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In the Privy Council.

No. of 1960

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

CATHERINE LEE — Appellant

AND

LEE'S AIR FARMING LIMITED — Respondent

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

CATHERINE LEE — Appellant

AND

LEE'S AIR FARMING LIMITED — Respondent

RECORD OF PROCEEDINGS

No. 1

CASE STATED

In the Compensation Court of New Zealand.

No. 1 Case Stated 29th August, 1958.

IN THE MATTER of the "Workers' Compensation Act, 1922" and its Amendments and in the matter of an action (No. 5/57) in the Compensation Court of New Zealand (Canterbury Industrial District)

between

CATHERINE LEE, of Christchurch, Widow,

Plaintiff

and

LEE'S AIR FARMING LIMITED a Company duly incorporated having its Registered Office at Christchurch

Defendant

CASE STATED BY THE JUDGE OF THE COMPENSATION COURT FOR THE OPINION OF THE COURT OF APPEAL PURSUANT TO RULE 5 OF CHAPTER VIII OF THE "WORKERS' COMPENSATION RULES 1939."

In the Compensation Court of New Zealand.

No. 1
Case Stated 29th August, 1958.
continued.

1. ON the 15th day of April, 1957 the above named Plaintiff filed her Writ and Statement of Claim in the above described action claiming £2430 for compensation under the "Workers' Compensation Act, 1922" on behalf of herself and her four infant children and £50 for funeral expenses in respect of the death of her husband Geoffrey Woodhouse Lee who died in an aircraft accident in Canterbury, New Zealand, on the 5th day of March, 1956.

2. THE Plaintiff claimed that at the time of the said accident the said Geoffrey Woodhouse Lee (hereinafter referred to as "the deceased") was employed by the Defendant Company as a top-dressing pilot and that the said accident arose out of and in the course of that employment.

3. IN its Statement of Defence the Defendant Company denied that the deceased at the time of the said accident was a "worker" within the meaning of the "Workers' Compensation Act 1922" and its amendments. This denial was based on the fact that the deceased was at the time of the said accident the controlling shareholder and governing Director of the Defendant Company.

4. THE action came on for hearing before me at Christchurch on the 31st day of March, 1958 and at the hearing the following facts set out in paragraphs 5 to 17 inclusive hereof were either proved by the Plaintiff or admitted by the Defendant Company.

5. IN 1954 the deceased instructed Messieurs J. W. K. Lawrence and Company, a firm of Public Accountants in Christchurch to form a Company for the purpose of conducting an aerial top-dressing business. The proposed name of the Company was "Farm Air Limited" but it was incorporated on the 5th day of August, 1954 under the name of "Lee's Air Farming Limited." The nominal capital of the Company was £3,000 divided into 3,000 £1 shares and the deceased was allotted 2,999 of the said shares and the Plaintiff was allotted 1 of the said shares.

6. THE deceased was appointed Governing Director of the Defendant Company and the Secretary was Clyde Leslie Sugden of Christchurch, Public Accountant, a member of the said firm of J. W. K. Lawrence & Co.

7. ONE of the assets of the Defendant Company was an "Auster" aircraft equipped for top-dressing and the deceased was a duly qualified pilot.

8. UNDER Article 33 of the Articles of Association of the Defendant Company the deceased was to be employed by the Defendant Company as Chief Pilot at a salary of £1500 per annum. A true copy of the said Articles and of the Memorandum of Association is annexed hereto. On the 16th day of August, 1954 a resolution was duly passed amending Article 33 so as to empower the Governing Director to

regulate his salary. A true copy of that resolution is annexed hereto.

9. (i) While the Defendant Company was in the course of being incorporated the said Clyde Leslie Sugden negotiated and obtained from Messieurs Edward Lumley & Sons, Insurance Brokers (hereinafter referred to as "the said Brokers") different forms of insurance cover for the benefit of the Defendant Company and its employees. Particulars of the said different forms of insurance cover are as follows:—

(a) The said "Auster" aircraft was insured for £2,200.
The proposal form informed the Company that the aircraft would be operated mainly by the deceased but that there was a possibility of an experienced top-dressing commercial pilot being employed at a later date.
A copy of the Confidential Record of Pilot sent to the said Brokers in support of the said proposal contained full details of the flying career of the deceased. A condition of the insurance policy which was issued was that the aircraft was to be operated only by the deceased and others as might be approved by the said Brokers.

(b) A personal accident policy for £1250 was taken out in favour of the deceased, this policy being in respect of any accident, however caused.

(c) Two further personal accident policies were taken out in favour of the deceased, each being for £1,000, one excluding flying risk and the other including flying risk.

(d) The said Clyde Leslie Sugden supplied to the said Brokers an Employer's Statement of Wages relative to Employer's Liability Insurance pursuant to Section 8 of "The Workers' Compensation Amendment Act 1950" and duly received an assessment of premium dated the 5th day of August, 1954. A copy of the said Assessment of Premium issued by the said Brokers is annexed hereto.

(ii) All these policies were in force at the date of the accident. The premiums on the personal accident policies were paid by the Defendant Company and debited to the personal account of the deceased in the books of the Defendant Company. In the personal accident policies the deceased is described as "Aerial Top Dressing Pilot and Company Manager."

10. FOLLOWING its incorporation the Defendant Company started operating its aerial top-dressing business and the deceased worked for the Defendant Company as its pilot continuously thereafter until his death on 5th March, 1956.

11. ON the 8th day of July, 1955 the said Clyde Leslie Sugden forwarded to the said Brokers an Employers' Statement of Wages

In the Compensation Court of New Zealand.

No. 1
Case Stated 29th August, 1958.
continued.

for the year ended 31st March, 1955 and on the same date wrote a letter to the said Brokers discussing the apportionment of the salary of the deceased. A copy of the said letter is annexed hereto. The relevance of the said letter was that a higher premium was payable on that part of the salary of the deceased attributable to his work as a pilot.

12. THE Defendant Company duly received from the said Brokers an assessment of premium dated 28th September, 1955 wherein the apportionment of the salary of the deceased as made by the Defendant Company was altered by the said Brokers. A copy of the said assessment of premium is annexed hereto.

13. THROUGHOUT the negotiations between the said Clyde Leslie Sugden and the said Brokers in 1954 and 1955 the said Brokers by their servants and agents in Christchurch knew the relationship of the deceased with the Defendant Company and also knew who the employees of the Defendant Company were and the full extent of their respective activities and duties as employees of the Defendant Company. The said Brokers accepted premiums for 1954 and 1955 paid by the Defendant Company calculated on the amount of salary due to the deceased in each year as an employee of the Defendant Company.

14. IN his capacity as Governing Director and controlling shareholder of the Defendant Company the deceased exercised full and unrestricted control of the affairs of the Defendant Company and he expressly or impliedly authorised the acts and conduct of any other employee or officer of the Defendant Company including the said Clyde Leslie Sugden.

15. IN his capacity as aforesaid the deceased made all decisions relating to contracts for aerial top-dressing, contract prices, the manner in which the Defendant Company's aircraft was to be employed and the methods to be employed in carrying out the work of the Defendant Company, and in general he exercised complete and unfettered control over all the operations of the Defendant Company at all material times.

16. ON the 5th day of March, 1956 while the deceased was piloting the said "Auster" aircraft during the course of aerial top-dressing operations in Canterbury the said aircraft stalled and crashed to the ground and burst into flames and was destroyed and the said deceased was killed as a result of the crash.

17. THE Plaintiff and her said four infant children were totally dependent on the deceased and the salary payable to the deceased up to the time of his death was such that if the Defendant Company is liable in this action it must pay the said sums of £2430 and £50 claimed by the Plaintiff in the action.

18. IN view of the facts set out in the preceding paragraphs 5 to

17 inclusive hereof it was submitted on behalf of the Defendant Company at the hearing before me on 31st March, 1958 that the deceased had not been a "worker" within the meaning of the "Workers' Compensation Act 1922" and its amendments and the Defendant Company relied upon the decision of the Compensation Court in **Brown v. Okiwi Farms Ltd. (1957) N.Z.L.R. 1073.**

19. IT was submitted on behalf of the Plaintiff at the said hearing that the deceased had been a "worker" within the meaning of the Act and that **Brown v. Okiwi Farms Ltd.** was wrongly decided or was a decision on its own facts and is therefore not applicable to the present case and the Plaintiff requested me to state this case for the opinion of the Court of Appeal.

20. THE question for the opinion of the Court of Appeal is whether at the time of the said accident the deceased was employed by the Defendant Company as a "Worker" within the meaning of the "Workers' Compensation Act, 1922" and its amendments.

DATED at Christchurch this 29th day of August, 1958.

K. G. Archer
Judge of the Compensation Court.

No. 2

NOTES OF EVIDENCE

Counsel: Mr Perry with Mr Mahon for Plaintiff
Mr Thompson for Defendant

Hearing: 31st March, 1958.

Mr Mahon calls:

CLYDE LESLIE SUGDEN, Public Accountant, in practice in Christchurch. I am one of the partners in the firm of J. W. K. Lawrence and Co. In 1954 my firm received instructions from Mr Geoffrey Woodhouse Lee to act as the Secretaries of the Company which he was going to form. The purpose of this Company was to conduct an Aerial Topdressing business. My firm had previously kept Mr Lee's books when he was farming in North Canterbury. The legal work of the Company's formation was done by a firm in Wellington. I eventually received a copy of the Articles of Association from Wellington. I produced stamped copy of these Articles of Association. (Exhibit A. A.) Under these Articles Mr Lee was appointed Governing Director. Under Article 33 he was to be employed by the Company as Chief Pilot at a salary of £1500 per annum. On the 16th August, 1954 a Resolution was passed, amending Article 33, the effect of this Resolu-

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No. 2
Plaintiff's Evidence
Clyde Leslie Sugden
Examination
continued.

tion being that the salary was to be arranged by the Governing Director. I produce a true copy of that Resolution (Exhibit B.). After the Incorporation of the Company the question of insurance of the aircraft was considered—this was also done before Incorporation. I approached the London and Lancashire Insurance Company, but this Company did not undertake insurance on aircraft. We then communicated with Edward Lumley and Sons and they agreed to arrange the aircraft cover. Mr Lee made out an Aircraft Proposal Form and it was sent to Lumley's. I produce this Proposal Form (Exhibit C.). I also produce Confidential Record of Pilot, also filled in and signed by Mr Lee and sent to Lumley's (Exhibit D.). There is reference to the name "Farm Air Ltd." on these forms. That was the name originally contemplated by Mr Lee for his Company. I produce the Cover Note issued by Lumley's in respect of the aircraft, dated 28th July, 1954 (Exhibit E.). When I was in the process of arranging the aircraft cover, I saw Mr Smith at Lumley's. He is, I presume, just a Clerk there. I also took out, on behalf of Mr Lee, 3 Personal Accident Policies with Lumley's. I produce the Cover Note for a Policy of £1250, Personal Accident (Exhibit F.). This Cover Note was in respect of any accident, however caused. I produce, as (Exhibits G. and H.) two Cover Notes for £1000 each. One of these includes flying risk and the other excludes flying risk. These Policies were arranged also with Mr Smith. At the time when I took out these policies just produced, I discussed the question of workers' compensation with Mr Smith. Mr Lee's position in the Company was, at that time, known to Mr Smith. I told Mr Smith who was working for the Company. I imagine the question of splitting of time between flying and other activities would have been discussed then. I produce, as (Exhibit I.) an Assessment of Premium for Employers' Liability Insurance dated 5th August, 1954, received from Lumley's. This assessment makes the necessary distinction between Mr Lee's wages as a Pilot and as a tractor driver, and in respect of general work. The reason for distinguishing his wages as a pilot was that the pilot's rate of pay was considerably higher.

B. C. D. E. F. & G. H. I.

TO JUDGE:

This document would, I should think, have been prepared by myself, but it could have been filled in by Lumley's. The Proposal itself would have been signed by myself. This is a common form for all Workers' Compensation. Lumley's would have their own printed form. These figures would have been provided by me and accepted by Lumley's.

TO COUNSEL:

The Personal Accident Policies which have been produced were renewed in the subsequent year. On 8th July, 1955, I forwarded an Employer's statement of wages for year ended 31st March, 1955. On the same date I wrote to Lumley's, discussing the apportionment of

J. wages of Mr Lee. This letter is produced as (Exhibit J.). I received, from Lumley's, an assessment of premium in response to this Statement of wages, and my split of wages was altered by Lumley's in the Assessment. I produce the Assessment dated 28th September, 1955,
K. with receipt for payment attached. (Exhibit K.). On the 17th November, 1954, I wrote to Lumley's, in connection with the Passenger Risk Cover on the aircraft, and I disclosed, in this letter, who the normal
L. passengers would be. (Exhibit L.). This letter was in response to an inquiry from Lumley's. The Aircraft Cover only applied while the aircraft was being flown by Mr Lee. I wrote, at one stage, to Lumley's, asking approval for Mr Neave to fly the aircraft. This approval was given. The Personal Accident Policies premiums were paid by the Company and debited to Mr Lee's Personal Account. The total effect of the three Personal Accident Policies was that the maximum recoverable under three of them was £2,250. I settled on this figure, together with the anticipated amount of Employer's Liability Insurance gave us an approximate figure of something over £4,000. After these different types of cover had been arranged it was expected, on the death of Mr Lee while flying, that we would recover between £4000 and £5000. The Company kept a Wages Book, and I produce a copy of the Extracts
M. from the Wages Book with reference to the deceased. (Exhibit M.). The total wages which were paid during the first period, up to March, 1955 were £260. Over the part-year which followed the amount was £225.

CROSS-EXAMINED—MR THOMPSON:

Q. When the Employer's Statement of Wages was first signed, on the 23rd July, 1954, Mr Lee signed it, didn't he? I can't recall that. Q. Is that his signature? Yes. Q. On behalf of the Company? Yes—that is my writing above his. Q But in that made on 8th July, 1955, you signed it? Yes. Q. At the time when these various contracts of insurance were discussed, you or Mr Lee, in the first instance, were concerned in the discussions? Yes. Q. When the insurance on the aircraft was made, that was done after considerable discussion was it not? I recall there was some discussion. Q. In fact Mr Lee went to Wellington on one occasion to consider that aspect, with the Lumley Management? I believe so. Q. Similarly, there was some discussion on the Personal Accident Policy issue? Probably there would be. Q. The first one—Exhibit F.—that is for £1250 and it is in respect of death by accident—there is a partial disablement provision of £1.15.0 per week? Yes. Q. That one includes all risks does it? Yes. Q. And the premium is £28? Yes. Q. There is one—Exhibit G.—operative while flying, and the cover is £1000? That's right. Q. Premium was £15? Yes. Q. But the Cover was, in all cases, very strictly limited wasn't it—on personal accident? Yes. Q. It didn't compare with the cover which would be available under Workers' Compensation? No. Q. And the Workers' Compensation Act cover was effected with you,

In the Compensation Court of New Zealand.

No. 2

Plaintiff's Evidence Clyde Leslie Sugden Cross-Examination *continued.*

Mr Lee and Mr Smith? That would be correct. Q. That was merely effected on the basis that it was a statutory obligation to insure? Yes. Q. There was no investigation of a ıy kind, conducted when that policy was being discussed—it had to take a policy out—the Company I mean? Yes. Q. So it took it more or less as a matter of course? Yes, I think you could say that. Q. There was no "holding out" on any benefits attaching to it? The Company knew it had to take it out, and there were certain benefits under it. Q. It didn't in effect sell the cover? No. Q. At that time, if it had occurred to you that there would be any defence to a claim brought by Mr Lee against the Company, Lee's Air Farming Ltd.—what would you have done? Q. Say, when this form was being filled in, it had been suggested that Mr Lee himself was not covered, what would you have done? I would have gone into the question very thoroughly. Q. If the Company had gone into the question that it was not going to cover Mr Lee, would you have gone to another Company? That is difficult to answer, because we were working on a supposition that the Company would not accept the premium, well they did without any hesitation. Q. If there had been any suggestion Mr Lee was not covered, would you not have said "Well I am going somewhere else?" I imagine I would have referred it to the Company's Solicitors. Q. You didn't do that though, because it was not suggested? That is so. Q. Suppose the Company's Solicitors had said they thought there was cover and Lumley's had still refused, would you have gone anywhere else? I would have tried, by all means, to obtain Workers' Compensation cover. Q. And one of the means would have been to go to other companies, wouldn't it? That would be so. Q. There was then no occasion to do so and you didn't do so? No. Q. Have you subsequently tried to get cover from other Companies for what would be called the One-man Shareholder worker Companies? Yes. Q. You have tried that with any Airwork Companies? Yes. Q. You are the Secretary to Wakeman's Air Company? Wakeman's Aviation Ltd. Q. That Company has a somewhat similar set-up as this one? Yes. Q. Mr Wakeman is the Principal Shareholder? Yes. Q. He is a pilot? Yes. Q. His Company is also insured with Lloyds is it not? That's right. Q. Since this unfortunate case, the premiums have been paid on the basis that Mr Wakeman is not an employee—whereas in this case he would have been an employee? That has been accepted provisionally. Q. That policy is at present in force for Workers' Compensation? Yes. Q. I assume you have tried to get cover from other Companies which would have insured that Mr Wakeman was covered as an Employee? I have tried one other. Q. But that type of cover is not accepted by the Companies? They would prefer not to have it because of the hazardous occupation. Q. At the present time, under Workers' Compensation in Wakeman's Company although he is not covered? We are not certain. Q. You have not taken out voluntary insurance for him? No. Q. That is because it is not available for topdressing pilots? Yes, but his circumstances are

such that he does not require it. Q. You didn't go to any other Companies and get any cover better than was available from Lumley's? It is not possible to do so. Q. Just for the record—you are the Secretary of the Company? Yes. Lee's Airfarming Ltd. Q. And the Secretary of other Companies? Yes. Q. You take your instructions from the Board of Directors in the ordinary way? Yes. Q. In this Company there was no Board as such was there? Not one which sat. Q. Mr Lee was the Governing Director? Yes. Q. He had the full power of the administration of the affairs of the Company? Yes. Q. Anything you did would be with his express or implied authority? Yes. Q. You would be accountable to him and no-one else? That is so. Q. He, Mr Lee, was the only one who entered into any contracts, for topdressing, on behalf of the Company? Yes. Q. He would fix the contract price or rate? Yes. Q. He would determine when he was to attend at the farm to do the work? Yes. Q. He would determine what type of aircraft he would fly. If there were more than one he would determine which? Yes. Q. He would, in effect, be the person who would have the sole power of decision on contracts with farmers? Yes. Q. There would be no control of any kind over his activities in the course of the Company's business? I think there would be various matters in law. Q. But generally there would be no control over his activities on behalf of the Company? That would be so. Q. So he would determine whether or not he should fly, despite the weather conditions, for instance? Yes. Q. Even if he were tired, to the point of exhaustion, there would be nobody with authority to tell him not to fly? That is so. Q. There was no-one in the Company who could discharge him, for instance, for incidents? That is so. Q. Or for bad or shoddy work? No. Q. Or even for instance, driving a plane when he was intoxicated? No. Q. So there was no-one to question his decision as to or how the plane could be flown at any time? Except Civil Aviation. Q. His decision was binding on the Company without reference to anybody? Yes. Q. In effect he was the Company, wasn't he? You could put it that way. Q. The last matter is that he could, had he chosen, determine where the insurances were to go? Yes. Q. He was the one who would have been affected, if for instance he had been injured when flying? Yes. Q. On the question of wages paid to him—tax was deducted of course? Yes. Q. That, however, is the case with any payment made to a Director? Yes—eventually. Q. And a Director is not necessarily a servant of the Company? I wouldn't like to put it like that.

(No re-examination)

TO JUDGE:

Q. You said you had taken out the Insurances—Accident policies —in order to insure the Company for over £4000—was that discussed with Mr Smith? I would say so. Q. You are not sure? It would be assumed that if they accepted the Employers' Liability risk, which they did, that it would be for £4000. Q. That would be an assumption

In the Compensation Court of New Zealand.

No. 2 Plaintiff's Evidence Clyde Leslie Sugden Cross-Examination *continued.*

on your part? My memory is not clear, but I have a recollection of the total figure being discussed, the reason being that his total capital investment in the Company was about £4000 and he wished, if possible, to cover himself for that. Q. I gather that in the case of Mr Wakeman the doubt as to whether he could be covered for Workers' Compensation was raised by Lumley's? Yes, but they have, in fact, covered him. They have taken the premium. Q. Had Mr Lee died before that policy was taken out? Yes, he died in 1956. Q. The dispute if it can be called that between the Insurance Company and the Insurer in this policy had been started? Yes. The question was raised in an entirely different manner in the case of Wakeman. Q. Who are the Shareholders in Mr Lee's Company? Mr Lee held 2,999 and Mrs Lee one share. Q. Were there any meetings of the Company? Not official. Q. So it would be true to say that the whole of the Company's decisions would be made by Mr Lee, as far as you were aware? Yes.

To Mr Thompson:

Q. When the premium was assessed, on 28th September, 1955, the rate was at £10 per £100 on £200 cover? Yes. Q. Did you ever notice that you were under-charged by 50%—you were charged £10 only on the premium? I don't think I did. Q. In fairness you have had discussions with Lumley's since this position arose and you have been told, if Mrs Lee does not succeed, the premiums in respect of the husband's wages will be refunded? That has not been put to me in so many words. It would probably be the understanding of the position.

To Mr Mahon:

Q. Had you ever been told that the premiums were recoverable? Not in words to that effect. Q. As far as you are concerned is the position quite open about that at the present time? Yes. Q. This Mr Wakeman—he bought Lee's license after Lee's death did he not? Correct. Q. Is he a single man with no dependants? Yes.

(lunch adjournment)

END OF EVIDENCE FOR THE PLAINTIFF

No evidence for Defendant

No. 3

In the Court of Appeal of New Zealand.

No. 3
Reasons for Judgment: North J. 18th December, 1958.

REASONS FOR JUDGMENT OF THE COURT OF APPEAL DELIVERED BY NORTH J.

This is a case stated by the Judge of the Compensation Court for the opinion of this Court pursuant to Rule 5 Chapter 8 of the Workers' Compensation Rules 1939. The facts are not in dispute, and may be summarized, thus:—

The Plaintiff is the widow of Geoffrey Woodhouse Lee who died in an aircraft accident in Canterbury on March 5, 1956. She seeks compensation under the Workers' Compensation Act 1922 on behalf of herself and her four infant children. The claim is based on the ground that at the time of the accident her husband was employed by the defendant company as a top-dressing pilot, and that the accident arose out of and in the course of that employment. The defendant company in its statement of defence denied that the deceased at the time of the accident was "a worker" within the meaning of the Workers' Compensation Act 1922 and its amendments, being the statutory provision in force at the date of the accident. This denial was based on the fact that the deceased at the time of the accident was the controlling shareholder and governing director of the defendant company. The defendant company was incorporated on August 5, 1954, the nominal capital being £3,000 divided into 3,000 £1 shares, and the deceased was allotted 2999 shares. According to the case stated the Plaintiff was allotted the remaining one share. This, however, is inconsistent with the memorandum of association which speaks of the one share being taken up by a Wellington Solicitor. Article 32 of the Articles of Association provided that the deceased "shall be and he is hereby appointed Governing Director and . . . . shall hold that office for life and the full government and control of the company shall be vested in him and he may exercise all the powers and authorities and discretions vested in the directors generally and that notwithstanding he is the sole director holding office and he may exercise all the powers of the company which are not by statute required to be exercised by the Company in a general meeting and any minute entered in the minute book of the Company's proceedings signed by the Governing Director shall, in any matter not expressly required by statute to be done by the Company in general meeting have the effect of a resolution of the Company." Clause 33 provided: "The Company shall employ the said Geoffrey Woodhouse Lee as the chief pilot of the Company at a salary of £1,500 per annum from the date of incorporation of the Company and in respect of such employment the rules of law applicable to the relationship of master and servant shall apply as between the Company and the said Geoffrey Woodhouse Lee."

On August 16, 1954, Article 33 was amended by deleting the words

In the Court of Appeal of New Zealand.

No. 3
Reasons for Judgment: North J. 18th December, 1958.
continued.

"a salary of £1500 per annum from the date of incorporation of the Company" and inserting the words "a salary to be arranged by the Governing Director." This resolution was effected by a minute signed by the deceased. Following its incorporation the Defendant Company commenced to operate its aerial topdressing business and the deceased worked for the defendant company as its pilot continuously thereafter till his death on March 5, 1956. It is common ground that the deceased was killed while piloting the aircraft on topdressing operations for the Company, as a result of the aircraft stalling and crashing to the ground where it burst into flames. In support of its plea that the deceased was not a "worker" the defendant company relied on the judgment of the Compensation Court in **Brown v. Okiwi Farms Ltd. 1957 N.Z.L.R. 1073.** The Plaintiff on the other hand submitted that this case was wrongly decided or else was a decision on its own particular facts. The form of the question submitted to this Court was expressed thus:—"The question for the opinion of the Court of Appeal is whether at the time of the said accident the deceased was employed by the Defendant Company as a "worker" within the meaning of the "Workers' Compensation Act 1922" and its amendments."

The question as framed really raises what is a mixed question of fact and law: See **Ross v. Ross and Bowman Pty. Limited 1942 W.C.R. 41.** We interpret the question to mean whether on the admitted facts of this case the deceased could hold the office of governing director of the Company and also be a servant of the Company.

The question as reframed is a narrower question than would arise if the Directors of a Company purported to enter into a service agreement with one of their number. That the relationship of master and servant may be created in such a case is not in doubt, for the board of directors may well retain its right to control the work which is undertaken: See **In re Boston & Company Limited 1913 2 Ch. 279, 285 and Anderson v. James Sutherland (Peterhead) Limited 1941 S.C. 203** where Lord Carmont reviews many of the leading authorities. Whether in a particular case a contract of service exists between a company and one of its directors is a question of fact to be determined on the circumstances of the case. The question posed in this case however is whether a governing director to whom the Company has entrusted "all its powers and authorities and discretions" can thereafter in law create the relationship of master and servant between the company and the governing director.

The argument for the Defendant in a nutshell is this: The company is a legal entity distinct from its shareholders; that the conception that a "one man" company is a mere "alias" or agent of or trustee for the person who holds substantially all the shares in the company was decisively negatived by the judgments delivered in the House of Lords in the leading case of **Salamon v. Salamon & Company 1897 A.C. 22;** therefore once it is determined that there was in existence a contract of service between the deceased and the Company, that is

an end of the matter; that the Court will disregard the shareholders and will disregard the fact that the deceased was also the governing director of the company. Viewed superficially the argument has an attractive simplicity, but for reasons which we shall endeavour to give, it is in our view unsound. It is true that a company is a separate legal entity distinct alike from its shareholders and directors; but if the powers of management are vested in a sole director, he alone can exercise those powers. "The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the Directors is by altering their Articles . . . . "They cannot themselves usurp the powers which by the articles are vested in the Directors'" see **John Shaw & Sons (Salford) Limited 1935 K.B. 113, 134.** The classic judgment of Lord Haldane in **Lennard's Carrying Co. v. Asiatic Petroleum 1915 A.C. 705, 713, 714** makes the position quite clear. He said "My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation . . . . " This passage from the speech of Lord Haldane was recently cited by Denning L. J. in **H. L. Bolton (Engineering) Co. Ltd. v. T. J. Graham & Sons Ltd. 1957 1 Q.B. 159, 172,** where he said: "A Company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

We do not think it follows at all from the passages just cited that a director or manager who for some purposes forms part of the "directing mind" of the Company cannot also enter into a contract of service with the company in which he may be subject to control. As we have already said the question here is a narrower one, because here the deceased was himself the whole "directing mind" of the company, and no others were entitled to take any part in its direction. If then the deceased was "the directing mind" of the company, how then can he also be a servant of the Company? It is true that the regulation of industrial conditions and other laws have in many respects made the classical tests used in the past to determine whether the relationship of master and servant existed, difficult of application: See **Short v. J. and W. Henderson Limited 1946 174 L.T. 417, 421.** In a case like the present one however in our opinion the test of the existence of the relationship of master and servant is still "whether the contract placed the

In the Court of Appeal of New Zealand.

No. 3 Reasons for Judgment: North J. 18th December, 1958. *continued.*

supposed servant subject to the command of the employer in the course of executing the work and not only as to what he shall do but to how he shall do it" per Dixon J. **Humberstone v. Northern Timber Mills 1949, 79, C.L.R. 389, 404.** As Kitto J. we think correctly pointed out in **Attorney General for N.S.W. v. Perpetual Trustee Company (Limited) 1951 85 C.L.R. 237, 300,** "without the obligation to obey orders there can be no meaning in the relationship, and it therefore cannot subsist."

Applying these principles to the admitted facts of the present case, what do we find? The defendant company was incorporated on August 5, 1954. The Act of Incorporation not only was operative to give birth to the company, but also was operative as an appointment and delegation to the deceased of substantially all the powers of the company. (See **Gower's Company Law, 2nd Edition, 118.**) These powers were moreover delegated to him for life and there remained with the Company no power of management whatsoever. One of his first acts was to appoint himself the only pilot of the company, for although Article 33 foreshadowed this appointment yet a contract could only spring into existence after the company had been incorporated. Therefore he became in effect both employer and worker. True the contract of employment was between himself and the company (see **Booth v. Helliwell 1914 3 K.B. 252**) but on him lay the duty both of giving orders and obeying them. In our view the two offices are clearly incompatible. There could exist no power of control and therefore the relationship of master-servant was not created. In the view we take of the case it becomes unnecessary to review the judgment of the Compensation Case in **Brown v. Okiwi Farms Ltd. 1957 N.Z.L.R. 1073.** The finding of the learned Judge that the Plaintiff was not a "worker" was a finding of fact and not of law. In the circumstances we say no more than this: the determination of this question of fact in our view does not depend on whether the other director would or "would not have issued detailed instructions" nor does it depend on the degree of control which could in the circumstances be exercised; on the contrary, it depends exclusively on the power of control. Nor do we think the phrase "incorporated partnership" is a happy one.

For these reasons the question in its amended form is answered in the negative.

Solicitors:

Wilding, Perry & Acland, Christchurch, for Plaintiff.
Charles S. Thomas, Thompson & Hay, Christchurch, for Defendant.

In the Court of Appeal of New Zealand.

No. 4

Formal Judgment 18th December, 1958.

No. 4

FORMAL JUDGMENT

BEFORE

THE HONOURABLE MR JUSTICE GRESSON, PRESIDENT
THE HONOURABLE MR JUSTICE NORTH
THE HONOURABLE MR JUSTICE CLEARY

THURSDAY THE 18th DAY OF DECEMBER, 1958

THIS CASE STATED coming on for hearing on the 27th day of November, 1958 AND UPON HEARING Mr Perry with him Mr Mahon of Counsel for the Plaintiff AND UPON HEARING Mr Thompson of Counsel for the Defendant THIS COURT DOTH ANSWER in the negative the question raised in the Case Stated and as amended by this Court namely whether on the admitted facts of the case the deceased could hold the office of Governing Director of the Company and also be a servant of the Company.

By the Court
K. SEEBECK,
Deputy Registrar.

L.S.

No. 5

At the Court at Buckingham Palace

No. 5

Order of Her Majesty in Council granting leave to Appeal 21st December, 1959

ORDER OF HER MAJESTY IN COUNCIL GRANTING LEAVE TO APPEAL

At the Court at Buckingham Palace
The 21st day of December, 1959
L.S.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — MR SECRETARY WARD
EARL OF PERTH — MR BROOKE

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of December 1959 in the words following, viz.:—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Catherine Lee in the matter of an Appeal from the Court of Appeal of New Zealand between the Petitioner and Lee's Air

At the Court at Buckingham Palace

No. 5

Order of Her Majesty in Council granting leave to Appeal 21st December, 1959

continued.

Farming Limited Respondents setting forth that the Petitioner's husband was the Governing Director of the Respondent Company and on the 5th March 1956 he was killed while piloting an aeroplane in the course of the Company's aerial top dressing operations: that the Petitioner issued a Writ against the Respondents in the Compensation Court claiming certain sums as compensation and funeral expenses under the Workers' Compensation Act 1922 and the Court on the 29th August 1958 stated a Case for the opinion of the Court of Appeal asking whether at the time of the accident the deceased was employed by the Respondents as a 'worker' within the meaning of the said Compensation Act and its amendments: that on the 18th December 1958 the Court delivered Judgment answering the question in the negative: that the Petitioner was entitled as of right to appeal to Your Majesty in Council but failed to make the necessary application within time: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Court of Appeal of New Zealand dated 18th December 1958 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal against the Judgment of the Court of Appeal of New Zealand dated the 18th day of December 1958 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of New Zealand and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

PART II

Exhibit A

ARTICLES OF ASSOCIATION OF LEE'S AIR FARMING LIMITED

1. ARTICLES 2, 11, 19, 23, 24, 25, 26, 27, 37 (c), 38, 39, 40, 42, 45, 47, 48, 59, 64, 65, 66, 68, 69, 71, 72, 73-80 inclusive and 104 of the Regulations contained in Table A of the Companies Act, 1933 shall not apply to this Company but the remaining Articles of Table A except in so far as the same are hereby modified shall so far as the same are applicable to the circumstances be deemed to be incorporated in these Articles, and, with the following Articles, to constitute the Company's regulations.

SHARES

2. THE Certificate of Title to shares shall be issued under the seal of the Company and shall be sealed in accordance with Articles 49 and 50 hereof.

3. SUBJECT to the provisions, if any, in that behalf of the Memorandum of Association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the Company may from time to time in general meeting determine.

CALLS

4. THE Directors may from time to time make such calls as they may think fit upon the members in respect of all moneys unpaid on the shares held by them respectively and not by the conditions of the allotment thereof made payable at fixed times, and each member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the Directors. A call may be made payable by instalments.

5. FOURTEEN days' notice of any call shall be given specifying the time and place of payment and to whom such call shall be paid.

6. A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

TRANSFER OF SHARES

7. NO shares shall be sold or transferred by any member or assignee in bankruptcy of a member or by the personal representative of any deceased member unless and until the rights of pre-emption hereinafter conferred shall have been exhausted, but every sale or

transfer of shares shall be subject to the provisions of Clause 12 hereof.

8. EVERY member or assignee as aforesaid who may desire to sell or to transfer any shares and every personal representative of a deceased member who may desire to sell or transfer any shares of such deceased member shall give notice in writing (hereinafter called "the transfer notice") to the Directors that he desires to make such sale or transfer. The transfer notice may include several shares and shall operate as a separate notice in respect of each. The transfer notice shall not be revocable except with the sanction of the Directors.

9. THE transfer notice shall constitute the Directors the agent of the person giving such notice, for the sale of such shares either in one lot or in separate lots, to any member or members of the Company or any other person or persons approved by the Directors in their absolute discretion at a price to be agreed upon between the person giving the transfer notice and the Directors, or in case of difference or failing any agreement, then at a price to be determined by the auditor of the Company as being the fair value of such shares after reference to the last balance sheet of the Company, and his decision shall be final.

10. IF the Directors as such Agent shall within sixty days after such price has been agreed on or determined as aforesaid (as the case may be) find a member or members or other approved person or persons as aforesaid willing to purchase the shares at such price and shall give notice thereof to the member, assignee or personal representative (as the case may be) he shall be bound upon payment of such price (subject to any lien which the Company may have under the Company's Articles of Association and to a deduction in respect thereof) to transfer the shares to such Purchaser.

11. IF in any case such member, assignee or personal representative after becoming bound as aforesaid shall make default in transferring the shares, the Directors may receive the purchase moneys and the Company shall execute a transfer of the shares to the Purchaser thereof. The Directors shall thereupon cause the name of the purchaser to be entered in the register of members as the holder of the shares and shall hold the purchase money (subject to any lien in favour of the Company as aforesaid) in trust for the retiring member, assignee or personal representative as the case may be. The receipt of the Company for the purchase money shall be a good discharge to the purchaser and after his name has been entered on the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

REFUSAL TO REGISTER TRANSFER OF SHARES

12. THE Directors may refuse to register any transfer of a share or shares:

(a) Where the Company has a lien on the share or shares;

(b) Where the share or shares are not fully paid up;

(c) Where any call is due and unpaid on the share or shares;

(d) Where the Directors have notice of any agreement by the shareholder to transfer only to some specified person or persons or subject to some specified condition or conditions.

The Directors may also in their absolute discretion and without assigning any reason decline to register any transfer of shares to any person whether a member or not.

13. EVERY instrument of transfer shall be left at the office for registration accompanied by the certificate of the shares to be transferred and such other evidence as the Company may require to prove the title of the transferor or his right to transfer the shares.

14. ALL instruments of transfer which shall be registered shall be retained by the Company, but any instrument of transfer which the Directors may decline to register shall be returned to the person depositing the same.

15. A fee not exceeding two shillings and sixpence may be charged for each transfer, and shall, if required by the Directors, be paid before the registration thereof.

16. THE transfer books and register of members may be closed during such time as the Directors think fit, not exceeding in the whole thirty days in each year.

17. IF the Directors refuse to register a transfer of any shares they shall within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

FORFEITURE OF SHARES

18. IF any member fails to pay any call or instalment on or before the day appointed for the payment of the same, the directors may at any time thereafter during such time as the call or instalment remains unpaid serve notice on such member requiring him to pay the same, to either with any interest that may have accrued and all expenses that may have been incurred by the company by reason of such non-payment.

19. THE notice shall name a day (not being less than fourteen days from the date of the notice) and a place on and at which such call or instalment and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

20. IF the requirements of any such notice as aforesaid are not complied with, any shares in respect of which such notice has been

given may at any time thereafter before payment of all calls or instalments, interest and expenses due in respect thereof be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

21. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

22. ANY member whose shares have been forfeited shall notwithstanding be liable to pay, and shall forthwith pay to the company all calls, instalments, interest and expenses upon or in respect of such shares at the time of forfeiture, together with interest thereon, from the time of forfeiture until payment at six per centum per annum; and the directors may enforce the payment thereof if they think fit.

REDUCTION OF CAPITAL

23. THE company may by special resolution reduce its share capital in the manner and with all or any of the incidents prescribed or allowed by the Companies Act, 1933.

GENERAL MEETINGS

24. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the directors. In default of a general meeting being so held, a general meeting shall be held in the month of September and may be convened by any member in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

25. THE abovementioned general meetings shall be called Ordinary General Meetings; all other general meetings shall be called Extraordinary General Meetings.

NOTICE OF GENERAL MEETINGS

26. SUBJECT to the provisions of section 125 (2) of the Companies Act 1933 relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may

be convened by such shorter notice and in such manner as those members may think fit.

27. ANYTHING that may be done by the company under the Companies Act 1933 or under these articles, by resolution, special resolution, or extraordinary resolution passed at a meeting of the company may be done either at a meeting of shareholders convened in accordance with these articles or in manner provided by section 300 of the said Act. If such act or thing is done in the last mentioned manner it shall not be necessary to call a meeting of the members of the company or to give notice of such meeting or to hold the same and the provisions hereof and of Table A shall be modified so as to give full effect to the said statutory provision.

PROCEEDINGS AT GENERAL MEETING

28. NO business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, two members personally present shall be a quorum.

29. THE chairman of directors shall be entitled to take the chair at every general meeting, or if there be no such chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting, the members present shall choose another director as chairman, and if no director be present, or if all the directors present decline to take the chair, then the members present shall choose one of their number to be chairman. At any general meeting the chairman shall have a deliberative vote but no casting vote.

VOTES OF MEMBERS

30. THE instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney, or if such appointor is a corporation, under the hand of the chairman of directors or managing director, or manager or attorney of such corporation. A proxy need not be a member of the company and a corporation being a member of the company may appoint any one of its officers to be its proxy.

GOVERNING DIRECTOR

31. ALL the provisions of these presents and such of the provisions of the said Table A as apply to the Company which shall in any way relate to the management and control of the business of the Company and powers of directors shall be read and interpreted as subject to the provisions contained in the following articles providing for the office of and the exercise of powers by the Governing Director and to the provisions for the tenure of office of Governing Director by the first Governing Director of the Company.

32. SUBJECT as hereinafter provided GEOFFREY WOODHOUSE LEE shall be and he is hereby appointed Governing Director and subject to the provisions of Clause 34 hereof shall hold that office

In the Compensation Court of New Zealand.

Exhibit A Articles of Association July 21st, 1954. *continued.*

for life and the full government and control of the Company shall be vested in him and he may exercise all the powers and authorities and discretions vested in the Directors generally and that notwithstanding he is the sole Director holding office and he may exercise all the powers of the Company which are not by statute required to be exercised by the Company in general meeting and any minute entered in the minute book of the Company's proceedings signed by the Governing Director shall, in any matter not expressly required by statute to be done by the Company in general meeting have the effect of a resolution of the company.

33. THE company shall employ the said Geoffrey Woodhouse Lee as the chief pilot of the company at a salary of £1,500 per annum from the date of incorporation of the company and in respect of such employment the rules of law applicable to the relationship of master and servant shall apply as between the company and the said Geoffrey Woodhouse Lee.

34. THE Governing Director may retire from office upon giving one month's notice in writing of his intention so to do, and the office of Governing Director shall be vacated if the Governing Director

(a) ceases to be a director by virtue of section 148 of the Act; or

(b) becomes bankrupt or enters into a composition with his creditors; or

(c) becomes prohibited from being a director by reason of any order made under section 216 or 268 of the Act; or

(d) becomes of unsound mind or becomes a protected person under The Aged and Infirm Persons Protection Act 1912; or

(e) becomes incapable of carrying out the duties of a director.

35. THE Governing Director may at any time convene a general meeting of the Company.

36. THE Governing Director shall not be disqualified by his office from holding any office or place of profit in the Company or from contracting with the company whether as vendor, purchaser or otherwise, nor shall any such contract or arrangement or any contract or arrangement entered into by or on behalf of the company in which the Governing Director shall be interested be avoided nor shall the Governing Director be liable to account for any profit realised by any such contract or arrangement by reason of the Governing Director holding such office or of the fiduciary relations thereby established.

DIRECTORS

37. IF and whenever there shall cease to be a governing director the number of directors of the company shall not be more than four or less than two who shall forthwith be appointed or elected by the company in general meeting.

38. A director need not hold any share qualification in the capital of the company.

MANAGING DIRECTOR

39. THE directors may from time to time appoint one or more of their body to the office of managing director or manager for such terms and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit. The appointment of a managing director or manager shall be subject to determination ipso facto if he ceases from any cause to be a director or if the company in general meeting resolves that his tenure of the office of managing director or manager be determined.

REMUNERATION OF DIRECTORS

40. THE directors other than the managing director shall be paid out of the funds of the company by way of remuneration for their services such sums (at a rate per annum) as the company in general meeting may from time to time determine and such remuneration shall be divided among them in such proportions and manner as the directors may determine and in default of such determination equally.

41. THE directors shall be entitled to be paid reasonable travelling and hotel expenses incurred in attendance at board meetings and when otherwise engaged in the business of the company.

DISQUALIFICATION OF DIRECTORS

42. THE office of a director shall be vacated if the director

(a) becomes bankrupt or enters into a composition with his creditors; or

(b) becomes prohibited from being a director by reason of any order made under section 216 or 268 of the Companies Act 1933; or

(c) becomes of unsound mind or becomes a protected person under the Aged and Infirm Persons Protection Act 1912.

(d) becomes incapable of carrying out the duties of a director;

(e) resigned his office by notice in writing to the company;

(f) be removed from office by an entry in the minute book signed in manner required by section 300 (I) of the Companies Act 1933, or by the company in general meeting.

43. NO director shall be disqualified by his office from holding any office or place of profit under the company or under any company in which this company shall be a shareholder or otherwise interested or from contracting with the company either as vendor purchaser or otherwise nor shall any such contract or any contract or arrangement entered into by or on behalf of the company in which any director shall be in any way interested be avoided nor shall any direc-

In the Compensation Court of New Zealand.

Exhibit A Articles of Association July 21st, 1954.

continued.

tor be liable to account to the company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such director holding that office or of the fiduciary relations thereby established but it is declared that the nature of his interest must be disclosed by him as provided by section 155 of the Companies Act 1933.

PROCEEDINGS OF DIRECTORS

44. A director interested in any matter or contract with the company shall not be counted for the purposes of a quorum and may not vote on such matter or contract at any meeting of directors unless he shall first declare the nature of his interest as required by the last preceding article.

45. IT shall not be necessary for the directors to hold any formal meetings. A resolution if in writing and signed by all the directors or by the governing director shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted.

46. THE directors may from time to time and without negativing any implied power to borrow at their discretion borrow for the purposes of the company from any persons firms or corporations any sum or sums of money on the security of all or any of the company's property (real or personal) assets and effects, both present and future inclusive or exclusive of its unpaid calls or unpaid capital, or any part thereof, either under legal mortgages or charges, with powers of sale and other usual powers or by the issue of mortgage debentures, debentures bonds obligations or any other securities of the company, created or issued generally upon such terms and conditions as the directors think fit.

ALTERNATE DIRECTORS

47. A director (including the governing director) who is abroad or about to go abroad may with the approval of the remaining directors (if any) appoint any person to be an alternate or substitute director during his absence abroad, and such appointment shall have effect and such appointee whilst he holds office as an alternate director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly; any such appointee shall not require any share qualification and he shall ipso facto vacate office if and when the appointor returns to New Zealand or vacates office as a director or removes the appointee from office and any appointment and removal under this clause shall be effected by notice in writing under the hand of the director making the same.

INDEMNITY

48. IF the directors or any of them or any officer servant or agent of the company or any other person in the interests of the company, shall become personally liable, either absolutely or contingently, for the payment of any sum primarily due from the company, the direc-

tors may execute or cause to be executed any mortgage charge, or security over or affecting the whole or any part of the assets of the company by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability. No director shall be disqualified by his office from voting in regard to any arrangement by or on behalf of the company to give himself or any other director any security by way of indemnity.

THE SEAL

49. WHILST there shall be a governing director of the company the seal of the company shall not be affixed to any instrument except by the authority of the governing director and in his presence and the governing director shall sign every instrument to which the seal of the company is so affixed in his presence.

50. WHEN there shall cease to be a governing director of the company the seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors and in the presence of two directors or of one director and the secretary or such other person as the directors may appoint for the purpose and those directors or that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

SIGNATURES TO CHEQUES

51. THE directors shall determine who shall be entitled to sign on the Company's behalf bills, notes, receipts, acceptances, endorsements, cheques and other negotiable instruments.

NOTICES

52. IF a member has no registered address within New Zealand and has not supplied to the company an address within New Zealand for the giving of notices to him, he shall not be entitled to have any notice sent to him from the company whose registered office shall be deemed the registered address of such member for all purposes whatever and all proceedings taken without notice to any such member shall be as valid as if he had due notice thereof.

SIGNATURES OF SUBSCRIBERS

G. W. Lee
J. W. P. Watts

DATED the twentyfirst day of July, 1954.

WITNESS to the above signatures:

R. M. Hardie,
Accountant,
Wellington.

In the Compensation Court of New Zealand.

Anexure to Exhibit A Memorandum of Association 21st July, 1954.

Annexure to Exhibit A

MEMORANDUM OF ASSOCIATION

"THE COMPANIES ACT, 1933"

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION of LEE'S AIR FARMING LIMITED

1. THE name of the Company is LEE'S AIR FARMING LIMITED.

II. THE Company is a private company registered under Part VIII of "The Companies Act, 1933".

III. THE objects for which the Company is established are as follows:—

1. To design, manufacture, construct, repair, fly, operate, equip, maintain, service, buy, sell, exchange, hire, let or otherwise deal in, distribute and work aeroplanes, aircraft, seaplanes, flyingboats, airships, helicopters, autogyros, gliders, balloons, parachutes and other appliances and conveyances, whether belonging to the Company or otherwise, appropriate for the aerial top-dressing, fertilising, manuring, spraying, sowing or cultivating of farm lands, orchards and generally lands of any description, dropping of goods of all kinds from the air, or other operations of any nature which may be carried on by the Company, motor trucks, motor vans, motor cars, station wagons, jeeps, tractors, bulldozers, trailers, caravans, hoppers, carry-alls and other vehicles of all descriptions, earth working machinery, machinery generally of every description, spare parts, accessories, radio and radar equipment, cameras and photographic materials and equipment of every description, survey equipment maps and materials and mechanisms generally of all descriptions incidental to any of the aforesaid articles or which the Company may require or desire to use to assist in carrying out all or any of its operations.

2. To manufacture, buy, sell, store, mine, dig, or otherwise obtain, deal in and distribute, manures, fertilisers, limes, insecticides, fungicides, weed killers, poisons, seeds, grains, liquids and solutions and substances generally of all descriptions capable of being dropped, spread sown or disseminated by air whether for application to farm lands, orchards, other lands or otherwise howsoever, sacks, bags, drums, tins and containers generally of all descriptions, cement, sand, gravel stones, pumice and generally materials of all descriptions necessary or useful for fulfilling any of the objects of the Company.

3. To establish, conduct and carry on the business in New Zealand or elsewhere of aerial or ground top-dressers, aerial or ground sowers or planters of grains and seeds of all descriptions, aerial or

ground purveyors or spreaders of limes, manures, fertilisers, insecticides, fungicides, weed-killers, poisons, liquids, solutions and substance of all descriptions for use on farm lands, orchards other lands or otherwise howsoever, aerial, ground or maritime contractors, aerial and ground photographers and surveyor carriers by land, air sea and droppers by air of mail, animals, stocks, goods, supplies, provisions and freight of every description, carriers by air, land and sea of passengers whether on defined routes or not or by way of tourist traffic or scenic excursions or otherwise, howsoever, taxi and ambulance operations by air, land and sea, air craft mechanics, motor mechanics, radio and radar mechanics, engineers, mechanical contractors, earth removal contractors, electrical contractors dealers in aircraft and other engine fuel and oil of every description shipping owners, commission agents, auctioneers, indentors, warehousemen and storers of goods and merchandise of every description.

4. To purchase, lease, rent or otherwise acquire or obtain lands and waterways and to construct, erect, alter, repair, clear, establish, maintain or operate aerodromes, landing fields, air strips, runways, seaplane bases, jetties, piers and docks, to establish, construct, erect, build, maintain, alter, repair and operate aircraft hangars, workshops, radio and radar stations, towers and beacons, factories, shops, offices, grain elevators, storehouses, warehouses, seed barns, sand pits, gravel pits, quarries and generally all buildings, erections, constructions and works of whatsoever nature, useful or necessary in the fulfilment of any of the objects of the Company and to appropriate, use, adapt, modify, repair, alter, maintain or pull down any part of the lands, messuages, buildings or other premises or property whatsoever of the Company for the purpose of establishing, constructing or erecting any of the aforesaid works.

5. To enter into contracts with any person or company as to interchange of aerial traffic powers or otherwise.

6. To acquire, take on transfer, purchase or otherwise, and obtain and apply for and from time to time renew, modify, vary and extend all licenses, authorities and quotas necessary or desirable for carrying on any of the aforesaid businesses and to do all or any of the aforesaid things either in the name of the Company or by and through managers, agents, or trustees duly appointed for the purpose

7. To carry on all or any of the aforesaid businesses by or through agents, manager or managers and lessees and licensees and from time to time to remove the same and appoint another or others in their stead and for the purposes aforesaid to transfer or to vest or to cause or permit to be transferred or vested on such terms as the Company shall think fit any license or licenses and authorities whether statutory or otherwise howsoever in such agents, managers, lessees or licensees and upon such terms as the Company shall think fit.

In the Compensation Court of New Zealand.

Anexure to Exhibit A Memorandum of Association 21st July, 1954.

continued.

8. To buy, sell, manufacture, repair, convert, alter and deal in all kinds of articles and things which may be required for the purpose of any of the businesses which the Company is authorised to carry on or commonly supplied by or dealt in by persons engaged in any such businesses or which may be capable of being profitably dealt in in connection with any of the said businesses.

9. To carry on any other businesses (manufacturing or otherwise) which may seem to the Company capable of being conveniently carried on in connection with any of the above specified businesses or calculated directly or indirectly to enhance the value of or render profitable any of the Company's property or rights.

10. To acquire and undertake the whole or any part of the business goodwill assets property rights or undertaking of any person firm or company carrying on or having power to carry on any business which this Company is authorised to carry on by any specific or general clause of this Memorandum expressly or by implication and as part or the whole of the consideration therefor to undertake all or any of the liability of such person firm or company and to give or accept by way of consideration for any of the acts or things aforesaid or for anything acquired as aforesaid any cash shares debentures or securities that may be agreed upon.

11. Generally to purchase take on lease or in exchange hire or otherwise acquire any real and personal property and rights or privileges which the Company may think necessary or convenient for the purposes of its business or businesses and in particular any land, buildings, easements, rights of way, restrictive covenants, machinery, plant and stock-in-trade.

12. To subscribe or apply for and take or acquire by purchase or otherwise and hold shares or debentures or securities of or other interest in any other company having objects whether primary or ancillary altogether or in part similar to any of the objects of this Company or carrying on any business or authorised or empowered to carry on any business which this Company is empowered by any specific or general clause of this Memorandum expressly or by implication to acquire undertake or carry on.

13. To apply for purchase or otherwise acquire and protect or renew or join with any other company or person in so doing whether in the Dominion of New Zealand or in any part of the world any patents brevets d'invention patent rights protections licenses concessions methods or secrets of manufacture and the like conferring any exclusive or non-exclusive or limited right to use or any secret or other information as to any invention which may seem to this Company capable of being used for any of the purposes of this Company or the acquisition of which may seem to this Company calculated directly or indirectly to benefit this Company and to use exercise develop

manufacture under and to expend money in experimenting upon or seeking to improve patents rights methods or inventions which this Company may acquire or propose to acquire.

14. To enter into any partnership or into any arrangements for sharing profits or for co-operation or for limiting competition or for mutual assistance or for union of interest joint adventure reciprocal concession or otherwise with any firm person or company having objects whether primary or ancillary altogether or in part similar to those of this Company or engaged in or carrying on or established for the purpose of carrying on or empowered to carry on any business or transaction which this Company is authorised by any specific or general clause of this Memorandum expressly or by implication to carry on or engage in or any business transaction venture or undertaking which may seem to this Company capable of directly or indirectly benefiting this Company.

15. To amalgamate with any other Company having objects or powers whether primary or ancillary altogether or in part similar to those of this Company and to give or accept by way of consideration for such amalgamation any payment of cash or any agreement for periodical payments of cash secured or unsecured shares wholly or partly paid up or with liability for the full nominal value thereof stocks bonds obligations debentures debenture stock scrip or securities of any person company or corporation and whether of the Company or corporation with which such amalgamation is effected or not.

16. To acquire or obtain from or make any arrangement with any government or authority supreme municipal local or otherwise or any corporation company or person for any authority right privilege concession contract or charter which this Company may think it desirable to obtain or which may seem to this Company conducive to any of the objects of this Company and to accept make payments under carry out exercise and comply with any such arrangement authority right privilege concession contract or charter.

17. To sell lease exchange bail grant licenses in respect of or otherwise deal with or dispose of the Company's undertaking or any part thereof or any property or interest in any property rights concessions or privileges belonging to this Company or over which this Company shall have any right or power of disposal either together or in portions to any firm person company or corporation for such consideration or premium as this Company may think fit and in particular wholly or partly for cash or wholly or partly for periodical payments of cash secured or unsecured shares wholly or partly paid up with liability to pay the full nominal value thereof stocks bonds obligations debentures debenture stock scrip or securities of any person company or corporation and whether of the person company or corporation acquiring the interest so disposed of or otherwise.

In the Compensation Court of New Zealand.

Anexure to Exhibit A Memorandum of Association 21st July, 1954.

continued.

18. To divide among the members of this Company from time to time whatever the Company may decide to be the profits arising from the operations of the Company or any part of such profits.

19. To divide as profits among the members of the Company the proceeds of any disposal or realisation of any part of the property or assets of the Company which in the opinion of the Company may fairly be considered and treated as accretions to capital.

20. To divide as profits amongst the members of the Company the nett annual income to be derived from the exhaustion of any wasting asset of the Company without any obligation on the part of the Company to provide for loss on any previous years operations.

21. To divide any property of the Company or any cash or any shares stocks bonds obligations debentures debenture stock scrip and securities the property of this Company or of which this Company may have the power of disposal whether or not the same be the proceeds of any sale, lease, exchange, bailment, license or other disposal or amalgamation as mentioned in this Memorandum of Association or otherwise belonging to the Company among the members in specie or in kind according to their respective rights.

22. To borrow or raise money or secure the repayment of money owing or the satisfaction or performance of any obligation or liability incurred or undertaken by the Company in such manner as the Company may think fit and in particular by the issue of debentures debenture stock (perpetual or redeemable) or by mortgage or charge or lien upon the whole or any part of the Company's property or assets (whether present or future) including its uncalled capital and to purchase redeem or pay off any such securities.

23. To make draw accept endorse discount execute and issue bills of exchange promissory notes bills of lading dock or other warrants debentures and any other instruments negotiable or transferable by delivery or to order or otherwise.

24. To receive money on deposit at interest.

25. To lend and advance money or give credit to or to give guarantees or become security for the payment of moneys of the performance of contracts or obligations by any members officers or servants of the Company or customers of or persons or corporation dealing with the Company.

26. To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and in particular to invest the same on mortgage or purchase of real leasehold or personal property shares or securities or by depositing the same with any bank company firm or person at interest and such investments from time to time to vary.

27. To use any reserve fund created from accumulated profits or from the issue of shares at a premium as part of the Company's capital without capitalising the same.

28. To remunerate any person firm or company for services rendered to this Company or to pay for any properties rights privileges concessions or any other thing or interest acquired by this Company by cash payment or by the allotment of shares debentures debenture stock or other securities of the Company partly or wholly paid up or otherwise.

continued.

29. To support and subscribe to or establish or aid in the establishment and support of associations institutions provident and benefit funds trusts societies or clubs which may be for the benefit of the Company its employees or ex-employees or which may be connected with any town or place where the Company carried on business: and to give pensions gratuities or charitable aid to any person or persons who have served the Company or the relatives or dependents of such persons or to any other person persons firm or corporation which the Directors of the Company for the time being may consider deserving of such.

30. To improve manage cultivate develop let or lease turn to account or otherwise deal with all or any part of the property or rights of the Company.

31. To promote or join in promoting any company or companies for the purpose solely or partly of acquiring all or any part of the undertaking property rights concessions or privileges or liabilities of this Company or of undertaking any business or operations or for any purpose which may seem to this Company likely to benefit this Company directly or indirectly and to place or guarantee the placing or underwrite apply for and accept or subscribe the whole or any part of the capital debentures or securities of any such company or to lend money to or guarantee the performance of the contracts of any such Company.

32. To apply for promote and obtain any Act of Parliament leave license or other authority to enable the Company to carry out any or all of its objects or for the purpose of obtaining for the Company any additional powers or for any other purpose which may appear to the Company expedient in the interests of the Company and to oppose any bills proceedings or applications which may seem to the Company likely to prejudice the Company's interest directly or indirectly.

33. To do all or any of the acts aforesaid or exercise all or any of the powers expressly or impliedly conferred by this Memorandum jointly with any person partnership corporation or other Company and to become jointly or jointly and severally liable with any such person partnership corporation or company on any contract or obligation

In the Compensation Court of New Zealand.

Anexure to Exhibit A Memorandum of Association 21st July, 1954.

continued.

which this Company may decide to be in the interests of this Company to enter into.

34. To do all such other things as in the opinion of the Company may be incidental or conducive to the attainment of any of the foregoing objects or the exercise of any of the foregoing powers.

35. The objects set forth in any clause or sub-clause of this Memorandum of Association shall not except when the context expressly requires to be in anywise limited or restricted by reference to or any inference from the terms of any other clause sub-clause or by the name of the Company. None of such clauses sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to any other clause sub-clause or objects but the Company shall have full power to exercise all or any of the objects and powers conferred by this Memorandum of Association independently of any other such objects and powers.

IV. THE liability of the members is "limited".

V. THE capital of the Company is THREE THOUSAND POUNDS (£3,000) divided into three thousand (3,000) shares of One pound (£1) each. The Company has power to divide the shares in the above mentioned or any increased capital into several classes and to issue the shares of any class or classes at a premium or at par and with any preferential deferred qualified or special rights privileges or conditions attached thereto or subject to any restrictions or limitations.

WE, the several persons whose names addresses and descriptions are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Dated the 21st day of July One thousand nine hundred and fifty four.

Name in Full	Address	Description	Signature	No. of Shares Taken
Geoffrey Woodhouse Lee	23 Weston Road, St. Albans, Christchurch.	Commercial Pilot	G. W. Lee	2999
Joseph Walter Pountney Watts	815 High Street, Lower Hutt	Solicitor	J. W. P. Watts	1

Witness to the above signatures:—

R. M. Hardie,
Accountant,
Wellington.

In the Compensation Court of New Zealand.

Exhibit B

Copy of Minute 16th August, 1954.

Exhibit B

COPY OF MINUTE

COPY OF MINUTE DATED 16th AUGUST, 1954

8. That Article 33 of the Company's Articles be amended by deleting the words "a salary of £1500 per annum from the date of incorporation of the Company" and inserting the words "a salary to be arranged by the Governing Director."

(Signed) "G. W. Lee."

In the Compensation Court of New Zealand

Exhibit I

Assessment of Premium 5th August, 1954

Exhibit I

ASSESSMENT OF PREMIUM

NATIONAL EMPLOYERS MUTUAL GENERAL INSURANCE ASSOCIATION LTD

(INCORPORATED IN ENGLAND).

Attorneys for New Zealand
EDWARD LUMLEY & SONS (N.Z.) LTD

Head Office, Brandon House, Wellington, N.Z.

No. C4/329

Branch: Christchurch

BRANCH/AGENCY COPY

ASSESSMENT OF PREMIUM (EMPLOYERS' LIABILITY INSURANCE)

Under the provisions of the Workers' Compensation Act, 1956.

Employer: Mr. / Mrs. / Miss LEE'S AIR FARMING LIMITED

Address: 154 Hereford Street, Christchurch.

PREMIUM ASSESSED ON EMPLOYER'S STATEMENT OF WAGES DATED 23rd, JULY 1954

DESCRIPTION OF WORK	Statistical Code	PAST YEAR ended 31 MARCH, 19 — Wages and Salaries paid (including Keep & other other Allowances)	Rate per Cent.	Premium	ENSUING YEAR ending 31 MARCH, 19 — Wages and Salaries estimated (including Keep & other other Allowances)	Rate per Cent.	Premium
		£	s. d.	£ s. d.	£	s. d.	£ s. d.
1. OFFICE WORK: Managers, Clerks, and others engaged in office work only							
2. GENERAL EMPLOYEES, PERMANENT AND CASUAL (State each class of employment)							
Aerial Topdressing Pilot	742				200	200 0	20 0 0
General work	387				310	15 0	2 6 6
Tractor Driver	731				375	32 6	6 1 11
							28 8 5
						—7½%	2 2 8
3. FARMING WORK:							£ 26 5 9
4. BUILDER:—							
5. DOMESTIC AND CASUAL WORK AT PRIVATE RESIDENCE: Domestic and casual work in or about private residence							
6. CONTRACTORS (not shown in 3): engaged in (State occupation).							
TOTALS					885		26 5 9
ADD: Past year's premium							
DEDUCT { Premium paid at commencement of past year on estimated wages, &c. (Assmt. No. C/4/329)							

VOLUNTARY INSURANCE

Name	Relationship	Description of Work

NOTE.—The minimum premium for each year (or shorter period) of insurance is 5s.

On payment of the premium an official numbered Cash Receipt will be issued. The Cash Receipt and this Assessment together constitute a certificate of insurance for the ensuing year shown above.

Premium Due £ 26 5 9

Premium Payable £ : :

THE PREMIUM PAYABLE MUST BE PAID NOT LATER THAN ONE MONTH AFTER THE DATE OF ASSESSMENT.
If not paid by that date an additional 5 per cent. is incurred under the Act.

Written by

Date: __/__/19__

Ledger:

PAYABLE AT
Edward Lumley & Sons Ltd.
Christchurch

Exchange must be included in cheques.
Please present this form when making payment.

FOR THE AUTHORISED INSURER
Ronald H. Miles

DATE OF ASSESSMENT:
5th August, 1954

In the Compensation Court of New Zealand.

Exhibit J

COPY OF LETTER

Exhibit J
Copy of Letter 8th July, 1955.

8th July, 1955.

The Manager,
Messrs Edward Lumley & Sons (N.Z.) Ltd.,
Hereford Street,
CHRISTCHURCH

Dear Sir,

Employers Liability Insurance

We enclose Employers Statement of Wages for the year ended 31st March 1955. The Company had been in operation eight months to that date, during which time Mr Lee, the Company's only pilot, received £260 in wages.

In accordance with the telephone conversation between the writer and your Mr Smith, we have apportioned these wages on the basis of actual flying hours. During the eight months Mr Lee flew approximately 250 hours, which represents one month at an eight-hour-day. The £260 has therefore been apportioned on the basis of one-eighth for flying and seven-eighths for general work.

We have estimated Mr Lee's wages at £600 for the coming twelve months, and according to our records to date it appears as though the yearly flying hours will be appoximately 500, representing nearly two months flying. The estimate of £600 has therefore been apportioned on the basis of one sixth flying and five-sixths general work.

We would be pleased to receive confirmation of the method of calculation in due course.

Yours faithfully,

C.L.S.,
Secretary.

In the Compensation Court of New Zealand

Exhibit K

Assessment of Premium 28th September, 1955

Exhibit K

ASSESSMENT OF PREMIUM

NATIONAL EMPLOYERS MUTUAL GENERAL INSURANCE ASSOCIATION LTD

(INCORPORATED IN ENGLAND).

Attorneys for New Zealand
EDWARD LUMLEY & SONS (N.Z.) LTD

No. C5/350

HEAD OFFICE COPY

Head Office, Brandon House, Wellington, N.Z. *Branch:* Christchurch

ASSESSMENT OF PREMIUM (EMPLOYERS' LIABILITY INSURANCE)

Under the provisions of the Workers' Compensation Act, 1956.

Employer: Mr. / Mrs. / Miss LEE'S AIR FARMING LIMITED

Address: 154 Hereford Street, Christchurch.

PREMIUM ASSESSED ON EMPLOYER'S STATEMENT OF WAGES DATED 8TH JULY 1955

DESCRIPTION OF WORK	Statistical Code paid (in-	PAST YEAR ended 31 MARCH, 1955						ENSUING YEAR ending 31 MARCH, 1956					
		Wages and Salaries paid (including Keep & other other Allowances)	Rate per Cent.		Premium			Wages and Salaries estimated (including Keep & other other Allowances)	Rate per Cent.		Premium		
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1. OFFICE WORK: Managers, Clerks, and others engaged in office work only													
2. GENERAL EMPLOYEES, PERMANENT AND CASUAL (State each class of employment)													
Aerial Topdressing Pilot	742	70	200	0	7	0	0	200	200	0	10	0	0
General work connected with Aerial Topdressing —administration etc	387	190	15	0	1	8	6	400	15	0	3	0	0
Tractor Driver	731	239	32	6	3	18	9	520	32	6	8	9	0
Mechanic	387	73	15	0		11	0	100	15	0		15	0
					12	18	3						
3. FARMING WORK:			7½%			19	5						
4. BUILDER:—													
5. DOMESTIC AND CASUAL WORK AT PRIVATE RESIDENCE: Domestic and casual work in or about private residence													
6. CONTRACTORS (not shown in 3): engaged in (State occupation).													
Employers please note													
Premium due											7	17	1
Less General Rebate					12½	%						19	8
Premium payable											6	17	5
TOTALS					11	18	10				22	4	0
ADD: Past year's premium											11	18	10
											34	2	10
DEDUCT { Premium paid at commencement of past year on estimated wages, &c. (Assmt. No. C/4/329)											26	5	9

VOLUNTARY INSURANCE

Name	Relationship	Description of Work

NOTE.—The minimum premium for each year (or shorter period) of insurance is 5s.

On payment of the premium an official numbered Cash Receipt will be issued. The Cash Receipt and this Assessment together constitute a certificate of insurance for the ensuing year shown above.

Premium Due £ 7 17 1

Premium Payable £ : :

THE PREMIUM PAYABLE MUST BE PAID NOT LATER THAN ONE MONTH AFTER THE DATE OF ASSESSMENT.

If not paid by that date an additional 5 per cent. is incurred under the Act.

Written by

Date: .../.../19...

Ledger:

PAYABLE AT
P.O. Box 1213
Christchurch

Exchange must be included in cheques.
Please present this form when making payment.

FOR THE AUTHORISED INSURER
Ronald H. Miles

DATE OF ASSESSMENT:
28th September, 1955

CERTIFICATE OF REGISTRAR OF COURT OF APPEAL AS TO ACCURACY OF RECORD

I, GERALD RONALD HOLDER, Registrar of the Court of Appeal of New Zealand, DO HEREBY CERTIFY that the foregoing 36 pages of printed matter contain true and correct copies of all the proceedings, evidence, judgments, decrees and orders had or made in the above matter, so far as the same have relation to the matters of appeal, and also correct copies of the reasons given by the Judges of the Court of Appeal of New Zealand in delivering judgment therein, such reasons having been given in writing: AND I DO FURTHER CERTIFY that the appellant has taken all the necessary steps for the purpose of procuring the preparation of the record, and the despatch thereof to England, and has done all other acts, matters and things entitling the said appellant to prosecute this Appeal.

AS WITNESS my hand and Seal of the Court of Appeal of New Zealand this 15th day of March 1960.

G. R. HOLDER

Registrar

L.S.

In the Privy Council.

No. of 1960.

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND.

BETWEEN

CATHERINE LEE .... *Appellant*

AND

LEE'S AIR FARMING LIMITED *Respondent*

RECORD OF PROCEEDINGS

BLYTH DUTTON WRIGHT & BENNETT
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Solicitors for the Appellant

GOLDINGHAM WELLINGTON & CO.
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Printed at The Caxton Press, Christchurch, New Zealand