G.M.A. Faugust Examination.

MR. STEPHEN)
MR. MERVYN MORGAN) for the DEFENDANTS

P.W.1. GUY MAGNUS ALEXANDER FAUGUST Sworn -

MR. COULDREY: Are you Mr. Guy Magnus Alexander Faugust?
A. I am.

Q. And you are a farmer at Kiambu? A. Yes.

20 Q. And are you the husband of the 3rd Plaintiff, BARBRO WILHELMINA ELIZABETH FAUGUST? A. I am.

Q. You are, I believe, a Swede? A. I am.

Q. In February, 1948, did you receive a circular letter signed by the three Defendants in this Suit?
A. Yes.

My Lord, perhaps the Witness could see the Circular letter.

Q. Did you see a circular letter similar to that?
A. Yes, and the annexures contained an invitation to subscribe.

30 EXHIBIT I. The correspondence read out by Mr. Couldrey in his opening address handed to and accepted by Court as Exhibit 1.

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Examination -
continued.

EXHIBIT 2. Circular Letter together with annexure handed to and accepted by Court as Exhibit 2.

MR.COULDREY: It is common ground that that circular letter contained an invitation to you to contribute to the Company for the manufacture of certain tiles? A. Yes.

Q. What did you do when you received that circular letter?

A. I read it out to my wife and we discussed it and as three names were mentioned on this paper, we thought we would go and see them. The three names were: Baron Uno Carl Samuel Akerhielm: I knew him before the War and he had been a very successful business man in the past. Eric Von Huth: I had known him; Ole Beyer: I had only met him once. 10

Q. Did Mr. Ole Beyer hold any official position at that time? A. He was a Danish Vice Consul.

Q. Did Baron Uno Carl Samuel Akerhielm have any position.

A. Not at that time, but later, he was appointed Swedish Consul. 20

Q. Did you go to the office?

A. Yes, I did and I saw Mr. Eric Von Huth and Mr. Ole Beyer at that time.

Q. You saw both of them? A. Yes.

Q. And what did they tell you?

A. They read the whole letter and the annexures through, and then Mr. Ole Beyer, during the conversation, told me that I had to be rather quick, as the shares were going pretty fast. They also showed me a plan of the proposed factory. I have not seen the plan since, but I think it was a red or blue print. We discussed the various aspects and I thought it sounded good, and then I decided to put down the first deposit of 10%. 30

Q. How many shares did you in fact subscribe for? I think it is stated by my learned friends that you did take up a number of shares 500 was it, in your own name?

A. It was 1,000 pounds worth of Ordinary Shares in 40

my own name; 500 pounds worth of Ordinary Shares for my own wife and 250 pounds worth of Preference Shares.

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Q. Now you paid for those in full?

A. No, I paid 10% of the lot at that time.

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Q. Did you subsequently pay the balance?

A. I paid the balance when I was called upon to do so.

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Q. Was the 90% all in one payment? A. Yes.

G.M.A. Faugust

10 Q. And in due course, you received you Share Certificates? A. I did.

Examination -
continued.

Q. Now did you hear anything more about the Company for some months?

A. No, I did not hear anything until I think it was round about between Christmas 1948 and the New Year 1949.

MR.COULDREY: Did you hear anything then?

20 A. There was a meeting held at the Salisbury Hotel. He had called quite a number of Swedes. After this meeting my sister-in-law

Q. I am afraid we cannot have what anyone else told you. Did you receive any information? A. Yes.

Q. And was it disquieting? A. Yes.

Q. And what did you do in consequence of that information?

A. I went up to Baron Uno Carl Samuel Akerhielm after the meeting and asked him the position of the Company, as I was worried.

Q. And what did the Baron reply to you?

30 A. He said: "Nothing to worry about; everything is all right" or something to that effect.

Q. Now when you had subscribed for these shares, had you discussed the matter with Ole Beyer or had you discussed the matter with anyone?

A. Nobody, that is with the exception of the Directors of the Company.

Q. Had you seen the Baron before you subscribed for the Shares? A. Yes, I saw him off and on.

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Examination -
continued.

Q. Had you seen him before you subscribed to the shares after you received the circular letter?

A. I had seen him before I received the circular letter.

Q. Did you know anything about the manufacturing of tiles yourself?

A. Nothing at all, My Lord.

(The Court comments on the appalling noise being made by the removal of the Secretariat from the Law Court buildings.)

10

Q. Have you ever invested in anything else but Coffee in this country?

A. Yes, I have been two years in Sisal.

Q. I mean besides Agriculture? A. Yes.

Q. Did you at that time ever read the Stock Market Reports?

A. No, never; I was not particularly interested.

Q. Did you ever invest money in other activities in this country?

A. No, I had invested money in a farm before, but never in business.

20

Q. What sort of farm was that?

A. European Dairy Farm.

MR.COULDREY: Had you ever been Director of the Company?

A. It was at that time when I was partner with Lt. Col. Stewart M.C., (remainder of name inaudible to shorthand writer).

Q. Had you ever been concerned with what we might call a Commercial activity before? A. Never.

30

Q. Did you know at that time anything about business?

A. I had taken a short course at a Commercial College in Sweden.

Q. And had you any practical experience in Commercial life? A. None whatsoever.

Q. And can you explain perhaps more fully than you

have already done so, your reasons for investing money in Dantiles Ltd.?

A. It was mostly because of those three names on the circular; Baron Akerhielm was a good business man and Mr. Ole Beyer being a Representative of my own country, as Vice Consul in Kenya and Mr. Eric Von Huth being a good accountant, in spite of his heavy drinking.

10 Q. I see; did you have any other reason for investing in this Company?

A. Yes, as to this memorandum or letter, the wording of it and the prospectus laid out in the circular.

Q. Let us then leave your reasons for investing in this Company. You told us earlier on that you first had fears at the meeting of Swedes and you discussed it with the Baron and he allayed those fears. Were you ever shown a balance sheet of the Company?

20 A. Not before that date, that was after the end of 1948.

COURT: You did not see an actual balance sheet at all? A. No.

Q. It was about that time or a little later that you first saw a balance sheet?

A. I think I saw the first balance sheet on the 18th March, 1949, when that General Meeting was held.

Q. What were your reactions to that balance sheet?

30 A. I did not understand the English way of putting up a balance sheet, but it was not signed, as far as I can remember now, by an Auditor.

Q. We don't want to go into the details of the balance sheet, but what was the impression left on your mind?

A. The balance sheet itself left me rather it was the discussion held at the General Meeting which rather obstructed things; which disappointed me.

40 Q. Were either of the Defendants present at that meeting?

A. Baron Akerhielm and Mr. Ole Beyer. I think Mr. Eric von Huth had been sacked by that time.

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continued.

MR.COULDREY: Did either the Baron or Mr.Beyer have anything to say about the Company at that time, at that meeting?

A. Yes, as far as I remember, Baron Akerhielm read out his Directors' Report and said that the Company was short of cash, I think that is correct, but I am not quite sure.

Q. Was there a Progress Report?

A. I can't answer that correctly because I don't remember, My Lord.

10

Q. Did you ask the Baron or Mr. Beyer any questions about this Company?

A. That was before this meeting took place.

Q. What did you ask them then?

A. This is rather a long story; at the beginning of 1949 Baron Akerhielm went down to the coast to receive the Swedish crew of the cruiser. In response to the rumours I heard for the first time at the Salisbury Hotel, I contacted Mr.Beyer from whom I wanted to get full knowledge of the situation of the Company. At that time, I cannot remember which date, it was, he referred to Baron Akerhielm who was not in town, as apparently Mr. Beyer was not entitled to show me any figures without the consent of the Chairman. Also at that time Mr. Beyer had received a message from Baron Akerhielm that he wanted certain information regarding the Company.

20

MR.STEPHEN: I know if we object we have to object quickly?

30

MR.COULDREY: In consequence of that message what did Mr. Beyer tell you?

A. He told me that Baron Akerhielm had a prospective buyer at Mombasa.

MR.STEPHEN: That is hearsay again

MR.COULDREY; Anyway, leave out the question of prospective buyer.

A. I had not any books, as I was told I was not entitled to look into the books. Then of course when Baron Akerhielm came back, I saw him at his office.

40

Q. And what did he have to say?

A. I went up a couple of times to his office and discussed the future of this Company and what was actually taking place.

Q. Was it in consequence of your general conversation that this meeting was called in 1949?

A. Not being satisfied after these talks I had with Baron Akerhielm and Mr. Beyer, I asked for a General Meeting to be called.

10 Q. My Lord, at this stage I could put the Minute Book of the Company in: I can put the Minutes to this witness.

COURT: Has he identified the Minute Book of the Company?

MR. COULDREY: Is that the Minute Book of the Company and is that Minute, where your thumb is, a copy of the Minutes of the Meeting held on that day?
A. That is so, My Lord.

20 COURT: It was held on what date?

A. The 18th March, 1949.

EXHIBIT 3: Minute Book handed to and accepted by Court as Exhibit 3.

MR. COULDREY: Now what happened after that meeting?
A. I believe Baron Akerhielm resigned as a Director.

COURT: At that Meeting? A. Yes.

Q. Will you look at the Minute of that date and say whether it was at that Meeting or another Meeting; we had better get these dates right?

30 A. I am afraid I mixed up those two dates; I had the impression that Baron Akerhielm resigned in June, but it was in March.

Q. But did he resign at that Meeting?

A. I was elected a Director of the Company on the 18th March.

COURT: I want to get this clear.

Witness reads out the Minute of the 18th March,

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continued.

1949, where; in the penultimate paragraph, it is intimated that due to dissatisfaction being expressed by several of the shareholders, Baron Akerhielm intended sending in his resignation to the Board as a Director, forthwith. In the Minute of the 28th March, 1949, in the first paragraph Mr. Beyer reported that Baron Akerhielm's resignation as a Director of the Company was received on the 20th March, 1949, and that Baron Akerhielm had now left for India, and would not be back for a couple of months. 10

Q. So the Baron resigned and you were appointed to the Board of Directors? A. Yes.

Q. Now for how long did you remain a Director?

A. As far as I remember for about ten days or a fortnight.

Q. Why did you resign?

A. At that time Mr. Scruby was my legal adviser and he advised me to resign immediately.

Q. And you resigned in consequence of your lawyer's advice? A. That is correct. 20

Q. Were you ever at a meeting where you were shown a contract with Muritas?

A. I believe as far as I can remember now, Mr. Beyer had one of those meetings at his office before the General Meeting was held, and I saw something to that effect, but I cannot remember; there was some correspondence.

COURT: Not the contract? A. No, not the contract.

MR. COULDREY: Did the Baron ever mention this contract to you? A. Oh yes, and so did Mr. Beyer. 30

Q. Was this before or after you had subscribed for shares or both?

A. I believe it was both occasions. It was mentioned in the circular that that was the contract.

Q. And did Baron Akerhielm ever mention it at a meeting of the Directors of the Company?

A. I believe it was taken up at an intermediate meeting. At a personal discussion with Baron Akerhielm, he mentioned that he wished to withdraw from the contract with Muritas as the title obtained by the patent right was not good enough. 40

Q. Can you remember who was present at that meeting?
A. That was at a talk between Baron Akerhielm and myself alone.

COURT: Between you and him alone?

A. Yes, My Lord.

COURT ADJOURNED at 12.45 p.m.

COURT RESUMED at 2.30 p.m.

10 MR. MORGAN: My Lord, I wondered what Your Lordship had recorded about what Mr.G.Faugust did on the advice of Mr. Scruby his lawyer?

COURT: Reads out its notes.

MR. MORGAN: I am obliged My Lord; I do not wish to make anything of it.

P.W.1. GUY MAGNUS ALEXANDER FAUGUST reminded on former Oath.

MR.COULDREY: Did Baron Akerhielm ever make any other remarks to you about the Company?

20 A. Yes, on a few occasions at the General Meeting and other meetings, he said that the shareholders when they placed money in the Company had to place it as a gamble. Mr.Beyer had always backed the shareholders up, those who had placed a lot of money in the Company and said it was not quite fair to them to lose a lot of money in a Company of this description, while the smaller shareholders could have a gamble.

Q. Can you remember whether Baron Akerhielm took an active interest in the conduct of the Company during the time he was a Director?

30 A. I would be able to say 'yes' to that, My Lord, but in one passage which happened shortly before the meeting of the 18th March, 1949, when I arrived fairly early at this meeting and no-one else had turned up, Baron Akerhielm came into the office pretty exhausted and had tried to find where the factory plot was situate. He eventually found it, he told me. I got the impression then that he did not know the whereabouts of where the factory plot was before that meeting.

MR.COULDREY: It was at that meeting of the 18th

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continued.

March, 1949, I take it, that your fears for the Company were first seriously aroused?

A. Well, the fear actually started before that meeting, but it was confirmed at that meeting.

Q. What steps did you then take with regard to this Company which you had so heavily invested in?

A. As I was appointed a Director at that meeting, I legally tried to go through the books. The figures were not consolidated and to get a clear picture of the situation I was left amazed more or less. 10

Q. Now what other steps did you take?

A. We called a meeting. Mr. Beyer and I discussed the possibility of getting more money for the Company. Nothing more materialised as I shortly afterwards resigned.

Q. Now can you remember attending a meeting on the 15th June, 1949?

A. I have very little memory of that meeting. Baron Akerhielm had promised that we could consult him as an adviser but whether that was at that meeting I could not say. 20

Q. Can you remember whether the question of liquidation was ever discussed:

A. I cannot remember, My Lord.

Q. Can you remember when you first decided to seek legal advice?

A. Mr. Scruby, who was new from (inaudible to Shorthand writer) I had had private talks to before we started to fuss about the state of the Company's affairs and he actually offered his advice to me. 30

Q. He never actually contacted I see a note here, did he ever attend on your behalf at a meeting of the Company?

A. Yes, he did twice; once in 1949 and once at Mr. Alexander's office when the question of liquidation was acute.

Q. Now the first letter which I read out this morning from Messrs. Shapley Barret & Co., to Mr. Ole Beyer, is dated the 30th September, 1949. Can you say whether the question of liquidation had arisen before that? A. I do not remember, My Lord. 40

Q. May I refer you here to the minutes of a meeting; I see you were present; on the 15th June, 1949. Will you glance at those minutes? Can you remember that meeting now?

A. Now I have seen it I remember; but before that I didn't.

MR.COULDREY: Now there was a meeting of shareholders I believe at Mr.Alexander's office on the 7th December, 1949; that was the one you were referring to, is it? A. That is the one.

10

Q. And can you then remember the question of liquidation arising?

A. Yes, very much so. On that instant, I refused liquidation.

Q. Why? A. As it would free the Directors of the Company of further liabilities if that should arise through any Court proceedings; that was what I thought.

20

Q. Now can you remember swearing an affidavit drawn up by Messrs. Shapley Barret & Co., in connection with an application to the Court regarding an Inspector? A. Yes, I remember that.

Q. Can you remember when that was; can you remember which year it was?

A. I think it was 1949, but I am not quite sure about that.

COURT: Show him the affidavit, can't you.

MR.COULDREY: It was some time in May 1950, was it? A. Yes.

30

Q. After that affidavit was sworn and after the Inspector had been appointed, did you take any action in this matter until after the Inspector's report had been filed?

A. I did not take any active part in the running of the Company, but quite a while after the Report of the Inspector had come through, I, my brother and my wife went to Mr. Seex.

Q. And what did you do?

40

A. As I personally wanted to see vouchers from the sales and purchases for the Company.

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continued.

Q. Were you able to see any?

A. Mr. Seex said it was no use my looking at those bills as they were not consolidated; they were all over the place apparently.

Q. Now it has been alleged in the Defence which has been filed in this case, that you contributed to the shares in the Company being valueless by your activities?

A. I daresay I created quite a lot of trouble for the Directors as I worried them quite a lot by seeing them in their various offices. 10

Q. Now did you worry them before or after you yourself became disturbed by the state of the Company?

A. After I had resigned as a Director of the Company, I never went to the office again except once.

MR.COULDREY: But did you start worrying the Directors before or after that incident at the Salisbury Hotel when you first became aware that something was wrong?

A. I started to worry the Directors between that day at the Salisbury Hotel right up to the year 1949. 20

Q. When you became Director for that short period of time, can you say now whether any activity was going on on the Company's plot?

A. I visited the plot twice; once in the company of Mr. Beyer and once in the company of Mr. Svend Thomsen.

Q. Who is Mr. Svend Thomsen?

A. He was the Works' Manager at that time.

Q. What did you find at the factory plot there?

A. I found no activity was going on; there were a couple of boys shifting broken bags of cement; the plant was not working; bamboo posts supported the factory. 30

Q. And what was the roof?

A. As far as I remember it was thatched. There was a concrete foundation and the mould stood on it; then the thatched roof.

Q. Was anything else erected?

A. There was a storage place in the shed, being the factory for storage of cement. 40

Q. Did it appear to you that great efforts were being made to direct the factory or machinery?

A. In my opinion, it looked at a standstill.

Q. And when would this have been?

A. That was early in 1949, between early January and up to June approximately. I remember that especially as I placed my truck which we had, at the disposal of the Company to enable them to move cement from one place to another.

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Q. For the Company? A. Yes for the Company.

Q. Now let us leave that then Mr. Faugust and can you tell us whether you have ever had any dividend from this Company? A. No.

10

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Q. Now the Company had been struck off the register; have you ever received any proportion of your capital back? A. I have received nothing back.

Examination -
continued.

Q. Have you lost all the money which you put into it? A. It looks like that, My Lord.

Q. May I just refer you back briefly to this circular letter which you received? You say you were impressed with that letter by the signatures of the people concerned, I believe?

20

A. Yes, and partly also by the fact that the tile was of Danish production.

MR.COULDREY: Did you pay any attention to the remarks that the tiles had been produced successfully elsewhere?

MR.MORGAN: Objection to the foregoing question.

MR.COULDREY: Were there any other remarks there?

A. We discussed this when I went to the office of (name inaudible to shorthand writer) and I was rather impressed by the prospectus and I believed everything which was said in the circular.

30

Cross-Examined

Cross-
Examination
by Counsel for
1st Defendant.

MR.M.MORGAN: Now you were, for some time at any rate, a Director and whilst you were a Director, it must have come to your notice that the Baron also had shares in Dantile Ltd. Is that correct?
A. Yes.

Q. I want to get this clear at the outset; that you are not the only person who has lost money and I want you to think a bit about your Directorship.

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You did tell His Lordship that you were only a Director for ten to fourteen days and then you resigned on the advice of Mr.Scruby. Is that what you are saying? A. That is what I am saying.

Q. I think I will have to pass this book up to the Court. This is the Court Exhibit and we all have our copies. At this meeting on the 18th March, 1949, the last few lines, at which Baron Akerhielm then intimated that he was going to resign with immediate effect, you were elected Chairman; was it Chairman?

10

A. I was supposed to take Baron Akerhielm's place on the Board.

Q. And you were not only Director, you were Chairman of Directors, with effect from that date and you say you resigned within ten to fourteen days from that date? A. Approximately.

Q. Can you explain how it is that in June you are amongst those present at a Directors' meeting dated the 15th June, 1949, I think it is.

20

COURT: The Minutes of the 18th March, do not say that he is appointed Chairman; that he is appointed a Director comes before the Baron's resignation.

Q. It does seem as if his election comes before the Baron's intimation of his resignation. The meeting on the 15th June, 1949, the Minutes of the Meeting of the Directors of Dantile Ltd., held at the offices of the Swedish Products Company, Nairobi; how did it come, if you were a Director for only ten to fourteen days, that you were attending as a Director at a Directors' Meeting three months later?

30

A. I can't explain that fact, because I told you before that I had only the vaguest recollection of that last meeting in June.

COURT: Are you quite sure that he was a Director as it is stated that he was in attendance?

MR.MORGAN: One would have thought at a Directors' Meeting the only people who would have been there would be Directors, unless it is by invitation; that is the usual phrase.

40

On the 28th March, you were still in the Chair;

that is ten days later; that is minuted at 10.00 a.m. on Monday, the 28th March. You were then Chairman of Directors. Now the very next Minutes in the book, and I hope I am correct in saying this, My Lord, are those dated the 15th June, and nowhere is it minuted that you had resigned. It is the usual thing when a Director resigns that he either notifies the meeting at the time or it is minuted. I can't see any minute of your resignation.

10

A. I sent in a letter to the Secretary Mr. Ole Beyer, notifying him of my resignation at a certain date.

Q. I am suggesting that that must have been after June, because in the following minute dated the 7th September, it is noted that the number of Directors has been reduced to one.

20

COURT: If you look at the very last paragraph of the minutes of the 28th March, the Chairman said he did not want any new meeting to be held before the Annual Meeting of the 20th April. Then we get on to the 15th June, which was the Meeting of the Directors.

MR.MORGAN: In what capacity did you attend that Meeting of the 15th June?

A. Was my brother Chairman at that time?

Q. Yes. A. At that time my brother mentioned that there was a meeting to be held and I just attended.

30

Q. But this was a Directors' Meeting and you were there. I am suggesting that you were a Director and that was why you were there?

A. I said I didn't remember much about that meeting when I was asked just now.

Q. And I must put it to you that you were a Director for much more than fourteen days.

A. Upon my resignation my brother automatically took over responsibility without being elected.

40

Q. Well, I must put the question again: I am suggesting that it is clear from the minutes that you were in fact a Director for several months after March 1949.

A. Well, I don't remember that, My Lord.

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by Counsel for
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continued.

MR.MORGAN: So you cannot remember when you sent
in your resignation and you cannot remember how
long you were a Director?

A. No reply audible to shorthand writer.

Q. Now just another point which I want to make
quite clear. Baron Akerhielm was Swedish Consul
at the time of this meeting at the Salisbury Hotel
in December, 1948, so the witness said. I am only
mentioning this fact because you said this morning
that Baron Akerhielm only became Swedish Consul in
1950.

10

A. As far as I can remember, it is so long ago.

Q. Your memory does not appear to be very good. A
very recent answer of yours was that you did not
really start worrying the Directors until after
this General Meeting in March, 1949.

A. My Lord, I stressed that after the meeting at
the Salisbury Hotel I started worrying the Direc-
tors. Why I say that is that at the General Meet-
ing - the Salisbury Hotel Meeting was nothing to
do with Dantile Ltd.

20

Q. At the General Meeting the Baron read out the
Report, didn't he? I don't know why the Report
is not part of the Minutes. My friend Mr. Stephen
is more expert in Company Law than I am.

COURT: This is the meeting of the 18th March 1949?

Q. Yes, and I have no doubt that it refers to the
Baron making a Report. Yes, "The Chairman re-
ported to the meeting the history of the Company
since its inception".

30

COURT: Was there not a written Report?

A. Yes, there was a written Report which Baron
Akerhielm read out.

Q. And was it circulated to shareholders before
the meeting?

A. It was not circulated, My Lord.

Q. How do you know it was not circulated then?

A. I can vouch that I did not get a copy of that
Report before the Meeting.

Q. You did at one stage say it was a written Re-
port and I am asking you how did you know it was a
written Report?

40

A. Because at the Meeting it was read from a piece of paper.

Q. It was a man making a speech from a piece of paper?

A. Yes, and my impression was that it was typed.

MR.MORGAN: Do you remember the Baron saying something like this: "Before giving you something of the Report ... " Do you remember that?

A. Yes, I remember that, My Lord.

10 COURT: This is part of the Report which he read out?

MR.MORGAN: Well, he remembers the Baron saying it from the chair. Now Mr. Faugust you may not be a Commercial tycoon, but even if you are just an ordinary Kenya farmer you must know that it is not the way to keep up the value of shares and increase confidence in the Company if there is a lot of talk "Have you heard the Chairman is lining his pockets with so and so?" A. I am perfectly aware of that.

20 Q. And am I right in saying that when the Baron starts off by saying that some of the talk has come from the Shareholders, you were one of the Shareholders from whom some of the talk was coming

A. I know for certain that some of the transactions were discussed in public, but I have never talked about the affairs of the Company except with my wife and other Shareholders. The original rumour I heard from my sister-in-law, at the Salisbury Hotel. There the ball started to roll and also
30 Svend Thomson who was Works' Manager, could not keep quiet. He broadcast too much to the world.

Q. Would you agree or not that your brother perhaps talks a little too much sometimes.

A. Sometimes, yes.

Q. And did the Baron at that meeting give the history of the Company and speak about Mr. Eric Von Huth being employed and Mr. Svend Thomsen and how the intention of the Directors was to buy a plot, No.52, in the Light Industrial Area.

40 A. All that was completely put in the picture at that meeting, but I was not satisfied about the finances. Baron Akerhielm explained in his Report

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that there was a shortage of money. I could never get a grip on the financial situation.

Q. Now you know you have said some rather disparaging things about the buildings. You do know that the factory has to have its plans passed by the Municipality; that must have come to your knowledge? A. I am aware of that.

Q. And you are not really suggesting are you, that the Municipality would allow a factory to be made of bamboo with a corrugated iron roof? 10

A. I saw that with my own eyes; those were the facts.

MR.MORGAN: Do you remember the Baron saying at the Meeting "We were not allowed to build on the plot before the plans were passed by the Municipality etc.? A. No, I don't remember the Baron saying that, but now you read it out, I remember it.

Q. So I suggest that what you saw was a temporary shed; that could be so, couldn't it? 20

A. Yes, that could have been so.

Q. Now another rather damaging statement by you was how the Baron arrived hot and bothered one day, not having been able to find out where the factory plot was.

A. Yes, I arrived at the Meeting held on the 18th March and I arrived early and at that time, I waited a while, and the Baron arrived exhausted and he told me that he had had difficulty in finding the plot.

Q. Have you been in the factory area yourself at all? A. Yes. 30

Q. Wouldn't you agree that it is difficult to find anything?

A. Yes, but when one has been once, it should be easy enough to find it again.

Q. And in an ordinary year you will also agree with me that the 18th March is about the hottest part of the year that we have in Nairobi?

A. (Mr.Mervyn Morgan states that the witness nods assent, My Lord.) 40

Q. Let us go back to 1948; no before that; you said

you never saw a Contract; the Baron never showed you a Contract when you were discussing Dantile Ltd. with him? A. No.

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Q. But we also have it from you that he talked about a Contract and said that the tile was not satisfactory, and talked about withdrawing from the Contract? A. That is correct.

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Q. And you don't doubt from that remark that there was a Contract? A. No, I don't doubt that.

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10 Q. But I am putting it to you that you are still thinking there was a Contract?

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A. If you enter into a Contract, can't you cancel the Contract?

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Q. But what I am saying is that you told us that the Baron made some remarks to you about how the tile was not coming up to expectations and he might have to withdraw the Contract?

20 A. Yes, perhaps it was not quite the correct wording; I don't remember the wording My Lord, but definitely the Baron wanted to get written applications with Muritas.

MR.MORGAN: Yes, well, that is what I am getting at; there were written applications with Muritas.

My Lord, I wonder if I could ask for a member of my Staff to sit at the Advocates' bench, he has not yet actually been admitted but it would be of great assistance to me?

COURT: Yes.

30 MR.MORGAN: May I please look at the original circulars which are the annexures in this case? And you received four pieces of paper, is that what it comes to?

COURT: I have it down that the witness said he had received all those.

40 MR.MORGAN: My Lord, the position is what I now have in my hand is the actual one which Mr.Faugust received and the one he has got is probably blank. We must get this correct. The thing which you received is not the one which you actually received; I think we might now substitute the one which you actually received. May I look now at

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what you received? All the papers in Exhibit 2
you have read?

A. Yes, I have read the whole thing.

Q. And after having read it all, you saw this
thing at the bottom of the front page: "Any fur-
ther information you may like to have will gladly
be given by us at our offices c/o Beyer's Kenya
Corporation, Kingsway Street, Nairobi". It was
after having read that that you went along to Mr.
Beyer's office?

10

A. Not Mr. Beyer's office My Lord; the last sen-
tence on the first piece of paper says: "Any fur-
ther information you would like to have will gladly
be given by us at our offices c/o Beyer's Kenya
Corp.. Kingsway Street, Nairobi", and it was to
that office I went.

Q. It was really as a result of that invitation
that you went along? A. Yes.

Q. And am I right in saying that when you went
there, you saw a tile, one of these things, at the
offices of Mr. Beyer; and this is very important,
so far as we are concerned; that was a sample tile
and I suggest to you that it looked very nice and
if it had not done so, you would not have bought
any shares?

20

A. The tile meant a lot to me as it was an invest-
ment.

Q. But it would mean more, the fact that it was a
nice looking tile; you hoped that it would be a
good thing? A. Yes.

30

Q. And I must press for an answer that what you
were shown was an attractive tile?

A. Yes, I saw a tile in Mr. Beyer's office.

COURT: Was it an attractive looking tile?

A. It was a tile a bathroom tile.

COURT: But you were satisfied with the appearance
of that tile? A. Yes.

MR.MORGAN: I still don't think you have answered
my question.

COURT: But he is not prepared to admit that it was
an attractive tile.

40

WITNESS: No, I am not prepared to admit that.

MR.MORGAN: Appearances are often deceptive, but the appearance of the tile satisfied you? A. Yes.

Q. And you looked at the tile and before writing out your cheque for the 10% deposit, I suppose there was a lot of talk with Mr. Beyer and I am putting it to you that the tile sample was inspected by you before you wrote out the cheque; it must have been; you would not write out the cheque first, would you?

10

A. I wrote out my cheque before I left the office; after looking at the tile; I can't say exactly when.

Q. And you were shown the Plan of the factory?

A. The plan of the factory was in the office.

COURT: You saw the plan?

A. Yes, I saw the plan of the proposed factory.

MR.MORGAN: That was not made of bamboo and corrugated iron? A. No.

20 Q. But you told us I think that you were there for some time? A. About half an hour approximately.

Q. And I think you must agree with me that you looked at the tile before you wrote out the cheque?

A. As far as I can remember, I did.

Q. And can you tell the Court how many Shareholders there were; how many people in Kenya as a result of these invitations bought shares?

30

A. At the time I asked who were the other shareholders and I was told I was not supposed to see the list. He said it was supposed to be secret, so I did not see it, but before that date, I got to know who they were.

Q. Never mind; I am just asking their numbers; I believe there were twenty?

A. There were eleven or twelve.

Q. And you must have met these shareholders from time to time and discussed it with them?

40

A. I didn't discuss anything with the shareholders. I don't believe I knew who the shareholders were at the Salisbury Hotel.

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MR.MORGAN: Well, let us leave it at that; you discussed it with them?

A. No, I didn't discuss it with them, I discussed it with my brother.

Q. I mean it is only natural

A. I do not know many of these shareholders; some of them are up-country.

Q. But I mean £1,000 is quite a lot of money to put into any concern; or perhaps it is not; perhaps £1,000 does not mean anything to you?

10

A. It was certainly worth more then than now.

Q. And you must have discussed the prospects of tile making in Kenya with your brother; it is only natural? We perhaps of course, have British ways of speaking about certain aspects. Some people are very bragging about it. I want a short answer; you did discuss the prospects of tile making with fellow shareholders?

A. Mostly with those who were Directors.

Q. I am talking about eight or nine who were not Directors. Let us confine ourselves to your brother and your wife. Did they also think that tile making in Kenya was going to be profitable in Kenya?

20

A. If I was in that position now, I still would believe in those tiles; now the time has passed, well, it is very different.

Q. And you have already said that when you received this circular, you were very much attracted by the three names? A. Very much so.

30

Q. Baron Akerhielm was a successful business man; and ~~Mr. B. Hill~~ was a good accountant even though he drank too much on occasions.

A. The fact that the tile and process came out of Denmark made a big impression on me.

Q. I think possibly it was the names at the foot of the circular, coupled with the fact that the tile came from Denmark, were the two things that made a big impression on you? A. Yes.

MR.MORGAN: My Lord, I do not think I have any further questions to ask this witness now, but if Your Lordship is about to adjourn, I would, My

40

Lord, after a very interesting day with this witness, like to reserve the right to recall this witness should anything else occur to me.

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COURT: Yes.

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COURT ADJOURNED AT 4.10 p.m.

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10 MR.MORGAN: May it please you My Lord, I was cross-examining this witness yesterday. My Lord, we have with us this morning Mr.Clive Salter who is leading the Plaintiffs' case. He was not here yesterday.

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P.W.1.GUY MAGNUS ALEXANDER FAUGUST reminded that he is still on his former oath.

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20 MR.MORGAN: Now Mr.Faugust, I want you to think back to a piece of evidence which you gave yesterday, which was to the effect that Baron Akerhielm said to you that the tile was not much good and made some remark about withdrawing from the contract; do you remember having given that evidence yesterday?

A. Yes, I think I remember that yesterday, My Lord.

Q. And I do not know whether you yourself gave the date, but my instructions are that some conversation about this tile took place on the 18th March; would you agree that that might be the date; that was the big meeting?

A. Yes, in 1949; it was during the course of general conversation.

30 Q. Oh, I see; it was then mentioned for the first time and in the general conversation?

A. Not the first time; it was mentioned earlier than that.

COURT: It was mentioned that the tiles were not good?

MR.MORGAN: Casting your mind back to the 18th, you arrived earlier than the others and you had a conversation with the Baron?

40 A. Not particularly; I was the first in the office and I waited for the rest to arrive; while I was waiting, Baron Akerhielm arrived.

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Q. Now what I want to suggest is that the real conversation was something like this, that Mr. Svend Thomsen in Denmark had been experimenting and he had found a way of making a much better tile and that the Baron thought it might be a good idea to explore the new process and giving up the Muritas process and starting a new process of his own?

A. I don't remember on that occasion that that was brought up, but that subject has been discussed, but I don't remember at what meeting that was. 10

Q. Well, all right; you do agree with me that Mr. Svend Thomsen had been experimenting and that he had discovered a better way of making tiles. Do you accept that?

A. I will only accept that I was told that by the Baron, but I cannot say when.

MR.MORGAN: You were told that? A. Yes.

Q. Now why I must press this a little bit is that the Baron is coming to say on oath that Mr. Svend Thomsen had discovered a much better tile and in view of the fact that it was obviously more difficult to make a better tile, they were considering not the Muritas process but some other process? 20

A. I think that is correct.

Q. You think that is correct; I am much obliged.

Q. Now just after the meeting of the 18th March, the same meeting, do you remember the Baron telling the Directors, the in-coming Directors and the old ones, that in his opinion, if they sacked Mr.Svend Thomsen, the Company would be finished, as he was the only technical man with a full knowledge of how to produce the old and the new tile, something to that effect? 30

A. Yes, something to that effect.

Q. And it is within your knowledge Mr.Faugust, that some time later, for whatever reason, Mr. Sverd Thomsen was in fact sacked? A. Yes.

Q. I think it is only fair to let you add that probably you felt under an obligation to sack him, didn't you? He didn't turn out very well? 40

A. Apart from that it was not enough to do for a man of his trade and the factory was not going. I was also told that he had acted dishonestly.

Q. You found that he was not doing things quite honestly and that is why you had to sack him?

A. Yes, My Lord.

Q. Who paid for your wife's shares that day when you wrote out the cheques?

A. I paid the lot myself. It was a gift from me.

10 Q. At the time when you received this circular you have told us twice I think, if not three times, that you were very impressed by the names, and you said that you knew Baron Akerhielm up to that date to be a very successful business man.

A. That is correct, My Lord.

Q. And would it be true to say that you also knew him to be honest as well as a successful business man?

A. I do not know Baron Akerhielm well enough; we had met on and off in the past and actually I had had no business transactions with him.

20 Q. You had not been able to form any opinion.
A.No.

Q. And what do you think today; do you think today that he is an honest man; you have got to know him a great deal better?

A. If I may say so, from that time when I started to be troublesome with the Directors, I started to lose faith both in the Company and him and the Directors.

MR.MORGAN: I am talking about today?

A. Since then, I have more or less lost contact.

30 Q. So you don't like to answer that question, whether today you think he is an honest man or not?

A. Well, you can't help hearing other people talking about this prominent man but I don't know whether the rumours one hears can be given in evidence.

Q. No, I mean of your own knowledge.

40 A. To me personally, neither of the Directors have in any way behaved dishonestly to me; only except when I could not get the full knowledge I wanted to obtain at the meetings.

Q. But apart from that, these people have behaved honestly towards you? A. Yes.

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MR.STEPHEN: Mr. Faugust you told the Court yesterday that you did not understand the English way of preparing a balance sheet; is that right?

A. That is correct at that time.

Q. You have learned better since? A. Yes.

Q. You have also said that late in 1949, you swore an affidavit at the offices of Messrs.Shapley Barrett & Co.? A. Yes, I did.

Q. Did you yesterday see a copy of your affidavit? 10

A. No, I did not.

Q. Would you like to see it now? A. Yes, please.

Q. That is not the original, that is a copy; you will probably recognise it as the copy provided by your own advocates (remainder inaudible to shorthand writer) You remember that now?

A. Yes, I remember that.

Q. Do you notice that towards the end of that affidavit you refer to the incomplete state of the Company's records and you say that you believe the Company is not in a position to supply audited Profit and Loss Accounts and a Balance Sheet? 20

A. Yes.

Q. Don't you think that was rather a rash statement?

A. My Lord, if I may say so, I had previously tried to go through the purchases and sales and the movement of money to the Company, but they were not consolidated, so I could not get a clear picture.

MR.STEPHEN: Now would you listen to my question. Wasn't it a somewhat rash statement to make, if you did not understand English accounting methods? Isn't it rather rash to criticise as you did in that affidavit? A. It was rather, My Lord. 30

Q. And subsequently, you read Mr.Seex's report on his investigations? A. Yes, I did.

Q. And do you remember that he said he had no difficulty in getting the information he required from which to prepare proper accounts?

A. I don't remember the wording, but I think something of the sort was mentioned in his report.

Q. Would you like to see it for yourself, as I do not want you to feel you are at a disadvantage. Look at paragraph 18.

A. I am satisfied as to that.

MR.SALTER: If my learned friend is going to refer to certain paragraphs I would like them to be read out please.

10 MR.STEPHEN: Paragraph 18 of the Report refers to the affidavit of Mr.Louis Karl Augustus Faugust dated the 3rd June, 1950. As Your Lordship will see, Mr. Seex makes some remark subsequently about this witness' affidavit :-

20 18 "Paragraph 9 of the affidavit states that Mr. Ole Beyer produced certain accounts and books which were very incomplete and it was obvious from this that no proper records had been kept regarding the Company's subscribed capital and that it would not be possible from the records to prepare a proper balance sheet and account showing how the Company's funds had been disbursed. The books and records produced to me were, in my opinion, adequate for a company of this size and I have been able to obtain from them all the information required to prepare proper accounts."

WITNESS: May I ask a question, My Lord?

30 COURT: I think your Advocates should ask any questions.

COURT: What is the date of that Report?

A. 11th December, 1950.

COURT: And what was the date of the witness' affidavit?

A. 9th May, 1950. It was not the affidavit of this witness but of Louis Karl Augustus Faugust.

MR.STEPHEN: If Your Lordship had the Inspector's Report you would see that the Inspector refers to the remark in paragraph 18.

40 COURT: This Report will be put in?

A. I understand so.

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MR. STEPHEN: You would also agree that Mr. Seex's different opinion from yours simply emphasizes that at that time you were not very familiar with English accounting methods and English Company practice?

A. Agreed.

Q. Mr. Faugust what do you understand by the term 'Authorised Capital'?

A. It is when the Company is formed or registered, it must have been authorised (remainder of sentence inaudible to shorthand writer) it is a question of law. 10

Q. What do you understand by 'Nominal Capital'?

A. That is the same, that is the fixed Capital put in writing.

Q. It is very confusing? A. Very confusing.

Q. And Company terminology you still find confusing?

A. As I told the Court before, I had not taken any active part, except for a fortnight, in any business, so I had not had time to study Company Law and wording of various paragraphs. 20

Q. At all events you agree with me that you find English Company terminology somewhat confusing, or you did then? A. Yes.

Q. And would it be fair to say that you are still somewhat doubtful about the two expressions?

A. Yes.

Q. Now what was your object Mr. Faugust, in becoming a Director in 1949?

A. When this was suggested at that meeting, it came more or less as a shock I was not prepared. This job was more or less pushed over without me being consulted beforehand. 30

Q. You mean that someone, by surprise, suggested that you should become a Director and you did not have an opportunity of considering it? A. No.

Q. But you did accept?

A. I was speechless at that moment.

COURT: You mean 'Silence means consent'

Q. And would it be fair to say Mr. Faugust that 40

when you find yourself a Director you immediately busied yourself in acquainting yourself with the past history and present position as it was at that time? A. I tried to.

Q. And did you not also give instructions for letters to be sent to such persons as Messrs. Harrison & Bowmer, to get accounts for the company for the first year? A. I don't remember that.

10 MR. STEPHEN: Would this copy letter refresh your memory at all?

A. I don't remember the beginning of it, My Lord, it may well have happened, but I don't remember the last sentence of trying to obtain capital.

Q. Don't you remember that that is even in the minutes, Mr. Faugust? I think my learned friends who are representing you in this case, will concede that it is in the minutes.

20 A. I have not read the minutes; it is some years back. I remember at one time Mr. Harrison told me that he was not prepared to audit the Balance Sheet of the Company.

Q. There are two meetings. (Mr. Stephen hands the minutes to the witness).

A. This is the meeting of the 18th March, where I was appointed a Director; I remember this, yes.

30 Q. What I am trying to point out is that those two documents, the carbon copy of the letter which refers to your instructions and the minutes, confirm each other, don't they? It is your recollection, rather than the minutes and letter are wrong.

A. It is in the minute book and, if that is so, it must be correct.

Q. It is quite clear Mr. Faugust that you were busying yourself about the Company's business at that time? A. Yes.

Q. And all that you learned, as you investigated the position, upset you; disappointed you?

A. Yes, it did.

40 Q. Well now, why didn't you make an effort to pull the Company round then instead of scuttling off the Board after a short time?

A. As I am not familiar with the construction and

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ways of a Company, I naturally consulted my legal advisers immediately, and on his advice, I sent in my resignation; also, as there was a complete lack of working capital, as far as I remember at that time we were not in a position to continue if no more capital could be raised.

Q. Now don't you think it would have been fairer once you found yourself in the saddle, to do what you could to save the situation?

A. It would have been so, but I relied entirely upon my legal adviser.

10

Q. Very well. I am quite satisfied with that answer. Whilst you were a Director, did you discover what Mr. Eric Von Huth's (the 2nd Defendant) salary was; for example, it was in the minutes?

A. As far as I remember it was £50 per month.

Q. That is right; about; I think it may have been Shs.1,200/- per month, but, at all events, that was not a high salary to pay; I mean £60 per month is not, by East African standards, a high salary?

A. At that time, I drew less salary than that. I thought it was not high pay at that time, but it was high pay compared with what I myself was drawing.

20

Q. But by East African standards it is not a high salary? A. I agree with that.

Q. And did you find out whether Baron Akerhielm had any salary as a Director?

A. He did not draw any salary; I believe the expenses were paid for, stationery and stamps.

30

Q. But those were charged by Mr. Beyer, the Secretary I believe.

A. That is true; it was Mr. Beyer who charged for the stationery and stamps.

Q. Now you told the Court yesterday, that you and Mr. Beyer had a discussion about getting more money for the Company? A. That is true.

Q. Was that about this time when you were a Director? A. That was when I was a Director.

Q. Now did you hear your Counsel say yesterday that the shares were worthless from the start? A. Yes.

40

Q. Do you agree that they were worthless from the start?

A. I would not be able to make an opinion on that.

Q. Do you agree that if the shares were worthless from the start, it is a very odd thing to discuss with the other Directors ways of getting more money?

10 A. There was no money available as working capital and we had discussions to get new issue of shares and to get more money that way.

Q. But if you agree the shares were worthless from the start, it was an odd procedure to discuss getting more money, no doubt on shares which would also be useless?

A. I would say again that there was no working capital for future developments at all; there were a few shillings in the Bank and some assets like paid for cement; that was all the Company possessed at that time.

20 Q. Then do you agree that these Shares were not worthless in 1949?

A. I never put my thoughts to that.

Q. Well, do it now.

A. Well, as I see it now, I think they were worthless.

Q. You do? Well, would you agree that if they were worthless in 1949, it was quite absurd to discuss raising more money?

30 A. I agree, but as I had important things to do at that time, I never thought of the value of the shares.

MR.STEPHEN: Now between January and June, 1949, at all events Mr.Faugust, you acquired a pretty fair impression of the Company's history and position?

A. Yes.

Q. You knew from the minutes I think, that a firm of Advocates had formed a Company and you knew who those Advocates were; they were named?

A. Yes, they were named.

40 Q. You also knew I think that that firm had advised on the Muritas contract?

A. I don't remember that, my Lord.

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Q. Will you accept the minutes as evidence? Up to now you have done so? Minutes of the 28th February, 1948, handed to witness. The contract with Muritas, what does that say?

A. Shall I read this out, My Lord?

COURT: Yes.

WITNESS: "Contract Muritas A/S and Dantilo Ltd., (in formation) Two of the Directors Baron Akerhielm and Mr.Eric Von Huth were requested to contact Mr. Hollister with reference to the above-mentioned contract." 10

MR.STEPHEN: Now the above-mentioned contract was the contract between Muritas and the above-mentioned Company. You did read all those minutes, didn't you? A. Yes. I may mention that I had never seen a contract between Muritas and the Company.

Q. Did you ever ask if you could see it?

A. As that was a transaction between the old directors I was not at that time particularly interested. There were more acute things to tackle as getting in money. 20

Q. Yes, but did you ask if you could see it?

A. I don't remember.

Q. Can you remember this? I think you did mention something about it yesterday. Is it your recollection that some time in 1949, probably early in 1949, Baron Akerhielm had someone interested in buying shares or the business?

A. Yes, I was told so by Mr. Ole Beyer.

Q. And do you recall also that Mr. Harrison of Messrs.Harrison & Bowmer had someone interested.? 30

A. I don't remember that; that is the first I have heard of it.

MR.STEPHEN: You are quite sure it is the first you have heard of it?

A. I can't recollect it; I may have heard it, but I don't recollect it.

Q. Now there was a Mr.Dan Christensen who was a shareholder.

A. I have not been able to find out who he is or his whereabouts. 40

Q. Now perhaps I can help you on that; (letter handed to witness) Does that help you?

A. It doesn't help at all, My Lord.

Q. Do you know who he is? A. No.

Q. Well, you can read?

A. If you give me a couple of seconds.

Q. You have read that? A. I have read it.

Q. He is a business man in Copenhagen?

10

A. I realise he must be a business man of some description.

Q. And would that be a fair translation as far as you can say; I am not treating you as an expert? I think that is a very fair translation

EXHIBIT A: Copy letter dated 20th October, 1947, handed to and accepted by Court as Exhibit A.

20

Q. He appears at all events from his stationery to be an Agent for the General Electric Company; did you notice that, at the foot of the letter, and that he was in a position to put Twenty five thousand krona into Dantile Ltd., and indeed, was keen to do so, is that right? A. Yes.

Q. And in fact he did become a shareholder?

A. I have seen his name as a shareholder of Dantile Ltd., but I do not know where he originated, whether he was a Kenya man or in Denmark.

30

MR.SALTER: I am not objecting to this letter although Mr. Dan Christensen is not here, as it has been agreed between my learned friends and myself, in order to save expense, that where letters from Denmark would have to be proved from that place, we have agreed not to object to each others letters on that account.

MR.STEPHEN: Did Your Lordship record the witness' answer that 'I have seen his name as being a shareholder but I have never met him' and of course, he was in Copenhagen?

A. Now of course, I realise he was a Copenhagen man.

40

Q. And of course, it was from Copenhagen that the Dantile process originated? A. Yes.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 7.

G.M.A.Faugust.

Cross-
Examination
by Counsel for
3rd Defendant -
continued.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 7.

G.M.A.Faugust.

Cross-
Examination
by Counsel for
3rd Defendant -
continued.

Q. Do you know a Mr. Viggo Ottesen? A. No.

MR.STEPHEN: Just see if that conveys anything to you. (Copy letter handed to witness) Do you remember that? A. No.

Q. But at all events, would that be a fair translation?

A. Yes, I think that is quite a fair translation, but his name does not convey anything to me.

Q. Well, I will not put that in for the time being as it does not convey anything to him. I shall be able to put it to another witness. 10

Q. Do you know Mr.Erik Scheitel?

A. I have never heard that name before.

Q. Do you not remember the fact that he was an alternative Director to Mr. Ole Beyer, in Dantile Ltd.? A. I don't know that.

Q. Now I think you ought to have heard his name.

A. Well, I don't remember.

Q. In any event, may I just draw your attention to this; you became a Director in 1949 and you say you read the minutes; at all events, Mr. Erik Scheitel you agree from the minutes, was an alternative Director to Mr. Ole Beyer and attended several Board meetings? 20

A. Well, I can't remember I met him. When did he relinquish his functions as a Director?

Q. On Mr.Ole Beyer's return; I think Mr.Ole Beyer went to Denmark.

A. I was without a job at that time; I was looking after myself, so I didn't know. 30

Q. Now will you look at this letter? (Copy letter handed to witness)

(Witness asks the Court the meaning of two Danish words, whether they mean the same thing, but the Court is unable to reply).

Q. Is that a reasonable translation apart from those two words?

A. Yes, except for that one expression.

EXHIBIT B: Copy letter handed to and accepted by Court as Exhibit B.

In the Supreme Court of Kenya.

Q. Now do you know anything against Mr. Dan Christensen? A. No, nothing.

Plaintiffs' Evidence.

Q. And since you could not recall Mr. Erik Scheitel you do not know anything against him? A. No.

No. 7.

Q. And you agree that both these persons were keen on Dantile Ltd?

A. I realise from their letters that they were.

G.M.A. Faugust.

10 Q. Now here is an Exhibit from one of the previous cases in connection with Dantile Ltd., it is a draft balance sheet. Now when you look at that balance sheet don't you agree that it shows

Cross- Examination by Counsel for 3rd Defendant - continued.

COURT: Is this Exhibit going in?

MR.MORGAN: My Lord, my friend did ask for the Resident Magistrate's file and that is an Exhibit from the file.

20 MR.STEPHEN: Do you consider on the basis of that balance sheet the 26th February, 1949, that the shares are worthless?

A. May I say that when I see this draft balance sheet I have always wanted to see details of the various expenses, that is in the past, but these things I wanted to see at the meetings and I did not obtain those facts.

Q. On the basis of that balance sheet of the 28th February, 1949, were the shares worthless?

30 A. In my opinion, one has to balance up production, speed and costs at the same time. If you have not got capital you have to borrow money; there are quite a few things sunk in capital and this needs assets to carry on production. I would be able to tell when I see (inaudible to shorthandwriter) Before the 18th February, 1949, I believe that the shares were not valueless but full value.

40 MR.SALTER: There is nothing to show who prepared this balance sheet; there is no name of an Auditor or accountant; it is just figures. I do submit that if it is It is one thing to put in a file which can be referred to in another case; it is quite another thing to take a document out of that file which bears no name.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 7.

G.M.A.Faugust.

Cross-
Examination
by Counsel for
3rd Defendant -
continued.

MR.MORGAN: I understand Mr.Couldrey made an application at the very beginning to put in the whole of the Supreme Court file and the whole of the Resident Magistrate's file and I made some comment at the time that it was for Your Lordship to decide. My friend asked you to make an Order for them to be put in. He has referred to them; the Minute Book has come out.

COURT: I know nothing about the rest of the file. At all events, it is quite clear that this document is clearly embarrassing and it cannot be identified with anything; it came from the Court file, but of course, I am not going to insist on this witness answering questions. 10

MR.MORGAN: My point is that it went in on consent. From the bar he said 'I am going to put in the Supreme Court file and the Resident Magistrate's file and I want Your Lordship to sign an Order for both 'We did not object and we understood that these files were going in by consent. 20

COURT: My last note is 'I ask Order to produce files of two cases'. I am reluctant to receive large masses of Exhibits.

MR.MORGAN: We have all of us read from the affidavits from the different Courts.

COURT: My Ruling at present is that the file as a whole has not been put in.

MR.STEPHEN: At all events, I leave it on this basis; I can cross examine Mr. Seex who I understand is being called, just as well as this witness. 30
But I would like to ask just one further question Mr.Faugust. Is it your view that at the time you became a Director, the shares were worthless?
A. Now at this moment; in the previous stage not.

Q. And you stake your opinion against that of Mr. Seex and basing it on the fact that there was nothing to support the Shares and the activity going on. Do you say that on the 18th March, 1949, the liabilities of Dantile Ltd., exceeded the assets? 40
A. I believe there was a certain amount of cement and paint as holding of the Company. I do not know; I can't answer that question.

Q. Well, you were a Director; can't you remember

any of this?

A. I thought at that time that the value of the shares were of full value as there were plenty of assets to back up the shares.

10 Q. Now Mr. Faugust consider carefully if in March and April 1949, the assets had been realised and the assets include machinery and every single article of value which belonged to the Company; if all those things had been realised and the liabilities paid, do you say that there would have been any surplus of cash?

A. A certain amount of surplus cash would have been left over. I consider that the Company lost its cash at the moment Baron Akerhielm resigned, it was like a captain leaving his ship before the ship had left.

20 Q. Do you agree that on the proposition I made a moment ago, the realisation made in 1949, there would have been a surplus of cash after paying liabilities, of thousands of shillings?

A. Unfortunately there have been so many Balance Sheets floating about with no names on them.

Re-Examination.

MR. SALTER: Mr. Faugust when did you first apply your mind as to whether the shares in 1949 were of value or of no value?

30 A. This has occurred to me in this Court. In the past I have never occupied thought of that; it is when I refer back now at that moment, when I think of it, and I have given my answer to that effect now.

Q. You told My Lord that the Baron left the Company as a Director on the 18th March, 1949, and that time you described his action as leaving a sinking ship. Did you think at that time that the ship was sinking?

A. That was my whole attitude to the situation; no stability at all.

40 MR. SALTER: And how long did you try to keep the ship afloat, how long did you remain a Director?

A. Until my legal adviser told me to get out, about ten to fourteen days after, I sent in my resignation in writing to the Secretary of the Company,

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 7.

G.M.A. Faugust.

Cross-
Examination
by Counsel for
3rd Defendant -
continued.

Re-Examination.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 7.

G.M.A. Faugust.

Re-
Examination -
continued.

upon which I received a reply from Mr. Ole Beyer accepting my resignation as a Director.

Q. Why was it you wanted to give up the Directorship? A. Mr. Scruby my legal adviser told me that I would meet with complications.

MR.MORGAN: I don't think we can have what his legal adviser told him.

COURT: I don't think we can go behind it.

MR.SALTER: Going back to questions which were asked by Mr.Mervyn Morgan. He asked you as to Svend Thomsen being dismissed; also about his being the only man with knowledge of the old and new tile Do you know what experience Mr. Svend Thomsen had had before he took up work with your Company? A. No, I had no knowledge, except what I heard from the Directors.

10

Q. Do you know what his experience had been in making tiles, or don't you know?

A. I don't know that.

Q. And what was the fundamental reason for getting rid of him?

20

A. I was informed by Mr.Ole Beyer that Mr. Svend Thomsen had disposed of certain goods belonging to the Company. I relied upon Mr.Ole Beyer's information as I myself did not see any proof.

Q. And I think you said there was not enough for him to do? To what extent was he employed? How busy was he kept?

A. He looked after the factory and I believe he erected that temporary factory in the factory area.

30

Q. And have you visited that area?

A. Twice; once with Mr. Svend Thomsen and once with Mr.Ole Beyer.

Q. And can you say to what extent Mr.Svend Thomsen had advanced the tile?

A. There was no production going on; it consisted of a bamboo shed and in the shed there was a concrete foundation for mould; also there was storage place for white cement.

Q. Now you told My Lord you were impressed by the

40

names on this circular letter and you knew the Baron as a successful business man. Did you know him personally as such?

A. Yes; not as a business man; that was information I got but I knew him in the past as being employed on farms in Ruiru and climbing the ladder pretty fast, which proves there is ability behind his efforts.

10 MR.SALTER: And what was it that caused you to lose faith in him?

A. That was at this intermediate meeting we had when I started these matters. I approached Baron Akerhielm quite a few times; he is a man of charming manners and on many occasions I made up my mind to thrash it out with him and when I left, I was none the wiser.

MR.MORGAN: Like Politicians?

A. Some people are gifted that way and I could not compete with him.

20 Q. What was the particular information you were seeking?

30 A. I was seeking for the intentions and what the future planning was. Also I wanted to have the details of the various expenses; also planning for the future. In fact, I wanted to verify rumours which were floating about that the Company was not sound; and on each occasion everything was explained that everything was all right and there was nothing to worry about at all, but I was not satisfied with these answers as there were no complete facts.

MR.SALTER: Yes. I understand; now tell My Lord when you decided to buy the shares? I don't want to know what your conversation was, but what was your wife's concern with the purchase of the shares?

A. My wife was quite satisfied that I had placed money in the Company.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 7.

G.M.A.Faugust.

Re-Examination
- continued.

In the
Supreme Court
of Kenya.

BARBRO WILHELMINA ELISABETH FAUGUST

Plaintiffs'
Evidence.

P.W.2. BARBRO WILHELMINA ELISABETH FAUGUST Sworn:

MR.SALTER: Is your full name Barbro Wilhelmina Elisabeth Faugust? A. Yes.

No. 8.
B.W.E.Faugust.
Examination.

Q. And are you the wife of the last witness, that is the second Plaintiff? (P.W.1. Guy Magnus Alexander Faugust)? A. Yes, I am.

Q. Would you look at Exhibit 2; that is the letter. Have you seen that before?
A. Yes, I have seen it before. 10

Q. How did you come to see it?
A. My husband showed it to me.

Q. Now I don't want any details as to any talk between you and your husband when he showed it to you; was there any discussion between you?
A. Yes.

Q. And when you read the letter yourself, what did you think?
A. Well, I liked very much to see that the Capital had already been subscribed in Denmark and that the tile had been sold and successfully processed in Denmark. 20

Q. You are Danish yourself? A. No, I am Swedish.

Q. I see; there is a statement there: "We have procured the patent rights of most countries in Africa, India and Pakistan", did that have any impression on you?
A. Yes, it rather impressed me.

Q. Was there anything else which appealed to you about this letter?
A. Yes, it was signed by our friend Baron Akerhielm and I, like my husband, thought that would be quite a good guarantee that his signature was on the letter. 30

Q. How well did you know him?
A. I did not know him frightfully well, but I had met him socially several times and I just liked him.

Q. And did you believe these statements?

A. Oh yes, indeed.

Q. And what did you decide to do?

A. Well, I was very pleased when my husband suggested we should invest some money in this firm as we thought it was a good thing to produce tiles when people were needing houses and houses were being built and they would need a lot of tiles.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 8.

10 MR.SALTER: If you had had any reason to suppose that the statements made in their letter were not true, what would you have done?

A. In that case, we would not have put any money in it at all.

B.W.E.Faugust.

Examination -
continued.

Q. Have you yourself any knowledge of business?

A. No, I have not.

Q. Or making tiles?

A. No, I have never made a tile in my life.

Q. Well, what did you decide to do then?

20 A. Well, we decided to put some money into this firm and my husband had inherited some money in Sweden and this firm seemed very safe and we wanted to get some interest on the money as we have three children.

Q. And what arrangements were made about investing the money?

A. My husband went to the office and he wrote the cheque.

Q. Yes, which office was this?

30 A. That was in Kingsway; that was Mr. Ole Boyer's office.

MR.MORGAN: It was not denied that he did write a cheque and it was not challenged.

MR.SALTER: I meant more about the number of shares; who was to get them?

A. My husband got £1,000 Ordinary Shares in his own name and I got as a gift from him £250 Preference Shares and £500 Ordinary Shares in my name.

Q. Whose money was it?

A. It was my husband's money.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 8.

B.W.E.Faugust.

Examination -
continued.

Q. And have you realised any of those shares? Have you sold any of them? A. No, never.

Q. Have you tried to sell any of them? A. No.

Q. Now after you had invested your husband's money in these shares, did you see the Baron at all afterwards?

A. I remember I met him in town at the beginning of March, 1949, because it was after we had heard rumours about the Company not being quite all right.

Q. Did you meet him by arrangement or casually? 10

A. Casually; I met him in Government Road.

Q. Did you have any conversation?

A. Yes, I said we were all right, but we were worried because we had heard rumours that everything was not all right with the Company.

Q. When you said that, did he say anything?

A. Yes, he patted my shoulder and he said: "You need not worry at all, because everything is all right".

MR.SALTER: Did you accept that? 20

A. Yes, I felt very happy and I thanked him.

Q. Was there any other occasion when you saw him, or was that the only one? A. I can't remember.

Cross-
Examination.
by Counsel for
1st Defendant.

Cross-Examination

MR.MORGAN: Mrs.Faugust I have not got the Minute Book, but did you attend that Meeting on the 18th August, 1949?

A. No I did not attend any Meeting.

Q. I was just asking in fact whether you did attend it? A. We thought that if my husband went he represented me also. 30

Q. And you knew the Baron socially before then?

A. Yes.

Q. And you said you found him charming? A. Yes.

Q. I think everyone finds him charming, don't they; and you thought that this might be a good investment? that you might make money out of this thing?

A. I certainly thought it was a good investment.

Q. You do know the Baron owns horses: do you, are you at all interested in horse racing? A. No.

In the Supreme Court of Kenya.

Q. Wise person.

Now when you received Exhibit 2 I suppose you read that thing at the end which set out the prospects of the estimated profit?

Plaintiffs' Evidence.

A. Yes, I remember I read it through and I was very much impressed by it. I was impressed because it says:

No. 8.

10

I N C O M E

B.W.E.Faugust

Two Shifts daily at 900 Tiles per Shift = 1,800 Tiles per day, in 25 days = 45,000 tiles per month, in 6 months = 270,000 tiles at -/36 cents per tile SHS:97,200.00.

Cross-Examination by Counsel for 1st Defendant - continued.

Out of the above profit the following will be used as Capital Expenditure (Erecting 2nd Unit)

20

(1) In Denmark: Machinery and Plant Freight etc. Shs.10,000.00.
(2) In Kenya " 22,800.00.
32,800.00.

Q. Yes, it makes interesting figures and attractive reading? A. It does.

Q. And I suppose you read all these pages for Exhibit 2 and all the figures and all the objects and projects: I suppose that impressed you too?

30

A. Yes, I remember I read it all and I believed in it and found it very good indeed; that was Exhibit 2.

Cross-Examination

Cross-Examination by Counsel for 3rd Defendant.

MR. STEPHEN: You put up no money yourself at all? A. No, I have no money at all.

Q. And in consequence you lost no money?

A. Well, I lost through my husband. I did not put anything in at all personally, but I was very pleased about my gift and that it would give me money in the future.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 8.

B.W.E.Faugust.
Cross-
Examination by
Counsel for
3rd Defendant -
continued.

Q. But having put up no money you were in the same position of having lost no money?

A. No, I had no money to put up.

Q. And it comes to this, that gift which your husband made to you turned out not to have very much value.

A. That is true.

No re-examination.

No. 9.

R. De Mare.
Examination.

No. 9.

ROLF DE MARE

10

P.W.5. ROLF DE MARE, Sworn:

MR.COULDREY: Have you a coffee farm at Kiambu?

A. Since 1932.

MR.COULDREY: I believe you normally live in Sweden but come out to Kenya during the winter months?

A. For a few months every winter, after the war.

Q. Now in February, 1948, did you receive these documents by post? A. Yes, My Lord.

Your Lordship will recollect that a copy was put in first, then we found the original one. We have now Mr. De Mare's copy.

20

EXHIBIT 2: Documents handed to and accepted by Court as Exhibit "A".

Q. Did you know the three signatories to that letter?

A. I know the Baron and Eric von Huth personally, but not Mr. Ole Beyer.

Q. Did you know who Mr. Ole Beyer was?

A. The Danish Vice Consul.

Q. You yourself, I believe, are Swedish?

A. Yes I am Swedish.

30

Q. Now that circular letter is a letter asking for subscriptions to a Company? A. Yes, My Lord.

In the
Supreme Court
of Kenya.

Q. Did you in fact ask or apply for any shares in the proposed Company?

A. No, when I got that letter I saw signatures; I saw they were Scandinavians and as at that time I was arranging a bathroom and had difficulty in obtaining tiles, I thought it would be a good thing to put money in to the Company.

Plaintiffs'
Evidence.

No. 9.

10 Q. Did you discuss that letter with anybody?

A. No, nobody before I signed and gave money.

R. De Mare.

Q. How much money did you pay?

A. Shs.10,000/- for five hundred Ordinary Shares.

Examination -
continued.

Q. Did you send your application for the shares by post or did you take it in and consult with anybody?

A. I sent the application by post.

Q. And ultimately, I believe you received a certificate for five hundred shares? A. Yes.

20 Q. Now what were the factors which influenced your mind when you decided to apply for these shares?

A. Because I had just had good coffee crop; I had money over; I thought it was good to make investment in this country while I lived here, and I trusted in these tiles.

Q. Did you know anything about these tiles, other than what was said in the letter from these three gentlemen? A. None at all.

30 Q. Had you any reason to suppose that any of the statements set out in the letter were incorrect?

A. No.

MR.COULDREY: If you had thought any of these statements were incorrect what would you have done?

A. I would probably have asked my Scandinavian friends first and then saw what the answer was.

Q. After you had subscribed for the shares, did you take any part in the activities of the Company?

A. I was only at one meeting, I believe in March, 1949. It was the only meeting I attended because I was mostly away.

In the
Supreme Court
of Kenya.

Q. I believe that in fact you did join in an application to the Court for the appointment of an Inspector? A. Yes.

Plaintiffs'
Evidence.

Q. In what month or year was that, can you remember?
A. It must have been before the 1st April.

No. 9.

Q. Did you at any time know, or were you ever informed that any shares were allotted by the Company for consideration other than cash?

R. De Mare.

A. I had very little to do with that Dantile business.

10

Examination -
continued.

Q. And had you ever heard of these shares apart from this letter? A. No, not before.

Cross-Examination

Cross-
Examination
by Counsel for
1st Defendant.

MR.MORGAN: Mr. De Mare, dealing first with what you said last, this meeting in March of 1949, the Baron was in the Chair, wasn't he?

A. He came, but I believe he went away.

Q. Yes, but I believe at the end of the meeting he intimated that he was going to resign?

A. I just went up to the meeting because I was in town. 20

Q. But what I want to get from you is that the Baron addressed the meeting; he made a speech to the meeting from the Chair, giving a short resume of the Company's work during the year; can you remember that, it is a long time ago?

A. I don't remember.

Q. I am not being unpleasant when I say £500 is a very small amount of money as far as you were concerned? A. It is quite sufficient. 30

MR. SALTER: Do you suppose that in litigation Mr. Morgan?

A. Perhaps that is why he was not very attentive to what the Baron said.

MR.MORGAN: When you received this thing, was it in that form; that is a bundle of papers altogether; and did you read them all?

A. Yes, I read them all.

Q. And after having read them all, you decided to invest £500? A. I had confidence in the Directors. 40

Cross-Examination.

MR. STEPHEN: You are a business man Mr. De Mare?

A. No, not at all; I am a theatrical man.

Q. Is it possible to be a business man in the theatre world?

A. Reply inaudible to shorthand writer.

Q. At all events, you have business interests?

A. I have.

10 Q. And unless I have misunderstood the position you wanted to go to India about a fortnight ago on business? A. Not at all; just a pleasure trip.

Q. So that you made an application, did you, for this case to be heard early in January so that you could go on a pleasure trip?

A. Yes I had booked tickets there; they are difficult to get; I do not know yet if I have them for Friday.

Q. Do you yourself know the name of Mr. Dan Christensen? A. No.

20 Q. You heard his name mentioned this morning in Court? A. Yes.

Q. And you now know for the first time that he was a shareholder in Dantile Ltd.?

A. Yes, if I want to I would have seen it before.

Q. And did you ever hear the name of Mr. Eric Scheitel? A. Never.

Q. Did you ever go to the office of the Company or of any of the Directors and see one of the tiles?

A. No.

30 Q. They never showed you a specimen? A. No.

Q. In fact, you were not very interested?

A. I was just interested to put some money and to get it back.

Q. Now did you ever hear of a Mr. Svend Thomsen?

A. Never.

Q. You never knew he was employed by the Company?

A. No.

In the
Supreme Court
of Kenya.

Plaintiffs'
Evidence.

No. 9.

R. De Mare.

Cross-
Examination by
Counsel for
3rd Defendant.

In the
Supreme Court
of Kenya.

Q. You knew Mr. Eric Von Huth?

A. Yes, I met him in the 'plane when I came out in 1946.

Plaintiffs'
Evidence.

Q. Was it 1946, 1947 or 1948?

A. 1947; I don't know when Mr. Eric Von Huth came out; 1947 may be.

No. 9.

Q. And that would be towards the end of 1946 when you came out? A. Yes, in December.

R. De Mare.

MR.STEPHEN: And on the occasion of that trip were you having conversation with Mr. Eric Von Huth? 10

Cross-
Examination by
Counsel for
3rd Defendant.
- continued.

A. Yes, he was quite drunk all the time.

Q. Are you quite certain now that it was 1946 and not 1947? Was it not just a few months before you received this circular?

A. I always came out in December; it might be 1947.

Q. You received this circular February, 1948?

A. Yes, it might have been just before.

Q. So it was probably in December, 1947? I take it Mr. Eric Von Huth did not try to sell you tiles on the trip; nor did he even mention tiles on the trip? 20

A. No.

Q. Now perhaps you can help me; do you know the name of that gentleman at all? A. No.

Q. What is the name? A. Viggo Ottesen.

Q. Would you take a look at that letter; it is written from Copenhagen; and written to one Erik; and it was written on the 28th January, 1948; and it is signed 'Viggo'; could that be Viggo Ottesen?

A. There is a Prince Viggo of Denmark.

Q. I do not think that would be him. Would you look at the fourth paragraph which said: "I spoke to Mr. Svend Thomsen and he is coming down this week and we shall soon start work." At all events it is quite clear from the context of that letter that Mr. Ottesen knows all about these tiles? 30

A. Yes.

Q. If you look later on, in the letter, you will agree that he refers to the question of 'thick glass; how many millimetres; cost and so on'

A. Yes, the glass must be three millimetres thick, but some factories are using 2mm. thick glass.

EXHIBIT 'C': Copy letter handed to and accepted by Court as Exhibit 'C'.

Q. Now you have business interests on the Continent in Europe? A. Only in Sweden.

Q. Not in France?

A. Not any more. I lived in France pre-war.

10 Q. And at the time you were living in France, you had business interests there? A. Yes.

Q. You have business interests in Sweden?

A. Very little.

Q. You used to have? A. I used to have.

Q. And you have wide experience of business?

A. Not what you mean by business.

MR. STEPHEN: Well, you are a person who has been actively engaged in business? A. Yes.

Q. Do you know Mr. Jorgen Brock? A. No.

Q. You have never heard of him? A. No.

30 Q. Very well; you have in addition to your coffee farm and other interests in Kenya? A. None.

Q. Now if this Company Dantile Ltd., had been successful, would it have caused you any annoyance to find that some shares were allotted for consideration other than cash; that is to say for services rendered? A. What do you mean by that?

40 Q. I will repeat the question; perhaps you will understand it a second time. Let me put it this way Shares can be allotted for cash, as in your case, or you can allot shares for goods or services. Well now, if this Company had been successful, it would not have worried you if someone got shares for goods and services, instead of cash?

A. It all depends on what services.

Q. If services had been rendered, do you agree?

A. I wanted interest on my money.

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Plaintiffs'
Evidence.

No. 9.

R. De Mare.

Cross-
Examination by
Counsel for
3rd Defendant
- continued.

In the
Supreme Court
of Kenya.

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No. 9.

R. De Mare.

Cross-
Examination by
Counsel for
3rd Defendant
- continued.

Q. Do you know whether Baron Akerhielm had a salary from this Company?

A. I had a balance sheet but I never read it through.

Q. You don't know whether the Baron ever had a salary? A. No.

Q. You can't then contest that he might not have had anything out of this Company? You don't know? A. No.

Q. Indeed, he may have lost money as far as you know? A. Probably. 10

Q. Did you make any effort yourself to pull the affairs of the Company round when you heard that they were not going well? A. No, not at all.

Re-Examination

Re-Examination.

MR.SALTER: Could you have in front of you Exhibit 'C' again; that letter? I think it is the fourth paragraph where it refers to Mr. Svend Thomsen, have you got that? "I spoke to Svend Thomsen and he Now the following as it is written; may I put that paragraph to you? Is it correct what you see there? A. Yes. 20

Q. Later on in that paragraph is it correct that the Statement is made: "... Mr.Pinner will start up just to teach Thomsen, so that will be all right" ... A. Yes.

MR.SALTER: And then is it "He will also be taught to mix the glaze, and shown everything else necessary"? A. Yes.

Q. Do you happen to know when Mr. Svend Thomsen came out here? 30

A. No, I don't; I have never seen him.

Q. You told My Lord that you were only interested in investing some money and hoping to get it back; have you had any back? A. Of which business?

Q. Of your investment in Dantile Ltd., A. I have not seen one penny.

Q. That letter you have in your hand, is there anything to indicate to whom it is addressed apart from 'Erik'? A. No.

No.10.

ERIC BERGEN SEEX

In the
Supreme Court
of Kenya.

P.W.6. ERIC BERGEN SEEX Sworn:

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Evidence.

MR.SALTER: Are you a partner in the firm of Messrs.
Cooper Bros. & Co.? A. I am.

Q. And they are Chartered Accountants carrying on
their profession amongst other places in Nairobi?

No.10.

A. Yes.

E. B. Seex.

10 Q. I think in 1950 the firm was known as Cooper
Bros. Leslie Seex & Co., wasn't it?

Examination.

A. That is correct.

Q. On the 30th August, 1950, were you appointed un-
der an Order of the Supreme Court of Kenya to in-
vestigate the affairs of Dantile Ltd.? A. I was.

Q. And did you carry out that investigation?

A. I did.

Q. And make a Report to the Court? A. I did.

Q. Have you got your Report there Mr. Seex?

A. I have a copy.

20 Q. Would you look at Exhibits 4 and 5 a moment?

A. There is a copy of the Report on this file.

Q. Now would you tell My Lord the scope of your in-
vestigation?

COURT: After you have made the minutes a separate
Exhibit.

(Copy of Report handed to and accepted by Court as
Exhibit 4a) (Report extracted from file)

COURT: It comes out of the Civil file does it?

A. Yes.

30 MR.SALTER: Now what was the scope of your investi-
gation? A. The scope of my investigation is set
out in Section 1 of my Report. Would you like me
to read it?

MR.SALTER: I don't think so. Would you turn to

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E. B. Seex.

Examination -
continued.

Section 2. I think there again you are attaching as part of your Report a circular notifying investments in this Company? The original of the Company, paragraph 5. "The idea of manufacturing tiles by a patent cold process a Danish Company". Now pausing there, did you find evidence of that in your investigation?

A. I found no evidence that a valid Patent existed.

Q. Well, when you wrote paragraph 5 in your Report, on what did you base it; on what information did you base the statement made in paragraph 5? 10

A. To the best of my recollection they were on statements given to me by the promoters of the Company.

Q. Were you shown, or were you able to discover any contract between Mr. Eric Von Huth and another person relating to the Patent rights of Muritas? I recollect that there was a form of contract, but it was not signed or executed.

COURT: Between (remainder of sentence inaudible to shorthand writer) 20

A. I can't remember; one of the parties was Dan-tile Ltd.

COURT: Unsigned? A. It may have been signed by one party My Lord, but not by the Company.

MR.SALTER: Did you then examine the circular which is now Exhibit 2 and 2A; and did you investigate the statements and figures attached to it?

A. I did.

Q. Now may I come then to your paragraph 9 under Section 2 which reads: "I am of the opinion as follows: 30

(a) The tile Denmark".

What steps were you able to take to arrive at a conclusion about that?

A. I cross-questioned the Promoters and I formed the opinion which is stated here.

Q. When you say you cross-questioned them, were these statements made by them upon oath or not?

A. No, not upon oath. 40

Q. You remember particularly whom you asked?

A. I can't remember, but I have notes on my file if I could refresh my memory.

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Q. Did you make them at that time? A. Yes.

Q. My Lord might the witness refresh his memory on that?

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COURT: Yes.

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10 WITNESS: I have before me notes of an interview on the 20th December, 1950. I regret that that sheet which is pinned to another is not dated, but it would be about the 4th December when I interviewed the others.

E. B. Seex.

Examination -
continued.

MR.SALTER: Yes, and did you record the answers?

A. I did.

Q. What did you particularly ask?

A. Question 1, what evidence that the tile sold successfully? The answer was: 'On book total'.

COURT: Whose answer is this? A. Baron Akerhielm.

20 MR.SALTER: I would like if possible, but it may be difficult, if you could refresh your memory from the notes rather than actually read them, but if you could tell My Lord what was the nature of the reply to that question.

30 MR.MORGAN: With my friend's permission, we must be very careful here. What he read is not evidence. He is allowed to refresh his memory; having seen the notes; if, after having seen the notes he cannot remember anything, well, he can't remember it. It seems to me that if the notes do not refresh his memory, where are we? It is a matter for His Lordship.

COURT: I would have thought that having seen the notes his memory would be refreshed. If he does not remember having seen that note, and that was the answer, then it is not evidence. Do you remember that Mr. Seex?

A. I remember the interview, My Lord.

COURT: And having seen your notes, do you remember what was said at the time?

40 A. Having looked at my notes, my recollection of the interview is that the basis for the Company was verbal information given to the Promoters by Mr. Eric Von Huth.

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continued.

MR.SAITER: I think we had better get away from the word Promoters. Who were the individuals to whom Mr.Eric Von Huth gave information?

A. By Promoters I mean those persons who signed this circular.

Q. And in your questioning of Mr. Eric Von Huth, refreshing your memory, are you able to tell My Lord what steps he, Mr. Von Huth, took to ascertain the accuracy of the three particular statements you mention?

A. I never saw Mr. Eric Von Huth; I wrote to him and I eventually received a reply after the date of my Report.

Q. Have you got his reply there? A. I have.

Q. And does it deal with the particular points in this circular?

A. In my opinion it does.

MR.SAITER: My Lord, my learned friends, would like to see it before the witness produces it.

Q. When did you first write to Mr.Eric Von Huth?

A. On the 21st November.

Q. And you completed your Report?

A. On the 15th December.

Q. And you received his reply on what date?

A. On the 30th December.

Q. And I do not know, but did you make any reference to it, you having completed your Report, did you take any action on the reply you received?

A. In my Report I mentioned that I had not seen Mr. Eric Von Huth; that I had written to him; that I had not had a reply, and that I might, in the light of that reply, have to submit a supplementary Report.

Q. Did you in fact submit a supplementary Report?

A. No.

Q. I do not know whether Your Lordship wants it as a separate Exhibit, but I think perhaps the letter should be read.

COURT: Well, I am completely in the dark.

10

20

30

MR.SALTER: Well, perhaps first of all you had better tell My Lord the actual questions you wanted him to answer.

A. I believe that that letter was sent to our Dar-es-Salaam Office as I have not got a copy of the actual questions.

Q. What are his replies?

10 A. Dated 27th December, 1950. "Dear Sirs, Dantile Ltd., I am in receipt of your letter of the 23rd November, 1950. I have seen your Mr. Maslin today (Mr.Maslin is a partner in our Dar-es-Salaam office) and explained to him why I have not been able to reply before the 15th December; however, I will now reply to the questions in your letter.

1. I was in touch with several people in Denmark who made large profits on what they in Denmark call 'MURITAS'.

20 2. The tile was successful in Denmark up to the middle of 1948, when better and cheaper tiles came on the market and when Mr.Ole Beyer was in Denmark he found out that it would not be a paying proposition as they were lying with big stocks they could not sell. He then got in touch with Mr. Thomsen who had a new invention which Mr.Beyer thought was better than mine. The Muritas product was only what we called a war product or ersatz.

3. The machinery was exactly the same as they used at home.

30 4. The moulds were not put into function at all, as there has never been any proper production, because the factory had not been started on the 1st December when I left. Mr.Mervyn Morgan has now got my Report regarding Dantile and I enclose herewith his correspondence with me regarding this point.

Perhaps you will kindly get into touch with Mr. Morgan.

40 Yours faithfully,
(Sgd.) ERIK VON HUTH."

Then there is a post-script:

"P.S. I have had no reports from Dantile I was told 1/12 I was still a Director, but no Minutes, Reports, Balance Sheet etc., for over 2 years."

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Examination -
continued.

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E. B. Seex.

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continued.

MR.SALTER: May I deal with your paragraph 9(a)?
You write in your Report: "I was informed that in
making this statement the promoters relied on in-
formation conveyed verbally by Mr.E.Von Huth. I
have not been able to discover that any further
steps were taken to verify the information". Did
you ask either Mr.Ole Beyer or Baron Akerhielm
whether they had themselves, or either of them
taken any steps to verify this matter? A. I did.

Q. What was the reply?

10

A. Not in their exact words, of course, but they
relied upon Mr. Eric Von Huth.

Q. Now your statement in 9(b): "Several factories
are existing in Denmark and paying a good dividend"
And you say: "I have seen no evidence to this
effect". What are you basing that on?

A. That I had seen no Company accounts or other
documentary evidence supporting the declaration of
a dividend.

Q. Did you also enquire into these Patent rights
in the statement that they can either be taken up
by the Company or sold to other parties at a con-
siderable profit? A. I did.

20

Q. And what did you find on that point?

A. I found nothing to support that statement.

Q. Had you any material which would show you whether
those rights had any value? A. No.

Q. Did you ask either Baron Akerhielm or Mr. Ole
Beyer about that? Can you remember?

A. I must have done, but I cannot recall it with-
out reference to my notes.

30

Q. Have you a record there which would enable you
to recollect that?

A. I have no note in my interview with Mr. Ole
Beyer of putting that question, but I did put it
to Baron Akerhielm and the answer was that, in the
course of negotiations, negotiations had been
opened for the purchase of the patent.

Q. Now may I come to the capital structure of the
Company? First of all I think there is attached
to the circular letter a document which is headed
'Strictly private and confidential and not for
publication' have you that before you? A. I have.

40

Q. Now that shows that the suggested share capital was Shs: 220,000/-. Did you also look at the Memorandum and Articles of Association of the Company?
A. Yes.

Q. And that would agree with Article 5 if the capital of the Company is Shs: 220,000/-? A. Yes.

Q. Now did you also examine as to how much of that capital had been subscribed and in what manner?
A. I did.

10 Q. Would you look, I think it is at the end of your Report? A. Section 4.

Q. And how much of the capital subscribed was in respect of consideration other than cash?
A. Shs: 42,000/-.

Q. And in fact what was the total amount subscribed?
A. You mean subscribed in cash?

Q. Well, we can do it in two ways; what is the total subscribed altogether?
A. Shs: 145,000/- is the total of Ordinary Shares.

20 Q. And of that, I think you said Shs: 42,000/- was in respect of consideration other than cash?

Q. The whole of that Ordinary Share Capital, that had all been called in had it and share Certificates issued?

A. Except in one instance, as far as I can remember there was one shareholder Soderholm; there was some doubt as to whether his shares had been correctly allotted and he only paid Shs: 200/- on Shs:2,000/-.

30 Q. Instead of Shs: 2,000/- he only paid Shs: 200/-?
A. Yes.

Q. May I deal for a moment with the shareholding of Mr. Harold Dan Christensen? What was his shareholding? A. Shs: 28,500 Ordinary Shares.

Q. And how much did he pay in cash?
A. Shs: 25,000/- leaving Shs: 3,500/- for consideration other than cash.

Q. And I see, is it correct to say that Baron Akerhielm was the holder of Shs: 13,000 Ordinary Shares for which he paid Shs: 8,000/- in cash and was

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continued.

credited with Shs: 5,000/- in consideration other than cash. Are you able to say what that consideration was? A. It was for preliminary expenses.

Q. And Mr. Ole Beyer is it right that he held Shs: 8,000 Ordinary Shares for which he paid Shs: 3,000/- and was credited with Shs: 5,000/- in respect of consideration other than cash? Again were you able to discover what that Shs: 5,000/- was? A. It was for preliminary expenses.

10

Q. And Muritas that is the Company which has been mentioned; I see held Shs: 6,500 Ordinary Shares paid in cash, but acquired the shares 'in toto' for consideration other than cash? A. Yes.

Q. Were you able to say what that was for?
A. It was intended as payment for the patent rights.

Q. So far as you know, were the Patent rights transferred in spite of that sum? A. No.

Q. And finally, we have Mr. Eric Von Huth of Shs: 22,000/- Ordinary Shares for which he paid nothing in cash at all?

20

COURT: Were the Shares Twenty shillings Shares?
A. Yes.

MR.SALTER: And again, the consideration for that Shs: 20,000/- was for preliminary expenses and Shs: 2,000/- for Patent rights? A. Yes.

Q. You mean that he had paid on behalf of Dantile Ltd., Shs: 2,000/- for Patent Rights? What do you mean by that?

30

A. My recollection was that Mr. Eric Von Huth had been appointed what I term sole Concessionaire for the Muritas patent.

Q. He is in fact debiting the Company in one sense? He is being credited with Shares for the Shs: 2,000/- ?

A. Yes, there appeared to be two rights involved; Muritas Patent Rights and Mr.Eric Von Huth as Concessionaire.

Q. So Dantile Ltd., had to pay something to Muritas

40

for Patent Rights and something to Mr. Eric Von Huth as Concessionaire? A. Yes.

COURT ADJOURNED at 4.10 p.m.

COURT RESUMED at 10.30 a.m.

ON WEDNESDAY, the 19th JANUARY, 1955.

P.W.6. Eric Bergen Seex reminded that he is on former oath.

EXHIBIT 6. Letter Mr. Eric Von Huth to Mr. E. B. Seex handed to and accepted by Court as Exhibit 6.

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E. B. Seex.
Examination -
continued.

10 MR. SALTER: There is a small matter in para. 18 of your Report under Section 4 to which reference has already been made, but not to you Mr. Seex that is dealing with the affidavit of Mr. Ole Beyer. It says:

20 "18. Paragraph 9 of the affidavit states that Mr. Ole Beyer produced certain accounts and books which were very incomplete and it was obvious from this that no proper records had been kept regarding the Company's subscribed capital and that it would not be possible from the records to prepare a proper balance sheet and account showing how the company's funds had been disbursed. The books and records produced to me were, in my opinion, adequate for a Company of this size and I have been able to obtain from them all the information required to prepare proper accounts".

30 It is really on the last four words "...to prepare proper accounts". In your investigation what do you have to say about the keeping of proper accounts.

A. The books were adequate for the keeping of Profit and Loss Accounts and Balance Sheet.

Q. But had Profit and Loss Accounts and Balance Sheet ever been prepared until you investigated the matter.

40 A. There was one audited account prepared early in the Company's history; I can't recall the date; subsequent to that there were various financial statements, but no proper Balance Sheet and Accounts.

Q. And what action did you have to take so far as

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continued.

Balance Sheets were concerned?

A. I had to prepare proper Profit and Loss Accounts and a Balance Sheet.

Q. Over what period did you have to prepare Profit and Loss Accounts and Balance Sheets?

A. I prepared it from the date of incorporation of the Company, which was on the 20th March, 1948, to the 31st August, 1950.

Q. Perhaps we might just turn to that account for a moment. That is included, is it, at the end of your Report? A. Yes. 10

Q. Would that be what is called Annexure Dantile 2; is that the first account which you would prepare?

A. It is.

Q. And without going into all the details, having prepared those accounts what would be your general observation about the Company; first of all, shall we say, at the end of one year of its life. I am not quite sure to what date the accounts would normally go; you prepared from the 21st March to the 31st August, 1950, as one account? 20

A. Yes, I covered the whole as one account.

Q. I don't know whether you are able to say what the position of the Company was at various interim stages between March, 1948, and August, 1951, in a general way?

A. In a general way, the progress of the Company would be initial purchases of machinery, plant and equipment; expenditure on wages, salaries and other outgoings and that process continued until the 31st August, 1950, and at one stage, they would require a certain amount of machinery and have incurred a certain amount of expenditure. 30

Q. Is there any evidence of any income at any time?

A. There was evidence of sales of material.

Q. What sort of materials?

A. Cement and paints and that sort of thing.

Q. Was there any evidence of income derived from the sale of any tiles? A. No.

Q. How would you describe the position of the Company as at the 31st August, 1950? A. Derelict. 40

Q. Might I turn now Mr. Seex to the question of the value of shares in this Company. First of all in assessing the value of the Company's shares what are the sort of factors you take into account?

A. A Company which is a going concern, the major factor which I would take in valuing shares would be the Company's earning power. A Company which is not operating, the major factor would be the net value of its assets.

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continued.

10 Q. When you say assets, do you mean physical assets or goodwill?

A. I would mean physical assets if the Company is not operating; unless the Company is operating it would have no goodwill.

Q. Now in your investigation did you discover whether the Company owned any land or leased any land? A. No.

Q. Do you mean you could not find out whether they had or there was no information?

20 A. I could not find whether they did own any land or lease any.

Q. I don't know whether you asked any of the Directors about that matter?

A. I recall that there was some correspondence about the lease of a plot of land, but I cannot recall if I cross-questioned the Directors about it; I probably did.

Q. Had the correspondence arrived at a stage of any contract for lease of land or anything of that kind?

30 A. No.

Q. Did you visit the plot in the Industrial Area at all where the Company was supposed to be operating? A. No.

Q. Was any value given to you, or did you find any information concerning the value of any buildings?

A. There was expenditure on buildings, but at the time of my investigation they appeared to be valueless.

40 Q. Now I wonder if you would turn to your balance sheet in connection with Dantile 2, on the first page, as at the 31st August, 1950. You refer to certain fixed assets, machinery, buildings, etc.

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continued.

Could you help us a little bit about those entries there in the Balance Sheet? For machinery you have the figure of Shs: 10,281.51/-. How did you compute that figure?

A. That figure represents the original cost of the machinery, less the items sold at their original cost price.

Q. Now again we come to buildings at a cost of Shs: 5,131.21 less sales Shs: 150.00 less amount written off Shs: 4,981.21 making a virtual nil balance? A. That is correct.

10

Q. How did you first of all estimate the cost there on what information?

A. That would be from vouchers of materials, wages allocated to erection and so on.

Q. And it is written off from nearly 100%? A.Yes.

Q. What was the reason for that?

A. So far as I recall either that the buildings had been erected on a plot which had been leased and the lease surrendered, or that the buildings were derelict and had fallen down, but I can't recall exactly the reason.

20

Q. Would you feel inclined to make any comment with regard to the value of the machinery and buildings with reference to a Company whose Authorised Capital was Shs: 220,000/-. Would you think it was an adequate expenditure or not; what comment would you make?

A. I can't truthfully answer that question; it requires technical knowledge.

30

Q. Now Current Assets. There you have got Mr. Eric Von Huth entered as a Sundry Debtor for Shs: 1,500/-. What was that in respect of?

A. Without the books I am unable to say. It looks as if it was an advance.

Q. Again somewhat generally, from an examination of this Balance Sheet and Profit and Loss Account, could you arrive at any general observation as to how the Capital subscribed had been expended, into sort of categories requiring assets or current expenditure on salaries and so on? A. Yes.

40

Q. What would be the easiest way of putting that in percentages?

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E. B. Seex.
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continued.

10 A. No, I think I can give round figures. The Company received in cash for Capital (I am working in pounds, as it is a smaller figure) £7,400. It used that money to the extent of approximately £800 for purchases of fixed assets, tools and implements and an amount of approximately £6,600 was expended on salaries, wages and general expenses and getting the Company going, as the net amount of fixed assets was small, whereas the expenditure was a large proportion of the original Capital subscribed.

Q. Would that indicate anything to you as an accountant, as regards the running of the Company?

A. No, expenses are often high when trying to establish a new enterprise.

Q. Can you say about the value of the shares at two different times; first in March, 1948, and secondly on the 31st August, 1950?

20 A. At March, 1948, which was when the Company started, the shares were probably worth a few shillings below par, say about 18/- each; at the 31st August, 1950, they were virtually valueless.

Q. I think it is common ground that this Company has not operated since that date, has it? A.No.

Q. I say it was not operating; what happened to it?
A. It was eventually struck off the register.

30 Q. May I turn now to your conclusions in your report under Section 6, paragraph 29; "It appears that the Company failed because the Patent tile which the Company was formed to manufacture proved to be unsatisfactory, and in fact, the Agreement to acquire the Patent was not completed". That was in accordance with your investigation? "The Company's resources were expended on obtaining machinery for the manufacture of this tile. It appears that they did evolve a better type of tile, but the Company had by then insufficient funds to go into production". Would you tell My Lord what was the material upon which you based your statement there, that they appeared to have evolved a better tile?

40 A. On information given to me by Mr. Ole Beyer.

Q. So far as you were able to ascertain, did the Company produce any tile at all to put on the market?
A. No.

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continued.

Q. And paragraph 30: "Statements made to me would indicate some mismanagement. I have insufficient concrete evidence to express an opinion on this point but in my opinion the primary cause of the Company's failure was the reason given in paragraph 29". What statements indicated to you mismanagement?

A. So far as I can recall without reference to the file, there were statements made at Shareholders' meetings; they were not Statutory meetings but informal.

10

MR.MORGAN: Is this hearsay? I don't know what the details are.

WITNESS: It is a long time now and I did look through the Minute Book and my recollection is that there were records of meetings and I have a clear recollection that there was correspondence and records of that nature which indicated mismanagement in the opinion of some people.

MR.SALTER: Paragraph 31: "I consider that the promoters should have been at greater pains to verify the merits of the product they proposed to manufacture. They placed too much reliance on the verbal statement by E. Von Huth whose statements could not be disinterested". I am not sure what you mean by the last sentence.

20

A. Mr. Eric Von Huth the Concessionaire of this Patent would clearly be interested in putting over the merits of this tile.

Q. Now paragraph 32: "The statutory requirements of the Companies Ordinance have not been observed in many instances" ... Can you amplify that a little?

30

A. The instances are stated in the Report. Section 3 enumerates the instances in which the Statutory requirements have not been complied with. In fact, I think proceedings were taken against some Directors.

Q. Paragraph 33: "Adequate, but not lavish books and records were kept, and the Company's papers were fairly well filed". And paragraph 34: "I received every assistance from the Secretary and past Directors of the Company". I would just like to go back to one question, Mr. Seex, on the values you have put upon these shares. Are those the values in relation to ordinary market value, or willing buyer and seller basis or any other basis?

40

A. No, I think they must be on the basis of a willing buyer and willing seller.

Cross-Examination

MR.MORGAN: Now Mr.Seex, you have told us of the value of the shares on the 24th March, 1948, and also the value of the shares at the 31st August, 1950, would you be able to tell us the value of the shares at the 31st July, 1948, I especially mentioned that date as there was a Balance Sheet which you must have seen from Messrs.Harrison & Bowmer. I do not know whether it forms part of the annexures and Report, but I think you must have seen it.

10 A. I did see it.

Q. Now, Messrs. Harrison & Bowmer, they are accountants, are they?

A. They are qualified accountants.

Q. Have you a copy of that Balance Sheet? A. No.

Q. Could I pass you a signed copy just for your own reference? Now looking at that Balance Sheet, could you tell us what the shares were worth approximately at the 31st July, 1948?

20 A. I have to disabuse my mind of subsequent valuations?

Q. Yes, and you have to accept Messrs. Harrison & Bowmer as a competent firm of accountants. What would you say that the price of the shares were from the Balance Sheet on the 31st July, 1948?

A. About five sevenths (5/7ths) of par.

Q. So that anybody who said the shares were worthless from the outset which was March, 1948 must be talking nonsense?

30 A. Nonsense is rather a strong word.

Q. Yes, it is a strong word.

A. No, I think any person would be entitled to their opinion.

Q. But their opinion would be the difference between Shs: 15.50 and nothing? A. Yes.

Q. Now when this Company was struck off from the register of Companies, the Baron had long since resigned. You have seen the Minute Book? A. Yes.

40 Q. Now Mr.Seex, I want you please to refer to your paragraph 31 in Section VI: "I consider that the promoters should have been at greater pains to

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verify the merits of the product they proposed to manufacture. They placed too much reliance on the verbal statement by Mr. Eric Von Huth whose statements could not be disinterested". We do know that you never yourself interviewed Mr. Eric Von Huth. I know the explanations and I am going to elaborate them, but that is a fact? A. Yes.

Q. And this letter of your questionnaire to Mr. Eric Von Huth, have you been able to find it?

A. I have. It is dated the 23rd November and bears date 2/11.

10

Q. Would you read it please?

A. Addressed to Mr. E. Von Huth: Dated the 23rd November, 1950 Dantile Ltd., "As you are perhaps aware, I have been appointed by the Court to investigate the affairs of the above Company. I have interviewed various people connected with the Company but do not consider it necessary to call you to Nairobi for that purpose. I will be obliged, however, by your replies to the following questions:-

20

1. In the Circular dated 23rd February, 1948, in which an invitation was issued to subscribers for shares to the Company, it is stated that several factories are already existing in Denmark and paying good dividends. Have you personal knowledge that such was the case?

2. If the tile was successfully made in Denmark, why could it not be successfully made in Kenya?

3. Was the machinery imported into Kenya identical with the machinery used in Denmark?

30

4. I have been told that the moulds would not function properly. Is this correct?

5. I would be grateful also if you would kindly advise me of any other matters which in your opinion contributed to the failure of the Company.

My report must be submitted to the Court before the 15th December and I would therefore be grateful for an immediate reply".

40

MR.MORGAN: Has Your Lordship a copy marked in red?

COURT: Yes. That will be Exhibit D2/11?

EXHIBIT D2/11: Copy letter handed to and accepted by Court as Exhibit D2/11.

MR.MORGAN: It will be eventually, I have given my learned friends Notice to Produce at this late hour unfortunately.

10 Q. Now is it correct to say that you would only really dispense with the presence of Mr.Eric Von Huth for your Report provided he gave the answers to your four questions? I take it you did not want to bring him all the way from Tanganyika and provided you got the answers to the questions, you could dispense with his presence? A. Yes.

Q. And you in fact made your Report before you had the four answers to those four questions? I know there may be an explanation, but you did in fact make your Report before you had the replies to those four vital questions? A. Yes.

20 Q. Have you got on your file a letter to Mr. Mervyn Morgan signed by yourself, which is My Lord, D2/10. A. I recall there is correspondence.

MR.MORGAN: I can show you the original marked D2/10. I have a copy for Your Lordship and this is signed by the witness. Would you read that please Mr. Seex?

30 WITNESS: Addressed to Mr. Mervyn Morgan; dated the 19th January, 1951: Re: Dantile Ltd., "I regret that I have not replied sooner to your letters dated 29th and 31st December reference 4/2922/R. 178 and 4/2950/R.178/7 owing to my absence on local leave.

I was appointed by the Supreme Court in re: Miscellaneous Civil Case No.15, 1950, as an Inspector under Section 136 of the Companies Ordinance to investigate the affairs of the above Company.

Mr. Von Huth was a Director of the Company and in a letter dated 23rd November, 1950, I asked him several questions. A copy of this letter is attached for your information.

40 My report had to be filed before the 15th December and as I had not received a reply to my letter I obtained the information I required from other sources and have filed my report.

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It is possible that I may have to file a supplementary report so that I would still like Mr. Von Huth to answer my enquiries. Incidentally, I have not received his letter of the 27th December to which you refer in your letter of the 31st December 1950, and would be grateful if you would kindly send me a copy".

MR.MORGAN: Now Mr.Seex, you got a copy from Mr. Morgan didn't you? A. I did.

Q. But the one which you read out yesterday and which is marked Exhibit 6 is, in fact, the original. I have studied it this morning, and I see that although you write to Mr. Morgan and say you have not received Mr. Von Huth's letter of the 27th December, I see your copy is stamped by your office on the 1st January; would you look at it?
A. That is correct.

10

Q. Now Mr. Eric Von Huth was one of the three Promoters in this matter, was he not; he played a leading part in it; was a Director; a salaried Manager; don't you think it would have been a good idea if you had written to the Supreme Court and said 'I know my Report has to be in by the 15th December, but I have not yet been able to interview one of the most important of the three promoters and I would, therefore, like an extension of the date'; did it not occur to you to ask the Court for an extension of the date?

20

A. I believe I did telephone the Registrar of Companies and put the position to him and his reply was that he was very anxious to have my report and if necessary I could put in a supplementary report.

30

Q. And in the letter of the 19th January to Mr. Morgan you mention a Supplementary Report. Did you in fact put in a Supplementary Report when you received the four vital answers? A. No.

Q. And attached to Mr. Eric Von Huth's letter to you giving the four answers was a full detailed Report of the history of Dantile Ltd., by Mr.Eric Von Huth; have you got it? Is it in your file?

40

A. I have on my file a history and various letters here; I am not clear to which one you refer.

Q. If I may refresh your memory, Mr.Morgan received a letter from Mr. Von Huth enclosing a copy of a

letter which he had sent to Mr. Seex. You have a letter on your file dated DW9 31st December, 1950, addressed to your firm from Mr. Morgan. Would you say if you can find that on your file? It was the one which your letter to me was in answer. I wrote: "Further to my so-and-so of the 29th" It was in reply to that you apologised for the delay as you were on local leave.

A. Yes, I recall that letter.

10 Q. And at that stage Mr. Von Huth's letter of the 27th December - I think it must have been November - was missing from your file and the report also attached to it was missing and you asked me to send you a copy and I did, but it must have happened - it does happen in offices, I know - it must have happened that that letter together with the Report, turned up because that is the one you produced yesterday.

20 A. Yes, I was on local leave at the time. Mr. Eric Von Huth's Report was attached and enclosed with the original letter.

30 Q. If you have not got a copy will you read this and tell me whether it is in fact the Report which Mr. Eric Von Huth sent to you? This, My Lord is marked D.2/9. My Lord, the witness agrees that he recalls my D.2/9 which is the letter from myself to Messrs. Cooper Bros. and my D.2/8 is the same as the letter which my learned friend was kind enough to produce last night and which is now marked Exhibit 6. We are now looking at D. 2/2. As I have to do more talking than you, Mr. Seex, would you be so kind as to read that out please?

"The history of Dantile Ltd., in East Africa.

Statement by Mr. Eric Von Huth

Before this Company was started
December 1948, to date. Sgd. Eric Von Huth.

40 MR.MORGAN: Now Mr.Seex you would agree I think that Mr. Eric Von Huth who was in Tanganyika was a very fair minded man although he thinks the Baron is dictatorial etc. I suggest to you that the tenor of this man is that of a very fair man?

A. I have reservations.

Q. Very well; you don't know Mr. Eric Von Huth?

A. No.

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Q. I believe the Magistrate went out of his way to comment very favourably on the character of Mr. Eric Von Huth.

MR.SALTER: He was de mortuis nil nisi bonum.

MR.MORGAN: No, he was not de mortuis nil nisi bonum. If my learned friend had been there, he would have been equally impressed. Now there is certain other correspondence which would make this file complete; some of which, of course, you are not concerned with, but if my learned friends would allow it all to go in by consent. 10

MR.SALTER: I am not taking objection to this, but I do not think it really assist one way or the other.

MR.MORGAN: I consider it is vital to my case. First of all I think we can put in D.2/6. I have shown you the one dated the 31st but now the one dated the 29th. It is as follows :-

"29th December, 1950. Messrs. Cooper Bros. In a recent letter from Mr. Eric Von Huth I am sending this letter instead. Sgd.Mervyn J.E. Morgan". Has Your Lordship got that letter D.2/6? 20

COURT: I have.

MR.MORGAN: My learned friend does not object to my putting in at this stage :-

D 2/7 which is the letter from Mr.Eric Von Huth to Mr.Morgan. I pass the letter to Your Lordship.

D 2/5 which is a letter I shall have to read out because it is addressed to me from Mr. Eric Von Huth. This is dated the 25th December 1950: "Thank you for your letter of 14.12 however I in your letter No.8517/G.1474 of 8/3 1950. Kindly let me know any developments in Dantile Ltd. Sgd. Eric Von Huth". I pass the letter to Your Lordship. 30

D 2/13 to make the sequence complete is another copy of this letter from Mr. Eric Von Huth to Cooper Bros. the one which every one thought had got lost.

D 2/14 is addressed to Cooper Bros. from Mr. M. Morgan dated 24th January, 1951. "I acknowledge 40

receipt requested by you Sgd. M.J.E. Morgan". My Lord, has Your Lordship got D/12 - this is somewhat confusing. Oh yes, the Judge's copy. Would you please pass it to His Lordship? This letter is addressed to me from Mr. Eric Von Huth dated 29th January 1951: "Re; Thomsen: I thank you this by registered mail. Sgd. Eric Von Huth".

10 D1, D3 and D4: In view of my friend's indulgence I do not think I need put in. They are missing. If to make the file complete, I will put them in. The first is a letter from Mr. Eric Von Huth sending Shs: 100/- and enclosing a copy of his Report on Dantile Limited.

The second is from me to Mr. Eric Von Huth saying that I should try to find out what it was all about.

And the 3rd was a receipt for his Shs: 100/-.

20 MR.MORGAN: Now it may be a small point, but something may be made of this; as far as you know, Mr. Seex, you never informed me that you were acting as the Inspector of Dantile Ltd? As far as you know, your office did not inform me that you - Cooper Bros. Ltd. - were acting in this matter?
A. Probably not.

Q. This circular letter, Mr. Seex, which forms part of your Report, there is a nicely printed copy of it and it forms part of your Report? A. Yes.

Q. Have you got it there? A. Yes.

30 Q. On one of the sheets - you have the thing in your hands - are a lot of figures; I have them now, it is dated the 23rd February 1948; and in your sheet it is annexure 1; it is the main letter if I may say so and on the second page is a blank form on which people apply for shares and the third is marked: "Strictly private and not for publication" from which you have taken some phrases. They are not in the Plaint; did you take phrases from them? Have you got that one marked: "Strictly private and not for publication"?
40 A. Yes.

Q. And you see that? A. Yes.

Q. All right; already subscribed: Shs: 70,000/-.
You would agree that the amount of Shs: 70,000/- is

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roughly one third of the capital required, isn't it? A. Yes.

Q. And on the top of the page there is a quotation "Exchange Danish Krona to the £. Shs: 1,500.00 total Shs: 70,000/-. The Exchange Danish Krona to the £ being the last item. It reads that all the money has been raised in Denmark, otherwise there would be no quotation "Danish Krona to the £" at the end? Am I right? A. Yes.

Q. So anybody receiving this letter and seeing on the first page that one third of the capital had been subscribed and who took the trouble to turn to page 4 and saw these details would have seen that one third had already been subscribed in Denmark? A. Yes.

10

Q. In your Report you do state My Lord I do not know how far Mr. Seex's conclusions arrived at in that Report become evidence in front of Your Lordship. The Report is in for many reasons; it is to explain many things, but my own humble view is that any conclusions arrived at in that Report, independent of those which my learned friend was careful to get the witness to agree on oath, I wonder if Your Lordship would care to give me an intimation on that?

20

COURT: The whole Report is in.

MR.MORGAN: Anything which the witness has not repudiated, I take to be in evidence?

COURT: I think they were all put to him.

MR.MORGAN: Mr. Seex, these patent rights; would you look for a moment at page 1 of your Annexure 1 which says: "We have procured the patent rights for most countries in Africa, India and Pakistan". Now that is one of the sentences which the Plaintiffs are complaining of in this case. Would you now look at the page marked "Strictly private, Objects and Prospects": the eighth paragraph down: "Besides the patent right for Kenya and Uganda, the Company holds the option for several other countries in Africa, India and Pakistan", which I suggest is explanatory of the first statement I have just read to you. Besides the patent rights for Kenya and Uganda, etc., Have you got that? Now

30

40

that would at least make it very clear to you that although on page one it says "We have procured the patent rights for most countries in Africa, India and Pakistan" nevertheless, that is modified and explained on page 4. It indicates that the Company hold the patent rights for Kenya and Uganda, do you agree?

A. I am not quite sure of what I am to agree to.

10 Q. No; don't agree too readily. I am suggesting to you that what appears on page three must be construed as clearing up and explaining what appears on page one.

A. Yes, I read it as a slight modification of what appears on page one.

20 Q. When the Directors whom you call Baron Akerhielm and Ole Beyer were being questioned by you and you asked them about the shares they received for consideration other than cash, did they explain to you - I suggest they did - about the vast amount of work, time and trouble in the preliminary stages of this Company, looking for plots, lawyers, etc.

A. Yes.

Q. It would take quite a lot of time with a Company in formation, for promoters; it takes a lot of their time? A. I agree, it does.

30 Q. My point was that Baron Akerhielm and Ole Beyer explained to you the details of the time and trouble they had spent on these propositions and that is why they got their free shares, which are now worthless, but they did in fact get them.

A. It is a likely question, but I have no recollection of doing so.

40 Q. Perhaps you attached no importance to those shares for consideration other than cash; perhaps you thought it was quite a normal thing and you did not comment on it; if so, of course, you would not have asked them. And you know that Mr. Eric Von Huth who received the greatest amount of shares, who not only came from Denmark with the idea, but spent a great deal of time travelling around and then had to fly out here, he got £1,000 free shares?

A. If it is in my Report, that is what he got.

MR.MORGAN: I suggest that is not very excessive.

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COURT: I have heard nothing yet about the year in Denmark.

MR.MORGAN: If Mr.Eric Von Huth received one thousand shares for many things and part of the consideration was that he had spent a large amount of time in Denmark and then flying out and having got the concessionship and the contract which my friends think does not exist. What I really want to ask Mr. Seex is whether in all the circumstances that one thousand pounds was excessive?

A. On the information you have given me, if Mr. Eric Von Huth did travel round etc., I would think £1,000 was quite a reasonable figure.

10

MR.MORGAN: The rest of my cross-examination will be covered by my friend Mr. Stephen.

Cross-Examination

Cross-
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Counsel for
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MR.STEPHEN: Mr.Seex, when does a going concern cease to be a going concern?

A. I would say when it ceases to investigate or sell a product.

20

COURT: When it stops?

WITNESS: It is a very general question. I think I can answer it better by reference to this particular case. I would say it ceases to be a going concern either when it ceased investigating a project or second, when it ceased manufacturing a product, or third, when it ceased selling a product.

Q. As a chartered accountant, Mr. Seex, do you understand in Company practice the expression "Free Shares"? A. Yes.

30

Q. It is not a very happy phrase though, is it, because you have just agreed that there is consideration other than cash, so that they are not free in fact? A. That is correct.

Q. Now we know that certain shares were allotted for consideration other than cash. Do you agree with me that that in no way diminished the cash resources of the Company?

A. Yes, I agree with you.

40

Q. And when you investigated Dantile Ltd., towards the end of 1950, the Company was about 2½ years old? A. Yes.

Q. And as a chartered accountant appointed by the Court to make investigation, you approached your task, I suppose, with a somewhat keen and critical eye? A. Yes.

Q. That was your duty, in fact?

A. I have to bring to bear such knowledge as I have on the case.

Q. Did you in the course of your investigations learn that a Mr. Stewart in 1947 was keen on acquiring an interest in this process and he was, at one time, a chartered accountant in Nairobi?

10

A. Yes.

Q. Indeed, at that time he was practising as a chartered accountant in 1947; and did you alone learn that Mr. Stewart in August or September 1947, went to Denmark to investigate the processes?

A. I can't recall it.

Q. Would reference to one of Dantile Ltd., files assist you to recall it? A. It might.

20

Q. Would you take a look at this file. I am not going to put it in. He was obviously in Copenhagen in November, 1947?

A. I can't see that he went to Denmark.

Q. And do the letters refer to Dantile Ltd? All I am concerned with is, is it clear, that he went to Denmark to go into Dantile Ltd., from that file?

MR.SALTER: This witness has already said 'I can't see that he went to Denmark' I don't know what this document is; presumably if it is put like that the witness cannot say, I submit.

30

MR.STEPHEN: Did you ever see that file in the course of your investigations?

A. I am sorry I cannot recall seeing it.

Q. You can't recall having seen it, but you may well have seen it? A. Yes.

Q. Do you dispute that Mr. Stewart investigated the process in 1947?

A. I don't dispute that he went to Denmark but I have no recollection why he went there.

40

Q. We have now two answers from you; you know that

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he was interested in the process and that he went to Denmark in 1947?

A. Yes, having seen the file.

MR.STEPHEN: This witness, My Lord, in my respectful submission, investigated Dantile Ltd., I have here six or eight files and I want to know just how far that investigation went. At all events, Mr. Seex, you knew Mr. Stewart at that time as a chartered accountant and a keen business man?

A. Yes.

10

MR.STEPHEN: And in the course of your investigations, did you see quite a volume of correspondence with Denmark in a foreign language as it appeared?

A. I can only remember letters in English, but there must have been letters in a foreign language.

Q. You never saw any letters which were in a foreign language?

A. Exactly what I did see it is very difficult to say now.

Q. You can't dispute that you may have seen numerous files in connection with Dantile Ltd., in a foreign language? A. I don't dispute it.

20

Q. Do you know the name of Mr. Dan Christensen in connection with Dantile Ltd.?

A. He appears as one of the subscribers.

Q. Did you make no enquiries as to his connection with the Company at all?

A. Not that I can recollect.

Q. Did you know for example that he lived in Copenhagen? A. I don't remember that.

30

Q. Do you know that he appointed one of the Directors to represent him: did you not see a document in English?

A. It is very probable I did, but I can't recollect it now.

Q. Do you know the name of Mr. Alber of Copenhagen or come across his name?

A. It is a name which seems familiar to me.

Q. Did you make any enquiries as to what his connection with the Company was?

A. I can't remember having done so.

40

Q. You can't remember that; did you come across the name of Erling Petersen & Grau?
A. I can't recall that name now.

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Q. I just want to see how far your investigation went; did you come across the name of Professor Anderson of the Technical College at Copenhagen?
A. No, I don't remember that.

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10 Q. Did you come across the name of Professor Morganson in the course of your investigations?
A. It would probably help better if I had their connection as at the moment the names mean nothing at all.

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Q. It is all in connection with Dantile Limited. Do you recall the name of Eric Schietel? A. No.

Q. Do you remember the Report from the Danish Architect on the tiles, the subject of this process?
A. Yes.

20 Q. Do you remember what the purport of that letter was?
A. It said that he had examined the tile shown to him by Mr. Eric Von Huth; that it seemed to be a good tile and that he would recommend it.

Q. Yes, that is right. You may have been told about these other parties, but have forgotten about them. Could I have the exhibits, Christensen's letter, etc.? Now do you think you ever saw anything like these amongst the files? You will find translations.
A. Exhibit 'A'. I can't remember having seen that.

30 Q. You have read the translation have you?
A. Yes, the name Alber is familiar to me.

Q. Now look at Exhibit 'B'.
A. I can't recall having seen this letter before.

Q. Would you tell me if you recognise the notepaper of Exhibit 'C'? A. No.

Q. Would it surprise you to know that there are a large number of letters with that heading amongst the Company's papers? A. It would.

40 Q. Would you also glance at that letter Exhibit 'C', the letter from Mr. Ottesen?

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A. This, I have some recollection of the question of compensation; it seems to be familiar.

Q. Well, the point to which I really want now to direct your mind is to paragraph 31 of your Report. You agree with me that you do not know anything about these gentlemen whose names I have mentioned to you during the last few minutes, with possibly the exception of the Danish architect and the vague suggestion that Mr. Alber means something and Mr. Dan Christensen's name you know? Now do you agree that these letters show that there was correspondence before this Company was formed, talking enthusiastically about the Dantile process?

10

A. Yes.

Q. And do you agree that had those and possibly other letters been shown to you it would have caused you to modify your Report?

A. I can't agree with that. I saw a great deal of correspondence. I went through the files and we in the accountancy profession, in asking people to subscribe for shares, we attach a lot of importance to the actual facts on which the invitation is issued and possibly I approach with even more caution than other people would and I saw nothing which, to my professional mind, would cause me to alter this opinion.

20

Q. You saw nothing; but that does not answer the question I put to you. Had you seen these letters and other letters and had they been translated to you, you might have formed a different opinion.

30

A. I saw nothing; no Muritas Accounts which showed what they had done.

Q. I am sticking to paragraph 31, Mr. Seex. Mr. Schietel whose name you do not know is in fact, mentioned a number of occasions in the Minute Book which I suppose you went through. A. I did, yes.

Q. You can't remember his name at all? Now don't you consider that Mr. Schietel who came out here subsequently became an alternate to one of the Directors, is the sort of person whose opinion, if the Directors knew him, they might have been perfectly entitled to rely on; you don't know him; you don't know Mt. Ottesen or Mr. Dan Christensen. For all you know they might be extremely sound.

40

A. I say that the letters would not have influenced my opinion.

Q. Now had you known for example that Mr. Ottesen was a House and Land Agent in Copenhagen, who knew the product, would that not have affected you?

A. I would have taken it into consideration.

Q. And that Mr. Harpoth was a successful business man in Copenhagen would that have affected your opinion?

A. I would have wanted to know what his business was.

10 Q. And would you not agree that being a Danish Architect would have made an impression? It seems very odd that there is such a lot of prejudicial matter which you can't remember and other things which you can. You can't recollect any of these things?

A. I have told the truth. You have asked me a lot of names which I have said I cannot remember.

20 Q. All right. And you say, do you, that even if the writer of those letters had personal knowledge of the product which this Company was formed to market, it would not have changed your opinion as expressed in paragraph 31?

A. Would you please repeat that.

Q. Do you say that if you had known that the writers of these letters had personal knowledge of the product which the Company was formed to market, it would not have changed your opinion?

A. No, I can't say that.

30 Q. But it might have done? Indeed would you go so far as to say that if the Directors' knowledge of these gentlemen was such as to entitle them to trust them, the Directors themselves may have been entitled to form the opinion they did about the product? A. Yes.

Q. And we know from your Report that Mr. Dan Christensen himself put up an offer of £1,000 in cash I think? A. Yes.

40 Q. That suggests does it not, Mr. Seex, that living as he does in Copenhagen that he formed a favourable opinion of Dantile Ltd.? A. Yes.

Q. And do you agree that unless you are a technician if you go to see a technical process in operation, you do not see at all the same thing which a man with trained and qualified eyes sees?

A. I suppose not.

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Q. And perhaps for you and me to go and visit a plant would make us none the wiser as to whether it would manufacture satisfactorily?

A. It is surprising what they do spot.

Q. And you will agree that neither Baron nor Mr. Ole Beyer were technical persons?

A. I do not know.

COURT ADJOURNED AT 12.45 p.m.

COURT RESUMED AT 2.30 p.m.

MR.STEPHEN: Mr.Seex, would you say that in approaching as an Inspector the circumstances of a Company's formation, the standard of your profession and yours in particular is about as high as one can find anywhere?

10

A. The approach of our profession undoubtedly is.

Q. Would you say that the approach of yourself or one of your partners would be as high as that which prevails shall we say in Great Britain?

A. I can't put it as high as that; there are some very fine men in Great Britain, but the approach is as critical.

20

Q. And in the course of your investigations, I do not see from your Report that you called the Advocate who formed the Company before you?

A. No I didn't.

Q. Do you now think that that might have been a wise thing to have done?

A. No, I understand that the Advocate was merely concerned with the registration of the Company which is a straightforward matter.

Q. Are you quite sure that is all you know about his activities?

30

A. I saw any correspondence with Mr. Hollister subsequently; I understood that he had been approached with regard to the circular after the question on the circular was raised.

Q. Well now, did you know when you yourself gave evidence in Criminal Case 859/51 that Mr.Hollister was a witness?

A. No, I did not know that.

Q. Would you take it from me that he was?

A. Certainly.

40

Q. And would it surprise you to hear this "I gave advice before the Company was formed. I gave advice regarding the circular. I did not attend the first meeting of the Directors". Is that the first you heard?

A. I know he had been connected with the circular.

Q. But didn't you realise that the circular was sent out about a month before the Company was formed?

10 A. I realise it now, but not at the time.

Q. At all events, you went through the Minute Book very carefully and I think you have already recognised it in Court and may I give it to you to refresh your memory? Do you say that from the very start of that Minute Book Mr. Hollister was involved as Advocate for the Company? I mean, he was involved professionally?

20 A. I say that at the first meeting he was instructed to draft the Company's Memorandum and Articles of Association.

Q. I would like you to go on to April and May and I think you will find that Mr. Hollister is referred to as having some duty to perform as Advocate for the Company.

A. On the 2nd April, he was asked to draft the Agreement for the Company.

30 Q. And he had already prepared the Memorandum and Articles of Association. Do you know, Mr. Seex, that Mr. Hollister was concerned in advising on the circular and in these other matters; do you now think that it might have been an advantage to have called him before you?

A. I am still unaware that he was asked to advise on the circular until afterwards.

Q. I thought you were taking it from me?

A. I beg your pardon, I was. Yes, I can't recall; it might be; I would have done.

40 Q. And from what you have seen of the Minute Book which I imagine substantially you accept as the business transacted at those meetings, it is clear, had you known of this, you might well have called Mr. Hollister before you; it might have been an advantage.

A. I am trying to recall what happened in regard to

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that circular; I remember I gave it considerable attention and I probably should have discussed it more. It did crop up between myself and Mr. Hollister.

Q. May be casually. At all events, you agree that under the searching light which is now being thrown on these events, it might have been more advantageous if you had had more information from Mr. Hollister? A. I obviously did not think so at the time, but it is possible yes.

10

Q. So that we can summarise certain features of your evidence in this way; you knew of Mr. Dan Christensen in his capacity as shareholder? A. Yes.

Q. You seem to recall a letter from Mr. Ottesen which was shown to you this morning? A. Yes.

Q. You recall the report recommending the tile from the Danish architect which you did not think very much of? A. Yes.

Q. But subject to that correspondence, any correspondence prior to the formation of the Company was not brought to your notice by anyone and the persons to whom I referred this morning did not ring a bell?

20

A. May I qualify that? I was furnished with all the files of the Company and I went through them all. This morning, I was unable to recall those letters to which you referred, but I am unable to state definitely whether they were, or not, on those files.

30

Q. I am sure you are doing your best, Mr. Seex. Now, did you in your investigations see letters indicating that Mr. Stewart had for a short time at any rate some interest in the Patent rights in respect of some parts of Africa and in that sense he was interested in the flotation of Dantile Ltd. and do you remember any letter in which he agreed to hand over such rights as he had to Dantile Ltd.? A. No, I can't remember that letter.

Q. Do you remember it being told to you orally? A. I can't recall that Mr. Stewart ever had any rights of his own.

40

Q. Very well, do you remember seeing a letter in which Mr. Eric Von Huth said he had assigned any rights which he had to Dantile Ltd.?

A. Yes, there were some letters suggesting that which I remember.

Q. Do you think that you might have seen letters from Mr. Stewart which you cannot now remember?

A. I do.

10 Q. Did you ever see either of those letters from Mr. Stewart to Mr. Ole Beyer?

MR.SALTER: I have not seen these letters and unless these parties are going to be called, I do object.

MR.STEPHEN: Very well, I won't put them in; I am surprised at my learned friend.

20 Q. Now as I understood your evidence yesterday, Mr. Seex, you said that you did not accept that there were any Patent rights for the Muritas tile at any time; is that correct? Please correct me if I misunderstood you.

A. I saw no evidence of Dantile Ltd., owning Patent rights. There may have been patent rights.

Q. There may have been patent rights but you saw no evidence of Dantile Ltd., having patent rights?

A. Yes.

30 Q. Now I know that out here we do not come across patents to the same extent as professional men do in England, but do you agree with me that where you have an invention, the country in which the first application for Letters Patent is made issues what is generally known as the Master Patent and applications then follow on by convention in other countries if you agree to register it there?

A. So I presume.

Q. And therefore, would you agree that if there was a patent in Denmark, it follows that the invention if a valid invention capable of being patented under convention could be patented in other countries? A. Yes.

40 Q. Now your Report goes no further than to say that you saw no evidence that Dantile Ltd., had a patent? A. Yes.

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Q. But there may have been? A. Yes.

Q. Did you ever see a contract, or were you ever shown what anyone suggested was a contract between Muritas and Mr. Eric Von Huth? A. I did.

Q. And was the document signed, or do you not recall? A. I can't recall.

Q. Is that the agreement which you were shown? Can you recognise it?

A. I can't say that I recognise it; that that is the one I saw.

10

Q. It is stated to be a duplicate and does bear the signature of someone on behalf of Muritas in illegible continental handwriting and there appears to be at the beginning of that contract, which is in a language which you and I do not understand, the name Muritas and Eric Von Huth; and that is about all it will convey to you as it does to me? A. Yes.

Q. And there appear to be thirteen articles or clauses.

20

MR.MORGAN: I think His Lordship has a copy.

EXHIBIT 'E' Handed to and accepted by Court as Ex. 'E'.

MR.STEPHEN: Mr.Seex, as far as you recall have you ever seen that document,

COURT: It is the first mention that there was a contract and I am rather interested in it.

MR.STEPHEN: I realise that.

Q. Did you ask for a translation of the document that was shown to you, Mr. Seex?

A. Not that I can recall.

30

Q. So in fact, as far as any contract was shown to you, you don't know what it says?

A. I had an idea what it was about.

Q. You do not understand Danish or Scandinavian very well?

A. I know German which would give me a clue.

Q. Now from your investigations, Mr. Seex, are you in a position to say conclusively and definitely that the tile had not been produced and sold successfully in Denmark? A. No.

Q. Your report in fact is simply a comment on the evidence which had been put before you or which you had found? A. Yes.

10 Q. Thank you; and as you have stated, you know that the Advocate was consulted before the Company was formed and there are indications from the Minute Book that he was acting for the Company for several months after its formation? A. Yes.

Q. And did you see in letters written to Muritas in Denmark asking for amendments to the contract? A. There was correspondence.

Q. Now you made certain comments both in your Report and in evidence, I want to ask you about. The first is regarding compliance with the formalities of the Companies' Ordinance. A. Yes.

20 Q. Do you know of any steps being taken by either of the two Mr. Faugusts when they were Directors, to comply with any of the provisions of the Companies Ordinance?

A. They appeared to be perturbed at the lack of them. I can check on that; I have my notes here.

Q. Would you check please. I can assure you you won't find anything Mr. Seex, but you can search to your heart's content.

30 A. I am looking because I got my clerk to make copies of everything, but I am quite prepared to accept what you say on the subject.

Q. Do you agree that the expressions 'Subscribed Capital' and 'Issued Capital' are synonymous terms? This is not a trap question.

A. It never occurred to me, but what I had in mind is capital.

MR.STEPHEN: It must be issued to be subscribed.

COURT: It must be issued to be subscribed?

40 MR.STEPHEN: Palmer at page 202 deals with the matter, but I wondered if the witness could help

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us. "It is presumed that the word 'subscribe' means apply for and accept in allotment from the Company, this is the usual sense in which the word subscribed is used". I was merely asking if 'issued' and 'subscribed' are synonymous terms in relation to capital?

Q. Now do you know of any company, Mr. Seex, which in your experience has acquired patent rights without paying for them either in cash shares or in kind? A. I can't at the moment recall any company. 10

Q. It would be a very rare thing, would it not, so far as your experience goes to find that no consideration is given for the acquisition of patent rights? A. Yes, it would.

Q. And if shares are allotted for the right to exploit an invention or for the assigning of letters patent, the shares allotted are either issued or subscribed, being issued for consideration other than cash. Would you agree that to a person who did not understand Company terminology, whatever expression you use, makes very little difference, because they would not know the difference between 'Authorised' and 'Subscribed' capital? A. Probably. 20

Q. Now as to the value of these shares, Mr. Seex, you said that at the end of July 1948, you estimated the value of the shares based on the balance sheet which was shown to you, at five sevenths (5/7ths) of par; was that right; based on the balance sheet? A. Yes. 30

Q. Now is a copy of that balance sheet amongst the papers which are comprised in your inspection file? A. I do not think so.

Q. Now at the end of 1948, would you say from your investigation that the shares still had the same value? A. I would not like to answer that one; it would be difficult to know what the situation is six months later. When one values shares, there are so many circumstances to be taken into account. 40

Q. But you say that they were almost worthless at the time you made your report in 1950? A. Yes.

Q. Do you agree that the Company's position

deteriorated gradually over the 2½ years prior to your investigation? I mean it did not draw all its money out of the bank and fritter it away in a day?

A. No, but I would not say the deterioration was gradual over the whole period; I would say that the situation I saw had existed for some little time.

Q. For a matter of six to nine months?

A. I can't recall, but it could be that.

10 Q. Do you agree that one year after the Company was formed, that is to say in March 1949, these shares still had some appreciable value; the Company's resources had not been dissipated.

A. I could not say that.

Q. You could not contest it?

A. No, I could not contest it.

Q. Do you agree that in September 1948, the Company's position was probably somewhat better.

A. I would expect it to be.

20 Q. And in that report, Mr. Seex, you express the view that the records of the Company and the book-keeping were adequate for a Company of its size and so on? A. Yes.

Q. And in your report, you observe that the affidavits which led to your appointment were (remainder inaudible to shorthand writer)?

A. Yes, and that was the affidavit of Mr. de Mare and the brothers Faugust.

30 Q. That is right. And do you feel, Mr. Seex, that possibly if you had had the advantage of the further papers which you may not have seen before, you might conceivably have slightly changed the expressions in the concluding passages of your report; for example, in your references to the patents?

A. Quite truthfully, Mr. Stephen, no; applying the standards which I apply to invitations, it did not come up to that standard.

40 Q. But looking at the matter objectively, you feel that your conclusions are fair in the light of what you have seen? A. Yes.

Q. Do you agree that there are matters to which I

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have referred today that might conceivably have affected your mind?

A. I feel I may have amplified what I have said.

Q. I am obliged to you, and you stand by that as a fair objective yet critical summary of what you found?

A. Looked at from the view point at which I was then appointed, which was critical, I was not asked to find out whether there was a contract.

MR.STEPHEN: And for all you know, there may have been? 10

A. I was quite prepared to accept there was.

Q. Indeed, would it be fair to say that your report proceeds on that assumption?

A. I have never questioned it.

Q. And that the Company was entitled to manufacture under that patent?

A. That I have doubts about.

Q. Why, do you think that, as is recorded in the Minute, and I believe it is, they wanted to improve on the terms of the contract and to get better rights than they had. I had better refer to the precise minute. Perhaps I should do it this way. Did you see in the minutes reference to Mr. Ole Beyer's visit to Denmark whilst he was in Denmark, did you see that a Mr. Eric Schietel acted as his alternate? 20
A. That is a name I can't recall.

Q. Perhaps you may recognise the minutes if you actually see them; do you remember them?

A. Yes, I can say I do. 30

Q. You remember reading the minutes of the 23rd August, 1948? Where it says about the patent rights regarding the tiles which were considered useless for manufacture as bathroom tiles; you did read that? A. Yes, I must have done.

Q. Did you see that the contract was discussed again?

A. I remember that the contract was frequently discussed and that they were seeking modifications.

Q. Will you just look at all those files and tell me whether you recognise them as files you have seen; some of the contents you may have seen; 40

1st File. others you may not?
 2nd File. A. These look like some of the contracts I saw; I would say I saw that file.
 3rd File. This is a familiar piece of paper. Those two files I would say I have seen.
 4th File. This file seems vaguely familiar.
 5th File. There are some papers on this file which I recognise.
 6th File. The correspondence on these two files
 7th File. is familiar.
 8th file. I can't say I recollect anything on that file.

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Q. Would it be fair to say that some of those files in their context you have seen; others you cannot recall? A. Yes.

Q. I will accept that answer. In the course of your investigation, Mr. Seex, were you shown a series of letters passing between Mr.Ole Beyer and Mr.Jorgan Brock?

20

A. Yes; the name 'Brock' was he a lawyer?

MR. STEPHEN: Yes, that is right.

Re-Examination

Re-Examination.

MR.SAITER: My Lord, I was going to put this correspondence in at a later stage. It has been agreed between my learned friend and myself. Here is an unmarked copy.

EXHIBIT 7: Correspondence handed to and accepted by Court as Exhibit 7.

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MR.STEPHEN: Now that is, as my learned friends have conceded to me, not the most perfect English translations; Some have a slightly foreign flavour. Did you see the 1st letter dated the 7th January, 1948, and you saw the 1st paragraph "As Co Directors of Dantile Ltd new Company" You saw that? A. Yes.

Q. And if you just glance at the rest, you will see they say what we primarily want amended is Clause 3. A. Yes.

Q. And will you look at the 3rd paragraph; you will see Mr.Stewart's name again and figures; do you see that? A. Yes.

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Q. Does it appear that the object of that letter is to try to eliminate Mr. Stewart from participation?
A. Yes, it would seem to do so.

Q. It does and does the very next letter from Mr. Jorgan Brock say that Muritas is willing on principle to comply with their request, and in paragraph 4 does it again refer to Mr. Stewart that they are going to do their best to eliminate him completely? It says it does not fix Muritas with any obligation towards Mr. Stewart and there seems to be a consensus of opinion for the elimination of Mr. Stewart?
A. Yes.

10

Q. And if I may say so, does that surprise you?
A. No.

Q. Do you agree that all over the world millions of pounds are put into companies and corporations each year for the development and exploitation of new ideas, new inventions and the marketing of new products and new processes? A. Yes.

Q. And do you agree that a fair proportion of these ventures do not succeed? A. I agree.

20

Mr. Salter: As you have that correspondence in front of you now, Mr. Seex, perhaps I could refer to that matter first.

EXHIBIT 7: Correspondence Muritas & Brock & Co., handed to and accepted by Court as Exhibit 7 earlier on.

Mr. Salter: Would you look at paragraph 7 of the previous letter "What we primarily want is to have your Clause 3 amended etc. in Dantile East Africa Ltd". Now pausing there a moment, were you able to find out whether at any time Dantile East Africa Ltd., held any patent right over this tile? A. I was never able to find out whether Dantile Ltd., held any patent rights.

30

Q. Did you see any assignment of those patent rights from any individual such as Mr. Eric Von Huth to Dantile Ltd? A. No.

Q. Again in the postscript, there appears to be a postscript in my copy: "Please furnish the new contract with the same date as the first one." It is signed 'Ole Beyer' etc. Is that right? A. Yes.

40

Q. Would you look at the second letter February 6th 1948. It is a very long letter; it is on the second page and the last paragraph but one "As regards thealso require some consideration".

A. Yes.

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Q. "You mention the right to sell your patent rights or alternatively, on easier terms agreed on". Was there any further material which you were able to discover which would in any way assign those rights to Dantile Ltd. "Your..... is impracticable.....and we enclose draft....." Now would you look at the next letter the 26th November, 1948, the penultimate paragraph: "As our Company does not want to use Muritas Patents we would ask you to see to it that.....for the Patent rights". That would refer, would it, to the shares which were credited in your balance sheet for the 6,500 consideration other than rights? The Patent rights as far as Muritas is concerned is 8,500? Towards the end of that bundle of correspondence there is a letter dated the 25th July 1950; that is a letter again signed by Mr. Ole Beyer to Mr. Brock, Master of Law, the second paragraph "First of all, I must point out that the contract of the 29th November, 1947, Exhibit 'E' mentioned in our letter of the 19th April, 1950, is not signed and only is available as a draft made by you.....Baron Akerhielm never returned the proxy with his signature". This contract was put to you; does it show signatures thereon? Page 2 of my copy says "However, I must point out that negotiations between your client and Mr. Eric Von Huth.....to which Mr. Eric Von Huth assigned his patent rights". Do you agree with that remark? A. No, I never saw an assignment.

10

20

30

Q. "As assigned above.....was prepared". What do you say about that? A. That is what I understood.

Q. I do not know whether you have had the opportunity of going through all this correspondence at all recently, but I don't know whether you are able to tell My Lord that when you did see it, what was the general attitude between Mr. Brock on behalf of Muritas Ltd., and Mr. Ole Beyer? Are you able to say from your memory what the general dispute and correspondence was about. A. It appeared to me at that time that the dispute between the two was that Mr. Ole Beyer was not satisfied with the contract. Muritas realised that the value of their patent right was depreciating and they were trying to get it as quickly as possible.

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Q. Might I turn to the Agreement, Exhibit 'E', between Muritas and Dantile Ltd; 29th November. Would you look at the end of the contract; is it agreed where it says "By Eric Von Huth, hereinafter called the Purchaser..." that that is signed for Eric Von Huth and Muritas? A. Yes.

Q. Clause 1 read ".....number 4330." Clause 2 read ".....purchasers right of exploitation is restricted to those two territories and there are restrictions as to how he shall employ the patent." 10
Clause 3 read ".....setting out various considerations". Now with that clause in front of you, Would you turn to your report; no, I think it is Exhibit 2. Second paragraph. My learned friend put to you: "We have procured the patent rights for most countries for Africa, India and Pakistan" and my learned friend in cross examination asked whether you considered that that was modified in any way by the statement in that document in your report headed "Strictly Private and Confidential 20
and not for publication". The eighth paragraph. From the third clause of that Agreement would you comment as to whether it is correct or incorrect, the statement that they held the option on the 23rd February 1948? Would you say that was correct having regard to clause 3 whether the option is to a third party who has an enduring option to the 3rd October 1948? A. As a layman, I would say no.

Q. And again, arising out of that, you were asked whether Clause 28 under Section 5 of your report 30
needed modifying in any way. Clause 25 read out.
A. I do not feel it should be modified.

Mr. Stephen: I do not recollect having cross-examined on that clause.

Mr. Salter: Apologies.

Mr. Salter: You were asked about an architect's letter and you said you were not impressed by it; what was the reason for that? A. It was a very brief letter; in my experience where a professional man is asked for an opinion on a product, he 40
goes to great pains to give an opinion of some length. In this case, it was a letter of a few lines which merely said it was a good tile and he would recommend it. There was no evidence to show that it was a Muritas tile.

Mr. Salter: Would you look at D 2 and also D 8?

D 2 first the statement by Mr. Eric Von Huth about three quarters down that page, there is: "On the 19th September, 1948, Mr. Svend Thomsen came from Denmark with a new way of making tiles which Mr. Ole Beyer agreed was a better way than the one I came out with in December 1948".

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10 Q. From your investigations, did you understand that they were going to produce an entirely new type of tile there? A. I understood that it was an improvement of the same tile which, as far as I remember, had a plastic cover.

MR. SALTER: And D8, the letter of the 27th December, Exhibit 6; "The tile was successful in Denmark up to the middle of 1948.....only a War product.. .." Was that the War product mentioned in the original letter, or a new one? A. I was of the opinion that the War product was the Muritas tile.

20 MR. SALTER: I want now to go back for a moment to the valuation of shares, when you told My Lord that you put various values 5/7ths and so on. You recall assessing that in the light of events at that time or in the light of events which have happened? A. It was clear when I was asked to put a value that it should be on the Balance Sheet which was shown to me and on the figures then shown I arrived at a value of five sevenths.

Q. That was the Balance Sheet which was not prepared by you? A. No, by Messrs. Harrison & Bowmer.

30 Q. Well, in view of the events which have happened and your knowledge of the matter now, what would you say was the value of the shares to the Subscribers at the time of taking up? A. I think I answered that as Shs: 18/-. That is based on the figures I had before me shortly after the Company was formed.

40 COURT: In cross examination, Mr. Morgan drew your attention to the Annexure of the original circular letter; it is the 2nd page marked "Strictly Private and Confidential" and at the top of the page "Specification of Capital required" and Mr. Morgan drew your attention to the item of ... Krona and he asked whether you inferred that the whole of this had been subscribed in Denmark and you answered 'Yes'. Do you now say as it reads in the line below "Capital already subscribed" had been supplied

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in Denmark, as I understood the question, would infer that the figures going before had been subscribed in Denmark? A. In fact, My Lord, I do not believe the whole of that was subscribed. Shs: 1,500/- represents the exchange on Mr. Dan Christensen's subscription which was remitted to this country. Some of those expenses were, in fact, settled by the issue of shares.

COURT: And would it be perfectly fair to describe those as subscribed? If I may now ask you to turn back to paragraph 11 of your Report the very last paragraph. "The only shares allotted for cash..... in addition to the Danish Subscription". Is it your view that Shs: 70,000/- was subscribed or promised in Denmark, but only partly payable from cash? A. That is so. The view I am expressing is that only half would be in cash; it was perhaps misleading to suggest that the whole had been promised in cash; it could be read like that.

10

COURT: It could be read as the whole being subscribed in cash? A. Yes, it could be read.

20

COURT: To the Advocates: Would you like to put any question arising out of that?

MR. MORGAN: Even at 5% exchange on Mr. Dan Christensen's subscription, it would only be Shs: 500/-. A. In answer to question by Your Lordship that the Danish Krona was Dan Christensen's twenty five thousand shares in cash.

COURT: Is that a very high rate of Exchange?

MR. MORGAN: We will call evidence to show that that could not have been the rate of exchange on Dan Christensen's

30

COURT: It would be 6%.

MR. MORGAN: Shs: 1,500/- on 1,250 would be about 12%. The exchange rate at 12% on 1,250 is.....

COURT: It is 6%.

COURT: Your impression is that that Shs: 1,500/- related only to Dan Christensen's cash subscription?

COURT ADJOURNED AT 4.15 p.m.

HEARING TO BE CONTINUED ON MONDAY, the 31st
January, 1955, at 10.30 a.m.

40

No. 11.

BARON UNO CARL SAMUEL AKERHIELM

MONDAY 31st JANUARY, 1955

D.W.1. BARON UNO CARL SAMUEL AKERHIELM sworn

MR. MORGAN: Who are you? A. Baron Uno Carl Samuel Akerhielm.

Q. And when did you first come to Kenya? A. In 1930.

10 MR. MORGAN: There really is a monumental noise, My Lord.

MR. MORGAN: And you did a lot of things when you first came out here, I believe, amongst your other activities I believe you trained horses? A. Yes, I did.

Q. And after that, you went into matters more commercial; amongst other things, Swedish Products? A. Yes.

Q. Which was a firm of agents for goods from Sweden? A. Yes.

20 Q. And you also owned Coffee Estates? A. Yes.

Q. And have you had any other commercial experience or interests? A. I am a Director of three firms:-

(1) United Dairies Ltd. since 1934.

(2) Beacon Ranch Ltd. " 1946.

(3) Anton Petersen & Henius Ltd. " 1951.

Q. And I believe you became Consul in 1948? A. Yes.

30 Q. Now before we do anything else, I want you to tell My Lord the Exchange Rate between Kroner and the East African shilling or pound in 1947 and explain fully what you say. A. In 1947 or 1948 the Exchange Rate was ~~1.938~~ to the pound.

Q. Now what does that mean in terms of per cent? A. 3.1%. It depends if you are buying or selling. ~~1.938~~ Buyers ~~1.936~~ Sellers.
19.38 19.36

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Q. And an Exchange Rate of 1,500 kroner at 3.1%? Approximately 48,500 kroner carries an Exchange Rate for East African shillings of 1,500/-. Those two figures added together make a total of Shs. 50,000/-.

Q. And if one adds another Shs. 20,000/- on to that the sum becomes Shs. 70,000/-? A. Agreed.

Q. Now would you tell His Lordship why Shs. 20,000/- carried no Exchange? A. I know Eric Von Huth asked for 20,000 kroner for his work in Denmark. Mr. Eric Von Huth was given Shs. 20,000 in Shares; the work was done in Denmark, so the Company saved the Exchange.

Q. And this Shs. 48,500/- which carried the exchange was that money or services in Denmark. A. It was machinery and money invested in Denmark.

Q. Now let us come to the latter end of 1947 or, perhaps, that is rather leading. When did you first hear about these tiles? There is a lot of evidence about it, but I want it from you. When did you first hear about MURITAS tiles? A. On Mr. Eric Von Huth's arrival, or rather return to Kenya.

Q. You mean that he had been in Kenya and gone to Denmark and come back again? A. Yes, he had been in Denmark a few years.

Q. Did you know Mr. Eric Von Huth? A. Very well, My Lord.

Q. Perhaps you would say now straight away, what sort of man you considered Eric Von Huth to be. A. He was a very honest and very kind man, but I might say he was drinking too much.

Q. You heard Mr. De Mare say he was drinking the whole way on the aeroplane? A. Yes, liquor is free in a 'plane.

Q. Now you say Mr. Eric Von Huth returned to Nairobi at the end of 1947. You had known him for many years and then what happened? A. He asked me to go to his office and he then explained about the patent rights which he had obtained in Denmark; he wanted me to come in the business.

Q. By 'come in the business' do you mean a proposition to do something in East Africa? A. Yes,

he had already promised in Denmark that I would accept a Directorship, without my knowledge.

Q. Without your knowledge; that was rather naughty of him, wasn't it? A. Yes, I think he thought it was such a good thing I was bound to accept.

Q. And you say he offered these tiles; was he very enthusiastic? A. He was very enthusiastic.

10 Q. And how did my friend Mr. Stephen's client Mr. Ole Beyer, how did he come into this thing? A. I think he had been asked by Mr. Dan Christensen to be his nominee.

MR. SALTER: Objects.

MR. MORGAN: Anyhow, sooner or later, you got in touch presumably with Mr. Ole Beyer? A. I did.

20 Q. Did Mr. Eric Von Huth show you anything when he discussed all this with you? A. Yes, he showed me photographs of the factory in Denmark; he showed me several letters and Contracts; especially letters from two people I know; Mr. Harpoth and Mr. Schietel who had both been in Kenya before.

Q. And when, if ever, did you first see an alleged MURITAS tile? A. At the same time, and later on they were sent out from the factory by air to Kenya.

Q. At the same time he showed you correspondence etc., he also showed you a tile or tiles?
A. Several tiles.

Q. And did he give you any information of any kind about finance? A. Yes, he did.

30 Q. What information? A. I got full information about the intended expenses for manufacture and cost of machinery.

Q. Did he say anything about... I'll put it this way; when he spoke to you, had he at that time received any financial support or was he merely looking for the future to get financial support?
A. He was looking for the future.

MR. MORGAN: He had not got any? A. No, except what money he had borrowed in Nairobi.

Q. This was in November, 1947? A. Yes.

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Q. What did he tell you, if anything, about licences and patents? A. He showed me all the different Contracts and Licenses; and also showed me an application from MURITAS written to the English Patent, some bureau, and also I saw receipt that he had received same.

Q. We all know, I think it is common ground, that the name D.G. Stewart crept into this thing, but when did you first become aware of the name D.G. Stewart? A. Before we sent out the letters. 10

Q. Now before you sent out the letters, had you received any financial support from anywhere? A. From a person or the Company?

Q. Either. A. Yes, the Company had received payment from Mr. Dan Christensen in Denmark.

Q. Was it the Company in formation? A. Yes.

Q. And perhaps you might tell us at this stage, did you yourself invest money in this concern? A. Yes.

Q. I again think it is admitted by a Plaintiff witness; it was £500. A. It is only £400 in the books, but I actually paid £500 in cash. 20

Q. Did you do any work in connection with this Company or did you leave it to others? A. I did all the work myself.

Q. And we know that you did in fact receive a certain allotment of shares without cash consideration? A. I did.

Q. Did you get any cash payment for the work which you told His Lordship you did? A. No.

Q. And the letters as you call them; were the letters sent out to friends? A. That is correct. 30

Q. Were they all Scandinavians? A. Yes.

Q. Before we come to sending out those letters I want you to cast your mind on to this name D.G. Stewart, and tell us anything that might not have happened because of that name. A. I know Mr. Stewart had been to Denmark and investigated the tiling proposition; had been to the factories and also discussed the matter with Muritas. I did not have a very high opinion of Mr. Stewart so flatly refused to be a Director of the Company. 40

MR. MORGAN: You objected to Mr. Stewart being a Director of the Company and as a result, what happened? A. He agreed to go out of the Company.

Q. Were any letters written about this? A. I think we agreed in Denmark to accept his resignation.

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10 MR. MORGAN: It is in the bundle of my friend's
correspondence, My Lord. I do not know what number
this is, but there is correspondence on the file
wherein letters are written to MURITAS LTD., saying
that D.G. Stewart has resigned. Well now, will you
look at the first letter dated 7th January, 1948, on
the bundle of correspondence marked Exhibit 7; it
is a translation from the Danish from Nairobi Head
Office of Beyer's (Kenya) Corporation to Muritas
Ltd., Copenhagen, and it should, in my submission,
be read closely with these Contracts. The first
letter reads: "As Co-Directors of 'Dantile East
20 Africa Ltd.' (in formation) Baron Akerhielm and the
writer of this letter would appreciate some minor
amendments being made to the Contract which your
Company has made with this new Company. What we
primarily want to have amended is your Clause 3.
According to that clause the right to sell your
patent rights in a number of countries is vested in
three private persons and not - such as we would
find it fair and reasonable - in Dantile East Africa
Ltd. We would urge you, both in your own and in
30 Dantile's interest, to change that clause. The rea-
son why we desire that clause to be changed is that
Dantile in our opinion, is the creator of the
African market, and that ~~that~~ company or its share-
holders, of whom you are one, should, therefore be
allowed to derive the profit of any excess price
obtained at the sale of the patent rights. If Dan-
tile Ltd., by selling the patent rights at a profit
is enabled to pay a handsome dividend to its share-
holders, the price of the shares is bound to go up.
40 One thing which we understand was the main reason
for the right to sell the patent rights being given
to private persons was that Mr. Arvad Petersen, when
he was still in the company should benefit from the
sale of the patent rights, and later Mr.D.G.Stewart
tried to keep that benefit in favour of Mr.Petersen's
creditors. As Directors of Dantile Ltd., we do not
think to have any obligations towards Mr. Petersen
and his creditors and fail to see any reason whatso-
ever for us or Dantile Ltd. to pay Mr. Arvad
50 Petersen's debt which Dantile Ltd. has not helped in
creating. Moreover, Mr. Petersen's dealings have

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been directly detrimental to the company and have landed one of its Directors, Mr. Von Huth, in a very precarious situation. Further, we would like Clause 8, paragraph 3, to be changed so that that paragraph and paragraph 4 of the same clause are omitted. That clause says that Mr. D.G. Stewart is to take up 40% of the share capital. We have asked Mr. Stewart if he is willing to subscribe for a smaller block of shares than the above 40% to which he agrees.

There are various reasons for our desire to the amendments being made. Our primary desire is that the company, which Baron Akerhielm, Mr. Von Huth and I myself are forming and for which we are, therefore, responsible, will become a sound undertaking, so that the persons whom we ask to invest money cannot later cast any reflection on us, but there is also another reason why we want Mr. Stewart to get as little influence as possible, namely that his name at present will have no attractive effect on the other prospective shareholders.

Mr. Arvad Petersen recommended Mr. Stewart to Mr. Von Huth who, therefore, did not know Mr. Stewart's position in this country for which Mr. Von Huth cannot, of course, be blamed. We are at the moment negotiating with Mr. Stewart and offer him a very fair compensation for the work he has done against his withdrawing more or less from the company. We ask you kindly to send us another contract with the above amendments, this time in Dantile Ltd's name. (The name will be Dantile Ltd., not as I have already written in this letter, Dantile East Africa Ltd.). We regret having to trouble you on that point, but all the three of us agree to the necessity hereof.

Please furnish the new contract with the same date as the first one.

Yours faithfully
(Sgd.) Ole Beyer.

Agreed to:

Signed: U. Akerhielm. E. Von Huth."

MR. MORGAN: You knew about that letter? A. Yes, I did, My Lord.

Q. And without reading all the letters, is it true to say that the reply thereto agreed to this in principle? A. It did.

MR. MORGAN: And that My Lord is the next letter on the bundle of correspondence marked Exhibit 7 from

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Mr. Jorgen Brock, Master of Law and Economics, Copenhagen to Messrs. Beyers (Kenya) Corporation Box 412, Nairobi; the letter is dated the 6th February, 1948, and reads: "thank you for your favour of 7th ult., the contents of which we have thoroughly studied, and Muritas Ltd., is willing, on principle, to comply with your request. Your proposals....."

10 This will presumably be the simplest way in which to arrange matters to the satisfaction of both the parties to the contract.

Yours faithfully,
(Sgd.) Jorgen Brock."

MR. MORGAN: I take it that that reply letter dated the 6th February, 1948, by Airmail would take a few days? A. It was before we wrote the letter to the intended subscribers.

20 Q. That is the point. Now this letter to the subscribers did you draft it yourself, or who?
A. It was very likely drafted by us and I gave it to Mr. Hollister for his final draft.

Q. You did a rough draft and passed it on to Mr. Hollister and he did the final draft? A. Yes. He did all the Contracts, all the letters and everything.

Q. And why did Mr. Hollister do this thing and not someone else? A. They wanted to be sure the letter was correct. Mr. Hollister was appointed the Company's lawyer.

30 Q. And when he put this thing in final draft, I suppose you and the other two read it over and signed it? A. Yes.

Q. And it did consist as we have heard of about five pages? A. Yes.

Q. And at the time when you signed it and sent it to these people, did you consider that anything in it was untrue? A. I did not.

Q. Do you even now consider that anything is untrue? A. There is nothing untrue.

40 Q. And the circular says that anyone wanting more detailed information or further particulars can go round to Mr. Ole Beyer's office; he had an office then? A. Correct.

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Q. It was Ole Beyer's Travel Bureau or Beyer's Corporation wasn't it? A. Yes.

Q. I don't know, but I think some of the plaintiffs said they may have spoken to you after the time they received the letter; I suppose that is possible? A. Yes, that is possible.

Q. And I suppose you may have told them that you thought it was quite a good thing? A. That is possible.

Q. Do you think it was a good thing? A. I certainly did. 10

Q. I was not here this morning when Mr. John Dobie Napkin gave evidence about the tiles, but I have looked at the typescript notes and his evidence is that they were not much good for bathroom tiles but were all right for floors. What would you say to that? A. I would not agree to that, as floor tiles have to be much better than wall tiles.

MR. MORGAN: You mean because they get more wear?
A. Yes. 20

COURT: I suppose we are not going to get a tile as an exhibit?

WITNESS: I doubt very much whether there are any left.

MR. MORGAN: You were in the chair and held meetings from time to time, presumably all of which are in this Minute Book and none of which are left out?
A. It may be, but not to my knowledge.

Q. By the way, did you receive any remuneration in your capacity of Director or Chairman of Directors? 30
A. I did not.

Q. And I think you were away for a short space of time and whilst you were away, Mr. Eric Von Huth acted as Chairman. A. He did.

Q. And then I see you were back on the 5th August, 1948, and the first thing is: "Baron Akerhielm has returned from leave and taken over the chair". Is that correct? A. Correct.

Q. And item 7 of the same Minutes of the 5th August 1948, deals with the correspondence. I must 40
read this out and ask you about it:-

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(a) Mr. Svend Thomsen in Denmark: Several letters had been received regarding the betterment of the tiles and the Directors were satisfied with the progress made.

(b) Contract MURITAS: Reply to the Draft Agreement sent the 28.4.48 had been received. The points were discussed at length and the Manager was instructed to reply in accordance with the decisions made.

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Q. Is that correct? A. Correct.

Q. And turning to the next Minute dated 23rd Aug. 1948, please look at that Minute; paragraph 2 (c), (d), (e). I think they deal with machinery, white cement and land arrangements. A. That is correct.

Q. Perhaps you would just read them out, please.

20

2. (a)

(b)

(c) The Machinery arrived in good condition. Machines, chemicals and colours have been stored at Etco House. The machinery has been washed in paraffin and greased.

(d) Fifty tons White Cement has been stored in Ex-Transport Company's go-down on Athi Road.

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Permit for this was obtained from Mr. Daville, the Cement Controller.

(e) Land Arrangements: The plot is still not surveyed, but the Manager to be instructed to get in touch with the Land Office for an early survey.

MR. MORGAN: Can you remember, having looked at that Minute, what land that is? A. This is the land in the Industrial Road Area.

Q. Athi Road Area had gone off by this time?

40

A. Yes, this is the new plot in the Industrial Area.

Q. And the next Minute on the 11th September, 1948,

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continued.

No.5 reads: "Factory Manager's Arrival. Svend Thomsen will arrive about 19.9"

Q. Do you remember that Minute? A. I do, My Lord.

Q. And I believe later Mr. Svend Thomsen did, in fact arrive, didn't he? A. He did.

Q. Do you happen to know, can you see from the Minutes when exactly he did arrive? A. He was expected to arrive about 19th September.

Q. Is the next Minute the 7th October, 1948?

A. Correct.

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Q. And under 'Any other business' it says: "The Director received a report from Mr. Svend Thomsen which was very satisfactory". A. I think he was delayed; he wanted to make other investigations on the new tile.

Q. I was wondering whether he was in fact here.

A. He was delayed in Demark.

Q. So you think the report was written from Denmark. A. Yes.

Q. And then there is the interesting thing underneath that, if you read on:

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"Building: It was decided that the Manager should get in touch with several Contractors to get the best offer for buildings when the drawings were passed".

A. The drawings were prepared by the Architect Mr. Gross and they were then produced at a meeting.

Q. Well, Baron Akerhielm that means surely that the drawings have to be passed by the City Council?

A. Yes, the Industrial Area is at present under the City Council.

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Q. And the next thing underneath that is: The Manager was instructed to contact East African Power and Lighting Co. to make the arrangements about light and power in the factory. A. Yes.

Q. And to touch on the next Minute, if you will look at the next one dated the 25th October, 1948. You are still in the Chair and Mr. Schietel is with you acting for Mr. Ole Beyer. Then under

2(e) Building: The blueprints have been received but no application could be sent to the Municipality

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before draining plans were ready. It was decided to ask Mr. Thomsen to attend to these matters; and the next one:

3. Report from Mr. Thomsen: Report was received describing the production of the tiles, but the Directors felt that another Report was needed, describing the tiles resistance against certain chemicals, oils and fat.

10 Q. Did that Report come from Denmark, or had Mr. Svend Thomsen arrived by then? A. I think he had arrived by then and gave us a report on the tile.

Q. We will see whether he had arrived, because probably it will be minuted. My Lord, I do not wish to go through all these Minutes, as they speak for themselves; I just wish to touch on a few.

20 Q. It seems that Mr. Svend Thomsen must have arrived about a month later and he took up the job of Factory Manager or Production Manager? A. He was employed as Technical Manager.

Q. And I suppose all this time, in addition to being Director, you were also Consul? A. I was.

Q. You did not think only about Dantile Ltd. from the time you got up to the time you were to bed? A. I did not.

30 Q. And then we come to the all important meeting of the 18th March, 1949. Now before that, do you remember a Cruiser coming in to Mombasa and your going away, and there was some Meeting at the Salisbury Hotel? A. I do.

Q. You went there as Consul, I suppose? A. I went as Chairman; I was Consul then; it was a private meeting called and I was Chairman of the meeting.

40 Q. And one of the witnesses here, I think it was Mr. G.M.A. Faugust, has given evidence that he arrived early at the Meeting and there was some talk between you and him about altering the Contract or withdrawing from the Contract, and that the original tile was no good; can you remember that? A. I would never have mentioned that it was no good; I might have said that a better tile might be made.

Q. Now tell us about this better tile. A. Mr.

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Svend Thomsen was experimenting with what he considered to be a better tile. He experimented with a plastic surface instead of a glazed surface.

MR. MORGAN: And that was the thing you had in mind?
A. Yes.

Q. So that his evidence about this conversation is not entirely untrue, but he may have got it slightly wrong? A. Correct.

Q. And at that Meeting, you, I believe, read out a Report? A. No, My Lord. 10

Q. Now in the middle of 1949; a Meeting in March, you were in the Chair, weren't you? A. Yes, I remember the Meeting most clearly.

Q. Was it a General Meeting?

WITNESS: It was an Extraordinary General Meeting.

MR. MORGAN: It appears from the Minutes to be: "An Extraordinary General Meeting of the Shareholders of Dantile Limited held at the office of Swedish Products Company, Nairobi, on Friday the 18th March, 1949, at 10.0 a.m. 20

"PRESENT: BARON AKERHIELM (In the Chair)
MR. OLE BEYER
MR. L. FAUGUST
MR. G. FAUGUST
MR. KUALE

In attendance: MR. J.A. HARRISON"

Q. Have a look at the Minutes of the 18th March, 1949? Mr. J.A. Harrison is the Accountant, Messrs. Harrison & Bowmer, isn't he? A. That is correct.

Q. Is he the same Harrison as Messrs. Harrison & Bowmer, Accountants? A. It is, My Lord. 30

Q. I thought it was. And I see in the eighth paragraph down the appointment of Mr.G.Faugust as a Director. Do you remember that? A. I most certainly do.

Q. And the next paragraph the appointment of Mr. Louis Faugust as a Director of the company?
A. Yes.

Q. And Baron Akerhielm intimated towards the end

of the Minutes that as a result of dissatisfaction by several of the Directors he did not intend to continue as a Director and he submitted his resignation. I believe he did? A. Yes, I did.

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Q. And I think I am right in saying that the only other occasion you sat on this Board..... I see on the 15th June, 1949 A. I was asked to attend to help the Company or give information.

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10 Q. You were invited? A. Yes, I was invited to reply to certain questions which the Directors did not know.

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COURT: What date did you say?

MR. MORGAN: 15th June, 1949.

20 Q. And I see on the 7th September, 1949, at 12.30 p.m. at the Meeting of the existing Directors held at the offices of Messrs. Beyer's (Kenya) Corporation, Mr. Ole Beyer, and Baron Akerhielm is in attendance? A. Yes, I was a Director for one purpose only and it was to sign a Declaration of Solvency.

Q. And did you do anything after that? A. No, I did not. I attended a Shareholders' Meeting in December, 1949; it was for the purpose of possible liquidation.

Q. You attended as Shareholder, together with other Shareholders? A. Yes.

30 Q. Now do you remember a certain piece of evidence being given about you; that on a certain date, you arrived at one of these Meetings very hot and bothered and saying that you could not find the factory plot? Page 8 of the typescript; I will read it to you, this one passage, which happened shortly before the Meeting of the 18th March, 1949, commencing page 7:

40 "Q. Can you remember whether Baron Akerhielm took an active interest in the conduct of the Company during the time he was a Director? A. I would be able to say 'yes' to that, My Lord, but in one passage which happened shortly before the meeting of the 18th March, 1949, when I arrived fairly early at this meeting and no one else had turned up, Baron Akerhielm came into the office pretty exhausted and had tried

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to find where the factory plot was situated. He eventually found it, he told me, I got the impression then that he did not know the whereabouts of where the factory plot was before that meeting."

MR. MORGAN: Now what have you to say to that?

A. There are no roads out there and it was not easy to find the plot, but I definitely could find it normally.

Q. And you may remember I put in cross examination something about the weather. What about March? Is that one of the better or worse months of the year?
A. It can be both, it depends on the rain whether it has broken or not.

Q. Do you remember, that at one stage, according to Mr. G. Faugust, you told the other Directors that Mr. Svend Thomsen whatever his morality might be, if he were sacked the Company would be short of a Technical man. He was indispensable to the Company. Do you remember that? A. I do.

Q. And I think Mr. Faugust said it was on the 18th March, the same meeting; was I wrong about that. A. I most certainly do and I consider him indispensable; nobody else knew how the manufacture should be done.

MR. MORGAN: And nevertheless, notwithstanding whether they were forced to do it or not, you do know that he was sacked? A. I know that they did sack him.

Q. Whilst Mr. Svend Thomsen was still in your employment and before he came, was he sending you tiles and when he came here, showing you tiles?
A. Yes, he did. He showed us tiles with plastic surfaces and we tested it with acid and it stood up to the test.

Q. Is it really necessary for tiles to stand up to acid? A. If the tile is very strong it will stand up to acid.

Q. And that was the improved tile? A. It was.

COURT: There is something I have not quite followed from the evidence; this improved form of Muritast tile was something separate?

WITNESS: It was separate; the intention was that we should not then use the Muritas patent.

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COURT: You were not then proposing to manufacture the Muritas patent; it was something different.
 A. Yes, but we should use the same machinery.

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MR. MORGAN: Now was the Muritas tile a baked tile or a cold process tile? A. Cold process.

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Q. And was the Muritas tile a cold process or baked tile? A. It was also a cold process tile.

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Q. And what are the advantages or disadvantages of a cold process tile as opposed to a baked tile.

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10 A. There should hardly be any; it would be cheaper to produce and much easier of course, to make.

Examination -
 continued.

Q. And you have already said that that would apply to both the old Muritas tile and the new? A. Yes.

Q. And then as a Shareholder you say you attended a Meeting in December, 1949; is that correct?
 A. Yes, the 7th December, 1949.

Q. And then in 1950, some application was made to the Supreme Court for an Inspector to be appointed; do you remember that? A. Yes.

20 Q. And you instructed Mr. Morgan to attend, but not to oppose that? A. I did.

Q. There was a specific piece of evidence of Mr. G.M.A. Faugust, page 3 of the typescript, which reads: "Mr. Couldrey: Did you hear anything then?
 A. There was a meeting held at the Salisbury Hotel. He had called quite a number of Swedes. After this meeting my sister-in-law....."

Q. I am afraid we cannot have what anyone else told you. Did you receive any information?

30 A. Yes.

Q. And was it disquieting? A. Yes.

Q. And what did you do in consequence of that information? A. I went up to Baron Uno Carl Samuel Akerhielm after the meeting and asked him the position of the Company, as I was worried.

Q. And what did the Baron reply to you? A. He said: "Nothing to worry about; everything is all right" or something to that effect."

MR. MORGAN: Is it possible that that is so, and

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that you might have made that reply? A. It might certainly have been so.

Q. And you saw Mr. Seex who was the man who was appointed as Inspector and he held this inquiry and I believe you did see him? A. I did see him.

Q. And then after Mr. Seex's Report, a most unpleasant thing happened; certain Criminal proceedings were brought against you, Mr. Ole Beyer and Mr. Von Huth for certain offences under the Companies Ordinance and you were acquitted of some and convicted of others? A. I was.

10

Q. Now the point is, were any of those Criminal charges brought against you? Were any for Default or Statutory offences; failing to notify changes of Directors; failure to prepare a Balance Sheet? A. They were all Statutory offences.

Q. Do you remember the sum total of your fines and how many convictions there were? A. I think there were two or three. I think it was about Shs.140/-.

Q. The point is that after Mr. Seex' Report, the only things that happened were Statutory offences? A. Yes.

20

Q. I see here you were fined thirty cents a day for one case; (Mr. Morgan then proceeds to read to the Court the fines for each case.) So the whole lot was just over £15? A. Yes.

Q. And do you remember the Magistrate when delivering Judgment said he was satisfied that all three of you had acted honestly throughout? A. He did.

Q. You did not cease to be Consul as a result of these convictions? A. I did not.

30

MR. MORGAN: My Lord, my learned friend has no objection to my producing this balance sheet dated the 31st July, 1948, as it saves calling Messrs. Harrison & Bowmer, Accountants. Would you look at that Balance Sheet and say whether it is by Messrs. Harrison & Bowmer? A. It is, yes.

EXHIBIT 'G' Balance Sheet dated 31.7.48 handed to and accepted by Court as Exhibit 'G'.

MR. MORGAN: Would you look at this letter written on paper headed 'Dantile Ltd.' by Mr. Eric Von Huth,

40

transferring all his rights to Dantile Ltd., Nairobi, on the 2nd April, 1948, and his signature is verified by the Danish Vice Consul of Nairobi, on the 3rd April, 1948, who was then Mr. Ole Beyer.

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EXHIBIT 'H' Letter handed to and accepted by Court as Exhibit H.

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MR. MORGAN: You know that Mr. Eric Von Huth is dead? A. I do.

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10 Q. Did Mr. Ole Beyer get any shares for a consideration other than cash? A. He did, for his work done for the Company.

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Q. What sort of work did he do? Was it small, insignificant, substantial, easy or hard? A. He did all the Secretarial work; there was quite a lot of it.

20 Q. And you heard Mr. Seex say that if Mr. Eric Von Huth spent a year in Denmark travelling around looking for factories and coming to Kenya, that Shs. 20,000/- worth of shares was a reasonable remuneration? A. I certainly agree with that.

Q. And do you agree that you got too much for the work you did? A. I do not think so.

COURT: Do you think Mr. Morgan that this would be a good stage at which to adjourn?

MR. MORGAN: Yes, My Lord, I think I have practically finished with this witness.

COURT ADJOURNED AT 4.5 p.m.

COURT RESUMED AT 10.45 a.m.

ON TUESDAY, the 1st FEBRUARY, 1955.

30 MR. MORGAN: Your Lordship, I regret to say that having looked at my papers in this matter, I have more questions to put to Baron Akerhielm.

D.W.1. Baron Uno Carl Samuel Akerhielm reminded on former oath.

Q. First, for the convenience of the Court, would you read out the letter which is part of the plaintiffs' agreed correspondence; the letter is from Malindi dated the 16th January, 1950.

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Mr. Couldrey handed in certain correspondence in which certain letters of words were missing and I thought it would be as well if the Baron read the letter out correctly.

Q. Would you read that letter to the Court, please?

Witness reads letter from Baron Akerhielm, at Malindi, to Messrs. Shapley, Barret & Co., Box 286, Nairobi. Letter is dated 16th January, 1950.

"Dear Sirs,

DANTILE LTD.

10

I beg to acknowledge receipt of your letter No.58/38/5 of the 12th instant and.... but you ought to be able to get all information necessary from Mr. Beyer.

Yours faithfully,

Sgd. B. Akerhielm.

Copies to:-

Ole Beyer, Esq., Box 412, Nairobi.

The Registrar of Companies, Nairobi."

MR. MORGAN: The only object of your reading that letter was so that Your Lordship would be able to fill in the gaps in your letter.

20

Q. Now earlier on (Page 87 of the typescript) in answer to the question 'Have you had any other commercial experience or interest?' you stated you were a Director of three firms, the second firm being 'Beacon Ranch Ltd.' I think it was recorded that you had been a Director since 1936. Was that correct? A. It should have been 1946.

Q. You remember having seen what is known as the 'Jorgen Brock' correspondence? A. I have seen it.

30

Q. And you remember something was read out in the plaintiffs' case in which Mr. Ole Beyer said there was a contract in existence, but it had never been signed? A. Yes.

Q. Was Mr. Ole Beyer correct when he wrote that?
A. He was incorrect.

Q. Would you look at this Exhibit 'E' and tell the Court whether that is signed or not? A. It is

signed on the 29th November, 1947, by Eric Von Huth for Dantile Ltd., and N. Grau for Muritas, and it is witnessed.

COURT: That contract is in already?

MR. MORGAN: Yes, I wanted to ask whether Mr. Ole Beyer was correct or incorrect and the witness says he was wholly incorrect.

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10 Q. Now would you please look at the Minutes of the 17th February, 1948, held in the office of Messrs. Beyer (Kenya) Corporation? It is unfortunate that we have no copies of these minutes, as the witness is looking at the minute book and therefore, Your Lordship cannot look at it.

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Under (a) Mr. Hollister has accepted the appointment as the Company's Solicitor.

(b) The Directors have visited Messrs. Beacon Ranch Ltd. and were shown a plot of 21 acres which the Company is willing to sell for.....

20 (c) Mr. Hollister had previously prepared a draft memorandum of the Articles of Association and this was passed. Mr. Hollister should be asked to prepare the final Memorandum and Articles of Association.

(d) Memorandum to intended shareholders has been prepared and was laid on the table for the Directors' signatures and was duly signed.

(e) Drawing for the factory buildings has been received from Denmark.

A list

30 Q. You remember those Minutes? A. Yes.

Q. The next Minutes, held in the office of Messrs. Beyer's (Kenya) Corporation, on the 21st February, have you got that one? Mostly about land and replies from the Economic and Commercial Adviser, Mr. Adams. The penultimate paragraph reads:

40 "Several letters with reference to contract with patent holders and shipment of the machinery were laid on the table and discussed". Do you remember that? A. It is minuted, so it must have been.

MR. SALTER: I observe from the minutes that none of the plaintiffs were present. They were Directors' Meetings; the only people present were defendants.

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I make observation that none of the plaintiffs were present and only defendants were.

COURT : Mr. Morgan is entitled to ask the witness about this.

MR. MORGAN: In the next minutes of the 28th February, 1948, held in the office of Messrs. Beyer's (Kenya) Corporation, the third paragraph, would you read that?

Witness reads:

"Contract regarding Patent Rights. 10
E. Von Huth - Dantile Ltd. (In formation)
Mr. Von Huth agreed to transfer all rights which he has received from A/S Muritas to Dantile Ltd. Mr. Hollister will be asked to draw up a legal contract between Mr. Von Huth and Dantile Ltd."

MR. MORGAN: And the next is the same thing.

Q. And the next is the same thing. They seem almost to be a repetition.

Q. I am obliged to my learned friend Mr. Stephen; they are not quite the same thing; the heading is different; the first is contract patent rights. 20

Q. Anyhow, the upshot was Mr. Eric Von Huth was prepared to transfer his rights and Mr. Hollister was appointed to make an agreement. A. Mr. Eric Von Huth agreed in the presence of Mr. Hollister, myself and (third name inaudible to shorthand-writer) to transfer all rights; it was before the circular letter.

MR. MORGAN: And then something was produced? 30
A. That is dated the 2nd April, isn't it?

Q. And it is interesting to note that in the minutes of the 2nd April, 1948, it is actually minuted:-

"Contract Eric Von Huth - Dantile Ltd.
Mr. Von Huth handed over a letter, confirming that he transferred all his rights with A/S Muritas to Dantile Ltd."

Q. And since my learned friend Mr. Salter will comment on these minutes, as he is entitled to do, were these minutes kept accurately or not? A. They were kept accurately. 40

Q. Well, you did not knowingly write down anything that was untrue? A. Certainly not, My Lord.

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Q. There is something in the minutes which is odd. It is a minute in which Mr. Harrison made some comment about some contract. I think it was on the 2nd April. I am sorry, it was the 13th May; this is quite apparent nonsense in the minutes. If you look at the minutes for the 13th May, 1948. Have you got that? A. Yes.

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10 Q. Paragraph 2 reads:

"The contract with Mr. Eric Von Huth in consideration of the sale by him to the Company of his rights under a written agreement with A/S Muritas was fully discussed. It was pointed out to the meeting by Mr. Harrison that in his opinion the agreement dated the 5th June, 1948 (the words in capitals have been crossed out and the word 'produced' written over the top) merely declared an intention to transfer rights and not that the rights had in fact been transferred to the Company. It was decided to ask the Company's Solicitors to determine the point".

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20

Q. Would that be a misprint for 1947, do you think? It was decided to ask the Company's Solicitors to determine the point. Is that correct? A. Yes.

MR. SALTER: I would prefer the witness to answer the question.

MR. MORGAN: I stand corrected.

30

Q. Somebody made a remark about having a potential buyer; did you make that remark? A. Yes, I did.

Q. Now when you made that remark, were you telling the truth or an untruth? A. I was telling the truth.

Q. Now these three statements which are complained of in the plaintiffs' plaint paragraph 4.

(a) "The tile has been produced and sold successfully in Denmark".

Now what is your honest opinion about that statement? A. That it is quite true, My Lord.

40

When you say you believe it to be true, do you mean then or now, or both? A. Then and now.

Q. (b) "We have procured the patent rights for most

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countries in Africa, India and Pakistan". What is your honest opinion about that statement? A. Quite true statements, according to the information I had.

Q. (c) "About a third of the Capital has already been subscribed in Denmark"; What do you say about that statement? A. That is also quite true.

Q. Now my last question; can you tell me how long you have been in the witness box Baron Akerhielm?
A. Approximately two hours.

Q. How long were you with Mr. Eric Seex when he was taking statements from you? A. Approximately a quarter of an hour.

10

COURT: There is one point which I think arises at this stage. The witness has just said that the statement:

(b) "We have procured the patent rights for most countries in Africa, India and Pakistan", is perfectly true. So far, all I have seen with regard to the acquisition of patent rights is Exhibit 'E' which relates only to Kenya and Uganda I presume they are covered by the agreement with Mr. Eric Von Huth which I have not seen. A. It was, of course, the occasion of the patent rights. Exhibit 'E' sets out the amounts which Dantile would have to pay for the patent rights.

20

MR. MORGAN: Was anything said on the other pages of the circular letter? A. It was mentioned on the second page that we had the option of these patent rights.

Q. Whose wording was the wording of this circular; was it yours? A. It was the solicitor's, I should think. It was drafted by us, but properly written by our solicitor Mr. Hollister.

30

MR. MORGAN: Your mother tongue, although you speak English is Swedish, isn't it? A. Yes, Swedish, My Lord.

COURT: I do not know that I am quite clear on this yet. Am I to understand that the option referred to on the second page.....

MR. MORGAN: I am going to argue that all these five pages must be read as one, and each of the plaintiffs said most carefully that they read all the five pages together and with equal enthusiasm, so I am arguing that the statement is true. The

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second line of defence is that the Baron honestly believed that it was true; there was no ill faith. If you read 'P rojects and Objects' on the third page, it is amplified.

COURT: Am I understanding you to say that the Company holds the option for several other countries? The option referred to there is the same as the option referred to in clause 3; the right to buy on or after the 30th June, 1948?

10 MR. MORGAN: My Lord, in my pleadings I was very careful to be very careful over this. My defence reads as follows: Mr. Morgan reads his pleadings to the Court This is a matter which Your Lordship will have to decide. I shall argue one way and no doubt my learned friend Mr. Salter will argue the other, and Your Lordship will have to say whether the circular letter was true or false.

20 COURT: At any rate, the rights obtained by Mr. Eric Von Huth do not affect this question. There was put in as Exhibit (Exhibit 'F') a list of agreements affecting Mr. Eric Von Huth. (This list is shown in the typescript pages 85 and 86).

MR. MORGAN: In point of fact, I had decided to let Mr. Stephen get that information; in order to avoid repetition I was going to let Mr. Stephen deal with the matter of those contracts. I think that is quite proper.

30 MR. SALTER: I do not object in the least, but perhaps it might be appropriate if Mr. Stephen is going to continue with what is really Examination-in-Chief, that my learned friend Mr. Stephen will not put any leading questions.

40 MR. MORGAN: He has said there were contracts in existence; that the statements were true and I was going to leave it to Mr. Stephen to amplify those contracts. As to whether he will cross examine or not, that is a point for Your Lordship to decide; but even if he does not cross examine, I hope that he will be able, without leading, to obtain evidence of these other contracts.

COURT: There are these two objects in the circular letter and annexed documents and what I would rather like to get clear in my mind is in making those statements in regard to options in other

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countries, are you relying solely on the agreement put in, or are you relying on the agreements with Mr. Eric Von Huth?

MR. MORGAN: No, Your Lordship, we are relying on what the Baron said in evidence. Then we are relying on the Minutes. Then we are relying on the evidence that the solicitor, Mr. Hollister, was instructed to draw up an agreement between Mr. Eric Von Huth and Dantile Ltd. We are also relying upon the original signed documents, which gave rights to Mr. Eric Von Huth, and there are other contracts which make up the link. 10

COURT: The answer to my question is that there are other documents, agreements with Mr. Eric Von Huth which have not yet come before the Court on which you are relying to support your case?

MR. STEPHEN: Perhaps I should make it clear, I have already tried to put to one of the witnesses one of these documents and my learned friend Mr. Salter objected, but I propose to try in another way. We are in this difficulty, a certain attempt has been made to limit the expenses owing to the fact that it might have been necessary to call a large number of people from Denmark, and I appreciate that my learned friend is entitled to say that this was not covered by the arrangement. 20

MR. MORGAN: The Plaintiffs are in a difficulty because they have to prove that no Contracts existed; they have to prove the statements untrue.

MR. SALTER: There is Mr. Seex.

MR. MORGAN: Mr. Seex' conclusions do not bind this Court. 30

COURT: I am afraid my natural curiosity will not have been fully satisfied until these agreements with Mr. Eric Von Huth have been put forth.

MR. MORGAN: Now what do you say about these Agreements with Mr. Eric Von Huth? A. There are several Agreements with Mr. Eric Von Huth and Muritas.

COURT: Perhaps the witness could verify the list which was put in yesterday; Exhibit 'F'.

MR. SALTER: Could the witness say whether he has seen or not seen these Contracts. A. I have seen these Contracts. 40

MR. SALTER: Well, that is very different. I would make the point that the document itself is the only proper evidence.

MR. MORGAN: Do you know where these documents are?
A. I can't say.

Q. You have said already that Mr. Eric Von Huth is dead and that you resigned from the Company in 1949?
A. Yes.

10 MR. STEPHEN: Now My Lord, I would be very grateful if Your Lordship would give me a little guidance at this stage. At this stage, I should know what Your Lordship's view is on the point. There are indications in the English Law Reports and English Law of Evidence and in the Indian Law as to the right of Counsel for a co-party to cross examine one of the suitors on his own side. For example, in the Indian Evidence Act, Sarkar's Commentary at page 1131, 9th Edition, which I think will be handed up to Your Lordship, half way down the page, there is a rather
20 unusual case. Now the next paragraph in my submission is rather more relevant and it is all mixed up; Criminal practice and Civil practice, but it should be precisely the same.

The first case reads: "When two or more persons" Further down, My Lord: "No special provision is made in the.....may cross examine another".

30 My Lord, the procedure I intended to adopt was as far as possible to avoid leading this witness and I did assure my learned friend Mr. Salter that if he felt any particular question was leading, I would not mind him objecting, but I wondered if Your Lordship would give some indication whether you feel that no leading questions of any kind may be put. I do submit that although in most respects the evidence of these witnesses and the case of this witness is the same as Mr. Ole Beyer, any evidence which may be given by this witness in cross examination will equally affect my client and therefore, I should in particular have the right to cross examine
40 whether I exercise it or not; But I am in Your Lordship's hands. I do not want to press it and am prepared to try and avoid leading; I would like some indication by Your Lordship.

MR. SALTER: I would like to say at once that I accept my learned friend's assurance that he would not wish to put leading questions on matters of perhaps rather vital importance and I am quite clear

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that I can rely upon his discretion in the matter. The principle involved in my submission is this: that where co-defendants have identical interests, as in this case, I submit then that Counsel for the one should not be allowed, subject to the discretion of the Court always, to cross examine the other. Where they have not identical interests and indeed, the one gives evidence either against or conflicting with the other, then, My Lord, there would be a case for permitting cross examination by the other co-defendant's Counsel. I think that is clear in the case, which to some extent, on that point, is in favour of my learned friend, Mr. Stephen, of *Dryden v. Surrey County Council and Stewart* 1936 2 All England Reports p. 535. That clearly shows, in my submission, that there has to be a clash of interests before cross examination is permitted, and on page 537 in the Judgment of the then Mr. Justice Finlay it says: "It is convenient perhaps to dispose of a point which arose.....in favour of or against the other defendant". And where I understood my learned friend Mr. Morgan to say that he proposed to allow Mr. Stephen to carry on where he had not done so, I submit that it should be refused. 10

COURT: As I have understood the case so far, the case for the two defendants is identical. Their interests are identical and hitherto, the present witness has not said anything derogatory of your client, except that on one occasion he wrote a letter which contained an inaccurate statement. I hold therefore, that Mr. Stephen should not cross examine the first defendant (Baron Uno Carl Samuel Akerhielm) but may examine him as his own witness. 30

MR. STEPHEN: I am much obliged My Lord. I think most of the material I want can be obtained in non leading questions.

MR. MORGAN: May I, although this is against me, give my views on this point? Mr. Morgan states his view.

MR. SALTER: With great respect, I do not share that view, I submit that Mr. Stephen may ask questions of this witness, but those questions should be in the form of Examination-in-Chief and not of cross examination. Mr. Salter continues. 40

COURT: Gives decision. Mr. Stephen may examine the 1st defendant (Baron Akerhielm) as his own witness.

MR. STEPHEN: First of all, Baron Akerhielm, I want to deal with the question raised by His Lordship, which I am sure you follow. Have you lately read the Agreement between Muritas and Mr. Eric Von Huth?
A. Yes, I have.

Q. Would you look at it again; Exhibit 'E'? I think it is the English and the Danish version. Is that document in Danish? A. It is, My Lord.

10 Q. Do you understand the Danish or the English version better? A. It is immaterial to me.

Q. Will you look at Clause 8? First of all, what is the date of the Agreement which you have before you? A. The 29th November, 1947.

Q. That is right; it is Clause 3, not clause 8. Would you read that to yourself, please? Clause 3 reads as follows:-

20 "By an option on the right of exploitation of the Muritas patent in (1) Abyssinia (2) Belgian Congo (3) Madagascar (4) Mosambique (5) Nyasaland (6) North Rhodesia (7) South Rhodesia (8) South West Africa (9) Natal (10) Transvaal-Orange (11) Cape Colony (12) Tanganyika (13) Zanzibar and (14) the Indian Empire with Ceylon, already given to a third party, the Vendor is, until further, prevented from assigning to the purchaser the right of exploitation in the aforesaid 14 territories. However, the Vendor declares himself to be willing if the third party has not on or before June 30th, 1948, alternatively October 1st, 1948, carried out his
30 option by concluding a final agreement of exploitation, to give the purchaser an option on the right of exploitation in all, respectively the remaining part of the 14 countries, for a consideration of £500. 0. 0. for each of the 11 countries mentioned above under 3-13 and £1,000. 0. 0. for each of the countries mentioned under (1) and (2) and £5,000.0.0 for number 14, the Indian Empire and Ceylon together.

40 However, in the event that a third party should acquire the right of exploitation for all respectively part of the 14 countries, the vendor shall bind himself to include in the final agreement drawn up in this respect, stipulations concerning a definite limitation of the right of exploitation within the countries in question, and concerning liquidated damages to be paid by such third party for manufacturing, selling or advertising the Muritas products of such third party outside the countries in question, such liquidated damages to be not less than £250.0.0. for each of the 13 countries first

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mentioned and £1,500.0.0. for (14) the Indian Empire and Ceylon and to assign to the purchaser the right to the said liquidated damages when the purchaser to the vendor establishes the possibility of the third party having exceeded his right of exploitation, and undertakes for his own account to collect the liquidated damages. In this connection, however, reservation shall also be made as to the right of effecting an introductory sale of not more than 20,000 tiles as outlined under 11, paragraph 2". 10

MR.STEPHEN: Now quite shortly, does that refer to a prior option? A. It does.

Q. Do you know who had that prior option? A. I do.

Q. Who? A. Mr. Eric Von Huth and Mr.D.G.Stewart.

Q. Now did you know about that prior option before the circular went out? A. I did.

MR. STEPHEN: And I think you have already told the Court in answer to your own Counsel that you were disturbed by Mr. Stewart figuring in the matter. Is that right? A. Yes. 20

Q. Did you take any steps when you discovered Mr. Stewart was interested. A. I did; I would have nothing to do with it when I discovered Mr. Stewart was involved in the Company in any way whatsoever.

Q. Did you have any meeting in connection with that? A. We had a meeting in Mr.Stewart's office. Mr. Ole Beyer was present.

Q. And what happened? A. I told him that I would not be a Director of the Company if he insisted on him being in the Company. 30

Q. And did you have any other meeting shortly afterwards? A. Yes, one.

Q. And with whom was that meeting? A. It was also with Mr. Stewart and he agreed to give up all these rights and he wrote to Denmark and it was also agreed that Mr. Stewart be withdrawn from the Contract.

Q. Then you said that Mr. Eric Von Huth was also interested with Mr. Stewart? A. Previous to sending out the circular, yes. 40

Q. And what was the nature of their interest that

you were concerned with? A. That Mr. Stewart should be a Director of the Company.

Q. And do you remember if Mr. Stewart had any other interests in the invention, other than Directorship? A. I do not think so.

Q. Would you look at Clause 3 again? Is there a reference in that in the original, to either third parties or a third party? A. Yes.

10 Q. Do you know who the third party was? A. Mr. Stewart.

Q. And as a result of these meetings with Mr. Stewart, did he make any bargain with you and your colleague, Mr. Ole Beyer? A. Yes, I think he did, if I remember rightly.

Q. What was the bargain? A. I think he was offered one of the countries.

Q. What happened to the others? A. Dantile had the right to do what they liked with the other countries.

20 Q. And do you know if that was purely oral or verbal or was it confirmed in writing? A. It was confirmed in writing by Mr. D.G. Stewart.

Q. And was it confirmed in writing before or after the circular went out? A. Before the circular went out.

Q. Have you any idea where that writing is? Have you seen it lately? A. I must have seen it before; but I do not think I have seen it lately I am not absolutely sure about that one.

30 Q. Now as to the representation about successful production and sales in Denmark, what, if any, evidence did you see about that before the circular went out? A. I saw accounts of production costs and sales figures from one of the factories. It was not a definite balance sheet, but it showed what the cost was and the sales figures and you could then see what the profit was.

40 Q. Before the circular went out, did anyone show you any correspondence from Denmark? A. Yes, I saw quite a lot of correspondence from Denmark.

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Q. Did you see any letter from a Mr. Dan Christensen? A. I did.

Q. What letter did you see from Mr. Dan Christensen? Can you remember what it said? A. Not clearly, but I know he invested money; he was.....

MR. SALTER: As this has not been put in, I do object to this witness saying what he has read.

MR. STEPHEN: Now this Exhibit 'A', was that the letter you saw? A. Yes, that is the letter I saw.

Q. From Mr. Dan Christensen? A. Correct. 10

Q. Have you ever seen that letter before? (Letter handed to witness). A. Yes, I have (Letter is Exhibit 'C').

Q. Do you know what Mr. Viggo Ottesen's business was? A. He had several different kinds of business.

Q. Tell me one. A. He had a Land and Estate Agent's business.

Q. Where? A. In Denmark.

Q. What part of Denmark? A. Copenhagen. 20

Q. Have you ever seen that before (Exhibit 'B' handed to witness)? A. Yes, I have.

MR. SALTER: My learned friend is seeking to put in a letter from Muritas and Mr. Von Huth. I think that, in accordance with the general agreement which we adhered to at the beginning that we would accede to letters rather than call witnesses, I will not object to this.

MR. STEPHEN: Did you ever see either of those two letters? If you didn't, just say so? A. Yes, I have. Exhibit 'I'. Letters handed to and accepted by Court as Exhibit 'J' Exhibits 'I' and 'J'. 30

MR. STEPHEN: Now these two last letters I have shown you, do the dates of those letters precede the date of the contract? A. Yes, it does.

MR. SALTER: I can express no opinion on this, My Lord, because it is written in a language I do not understand.

MR. STEPHEN: I propose to put it to the witness, as it is in Danish then perhaps Your Lordship would agree.

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Q. From whom and to whom is that letter? A. It is from Mr. Viggo Ottesen to Mr. Eric Von Huth, (that is Exhibit 'C').

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Q. And dated? A. 21st February, 1948.

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10 Q. Is it a chatty social letter or a business letter? A. It is a business letter and also refers to his wife.

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Q. Has it anything to do with Dantile Ltd.? A. It has.

Further
Examination -
continued.

Q. Does it make any reference to factories? A. It makes reference that the machinery has been delayed and they have been talking with the National Bank, but the shipment of the machinery has been delayed.

20 Q. Does he say anything more about factories?
A. It says Mr. Thomsen is still working at one of the factories; that he has made glazings there and that he is quite conversant with the manufacture and that he has been shown everything else necessary at the factory and that he has a good idea how to produce.

Q. Had Mr. Eric Scheitel any particular business experience? A. Yes, he was a business man.

Q. Of what kind? A. I think he was an engineer, but he was in the motor business.

Q. Now did you see any other enthusiastic letters?
A. One from Mr. Eric Scheitel.

30 Q. Apart from those which have been shown to you?
A. One from Mr. Harpoth; he was working as an architect in Nairobi.

Q. And what is he doing now? A. He is now the City Architect in Copenhagen.

Q. You saw the report from him? A. Yes.

Q. Did you know Mr. Harpoth at the time you saw the Report? A. Yes, I did.

Q. Did you know Mr. Eric Scheitel at the time you saw that letter? A. Yes, I did.

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continued.

COURT: Are these letters all Exhibits? A. Yes.

Exhibit 'K' Letter dated 21st February, 1948, from Mr. Viggo Ottesen to Mr. Eric Von Huth, referring to Dantile Ltd., and Mr. Svend Thomsen, handed to and accepted by Court as Exhibit 'K'.

MR. STEPHEN: Did you discuss any of these letters with any of your co-Directors? A. Yes, we discussed them.

Q. And what opinion did you form? A. I was very impressed. 10

Q. Did you discuss those letters with Mr. Eric Von Huth and Mr. Ole Beyer? A. Yes, I did.

Q. And what impression did Mr. Dan Christensen's letter make on you? A. It made the impression that he was so interested he was prepared even to sign a Promissory Note to pay straight away, which ~~note~~ impressed me. *greatly*

Q. And you have already told the Court that he subscribed some shares; did he in addition, assist the Company in any other way? A. Yes, he might have, but I can't really remember that. 20

Q. How many shares were allotted? A. He invested 25,000 Kroner.

Q. Do you say that is the total allotment? A. No, then there was allotment to Muritas for shares; then there was allotment to Mr. Eric Von Huth.

Q. Do you remember the expression "About one third of the Capital has been subscribed in Denmark"? A. I do.

Q. From memory, and without looking at the memorandum does it say what sum was about one third of the capital? A. About Shs: 70,000.00. 30

Q. And again from memory, can you recall how that Shs: 70,000.00 is made up? A. Roughly, I can. Part was for machinery and patent rights and part was Mr. Dan Christensen's money; part work done by Mr. Eric Von Huth and part was exchange from money invested in Denmark.

Q. Now to assist the Court, is there any English or East African coin which is the approximate 40

equivalent to Kroner? What is the value of one Kroner? A. I think it is 97 cents; about 3% difference for one shilling.

Q. So Shs.25,000/- would be about 25,000 Kroner?

A. Yes, there is about 3% difference.

Q. And when you use the expression 'about one third of the capital has been subscribed in Denmark' what did you intend to convey? A. To convey that that money was actually subscribed. We had bought machinery; paid for services rendered and had cash for it; it was actually invested or subscribed in Denmark.

10

Q. Now what was Mr. Svend Thomsen's particular line of business? A. I think he was a technical man.

Q. What kind of technical man; chemist, mechanic or botanist? A. More mechanic I would say.

Q. Now as regards Mr. Hollister; can you remember how often you saw him before the Company was formed? A. Very frequently.

20

Q. Why was he particularly chosen to be the Company's Advocate? A. There was a particular reason for it; his wife was Scandinavian.

Q. How much time did you and Mr. Ole Beyer give up to the affairs of this Company before and at the time of its formation? A. Considerable time, but it is very difficult to say the exact days or hours.

30

Q. Now a good deal later on you will remember that the brothers Faugust got their Advocates to write you on several occasions, rather aggressive letters?

A. They did.

Q. Now did those letters, their activities, assist the Company in any way? A. No, far from it.

Q. What do you mean by that? A. They rather put everyone against the whole thing. People would not invest money after rumours are spread out.

Q. Can you express any opinion on this, whether the activities of the plaintiffs were of assistance or not, in connection with the affairs of Dantile?

40

MR. SALTER: I do object to the word 'opinion'; let him state the facts and let your Lordship judge.

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continued.

COURT: Is it in any way material?

MR. STEPHEN: We have been asked to give particulars as to how the plaintiffs harassed the Directors and I submit that to confirm those particulars, I am entitled to ask the witness what he felt or thought.

MR. SALTER: His thought may be affected.

COURT: I would have thought it really rested on the terms of the circular letter and what anyone did afterwards.

MR. STEPHEN: I could have wished that that had been in the minds of Counsel all the way through, but we have gone into these matters, and I felt obliged to cover them in case anything is made of them subsequently.

10

Q. For what purpose did you go to Mr.Hollister?

A. For the purpose of getting everything straight before starting the Company.

Q. Were you in fact relying upon your co-Directors or upon Mr.Hollister, or upon whom? A. I was relying upon Mr. Hollister.

20

MR. SALTER: Inaudible to shorthandwriter.

MR. STEPHEN: Yes, I have slipped up there.

Q. At the time the memorandum went out to the various persons to whom it was addressed, did you know anything of patents and patent procedure?

A. No, I did not.

Q. Do you know if, before the circular went out, Mr. Hollister had seen.....

MR. SALTER: I do object to the form of the question.

30

MR. STEPHEN: I can't see yet that it is leading. Had Mr. Hollister been consulted about the patent position before the circular went out?

A. Before the circular went out, Mr.Hollister had the contracts, agreements and everything.

Q. Now the actual memorandum itself; Exhibit 2. Now the first page of that is, as I think we all concede, a letter. A. That is correct.

Q. Now whose was the phraseology of that letter?

A. Mr. Hollister.

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Q. Thank you, and when you looked at that letter, after Mr. Hollister had phrased it, were you satisfied with it, or not? A. We were satisfied with it.

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Q. Did you read it after Mr. Hollister had done it and before you signed it? A. I must have done.

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10 Q. And do you know who prepared the applications for shares? A. Mr. Hollister.

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Q. Now what is the next page; is it a memorandum? A. Yes.

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Examination -
continued.

Q. Now did this memorandum go out at the same time as the letter, or not? A. It was attached to the letter.

Q. Do you know if anyone got a letter without a memorandum? A. No, I do not know of anyone.

Q. Did you at any time notice any discrepancy between the memorandum and the letter? A. No.

20 Q. Do you now think there is any discrepancy between the two? A. No, I don't. There might be one word I could have changed.

Q. Now do you see on the next page 'Amount of Capital required'? A. Yes.

Q. Do you know who prepared that particular page? A. It was prepared by Mr. Hollister.

Q. Do you know if he had any assistance from anyone? A. He might have had.

30 Q. And from whom do you think he would have had assistance? A. He would have figures from the books of the Company.

Q. And who provided the books? A. Mr. Eric Von Huth.

COURT ADJOURNED AT 12.45 p.m.

COURT RESUMED AT 2.30 p.m.

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continued.

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D.W.1. Baron Uno Carl Samuel Akerhielm reminded on former oath.

MR. STEPHEN: I have two further questions I would like to ask this witness, with your Lordship's indulgence.

Q. We mentioned your interview with Mr. Seex; what was the subject of the questions which you were asked by Mr. Seex? A. It was mostly financial questions.

Q. Were any questions asked you of an historical nature? A. Very little, if I remember correctly. 10

Q. Was the subject of patents mentioned? A. Not that I can remember.

Q. Were contracts mentioned. A. Not so far as I remember.

Q. Thank you.

XXMN.

MR. SALTER: Baron Akerhielm would you have before you Exhibit 2, and the annexures.

Q. May I take it that you as one of the signatories to that document, accept responsibility for everything that is contained in it? A. I suppose so. 20

Q. I don't want you to suppose anything; do you accept it or not? A. I do.

Q. And was the object of that circular to attract investments of monies into Dantile Ltd. (in formation)? A. It was like asking those who were interested to become shareholders.

Q. Was the object of the letter to attract investment in Dantile Ltd. (in formation)? A. That can be said. 30

Q. But do you agree? A. I do agree.

Q. And it was addressed only to Scandinavians living in Kenya? A. That is correct.

Q. And they, I suppose in your mind, would be people who were likely to be interested in a project where the signatories are Scandinavians?

A. That was not actually the reason; the reason was that we thought it was a very good business 40

and we thought Scandinavians should get the opportunity to make money in this Company.

Q. Did you think that they, seeing your name there, as Consul, would be more likely to place reliance on that document? A. I was not hardly anyone at that time.

Q. You knew all these people; did you not? A. I did.

10 Q. And you did not think that they knowing you in social ways etc., would be more likely to place reliance on that document? A. They might have done so.

Q. Was it not primarily for that reason you addressed it to Scandinavians? A. No, it was not a public Company; it was not addressed to the public; it was only addressed to friends.

Q. When was Mr. Hollister appointed to act as legal adviser to the Company? A. As early as possible the Company started in formation.

20 Q. When was that? A. I can't remember the exact date but the first time we visited him was the end of the year 1947.

Q. Is Mr. Hollister in Nairobi now? A. As far as I know, yes.

30 Q. Now, I think you told My Lord in your evidence-in-chief, you said "I should think the wording of the circular was Mr. Hollister's". I can only take it that it came from Mr. Hollister's office and we drafted what should be included in the Circular, and then we sent it to him.

Q. So you, Mr (name inaudible to shorthand writer) and Mr. Eric Von Huth sent a draft of what the circular should contain. A. We visited him and discussed the whole matter with him, after we had drafted certain points.

Q. Of course, Mr. Hollister could act only upon information and instructions received from you and the other two? A. No, he had all the papers relevant patent rights, contracts and everything.

40 Q. What was the object of the draft? A. To get everything correctly.

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continued.

Q. And did you tell Mr. Hollister that this tile had been produced and sold successfully in Demark?
A. Most likely.

Q. I want to know. A. He might have taken it from me or from the letters he received.

Q. Did you tell him that: "We have procured the patent rights for most countries in Africa, India and Pakistan"? A. I can't tell for certain; he must have got that from the contracts.

Q. Do you say that you did not tell him that?

A. I did not say so; I may have done so.

10

Q. Did you tell him: "About a third of the capital has already been subscribed in Denmark"? A. I might have done so.

Q. "and the necessary machinery for the first unit has been purchased and is already on its way to Kenya"? A. I might have done so.

Q. "and the machinery for the second unit is on order"? A. I might have done so.

Q. "We have realised from conversations that most of our Scandinavian friends are very interested in this project and anxious to subscribe some Capital"?
A. I might have done so.

20

Q. Well, he could not have got that from any document, could he? Are you trying to hide and shield yourself behind Mr.Hollister? A. I was only one of the parties at his office.

Q. But you have accepted responsibility for every single word written in this document? A. I have, My Lord.

30

Q. Just turn to the second page. This was sent out, I think you told us, at the same time as the circular, which is dated the 24th February, 1948.

MR. MORGAN: It is part of it.

MR. SALTER: Would you turn to the third page where it says: "Objects and Prospects". "We further enclose a form for subscription of the shares and should be grateful for your reply at an early date, as only a limited number of shares still are available". Would you say that was true?

A. Quite true. The bulk of the Capital was still available at that time.

40

Q. The Capital at which you were aiming was Shs. 220,000/-? A. Correct.

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Q. And you say in this circular "Already subscribed Shs.70,000/-"? A. Correct.

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Q. "To be subscribed: Shs.150,000/-"? A. Correct.

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Q. So that although it is limited in the sense that it is limited to Shs.150,000.00 there were, in fact a good many shares which could still be taken up to that date? A. There were.

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10 Q. If that was true, what was the object to make people hurry up? A. It was very likely to take the opportunity straight away.

Cross-
Examination -
continued.

Q. To say 'Come straight away' with a sense of urgency about it.

"The Company has a contract with the patent holders in Denmark for the production rights of a tile used for bathrooms, kitchens, breweries, bakeries, fire places etc. etc."

20 On the 24th February 1948, do you say the Company had such a contract?

A. The Company in formation had it.

Q. What is the document upon which you rely to say that the Company in formation had it? A. The contract with Mr. Eric Von Huth which he had transferred to the Company.

Q. Would you look at this exhibit - Exhibit 'H' - look at the date of that document; is it not the 2nd April, 1948? A. Yes, but it was promised long before.

30 Q. You are relying upon the transfer of such rights which Mr. Eric Von Huth had, to the Company? A. He had already promised it in Mr. Hollister's office.

Q. You have already said that you relied to support your statement, upon the contract between Mr. Eric Von Huth and Muritas? His contract was never there on the 24th April, 1948. That document is the 2nd April, 1948; this is the document upon which you told My Lord you relied. A. It is not, My Lord. I rely upon the verbal promise in Mr. Hollister's office.

40

Q. I see. Now would you look at this letter dated

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the 23rd March, 1948; the second paragraph; does he say this; part of it of course, deals with the Patent Register which I will come to later on; Exhibit 8, a letter dated the 23rd March, 1948, Mr. E.J. Hollister (of Dacre A. Shaw, Buckley & Hollister) to The Secretary, Dantile Ltd. (in formation), the second paragraph reads: "We have searched the Patent Register here and the search revealed that so far no Muritas patents have been registered in this country, and we would suggest that you communicate with Muritas at the earliest possible moment and ask them to register their patents in England since English registration is essential prior to registration here". Did you do that? A. It had already been registered in England. 10

Q. This is your own Advocate.

"It is also necessary for Mr. Von Huth to write a letter to Dantile Ltd., whereby he agrees to transfer all or any of his rights with Muritas to Dantile Ltd. in consideration for shares in the Company and his employment as a salaried manager. Also you should get in touch with Mr. Alber and he should write a letter to Dantile Ltd., agreeing to transfer any rights he may have with Muritas to the Company in return for the share he will receive of the purchase money paid on the transfer of the South African rights to Mr. Stewart". 20

A. That, as far as I remember is only a confirmation of a conversation we had already had.

MR. SALTER: This letter Exhibit 'H' was written presumably in pursuance of the advice in this letter of the 28th March? A. He transferred to Mr. Stewart previous to that letter. 30

Q. I see. So your own Advocate, upon your instructions and after discussions with him, was unaware of that? A. He might have been I can't say.

MR. SALTER: You have seen this letter?

MR. MORGAN: He has already elicited the fact that Mr. Hollister was in Nairobi, and this is a letter from a man whom we all know. Can it be admissible? 40

COURT: Presumably the witness as a Director saw this letter?

Witness: I do not think I have seen it previously; I have seen it now.

MR. MORGAN: The 100% method of proving this would

have been to call Mr. Hollister for the plaintiffs; he gave evidence for the prosecution in the criminal case. If Mr. Hollister is not going to be called how.....

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MR. SALTER: It is, in my submission, wholly relevant.

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MR. MORGAN: Yes, but it is not admissible.

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MR. MORGAN: Although we may still think it is inadmissible we do not object to it going in.

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10 Exhibit 8: Letter dated 23rd March, 1948, Mr. E.J. Hollister to Dantile Ltd. (in formation) handed in and accepted by Court as Ex. 8.

Cross-
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continued.

MR. SALTER: Passing on, if I may. Continuing on page three under 'Objects and Prospects' paragraph 4: "The production of this tile is an entirely new invention, as the tiles are not burnt, but made by a cold process as specified in the contract with the patent holders". Do you say that is true?

20 A. I do, My Lord; in accordance with the information I received and the contract I have seen.

Q. Did you read the letter which was put in by your Counsel from Mr. Eric Von Huth, dated the 27th December, 1950, from Messrs. Cooper Bros. Leslie, Seex & Co.? It is Exhibit 2 marked '8'. Look at paragraph 2 of that letter:

30 2. "The tile was successful in Denmark up to the middle of 1948 when better and cheaper tiles came on the market and when Mr. Ole Beyer was in Denmark he found out that it would not be a paying proposition, as they were lying with big stocks they could not sell. He then got in touch with Mr. Thomsen who had a new invention which Mr. Beyer thought was better than mine. The "Muritas" product was only what we called a war product or "ersatz". And do you still say that this was an entirely new invention? A. At that time it was a new invention as far as I knew.

Q. Continuing with the third page under 'Objects and Prospects' paragraph 5:

40 "The tiles are sold in Denmark at 52 Ore per tile whereas here in Kenya, the suggested price has been put as low as 36 cents. This price can most likely be raised considerably. The purpose of the Company is further to produce anything as specified in the Memorandum and Articles of Association (these

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are at your disposal in our office) but in principal the production of the above-mentioned tiles. Besides the patent right for Kenya and Uganda, the Company holds the option for several other countries in Africa, India and Pakistan". Do you say that is correct? A. It is to my knowledge.

Q. Do you say it was correct when you wrote it?
A. Most certainly.

Q. Let us now turn to the correspondence which is Exhibit 7; I shall have to refer to this a little more later. Will you turn to the letter dated 6th February, 1948? The passage I want you to come to is the one which starts on my second page. It is on your page 3 and it is the second paragraph on that page. We will read the first one as well.

10

COURT: I can't find that.

MR. SALTER: My Lord, it is the letter dated the 6th February 1948 the second letter on the file and the third page.

COURT: Yes, it is my page 4.

20

MR. SALTER: "Muritas Ltd. has in the agreement on the option in respect of the individual countries, as further specified in Clause 3, secured considerable considerations in cash which for 11 countries (3-13) total £5,500.0.0. for 2 countries (1 and 2) £2,000.0.0. and for 14 (India and Ceylon) £5,000.0.0 altogether £12,500.0.0.

Muritas Ltd. would, therefore, be fully justified in demanding no less than £12,500. 0. 0. in cash for the assignment of the 14 countries as a whole, or for each individual country the cash amount stipulated in Clause 3. Subject to the realization of the above-mentioned formal arrangement of the right of option - not later than 1st October, 1948, the right of the first holders of the option will either have been finally acquired or have fallen away - Muritas Ltd. may be open for a negotiation of the assignment of the right to Dantile Ltd. of course, primarily in accordance with the stipulations of Clause 3, of the contract, but alternatively on easier terms as agreed upon. Your suggestion to date a revised contract 27th November, 1947, is impracticable, if not for other reasons for instance the officially certified translation of 8th December, 1947, then because of the stamping.

30

The simplest thing would be to prepare an addendum and we enclose a draft addendum in duplicate".

40

Q. Do you still say that it is true on the 24th February, 1948, that the Company holds the option for several other countries in Africa, India and Pakistan? A. I do, My Lord; it is not a letter to Dantile Ltd. it is a letter I have never seen.

Q. Never mind whether you have seen it or not, it is in answer to Mr. Ole Beyer. A. I have no knowledge of that letter, My Lord.

10 Q. Now turn to the previous letter dated the 7th January, 1948, and just look at the signature to that. It is signed by Mr. Ole Beyer and underneath his signature, Agreed to: Signed: U. Akerhielm. E. Von Huth." So you knew the contents of that letter? A. I did.

20 Q. And in the second paragraph of that letter you say that you wanted a new clause; "What we primarily want amended is your Clause 3. According to that clause the right to sell your patent rights in a number of countries is vested in three private persons and not - such as we would find it fair and reasonable - in Dantile East Africa Ltd. We would urge you, both in your own and in Dantile's interest, to change that clause. The reason why we desire that clause to be changed is that Dantile in our opinion is the creator of the African market, and that that Company or its shareholders, of whom you are one, should, therefore be allowed to derive the profit of any excess price obtained at the sale of the patent rights. If Dantile Ltd. by selling
30 the patent rights at a profit is enabled to pay a handsome dividend to its shareholders, the price of the shares is bound to go up".

Q. So in January, 1948, they were vested in three persons? A. Yes, but we have transferred the rights to us.

Q. If it had been transferred to you, what was the object of putting that in? A. It was the intention to draw up a new contract.

40 Q. It was your intention to get a new contract, but you did not get one, did you? A. The old contract was still standing as good.

Q. And you had no rights in countries 3-13 as the paragraph I have read shows? A. We had the right before we sent our circular.

Q. Do you say that the passage which I have read

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in the letter of the 6th February, 1948, which was a fortnight before the circular letter, that the Company Muritas Ltd. were not prepared to part with these options except for the substantial consideration therein stated, or for some easier terms?

A. It is not a reply to our letter, it is a letter for consideration.

Q. You do not like that as a reply to your letter?

A. Most certainly not.

Q. Listen, the first letter is signed by Mr. Ole Beyer? A. Yes. 10

Q And the address on the letter of this sender is: "Messrs. Beyers (Kenya) Corporation"; is that right?

A. I do not know why it should have that.

Q. And that letter is sent with your full concurrence, because you have written at the bottom:

"Agreed to: Signed: U. Akerhielm". Do you dispute that? A. No.

Q. In other words, what has happened, Mr. Ole Beyer on your behalf has written a letter to Muritas Ltd.? The reply dated 6th February, 1948, is from Jorgen Brock, who is dealing with the affairs of Muritas Ltd., and he refers to a letter of the 7th ultimo, which is the 7th January, 1948. Do you still say that you do not accept it as a reply to that letter; is that what you wish to say? Perhaps you would like to see the original? A. I do not think I have any recollection of having seen that letter before. Several times during the Contract I asked for alterations and we got a letter, previous to this letter, where Muritas accepted the transfer of rights to Dantile Ltd., (in formation) so I cannot see the object of this letter. 20 30

MR. SALTER: I will try to make it very plain to you Baron Akerhielm. On the 7th January, 1948, on the paper of Mr. Ole Beyer of Beyers (Kenya) Corporation a letter is written to Muritas Ltd. with your knowledge and consent and signed by Mr. Ole Beyer. Since it puzzles you so, would you look at the original? A. Yes, that is my signature. 40

Q. Let us turn to this letter you say: "As co-directors of 'Dantile East Africa Ltd.' (in formation) Baron Akerhielm and the writer of this letter would appreciate some minor amendments being made to the contract which your Company has made with

this new Company. What we primarily want to have amended is your Clause 3. According to that clause the right to sell your patent rights in a number of countries is vested in three private persons and not - such as we would find it fair and reasonable - in Dantile East Africa Ltd. We would urge you, both in your own and in Dantile's interest,....."

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continued.

Q. Have you got the Transfer here of those rights?
A. That I can't tell, My Lord.

10 Q Do you know that Mr. Seex could not find the transfer? You heard him say so? A. We had a meeting and he promised to transfer it and the matter was left in the hands of Mr. Hollister.

Q. On the 23rd March, Mr. Hollister is writing to the Company to get a transfer, so the position is, on the 7th January, 1948, you are asking for an amendment to this Clause and saying that it is very unfair because these rights should be in the name of Dantile East Africa. A. Very likely so.

20 Q. Well, if there had been a transfer; but none has been produced.

Q. We go on: "The reason why we desire that clause to be changed is that Dantile in our opinion is the creator of the African market"..... You had not sold a single tile, had you, or since? A. No. "African market, and that that Company or its shareholders, of whom you are one, should therefore, be allowed to derive the profit of any excess price obtained at the sale of the patent rights. If Dantile Ltd., by selling the patent rights at a profit is enabled to pay a handsome dividend to its shareholders, the price of the shares is bound to go up".

30

MR. SALTER: At that time, you had not even formed your Company, had you? A. Very likely not.

Q. You had not, had you? And here you are talking about selling rights, at a profit. From your circular, Exhibit 2, did you not give the impression that you were forming a Company to make and market an entirely new type of tile and that you had obtained the rights to enable you to do so? A. In my opinion we did have the right.

40

Q. Then what did you mean in this letter of the 7th January, saying that you want a change in your contract in order that you can sell the patent rights?

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A. It is very difficult for me to explain but we had patent rights and they were transferred to Dantile Ltd. We had several agreements which the Company had agreed to. Six or seven different letters were written to Muritas asking them to alter certain clauses.

Q. Now would you answer my question, which was: Why in your circular letter were you representing that you had patent rights and that you were going to use them to manufacture and market this tile? What is the object of saying please amend the clauses I have with you, in order that we can sell the rights? A. As far as I can remember we only wanted them in Dantile's name and not in the name of the third party. 10

Q. Would you prefer not to answer? A. I will answer to the best of my ability.

Q. Then you say please furnish that contract with the same date as the first one; what was the object of that? A. I have no idea; it is eight years ago; I can't tell you the reason for it. 20

Q. Very well, let us go on with this letter I was asking about of the 6th February, 1948. Do you still wish to say that this letter of the 6th February, 1948, is not an answer to your letter of the 7th January, 1948? It starts off: "Thank you for your favour of 7th ultimo, the contents of which we have thoroughly studied, and Muritas Ltd. is willing, on principle, to comply with your request". A. It certainly looks like that. 30

Q. Very well; and this is received before your circular letter?

MR. MORGAN: It is about a fortnight before the circular letter.

MR. SALTER: Now the second paragraph, page 2, starting:

"The provisions of clause 3 has likewise been inserted according to Mr. Von Huth's wishes, but on purpose held in the vague form, because Mr. Von Huth both at the initial negotiations and at the negotiations carried on with Muritas Ltd.'s legal adviser had mentioned various persons who were interested together with him in acquiring the sole 40

right for the fourteen districts stated". Would those persons be you? A. Very likely, My Lord.

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Q. Continuing the next paragraph:

"Whilst Muritas Ltd. de facto was aware that negotiations, among other things, about the above division of power, were carried on between Mr. Von Huth and Mr. D.G. Stewart, the Company has not received any formal information or declaration and consequently has not incurred any obligation, nor is Mr. D. G. Stewart entitled to set up any legal claim against Muritas Ltd. Mr.....for observance of an agreement, if any, between Mr. Von Huth and Mr. D. G. Stewart, which is the attitude to clause 8, paragraphs 3 and 4". So there again, you use the expression purposely vague.

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Q. The next paragraph:

"On the other hand not only have several persons been mentioned in the negotiations about the opinion reserved for "3-Mand" (third party), mentioned in clause 3 in respect of the specified 14 countries, but one of these, Mr. Alber, has several times taken part in the negotiations and was present even at the last negotiation but one with Muritas Ltd's legal adviser and has together with Mr. Von Huth caused certain of the 14 countries which used to figure in clause 1, as acquired to be referred to clause 3 as given in option only." Then we come to passages I have already given you. A. We had an agreement; we had an option.

20

30

Q. Do you not agree that there is no assignment; that if there is to be an assignment, it will cost £12,500. 0. 0. or it may be open to easier terms? A. I certainly agree we had to buy the option. We had to pay for it.

Q. And have you ever paid for it? A. No.

40

Q. Not only did you not pay for it, but will you look at the next letter dated the 25th November, 1948, which is written by your co-director Mr. Ole Beyer to Mr. Jorgen Brock of Copenhagen, and which reads:

"Contracts Muritas Ltd.

Please inform your client, Muritas Ltd., of the following:-

1. The Managing Director of our Company, Mr. Eric Von Huth, has retired from his post as Managing Director, but keeps his seat on the board.

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2. Our Company has given up the idea of producing the tile patent protected by Muritas Ltd.

You will understand from the above that our Company's relation to Muritas thus is quite changed for which reason the draft contract submitted will no longer be of importance to any of the parties. As our Company does not want to use Muritas' patent we would ask you to see to it that Muritas returns the block of shares deposited by the Company and the cash amount paid in advance for the patent rights. Our Company will, of course, at any time be willing to give a declaration in writing to the effect that no information received concerning the production of the Muritas tile will be used for the production of a tile from the Muritas specification.

10

Yours faithfully,
p.p. Dantile Ltd.
Sgd. Ole Beyer.

A. I have no objection to that.

MR. SALTER: "The money paid in advance was Shs. 6,500/- for consideration other than cash". Is that right? A. It is very likely so.

20

COURT: Where are you taking that from?

MR. SALTER: Mr. Seex's Report, Schedule 4.

Q. And may I pause there for a moment. If that was consideration paid, consideration other than cash, would you explain to My Lord, what you mean in Exhibit 2, under 'Specification of Capital Required; Patent Rights Shs. 18,000/-'.

A. One is in February, 1948, and the other is November, 1948; lots of things have changed. Mr. Thomsen had then come from Denmark and had shown a better tile and it was only in our interest to produce the best tile possible.

30

Q. Now look at Dantile Ltd., in formation; "Specification of Capital required" "Patent Right Shs.18,000/-". A. Correct.

Q. What was that for? A. Paid in Denmark.

Q. Where were you to exercise the right? A. To exercise the right in Kenya and Uganda.

40

Q. Anywhere else? A. Not to my knowledge.

Q. And do I understand instead of Shs.18,000/- you were allotted Shs.6,500/- in shares?

A. No, I do not think that is correct; a certain amount in cash and a certain amount in shares.

Q. So that this would be Shs.18,000/- and you say in addition to the 6,500 shares? A. I should not think so; that is included.

Q. It is included in the sum 18,000/-; then why do you put capital already subscribed Shs.18,000/-.

10 A. We have the patent right and paid formation expenses.

Q. You have said that the 6,500 shares were part of the Shs.18,000/- Is that right? A. I can't tell for certain, but that is what I think it is.

Q. Very well, that would leave a balance of Shs. 11,500/- . A. Very likely so, My Lord.

Q. When was that paid, the Shs.11,500/-? A. I expect it was paid.

20 Q. I don't expect anything. A. I have no account books here.

Q. Did you not prepare these figures? A. I accept them as correct, but I have no books here. Mr. Harrison and Mr. Eric Von Huth prepared them.

Q. But you have no record whether the money was paid or not? A. These are correct figures in accordance with my recollection, but I cannot say how much was paid in cash or in shares; it is eight years ago.

30 Q. Did you enquire whether that cash had been paid?
A. At that time I certainly must have done.

Q. But you can't remember. In fact you employed Mr. Svend Thomsen to help manufacture or supervise the manufacture of a tile entirely different from the one set out in your circular letter? A. Not entirely different; the same machinery could be used.

Q. I was not asking whether the same machinery could be used.

COURT: That is a fair answer.

40 MR. SALTER: Was this a cement tile? A. It was cement tile, with a plastic covering.

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Q. Now Exhibit 'C' is the letter which one of my learned friends put in. Exhibit 'C' is a letter dated 28th January, 1948, from Mr. Viggo Ottesen to Mr. Eric Von Huth, that is only four days after the circular letter. A. If I remember rightly, the circular letter was in February.

Q. I am much obliged. Half way down: "I spoke to Svend Thomsen and he will be arriving during this week and will immediately start work. Unfortunately most factories are dormant due to stagnation of the sale during the winter season, but Mr. Pinnerup will start up just to teach Thomsen so that will be all right. He will also be taught to mix the glaze, and shown everything else necessary". 10

MR. SALTER: I suppose you read that letter? A. I most certainly did.

Q. And did you understand from that, that Mr. Svend Thomsen was being taught how to do the job? A. He was not employed by the firm at that time, he was employed very much later. 20

Q. Did you not understand from that letter that Mr. Svend Thomsen was an inexperienced man and was going to learn the job? A. Yes.

Q. And was that in respect of the old tile, or the new tile? A. The old tile.

Q. And after that tile was shown not to be a success did you get Mr. Thomsen to experiment? A. We did.

MR. MORGAN: Objects.

MR. SALTER: Do you agree that the old tile proved wholly unsuccessful? A. I do not, My Lord. 30

Q. Why, if it was not wholly unsuccessful, were you never able to sell a single tile? A. Because the tile was not produced.

Q. Why was it not produced? A. Owing to several factors; one was delay in shipment of the machinery; delay in cement; delay in getting the plot; delay by Municipality to pass the plans; then they were passed and alterations for drainage and the whole thing was not ready until two weeks before I retired as Director. They could still have been produced, but they were not, owing to difference in management and Directorship. 40

Q. Would you turn now to Mr. Ole Beyer's Report on Dantile's fate. It is to be found in the correspondence Exhibit 7 following the letter dated 21st July, 1949. The Report is dated the 15th February, 1950, and is headed "REPORT TO B. MOLTKE-LETH ON DANTILE LTD'S FATE". Presumably you have seen it.

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MR. STEPHEN: I do not think anyone would have seen it before this case started.

MR. SALTER: This is the Report by Mr. Ole Beyer.

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10 COURT: My copy is unsigned.

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MR. SALTER: Yes, it is unsigned, but Your Lordship sees the letter dated the 18th February, 1950. That Report has been with your Advocates for about one year. Have you seen it or not? Would you turn to it, now that you have it before you? There is a paragraph which starts: "When the municipality had suggested a site for the factory and permitted the Company to build it, and when machinery etc. had been sent from Denmark, some alarming rumours reached the board. It was heard from Denmark that tiles produced by the same design as those produced by Grau were not durable, and that the factories, which had produced such tiles had large quantities in stock which were unsaleable". In fact, those were the Dantile and Muritas tiles; it is the same kind of tile? A. I can't tell you.

20

Q. Continuing with letter:

30 "Von Huth had exchanged letters with a young friend Mr. Svend Thomsen from Aalborg and when he talked about a new plastic material available for tiles and the Company saw samples of it, it was resolved not to use Grau's production method, of which Grau was informed. At that time no contract with Grau had been signed, for which reason the Company thought itself justified in being refused the amount paid in advance for the production right, and Grau was requested to repay it". Footnote states "X not before the 25.11.48"

40 Q. Grau was the original manufacturer of the tile, wasn't he? A. I think he was the Manager of Muritas Ltd.

Q. It was, in fact, a Muritas tile? A. I think it was.

Q. Continuing with the letter:

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"During my stay in Denmark in the Summer 1948 I examined the market possibilities for tiles equal to those produced by Grau and found that people did not believe in their durability and that the sale was insignificant"

Footnote to letter:-"without contracting or informing".

Q. Did you realise that in 1948? Did he write to you in the Summer of 1948, Mr. Ole Beyer? A. It might be possible.

10

Q. Can we not take it as more definite? Did he not write to you and tell you about the discovery.
A. I think he did; he got to know it was not as durable as expected.

Q. Continuing with the letter:

"I learned that the surface of the good tiles was very brittle and realised that the tile was not good enough to stand the fairly rough treatment it would invariably be exposed to in this country where all cleaning is done by negroes. The tile was a decided substitute product which could only expect to be sold in a period where glazed tiles were unobtainable on the market, and the Company could not base a future production on a substitute product. There is no doubt that Von Huth should have been more attentive in Denmark where he could have obtained expert information, and we ought to have gone further into the matter before we went in for the manufacture, but we trusted the statements Von Huth brought from sources in Denmark.

20

I now contacted Mr. Thomsen who at our instance had examined the possibilities of furnishing a cement tile with a plastic coating, and when the experiments proved successful, he was engaged to produce these tiles for Dantile Ltd. I examined the coating and spoke with the factory Nygaa which made this and found that it suited the purpose. The engineer of the factory further stated that Thomsen was capable of producing tiles with this coating
Mr. Thomsen then went to Kenya.

30

On my return to Kenya I found that Von Huth had relapsed into his old vice 'liquor' while I had been away and as his conduct was because of his drunkenness beneath all criticism it was necessary to ask him to resign. Unfortunately, Thomsen who was an old friend of Huth's was addicted to the same vice, but we hoped by removing Von Huth to be able to keep his nose to the grindstone. When the machines

40

had arrived Thomsen appeared to know nothing and I, therefore asked the Chairman of the Company if I could be allowed to dismiss Thomsen. Besides, I suspected him of stealing from the Company; Akerhielm did not want Thomsen to be dismissed. When the machines had arrived, the Company built a small shed in which to make experiments with the tiles and it was the intention, when the first experiments had turned out favourably, to try to increase the share capital. However, one of the Company's great shareholders spread rumours in the town about the Company's unreliability and therefore spoiled the chances of obtaining more capital".

10

MR. SALTER: You knew then, of course, that the tile was quite useless? A. It was not useless.

Q. You disagree with Mr. Ole Beyer? A. To a certain extent, yes.

20

Q. "There is no doubt that Mr. Von Huth should have been more attentive..... from sources in Denmark". Do you agree with Mr. Ole Beyer over the statement? A. I agree that he relied on the information he received; it was from a very reliable source; it was people whom I knew who had been to Kenya and were well known in Kenya. I could see no reason why we should doubt it.

Q. Is Mr. Ole Beyer in Kenya? A. Yes.

30

Q. Do you agree with your co-Director that: "... we ought to have gone further into the matter before we went in for the manufacture, but we trusted the statements Von Huth brought from sources in Denmark"? A. My conscience is quite clear that we very likely would not have got any more information, not at the time we started the Company.

Q. Do you think seriously that you have had such information about this tile that you could invite people to invest money in the Company? A. Didn't I invest myself My Lord?

40

Q. That is the question; you might have deceived yourself, don't you think? Didn't you tell the plaintiff Mr. G.M.A. Faugust that it was a 'gamble'? A. All business is a gamble.

Q. Do you like gambling with other people's money? A. I do not.

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Q. Did you ever at any time, tell them it was a 'gamble'? A. It was a gamble, but not in that sense of the word.

Q. Well, I want to understand what you do mean?
A. That depends upon what you mean by 'gamble'. You invest your capital to get interest on it and I thought this was a sound investment, but you can say afterwards it was a failure, and I quite agree.

Q. We are all agreed that it was a failure, but what I am putting to you is that you did not take sufficient trouble; that you should have gone further into the matter. A. I do not think so. I think we could still have sold our tiles if we had produced them.

10

Q. When you made those statements about the tile selling successfully and having contracts, did you really care whether they were true or not? A. I certainly did.

Q. What other information did you obtain other than that of Mr. Eric Von Huth? A. We have proved that Mr. Dan Christensen living in Denmark could look at the tiles any day; look at the factory any day and he invested Shs.25,000.00. Mr. Eric Von Huth was a very honest man; he could have got employment anywhere and why should I disbelieve that it was a good thing. He could have received £100 any day he liked.

20

Q. "When the machines had arrived, the Company built a small shed in which to make experiments with the tiles and it was the intention, when the first experiments had turned out favourably, to try to increase the share capital. However, one of the Company's great shareholders spread rumours in the town about the Company's unreliability and therefore, spoiled the chances of obtaining more capital". When you put up your shed, were you experimenting? A. It was more or less a shed to keep the machinery in.

30

Q. I am not interested in the machinery; what were you experimenting with? A. That shed was put up two or three days before I retired as a Director.

40

Q. You were then, in 1949, experimenting with tiles? A. Not to my knowledge.

Q. Then what does this mean. A. There was no factory; I have not written this report.

Q. We will go on: "Mr. Thomsen did nothing but drink and hang about and when his creditors applied to the Company for payment of bills, I asked the new board to dismiss Thomsen, but my request was turned down once more. I wanted to engage a cementer from Denmark who knew his job. Mr. G. Faugust soon got tired of being Chairman of the board and retired, when Mr. L. Faugust was appointed Chairman. Also Mr. L. Faugust refused to dismiss Thomsen although it was proved that he neglected his work and only when I caught Thomsen trying to sell a load of cement belonging to the factory and pocket the money, and likewise proved that he had done the same thing on a previous occasion, Thomsen was turned out. After this, even the Company's liquid resources had dwindled dangerously, for which reason Mr. L. Faugust wanted to retire from the board and his responsibility. There was now only one alternative, namely, liquidation and it was, therefore, resolved at an extraordinary meeting (general) that the Company should go into liquidation. Baron Akerhielm now allowed himself to be re-elected to the board in order to help in the liquidation".

Q. "And the Company's liquid resources had dwindled dangerously....." What do you mean by that?
A. The liquid sources failed.

Q. Mr. Svend Thomsen was the man who had not had very much experience, who appears to have diminished the liquid resources? A. He worked in Denmark specially for the production, but Mr. Thomsen was the man who was going to produce a new investment; he experimented in Denmark and I have seen the plastic tile; but you refer to the old tile and this tile was an entirely new investment.

MR. MORGAN: It was new as far as Kenya was concerned.

MR. SALTER: Reading from the transcript of the notes on page 7:-

"Mr. Couldrey: Did Baron Akerhielm ever make any other remarks to you about the Company? A. Yes, on a few occasions at the General Meeting and other meetings, he said that the shareholders when they placed money in the Company had to place it as a gamble. Mr. Beyer had always backed the shareholders up, those who had placed a lot of money in the Company and said it was not quite fair to them to lose a lot of money in a Company of

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this description, while the smaller shareholders could have a gamble".

MR. SALTER: Did you ever make remarks to Mr. Faugust about 'having a gamble'? Have you ever used that word? A. No

Q. Why do you shrink from it? A. I have never used that word.

Q. Why did you really retire as a Director of this Company in 1949? A. I retired for one reason; rumours that your plaintiffs spread about me; the rumour was that I had collected a lot of money and used a lot of money privately and there was no truth in that. I have never seen a cent from Dan-tile Ltd.

10

Q. Now on page 19, of the typed transcript, referring to my learned friend's cross examination, the last question but one:

"Mr. Morgan: "Now what I want to suggest is that the real conversation was something like this; that Mr. Svend Thomsen in Denmark had been experimenting and he had found a way of making a much better tile and that the Baron thought it might be a good idea to explore the new processes and giving up the Muritas process and starting a new process of his own? A. I don't remember on that occasion that that was brought up, but that subject has been discussed, but I don't remember at what meeting that was".

20

MR. SALTER: Pausing there for a moment, the situation was this, that you or the Company had obtained certain findings on the manufacture of what might be called the old tile, the tile referred to in Exhibit 2. Did you decide to abandon that and start an entirely new process? A. We were thinking about it.

30

Q. When? A. It never came that far; it was naturally up to the Directors to try to improve.

Q. Yes, that sounds very nice, but did you consult your shareholders about that? A. Not to my knowledge.

40

Q. Now on page 20 of the typescript:

"Now why I must press this a little bit is that the Baron is coming here to say on oath that Mr. Svend

Thomsen had discovered a much better tile and in view of the fact that it was obviously more difficult to make a better tile, they are considering not the Muritas process but some other process?

A. I think that is correct.

Q. When did you think about this? A. Some correspondence from Mr. Svend Thomsen in Denmark, that was about the time of the circular letter.

10 Q. You said in Denmark; Mr. Thomsen did not arrive until the end of 1948. What I am putting to you is this; are you saying we had gone away from the tile mentioned in Exhibit 2 and we were experimenting with a new process? A. Not at the time when the circular was sent out. Six months later, yes.

Q. Did you consult the shareholders about that?

A. I did not.

20 Q. Did you on several occasions assure Mr. Faugust and his wife that everything was going on all right? A. It might be possible I did so.

Q. That would not be correct, would it? A. It would be correct.

Q. Why? A. We were still trying to get a plot; we have the machinery out; we had ordered the plastic paint; we had part of the cement out; we were preparing drawings for the buildings and so on; in other words, we hoped to start at an early date.

30 Q. Was it your idea that everything was going on all right? A. It often takes longer than we expect.

Q. Is the position this, that you never acquired the plot at all? A. We certainly did.

Q. Was the plot ever transferred to your Company? A. To my knowledge I think so. I have been to the Land Office and we got the number and we had the plot surveyed.

Q. Was it transferred? A. That I am not sure about; it was allocated in any case.

40 Q. Now the position is this; you got your money on the strength of this circular; you agree with that? A. Most certainly.

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Q. And correct me if I am wrong; no plot was ever transferred to the Company? No tiles were ever produced but experiments were carried out with regard to the new process? A. No, I don't agree. Everything was done to start the Company as early as possible, but the shipment was delayed; it was just after the war. It was in the new Industrial Area we investigated several plots. The Industrial Area was a completely new area; we could not get plots before October. We then had the plans passed in March and I retired on the 19th March.

10

Q. Now before you received the money from these plaintiffs, did you tell them that some of the shares in this Company which you describe as subscribed capital, had not been paid for in cash, but had been paid for in consideration other than cash? A. He never asked me. We have got all the information recorded.

MR. SALTER: You have just told My Lord that all the money was subscribed on the strength of this complete circular Exhibit 2. Did you mention that the shares were subscribed or allotted in respect of consideration other than cash? A. The formation expenses were all costs in connection with the formation.

20

Q. Do you suggest that a person who admittedly has no knowledge of business, who is in fact a farmer, would understand by formation expenses that shares had been taken up for consideration other than money? A. But it says formation expenses; it very clearly says it is formation expenses; which is costs on the formation of the Company.

30

Q. I am putting to you that people who have no knowledge of business companies etc. do you suggest that they would understand at once what you mean? A. They most certainly should do.

Q. And would you tell My Lord that the reason is that they never asked you? Do you say that the reason you never made the point very clear was because they never asked you? A. No, cash is received in any case.

40

Q. You told my learned friend that you thought you had found a buyer for this concern; that I think was March, 1949? A. No, you could call it a buyer or investor whichever you like; it was in the middle of 1948. He wanted to invest a lot of money.

Q. And did you put him off? A. No, I think your clients put him off.

Q. But that would have been very much against their interest? A. No, because they were still in the Company at that time.

Q. My recollection is that you said you had found a buyer, but that he had become disinterested? Are you seriously suggesting that having taken these people's money on the strength of this circular, the project having turned out a disaster for everyone, are you seriously suggesting that it is due to some action on part of the plaintiffs? A. No, I am not.

10

COURT ADJOURNED AT 4.5 p.m.

COURT RESUMED AT 10.45 a.m.

ON WEDNESDAY, the 2nd FEBRUARY, 1955.

D.W.l. Baron Uno Carl Samuel Akerhielm reminded on former oath.

REXMN.

20 MR. MORGAN: Baron Akerhielm you were asked by Mr. Salter quite a lot about transferring rights yesterday afternoon and I want to re-examine you by what you mean by transfer. Have you ever bought or sold land? A. Yes.

Re-Examination.

Q. And how or what form do the negotiations, deal, buying and selling, take? A. You usually start with an agreement of sale; then very much later on, you get a deed of transfer.

30 Q. This agreement for sale; I am talking of land transactions at the moment; is it always in writing or is it sometimes verbal? A. It can be verbal.

Q. And is verbal binding? A. Both are binding.

Q. Analogising assignment of rights and options to deal of land with which you are well familiar, what stage of the deal would you reach at the time you sent out the circular? A. The stage of agreement for sale.

Q. And the letter of Mr.Hollister's which Mr.Salter

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- continued.

put in by consent; there was some objection if I remember correctly; may I see that Exhibit 8 the letter from Mr.Hollister dated 23rd March, 1948. And what do you say about this letter of Mr.Hollister's dated the 23rd March? What is that talking about? A. The agreement for sale had preceded that letter; there is therefore, talking about the second stage, formal documentation.

Q. Now when Mr. Salter was cross examining you, he spoke at some length to you about a letter dated the 7th January, 1948, from Beyer's Corporation. I think it clearly came from Dantile Ltd. to Muritas Ltd. and it was roughly in these lines; it was the first letter in Exhibit 7: "There are a lot of rights and options vested in three private persons. We do not think this right and we would like these formally vested in Dantile Ltd." That was the form of the letter. You remember that? A. Yes.

10

MR. MORGAN: And during cross examination you kept using the phrase 'they transferred the rights to us'. Did your answer mean that at the time of writing the letter they had transferred the rights, or did it mean at the sending out of the circular that it transferred the rights to you? A. At the time of the circular they had been transferred.

20

Q. Now turning to this agreement for sale; first of all, would you tell His Lordship who were the three persons mentioned in the letter? A. Mr. Eric Von Huth, Mr. D.G. Stewart, who also acted for the third party.

30

Q. Who was the third party? A. Mr. Ole Beyer.

Q. And this agreement of 29th November, 1947; I am not at all sure that it is not part of the agreed correspondence. This signed agreement Exhibit 'E' which is dated 29th November, 1947, in a nutshell, what does it confer on Muritas and by whom? A. It confers the right of Kenya and Uganda on to Mr.Eric Von Huth. For the remaining countries Mr.Eric Von Huth as third party had a second option.

Q. This letter having been dispatched from Kenya to Denmark in February, 1948, was anything done and did anything happen in Nairobi, independent of that letter? A. We had a meeting with Mr.D.G.Stewart.

40

COURT: May I see that exhibit?

MR. MORGAN: The witness has slipped up; he has no clear recollection of it.

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COURT: Presumably it is signed on behalf of Dantile Ltd.

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MR. MORGAN: In point of fact, Mr. Eric Von Huth.

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Q. What happened to these first options which are mentioned in that agreement which are held by the three in Mr. D.G. Stewart? A. Mr. D.G. Stewart agreed to transfer his rights to Dantile Ltd.

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10 Q. Was that between the 7th January and the 23rd February. A. It was before we sent out the circular and it was confirmed in writing prior to that date, before we sent out the circular.

Re-Examination
- continued.

COURT: Before you sent out the circular? A. Yes.

MR. MORGAN: Now I am in some difficulty, My Lord. I had these written confirmations signed by Mr.D.G. Stewart, and Mr. Salter has objected to their admissibility, as Mr. Stewart is apparently not called. There was written confirmation.

20 MR. SALTER: Objection. Contents of document which are inadmissible.

MR. MORGAN: We say in a certain letter, we have contracts which my learned friend objects to.

COURT: This witness can say that a particular letter was received by Dantile Ltd. of which he was then a Director.

30 MR. SALTER: My learned friend knows perfectly well the grounds of my objection to this. He has shown a letter which is purported to be written by Mr.D.G. Stewart and a co-defendant. It is perfectly admissible for the co-defendant to be called and so I resent that letter. Anything which this witness says is inadmissible.

MR. MORGAN: And yet my learned friend reads from a letter by Mr. Ole Beyer in Denmark: I cannot understand you Mr. Salter. It is not returning the honour.

MR. SALTER: The answer is that Mr. Ole Beyer can be called.

COURT: This letter was not laid before the Board

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of Dantile Ltd. I suppose this witness could prove it.

MR. SALTER: This witness is saying that he believes this, that and the other and that there was a contract.

COURT: He is saying that it had been.

MR. SALTER: At the present moment something is being treated as a contract which at the present moment is not a contract at all. A contract is something which is usually in the form of exchange of correspondence, a document or something like that.

10

COURT: I would have thought it was possible to have obtained from this witness the grounds of his statement he has just made; that is, the transfer of rights was confirmed in writing before the circular letter was issued.

MR. SALTER: If it is the case that a letter was placed before the Board and considered and in fact, was confirmation of a contract, then I withdraw my objection at once.

20

COURT: He says, he has told us, that Mr.D.G.Stewart had had the first option and agreed to transfer his rights.

MR. SALTER: What has been confirmed in writing?

COURT: Agreement to transfer.

MR. SALTER: An agreement is an offer and acceptance and not an offer of transfer. This letter can be strictly proved quite easily, by the co-defendant.

MR. MORGAN: It may not be proved to prove the actual transfer, but it is admissible; that is, admissible for the grounds.

30

COURT: The position is that this witness has said that they had an agreement for transfer of those rights; possibly as lawyers, we may think it is not an agreement.

MR. SALTER: If this witness says that there was a discussion at the Board Meeting and this man was considered, I have no objection whatsoever. What I object to is that this witness seeks to put a letter to him which is not, in my submission admissible

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in evidence; that is what I object to. I have not objected to other documents, although they were not admissible, in my submission.

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COURT: I think if this witness is now asked the grounds on which he has made this statement.

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MR. MORGAN: Perhaps I can go back to the previous answer. You said you had a verbal discussion with Mr. D.G. Stewart about the prior option. So you did have a meeting with Mr. Stewart, who is away?

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10 A. Myself, Mr. Eric Von Huth and Mr. Ole Beyer.

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Q. And what was agreed at that meeting? A. It was agreed Mr. D.G. Stewart should transfer all his rights to Dantile Ltd.

Re-Examination
- continued.

Q. And you have said, I do not know how far Mr. Salter may object to the letter, that there was some written confirmation? A. He did agree at the meeting to transfer all his rights.

20 Q. I am satisfied with that; a verbal agreement is sufficient. Was there consideration? A. Yes, there was. He was given the patent right for South Africa as compensation and that was also confirmed in writing.

Q. And all this you have said, was between this letter to Denmark and before you sent out the circular? A. It was.

30 Q. Now what about Mr. Eric Von Huth? Again you were talking to Mr. Salter yesterday; they had transferred their rights; what had Mr. Eric Von Huth done by way of transfer of rights? A. He had also agreed to a transfer; it was also confirmed later. That was confirmed later in the minutes.

Q. Now I just want to ask one or two other short points. Mr. Salter was upset that you had described something new which had been going on for eighteen months. Would you elaborate what you mean by 'new'? A. It was a modern product and it was definitely new in Kenya or Africa.

COURT: This is Muritas?

MR. MORGAN: Yes, Muritas cold process tile.

40 MR. MORGAN: And I want this absolutely clear; at the time of the sending out of the letter, had you

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heard of a new and better tile, or did it come after the sending of the circular? A. After the circular.

Q. And when you resigned for reasons which you gave to Mr. Salter, you said in fact you signed a Declaration of Solvency? A. I did.

Q. And I think Mr. Seex said that at that time the shares were worth roughly Shs.15/- per share?

COURT: Is that correct?

MR. MORGAN: When did you resign Baron Akerhielm?
A. March 1949.

10

Q. I am interested in what Mr. Seex said the shares were worth at the time of your resignation. Forget Mr. Seex; perhaps that is not correct. Were the shares worth something at any rate, at the time of your resignation? A. In my view, definitely, yes.

COURT: Who resigned in March, 1949?

MR. MORGAN: Forget the Shs.15/- I think I misled you over that, but the shares were definitely worth something. A. Yes, they were definitely worth something.

20

REXMN.

Further
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MR. STEPHEN: It was suggested Baron Akerhielm that you were sheltering behind Mr. Hollister. What experience of Company formations had you and your colleagues? A. None, My Lord, or hardly any.

Q. And of patents? A. None whatsoever.

Q. Now if you were forming a Company today, would you consult any class of professional person?
A. I would certainly see a lawyer.

Q. And for what did you consult Mr. Hollister?
A. To see that everything was correctly made; that all figures and everything would be checked by him.

30

Q. Now can you say whether Mr. Eric Von Huth got any consideration for agreeing to transfer his rights. A. He didn't, except in Denmark.

Q. And you told us yesterday that you discussed with Mr. Eric Von Huth and Mr. Ole Beyer these letters from Mr. Dan Christensen and Mr. Viggo Ottesen

and others which were written about January, 1948.
Do you remember that? A. I do.

MR. STEPHEN: Were you satisfied with those discussions? A. I was.

Q. Did Mr. Ole Beyer express to you any qualms or satisfaction? A. He was satisfied, too.

Q. And what was Mr. Eric Von Huth's decision?
A. He was also satisfied.

Q. Thank you.

10 COURT: There is one point on this last answer; the witness has said that he had no consideration.
A. That is what I said; except in Denmark.

MR. MORGAN: He was Director and co-owner of shares in the Company and it was naturally in his interest that the Company should get as much as possible. He got no extra payment for the transfer of the patent right, My Lord.

MR. MORGAN: I think Mr. Seex said he got something as concessionaire for Kenya and Uganda.

20 COURT: Yes, I have seen it on the record somewhere.

MR. MORGAN: I am not calling any evidence, other than Baron Akerhielm and that is the close of the 1st defendant's (Baron Akerhielm) case, and it is also the close of the case for the 2nd defendant (Mr. Eric Von Huth).

COURT: I thought the case as against the 2nd defendant was withdrawn?

MR. COULDREY: The situation is that where Order 25 Rule 2.....

30 COURT: Here is my note: "The 2nd defendant is dead and it is definitely stated that we are not proceeding against him".

MR. COULDREY: The position is that the procedure is laid down in Order 25 Rule 2; "Where one defendant died and the cause of action survives against the other defendant, the Court merely makes a note to that effect on the file and the suit proceeds against the other defendant".

MR. MORGAN: It looks as if the case against the 2nd

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refer to as the Circular Letter, dated the 24th February, 1948, was sent to the 1st Plaintiff; another copy, dated the 23rd February, 1948, was sent to the 2nd Plaintiff. The 3rd Plaintiff is the wife of the 2nd Plaintiff.

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The letter in question contained the following statements:

- (a) "The tile has been produced and sold successfully in Denmark".
- 10 (b) "We have procured the Patent Rights for most countries in Africa, India and Pakistan."
- (c) "About one third of the Capital has already been subscribed in Denmark."

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The Plaintiffs allege that each of these statements was untrue; and that in particular, the Defendants had not procured the Patent Rights for most countries in Africa, India and Pakistan; nor had one third of the Capital already been subscribed in Denmark.

- 20 The Plaintiffs also observe that the Defendants omitted to state in the Circular Letter that free shares were to be issued to each of them as well as to other persons. The Plaintiffs allege that the Defendants, at the time when they made the representations in question, either knew them to be false and untrue, or made them recklessly, not caring whether they were true or false.

- 30 The Plaintiffs state that, acting on the faith of such representations and believing them to be true, they purchased shares in the Company as follows:

1st Plaintiff	500 Ordinary Shares for Shs. 10,000/-;
2nd Plaintiff	1,500 Ordinary Shares for Shs. 30,000/-

and 250 Preference Shares for Shs.5,000/- of which he gave to the 3rd Plaintiff 500 Ordinary Shares and 250 Preference Shares, which were registered in her name.

- 40 The Plaintiffs further allege that the shares have ever since been worthless, or worth much less than the price they paid, and in consequence the Plaintiffs have suffered damage as follows:

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1st Plaintiff Shs. 10,000/-
2nd Plaintiff Shs. 20,000/- or alternatively
Shs.35,000/-

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3rd Plaintiff Shs. 15,000/- or alternatively
nil as they have lost the interest thereon and the
use thereof.

By his defence the 1st Defendant, Baron Akerhielm, denies that the representations in question were false. He further maintains that if any of the representations was false, he had reasonable grounds to believe, and did up to the time of the allotment of shares and thereafter, believe, that each such representation was true; and that he acted in all matters in perfect good faith and neither fraudulently nor with intent to deceive. 10

The 1st Defendant, also maintains that the Plaintiffs relied on their own judgment in subscribing for shares: he denies that the shares are now worthless and claims that if they have dropped in value, this is largely due to the actions of the Plaintiffs. 20

The 3rd Defendant Mr. Ole Beyer, has entered a defence to the same effect.

At the commencement of the hearing it was stated that the 2nd Defendant, Eric Von Huth, is now dead, and that the Plaintiffs have dropped their claim as against his estate.

The Plaintiffs also withdrew the claim, made by them in their Plaint, that the Circular Letter was a prospectus giving them the right to compensation under Section 38(1) of the Companies Ordinance. 30

The action is, therefore, one of deceit. To determine precisely what the Plaintiffs have to prove, the Court need not look beyond the Judgment of the House of Lords in DERRY v. PEEK, decided in 1889 and reported in 14 Appeal Cases at page 337 et seq

The head note to that Report reads as follows:

"In an action of deceit the Plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, 40

or recklessly, without caring whether it be true or false.

A false statement made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud, but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit."

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Perusal of the Report shows that this head-note correctly records the view of all the noble Lords by whom the Appeal was heard.

It follows that, in order to succeed, the Plaintiffs must prove:

1. That the Circular Letter contains one or more false statements;
2. That such statement was not made by the Defendants in the honest belief that it was true;
- 20 3. That by reason of such false statement the Plaintiffs were induced to buy shares in the Company;
4. That in consequence, the Plaintiffs have suffered loss;
5. As regards the 3rd Plaintiff, Mrs. Barbro Wilhelmina Elizabeth Faugust, that she has a cause of action.

The material facts are as follows:

30 The late Mr. Erik Von Huth, who was originally named as the 2nd Defendant, while on a visit to Denmark, became interested in a process for the manufacture of tiles without firing, patented in Denmark by a Company of the name of Muritas A/S.

Mr. Von Huth thought that the tiles might profitably be manufactured by this process in Kenya and got in touch with Mr. D.G. Stewart, an Accountant practising in Nairobi. Subsequently, he came to Kenya and invited the 1st and 3rd Defendants to take part with him in the enterprise.

40

On the 29th November, 1947, an Agreement was signed in Denmark between Muritas A/S (thereinafter called the Vendor) and Mr. Erik Von Huth on behalf of DANTILES EAST AFRICA LIMITED (thereinafter called the Purchaser).

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The first three clauses of this Agreement are as follows:

(I) The Vendor agrees to assign unto the purchaser the sole right of exploitation within the territories (the countries, the governmental districts) of Kenya and Uganda in East Africa of the manufacture of MURIT tiles which is patented in this country, with priority right, by the vendor's application for Danish Letters Patent of November 5th, 1946, No. 4330. 10

(II) The purchaser's right of exploitation shall be limited to the aforesaid two territories, within which he shall be entitled to manufacture, sell and advertise MURIT glazing powder or MURIT products of any kind, while the purchaser must not in any other territory (country or governmental district) undertake any of the above-mentioned acts before a special agreement concerning such exploitation has been entered into with the vendor in regard to each territory (country or governmental district). 20

However the purchaser shall be entitled to sell a quantity not exceeding 20,000 MURIT tiles for the purpose of introducing the article in any other territory in which the vendor has not advised the purchaser that he has, by a final agreement, assigned, the right of exploitation to a third party.

(III) By an option on the right of exploitation of the MURITAS patent in: 30

1. Abyssinia
2. Belgian Congo
3. Madagascar
4. Mosambique
5. Nyasaland
6. Northern Rhodesia
7. Southern Rhodesia
8. South West Africa
9. Natal
10. Transvaal-Orange 40
11. Cape Colony
12. Tanganyika
13. Zanzibar
14. The Indian Empire with Ceylon

already given to a third party, the vendor is, until further, prevented from assigning to the purchaser the right of exploitation in the aforesaid 14 territories. However, the vendor

declares himself to be willing, if the third party has not on or before June 30th, 1948, alternatively October 1st 1948, carried out his option by concluding a final agreement of exploitation, to give the purchaser an option on the right of exploitation in all, respectively the remaining part of the 14 countries, for a consideration of £500. 0. 0. for each of the 11 countries mentioned above under 3-13, and £1,000. 0. 0. for each of the countries mentioned under (1) and (2) and £5000. 0. 0. for No.14, the Indian Empire and Ceylon together.

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However, in the event that a third party should acquire the right of exploitation for all, respectively part of the 14 countries, the vendor shall bind himself to include in the final agreement drawn up in this respect, stipulations concerning a definite limitation of the right of exploitation within the countries in question, and concerning liquidated damages to be paid by such third party for manufacturing, selling or advertising the MURIT products of such third party outside the countries in question, such liquidation damages to be not less than £250. 0. 0. for each of the 13 countries first mentioned and £1,500. 0. 0. for (14) the Indian Empire and Ceylon; and to assign to the purchaser the right to the said liquidated damages when the purchaser to the vendor establishes the possibility of the third party having exceeded his right of exploitation, and undertakes for his own account to collect the liquidated damages.

In this connection, however, reservation shall also be made as to the right of effecting an introductory sale of not more than 20,000 tiles as outlined under II, paragraph 2.

The 1st Defendant, Baron Akerhielm, has stated in evidence that the third party referred to in Clause 3 consisted of Mr. Von Huth and Mr.D.G.Stewart. He has also stated that an Agreement was come to whereby Mr. D.G. Stewart surrendered his interests except as regards South Africa; and that Mr. Von Huth also agreed to transfer his rights under Clause III to DANTILE LIMITED.

No evidence in writing of the Agreement with Mr. D.G. Stewart is before the Court. As regards the Agreement with Mr. Von Huth, Baron Akerhielm

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stated that Mr. Von Huth agreed verbally to transfer his interests before the Circular Letter was issued. This Agreement was subsequently confirmed in writing by an unstamped memorandum (Exhibit "H") in the following terms:

"I Mr. Erik Von Huth, the undersigned, hereby transfer all my rights which I may possess in A/S MURITAS, Copenhagen, to DANTILE LIMITED, Nairobi. Nairobi 2nd April, 1948."

The Circular Letter which forms the basis of the claim by the Plaintiffs is in the following terms:- 10

"The undersigned are forming a Private Limited Company in Kenya for the purpose of producing a cold process tile, used for bathroom etc. The tile has been produced and sold successfully in Denmark.

We have procured the patent rights for most countries in Africa, India and Pakistan.

About a third of the capital has already been subscribed in Denmark and the necessary machinery for the first unit has been purchased and is already on its way to Kenya and the machinery for the second unit is on order. 20

We have realised from conversations that most of our Scandinavian friends are very interested in this project and anxious to subscribe some Capital.

For your information we enclose herewith a Memorandum showing the proposed formation of the Company and a statement of the expected profit and loss account for the first year. 30

Will you please let us know at your early convenience whether you wish to take up any shares.

Any further information you may like to have will gladly be given by us at our offices c/o Beyer's Kenya Corporation, Kingsway Street, Nairobi."

Attached to this letter was a form of subscription for shares and also a two page "Memorandum on DANTILE LIMITED." "STRICTLY PRIVATE AND CONFIDENTIAL. Not for publication." This memorandum was separately signed by the Defendants. 40

There was also attached an account headed "Expected Production Account for the first six months

with one unit," and another account headed "Expected production Account for the second half year with two Units." The latter account was dated the 29th January, 1948, and was signed by the Defendants.

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It is common ground between the parties that the documents annexed to the Circular Letter must be taken as part of it and that the statements contained in the letter must be read in the light of those in the annexures.

10 The 1st and 2nd Plaintiffs having read and considered this Circular Letter subscribed for shares in the Company. The 2nd Plaintiff, who had discussed the matter with the 3rd Plaintiff, had 500 Ordinary Shares and 250 Preference Shares registered in her name. The purchase money for these shares was paid by the 2nd Defendant.

20 A considerable body of evidence has been given as to the subsequent history of the Company, of which the Defendants became the Directors, Mr. Erik Von Huth being appointed Managing Director.

Of later events, however, all that need be said is that no tiles were ever produced by the Company; that on the 30th August, 1950, on the application of the Plaintiffs, Mr. E.B. Seex, Chartered Accountant, was appointed by the Court as Inspector to inspect the affairs of the Company; and that the Company has now gone into liquidation. Mr. Seex has given evidence in this action, and his Official Report has been put in evidence.

30 Before dealing with the alleged misrepresentations it will be most convenient to consider the Plaintiffs' point that the Defendants omitted to state in the Circular Letter that free shares were to be issued to each of them, as well as to other persons.

40 In taking this point, the Plaintiffs appear to be under the impression that shares were being issued to the Defendants and others as free gifts, without the recipients making any return. Clearly, this was something which no Company could do; and if the Plaintiffs had thought fit to enquire, they would have discovered that the shares issued to the Defendants and Mr. Dan Christensen were in consideration of their services in the formation of the Company, and that shares had been issued to MURITAS A/s in payment for the agreement to assign

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their patent. As the Circular Letter contained the paragraph "Any further information you make like to have will gladly be given by us at our offices", it is clear that the Plaintiffs have only themselves to blame if they made an enquiry as to the issue of shares for considerations other than cash.

I will now consider the representations which the Plaintiffs allege to be false.

The first of these is that: "The tile has been produced and sold successfully in Denmark." 10

This claim, however, was abandoned by Mr. Salter in his closing address on behalf of the Plaintiffs.

He then said:

"The evidence, I think, cannot be challenged. The evidence is that this was the tile which was produced some time during the War; may be not of particularly good quality, but which sold rapidly up to the middle of 1948 in Denmark."

It need only be added that the 1st Defendant has stated in evidence: "I saw figures as to production costs and sales figures for one factory in Denmark." 20

I hold therefore, that the statement that: "the tile has been produced and sold successfully in Denmark" was true.

I will now deal with the statement that: "About a third of the Capital has already been subscribed in Denmark."

It was argued by Mr. Salter on behalf of the Plaintiffs that "subscribed" means subscribed in cash; and that to include in this term shares issued for a consideration other than cash is misrepresentation. 30

In support of this argument he has cited the judgment in *ARNISON v. SMITH*, decided in 1889 and reported in 41 Chancery Division at page 348.

For the defence, it was submitted that this judgment is not wholly to be relied upon in view of the judgment in *DERRY v. PEEK*, to which reference has already been made, which was decided later in 40

the same year. That is a question, however, which need not be determined for the purpose of this suit.

If the phrase: "About a third of the Capital has already been subscribed in Denmark" stood alone, a reader might reasonably infer that this meant subscribed in cash. When, however, he turned to the second page of the "Memorandum on DANTILE LIMITED" attached to the Circular Letter, he would find the following under the heading "Specification of Capital Required."

10

Patent Right	Shs. 18,000.00
Formation expenses	37,000.00
Travel account	4,000.00
Machinery and Plant plus freight	9,500.00
Exchange Danish Kr. to £	<u>1,500.00</u>
CAPITAL ALREADY SUBSCRIBED:	<u>70,000.00</u>

From this it is clear that the "Capital Already Subscribed" included shares issued for considerations other than cash; indeed upon the face of it, it would appear that it consisted entirely of such shares.

20

If the Plaintiffs had any doubt as to the meaning of these items they had only to enquire at the Company's offices. Actually, the 2nd Plaintiff did go to the office and make enquiries before he signed his cheque for the purchase of shares in the Company, but there is no evidence that he then made enquiries as to the Capital subscribed in Denmark.

30

The proposed Capital of the Company was Shs. 220,000.00 of which, as shown in the Memorandum Shs.70,000.00, had already been subscribed. Thus the statement to which the Plaintiffs object would be true, provided that the whole Shs.70,000.00 had, in fact, been subscribed in Denmark. This is an aspect of the matter upon which Mr.Salter has not laid any stress, but it is clearly important.

The Register of Shareholders in DANTILE LIMITED has been put in evidence as part of Exhibit 5. In this Register the names and addresses of all Shareholders are entered, with the value in Pounds of the shares allotted to them respectively.

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Upon examination of the Register it will be noted that the only shareholders with addresses in Denmark are as follows :-

	<u>NAME</u>	<u>TOTAL VALUE OF SHARES HELD</u>
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If to this amount there be added the value of the Shares registered in the name of Eric Von Huth for services rendered by him in Denmark: £1,100, we arrive at a total of £2,850, that is to say Shs. 57,000/-: which falls short by more than Shs. 16,000.00. of a third of the total Capital of the Company.

10

On this ground I hold that the statement that "About a third of the Capital has already been subscribed in Denmark" was untrue.

The third statement on which the Plaintiffs base their claim is that: "We have procured the patent rights for most countries in Africa, India and Pakistan."

20

The position at the time when the Circular Letter was issued that under the Agreement made on the 29th November, 1947, between Muritas A/S and DANVILLE EAST AFRICA LIMITED, (Exhibit "E") Muritas had agreed to assign to DANVILLE the sole right of exploitation within the territories of Kenya and Uganda. There is no evidence that any attempt had then been made to register the patent rights in Kenya and Uganda; or indeed, to take the necessary preliminary step of registration in the United Kingdom. As far, therefore, as Kenya and Uganda are concerned, it was untrue to say that the Defendants had procured the patent rights. No patent rights for Kenya or Uganda were then in existence.

30

As regards the other African Territories and as regards India and Pakistan, according to the uncontradicted evidence of the 1st Defendant, the option held by Mr. Von Huth and Mr. D.G. Stewart had been split; Mr. D.G. Stewart retained the sole right to exercise the option in respect of the South African provinces mentioned in Clause 3 of the Agreement, and surrendered his right as regards

40

the remaining territories mentioned in that Clause to DANTILE LIMITED, to whom also Mr. Von Huth had transferred his interests in the option.

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- continued.

10 Assuming that this is a correct statement of the position at the time when the Circular Letter was issued, while it was clearly not the fact that the Defendants had "Procured the patent rights for most countries in Africa, India and Pakistan" as stated in the Circular Letter, it was not untrue to say, as was stated in the attached Memorandum, "The Company hold the option for several other countries in Africa, India and Pakistan."

The next question is whether the Defendants honestly believed that the statements in the Circular Letter and Annexures were true.

20 The 1st Defendant Baron Akerhielm has given evidence and has been examined and cross examined at considerable length. He stated: "We prepared the rough draft of the Circular Letter which was finally settled by Mr. Hollister, the Company's Lawyer. We then signed it and I did not consider that anything in it was untrue" "It was quite true that the tile had been produced and sold in Denmark. As regards the patent rights, that was a true statement according to my information. It was also true that one third of the Capital had been subscribed in Denmark" "I think the wording of the Circular Letter was settled by Mr. Hollister. We prepared the first draft" "I saw figures as to production costs and sales figures for one factory in Denmark" "I was relying upon Mr. Hollister to get everything straight. I knew nothing of patent procedure. Before the Circular Letter went out Mr. Hollister had all Contracts, letters and Agreements before him. The wording of the Circular Letter was Mr. Hollister's and I was satisfied with it" "The "Specification of Capital Required" was prepared by Mr. Hollister with assistance from Mr. Von Huth."

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The Plaintiffs have put in evidence a letter dated the 23rd March, 1948, from Mr. Hollister to the Secretary, Dantile Limited (In formation) (Exhibit 8), which contains the following paragraph:

"We have searched the Patent Register here and the search revealed that so far, no Muritas

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Supreme Court
of Kenya.

No.12.

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Justice Corrie.

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- continued.

Patents have been registered in this country, and we would suggest that you communicate with Muritas at the earliest possible moment and ask them to register their Patents in England, since English registration is essential prior to registration here. It is also necessary for Mr. Von Huth to write a letter to Dantile Limited whereby he agrees to transfer all or any of his rights with Muritas to Dantile Limited in consideration for shares in the Company and his employment as a salaried Manager. Also, you should get in touch with Mr. Alber and he should write a letter to Dantile Limited agreeing to transfer any rights he may have with Muritas to the Company in return for the share he will receive of the purchase money paid on the transfer of the South African rights to Mr. Stewart."

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In view of the terms of this paragraph it is somewhat surprising that rather more than a month earlier Mr. Hollister, an Advocate, should have approved of the terms of the Circular Letter. Mr. Hollister however, has not been called to say that he did not approve and the evidence of Baron Akerhielm in this respect stands uncontradicted.

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Having heard the evidence of Baron Akerhielm, I am satisfied that he signed the Circular Letter in good faith, honestly believing that the terms of that letter and of the documents attached to it were true.

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The case as regards the 3rd Defendant Mr. Ole Beyer stands upon a different footing, as Mr. Beyer, though stated to be in Kenya at the time of the hearing of the action, has not seen fit to give evidence. There was, of course, no obligation upon Mr. Beyer to do so. It is for a Plaintiff to prove his case and there is, in general, no reason for a Defendant who is satisfied that the Plaintiff's case must fail, to give evidence on his own behalf.

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The circumstances of this action, however, are somewhat unusual. This is an action of deceit, which involves an allegation by the Plaintiffs of fraud on the part of the Defendants; and fraud in such a case, has no mere technical meaning, but involves moral turpitude. In such circumstances, it

is surprising that Mr. Beyer who occupied an official position, should not have been eager to come forward and deny the charges against him. In the absence of his evidence, the Court has to determine whether the Plaintiffs have made good their case against him.

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Supreme Court
of Kenya.

No.12.

10 The case established by the Plaintiffs is that two statements contained in the Circular Letter have been held by this Court to be untrue. As
20 against this, there is in favour of Mr. Beyer, Baron Akerhielm's evidence that the terms of this Circular Letter and annexures were finally settled by Mr. Hollister, the Company's Lawyer, who had all the Contracts, Letters and Agreements before him. In such circumstances, Mr. Beyer was entitled to rely upon the accuracy of the wording of the Circular Letter and annexures as settled by Mr. Hollister, and honestly to believe that the statements contained in them were true; and the Plaintiffs have failed to prove that he did not, in fact do so.

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Justice Corrie.
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- continued.

The Plaintiffs' claim therefore, fails as against both Defendants, and their action must be dismissed.

The Plaintiffs will pay the costs of the 1st and 3rd Defendants.

O.C.K. Corrie,
JUDGE.

NAIROBI,
18th May, 1955.

30 SEAL OF HER MAJESTY'S SUPREME COURT OF KENYA.

No. 13.

No.13.

(Heading as in No. 12)

DECREE.

Decree.

18th July, 1955.

CLAIM for (1) Damages, (2) In the alternative, compensation under Section 38 (1) of the Companies Ordinance Cap.288(3) Interest at Court rates, (4) Costs of the suit.

40 THIS SUIT coming on the 17th, 18th, 19th, and 31st days of January, and 1st and 2nd days of February, 1955, for hearing and on the 18th day of May, 1955, for Judgment before The Honourable Mr. Justice Corrie,

In the
Supreme Court
of Kenya.

No.13.
Decree.
18th July, 1955
- continued.

in the presence of Counsel for the Plaintiff, Counsel for the 1st Defendant, Counsel for the 3rd Defendant and in the absence of the 2nd Defendant who had died subsequent to the institution of the case, IT IS ORDERED that the Plaintiffs' suit against the 1st and the 3rd Defendants be dismissed AND IT IS FURTHER ORDERED that the Plaintiffs do pay to the 1st Defendant and the 3rd Defendant, their costs of the suit to be taxed.

GIVEN under my hand and the Seal of the Court at Nairobi this 18th day of July, 1955. 10

Sgd. O.C.K. Corrie,
JUDGE
SUPREME COURT OF KENYA.

SEAL OF HER MAJESTY'S SUPREME COURT OF KENYA.

No.14.
Notice of
Appeal.
25th May, 1955.

No. 14.
(Heading as in No. 12)

NOTICE OF APPEAL

TAKE NOTICE that ROLF DE MARE GUY MAGNUS ALEXANDER FAUGUST and BARBRO WILHELMINA ELISABETH FAUGUST the Plaintiffs herein, being dissatisfied with the decision of the Honourable Mr. Justice Corrie given herein at Nairobi on the 18th day of May 1955, intend to appeal to Her Majesty's Court of Appeal for Eastern Africa against the whole of the said decision. 20

DATED at Nairobi this 25th day of May, 1955.

Sgd. J.A. Coldrey,
KAPLAN AND STRATTON
ADVOCATES FOR THE APPELLANTS. 30

The address for service of the Appellants is care of Messrs. Kaplan and Stratton, Advocates, Queensway House, York Street, Nairobi.

Filed the 26th day of May, 1955, at Nairobi.

Sgd. R.H. Lownie,
Dy. Registrar.

No. 15.

In the Court
of Appeal for
Eastern Africa.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

AT NAIROBI

CIVIL APPEAL NO.57 of 1955

(In the matter of Intended Appeal)

No.15.

Memorandum of
Appeal.
25th July, 1955.

ROLF DE MARE
GUY MAGNUS ALEXANDER FAUGUST
BARBRO WILHELMINA ELISABETH FAUGUST } Appellants

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versus

BARON UNO CARL SAMUEL AKERHIEIM and)
OLE BEYER) Respondents

(Appeal from a Judgment and Decree of Her Majesty's
Supreme Court of Kenya at Nairobi (Mr. Justice
Corrie) dated the 18th day of May, 1955)

in

Civil Case No.1055 of 1951

Between:

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Rolf De Mare
Guy Magnus Alexander Faugust
Barbro Wilhelmina Elisabeth Faugust } Plaintiffs

and

Baron Uno Carl Samuel Akerhielm
Erik Von Huth
Ole Beyer } Defendants

MEMORANDUM OF APPEAL

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Rolf De Mare, Guy Magnus Alexander Faugust
and Barbro Wilhelmina Elisabeth Faugust, the Ap-
pellants above-named, appeal to Her Majesty's Court
of Appeal for Eastern Africa against the whole of
the decision above mentioned on the following
grounds, namely :-

1. THAT the learned trial Judge erred in law in
disregarding the fact that the Respondents omitted
to state in their circular letter that certain
shares were issued or being issued in the Company
Dantile Limited for a consideration other than
cash.

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of Appeal for
Eastern Africa.

No.15.

Memorandum of
Appeal.

25th July, 1955
- continued.

2. THAT the learned trial Judge erred in law in finding that the Appellants had only themselves to blame if they made no enquiry as to the issue of shares for a consideration other than cash.

3. THAT the learned trial Judge erred in fact in not finding on the evidence that Appellants, or at any rate the Second Appellant, on his own behalf and on behalf of the Third Appellant did make enquiries of the Respondent Beyer as to the issue of Shares for a consideration other than cash. 10

4. THAT the learned trial Judge erred in law and in fact in finding that the Respondent honestly believed to be true the statements made in their said circular letter (two of which he found to be false).

5. THAT the learned trial Judge erred in law in holding that, because the terms of the said circular letter were settled by Mr. Hollister, the Advocate for Dantile Limited, the Respondents, or either of them, were entitled to believe in the truth of the statements contained therein. 20

6. THAT the learned trial Judge erred in law in holding that because the said Mr. Hollister was not called to give evidence the evidence of the First Respondent must stand uncontradicted, and he failed to consider or to hold that the burden of producing Mr. Hollister's evidence lay with the Respondents.

7. THAT the learned trial Judge erred in law in not holding that the burden of proof had shifted to the Respondents Beyer at the conclusion of the Appellants' case and he further erred in holding that in the circumstances, Mr. Beyer was entitled to rely upon the accuracy of the wording of the circular letter and annexures and honestly to believe that the statements contained in them were true. 30

8. THAT the learned trial Judge erred in fact and in law in holding that the Appellants had failed to prove that the Respondents or either of them did not honestly believe the said statements to be true. 40

9. THAT the learned trial Judge erred in law in omitting to consider whether or not the Respondents, or either of them, had made the said statements

(two of which he found to be untrue) recklessly or without caring whether they were true or false.

10. THAT the learned trial Judge erred in fact and in law in not finding that the Respondents, or either of them, had made the said statements recklessly, or without caring whether they were true or false.

11. THAT the Judgment was against the weight of evidence.

10 WHEREFORE the Appellants pray that this Appeal be allowed with costs and that judgment be entered in terms of the Plaint filed in the lower Court with costs to the Appellants.

DATED at NAIROBI, this 25th day of July, 1955.

Sgd. J.A.Couldrey
KAPLAN & STRATTON
ADVOCATES FOR THE APPELLANTS.

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No.15.

Memorandum of Appeal.

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No. 16.

JUDGES NOTES OF ARGUMENTS AT HEARING OF THE APPEAL

(Not Printed)

No.16.

Judges Notes of Arguments at hearing of the Appeal.

4th July, 1956
(Not printed).

No. 17.

JUDGMENT OF COURT OF APPEAL

(Heading as in No.15)

JUDGMENT OF BRIGGS J.A.

No.17.

Judgment of Court of Appeal.

4th July, 1956.

This is an appeal from a judgment and decree of the Supreme Court of Kenya. During and after the second great war there was an acute shortage of fire-baked tiles in Denmark. As a substitute

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for such tiles a company called Muritas A/S developed and put on the market with some success a cold-process tile apparently made of cement with a plastic face. The Company obtained provisional protection for its invention in Denmark under application for letters patent No.4330 dated 5th November, 1946. In 1947 one Erik von Huth, now deceased, negotiated with Muritas for licences to manufacture and sell their tile in various overseas territories, including Kenya and Uganda. A Mr. Stewart was associated with von Huth in these negotiations. It appears that some time before 29th November, 1947, von Huth & Stewart obtained from Muritas an option entitling them to grants of exclusive licenses for the tile in a number of African and Asian territories on making a specified cash payment for each territory. Kenya and Uganda were not included in this option. On 29th November, 1947, Muritas made an agreement in Denmark with "Dantile East Africa Ltd. by Erik von Huth" granting to the latter company a licence in respect of the tile and related products for Kenya and Uganda. I shall refer to this agreement as "Exhibit E". For some time before Exhibit E was executed von Huth had been negotiating with the two Respondents and they had decided to form in Kenya a company with a name including the word "Dantile". It is to this company intended to be formed that Exhibit E refers. In January 1948 it was decided that the name of the company should be "Dantile Limited".

On or about 24th February, 1948, the two Respondents and von Huth sent to a number of persons in Kenya, mostly if not all Scandinavians by race, a circular letter and explanatory memorandum attached inviting them to subscribe for shares in Dantile Ltd., then in formation. The letter contained the following three phrases:-

- (1) "The tile has been produced and sold successfully in Denmark".
- (2) "We have procured the patent rights for most countries in Africa, India and Pakistan".
- (3) "About a third of the capital has already been subscribed in Denmark"

This letter and memorandum, which must admittedly be read together as a single document, persuaded

the first and second Appellants to subscribe. The first Appellant took up 500 Ordinary Shares of Shs.20 each for cash, and the second Appellant 1,500 Ordinary Shares and 250 Preference Shares of Shs.20 each, all for cash. The second Appellant says he gave 500 of the ordinary shares and the 250 preference shares to the third Appellant, who is his wife, as a present, and they should later have been allotted and issued to her, but it seems that only the 500 Ordinary Shares were in fact issued to her and the remainder to her husband. Dantile Ltd., was registered on 20th March, 1948, and the shares were allotted in May, 1948.

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The Muritas tile was not wholly satisfactory, chiefly, it seems, through lacking durability. The second Respondent found on visiting Denmark in Summer 1948 that since ordinary tiles had become readily available sales of Muritas tiles had gone down and they were then hardly marketable. It seemed likely that the same difficulties might arise in East Africa. However that may be, Dantile Ltd., for a number of different reasons never started production of the Muritas tile on a commercial basis, and by November, 1948, had decided not to produce it at all. They considered producing another type of tile, but never succeeded in doing so. The assets were gradually frittered away and the company was finally wound up. The Appellants received nothing in the winding up and the whole of their money has been lost.

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In 1951 the Appellants sued the Respondents and von Huth for the sums so lost. The suit was laid first as a common law action in deceit, the allegation being that the statements contained in the three phrases which I have set out were false and fraudulently made. There was an alternative claim that the letter and memorandum were together a prospectus, but this was abandoned at the trial. There was also an allegation that the Defendants "omitted to state in the said letter that free shares were to be issued to them as well as to other persons." It may be as well to dispose of this last allegation at the outset. The defence to it was that no shares had been issued "free", but that certain shares had properly been issued in consideration of services rendered to, or in the formation of, the company, or of rights transferred to the company. It appeared from the only return

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of allotments and the first annual return of the
Company that these shares were :-

1,100 Ordinary Shares of Shs.20	to von Huth
250 do.	to the second Respondent
250 do.	to the first Respondent
<u>175</u> do.	to one Christensen
<u>1,775</u>	

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5475 Ordinary Shares in all and 250 Preference Shares in all were there stated to have been issued for cash, to the parties and others, but this is incorrect. In fact 325 of these ordinary shares were issued to Muritas A/S in consideration of patent rights under Exhibit E.

So long as the claim based on the documents being a prospectus was in issue, all this may have been very material; but when that claim was abandoned, it could at best only be material if the silence was fraudulent within the meaning of section 17 of the Indian Contract Act. It appears from the explanation to that section that in this case it would be necessary to prove a duty to disclose the matters not disclosed. I think that it was necessary to plead the matters relied on as showing the existence of that duty and to prove the duty before the silence could be relied on as fraudulent. This was not done. There was no fiduciary relationship, and the case was not laid as one of negligent misrepresentation. We intimated to the Appellant's Counsel during the hearing that we were not prepared to consider the case on any footing other than deceit at common law, within the rules laid down in Derry v Peek, 14 A.C.337. The issues were further narrowed by the Appellants abandoning before us any claim in respect of the first of the three statements. They accepted that the evidence at the trial established that the tiles had at one time been "produced and sold successfully in Denmark". The learned trial Judge had decided that, although the second and third of the three statements relied on were false, the two Respondents had honestly believed them to be true. Von Huth had died before the trial. The suit was accordingly dismissed and the Appellants appealed. It therefore now remains only to consider, first, whether the second and third statements were true,

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and secondly, whether, if untrue, they or either of them was made by the Respondents "(1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false". Derry v Peek, at 374. It will be necessary to consider the facts as regards each statement in some detail. I shall deal first with the third statement.

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10 The words "About a third of the capital has already been subscribed in Denmark" must be considered in relation to certain passages in the memorandum. It begins as follows :-

"STRICTLY PRIVATE AND CONFIDENTIAL NOT FOR
PUBLICATION
MEMORANDUM ON DANTILE LTD.

	Suggested Share Capital	<u>Shs.220,000.00</u>
	<u>To be divided into:</u>	
	2500 6% Preference Shares @ 20/- each	Shs. 50,000.00
	8500 Ordinary Shares " " "	<u>" 170,000.00</u>
20		Shs.220,000.00
	already subscribed	<u>" 70,000.00</u>
	to be subscribed	<u>Shs.150,000.00"</u>

Later appears the following:-

"DANTILE LIMITED (IN FORMATION)
SPECIFICATION OF CAPITAL REQUIRED

	Patent right	18,000.00
	Formation expenses	37,000.00
	Travel account	4,000.00
30	Machinery & Plant plus freight	9,500.00
	Exchange Danish Kr. to £	<u>1,500.00</u>
		<u>Shs. 70,000.00"</u>

and after this a number of items appear showing estimated expenditure required for setting up a factory and starting production. The only item of individual relevance is "Registration of Co. Solicitor etc. 5,000.00" The total is Shs.150,000 and immediately after this appears again:-

	Capital already subscribed	70,000.00
	Further	<u>150,000.00</u>
40	Total capital required	<u>Shs.220,000.00"</u>

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The first question is what this all means. After hearing most full and able arguments on both sides, I am clearly of opinion that what von Huth and the Respondents were saying was in effect this, "We have incurred on behalf of the Company commitments for patent right, formation expenses, travel, machinery etc. and exchange amounting to Shs.70,000 but this sum is already provided for. The liability will be discharged either by allotting shares to creditors in Denmark in satisfaction of their debts, or out of new money promised or paid by subscribers in Denmark for the issue of shares for cash". It is not necessary to find that the signatories were alleging that all the commitments comprised in the Shs.70,000 had been incurred in Denmark, though the context suggested this to some extent. The large sum for formation expenses did not indicate the contrary in view of the further item of Shs.5,000 which I have mentioned. In its context I see no reason for saying that the word "subscribed" should be interpreted as meaning "promised as a subscription for shares to be issued for cash". I think an issue for other sufficient consideration is within the meaning. But certain points are, I think, clear beyond doubt. First, the sum of Shs.70,000 is clearly identifiable with "about a third of the capital already subscribed in Denmark", for the whole of the remainder of the capital, namely Shs.150,000, is offered as "to be subscribed". Next, the allegation that Shs.70,000 had been subscribed in Denmark was in this case of considerable importance for a number of reasons. The tile was a Danish product known and sold in Denmark. It was material that confidence in it should be felt in the place where it was best known. This applies with greater force when it is remembered that the invitation to subscribe here was addressed primarily to Scandinavians, and that of the three persons sending it out one was the Consul in Nairobi for Sweden and another the vice-consul in Nairobi for Denmark. It was fair to assume that those responsible for forming the Company would themselves wish to subscribe, and it was material that their expected contributions would be made to the Shs.150,000 offered, and not included in the Shs.70,000 already subscribed.

It appears that 2,100 Ordinary Shares were issued for a consideration other than cash, 325

to Muritas, 175 to Christensen, 1,100 to von Huth and 250 to each of the Respondents. Of the holders of 5,150 Ordinary and 250 Preference Shares issued for cash, Christensen alone "subscribed in Denmark" or resides there. He took 1,250 Ordinary Shares for cash. Apart from him and Muritas, the other ten shareholders are all Kenya residents and, subject to what follows, cannot on any basis be said to have subscribed in Denmark". There is no suggestion anywhere that any person ever promised to take up shares and failed to do so, though a sum of £90 remained due and unpaid on calls. It was suggested that, because von Huth spent a considerable time in Denmark, and his services, which were paid for by shares, were performed largely in Denmark". I think this is straining the meaning of words to an unreasonable extent. Omitting von Huth, the true position was that only 1,750 Ordinary shares were ever subscribed for in Denmark. They represent Shs.35,000 or just half the sum of Shs.70,000 said to have been so subscribed. If the 1,100 shares issued to von Huth are included, the total is still only Shs.57,000. The learned trial Judge was apparently prepared to give the Respondents the benefit of the doubt as regards von Huth, and even so found that it was untrue that "about one third of the capital" had already been subscribed in Denmark. I prefer to put it that von Huth did not subscribe in Denmark; But I agree entirely with the learned trial Judge that the statement was untrue.

I turn now to the patent rights. As I have said, Muritas had filed an application for Danish letters patent in 1946. I presume that under the international convention this would have enabled them to register in the United Kingdom and so to obtain provisional protection in Kenya and Uganda. There is some evidence that they did instruct agents to apply for registration in the United Kingdom. There is no reason to suppose that letters patent were ever issued in Denmark or that registration was ever completed in the United Kingdom. There was certainly no registration at any material time in Kenya or Uganda. It is of course necessary to distinguish between "patent rights" and "letters patent" or "a patent". The Respondents never claimed the latter: but the former phrase, though vague, must have some validity and meaning. If A says, "I have the patent rights for Kenya", I

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think he must mean at least, "There is somewhere a patent, or an application for patent, which I believe to be valid, and to be capable, by registration in the United Kingdom and Kenya, of being valid in Kenya: to this I hold by licence, or agreement or option for licence, the exclusive rights in respect of Kenya". It may be objected that he means much more, in particular, that the original patent or application has already by registration been validated as regards Kenya and Uganda. This was the view which commended itself to the learned trial Judge. He said:

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"The position at the time when the Circular Letter was issued was that under the Agreement made on the 29th November, 1947, between Muritas A/S and DANTILE EAST AFRICA LIMITED, (Exhibit 'E') Muritas has agreed to assign to DANTILE the sole right of exploitation within the territories of Kenya and Uganda. There is no evidence that any attempt had then been made to register the patent rights in Kenya and Uganda; or indeed, to take the necessary preliminary step of registration in the United Kingdom. As far, therefore, as Kenya and Uganda were concerned, it was untrue to say that the Defendants had procured the patent rights. No patent rights for Kenya or Uganda were then in existence".

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Under the rule in Benmax v Austin Motor Co., Ltd., (1955) A.C. 370, I think we must form our own opinions on this question. Speaking for myself, I think that in a case of alleged fraud I might have been inclined to take a view more generous to the Defendants, and to have found that the statement "We have procured the patent rights for most countries in Africa India and Pakistan" was not proved to be untrue as regards Kenya and Uganda, but on the view which I take of other issues it is not necessary finally to answer this question. As regards other countries, the position is more complex. The learned trial Judge said:

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"As regards the other African Territories and as regards India and Pakistan, according to the uncontradicted evidence of the 1st Defendant, the option held by Mr. von Huth and Mr. D.G.Stewart had been split; Mr.D.G.Stewart retained the sole right to exercise the option in respect of the South African provinces mentioned in Clause 3 of the Agreement, and

surrendered his right as regards the remaining territories mentioned in that Clause to Dantile Limited, to whom also Mr. von Huth had transferred his interests in the option.

10 Assuming that this is a correct statement of the position at the time when the Circular Letter was issued, while it was clearly not the fact that the Defendants had "Procured the patent rights for most countries in Africa, India and Pakistan" as stated in the Circular Letter, it was not untrue to say, as was stated in the attached memorandum, "The Company holds the option for several other countries in Africa, India and Pakistan".

20 Certain particulars given by the Respondents and forming part of the pleadings refer to various documents as "contracts" by reason of which the rights of von Huth and Stewart under the option granted to them prior to Exhibit E had been surrendered to Dantile Ltd. The Respondents' case is that Exhibit E obliged Muritas to grant option rights to Dantile Ltd., if and as soon as the prior rights of von Huth and Stewart were not exercised, and that since those rights had either been surrendered or merged in Dantile's rights it was true to say that Dantile "had an option" in respect of the other countries. That von Huth had surrendered his rights, whatever they were, to Dantile is hardly contested. He wrote on 2nd April, 1958,

30 "I, Mr. Eric Von Huth, the undersigned, hereby transfer all my rights, which I may possess in A/S Muritas Copenhagen, to Dantile Ltd., Nairobi".

40 This was said to be in pursuance of an oral agreement made prior to the 24th February, 1948, and there was evidence that it was done for consideration. I think the letter must be treated as a valid equitable assignment. According to the first Respondent, Stewart had agreed similarly to transfer most of his rights, in that he was to receive from von Huth and himself the sole option as regards South Africa and was to transfer to Dantile his remaining rights under the prior option. It is not clear whether this was to be by assignment to von Huth in the first place and then from von Huth to Dantile, or whether there was to be a tripartite agreement and assignment. The first Respondent says in substance that this arrangement

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was put in writing and carried into effect before 24th February, 1948, by means of letters from Stewart to the second Respondent. His Counsel tried to put these documents in at the trial, but Mr. Salter for the Appellants objected, his object being to oblige the second Respondent to go into the box to prove them. Unfortunately the matter was not pressed and the learned Judge gave no ruling on the admissibility of the documents. Mr. Salter had also objected to oral evidence being given by the first Respondent as regards the contents of these documents. This objection was apparently overruled, for the evidence was given. This rather unhappy state of affairs leaves us completely in the dark. In my view the documents were clearly admissible, if only to enable the first Respondent to say, "Although I did not see this document at the time, I was informed of its existence and believed that it existed. To show that my belief was genuine and reasonable, here is what purports to be the document in question, produced from the Company's records". For this purpose the document would be, as it were, real evidence, rather than documentary evidence. In the absence of the documents I think it very doubtful whether the first Respondent should have been allowed to give evidence of their contents. The general effect of all this is, however, that there is good prima facie reason to suppose that all rights of von Huth and Stewart under the prior option, except those in respect of South Africa, had become vested in Dantile Ltd. Without saying for a moment that that was proved, I think it is so probable that it would be impossible to say that the Respondents did not honestly believe it to be the case, whether or not they so swore. For these reasons I should hesitate to hold that the second statement was false, and I should decline to hold that it was made fraudulently.

The remaining question is whether the third statement, which was untrue, was fraudulent within the rules in Derry v. Peek. The two Respondents stand on somewhat different footings, for the first Respondent gave evidence and swore that he had believed the statements to be true, while the second Respondent neither gave nor called evidence, though he relied to some extent on the evidence of the first Respondent. The learned trial Judge dealt with the question of fraud as regards the first Respondent as follows :-

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"The 1st Defendant Baron Akerhielm has given evidence and has now been examined and cross-examined at considerable length. He stated: "We prepared the rough draft of the Circular Letter which was finally settled by Mr. Hollister, the Company's Lawyer. We then signed it and I did not consider anything in it was untrue" .. "It was quite true that the tile had been produced and sold in Denmark. As regards the patent rights, that was a true statement according to my information. It was also true that one third of the Capital had been subscribed in Denmark" "I think the wording of the Circular Letter was settled by Mr. Hollister. We prepared the first draft" "I saw figures as to production costs and sales figures for one factory in Denmark" "I was relying upon Mr. Hollister to get everything straight. I knew nothing of patent procedure. Before the Circular Letter went out Mr. Hollister had all Contracts, letters and Agreements before him. The wording of the Circular Letter was Mr. Hollister's and I was satisfied with it" "The 'Specification of Capital Required' was prepared by Mr. Hollister with assistance from Mr. Von Huth".

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No.17.

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4th July, 1956
- continued.

The Plaintiffs have put in evidence a letter dated the 23rd March 1948, from Mr. Hollister to the Secretary, Dantile Limited (In formation) (Exhibit 8), which contains the following paragraph:-

"We have searched the Patent Register here and the search revealed that so far, no Muritas Patents have been registered in this country, and we would suggest that you communicate with Muritas at the earliest possible moment and ask them to register their Patents in England, since English registration is essential prior to registration here. It is also necessary for Mr. von Huth to write a letter to Dantile Limited whereby he agrees to transfer all or any of his rights with Muritas to Dantile Limited in consideration for shares in the Company and his employment as a salaried Manager.

Also you should get in touch with Mr. Alber and he should write a letter to Dantile Limited agreeing to transfer any rights he may have with Muritas to the Company in return for the

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share he will receive of the purchase money
paid on transfer of the South African rights
to Mr. Stewart".

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In view of the terms of this paragraph it is somewhat surprising that rather more than a month earlier Mr. Hollister, an Advocate, should have approved of the terms of the Circular Letter. Mr. Hollister however, has not been called to say that he did not approve and the evidence of Baron Akerhielm in this respect stands uncontradicted.

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Having heard the evidence of Baron Akerhielm, I am satisfied that he signed the Circular Letter in good faith, honestly believing that the terms of that letter and of the documents attached to it were true". There were thus two factors leading to the finding that fraud was not proved, the first being the favourable impression which the first Respondent made in the witness box, and the second his reliance on Mr. Hollister. As regards the second Respondent the learned Judge said:

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"The case as regards the 3rd Defendant Mr. Ole Beyer stands upon a different footing, as Mr. Beyer, though stated to be in Kenya at the time of the hearing of the action, has not seen fit to give evidence. There was of course, no obligation upon Mr. Beyer to do so. It is for a Plaintiff to prove his case and there is, in general, no reason for a Defendant who is satisfied that the Plaintiff's case must fail, to give evidence on his own behalf.

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The circumstances of this action, however, are somewhat unusual. This is an action of deceit, which involves an allegation by the Plaintiffs of fraud on the part of the Defendants; and fraud in such a case, has no mere technical meaning, but involves moral turpitude. In such circumstances, it is surprising that Mr. Beyer, who occupied an official position, should not have been eager to come forward and deny the charges against him. In the absence of his evidence, the Court has to determine whether the Plaintiffs have made good their case against him.

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The case established by the Plaintiffs is that two statements contained in the Circular Letter have been held by this Court to be untrue. As against this, there is in favour of

Mr. Beyer, Baron Akerhielm's evidence that the terms of this Circular Letter and annexures were finally settled by Mr. Hollister, the Company's Lawyer, who had all Contracts, Letters and Agreements before him. In such circumstances, Mr. Beyer was entitled to rely upon the accuracy of the wording of the Circular Letter and annexures as settled by Mr. Hollister and honestly to believe that the statements contained in them were true; and the Plaintiffs have failed to prove that he did not, in fact, do so".

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Here the finding is based squarely on the relations of the Respondents with Mr. Hollister, so it will be convenient to examine that point first.

It seems to have been accepted as true by the Appellants that the Respondents did consult Mr. Hollister as to the form of the letter and memorandum before sending them out, though there is no evidence of this other than the first Respondent's. It is remarkable that the minute book does not indicate this, though Mr. Hollister is frequently mentioned in other connections. The evidence of Mr. Seex, the accountant who was appointed by the Court as an inspector to investigate the affairs of the Company, is equivocal and may only mean that Mr. Hollister was consulted afterwards. However, I must accept that Mr. Hollister was consulted, and I shall assume that he did his duty in the matter as an honest and competent Solicitor. There is no slightest reason to suppose the contrary, and even if there were it would be grossly unjust to act on any other assumption when Mr. Hollister has not given, and presumably has not had the opportunity to give evidence. It must be noted at once that the Appellants could not usefully have called Mr. Hollister, since all the evidence they would have wished to obtain from him would have been excluded by privilege. The learned trial Judge appears to have overlooked this and to have assumed that the Appellants could have called Mr. Hollister, if they wished, to show that he was not responsible for the substance of the documents. I think with respect that this was a serious misdirection which goes to the root of the learned trial Judge's finding that the Respondents acted innocently. In my view, it was for the Respondents to call Mr. Hollister to support their case. They made no allegations

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- continued.

against him, and if their case was true he would obviously have accepted responsibility for the form of the documents, and might have been able to show that the untrue statement resulted from some mistake or misunderstanding. He was available, and I think an inference unfavourable to the Respondents could and should have been drawn from their failure to call him. In his absence, the evidence is that the Respondents submitted a draft to him and he settled the final form. I am driven to the conclusion that the facts stated in the documents were facts supplied by the Respondents and accepted by Mr. Hollister as their instructions to him. As regards the statement which I have found to be untrue, it is inconceivable to me that Mr. Hollister should have originated it. It was so clearly a matter which either was, or should have been within the clients knowledge that humanly speaking he must have relied on them for it. It was never expressly alleged that Mr. Hollister was the source of that statement, and I find as a fact that he was not, but that the Respondents were the source of the statement and responsible for it. In fact this was practically admitted, for when asked, "Did you tell him: "About a third of the capital has already been subscribed in Denmark?", the first Respondent replied, "I might have done so". In cross-examination the first Respondent further said that he accepted responsibility for the whole of the documents, that he was not trying to shelter behind Mr. Hollister, and that in his opinion and belief the statements of fact in the documents were true. Although the learned trial Judge accepted this last statement and in the ordinary way I should be loath to differ from him, I think the validity of his finding is gravely impaired by his view of the issue concerning Mr. Hollister. I think we must form our own opinions of the Respondents' mental state when they issued the false statement.

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The Respondents were both directly and immediately concerned in obtaining subscriptions to Dantile Ltd. This was not a case of intending directors of a large concern leaving matters to subordinates and having no detailed knowledge of what was going on. The total number of shareholders was no more than twelve and the sums involved were not large. Counsel for the Respondents sought to suggest that they were not business men and could not be expected to have knowledge of ordinary

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business affairs, or at any rate of company formations and patents. As regards patents this may be so, and I have given it some weight in finding in their favour on that issue. But I cannot go further. It is not, I think, the practice of European countries to appoint to their consular establishments persons without knowledge of ordinary business. The first Respondent was in 1948 a director of two other companies in Kenya besides Dantile Ltd., and had other business interests. The second Respondent wrote business letters on paper headed "Beyer's (Kenya) Corporation" which suggests at least that he had business interests. I find that both Respondents had quite enough knowledge of the world to understand that an invitation to subscribe for shares should at least be accurate in its facts. I find that both Respondents were well aware in February 1948 that the only subscribers in view in Denmark were Christiensen and Muritas, and that their subscriptions would not nearly cover the Shs.70,000 mentioned, or amount to about one-third of the capital of Shs.220,000. I find that the untrue statement was made by both of them with knowledge that it was untrue. If, however, I am wrong in this, and in some remarkable way which I cannot envisage the Respondents remained in ignorance of some of the relevant facts, I am of opinion that, having regard to their positions and opportunities of knowledge, they must have made the statement recklessly and careless whether it was true or false. That either of them ever believed it to be true I consider impossible.

The only remaining question is that of damages. Some effort was made to show that immediately after the incorporation, and for some time afterwards, shares in Dantile Ltd., were not worthless, though they may have been worth less than par. On an accountancy basis this may have been true. Until the money subscribed had been spent there were obviously some assets. But it was never shown that the shares were marketable at all after issue, and I greatly doubt if anyone could have been found to buy them at any price, for the company was never in any real sense a going commercial concern. In such a case, I think the measure of damages is defined by the judgments in Twycross v Grant, (1877) 2 C.P.D.469. The direction given by Lord Coleridge C.J. to the jury (p.477) was,

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- continued.

"The Plaintiff, is entitled, if you think there has been fraud, to recover what that fraud has cost him. He is entitled to recover the real damage occasioned by the fraud. If you think the real damage occasioned by the fraud is the full amount of the shares, give him the full amount of the shares, namely, £700. If you think there is evidence which goes to show that the result of the fraud is not damage to the full extent of £700, then give him so much less as in your judgment the fraud has really occasioned him loss".

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On motion for judgment the Court, consisting of Lord Coleridge, Grove J. and Lindley J. said (p.490),

"It was further contended that the true measure of damages is, the difference between the value of what the Plaintiff intended to get and the value of what he did in fact get. Adopting this principle, two results were contended for. First, it was said that the Plaintiff intended to get shares in a company such as that described in the prospectus, and he got shares worth less than they would have been worth if the concealed contracts had not been entered into; and that the utmost measure of damage is, the diminished value of the shares consequent on the payment out of the capital of the company of the sums mentioned in the concealed agreements. Secondly, it was argued that as, according to the Plaintiff's own contention, the company's undertaking was impracticable, the shares which he really intended to get were worthless, and that consequently he had sustained no damage at all by reason of the concealment of which he complains. But, in our opinion, the Defendants are not entitled to avail themselves of the fact that the Plaintiff intended to take shares in such a company as that described in the prospectus, or in the company unaffected by the concealed contracts. That intention was itself the result of the wrongful act of the Defendants; and, as between the Plaintiff and them, he is entitled to repudiate any intention of his own based on their fraudulent concealment. He is entitled to say that, but for their fraud, he would never have parted with his money. He has parted with it for shares as to which there was abundant evidence that they never had any real

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value at all; and his loss is the direct consequence of the Defendants' conduct in issuing the prospectus. His slight and temporary profits hardly equal the ordinary interest of his money; and we think, therefore, there is no reason for disturbing the verdict of the jury either wholly or in part".

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10 On appeal the Court consisted of Bramwell, L.J.,
Kelly, C.B. and Cockburn, C.J., and the question
of damages was dealt with by the last-named as
follows:-

20 "If a man is induced by misrepresentation
to buy an article, and while it is still in
his possession, it becomes destroyed or dam-
aged, he can only recover the difference be-
tween the value as represented and the real
value at the time he bought. He cannot add
to it any further deterioration which has arisen
from some other supervening cause. If a man
buys a horse, as a racehorse, on the false rep-
resentation that it has won some great race,
while in reality it is a horse of very inferior
speed, and he pays ten or twenty times as much
as the horse is worth, and after the buyer has
got the animal home it dies of some latent dis-
ease inherent in its system at the time he
bought it, he may claim the entire price he
gave; the horse was by reason of the latent
mischief worthless when he bought; but if it
30 catches some disease and dies, the payer cannot
claim the entire value of the horse, which he
is no longer in a condition to restore, but
only the difference between the price he gave
and the real value at the time he bought.

40 I should agree that the law as just stated
should have been pointedly brought to the at-
tention of the jury with a view to the damages,
could I find in the facts of the case any mat-
erials to which it would be applicable. But I
find none. The shares were wholly valueless
at the time the action was brought. They were
so when the Company was put an end to. In
fact they were so from the beginning, from
radical defects inherent in the project from
its birth. The project failed as at first
proposed, because difficulties were found to
exist which it would have required too great

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—————
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- continued.

an expenditure of capital to overcome; in its second form to which, be it observed, the Defendants were equally parties because the traffic was insufficient to afford a remunerative return. The shares may have had for a time some fictitious value in the share-market; but the Plaintiff, having invested, was not bound to sell, but was fully entitled to wait till the lines were actually worked. When practically tested the enterprise failed, and the shares proved worthless. The measure of damages is, consequently, the price the Plaintiff was induced to give for them by the statutory fraud on which the action is founded".

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On this footing I think it quite unnecessary to remit the case for any further consideration of the question of damages. I think the damages suffered were the amounts invested.

In my opinion this appeal should be allowed. The judgment and decree of the Supreme Court should be set aside and judgment should be entered as follows against both Respondents:-

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- (i) for the first Appellant for Shs. 10,000. damages for deceit;
- (ii) for the second Appellant, for Shs. 20,000. damages for deceit;
- (iii) for the second and third Appellants jointly, for Shs. 15,000 damages for deceit;
- (iv) for all the Appellants, for interest on the sums due to them respectively from the date of the judgment set aside till realization; and
- (v) for all the Appellants, for costs of the suit in the Supreme Court on the higher scale, with a certificate for two advocates, one of them a Queen's Counsel.

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The Appellants should ordinarily have their full costs of the appeal and I would direct that costs of two advocates be allowed, for the case was long and difficult and important issues were involved. But there should in my view be a deduction from the costs because of the deplorable condition of the record. Even in its final state, when various

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10 sections had been filed piecemeal and out of time, it was still defective in omitting various most material documents and certain parts of the evidence. It was arranged entirely without regard for Rule 62 and it caused much inconvenience both to the Court and to Counsel. This is clearly the fault of the advocate who certified it. I think the fairest order to make is that the charges for making and certifying copies of the record under items 18 and 19 of Scale A in the 3rd Schedule to the Rules should be disallowed. The remaining costs of the record and other costs of the appeal should be paid by the Respondents.

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Judgment of
Court of Appeal.
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- continued.

F.A.BRIGGS,
JUSTICE OF APPEAL

JUDGMENT OF SINCLAIR V.P.

I agree.

R.O.SINCLAIR,
VICE-PRESIDENT.

20 JUDGMENT OF BACON, J.A.

I agree.

ROGER BACON
JUSTICE OF APPEAL.

NAIROBI.

4th July, 1956.

In the Court
of Appeal for
Eastern Africa.

No. 18.

ORDER CONSOLIDATING APPLICATION FOR
CONDITIONAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

No.18.

Order
consolidating
application for
conditional
leave to Appeal
to Her Majesty
in Council.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI.

CIVIL APPLICATION NO.5 of 1956

(In the matter of an Intended Appeal to
Her Majesty in Council)

26th September,
1956.

BETWEEN:

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BARON UNO CARL SAMUEL AKERHIEIM

Applicant

--and--

1. ROLF DE MARE

2. GUY MAGNUS ALEXANDER FAUGUST

3. BARBRO WILHELMINA ELISABETH FAUGUST

Respondents

CIVIL APPLICATION NO.6 of 1956

(In the matter of an Intended Appeal to
Her Majesty in Council)

BETWEEN:

OLLE BEYER

Applicant

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-and-

1. ROLF DE MARE

2. GUY MAGNUS ALEXANDER FAUGUST

3. BARBRO WILHELMINA ELISABETH FAUGUST

Respondents

(Applications for conditional leave to appeal to
Her Majesty in Council from a judgment and order
of Her Majesty's Court of Appeal for Eastern Af-
rica dated 4th July, 1956, in

Civil Appeal No. 57 of 1955

Between

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Rolf De Mare and 2 Others

Appellants

and

Baron Uno Carl Samuel Akerhielm
and Another

Respondents

In Chambers

this 26th day of September, 1956.

Before the Honourable the President
(Sir Newnham Worley)

O R D E R

UPON these Applications for conditional leave to appeal to Her Majesty in Council coming for hearing this day in the presence of B. O'Donovan Esquire Counsel for the Applicant in Civil Application No.5 of 1956 and holding the brief of F.R. Stephen Esquire Counsel for the Applicant in Civil Application No.6 of 1956 and of J. A. Couldrey Esquire Counsel for the Respondents in both these Applications IT IS ORDERED BY CONSENT that the Applications be and are hereby consolidated.

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GIVEN under my hand and the Seal of the Court at Nairobi, the 26th day of September, 1956.

F.Harland, Registrar.

Issued this 8th day of March, 1957.

In the Court of Appeal for Eastern Africa.

No.18.

Order consolidating application for conditional leave to Appeal to Her Majesty in Council.

26th September, 1956.

- continued.

No.19.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.

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CIVIL APPLICATION NO.5 of 1956

(In the matter of an Intended Appeal to Her Majesty in Council from a judgment of Her Majesty's Court of Appeal for Eastern Africa dated the 4th day of July, 1956 in Civil Appeal No.57 of 1955).

BARON UNO CARL SAMUEL AKERHJELM

Applicant

- and -

1. ROLF DE MARE

2. GUY MAGNUS ALEXANDER FAUGUST

30

3. BARBRO WILHELMINA ELISABETH FAUGUST Respondents

CIVIL APPLICATION NO.6 of 1956

(In the matter of an Intended Appeal to Her Majesty

No.19.

Order granting conditional leave to Appeal to Her Majesty in Council.

26th September, 1956.

In the Court of Appeal for Eastern Africa.

in Council from a judgment of Her Majesty's Court of Appeal for Eastern Africa dated the 4th day of July, 1956 in Civil Appeal No.57 of 1955).

No.19.

OLE BEYER

Applicant

- and -

Order granting conditional leave to Appeal to Her Majesty in Council.

- 1. ROLF DE MARE
- 2. GUY MAGNUS ALEXANDER FAUGUST
- 3. BARBRO WILHELMINA ELISABETH FAUGUST Respondents

26th September, 1956.

(Consolidated by Order of Court made on the 26th day of September, 1956).

10

- continued.

O R D E R

In Chambers The 26th day of September, 1956.

Before: The President (Sir Newnham Worley)

UPON application made to this Court by Counsel for the above-named Applicants on the 26th day of September 1956 for conditional leave to appeal to Her Majesty in Council under Section 3 of the East African (Appeals to Privy Council) Order in Council 1951

AND UPON HEARING Counsel for the Applicants and for the Respondents THIS COURT DOTH ORDER that the Applicants do have leave to appeal under paragraph (a) of Section 3 to Her Majesty in Council from the judgment and order above-mentioned subject to the following conditions:-

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- 1. That each applicant do within 30 days from the date hereof enter into good and sufficient security, to the satisfaction of the Registrar, in the sum of Shillings Ten thousand (a) for the due prosecution by him of his appeal (b) for payment of all costs becoming payable by him to the Respondents, in the event of (1) such applicant not obtaining an order granting him final leave to appeal or (2) his appeal being dismissed for non-prosecution or (3) the Privy Council ordering him to pay the Respondent's costs of the appeal or any part of such costs;

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- 2. That the applicants shall apply as soon as practicable to the Registrar of this Court for an appointment to settle the record and the Registrar shall thereupon settle the record with

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all convenient speed, and that the said record shall be prepared and shall be certified as ready within sixty days from the date hereof;

- 10 3. That the Registrar, when settling the record shall state whether the Applicants or the Registrar shall prepare the record, and if the Registrar undertakes to prepare the same he shall do so accordingly, and if, having so undertaken, he finds he cannot do or complete it, he shall pass on the same to the Applicants in such time as not to prejudice the Applicants in the matter of the preparation of the record within sixty days from the date hereof;
- 20 4. That if the record is prepared by the Applicants, the Registrar of this Court shall on the time of settling of the record state the minimum time required by him for examination and verification of the record, and shall later examine and verify the same so as not to prejudice the Applicants in the matter of preparation of the record within the said sixty days;
5. That the Registrar of this Court shall certify (if such be the case) that the record (other than the part of the record pertaining to final leave) is or was ready within the said period of sixty days;
6. That the Applicants shall have liberty to apply for extension of the times aforesaid for just cause;
- 30 7. That each Applicant shall lodge his application for final leave to appeal within fourteen days from the date of the Registrar's certificate above-mentioned;
- 40 8. That each Applicant, if so required by the Registrar of this Court, shall engage to the satisfaction of the said Registrar, to pay for a typewritten copy of the record (if prepared by the Registrar) or for its verification by the Registrar, and for the cost of postage payable on transmission of the typewritten copy of the record officially to England, and shall if so required deposit in Court the estimated amount of such charges.

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of Appeal for
Eastern Africa.

No.19.

Order granting
conditional
leave to Appeal
to Her Majesty
in Council.

26th September,
1956.

- continued.

In the Court
of Appeal for
Eastern Africa.

AND IT IS FURTHER ORDERED that the costs of and
incidental to this application be costs in the in-
tended appeal.

No.19.

DATED at Nairobi this 26th day of September 1956.

Order granting
conditional
leave to Appeal
to Her Majesty
in Council.

Sgd. F. Harland,
Registrar,

H.M.COURT OF APPEAL FOR EASTERN AFRICA.

26th September,
1956.

Issued this 27th day of October, 1956.

- continued.

No.20.

No.20.

Order extending
time for
lodging
intended Appeal
to Her Majesty
in Council.

ORDER EXTENDING TIME FOR LODGING INTENDED APPEAL
TO HER MAJESTY IN COUNCIL

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IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI

CIVIL APPLICATION NO.5 of 1956

(In the matter of an intended appeal to Her Majesty
in Council)

BETWEEN:

BARON UNO CARL SAMUEL AKERHJELM

Applicant

- and -

1. ROLF DE MARE

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2. GUY MAGNUS ALEXANDER FAUGUST

3. BARBRO WILHELMINA ELISABETH FAUGUST Respondents

CIVIL APPLICATION NO.6 of 1956

(In the matter of an intended appeal to Her Majesty
in Council)

BETWEEN:

OLE BEYER

Applicant

- and -

1. ROLF DE MARE

30

2. GUY MAGNUS ALEXANDER FAUGUST

3. BARBRO WILHELMINA ELISABETH FAUGUST Respondents

(Applications for conditional leave to appeal to
Her Majesty in Council from a judgment and order

of Her Majesty's Court of Appeal for Eastern Africa at Nairobi dated 4th July, 1956 in

Civil Appeal No.57 of 1955

Between

Rolf De Mare and 2 Others

Appellants

- and -

Baron Uno Carl Samuel Akerhielm and Another

Respondents

(Consolidated by Order made on the 26th September, 1956).

10

In Chambers

This 30th day of November, 1956.

Before the Honourable Mr. Justice Briggs, a Justice of Appeal.

O R D E R

UPON the Application filed by the Applicant dated the 20th November, 1956 and UPON HEARING F.R. Stephen, Esq., Advocate for the Applicant and E. Bristow, Esq., Advocate for the Respondents THIS COURT BY CONSENT DOTH EXTEND the time up to the 31st day of January 1957 for lodging the said intended Appeal to Her Majesty in Council AND DOTH ORDER that the Costs of this application abide the result of the said intended appeal.

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GIVEN under the Seal of the Court at Nairobi the 30th day of November, 1956.

Sgd. F. Harland

Registrar Court of Appeal
for Eastern Africa.

Issued this 7th day
of January, 1957.

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In the Court
of Appeal for
Eastern Africa.

No.20.

Order extending
time for
lodging
intended Appeal
to Her Majesty
in Council.

30th November,
1956.

- continued.

In the Court
of Appeal for
Eastern Africa.

No.21.

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

No.21.

Order granting
final leave to
Appeal to Her
Majesty in
Council.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI

CIVIL APPLICATIONS NOS. 5 and 6 of 1956

27th February,
1957.

(Consolidated by Order dated 26th September, 1956)

(In the matter of an Intended Appeal to
Her Majesty in Council)

BETWEEN:

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- 1. BARON UNO CARL SAMUEL AKERHJELM
- 2. OLE BEYER

Applicants

- and -

- 1. ROLF DE MARE
- 2. GUY MAGNUS ALEXANDER FAUGUST
- 3. BARBRO WILHELMINA ELISABETH FAUGUST Respondents

(Intended Appeal from the judgment of Her Majesty's
Court of Appeal for Eastern Africa at Nairobi
dated the 4th day of July, 1956, in

Civil Appeal No.57 of 1955

20

Between:

- 1. Rolf De mare
- 2. Guy Magnus Alexander Faugust
- 3. Barbro Wilhelmina Elisabeth Faugust

Appellants

- and -

- 1. Baron Uno Carl Samuel Akerhielm
- 2. Ole Beyer

Respondents

In Chambers this 27th day of February, 1957.

Before the Honourable Mr. Justice Briggs, a Justice
of Appeal.

O R D E R

UPON application made to this Court by Counsel
for the above-named Applicants on the 16th day of

February, 1957 for final leave to appeal to Her Majesty in Council AND UPON READING the Affidavit of Francis Richard Stephen of Nairobi, Advocate, sworn on the 16th day of February, 1957 in support thereof AND UPON HEARING Counsel for the Applicants and in the presence of John Alexander Coul-drey, Esquire, Counsel for the Respondents THIS COURT DOTH ORDER that the application for final leave to appeal to Her Majesty in Council be and is hereby granted AND DOTH DIRECT that the record including this Order be despatched to England within 14 days from the date of this Order AND DOTH FURTHER ORDER that the costs of this application do abide the result of the Intended Appeal.

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GIVEN under my hand and the Seal of the Court at Nairobi, the 27th day of February, 1957.

F. Harland,
Registrar.

ISSUED this 4th day of March, 1957.

In the Court
of Appeal for
Eastern Africa.

No.21.

Order granting
final leave to
Appeal to Her
Majesty in
Council.

27th February,
1957
- continued.

ExhibitsE X H I B I T S

1.

1. LETTER - J.A.COULDREY to O.BEYER and
BARON AKERHIEIM

Letter.

J.A.Couldrey to
Ole Beyer and
Baron Akerhielm.

4th June, 1951.

REGISTERED.

4th June, 1951.

Ole Beyer, Esq.,
c/o Danish Consulate,
Nairobi.Baron U.C.V.S.Akerhielm,
Nairobi.

Dear Sir,

10

DANTILE LTD.

My client, Mr.L.K.G.Faugust, Mr. Guy Faugust and Mr. Rolf de Mare, have instructed me to demand from you the money paid for their shares in the above Company. This money was subscribed on the strength of false representations contained in a circular letter signed by you and Mr.Eric von Huth on the 23rd February, 1948.

Mr.L.K.G.Faugust is demanding £500, Mr.Guy Faugust £1,750 and Mr. de Mare £500.

20

I have received instructions to file an action immediately, and will accordingly do this on Thursday next, the 7th instant, unless I receive an acknowledgment in writing of your liability by the morning post on that date. I regret having to be so precipitate in this matter, but I understand that you may shortly be leaving the country. The plaint will contain a request for interest on the money subscribed and also a request for general damages.

30

Yours faithfully,

J.A. Couldrey.

1. (Contd.)

LETTER. - STEPHEN & BICKERTON WILLIAMS
to J.A.COULDREY

STEPHEN & BICKERTON WILLIAMS
ADVOCATES,

NAIROBI.
7th June, 1951

REF: FRS/892

J.A.Couldrey, Esq.,
Advocate,
Nairobi.

10

Dear Sir,

DANTILE LIMITED

Your letter of 4th instant, written on behalf of your clients, Messrs. Faugust and de Mare, and addressed to our client, Mr. Ole Beyer was handed to our client yesterday morning at the Law Courts, and we are instructed to inform you that we shall accept service of any proceedings you may care to file against our client.

20

We may add that after the evidence given by Mr. Louis Faugust yesterday, we should certainly have advised our client to contest the claim you now make, if he had not already instructed us to do so.

Yours faithfully,
STEPHEN & BICKERTON WILLIAMS.

LETTER. - MERVYN J.E.MORGAN to J.A.COULDREY

Mervyn J.E.Morgan,
ADVOCATE,

NAIROBI,
11th June, 1951.

30

J.A.Couldrey, Esq.,
Advocate,
Nairobi.

Dear Sir,

I write formally to acknowledge receipt of your registered cover of the 5th instant addressed to Eric von Huth Esquire, and officially to inform you that I shall be acting for Mr. von Huth in any

Exhibits

1. (Contd.)

Letter.
Stephen &
Bickerton
Williams to
J.A.Couldrey.
7th June, 1951.

Letter.
M.J.E.Morgan
to J.A.Couldrey.
11th June, 1951.

Exhibits

1. (Contd.)

Letter.

M.J.E.Morgan
to J.A.Couldrey.

11th June, 1951

- continued.

claim you may care to bring against him, and that I have been already instructed by him to deny liability for the payment by him to the clients, or any other person, of either the sum mentioned in the letter or for any part thereof.

It follows from the foregoing that I am in a position to accept service of any process which you may care to take out against Mr. von Huth.

Yours faithfully,

Mervyn J.E.Morgan.

10

Letter.

M. J.E.Morgan
to J.A.Couldrey.

12th June, 1951.

LETTER. MERVYN J.E.MORGAN to J.A.COULDREY

Mervyn J.E.Morgan,
Advocate.

NAIROBI.
12th June, 1951.

J.A.Couldrey, Esq.,
Advocate,
Nairobi.

Dear Sir,

I write formally to acknowledge receipt of your registered cover of the 5th instant addressed to Baron Akerhielm, and officially to inform you that I shall be acting for Baron Akerhielm in any claim you may care to bring against him, and that I have been already instructed by him to deny liability for the payment by him to the clients, or any other person, of either the sum mentioned in the letter or for any part thereof.

20

It follows from the foregoing that I am in a position to accept service of any process which you may care to take out against Baron Akerhielm.

30

Yours faithfully,

Mervyn J.E.Morgan.

1. (Contd.)

LETTER. WALKER & COULDREY to MERVYN J.E.MORGAN

JAG/61/51.

21st March, 1952.

Mervyn J.E.Morgan Esq.,
Nairobi.

Dear Sir,

Re: S.C.C.C. No.1055/51 -
De Mare & Others v. Akerhielm and Others

Exhibits

1. (Contd.)

Letter.
Walker &
Couldrey to
M. J.E.Morgan.
21st March, 1952.

10 We refer to your letter of the 18th February when you kindly said we could have time within reason to file a Reply.

We have now received the Defence of the 3rd Defendant but before being able to file necessary Replies we would be much obliged if you would let us have some further and better particulars of the Defences of the 1st and 2nd Defendants.

20 I may say that in making this request, and in the absence of Mr. Couldrey, the Writer has taken the advice of Mr.Clive Salter who will presently be appearing with Mr. Couldrey.

1. Paragraph 4.

As to the "Circular letter" please state the approximate number sent out and in what manner it was thought that the recipients might be interested other than in a financial investment.

2. Paragraph 6(b)

30 Of the "Contracts" alleged to be in existence stating how many there were, and whether the same were made orally or in writing; if orally, when and between whom the same are alleged to have been made, respectively, and giving the substance thereof; if in writing, identifying the documents respectively.

3. Paragraph 7.

Of the "services rendered to the Company", stating the nature thereof and when and by whom it is alleged they were so rendered and the number of free shares allocated therefor.

Exhibits

1. (Contd.)
Letter.
Walker &
Couldrey to
M.J.E.Morgan.
21st March, 1952
- continued.

4. Under Paragraph 11(ii)

Of the alleged "reasonable grounds" giving the nature and substance thereof.

5. Under Paragraph 12.

Of "the actions of the Plaintiffs", stating the nature thereof and when and in what manner the Plaintiffs took such actions and whether jointly or severally, and how and to what extent it is alleged that the said shares depreciated in value as a result thereof.

10

Under Paragraph 13.

Of the alleged laches, delay and acquiescence stating the nature thereof and in what manner it is alleged that the same disentitled the Plaintiff each of them to relief.

Yours faithfully,
Walker & Couldrey.

Letter.
Walker &
Couldrey to
Stephen &
Bickerton
Williams.
21st March,
1952.

LETTER. WALKER & COULDREY TO STEPHEN & BICKERTON
WILLIAMS

21st March, 1952.

20

Messrs. Stephen & Bickerton Williams,
Nairobi.

Dear Sirs,

Re: S.C.C.C. No.1055/51 -
De Mare & Others v. Akerhielm and Others

We thank you for your letter kindly allowing us an extension of time to file the reply.

In the meantime we have now heard from Mr. Salter who says that to enable him to file a suitable reply he would like further and better particulars of the Defence of Third Defendant.

30

1. Under Paragraph 3.

Of "as the Plaintiffs are well aware", stating when and in what manner it is alleged that the Plaintiffs became aware that the said representations and statements were true and the substance of their alleged knowledge.

2. Under Paragraph 6.

Of the alleged "reasonable grounds", giving the nature and substance thereof.

3. Under Paragraph 7.

Of the "conduct of the 1st and 2nd Plaintiffs", stating the nature thereof and when and in what manner it is alleged that the 1st and 2nd Plaintiffs acted, and whether jointly or severally, and how and to what extent such conduct is alleged to have depreciated the value of the said shares.

10

4. Under Paragraph 8.

Of the alleged laches, delay and acquiescence, stating the nature thereof and in what manner it is alleged that the same disentitled the Plaintiff and each of them to relief.

We should be obliged if you would agree to a further extension of time for filing the Reply until these particulars have been given.

Walker & Couldrey.

Exhibits

1. (Contd.)

Letter.
Walker &
Couldrey to
Stephen &
Bickerton
Williams.
21st March,
1952 -
continued.

20

LETTER. MERVYN J.E.MORGAN to WALKER & COULDREY.

MERVYN J.E.Morgan.

22nd April, 1952.

Messrs.Walker & Couldrey,
Nairobi.

Dear Sirs,

S.C.C.C. No. 1055/51 -
De Mare & Others vs. Akerhielm and Others

I acknowledge receipt with thanks of your JAC/61/51 of 21st March.

Letter.
M.J.E.Morgan
to Walker &
Couldrey.
22nd April, 1952.

30

As to Paragraph 4.

I object to giving the second half of the particulars asked for on the grounds that the request is wrong in form and that it is impossible to answer other than to say that there was no idea of interest other than Financial Interest.

I am not bound at this stage to do more than to deny as I have done the alleged misuse by the Plaintiffs of the words "induce".

Exhibits

1. (Contd.)

Letter.

M.J.E.Morgan
to Walker &
Couldrey.

22nd April, 1952

- continued.

As regards the first part the number is 25 to 35 (exact figure is between and will be given later).

Under Paragraph 7.

The services (which are pleaded in the alternative and after a denial that any free shares were issued) are as follows: Time, Trouble and skill in the promotion of the business and the search for premises.

If any free shares were issued which is not admitted then the allocations were as follows: 250 Akerhielm, 250 Beyer, 1,000 von Huth.

10

Under Paragraph 11(ii)

The reasonable grounds are a matter of evidence and we are not bound to say more than has already been said.

Under Paragraph 12.

The actions of the three Plaintiffs consist in demanding every sort of investigation to be made, causing prosecution against the Directors and generally speaking of the shares as worthless long before they were so.

20

Under Paragraph 13.

- (a) It is indeed laches consisting of two years.
- (b) The delay also consists of two years.
- (c) The acquiescence consists in the fact act only of the allowing of two years to pass but the fact that the Plaintiff shareholders knew all that was going on and if they did not expressly ratify it they certainly accepted it.

30

As to the effects of laches, delay and acquiescence these are matters of law and there is no obligation on the Defendants specifically to plead law in this or any pleading and the particulars requested are objected to.

Yours faithfully,

Mervyn J.E.Morgan.

1. (Contd.)

LETTER. STEPHEN & BICKERTON WILLIAMS to
WALKER & COULDREY.

STEPHEN & BICKERTON WILLIAMS
ADVOCATES.

FRS/9 2 4.

Messrs. Walker & Couldrey,
Nairobi.

Dear Sirs,

NAIROBI.
23rd April, 1952.

Exhibits

1. (Contd.)

Letter.
Stephen &
Bickerton
Williams to
Walker &
Couldrey.

23rd April,
1952.

10

Re: S.C.C.C.No.1055/51 - Rolf de Mare
& Others vs. Baron Akerhielm and Others.

In reply to the request contained in your letter of the 21st ultimo for particulars of the Defence, we set out below particulars to enable you to settle the terms of your reply. In giving these particulars, we do not concede that you are entitled to all the details for which you ask, but we trust what follows will assist you:-

Under Paragraph 3.

20

1. The Second Plaintiff was present at several meetings of Directors between March and June 1949 and was also, for a time, a Director of the Company and is assumed then to have learnt and informed himself as to the circumstances in which the project was started.

30

2. Further, during discussions between the 1st and 2nd Plaintiffs and the 1st and 3rd Defendants respectively, between March 1949 and February, 1950, the said Defendants mentioned their investigations prior to the formation of the Company and offered to show the said Plaintiffs documents to satisfy them.

3. Again, at an Extraordinary General Meeting of the Company held in or about the month of March, 1949, the first Defendant, as Chairman of the Directors of the Company, made a full report to the shareholders - with the Third Defendant's full approval - upon the circumstances of the Company's formation.

40

Under Paragraph 6.

Personal investigations into the project before the formation of the Company, and inter alia, the study of documents and correspondence received from Denmark.

Exhibits

1. (Contd.)

Letter.
Stephen &
Bickerton
Williams to
Walker &
Couldrey.
23rd April,
1952 -
continued.

The said representations and statements were made after advice from the Company's Advocates.

Under Paragraph 7.

The First and Second Plaintiffs, both personally and by their Advocates, between November 1949 and February, 1950 by allegations that the books and records of the Company were not properly kept and were inadequate, by oral denigration of the Company and by an application to H.M. Supreme Court of Kenya for the appointment of an Inspector under the Companies Ordinance involved the Defendants as Directors in the expenditure of considerable time and effort (contesting the said allegations) which could have been more profitable, applied to the business, and harassed the Company and its Directors generally.

10

Under Paragraph 8.

The Second Plaintiff was present at several meetings of Directors between March and June 1949 and was also, for a time, Director of the Company and is assumed then to have learnt and informed himself as to the circumstances in which the project was started. Further, from March 1949 onwards the Plaintiffs and one, Louis Faugust, who was also a Director of the Company from 18th March to 20th June, 1949, were collaborating in enquiring into the affairs of the Company and had the advice of Advocates thereon; and during ~~the~~ well before the end of 1949 had access to and had all the information requisite to commence this suit; yet the Plaint herein was not filed until 17th September 1951.

20

30

Your letter of the 21st ultimo, which requested the foregoing particulars, bears no indication that a copy was sent to the Registrar, H.M. Supreme Court of Kenya, for the Court file, and as these particulars form part of the Pleadings, we suggest that you send the extra copy of this letter containing the particulars to the Registrar, together with copy of your letter asking for particulars, which will rectify the position.

40

Yours faithfully,
STEPHEN & BICKERTON WILLIAMS.

Copy to Mervyn J.E.Morgan, Esq., Advocate, Nairobi.

The Registrar, H.M. Supreme Court of Kenya, Nairobi.

1. (Contd.)

LETTER. WALKER & COULDREY to MERVYN J.E.MORGAN

Mervyn J.E.Morgan, Esq.,
Nairobi.

2nd May, 1952.

Dear Sir,

Re: S.C.C.C. No.1055/51 - De Mare
& Others versus Akerhielm & Others

Exhibits

1. (Contd.)

Letter.
Walker &
Couldrey to
M.J.E.Morgan.
2nd May, 1952.

10 We beg to acknowledge the receipt of your
letter of the 22nd ultimo containing the particu-
lars requested in our letter of the 21st of March.

20 We note that you object to giving the par-
ticulars under paragraph 11(2) which we have
requested. We must ask that you should let us
have these as otherwise we will have no alternative
but to file a Summons to ask for an Order that ~~thes~~
these particulars should be given. We are inter-
ested only in the particulars, that is the facts
on which you rely and not on the facts by which
you mean to prove these facts.

Yours faithfully,

Walker & Couldrey.

Copy to:

Registrar, Supreme Court, Nairobi.

Messrs. Stephen & Bickerton Williams.

Exhibits

1. (Contd.)

1. (Contd.)

LETTER. MERVYN J.E.MORGAN to WALKER & COULDREY

Letter.
M.J.E.Morgan to
Walker &
Couldrey.
19th May, 1952.

MERVYN J.E.MORGAN,
ADVOCATE.

NAIROBI,
May 19th, 1952.

52/2434/G.756/26.
Messrs. Walker & Couldrey
Nairobi

Dear Sir,

10

S.C.C.C. No.1055/51 -
De Mare & Others vs. Akerhielm & Others

I acknowledge receipt of your JAC/61/51 of 2nd instant.

Although I am still of the opinion that I do not have to give these particulars since they are, in my opinion, matters of evidence nevertheless and so as to expedite and not hold up the matter I adduce the answer given by my friend Mr. Stephen on behalf of the three other Defendants in answer to a similar request. 20

That answer is:

Under paragraph 6.

Personal investigations into the project before the formation of the Company and, inter alia, the study of documents and correspondence received from Denmark. The said representations and statements were made after advice from the Company's Advocates.

Yours faithfully,

30

Mervyn J.E.Morgan.

2. - CIRCULAR LETTER FROM DANTILE LTD.,
(in Formation)

Exhibits

2.

DANTILE LTD., (IN FORMATION),
P.O.Box 412,
NAIROBI.
24/2/48.

Circular letter,
from Dantile
Ltd., (in
Formation)
24th February,
1948.

Dear

10 The undersigned are forming a Private Limited
Company in Kenya for the purpose of producing a
cold process Tile used for bathrooms etc. The tile
has been produced and sold successfully in Denmark.

We have procured the patent rights for most
countries in Africa, India and Pakistan.

About a third of the capital has already been
subscribed in Denmark and the necessary machinery
for the first unit has been purchased and is al-
ready on its way to Kenya and the machinery for the
second unit is on order.

20 We have realised from conversations that most
of our Scandinavian friends are very interested in
this project and anxious to subscribe some capital.

For your information we enclose herewith a
Memorandum showing the proposed formation of the
Company and a statement of expected profit and loss
account for the first year. Will you please let
us know at your early convenience whether you wish
to take up any shares.

30 Any further information you may like to have
will gladly be given by us at our offices - c/o
Beyer's (Kenya) Corporation, Kingsway Street, Nai-
robi.

With kind regards,

Sgd. Baron Akerhielm.

Sgd. Ole Beyer.

Sgd. E. Von Huth.

Exhibits

2. (Contd.)

Memorandum on
Dantile Ltd.,
(annexed to
Circular Letter)

2. (Contd.)

MEMORANDUM ON DANTILE LTD.,
(annexed to Circular Letter)

"STRICTLY PRIVATE AND CONFIDENTIAL NOT
FOR PUBLICATION"

MEMORANDUM ON DANTILE LTD.

Suggested Share Capital		<u>Shs. 220,000.00</u>	
<u>To be divided into:</u>			
2500	6% Preference Shares at 20/- each	50,000.00	
8500	Ordinary Shares	<u>170,000.00</u>	10
		Shs. 220,000.00	
	Already subscribed	<u>70,000.00</u>	
	To be subscribed	<u>150,000.00</u>	

DIRECTORS:

Eric Von Huth (Danish) Nairobi.
Baron Uno Akerhielm (Swedish) Nairobi.
Ole Beyer (Danish) Nairobi.

SECRETARY:

Registered Office: Box 412, Nairobi.

20

OBJECTS AND PROSPECTS:

We further enclose a form of Subscription of the Shares, and should be grateful for your reply at an early date, as only a limited number of shares still are available.

The Company has a contract with the patent holders in Denmark for the production rights of a tile used for bathrooms, kitchens, breweries, bakeries, fire places etc.

Several factories are already existing in Denmark and paying a good dividend.

30

The production of this tile is an entirely new invention, as the tiles are not burnt, but

made by a cold process as specified in the contract with the patent holders.

The tiles are sold in Denmark at 52 Ore per tile, whereas here in Kenya the suggested price has been put as low as 36 cents.

This price can most likely be raised considerably.

10 The purpose of the Company is further to produce anything as specified in the Memorandum and Articles of Association, (these are at your disposal in our office) but in principal the production of the above-mentioned tile.

Besides the patent right for Kenya and Uganda, the Company holds the option for several other countries in Africa, India and Pakistan.

These patent rights can either be taken up by the Company, or sold to other parties at considerable profit.

20 Should the Company consider it advisable to start production in other countries, further Capital would naturally be required and old shareholders will have priority in taking up these shares in proportion to shares already held.

MANAGEMENT

The Company will be managed by the Directors, with Eric Von Huth as Manager and Accountant.

SHARES

30 Holders of ordinary shares have no dividend rights until 6% per annum has been paid on preference shares, and have no right in the liquidation until the preference shares have been repaid in full.

40 Holders of preference shares will not be notified of, and have no right to attend or vote at any general meeting of the Company, unless the Meeting is called for the purpose of passing a resolution to wind up the Company, or for altering the Articles of Association of the Company in any manner directly affecting the rights and privileges attaching to such shares. The ordinary shareholders will be entitled to one vote for each share held.

CONTRACT:

A contract is held with the patent holders, A/S Muritas, Copenhagen, in the name of Dantile Ltd., Signed Uno Akerhielm. Eric Von Huth. Ole Beyer.

Exhibits

2. (Contd.)

Memorandum on
Dantile Ltd.,
(annexed to
Circular
Letter)
- continued.

2. (Contd.)

Exhibits
2. (Contd.)
Specification
of Capital
required
(annexed to
Circular
letter)
29th January
1948.

SPECIFICATION OF CAPITAL REQUIRED -
(annexed to Circular Letter)

DANTILE LIMITED (IN FORMATION)

SPECIFICATION OF CAPITAL REQUIRED

Patent right	18,000.00	
Formation expenses	37,000.00	
Travel account	4,000.00	
Machinery & Plant plus freight	9,500.00	
Exchange Danish Kr. to £	1,500.00	10
Capital Already Subscribed	Shs. 70,000.00	

FURTHER:

Factory Plot	12,000.00	
Boys' Quarters for 16 Boys	5,000.00	
European Quarters	30,000.00	
Factory Building	30,000.00	
Inventory, Machinery, Motors, Installation, Glass Trays, Boxes etc., to be purchased locally	22,800.00	20
Lorry	12,000.00	
	111,800.00	

EXPECTED EXPENSES UNTIL FACTORY IS IN PRODUCTION:

Registration of Co., Solicitor etc.	5,000.00	
Salaries	7,200.00	
Reserve working Capital	26,000.00	38,200.00
TOTAL		150,000.00

CAPITAL ALREADY SUBSCRIBED: 70,000.00 30

FURTHER: 150,000.00

TOTAL CAPITAL REQUIRED: Shs. 220,000.00

THIS TO BE DIVIDED INTO:

6% Preference Shares	50,000.00
Ordinary Shares	170,000.00
	Shs. 220,000.00

NAIROBI 29th January, 1948.

Signed: Uno Akerhielm Eric Von Huth Ole Beyer.

2. (Contd.)

EXPECTED PRODUCTION ACCOUNT (OF DAN TILE LTD.) for the First Six Months
with One Unit. (annexed to Circular Letter)

D A N T I L E L I M I T E D (I N F O R M A T I O N)

EXPECTED PRODUCTION ACCOUNT FOR THE FIRST SIX MONTHS WITH 1 UNIT

<u>EXPENDITURE</u>	<u>INCOME</u>
Technical Manager, Shs. 6,000.00	Two Shifts daily @ 900 Tiles per Shift = 1,800 Tiles per day, in 25 days =
Office, General	45,000 Tiles per month
Manager etc. <u>12,000.00</u>	in 6 months = 270,000 Tiles @ -/36 per tile.
Native Labour including Ration	Shs. 18,000.00
Factory Expenses:	4,200.00
Power & Light, Insurance	
Glazing, Cement, Grit and Sand	28,200.00
Transport	3,600.00
Travelling Expenses	1,500.00
Repairs and Renewals	2,000.00
Profit	39,700.00
	<u>Shs. 97,200.00</u>

Out of the above profit the following will be used as
Capital Expenditure (Erecting 2nd Unit)

(1) In Denmark: Machinery & Plant, Freight, etc.	Shs. 10,000.00
(2) In Kenya	<u>22,800.00</u>
	<u>Shs. 32,800.00</u>

Exhibits

2. (Contd.)
Expected
Production
Account (of
Dantile Ltd.)
for first six
months with
one Unit.

(Annexed to
Circular
Letter).

Shs. 97,200.00

Contd.)

for 2nd half year with 2 Units (annexed to Circular Letter)

(INFORMATION)

THE 2nd Half Year with 2 Units

INCOME

Two Shifts daily @ 1,800 tiles
per shift = 3,600 per day, in
25 days = 90,000 tiles per
month, in 6 months 540,000
tiles @ 36 cents per tile Shs. 194,400.00

Shs. 194,400.00

(First $\frac{1}{2}$ year 1 unit - Second $\frac{1}{2}$ year 2 Units)

Profit first 6 months (270,000) Shs. 39,700.00

Profit next 6 months (540,000 tiles) " 100,800.00

Shs. 140,500.00

Capital for Ordinary Shares Shs.170,000/-
Expected Profit say, 25%

Nairobi. January 29th, 1948.

Sgd. Uno Akerhielm. Sgd. Erik von Huth. Sgd. Ole Beyer.

Exhibits

2. (Contd.)

Expected Production Account
(of Dantile Ltd.) for 2nd
half year with
two Units.

(annexed to
Circular
Letter).

Exhibits

3.

(Dantile Ltd.,
Part of Minute
Book)

Minute of
Directors
Meeting.

17th February,
1948.

3. - PART OF MINUTE BOOK OF DANTILE LTD.,
MINUTE OF DIRECTORS MEETING held
17th FEBRUARY 1948

DANTILE LTD. (IN FORMATION)

A Meeting of the directors was held in the office of Messrs. Beyer (Kenya) Corporation on the 17th February, 1948, at 2 p.m.

Present:

Baron Uno Akerhielm
Mr. Erik von Huth.
Mr. Ole Beyer.

10

The minutes from previous meeting held on the 3rd February, 1948, were read and signed.

Arising from previous Minutes:

(a) Mr. Hollister has accepted the appointment as the Company's Solicitor.

(b) The directors have visited Messrs. Beacon Ranch Ltd., and were shown a plot of 21 acres which the Company is willing to sell, for £30.0.0 per acre. It was resolved to accept this offer and get in touch with the Land Control Board for the necessary transfer.

20

(c) Mr. Hollister had previously prepared a draft memorandum of the Articles of Association and this was passed. Mr. Hollister should be asked to prepare the final Memorandum and Articles of Association.

(d) Memorandum to intended shareholders has been prepared and was laid on the table for the directors' signature and was duly signed.

30

(e) Drawing for the factory buildings has been received from Denmark.

A list of intended shareholders was produced, and after discussion it was suggested to send letters to the names mentioned on the list.

Mr. Von Huth was asked to get in touch with Mr. Adams and get the final permission for establishing of the Company, and was also asked to

prepare the application for land transfer.

It was suggested that an agreement with Mr. von Huth should be drafted.

It was suggested that a letter should be sent to Messrs. Muritas and Messrs. D. Christensen to obtain the necessary authority for Baron Akerhielm and Mr. Beyer to act on their behalf.

Sgd. Uno Akerhielm Sgd. Ole Beyer Sgd. E. von Huth.

Exhibits

3. (Contd.)
(Dantile Ltd.,
Part of Minute
Book)
Minute of
Directors
Meeting.
17th February,
1948
- continued.

MINUTE OF DIRECTORS MEETING held 21st February 1948

10

DANTILE LTD. (IN FORMATION)

A Meeting of the directors was held in the office of Messrs. Beyer (Kenya) Corporation on the 21st of February, at 11.15 a.m.

Present:

Baron Uno Akerhielm.
Mr. Erik von Huth.
Mr. Ole Beyer.

Dantile Ltd.,
Minute of
Directors
Meeting.
21st February,
1948.

The minutes from previous meeting, held on the 17th of February, 1948, were read and signed.

20

Reply has been received from the Economic and Commercial Adviser Mr. Adams stating that the application to form the Company has been approved, it is only necessary to put in a formal application to the Member for Finance for the approval of the share capital required. Mr. Hollister was instructed to prepare the necessary application.

Baron Akerhielm and Mr. von Huth have seen the Land Office with regard to the land at Beacon Farm Ltd.

30

It was pointed out that it would be nearly impossible to be granted land for a factory site on the farm in question. It was therefore resolved that we should apply for factory site, together with sites for house and boys quarters, in the Athi Township Area.

Exhibits
3. (Contd.)
Dantile Ltd.,
Minute of
Directors
Meeting.
21st February,
1948
- continued.

Several letters with reference to contract with patent holders and shipment of the machinery were laid on the table and discussed.

Baron Akerhielm was appointed Chairman and Beyer's (Kenya) Corporation Secretary of the Company.

Sgd. Uno Akerhielm,
Chairman,
28.2.48.

Dantile Ltd.,
Minute of
Directors
Meeting.
28th February,
1948.

MINUTE OF DIRECTORS MEETING held 28th FEBRUARY 1948 10

DANTILE (IN FORMATION)

A Meeting of the Directors was held in the office of Messrs. Beyer's Kenya Corporation on the 28th February, 1948, at 9.30 a.m.

Present:

Baron Uno Akerhielm
Mr. Erik von Huth.
Mr. Ole Beyer.

The minutes from previous meeting held on the 21st of February, 1948, were read and signed. 20

Contract regarding Patent Rights.

E. von Huth - Dantile Ltd. (in formation)

Mr. von Huth agreed to transfer all rights which he has received from A/S Muritas to Dantile Ltd., Mr. Hollister will be asked to draw up a legal contract between Mr. V. Huth and Dantile Ltd.

Contract Muritas A/S and Dantile Ltd.
(in formation).

Two of the directors, Baron Akerhielm and Mr. Erik von Huth, were requested to contact Mr. Hollister with reference to the above mentioned contract. 30

Contract Mr. von Huth and Dantile Ltd.
(in formation)

The Company's Solicitor, Mr. Hollister, to be requested to draw up a contract in the above matter.

Land Application - Athi River.

The Secretary reported that a letter has already been sent to the Town Planning Adviser with an application for land. The meeting was informed that the letter has been handed over to the Commissioner for Land & Mines.

Research.

10 It was suggested that a sample of local sand should be sent to Professor A. Mogensen, Copenhagen, for testing the suitability for production of Tiles

Sgd. Uno Akerhielm,
Chairman.

2/4/48.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.

28th February,
1948

- continued.

MINUTE OF DIRECTORS MEETING HELD 2nd APRIL, 1948DANTILE LTD.

A Meeting of the Directors was held in the office of Messrs. Beyer's Corporation on the 2nd April, 1948, at 11 a.m.

Dantile Ltd.,
Minute of
Directors
Meeting.
2nd April 1948.

20

Present:

Baron Uno Akerhielm
Mr. Erik von Huth.
Mr. Ole Beyer.

The minutes from previous meeting held on the 28th of February, 1948, were read and signed.

Contract Erik von Huth - Dantile Ltd.

Mr. von Huth handed over a letter, confirming that he transferred all his rights with A/S Muritas to Dantile Ltd.

30

Contract Muritas A/S - Dantile Ltd.

A Draft Agreement was received from Mr. Hollister and was discussed. Certain alterations were suggested.

Manager's Contract, Mr. Erik von Huth, -
Dantile Ltd.

A Draft Agreement from Mr. Hollister was passed,

Exhibits
3. (Contd.)
Dantile Ltd.,
Minute of
Directors
Meeting.
2nd April 1948
- continued.

and it was decided that this agreement should be put into force from the date the erection of the factory building was started.

The Secretary stated that the Company was incorporated the 20th of March last, and the Firm's seal had been received.

An account has been opened with Messrs. Barclays Bank Ltd., and the Directors have signed the necessary forms in this connection.

Uno Akerhielm,
Chairman.
14/5/48.

10

Dantile Ltd.,
Minute of
Directors
Meeting.
13th May 1948.

MINUTE OF DIRECTORS MEETING HELD 13th MAY 1948

MINUTES of a Meeting of Directors of DANTILE LIMITED held at the Offices of HARRISON & BOWMER, Sadler Street, Nairobi on the 13th May, 1948 at 11.0 a.m.

Present:

Baron Akerhielm.
Mr. Erik von Huth.
Mr. Ole Beyer.

20

By invitation, Mr. J.A. Harrison.

Previous
Minutes.

Managing
Directors
Agreement.

1. Minutes of the preceding Meeting having been previously circulated, were taken as read, confirmed and signed.

2. The contract with Mr. Erik von Huth in consideration of the sale by him to the Company of his rights under a written agreement with A/S Muritas was fully discussed.

It was pointed out to the Meeting by Mr. Harrison, that in his opinion the Agreement produced merely declared an intention to transfer rights and not that the rights had in fact been transferred to the Company. It was decided to ask the Company's Solicitors to determine the point.

30

Convening of
Meeting for the
purpose of
authorising the
issue of re-
deemable prefer-
ence Shares.

3. It was resolved that an extraordinary General Meeting of the Company be convened for the purpose of passing a extraordinary resolution authorising the issue of 2,500 6% Redeemable Preference Shares of Shs. 20/- each.

40

4. The Secretaries reported that applications for Shares had been received from the undermentioned and it was resolved that Shares be allotted in accordance with the Applications -

	ALLOTTEE	NUMBER OF SHARES	DENOTING NUMBERS OF SHARES	
			FROM	TO
	Harald Dan Christensen	1425	1	1425
10	Ole Beyer	400	1426	1825
	A/S Muritas	325	1826	2150
	Rolf de Mare	500	2151	2650
	William Heilbuth	500	2651	3150
	Louis Faugust	500	3151	3650
	Baron Akerhielm	650	5251	5650
	Erik von Huth	1100	3901	5000
	Bror Van Der AA Kuhle	250	5001	5250
	Karl Sigvard Soderholm	100	5651	5750
	Barbara Faugust	500	5751	6250
20	Guy Faugust	1000	6251	7250
	" " Redeemable Preference Shares	250	1	250

Exhibits
3. (Contd.)
Dantile Ltd.,
Minute of
Directors
Meeting.
13th May 1948
- continued.

Applications
and
Allotments.

The Secretaries were instructed to prepare the appropriate Share Certificates. The Share Certificates were produced and signed by two Directors on behalf of the Board and countersigned by the Secretaries.

Issue of Share
Certificates.

In the presence of all of them the Seal of the Company was this day affixed.

30 There being no further business the Meeting closed at 11.0 a.m. Closure.

Sgd. Uno Akerhielm,
Chairman.

24/5/48.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.5th August,
1948.

3. (Contd.)

MINUTE OF DIRECTORS MEETING HELD 5th AUGUST 1948DANTILE LTD.

A Meeting of the Directors was held in the office of Messrs. Beyer's Corporation on the 5th August, 1948, at 10.30 a.m.

Present:

Baron Uno Akerhielm, Chairman.

Mr. Erik von Huth, Manager.

Mr. Erik Scheitel, acting for Mr. O. Beyer.

10

Baron Akerhielm has returned from leave and taken over the Chair.

1. Minutes of the preceding Meeting having been previously circulated were taken as read, confirmed and signed.

2. Written Report from Manager. No written report was received from the Manager, Mr. Eric von Huth, but the activities during the last two months were fully discussed and the Manager reported:

(a) Land Arrangements. Letter received from the Land Department that the Company has been allotted Plot No. 52 in the Light Industrial Area at a price of £4,356/-/- per acre, including development charges for roads and drains. 1/5 to be paid as Stand Premiums and 4/5 by way of annual rent of 5%. The Company cannot get access to the Plot until it is surveyed which is expected to take another two months.

20

(b) Buildings. The Manager reports that he has been in contact with Col. Bridger of the Municipality and the Manager was asked to prepare Plans of the Buildings and forward them for approval. The drawings have been made and will be forwarded to the Municipality about 10.8.48.

30

(c) Machinery. All machinery ordered from Denmark has arrived at Nairobi and has been stored with the Express Transport Coy. Nairobi.

The Manager was instructed to inspect the machinery and if it had not arrived at Nairobi in good order and condition to make claims; and further instructed to see that the machinery is kept

40

in good condition and insured until the factory is erected; and to see that the machines are kept in good order and condition until the starting of production.

(d) Chemicals. Chemicals have arrived at the coast, but samples had to be sent to the Government Laboratory for report and will then be sent to Nairobi.

10 (e) Cement. Fifty tons White Cement arrived at Mombasa and will be railed to Nairobi. The Manager has been instructed to get storage at Nairobi.

3. Payment of Shares. The amount of Shs.134,400/- has been accounted for and Shares have been issued, signed and stamped.

4. Financial Position. Expenses were discussed and approved and the Company had a Bank Balance as per 31.7.48 of Shs.30,903/04.

5. Land Arrangements. All matters discussed under point 2(a).

20 6. Powel's Products. The Company has received an offer from Messrs. Powel's Products to become their sale's agent. The matter was discussed, but left in abeyance until such time as production starts.

7. Correspondence.

(a) Mr.Svend Thomsen in Denmark: Several letters had been received regarding the betterment of the Tiles and the Directors were satisfied with the progress made.

30 (b) Contract Muritas. Reply to the Draft Agreement sent the 28.4.48 had been received. The points were discussed at length and the Manager was instructed to reply in accordance with the decisions made.

8. Nothing further to discuss.

Meeting finished at 12.40 p.m.

Sgd. Uno Akerhielm,
Chairman.

23/8/48.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.

5th August,
1948

- continued.

Exhibits

3. (Contd.)

Dantile Ltd.
Agenda for
Meeting on
23rd August
1948.

3. (Contd.)

AGENDA FOR MEETING ON 23rd AUGUST 1948DANTILE LTD.Agenda for Monday 23rd August 1948

1. Minutes.
2. Arising out of Minutes :-
 - a. Contract Mr. Erik von Huth.
 - b. Buildings.
 - c. Machinery, Chemicals etc.
 - d. Cement.
 - e. Land Arrangements.
3. Insurance.
4. Audit.
5. Correspondence.
6. Any other business.

10

Dantile Ltd.,
Minute of
Directors
Meeting.
23rd August,
1948.

MINUTE OF DIRECTORS MEETING HELD 23rd AUGUST, 1948DANTILE LTD.

A Meeting of the Directors was held in the office at Messrs. Beyer's Corporation on the 23rd of August, 1948, at 2.30 p.m.

20

Present:

Baron Uno Akerhielm, Chairman.
Mr. Erik von Huth, Managing Director.
Mr. Erik Scheitel, acting for Mr.O.Beyer.

1. Minutes of the preceding Meeting having been previously circulated, were taken as read, confirmed and signed.
2. Arising out of previous Minutes.
 - (a) Managing Director's Agreement. Legal opinion had been obtained and it was found that the agreement was in order.
 - (b) Buildings. Mr.von Huth reported on Buildings, owing to a letter from Mr.S.Thomsen, the building programme was left in abeyance until specifications received from Denmark.
 - (c) The Machinery arrived in good condition. Machines, chemicals and colours have been stored at Etco House. The machinery has been washed in paraffin and greased.

30

(d) Fifty tons White Cement has been stored in ex-Transport Company's go-down on Athi Road. Permit for this was obtained from Mr. Danville, the Cement Controller.

(e) Land Arrangements. The plot is still not surveyed, but the Manager to be instructed to get in touch with the Land Office for an early survey.

10 3. Insurance. The machines, cement etc., have all been insured with Messrs. Employers' Liability Assurance Corporation Ltd., London, E.C.4.

4. Audit. The Manager reported that the books have been audited up to the 31st of July, 1948.

5. Correspondence:

(a) Mr. O. Beyer had been in contact with Mr. Svend Thomsen and was very satisfied with the progress made. He had also inspected the new machinery and found it satisfactory.

20 (b) An offer for new machinery had been made by Mr. Svend Thomsen, who had contacted Messrs. C.P. Petersen, for Shs. 4,000/-. It was decided to open a reimburse with the Nord-Jydsk Bank, Aalborg.

(c) Messrs. Hygea have given us an offer for different kinds of paint. Owing to an expected mistake in Mr. Thomsen's letter, no paint to be ordered until further information received from Mr. Thomsen.

30 (d) Samples of Terazza Powder sent to Denmark have had a very favourable report.

(e) Mr. Beyer to be asked to get any information re compensation for the purchase of a Patent Right which may be considered useless for the production of bathroom tiles.

(f) The Manager was instructed to act in accordance with the above Minutes.

6. Any other business: None.

The Meeting finished at 4.30.

40 Sgd. Uno Akerhielm,
Chairman.

11/9/48.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.

23rd August,
1948

- continued.

Exhibits

3. (Contd.)

Dantile Ltd.,
 Agenda for
 Meeting on
 11th September,
 1948.

AGENDA FOR MEETING ON 11th SEPTEMBER, 1948DANTILE LTD.Agenda for Meeting Saturday 11th September 1948
 at 10.30 a.m.

1. Minutes.
2. Arising out of last Minutes.
 - a. Buildings.
 - b. Machinery.
 - c. Land Arrangements.
3. New Office.
4. Unissued Shares.
5. Factory Manager's Arrival.
6. Furniture, Fittings and Building Plot for
 Managing Director.
7. Contract Muritas A/S.
8. Balance Sheet.
9. Any other Business.

10

Dantile Ltd.,
 Minute of
 Directors
 Meeting.
 11th September,
 1948.

MINUTE OF DIRECTORS MEETING
 held 11th SEPTEMBER, 1948

20

DANTILE LTD.

A Meeting of the Directors was held in the
 office of Messrs. Beyer's Corporation on the 11th
 of September, 1948, at 10.30 a.m.

Present:

Baron Uno Akerhielm, Chairman.
 Mr. Erik von Huth, Managing Director.
 Mr. Erik Scheitel, acting for Mr. Ole Beyer.

1. Minutes of the preceding Meeting having been
 previously circulated, were taken as read, con-
 firmed and signed.
2. Arising out of last Minutes
 - (a) Buildings. No specification has been received
 from Mr. S. Thomsen.
 - (b) Machinery. A reimburse has been applied for
 with Barclays Bank.

30

- (c) Land Arrangements. The Manager has been in touch with Land Control Board, but nothing further is reported.

The Manager has viewed the plot and is satisfied.

3. New Office. The Chairman was instructed to get in touch with Messrs. Harrison & Bowmer and arrange for suitable space for Dantile.

- 10 4. Unissued Shares. Until matters regarding Contract have been settled, no further capital can be subscribed.

5. Factory Manager's Arrival. Svend Thomsen will arrive about 19.9.

6. Furniture, Fittings and Building Plot for Managing Director.

It is impossible owing to contract with Managing Director to purchase Furniture, but it was agreed to advance the Managing Director with a sum of up to Shs. 1,500/- enabling him to buy furniture.

- 20 7. Contract Muritas A/S. Letter has been received from Muritas' Solicitors. The contract was discussed again. Muritas informed their intention that parties representing them must have at least 52% of Dantile Ltd., shares. They were not prepared to subscribe any further capital. No reply has been received from Mr. Beyer and Mr. Dan Christensen and the Manager was instructed to contact these two gentlemen regarding further capital.

- 30 8. Balance Sheet. Balance Sheet, as audited, was produced for a period up to 31.7.48. This was adopted and signed.

9. Any other business. White cement. It was decided not to sell any Cement until Mr. Thomsen arrives.

Plot. The Chairman was asked to contact the Land Department regarding an early survey.

The Meeting finished 11.30 a.m.

Sgd. Uno Akerhielm
Chairman.

7/10/48.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.

11th September,
1948

- continued.

Exhibits

3. (Contd.)

Dantile Ltd.,
Agenda for
Meeting on
7th October,
1948.

3. (Contd.)

AGENDA FOR MEETING ON 7th OCTOBER 1948DANTILE LTD.Agenda for Meeting Thursday 7th October 1948
at 10 a.m.

1. Minutes.
2. Arising out of last Minutes.
 - a. The new office of the Company.
 - b. Letters to Messrs. Dan Christensen and Ole Beyer.
3. Sale of and future supplies of white cement.
4. Machinery.
5. Land arrangements.
6. Buildings.
7. Purchase of materials.
8. Contract "Muritas".
9. Correspondence.
10. Any other business.

10

Dantile Ltd.,
Minute of
Directors
Meeting.

7th October,
1948.

MINUTE OF DIRECTORS MEETING HELD 7th OCTOBER, 1948DANTILE LTD.

20

A Meeting of the Directors was held in the office of Messrs. Beyer's Corporation on the 7th of October, 1948, at 10 a.m.

Present:

Baron Uno Akerhielm, Chairman.
Mr. Erik von Huth, Managing Director.
Mr. Erik Scheitel, acting for Mr. O. Beyer.

1. Minutes of the preceding Meeting having been previously circulated, were taken as read, confirmed and signed.

30

2. Arising out of previous Minutes.

- (a) Office of Company has been moved to Messrs. Harrison & Bowmer.

(b) It was confirmed that a letter had been written to Mr. Dan Christensen, Mr. Ole Beyer had left Denmark and it was therefore impossible to contact him.

3. Sale of and Future Supplies of White Cement.

It was decided not to sell any white cement until further.

4. Machinery.

10 The new machines, ordered from Dameco, Denmark, have left Aalborg the 28th of September, 1948.

5. Land Arrangements.

The Chairman reported that he and the Manager have been in contact with the Land Department and they were promised priority of the survey.

6. Buildings.

The Directors have seen the draft drawings and they were accepted. Mr. Grausen instructed to prepare the drawings. The Manager was instructed to get the plans passed by the Municipality.

20 7. Purchase of Materials.

All materials for the production of the Tiles have been ordered and should be received at the time of completion of factory.

8. Contract "Muritas"

The contract is to be in abeyance until Mr. Beyer arrives in Kenya.

9. Correspondence.

Nothing to report.

10. Any other business.

30 The Director received a report from Mr. Svend Thomsen which was very satisfactory.

Building: It was decided that the Manager should get in touch with several contractors to get the best offer for buildings when the drawings were passed.

The Manager was instructed to contact East

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.

7th October,
1948

- continued.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minute of
Directors
Meeting.

7th October,
1948.

- continued.

African Power & Lighting Co., to make the arrangements about light and power in the factory.

Levelling of plot: The Manager was asked to inquire if Dantile was responsible for levelling of plot.

Housing and Labour: The Manager was asked to inquire about housing for labour.

The Meeting finished at 11.15 a.m.

Sgd. Uno Akerhielm,
Chairman.

25/10/48.

10

Agenda for
Meeting on
25th October,
1948.

AGENDA FOR MEETING ON 25th OCTOBER, 1948DANTILE LTD.Agenda for Meeting Monday 25th October 1948 at 9 a.m.

1. Minutes.
2. Arising out of last Minutes.
 - a. Land
 - b. Electricity and light.
 - c. Levelling of plot.
 - d. Housing for labour
 - e. Buildings.
3. Report from Mr. Thomsen.
4. Report from Architect.
5. Correspondence.
6. Any other business.

20

Dantile Ltd.,
Minutes of
Directors
Meeting.
25th October,
1948.

MINUTES OF DIRECTORS MEETING HELD 25th OCTOBER 1948DANTILE LTD.

A Meeting of the Directors was held in the office of Messrs. Harrison and Bowmer on the 25th October, 1948, at 9 a.m.

30

Present:

Baron Uno Akerhielm.
Mr. Erik Scheitel, acting for Mr. O.Beyer.

Regretted that the Managing Director was not present and no written reasons for his absence have been received.

1. Minutes of the preceding Meeting circulated, were read, confirmed and signed.

2. Arising out of previous Minutes

(a) Land

10

The companies plot No.52 has been surveyed. Test holes for foundation have been made and the top-soil is only 3 ft. in depth.

(b) The Manager has been in touch with East African Power & Light and has been promised attention as soon as possible and an application for Power and Light has been signed.

(c) Levelling of plot

Land Office stated that Dantile Ltd. was responsible for levelling of plot.

(d) Housing for Labour

20

The Labour Officer has been consulted and advised that the Company should make their own houses for labour. The Directors decided to leave the matter until a later date.

(e) Building

30

The blue prints have been received but no application could be sent to the Municipality before draining plans were ready. It was decided to ask Mr. Thomsen to attend to these matters.

3. Report from Mr. Thomsen.

Report was received describing the production of the tiles, but the Directors felt that another Report was needed, describing the tiles resistance against certain chemicals, oils and fat.

4. Report from Architect

40

Report was received and discussed and it was accepted the 4% of the total building-cost for the work done and the work proposed in his letter should be paid to the Architect.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minutes of
Directors
Meeting.

25th October,
1948.

- continued.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minutes of
Directors
Meeting.

25th October,
1948.

- continued.

5. Correspondence

Letter was received from Mr. Dan-Christensen wherein he stated that he was unable to put further capital in Dantile.

6. The attention of the meeting was drawn to the unsatisfactory conduct on the part of Mr.E.von Huth and after some discussion it was decided to await the return of Mr.O.Beyer when the whole matter will again be raised and action be taken.

The Meeting finished at 10.45 a.m.

Uno Akerhielm,
Chairman.

11/11/48.

10

Dantile Ltd.,
Minutes of
Extraordinary
General
Meeting of
Shareholders.
18th March,
1949.

MINUTES OF EXTRAORDINARY GENERAL MEETING OF SHARE-
HOLDERS HELD 18th MARCH, 1949

Minutes of an Extraordinary General Meeting of the Shareholders of Dantile Limited held at the offices of Swedish Products Company, Nairobi, on Friday the 18th March, at 10 a.m.

Present:

Baron Akerhielm (In the Chair)
Mr. O. Beyer.
Mr. L. Faugust.
Mr. G. Faugust.
Mr. Kuhle.

In attendance: Mr.J.A.Harrison.

Before the Meeting opened Mr.G.Faugust asked permission of the Chairman for Mr.Scruby, Advocate to attend, for the purpose of watching his (Mr.G. Faugust) interest. Although the Chairman was of the opinion that the application was irregular he saw no reason why Mr.Scruby should not be present.

20

30

Notice of
Meeting.

The notice convening the meeting was read.

The Chairman reported to the meeting the history of the Company since its inception.

Chairman's
Report.

The question of cost of manufacture was discussed at length. During the discussion it was

stated that tiles could be sold at cts. /40 per tile and that the cost of production would be approximately cts. -/24 per tile.

A Pro-Forma Balance Sheet as at the 28th February 1949 was produced to the meeting. Mr. Harrison explained that this account had to be produced at very short notice and it must therefore be regarded as a draft Balance Sheet only.

10 Mr. Scruby raised a question on the accounts regarding the issue of free shares. The appropriate figures were furnished and it was pointed out that the shares in question were issued for services rendered to the Company during the promotion.

Mr. Scruby also requested information relating to preliminary expenses. This was supplied.

At this stage Mr. Scruby left the meeting.

20 It was proposed by Baron Akerhielm and seconded by Mr. L. Faugust that Mr. Guy Faugust be appointed Director of the Company. This was passed unanimously and it was resolved that Mr. Guy Faugust be and is hereby elected Director of the Company.

It was proposed by Mr. O. Beyer and seconded by Mr. Kuhle that Mr. Louis Faugust be appointed Director of the Company. This was passed unanimously and it was resolved that Mr. Louis Faugust be and is hereby elected Director of the Company.

30 A letter received from Mr. Von Huth was read to the meeting. Mr. Von Huth stated that he wished to sell his shares in the Company. He also pointed out in his letter that the delay in commencing operations was due to the Land Office not surveying land purchased by the Company, until quite recently the result being the Company could make no progress.

Baron Akerhielm stated that as a result of dissatisfaction being expressed by several of the shareholders he did not wish to continue as a Director and that he intended sending his resignation to the Board forthwith.

40 There being no further business the meeting terminated at 11.15 a.m.

Chairman.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minutes of
Extraordinary
General
Meeting of
Shareholders.

18th March,
1949
- continued.

Financial
Statement.

Appointment
of Director.

Letter from
Mr. Von Huth.

Resignation
of Director.

Termination.

Exhibits

3. (Contd.)

3. (Contd.)

MINUTES OF DIRECTORS MEETING HELD 28th MARCH, 1949

Dantile Ltd.,
Minutes of
Directors
Meeting.

MINUTES OF A MEETING OF THE DIRECTORS DANTILE LTD.
HELD AT BEYERS CORPORATION, KINGSWAY, NAIROBI AT
10 p.m. on MONDAY 28th OF MARCH, 1949.

28th March 1949.

Present:

Mr. G. Faugust. In the Chair.

Mr. L. Faugust.

Mr. O. Beyer.

1. Mr. Beyer reported that Mr. Akerhielm's resignation as a Director was received on 20th March, and that Mr. Akerhielm has left for India, and will not be back the first couple of months. 10
2. The new chairman Mr. G. Faugust suggested that the articles of association should be altered, so that it in the future would be possible for Indians to buy shares. The board agreed to this, and Mr. Beyer was told to inform the shareholders that this question would be put up on the yearly general meeting. 20
3. The Chairman also suggested that the yearly general meeting should be held the 20th April and Mr. Beyer was instructed to ask the auditors if they could have the accounts ready before that date. Also if the meeting could be held at their premises in Sadler Street.
4. The Chairman further suggested that all Dantiles accounts should be kept by the auditors Messrs. Harrison & Bowmer, this firm being willing to do this work plus all the audits for a monthly salary of Shs. 200/- per month. The Board agreed to this, and Mr. Beyer was told to inform Messrs. Harrison & Bowmer that the Company would accept this agreement for one year. Mr. Beyer should keep a petty cash and be able to operate the cheques account until a suitable manager could take over the management of the Company. 30
5. Mr. Beyer told the Board that due to the change of Directors it was not possible to operate the bank account. Therefore it has been necessary for him to cash some cheques issued to Dantile Ltd., and make all cash payments out of his firm. Mr. Beyer was asked to continue this, 40

until the new signatures were presented to the bank.

Exhibits

3. (Contd.)

6. Mr.L.Faugust asked the Chairman if he still wanted his lawyers to interfere with the Company's affairs, and if the Chairman still wanted the meeting suggested by his lawyers. The Chairman said that this meeting was no more necessary, and he did not want any new meeting to be held before the annual meeting on the 20th April.

Dantile Ltd.,
Minutes of
Directors
Meeting.

28th March 1949
- continued.

10

The meeting terminated at 11.15.

Sgd. G.Faugust,
Chairman.

15/4/49.

MINUTES OF DIRECTORS MEETING HELD 15th JUNE 1949

MINUTES OF A MEETING OF THE DIRECTORS OF DANTILE LTD., HELD AT THE OFFICE OF SWEDISH PRODUCT COMPANY NAIROBI ON 15th JUNE 1949 at 10 a.m.

Dantile Ltd.,
Minutes of
Directors
Meeting.

15th June 1949.

Present:

20

L. Faugust (In the Chair)
O. Beyer.
U. Akerhielm (In attendance)
E.J.Hollister for Mr.B.Kuhle
G. Faugust.

30

The Chairman explained that the economical situation in the Company was so bad that the company when the creditors are paid, is unable to pay the daily expenses, therefore he suggested that the shareholders should be informed about the situation and it should be decided to liquidate the company to try to sell the company. The assets are at the moment approx. 20.000/- Shs.

Baron Akerhielm said that he thought it possible to sell the company due to the demand of plots on factory area.

Mr. Hollister advised the company to ask a chartered accountant's advice regarding the possible liquidation.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minutes of
Directors
Meeting.

15th June 1949
- continued.

The Secretary was told to try to sell the con-
signment of white cement and pay up the creditors.

The Chairman explained the case "Svend Thom-
sen" who during his employment sold white cement
for approx. Shs.790/- and used the money for his
private expenses. It was decided to wait until
6th July before the police should be told, as Mr.
Thomsen's present employers M.A.P. Ltd., gave a
promise to pay the debt before that date.

The meeting terminated at 12.30.

10

Dantile Ltd.,
Minutes of
Directors
Meeting.

7th September,
1949.

MINUTES OF DIRECTORS MEETING HELD ON 7th SEPTEMBER
1949

DANTILE LTD.

MINUTES OF THE MEETING OF THE EXISTING DIRECTOR
HELD AT THE OFFICES OF MESSRS. BEYER'S (KENYA)
CORPORATION ON THE 7th SEPTEMBER, 12.30 p.m.

Present:

Mr. Ole Beyer.
Baron Akerhielm (in attendance)

Appointment of Director.

20

It was noted that a number of Directors had,
as a result of resignations, been reduced to one.

The Articles of Association No.29 require the
quorum of Directors shall be two. In order to
complete the formalities in connection with the
signing of a declaration of solvency for a liqui-
dation by the Shareholders, it was resolved that
Baron Akerhielm be appointed a Director of the
Company to fill the vacancy for the purpose previ-
ously specified.

30

Chairman.

7/9/49.

3. (Contd.)

MINUTES OF SHAREHOLDERS MEETING HELD 7th DECEMBER,
1949

DANTILE LTD.

MINUTES OF THE MEETING OF SHAREHOLDERS HELD AT THE
OFFICES OF MESSRS.ALEXANDER & INGRAM, SADLER STREET,
NAIROBI ON 7th DECEMBER 1949. 10.00 a.m.

Present:

10 O. Beyer.
Baron U.Akerhielm.
G. Faugust.
L. Faugust.
K.S.Soderholm, in attendance for
Mr. de Mare.
Mr. Scruby, in attendance for Mrs.
G.Faugust.
Mr. Alexander, in attendance.

20 It was explained that the meeting was held in ac-
cordance to the meeting held on 15th June, 1949,
when it was suggested that the company should go
into voluntary liquidation.

It was noticed that Mr.Soderholm was in atten-
dance for Mr. de Mare, but that Mr. Soderholm did
not have the Power of Attorney with him.

30 Baron Akerhielm pointed out that he was not a
director of the Company, but that he had been so
for one purpose and for one day only, enabling Mr.
Beyer, the only director, to get a signature for
declaration of solvency. Two signatures were
necessary for the purpose in accordance with para.
29 of the Articles of Association.

It was suggested that additional directors
should be appointed, but none of the present share-
holders would accept appointment.

A discussion ensued regarding the liquidation
of the company and the appointment of the liquida-
tor, no decision was made, and owing to the hostility
against the previous directors, Mr. Alexander re-
fused to be appointed accountant and liquidator.

40 Further owing to lack of Power of Attorney for
absent shareholders, it was suggested that a meet-
ing should be held at a later date. Suggestions
were also made that public liquidator should be
appointed.

The meeting terminated at 10.45.

Exhibits

3. (Contd.)

Dantile Ltd.,
Minutes of
Shareholders
Meeting.

7th December,
1949.

Exhibits

4A.

Inspector's
Report on
Dantile Ltd.
11th December,
1950.

4A. - INSPECTOR'S REPORT ON DANTILE LTD.IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.MISCELLANEOUS CIVIL CASE NO.15 of 1950IN THE MATTER OF DANTILE LTD.

and

IN THE MATTER OF THE COMPANIES ORDINANCE 1933.

REPORT OF THE INSPECTOR

Index.

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IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBIMISCELLANEOUS CIVIL CASE NO.15 of 1950

IN THE MATTER OF DANTILE LTD.

and

IN THE MATTER OF THE COMPANIES ORDINANCE 1955.

REPORT OF THE INSPECTORTERMS OF REFERENCE

10 I refer to an order of the Supreme Court of Kenya in the above miscellaneous Civil Case dated 30th August, 1950, and to the Affidavits of Louis Karl Gustav Faugust, dated 30th June, 1950, Guy Magnus Alexander Faugust, dated 9th May, 1950. Rolf de Mare dated 21st April, 1950, and Uno Carl Viktor Samuel Akerhielm, dated 17th August, 1950. The reason for the application for the appointment of an Inspector are stated in these Affidavits and my terms of reference are set out in the Court Order referred to above.

20 2. The report which follows is divided into six sections as under:

- Section I Scope of Investigation.
- Section II Events leading to the formation of the Company.
- Section III Formation of the Company and statutory matters relevant thereto.
- Section IV Affidavits.
- Section V Books of account and Balance Sheet.
- Section VI Conclusion.

30

SECTION I.SCOPE OF INVESTIGATION

3. My investigation covered the whole of the Company's activities including matters leading to the incorporation of the Company. I inspected the Company's books, documents and correspondence. The Company's affairs were discussed with the following who at one time or another were officers and

Exhibits

4A. (Contd.)

Inspector's
Report on
Dantile Ltd.11th December,
1950.

- continued

Terms of
Reference.

Section I.

Scope of
Investigation.

Exhibits
4A. (Contd.)
Inspector's
Report on
Dantile Ltd.
11th December,
1950.

Section I.
Scope of
Investigation
- continued.

directors of the Company:

Mr. Ole Beyer,	Secretary.
Baron Uno Akerhielm	Director.
Mr. G. Faugust	Director.
Mr. L. Faugust	Director.

4. I addressed written questions to E. von Huth, also a director at one time, who, I was informed, is now resident in Tanganyika, but I have had no reply from the address to which my letter was sent. My questions sought confirmation of information furnished by the persons mentioned in paragraph 3 above and also asked if there was any other relevant information he could give. I do not consider that the lack of response from von Huth detracts materially from this report.

10

Section II.

Events leading
to the formation
of the Company.

SECTION II

EVENTS LEADING TO THE FORMATION OF THE COMPANY

ORIGIN OF COMPANY

5. The idea of manufacturing tiles by a patent cold process was initiated by a Mr. Erik von Huth. In 1947 he obtained the patent rights for the manufacture of the tiles from A/S Muritas, a Danish company. Thereupon he communicated with Mr. Ole Beyer, the Danish Consul in Nairobi, asking him for his assistance to exploit the patent and to raise funds to enable Mr. von Huth to return to Kenya. Mr. Beyer stated that member of the Scandinavian community in Kenya were agreeable to help Mr. Von Huth and advanced him the cost of his fare to East Africa.

20

30

CIRCULAR INVITING SUBSCRIPTIONS FOR SHARES

6. On arrival Mr. von Huth collaborated with Baron Uno Akerhielm with a view to interesting friends in the patent and eventually a circular was sent out inviting subscriptions to a company to be formed. A copy of this circular is contained in Annexure "Dantile I".

7. From a perusal of correspondence on the Company's files I am satisfied that care was taken to see that the information as to the costs given in the circular was reasonably accurate.

40

8. From correspondence it would appear that allegations were made by some of the shareholders that the circular constituted an invitation to the public to subscribe for shares, I consider this to be a legal matter on which I am not competent to express an opinion.

9. I am of the opinion that the Circular contains other statements which were made without proper investigation as to their accuracy. The Statements to which I refer are as follows :-

The following wording occurs:

(a) "The tile has been produced and sold successfully in Denmark". I was informed that in making this statement the promoters relied on information conveyed verbally by Mr.E.Von Huth. I have not been able to discover that any further steps were taken to verify the information.

(b) "Several factories are existing in Denmark and paying a good dividend". I have seen no evidence to this effect.

(c) "These patent rights can either be taken up by the company or sold to other parties at a considerable profit". I have seen no evidence whatever that the rights could be sold at a profit.

10. In other respects and particularly in regard to estimates of capital expenditure required so far as the subsequent development of the Company went the estimates appear to be reasonably accurate. Since the Company never came into production the forecasted profit could not be proved.

11. The circular sets out the capital required as follows, and states that about a third of the capital has already been subscribed in Denmark:

2,500 6% Preference Shares of		
	20.00 each	Shs. 50,000.00
8,500 Ordinary Shares of		
	20.00 each	<u>170,000.00</u>
		220,000.00
40	Already subscribed	<u>70,000.00</u>
	To be subscribed:	<u>Shs.150,000.00</u>

Exhibits

4A. (Contd.)

Inspector's
Report on
Dantile Ltd.
11th December,
1950.

Section II.

Events leading
to the formation
of the Company
- continued.

Exhibits

4A. (Contd.)

Inspector's
Report on
Dantile Ltd.
11th December,
1950.

Section II.

Events leading
to the formation
of the Company
- continued.

Section III.

Formation of
the Company and
Statutory
Matters
relevant
thereto.

The only shares allotted for cash to a Danish resident were 1,125 Ordinary Shares to Dan Christensen representing Shs. 25,000/-. I accept the statement that the Shs. 70,000/- represents capital already promised but in my opinion it was misleading to say that one third had been subscribed in Denmark as investors would be led to believe that moneys subscribed in Kenya would be in addition to the Danish subscriptions.

SECTION III

10

FORMATION OF THE COMPANY AND STATUTORY MATTERS
RELEVANT THERETO

INCORPORATION OF COMPANY

12. The Company was incorporated on 20th March, 1948.

13. I find that the following Section of the Companies Ordinance 1933 have not been complied with.

ALLOTMENT OF SHARES:

(a) Section 43(1) requires the Company to make a return of allotments within 60 days. All shares were allotted on the 13th May, 1948. I inspected the return filed with the Registrar of Companies which shows the allotment as having been made on the 13th October, 1948, while the return was filed on the 11th December, 1948.

20

REGISTERED OFFICE.

(b) Section 92(2) requires that notice of the situation of the registered office shall be given within 28 days of the date of the incorporation of the Company. The Company was incorporated on the 20th March, 1948. I find that the notice was not filed until 27th April, 1949.

30

ACCOUNTS.

(c) Section 123(1) of the Companies Ordinance requires the directors to lay before the Company in General Meeting a Profit & Loss Account made up to date not earlier than the date of the meeting by

more than nine months and Section 123(2) states that the directors shall cause to be made out in every calendar year and lay before the Company in General Meeting a Balance Sheet as at the date to which the Profit & Loss Account is made up and that there shall be attached to every such Balance Sheet a report by the Directors. I cannot find that these requirements have been complied with. The Company did, however, produce several sets of accounts to which I refer in paragraph 19 below.

10

DIRECTORS.

(d) Section 145(1) requires that the Company shall within 14 days from the appointment of the first Directors of the Company and within 14 days of any change send to the Registrar a return of Directors.

I have extracted from Directors Minutes the following particulars of Directors.

Erik von Huth appointed by the Articles. His appointment was terminated on the 30th November, 1948, by a resolution of the Directors dated 11th November, 1948.

20

Baron Uno Akerhielm appointed by the Articles. Resigned on the 20th March, 1949. Was re-appointed on the 7th September, 1949, for the express purpose of signing a declaration of solvency.

Ole Beyer appointed by the Articles and still a Director.

Louis Faugust appointed by the Board on 18th March, 1949, in place of Uno Akerhielm and resigned on the 20th June, 1949.

30

Guy Faugust appointed by the Board on the 18th March, 1949, in place of E. von Huth and resigned on 1st April, 1949.

It is noted that the Minutes of the 18th March, 1949, have not been signed by the Chairman.

No return of Directors was filed until 27th October, 1949.

SECTION IV.

AFFIDAVITS.

40

14. I deal as follows with the statements made in the Affidavits :-

Exhibits

4A. (Contd.)

Inspector's Report on .. Dantile Ltd. 11th December, 1950.

Section III.

Formation of the Company and Statutory Matters relevant thereto.

- continued.

Section IV.

Affidavits.

<p><u>Exhibits</u> 4A. (Contd.) Inspector's Report on Dantile Ltd. 11th December, 1950. Section IV. Affidavits - continued.</p>	<p><u>Affidavit of Louis Karl Gustus Faugust dated 3rd June, 1950.</u></p> <p>15. In Annex LKGS (1) to the above affidavit a demand is made for the accounts of the Company. I have prepared and attach hereto in Annex "Dantile II" a Profit & Loss Account for the period 20th March, 1948, (date of incorporation) to 31st August 1950, and Balance Sheet at 31st August, 1950, and my comments on the aforesaid accounts are contained in Section V of this report.</p> <p>16. The Annex also asks the following questions to which the answers are undernoted:</p> <p>(a) How much will be realised by the sale of the Company's assets? The accounts given in Annex I show the amounts realised from the sale of the Company's assets and they also show the unsold assets at their estimated realisable value.</p> <p>(b) What do such assets comprise? The aforementioned accounts give this information.</p> <p>(c) What will be the expenses of the liquidator? No liquidator has been appointed.</p> <p>(d) How much is it estimated will be available for distribution among shareholders? Provided that the remaining assets realise the Balance Sheet values there would appear to be a surplus of assets over liabilities of Shs. 5,086/-. This would be subject to liquidation expenses and any remaining surplus would be available for the preference shareholders.</p> <p>17. Annex LKGS (2), (3), (4) and (5) do not call for comment.</p> <p>18. Paragraph 9 of the Affidavit states that Mr. Ole Beyer produced certain accounts and books which were very incomplete and it was obvious from this that no proper records had been kept regarding the Company's subscribed capital and that it would not be possible from the records to prepare a proper Balance Sheet and Account showing how the Company's funds had been disbursed. The books and records produced to me were, in my opinion, adequate for a Company of this size and I have been able to obtain from them all the information required to prepare proper accounts.</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
---	---	---

19. Clause 10 states that "no audited Balance Sheet and Profit and Loss Account has to my knowledge ever been produced by the Company". I find that the following Balance Sheets and Accounts had been prepared:

- 10 (a) Balance Sheet at 31st July, 1948, and Trading and Profit & Loss Account for the period 1st April, to 31st July, 1948. This was audited by Messrs. Harrison & Bowmer and signed by them on the 3rd September, 1948.
- (b) Draft Balance Sheet at 14th June, 1949, unaudited.
- (c) Draft Balance Sheet at 28th February, 1949, unaudited.

Exhibits
4A. (Contd.)
Inspector's Report on Dantile Ltd.
11th December, 1950.
Section IV.
Affidavits - continued.

AFFIDAVIT OF GUY MAGNUS ALEXANDER FAUGUST
dated 9th May, 1950.

20. Paragraph 3 of the above affidavit states that "no ordinary general meeting has to my knowledge ever been held in compliance with Section 123 of the Companies Ordinance 1933". This appears to be true. See paragraph 13(c).

21. The remaining statements in this affidavit are repeated in the L.K.G.Faugust affidavit and have been dealt with under that head.

Affidavit of Rolf de Mare dated 21st April, 1950.

22. The statements made in this affidavit are repeated in other affidavits which have already been dealt with.

30 Affidavit of Uno Carl Viktor Samuel Akerhielm
dated 17th August, 1950.

40 23. The only paragraph which calls for comment is paragraph 12 where it is stated "that Mr.K.S.Soderholm to the best of my knowledge and belief was not a member of the Company either on the 3rd February, 1950, or at any time". The position regarding Mr. Soderholm appears to be that he applied for 100 Ordinary Shares on the 8th March, 1948, and an application form is in the Company's records but not signed. On April 3rd, 1948, he paid the required deposit of Shs. 200/- and the shares were allotted

Exhibits
4A. (Contd.)
Inspector's
Report on
Dantile Ltd.

11th December,
1950.

Section IV.

Affidavits
- continued.

Section V.

Books of
Account and
Balance Sheets.

on the 13th May, 1948. The balance of calls amounting to Shs.1,800/- were not paid. Although the application form was not signed I consider that the payment of the deposit and allotment made him a shareholder and that he owes Shs. 1,800/- for calls in arrear.

SECTION V.

BOOKS OF ACCOUNT AND BALANCE SHEETS

24. In my opinion, the books of account produced to me were adequate for the Company's purposes and contained the information required by Section 122 (1) of the Companies Ordinance 1933. Vouchers were produced for a substantial part of the Company's transactions. 10

25. The annex "Dantile II" I attach Profit and Loss Account for the period from 20th March, 1948, to 31st August, 1950, together with the Balance Sheet at the latter date. Attached to the accounts are the following Schedules:

Schedule I	Details of Preliminary Expenses	20
Schedule II	Details of Patent Rights	
Schedule III	List of Sundry Debtors and Creditors	
Schedule IV	Machinery.	
Schedule V	Furniture and Fittings	
Schedule VI	Salaries	
Schedule VII	Secretarial Fees	
Schedule VIII	Travelling Expenses	
Schedule IX	Allotment of Shares and consideration thereof	30

PROFIT & LOSS ACCOUNT

26. This contains the whole of the expenditure of the Company allocated to suitable heads and including preliminary expenses and patent rights written off and also the losses on the sale of various assets.

27. The Balance Sheet on the asset side gives the fixed assets of the Company at original cost less sales and amounts written off. The fixed assets have been written down to a figure which it is anticipated might be realised. The accounts have been prepared in detail and should be self-explanatory.

10 28. It is to be noted that the agreement to acquire the patent was never completed and as a consequence the consideration given to A/S Muritas comprising 325 Ordinary Shares and Shs.6,500/- in cash should not have been paid.

SECTION VI

CONCLUSION

20 29. It appears that the Company failed because the patent tile which the Company was formed to manufacture proved to be unsatisfactory and in fact the agreement to acquire the patent was not completed. The Company's resources were expended on obtaining machinery for the manufacture of this tile. It appears that they did evolve a better type of tile, but the Company had by then insufficient funds to go into production.

30. Statements made to me would indicate some mismanagement. I have insufficient concrete evidence to express an opinion on this point but in my opinion the primary cause of the Company's failure was the reason given in paragraph 29.

30 31. I consider that the promoters should have been at greater pains to verify the merits of the product they proposed to manufacture. They placed too much reliance on the verbal statement of E.von Huth whose statements could not be disinterested.

32. The statutory requirements of the Companies Ordinance have not been observed in many instances.

33. Adequate, but not lavish, books and records were kept and the Company's papers were fairly well filed.

40 34. I received every assistance from the Secretary and past Directors of the Company.

NAIROBI.
11th December, 1950.

Submitted by
ERIK V.SEEK,
Inspector.

Exhibits

4A. (Contd.)

Inspector's
Report on
Dantile Ltd.

11th December,
1950.

Section V.

Books of
Account and
Balance Sheets
- continued.

Section VI.

Conclusion.

Exhibits
4A. (Contd.)
Inspector's
Report on
Dantile Ltd.,
11th December,
1950.

Schedule I.
Particulars of
Preliminary
Expenses.

<u>SCHEDULE I.</u>				
<u>DANTILE LTD.</u>				
<u>PARTICULARS OF PRELIMINARY EXPENSES</u>				
<u>Copenhagen</u>				
<u>Free issue of Shares:</u>				
E. von Huth	1000 Shares	20,000.00		
Baron U.				
Akerhielm	250 "	5,000.00		
Ole Beyer	250 "	5,000.00		
Dan				
Christensen	125 "	<u>2,500.00</u>	32,500.00	10
<u>A/S Muritas a/c of 28.1.1948</u>				
For negotiations re forma- tion, transport, telephone, telegrams, general office expenses, representative expenses, etc.		3,981.83	36,481.85	
<u>Nairobi</u>				
Solicitors Fees re forma- tion of Company		1,645.00		20
Stamp duty on Share Capital		1,100.00		
Printing of Memo. & Articles of Association		347.50		
Cost of Agreement between Muritas, E.von Huth and Company		610.00		
Cost of Company's Seal		160.00		
Fees, etc. re registration		<u>228.30</u>		
		4,090.80		
<u>A/C Dacre A.Shaw & Buckley</u>				30
<u>Sundries:</u>				
Travelling, telephone, telegrams, stamps, stationery, circulars, typing & General Office expenses to 13.12.47.		859.22	<u>4,950.02</u>	
		Shs.	41,431.87	

SCHEDULE II.
PATENT RIGHTS

	A/S Muritas. Free Shares - 325 Ordinary of 20/- each	6,500.00	
	Paid in Copenhagen	<u>6,500.00</u>	13,000.00
	<u>E.von Huth.</u> Free Shares - 100 Ordinary of 20/- each	2,000.00	
	Paid in cash	<u>2,000.00</u>	4,000.00
10	<u>G.Alber.</u> Paid in cash in Copenhagen by Muritas		<u>1,000.00</u>
			18,000.00

Exhibits
4A. (Contd.)
Inspector's
Report on
Dantile Ltd.
11th December,
1950

Schedule II.
Patent Rights.

SCHEDULE III.
DANTILE LTD.

SUNDRY DEBTORS AND CREDITORS LEDGER

<u>Fol.</u>		<u>Dr.</u>	<u>Cr.</u>
	2 Beyers (Kenya) Corporation		95.62
20	3 Svend Thomsen (Sales of Cement cash collected and used for personal expenses)	790.50	
	3 Beyer & Allan Ltd.	3.00	
	4 R.A.Williamson & Co., Mombasa		275.32
	5 Puran Singh & Sons		457.00
x	6 Askit Ltd. P.O.Box 945, Nairobi	360.00	
	7 Express Transport Co.Ltd.		725.90
	9 East African Standard Ltd.		258.50
30	9 E. von Huth	1,500.00	
	12 Woodcrete Ltd.		1.50
x	13 Sheikh Fazal Illahi Investment Trust Ltd., P.O.Box 477, Nairobi.	90.00	
x	14 Paige & Hawkins Ltd., Private Bag, Nairobi	540.00	
	15 Beyer Travel Bureau Ltd.		543.10
	16 Dacre Shaw Buckley & Hollister		202.00
40		<u>Shs. 3,283.50</u>	<u>2,558.94</u>

Schedule III.
Sundry Debtors
and Creditors
Ledger.

x Letters sent by Mr.Ole Beyer on 21.9.50, enclosing copies of invoices and requesting settlement.

Exhibits
4A. (Contd.)
Inspector's
Report on
Dantile Ltd.
11th December,
1950

Schedule IV.
Schedule of
Machinery,
Furniture &
Fittings,
Salaries and
Travelling
Expenses.

SCHEDULE IVDANTILE LTD.MACHINERY

2 Vibration Machines	3,200.00	
1 Grinding Machine	1,400.00	
6 Forms for tiles	650.00	
1 Compressor	4,000.00	
1 Oven	417.00	
Freight, clearing, forwarding, insurance, storage charges etc.	<u>634.51</u>	10
	10,281.51	
<u>Less: Sale of Compressor</u>	<u>4,000.00</u>	
	Shs. <u>6,281.51</u>	

SCHEDULE VFURNITURE & FITTINGS

1 Olivetti Typewriter	725.00	
Tables etc.	<u>373.95</u>	
	1,098.95	
<u>Less: Sales: Typewriter</u> 405.00		
1 Office Table 100.00	<u>505.00</u>	20
<u>Balance written off</u>	Shs. <u>593.95</u>	

SCHEDULE VISALARIES.

E.von Huth. 13 months @ 1,200/-	15,600.00	
P.Archer	994.80	
Svend Thomsen @ Shs.800/- per month	<u>3,685.00</u>	
	<u>20,279.80</u>	

SCHEDULE VIISECRETARIAL FEES

Beyers (Kenya) Corporation Ltd. @ Sh. 200/- per month	Sh. <u>6,400.00</u>	30
--	---------------------	----

SCHEDULE VIIITRAVELLING EXPENSES

E.von Huth paid in Copenhagen	1,050.00	
E.von Huth paid per Beyers (Kenya) Corporation Ltd.	<u>2,950.00</u>	
	Shs. <u>4,000.00</u>	

7. - LETTER, BEYER'S (KENYA) CORPORATION to
MURITAS LTD., COPENHAGEN

Exhibits

7.

BEYER'S (KENYA) CORPORATION,
7.1.48.
NAIROBI (Head Office)
Kingsway P.O. Box 412.
Muritas Limited,
COPENHAGEN.

Letter.
Beyer's (Kenya)
Corporation to
Muritas Ltd.,
Copenhagen.

7th January,
1948.

Dear Sirs,

10 As Co-Directors of DANTILES EAST AFRICA LTD.
(in formation) Baron Akerhielm and the writer of
this letter would appreciate some minor amendments
being made to the contract which your Company has
made with this new company.

20 What we primarily want to have amended is your
clause 3. According to that clause the right to
sell your patent rights in a number of countries
is vested in three private persons and not - such
as we could find it fair and reasonable - in Dan-
tile East Africa Ltd. We would urge you, both in
your own and in Dantile's interest to change that
clause. The reason why we desire that clause to
be changed is that Dantile in our opinion is the
creator of the African market, and that that com-
pany or its shareholders, of whom you are one,
should, therefore, be allowed to derive the profit
of any excess price obtained at the sale of the
patent rights. If Dantile Ltd., by selling the
30 patent rights at a profit is enabled to pay a hand-
some dividend to its shareholders, the price of
the shares is bound to go up.

40 One thing which we understand was the main
reason for the right to sell the patent rights be-
ing given to private persons was that Mr. Arvad
Petersen, when he was still in the company, should
benefit from the sale of the patent rights, and
later Mr. D.G. Stewart tried to keep that benefit
in favour of Mr. Petersen's creditors. As direc-
tors of Dantile Ltd., we do not think to have any
obligations towards Mr. Petersen and his creditors
and fail to see any reason whatsoever for us or
Dantile Ltd., to pay Mr. Arvad Petersen's debt
which Dantile Ltd., has not helped in creating.
Moreover, Mr. Petersen's dealings have been directly

Exhibits

7. (Contd.)

Letter.

Beyer's (Kenya)
Corporation to
Muritas Ltd.,
Copenhagen.

7th January,
1948

- continued.

detrimental to the Company and have landed one of its directors, Mr. von Huth, in a very precarious situation.

Further we would like Clause 8, paragraph 3, to be changed so that paragraph and paragraph 4 of the same clause are omitted.

That Clause says that Mr. D.G. Stewart is to take up 40% of the share capital. We have asked Mr. Stewart if he is willing to subscribe for a smaller block of shares than the above 40% to which he agrees.

10

There are various reasons for our desire to the amendments being made. Our primary desire is that the company which Baron Akerhielm, Mr. von Huth and I myself are forming and for which we are, therefore, responsible will become a sound undertaking, so that the persons whom we ask to invest money cannot later cast any reflection on us, but there is also another reason why we want Mr. Stewart to get as little influence as possible, namely, that his name at present will have no attractive effect on the other prospective shareholders.

20

Mr. Arvad Petersen recommended Mr. Stewart to Mr. von Huth who, therefore, did not know Mr. Stewart's position in this country for which Mr. von Huth cannot, of course, be blamed. We are at the moment negotiating with Mr. Stewart and offer him a very fair compensation for the work he has done against his withdrawing more or less from the company.

30

We ask you kindly to send us another contract with the above amendments this time in DANTILE'S name. (The name will be DANTILE LTD., and not as I have already written in this letter, DANTILE EAST AFRICA LTD.) We regret having to trouble you on that point, but all the three of us agree to the necessity thereof.

Yours faithfully,

Sgd. OLLÉ BEYER.

Please furnish the new contract with the same date as the first one.

40

Agreed to:

Sgd. U. AKERHJELM. E.VON HUTH.

I certify the foregoing to be a true and faithful translation of the original in the Danish language produced to me.

Witness my hand and seal.

Copenhagen, August 1st, 1952.

Sgd. Michelly Reinholdt Nielsen.

Sworn translator of the English language.

Exhibits

7. (Contd.)

Letter.
Beyer's (Kenya)
Corporation to
Muritas Ltd.,
Copenhagen.

7th January,
1948
- continued.

10

TRANSLATION OF LETTER - JORGEN BROCK to
BEYER'S (KENYA) CORPORATION

Translation from Danish:

JORGEN BROCK.

Master of Law & Economics.

Airmail.

Messrs.Beyer's (Kenya) Corporation,
Kingsway, P.O.412,
Nairobi.

Copenhagen,
February
6th, 1948.

Translation of
Letter, J.Brock
to Beyer's
(Kenya)
Corporation.

6th February,
1948.

20 Dear Sirs,

Thank you for your favour of 7th ult., the contents of which we have thoroughly studied, and Muritas Ltd., is willing, on principle, to comply with your request.

Your proposals deal with Clause 3 and Clause 8, paragraph 3 and 4 of the contract, which both in substance and in form are fairly different.

30 Paragraph 3 and 4 of Clause 8 present least difficulty as both the paragraphs are mainly an expression of wishes advanced by Mr. Erik von Huth, but also to some degree, according to Mr.von Huth, should hold a guarantee for Muritas Ltd., by partly more negatively preventing Mr.D.G.Stewart and his nominee from obtaining more than 40% weight and influence both on the board of directors and on the general meeting, partly by more positively securing to Mr. Erik von Huth and Baron Akerhielm and Consul Beyer, as friends of the former and Muritas Ltd's. shareholders and thereby known as fit representa-
40 tives, together 60% of the influence on the board of Directors and on the general meeting.

That a development has taken place during Mr. von Huth's stay in this country which has thoroughly changed Mr.von Huth's view on the standard of the persons suggested by Mr.von Huth, both Mr.Arvid Petersen and Mr. D.G. Stewart, is fully realised by Muritas Ltd., and as the stipulation to reserve 40%

Exhibits

7. (Contd.)

Translation of
Letter, J.Brock
to Beyer's
(Kenya)
Corporation.

6th February,
1948

- continued.

for Mr. D.G. Stewart and his friends was only inserted in the contract to comply with Mr.von Huth's wishes and does not fix Muritas Ltd., with any obligation towards Mr.Stewart, to whom Muritas Ltd., has held out no promise in that respect, Muritas Ltd., will be willing to modify the provisions of paragraphs 3 and 4 Clause 8 in the addendum to the contract, of which a draft in duplicate is enclosed, so that the 3 gentlemen to whom 60% of the influence (on board and general meeting) is secured, are freely allowed themselves to take over, in whole or in part, also the 40% or decide by whom these 40% shall be acquired. 10

However, Muritas Ltd., would like to retain the more positive provision that the 3 gentlemen as representatives of Muritas Ltd., themselves, shall, inclusive of Muritas Ltd's share, invest, dispose of and keep the 60% i.e. the controlling interest in Dantile Ltd., because of the guarantee which this influence holds in Muritas Ltd's view and as the gentlemen in their letter of 7th ult., did not express any wish to cede any part of that influence, this provision might be preserved in the joint interest of both the parties to the contract. 20

Matters are different in respect of Clause 3.

In your letter I think to read a misunderstanding of the Danish term "3-Mand" (third party), as you seem to consider this to mean 3 persons, while it only indicates the vague notion third person, that is to say in the legal sense of the word one or more persons unnamed and not known to the parties to the contract. 30

The provision of Clause 3 has likewise been inserted according to Mr.von Huth's wishes, but on purpose held in the vague form, because Mr. von Huth both at the initial negotiations and at the negotiations carried on with Muritas Ltd's legal adviser had mentioned various persons who were interested together with him in acquiring the sole right for the 14 districts stated. 40

While Muritas Ltd., de facto was aware that negotiations, among other things, about the above division of power, were carried on between Mr. von Huth and Mr.D.G.Stewart the company has not received

any formal information or declaration and consequently has not incurred any obligation, nor is Mr.D.G.Stewart entitled to set up any legal claim against Muritas Ltd., for observance of an agreement, of any, between Mr. von Huth and Mr. D.G. Stewart, which is the ground for Muritas Ltd's. above mentioned attitude to Clause 8, paragraphs 3 and 4.

10 On the other hand not only have several persons been mentioned in the negotiations about the option reserved for "3 Mand" (third party), mentioned in Clause 3 in respect of the specified 14 countries, but one of these, Mr. Alber, has several times taken part in the negotiations and was present even at the last negotiation, but one, with Muritas Ltd's legal adviser and has together with Mr.von Huth caused certain of the 14 countries which used to figure in Clause 1 as acquired to be referred to Clause 3 as given in option only.

20 That Clause VII was modified on the same occasion (consideration both in cash and in shares) must also be taken into account to which we will revert below.

30 Already Mr.Alber's participation in the negotiations (Mr.Alber was only prevented, by agreement from being present at the final negotiation and the signing of the contract, because he was out of town) and his expressly stated legal status qua co-owner of the option according to Clause 3 will necessitate that Mr.Alber furnishes Muritas Ltd., with a duly authorised declaration (see Clause IX) to the effect that Mr. Alber towards Muritas Ltd., renounces his claim as co-owner of the option in respect of any of the 14 specified countries.

40 But such formal declaration from Mr. Alber is the more necessary because Muritas Ltd., by several letters of October, 1947, addressed to Mr. von Huth and Mr. Alber, has confirmed that obligation in respect of the option.

So much for the formal aspect of the matter which surely can be arranged by direct negotiation with Mr.Alber at your place where Mr.Alber will arrive about March/April this year according to what Muritas Ltd., has learned.

Exhibits

7. (Contd.)

Translation of Letter, J.Brock to Beyer's (Kenya) Corporation.

6th February, 1948.

- continued.

Exhibits

7. (Contd.)

Translation of
Letter, J.Brock
to Beyer's
(Kenya)
Corporation.

6th February,
1948.

- continued.

As regards the facts, the assignment to Dantile Ltd., of the option in respect of all the specified 14 countries will in Muritas Ltd's opinion also require some consideration.

You mention "the right to sell your patent rights", while Clause 3 of the option uses the term assign, i.e. the holders of the option take over the right of exploitation which, of course, also covers the right to re-sell the sole right.

Muritas Ltd., has in the agreement on the option in respect of the individual countries, as further specified in Clause 3, secured considerable considerations in cash which for 11 countries (3-13) total £5,500.0.0., for 2 countries (1 and 2) £2,000.0.0., and for 14 (India and Ceylon) £5,000.0.0., altogether £12,500.0.0. 10

Muritas Ltd., would therefore be fully justified in demanding no less than £12,500.0.0 in cash for the assignment of the 14 countries as a whole, or for each individual country the cash amount stipulated in Clause 3. 20

Subject to the realization of the above-mentioned formal arrangement of the right of option, not later than 1/10 1948 the right of the first holders of the option will either have been finally acquired or have fallen away - Muritas Ltd., may be open for a negotiation of the assignment of the right to Dantile Ltd., of course, primarily in accordance with the stipulations of Clause 3 of the Contract, but alternatively on easier terms as agreed upon. 30

Your suggestion to date a revised contract 27/11 1947 is impracticable, if not for other reasons for instance the officially certified translation of 8/12 1947, then because of the stamping.

The simplest thing would be to prepare an addendum and we enclose a draft addendum in duplicate.

If you on close examination should find observations to make or modifications to propose, I ask you to send me one copy with the observations and proposals when you as far as possible by return, will receive Muritas Ltd's opinion, possibly 40

with counter proposals so that the final documents may be available in fair copies at the same time as the formal arrangement with Mr. Alber is effected and sent to Muritas Ltd., in a duly authorised form provided with Mr. Von Huth's endorsement.

This will presumably be the simplest way in which to arrange matters to the satisfaction of both parties to the contract.

Yours faithfully,

Sgd. JORGEN BROCK.

10

Exhibits

7. (Contd.)

Translation of Letter, J. Brock to Beyer's (Kenya) Corporation.

6th February, 1948.

- continued.

LETTER - DANTILE LTD., to JORGEN BROCK

Translation from Danish.

DANTILE LIMITED.

Registered.

Office Beyer's (Kenya) Corporation.

Box 412, Nairobi.

25/11/1948.

Jorgen Brock Esq.,
Master of Law and Economics,
8, Dr. Tvaergade,
Copenhagen.

Letter.

Dantile Ltd.,
to Jorgen Brock.

25th November, 1948.

20 Dear Sir,

Contract Muritas Ltd.

Please inform your client, Muritas Ltd., of the following :-

1. The managing director of our Company, Mr. Erik von Huth, has retired from his post as managing director, but keeps his seat on the board.

2. Our company has given up the idea of producing the tile patent protected by Muritas Ltd.

30

You will understand from the above that our company's relation to Muritas thus is quite changed for which reason the draft contract submitted will no longer be of importance to any of the parties.

As our company does not want to use Muritas' patent we would ask you to see to it that Muritas returns the block of shares deposited by the company

Exhibits

7. (Contd.)

Letter -
Dantile Ltd.,
to Jorgen
Brock.
25th November,
1948.
- continued.

and the cash amount paid in advance for the patent rights.

Our company will, of course, at any time be willing to give a declaration in writing to the effect that no information received concerned the production of the Muritas tile will be used for the production of a tile from the Muritas specification.

Yours faithfully,

p.p.DANTILE LTD.,
Sgd. Ole Beyer.

10

Translation
of letter.
J.Brock to
Dantile Ltd.
18th December,
1948.

TRANSLATION OF LETTER. JORGEN BROCK TO DANTILE LTD.

Translation from Danish.

JORGEN BROCK.

Copenhagen K.

Master of Law and Economics.

8, Dr.Tvaergade

18/12/1948.

Messrs. Dantile Ltd.,
c/o Beyer's (Kenya) Corporation,
Box 412, Nairobi.

Dear Sirs,

Your reference 71.

Contract Muritas of 29/11/1947.

20

Thank you for your favour of 25th ult., the contents of which I have noted.

That the proposed new contract between your company and Muritas Ltd., changed according to your wishes, should now be of no interest can only be ascertained with regret as the not insignificant work performed by me at your instance thus must be considered to be wasted for which reason I must reserve to myself to receive from your company the remuneration which Muritas Ltd., in the circumstances certainly will point out comes into the picture at your instance, besides which your company paid me a modest amount for the drawing up of the existing contract.

30

Under the contract duly signed on 27/11/1947, which is still in force, Muritas Ltd., in full

confidence of your company becoming a lucrative undertaking, definitely assigned to your company the right to exploit the patent in certain countries against a modest amount in cash while the greater part of the consideration was to be paid by a block of shares in your company which has later been handed over to Muritas Ltd.

10 That Muritas Ltd., on certain conditions was willing to allow an increase of your company's capital, although such increase of capital would limit Muritas Ltd's. influence, because Muritas Ltd.'s percentage share of the capital would amount to less than originally contracted for, cannot in any way entitle your company to demand repayment of the cash amount or surrendering of the block of shares, especially as the conditions have not been fulfilled and the promise held out thus falls away.

20 Such reservation is not set up in the contract in force which unfortunately, does not contain any stipulation about conditional assignment of the exploitation right in case of negligence.

Muritas Ltd., must, therefore, absolutely reject your claim for the refund of the cash amount and the surrender of the shares, but will apply to Baron Akerhielm and ask him to attend to Muritas Ltd's interests towards your company.

30 I should be obliged to learn how you look upon the question of paying me for the work which I have undertaken at your instance in order to make Muritas Ltd. agree to the increase of capital desired by you and other changes in the existing contract.

Yours faithfully,

Sgd. Jorgen Brock.

Exhibits

7. (Contd.)

Translation of letter. J.Brock to Dantile Ltd.

18th December, 1948.

- continued.

Exhibits

7. (Contd.)

Translation
of Letter.
J.Brock to
O.Beyer.

17th March,
1949.

TRANSLATION OF LETTER - JORGEN BROCK to OLE BEYER

Translation from Danish

JORGEN BROCK

Master of Law and Economics.

Airmail.

Royal Danish Vice Consul Ole Beyer,
c/o Beyer's Corporation,
Nairobi.

Copenhagen K.

17/3/1949.

8, Dr.Tvaergade.

Dear Sirs,

I replied about the middle of December to your letter of 25/1 on behalf of Muritas Ltd., and today - 3 months later - I am still without an answer to same, nor have I received any exploitation to the strange standpoint reflected in your letter, namely that the duly signed, certified and stamped contract should be of no importance because no agreement had been reached about the modifications which at your request were being discussed.

10

Nor have we received any answer from Baron Akerhielm whom we wrote at the same time to learn how matters stood.

20

About 3 weeks ago we then wrote the Danish Consul and asked him to make the necessary inquiries and were informed a couple of days ago that the Consul was seriously ill in hospital and would be prevented from attending to the matter for some time ahead. We were advised to apply direct to the Ministry of Foreign Affairs, which application would be answered by you at the instance of the Ministry.

30

Before Muritas Ltd., takes that step I would once more urge you to give Muritas Ltd., the explanation you owe the company and will have to give it.

Your position as a Royal Danish Vice Consul and shareholders of Dantile has been highly instrumental in my clients having wanted to conclude the contract of terms according to which the patent would mainly be paid through the block of shares, which has already been pointed out in our correspondence.

40

That you personally sign the strange letter of 25/11/1948 is quite incomprehensible to us, nor do we understand that you ignore our letters.

To quell my client's interest by silence is a conduct which is quite incompatible with your position by which you are bound to safeguard and defend Danish interests.

10 Muritas Ltd., has at my request wanted to draw attention hereto in the hope within 30 days from this date to receive a satisfactory reply and information which our interests will otherwise be forced us to obtain through official channels.

Yours faithfully,

Sgd. J. Brock.

Exhibits

7. (Contd.)

Translation of Letter. J. Brock to O. Beyer.

17th March, 1949.

- continued.

TRANSLATION OF LETTER - BEYER'S (KENYA) CORPORATION
TO JERGEN BROCK.

Translation from Danish.

BEYER'S (KENYA) CORPORATION,

Head Office Kingsway, P.O. Box 412,

Nairobi, 21/3/1949.

20

Registered.

Jorgen Brock, Esq.,
Master of Law and Economics,
8, Dr. Tvaergade,
Copenhagen, K.

Dear Sir,

30

I acknowledge the receipt of your letter of the 17th inst., dealing with Muritas and must say that your letter surprises me a good deal. As you have written a private letter to me and have made free to involve my position as a Danish Vice Consul in the correspondence exchanged between you and Dantile Ltd., I beg to send you a private answer and shall see to it that Dantile later writes an official letter to you.

First of all I must emphasise that, when Dantile's managing director, Mr. von Huth, retired from the day to day management of the company, the

Translation of Letter. Beyer's (Kenya) Corporation to J. Brock.

21st March, 1949.

Exhibits

7. (Contd.)

Translation
of Letter.
Beyer's (Kenya)
Corporation to
J.Brock.

21st March,
1949.

- continued.

chairman of the company Baron Akerhielm, asked me as the Secretary to Dantile Ltd., to write you the letter you mention to be dated 25/1 (I take it that you by mistake have written 25/1 as Dantile's letter to you was dated 25/11/1948). As secretary of Dantile, I receive Dantile's mail now that there is no managing director, and I have never on Dantile's behalf, or personally received the letter mentioned to have been written by you about mid December, nor has Baron Akerhielm ever received the letter meant for him.

10

In my opinion it would have been more correct for you, before jumping to conclusions, to have examined whether these letters had really been sent off, or whether they might have gone astray in the mail, and it is not possible for Dantile or others to answer the letters before they come in.

Dantile's board of directors would presumably no less than your client like the negotiations to be clarified which are being carried on between the company and your client.

20

I find your last observation as to what is consistent with my position both insolent and defamatory and will not omit to inform you that these statements are punishable according to English law.

Yours faithfully,
Sgd. Ole Beyer.

TRANSLATION OF LETTER - JORGEN BROCK to OLE BEYER.Exhibits

Translation from Danish.

7. (Contd.)

JORGEN BROCK.

Copenhagen, K.

Translation
of Letter.

Master of Law and Economics.

8, Dr.Tvaergade.

J. Brock to
O. Beyer.

26/3/49.

Royal Danish Vice Consul Ole Beyer,
Beyer's (Corporation)
Kingsway Box 412,
Nairobi.

26th March,
1949.

10 Dear Sir,

Your letter of 21st inst., already came to hand on 25th inst., and I have noted the contents.

That I for 3 months am without an answer to my letters addressed to :-

Messrs. Dantile Ltd.,
c/o Beyer's (Kenya) Corporation,
Box 412, Nairobi

and Baron Uno Akerhielm,
Nairobi, Kenya.

20 respectively, of which two letters a copy is enclosed, and on Muritas' behalf have approached the Royal Danish Consulate, obviously appears as unreasonable to you as it appears reasonable to me.

Dantile's letter of 25/11/1948 (which, unfortunately, in my letter of 17/3/1948 was wrongly stated as 25/1/1945) contained quite an untenable assertion as to Dantile's legal status in relation to my clients, and besides, an incomplete but very alarming information as the basis of Dantile's untenable conclusion.

30

As you personally had signed the letter on Dantile's behalf and are on Dantile's board, to some degree also as elected by my client, you cannot wonder that the application was directed to Dantile c/o your address, which letter of 17/3 has also safely reached.

That neither you, nor Baron Akerhielm, should have received my letter, the despatch of which you make free to question is quite improbable, and my clients, therefore, wanted through official channels

40

Exhibits

7. (Contd.)

Translation
of Letter.J. Brock to
O. Beyer.26th March,
1949.

- continued.

to obtain the necessary information which was missing in the letter with the strange conclusion signed by you.

That the Consulate was able to answer us already 11 days after our letter had been sent off made it still more striking that neither you nor Baron Akerhielm had answered my letters, but both my clients and I myself most strongly maintain that you, by virtue of your position not only as my client's chosen representative, but more particularly with a view to your official position, should have been bound in the letter of 25/11/1948 signed by you, to have given us further particulars about the alarming information and the, we still confine ourselves to say, strange conclusion.

10

We think and maintain that you are bound by your official position to not merely abandon the Danish interests which have been placed in your hands too, but on the contrary to safeguard these interests which so far away might easily be exposed to negligence, and an attempt of such negligence is traceable in the letter's "strange" disregard of the simplest canons of justice.

20

We thought we ought to appeal to your feeling of responsibility and are willing to admit to anyone that we hereby repeat our statement.

We cannot see that you are justified in feeling offended because we approached you, personally as you were elected Muritas' representative on Dantile's Board, in faith of your official responsibility. We await an early and exhaustive reply with tenable arguments.

30

Yours faithfully,

Sgd. Jorgen Brock.

TRANSLATION OF LETTER - DANTILE LTD., to
JORGEN BROCK.

Exhibits

7. (Contd.)

Translation from Danish.

DANTILE LIMITED,

Registered Office
Beyer's (Kenya)
Corporation,
Box 412,
Nairobi.

Translation
of Letter.
Dantile Ltd.,
to J. Brock.
4th July, 1949.

4/7/1949.

10 Jorgen Brock, Esq.,
Master of Law and Economics,
8, Dr. Tvaergade,
Copenhagen, K.

Dear Sir,

20 This is to inform you that all the directors
of Dantile have retired and that it has proved im-
possible to induce any of the shareholders to take
the seat of the resigned shareholders. According
to the law the Company is then to go into liquida-
tion which will most likely take place in the
course of next month.

There will presumably be capital enough to
meet the claims of the company's creditors while
the shareholders must consider their capital, or
in any case the greater part, as lost.

If your client, Muritas, thinks to have any
justified claims on Dantile Ltd., I would advise
you to send such claims in English to me so that I
in time can hand them over to the Liquidator.

30

Yours faithfully,

Sgd. Ole Beyer.

Exhibits

7. (Contd.)

Translation
of Letter.
J. Brock to
O. Beyer.

21st July, 1949.

TRANSLATION OF LETTER - JORGEN BROCK to OLE BEYER.

Translation from Danish.

JORGEN BROCK,
Master of Law and Economics.

Copenhagen K.

21/7/1949.

Airmail.

Royal Danish Vice Consul Ole Beyer,
Beyer's (Kenya) Corporation,
Kingsway, P.O. Box 412, Nairobi.

Dear Sir,

I am obliged for your letter of 4th instant,
and have noted the contents of with regret.

10

According to your request I enclose in dupli-
cate a pro of Muritas' Ltd's claim on Dantile (in
liquidation) and ask you kindly, as suggested by you,
to hand it over to the liquidator and see to it
that the duplicate is returned to me, provided
with the liquidators endorsement that he has re-
ceived the proof.

In your above letter you do not touch upon the
letters I have sent you on Muritas Ltd's behalf in
which we ask for further particulars about the de-
velopment which has caused the liquidation of Dan-
tile. I therefore, on Muritas behalf repeat my
requests as Muritas still must maintain to be
entitled to receive such information to ascertain
whether Muritas might have further claims to set
up against Dantile or those of its directors who
were to safeguard Muritas' interest, as the greater
part of the consideration for the patent rights was
to be paid through the shares.

20

30

That your person and your official position
as protector of Danish interests in the distant
country have been of great importance to Muritas
has formerly been pointed out by me, and at the re-
quest of my clients I beg to urge you to furnish
Muritas, in private, with the required information
which Muritas considers indispensable and, there-
fore, in case of need, must obtain through official
channels.

I hope to receive a favourable reply, and,
thanking you in advance for handing over the proof
of claim to the liquidator, I remain,

40

Yours faithfully,

Sgd. Jorgen Brock.

c.c. to Moltke-Leth,
Solicitor of the High Court.

TRANSLATION OF REPORT TO B.MOLTKE-LETH
ON FATE OF DANTILE LTD.

Exhibits

7. (Contd.)

Translation from Danish.

Translation
of Report to
B.Moltke-Leth
on fate of
Dantile Ltd.

REPORT to B.Moltke-Leth on Dantile Ltd's. Fate.

15th February,
1950.

I have been told that E.von Huth during his stay in Denmark just after the war met N. Grau, manufacturer who produced bathroom tiles in a factory near Dragor. These tiles were a substitute product made of cement and coated with casein.

10 Von Huth got interested in the production and through correspondence with a friend of his in Kenya, P.Arvad Petersen, the two gentlemen resolved to buy the production right in Grau's tiles and to erect a factory for the production of these tiles in Kenya. I understood that von Huth was to acquaint himself with the production methods in Denmark, and at the same time he should provide the necessary capital at home for the purchase of machinery and raw materials, while he was to defray his own living expenses as long as the initial work in Denmark lasted, which amount should be re-
20 funded when the company in Kenya had been started.

According to his own statements von Huth performed his obligations, while Petersen apparently did nothing in Kenya. As von Huth, in spite of repeated applications, did not hear anything from Petersen, he wrote and asked me if I would help him to find out what Petersen was doing. I knew Petersen very well but, unfortunately, only his shortcomings and could only advise von Huth that
30 Petersen was a most unreliable person and that I would recommend him to wash his hands of Petersen. Later I learned that Petersen for his own account had tried to sell the production right in the tiles to a local firm in Nairobi and reported this to von Huth. Further, Petersen was shortly afterwards sentenced to imprisonment for fraud.

Von Huth then wrote to me and later to Baron Akerhielm and asked us to help him to start his
40 factory. As von Huth was an old friend of mine I wrote to him that I had not much knowledge of tiles, but that I would pay his passage to Kenya and thus give him an opportunity personally to proceed with the matter. If von Huth succeeded in his undertaking I was to receive shares for the amount of the fare.

Exhibits

7. (Contd.)

Translation
of Report to
B.Moltke-Leth
on fate of
Dantile Ltd.

15th February,
1950.

- continued.

Before that happened I think that D.G.Stewart, accountant, from Nairobi, and von Huth had a meeting with Grau, at which a draft contract was made between von Huth and Grau. According to that contract part of the production rights should be paid in shares in the company which von Huth was to start. As already mentioned that happened before I was mixed up with the company. It is, therefore, quite out of the place when Grau maintains only to have taken up shares in the company because I was on the board. The board of directors was not formed until von Huth was back in Kenya, and the block of shares to be given to Grau was agreed upon between Grau and von Huth, which agreement is available in writing, and was made while Huth still stayed in Denmark and before I had at all agreed to join any board.

10

On von Huth's arrival here he showed us samples of the tiles made by Muritas Ltd., which we found looked nice. At that time it was impossible to get glazed tiles in Kenya, and the production figures which von Huth gave us left no doubt that the production of tiles would be a paying proposition.

20

On von Huth's appeal Baron Akerhielm and I tried to make other Scandinavians interested in the formation of a joint stock company to exploit von Huth's right of production. Von Huth was to be the managing director of the company and be in charge of the production. A share capital of 220,000 shs. was estimated to be required. At the invitation to subscribe for shares, shares to an amount of 150,000 shs. were taken up, of which, however, about 35,000 shs. shares were issued as payment for services rendered and also to cover von Huth's air ticket to this place. Which actually means about 115,000 shs. was paid in cash.

30

At a meeting held after the subscription list was closed, directors were elected and consisted of Baron Akerhielm as chairman, E. von Huth as managing director and I myself as ordinary member of the board.

40

As von Huth considered the obtained capital sufficiently large to start the production, it was resolved to commence work. However, Baron Akerhielm demanded that all agreements made between

von Huth as the holder of the production right and D.G.Stewart should be cancelled, and when that had been done von Huth should leave the production right to the newly formed company. Grau was, therefore, asked to modify the contract made between him and von Huth, and another draft contract was forwarded. As far as I know, Grau asked Baron Akerhielm to be his representative in the newly formed company.

10 When the municipality had suggested a site for the factory and permitted the company to buy it, and when machinery etc., had been sent from Denmark, some alarming rumours reached the board. It was heard from Denmark that tiles produced by the same design as those produced by Grau were not durable, and that the factories, which had produced such tiles, had large quantities in stock which were unsaleable. Von Huth had exchanged letters with a young friend Mr. Svend Thomsen from Aalborg and when he had talked about a new plastic material available for tiles, and the company saw samples of it, it was resolved not to use Grau's production method, of which Grau was informed. + At that time no contract with Grau had been signed, for which reason the company thought itself justified in being refunded the amount paid in advance for the production right, and Grau was requested to repay it.

20

30 During my stay in Denmark in the summer 1948 = I examined the market possibilities for tiles equal to those produced by Grau and found that people did not believe in their durability and that the sale was insignificant. I learned that the surface of the good tiles were very brittle and realised that the tile was not good enough to stand the fairly rough treatment it would invariably be exposed to in this country where all cleaning is done by negroes. The tile was a decided substitute product which could only expect to be sold in a period where glazed tiles were unobtainable on the market, and the company could not base a future production on a substitute product. There is no doubt that von Huth should have been more attentive in Denmark where he could have obtained expert information, and we ought to have gone further into

40

+ not before the 25/11/48.

= without contracting or informing.

Exhibits

7. (Contd.)

Translation of Report to B.Moltke-Leth on fate of Dantile Ltd.

15th February, 1950.

- continued.

Exhibits

7. (Contd.)

Translation
of Report to
B.Moltke-Leth
on fate of
Dantile Ltd.

15th February,
1950.

- continued.

the matter before we went in for the manufacture, but we trusted the statements von Huth brought from sources in Denmark.

I now contacted Mr.Thomsen who at our instance had examined the possibilities of furnishing a cement tile with plastic coating, and when the experiments proved successful, he was engaged to produce these tiles for Dantile Ltd. I examined the coating and spoke with factory Hygaa which made this and found that it suited the purpose. The engineer of the factory further stated that Thomsen was capable of producing tiles with this coating. Mr.Thomsen then went to Kenya.

10

On my return to Kenya I found that von Huth had relapsed into his old vice "liquor" while I had been away and as his conduct was because of his drunkenness beneath all criticism it was necessary to ask him to resign. Unfortunately Thomsen who was an old friend of Huth's was addicted to the same vice, but we hoped by removing von Huth to be able to keep his nose to the grindstone. When the new machines had arrived Thomsen appeared to know nothing, and I therefore, asked the chairman of the company if I could be allowed to dismiss Thomsen. Besides, I suspected him of stealing from the company, Akerhielm did not want Thomsen to be dismissed.

20

When the machines had arrived, the company built a small shed in which to make experiments with the tiles and it was the intention, when the first experiments had turned out favourably, to try to increase the share capital. However, one of the Company's great shareholders spread rumours in the town about the Company's unreliability, and therefore, spoiled the chances of obtaining more capital.

30

At a subsequent meeting with the shareholders, held in order to discuss the increase of the capital, the chairman, Baron Akerhielm, stated that he wanted to resign because two shareholders, the brothers Faugust, held him in distrust. One of the brothers, G.Faugust, was then appointed chairman and the other, L.Faugust, a member of the board. None of the shareholders present was able to put in more capital.

40

Mr. Thomsen did nothing but drink and hang

about and when his creditors applied to the company for payment of bills, I asked the new board to dismiss Thomsen, but my request was turned down once more. I wanted to engage a cementer from Denmark who knew his job.

10 Mr.G.Faugust soon got tired of being chairman of the board and retired, when Mr.L.Faugust was appointed chairman. Also Mr.L.Faugust refused to dismiss Thomsen although it was proved that he neglected his work and only when I caught Thomsen in trying to sell a load of cement belonging to the factory and pocket the money, and likewise proved that he had done the same thing on a previous occasion Thomsen was turned out.

After this even the company's liquid resources had dwindled dangerously, for which reason Mr. L. Faugust wanted to retire from the Board and his responsibility.

20 There was now only one alternative, namely, liquidation, and it was therefore resolved at an extraordinary meeting (general) that the company should go into liquidation. Baron Akerhielm now allowed himself to be re-elected to the board in order to help in the liquidation.

30 At the subsequent general meeting everything was made ready and the liquidators, who were willing to undertake the liquidation, the accountants Alexander and Ingram were present. However, now the brothers Faugust did not want voluntary liquidation although they had voted for it at the preceding meeting, and as the other persons present did not represent a majority vote of 75% the meeting had to be cancelled and another meeting is now to be convened at 3 weeks notice.

40 It will be hardly possible to save much of the paid up capital as most of it is spent on von Huth's and Thomsen's salaries and on purchase of machines and material. The first machines which came to this country can only be sold as scrap iron and are valueless. The assets left may amount to 30,000 Shs. but are likely to realise much less as the raw materials in stock are only applicable here to a slight extent. It may be possible at best, to repay 1/5 of the paid up

Exhibits

7. (Contd.)

Translation of Report to B.Moltke-Leth on fate of Dantile Ltd.

15th February, 1950.

- continued.

Exhibits

7. (Contd.)

Translation
of Report to
B.Moltke-Leth
on fate of
Dantile Ltd.
15th February,
1950.
- continued.

capital to the shareholders. But I personally think that it will only amount to 1/10.

The following alternatives are open at the moment. Voluntary liquidation, winding up by this Court, or sale of the company. I personally think that the last mentioned course is possible if only the shareholders will be sensible about trying it.

Nairobi, 15/2/1950.

Translation
of Letter.
J. Brock to
O. Beyer.
19th April,
1950.

TRANSLATION OF LETTER - JORGEN BROCK TO OLE BEYER. 10

Translation from Danish.

Jorgen Brock,
Master of Law and Economics. Copenhagen, K.
8, Dr.Tvaergade.
19/4/1950.

The Royal Danish Vice Consul Ole Beyer,
Kingsway, P.O. Box 412, Nairobi.

Dear Sir,

Having received through Moltke-Leth a copy of your "Report on Dantile's Fate" of 15/2 last, I who have been delayed because certain members of Muritas' board and I myself have been out of town, will not omit to say that we have been without any information from you since 4/7/1949 till the said report came forward, i.e. more than 7 months, nor have I received any answer to my registered letter of 21/7/1949. 20

The claim for information was, therefore, on 10/2/1950 submitted to the Ministry of Foreign Affairs, but on the receipt of the report we asked them to stop the consideration of same. 30

To your particulars of the case I beg to state as follows :-

Muritas Ltd., has never, nor by correspondence, been in connection with Mr.Arvid Petersen and must, therefore, consider Mr.Arvid Petersen's affairs of no concern to Muritas Ltd.

I must definitely refute that the fact that you were a director of Dantile Ltd., should be of no importance to Muritas Ltd., with a view to receiving part of the consideration of the patent right in shares in Dantile Ltd., as both your and Baron Akerhielm's seats on the board in the contract made with Mr. von Huth of 29/11/1947 (point VIII) are expressly stated to be the condition for the arrangement.

10

When this condition from the very beginning is fulfilled by your joining the company formed according to the stipulations of point VIII of the said contract and your signature appears on the prospectus of January 1948 and its exhibit and you are entered in the Certificate of Incorporation as member of the board, the view held by you in the letter of 25/11/1948 is quite incomprehensible to us and in itself untenable which, we, therefore again beg to emphasise.

20

That you after the incorporation which took place in March 1948 fail to contact Muritas during your stay in this country in the autumn 1948, the product of which company you already at that time was dissatisfied with, since you engaged the quite incompetent Mr. Thomsen as technical manager, has been and is still incomprehensible to Muritas Ltd. and you will certainly understand Muritas Ltd's point of view that the failure of Dantile's production under Mr. Thomsen's management could have been avoided if you, which would have been reasonable, had contacted Muritas Ltd.

30

Dantile Ltd., could, no doubt, have been spared much of the misery and distress which are apparent in your report which, even if it may hold a human background of the Board's delayed or neglected interference, containing nothing in the nature of statements of account in respect of (I) the capital at the start, (II) the later employment of the capital, or (III) balance sheet at the opening of the liquidation or the winding up proceedings.

40

As regards (1) I beg to say that no mention has presumably been made in this country of preference shares, but only of a capital of altogether 200,000 shs. while the prospectus shows 2 classes of which the preference shares are to be covered first of all.

Exhibits

7. (Contd.)

Translation
of Letter.
J. Brock to
O. Beyer.

19th April,
1950.

- continued.

Exhibits

7. (Contd.)

Translation
of Letter.
J. Brock to
O. Beyer.

19th April,
1950.
- continued.

Question 1: Who has received the preference shares?

How are these shares paid?

How many ordinary shares were taken up?

How are these paid?

Your information that part of the share capital was spent on Mr. von Huth's stay in this country and his journey to Nairobi has no reassuring effect and would hardly conform with the requirements of the Danish Companies Act concerning form of payment and information to be given to the persons, including my clients, who take up or take over shares as payments for goods, patents or other values. 10

Although an examination of these points might show that the responsibility in this respect lies with the board of directors, and my clients must reserve to themselves the right to maintain that this is the case until the required exhaustive information has been submitted and has formed the basis for my clients' resolution, it will, besides, be necessary to obtain full and detailed information about the above points II and III, so that my clients can decide which further steps should be taken. 20

As you from the very beginning have taken part in the formation and management of the company and had a hand in the engagement of the infelicitious Mr. Thomsen, you have in my clients' and my view undertaken a serious responsibility towards the shareholders by not stepping in in time and get to the bottom of the plot depicted in your report, the more so as you in face of our earnest enquiries and our reference to the contract try in the correspondence with our clients flatly to deny the existence of the contract the provisions of which you, after all, have joined in performing, and which you only per correspondence have tried later to have modified. 30

I therefore request you once more as soon as possible to send the above mentioned and often called for information including more particularly, an account of the present situation, besides which we would like to learn the liquidators attitude to the claims set up in my letter and proved to the liquidators. 40

As already mentioned, the report only gives a summary of historical facts, but does not contain any statement of accounts, and my clients must still reserve to themselves the right to receive such statement of accounts with due specification and proof, as my clients until such fully detailed accounts are available must reserve to themselves the right to set up a counter claim against you personally to which a neglected shareholder is entitled according to Danish law against the board of a company, in which connection my clients consider your person and official position as inseparable and qualifying your responsibility.

10

As member of the board it is your duty to enforce Mr.Thomsen's dismissal when he "did nothing but drink and hang about", and if other members of the board, all the same, keep Thomsen as manager, you should either have caused a general meeting to be convened or have resigned your seat as director and at the same time in optima forma have informed the shareholders represented by you of the state of affairs.

20

By remaining on the board despite your knowledge of the untenable conditions, you have made yourself co-responsible for the catastrophe which has hit the company.

My clients would, therefore, find it reasonable that you help to relieve my clients' loss by only receiving 10-20% of the proceeds of your shares's nominal value obtained at the liquidation, mentioned in both your letter of 4/7/1949 and in the report, for the purpose of which I on 21/7/1949 at your request sent proof of a claim of Danish Kroner 1,000.-.

30

The proof was made out in English in duplicate and at your request sent to your private address asking for acknowledgment of the receipt of the proof, but we have not received such acknowledgment, nor have we received any observations to the claim.

40

Besides the required information and the acknowledgment of the proof, my clients wanted to hear from you whether you in the proposed manner or in any other manner could think of helping to relieve my clients' loss which would undoubtedly have become smaller if you in time had interfered with

Exhibits

7. (Contd.)

Translation
of Letter.
J.Brock to
O.Beyer.

19th April,
1950.

- continued.

Exhibits
7. (Contd.)
Translation
of Letter.
J.Brock to
O.Beyer.
19th April,
1950.
- continued.

the unfortunate conditions prevailing in the company of whose board you were a member, also as the representative of my clients who reserve to themselves to rely on the responsibility which your post as director holds especially under these conditions and which as not become smaller by the quite incomprehensible and untenable standpoint set out in the letters of 25/11/1948 and 21/3/1949 in which you take exception to your share in or responsibility for the company and present the case in a manner which is at variance with the facts. You try, in some degree, to maintain this in the report and by your great delay of the correspondence and your omission to give information about the accounts.

10

I hope soon to hear from you that it will be possible to find a satisfactory solution and remain,

Yours faithfully,

Sgd. Jorgen Brock.

20

Translation
of Letter.
J.Brock to
Ole Beyer.
29th June,
1950.

TRANSLATION OF LETTER - JORGEN BROCK TO OLE BEYER.

Translation from Danish.

JORGEN BROCK,
Master of Law and Economics.

Copenhagen K.

Air Mail.

29/6/1950

Royal Danish Vice Consul Ole Beyer.
Kingsway, P.O.Box 412, Nairobi.

Dear Sir,

As 2 months have now passed since I wrote my letter to you of 19/4 last, to which I am still without an answer, Muritas Ltd., has ordered me to resume the petition to the Ministry of Foreign Affairs which was stopped at the instance of Muritas Ltd. In the petition we asked the Ministry to officially apply to you, and I have had an opportunity to discuss the matter also with Count Knuth, senior principal of the Ministry.

30

It will therefore, be possible at short notice, to proceed with the matter, but Muritas Ltd. has however, wanted by this letter to give you one

40

more chance voluntarily to account for both Dan-
tile's and your own affairs in relation to my cli-
ents as asked for in letter of 19/4/1950. My
clients hereby give you a last opportunity to throw
light on the matter.

Hoping to receive a reply satisfactory to
Muritas Ltd., within 60 days from this day, which
is Muritas Ltd's. condition for an amicable settle-
ment, I remain,

Yours faithfully,

Sgd. Jorgen Brock.

Exhibits

7. (Contd.)

Translation
of Letter.
J.Brock to
Ole Beyer.

29th June,
1950.

- continued.

10

TRANSLATION OF LETTER - OLE BEYER TO JORGEN BROCK.

Translation from Danish.

OLE BEYER.

Jorgen Brock, Esq.,
Master at Law,
8, Dr.Tvaergade,
Copenhagen. K.

P.O.Box 412,
Nairobi.

25/7/1950.

Translation
of Letter.
Ole Beyer to
J. Brock.

25th July, 1950.

20

Your letters of 19/4 and 29/6 this year have
been shown to Baron Akerhielm as chairman of Dan-
tile's Board of Directors who has asked me to
answer these letters as follows :-

30

First of all I must point out that the contract
of 29/11/1947, mentioned in our letter of 19/4/1950
is not signed and only is available as a draft made
by you and dated 21/11/1947, as the full wording
of the contract was not satisfactory and it, there-
fore, was desired to make certain modifications,
which also appears from the subsequent correspon-
dence. Further, I want personally to point out
that you, in accordance with a draft lying in the
correspondence here, appoint Baron Akerhielm as at-
torney of Muritas Ltd. Your clients should,
therefore, long ago have asked Baron Akerhielm for
information about the matter and have instructed
Baron Akerhielm about your wishes. Your clients
have surely realised that Baron Akerhielm never re-
turned the proxy provided with his signature.

40

As regards Mr. Thomsen's engagement this was

Exhibits

7. (Contd.)

Translation
of Letter.
Ole Beyer to
J. Brock.

25th July, 1950
- continued.

effected by Mr.von Huth who said that he knew Thomsen. I personally examined Thomsen's qualifications by applying to the factory Hygaa in Aalborg who said that Thomsen was competent to produce tiles coated with plastic. Further I met Thomsen's father, O.Thomsen, director of an insurance company, Aalborg, who, unfortunately mentioned nothing about the son's bad disposition. Dantile's board of directors had asked me to examine the possibilities of producing plastic tiles but not given me any power to negotiate with Muritas Ltd.

10

Preference Shares: To meet your clients' wishes that Baron Akerhielm, attorney for your clients, Mr.von Huth and I myself, as attorney for Dan Christensen, should represent 60% of the total capital, it was necessary to issue a block of shares, the holders of which were not entitled to vote. Further, I must point out that the negotiations in Denmark were carried on between your clients and von Huth and the first contract was made between your clients and von Huth. Only on von Huth's arrival in this country a joint stock company was formed to which von Huth assigned his patent rights. However, as mentioned above, Dantile did not want to recognise and take over the original contract, for which reason draft another contract between your clients and Dantiles Ltd., was prepared.

20

At an extraordinary general meeting held on 13/5/1948, it was agreed to divide the authorised capital in 2,500 preference shares and 500 ordinary shares. The preference shares should be paid 6% dividend each year.

30

Of the shares offered for subscription 7,250 ordinary shares and 250 preference shares were taken up. The latter were taken up by Mr. G. Faugust, Nairobi.

To your observation that it is not permitted according to Danish law to pay for services rendered may be stated that this is fully warrantable under the English Companies Act. Besides, we have gathered from Mr.von Huth that your clients agreed hereto.

40

In reply to your point II, I enclose a specification from Dantile's ledger of the preliminary

Expenses account and likewise a specification of the Profit and Loss account. These specifications will show your clients on which purpose the funds have been spent.

Exhibits

7. (Contd.)

Translation
of Letter.
Ole Beyer to
J. Brock.

25th July, 1950
- continued.

10 With regard to your reproach against me that I did not at an earlier date interfere with Thomsen's continued engagement in the company, I can only say that I applied to every single member of the board and that I only succeeded in having Thomsen dismissed when I could prove that he had enriched himself at the expense of the company. Up till that time Mr. Thomsen was supported by the rest of the board, including the chairman and I could, of course, do nothing.

20 At a liquidation which it was agreed at the last general meeting to place in the hands of the public liquidator, all the questions will be laid clear before your clients as well as the other shareholders, and your clients claim will, of course, be treated on line with the claims set up by the other shareholders. Both Baron Akerhielm and I wanted public liquidation as the correctness of this cannot later be called in question. Complete accounts will be sent to your clients by the Liquidator.

30 Your observation that I ought to have resigned my seat on the board when I could not enforce Thomsen's dismissal I find very strange. That I would have preferred, but, unfortunately I represented Mr. Dan Christensen's capital and solely for that reason I found it unwarrantable to resign. Besides, I do not think that the question whether I resigned or stayed on has any influence on the size of the responsibility but by staying on I thought that it might be possible to spare the company further losses.

Your claim for compensation of Kroner 1,000 for royalty and solicitors fees will be submitted to the liquidator and dealt with by him.

40 I fail to see why I personally should make good your clients' loss, I do not know your clients and have never undertaken any responsibility in order to represent their interests.

Yours faithfully,
Sgd. Ole Beyer.

Exhibits

7. (Contd.)

Translation
of Letter.
J.Brock to
O.Beyer.
2nd August,
1950.

TRANSLATION OF LETTER - JORGEN BROCK TO OLE BEYER.

Translation from Danish.

JORGEN BROCK,
Master of Law and Economics.

8, Dr.Tvaergade,
Copenhagen, K.
2/8/1950.

The Royal Danish Vice Consul Ole Beyer,
P.O. 412, Nairobi.

Dear Sir,

I have today with thanks received your letter of 25/7 in reply to my registered air mail letter of 29/6 the contents of which and of the attached enclosures I have noted.

10

My clients must reserve to themselves to further study your statements about the divergent views of the English and the Danish Companies Act concerning preliminary expenses. Especially the item 3 Directors 30,000 - seems to us to be not only surprising but quite overwhelming and, coupled with Dan Christensen's 2,300 - von Huth's 3,958 and expected expenses 5,057.37 these expenses which are quite unwarrantable under Danish Law total Kroner 41,515.37 which only leaves Kroner 516.50 for actual expenses.

20

According to Danish Law the prospectus shall contain a clear statement of (A) not only the total maximum account of the preliminary expenses, but (B) the exact commission to be paid to the promoters who, until the company has been incorporated, are personally liable for all expenses and, therefore, liable to make good to the shareholders such expenses which are not clearly stated and specified in the prospectus.

30

Mr.von Huth has most definitely not mentioned anything about the 3 directors (presumably you yourself, von Huth and Baron Akerhielm) each being paid Kroner 10,000 for the formation of the company, and according to Danish law each of the gentlemen is consequently bound to refund my clients (prorate your share of) these unlawfully received 30,000.--.

What does the item Creditors 173.75 cover?
How is it possible for a company under formation to have creditors? Who has been paid cash 16.?

40

Who has received the 5,057.37 for expected

expenses? Have these expenses occurred legitimately?

Exhibits

7. (Contd.)

Also Profit and Loss account seems to be fairly blurred. What is interest of exchange 1,215.70? Is exp. Expenses an abbreviation of expected expenses of an equally problematic nature as the corresponding well over 5,000 - under preliminary expenses?

Translation of Letter. J. Brock to O. Beyer.

2nd August, 1950.

- continued.

As against the actual working costs

10	Freight	681.60
	Insurance	402.70
	Forwarding & Transport	896.44
	Office and Printing	349.25
	Postage, Telegrams	28.00
	Sundry	10.00
		<hr/>
	Total	2,367.99

are, besides the above 2 items

administrative expenses

20	Salaries and wages	15,600.00
	Secretarial	2,400.00
	Travel expenses	4,000.00
		<hr/>
		22,000.00

i.e. the administration amounts to more than 9 times the actual working costs. Do not you think this calls for illustration and, if possible explanation and proof?

30 My clients should like to hear your explanations to these entries, but reserve to themselves through any legitimate channel - also the Ministry of Foreign Affairs - to have light thrown on them.

Further, I must reject your explanation in writing which in every respect is dissatisfactory, in most points wrong and partly self-contradicting.

Without including all the points I shall briefly state that the contract is finally signed in Dantile's name by von Huth and then the company was formed, the shares issued and sent to my clients in conformity with the stipulations of the duly signed contract.

40 The fairly diffuse correspondence which was then exchanged about modifications desired to be

Exhibits

7. (Contd.)

Translation
of Letter.

J.Brock to
O.Beyer.

2nd August,
1950.

- continued.

made by the Board of Directors contains nothing to the effect that the contract should not be final and binding, on the contrary, an increase of the share capital is recognised to involve that my clients without further payment being made on their part shall receive part of the new shares, because my clients are entitled under the contract to receive 5% of the shares capital as consideration for the assignment.

That the 3 gentlemen had divided between them 30,000 - of the company's liquid resources is presumably the reason why it was necessary to increase the capital - presumably so that the 3 gentlemen could have more money to divide between them and my clients also reject your request to take up more shares and ask the gentlemen themselves to provide the funds. Nothing is mentioned about the purpose for which the new capital is to be used, nor is any explanation given for the purpose for which the original capital has been used.

10

20

My clients, however, waived "en cadeau" their claim under the contract to receive more shares as consideration.

As there was then no money to divide - whether Thomsen or von Huth has spent most money (to put it mildly) is left unsaid - you do not leave the bridge even formally which we still must consider had been your duty but carry on as secretary although you try afterwards to rid yourself of the responsibility incurred by your signature.

30

As my clients' letter through me to Baron Akerhielm remained unanswered - but contrary to your assertion we applied direct to Baron Akerhielm as our attorney, but in vain - we had to approach you both, because we had made it a condition that you should be a member of the board as a guarantee for the honesty - von Huth was not found satisfactory in that respect by my clients - and because you as Danish Vice Consul ex officio are bound to protect Danish interests against molest and robbery as is the case in your company.

40

That you keep silent so long as possible and felt unjustly aggrieved when we advised you that we would call for intervention on the part of your superiors, is no excuse for your conduct, no more

than the untenable account which you only give now because you have been forced to do so can be satisfactory to my clients.

10 That you had no power to negotiate with Murit-
tas Ltd., on behalf of Dantile's board of direc-
tors is only due to your own unpardonable negli-
gence, as you knew that you represented my clients,
and can surely only be explained in the way that
you already at that time realised how untenable
Dantile's situation was - called forth by the 3
gentlemen's division between them of the liquid
means - and the negotiations about modifications
both of the articles of association and of the
contract were then in full swing.

20 How do you explain that the 3 directors had
to issue "a block of shares the holders of which
were not entitled to vote". If you wanted to
perform the contract and take over the invention
you were bound to take up ordinary shares equal to
60% of the total capital, or you would forfeit
your right to exploit the invention.

What is "shares the holders of which are not
entitled to vote", is it a finer term of shares
not paid up, that is to say, swindle, when you do
not beforehand obtain my clients' approval?.

30 Your correspondence about the increase of the
shares capital mentions nothing about shares not
fully paid up, and the additional shares which you
asked my clients to take up should also have been
paid up - then the 3 directors had had a larger
amount to divide between them.

Had you convened my clients to the extraordin-
ary general meeting to be held on 13/5/1948 or in-
formed them of the agenda - otherwise you are under
Danish Law responsible to my clients for the pro-
ceedings, including also the issue of 2 kinds of
shares which is not stipulated in the contract.

40 On the whole I think I have gone through the
greater part of your very cheap arguments, but I
reserve to myself, as I have there and then written
the above in my indignation to see a Danish Govern-
ment representative give so unreliable an account,

Exhibits

7. (Contd.)

Translation
of Letter.
J.Brock to
O.Beyer.

2nd August,
1950.

- continued.

Exhibits

7. (Contd.)

Translation
of Letter.
J.Brock to
O.Beyer.

2nd August, 1950.
- continued.

the preparation of which must have taken several weeks, to thoroughly consider the matter - and already on this basis to submit the matter to the Ministry of Foreign Affairs - but will however, give you an opportunity within three weeks from this day to answer the positive questions.

Yours faithfully,

Sgd. Jorgen Brock.

8.

Letter.
Dacre A.Shaw,
Buckley &
Hollister to
Dantile Ltd.,
(in Formation)

23rd March,
1948.

8. - LETTER - DACRE A.SHAW, BUCKLEY & HOLLISTER
TO DANTILE LTD., (in Formation)

10

DACRE A.SHAW, BUCKLEY & HOLLISTER,
Advocates.

P.O. Box 481,
NAIROBI,
Kenya Colony.

23rd March, 1948

EJH/WSH.

The Secretary,
Dantile Limited (In Formation),
c/o Messrs. Beyer's Corporation,
Kingsway,
NAIROBI.

20

Dear Sir,

We enclose herewith the draft Agreement between your Company and Muritas and shall be glad if the Directors will carefully peruse the draft and return it to us approved with any necessary alterations, so that we may engross it for signature.

We have searched the Patent Register here and the search revealed that so far no Muritas Patents have been registered in this country, and we would suggest that you communicate with Muritas at the earliest possible moment and ask them to register their patents in England since English registration is essential prior to registration here. It is also necessary for Mr.von Huth to write a letter to Dantile Limited whereby he agrees to transfer all or any of his rights with

30

Muritas to Dantile Limited in consideration for shares in the Company and his employment as a salaried manager. Also you should get in touch with Mr. Alber and he should write a letter to Dantile Limited agreeing to transfer any rights he may have with Muritas to the Company in return for the share he will receive of the purchase money paid on transfer of the South African rights to Mr. Stewart.

10 With regard to the incorporation of the Company, we would report as follows :-

20 The Memorandum and Articles of Association are with the Registrar of Companies at the present moment. We hope to receive them back together with the Certificate of Incorporation either before or immediately after Easter. In any case the date of incorporation will be before Easter. We have the Share Certificates printed and ready for use, and we also have the seal of the Company in this office ready for use.

Yours faithfully,

DACRE A. SHAW, BUCKLEY & HOLLISTER.

(Signed) E.J.Hollister.

Exhibits

8. (Contd.)

Letter.
Dacre A.Shaw,
Buckley &
Hollister to
Dantile Ltd.,
(in Formation)

23rd March,
1948.

Exhibits

A. - LETTER - H. DAN-CHRISTENSEN to E. VON HUTH

A. Oct. 28 1947. IN DUPLIO

Letter. ANBEFALET

H. Dan- HARALD

Christensen DAN

to E. Von Huth. DANONIT

28th October, PIPE-SPIDSER

1947. STRANDVEJ 2 KOBENHAVN

DENMARKS ENESTE PIPE-SPECIALFORRETNING

FABRIKATION i PIPE-BRANCHEN

POSTADRESSE: STRANDVEJ 2. TELEFON RYVANG 538: 10

AMALIEGADE 3.

REFERENCE: HAADVAE RKERBANKEN, POSTKONTO 86526.

Mr. E. Von Huth,

Raadhuspladsen 55,

V. 20/10/1947.

CONFIDENTIELT

T R A N S L A T I O N

In confirmation of our earlier conversation and our conversation today at this office, - at Nyhavn between Engineer Alber you and me I wish to confirm that I am prepared to invest Kroner 25,000 in a share Company for use of your Danish patent for tile manufacturing called Dantile S.E. Africa first and foremost in Kenya and Uganda and perhaps eventually Tanganyika. 20

The amount I can put to your disposal in January, 1948 but I am prepared if necessary to give a promissory note on the amount payable during three months if it shall be necessary to finance purchase of machines etc., I confirm that I shall meet you as arranged next Tuesday to finalise the whole matter and hope to hear from you before then. 30

With regards,

H. Dan-Christensen.

B. - LETTER - ERIK SCHEITEL TO ERIK VON HUTHExhibits

Translation:

27/1/47.

B.

Dear Erik,

Letter.
E.Scheitel to
Erik Von Huth.27th January,
1947.

As arranged I went out to Dragor a couple of days ago and had an opportunity to see the Tile Factory which you proposed to start a similar one in Kenya under the name of "Dantile". I took some photographs of the production and the machinery which later on will be useful for you in Kenya.

10 As we discussed about, I think it will be very wise of you to take with you a vibration machine and a grinding machine (with all the necessary spare parts for 2 years production) so that the factory can start up as soon as the machinery is fixed.

It will be necessary to take along the frames for the vibration machine in which the tiles are manufactured. If it is the idea that more factories have to be started up within a short time, I will suggest that those parts of the machinery

20 which cannot be produced within a short time in Nairobi will be supplied from Denmark. The parts of the machinery, I am specially thinking about, are all the springs and the special harden parts of the vibration machine, as the eccentric wheel with the foundation piece and the ball bearing and the roller bearing belonging to this. The cause for which I think it is necessary to bring along the various machine parts are that it is no good

30 to have any serious machine stop when the factory starts production, and in my opinion it is necessary to have two years' production guarantee without having any serious repairs done by local workshops. As you know I have been quite a long time in Kenya, and it is my conviction that there are possibilities for big sales of the tiles you propose to manufacture there. It is a glorious idea, and I am sure you will succeed. The only thing, I feel sorry for is that I am not able in the moment to invest any capital in your business, but may be

40 I will be able to do so later on.

I wish for you that you will succeed in your project, but I am sure it will work out successfully.

Kind regards,
Erik.

Kay and my parents send you their love.

ExhibitsC. - LETTER - VIGGO OTTESEN TO ERIK.

C. (Contd.)
 Letter.
 V. Ottesen
 to Erik.
 28th January,
 1948.

V. Ottesen.

Copenhagen,
 28.1.48.

Dear Erik,

Thank you for your letters of 13th and 20th inst., and also the one undated letter. With regard to Mr. Stewart retiring from Dantile I do not think it should be necessary to pay him any compensation, but I will leave that to you to fix.

From one of your letters I understand that Dantile wants a further consignment of machinery exactly like the consignment we are shipping per s.s. "Tanafjord", and we have therefore ordered this machinery. A/S Muritas does not want to take shares in payment of this consignment, as it looks like that we will get more shares when Dantile is to be extended to further districts. I am phoning Dan Christensen when the promissory note is paid in order to ask him if he is interested.

10

This deals with your first letter. The weather here is very mild with rain and fog; we have only had heavy frost a couple of days.

20

I spoke to Svend Thomsen, and he will be arriving during this week and will immediately start work. Unfortunately most factories are dormant due to stagnation of the sale during the winter season, but Mr. Pinnerup will start up just to teach Thomsen, so that will be all right. He will also be taught to mix the glaze, and shown everything else necessary.

30

As it is easy to obtain water here, we have never troubled making account for how much water it is necessary to use in the production of 1,000 tiles; we will try to find out and let you know.

The glass must be 3 mm. thick, but some factories are using 2 mm. thick glass. The price you are mentioning must be wrong as glass here 3 mm. thick, can be obtained for approx. Kr.1.92 each, and I do not believe that the freight to Nairobi could amount to such a figure, that each glass will cost Shs.24/-; the measurement of each glass is 53 x 53 cm. With regard to electron motors I have asked one of the big firms and have got confirmed that this firm is able to supply. Unfortunately

40

time of delivery is 6 months. You are writing that the motor must be 440 volt 3 phase a.c. but we are short of one information; how many cycles? It must be either 50 or 60, but you can get this information from the Power & Lighting Co., or one of the local electricians.

10 I am going to send you some more samples; it was rather unfortunate that the tiles were broken, as the parcel was labelled "Careful", but possibly the Airways did not take any notice, although they labelled the parcel themselves. The burgundy-coloured tile was an experiment, and it was not quite successful.

It is rather unfortunate that Albert did not fix the export licence before he went to U.S.A. as the machinery could then have been on its way to Mombasa now.

20 I am enclosing a note, showing expenses up to today, but I have not calculated the Kr.200.00 you borrowed from me. In case you want them debited to Dantile instead of sending them please let me know. Actually, I think it was an expenditure, which should be included in the formation expenditure.

Kind regards from anybody here,
Yours faithfully,
Sgd. Viggo.

D. 2.

30 THE HISTORY OF DANTILE LIMITED IN EAST AFRICA
STATEMENT BY MR. ERIK VON HUTH.

Before this Company was started it was called Dantile In Formation.

A budget was made out for two units; samples were taken out from Denmark. This budget was posted to approximately 60 Scandinavians and without any pressure from the Directors, the sample and budgets were accepted by a few of these, who were all personal friends.

Exhibits

C. (Contd.)

Letter.
V. Ottesen
to Erik.

28th January,
1948.

- continued.

D.2.

The History of
Dantile Ltd.,
in East Africa.

Statement by
E. Von Huth.

Undated.

Exhibits

D.2. (Contd.)

The History of
Dantile Ltd.,
in East Africa.Statement by
E. Von Huth.
- continued.

Undated.

Baron Uno Akerhielm fixed up, for instance, with the two brothers Faugust and Soderholm and I also think with Bor Kuhle.

Mr. Rolf de Mare came to Mr. Beyer's office with a cheque for £500. Mr. W. Hilbuth wrote a very friendly letter (and it should still be in the files of the Company) to me and also enclosed a cheque for £500.

We got in touch with Mr. Hollister, Advocate, Nairobi, who prepared our Memorandum and Articles of Association in the most legal way and all shareholders got a copy of this.

10

We also saw the Economical Controller who allowed us to carry on and considered it a good thing for the Colony.

The next step was to see the Land, Mines and Surveys with a proposal to buy approximately 28 acres of Messrs. K. Aschans and Baron Akerhielm's estate at Athi River, but were told that it was not a factory area and we should send them an application for a plot in the new Light Factory Area, Nairobi.

20

We did so, but as far as I remember, we first got the final reply in October, 1948, and, therefore, we could not start the buildings.

On the 19th September, 1948, Mr. S. Thomsen came from Denmark with a new way to make tiles, which Mr. Beyer agreed was much better one than the one I came out with in December, 1947.

Anyhow, all this can be seen in the Minutes Book of the Company, which was kept up to date when I left on the 1st December, 1948.

30

In the same Minute Book can be seen how I left. It was especially Baron Akerhielm who wanted me to leave and furthermore he suggested that if I would not accept his terms, I could leave forthwith. He was a very dictatorial Chairman.

I should have had a contract with the Company as soon as we had started building the factory. It would have been £75 per month, plus £12.10.0 house allowance, home leave, etc., which can be seen in

40

the budget, but that day in Messrs. Harrison & Bower's office this contract was cancelled by him. While I was employed, I had £60 per month for 13 months and it was not the mistake of the Directors that we could not get any plots before.

10 Since then I have never received any minutes whatsoever. I wrote for these on the 6th January, from Dodoma and got a very rude reply, so I consider myself having finished with the Company for nearly $1\frac{1}{2}$ years.

Nobody would know, of course, how matters would have continued under my management, but it hardly could have been worse than it has been during these $1\frac{1}{2}$ years.

Everything was drawn up legally and I cannot see the Directors are to be blamed.

20 If we had obtained the buildings in Athi River, we could have started production approximately the 1st September, 1948. We had 50 tons of white cement and could get ordinary cement locally, sand, wood, machinery, colours etc.

When Mr. Thomsen came with the new procedure, we also bought all the new materials for this new production, but I have, as mentioned before, not had any reports of Minutes from Nairobi since 1st December, 1948, even although I was told I had resigned as a Managing Director but was still a Director in the Company.

30 I have not received one cent from Nairobi since the 1st December, 1948, to date.

Signed.

Eric Von Huth.

Exhibits

D.2. (Contd.)

The History of Dantile Ltd., in East Africa.

Statement by E. Von Huth.
- continued.

Undated.

Exhibits

D²10 - LETTER - COOPER BROTHERS, LESLIE SEEX & CO.
to MERVYN J.E. MORGAN

D²10.

Letter.
Cooper Brothers,
Leslie, Seex &
Co., to
M.J.E. Morgan.
19th January,
1951.

COOPER BROTHERS, LESLIE, SEEX & CO.,
P.O. Box 158,
Queensway House,
York Street,
Nairobi,
Kenya Colony.
Mervyn J.E.Morgan, Esq.,
Private Bag,
NAIROBI.
19th January, 1951.

Dear Sir,

10

Re; Dantile Ltd.

I regret that I have not replied sooner to your letters dated 29th and 31st December reference 4/2922/R.178 and 4/2950/R.178/7 owing to my absence on local leave.

I was appointed by the Supreme Court in Re Miscellaneous Civil Case No.15, 1950 as an Inspector under Section 136 of the Companies Ordinance to investigate the affairs of the above Company.

Mr.Von Huth was a director of the Company and in a letter dated 23rd November, 1950 I asked him several questions. A copy of this letter is attached for your information.

20

My report had to be filed before the 15th December and as I had not received a reply to my letter I obtained the information I required from other sources and I have filed my report.

It is possible that I may have to file a supplementary report so I would still like Mr. Von Huth to answer my enquiries. Incidentally I have not received his letter of the 27th December, to which you refer in your letter of the 31st December, 1950 and would be grateful if you would kindly send me a copy.

30

Yours faithfully,

Signed Eric B. Seex.

Enc. Copy letter.

D²11. - LETTER - E.B.SEEEX to E.VON HUTH

Exhibits

Registered

23rd November, 1950.

D²11.

E.Von Huth, Esq.,
Kongwa,
TANGANYIKA TERRITORY.

Letter.
E.B. Seex to
E. Von Huth.
23rd November,
1950.

Dear Sir,

Dantile Ltd.

10 As you are perhaps aware I have been appointed by the Court to investigate the affairs of the above Company. I have interviewed various people connected with the Company but do not consider it necessary to call you to Nairobi for that purpose. I will be obliged, however, by your replies to the following questions :-

- 20 1. In the Circular dated 23rd February, 1948, in which an invitation was issued to subscribe for shares to the company, it is stated that several factories are already existing in Denmark and paying good dividends. Have you personal knowledge that such was the case?
2. If the tile was successfully made in Denmark, why could it not be successfully made in Kenya?
3. Was the machinery imported into Kenya identical with the machinery used in Denmark?
4. I have been told that the moulds would not function properly. Is this correct?

I would be grateful also if you would kindly advise me of any other matters which in your opinion contributed to the failure of the company.

30 My report must be submitted to the Court before the 15th December and I would therefore be grateful for an immediate reply.

Yours faithfully,

E.B. SEEX.

A/rn.

ExhibitsD²13.

Letter.
E.Von Huth to
Cooper Bros.,
Leslie Seex &
Co.
27th December,
1950.

D²13. - LETTER - ERIK VON HUTH to COOPER BROS.
LESLIE SEEX & CO.

Copy.

P.O. Box 1001,
Dar-es-Salaam.
27th December, 1950.

Messrs.Cooper Bros., Leslie, Seex & Co.,
P.O. Box 158,
Queensway House, York Street,
Nairobi.

Dear Sirs,

10

Dantile Ltd.

I am in receipt of your letter of the 23rd
November, 1950.

I have seen your Mr.Maslin to-day and ex-
plained to him why I have not been able to reply
before the 15th December; however, I will now re-
ply to the questions in your letter.

1. I was in touch with several people in Denmark
who made large profits on what they in Denmark call
"Muritas".

20

2. The tile was successful in Denmark up to the
middle of 1948 when better and cheaper tiles came
on the market and when Mr. Ole Beyer was in Den-
mark he found out that it would not be a paying
proposition, as they were lying with big stocks
they could not sell. He then got in touch with
Mr.Thomsen who had a new invention which Mr.Beyer
thought was better than mine. The "Muritas" pro-
duct was only what we called a war product or ersatz.

3. The machinery was exactly the same as they
used at home.

30

4. The moulds were not put into function at all,
as there has never been any proper production, be-
cause the factory had not been started on the 1st
December when I left.

Mr.Mervin Morgan has got my report regarding
Dantile and I enclose herewith his correspondence
with me regarding this point.

Perhaps you will kindly get into touch with
Mr. Morgan.

40

Yours faithfully,
(Erik von Huth).

E. - TRANSLATION OF AGREEMENT BETWEEN
MURITAS A/S and DANTILE EAST AFRICA LTD.

Exhibits

E.

Translation from Danish.

Translation of
Agreement
between Muritas
A/S and Dantile
East Africa
Ltd.

Stamp Kr. 6.60.

29th November,
1947.

A G R E E M E N T

Made this 29th day of November 1947 between Muritas A/S (hereinafter called the Vendor) and Dantile East Africa Ltd., by Erik Von Huth (hereinafter called the Purchaser)

10 Whereby it is agreed as follows :-

I.

The Vendor agrees to assign unto the Purchaser the sole right of exploitation within the territories (the countries, the governmental districts) of Kenya and Uganda in East Africa of the manufacturing of Muritas tiles which is patented in this country, with priority right, by the Vendor's application for Danish Letters Patent of November 5, 1946, No.4330.

20

II.

The Purchaser's right of exploitation shall be limited to the aforesaid two territories, within which he shall be entitled to manufacture, sell and advertise Murit glazing powder or Murit products of any kind, while the Purchaser must not in any other territory (country or governmental district) undertake any of the above mentioned acts before a special agreement concerning such exploitation has been entered into with the Vendor in regard to each territory (Country or governmental district).

30

However, the Purchaser shall be entitled to sell a quantity not exceeding 20,000 Murit tiles for the purpose of introducing the article in any other territory in which the Vendor has not advised the Purchaser that he has, by a final agreement, assigned the right of exploitation to a third party.

III.

40 By an option on the right of exploitation of the Muritas patent in (1) Abyssinia, (2) Belgian

Exhibits.

E. (Contd.)

Translation of
Agreement
between Muritas
A/S and Dantile
East Africa
Ltd.

29th November,
1947.

- continued.

Congo, (3) Madagascar, (4) Mozambique, (5) Nyasa-land, (6) North Rhodesia, (7) South Rhodesia, (8) Southwest Africa, (9) Natal, (10) Transvaal-Oranje, (11) Cape Colony, (12) Tanganyika, (13) Zanzibar and (14) the Indian Empire with Ceylon, already given to a third party, the Vendor is, until further, prevented from assigning to the Purchaser the right of exploitation in the aforesaid 14 territories. However, the Vendor declares himself to be willing, if the third party has not on or before June 30, 1948, alternatively October 1, 1948, carried out his option by concluding a final agreement of exploitation, to give the Purchaser an option on the right of exploitation in all, respectively the remaining part of the 14 countries, for a consideration of £500.0.0. for each of the 11 countries mentioned above under 3-13 and £1000.0.0. for each of the countries mentioned under (1) and (2), and £5000.0.0. for No.14, the Indian Empire and Ceylon together.

10

20

However, in the event that a third party should acquire the right of exploitation for all, respectively part of the 14 countries, the Vendor shall bind himself to include in the final agreement drawn up in this respect, stipulations concerning a definite limitation of the right of exploitation within the countries in question, and concerning liquidated damages to be paid by such third party for manufacturing, selling or advertising the Murit products of such third party outside the countries in question, such liquidation damages to be not less than £250.0.0. for each of the 13 countries first mentioned, and £1500.0.0. for (14) the Indian Empire and Ceylon; and to assign to the Purchaser the right to the said liquidated damages when the Purchaser to the Vendor establishes the possibility of the third party having exceeded his right of exploitation, and undertakes for his own account to collect the liquidated damages.

30

40

In this connection, however, reservation shall also be made as to the right of effecting an introductory sale of not more than 20,000 tiles as outlined under II, par. 2.

IV.

In addition to the foregoing, the Vendor shall undertake immediately on payment by the Purchaser

of the first instalment, see Section VII, to supply the Purchaser with complete drawings of the machines in question, the powdering machines, (Glazing mill and sifting machines), and at a price which is at present Danish Kroner 2.00 per kilo at factory, Roskilde, payable in cash against shipping documents, to supply the purchaser with chemicals in such quantities as are necessary for the exploitation, when duly notified of each shipment required, and as long as desired by the Purchaser.

Exhibits

E. (Contd.)

Translation of Agreement between Muritas A/S and Dantile East Africa Ltd.

29th November, 1947.

- continued.

V.

Further, the Vendor shall bind himself, on payment in cash at factory f.o.b. Copenhagen, simultaneously with the payment referred to in Section VII, to supply the Purchaser with the machines necessary for manufacturing the tiles (2 vibrators and 1 grinding machine with further specified spare parts).

VI.

Should the Vendor be able to show that, beyond the introductory sale referred to in Section II, par. 2, the Purchaser has manufactured, sold or advertised Murit powder or Murit products in any country for which a final agreement has already been made with the Vendor according to Section II and III, the Purchaser shall pay to the Vendor liquidated damages in an amount of £250.0.0. for each of the 13 countries first mentioned in Section III in which such violation has taken place, and £1500.0.0. for (14) the Indian Empire and Ceylon.

However, the manufacturer shall not be responsible as to where the manufacturer's customer may place the tiles purchased from the manufacturer, when the manufacturer at the time of the sale provides the invoice with a notation to the effect that the limits of the sales district shall be respected.

VII.

As consideration for the right of exploitation in the 2 countries mentioned in Section II, the Purchaser shall (A) on signing this agreement pay to the Vendor a sum of Kroner 6,500.00 say six thousand five hundred kroner, the receipt whereof the Vendor hereby acknowledges, and (B) pay a corresponding amount of Kr.6,500.00 in shares in

Exhibits

E. (Contd.)

Translation of
Agreement
between Muritas
A/S and Dantile
East Africa
Ltd.

29th November,
1947.

- continued.

Dantile East Africa Ltd., converted into £ at the rate of Kr.20.00 to £1.

VIII.

The Company of Dantile East Africa Ltd., is established by the Purchasers with a nominal capital of £10,000.0.0. say ten thousand pounds, of which amount £3,325 shall be paid in cash, or as far as concerns the amount due the Vendor according to Section VII (Kr.6,500.00 or £325.0.0) in other values.

10

Dantile East Africa Ltd., shall be registered in Kenya, and the board of directors shall comprise Erik Von Huth, Ole Beyer, Danish Vice Consul and Baron Uno Akerhielm, the latter of whom, being the attorney of the Vendor on the Board, shall represent the Vendor's voting power.

The said 3 members of the board shall jointly, and inclusive of the Vendor's £325.0.0. shares mentioned in Section VII, hold 60% of the capital subscribed in Dantile East Africa Ltd.

20

The remaining 40% shall be subscribed by Chartered Accountant D.G.Stewart, who shall himself be a member of the board of directors of the company together with his nominee.

IX.

Should existing or subsequent currency restrictions in Kenya (East Africa) prevent the transmission to the Purchaser of the shares due the Vendor according to Section VII B (a written statement to this effect from Vice Consul Ole Beyer shall constitute sufficient proof and shall be received by the Vendor on or before May 15, 1948, respectively August 15, 1948), deposit of the shares for the Vendor's account in a bank in Kenya which has been approved by the Vendor and selected by the "Kobenhavns Handelsbank" shall constitute due completion of the obligation of delivery according to Section VII B.

30

X.

On receipt of the first instalment of the consideration for the countries concerned, the Vendor shall bind himself immediately to extend

40

the protection of his patent acquired by the application for Danish patent of November 5, 1946, No. 4330, which is immediately valid for one year in all countries, to be valid for another year in all countries for which the said payment has been made by applying for a patent and thereupon expedite as much as possible the acquisition of the final patents in the same manner as the Vendor is already endeavouring to obtain a final Danish patent.

10 All expenses incurred in connection with such extension must be borne by the Purchaser.

XI.

As soon as the final patent has been obtained for any of the countries concerned, the Vendor shall in optima forma assign the patent rights for such country to the Purchaser.

XII.

20 Should the insurance of the final patent be definitely refused by the competent authorities, the Vendor shall be bound to deliver up the amount of shares stipulated for such districts according to Section VII B.

XIII.

30 This agreement shall be stamped according to the amount of the consideration, Kr.13,000.00 with a 2.60 Kr. revenue stamp, as far as concerns Sections III and V. it shall be stamped as a mutual declaration, making a total stamp duty of Kr. 6,60 which amount shall be paid by the Purchaser. The Purchaser shall likewise pay the fees of the Vendor's legal adviser, Captain J. Brock, graduate at law and economics, which shall be fixed at Kr.250.00 in addition to actual outlays, inter alia, expenses in connection with the translation into English of this agreement by an authorised English translator.

For Dantile Ltd.,
E.Von Huth.

Copenhagen,
29th November, 1947.

For A/S Muritas
N. Grau.

40 As Witness:

Aase Jorgensen,
Head Clerk,
Stockholmsgade, 37.

Jorgen Brock
And. jur. & polit,
Captain,
Dr. Tvaergade, 8.

Exhibits

E. (Contd.)

Translation of
Agreement
between Muritas
A/S and Dantile
East Africa
Ltd.

29th November,
1947.

- continued.

G. - TRADING & PROFIT & LOSS ACCOUNT OF DANTILE LTD.

D A N T I L E

TRADING AND PROFIT AND LOSS ACCOUNTS FOR

To Purchase - Goods for Manufacture	780.00	
" " Cement	14,104.01	
" Spare parts	<u>1,865.00</u>	16,749.01
		<u>16,749.01</u>

To:-

Travelling Expenses	4,000.00	
Interest and Exchange	1,183.50	
General Expenses	278.50	
Salaries	10,800.00	
Audit and Accountancy	<u>300.00</u>	16,562.00
		<u>16,562.00</u>

For Period 1st April, 1948 to 31st July, 1948.

L I M I T E D

THE PERIOD 1st APRIL to 31st JULY, 1948.

By Stocks on Hand 16,749.01

16,749.01

By:-

Balance - Loss for Period 16,562.00

16,562.00

Exhibits

G.

Trading &
Profit & Loss
Account of
Dantile Ltd.,
for period
1/4/48 to
31/7/48.

G. (Contd.) BALANCE SHEET OFD A N T I L EBALANCE SHEETLIABILITIESAuthorised Capital

8,500 Ordinary Shares of Shs. 20/- each	170,000.00	
2,500 6% Redeemable Preference Shares of Shs. 20. each	<u>50,000.00</u>	
<u>11,000</u>	<u>220,000.00</u>	

Issued Capital

7,250 Ordinary Shares of Shs.20/- each fully paid	145,000.00	
250 6% Redeemable Preference Shares of Shs.20/- (Redeemable 1st June, 1958) each fully paid	<u>5,000.00</u>	150,000.00

Sundry Creditors

2,745.99

Profit and Loss Account

Loss for period 1st April to 31st July 1948 per contra	<u>16,562.00</u>	
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To the Members of DANTILE LIMITED

We have audited the above Balance Sheet of DANTILE LIMITED and have received all the information and explanations we have required. In our opinion the above Balance Sheet shows a true and correct view of the state of Affairs of the Company's business according to the Books and to the information and explanations given to us.

p.p. HARRISON & BOWMER,
J.C.Harrison,
A.I.S. (S.A.)

Auditors.

Nairobi.
3rd September, 1948.

Shs. 152,745.99

DANTILE LTD., as at 31st JULY, 1948L I M I T E D31st JULY 1948Exhibits

G. (Contd.)

Balance Sheet
of Dantile
Ltd., as at
31st July 1948.ASSETS

<u>Preliminary Expenses</u>		41,731.87
<u>Patent Rights</u>	At cost	18,000.00
<u>Plant and Machinery</u>	At cost	5,724.29
<u>Furniture</u>	At cost	725.00
<u>Development Cost (Experiments)</u>		2,400.00
<u>Sundry Debtors</u>		4,302.75
<u>Debtors for Shares</u>		15,600.00
<u>Stock on Hand as valued by Managing Director</u>		16,749.01
<u>Cash at Barclays Bank</u>	30,903.04	
<u>" in Hand</u>	<u>48.03</u>	30,951.07
<u>Profit & Loss Account</u>		
As per contra		16,562.00

For and on behalf of DANTILE LIMITED

UNO AKERHJELM, Director.

E. VON HUTH, Director.

Shs. 152,745.99

Exhibits

H.
Assignment of
Rights by
E. Von Huth.
2nd April 1948.

H. - ASSIGNMENT OF RIGHTS BY E. VON HUTH

DANTILE LTD.
(Incorporated in Kenya)
MANUFACTURERS OF GLAZED TILES.

Registered Office:
BEYER'S (KENYA) CORPORATION,
BOX 412,
NAIROBI.

I, Mr. Erik Von Huth, the undersigned, hereby
transfer all my rights, which I may possess in A/S
Muritas Copenhagen, to Dantile Ltd., Nairobi. 10

Nairobi, the 2nd April, 1948.

Signed E. Von Huth.

At Herr Erik von Huth, mig personlig bekendt,
i min Over-varelse egenhandig har undertegnet for-
anstaaende Dokumont, bevidnes berved.

Kongelig dansk Konsulat i Nairobi.

den 3 April 1948.

Signed Ole Beyer,
Vice-Konsul. 20

KGL DANSK KONSULAT I NAIROBI.

J.Nr.216/-
Afgift Shs.4/-

I.

I. - LETTER - MURITAS A/S to E. VON HUTH.

Letter.
Muritas A/S to
E. Von Huth.
1st October,
1947.

A/S MURITAS. Kobenhavn, den.1.10.47.
v/ERLING PETERSEN Aalholmvej 47, Valby
& N.GRAU. Telfon Damso 5050.

Mr.E.v.Huth,
C/o Fa.Brunn & Irving,
Frederiksberggade 23,
K.

Dear Sir,

Further to our letter of 25/9 1947 your pri-
ority will be extended to 30/6 1948.

According to your wish, Zanzibar will be in-
cluded in our Tanganyika price. 30

The rights cover you only or any company you may form for utilizing of Muritas tile as mentioned in our letter of 25/9 1947.

Yours truly,
A/S "MURITAS".

Prices agreed to between us are:
Kenya, Uganda. 650 pd. Sterling.
Tanganyika, Zanzibar 500 " "

Exhibits

I. (Contd.)
Letter.
Muritas A/S to
E. Von Huth.
1st October,
1947.
- continued.

J. - LETTER - MURITAS A/S to E. VON HUTH

10 A/S MURITAS. Kobenhavn,
v/ERLING PETERSEN & N.GRAU. den. 25.9.47.
Aalbelmvej 47,
Valby.
Telfon Damsz 5050

Herr E. v. Huth,
C/o Fa, Brunn & Irving,
Frederiksberggade 23,
K.

J.
Letter.
Muritas A/S to
E. Von Huth.
25th September,
1947.

20 We herewith beg to confirm that you hold the priority for patent covering manufacture of Muritas tile under the Danish Patent Application of 5/11/1946 number 4330/46 for Kenya, Uganda and Tanganyika up till the 1st March, 1948.

The rights cover you only or any company you may form for the utilizing of the above mentioned patent application.

Yours truly,
A/S "MURITAS".

Exhibits

K.

K. - TRANSLATION OF LETTER - VIGGO OTTESEN to
E. VON HUTH

Translation
of letter.
V. Ottesen to
E, von Huth.
21st February,
1948.

Translation of Exhibit K.

Erik Von Huth.

P.O.Box 432,

Nairobi (Kenya Colony) Translation from the Danish

V. Ottesen,

Estate Agent,

Italienvej 60,

tlf. Sundby 741.

Copenhagen,

21st February, 1948.

10

Dear Erik,

Thanks for your letter of the 6th instant, which I received. Cand, jur. (Solicitor) Captain Brock has sent you a letter with reference to alteration of the contract which I am sure you have received.

The machinery could of course not be sent off which to a certain extent is your own fault. I have spoken to the Government Exchange Bank and have been promised a straight answer within the next few days, so that we can send the machinery by the next ship. Same is leaving about the middle of next month.

20

Svend Thomsen is still in Hedehusene and has also been at the factory at Vur Frue and has been making glazing there. He is quite conversant with same now and has soon finished at Hedehusene. He seems to have got a good grip on it, so I believe you shall get pleasure out of him when he arrives.

With reference to export permission of unit No.2, I doubt very much that you will get permission without receiving any pound sterling, but I thought we should try to get a small amount of sterling and the remainder of the money can be taken from the remaining money from "Dan.C." If we can pay with pound sterling, it will at the most take 14 days to get permission. However, I feel that you should not start unit No.2 before you have started the first factory and know that same is working satisfactory.

30

40

We have still not heard anything from C.Alber, have you heard anything? I will now write again

to him and hope to hear how the discussions are developing which he had in December. I have heard that he has been ill and been operated on for ulcers. I spoke to Hanne Hansen the other day.

10 On the back of this letter is a preliminary arrangement regarding the account of Dantile, but will you send a proper one when you have read through this one. With reference to the cheques which have been written out, same number only four to five, as most money paid out is in cash. Only twice have cheques been sent to your ex-wife, so I do not think that matters. The money which has been paid to C.Alber you have paid yourself, but on the 20th 11 Buller was paid Kr.900.- in agreement with you.

20 23/2. I have today spoken to the Government Exchange Bank, and the Bank has no objection that the machinery should be sent and the matter has now been referred to the Office of the Director for Export, and I shall approach me in a few days' time but do not doubt that the permission will be granted so that we can send the machinery by the next steamer.

I will myself arrange that some samples will be sent this week but I have to collect them at Hedehusene.

I will end for this time, but will write again as early as I get the export permission.

Many regards from all here.

30 Yours sincerely,
Sig. Viggo.

Dantile Ltd.,
Nairobi.

Ref. to account of 28/1	Kroner	6,831.85
Patent rights		6,500.--
Machinery as per invoice of 1/12		6,945.--
200 kilos Chemicals at 2.-		400.--
Green and yellow colour for 10,000 Kiloz glazing		330.--
40 Discount of promissory note on "Dan.C."		306.59
	<u>Kroner</u>	<u>21,363.44</u>

Exhibits

K. (Contd.)

Translation
of letter.
V.Ottesen to
E.Von Huth.

21st February,
1948.

- continued.

Exhibits

K. (Contd.)

Translation
of letter.

V.Ottesen to
E.Von Huth.

21st February,
1948.

- continued.

The amount for the colouring might be altered if we do not get green colour before. I can send you a new invoice for the machinery as soon as we get the permission, specifying the different items. With reference to the account of the 28/1 which you have received I doubt if it can be more specified, but should you not be satisfied, let me know how you want it specified.

Exhibit
No.5
Page 6 of
the
Register
of Members
of Dantile
Ltd.

6 REGISTER OF MEMBERS

NAME *HARALD JAN CHRISTENSEN.*
ADDRESS AND OCCUPATION *STANLEY GAN, COPENHAGEN.
MANUFACTURER*

AND SHARE LEDGER

DATE OF ENTRY AS A MEMBER *18TH MAY.* 19*28*
DATE OF CEASING TO BE A MEMBER 19

6

DR. SHARES ACQUIRED						
NO. OF ALLOTMENT	NO. OF TRANSFER	DATE OF ALLOTMENT OR ENTRY OF TRANSFER	NO. OF SHARES ALLOTTED OR TRANSFERRED	DISTINCTIVE NUMBERS (INCLUSIVE)		TOTAL VALUE OF SHARES HELD
				From	To	
		<i>18.5.28</i>	<i>1425</i>	<i>1</i>	<i>1425</i>	<i>1425 - -</i>

DR. CASH PAYABLE ON SHARES			
DATE WHEN CALLED	DESCRIPTION OF PAYMENT OR NO. OF CALL	AMOUNT PER SHARE	TOTAL AMOUNT

CASH PAID ON SHARES CR.			
DATE WHEN DUE	DATE OF PAYMENT	CASH BOOK FOLIO	AMOUNT

SHARES TRANSFERRED CR.					
NO. OF TRANSFER	DATE OF ENTRY OF TRANSFER	NO. OF SHARES TRANSFERRED	DISTINCTIVE NUMBERS (INCLUSIVE)		TOTAL VALUE OF SHARES TRANSFERRED
			From	To	

NAME *OLE BEYER*
ADDRESS AND OCCUPATION *P. O. BOX 412, NAIROBI.
COMPANY DIRECTOR*

DATE OF ENTRY AS A MEMBER *13TH MAY.* 19*28*
DATE OF CEASING TO BE A MEMBER 19

		<i>13.5.28</i>	<i>400</i>	<i>1226</i>	<i>1826</i>	<i>400 - -</i>
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Exhibit
No. 5
Page 8 of
the
Register
of Members
of Dantile
Ltd.

8 REGISTER OF MEMBERS								AND SHARE LEDGER								8							
NAME <i>WILLIAM HEILBUTH</i>								DATE OF ENTRY AS A MEMBER <i>13TH MAY.</i>								19 <i>28</i>							
ADDRESS AND OCCUPATION <i>C. O. HITANE</i>								DATE OF CEASING TO BE A MEMBER								19							
								<i>FARMAD.</i>															
DR. SHARES ACQUIRED								DR. CASH PAYABLE ON SHARES				CASH PAID ON SHARES CR.				SHARES TRANSFERRED							
NO. OF ALLOTMENT	NO. OF TRANSFER	DATE OF ALLOTMENT OR ENTRY OF TRANSFER	NO. OF SHARES ALLOTTED OR TRANSFERRED	DISTINCTIVE NUMBERS (INCLUSIVE)		TRANSFERRED'S FOLIO (IF SO ACQUIRED)	TOTAL VALUE OF SHARES HELD	DATE WHEN CALLED	DESCRIPTION OF PAYMENT OR NO. OF CALL	AMOUNT PER SHARE	TOTAL AMOUNT	DATE WHEN DUE	DATE OF PAYMENT	CASH BOOK FOLIO	AMOUNT	NO. OF TRANSFER	DATE OF ENTRY OF TRANSFER	NO. OF SHARES TRANSFERRED	DISTINCTIVE NUMBERS (INCLUSIVE)		TRANSFEREE'S FOLIO	TOTAL VALUE OF SHARES TRANSFERRED	
				From	To														From	To			
		<i>13.5.28</i>	<i>500</i>	<i>2651</i>	<i>2650</i>		<i>500 - -</i>																
		<i>13.5.28</i>	<i>500</i>	<i>3157</i>	<i>2650</i>		<i>500 - -</i>																
NAME <i>LOUIS FAUBUST</i>								DATE OF ENTRY AS A MEMBER <i>13TH MAY.</i>								19 <i>28</i>							
ADDRESS AND OCCUPATION <i>P. O. Box 280, NAIROBI</i>								DATE OF CEASING TO BE A MEMBER								19							
								<i>FARM HANWASH.</i>															

10 REGISTER OF MEMBERS

NAME *ANOL VAN DER AA KUNLE.*
 ADDRESS AND OCCUPATION *C. O. BOX, NAINABRA.*
FORMER.

AND SHARE LEDGER 10

DATE OF ENTRY AS A MEMBER *13TH MAY.* 19 *48.*
 DATE OF CEASING TO BE A MEMBER 19

DR. SHARES ACQUIRED						
No. of ALLOTMENT	No. of TRANSFER	DATE OF ALLOTMENT OR ENTRY OF TRANSFER	No. of SHARES ALLOTTED OR TRANSFER'D	DISTINCTIVE NUMBERS (INCLUSIVE)		TOTAL VALUE OF SHARES HELD
				From	To	
		<i>13.5.48</i>	<i>100</i>	<i>5001</i>	<i>5250</i>	<i>250 - -</i>

DR. CASH PAYABLE ON SHARES			
DATE WHEN CALLED	DESCRIPTION OF PAYMENT OR No. OF CALL	AMOUNT PER SHARE	TOTAL AMOUNT

CASH PAID ON SHARES CR.			
DATE WHEN DUE	DATE OF PAYMENT	CASH BOOK FOLIO	AMOUNT

SHARES TRANSFERRED CR.						
No. of TRANSFER	DATE OF ENTRY OF TRANSFER	No. of SHARES TRANSFER'D	DISTINCTIVE NUMBERS (INCLUSIVE)		TRANS-FERRE'S FOLIO	TOTAL VALUE OF SHARES TRANSFERRED
			From	To		

NAME *HALL SIGVARI SOJERHOLM.*
 ADDRESS AND OCCUPATION *COTSNOL) ESTATE, HANABU.*
FARM HANABU

DATE OF ENTRY AS A MEMBER *13TH MAY.* 19 *48.*
 DATE OF CEASING TO BE A MEMBER 19

		<i>13.5.48</i>	<i>100</i>	<i>5001</i>	<i>5450</i>	<i>100 - -</i>
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Exhibit
No. 5
Page 11 of
the
Register
of Members
of Danile
Ltd.

11 REGISTER OF MEMBERS

NAME *BARBARA FAUGUST*
ADDRESS AND OCCUPATION *C. O. HIAHAY*

MARRIED WOMAN

AND SHARE LEDGER

11

DATE OF ENTRY AS A MEMBER *13TH MAY* 19*48*
DATE OF CEASING TO BE A MEMBER 19

DR. SHARES ACQUIRED							DR. CASH PAYABLE ON SHARES				CASH PAID ON SHARES CR.				SHARES TRANSFERRED CR.								
NO. OF ALLOTMENT	NO. OF TRANSFER	DATE OF ALLOTMENT OR ENTRY OF TRANSFER	NO. OF SHARES ALLOTTED OR TRANSFERRED	DISTINCTIVE NUMBERS (INCLUSIVE)		TRANSFEE'S FOLIO (IF SO ACQUIRED)	TOTAL VALUE OF SHARES HELD	DATE WHEN CALLED	DESCRIPTION OF PAYMENT OR NO. OF CALL	AMOUNT PER SHARE	TOTAL AMOUNT	DATE WHEN DUE	DATE OF PAYMENT	CASH BOOK FOLIO	AMOUNT	NO. OF TRANSFER	DATE OF ENTRY OF TRANSFER	NO. OF SHARES TRANSFERRED	DISTINCTIVE NUMBERS (INCLUSIVE)		TRANSFEREE'S FOLIO	TOTAL VALUE OF SHARES TRANSFERRED	
				From	To														From	To			
		<i>13.5.48</i>	<i>800</i>	<i>3781</i>	<i>6150</i>		<i>500 - -</i>																

NAME *GUY FAUGUST*
ADDRESS AND OCCUPATION *C. O. HIAHAY*

FARM HAND

DATE OF ENTRY AS A MEMBER *13TH MAY* 19*48*
DATE OF CEASING TO BE A MEMBER 19

		<i>13.5.48</i>	<i>1000</i>	<i>6151</i>	<i>7150</i>		<i>1000 - -</i>																
		<i>13.8.48</i>	<i>250</i>	<i>1</i>	<i>250</i>		<i>250 - -</i>																

6% REDEEMABLE PREFERENCE

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

BARON UNO CARL SAMUEL AKERHJELM
and OIE BEYER (Defendants) Appellants

- and -

ROIF DE MARE, GUY MAGNUS
ALEXANDER FAUGUST and BARBRO
WILHELMINA ELISABETH FAUGUST
(Plaintiffs) Respondents

RECORD OF PROCEEDINGS

CLIFFORD-TURNER & CO.,
11 Old Jewry,
London, E.C.2.
Appellants' Solicitors.

GORDON DADDS & CO.,
80 Brook Street,
London, W.1.
Respondents' Solicitors.