

Adv M.J. Lowe S.C.

*Docex I
Cellular 082 5533761
Tel No. (046) 6224058
Fax No. 0865844978
e-mail : murlowe@imagnet.co.za*

*St George's Chambers
108 High Street
Grahamstown
6139*

2 July, 2012

Your Ref: **Mr Brody/Glyn**

Messrs Wheeldon Rushmere & Cole
119 High Street
GRAHAMSTOWN
6139

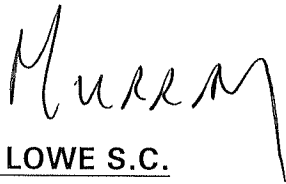
Dear Brin,

Re : **RAINE & ANOTHER / NELM**

1. I have pleasure in enclosing herewith a draft Plea for your kind attention.
2. I think we should run past your clients and particularly Prof Walters in order to ensure that they agree with the approach that we have taken.
3. I have dealt with the prescription issue as best I can and raised various other defenses.
4. We will probably get an exception in due course with which we will have to deal.

With kind regards and thank you for the brief.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. J. Lowe". The signature is written in a cursive style with a large initial "M" and a long, sweeping tail.

M.J. LOWE S.C.

/ms

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE - GRAHAMSTOWN

Case No. 1370/2012

In the matter between:

PETER CRON RAINE

1st Plaintiff

BOE TRUST LIMITED

2nd Plaintiff

- and -

NATIONAL ENGLISH LITERARY MUSEUM

Defendant

DEFENDANT'S SPECIAL PLEA AND PLEA OVER

(Filed of Record on this day of 2012)

A: DEFENDANT SPECIAL PLEA

Defendant pleads specially as follows to Plaintiffs' Particulars of Claim.

1. Plaintiffs' claim is based upon their purported claim to the documents referred to in annexure "PC3" to the Particulars of Claim (the Cronwright Schreiner collection) arising from the contents of the Will of Samuel Cron

Cronwright ("Cronwright") and the subsequent Will of his daughter Cronlyn Mary Featherstone Raine ("Cronlyn").

2. Plaintiffs contend that the said documents constitute part of the movable property referred to in clause 4 of the Cronwright Will alternatively constitute part of the books, writings and pictures, photographs and articles not specially bequeathed by Cronwright and referred to in clause 7 of the Cronwright Will.
3. Plaintiffs contend that the documents sought were not included in the residue of Cronlyn's deceased estate.
4. Plaintiffs in the premises claim that First Plaintiff is the owner of the said documents alternatively that the documents fell into the deceased estate of Cronlyn of which Second Plaintiff is the executor.
5. First Plaintiff's claim is based upon his alleged ownership of the documents concerned being a *rei vindicatio*, an incident of ownership.
6. Alternatively both Plaintiffs contend that the documents fell into the deceased estate of Cronlyn, effectively constituting a claim by Second Plaintiff to delivery of the documents.

7. Plaintiffs' claim is contained in their Summons dated 2nd May 2012 which were served on Defendant on 9 May 2012.
8. Plaintiffs' claims constitute a debt as referred to in the Prescription Act 68 of 1969 alternatively in respect of Act 18 of 1943, constitute a right of action accruing against Defendant.
9. Plaintiffs' claims based upon the causes of action set out in the Particulars of Claim accordingly fell due on a date more than 3 years prior to the service of Summons on Defendant and accordingly Plaintiffs' Summons was served more than 3 years after the date on which the Plaintiffs' claims arose.
10. In the premises, Plaintiffs' claims are prescribed in terms of Section 11 of Act 68 of 1969, alternatively in terms of Act 18 of 1943, alternatively both.

WHEREFORE Defendant prays that Plaintiffs' claims be dismissed with costs.

B: DEFENDANT'S PLEA OVER

The Defendant pleads as follows to Plaintiffs' Particulars of Claim.

11. **Ad Paragraph 1 thereof**

Defendant admits First Plaintiff's name and that he is an adult male, has no knowledge of the remaining allegations herein contained, does not admit same and puts Plaintiffs to the proof thereof.

12. **Ad Paragraph 2 thereof**

Defendant admits Second Plaintiff's name, has no knowledge of the remaining allegations herein contained, does not admit same and puts Second Plaintiff to the proof thereof.

13. **Ad Paragraph 3 thereof**

This is admitted.

14. **Ad Paragraph 4 thereof**

Save to admit that Cronlyn Mary Featherstone Raine ("Cronlyn") was the daughter of Samuel Cron Cronwright ("Cronwright"), Defendant has no knowledge of the allegations herein contained, does not admit same and puts Plaintiffs to the proof thereof.

15. **Ad Paragraph 5 thereof**

This is admitted.

16. **Ad Paragraph 6 thereof**

This is admitted.

17. **Ad Paragraphs 7, 8 and 9 thereof**

17.1 Defendant admits only the allegations herein contained insofar as they accord with Cronwright's Will being "PC1" to Plaintiffs' Particulars of Claim, denying each and every remaining allegation herein contained as if specifically traversed.

17.2 Defendant pleads that in terms of clauses 4 and 5 of Cronwright's Will, that it was only the "*funds*" set aside for the Trust that were to be distributed amongst Cronlyn's children as contemplated in clause 5 of Cronwright's Will.

17.3 Defendant denies, accordingly, that the movable property including book and film copyrights and royalties were to be included in such distribution.

17.4 Defendant annexes hereto the Last Will and Testament of Olive Emily Albertina Schreiner marked "NELM1":

17.4.1 In terms of which she appointed Cronwright as her sole heir subject further to the contents of her Will;

17.4.2 In terms of clause 2 thereof in the event of the death of Cronwright any property left to him by Olive Schreiner still being unused, such property or proceeds, were to devolve upon the South African College Council if exceeding 300 Pounds in value and were to be the subject of a scholarship at the South African College to be called the Cron Scholarship;

17.4.3 In terms of clause 4 thereof that upon the death of Cronwright all letters, documents, journals and papers of any kind written by Olive Schreiner, or belonging to Olive Schreiner which were then in Cronwright's possession, were to be given to Francis Lyndall Schreiner or such other person as Olive Schreiner may nominate, to be disposed of in

accordance with such instructions as she may in writing have given to such person.

17.5 In the premises, Olive Schreiner created in her Will a fideicommissum in respect of her property in favour of Francis Lyndall Schreiner, alternatively such property including all letters, documents, journals and papers of any kind belonging to Olive Schreiner, were to be left to the South African College Council.

17.6 Further, in the premises, accordingly and in any event, Defendant denies that any of the Olive Schreiner documents referred to devolved finally upon Cronwright or Cronwright's descendants.

18. **Ad Paragraphs 10 and 11 thereof**

Defendant has no knowledge hereof, does not admit same and puts Plaintiffs to the proof thereof.

19. **Ad Paragraph 12 thereof**

19.1 Defendant only admits the allegations contained which accord with Cronlyn's Will (of which Defendant has no knowledge);

19.2 Defendant has no knowledge of the remaining allegations herein contained, does not admit same and puts Plaintiffs to the proof thereof.

20. **Ad Paragraph 13 thereof**

Defendant has no knowledge hereof, does not admit same and puts Plaintiffs to the proof thereof.

21. **Ad Paragraph 14 thereof**

21.1 Defendant has no knowledge hereof, does not admit same and puts Plaintiffs to the proof thereof.

21.2 In any event, and assuming that First Plaintiff became the said capital beneficiary, Defendant denies that:

21.2.1 First Plaintiff became the capital beneficiary to anything other than the Funds set aside for the Trust in terms of the Cronwright Will;

21.2.2 This included any of the papers of Olive Schreiner;

21.2.3 This included the documents referred to in clause 7 of the Cronwright Will.

22. **Ad Paragraphs 15 and 16 thereof**

Defendant has no knowledge hereof, but does not dispute same.

23. **Ad Paragraph 17 thereof**

Defendant admits being in possession of the Cronwright Schreiner collection being the documents detailed in annexure "PC3" to Plaintiffs' Particulars of Claim, denying each and every remaining allegation herein contained as if specifically traversed.

24. **Ad Paragraph 18 thereof**

24.1 Each and every allegation herein contained is denied as if specifically traversed.

24.2 In any event, and having regard to annexure "NELM1" hereto, Defendant denies that any of the documents in "PC3" hereto, vested in Cronwright or Cronwright's estate.

25. **Ad Paragraph 19 thereof**

This is admitted.

26. **Ad Paragraph 20 thereof**

Each and every allegation herein contained is denied as if specifically traversed.

27. **Ad Paragraph 21 thereof**

Defendant admits demand and a refusal to give Plaintiffs possession of the documents referred to, but denies being obliged to do so.

WHEREFORE Defendant prays that Plaintiffs' claims be dismissed with costs.

M.J. LOWE S.C.
Defendant's Counsel

WHEELDON RUSHMERE & COLE
Defendant's Attorneys
119 High Street
GRAHAMSTOWN
(Ref : Mr Brody)

TO: The Registrar of the above Honourable Court

AND TO: Messrs **NEVILLE BORMAN & BOTHA**
Plaintiffs' Attorneys
22 Hill Street

GRAHAMSTOWN