

IN THE SUPREME COURT }  
 OF NEW SOUTH WALES }  
 COURT OF APPEAL }

*Appeal*  
 Term No. 22 of 1969

BETWEEN:

ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG & SON PTY. LIMITED; FINLAYSIDE PTY. LIMITED; SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED; GOULBURN ACCEPTANCE PTY. LIMITED; A. E. ARMSTRONG PTY. LIMITED

Appellants (1st to 6th Defendants)

AND:

JOHN OSBORNE BOVILL; CLARE BARTON; TERRENCE BARTON; AGOSTON GONGZE; HOME HOLDINGS PTY. LIMITED; ALLEBART PTY. LIMITED; and ALLEBART INVESTMENTS PTY. LIMITED

Respondents (15th to 21st Defendants)

Term No. 25 of 1969

BETWEEN:

ALEXANDER BARTON

Appellant (Plaintiff)

AND:

ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG & SON PTY. LIMITED; FINLAYSIDE PTY. LIMITED; SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED; GOULBURN ACCEPTANCE PTY. LIMITED; A. E. ARMSTRONG PTY. LIMITED; LANDMARK (QUEENSLAND) PTY. LIMITED (IN LIQUIDATION); PARADISE WATERS (SALES) PTY. LIMITED; PARADISE WATERS LIMITED; GOONDOO PTY. LIMITED; LANDMARK HOME UNITS PTY. LIMITED; LANDMARK FINANCE PTY. LIMITED; LANDMARK HOUSING & DEVELOPMENT PTY. LIMITED; LANDMARK CORPORATION LIMITED; CLARE BARTON; TERRENCE BARTON; AGOSTON GONGZE; JOHN OSBORNE BOVILL; HOME HOLDINGS PTY. LIMITED; ALLEBART PTY. LIMITED; ALLEBART INVESTMENTS PTY. LIMITED

Respondents (1st to 21st Defendants)

**INSTITUTE OF ADVANCED  
 LEGAL STUDIES,  
 25, RUSSELL SQUARE,  
 LONDON,  
 W.C.1.**

**APPEAL BOOK**

**VOLUME I**

SOLICITORS FOR THE APPELLANTS

(1st to 6th Defendants);  
 Dare, Reed, Martin & Grant  
 187 Macquarie Street,  
SYDNEY.

SOLICITORS FOR THE RESPONDENTS

(15th to 21st Defendants)  
 McCaw, Johnson & Co.,  
 60 Pitt Street,  
SYDNEY.

SOLICITORS FOR THE APPELLANT

(Plaintiff)  
 McCaw, Johnson & Co.,  
 60 Pitt Street,  
SYDNEY.

SOLICITORS FOR THE RESPONDENTS

(1st to 6th Defendants)  
 Dare, Reed, Martin & Grant,  
 187 Macquarie Street,  
SYDNEY.

SOLICITORS FOR THE RESPONDENTS

(7th, 9th, 10th & 13th Defendants)  
 Francis White, Barnes & McGuire,  
 149 Castlereagh Street,  
SYDNEY.

SOLICITORS FOR THE RESPONDENT

(14th Defendant)  
 Dawson, Waldron,  
 44 Martin Place,  
SYDNEY.

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
COURT OF APPEAL )

Term No. 25 of 1969

<u>BETWEEN:</u>	<u>ALEXANDER BARTON</u>	Appellant
<u>AND:</u>	<u>ALEXANDER EWAN ARMSTRONG</u>	First Respondent
<u>AND:</u>	<u>GEORGE ARMSTRONG &amp; SON PTY. LIMITED</u>	Second Respondent
<u>AND:</u>	<u>FINLAYSIDE PTY. LIMITED</u>	Third Respondent
<u>AND:</u>	<u>SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED</u>	Fourth Respondent
<u>AND:</u>	<u>GOULBURN ACCEPTANCE PTY. LIMITED</u>	Fifth Respondent
<u>AND:</u>	<u>A.E. ARMSTRONG PTY. LIMITED</u>	Sixth Respondent
<u>AND:</u>	<u>LANDMARK (QUEENSLAND) PTY. LIMITED</u>	Seventh Respondent
<u>AND:</u>	<u>PARADISE WATERS (SALES) PTY. LIMITED</u>	Eighth Respondent
<u>AND:</u>	<u>PARADISE WATERS LIMITED</u>	Ninth Respondent
<u>AND:</u>	<u>GOONDOO PTY. LIMITED</u>	Tenth Respondent
<u>AND:</u>	<u>LANDMARK HOME HOLDINGS PTY. LIMITED</u>	Eleventh Respondent
<u>AND:</u>	<u>LANDMARK FINANCE PTY. LIMITED</u>	Twelfth Respondent
<u>AND:</u>	<u>LANDMARK HOUSING &amp; DEVELOPMENT PTY. LIMITED (In Liquidation)</u>	Thirteenth Respondent
<u>AND:</u>	<u>LANDMARK CORPORATION LIMITED</u>	Fourteenth Respondent
<u>AND:</u>	<u>CLARE BARTON</u>	Fifteenth Respondent
<u>AND:</u>	<u>TERRENCE BARTON</u>	Sixteenth Respondent
<u>AND:</u>	<u>AGOSTON GONGZE</u>	Seventeenth Respondent
<u>AND:</u>	<u>JOHN OSBORNE BOVILL</u>	Eighteenth Respondent
<u>AND:</u>	<u>HOME HOLDINGS PTY. LIMITED</u>	Nineteenth Respondent
<u>AND:</u>	<u>ALLEBART PTY. LIMITED</u>	Twentieth Respondent
<u>AND:</u>	<u>ALLEBART INVESTMENTS PTY. LIMITED</u>	Twenty First Respondent

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ELIZABETH II by the Grace of God of the United Kingdom, Australia and Her other realms and territories, Queen, Head of the Commonwealth Defender of the Faith.

To the within-named Defendants, ALEXANDER EWAN ARMSTRONG, GEORGE ARMSTRONG & SON PTY. LTD., GOULBURN ACCEPTANCE PTY. LTD., A.E. ARMSTRONG PTY. LTD., LANDMARK (QUEENSLAND) PTY. LTD., (In Liquidation) PARADISE WATERS (SALES) PTY. LTD., PARADISE WATERS LTD., GOONDOO PTY. LTD., LANDMARK HOME HOLDINGS PTY. LTD., LANDMARK FINANCE PTY. LTD., LANDMARK HOUSING & DEVELOPMENT PTY. LTD. (In Liquidation)., LANDMARK CORPORATION LTD., CLARE BARTON, TERRENCE BARTON, AGOSTON GONCZE, JOHN OSBORNE BOVILL, HOME HOLDINGS PTY. LTD., ALLEBART PTY. LTD., AND ALLEBART INVESTMENTS PTY. LTD.,

Greeting

WE command you that, within eight days after the service hereof on you, exclusive of the day of such service you cause an appearance to be entered for you in the Equity Office of our Supreme Court, Elizabeth Street, Sydney, in the State of New South Wales, to the within Statement of Claim. And that you do at the same time of entering your appearance file in the said Equity Office a Memorandum stating in effect that you dispute, in whole or in part, the Plaintiff's claim (specifying which part) or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title and interest in the subject matter of the within statement of Claim.

Amended Statement  
of Claim

Witness, the Honourable Charles McLelland,  
Chief Judge in Equity at Sydney the ninth  
day of February in the year One Thousand nine  
hundred and sixty eight and in the eighteenth  
year of our reign.

D. HALLIGAN

FOR CHIEF CLERK IN EQUITY

NOTE: If you neglect to enter your Appearance or to file a memorandum  
as above-mentioned you will be subject to such order as the Court  
thinks fit to make in your absence.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

<u>AND: ALEXANDER EWAN ARMSTRONG</u>	1st Defendant	
<u>AND: GEORGE ARMSTRONG &amp; SON PTY. LTD.</u>	2nd Defendant	
<u>AND: FINLAYSIDE PTY. LTD.</u>	3rd Defendant	10
<u>AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LTD.</u>	4th Defendant	
<u>AND: GOULBURN ACCEPTANCE PTY. LTD.</u>	5th Defendant	
<u>AND: A.E. ARMSTRONG PTY. LTD.</u>	6th Defendant	
<u>AND: LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation)</u>	7th Defendant	
<u>AND: PARADISE WATERS (SALES) PTY. LTD.</u>	8th Defendant	
<u>AND: PARADISE WATERS LTD.</u>	9th Defendant	
<u>AND: GOONDOO PTY. LTD.</u>	10th Defendant	20
<u>AND: LANDMARK HOME UNITS PTY. LTD.</u>	11th Defendant	
<u>AND: LANDMARK FINANCE PTY. LTD.</u>	12th Defendant	
<u>AND: LANDMARK HOUSING &amp; DEVELOPMENT PTY. LTD. (In Liquidation)</u>	13th Defendant	
<u>AND: LANDMARK CORPORATION LTD.</u>	14th Defendant	
<u>AND: CLARE BARTON</u>	15th Defendant	
<u>AND: TERRENCE BARTON</u>	16th Defendant	
<u>AND: AGOSTON GONCZE</u>	17th Defendant	30
<u>AND: JOHN OSBORNE BOVILL</u>	18th Defendant	
<u>AND: HOME HOLDINGS PTY. LTD.</u>	19th Defendant	
<u>AND: ALLEBART PTY. LTD.</u>	20th Defendant	
<u>AND: ALLEBART INVESTMENTS PTY. LTD.</u>	21st Defendant	

STATEMENT OF CLAIM

1. The second, third, fourth, fifth and sixth-named Defendants (hereinafter referred to as "the Armstrong companies") are each duly incorporated companies liable to be sued by their respective corporate names.

2. The first-named Defendant is the Managing Director, and either the holder or the controller of the majority of the shares in each of the Armstrong companies.

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3. The seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth defendants are each duly incorporated companies liable to be sued by their respective corporate names and are herein called the Landmark Companies.

4. The nineteenth, twentieth and twenty-first defendants are each duly incorporated companies liable to be sued by their respective corporation names.

5. At all material times the first-named Defendant was a Director of the Landmark Companies.

20

6. At all material times the Plaintiff was the Managing Director of the Landmark Companies.

7. On and prior to the execution of the certain Deed hereinafter referred to, on or about the 17th day of January, 1967 the first-named Defendant, on his own behalf, and on behalf of the Armstrong companies, had endeavoured to persuade and to compel the Plaintiff and the Landmark Companies to agree with him and the Armstrong companies, upon the matters subsequently substantially set forth in the said Deed.

30

8. It was not in the Plaintiff's interest to



Amended Statement  
of Claim

agree with the Defendants herein in the manner which the first-named Defendant sought, and the Plaintiff for a long time refused so to agree.

9. The first-named Defendant thereupon on his own behalf and on behalf of the Armstrong Companies for the purpose of compelling the Plaintiff to agree as hereinafter mentioned to cause the Landmark companies so to agree continually threatened to have the Plaintiff murdered if the Plaintiff did not agree with the Defendants in the manner which the first-named Defendant sought on his own behalf and on behalf of the Armstrong Companies and the first-named Defendant on his own behalf and on behalf of the Armstrong Companies otherwise exerted unlawful pressure upon the Plaintiff so to agree. 10

10. For the purposes mentioned in the preceding paragraph hereof the first-named Defendant on his own behalf and on behalf of the Armstrong companies engaged certain criminals to kill or otherwise injure the Plaintiff. 20

11. As a result of the threats and actions of the first-named Defendant on his own behalf and on behalf of the Armstrong companies hereinbefore mentioned, the Plaintiff feared for his life and safety and feared for the life and safety of his family.

12. The Plaintiff being in fear, as set out in the preceding paragraph, and against his will and for the purpose of avoiding the threat of death or injury aforesaid told the first-named Defendant on his own behalf and on behalf of the Armstrong 30

Amended Statement  
of Claim

companies that he agreed with the first-named Defendant on his own behalf and on behalf of the Armstrong companies in the manner sought by him and thereafter the Plaintiff executed a Deed on or about the 17th day of January, 1967, which substantially set forth the matters to which the first-named Defendant on his own behalf and on behalf of the Armstrong Companies had sought the Plaintiff's agreement in the manner hereinbefore set out. The Plaintiff craves leave to refer to the said Deed when produced as if the same had been fully set forth herein. 10

13. At or about the same time as the execution of the aforesaid Deed, the Plaintiff executed a number of other Deeds ancillary to the aforesaid Deed.

14. The execution of the said Deed, and the said ancillary Deeds, by the Plaintiff was not voluntary and was done against his will while he was in fear for his life and safety and feared for the life and safety of his family as aforesaid. 20

15. Following the execution of the said Deed, and the said ancillary Deeds, by the Plaintiff, he remained and still remains in fear for his life and safety and for the life and safety of his family because of both -

- (a) the threats and actions of the first-named Defendant on his own behalf and on behalf of the Armstrong Companies prior to the execution of the said Deed; 30
- (b) further threats and actions of the first-named Defendant on his own behalf

Amended Statement  
of Claim

and on behalf of the Armstrong Companies after the execution of the said Deed designed to have, and having, the effect of keeping the Plaintiff in fear for his life and safety and the life and safety of his family, and of compelling the Plaintiff to continue to agree to the first-named Defendant's wishes on his own behalf and on behalf of the Armstrong Companies. 10

16. The Plaintiff has feared and fears that if he had avoided the said Deed upon the grounds of duress without the benefit of Court Proceedings, his life and that of his family would have been in grievous danger.

17. In so far as any action may be necessary by the Plaintiff to avoid the said Deed, the Plaintiff hereby avoids and rescinds the said Deed. 20

18. The Plaintiff says that he has not received any benefits under the said Deed but, nevertheless, hereby offers to restore to the Defendants any benefits he may have obtained under the said Deed.

19. Pursuant to the said Deed and not otherwise certain ancillary agreements and Deeds were executed by, inter alia, the Plaintiff and in particular the Plaintiff was required to execute and procure execution by the Defendants, Clare Barton, Terrence Barton, Agoston Goncze, John Osborne Bovill, Home Holdings Pty. Ltd., Allebart Pty. Ltd., and Allebart Investments Pty. Ltd., (hereinafter called the nominees) of certain contracts to purchase shares 30

Amended Statement  
of Claim

from A.E. Armstrong Pty. Ltd., (herein called the share contracts).

20. Each of the share contracts provided for the purchase from the sixth defendant by each respective nominee of specified numbers of shares as set forth in the share contracts, at 60 cents per share namely, as to the personal nominees, 30,000 shares each, and as to the corporate nominees, 10 47,500 shares each, such sums being payable in three equal annual instalments, the first of such payments becoming due on the 18th January, 1968.

21. Pursuant to such share contracts, the shares referred to therein were transferred to the nominees, who respectively entered into mortgages securing the payments of the sums aforesaid, and providing, inter alia, that upon Default in payment by the nominee of any instalment, the whole amount payable by such nominee should be immediately due 20 and payable, and the sixth defendant could, on the happening of such event be entitled to have these shares transferred to its nominee and to dispose of them. The Plaintiff craves leave to refer to the said share contracts and mortgages, when produced, as if the same had been fully set forth herein.

22. The Plaintiff guaranteed the applications of each of the nominees under the share contracts and mortgages aforesaid.

23. If the sixth defendant is able to procure 30 the transfer of the shares to its name as hereinbefore referred to, it will probably be able to control the Landmark companies.

Amended Statement  
of Claim

24. Certain payments under the share contracts mentioned in paragraph 19 hereof are expressed, according to the terms thereof, to be due for payment on the 18th day of January, 1968.

25. The Plaintiff does not intend to pay or to cause to be paid the said payments and fears that unless restrained by Order of this Honourable Court, the first-named Defendant and the Armstrong companies may take action pursuant to the said Deed and certain ancillary documents and cause irreparable harm and loss to the Plaintiff and the Landmark companies. 10

THE PLAINTIFF THEREFORE CLAIMS:

(1) That it may be declared that the aforesaid Deed, and said ancillary Deeds, were executed by the Plaintiff under duress and were not his Deeds.

(2) In the alternative that it may be declared that the aforesaid Deed and said ancillary Deeds were executed by the Plaintiff under duress and have been duly avoided by the Plaintiff. 20

(3) That it may be declared that the aforesaid Deed, and ancillary Deeds, are void, or alternatively are void so far as concerns the Plaintiff.

(4) That the Defendants, and each of them, may be restrained from acting upon or purporting to act upon the said Deed and ancillary Deeds in any way whatsoever or alternatively so far as concerns the Plaintiff, and from acting upon or purporting to act upon any rights or powers under any Deeds, agreements or other documents coming into existence consequentially upon the said Deed or ancillary 30

Amended Statement  
of Claim

Deeds in any way whatsoever or alternatively so far as concerns the Plaintiff.

(5) That the guarantees and mortgages by the Plaintiff and other obligations of the Plaintiff contained in the said ancillary Deeds are invalid and void and not binding upon the Plaintiff.

(6) That the Defendants be ordered to pay the Plaintiff's costs of this suit. 10

(7) That the Plaintiff may have such further or other relief as the nature of the case may require.

R. Purvis

Counsel for the Plaintiff.

NOTE: This Statement of Claim is filed by Messrs. Gaden Bowen & Stewart of 402 New South Head Road, Double Bay Solicitors for the Plaintiff, Alexander Barton, of 187 Edinburgh Road, Castlecrag.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EWAN ARMSTRONG First Defendant

AND: GEORGE ARMSTRONG & SON  
PTY. LIMITED Second Defendant

AND: FINLAYSIDE PTY. LIMITED Third Defendant 10

AND: SOUTHERN TABLELANDS  
FINANCE CO. PTY. LIMITED Fourth Defendant

AND: GOULBURN ACCEPTANCE PTY.  
LIMITED Fifth Defendant

AND: A.E. ARMSTRONG PTY.  
LIMITED Sixth Defendant

AND: LANDMARK (QUEENSLAND)  
PTY. LIMITED (In  
Liquidation) Seventh Defendant

AND: PARADISE WATERS (SALES)  
PTY. LIMITED Eighth Defendant 20

AND: PARADISE WATERS LIMITED Ninth Defendant

AND: GOONDOO PTY. LIMITED Tenth Defendant

AND: LANDMARK HOME UNITS PTY.  
LIMITED Eleventh Defendant

AND: LANDMARK FINANCE PTY.  
LIMITED Twelfth Defendant

AND: LANDMARK HOUSING & DEVELOPMENT  
PTY. LIMITED (In  
Liquidation) Thirteenth Defendant

AND: LANDMARK CORPORATION  
LIMITED Fourteenth Defendant 30

AND: CLARE BARTON Fifteenth Defendant

AND: TERRENCE BARTON Sixteenth Defendant

AND: AGOSTON GONCZE Seventeenth Defendant

AND: JOHN OSBORNE BOVILL Eighteenth Defendant

AND: HOME HOLDINGS PTY.  
LIMITED Nineteenth Defendant

AND: ALLEBART PTY. LIMITED Twentieth Defendant

AND: ALLEBART INVESTMENTS PTY.  
LIMITED Twenty-first Defendant

STATEMENT OF DEFENCE

ALEXANDER EWAN ARMSTRONG the first abovenamed defendant, does on his oath say as follows:-

1. In answer to paragraph 2 of the Statement of Claim the firstnamed defendant says that from August, 1966, or earlier, and until the swearing of this Statement of Defence, he has been one of a board of three directors of each of the defendants George Armstrong & Son Pty. Limited, A.E. Armstrong Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited, that he was, from August, 1966, or earlier and until 9th January, 1967, and from 28th April, 1967 until the swearing of this Statement of Defence one of a board of three directors of Finlayside Pty. Limited. In further answer to the said paragraph 2 the first named defendant denies that he was or is managing director of any of the said companies. 10

2. In answer to paragraph 3 of the Statement of Claim, the first named defendant says that since the commencement of this suit an order has been made by the Supreme Court of New South Wales in its equitable jurisdiction for the winding up of the fourteenth defendant Landmark Corporation Limited. 20

3. In answer to paragraph 5 of the Statement of Claim the first named defendant admits that he was a director of each of the Landmark companies other than Landmark Finance Pty. Limited from August, 1966, or earlier, and until the 18th day of January, 1967, or shortly thereafter. Save as aforesaid the first named defendant does not know and cannot admit that at any material time he was a director of the Landmark companies or any of them. 30



Statement of Defence  
of the first named  
Defendant

4. In answer to paragraph 6 of the Statement of Claim, the first named defendant admits that the plaintiff was the managing director of Landmark Corporation Limited and a director of each other of the Landmark companies from August, 1966, or earlier, until the date of the commencement of this suit or until the date of the winding up thereof, as the case may be. Save as aforesaid, the first named defendant does not know and cannot admit that at any material time the plaintiff was the managing director of the Landmark companies. 10

5. In answer to paragraph 7 of the Statement of Claim the first named defendant says that prior to the 17th January, 1967, there had occurred differences and disputes between the first named defendant and the plaintiff as directors respectively of Landmark Corporation Limited relating to the management of certain of the business and affairs of Landmark Corporation Limited and of certain of its subsidiaries relating to the accounts of Landmark Corporation Limited and to the consolidated accounts of Landmark Corporation Limited and its subsidiaries and relating to the desire and proposal of the plaintiff that the directors of Landmark Corporation Limited should recommend to the annual general meeting of that company the payment of a dividend. 20  
In further answer to the said paragraph 7, the first named defendant says that arising out of the above-mentioned disputes and actions of the plaintiff and of certain of the Landmark companies in 30

Statement of Defence  
of the first named  
Defendant

furtherance of such disputes there were instituted and conducted in the equitable jurisdiction of the Supreme Court of New South Wales the following suits, namely:-

- (a) Suit No. 1262 of 1966 in which Finlay-  
side Pty. Limited was the plaintiff and  
Landmark Corporation Limited, Paradise 10  
Waters (Sales) Pty. Limited and Paradise  
Waters Limited were the defendants, and  
in which certain interlocutory relief  
was granted to the plaintiff therein  
against the defendants therein and each  
of them.
- (b) Suit No. 1263 of 1966 in which George  
Armstrong & Son Pty. Limited was the  
plaintiff and Landmark Corporation  
Limited was the defendant in which said 20  
suit no determination or orders had  
been made prior to the 17th January,  
1967.
- (c) Suit No. 1359 of 1966 in which Alexan-  
der Ewan Armstrong was the plaintiff  
and Landmark Corporation Limited was  
the Defendant and in which certain re-  
lief was granted to the plaintiff  
against the defendant.

The first named defendant craves leave to refer to 30  
the documents of record in the said suits when  
produced as though the same were set forth herein.

6. In further answer to the said paragraph 7,

Statement of Defence  
of the first named  
Defendant

the first named defendant says that in the month of  
December, 1966, and until the 13th January, 1967,  
endeavours were made by the plaintiff and by the  
first named defendant and by the parties to the  
abovementioned suits, and by the solicitors and  
counsel and other advisers of the said persons and  
parties to resolve the said disputes and to compro- 10  
mise the said litigation and further that during  
the second week of January, 1967, the first named  
defendant, as and by way of a compromise between  
the proposals put forward on behalf of the plain-  
tiff and Landmark Corporation Limited, Paradise  
Waters Limited, Paradise Waters (Sales) Pty.  
Limited, Goondoo Pty. Limited, Landmark Home Units  
Pty. Limited, Landmark Finance Pty. Limited, Land-  
mark Housing & Development Pty. Limited, and  
Landmark (Queensland) Pty. Limited and those put 20  
forward on behalf of the first named defendant and  
of Finlayside Pty. Limited, George Armstrong &  
Sons Pty. Limited, Southern Tablelands Finance Co.  
Pty. Limited and Goulburn Acceptance Pty. Limited,  
agreed, and Finlayside Pty. Limited, George  
Armstrong & Sons Pty. Limited, Southern Tablelands  
Finance Co. Pty. Limited and Goulburn Acceptance  
Pty. Limited agreed to the matters subsequently  
provided for by the deed of the 17th January, 1967,  
made between George Armstrong & Sons Pty. Limited, 30  
Finlayside Pty. Limited, Southern Tablelands  
Finance Co. Pty. Limited, Goulburn Acceptance Pty.  
Limited and A.E. Armstrong Pty. Limited of the

Statement of Defence  
of the first named  
Defendant

first part, Landmark (Queensland) Pty. Limited,  
Paradise Waters (Sales) Pty. Limited, Paradise  
Waters Limited, Goondoo Pty. Limited, Landmark Home  
Units Pty. Limited, Landmark Finance Pty. Limited,  
Landmark Housing and Development Pty. Limited and  
Landmark Corporation Limited of the second part,  
Alexander Ewan Armstrong of the third part and 10  
Alexander Barton of the fourth part.

7. Save as aforesaid the first named defendant  
in further answer to the said paragraph 7 denies  
that on and prior to the execution of the said deed  
on the 17th January, 1967, the first named defen-  
dant on his own behalf or on behalf of the Armstrong  
companies or any of them had endeavoured to persuade  
or to compel the plaintiff and the Landmark companies  
or any of them to agree with him and the Armstrong  
companies, or any of them upon the matters subse- 20  
quently set forth in the said Deed.

8. In answer to paragraph 8 of the Statement of  
Claim, the first named defendant repeats paragraphs  
5, 6 and 7 above and says that he does not know and  
cannot admit that it was not in the plaintiff's in-  
terest to agree with the defendants in this suit in  
the manner which the first named defendant on his  
own behalf or on behalf of the Armstrong companies  
or any of them or at all sought or in the terms of  
the said deed of the 17th January, 1967, so far as 30  
the same were to be performed by or affected the  
plaintiff, and denies that the plaintiff for a long  
time refused so to agree.

Statement of Defence  
of the first named  
Defendant

9. In answer to paragraph 9 of the Statement of Claim, the first named defendant on his own behalf or on behalf of the Armstrong companies or any of them or at all denies that for the purpose of compelling the plaintiff to agree as in the Statement of Claim alleged, to cause the Landmark companies so to agree, or for any purpose or at all he continually or at all threatened to have the plaintiff murdered if the plaintiff did not agree with the defendants in the manner which the first named defendant sought, and denies further that he, on his own behalf or on behalf of the Armstrong companies or any of them or at all, otherwise exerted unlawful pressure upon the plaintiff so to agree. 10

10. In answer to paragraph 10 of the Statement of Claim, the first named defendant denies that for the purposes mentioned in paragraph 9 of the Statement of Claim, or at all, on his own behalf or on behalf of the Armstrong companies or any of them or at all, engaged certain or any criminals to kill or otherwise injure the plaintiff. 20

11. In answer to paragraph 11 of the Statement of Claim, the first named defendant repeats paragraphs 7, 9 and 10 above and denies that as a result of any threats or actions of the first named defendant, on his own behalf or on behalf of the Armstrong companies or any of them or at all, the plaintiff feared for his life and safety or that he feared for the life and safety of his family. 30

12. In further answer to the said paragraph 11,

Statement of Defence  
of the first named  
Defendant

first named defendant does not know and cannot admit that the plaintiff feared for his life and safety as alleged or that he feared for the life and safety of his family as alleged.

13. In answer to paragraph 12 of the Statement of Claim, the first named defendant repeats paragraphs 9, 10, 11 and 12 above, and denies that the plaintiff was in fear as set out in paragraph 11 of the Statement of Claim, and does not know and cannot admit that against the will of the plaintiff, and denies that for the purpose of avoiding the threat of death or injury in the Statement of Claim alleged, the plaintiff told the first named defendant, on his own behalf or on behalf of the Armstrong companies or any of them or at all, that the plaintiff agreed with the first named defendant in the manner sought by the first named defendant, on his own behalf and on behalf of the Armstrong companies or any of them or at all, as alleged. 10 20

14. In further answer to the said paragraph 12, the first named defendant repeats paragraphs 5, 6 and 7 above.

15. In answer to paragraph 13 of the Statement of Claim, the first named defendant says that after the execution of the deed of the 17th January, 1967, the plaintiff executed the following deeds or documents on the following dates: 30

- (a) A deed made the 18th day of January, 1967, between A.B. Armstrong Pty. Limited and Alexander Barton whereby the

Statement of Defence  
of the first named  
Defendant

plaintiff agreed to purchase 30,000  
fully paid shares of \$1.00 each in the  
capital of Landmark Corporation Limited.

- (b) A deed made the 18th day of January,  
1967, between Alexander Barton as mort-  
gagor, A.E. Armstrong Pty. Limited as  
mortgagee and certain guarantors, 10  
securing the payment of the price for  
the shares the subject of the deed men-  
tioned in (a) above.
- (c) An undated instrument of transfer of  
the shares the subject of the deed men-  
tioned in (a) above.
- (d) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Allebart Investments Pty.  
Limited whereby Allebart Investments Pty. 20  
Limited agreed to purchase 47,500 fully  
paid \$1.00 shares in the capital of  
Landmark Corporation Limited.
- (e) A deed made the 18th day of January,  
1967, between Allebart Investments Pty.  
Limited as mortgagor, A.E. Armstrong  
Pty. Limited as mortgagee and Alexander  
Barton and ors. as guarantors securing  
the payment of the price for the shares  
the subject of the deed mentioned in 30  
(d) above.
- (f) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. Limited

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of the first named  
Defendant

and Allebart Pty. Limited whereby  
Allebart Pty. Limited agreed to purchase  
47,500 fully paid shares of \$1.00 each  
in the capital of Landmark Corporation  
Limited.

- (g) A deed made the 18th day of January,  
1967, between Allebart Pty. Limited as 10  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment  
of the price for the shares the subject  
of the deed mentioned in (f) above.
- (h) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Home Holdings Pty. Limited  
whereby Home Holdings Pty. Limited  
agreed to purchase 47,500 fully paid 20  
shares of \$1.00 each in the capital of  
Landmark Corporation Limited.
- (j) A deed made the 18th day of January,  
1967, between Home Holdings Pty. Limited  
as mortgagor, A.E. Armstrong Pty.  
Limited as mortgagee, and Alexander  
Barton and ors. as guarantors, securing  
the payment of the price for the shares  
the subject of the deed mentioned in  
(h) above. 30
- (k) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. Limited  
and Agoston Goncze whereby Agoston Goncze



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Defendant

agreed to purchase 30,000 fully paid  
shares of \$1.00 each in the capital of  
Landmark Corporation Limited.

- (l) A deed made the 18th day of January,  
1967, between Agoston Goncze as mort-  
gagor, A.E. Armstrong Pty. Limited as  
mortgagee and Alexander Barton and ors. 10  
as guarantors securing the payment of  
the price of the shares the subject of  
the deed mentioned in (k) above.
- (m) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. Limited  
and Terrence Barton whereby Terrence  
Barton agreed to purchase 30,000 fully  
paid shares of \$1.00 each in the capital  
of Landmark Corporation Limited.
- (n) A deed made the 18th day of January, 20  
1967, between Terrence Barton as mort-  
gagor, A.E. Armstrong Pty. Limited as  
mortgagee and Alexander Barton and ors.  
as guarantors securing the payment of  
the price of the shares the subject of  
the deed mentioned in (m) above.
- (o) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Clare Barton whereby Clare  
Barton agreed to purchase 30,000 fully 30  
paid shares of \$1.00 each in the capital  
of Landmark Corporation Limited.
- (p) A deed made the 18th day of January,

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Defendant

1967, between Clare Barton as mortgagor,  
A.E. Armstrong Pty. Limited as mortga-  
gee and Alexander Barton and ors. as  
guarantors securing the payment of the  
price of the shares the subject of the  
deed mentioned in (o) above.

(q) A deed made the 18th day of January, 10  
1967, between A.E. Armstrong Pty.  
Limited and John Osborne Bovill whereby  
John Osborne Bovill agreed to purchase  
30,000 fully paid shares of \$1.00 each  
in the capital of Landmark Corporation  
Limited.

(r) A deed made the 18th day of January,  
1967, between John Osborne Bovill as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and 20  
ors. as guarantors securing the payment  
of the price of the shares the subject  
of the deed mentioned in (q) above.

Save as aforesaid, the first named defendant denies  
that at or about the same time as the execution of  
the deed mentioned in paragraph 13 of the Statement  
of Claim, the plaintiff executed a number of other  
deeds ancillary to the aforesaid deed.

16. In answer to paragraph 14 of the Statement of  
Claim, the first named defendant does not know and 30  
cannot admit that the execution by the plaintiff of  
the deeds therein mentioned was not voluntary or  
that the same was done against the will of the

Statement of Defence  
of the first named  
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plaintiff, or that the execution of the deeds therein mentioned by the plaintiff was done by him while he was in fear for his life and safety, or whilst he feared for the life and safety of his family. In further answer to the said paragraph 14, the first named defendant repeats paragraphs 9, 10, 11 and 12 above. 10

17. In answer to paragraph 15 of the Statement of Claim, the first named defendant denies that following the execution of the deeds in the said paragraph mentioned by the plaintiff the plaintiff remained or that he still remained in fear for his life and safety or for the life and safety of his family because of either of:-

(a) Any threats or actions of the first named defendant on his own behalf or on behalf of the Armstrong companies or any of them or at all, prior to the execution of the said deed on the 17th January, 1967. 20

(b) Any further threats or actions of the first named defendant on his own behalf or on behalf of the Armstrong companies or any of them or at all after execution of the said deed designed to have or having the effect of keeping the plaintiff in fear for his life and safety or for the life and safety of his family or of compelling the plaintiff to continue to agree to the first 30

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named defendant's wishes, on his own behalf or on behalf of the Armstrong companies or any of them or at all.

18. In further answer to the said paragraph 15, the first named defendant repeats the denials in paragraphs 9, 10, 11 and 12 above.

19. In further answer to the said paragraph 15, 10  
the first named defendant denies that after the execution of the said Deed of the 17th January, 1967, the first named defendant made any threats or did any acts designed to have or having the effect of keeping the plaintiff in fear for his life and safety or for the life and safety of his family or of compelling the plaintiff to continue to agree to the first named defendant's wishes.

20. In answer to paragraph 16 of the Statement of Claim, the first named defendant does not know and 20  
cannot admit that the plaintiff has feared or that he fears that if he had avoided the deed therein mentioned upon the grounds of duress without the benefit of Court proceedings his life or that of any member of his family would have been in grievous or any danger.

21. In further answer to the said paragraph 16, the first named defendant denies that the life of the plaintiff or the life of any member of his family has ever been in grievous or any danger by 30  
reason of any act of the first named defendant.

22. In answer to paragraph 17 of the Statement of Claim, the first named defendant denies that

Statement of Defence  
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the plaintiff is entitled to avoid the Deed of the 17th day of January, 1967, upon the grounds asserted in the Statement of Claim or at all.

23. In answer to paragraph 18 of the Statement of Claim, the first named defendant craves leave to refer to the said Deed when produced as though the same were pleaded in full in answer to the said paragraph. In further answer to the said paragraph the first named defendant denies that the plaintiff has not received any benefits under the said deed and repeats the matters set forth in paragraph 5, 6 and 7 above. 10

24. In answer to paragraph 19 of the Statement of Claim the first named defendant craves leave to refer to the deed made the 17th day of January, 1967, and the other agreements and deeds in the said paragraph mentioned when produced as though the same were pleaded in full in answer to the said paragraph and does not admit that the same or the effects thereof are in the said paragraph sufficiently or accurately set forth. 20

25. In answer to paragraph 20 of the Statement of Claim, the first named defendant craves leave to refer to the share contracts therein mentioned when the same are produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 30

26. In answer to paragraph 21 of the Statement of

Statement of Defence  
of the first named  
Defendant

Claim, the first named defendant craves leave to refer to the share contracts and to the mortgages therein mentioned when the same are produced, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

27. In answer to paragraph 22 of the Statement of Claim, the first named defendant craves leave to refer to the instrument of guarantee when produced and does not admit that the same or the effect thereof is in the said paragraph sufficiently or accurately set forth. 10

28. In answer to paragraph 23 of the Statement of Claim, the first named defendant denies that if the sixth defendant were able to procure the transfer of the shares therein mentioned to its name, it would have been, or would be able to control 20 the Landmark companies or any of them. In further answer to the said paragraph 23, the first named defendant says that the seventh and the thirteenth defendants are being wound up pursuant to orders made by the Supreme Court of Queensland. In further answer to the said paragraph the first named defendant says that the fourteenth defendant is being wound up pursuant to an order made by the Supreme Court of New South Wales in its equitable jurisdiction on the 1st day of January, 1968, and that the 30 Landmark companies, other than Landmark Corporation Limited, are each of them subsidiaries of Landmark Corporation Limited.

Statement of Defence  
of the first named  
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29. In answer to paragraph 24 of the Statement of Claim the first named defendant craves leave to refer to the share contracts therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

30. In answer to paragraph 25 of the Statement of Claim, the first named defendant denies that any action which he or the Armstrong companies, or any of them may take pursuant to the deed of the 17th January, 1967, or pursuant to any of the ancillary documents in the said paragraph mentioned would cause irreparable or any harm or loss to the Landmark companies or any of them. 10

31. In answer to the whole of the Statement of Claim, the first named defendant submits that the allegations in the Statement of Claim do not entitle the plaintiff to the relief therein sought and the first named defendant craves the same benefit from this submission as if he had demurred to the Statement of Claim. 20

Russell Bainton  
Counsel for the Defendant

This statement of defence is filed by Robert Ian Grant of Messrs. Dare, Reed, Martin & Grant of 137 Macquarie Street, Sydney, the solicitor for the first abovenamed defendant. 30

Statement of Defence  
of the first named  
Defendant

The above statement of defence was sworn by the  
abovenamed Alexander Ewan Armstrong at Sydney this  
15th day of February, 1968, before me:

A.E. Armstrong

Acting Chief Clerk in Equity

Above statement of defence was resworn by the  
abovenamed Alexander Ewan Armstrong at Sydney this  
26th day of July, 1968 before me:

10

A.E. Armstrong



IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND:

ALEXANDER EWAN ARMSTRONG  
AND ORS.

Defendants 10

STATEMENT OF DEFENCE

OF

SECOND NAMED DEFENDANT  
GEORGE ARMSTRONG & SON PTY. LIMITED

The second abovenamed defendant under its Common Seal says as follows:-

1. In answer to paragraph 2 of the Statement of Claim, the defendant George Armstrong & Son Pty. Limited says that from August, 1966, or earlier, and until the date of this Statement of Defence the defendant Alexander Ewan Armstrong has been one of a Board of three directors of each of the defendants George Armstrong & Son Pty. Limited, A.E. Armstrong Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited, and that the defendant Alexander Ewan Armstrong was from August, 1966 or earlier, and until the 9th January, 1967, and from the 28th April, 1967 until the date of this Statement of Defence one of the Board of three directors of Finlayside Pty. Limited.

Statement of Defence  
of the second named  
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In further answer to the said paragraph 2,  
the defendant George Armstrong & Son Pty.  
Limited denies that the defendant Alexander  
Ewan Armstrong was or is managing director of  
any of the said defendant companies.

2. In answer to paragraph 3 of the Statement of  
Claim the defendant George Armstrong & Son 10  
Pty. Limited says that since the commencement  
of this suit, an order has been made by the  
Supreme Court of New South Wales in its equit-  
able jurisdiction for the winding up of the  
fourteenth defendant Landmark Corporation  
Limited.

3. In answer to paragraph 5 of the Statement of  
Claim the defendant George Armstrong & Son  
Pty. Limited admits that the defendant  
Alexander Ewan Armstrong was a director of 20  
each of the Landmark Companies other than  
Landmark Finance Pty. Limited from August,  
1966, or earlier, and until the 18th day of  
January, 1967, or shortly thereafter. Save  
as aforesaid the defendant George Armstrong  
& Son Pty. Limited does not know and cannot  
admit that at any material time the defen-  
dant Alexander Ewan Armstrong was a director  
of the Landmark companies or any of them.

4. In answer to paragraph 6 of the Statement of 30  
Claim the defendant George Armstrong & Son  
Pty. Limited admits that the plaintiff was  
the managing director of Landmark Corporation

Statement of Defence  
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Defendant

Limited and a director of each other of the  
Landmark companies from August, 1966, or  
earlier, until the date of commencement of  
this suit, or until the date of the winding  
up thereof, as the case may be. Save as  
aforesaid, the defendant George Armstrong &  
Son Pty. Limited does not know and cannot 10  
admit that at any material time the plaintiff  
was the managing director of the Landmark  
companies.

5. In answer to paragraph 7 of the Statement of  
Claim the defendant George Armstrong & Son  
Pty. Limited says that prior to the 17th  
January, 1967, there had occurred differences  
and disputes between the defendant Alexander  
Ewan Armstrong and the plaintiff as directors  
respectively of Landmark Corporation Limited 20  
relating to the management of certain of the  
business and affairs of Landmark Corporation  
Limited and of certain of its subsidiaries and  
relating to the accounts of Landmark Corpora-  
tion Limited and to the consolidated accounts  
of Landmark Corporation Limited and its sub-  
sidiaries and relating to the desire and  
proposal of the plaintiff that the directors  
of Landmark Corporation Limited should re-  
commend to the Annual General Meeting of that 30  
company the payment of a dividend. In further  
answer to the said paragraph 7, the defendant  
George Armstrong & Son Pty. Limited says that

Statement of Defence  
of the second named  
Defendant

arising out of the abovementioned disputes and actions of the plaintiff and of certain of the Landmark companies in furtherance of such disputes there were instituted and conducted in the equitable jurisdiction of the Supreme Court of New South Wales the following suits, namely:-

10

(a) Suit No. 1262 of 1966 in which Finlayside Pty. Limited was the plaintiff and Landmark Corporation Limited, Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited were the defendants, and in which certain interlocutory relief was granted to the plaintiff therein against the defendants therein and each of them.

(b) Suit No. 1263 of 1966 in which George Armstrong & Son Pty. Limited was the plaintiff and Landmark Corporation Limited was the defendant in which said suit no determination or orders had been made prior to the 17th January, 1967.

20

(c) Suit No. 1359 of 1966 in which Alexander Ewan Armstrong was the plaintiff and Landmark Corporation Limited was the defendant and in which certain relief was granted to the plaintiff against the defendant.

30

Statement of Defence  
of the second named  
Defendant

The defendant George Armstrong & Son Pty.

Limited craves leave to refer to the documents  
and records in the said suits when produced  
as though the same were set forth herein.

6. In further answer to the said paragraph 7 the  
defendant George Armstrong & Son Pty. Limited  
says that in the month of December, 1966, and 10  
until the 13th January, 1967, endeavours were  
made by the plaintiff and by the defendant  
Alexander Ewan Armstrong and by the parties  
to the abovementioned suits and by the solici-  
tors and counsel and other advisers for the  
said persons and parties to resolve the said  
disputes, and to compromise the said litiga-  
tion and further that during the second week  
of January, 1967, the defendant Alexander Ewan  
Armstrong, as and by way of a compromise be- 20  
tween the proposals put forward on behalf of  
the plaintiff and Landmark Corporation Limited,  
Paradise Waters Limited, Paradise Waters  
(Sales) Pty. Limited, Goondoo Pty. Limited,  
Landmark Home Units Pty. Limited, Landmark  
Finance Pty. Limited, Landmark Housing &  
Development Pty. Limited and Landmark (Queens-  
land) Pty. Limited and those put forward on  
behalf of the defendant Alexander Ewan Arm-  
strong and of the defendants Finlayside Pty. 30  
Limited, George Armstrong & Son Pty. Limited,  
Southern Tablelands Finance Co. Pty. Limited  
and Goulburn Acceptance Pty. Limited agreed,

Statement of Defence  
of the second named  
Defendant

and the defendants Finlayside Pty. Limited,  
George Armstrong & Son Pty. Limited, Southern  
Tablelands Finance Co. Pty. Limited and Goul-  
burn Acceptance Pty. Limited each agreed to  
the matters subsequently provided for by the  
deed of the 17th day of January, 1967, made  
between George Armstrong & Son Pty. Limited, 10  
Finlayside Pty. Limited, Southern Tablelands  
Finance Pty. Limited, Goulburn Acceptance Pty.  
Limited and A.E. Armstrong Pty. Limited of  
the first part, Landmark (Queensland) Pty.  
Limited, Paradise Waters (Sales) Pty. Limited,  
Paradise Waters Limited, Goondoo Pty. Limited,  
Landmark Home Units Pty. Limited, Landmark  
Finance Pty. Limited, Landmark Housing &  
Development Pty. Limited and Landmark Corpora-  
tion Limited of the second part, Alexander 20  
Ewan Armstrong of the third part, and Alexander  
Barton of the fourth part.

7. Save as aforesaid the defendant George Arm-  
strong & Son Pty. Limited, in further answer  
to the said paragraph 7, denies that on and  
prior to the execution of the said deed on the  
17th January, 1967, the defendant Alexander  
Ewan Armstrong on his own behalf or on behalf  
of the defendant George Armstrong & Son Pty.  
Limited or on behalf of any other or the 30  
Armstrong companies had endeavoured to per-  
suade or to compel the plaintiff and the  
Landmark companies or any of them to agree

Statement of Defence  
of the second named  
Defendant

with the said Alexander Ewan Armstrong and the  
Armstrong companies or any of them upon the  
matters subsequently set forth in the said  
deed.

8. In answer to paragraph 8 of the Statement of  
Claim the defendant George Armstrong & Son  
Pty. Limited repeats paragraphs 5 6 and 7 10  
above and says that it does not know and can-  
not admit that it was not in the plaintiff's  
interest to agree with the defendants in this  
suit in the manner which the defendant  
Alexander Ewan Armstrong sought, or in the  
terms of the said deed of the 17th January,  
1967, so far as the same were to be performed  
by or affected the plaintiff and denies that  
the plaintiff for a long time refused so to  
agree. 20

9. In answer to paragraph 9 of the Statement of  
Claim the defendant George Armstrong & Son  
Pty. Limited denies that for the purpose of  
compelling the plaintiff to agree as in the  
Statement of Claim alleged to cause the Land-  
mark companies so to agree or for any purpose  
or at all the defendant Alexander Ewan  
Armstrong continually or at all threatened  
to have the plaintiff murdered if the plain-  
tiff did not agree with the defendants in the 30  
manner which the defendant Alexander Ewan  
Armstrong sought and denies further that the  
defendant Alexander Ewan Armstrong otherwise

Statement of Defence  
of the second named  
Defendant

exerted unlawful pressure upon the plaintiff  
so to agree in further answer to the said  
paragraph 9 the Defendant George Armstrong &  
Son Pty. Limited denies that the Defendant  
Alexander Ewan Armstrong made any such threats  
or did any such acts as are in the said para-  
graph alleged on behalf of the Defendant 10  
George Armstrong & Son Pty. Limited and that  
he had no authority from the Defendant so to  
do.

10. In answer to paragraph 10 of the Statement of  
Claim the defendant George Armstrong & Son  
Pty. Limited denies that for the purposes men-  
tioned in paragraph 9 of the Statement of  
Claim or at all the defendant Alexander Ewan  
Armstrong engaged certain or any criminals 20  
to kill or otherwise injure the plaintiff in  
further answer to the said paragraph 10 the  
Defendant George Armstrong & Son Pty. Limited  
denies that the Defendant Alexander Ewan Arm-  
strong made any such threats or did any such  
acts as are in the said paragraph alleged on  
behalf of the Defendant George Armstrong &  
Son Pty. Limited and that he had no authority  
from the Defendant so to do.

11. In answer to paragraph 11 of the Statement of  
Claim the Defendant George Armstrong & Son 30  
Pty. Limited repeats paragraphs 9 and 10  
above and denies that as a result of any  
threats or actions of the Defendant Alexander



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of the second named  
Defendant

Ewan Armstrong the Plaintiff feared for his life and safety or that he feared for the life and safety of his family in further answer to the said paragraph 11 the Defendant George Armstrong & Son Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant George Armstrong & Son Pty. Limited and that he had no authority from the Defendant so to do. 10

12. In further answer to the said paragraph 11 the Defendant George Armstrong & Son Pty. Limited does not know and cannot admit that the Plaintiff feared for his life and safety as alleged or that he feared for the life and safety of his family as alleged. 20

13. In answer to paragraph 12 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited repeats paragraphs 9, 10, 11 and 12 above and denies that the Plaintiff was in fear as set out in paragraph 11 of the Statement of Claim, and does not know and cannot admit that against the will of the Plaintiff and denies that for the purpose of avoiding the threat of death or injury in the statement of claim alleged the Plaintiff told the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all that the 30

Statement of Defence  
of the second named  
Defendant

Plaintiff agreed with the Defendant Alexander Ewan Armstrong in the manner sought by the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all.

14. In further answer to the said paragraph 12 the Defendant George Armstrong & Son Pty. Limited repeats paragraphs 5, 6 and 7 above. 10

15. In answer to paragraph 13 of the Statement of Claim the Defendant George Armstrong & Son Pty. Limited says that after the execution of the deed of the 17th January, 1967 the Plaintiff executed the following deeds and documents on the following dates:-

(a) A deed made the 18th day of January, 1967 between A.E. Armstrong Pty. Limited and Alexander Barton whereby the Plaintiff agreed to purchase 30,000 fully paid shares of \$1.00 each in the capital of Landmark Corporation Limited. 20

(b) A deed made the 18th day of January, 1967, between Alexander Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and certain guarantors securing the payment of the price for the shares the subject of the deed mentioned in (a) above. 30

(c) An undated instrument of transfer of the shares the subject of the deed mentioned in (a) above.

Statement of Defence  
of the second named  
Defendant

- (d) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Allebart Investments Pty.  
Limited whereby Allebart Investments  
Pty. Limited agreed to purchase 47,500  
fully paid \$1. shares in the capital of  
Landmark Corporation Limited. 10
- (e) A deed made the 18th day of January,  
1967, between Allebart Investments Pty.  
Limited as mortgagor, A.E. Armstrong  
Pty. Limited as mortgagee and Alexander  
Barton and ors. as guarantors securing  
the payment of the price for the shares  
the subject of the deed mentioned in  
(d) above.
- (f) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. 20  
Limited and Allebart Pty. Limited where-  
by Allebart Pty. Limited agreed to pur-  
chase 47,500 fully paid shares of \$1.  
each in the capital of Landmark Corpora-  
tion Limited.
- (g) A deed made the 18th day of January,  
1967, between Allebart Pty. Limited as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment 30  
of the price for the shares the subject  
of the deed mentioned in (f) above.
- (h) A deed made the 18th day of January,

Statement of Defence  
of the second named  
Defendant

1967, between A.E. Armstrong Pty.  
Limited and Home Holdings Pty. Limited  
whereby Home Holdings Pty. Limited  
agreed to purchase 47,500 fully paid  
shares of \$1. each in the capital of  
Landmark Corporation Limited.

- (j) A deed made the 18th day of January, 10  
1967, between Home Holdings Pty.  
Limited as mortgagor, A.E. Armstrong  
Pty. Limited as mortgagee, and Alexander  
Barton and ors. as guarantors, securing  
the payment of the price for the shares  
the subject of the deed mentioned in  
(h) above.
- (k) A deed made the 18th day of January, 20  
1967, between A.E. Armstrong Pty.  
Limited and Agoston Goncze whereby  
Agoston Goncze agreed to purchase 30,000  
fully paid shares of \$1. each in the  
capital of Landmark Corporation Limited.
- (l) A deed made the 18th day of January,  
1967, between Agoston Goncze as mortga-  
gor, A.E. Armstrong Pty. Limited as  
mortgagee and Alexander Barton and ors.  
as guarantors securing the payment of  
the price of the shares the subject of  
the deed mentioned in (k) above. 30
- (m) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. Limited  
and Terrence Barton whereby Terrence

Statement of Defence  
of the second named  
Defendant

Barton agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.

- (n) A deed made the 18th day of January, 1967, between Terrence Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and Ors. 10 as guarantors securing the payment of the price of the shares the subject of the deed mentioned in (m) above.
- (o) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Clare Barton whereby Clare Barton agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.
- (p) A deed made the 18th day of January, 20 1967, between Clare Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and Ors. as guarantors securing the payment of the price of the shares the subject of the deed mentioned in (o) above.
- (q) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and John Osborne Bovill whereby John Osborne Bovill agreed to purchase 30 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.

Statement of Defence  
of the second named  
Defendant

(r) A deed made the 13th day of January,  
1967, between John Osborne Bovill as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment  
of the price of the shares the subject  
of the deed mentioned in (q) above. 10

Save as aforesaid the defendant George  
Armstrong & Son Pty. Limited denies that at  
or about the same time as the execution of  
the deed mentioned in paragraph 13 of the  
Statement of Claim the plaintiff executed a  
number of other deeds ancillary to the afore-  
said deed.

16. In answer to paragraph 14 of the Statement of  
Claim the Defendant George Armstrong & Son  
Pty. Limited does not know and cannot admit 20  
that the execution by the Plaintiff of the  
deeds therein mentioned was not voluntary or  
that the same was done against the will of the  
Plaintiff, or that the execution of the deeds  
therein mentioned by the Plaintiff was done  
by him while he was in fear for his life and  
safety or while he feared for the life and  
safety of his family. In further answer to  
the said paragraph 14 the second named Defen-  
dant George Armstrong & Son Pty. Limited re- 30  
peats paragraphs 9, 10, 11 and 12 above.

17. In answer to paragraph 15 of the Statement of  
Claim the Defendant George Armstrong & Son

Statement of Defence  
of the second named  
Defendant

Pty. Limited denies that following the execution of the deeds in the said paragraph mentioned by the Plaintiff the Plaintiff remained or that he still at the institution of this suit remained in fear for his life and safety or for the life and safety of his family because of either of:-

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(a) Any threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all prior to the execution of the said deed on the 17th January, 1967

(b) Any further threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all after the execution of the said deed designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life and safety of his family or of compelling the Plaintiff to continue to agree to the Defendant Alexander Ewan Armstrong's wishes on his own behalf or on behalf of the Armstrong companies or any of them or at all.

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18. In further answer to the said paragraph 15 the Defendant George Armstrong & Son Pty. Limited repeats the denials in paragraphs 9,

Statement of Defence  
of the second named  
Defendant

10, 11 and 12 above. In further answer to the said paragraph 15 the Defendant George Armstrong & Son Pty. Limited denies that the defendant Alexander Ewan Armstrong made any such threats or did any such acts as are alleged in the said paragraph on behalf of the Defendant George Armstrong & Son Pty. Limited 10 and that he had any such authority from the said Defendant to do so.

19. In further answer to the said paragraph 15 the Defendant George Armstrong & Son Pty. Limited denies that after the execution of the said deed of the 17th January, 1967, the Defendant Alexander Ewan Armstrong made any threats or did any acts designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life 20 and safety of his family or of compelling the Plaintiff to continue to agree to the Defendant Alexander Ewan Armstrong's wishes.

20. In answer to paragraph 16 of the Statement of Claim the Defendant George Armstrong & Son Pty. Limited does not know and cannot admit that the Plaintiff has feared or that he fears that if he had avoided the deed therein mentioned upon the grounds of duress without the benefit of Court proceedings his life or 30 that of any member of his family would have been in grievous or any danger.

21. In further answer to the said paragraph 16



Statement of Defence  
of the second named  
Defendant

the Defendant George Armstrong & Son Pty.

Limited denies that the life of the Plaintiff  
or the life of any member of his family has  
ever been in grievous or any danger by reason  
of any act of the Defendant Alexander Ewan  
Armstrong.

22. In answer to paragraph 17 of the Statement of 10

Claim the Defendant George Armstrong & Son  
Pty. Limited denies that the Plaintiff is en-  
titled to avoid the deed of the 17th day of  
January 1967 upon the ground asserted in the  
Statement of Claim or at all. In further an-  
swer to the said paragraph 17 the Defendant  
George Armstrong & Son Pty. Limited says that  
on the 18th day of January 1967 it executed  
and delivered up discharges of the following  
mortgages and securities held by it to secure 20  
moneys due to it from Paradise Waters (Sales)  
Pty. Limited namely:-

- (a) Bill of Mortgage No. D35781<sup>4</sup> granted by  
Paradise Waters Limited over freehold  
portion of McIntosh Island.
- (b) Scrip lien and deed of charge dated the  
22nd February, 1966 executed by Land-  
mark Corporation Limited over 3,000  
\$2.00 shares in Paradise Waters (Sales)  
Pty. Limited. 30
- (c) Memorandum of Mortgage executed by  
Goondoo Pty. Limited over development  
Lease No. 7.

Statement of Defence  
of the second named  
Defendant

(d) Deed of Mortgage executed by Landmark Corporation Limited over certain life policies.

23. In answer to paragraph 18 of the Statement of Claim the Defendant George Armstrong & Son Pty. Limited craves leave to refer to the said deed when produced as though the same were pleaded in full in answer to the said paragraph. In further answer to the said paragraph the Defendant George Armstrong & Son Pty. Limited denies that the Plaintiff has not received any benefit under the said deed, and repeats the matters set forth in paragraphs 5, 6 and 7 above. In further answer to the said paragraph 18 the Defendant George Armstrong & Son Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant George Armstrong & Son Pty. Limited and that he had no authority from the Defendant so to do.

24. In answer to paragraph 19 of the Statement of Claim the Defendant George Armstrong & Son Pty. Limited craves leave to refer to the deed made on the 17th January, 1967 and the other agreements and deeds in the said paragraph mentioned when produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the

Statement of Defence  
of the second named  
Defendant

same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

25. In answer to paragraph 20 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 10

26. In answer to paragraph 21 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited craves leave to refer to the share contracts and to the mortgages therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

27. In answer to paragraph 22 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited craves leave to refer to the instruments of guarantee when produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

28. In answer to paragraph 23 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited denies that if the sixth defendant were able to procure the transfer of the 30

Statement of Defence  
of the second named  
Defendant

shares therein mentioned to its name it would have been or would be able to control the Landmark companies or any of them. In further answer to the said paragraph 23 the defendant George Armstrong & Son Pty. Limited says that the 7th and the 13th defendants are being wound up pursuant to orders made by the Supreme Court of Queensland. In further answer to the said paragraph 23, the defendant George Armstrong & Son Pty. Limited says that the 14th defendant is being wound up pursuant to an order made by the Supreme Court of New South Wales in its equitable jurisdiction on the 11th day of January, 1968, and that the Landmark companies other than the Landmark Corporation Limited are each of them subsidiaries of Landmark Corporation Limited.

29. In answer to paragraph 24 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraphs sufficiently or accurately set forth.

30. In answer to paragraph 25 of the Statement of Claim the defendant George Armstrong & Son Pty. Limited denies that any action which Alexander Ewan Armstrong or the Armstrong companies or any of them may take pursuant to the

Statement of Defence  
of the second named  
Defendant

deed of the 17th January, 1967, or pursuant to any of the ancillary documents in the said paragraph mentioned would cause irreparable or any harm or loss to the Landmark companies or to any of them.

31. In answer to the whole of the Statement of Claim, the defendant George Armstrong & Son Pty. Limited says that the Statement of Claim does not contain any offer by or on behalf of the plaintiff to do equity to the defendant George Armstrong & Son Pty. Limited and craves the same benefit from this statement of defence as if it had pleaded or demurred to the Statement of Claim. 10

32. In answer to the whole of the Statement of Claim the defendant George Armstrong & Son Pty. Limited submits that the allegations in the Statement of Claim do not entitle the plaintiff to the relief therein sought, and the defendant George Armstrong & Son Pty. Limited craves the same benefit from this submission as if it had demurred to the Statement of Claim. 20

R. Bainton  
.....  
Counsel for the defendant,  
George Armstrong & Son,  
Pty. Limited. 30

This Statement of Defence is filed by Robert Ian Grant of Messrs. Dare, Reed, Martin & Grant of 187 Macquarie Street, Sydney, Solicitor for the defendant George Armstrong & Son Pty. Limited.

Statement of Defence  
of the second named  
Defendant

The Common Seal of George )  
Armstrong & Son Pty. Limited )  
was hereunto affixed the )  
10 day of May, 1968 ) R.I. Grant  
pursuant to a resolution of )  
the Board of Directors in the ) C. Thorpe  
presence of R.I. Grant ) 10  
director and Cyril Garnet Thorpe )  
Secretary: )

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND:

ALEXANDER EWAN ARMSTRONG  
AND ORS.

Defendants 10

STATEMENT OF DEFENCE

OF

THIRD NAMED DEFENDANT  
FINLAYSIDE PTY. LIMITED

The third abovenamed defendant under its Common Seal says as follows:-

1. In answer to paragraph 2 of the Statement of Claim, the defendant Finlayside Pty. Limited says that from August, 1966, or earlier, and until the date of this Statement of Defence 20 the defendant Alexander Ewan Armstrong has been one of a board of three directors of each of the defendants George Armstrong & Son Pty. Limited, A.E. Armstrong Pty. Limited, Southern Tablelands Finance Co., Pty. Limited, and Goulburn Acceptance Pty. Limited, and that the defendant Alexander Ewan Armstrong was from August, 1966, or earlier, and until the 9th January, 1967, and from the 28th April, 1967 until the date of this Statement 30 of Defence one of the board of three directors

Statement of Defence  
of the third named  
2(w). Defendant

Statement of Defence  
of the third named  
Defendant

of the defendant Finlayside Pty. Limited. In further answer to the said paragraph 2, the defendant Finlayside Pty. Limited denies that the defendant Alexander Ewan Armstrong was or is managing director of any of the said defendant companies.

2. In answer to paragraph 3 of the Statement of Claim the defendant Finlayside Pty. Limited says that since the commencement of this suit an order has been made by the Supreme Court of New South Wales in its equitable jurisdiction for the winding up of the fourteenth defendant Landmark Corporation Limited. 10

3. In answer to paragraph 5 of the Statement of Claim the defendant Finlayside Pty. Limited admits that the defendant Alexander Ewan Armstrong was a director of each of the Landmark Companies other than Landmark Finance Pty. Limited from August, 1966, or earlier, and until the 18th day of January, 1967, or shortly thereafter. Save as aforesaid the defendant Finlayside Pty. Limited does not know and cannot admit that at any material time the defendant Alexander Ewan Armstrong was a director of the Landmark companies or any of them. 20

4. In answer to paragraph 6 of the Statement of Claim the defendant Finlayside Pty. Limited admits that the plaintiff was the managing director of Landmark Corporation Limited and 30



Statement of Defence  
of the third named  
Defendant

a director of each other of the Landmark companies from August, 1966, or earlier, until the date of commencement of this suit, or until the date of the winding up thereof, as the case may be. Save as aforesaid, the defendant Finlayside Pty. Limited does not know and cannot admit that at any material time the plaintiff was the managing director of the Landmark companies. 10

5. In answer to paragraph 7 of the Statement of Claim the defendant Finlayside Pty. Limited says that prior to the 17th January, 1967, there had occurred differences and disputes between the defendant Alexander Ewan Armstrong and the plaintiff as directors respectively of Landmark Corporation Limited relating to the management of certain of the business and affairs of Landmark Corporation Limited and of certain of its subsidiaries and relating to the accounts of Landmark Corporation Limited and to the consolidated accounts of Landmark Corporation Limited and its subsidiaries and relating to the desire and proposal of the plaintiff that the directors of Landmark Corporation Limited should recommend to the Annual General Meeting of that company the payment of a dividend. In further answer to the said paragraph 7, the defendant Finlayside Pty. Limited says that 20 30

Statement of Defence  
of the third named  
Defendant

arising out of the abovementioned disputes and actions of the plaintiff and of certain of the Landmark companies in furtherance of such disputes there were instituted and conducted in the equitable jurisdiction of the Supreme Court of New South Wales the following suits, namely:-

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(a) Suit No. 1262 of 1966 in which Finlayside Pty. Limited was the plaintiff and Landmark Corporation Limited, Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited were the defendants, and in which certain interlocutory relief was granted to the plaintiff therein against the defendants therein and each of them.

(b) Suit No. 1263 of 1966 in which George Armstrong & Son Pty. Limited was the plaintiff and Landmark Corporation Limited was the defendant in which said suit no determination or orders had been made prior to the 17th January, 1967.

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(c) Suit No. 1359 of 1966 in which Alexander Ewan Armstrong was the plaintiff and Landmark Corporation Limited was the defendant and in which certain relief was granted to the plaintiff against the defendant.

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The defendant Finlayside Pty. Limited craves leave to refer to the documents and records

Statement of Defence  
of the third named  
Defendant

in the said suits when produced as though the same were set forth herein.

6. In further answer to the said paragraph 7 the defendant Finlayside Pty. Limited says that in the month of December, 1966, and until the 13th January, 1967, endeavours were made by the plaintiff and by the defendant Alexander Ewan Armstrong and by the parties to the abovementioned suits and by the solicitors and counsel and other advisers for the said persons and parties to resolve the said disputes, and to compromise the said litigation and further that during the second week of January, 1967, the defendant Alexander Ewan Armstrong, as and by way of a compromise between the proposals put forward on behalf of the plaintiff and Landmark Corporation Limited, Paradise Waters Limited, Paradise Waters (Sales) Pty. Limited, Goondoo Pty. Limited, Landmark Home Units Pty. Limited, Landmark Finance Pty. Limited, Landmark Housing & Development Pty. Limited and Landmark (Queensland) Pty. Limited and those put forward on behalf of the defendant Alexander Ewan Armstrong and of the defendants Finlayside Pty. Limited, George Armstrong & Son Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited agreed, and the defendants Finlayside Pty. Limited, George Armstrong & Son Pty. Limited,

Statement of Defence  
of the third named  
Defendant

3.

Statement of Defence  
of the third named  
Defendant

Southern Tablelands Finance Co. Pty. Limited  
each agreed to the matters subsequently pro-  
vided for by the deed of the 17th day of  
January, 1967, made between George Armstrong  
& Son Pty. Limited, Finlayside Pty. Limited,  
Southern Tablelands Finance Pty. Limited,  
Goulburn Acceptance Pty. Limited and A.E. 10  
Armstrong Pty. Limited of the first part,  
Landmark (Queensland) Pty. Limited, Paradise  
Waters (Sales) Pty. Limited, Paradise Waters  
Limited, Goondoo Pty. Limited, Landmark Home  
Units Pty. Limited, Landmark Finance Pty.  
Limited, Landmark Housing & Development Pty.  
Limited and Landmark Corporation Limited of  
the second part, Alexander Ewan Armstrong of  
the third part, and Alexander Barton of the  
fourth part. 20

7. Save as aforesaid the defendant Finlayside  
Pty. Limited, in further answer to the said  
paragraph 7, denies that on and prior to the  
execution of the said deed on the 17th  
January, 1967, the defendant Alexander Ewan  
Armstrong on his own behalf or on behalf of  
the defendant Finlayside Pty. Limited or on  
behalf of any other of the Armstrong companies  
had endeavoured to persuade or to compel the  
plaintiff and the Landmark companies or any 30  
of them to agree with the said Alexander Ewan  
Armstrong and the Armstrong companies or any

Statement of Defence  
of the third named  
Defendant

of them upon the matters subsequently set forth in the said deed.

8. In answer to paragraph 8 of the Statement of Claim the defendant Finlayside Pty. Limited repeats Paragraphs 5, 6 and 7 above and says that it does not know and cannot admit that it was not in the plaintiff's interest to agree with the defendants in this suit in the manner which the defendant Alexander Ewan Armstrong sought, or in the terms of the said deed of the 17th January, 1967, so far as the same were to be performed by or affected by the plaintiff and denies that the plaintiff for a long time refused so to agree. 10

9. In answer to paragraph 9 of the Statement of Claim the defendant Finlayside Pty. Limited denies that for the purpose of compelling the plaintiff to agree as in the Statement of Claim alleged to cause the Landmark companies so to agree or for any purpose or at all threatened to have the plaintiff murdered if the plaintiff did not agree with the defendants in the manner which the defendant Alexander Ewan Armstrong sought and denies further that the defendant Alexander Ewan Armstrong otherwise exerted unlawful pressure upon the plaintiff so to agree. 20 30

In further answer to the said paragraph 9 the Defendant Finlayside Pty. Limited denies that the Defendant Alexander Ewan Armstrong made

Statement of Defence  
of the third named  
Defendant

any such threats or did any such acts as are  
in the said paragraph alleged on behalf of  
the Defendant Finlayside Pty. Limited and  
that he had no authority from the Defendant  
so to do.

10. In answer to paragraph 10 of the Statement of  
Claim the Defendant Finlayside Pty. Limited 10  
denies that for the purposes mentioned in  
paragraph 9 of the Statement of Claim or at  
all the Defendant Alexander Ewan Armstrong  
engaged certain or any criminals to kill or  
otherwise injure the Plaintiff. In further  
answer to the said paragraph 10 the Defendant  
Finlayside Pty. Limited denies that the De-  
fendant Alexander Ewan Armstrong made any  
such threats or did any such acts as are in  
the said paragraph alleged on behalf of the 20  
Defendant Finlayside Pty. Limited and that he  
had no authority from the Defendant so to do.

11. In answer to paragraph 11 of the Statement of  
Claim the Defendant Finlayside Pty. Limited  
repeats paragraphs 9 and 10 above and denies  
that as a result of any threats or actions of  
the Defendant Alexander Ewan Armstrong the  
Plaintiff feared for his life and safety or  
that he feared for the life and safety of his  
family. In further answer to the said para- 30  
graph 11 the Defendant Finlayside Pty.  
Limited denies that the Defendant Alexander  
Ewan Armstrong made any such threats or did

Statement of Defence  
of the third named  
Defendant

Statement of Defence  
of the third named  
Defendant

any such acts as are in the said paragraph alleged on behalf of the Defendant Finlayside Pty. Limited and that he had no authority from the Defendant so to do.

12. In further answer to the said paragraph 11 the Defendant Finlayside Pty. Limited does not know and cannot admit that the Plaintiff 10 feared for his life and safety as alleged or that he feared for the life and safety of his family as alleged.

13. In answer to paragraph 12 of the Statement of Claim the Defendant Finlayside Pty. Limited repeats paragraphs 9, 10, 11 and 12 above and denies that the Plaintiff was in fear as set out in paragraph 11 of the Statement of Claim and does not know and cannot admit that against the will of the Plaintiff and denies 20 that for the purpose of avoiding the threat of death or injury in the Statement of Claim alleged the Plaintiff told the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all that the Plaintiff agreed with the Defendant Alexander Ewan Armstrong in the manner sought by the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or 30 at all.

14. In further answer to the said paragraph 12, the Defendant Finlayside Pty. Limited repeats

Statement of Defence  
of the third named  
Defendant

paragraphs 5, 6 and 7 above.

15. In answer to paragraph 13 of the Statement of Claim the Defendant Finlayside Pty. Limited says that after the execution of the deed of the 17th January, 1967 the Plaintiff executed the following deeds and documents on the following dates:-

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(a) A deed made the 18th day of January, 1967 between A.E. Armstrong Pty. Limited and Alexander Barton whereby the Plaintiff agreed to purchase 30,000 fully paid shares of \$1.00 each in the capital of Landmark Corporation Limited.

(b) A deed made the 18th day of January, 1967 between Alexander Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and certain guarantors securing the payment of the price for the shares the subject of the deed mentioned in (a) above.

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(c) An undated instrument of transfer of the shares the subject of the deed mentioned in (a) above.

(d) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Allebart Investments Pty. Limited whereby Allebart Investments Pty. Limited agreed to purchase 47,500 fully paid \$1. shares in the capital of Landmark Corporation Limited.

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Statement of Defence  
of the third named  
Defendant

- (e) A deed made the 18th day of January, 1967, between Allebart Investments Pty. Limited as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price for the shares the subject of the deed mentioned in (d) above. 10
- (f) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Allebart Pty. Limited whereby Allebart Pty. Limited agreed to purchase 47,500 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.
- (g) A deed made the 18th day of January, 1967, between Allebart Pty. Limited as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price for the shares the subject of the deed mentioned in (f) above. 20
- (h) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Home Holdings Pty. Limited whereby Home Holdings Pty. Limited agreed to purchase 47,500 fully paid shares of \$1. each in the capital of Landmark Corporation Limited. 30
- (j) A deed made the 18th day of January,

Statement of Defence  
of the third named  
Defendant

1967, between Home Holdings Pty. Limited  
as mortgagor, A.E. Armstrong Pty.

Limited as mortgagee, and Alexander  
Barton and ors. as guarantors, securing  
the payment of the price for the shares  
the subject of the deed mentioned in  
(h) above.

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(k) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Agoston Goncze whereby  
Agoston Goncze agreed to purchase  
30,000 fully paid shares of \$1. each  
in the capital of Landmark Corporation  
Limited.

(l) A deed made the 18th day of January,  
1967, between Agoston Goncze as mortga-  
gor, A.E. Armstrong Pty. Limited as  
mortgagee and Alexander Barton and ors.  
as guarantors securing the payment of  
the price of the shares the subject of  
the deed mentioned in (k) above.

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(m) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Terrence Barton whereby  
Terrence Barton agreed to purchase  
30,000 fully paid shares of \$1. each  
in the capital of Landmark Corporation  
Limited.

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(n) A deed made the 18th day of January,  
1967, between Terrence Barton as

Statement of Defence  
of the third named  
Defendant

mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
Ors. as guarantors securing the payment  
of the price of the shares the subject  
of the deed mentioned in (m) above.

- (o) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. Limited and Clare Barton whereby Clare Barton agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited. 10
- (p) A deed made the 18th day of January,  
1967, between Clare Barton as mortgagor,  
A.E. Armstrong Pty. Limited as mortga-  
gee and Alexander Barton and Ors. as  
guarantors securing the payment of the  
price of the shares the subject of the  
deed mentioned in (o) above. 20
- (q) A deed made the 18th day of January,  
1967 between A. E. Armstrong Pty.  
Limited and John Osborne Bovill whereby  
John Osborne Bovill agreed to purchase  
30,000 fully paid shares of \$1. each in  
the capital of Landmark Corporation  
Limited.
- (r) A deed made the 18th day of January,  
1967, between John Osborne Bovill as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment 30

Statement of Defence  
of the third named  
Defendant

of the price of the shares the subject  
of the deed mentioned in (q) above.

Save as aforesaid the defendant Finlayside  
Pty. Limited denies that at or about the  
same time as the execution of the deed men-  
tioned in paragraph 13 of the Statement of  
Claim the plaintiff executed a number of other 10  
deeds ancillary to the aforesaid deed.

16. In answer to paragraph 14 of the Statement of  
Claim the defendant Finlayside Pty. Limited  
does not know and cannot admit that the exe-  
cution by the Plaintiff of the deeds therein  
mentioned was not voluntary or that the same  
was done against the will of the Plaintiff or  
that the execution of the deeds therein men-  
tioned by the Plaintiff was done by him while  
he was in fear for his life and safety or 20  
while he feared for the life and safety of  
his family. In further answer to the said  
paragraph 14 the third named Defendant  
Finlayside Pty. Limited repeats paragraphs 9,  
10, 11 and 12 above.

17. In answer to paragraph 15 of the Statement of  
Claim the Defendant Finlayside Pty. Ltd.,  
denies that following the execution of the  
Deeds in the said paragraph mentioned by the  
Plaintiff the Plaintiff remained or that he 30  
still at the institution of this suit remain-  
ed in fear for his life and safety or for the  
life and safety of his family because of either  
of:-

Statement of Defence  
of the third named  
Defendant

(a) Any threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all prior to the execution of the said deed on the 17th January 1967.

(b) Any further threats or actions of the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all after the execution of the said deed designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life and safety of his family, or of compelling the Plaintiff to continue to agree to the Defendant Alexander Ewan Armstrong's wishes on his own behalf or on behalf of the Armstrong companies or any of them or at all. 10 20

18. In further answer to the said paragraph 15 the Defendant Finlayside Pty. Ltd., repeats the denials in paragraphs 9, 10, 11 and 12 above. In further answer to the said paragraph 15 the Defendant Finlayside Pty. Ltd., denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are alleged in the said paragraph on behalf of the Defendant Finlayside Pty. Ltd., and that he had any such authority to do so. 30

Statement of Defence  
of the third named  
Defendant

19. In further answer to the said paragraph 15  
the Defendant Finlayside Pty. Ltd., denies  
that after the execution of the said deed of  
the 17th January, 1967 the Defendant  
Alexander Ewan Armstrong made any such threats  
or did any acts designed to have or having  
the effect of keeping the Plaintiff in fear 10  
for his life and safety or for the life and  
safety of his family or of compelling the  
Plaintiff to continue to agree to the Defen-  
dant Alexander Ewan Armstrong's wishes.
20. In answer to paragraph 16 of the Statement of  
Claim the Defendant Finlayside Pty. Ltd.,  
does not know and cannot admit that the Plain-  
tiff has feared or that he fears that if he  
had avoided the deed therein mentioned upon  
the grounds of duress without the benefit of 20  
Court proceedings his life or that of any mem-  
ber of his family would have been in grievous  
or any danger.
21. In further answer to the said paragraph 16 the  
Defendant Finlayside Pty. Limited denies that  
the life of the Plaintiff or the life of any  
member of his family has ever been in grie-  
vous or any danger by reason of any act of  
the Defendant Alexander Ewan Armstrong.
22. In answer to paragraph 17 of the Statement of 30  
Claim the Defendant Finlayside Pty. Limited  
denies that the Plaintiff is entitled to  
avoid the deed of the 17th January 1967 upon

Statement of Defence  
of the third named  
Defendant

the grounds asserted in the Statement of Claim or at all. In further answer to the said paragraph 17 the Defendant Finlayside Pty. Limited says that on the 13th day of January 1967 it executed and delivered to the Defendant Landmark Corporation Limited a transfer of its 2,000 shares in the capital of Paradise Waters (Sales) Pty. Limited. In further answer to the said paragraph 17 the Defendant Finlayside Pty. Limited says that on the said 13th day of January, 1967 it did pay to the Defendant Landmark (Queensland) Pty. Limited the sum of \$60,000 as and being the purchase price for the transfer by the said Landmark (Queensland) Pty. Limited to the Defendant Finlayside Pty. Limited of lots 140 and 20 in building units plan No. 71 being respectively the land contained in Certificates of Title Volume 3905 Folios 190 and 70. In further answer to the said paragraph 17 the Defendant Finlayside says that Landmark (Queensland) Pty. Limited and Landmark Corporation Limited are each of them in liquidation.

23. In answer to paragraph 28 of the Statement of Claim the Defendant Finlayside Pty. Limited craves leave to refer to the said deed when produced as though the same were pleaded in full in answer to the said paragraph. In further answer to the said paragraph the

Statement of Defence  
of the third named  
Defendant

Defendant Finlayside Pty. Limited denies that the Plaintiff has not received any benefit under the said deed, and repeats the matters set forth in paragraphs 5, 6 and 7 above. In further answer to the said paragraph 18 the Defendant Finlayside Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Finlayside Pty. Limited and that he had no authority from the Defendant so to do. 10

24. In answer to paragraph 19 of the Statement of Claim the Defendant Finlayside Pty. Limited craves leave to refer to the deed made on the 17th day of January, 1967 and the other agreements and deeds in the said paragraph mentioned when produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

25. In answer to paragraph 20 of the Statement of Claim the Defendant Finlayside Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 30



Statement of Defence  
of the third named  
Defendant

26. In answer to paragraph 21 of the Statement of Claim the defendant Finlayside Pty. Limited craves leave to refer to the share contracts and to the mortgages therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 10

27. In answer to paragraph 22 of the Statement of Claim the defendant Finlayside Pty. Limited craves leave to refer to the instruments of guarantee when produced and does not admit that the same or the effect thereon are in the said paragraph sufficiently or accurately set forth.

28. In answer to paragraph 23 of the Statement of Claim the defendant Finlayside Pty. Limited 20 denies that if the sixth defendant were able to procure the transfer of the shares therein mentioned to its name it would have been or would be able to control the Landmark companies or any of them. In further answer to the said paragraph 23 the defendant Finlayside Pty. Limited says that the 7th and 13th defendants are being wound up pursuant to orders made by the Supreme Court of Queensland. In further answer to the said paragraph 23, the defendant Finlayside Pty. Limited says that the 14th defendant is being wound up pursuant to an order made by the Supreme 30

Statement of Defence  
of the third named  
Defendant

Court of New South Wales in its equitable jurisdiction on the 11th day of January, 1968, and that the Landmark companies other than Landmark Corporation Limited are each of them subsidiaries of Landmark Corporation Limited.

29. In answer to paragraph 24 of the Statement of Claim the defendant Finlayside Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraphs sufficiently or accurately set forth. 10

30. In answer to paragraph 25 of the Statement of Claim the defendant Finlayside Pty. Limited denies that any action which Alexander Ewan Armstrong or the Armstrong companies or any of them may take pursuant to the deed of the 17th January, 1967, or pursuant to any of the ancillary documents in the said paragraph mentioned would cause irreparable or any harm or loss to the Landmark companies or to any of them. 20

31. In answer to the whole of the Statement of Claim the defendant Finlayside Pty. Limited says that there is not in the Statement of Claim any offer by or on behalf of the Plaintiff to do equity to the defendant Finlayside Pty. Limited and the defendant Finlayside Pty. Limited craves the same benefit from 30

Statement of Defence  
of the third named  
Defendant

this Statement of Defence as if it had pleaded  
or demurred to the Statement of Claim.

32. In answer to the whole of the Statement of  
Claim the defendant Finlayside Pty. Limited  
submits that the allegations in the Statement  
of Claim do not entitle the plaintiff to the  
relief therein sought, and the defendant 10  
Finlayside Pty. Limited craves the same bene-  
fit from this submission as if it had demurred  
to the Statement of Claim.

R. Bainton  
.....  
Counsel for the Defendant,  
Finlayside Pty. Limited.

This Statement of Defence is filed by Robert Ian  
Grant of Messrs. Dare, Reed, Martin & Grant of 187  
Macquarie Street, Sydney, Solicitor for the defen-  
dant Finlayside Pty. Limited. 20

The Common Seal of Finlayside)  
Pty. Limited was hereunto )  
affixed the 10th day of May, )  
1968, pursuant to a resolu- ) R. I. Grant  
tion of the Board of )  
Directors in the presence of )  
R.I. Grant director ) C. Thorpe  
and )  
Secretary: Cyril Thorpe )

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND:

ALEXANDER EWAN ARMSTRONG  
AND ORS.

Defendants 10

STATEMENT OF DEFENCE

OF

FOURTH NAMED DEFENDANT  
SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED

The fourth abovenamed defendant under its Common Seal says as follows:-

1. In answer to paragraph 2 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited says that from August, 1966, or earlier, and until the date of this Statement of Defence the defendant Alexander Ewan Armstrong has been one of a board of three directors of each of the defendants George Armstrong & Son Pty. Limited, A.E. Armstrong Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited, and that the defendant Alexander Ewan Armstrong was from August, 1966 or earlier, and until the 9th January, 1967, and from the 28th April, 1967 until the date of this Statement of Defence one of the board of three directors of the defendant Finlayside Pty. Limited.

Statement of Defence  
of the fourth named  
Defendant

3(q).

Statement of Defence  
of the fourth named  
Defendant

In further answer to the said paragraph 2,  
the defendant Southern Tablelands Finance Co.  
Pty. Limited denies that the defendant  
Alexander Ewan Armstrong was or is managing  
director of any of the said defendant com-  
panies.

2. In answer to paragraph 3 of the Statement of 10  
Claim the defendant Southern Tablelands  
Finance Co. Pty. Limited says that since the  
commencement of this suit, an order has been  
made by the Supreme Court of New South Wales  
in its equitable jurisdiction for the wind-  
ing up of the fourteenth defendant Landmark  
Corporation Limited.

3. In answer to paragraph 5 of the Statement of  
Claim the defendant Southern Tablelands  
Finance Co. Pty. Limited admits that the de- 20  
fendant Alexander Ewan Armstrong was a direc-  
tor of each of the Landmark companies other  
than Landmark Finance Pty. Limited from  
August, 1966, or shortly thereafter. Save as  
aforesaid the defendant Southern Tablelands  
Finance Co. Pty. Limited does not know and  
cannot admit that at any material time the  
defendant Alexander Ewan Armstrong was a dir-  
ector of the Landmark companies or any of  
them. 30

4. In answer to paragraph 6 of the Statement of  
Claim the defendant Southern Tablelands  
Finance Co. Pty. Limited admits that the

Statement of Defence  
of the fourth named  
Defendant

Plaintiff was the managing director of Landmark Corporation Limited and a director of each other of the Landmark companies from August, 1966, or earlier, until the date of commencement of this suit, or until the date of the winding up thereof, as the case may be. Save as aforesaid, the defendant Southern Tablelands Finance Co. Pty. Limited does not know and cannot admit that at any material time the plaintiff was the managing director of the Landmark companies. 10

5. In answer to paragraph 7 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited says that prior to the 17th January, 1967, there had occurred differences and disputes between the defendant Alexander Ewan Armstrong and the plaintiff as directors respectively of Landmark Corporation Limited relating to the management of certain of the business and affairs of Landmark Corporation Limited and of certain of its subsidiaries and relating to the accounts of Landmark Corporation Limited and to the consolidated accounts of Landmark Corporation Limited and its subsidiaries and relating to the desire and proposal of the plaintiff that the directors of Landmark Corporation Limited should recommend to the Annual General Meeting of that company the payment of a dividend. In further answer to the said 20 30

Statement of Defence  
of the fourth named  
Defendant

paragraph 7, the defendant Southern Table-lands Finance Co. Pty. Limited says that arising out of the abovementioned disputes and actions of the plaintiff and of certain of the Landmark companies in furtherance of such disputes there were instituted and conducted in the equitable jurisdiction of the Supreme Court of New South Wales the following suits, namely:- 10

- (a) Suit No. 1262 of 1966 in which Finlay-side Pty. Limited was the plaintiff and Landmark Corporation Limited, Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited were the defendants, and in which certain interlocutory relief was granted to the plaintiff therein against the defendants 20 therein and each of them.
- (b) Suit No. 1263 of 1966 in which George Armstrong & Son Pty. Limited was the plaintiff and Landmark Corporation Limited was the defendant in which said suit no determination or orders had been made prior to the 17th January, 1967.
- (c) Suit No. 1359 of 1966 in which Alexander Ewan Armstrong was the plaintiff and 30 Landmark Corporation Limited was the defendant and in which certain relief was granted to the plaintiff against the defendant.

Statement of Defence  
of the fourth named  
Defendant

The defendant Southern Tablelands Finance Co. Pty. Limited craves leave to refer to the documents and records in the said suits when produced as though the same were set forth herein.

6. In further answer to the said paragraph 7 the defendant Southern Tablelands Finance Co. Pty. Limited says that in the month of December, 1966, and until the 13th January, 1967, endeavours were made by the plaintiff and by the defendant Alexander Ewan Armstrong and by the parties to the abovementioned suits and by the solicitors and counsel and other advisors for the said persons and parties to resolve the said disputes, and to compromise the said disputes, and to compromise the said litigation and further that during the second week of January, 1967, the defendant Alexander Ewan Armstrong, as and by way of a compromise between the proposals put forward on behalf of the plaintiff and Landmark Corporation Limited, Paradise Waters Limited, Paradise Waters (Sales) Pty. Limited, Goondoo Pty. Limited, Landmark Home Units Pty. Limited, Landmark Finance Pty. Limited, Landmark Housing & Development Pty. Limited and Landmark (Queensland) Pty. Limited and those put forward on behalf of the defendant Alexander Ewan Armstrong and of the defendant Finlayside Pty. Limited, George Armstrong & Son Pty.



Statement of Defence  
of the fourth named  
Defendant

Limited, Southern Tablelands Finance Co. Pty.  
Limited and Goulburn Acceptance Pty. Limited  
agreed, and the defendants Finlayside Pty.  
Limited, George Armstrong & Son Pty. Limited,  
Southern Tablelands Finance Co. Pty. Limited  
each agreed to the matters subsequently pro- 10  
vided for by the deed of the 17th day of  
January, 1967, made between George Armstrong  
& Son Pty. Limited, Finlayside Pty. Limited,  
Southern Tablelands Finance Pty. Limited,  
Goulburn Acceptance Pty. Limited and A.E.  
Armstrong Pty. Limited of the first part,  
Landmark (Queensland) Pty. Limited, Paradise  
Waters (Sales) Pty. Limited, Paradise Waters  
Limited, Goondoo Pty. Limited, Landmark Home  
Units Pty. Limited, Landmark Finance Pty.  
Limited, Landmark Housing & Development Pty. 20  
Limited and Landmark Corporation Limited of  
the second part, Alexander Ewan Armstrong of  
the third part, and Alexander Barton of the  
fourth part.

7. Save as aforesaid the defendant Southern  
Tablelands Finance Co. Pty. Limited, in fur-  
ther answer to the said paragraph 7, denies  
that on and prior to the execution of the  
said deed on the 17th January, 1967, the de-  
fendant Alexander Ewan Armstrong on his own 30  
behalf or on behalf of the defendant Southern  
Tablelands Finance Co. Pty. Limited or on  
behalf of any other of the Armstrong companies

Statement of Defence  
of the fourth named  
Defendant

had endeavoured to persuade or to compel the plaintiff and the Landmark companies or any of them to agree with the said Alexander Ewan Armstrong and the Armstrong companies or any of them upon the matters subsequently set forth in the said deed.

8. In answer to paragraph 8 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited repeats paragraphs 5, 6 and 7 above and says that it does not know and cannot admit that it was not in the Plaintiff's interest to agree with the Defendants in this suit in the manner which the Defendant Alexander Ewan Armstrong sought or in the terms of the said deed of the 17th January 1967 so far as the same were to be performed by or affected the Plaintiff and denies that the Plaintiff for a long time refused so to agree. 10 20

9. In answer to paragraph 9 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited denies that for the purpose of compelling the Plaintiff to agree as in the Statement of Claim alleged to cause the Landmark companies so to agree or for any purpose or at all the Defendant Alexander Ewan Armstrong continually or at all threatened to have the Plaintiff murdered if the Plaintiff did not agree with the Defendants in the manner which the Defendant Alexander 30

Statement of Defence  
of the fourth named  
Defendant

Armstrong sought and denies further that the Defendant Alexander Ewan Armstrong otherwise exerted unlawful pressure upon the Plaintiff so to agree. In further answer to the said paragraph 9 the Defendant Southern Tablelands Finance Co. Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Southern Tablelands Finance Co. Pty. Limited and that he had no authority from the Defendant so to do. 10

10. In answer to paragraph 10 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited denies that for the purposes mentioned in paragraph 9 of the Statement of Claim or at all the Defendant Alexander Ewan Armstrong engaged certain or any criminals to kill or otherwise injure the Plaintiff. In further answer to the said paragraph 10 the Defendant Southern Tablelands Finance Co. Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Southern Tablelands Finance Co. Pty. Limited and that he had no authority from the Defendant so to do. 20 30

11. In answer to paragraph 11 of the Statement of Claim the Defendant Southern Tablelands Finance

Statement of Defence  
of the fourth named  
Defendant

Co. Pty. Limited repeats paragraphs 9 and 10 above and denies that as a result of any threats or actions of the Defendant Alexander Ewan Armstrong the Plaintiff feared for his life and safety or that he feared for the life and safety of his family. In further answer to the said paragraph 11 the Defendant 10  
Southern Tablelands Finance Co. Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Southern Tablelands Finance Co. Pty. Limited and that he had no authority from the Defendant so to do.

12. In further answer to the said paragraph 11 the Defendant Southern Tablelands Finance Co. Pty. Limited does not know and cannot admit that 20  
the Plaintiff feared for his life and safety as alleged or that he feared for the life and safety of his family as alleged.

13. In answer to paragraph 12 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited repeats paragraphs 9, 10, 11 and 12 above and denies that the Plaintiff was in fear as set out in paragraph 11 of the Statement of Claim and does not know and cannot admit that against the will of the Plaintiff 30  
and denies that for the purpose of avoiding the threat of death or injury in the Statement of Claim alleged the Plaintiff told the

Statement of Defence  
of the fourth named  
Defendant

Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all that the Plaintiff agreed with the Defendant Alexander Ewan Armstrong in the manner sought by the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all. 10

14. In further answer to the said paragraph 12 the Defendant Southern Tablelands Finance Co. Pty. Limited repeats paragraphs 5, 6 and 7 above.

15. In answer to paragraph 13 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited says that after the execution of the deed of the 17th January 1967 the Plaintiff executed the following deeds and documents on the following dates:- 20

(a) A deed made the 18th day of January, 1967 between A.E. Armstrong Pty. Limited and Alexander Barton whereby the Plaintiff agreed to purchase 30,000 fully paid shares of \$1.00 each in the capital of Landmark Corporation Limited.

(b) A deed made the 18th day of January, 1967 between Alexander Barton as mortgagor A.E. Armstrong Pty. Limited as mortgagee and certain guarantors securing the payment of the price for the shares the subject of the deed mentioned in (a) above. 30

Statement of Defence  
of the fourth named  
Defendant

Statement of Defence  
of the fourth named  
Defendant

- (c) An undated instrument of transfer of the shares the subject of the deed mentioned in (a) above.
- (d) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Allebart Investments Pty. Limited whereby Allebart Investments Pty. Limited agreed to purchase 47,500 fully paid \$1. shares in the capital of Landmark Corporation Limited. 10
- (e) A deed made the 18th day of January, 1967, between Allebart Investments Pty. Limited as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price for the shares the subject of the deed mentioned in (d) above. 20
- (f) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Allebart Pty. Limited whereby Allebart Pty. Limited agreed to purchase 47,500 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.
- (g) A deed made the 18th day of January, 1967, between Allebart Pty. Limited as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment 30

Statement of Defence  
of the fourth named  
Defendant

of the price for the shares the subject  
of the deed mentioned in (f) above.

- (h) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Home Holdings Pty. Limited  
whereby Home Holdings Pty. Limited  
agreed to purchase 47,500 fully paid 10  
shares of \$1. each in the capital of  
Landmark Corporation Limited.
- (j) A deed made the 18th day of January,  
1967, between Home Holdings Pty.  
Limited as mortgagor, A.E. Armstrong  
Pty. Limited as mortgagee, and Alexander  
Barton and ors. as guarantors, secur-  
ing the payment of the price for the  
shares the subject of the deed mention-  
ed in (h) above. 20
- (k) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Agoston Goncze whereby  
Agoston Goncze agreed to purchase  
30,000 fully paid shares of \$1. each in  
the capital of Landmark Corporation  
Limited.
- (l) A deed made the 18th day of January,  
1967, between Agoston Goncze as mortga-  
gor, A.E. Armstrong Pty. Limited as 30  
mortgagee and Alexander Barton and ors.  
as guarantors securing the payment of

Statement of Defence  
of the fourth named  
Defendant

the price of the shares the subject of  
the deed mentioned in (k) above.

- (m) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Terrence Barton whereby  
Terrence Barton agreed to purchase  
30,000 fully paid shares of \$1. each in 10  
the capital of Landmark Corporation  
Limited.
- (n) A deed made the 18th day of January,  
1967, between Terrence Barton as mort-  
gagor, A.E. Armstrong Pty. Limited as  
mortgagee and Alexander Barton and ors.  
as guarantors securing the payment of  
the price of the shares the subject of  
the deed mentioned in (m) above,
- (o) A deed made the 18th day of January, 20  
1967, between A.E. Armstrong Pty.  
Limited and Clare Barton whereby Clare  
Barton agreed to purchase 30,000 fully  
paid shares of \$1. each in the capital  
of Landmark Corporation Limited.
- (p) A deed made the 18th day of January,  
1967, between Clare Barton as mortgagor,  
A.E. Armstrong Pty. Limited as mortga-  
gee and Alexander Barton and ors. as  
guarantors securing the payment of the 30  
price of the shares the subject of the  
deed mentioned in (o) above.
- (q) A deed made the 18th day of January,

Statement of Defence  
of the fourth named  
Defendant



Statement of Defence  
of the fourth named  
Defendant

1967, between A.E. Armstrong Pty.  
Limited and John Osborne Bovill whereby  
John Osborne Bovill agreed to purchase  
30,000 fully paid shares of \$1. each in  
the capital of Landmark Corporation  
Limited.

(r) A deed made the 18th day of January, 10  
1967, between John Osborne Bovill as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment  
of the price of the shares the subject  
of the deed mentioned in (q) above.

Save as aforesaid the Defendant Southern  
Tablelands Finance Co. Pty. Limited denies  
that at or about the same time as the execu-  
tion of the deed mentioned in paragraph 13 of 20  
the Statement of Claim the plaintiff executed  
a number of other deeds ancillary to the  
aforesaid deed.

16. In answer to paragraph 14 of the Statement of  
Claim the defendant Southern Tablelands  
Finance Co. Pty. Limited does not know and  
cannot admit that the execution by the plain-  
tiff of the deeds therein mentioned was not  
voluntary or that the same was done against  
the will of the plaintiff, or that the execu- 30  
tion of the deeds therein mentioned by the  
plaintiff was done by him while he was in fear  
for his life and safety or while he feared for

Statement of Defence  
of the fourth named  
Defendant

the life and safety of his family. In further answer to the said paragraph 14 the fourth named defendant Southern Tablelands Finance Co. Pty. Limited repeats paragraphs 9, 10, 11 and 12 above.

17. In answer to paragraph 15 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited denies that following the execution of the deeds in the said paragraph mentioned by the Plaintiff the Plaintiff remained or that he still at the institution of this suit remained in fear for his life and safety or for the life and safety of his family because of either of:-
- (a) Any threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf of the Armstrong companies or any of them or at all prior to the execution of the said deed on the 17th January, 1967.
- (b) Any further threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all after the execution of the said deed designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life and safety of his family or of compelling the Plaintiff to continue to

Statement of Defence  
of the fourth named  
Defendant

Statement of Defence  
of the fourth named  
Defendant

agree to the Defendant Alexander Ewan  
Armstrong's wishes on his own behalf or  
on behalf of the Armstrong companies or  
any of them or at all.

18. In further answer to the said paragraph 15,  
the Defendant Southern Tablelands Finance Co  
Pty. Limited repeats the denials in paragraphs 10  
9, 10, 11 and 12 above. In further answer  
to the said paragraph 15 the Defendant South-  
ern Tablelands Finance Co. Pty. Limited de-  
nies that the Defendant Alexander Ewan Arm-  
strong made any such threats or did any such  
acts as are alleged in the said paragraph on  
behalf of the Defendant Southern Tablelands  
Finance Co. Pty. Limited and that he had any  
such authority from the said Defendant to do  
so.

20

19. In further answer to the said paragraph 15  
the Defendant Southern Tablelands Finance Co.  
Pty. Limited denies that after the execution  
of the said deed of the 17th January, 1967  
the Defendant Alexander Ewan Armstrong made  
any threats or did any acts designed to have  
or having the effect of keeping the Plaintiff  
in fear for his life and safety or for the  
life and safety of his family or of compell-  
ing the Plaintiff to continue to agree to the 30  
Defendant Alexander Ewan Armstrong's wishes.

20. In answer to paragraph 16 of the Statement of  
Claim, the defendant Southern Tablelands

Statement of Defence  
of the fourth named  
Defendant

Statement of Defence  
of the fourth named  
Defendant

Finance Co. Pty. Limited does not know and cannot admit that the plaintiff has feared or that he fears that if he had avoided the deed therein mentioned upon the grounds of duress without the benefit of Court proceedings his life or that of any member of his family would have been in grievous or any danger. 10

21. In further answer to the said paragraph 16 the defendant Southern Tablelands Finance Co. Pty. Limited denies that the life of the plaintiff or the life of any member of his family has ever been in grievous or any danger by reason of any act of the defendant Alexander Ewan Armstrong.

22. In answer to paragraph 17 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited denies that the plaintiff is entitled to avoid the deed of the 17th January, 1967, upon the grounds asserted in the Statement of Claim or at all. 20

In further answer to the said paragraph 17 the defendant Southern Tablelands Finance Co. Pty. Limited says that on the 18th day of January, 1967, it did lend to Paradise Waters (Sales) Pty. Limited the sum of \$300,000 upon the following mortgages and securities, ranking after then subsisting securities in favour of United Dominions Corporation (Australia) Limited, namely:- 30

(a) A Bill of mortgage by Paradise Waters

Statement of Defence  
of the fourth named  
Defendant

Limited over the freehold portion of  
Macintosh Island.

- (b) A script lien and deed of charge of  
Landmark Corporation Limited over the  
5,000 issued shares in the capital of  
Paradise Waters (Sales) Pty. Limited.
- (c) A memorandum of mortgage by Goondoo 10  
Pty. Limited over Development Lease No.  
7.
- (d) A deed of charge by Landmark Corpora-  
tion Limited over certain life policies.
- (e) A deed of equitable charge by Paradise  
Waters (Sales) Pty. Limited over the  
whole of its assets and undertaking.
- (f) A deed of equitable charge by Paradise  
Waters Limited over the whole of its  
assets and undertaking. 20

In further answer to the said paragraph 17  
the Defendant Southern Tablelands Finance Co.  
Pty. Limited says that the whole of the prin-  
cipal sum so lent remains due and unpaid to  
it, and that interest on the said sum of  
\$300,000 at the rate of            per centum per  
annum remains due and unpaid from the  
day of            1967.

23. In answer to paragraph 18 of the Statement of  
Claim the Defendant Southern Tablelands 30  
Finance Co. Pty. Limited craves leave to re-  
fer to the said deed when produced as though  
the same were pleaded in full in answer to

Statement of Defence  
of the fourth named  
Defendant

the said paragraph. In further answer to the said paragraph the Defendant Southern Tablelands Finance Co. Pty. Limited denies that the Plaintiff has not received any benefit under the said deed and repeats the matters set forth in paragraphs 5, 6 and 7 above. In further answer to the said paragraph 18 10 the Defendant Southern Tablelands Finance Co. Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Southern Tablelands Finance Co. Pty. Limited and that he had no authority from the Defendant so to do.

24. In answer to paragraph 19 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited craves leave to refer to the deed made on the 17th day of January 1967 and the other agreements and deeds in the said paragraph mentioned when produced as though the same were pleaded in full in answer to the said paragraph and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

25. In answer to paragraph 20 of the Statement of Claim the Defendant Southern Tablelands Finance Co. Pty. Limited craves leave to refer to the share contracts therein mentioned when 30

Statement of Defence  
of the fourth named  
Defendant

the same are produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

26. In answer to paragraph 21 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited craves leave to refer to the share contracts and to the mortgages therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 10

27. In answer to paragraph 22 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited craves leave to refer to the instruments of guarantee when produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

28. In answer to paragraph 23 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited denies that if the sixth defendant were able to procure the transfer of the shares therein mentioned to its name it would have been or would be able to control the Landmark companies or any of them. In further answer to the said paragraph 23 the defendant Southern Tablelands Finance Co. Pty. Limited says that the 7th and 13th 30

Statement of Defence  
of the fourth named  
Defendant

Statement of Defence  
of the fourth named  
Defendant

defendant are being wound up pursuant to orders made by the Supreme Court of Queensland. In further answer to the said paragraph 23, the defendant Southern Tablelands Finance Co. Pty. Limited says that the 14th defendant is being wound up pursuant to an order made by the Supreme Court of New South Wales in its equitable jurisdiction on the 11th day of January, 1968 and that the Landmark companies other than Landmark Corporation Limited are each of them subsidiaries of Landmark Corporation Limited. 10

29. In answer to paragraph 24 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

30. In answer to paragraph 25 of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited denies that any action which Alexander Ewan Armstrong or the Armstrong companies or any of them may take pursuant to the deed of the 17th January, 1967, or pursuant to any of the ancillary documents in the said paragraph mentioned would cause irreparable or any harm or loss to the Landmark companies or to any of them. 30

Statement of Defence  
of the fourth named  
Defendant



Statement of Defence  
of the fourth named  
Defendant

31. In answer to the whole of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited says that there is not in the Statement of Claim any offer by or on behalf of the plaintiff to do equity to the defendant Southern Tablelands Finance Co. Pty. Limited and the defendant Southern Tablelands Finance Co. Pty. Limited craves the same benefits from this Statement of Defence as if it had pleaded or demurred to the Statement of Claim. 10

32. In answer to the whole of the Statement of Claim the defendant Southern Tablelands Finance Co. Pty. Limited submits that the allegations in the Statement of Claim do not entitle the plaintiff to the relief sought therein, and the defendant Southern Tablelands Finance Co. Pty. Limited craves the same benefit from this submission as if it had demurred to the Statement of Claim. 20

.....  
Counsel for the Defendant,  
Southern Tablelands  
Finance Co. Pty. Limited.

This Statement of Defence is filed by Robert Ian Grant of Messrs. Dare, Reed, Martin & Grant of 137 Macquarie Street, Sydney, Solicitor for the defendant Southern Tablelands Finance Co. Pty. Limited. 30

Statement of Defence  
of the fourth named  
Defendant

The Common Seal of Southern )  
Tablelands Finance Co. Pty. )  
Limited was hereunto affixed )  
the )  
day of )  
1968, pursuant to a resolu- )  
tion of the Board of Directors )  
in the presence of )  
Robert Ian Grant, Director )  
and Secretary: )

R. I. Grant                     10  
                   Director  
  
Cyril Thorpe

Cyril Garnet Thorpe

Statement of Defence  
of the fourth named  
Defendant

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND:

ALEXANDER EWAN ARMSTRONG  
AND ORS.

Defendants 10

STATEMENT OF DEFENCE

OF

FIFTH NAMED DEFENDANT  
GOULBURN ACCEPTANCE PTY. LIMITED

The fifth above named defendant under its Common Seal says as follows:-

1. In answer to paragraph 2 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited says that from August, 1966, or earlier, and until the date of this Statement of Defence the defendant Alexander Ewan Armstrong has been one of a board of three directors of each of the defendants George Armstrong & Son Pty. Limited, A.E. Armstrong Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited, and that the defendant Alexander Ewan Armstrong was from August, 1966, or earlier, and until the 9th January, 1967, and from the 28th April, 1967 until the date of this Statement of Defence one of the board of three directors of the defendant Finlayside Pty. Limited. In further answer to the said

Statement of Defence  
of the fifth named  
Defendant

4(m).

Statement of Defence  
of the fifth named  
Defendant

paragraph 2, the defendant Goulburn Acceptance Pty. Limited denies that the defendant Alexander Ewan Armstrong was or is managing director of any of the said defendant companies.

2. In answer to paragraph 3 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited says that since the commencement of this suit, an order has been made by the Supreme Court of New South Wales in its equitable jurisdiction for the winding up of the fourteenth defendant Landmark Corporation Limited. 10

3. In answer to paragraph 5 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited admits that the defendant Alexander Ewan Armstrong was a director of each of the Landmark companies other than Landmark Finance Limited from August, 1966, or earlier, and until the 18th day of January, 1967, or shortly thereafter. Save as aforesaid, the defendant Goulburn Acceptance Pty. Limited does not know and cannot admit that at any material time the defendant Alexander Ewan Armstrong was a director of the Landmark companies or any of them. 20

4. In answer to paragraph 6 of the Statement of Claim, the defendant Goulburn Acceptance Pty. Limited admits that the plaintiff was the managing director of Landmark Corporation 30

Statement of Defence  
of the fifth named  
Defendant

Limited and a director of each other of the Landmark companies from August, 1966, or earlier, until the date of the commencement of this suit, or until the date of the winding up thereof, as the case may be. Save as aforesaid, the defendant Goulburn Acceptance Pty. Limited does not know and cannot admit 10 that at any material time the plaintiff was the managing director of the Landmark companies.

5. In answer to paragraph 7 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited says that prior to the 17th January, 1967, there had occurred differences and disputes between the defendant Alexander Ewan Armstrong and the plaintiff as directors respectively of Landmark Corporation Limited 20 relating to the management of certain of the business and affairs of Landmark Corporation Limited and of certain of its subsidiaries and relating to the accounts of Landmark Corporation Limited and to the consolidated accounts of Landmark Corporation Limited and its subsidiaries and relating to the desire and proposal of the plaintiff that the directors of Landmark Corporation Limited should recommend to the Annual General Meeting of 30 that company the payment of a dividend. In further answer to the said paragraph 7, the defendant Goulburn Acceptance Pty. Limited

Statement of Defence  
of the fifth named  
Defendant

says that arising out of the abovementioned disputes and actions of the plaintiff and of certain of the Landmark companies in furtherance of such disputes there were instituted and conducted in the equitable jurisdiction of the Supreme Court of New South Wales the following suits, namely:-

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(a) Suit No. 1262 of 1966 in which Finlayside Pty. Limited was the plaintiff and Landmark Corporation Limited, Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited were the defendants, and in which certain interlocutory relief was granted to the plaintiff therein against the defendants therein and each of them.

(b) Suit No. 1263 of 1966 in which George Armstrong & Son Pty. Limited was the plaintiff and Landmark Corporation Limited was the defendant in which said suit no determination or orders had been made prior to the 17th January, 1967.

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(c) Suit No. 1359 of 1966 in which Alexander Ewan Armstrong was the plaintiff and Landmark Corporation Limited was the defendant and in which certain relief was granted to the plaintiff against the defendant.

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The defendant Goulburn Acceptance Pty. Limited craves leave to refer to the documents and

Statement of Defence  
of the fifth named  
Defendant

records in the said suits when produced as though the same were set forth herein.

6. In further answer to the said paragraph 7 the defendant Goulburn Acceptance Pty. Limited says that in the month of December, 1966, and until the 13th January, 1967, endeavours were made by the plaintiff and by the defendant Alexander Ewan Armstrong and by the parties to the abovementioned suits and by the solicitors and counsel and other advisers for the said persons and parties to resolve the said disputes, and to compromise the said litigation and further that during the second week of January, 1967, the defendant Alexander Ewan Armstrong, as and by way of a compromise between the proposals put forward on behalf of the plaintiff and Landmark Corporation Limited, Paradise Waters Limited, Paradise Waters (Sales) Pty. Limited, Goondoo Pty. Limited, Landmark Home Units Pty. Limited, Landmark Finance Pty. Limited, Landmark Housing & Development Pty. Limited, and Landmark (Queensland) Pty. Limited and those put forward on behalf of the defendant Alexander Ewan Armstrong and of the defendants Finlayside Pty. Limited, George Armstrong & Son Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited agreed, and the defendants Finlayside Pty. Limited, George

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Statement of Defence  
of the fifth named  
Defendant

4(q).

Statement of Defence  
of the fifth named  
Defendant

Armstrong & Son Pty. Limited, Southern  
Tablelands Finance Co. Pty. Limited each  
agreed to the matters subsequently provided  
for by the deed of the 17th day of January,  
1967, made between George Armstrong & Son  
Pty. Limited, Finlayside Pty. Limited,  
Southern Tablelands Finance Co. Pty. Limited, 10  
Goulburn Acceptance Pty. Limited and A.E.  
Armstrong Pty. Limited of the first part,  
Landmark (Queensland) Pty. Limited, Paradise  
Waters (Sales) Pty. Limited, Paradise Waters  
Limited, Goondoo Pty. Limited, Landmark Home  
Units Pty. Limited, Landmark Finance Pty.  
Limited, Landmark Housing & Development Pty.  
Limited and Landmark Corporation Limited of  
the second part, Alexander Ewan Armstrong of  
the third part, and Alexander Barton of the 20  
fourth part.

7. Save as aforesaid the defendant Goulburn Ac-  
ceptance Pty. Limited, in further answer to  
the said paragraph 7, denies that on and prior  
to the execution of the said deed on the 17th  
January, 1967, the defendant Alexander Ewan  
Armstrong on his own behalf or on behalf of  
the defendant Goulburn Acceptance Pty.  
Limited or on behalf of any other of the  
Armstrong companies had endeavoured to per- 30  
suade or to compel the plaintiff and the  
Landmark companies or any of them to agree  
with the said Alexander Ewan Armstrong and

Statement of Defence  
of the fifth named  
Defendant



Statement of Defence  
of the fifth named  
Defendant

the Armstrong companies or any of them upon the matters subsequently set forth in the said deed.

8. In answer to paragraph 8 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited repeats paragraphs 5, 6 and 7 above and says that it does not know and cannot admit that it was not in the plaintiff's interest to agree with the defendants in this suit in the manner which the defendant Alexander Ewan Armstrong sought, or in the terms of the said deed of the 17th January, 1967, so far as the same were to be performed by or affected the plaintiff and denies that the plaintiff for a long time refused so to agree. 10

9. In answer to paragraph 9 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited denies that for the purpose of compelling the plaintiff to agree as in the Statement of Claim alleged to cause the Landmark companies so to agree or for any purpose or at all the defendant Alexander Ewan Armstrong continually or at all threatened to have the plaintiff murdered if the plaintiff did not agree with the defendants in the manner which the defendant Alexander Ewan Armstrong sought and denies further that the defendant Alexander Ewan Armstrong otherwise exerted unlawful pressure upon the Plaintiff so to agree. 20 30

Statement of Defence  
of the fifth named  
Defendant

Statement of Defence  
of the fifth named  
Defendant

In further answer to the said paragraph 9 the Defendant Goulburn Acceptance Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Goulburn Acceptance Pty. Limited and that he had no authority from the Defendant so to do. 10

10. In answer to paragraph 10 of the Statement of Claim the Defendant Goulburn Acceptance Pty. Limited denies that for the purposes mentioned in paragraph 9 of the Statement of Claim or at all the Defendant Alexander Ewan Armstrong engaged certain or any criminals to kill or otherwise injure the Plaintiff. In further answer to the said paragraph 10 the Defendant Goulburn Acceptance Pty. Limited 20 denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Goulburn Acceptance Pty. Limited and that he had no authority from the Defendant so to do.

11. In answer to paragraph 11 of the Statement of Claim the Defendant Goulburn Acceptance Pty. Limited repeats paragraphs 7, 9 and 10 above and denies that as a result of any threats 30 or actions of the Defendant Alexander Ewan Armstrong the Plaintiff feared for his life and safety or that he feared for the life and

Statement of Defence  
of the fifth named  
Defendant

safety of his family. In further answer to the said paragraph 11 the Defendant Goulburn Acceptance Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant Goulburn Acceptance Pty. Limited 10 and that he had no authority from the Defendant so to do.

12. In further answer to the said paragraph 11 the Defendant Goulburn Acceptance Pty. Limited does not know and cannot admit that the Plaintiff feared for his life and safety as alleged or that he feared for the life and safety of his family as alleged.

13. In answer to paragraph 12 of the Statement of Claim the Defendant Goulburn Acceptance Pty. Limited repeats paragraphs 9, 10, 11 and 12 20 above and denies that the Plaintiff was in fear as set out in paragraph 11 of the Statement of Claim and does not know and cannot admit that against the will of the Plaintiff and denies that for the purpose of avoiding the threat of death or injury in the Statement of Claim alleged the Plaintiff told the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies 30 or any of them or at all that the Plaintiff agreed with the Defendant Alexander Ewan Armstrong in the manner sought by the

Statement of Defence  
of the fifth named  
Defendant

Statement of Defence  
of the fifth named  
Defendant

Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all.

14. In further answer to the said paragraph 12 the Defendant Goulburn Acceptance Pty. Limited repeats paragraphs 5, 6 and 7 above.

15. In answer to paragraph 13 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited says that after the execution of the deed of the 17th January, 1967, the Plaintiff executed the following deeds and documents on the following dates:- 10

(a) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Alexander Barton whereby the plaintiff agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited. 20

(b) A deed made the 18th day of January, 1967, between Alexander Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and certain guarantors, securing the payment of the price for the shares the subject of the deed mentioned in (a) above.

(c) An undated instrument of transfer of the shares the subject of the deed mentioned in (a) above. 30

(d) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty.

Statement of Defence  
of the fifth named  
Defendant

Statement of Defence  
of the fifth named  
Defendant

Limited and Allebart Investments Pty.  
Limited whereby Allebart Investments  
Pty. Limited agreed to purchase 47,500  
fully paid \$1. shares in the capital of  
Landmark Corporation Limited.

- (e) A deed made the 18th day of January,  
1967, between Allebart Investments Pty. 10  
Limited as mortgagor, A.E. Armstrong  
Pty. Limited as mortgagee and Alexander  
Barton and ors. as guarantors securing  
the payment of the price for the shares  
the subject of the deed mentioned in  
(d) above.
- (f) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Allebart Pty. Limited  
whereby Allebart Pty. Limited agreed to 20  
purchase 47,500 fully paid shares of  
\$1. each in the capital of Landmark  
Corporation Limited.
- (g) A deed made the 18th day of January,  
1967, between Allebart Pty. Limited as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment  
of the price for the shares the subject  
of the deed mentioned in (f) above. 30
- (h) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Home Holdings Pty. Limited  
whereby Home Holdings Pty. Limited agreed  
Statement of Defence  
of the fifth named  
4(w). Defendant

Statement of Defence  
of the fifth named  
Defendant

agreed to purchase 47,500 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.

- (j) A deed made the 18th day of January, 1967, between Home Holdings Pty. Limited as mortgagor, A.E. Armstrong Pty. Limited as mortgagee, and Alexander Barton and ors. as guarantors, securing the payment of the price for the shares the subject of the deed mentioned in (h) above. 10
- (k) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Agoston Goncze whereby Agoston Goncze agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited. 20
- (l) A deed made the 18th day of January, 1967, between Agoston Goncze as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price of the shares the subject of the deed mentioned in (k) above.
- (m) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Terrence Barton whereby Terrence Barton agreed to purchase 30,000 fully paid shares of \$1. each 30

Statement of Defence  
of the fifth named  
Defendant

in the capital of Landmark Corporation  
Limited.

- (n) A deed made the 18th day of January,  
1967, between Terrence Barton as mort-  
gagor, A.E. Armstrong Pty. Limited as  
mortgagee and Alexander Barton and ors.  
as guarantors securing the payment of 10  
the price of the shares the subject of  
the deed mentioned in (m) above.
- (o) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Clare Barton whereby Clare  
Barton agreed to purchase 30,000 fully  
paid shares of \$1. each in the capital  
of Landmark Corporation Limited.
- (p) A deed made the 18th day of January,  
1967, between Clare Barton as mortgagor, 20  
A.E. Armstrong Pty. Limited as mort-  
gagee and Alexander Barton and ors. as  
guarantors securing the payment of the  
price of the shares the subject of the  
deed mentioned in (o) above.
- (q) A deed made the 18th day of January,  
1967, between A. E. Armstrong Pty.  
Limited and John Osborne Bovill whereby  
John Osborne Bovill agreed to purchase  
30,000 fully paid shares of \$1. each in 30  
the capital of Landmark Corporation  
Limited.
- (r) A deed made the 18th day of January,

Statement of Defence  
of the fifth named  
Defendant

Statement of Defence  
of the fifth named  
Defendant

1967, between John Osborne Bovill as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment  
of the price of the shares the subject  
of the deed mentioned in (q) above.

Save as aforesaid the defendant Goulburn  
Acceptance Pty. Limited denies that at or  
about the same time as the execution of the  
deed mentioned in paragraph 13 of the State-  
ment of Claim the Plaintiff executed a number  
of other deeds ancillary to the aforesaid deed. 10

16. In answer to paragraph 14 of the Statement of  
Claim the Defendant Goulburn Acceptance Pty.  
Limited does not know and cannot admit that  
the execution by the Plaintiff of the deeds  
therein mentioned was not voluntary or that 20  
the same was done against the will of the  
Plaintiff or that the execution of the deeds  
therein mentioned by the Plaintiff was done  
by him while he was in fear for his life and  
safety or while he feared for the life and  
safety of his family. In further answer to  
the said paragraph 14 the fifth named Defen-  
dant Goulburn Acceptance Pty. Limited repeats  
paragraphs 9, 10, 11 and 12 above.

17. In answer to paragraph 15 of the Statement of 30  
Claim the Defendant Goulburn Acceptance Pty.  
Limited denies that following the execution  
of the deeds in the said paragraph mentioned



Statement of Defence  
of the fifth named  
Defendant

by the Plaintiff the Plaintiff remained or that he still at the institution of this suit remained in fear for his life and safety or for the life and safety of his family because of either of:-

(a) Any threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all prior to the execution of the said deed on the 17th January, 1967. 10

(b) Any further threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all after the execution of the said deed designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life and safety of his family or of compelling the Plaintiff to continue to agree to the Defendant Alexander Ewan Armstrong's wishes on his own behalf or on behalf of the Armstrong companies or any of them or at all. 20

18. In further answer to the said paragraph 15 the Defendant Goulburn Acceptance Pty. Limited repeats the denials in paragraphs 9, 10, 11 and 12 above. In further answer to the said paragraph 15 the Defendant Goulburn Acceptance 30

Statement of Defence  
of the fifth named  
Defendant

Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are alleged in the said paragraph on behalf of the Defendant Goulburn Acceptance Pty. Limited and that he had any such authority from the Defendant to do so.

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19. In further answer to the said paragraph 15 the Defendant Goulburn Acceptance Pty. Limited denies that after the execution of the said deed of the 17th January 1967 the Defendant Alexander Ewan Armstrong made any threats or did any acts designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life and safety of his family or of compelling the Plaintiff to continue to agree to the Defen-

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20. In answer to paragraph 16 of the Statement of Claim the Defendant Goulburn Acceptance Pty. Limited does not know and cannot admit that the Plaintiff has feared or that he fears that if he had avoiced the deed therein mentioned upon the grounds of duress without the benefit of Court proceedings his life or that of any member of his family would have been in grievous or any danger.

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21. In further answer to the said paragraph 16 the Defendant Goulburn Acceptance Pty. Limited denies that the life of the Plaintiff or the

Statement of Defence  
of the fifth named  
Defendant

life of any member of his family has ever  
been in grievous or any danger by reason of  
any act of the Defendant Alexander Ewan  
Armstrong.

22. In answer to paragraph 17 of the Statement of  
Claim the Defendant Goulburn Acceptance Pty.  
Limited denies that the Plaintiff is entitled 10  
to avoid the deed of the 17th January 1967  
upon the grounds asserted in the Statement of  
Claim or at all.

23. In answer to paragraph 18 of the Statement of  
Claim the Defendant Goulburn Acceptance Pty.  
Limited craves leave to refer to the said deed  
when produced as though the same were pleaded  
in full in answer to the said paragraph. In  
further answer to the said paragraph the De-  
fendant Goulburn Acceptance Pty. Limited de- 20  
nies that the Plaintiff has not received any  
benefit under the said deed and repeats the  
matter set forth in paragraphs 5, 6 and 7  
above. In further answer to the said para-  
graph 18 the Defendant Goulburn Acceptance  
Pty. Limited denies that the Defendant  
Alexander Ewan Armstrong made any such acts  
as are in the said paragraph alleged on be-  
half of the Defendant Goulburn Acceptance  
Pty. Limited and that he had no authority from 30  
the Defendant so to do.

24. In answer to paragraph 19 of the Statement of  
Claim the Defendant Goulburn Acceptance Pty.

Statement of Defence  
of the fifth named  
Defendant

Limited craves leave to refer to the said deed made on the 17th day of January, 1967 and the other agreements and deeds in the said paragraph mentioned when produced as though the same were pleaded in full in answer to the said paragraph and does not admit that the same or the effect thereof are in the said 10 paragraph sufficiently or accurately set forth.

25. In answer to paragraph 20 of the Statement of Claim the Defendant Goulburn Acceptance Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced as though the same were pleaded in full in answer to the said paragraph and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

26. In answer to paragraph 21 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited craves leave to refer to the share contracts and to the mortgages therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

27. In answer to paragraph 22 of the Statement of Claim the defendant Goulburn Acceptance Pty. 30 Limited craves leave to refer to the instruments of guarantee when produced and does not admit that the same or the effect thereof

Statement of Defence  
of the fifth named  
Defendant

are in the said paragraph sufficiently or  
accurately set forth.

28. In answer to paragraph 23 of the Statement of  
Claim the defendant Goulburn Acceptance Pty.  
Limited denies that if the sixth defendant  
were able to procure the transfer of the  
shares therein mentioned to its name it would 10  
have been or would be able to control the  
Landmark companies or any of them. In further  
answer to the said paragraph 23 the defendant  
Goulburn Acceptance Pty. Limited says that  
the 7th and 13th defendant are being wound up  
pursuant to orders made by the Supreme Court  
of Queensland. In further answer to the said  
paragraph 23, the defendant Goulburn Accep-  
tance Pty. Limited says that the 14th defen- 20  
dant is being wound up pursuant to an order  
made by the Supreme Court of New South Wales  
in its equitable jurisdiction on the 11th day  
of January, 1968, and that the Landmark com-  
panies other than Landmark Corporation Limited  
are each of them subsidiaries of Landmark  
Corporation Limited.

29. In answer to paragraph 24 of the Statement of  
Claim the defendant Goulburn Acceptance Pty.  
Limited craves leave to refer to the share  
contracts therein mentioned when the same are 30  
produced and does not admit that the same or  
the effect thereof are in the said paragraphs  
sufficiently or accurately set forth.

Statement of Defence  
of the fifth named  
Defendant

30. In answer to paragraph 25 of the Statement of Claim the defendant Goulburn Acceptance Pty. Limited denies that any action which Alexander Ewan Armstrong or the Armstrong companies or any of them may take pursuant to the deed of the 17th January, 1967, or pursuant to any of the ancillary documents in the said paragraph mentioned would cause irreparable or any harm or loss to the Landmark companies or any of them. 10

31. In answer to the whole of the Statement of Claim, the defendant Goulburn Acceptance Pty. Limited submits that the allegations in the Statement of Claim do not entitle the plaintiff to the relief therein sought, and the defendant Goulburn Acceptance Pty. Limited craves the same benefit from this submission as if it had demurred to the Statement of Claim. 20

.....  
Counsel for the Defendant,  
Goulburn Acceptance Pty.  
Limited.

This Statement of Defence is filed by Robert Ian Grant of Messrs. Dare, Reed, Martin & Grant of 187 Macquarie Street, Sydney, Solicitor for the defendant Goulburn Acceptance Pty. Limited.

The Common Seal of Goulburn Acceptance Pty. Limited was hereunto affixed the day of 1968, pursuant to a resolution of the Board of Directors in the presence of: Alexander Ewan Armstrong Director and Secretary: Cyril Garnet Thorpe ) ) A.E. Armstrong Director ) ) C. Thorpe Secretary ) ) 30

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND:

ALEXANDER EWAN ARMSTRONG  
AND ORS.

Defendants 10

STATEMENT OF DEFENCE

OF

SIXTH NAMED DEFENDANT  
A.E. ARMSTRONG PTY. LIMITED

The sixth abovenamed defendant under its Common Seal says as follows:-

1. In answer to paragraph 2 of the Statement of Claim, the defendant A.E. Armstrong Pty. Limited says that from August, 1966, or earlier, and until the date of this Statement of Defence the defendant Alexander Ewan Armstrong has been one of a Board of three directors of each of the defendants George Armstrong & Son Pty. Limited, A.E. Armstrong Pty. Limited, Southern Tablelands Finance Co. Pty. Limited and Goulburn Acceptance Pty. Limited, and that the defendant Alexander Ewan Armstrong was from August, 1966 or earlier, and until the 9th January, 1967, and from the 28th April, 1967, until the date of this Statement of Defence one of the Board of three directors of Finlayside Pty. Limited.

In further answer to the said paragraph 2, the

Statement of Defence  
of the sixth named  
Defendant

Statement of Defence  
of the sixth named  
Defendant

defendant A.E. Armstrong Pty. Limited denies that the defendant Alexander Ewan Armstrong was or is managing director of any of the said defendant companies.

2. In answer to paragraph 3 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited says that since the commencement of this suit, an order has been made by the Supreme Court of New South Wales in its equitable jurisdiction for the winding up of the fourteenth defendant Landmark Corporation Limited. 10

3. In answer to paragraph 5 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited admits that the defendant Alexander Ewan Armstrong was a director of each of the Landmark companies other than Landmark Finance Pty. Limited from August, 1966, or earlier, and until the 18th day of January, 1967, or shortly thereafter. Save as aforesaid the defendant A.E. Armstrong Pty. Limited does not know and cannot admit that at any material time the defendant Alexander Ewan Armstrong was a director of the Landmark companies or any of them. 20

4. In answer to paragraph 6 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited admits that the plaintiff was the managing director of Landmark Corporation Limited and a director of each other of the 30



Statement of Defence  
of the sixth named  
Defendant

Landmark companies from August, 1966, or earlier, until the date of commencement of this suit, or until the date of the winding up thereof, as the case may be. Save as aforesaid, the defendant A.E. Armstrong Pty. Limited does not know and cannot admit that at any material time the plaintiff was the managing director of the Landmark companies. 10

5. In answer to paragraph 7 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited says that prior to the 17th January, 1967, there had occurred differences and disputes between the defendant Alexander Ewan Armstrong and the plaintiff as directors respectively of Landmark Corporation Limited relating to the management of certain of the business and affairs of Landmark Corporation Limited and of certain of its subsidiaries and relating to the accounts of Landmark Corporation Limited and to the consolidated accounts of Landmark Corporation Limited and its subsidiaries and relating to the desire and proposal of the plaintiff that the directors of Landmark Corporation Limited should recommend to the Annual General Meeting of that company the payment of a dividend. In further answer to the said paragraph 7, the defendant A.E. Armstrong Pty. Limited says that arising out of the abovementioned disputes and actions of the plaintiff and of 20 30

Statement of Defence  
of the sixth named  
Defendant

certain of the Landmark companies in further-  
ance of such disputes there were instituted  
and conducted in the equitable jurisdiction  
of the Supreme Court of New South Wales the  
following suits, namely:-

- (a) Suit No. 1262 of 1966 in which Finlay-  
side Pty. Limited was the plaintiff 10  
and Landmark Corporation Limited,  
Paradise Waters (Sales) Pty. Limited  
and Paradise Waters Limited were the  
defendants, and in which certain inter-  
locutory relief was granted to the  
plaintiff therein against the defen-  
dants therein and each of them.
- (b) Suit No. 1263 of 1966 in which George  
Armstrong & Son Pty. Limited was the  
plaintiff and Landmark Corporation 20  
Limited was the defendant in which said  
suit no determination or orders had  
been made prior to the 17th January,  
1967.
- (c) Suit No. 1359 of 1966 in which Alexander  
Ewan Armstrong was the plaintiff and  
Landmark Corporation Limited was the  
defendant and in which certain relief  
was granted to the plaintiff against  
the defendant. 30

The defendant A.E. Armstrong Pty. Limited  
craves leave to refer to the documents and re-  
cords in the said suits when produced as

Statement of Defence  
of the sixth named  
Defendant

though the same were set forth herein.

6. In further answer to the said paragraph 7  
the defendant A.E. Armstrong Pty. Limited  
says that in the month of December, 1966, and  
until the 13th January, 1967, endeavours were  
made by the plaintiff and by the defendant  
Alexander Ewan Armstrong and by the parties 10  
to the abovementioned suits and by the solici-  
tors and counsel and other advisers for the  
said persons and parties to resolve the said  
disputes, and to compromise the said litiga-  
tion and further that during the second week  
of January, 1967, the defendant Alexander  
Ewan Armstrong, as and by way of a compromise  
between the proposals put forward on behalf  
of the plaintiff and Landmark Corporation  
Limited, Paradise Waters Limited, Paradise 20  
Waters (Sales) Pty. Limited, Goondoo Pty.  
Limited, Landmark Home Units Pty. Limited,  
Landmark Finance Pty. Limited, Landmark Hous-  
ing & Development Pty. Limited and Landmark  
(Queensland) Pty. Limited and those put for-  
ward on behalf of the defendant Alexander  
Ewan Armstrong and of the defendants Finlay-  
side Pty. Limited, George Armstrong & Son  
Pty. Limited, Southern Tablelands Finance Co.  
Pty. Limited and Goulburn Acceptance Pty. 30  
Limited agreed, and the defendants Finlayside  
Pty. Limited, George Armstrong & Son Pty.  
Limited, Southern Tablelands Finance Co. Pty.

Statement of Defence  
of the sixth named  
Defendant

Statement of Defence  
of the sixth named  
Defendant

Limited and Goulburn Acceptance Pty. Limited each agreed to the matters subsequently provided for by the deed of the 17th day of January, 1967, made between George Armstrong & Son Pty. Limited, Finlayside Pty. Limited, Southern Tablelands Finance Pty. Limited, Goulburn Acceptance Pty. Limited and A.E. Armstrong Pty. Limited of the first part, Landmark (Queensland) Pty. Limited, Paradise Waters (Sales) Pty. Limited, Paradise Waters Limited, Goondoo Pty. Limited, Landmark Home Units Pty. Limited, Landmark Finance Pty. Limited, Landmark Housing & Development Pty. Limited and Landmark Corporation Limited of the second part, Alexander Ewan Armstrong of the third part, and Alexander Barton of the fourth part.

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7. Save as aforesaid the defendant A.E. Armstrong Pty. Limited, in further answer to the said paragraph 7, denies that on and prior to the execution of the said deed on the 17th January 1967, the defendant Alexander Ewan Armstrong on his own behalf or on behalf of the defendant A.E. Armstrong Pty. Limited or on behalf of any other of the Armstrong companies had endeavoured to persuade or to compel the plaintiff and the Landmark companies or any of them to agree with the said Alexander Ewan Armstrong and the Armstrong companies or any of them upon the matters subsequently set forth in the said deed.

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Statement of Defence  
of the sixth named  
Defendant

8. In answer to paragraph 8 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited repeats paragraphs 5, 6 and 7 above and says that it does not know and cannot admit that it was not in the plaintiff's interest to agree with the defendants in this suit in the manner which the defendant Alexander Ewan Armstrong sought, or in the terms of the said deed of the 17th January, 1967, so far as the same were to be performed by or affected the plaintiff and denies that the plaintiff for a long time refused so to agree. 10

9. In answer to paragraph 9 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited denies that for the purpose of compelling the plaintiff to agree as in the Statement of Claim alleged to cause the Landmark companies so to agree or for any purpose or at all the defendant Alexander Ewan Armstrong continually or at all threatened to have the plaintiff murdered if the plaintiff did not agree with the defendants in the manner which the defendant Alexander Ewan Armstrong sought and denies further that the defendant Alexander Ewan Armstrong otherwise exerted unlawful pressure upon the plaintiff so to agree. In further answer to the said paragraph 9 the Defendant A.E. Armstrong Pty. Limited denies that the 20 30

Statement of Defence  
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Defendant

Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant A.E. Armstrong Pty. Limited and that he had no authority from the Defendant so to do.

10. In answer to paragraph 10 of the Statement of Claim the Defendant A.E. Armstrong Pty. Limited denies that for the purposes mentioned in paragraph 9 of the Statement of Claim or at all the Defendant Alexander Ewan Armstrong engaged certain or any criminals to kill or otherwise injure the Plaintiff. In further answer to the said paragraph 10 the Defendant A.E. Armstrong Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant A.E. Armstrong and that he had no authority from the Defendant so to do.

11. In answer to paragraph 11 of the Statement of Claim the Defendant A.E. Armstrong Pty. Limited repeats paragraphs 7, 9 and 10 above and denies that as a result of any threats or actions of the Defendant Alexander Ewan Armstrong the Plaintiff feared for his life and safety or that he feared for the life and safety of his family. In further answer to the said paragraph 11 the Defendant A.E. Armstrong Pty. Limited denies that the

Statement of Defence  
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Defendant

Statement of Defence  
of the sixth named  
Defendant

Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph alleged on behalf of the Defendant A.E. Armstrong Pty. Limited and that he had no authority from the Defendant so to do.

12. In further answer to the said paragraph 11 10  
the Defendant A.E. Armstrong Pty. Limited does not know and cannot admit that the Plaintiff feared for his life and safety as alleged or that he feared for the life and safety of his family as alleged.

13. In answer to paragraph 12 of the Statement of Claim the Defendant A.E. Armstrong Pty. Limited repeats paragraphs 9, 10, 11 and 12 above and denies that the Plaintiff was in fear as set out in Paragraph 11 of the 20  
Statement of Claim and does not know and cannot admit that against the will of the Plaintiff and denies that for the purpose of avoiding the threat of death or injury in the Statement of Claim alleged the Plaintiff told the Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all that the Plaintiff agreed with the Defendant Alexander Ewan Armstrong in the manner sought by the 30  
Defendant Alexander Ewan Armstrong on his own behalf or on behalf of the Armstrong companies or any of them or at all.

Statement of Defence  
of the sixth named  
Defendant

14. In further answer to the said paragraph 12  
the Defendant A.E. Armstrong Pty. Limited re-  
peats paragraphs 5, 6 and 7 above.

15. In answer to paragraph 13 of the Statement of  
Claim the Defendant A.E. Armstrong Pty.  
Limited says that after the execution of the  
deed of the 17th January 1967 the Plaintiff 10  
executed the following deeds and documents on  
the following dates:-

(a) A deed made the 18th day of January,  
1967 between A.E. Armstrong Pty.  
Limited and Alexander Barton whereby  
the Plaintiff agreed to purchase 30,000  
fully paid shares of \$1.00 each in the  
capital of Landmark Corporation Limited.

(b) A deed made the 18th day of January,  
1967 between Alexander Barton as mort- 20  
gagor, A.E. Armstrong Pty. Limited as  
mortgagee and certain guarantors secur-  
ing the payment of the price for the  
shares the subject of the deed mention-  
ed in (a) above.

(c) An undated instrument of transfer of  
the shares the subject of the deed men-  
tioned in (a) above.

(d) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. 30  
Limited and Allebart Investments Pty.  
Limited whereby Allebart Investments  
Pty. Limited agreed to purchase 47,500



Statement of Defence  
of the sixth named  
Defendant

fully paid \$1. shares in the capital of  
Landmark Corporation Limited.

- (e) A deed made the 18th day of January,  
1967, between Allebart Investments Pty.  
Limited as mortgagor, A.E. Armstrong  
Pty. Limited as mortgagee and Alexander  
Barton and ors. as guarantors securing 10  
the payment of the price for the shares  
the subject of the deed mentioned in  
(d) above.
- (f) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty.  
Limited and Allebart Pty. Limited where-  
by Allebart Pty. Limited agreed to pur-  
chase 47,500 fully paid shares of \$1.  
each in the capital of Landmark Corpora-  
tion Limited. 20
- (g) A deed made the 18th day of January,  
1967, between Allebart Pty. Limited as  
mortgagor, A.E. Armstrong Pty. Limited  
as mortgagee and Alexander Barton and  
ors. as guarantors securing the payment  
of the price for the shares the subject  
of the deed mentioned in (f) above.
- (h) A deed made the 18th day of January,  
1967, between A.E. Armstrong Pty. Limited  
and Home Holdings Pty. Limited whereby 30  
Home Holdings Pty. Limited agreed to  
purchase 47,500 fully paid shares of \$1

Statement of Defence  
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Defendant

each in the capital of Landmark Corporation Limited.

- (j) A deed made the 18th day of January, 1967, between Home Holdings Pty. Limited as mortgagor, A.E. Armstrong Pty. Limited as mortgagee, and Alexander Barton and ors. as guarantors, securing the payment of the price for the shares the subject of the deed mentioned in (h) above. 10
- (k) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Agoston Goncze whereby Agoston Goncze agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.
- (l) A deed made the 18th day of January, 1967, between Agoston Goncze as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price of the shares the subject of the deed mentioned in (k) above. 20
- (m) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Terrence Barton whereby Terrence Barton agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited. 30
- (n) A deed made the 18th day of January,

Statement of Defence  
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Defendant

1967, between Terrence Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price of the shares the subject of the deed mentioned in (m) above.

- (o) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and Clare Barton whereby Clare Barton agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited. 10
- (p) A deed made the 18th day of January, 1967, between Clare Barton as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and ors. as guarantors securing the payment of the price of the shares the subject of the deed mentioned in (o) above. 20
- (q) A deed made the 18th day of January, 1967, between A.E. Armstrong Pty. Limited and John Osborne Bovill whereby John Osborne Bovill agreed to purchase 30,000 fully paid shares of \$1. each in the capital of Landmark Corporation Limited.
- (r) A deed made the 18th day of January, 1967, between John Osborne Bovill as mortgagor, A.E. Armstrong Pty. Limited as mortgagee and Alexander Barton and

Statement of Defence  
of the sixth named  
Defendant

crs. as guarantors securing the payment  
of the price of the shares the subject  
of the deed mentioned in (q) above.

Save as aforesaid the defendant A.E. Armstrong  
Pty. Limited denies that at or about the  
same time as the execution of the deed men-  
tioned in paragraph 13 of the Statement of 10  
Claim the Plaintiff executed a number of other  
deeds ancillary to the aforesaid deed.

16. In answer to paragraph 14 of the Statement of  
Claim the Defendant A.E. Armstrong Pty.  
Limited does not know and cannot admit that  
the execution by the Plaintiff of the deeds  
therein mentioned was not voluntary or that  
the same was done against the will of the  
Plaintiff or that the execution of the deeds  
therein mentioned by the Plaintiff was done 20  
by him while he was in fear for his life and  
safety or while he feared for the life and  
safety of his family. In further answer to  
the said paragraph 14 the sixth named Defen-  
dant A.E. Armstrong Pty. Limited repeats  
paragraphs 9, 10, 11 and 12 above.

17. In answer to paragraph 15 of the Statement of  
Claim the Defendant A.E. Armstrong Pty.  
Limited denies that following the execution  
of the deeds in the said paragraph mentioned 30  
by the Plaintiff the Plaintiff remained or  
that he still at the institution of this suit  
remained in fear for his life and safety or

Statement of Defence  
of the sixth named  
Defendant

Statement of Defence  
of the sixth named  
Defendant

for the life and safety of his family be-  
cause of either of:-

- (a) Any threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all prior to the execution of the said deed on 10 the 17th January, 1967
- (b) Any further threats or actions of the Defendant Alexander Ewan Armstrong either on his own behalf or on behalf of the Armstrong companies or any of them or at all after the execution of the said deed designed to have or having the effect of keeping the Plaintiff in fear for his life and safety or for the life and safety of his family or of 20 compelling the Plaintiff to continue to agree to the Defendant Alexander Ewan Armstrong's wishes on his own behalf or on behalf of the Armstrong companies or any of them or at all.

18. In further answer to the said paragraph 15 the Defendant A.E. Armstrong Pty. Limited repeats the denials in paragraphs 9, 10, 11 and 12 above. In further answer to the said paragraph 15 the Defendant A.E. Armstrong Pty. 30 Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are alleged in the said

Statement of Defence  
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paragraph on behalf of the Defendant A.E.  
Armstrong Pty. Limited and that he had any  
such authority from the said Defendant to do  
so.

20. In answer to paragraph 16 of the Statement of  
Claim the Defendant A.E. Armstrong Pty.  
Limited does not know and cannot admit that 10  
the Plaintiff has feared or that he fears  
that if he had avoided the deed therein  
mentioned upon the grounds of duress without  
the benefit of Court proceedings his life or  
that of any member of his family would have  
been in grievous or any danger.

21. In further answer to the said paragraph 16  
the Defendant A.E. Armstrong Pty. Limited de-  
nies that the life of the Plaintiff or the 20  
life of any member of his family has ever been  
in grievous or any danger by reason of any  
act of the Defendant Alexander Ewan Armstrong.

22. In answer to paragraph 17 of the Statement of  
Claim the Defendant A.E. Armstrong Pty.  
Limited denies that the Plaintiff is entitled  
to avoid the deed of the 17th January, 1967  
upon the grounds asserted in the Statement of  
Claim or at all. In further answer to the  
said paragraph 17 the Defendant A.E. Armstrong  
Pty. Limited says that on the 18th day of 30  
January 1967 it executed and delivered the  
deeds mentioned in paragraph 15 (a), (d), (f),  
(h), (k), (m), (o) and (q) of this Statement

Statement of Defence  
of the sixth named  
Defendant

of Defence and transfers of the shares mentioned in each of the said deeds and that it was not then and has not yet been paid the consideration for the said transfers expressed in the said deeds or any part thereof. In further answer to the said paragraph 17 the Defendant A.E. Armstrong Pty. Limited says 10 that Landmark Corporation Limited has since the said 18th day of January, 1967 namely on the 11th day of January, 1968 been ordered to be wound up and that the shares mentioned in the said deeds are not now of any value.

23. In answer to paragraph 18 of the Statement of Claim the Defendant A.E. Armstrong Pty. Limited craves leave to refer to the said deed when produced as though the same were pleaded in full in answer to the said paragraph. In further answer to the said paragraph the Defendant A.E. Armstrong Pty. Limited denies that the Plaintiff has not received any benefit under the said deed and repeats the matters set forth in paragraphs 5, 6 and 7 above. In further answer to the said paragraph 18 the Defendant A.E. Armstrong Pty. Limited denies that the Defendant Alexander Ewan Armstrong made any such threats or did any such acts as are in the said paragraph 20 alleged on behalf of the Defendant A.E. Armstrong Pty. Limited and that he had no authority from the Defendant so to do. 30

Statement of Defence  
of the sixth named  
Defendant

24. In answer to paragraph 19 of the Statement of Claim the Defendant A.E. Armstrong Pty. Limited craves leave to refer to the deed made on the 17th January, 1967 and the other agreements and deeds in the said paragraph mentioned when produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 10

25. In answer to paragraph 20 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited craves leave to refer to the share contracts therein mentioned when the same are produced as though the same were pleaded in full in answer to the said paragraph, and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 20

26. In answer to paragraph 21 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited craves leave to refer to the share contracts and to the mortgages therein mentioned when the same are produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth. 30

27. In answer to paragraph 22 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited craves leave to refer to the



Statement of Defence  
of the sixth named  
Defendant

instruments of guarantee when produced and does not admit that the same or the effect thereof are in the said paragraph sufficiently or accurately set forth.

28. In answer to paragraph 23 of the Statement of Claim the defendant A.E. Armstrong Pty.

Limited denies that if it were able to procure the transfer of the shares therein mentioned to its name it would have been or would be able to control the Landmark companies or any of them. In further answer to the said paragraph 23 of the Statement of Claim the defendant A.E. Armstrong Pty.

Limited says that the 7th and the 13th defendants are being wound up pursuant to orders made by the Supreme Court of Queensland. In further answer to the said paragraph 23, the defendant A.E. Armstrong Pty. Limited says that the 14th defendant is being wound up pursuant to an order made by the Supreme Court of New South Wales in its equitable jurisdiction on the 11th day of January, 1968, and that the Landmark companies other than Landmark Corporation Limited are each of them subsidiaries of Landmark Corporation Limited.

29. In answer to paragraph 24 of the Statement of Claim the defendant A.E. Armstrong Pty.

Limited craves leave to refer to the share contracts therein mentioned when the same are produced and does not admit that the same or

Statement of Defence  
of the sixth named  
Defendant

Statement of Defence  
of the sixth named  
Defendant

the effect thereof are in the said paragraphs sufficiently or accurately set forth.

30. In answer to paragraph 25 of the Statement of Claim the defendant A.E. Armstrong Pty. Limited denies that any action which Alexander Ewan Armstrong or the Armstrong companies or any of them may take pursuant to the deed of the 17th January, 1967, or pursuant to any of the ancillary documents in the said paragraph mentioned would cause irreparable or any harm or loss to the Landmark companies or to any of them. 10

31. In answer to the whole of the Statement of Claim, the defendant A.E. Armstrong Pty. Limited says that the Statement of Claim does not contain any offer by or on behalf of the plaintiff to do equity to the defendant A.E. Armstrong Pty. Limited and craves the same benefit from this Statement of Defence as if it had pleaded or demurred to the Statement of Claim. 20

32. In answer to the whole of the Statement of Claim the defendant A.E. Armstrong Pty. Limited submits that the allegations in the Statement of Claim do not entitle the plaintiff to the relief therein sought, and the defendant A.E. Armstrong Pty. Limited craves the same benefit from this submission as if it had demurred to the Statement of Claim. 30

R. Bainton  
Counsel for the Defendant, A.E. Armstrong  
Pty. Limited.

Statement of Defence  
of the sixth named  
5(y). Defendant

Statement of Defence  
of the sixth named  
Defendant

THE COMMON SEAL of  
A.E. ARMSTRONG PTY. LIMITED  
was hereunto affixed in the  
presence of R. I. Grant,  
Director and Cyril Garnet  
Thorpe, Secretary.

R. I. Grant  
C. Thorpe.

This statement of defence is filed by Robert Ian 10  
Grant of Messrs. Dare, Reed, Martin & Grant of 187  
Macquarie Street, Sydney, Solicitors for the Defen-  
dant A.E. Armstrong Pty. Limited.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

<u>AND: ALEXANDER EWAN ARMSTRONG</u>	1st Defendant	
<u>AND: GEORGE ARMSTRONG &amp; SON PTY. LTD.</u>	2nd Defendant	
<u>AND: FINLAYSIDE PTY. LTD.</u>	3rd Defendant	10
<u>AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LTD.</u>	4th Defendant	
<u>AND: GOULBURN ACCEPTANCE PTY. LTD.</u>	5th Defendant	
<u>AND: A.E. ARMSTRONG PTY. LTD.</u>	6th Defendant	
<u>AND: LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation)</u>	7th Defendant	
<u>AND: PARADISE WATERS (SALES) PTY. LTD.</u>	8th Defendant	
<u>AND: PARADISE WATERS LTD.</u>	9th Defendant	
<u>AND: GOONDOO PTY. LTD.</u>	10th Defendant	20
<u>AND: LANDMARK HOME HOLDINGS PTY. LTD.</u>	11th Defendant	
<u>AND: LANDMARK FINANCE PTY. LTD.</u>	12th Defendant	
<u>AND: LANDMARK HOUSING &amp; DEVELOPMENT PTY. LTD. (In Liquidation)</u>	13th Defendant	
<u>AND: LANDMARK CORPORATION LTD.</u>	14th Defendant	
<u>AND: CLARE BARTON</u>	15th Defendant	
<u>AND: TERRENCE BARTON</u>	16th Defendant	
<u>AND: AGOSTON GONCZE</u>	17th Defendant	
<u>AND: JOHN OSBORNE BOVILL</u>	18th Defendant	30
<u>AND: HOME HOLDINGS PTY. LTD.</u>	19th Defendant	
<u>AND: ALLEBART PTY. LTD.</u>	20th Defendant	
<u>AND: ALLEBART INVESTMENTS PTY. LTD.</u>	21st Defendant	

REPLICATION TO STATEMENT OF  
DEFENCE BY FIRST-NAMED DEFENDANT

The Plaintiff joins issue with the first-named Defendant upon his Statement of Defence save in so far as the same contains admissions.

Counsel for the Plaintiff

NOTE: This Replication is filed by PETER MICHAEL BOWEN of 86-88 Pitt Street, Solicitor for the abovenamed Plaintiff.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EWAN ARMSTRONG 1st Defendant

AND: GEORGE ARMSTRONG & SON PTY. LTD. 2nd Defendant

AND: FINLAYSIDE PTY. LTD. 3rd Defendant 10

AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LTD. 4th Defendant

AND: GOULBURN ACCEPTANCE PTY. LTD. 5th Defendant

AND: A.E. ARMSTRONG PTY. LTD. 6th Defendant

AND: LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation) 7th Defendant

AND: PARADISE WATERS (SALES) PTY. LTD. 8th Defendant

AND: PARADISE WATERS LTD. 9th Defendant

AND: GOONDOO PTY. LTD. 10th Defendant 20

AND: LANDMARK HOME HOLDINGS PTY. LTD. 11th Defendant

AND: LANDMARK FINANCE PTY. LTD. 12th Defendant

AND: LANDMARK HOUSING & DEVELOPMENT PTY. LTD. (In Liquidation) 13th Defendant

AND: LANDMARK CORPORATION LTD. 14th Defendant

AND: CLARE BARTON 15th Defendant

AND: TERRENCE BARTON 16th Defendant

AND: AGOSTON GONCZE 17th Defendant 30

AND: JOHN OSBORNE BOVILL 18th Defendant

AND: HOME HOLDINGS PTY. LTD. 19th Defendant

AND: ALLEBART PTY. LTD. 20th Defendant

AND: ALLEBART INVESTMENTS PTY. LTD. 21st Defendant

REPLICATION TO STATEMENT OF  
DEFENCE BY SECOND-NAMED DEFENDANT

The Plaintiff joins issue with the second-named Defendant upon its Statement of Defence save insofar as the same contains admissions.

Counsel for the Plaintiff

NOTE: This Replication is filed by PETER MICHAEL BOWEN of 86-88 Pitt Street, Solicitor for the abovenamed Plaintiff.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

<u>AND: ALEXANDER EWAN ARMSTRONG</u>	1st Defendant	
<u>AND: GEORGE ARMSTRONG &amp; SON PTY. LTD.</u>	2nd Defendant	
<u>AND: FINLAYSIDE PTY. LTD.</u>	3rd Defendant	10
<u>AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LTD.</u>	4th Defendant	
<u>AND: GOULBURN ACCEPTANCE PTY. LTD.</u>	5th Defendant	
<u>AND: A.E. ARMSTRONG PTY. LTD.</u>	6th Defendant	
<u>AND: LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation)</u>	7th Defendant	
<u>AND: PARADISE WATERS (SALES) PTY. LTD.</u>	8th Defendant	
<u>AND: PARADISE WATERS LTD.</u>	9th Defendant	
<u>AND: GOONDOO PTY. LTD.</u>	10th Defendant	20
<u>AND: LANDMARK HOME HOLDINGS PTY. LTD.</u>	11th Defendant	
<u>AND: LANDMARK FINANCE PTY. LTD.</u>	12th Defendant	
<u>AND: LANDMARK HOUSING &amp; DEVELOPMENT PTY. LTD. (In Liquidation)</u>	13th Defendant	
<u>AND: LANDMARK CORPORATION LTD.</u>	14th Defendant	
<u>AND: CLARE BARTON</u>	15th Defendant	
<u>AND: TERRENCE BARTON</u>	16th Defendant	
<u>AND: AGOSTON GONCZE</u>	17th Defendant	30
<u>AND: JOHN OSBORNE BOVILL</u>	18th Defendant	
<u>AND: HOME HOLDINGS PTY. LTD.</u>	19th Defendant	
<u>AND: ALLEBART PTY. LTD.</u>	20th Defendant	
<u>AND: ALLEBART INVESTMENTS PTY. LTD.</u>	21st Defendant	



REPLICATION TO STATEMENT OF  
DEFENCE BY THIRD-NAMED DEFENDANT

The Plaintiff joins issue with the third-named Defendant upon its Statement of Defence save in so far as the same contains admissions.

Counsel for the Plaintiff

NOTE: This Replication is filed by PETER MICHAEL BOWEN of 86-88 Pitt Street, Solicitor for the abovenamed Plaintiff.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

<u>AND: ALEXANDER EWAN ARMSTRONG</u>	1st Defendant	
<u>AND: GEORGE ARMSTRONG &amp; SON PTY. LTD.</u>	2nd Defendant	
<u>AND: FINLAYSIDE PTY. LTD.</u>	3rd Defendant	10
<u>AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LTD.</u>	4th Defendant	
<u>AND: GOULBURN ACCEPTANCE PTY. LTD.</u>	5th Defendant	
<u>AND: A.E. ARMSTRONG PTY. LTD.</u>	6th Defendant	
<u>AND: LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation)</u>	7th Defendant	
<u>AND: PARADISE WATERS (SALES) PTY. LTD.</u>	8th Defendant	
<u>AND: PARADISE WATERS LTD.</u>	9th Defendant	
<u>AND: GOONDOO PTY. LTD.</u>	10th Defendant	20
<u>AND: LANDMARK HOME HOLDINGS PTY. LTD.</u>	11th Defendant	
<u>AND: LANDMARK FINANCE PTY. LTD.</u>	12th Defendant	
<u>AND: LANDMARK HOUSING &amp; DEVELOPMENT PTY. LTD. (In Liquidation)</u>	13th Defendant	
<u>AND: LANDMARK CORPORATION LTD.</u>	14th Defendant	
<u>AND: CLARE BARTON</u>	15th Defendant	
<u>AND: TERRENCE BARTON</u>	16th Defendant	
<u>AND: AGOSTON GONCZE</u>	17th Defendant	30
<u>AND: JOHN OSBORNE BOVILL</u>	18th Defendant	
<u>AND: HOME HOLDINGS PTY. LTD.</u>	19th Defendant	
<u>AND: ALLEBART PTY. LTD.</u>	20th Defendant	
<u>AND: ALLEBART INVESTMENTS PTY. LTD.</u>	21st Defendant	

REPLICATION TO STATEMENT OF  
DEFENCE BY FOURTH-NAMED DEFENDANT

The Plaintiff joins issue with the fourth-named Defendant upon its Statement of Defence save in so far as the same contains admissions.

Counsel for the Plaintiff

NOTE: This Replication is filed by PETER MICHAEL BOWEN of 86-88 Pitt Street, Solicitor for the abovenamed Plaintiff.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
IN EQUITY )

No. 23 of 1968

BETWEEN:

ALEXANDER BARTON

Plaintiff

AND: ALEXANDER EWAN ARMSTRONG 1st Defendant

AND: GEORGE ARMSTRONG & SON PTY. LTD. 2nd Defendant

AND: FINLAYSIDE PTY. LTD. 3rd Defendant 10

AND: SOUTHERN TABLELANDS FINANCE CO. PTY. LTD. 4th Defendant

AND: GOULBURN ACCEPTANCE PTY. LTD. 5th Defendant

AND: A.E. ARMSTRONG PTY. LTD. 6th Defendant

AND: LANDMARK (QUEENSLAND) PTY. LTD. (In Liquidation) 7th Defendant

AND: PARADISE WATERS (SALES) PTY. LTD. 8th Defendant

AND: PARADISE WATERS LTD. 9th Defendant

AND: GOONDOO PTY. LTD. 10th Defendant 20

AND: LANDMARK HOME HOLDINGS PTY. LTD. 11th Defendant

AND: LANDMARK FINANCE PTY. LTD. 12th Defendant

AND: LANDMARK HOUSING & DEVELOPMENT PTY. LTD. (In Liquidation) 13th Defendant

AND: LANDMARK CORPORATION LTD. 14th Defendant

AND: CLARE BARTON 15th Defendant

AND: TERRENCE BARTON 16th Defendant

AND: AGOSTON GONCZE 17th Defendant 30

AND: JOHN OSBORNE BOVILL 18th Defendant

AND: HOME HOLDINGS PTY. LTD. 19th Defendant

AND: ALLEBART PTY. LTD. 20th Defendant

AND: ALLEBART INVESTMENTS PTY. LTD. 21st Defendant

REPLICATION TO STATEMENT OF  
DEFENCE BY FIFTH-NAMED DEFENDANT

The Plaintiff joins issue with the fifth-named Defendant upon its Statement of Defence save in so far as the same contains admissions.

Counsel for the Plaintiff

NOTE: This Replication is filed by PETER MICHAEL BOWEN of 86-88 Pitt Street, Solicitor for the abovenamed Plaintiff.

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No. 23 of 1968

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REPLICATION TO STATEMENT OF  
DEFENCE BY SIXTH-NAMED DEFENDANT

The Plaintiff joins issue with the sixth named Defendant upon its Statement of Defence save in so far as the same contains admissions.

Counsel for the Plaintiff

NOTE: This Replication is filed by PETER MICHAEL BOWEN of 36-38 Pitt Street, Solicitor for the abovenamed Plaintiff.

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
IN EQUITY )

No. 23 of 1968

CORAM: STREET, J.

Tuesday, 14th May, 1968.

BARTON -v- ARMSTRONG & ORS.

MR. GRUZMAN, Q.C., with Messrs. PRIESTLEY and PURVIS  
appeared for the plaintiff.  
MR. STAFF, Q.C., with Messrs. BAINTON and BRUCE ap-  
peared for the first six defendants.

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(Muir's Motors (Ryde) Pty. Limited called on subpoena duces tecum. Leonard Jeffrey, an officer in the employ of Muir's Motors, appeared in answer to the subpoena. Mr. Jeffrey produced the documents called for in the subpoena, together with a copy of the subpoena. He stated that the Company had no objection to the documents produced being made available for inspection but was concerned for the prompt return of a manilla folder relating to F.Hume. Excused.)

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(Bank of New South Wales called on subpoena duces tecum by Mr. Gruzman. Arnold Marks, an officer of the bank, appeared in answer to the subpoena and produced the documents called for therein. Mr. Marks stated that the bank had no objection to the documents produced being made available for inspection by the parties. Excused.)

(Wentworth Hotel called on subpoena duces tecum by Mr. Gruzman. Alan Edward Smith, an employee of Qantas-Wentworth Holdings Limited, appeared in answer to the subpoena. Mr. Smith produced the documents called for in the subpoena, together with a copy of the subpoena, and stated that there was no objection to the documents produced being made available for inspection by the parties. Excused.)

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(Frederick Hume called on subpoena duces tecum by Mr. Gruzman. Mr. Hume appeared in answer to the subpoena and produced the documents called for, together with a copy of the subpoena. Mr. Hume stated that he had no objection to the documents produced being made available for inspection by the parties to the litigation. Excused.)

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(Manager, Swiss Inn, Katoomba, called on subpoena duces tecum by Mr. Gruzman. Robyn Agnes Skeen appeared in answer to the subpoena. Miss Skeen produced the documents called for in the subpoena, together with a copy of the subpoena. She stated that there was no objection to the documents produced being made available to the parties for inspection. Excused.)

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(Commonwealth Police called on subpoena duces tecum by Mr. Gruzman. John Donnolly Davies, Superintendent of Commonwealth Police, appeared in answer to the subpoena. Superintendent Davies produced the documents called for in the subpoena, together with a copy of the subpoena. He stated that there was no objection to the documents produced being seen by the parties, nor were the documents required back as a matter of urgency. Excused.)

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(Commercial Bank of Australia, Goulburn, called on subpoena duces tecum by Mr. Gruzman. Robert George Toyer, an officer of the Commercial Bank of Australia Head Office, appeared in answer to the subpoena and produced the documents called for therein, together with a copy of the subpoena. Mr. Toyer stated that there was no objection to the documents produced being made available to the parties for inspection, nor were the documents required back as a matter of urgency. Excused.)

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(Further hearing adjourned to Wednesday, 15th May, 1968.)

CORAM: STREET, J.

BARTON -v- ARMSTRONG & ORS.

SECOND DAY, WEDNESDAY, 15TH MAY, 1968

(Mr. Powell announced an appearance for the seventh, ninth, tenth and thirteenth defendants.)

(Mr. Bennett announced an appearance for the fourteenth defendant.)

(Alexander Ewan Armstrong called on subpoena duces tecum by Mr. Gruzman. Mr. Staff answered the subpoena on behalf of Mr. Armstrong and moved to set aside the last two lines in para. 1 of the subpoena. His Honour stated that he would not enforce the last two lines of para. 1. Mr. Staff produced diaries in answer to the call on subpoena.) 10

(Department of Motor Transport called on subpoena duces tecum by Mr. Gruzman. Ronald Charles Bayle, an officer of the department, produced the documents called for on subpoena together with a copy of the subpoena. Mr. Bayle stated that there was no objection to documents produced being made available for inspection, nor were they required by the department as a matter of urgency. Excused.) 20

(Smiths Sports Store called on subpoena duces tecum by Mr. Gruzman. Leslie John Crispin, an employee of the store, appeared in answer to the subpoena and produced the documents called for therein, together with a copy of the subpoena. He stated that there was no objection to the documents produced being made available for inspection. Excused.) 30

(Gaden Bowen & Stewart called on subpoena duces tecum by Mr. Staff. John Patrick Rowan, 402 New South Head Road, Double Bay, appeared in answer to the subpoena. Mr. Rowan produced the documents called for in the subpoena, together with a copy of the subpoena, and stated that there was no objection to the documents produced being seen by the parties. No professional privilege was claimed. Excused.) 40

(George Montague Saywell called on subpoenas duces tecum by Mr. Staff. Mr. Bennett answered the subpoenas on Mr. Saywell's behalf and produced Minutes Books of Directors' meetings.)

(Hungerford Spooner & Kirkhope called on subpoena duces tecum by Mr. Staff. Anthony McKeown appeared in answer to the subpoena and produced the documents called for therein, together with copy of the subpoena. Mr. McKeown stated that there was no objection to the documents produced being made available for inspection, nor were they required to be returned as a matter of urgency. Excused.) 50

(Secretary, Sydney Stock Exchange, called by Mr. Staff on subpoena duces tecum. James Frederick William Whitehead, a representative of the Sydney Stock Exchange, appeared in answer to the subpoena. Mr. Whitehead produced the documents called for in the subpoena together with a copy of the subpoena and stated that there was no objection to the documents produced being made available for inspection by the parties. Excused.)

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(Southern Tablelands Finance Co. Pty. Limited called on subpoena duces tecum by Mr. Gruzman. Mr. Staff appeared in answer to the subpoena. Mr. Gruzman stated that he did not call under para. 1 of the subpoena. Call on the subpoena was deferred to permit of discussion between counsel during the luncheon adjournment.)

(Commonwealth Bank called on subpoena duces tecum by Mr. Gruzman. Wayne Chin, an officer of the Commonwealth Trading Bank, Kings Cross, appeared in answer to the subpoena. Mr. Chin produced the documents called for in the subpoena, together with a copy of the subpoena and stated there was no objection to the documents produced being made available for inspection. Excused.)

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(Mr. Gruzman opened to his Honour.)

HIS HONOUR: I think it preferable he be addressed as Witness.

ALEXANDAR VOJINOVIC  
Sworn, examined as under:

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MR. GRUZMAN: Q. Witness would you have a look at that piece of paper? (Shown.) Just answer this question yes or no. Is that the correct spelling of your name? Do not spell it out. Is that the correct spelling of your name? (No answer.)

Q. If it is not you alter it? A. No.

Q. Alter it to the correct spelling? (Witness complies. Shown to Mr. Staff.)

Q. Does that paper now record your true name?

A. That is right.

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HIS HONOUR: That document can be tendered and that name will go in the transcript.

MR. GRUZMAN: Q. I think at the moment you are a prisoner in one of Her Majesty's gaol in a neighbouring State, in another State? A. Yes.

Q. Do you know a man called Frederick Hume? (Objected to by Mr. Staff.)

MR. GRUZMAN: Firstly there is the link of agency; secondly by inference - if a person says, "I will kill you" and someone comes to kill him there is an inference, the two events are linked; thirdly, because we are dealing here with the effect on a man's mind at a particular time.

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HIS HONOUR: What is your objection?

MR. STAFF: The ground of relevance. Looking at the pleas there is nothing in our submission to show that matter is relevant.

HIS HONOUR: At this stage I think I will allow the question.

MR. STAFF: We would propose to object to each question asked of this witness at this point of time. There is no reason why this evidence should not be adduced in its logical order. If it is given I would ask your Honour not to release the witness and we would seek to defer cross-examination until the plaintiff has given evidence.

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HIS HONOUR: I could not deny that application.

MR. GRUZMAN: I will withdraw this witness.

(Witness stood down.)

MR. GRUZMAN: Would your Honour give a direction that no communication should go to this witness from anybody?

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HIS HONOUR: No, I will not give that direction.

PLAINTIFF

Sworn, examined as under:

MR. GRUZMAN: Q. What is your full name? A. Alexander Barton.

Q. Where do you live? A. 187 Edinburgh Road, Castlecrag.

Q. What is your occupation? A. Company Director.

Q. What is your telephone number? A. 95-6294.

30

Q. I think you first came in contact with Mr. Armstrong whilst you were a director of Finlayside Pty. Limited? A. Yes.

Q. I think that company contracted some debts of Australian Factors? A. That is right.

Q. About the middle of 1963 you first had a transaction with Mr. Armstrong in which you had a joint venture in respect of The Sands Surfers Paradise? A. That is correct.

Q. Then at a certain stage were you invited to join the Board of Landmark? A. Yes.

40

Q. When was that? A. In the second half of 1963.

Q. Who invited you? A. Mr. Armstrong.

Q. Did you then become managing director of the  
A. Vojinovic, x,  
stood down.

Landmark Corporation Limited and its subsidiaries?

A. I became general manager on the 1st July 1963 and in 1964 I became managing director.

Q. I think the business of Landmark Corporation was development of properties and land for resale?

A. Had many different interests, including coffee plantations, printing works, island trading and some real estate at the time when I joined.

Q. Some real estate at the time when you joined? 10

A. Yes.

Q. In 1965 did Landmark Corporation acquire from Mr. Armstrong's companies the land known as Paradise Waters? (Objected to; rejected.)

Q. About the middle of 1966 what were the assets, the principal assets of Landmark Corporation? (Objected to - relevance; allowed.)

Q. As at the middle of 1966 what were the principal assets of Landmark Corporation? A. Had three major assets; a mortgage management company called Landmark Finance Pty. Limited; a project for Landmark House in Brisbane; and Paradise Waters Estate, Surfers Paradise. 20

Q. What did this Paradise Waters Estate consist of? A. Consisted of deepwater frontage development at two parts. One part, freehold land, and the other part, leasehold land.

Q. Deepwater frontage development, one part -?

A. Freehold land; the other part leasehold land convertible to freehold land when it was completed. 30

Q. At the middle of 1966 what stage had that development reached? A. Dredging part of the development; it was 75% completed and had to be completed within the next two months because the Main Roads Department had to open an expressway passing that development, and they should have sufficient time to produce that part of the work after the filling area has been completed.

Q. Who were at this time the directors of Landmark Corporation? (No answer.) 40

Q. The middle of --- A. Mr. Armstrong, myself -

Q. Mr. Alex Armstrong, M.L.C? A. Yes.

Q. Yourself? A. Yes, John Cotter and John Osborne Bovill.

MR. STAFF: I take it this witness is only tendering his view of who were the directors.

HIS HONOUR: The answer has been given. If anything turns on it you had better put in leading form Mr. Bovill's de facto activities and positions.

MR. GRUZMAN: Q. Mr. Barton, I think the position 50

with regard to Mr. Bovill was that he had a number of shares in family companies, that he himself held personally 556 fifty cent shares which were subsequently altered with all the other shares to 270-odd \$1 shares and the share qualification for a director of the company is a personal holding of 500 shares? A. Yes.

Q. This point was raised at a certain stage and Mr. Bovill then stood down from the Board as chairman, subsequently acquired the correct number and was duly re-elected? A. What really happened, when Mr. Armstrong had been removed from the chair, the Board appointed John Bovill chairman. He was acting as chairman for a while and a few days before the general meeting Mr. Armstrong came to the Board Meeting and said, "John Bovill is not a director, he has no qualifications, therefore he cannot be a chairman of the Company". We had a solicitor present and he advised me that - (Objected to.) 10 20

Q. I think in fact Mr. Bovill's family companies had very substantial share holdings in the company? A. Yes.

Q. You told us the assets and the directors, what were the principal liabilities of the company in about the middle of 1966? A. The principal liabilities were the second mortgage and finance companies mainly to United Dominions Corporation Australia Limited, and second mortgage on Paradise Waters Estate to Southern Tableland Finance Pty. Limited. 30

Q. For how much? A. Was \$400,000.

Q. Did Mr. Armstrong substantially control Southern Tablelands Finance? (Objected to; rejected.)

Q. Would you look at that document and tell me who signed as director and who signed as secretary respectively? A. A. E. Armstrong director and Cyril Thorpe secretary.

Q. You recognise those signatures? A. Yes, I do.

Q. As to those positions? A. Yes.

MR. STAFF: I point out this was filed on 13th December 1967 and the question is directed to 1966. 40

MR. GRUZMAN: Q. Would you have a look at this and see if you recognise some of the signatures on the 1966 return? (Shown.) A. Yes, same signatures.

(Both documents referred to above tendered.)

Q. In that return the first director is Mr. Armstrong and the second director Mr. Robert Ian Grant? Q. Yes.

Q. Who is Mr. Grant to your knowledge? A. Mr. Grant is a solicitor.

Q. He is a solicitor acting in this case? A. Yes.

Q. The third director is Mr. Thorpe, is it not?  
A. Yes.

Q. Who is that gentleman? A. Thorpe is a very old employee of Pelgrave. He has been employed by Pelgrave, - now known as Landmark - for 25 years.

Q. He has been employed by Pelgrave for some 25 years? A. Yes.

HIS HONOUR: In paragraph 2 (read) that is not denied on the defence, holder and controller of the majority of shares, and according to his defence one of three directors. 10

MR. GRUZMAN: Q. In the course of the conduct of dredging operations was a contractor H. & V. Developments Pty. Limited employed to conduct that dredging?  
A. Yes.

Q. This was at Surfers Paradise on the Paradise Waters Estate? A. That is right.

Q. Did this contractor get behind with his work?  
A. Yes, he was behind with his dredging. (Objected to by Mr. Staff; rejected.) 20

Q. Did an occasion arise when you and Mr. Armstrong went to Surfers Paradise in connection with these dredging operations? A. Yes, in July 1966.

Q. In connection with that matter was some notice to be served on the contractor? A. Yes, dismissal notice to be served on the contractor.

Q. Would you tell his Honour of the conversation with Mr. Armstrong with respect to that matter? (Objected to by Mr. Staff.) 30

HIS HONOUR: This is leading up to evidence from which you want me to draw an inference of agency?

MR. GRUZMAN: Yes.

HIS HONOUR: I defer ruling on that at the moment and permit the defendant to tender the interrogatories administered to the plaintiff and the answer.

(Interrogatories administered to the plaintiff and the whole of the answer tendered; without objection marked Exhibit 1.)

HIS HONOUR: I will defer my ruling on this. 40

(Further hearing adjourned to 10 a.m., Thursday 16th May, 1968.)

(Bank of New South Wales called on subpoena duces tecum. Mr. Anthony Keppo, an officer of the bank, appeared in answer to the subpoena. Mr. Keppo produced a copy of the subpoena together with the documents called for therein, and stated that there was no objection to the documents so produced being made available to the parties for inspection, nor were the documents required by the bank as a matter of urgency. Excused.) 10

(Frederick Hume called on subpoena duces tecum by Mr. Gruzman. Mr. Hume stated that he had been served with two subpoenas and produced documents in accordance with the subpoenas. He stated that one of the documents produced - a diary for this year - was required back as a matter of urgency. Mr. Grumman stated that he did not require the diary for this year, and his Honour permitted the diary to be retained by Mr. Hume, on condition that its safety was ensured during the currency of the hearing, in the event of its production being subsequently required. Excused.) 20

PLAINTIFF:

On former oath:

HIS HONOUR: Q. You are on your oath as of yesterday, Mr. Barton? A. Yes. 30

MR. GRUZMAN: At the adjournment yesterday your Honour had deferred ruling -

MR. STAFF: Before my friend resumes, there are one or two matters in the transcript. At the foot of p.5 the question is recorded as being, "I think you first came in contact with Mr. Armstrong whilst you were a director of Finlayside Pty. Limited." I think the question was: "... you were a director of Home Septic Tanks Pty. Limited." 40

At the top of p.6, in the first question, the question is recorded as "I think that the company contracted some debts of Australian Factors." "contracted" should be "factored."

MR. GRUZMAN: There was a question before your Honour at the adjournment yesterday and your Honour had deferred ruling on it.

HIS HONOUR: I have formed the view that this ought to be admitted. I allow the question. Perhaps you can put it again. 50

MR. GRUZMAN: Q. Mr. Barton, you were asked these questions: "Q. Did an occasion arise when you and Mr. Armstrong went to Surfers Paradise in connection



with these dredging operations? A. Yes, in July, 1966. Q. In connection with that matter was some notice to be served on the contractor? A. Yes, dismissal notice to be served on the contractor. Q. Would you tell his Honour of the conversation with Mr. Armstrong with respect to that matter?"

Will you answer that last question? A. Mr. Armstrong said, "Mr. Hopgood", meaning the managing director of H. & V. Development Pty. Limited, "might put up a fight if we try and get this machinery. I have a man who does all my dirty work I employ permanently." 10

HIS HONOUR: Q. "I employ ..."? A. "I employ him permanently, and he does all the strong-arm work that I may require. He will be able to do this job efficiently."

MR. GRUZMAN: Q. Yes. A. Then he turned to Mrs. Armstrong and asked her ---

Q. What did he say? A. "Give me Fred's number". 20

Q. Did Mrs. Armstrong do something? A. Mrs. Armstrong took out a black small notebook from her bag, and while she was looking for the number she said, "I don't think Alexander Barton will agree to the methods what you and Fred use."

Q. Did Mr. Armstrong say anything? A. Then Mr. Armstrong said - I just want to be precise - "The company has not got anybody who can do that job as efficiently as Fred can do it. He has done many jobs for me before." 30

Q. Up to that stage had you met Frederick Hume?  
A. I never met him. Never heard of him.

Q. When did you see him, following this conversation? A. Next morning Mr. Armstrong brought him along to the Chevron Hotel where I was staying.

Q. Yes. A. Mr. Armstrong introduced him to me and said, "This is Fred Hume."

Q. You saw a gentleman in Court earlier this morning on subpoena. Was that the man you were introduced to? A. Yes, that was the man. 40

Q. Well then, what happened? You were introduced at the hotel. What happened then? (Objected to; disallowed.)

Q. You were introduced in the hotel. What did Mr. Armstrong say when he introduced you? (Objected to; allowed.)

Q. What did Mr. Armstrong say when he introduced Mr. Hume to you in the hotel? A. "Better you get Mr. Hume to serve the dismissal notice on H. & V. Development"; and I went up to my room and - 50

Q. The question I asked you is what did he say?

I mean by way of introduction. This was the first time you met Mr. Hume? A. Yes.

Q. I am merely asking you what did Mr. Armstrong say to you when he introduced you? A. He said, "This is Frederick Hume, and this is Alexander Barton."

Q. And then he went on with this other conversation you just mentioned - "better to get Fred Hume to serve the notice"? A. Yes. 10

Q. Did you give Fred Hume the notice to serve?  
A. Yes.

Q. And did you again meet Fred Hume? A. Yes.

Q. When was that? A. I met him on the same day again in Mr. Armstrong's company, and he said that it is difficult to serve the dismissal notice, because he went to Mr. Hopgood's home and his wife said to him that he is not at home and she said if he were at home he might jump out the window and run away. 20

Q. I think you got some legal advice on the matter? A. Yes.

Q. Did you again see Mr. Hume during the day? A. I saw Mr. Hume the next day.

Q. Was this in Mr. Armstrong's presence? A. It was in Mr. Armstrong's presence in front of the Paradise Towers building on the Pacific Highway.

Q. What conversation took place between you then? (Objected to; argument ensued.)

HIS HONOUR: Leave to the plaintiff to amend the statement of claim by alleging agency of the second to the sixth defendants by the first defendant by inserting a specific allegation where so desired after references to the "firstnamed defendant". Costs reserved. 30

(Further argument on admissibility of question.)

HIS HONOUR: The plaintiff seeks to tender evidence of the conversation between Mr. Armstrong and Mr. Hume at which he was present in which, as I understand the proffered evidence, Mr. Hume and Mr. Armstrong agreed upon a specific course of conduct being followed by Mr. Hume on behalf of Landmark Corporation Limited at the request of Mr. Armstrong. The evidence is sought to be supported, in terms of admissibility, on the ground that the relationship between Mr. Armstrong and Mr. Hume is relevant. The way in which the plaintiff seeks to make this relevant is by foreshadowing evidence in due course that threats were made to him by Mr. Armstrong, and that later he was subjected to those threats being reiterated by or through the agency of Mr. Hume. From this it will be sought to have an inference drawn 40 50

that the relationship between Mr. Armstrong and Mr. Hume was such as to lead to the conclusion that what Mr. Hume did he was doing on Mr. Armstrong's behalf. Evidence is also tendered of the general relationship between Mr. Armstrong and Mr. Hume, and it does not seem to me that it is open to the plaintiff to prove specific commissions undertaken by Mr. Hume for Mr. Armstrong on other occasions.

For these reasons I reject the question, and I shall reject any further proffered evidence relating to this particular transaction in Surfers Paradise.

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MR. GRUZMAN: Q. Mr. Barton, will you have a look at this document I am showing to you? A. Yes.

Q. Do you recognise the signature on the document? A. Yes.

Q. Whose signature is that? A. Frederick Hume's.

Q. What is the document? (Objected to; argument ensued.)

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HIS HONOUR: I am of the view that the document should not be admitted. The conspiracy formulated by the plaintiff in respect of the admissibility of this document is said to be a conspiracy between Mr. Armstrong and Mr. Hume, and perhaps others, to use wrongful force as and when required by Mr. Armstrong by whatever means, lawful or unlawful, as may serve Mr. Armstrong's objects. That is not, as I understand the pleadings, the case propounded on behalf of the plaintiff. Para. (9) alleges that Mr. Armstrong threatened to have the plaintiff murdered; para. 10 alleges that Mr. Armstrong engaged criminals to kill or otherwise injure the plaintiff. It may well be as a principle governing admissibility of evidence a charge of conspiracy will govern the admissibility of acts by the persons said to have been engaged to kill or otherwise injure the plaintiff, and by Mr. Armstrong, but these acts must in my view be in furtherance of the common object as pleaded. It does not seem to me to be open to the plaintiff within the form of these pleadings or the case which is sought to be made on his behalf to allege a conspiracy in quite such broad and general terms as are formulated by counsel from the bar table in support of the admissibility of the document. I accordingly reject it, but for the purpose of the record I shall have it marked for identification "2".

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(Document bearing signature stated to be that of Frederick Hume, m.f.i. 2.)

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MR. GRUZMAN: Q. After the incident at Surfers Paradise were you on friendly terms with Mr. Armstrong? A. Fairly friendly, but I was disgusted with the things that happened at Surfers Paradise.

HIS HONOUR: Q. I am sorry, I did not hear that. A. Fairly friendly terms, but I was disgusted - (Objected to.)

Q. Fairly friendly, subject to some qualifications. Would that be a fair way to put it? A. Yes.

MR. GRUZMAN: Q. Can you tell us when Mr. Armstrong went overseas? A. Early in August, 1966.

Q. And when he returned from overseas what happened? Did you speak to him? A. Yes. I heard that Mr. Armstrong and his wife arrived at Landmark Corporation's office. I went to him, and said, "I am not prepared to work with you in any circumstances." 10

HIS HONOUR: Q. You said, "I am not prepared to work..." A. "... with you on any circumstances. I see only one alternative, that you resign and get out of Landmark Corporation Limited. I can't resign myself, as much as I would like to, because of my responsibility to shareholders, United Dominions Corporation Limited, and other persons and parties connected with the projects which are under consideration." Mr. Armstrong replied that he was not prepared to resign, and he said that the city is not as safe as I may think between office and home and I will see what he can do against me and I will regret the day when I decided not to work with him. I would like to qualify these discussions. I have to say the background of these discussions. Before Mr. Armstrong returned to Australia the company secretary showed me post office charges - (Objected to.) 20

MR. GRUZMAN: Q. I think the position was that there had been a number of disagreements between you. (Objected to.) 30

Q. Why did you tell Mr. Armstrong that you could not work with him any longer? (Objected to; rejected.)

Q. Was there an incident when you received a paper from the company secretary and you went in to see Mr. Armstrong with that paper? A. Yes.

Q. Did that occur before he went overseas? A. Yes, the company secretary ---

Q. You can't tell us what he told you. He brought you a piece of paper, and did you go in to Mr. Armstrong's office with the piece of paper and have a discussion with him? A. Yes, Mr. Stewart, the company secretary came to me and tossed a piece of paper on my desk. 40

Q. You can't tell us that. You took the piece of paper? A. Yes, and he asked me if I will approve this request from Mr. Armstrong. The request was that Mr. Armstrong wanted - (Objected to.)

HIS HONOUR: The question at the moment is confined to what you said to Mr. Armstrong when you went in to see Mr. Armstrong. 50

MR. GRUZMAN: Q. You cannot tell us for the moment what discussions took place between you and Mr. Stewart, but when you went into Mr. Armstrong's

office did you discuss with him about this piece of paper and so on? A. Yes. I did hand that - I handed to Mr. Armstrong the piece of paper marked with a red pencil "No" signed by me. The request - (Objected to) I said to Mr. Armstrong, "You cannot have a boat in Sydney and you cannot have a boat at Surfers Paradise and you can't have a chauffeur all the time and paid by the company."

Q. What was Mr. Armstrong's attitude to that? A. 10  
~~Mr. Armstrong in a threatening attitude, said to me, "I am a large -"~~ (Objected to; by direction answer struck out as indicated.)

HIS HONOUR: Just confine yourself to what was said.

MR. GRUZMAN: Q. Did Mr. Armstrong stand up or sit down? What did he do or say? A. He was sitting down, and he said, "I am a large shareholder of this company; I am a large creditor of this company, and I can issue a s.222 notice against the company. I can wind up the company any time I want to." 20

Q. How did he say that? What was his tone? A. Quite normal. He was hostile because I didn't approve his request.

Q. Did anything further happen in that incident?  
A. No.

Q. Don't answer this in case it is objected to. Why did you not approve these requests? (Objected to; rejected.)

Q. Did you have any other discussion with Mr. Armstrong about company matters relating to Mr. Armstrong personally? A. Yes. Before Mr. Armstrong went overseas he asked me to approve overseas expenses for himself and his wife. 30

HIS HONOUR: Q. For whom? A. For himself and for his wife. I refused.

MR. GRUZMAN: Q. You might tell us what Mr. Armstrong - he was chairman of directors of the company?  
A. Yes.

Q. Did he have any executive position in Landmark Corporation? A. No. 40

Q. Did he attend at the offices? A. Yes. He was there nearly every day when he was in Sydney.

Q. And were the company's offices used by Mr. Armstrong for any purpose? (Objected to; allowed.)  
A. Yes. Mr. Armstrong had all his private companies registered in Landmark Corporation office. His office occupied certain space of the company premises. Mr. Armstrong had at least two employees of Landmark Corporation, and paid by Landmark, working on his own private affairs. (Objected to.) 50

Q. Did you have a discussion about this subject matter with Mr. Armstrong? A. Yes.

Q. What was that discussion? A. I told Mr. Armstrong -

Q. When was this? A. On many occasions. Not only one occasion.

Q. In relation to Mr. Armstrong going overseas can you indicate to us when the last discussion was prior to that? A. It was a few days before he went overseas.

Q. A few days before he went overseas? A. Yes. 10

Q. See if you can sort out in your mind that discussion on this subject? A. I already had said -

Q. You mentioned that he was using employees - employees were being used? A. Yes.

Q. What discussion did you have with Mr. Armstrong on that subject matter? A. I told Mr. Armstrong that he could do two things - to employ people himself and pay the people to work for him and take his private companies out of Landmark Corporation premises, or he can agree with Landmark Corporation Limited and have the Board to approve that he should pay a certain fee to recompense Landmark for the expenses. 20

Q. Up to the time that Mr. Armstrong went overseas, or at the time that he went overseas what were your personal relationships with him? A. On the surface it was fair - fair.

HIS HONOUR: Q. Did you say "fair" or "bad"? A. Fair. But I had disagreements with him all the time. I never agreed on most of the cases with him. On the surface it was fair, till the Surfers Paradise incident. 30

(Luncheon adjournment.)

At 2 p.m.

HIS HONOUR: You are still on your oath, Mr. Barton.

MR. GRUZMAN: Q. Mr. Barton, I omitted to ask you a question relating to a conversation which took place in May 1966, which I dealt with in my opening. You might just tell his Honour whether there was some difference of opinion between you and Mr. Armstrong in May 1966? A. Yes, it were. (sic.) 40

Q. What was the conversation between you and Mr. Armstrong about that matter? (Objected to; allowed.)

Q. Just before coming to the conversation I would like you to tell his Honour if you can, the incident or incidents which led up to this conversation. This is the conversation in May 1966. (Objected to; rejected.)

Q. Mr. Barton, immediately prior to this conversation

did you have some conversations with a man called Doug Bryant, and Kilmartin and Laurie Wall? Did you have some conversations with those people? A. Yes.

Q. With all of them? A. Yes. I went first -

Q. You can't tell us what these conversations were, but as a result did you form a certain opinion about something Mr. Armstrong was doing? A. Yes.

Q. Well then, did you have a conversation with Mr. Armstrong about that matter? A. Yes. 10

Q. Will you tell his Honour what that conversation was? A. I told Mr. Armstrong, "You are a vicious and ruthless man. You are only interested in your own financial affairs. You go as far as death, conspiring to mislead justice, and contact anybody in any high position, including judges."

Q. Did Mr. Armstrong answer that? A. Yes.

Q. What did he say? A. He said, "Never mind all this. I have my own way of getting things done, and I always get what I want, but I agree for you to have the physical running of Landmark Corporation Limited." 20

Q. In the course of that conversation and prior to these remarks did you tell Mr. Armstrong anything about the belief that you had come to? A. Yes. I said to Mr. Armstrong that I am very seriously objecting that he is instructing people to spy on me - giving information after any conversation or dealings I had with them. I told him I objected that he committed the company to various real estate deals and objected that Mr. Armstrong was dealing directly with Laurie Wall who sold his business out to Doug Bryant and Doug Bryant was Landmark's agent at Surfers Paradise and Mr. Kilmartin was the representative of Landmark Corporation and subsidiaries. 30

Q. Did Mr. Armstrong make any comments about these statements of yours? A. Yes.

Q. What did he say? A. Mr. Armstrong said that he had been dealing with Laurie Wall for many years, and he made some remarks about Doug Bryant, and said, "Doug Bryant is not a proper person to deal with," and then - 40

Q. You told him "You are a ruthless, vicious man ..."? A. Yes.

Q. Would you mind just telling me after that incident in May were there further discussions with Mr. Armstrong in the ensuing weeks about money matters? A. I had constantly discussions with Armstrong about money matters. He tried to withdraw his loans from Landmark Corporation --- (Objected to.) 50

Q. What did he say about his loans to the company? A. On one occasion he said he wanted Landmark

to repay him \$100,000. I told him that the company's liquidity position cannot afford at this stage, but I will make all effort to see that he will be paid, and then he said, "I am in a position, as a creditor of the company, and my money is overdue, I can issue a s.222 against the company and liquidate the company." On another occasion ---

Q. Can you help us as to when that conversation was? A. I can't place the date. 10

HIS HONOUR: Q. Before or after he went overseas?  
A. Before.

MR. GRUZMAN: Q. You were speaking of another occasion? A. Yes, on another occasion at a Board meeting Mr. Armstrong demanded 18 per cent. interest for his loan moneys. He said, "The money is due," and he wanted 18 per cent. interest. I told him under no circumstances I would agree that the company pays him more interest than what the company pays to any other finance company. It was a very heated board meeting, and finally I did went as far as to tell him unless he withdrew the request I put it to the resolution of the board, but I think before that happened my co-directors said the same thing - that they are not prepared to approve any higher interest than has been paid to other finance companies. 20

Q. I think you yourself went overseas early in the year. Do you remember when you went overseas?  
A. Yes, I went towards the end of May, and I came back I think just before the end of June. 30

Q. Whilst you were overseas did you investigate methods of financing? Did you investigate methods of financing whilst you were overseas? A. Yes.

Q. Well then, I think we come to the incident when eventually certain things happened at Surfers Paradise with Armstrong and Hume, and then Mr. Armstrong went overseas, and you have already told us that when he came back from overseas you told him that you could not work with him? A. Yes. 40

Q. Following that statement was there a meeting of the Board of Landmark? A. Yes.

Q. Do you remember the date of that Board meeting?  
A. I think there were two Board meetings. One could be on 21st or 22nd, and another one on 24th or 25th or 26th.

Q. Are these the minutes of the Board meeting on 18th October? Is that Mr. Armstrong's signature? A. Yes.

Q. Is the next one a meeting on 24th October, and is that your signature on these minutes? A. Yes. 50

Q. Now, you might just tell us: This Board meeting of 24th October - can you tell us who was



present at that meeting? A. That Board meeting has been called by myself for the purpose to put the motion to the Board to clarify Mr. Armstrong's position in the company, and there was present all the directors of Landmark Corporation Limited and I also had invited Fred Miller, solicitor acting for the company.

Q. Was there some special procedure arranged to record what was said? A. Yes. I moved that a tape recorder be adopted for the purpose of this meeting and it should be under the control of Allen, Allen & Hemsley, solicitors, and that has been adopted by the Board. 10

Q. And in point of fact was a tape recording taken under the direction of Allen, Allen & Hemsley of what was said at the meeting? A. Yes.

Q. You told us you called this meeting for the purpose of defining the position of Mr. Armstrong in the company? A. Yes. I did put a motion to the Board first of all that the Board - (Objected to.) 20

Q. Tell us what you said on this matter at the Board meeting - the substance of it, shortly? A. Yes. In substance I told the Board that I no longer was prepared to work under the existing condition with Mr. Armstrong interfering with my job and committing the company without my knowledge; Mr. Armstrong drawing expenses which is not expenses of the company, and the Board had a choice --- 30

HIS HONOUR: Mr. Gruzman, I have rejected Mr. Staff's objection. That was on the basis that you would tender the evidence in direct speech.

Mr. Staff, when I overruled your objection I did not have in mind that he would be attempting to give you a summary of what took place. I do not want you to be mistakenly of the belief that I had ruled that a summary was admissible.

MR. STAFF: I had assumed the witness understood that he was asked what he said and he was giving what he said, even though it was a summary. 40

HIS HONOUR: He was asked to state the substance of what happened.

MR. GRUZMAN: Q. Although a tape recording was taken and kept under the control of Allen, Allen & Hemsley, so far as you know it has never been transcribed? (Objected to; allowed.)

Q. So far as you know it has not been transcribed? A. That is right.

MR. GRUZMAN: Q. How long did this Board meeting take, do you remember? A. Nearly all day. 50

Q. I don't want to ask you all of what took place, but you told us the purpose for which you

called the meeting. What was the conversation, so far as you can recollect - some at least of the things that you said to the Board on the subject of yourself and Mr. Armstrong? Can you tell us some of the things that were said in that regard? A. I tabled my motion, which is in the minutes, which I recommended to the Board that Mr. Armstrong no longer should occupy an office in Landmark Corporation Limited. Mr. Armstrong would have to remove his private companies from the company premises.

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Mr. Armstrong no longer will have a car to use. Mr. Armstrong has no right to use the Landmark employees for his own purpose, and I did ask Mr. Armstrong ---

Q. You said to Armstrong -? A. I said to Mr. Armstrong, "Have you paid Oscar Guth for the speech what he prepared for you what has been said in Parliament about the Opera House?" Mr. Armstrong said, "Yes." I have asked him if he paid by cheque or by cash, and he said, "By cash." But also I have asked Mr. Armstrong if he was prepared to resign as director, and he said, "No," but he might, and he jumped up and said, "Are you going to make a speech in the Opera House against me?" and he will resign. That was about one o'clock, and the Board meeting has stopped, and he came back and then he said he is not prepared to resign.

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Q. When you were giving evidence before and were asked in substance what happened, and you told his Honour in substance what happened, were those matters you spoke of in substance said in the course of the meeting? A. Yes.

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Q. Now, in the end what did the meeting decide on your motions? (Objected to; rejected.)

Q. Was the motion put to the meeting of directors? A. Yes.

Q. What was said? A. It has been resolved, with Mr. Armstrong dissenting - (Objected to; rejected.)

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Q. Who said what when the motion was put? A. I beg your pardon?

Q. Who said what? The motion was put by who? Who was in the chair? A. Mr. Armstrong.

Q. Was the motion put by Mr. Armstrong to the meeting? A. It has been put by me.

Q. You put the motion, and who said what when the motion was put? What did each director say? A. Two of the directors supported it - John Bovill and John Cotter, and Mr. Armstrong was against.

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HIS HONOUR: I am not clear what the motions were? Are these the motions originally described about vacating the office?

MR. GRUZMAN: I will tender the minutes of the meeting of directors of Landmark held on 24th October, 1966.

(Minutes of meeting of 24th October 1966 tendered and marked Exhibit "A".)

Q. Just to have to chronologically, you told his Honour about the conversation when Mr. Armstrong said that, "This city is not as safe as you may think between office and home", and other matters. Do you remember that conversation? A. Yes. 10

Q. Can you tell his Honour when that conversation took place in relation to the Board meeting of 24th October? A. It was just a few days before.

Q. A few days before that Board meeting? A. Yes.

Q. Will you look at this cheque, and tell me whether you recognise the signature on that cheque? A. Yes, I recognise it. Mr. Armstrong's signature, and Mr. Thorpe's signature - Cyril Thorpe. 20

(Cheque for \$500 tendered; objected to, ruling on admissibility deferred; cheque m.f.i. 3.)

Q. Will you look at this cheque? Do you recognise the signature on this cheque? A. Yes, the same two people - Mr. Armstrong and Mr. Thorpe.

(Cheque dated 4th January 1967 m.f.i. 4.)

Q. Will you be good enough to have a look at these documents which I show you, and tell me whether you can identify the signatures appearing on each of them? (Objected to; rejected.) 30

Q. Can you identify the signature of Frederick Hume on each of the documents? (Objected to; rejected.)

(M.f.i. 2 tendered; objected to; rejected.)

(File from the Registrar-General relating to Hume's Investigations tendered; objected to.)

(Business Names Act documents re Hume's Investigations tendered and marked Exhibit "B".) 40

Q. Having in mind some half hour has passed on technical discussion, I will just remind you that you told his Honour about a meeting of directors which took place on 24th October, and the resolutions that were passed at that meeting? A. Yes.

Q. Now could you tell his Honour what was the next thing that happened between you and Mr. Armstrong? A. On 19th November I think, or approximately 19th November, at another Board meeting Mr. Armstrong has been removed as chairman of the 50

company. On 15th November he moved out from Landmark Corporation offices.

Q. Have you got that order right? On 19th November you said there was a Board meeting at which he was removed as chairman? (Objected to; allowed.)

Q. Can you then give the date it was that Mr. Armstrong moved out of Landmark offices? A. About 15th November.

Q. That is prior to the meeting? A. That was consequent on the resolution on 24th October. He had two weeks to move out, and I think 15th November was the date he moved out. On 19th November the Board resolved that Mr. Armstrong would be no longer chairman of the corporation, and John Osborne Bovill has been appointed chairman. 10

Q. Now, after Mr. Armstrong had been removed as chairman of directors did you notice anything happening to you? A. Yes. (Objected to; rejected.)

Q. I will come to a conversation. Can you remember a conversation with Mr. Armstrong late in November 1966? Do you recollect having a conversation with Mr. Armstrong late in 1966? A. Yes. 20

Q. Can you tell his Honour what that conversation was? A. Mr. Armstrong said to me that, "I am of German origin, and Germans fight to the death".

HIS HONOUR: Q. I am sorry, I did not hear that. A. "I am of German origin, and Germans fight to the death. I will show you what can I do against you, and you had better watch out. You can get killed." 30

MR. GRUZMAN: Q. Prior to that conversation had you noticed something which gave you concern for your personal security? (Objected to; allowed.) A. ~~Yes, from the middle of November onwards I had seen people following me, watching my home. Mostly strangers. I seen Frederick Hume on a few occasions. I got so concerned that I started to worry about my physical safety, and finally I hired Australian Watching -~~ (Objected to.) (By direction answer struck out as indicated.) 40

HIS HONOUR: You will have to keep a little more control, I think, Mr. Gruzman. The answer will be struck out. Strictly speaking, the answer to the question asked presumably should have been "Yes," and then you would have proceeded from there to ask further questions. You ought to go back again and put the question to him. Keep control of the witness so that these objections can be taken, if they are to be taken, and dealt with. 50

MR. GRUZMAN: Q. You do tell his Honour that round about this time you had noticed something which concerned your personal security? A. Yes.

Q. What was it that you saw? (Objected to;

argument ensued; ruling on admissibility deferred.)

(Witness stood down.)

(Frederick Hume called on subpoena duces tecum by Mr. Gruzman.)

MR. GRUZMAN: Q. You are before the Court again, Mr. Hume, on the subpoena duces tecum upon which you were called earlier? A. Yes.

Q. You produced to the Court in answer to a call for diaries three books, one of which you said was the 1968 book, which you subsequently took away, with the Court's leave? A. Yes. 10

Q. That left two diaries? A. Yes. (Objected to.)

(Mr. Gruzman sought leave to examine Mr. Hume on the voir dire.)

FREDERICK HUME

On voir dire:

MR. GRUZMAN: Q. What is your full name? A. Frederick Hume. 20

Q. Where do you reside? A. 33 Garling Street, Lane Cove.

Q. What is your occupation? A. Private inquiry agent.

Q. You were served with a subpoena duces tecum to produce to the Court all note books, diaries and records relating to your movements from 1st January 1966 to date, and other documents? A. I was.

Q. In answer to that subpoena you produced a diary, or book, quarto size, which terminates on 17th April, 1965? A. I produced all the books that are in my possession. 30

Q. First of all, you produced three books altogether falling within the description of diaries, did you not? A. Three books, yes, and then you returned me the one book for the current year.

Q. The current year, 1968, was returned to your custody by the Court? A. Yes.

Q. That left two books? A. That is right.

Q. The first one is quarto size, and it ends with an entry - foolscap size, and ends with an entry on Saturday, 17th April, 1965? A. Yes. 40

Q. The other book is a small book, which commences with an entry of 5th January, 1967? A. That is right.

Q. Did you have in your possession at any time a diary which records your movements between April  
Plaintiff, x, stood  
down -

1965 and January 1967? A. Yes, there was a foolscap one, the same as the one you have in front of you.

Q. One, or two? A. There would have been two.

Q. Two foolscap books, similar to the first diary that you have produced? A. Yes.

Q. When did you last have those documents in your possession? A. I last had those documents some time in August, 1967. 10

Q. August, 1967? A. I can tell you the date. It was either the 12th or the 13th when the robbery occurred and the documents were destroyed. The place was completely demolished.

Q. This is on the 12th or 13th August, 1967? A. Yes.

Q. Where were the documents when you last saw them? A. They were in Riley Street - 77 Riley Street.

Q. Do you occupy the whole of those premises? A. I occupied those premises, yes. 20

Q. The whole of the premises? A. No, not the whole. It was a unit.

Q. A unit? A. Yes.

Q. On what floor? A. On the ground floor.

Q. On the ground floor? A. Yes.

Q. Did that have a number? A. Yes. It was unit No. 19, it would be.

Q. Did you have a number of books there? A. Quite a lot of books. All sorts of books. They were mainly documents of various investigations in accident cases, and so on. They were all destroyed. 30

Q. They were records of all the work you had done? A. Yes. Not only work I had done, but also that some of my employees had done.

Q. Detailed records? A. Detailed records.

Q. Of your movements? A. Yes, detailed records.

Q. When did you last see these diaries yourself? A. I last saw them the day before this robbery.

Q. Did you come back to the premises? A. I came back to the premises, yes. 40

Q. When did you come first after the robbery? A. I was at Katoomba, and when I returned the place was in a shambles.

Q. How long were you away in Katoomba? A. I was away for one day - nearly two days.

Q. Where were you staying up there? A. At the hotel. I believe it is called the Carrington.

Q. The Kurrajong Hotel? A. It was the big one in the centre of the town. Carrington.

Q. Did anyone live in these premises? A. Yes.

Q. Who lived there? A. My secretary.

Q. Your secretary? A. Yes.

Q. What is her name? A. Annette Catt.

Q. Was she away from the premises? A. She was in Katoomba with me. 10

Q. She was in Katoomba with you? A. Yes.

Q. Would you just tell the Court; had there been a fire in the premises? A. No. There was a robbery.

Q. A robbery? A. Everything was taken.

Q. Would you mind telling his Honour what was taken? A. The television was taken, a typewriter, and various other things. Everything was torn around the place. Some documents were left. 20

Q. Your taxation records and cash book were quite intact, weren't they? A. They were not kept at Riley Street. They are kept with my father, as he keeps my income tax things in his possession at Garling Street.

Q. Do you say - did you look for these diaries afterwards? A. Did I look for them? The police have been looking for them since the day of the robbery.

Q. On the day of the robbery did you look for the diaries? A. Did I look for them on the day of the robbery? When I walked in there I realised that the place had been robbed - everything has been thrown around, and there was everything missing. 30

Q. And do you tell his Honour that these two foolscap diaries were actually stolen from the premises? A. That is right. They were actually stolen.

Q. They were not there in a torn-up state? A. No, they were not there in a torn-up state. There were a number of things missing - not just the two diaries. 40

Q. Diaries and documents relating to your work and movements during that period were actually stolen? A. Yes.

Q. Did you start another diary for the year 1967? A. No, I didn't start another diary. I used the same as a telephone book. It is not a diary; it

is actually for telephone messages, so it keeps me informed of what I have to do on a particular day. My diary is kept with a record of the things that I do and have to give evidence in Court about. That is the foolscap diary.

Q. Your 1967 diary was not stolen, was it? A. No. That was with me.

Q. That was with you? A. Yes. That keeps me informed what I have to do every day. 10

Q. There are very few entries in this diary? A. They are things I have to do. That does not mean they are the things my employees have to do, or my secretary. She has her own diary. They are just things that I had to do.

Q. To whom was this robbery reported? A. To the Darlington Police. There were two robberies -

HIS HONOUR: Mr. Gruzman, I think this has gone as far as you can take it now.

(Witness retired.) 20

(Further hearing adjourned to 10 a.m., on Tuesday, 21st May, 1968.)



CORAM: STREET, J.

BARTON -v- ARMSTRONG & ORS.

FOURTH DAY: TUESDAY, 21ST MAY, 1968.

HIS HONOUR: There is one matter in the transcript on p.17, in about the tenth line from the top: "Are you going to make a speech in the Opera House against me?" I think that that should be "Upper House". If counsel has no objection that will be amended to "Upper House".

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MR. STAFF: There is one on p.14, 11 lines from the bottom - the fourth last question. Towards the end of the sentence the transcript shows "... and contact". That should be "would attack".

(An officer of Traders Finance Pty. Limited called on subpoena duces tecum by Mr. Gruzman. Ronald Frederick Brock, a representative of Traders Finance Pty. Ltd., 124 Phillip Street, Sydney, appeared in answer to the subpoena. Mr. Brock produced the documents called for in the subpoena, together with a copy of the subpoena, and stated that there was no objection to the documents so produced being seen by the parties, nor were the documents required back as a matter of urgency. Excused.)

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(Commissioner of Police called on subpoena duces tecum. Sgt. Ian Barry Anderson appeared in answer to the subpoena and was questioned on the floor of the court by Mr. Gruzman as under.)

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MR. GRUZMAN: Q. What is your full name? A. Ian Barry Anderson.

Q. You are a Sergeant of Police representing the Commissioner of Police in answer to a subpoena served on the Commissioner in relation to certain matters? A. Yes.

Q. Do you produce to the Court that document and the documents called for - do you produce that subpoena and the documents called for by it? A. I produce the subpoena and I also produce three documents which form part of the material which is called for in the subpoena. I have not up to the present time had sufficient time to be able to make a full search, and I feel that there will be probably notes in police note books concerning this matter, which I have not been able to get at this stage.

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MR. GRUZMAN: We understand this relates to the Hume robbery.

HIS HONOUR: Do you seek to have this further material?

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MR. GRUZMAN: If I may recall Sergeant Anderson at a later stage.

HIS HONOUR: Q. If there are other documents which you think may fall within the subpoena would you be good enough in the next couple of days to see if anything can be found? A. Yes, I will carry out further search.

HIS HONOUR: Q. If you communicate with Mr. Gruzman's solicitors and let them know the result, the matter can be brought forward again, if necessary. Is there any objection to the documents you have produced being seen by the parties? A. I am instructed that the Commissioner feels that the documents should only be made available when your Honour is satisfied that they are relevant.

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Q. Are they required back urgently? A. No.

HIS HONOUR: I will have to look at them if and when you want to see them, Mr. Gruzman.

MR. GRUZMAN: We would make application to see the documents now.

(Following inspection of the documents, his Honour excluded the modus operandi form from the documents produced on subpoena duces tecum and permitted the remaining two documents to be inspected by counsel. Modus operandi form returned to Sgt. Anderson, who was then excused.)

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(Mr. Gruzman addressed further argument in support of the admissibility of the question asked of the witness, the plaintiff, prior to his being stood down on Thursday, 16th May, 1968.) (P.19.)

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HIS HONOUR: The plaintiff seeks to adduce evidence of certain things which he said that he observed about the time when, according to him, his life had been threatened by the first defendant. The nature of the evidence which it is proposed to lead, as I understand it, is that he observed one identified person and a number of unidentified persons loitering in the vicinity of his home in such circumstances as to put him in some fear for his personal safety. The evidence is objected to upon the ground that there is no basis laid for admitting, as against the first defendant or any of the other defendants, these alleged events. No ground, so the objection goes, has been laid for attributing to any of the defendants' responsibility with these events.

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Other matters have been canvassed in argument, but it seems to me desirable at this stage of the suit that I confine the reasons for my ruling essentially to so much as is necessary to determine the point taken in the objection. One important issue in the suit will be the state of the plaintiff's mind at the time when he signed the documents which are challenged. The degree to which, if at all, the defendants or any one of them were responsible for inducing that state of mind, and the effect of that state of mind upon the decision to execute the document are separate issues which

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will also require determination at the proper time. It does, however, seem to me, as at present advised, that the evidence now sought to be led is relevant to the state of the plaintiff's mind at the present point of time. I do not regard it as relevant to the other issues that I have mentioned, but at this point of time, the evidence not being complete, it is impossible to form even a tentative conclusion in regard to these other issues and their effect upon the admissibility of this evidence. Being relevant to the state of the plaintiff's mind, I am of the view that the evidence is admissible, and I allow the question to which objection was taken. 10

PLAINTIFF  
On former oath:

HIS HONOUR: Q. You are still on your former oath, Mr. Barton, to tell the truth, do you understand?

A. I understand, your Honour.

MR. GRUZMAN: Q. I think you were telling us of some incidents or matters which you observed during November of 1966 which you said had some effect on your views as to your own personal safety. Will you tell his Honour what those matters which you observed were? A. I have seen a man standing behind a substation on the opposite side of the road, right opposite with my home and is just reading some papers. I looked up. I have a large glass window and I seen someone there and I just recognised him. Later on, about half an hour's time, I seen him again looking out behind a substation, and between the electric pole, ~~and-it-looked-to-me-that it-is-very-funny-that-someone-is-standing-such-a long-time.~~ (Objected to; by direction portion indicated struck out.) From that time onwards I was watching this point and I satisfied myself that this man - (Objected to.) 20 30

Q. What did you see? A. I seen a man standing there for all day.

Q. On one day, or more than one day? (Objected to; rejected.) 40

Q. On how many occasions did you observe this? (Objected to; rejected.)

Q. You saw this on some specific occasion. When did you next see something which attracted your attention? A. The following day and the day after - day after day until practically 8th January 1967.

Q. For how long, or on how many occasions on each day did you observe the man over that period? A. I usually seen him once or twice a day. 50

Q. Was there somebody there on each occasion that you looked, or on some occasions? What was the position with respect to that? A. Some occasions nobody was there, and some occasions some people was there.

Q. You have used the expression "some people"

and "a man". Will you tell his Honour, when you looked was there one person, or more than one person? A. One person, yes, there was one person.

Q. Were you able to identify that person? Could you see who it was? A. I could identify only one person on one occasion was Frederick Hume.

Q. On other occasions - I understand you to say that you only saw Frederick Hume on one occasion. With respect to the other occasions, did you see the same person, or different persons? A. I seen two or three people - two or three different people on different occasions. 10

Q. Did you from time to time see the same person on various occasions? A. Yes.

Q. Was there anything else of that character which occurred during the period you have spoken of which attracted your attention? A. Yes. ~~I have seen Frederick Hume in front of my office.~~ (Objected to; by direction portion indicated struck out.) 20

Q. What was it you saw? (Objected to.)

Q. Over this period you have mentioned did anything else happen which caused you to fear for your safety? A. Yes.

Q. What else happened? (Objected to; allowed for earlier stated reasons.) A. I have seen Frederick Hume standing in Pitt Street opposite Landmark Corporation Office for many hours on one occasion. I also seen other people standing there when I left Landmark Corporation office to go to the Bank of New South Wales in George Street. I had a bodyguard with me, and we noticed that somebody was following us to the bank. I spent about an hour in the bank. I came out. The man was standing - the same man was standing on the opposite side of the road. As soon as we passed him he followed me back to the building where Landmark Corporation office is. I looked out from the window and I seen the man was standing there for the rest of the day. 30 40

Q. You have told his Honour - first of all, will you tell us - you mentioned the name Frederick Hume. On a number of occasions did you see Frederick Hume in the vicinity of Landmark's office? (Objected to.)

HIS HONOUR: The defendants object again to this line of evidence, and in particular draw attention to the interrogatories and the answers. It seems to me that the complaint is well founded that evidence along these lines was not foreshadowed in the statement of claim so as to be fairly brought to the notice of the defendants, and thus so as to attract the interrogatories that I have no doubt would have been directed to this topic had the defendants been on notice in regard to it. At the same time, the evidence is in my view relevant for the reasons I 50

have stated earlier this morning and notwithstanding the objection taken by reference to answers to the interrogatories, and thence by reference to the statement of claim, I am of the view that I should allow the evidence in the appropriate adjournment which might enable them to meet any unexpected evidence along these lines.

MR. GRUZMAN: Q. You were telling us, I think, something about other matters which caused you to fear for your safety during the period that you have mentioned. Will you please give us a little more detail about them, if you can? A. I seen Mr. Frederick Hume in front of the Landmark Office standing there for four or five hours. I also seen him in the vicinity of my home.

10

Q. What was that? A. I also seen him in the vicinity of my home.

Q. You have mentioned those matters. Are there any additional matters that come to your mind at that time of a similar character to which you have been telling us about? A. ~~I-realised-that-I-have-been-followed~~ - (Objected to; by direction struck out as indicated.)

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Q. Will you tell us what you saw in that respect? A. I saw somebody following me in the city when I was moving around doing my business and I also saw that there was following a man when I left the city to go to home. A number of occasions I have seen a blue Falcon car and I have seen a two-ton red truck was following me many occasions. I had a bodyguard since I first noticed these movements around my house.

30

HIS HONOUR: Q. I am sorry, I did not hear that answer. A. I had a bodyguard since I first noticed these movements around my house, and the bodyguard was stationed at my home. Left with me for the office. He has been changed, and the other bodyguard was standing there all day. Then after eight hours has been changed and that bodyguard came home with me and stayed there all night until the next man arrived in the morning and changed him over and took me to Landmark office, and wherever I went during this period of about 20 or 21st November till 3rd December I always had one or two bodyguards with me or watching my home.

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Q. Were they armed men? A. That was armed men, and towards the end of November one of the bodyguards knocked on my door about six o'clock in the morning and said to me - (Objected to.)

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HIS HONOUR: I am of the view that what the bodyguard said is not the slightest evidence of the truth of what he may have said, but I admit it as an event falling within the earlier ruling I have given.

MR. GRUZMAN: Q. Please proceed with what happened? A. The bodyguard told me that at about four

o'clock in the morning, a car with four men in it without headlights on was stopped in front of my home, and he wanted me to contact his boss to arrange that at night time, two bodyguards should be stationed at my home, because he felt that he on his own cannot protect me, and so I arranged it, and from that time onwards I had two bodyguards watching my home at night.

Q. Over this period - I want to deal now with something of a different character to what you have been telling us about - (Objected to.) 10

Q. Can you tell his Honour the name of the bodyguard who spoke to you at six o'clock in the morning? A. At that time I knew him only as George. He is a man about fifty. Short grey hair, with a big body.

Q. Do you now know his name? A. Yes.

Q. What is his name? A. George Thompson.

Q. An employee of what company? A. Australian Watching Company. 20

Q. Australian Watching Company? A. Yes.

Q. And they are in Sydney? A. Yes.

Q. I had been dealing with something; you had been telling us about events of a certain character. I want to now ask you about other matters which occurred during this period which put you in fear. Can you recall any other matters - that is, other than persons watching you or following you, which put you in fear? A. Yes. (Objected to; admitted on the assumption that the matter to be adduced falls within the ambit of the earlier ruling.) 30

Q. Will you tell us? A. I had a conversation with Mr. Armstrong, and Mr. Armstrong have said, "I am of German origin and Germans fight to the death. I will show you what can I do against you. You had better watch out. You can get killed."

Q. Was there any other - was that a direct conversation, or on the telephone? A. That is in direct conversation. Mr. Armstrong wanted to convince me - (Objected to; rejected.) 40

Q. Was there any other conversation, or events similar to conversations which put you in fear? A. In November?

Q. Yes? A. I don't recall any. I had a conversation with Mr. Bovill.

Q. You can tell us about the conversation with Mr. Bovill. When was that? A. I think it was early December.

Q. Early December. Tell us that conversation. (Objected to; allowed.) 50

HIS HONOUR: I allow this conversation again not as any evidence of the truth of what was stated but as evidence of events which might have operated upon the plaintiff's state of mind.

MR. GRUZMAN: Q. What were the circumstances in which this conversation occurred? A. At a board meeting Bovill went to the washroom and Mr. Armstrong followed him.

HIS HONOUR: Q. What was that? I am sorry, I did not hear you. A. ~~Mr. Armstrong followed Mr. Bovill to the washroom, and when Mr. Bovill came back I have seen something upset him in his face.~~ (Objected to; by direction answer struck out as indicated.)

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MR. GRUZMAN: Q. Would you tell his Honour - you mentioned a board meeting. Would you tell his Honour what you saw at this board meeting in relation to Mr. Bovill? A. I seen Mr. Bovill leaving the board room and I also seen Mr. Armstrong went and followed. I seen Mr. Bovill return to the board room, and Mr. Armstrong returned after Mr. Bovill.

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Q. Did you observe something about Mr. Bovill? Did you see something about him before he spoke to you? A. I have seen Mr. Bovill when he came back. His face was white, and he was very disturbed, and after the Board meeting I have asked him what happened, and Mr. Bovill told me that Mr. Armstrong have said to him that he can hire Reilly or McMillan from Melbourne to kill somebody for £2,000, and Bovill told me that "I am worried about your safety. Mr. Armstrong might hire one of these men to rub you out".

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Q. I was endeavouring to direct your attention both to the conversations, and to, I think I put to you, "matters similar to conversations". Will you try to recollect whether any other events occurred over this period which put you in fear? This is the period from November to 8th January. A. ~~In November before the annual general meeting Mr. Bovill was trying to patch up the differences at least--~~ (Objected to; by direction struck out as indicated.)

40

Q. I will ask you this question. Over this period did you receive any telephone calls? (Objected to; allowed.) A. Yes, I received telephone calls early in the morning, between four and five o'clock in the morning.

Q. Received telephone calls between four and five o'clock in the morning? A. Yes.

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Q. Will you tell us about that? Tell us about these telephone calls? A. Most of the occasions nobody was speaking, only I heard heavy breathing into the telephone and some occasions the caller said, "You will be killed."

Q. On any occasion, did you recognise the voice

that was speaking to you on any occasion over this period? A. Yes, I recognised Mr. Armstrong's voice in January 1967.

Q. On how many occasions did you recognise Mr. Armstrong's voice? A. Many times he rang me and talked to me and told me his name. Are you talking about during this period?

Q. All the occasions. You mentioned an occasion in January you say you recognised Mr. Armstrong's voice. What was said by Mr. Armstrong on that occasion? A. "You will get killed." 10

Q. On how many occasions did you receive a telephone call in which you recognised Mr. Armstrong's voice in which something like that was said? (Objected to; rejected.)

Q. You mentioned a specific occasion when you say Mr. Armstrong said on the telephone, "You will get killed". Prior to that had you had a conversation with Mr. Armstrong on the telephone when anything like that had been said? (Objected to; rejected.) 20

Q. You told his Honour about a particular occasion in January when you recognised Mr. Armstrong's voice, and he said, "You will get killed". What else was said in the course of that conversation? A. Nothing was said. Just that word, that sentence.

Q. Nothing by either party? Neither by you or by Mr. Armstrong? A. ~~I-used-to-say-in-the-telephone when-these-early-morning-calls-came-in~~ 30

HIS HONOUR: That is not an answer. That answer will be struck out.

MR. GRUZMAN: Q. Did you on this occasion say anything in the telephone? A. Yes. I said, "You go to Callan Park".

Q. "You go to Callan Park"? A. Yes.

Q. Now, I would like to take you back to the earlier telephone calls? A. That is over the November-December period? 40

Q. Can you tell his Honour when these telephone calls that you have referred to in this context commenced? A. Started just after Mr. Armstrong has been removed from the chair on 19th November. ~~I-get-my-solicitor-to-arrange~~ - (Objected to; by direction portion indicated struck out.)

Q. They commenced after this event. Will you tell his Honour when was the first one after that event? A. About the same time when I started to see the people was standing behind the substation. 50

Q. Well, how long was that after the event when Mr. Armstrong was removed from the chair? A. About a day or two at the most.



Q. At what time of the day? A. Always between four and five in the morning. Mostly about 4.30, 4.55.

Q. In these earlier conversations we are dealing with now - that is the ones in November and December - what would happen? The 'phone would ring, and then what would occur? (Objected to.)

Q. What happened on the first 'phone call that you mentioned after Mr. Armstrong was removed from the chair of Landmark? A. Nobody was speaking --- 10

Q. The telephone rang, and then what happened?  
A. I picked it up, and said "Hullo". I was listening to someone to speak and heard only heavy breathing in the telephone, and nobody spoke.

Q. For how long did this continue? A. Probably a minute, I was always waiting to hang up.

Q. You can't tell us what you were always doing, but the caller hung up? A. Yes.

Q. When was the next one? A. The next one was the next morning. 20

Q. What happened on that occasion? A. Exactly the same as before.

Q. When was the next one? A. I can't be exactly sure of the dates. I would like to say that I received a 'phone calls about four or five days in a row, and a few days' break then, and three or four days again, and a bit of a break then, and it was going on, and I went to my solicitor to do something about it. 30

Q. For how long did this series of 'phone calls continue? A. On and off, about 18 months (sic.)

Q. Did you on any occasion other than the occasion that you referred to when you heard Mr. Armstrong's voice - on any other occasion was anything said to you? A. Yes. It has been said that "You will get killed". A voice which I could not recognise. ~~It-can-be-Mr.-Armstrong-but-it-was--disguised,--I-could-not-be-sure-that-it-was-him.~~ (Objected to; by direction portion indicated struck out.) 40

HIS HONOUR: Mr. Gruzman, I think you had better keep better control of your witness. You cannot have that. I don't think it is fair to force Mr. Staff into having to object. You will have to keep control of your witness.

MR. GRUZMAN: Q. What accent did the voice have? (Objected to; rejected.)

Q. Was there anything descriptive about this voice? Was there any distinctive about it, in the sense that it was a man or a woman? A. Definitely a man. 50

Q. Definitely a man? A. Yes, it was definitely a man.

Q. Apart from that was there anything distinctive about the voice? A. As I said, it was distorted.

Q. It was a distorted voice? A. It was a distorted voice, yes.

Q. Well, I think we are approaching the time now of the annual general meeting. First of all, had some litigation commenced in November between Mr. Armstrong and Landmark? A. Yes. 10

Q. And had Mr. Armstrong taken some action with respect to moneys due to him? Had Mr. Armstrong taken some action in that regard? A. Yes.

Q. Well then, did you on 23rd November - did the company, Landmark, on 23rd November 1966 receive a letter from United Dominions Corporation? A. Yes.

Q. Now will you tell his Honour, did an incident occur in connection with the Daily Mirror Newspaper? A. Yes. 20

\* Q. What was that? A. A photographer and a journalist came to the Landmark office. (Objected to; allowed.)

\* Q. What did they do? A. They took a photograph of myself and the bodyguard.

\* Q. Was that photograph ever - (Objected to; rejected.)

HIS HONOUR: The evidence regarding the attendance of the photographer and the journalist (questions marked \*) will be struck out. 30

MR. GRUZMAN: Q. Will you tell us, if you would, of the incident which I think you suggested took place on a certain day when Mr. Armstrong came to the Landmark office on an occasion when you had a bodyguard there? Will you tell us of that incident? A. That was in November 1966. We had a board meeting of Landmark Corporation Limited, and Mr. Armstrong has arrived. I was standing in the board room door. Mr. Armstrong went straight to the little office where my bodyguard was sitting and rushed to him and - (Objected to witness retired from the Court during ensuing argument.) 40

MR. GRUZMAN: The evidence which we seek to adduce would be to this effect that on the occasion when a board meeting of Landmark Corporation was to take place, Mr. Barton's bodyguard was in an office outside Mr. Barton's office. He was not present at the board meeting, and there had been no suggestion that he would be, and Mr. Armstrong walked into the offices of Landmark and was furious, jumping around like a madman, and Armstrong was body to body with the bodyguard, ordered him out in loud and furious terms, saying, amongst other things, "Get out from 50

here, you dirty bastard", and that was said in front of the office girls and other people, including Mr. Coleman, solicitor, and Mr. Barton said, "This is my bodyguard. You cannot act like this in front of the staff. This is a company and not a circus." Mr. Armstrong said, "I will get the fraud squad here. They will be here in five minutes". In five minutes two men arrived and Mr. Coleman, the solicitor, went to speak to them and told them, "This man is a body guard instructed by the managing director, and can stay here", and in due course the detectives left, and the board meeting took place. I would like to add that there was physical contact between the bodyguard and Mr. Armstrong by Mr. Armstrong grabbing him around the body, and there was foul language of a very nasty kind used by Mr. Armstrong.

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HIS HONOUR: I am not satisfied that evidence along these lines is relevant to the issues that I have to determine, and I reject it.

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(Witness returned into Court.)

MR. GRUZMAN: Q. You were mentioned a board meeting at which - mentioning a board meeting prior to which a certain incident took place. I don't want to hear anything about the incident, do you understand? A. Yes.

Q. At that board meeting did something take place on Mr. Bovill's qualifications as a director? A. Yes.

Q. I would like you to come now - is that the letter you referred to from United Dominions Corporation? A. Yes, that is the letter.

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(Photostat copy of letter tendered; objected to; rejected.)

(Minutes of meeting of directors of Landmark Corporation held on 24th November 1966 tendered; objected to; tender withdrawn.)

Q. At the meeting of directors of Landmark Corporation on 24th November 1966 who was present? Was Mr. Armstrong and yourself - A. Myself and Mr. Armstrong was present, and Mr. Bovill and Mr. Cotter.

40

Q. Did you read a letter? A. Yes.

Q. Will you look at this document which is now shown to you? Is that the letter you read? A. Yes, that is the letter I read.

Q. Did you read the whole of the letter? A. Yes, the whole of the letter.

Q. Would you read it out for his Honour in the same way as you did at the Board Meeting? (Objected to.)

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(Minutes of meeting of directors of Landmark

held on 24th November, 1966 re-tendered; admitted and marked Exhibit "C".)

HIS HONOUR: I will admit the minutes of 24th November, 1966, the relevant portion of which is said to be the reference to the letter from U.D.C., and a copy of the letter dated 23rd November, which is in the Minute Book immediately prior to the minutes of the next meeting. That will be Exhibit "C".

MR. GRUZMAN: Q. I think that you have already given evidence of a meeting of directors of Landmark at which it was resolved that Mr. Armstrong be removed as Chairman? You have already given evidence in regard to that? A. Yes. 10

Q. I think that that took place on 17th November, 1966? That meeting took place on 17th November 1966?  
A. I think it was on 19th November.

Q. And I think the effect of that under the securities was that Mr. Armstrong's companies' moneys became due and payable? (Objected to; rejected.) 20

Q. I think you have already given evidence that Mr. Armstrong demanded repayment of \$450,000? (Objected to; rejected.)

Q. As at November 1966 you told his Honour earlier what the assets of the company were. Would you tell his Honour also what were the principal liabilities?

MR. GRUZMAN: I think in fact that has already been dealt with. That was dealt with on p. 7 of the transcript. 30

HIS HONOUR: Then you are not pressing the question, Mr. Gruzman?

MR. GRUZMAN: No, I withdraw the question.

Q. Following upon Mr. Armstrong's removal as Chairman of the company, what happened about the \$400,000 owing to Southern Tablelands Finance Co.?  
A. ~~Mr. Armstrong called up \$400,000 --- wanted payment within seven days.~~ (Objected to; by direction answer struck out as indicated.) 40

Q. Was the amount of \$400,000 owing to Southern Tablelands Finance Company called up? A. Yes.

Q. And was Landmark in a position to pay that?  
A. No, it was not in a position to pay it.

Q. And was that the purpose of obtaining the letter from U.D.C.? A. Yes.

Q. Was there any other source at that time from which moneys payable to Southern Tablelands could be obtained? (Objected to; rejected.)

Q. Was there any other source that you knew from 50

which moneys payable - any other source that you knew or had in mind from which moneys payable to Southern Tablelands could be paid other than from U.D.C.? A. No.

Q. Now, with respect to these moneys payable to Southern Tablelands and other companies - first of all, were there any moneys payable to other companies in which Mr. Armstrong was interested? A. Yes, some \$50,000 plus interest was due to George Armstrong & Son Pty. Limited. 10

Q. You mentioned at some point of your evidence that Mr. Armstrong had said something about issuing a s.222 notice in respect of certain moneys? A. Yes.

Q. You have already given evidence in regard to that matter? A. Yes.

Q. Could you identify one occasion when that was spoken of by Mr. Armstrong? A. Yes.

Q. Take any particular occasion. What was said on that occasion? A. That, "I can issue a s.222 notice against the company and liquidate the company any time when I want to." 20

Q. Mr. Armstrong said that? A. Yes, Mr. Armstrong said that.

Q. On how many occasions did he say that? A. He said that on about 25 or 30 occasions.

Q. I would like to come now - first of all, had there been some newspaper publicity about the affairs of Landmark? A. Yes, very large publicity, yes. There was very large publicity. 30

Q. Had there been statements made by U.D.C.? A. Yes. (Objected to; allowed.)

Q. There had been statements made by U.D.C.? A. Yes.

Q. Had there been statements made by Mr. Armstrong? (Objected to; allowed.) A. Yes.

Q. And you yourself, I think, had made statements on behalf of the company? A. Yes.

HIS HONOUR: Q. In the press? A. Yes. 40

MR. GRUZMAN: Q. Had there been a considerable press coverage of the affairs of Landmark at round about this period? (Objected to; allowed.)

Q. Had there been considerable press coverage of the affairs of Landmark round about this time? A. Yes, very big coverage.

Q. Well then, at the general meeting, what were the motions which were put to the meeting? What motions were put to the meeting? I just want you

to enumerate them for the moment? A. Besides the ordinary matters of a company Mr. Armstrong has nominated certain people to be directors of Landmark Corporation Limited.

Q. Mr. Armstrong nominated certain people to be directors of Landmark Corporation? A. Yes.

Q. And were they standing in opposition to the directors who supported you? A. Yes.

Q. Had you been at the board meeting when the nominations were brought forward? A. Yes. 10

Q. What was that board meeting? Was that the board meeting of which the minutes have just been tendered? A. Yes.

Q. What was your view as to the validity of these nominations? (Objected to; not pressed.)

Q. Immediately prior to the Board meeting - say during the week or so before the Board meeting - what was the position about the 'phone calls that you had mentioned? (Objected to; objection not pressed.) 20

Q. What was the position with respect to 'phone calls during the week or so prior to the general meeting? A. It was very frequent.

Q. They were very frequent? A. Yes.

Q. And these were 'phone calls of the type you have mentioned earlier in your evidence? (Objected to; allowed.) A. Yes.

Q. What about other matters which caused you concern for your personal safety? A. ~~Threats by Mr. Armstrong and~~ - (Objected to; by direction answer struck out as indicated.) 30

Q. Before the general meeting did you take any special precautions to safeguard yourself? A. Yes.

Q. What were they? What precautions did you take? A. I employed bodyguards for 24 hours a day.

Q. What arrangements did you make with respect to your own personal safety at the general meeting? A. I have employed three bodyguards. 40

Q. Yes? A. One bodyguard was standing in the door with the company secretary, and I gave him instructions to check everybody who was not a shareholder but coming in with a proxy, and if any people who he suspected might be dangerous to my safety, to keep me under very strong surveillance.

Q. Where did this meeting take place? A. It took place at Phillip Street. In a hall at Phillip Street.

Q. What hall? Do you remember the name of the hall? A. I don't remember the name of the hall. Some play house.

Q. St. James Playhouse. You said that you had one bodyguard assisting the secretary at the door. What happened to the other two bodyguards? What was the position in relation to the other two bodyguards? A. Two bodyguards has been on my instructions staying behind the curtain on the dais. 10

Q. There was a dais, I think, at the end of the hall? A. Yes.

Q. And who were seated on this dais? A. There were some of the directors of Landmark Corporation Limited, a Mr. Riley, Q.C., and Mr. Coleman, the solicitor, from Allen Allen & Hemsley.

Q. Were they seated at a table large enough to accommodate them all? A. Yes.

Q. And facing the audience? A. Yes, facing the audience. 20

Q. And behind them was there a curtain? A. Yes, about three or four feet away was a curtain.

Q. And you say the bodyguards were behind the curtain? The bodyguards were behind that curtain, were they? A. Yes, they were behind the curtain.

Q. What were they doing there? A. I instructed them to watch Mr. Armstrong, and if necessary to pull me off from the chair.

Q. Did you address the meeting? A. Yes. 30

Q. Did Mr. Armstrong address the meeting? A. Yes.

Q. What was the result so far as the election of directors was concerned? A. Mr. Armstrong's nominations has been defeated.

Q. Following that, did you continue the employment of a bodyguard or what did you do in respect of that? A. I released them on 3rd December, 1966.

HIS HONOUR: Q. 3rd, 13th or 30th? A. 3rd.

MR. GRUZMAN: Q. That is after the general meeting? You had succeeded at the general meeting, and you released the bodyguards? A. Yes. 40

Q. Well then, were there certain Court proceedings in this Court between Landmark and the Armstrong - one or more of the Armstrong companies? (Objected to; rejected.)

Q. At the annual meeting had Mr. Armstrong said anything in your presence which caused you concern? Which caused you any concern - yourself, personally? A. I don't think - my answer is "No". 50

Q. You didn't actually hear anything? A. I would like to qualify that.

Q. What you want to say is that certain things were told to you, but you did not hear them? A. Yes.

Q. Well then, were there proceedings on 7th December 1966 in the Equity Court between Southern Tablelands Finance Company and Landmark with respect to an injunction to restrain money from being advanced by U.D.C.? A. I think this started at the end of November. 10

Q. At the end of November? A. Yes, I think it started at the end of November.

Q. Were you in Court? A. Yes, I was in Court.

Q. Shortly after the annual general meeting? A. Before the annual general meeting. I think it was on 1st December, 1966.

Q. Was the letter from U.D.C. produced to the Court? A. Yes, it was. 20

Q. And as a result, were there certain orders made by the Court? A. Yes, orders were made.

Q. Well then, at or about that time was there a Board meeting of Paradise Waters? A. After -

Q. Paradise Waters (Sales), was it? Paradise Waters (Sales)? What happened at that meeting? What date was that meeting, can you remember? Can you remember the date? A. The Board meeting was on 7th December.

Q. 7th December? A. 7th December, 1966. 30

Q. What took place at that board meeting? A. At that board meeting, in front of everybody present, Mr. Armstrong said to me, "You can employ as many bodyguards as you want. I will still fix you".

Q. Well then, was a further letter received from U.D.C.? A. Yes, it was.

Q. When was that? Do you remember the date of that letter? A. I don't know the exact date. It was before 14th December, and it was round about 10th or 11th December. 40

Q. Round about 10th or 11th December a further letter was received from U.D.C., is that right? A. Yes.

Q. While that letter is being obtained, I will just ask you this: What was done by U.D.C. with respect to the moneys owing to them? A. U.D.C. advised Landmark Corporation - (Objected to.)

Q. What did they do in respect of moneys that were owing to them? (Objected to; rejected.)



Q. What notification did you receive from U.D.C. with respect to moneys owing to them? (Objected to; rejected.)

Q. Did you have any conversation with U.D.C. or with a representative of U.D.C. with respect to moneys owing to them? A. Yes.

Q. With whom did you have that conversation? A. I had a conversation with Mr. Honey, managing director of U.D.C. 10

Q. With Mr. Honey? A. The managing director of U.D.C., and Mr. Honey said to me that U.D.C. have decided not to advance money to Landmark to pay out the \$400,000 due to Southern Tablelands Finance Pty. Limited, and also he told me that we will receive a letter from U.D.C. very shortly, and informed me that this letter will say that it no longer will pay the progress certificates which has been contracted with them before.

Q. Did you receive such a letter? A. Yes. 20

Q. Well then at that time would you tell his Honour what the position was about 'phone calls being received? What was the position about 'phone calls at that time? A. It is still going.

Q. Well then, over this period were there meetings of Paradise Waters companies? A. Yes. Mr. Armstrong, who is a director of both companies was calling meetings at short notice very frequently.

Q. At one of those meetings that you have just mentioned - at some time after that was there a conversation with Mr. Armstrong about his interest in Landmark? A. Yes. Mr. Armstrong was present at a board meeting on 14th December 1966. He asked me if I would come out from the board room because he had something very important to say to me. I have refused first, because I didn't want to talk to him on my own; I was preferring that everything that he wants to say, to say in front of other people. But he was insistent, and then I went with Mr. Armstrong to my room, and Mr. Armstrong said to me, "Unless Landmark buys my interest in Paradise Waters (Sales) Pty. Limited for \$100,000, and the company repays \$400,000 owing to me, and you buy my shares for 60¢ each I will have you fixed". 30 40

Q. What did you understand by that? What did you understand by the expression "I will have you fixed"? A. I understood that I will get killed. I was frightened. I was extremely worried about the safety of myself and my family.

HIS HONOUR: Q. What date was this? This is the 4th December or the 14th? A. The 14th December. 50

MR. GRUZMAN: Q. With respect to your position in the company, did you at any stage make any offer to resign? A. Yes. After this conversation I called my solicitor, Mr. Peter Coleman, of Landmark

to my office, and also John Bovill and John Cotter, and I have told them that the results of Mr. Armstrong's threats to me on the one hand ... (balance unintelligible.)

MR. STAFF: I can't follow this.

HIS HONOUR: Q. "The results of Mr. Armstrong's threats ..."? A. "... threats against my life and safety on the one hand, and on the other hand United Dominions Corporation did not gave me the money - gave the company the money that was promised to pay out Mr. Armstrong, I see no other alternative just for myself to resign, because the company now has been publicly damaged possibly through my own and Mr. Armstrong's activities", and I thought it is proper step for me to take is to resign.

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MR. GRUZMAN: Q. What happened? A. Mr. Bovill and Mr. Cotter persuaded me not to resign. (Objected to; rejected.)

Q. Tell us the conversation. What was said?  
A. Mr. Bovill said to me, "You can't resign and leave the company in mine and Mr. Cotter's hands." He also said that the right thing for me is to stay with the company as managing director, and he assured me of confidence in me and my activities.

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Q. I would like you to go back, if you would - I am taking this out of context - to the meeting of 24th November, of which the minutes have been tendered. (Objected to.)

Q. I take it that there were some other discussions not directly related to the matter you were speaking of? A. Yes, that is right.

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Q. Was there a general discussion about whether you should resign or you should not resign? Was there a general discussion about that? A. Yes.

Q. Now I want to take you back to the matter that you started to tell us about before the morning tea adjournment - an incident which occurred after the meeting of 24th November 1966 of which the minutes were tendered. I want to take you back to a matter that you started to tell us about? A. Yes.

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Q. You started to say to the Court that Mr. Bovill tried to patch something up, and you were stopped from saying it? A. Yes.

Q. Now I would like to take you to that conversation, and will you just briefly tell us what the conversation was? Who was present? A. Mr. Bovill and myself went to Mr. Armstrong after the board meeting and I said to Mr. Armstrong that these public fights will result in loss of money to the shareholders, and I told him that I already have the support of the shareholders and no further reason for him to contest that meeting, and I advised him - I said to him, "You should resign and get out

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and let us protect the shareholders' interests." Mr. Armstrong then said, "I am not working for the widows and orphans. I am working for myself."

MR. GRUZMAN: Q. We come back again now to the position in December 1966. Did you leave Sydney on a certain date in December? A. Yes.

Q. What date was that? A. On a Saturday and I think it was on the 24th December.

Q. You think it was Saturday 24th December. 10  
Now, prior to your leaving - and I will lead on this, I hope without objection - had U.D.C. required certain further securities? A. Yes.

Q. Had those securities been executed? A. Yes.

Q. I think that was on 23rd December? A. Yes.

Q. Had something been said to you by U.D.C. about appointing a receiver? A. Yes.

Q. Had U.D.C. said that they would appoint a receiver unless they received additional security? 20  
A. Yes.

Q. And had additional security been given over the Landmark Finance Company? A. And Landmark Housing & Development Company - has been given specific mortgage over the building owned by Landmark Housing & Development Pty. Limited as a collateral security too as additional security for the loans given to Paradise Waters (Sales). In fact, Mr. Honey went to Brisbane and has execute documents to appoint a receiver in Paradise Waters. As the result of the additional security this receiver has 30  
not been appointed.

Q. Was the appointment of a receiver withdrawn or was it deferred? A. In fact they undertook not to appoint a receiver for seven days.

Q. In the meantime whilst you were at Surfers Paradise had some letter, to your knowledge, been written to U.D.C.? A. Yes.

Q. Was that by Messrs. Cotter Bovill? A. Yes.

Q. To ask them to re-consider - (Objected to by Mr. Staff.) 40

Q. Was that in connection generally with finance? (Objected to by Mr. Staff; rejected.)

Q. When did you return from Surfers Paradise?  
A. On about 2nd January.

Q. What was the next thing that happened in relation to this matter after your return? Did you receive an approach from somebody on behalf of Mr. Armstrong? A. Yes. I have been approached by Bruce Henry Smith on about the 3rd or 4th January, 1967 and he said to me that he wants to negotiate 50

on behalf of Mr. Armstrong and his companies with a view to getting Mr. Armstrong out from Landmark Corporation and its subsidiaries.

Q. What particular proposition was put to you?

A. Mr. Smith said that Mr. Armstrong wants Landmark to buy his interest in Paradise Waters (Sales) for \$100,000; Mr. Armstrong wants his loan for \$400,000 to be repaid; Mr. Armstrong wants me to purchase his shareholding from Landmark Corporation Limited for 60¢ each.

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Q. What did you say to that? A. I told Mr. Smith that I am inclined to make some sort of agreement with Mr. Armstrong and his companies and I will be very happy if Mr. Armstrong gets out from Landmark Corporation Limited, but I am not authorised to make any agreement on behalf of Landmark Corporation Limited and I will seek the advice of my own solicitor and the company's solicitor in that matter.

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Q. Did you see Mr. Smith again prior to Saturday 7th January? A. No. I had had one or two telephone conversations.

Q. One or two telephone conversations with Mr. Smith? A. Yes.

MR. GRUZMAN: I accept the criticism that if I mention telephone calls from time to time that the ruling that your Honour mentioned might apply. May it be taken that unless I withdraw from that, unless I ask questions to the contrary, we assume that these telephone calls continued.

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Q. Now, did something happen on Saturday 7th January? A. Yes.

Q. What time of the day was it? A. About 3 o'clock in the afternoon a man who called himself Alec rang me and he said he would like to (Objected to by Mr. Staff.)

(Luncheon adjournment.)

TREVOR WILLIAM MANSER

On subpoena duces tecum:

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MR. GRUZMAN: Q. What is your full name? A. Trevor William Manser.

Q. You are a member of the firm of Brooks & Dean, chartered accountants? A. That is correct.

Q. Do you produce to the Court a copy of the subpoena served on the firm and the documents called for in the subpoena? A. Yes.

HIS HONOUR: Q. Are those documents documents in respect of which objection is taken to their being seen by the parties? Are they confidential in

Plaintiff interposed.  
T.W. Manser, x on  
subpoena duces tecum

any respect? A. Only as between client and accountant.

Q. Does your firm have any objection then to the parties to this litigation seeing them if they are relevant to the issues? A. Not for my part.

Q. Are they required back urgently? A. No. There are copies I have in the office.

HIS HONOUR: I will look at the documents before they are made available and determine for myself whether they should be seen by strangers. 10

(Mr. Gruzman sought leave for both parties to see the documents produced. The application was not pressed and Mr. Manser was allowed to leave.)

PLAINTIFF

Examination continued:

HIS HONOUR: I have already admitted evidence of events both in terms of happenings and statements made to Mr. Barton relevant to the existence on his part of a state of fear operative at the time he signed the documents under challenge. The evidence now tendered will, as I understand it, lead up to allegations that Mr. Barton was informed of a threat upon his life, following upon which he sought the assistance of the police. This appears to me to be relevant and admissible in connection with the state of Mr. Barton's mind at the relevant time and I propose to admit it for much the same reasons as I stated earlier this morning. 20 30

MR. GRUZMAN: Q. Will you please tell us what was the conversation on the telephone at 3 o'clock on the afternoon of Saturday, 7th January 1967? (Objected to.)

HIS HONOUR: I will have it noted that to avoid the necessity of repeated objections the ruling I have given would extend in general terms to the conversation which the witness was about to depose to and to events directly related to that conversation. 40

MR. GRUZMAN: Q. What was that telephone conversation, please? A. A man rang me on Saturday afternoon at 3 o'clock and he said his name was Alec and he wanted to talk to me urgently in my best interests. I have asked him what it is all about it and he said he cannot tell me on the telephone and he wants to see me in the Rex Hotel. I have told him I had an office and he can see me in my office on Monday morning and he said, "This matter can't wait until Monday morning it will have to be resolved today", and I told him unless he tell me what it is all about I have nothing further to talk with him and he then said he is going to ring me back in about an hour's time. 50

At 4 o'clock on the same afternoon he rang me and he said that this matter is in connection with Frederick Hume and his friend. Then I told him I want to see him and he should come to my home.

HIS HONOUR: Q. You told him you wanted to see him? A. I told him then that I am prepared to see him.

Q. And that he should come to your home? A. And that he should come to my home, and he said he didn't want to come to my home because he didn't want to be seen and then suggested that I will meet him at the Castlecrag Post Office at 6 o'clock and he agreed. Then I had a discussion with my son. 10

MR. GRUZMAN: Q. Don't tell us what that was. What did you do? A. And I then decided (Objected to by Mr. Staff.)

Q. Did you see your son go anywhere? A. My son and his friends in my wife's car went and was sitting on the opposite side of the road to watch me, to see what has happened. 20

Q. You went in your car. Which car was that? A. It was a white Mercedes and Alec told me to be with my white Mercedes and he can recognise it. I was waiting there about three quarter hours.

Q. This is outside the Castlecrag Post Office? A. Outside the Castlecrag Post Office - I was standing next to my car and no one turned up. I went home and guests started to arrive - we had tickets to the Royal Theatre and some guests started to arrive to come with us. We arranged to be going with two cars to the Royal Theatre. When I came back and when the guests started to arrive I told them I could not go. 30

Q. You can't tell us what you told them. Did something happen? A. Then I received another telephone call from the man who called himself Alec and he said I have not kept my bargain, I have not been on my own, he had seen a car, a Valiant, opposite the street, this is my wife's car and he recorded the registration number of the car and - 40

Q. Mr. Staff would like to know what he said. Do you remember what he said was the registration number of your wife's car? A. I even don't know my own car registration. I don't remember.

Q. What did he say? He said he had seen your wife's car? A. And I didn't kept my bargain and he wants me to come to the Rex Hotel at nine o'clock, and I agreed. I rang -

Q. Was anything else said? A. He said that the matter is very urgent and I am in big trouble. 50

Then I rang Mr. Fleming from the Australian Watching Company and I asked him to - (Objected to;

pressed on the witness' state of mind: allowed.)  
- and asked him to get somebody in to the Rex Hotel  
to protect me and he told me that the man named  
Robertson will be there, he knew me already because  
he was employed by him on my job before. Also two  
of my friends agreed to go to the Rex Hotel - (Ob-  
jected to; pressed on the same basis.)

Q. Did you speak to somebody else who was in  
your home at the time? A. Yes. I talked to Dr. 10  
Martin and his wife. They agreed -

Q. What did you say to them and what did they  
say to you? A. I said to them, "Are you prepared  
to go to the Rex Hotel well before 9 o'clock and  
make it sure that you recognise the man who I am  
going to talk?"

Q. Had you previously told them anything about  
what was happening? A. No. But I was going to  
continue - I didn't told them but they were present  
when I received a 'phone call. 20

Q. Then had the man Alec said anything to you on  
the telephone other than what you have said?  
(Objected to; pressed; allowed.) A. According  
to Alec's instructions I went - (objected to.)

Q. What did he say, if anything else? A. He  
said I should come to the Rex Hotel at 9 o'clock  
and be in my white Mercedes and when I approaching  
the Rex Hotel I should slow down so that somebody  
could contact me.

Q. After you had had this conversation and made  
these 'phone calls what did you do? A. About 8.30 30  
I left for the Rex Hotel and when I get -

Q. In your white Mercedes? A. In my white  
Mercedes - on my own, and when I approached the  
Rex Hotel I made sure it was about 9 o'clock as he  
suggested to me and I was driving very very slowly  
and somebody knocked on the car window. I stopped  
and a man said to me, "My name is John and you are  
looking for Alec?" I told him, "Yes." I parked  
my car and he took me to the Rex Hotel. First he 40  
took me on the first floor and go around into two  
or three different parts of the hotel. Finally he  
took me to a big bar and told me this is Alex  
and showed me a man.

Q. Showed you a man? A. And then Alec told  
him, "Thank you" and this man John left.

Q. You say you were in a big bar. Where were  
you? Identify it. You mentioned the first floor.  
Was this bar on the first floor? A. No, it was  
on the ground floor but he took me around all dif- 50  
ferent parts of the Rex Hotel.

Q. And eventually to a bar on the ground floor?  
A. On the ground floor.

Q. Were there tables and chairs there or what

was the set-up of this bar? A. It was a big room with a long bar and people was mostly standing - some chairs and tables in that bar.

Q. Was the man Alec at a table or at the bar?

A. No, he was standing when he took me.

Q. At the bar? A. Yes, at the bar.

Q. Would you tell his Honour what conversation then took place? A. Then Alec took me into another bar, a small bar which was very crowded, and full with tables and chairs, and most of the people were sitting at the tables and chairs, and he asked me if I want a drink. I told him Yes, and I order two Scotch and sodas and was holding a glass in my hand.

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He took me into a corner of that bar and then he said to me, "Mr. Barton, you are in a big trouble. My team has been hired to kill you. We have been paid, offered to be paid £2,000 and the man Frederick Hume is the middleman who has been hired by a big man Armstrong," and he said that if I prepared to pay him the £2,000 he rather don't do it, and then I told him that I didn't want to be mixed up in these sort of matters and I going straight to the police. He then said that I should not rush things because I am in real danger and he has a long criminal record and his team is very anxious to get the money and I have told him, as I did before, that I go straight to the police. He said he has a long criminal record, he has been arrested many times, and he spent a lot of time in gaol, and he has a detective who he is prepared to bring to me and put the matter in front of the police through the detective.

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Q. Please continue. A. Then I told him that if this will be done through the police and if his principals who hired him will get arrested and dealt with I prepared to pay him the money through the police and he said that is quite all right and if I can give him £500 in advance. I told him I do nothing without the police. Then he said it is all right, he will get in contact with me tomorrow morning and he will contact the detective in the meantime and I will be able to meet him with the detective together and place the matter in the police hands.

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Then I slowly moved with Alec outside, out from the bar. First I was standing in a corridor; I was waiting there till Dr. Martin passed us three or four times enabling him to have a good look at the man, and then I strolled outside with him to the street and I spent other two or three minutes with him on the street making sure that some other people seen him as well, that he can be recognised.

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Your Honour, I missed out one point in the conversation with the man when he said that he has been offered £2,000 to kill me and he have to rob my



wife diamond ring and he get paid £5,000 for the ring separate.

HIS HONOUR: Q. I am sorry, I did not catch that. He said he had been offered £2,000 - A. To kill me, and he have to rob my wife from her diamond ring and he get paid £5,000 for the ring as well.

MR. GRUZMAN: Q. Can you remember anything else that was said in this conversation? A. I don't think so.

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MR. GRUZMAN: I propose to lead on it.

MR. STAFF: I object to any leading.

HIS HONOUR: You cannot lead him. You can remind him about the topic.

MR. GRUZMAN: Q. Was anything said about how much Hume would be getting for the job? (Objected to.) A. I am just getting to that one.

Q. You heard the question. What is the answer? A. He said to me that Frederick Hume get £5,000 for the job and that he get only £2,000 I thought I said it before.

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Q. You mentioned about going out into the street with this man. Have you seen that man again? I will withdraw that. Did you see that man in the vicinity of the Court here? A. Yes.

Q. I will lead on this; was he the man who entered the witness box briefly and was referred to as Alec? A. Yes.

Q. Then what did you do? You left the Rex Hotel and then did you return to your home? A. I left the Rex Hotel and I went and I had dinner with my friends somewhere close, one of the restaurants in King's Cross.

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(His Honour directed Mr. Gruzman's attention to the fact that the person referred to was directed by his Honour before he entered the witness box to be referred to as "witness".)

Q. After this what was the next thing that happened? A. Next morning about 7 o'clock I rang Fred Miller & Company, solicitor.

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Q. That is Mr. Fred Miller of Allen, Allen & Hemsley who were the solicitors for the company? A. Yes, and I told him - (Objected to.) and I said -

HIS HONOUR: This seems to be within the earlier ruling.

WITNESS: I said to Fred Miller that that mad man Armstrong now hire criminals to kill me and I knew that Mr. Armstrong has good connections in the

Police Department; therefore, I like him to come with me to somebody on the top that I can get police protection. He said that he will ring me back, he will looking for a barrister who experienced in criminal matters, and he will ring me back as soon as he can.

He rang me at 9 o'clock and he said that, "I engage Alec Muir, Q.C.," and he ordered him to be in touch with Inspector Lendrum and appointment has been made to see him at the C.I.B. at 11.30 or 11 o'clock and he ask me to be in front of his office in Castlereagh Street because his office is closed and he will be there himself as well. 10

I drove to his office. I see a man walking there and I approach him and ask him, "Are you waiting for Fred Miller". He said, "yes". He said, "You must be Mr. Barton". I said, "Yes, I am," and he introduced himself as Alec Muir, Q.C.

Q. Did Mr. Miller appear? A. A few minutes later Mr. Miller arrived. 20

Q. Did you all go to the C.I.B.? A. We all went to the C.I.B. and my son was with me as well.

Q. Did you go to an office where Superintendent Lendrum was? A. Mr. Muir Q.C., went to Mr. Lendrum and he call us in into a big office - I think it was the office of Mr. Blissett who was the head of the C.I.B. then - and Mr. Lendrum call in Sergeant Wild and Detective Follington and ask me what it is all about. First Fred Miller introduced him with himself - he said that he knew Mr. Armstrong very well, he had been on the Board with Mr. Armstrong in Australian Factors Limited and he said that he knew this is a serious matter because he has been threatened by Mr. Armstrong himself. 30

Then I told Mr. Lendrum what happened on Saturday afternoon from 3 o'clock onwards till I left the man at the Rex Hotel and then he said, "This is a serious matter and we have to organise the dogs and we have to catch that man." I asked him what "the dogs" mean and he said the men is all different disguises, the policeman in all different disguises will be on the spot, and he then said that Detective Follington should come to me with my home and wait for the telephone call from the man who called himself Alec. 40

We arrived to my home with Mr. Follington about quarter to one and my wife has informed me a man already rang about 11 o'clock and he said he would ring again, and as I have been instructed by Mr. Follington that first I have to ask the man who is the Detective who he was referring to on the previous night - 50

Q. Did you say that he rang again? A. Before he rang, Mr. Follington instructed me what to say.

Q. Yes? A. First I have to press him for the

name of the detective he was supposed to bring along and also I have to tell him that I have guests and I cannot see him before 7 o'clock at night, because according to the C.I.B. this will be the best time to catch him.

At one o'clock the man called Alec rang and I say to him, "I like to know who is the detective who I supposed to meet." Mr. Follington was listening on the extension line. And he said, "The name of the detective is Mackie", and he told me that he could not contact him yet because he could not find him; he rang the Darlington Police two or three times and could not contact Mackie yet, and I told him that it doesn't matter because I have guests and I can't go and see Mackie and him before 7 o'clock, and he said that is all right, by that time he will have Mackie with him and I should meet him at the King's Cross front of the hospital and he gave us a corner, the name of two streets which was not a corner that Mr. Follington worked it out that it should be on the Riley Street corner. Mr. Follington rang the C.I.B.; he informed -

Q. Just before you go on from that conversation, I would like you to think whether anything else was said in that conversation? A. Oh yes. Alec said that I should bring £500 with me and I has been instructed by Mr. Lendrum and Follington again that I should promise him that I bring the money with me, and I told him I will have the money with me.

Q. What was the next thing that happened? A. The next thing is, 6.30 Mr. Follington was staying with us all afternoon and 6.30 I left in my car and my son went with Mr. Follington in the other car to the spot which has been nominated by that man. Mr. Follington before he left warned me not to let anybody get inside of my car because that dangerous; they wanted me to get outside from the car - that means they can deal with the man themselves.

Q. Meaning the police could deal with the man themselves? A. The police, yes.

When I arrived to the corner Alec was already there. I wanted to open the car door and I get out from the car on the other side, the opposite side where the driving seat is, according to Mr. Follington's instructions, and the man walk to me and he said that, "I could not get in touch with Detective Mackie," and then I see Mr. Follington in shirt - take his coat off - in shirt, was just walking behind the man, was about 10 ft. away, and I went to my pocket and took out \$1,000 and I told him, "It doesn't matter if you haven't got the police because I get them myself," and at that time Follington grabbed both of his hands from the back. Then some other detectives came around and Mr. Follington told me to drive to the C.I.B. and he went to the car which was parked in the lane and my son was sitting in that other car when Mr. Follington, as he said, left his hardware.

Q. What did that mean to you? A. His gun and other equipment. And I drove to the C.I.B. and I have been met by Inspector or Superintendent Lendrum - I don't know what is his real rank.

Q. It is either Inspector or Superintendent; you are not sure? A. I am not sure. I have been met there and they say that Det. Sgt. Wild and Follington is already dealing with Alec and I should wait and he find out what is happening. I was waiting with Inspector Lendrum and he was talking to me in general things. He ask me if I know a solicitor called Tibor Bodor who is also of Hungarian origin and he was a police translator.

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Q. This is just polite conversation? A. Just conversation.

HIS HONOUR: I think you can leave this, Mr. Gruzman.

MR. GRUZMAN: Yes, I do not tender this.

WITNESS: And about half-an-hour's time Mr. Lendrum told me that he now go inside and find out how far they got, and he spent about ten minutes inside and came out and told me that Alec has admitted everything in the same line as my allegations has been made this morning.

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HIS HONOUR: Q. Is that what Inspector Lendrum said? A. Yes, exactly what he said.

Q. Will you say it again, what Inspector Lendrum said to you? A. Mr. Lendrum said to me that Alec has admitted everything in the line as my allegations has been made this morning, and then he said that I am in danger, I have to be very careful I don't expose myself, and he also told me that they will let Alec go on next morning because that is the only way how they are going to lead them to the principals, and Mr. Lendrum brought up the question of money again. He said he had no objection if I want to see that this man has been caught fast, that to help the C.I.B. I give some money to the C.I.B. He said it is entirely up to me. He said they has not got the facilities of this nature, but might help the case or might not - it is up to me if I do it or not. He also said if I want to know further what happened I should come to the C.I.B. next morning and I talk to Mr. Wild.

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HIS HONOUR: Q. Did he mean to leave some banknotes there to be passed over? A. No. He just was referring to the fact that they are going to let Alec go to lead them into the principals and he said he has no objection if I give money to the C.I.B. to use it for the purpose that it was given to Alec, help him to have money till these men are caught.

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Q. That is money to be passed on to Alec? A. To be passed on to Alec, yes. But he told me quite clearly that I don't need to do it; it is entirely up to my decision if I wanted to do it or not.

Next morning at 9.30 I went to the C.I.B. and I see Det. Sgt. Wild and Det. Follington. I ask them what happened last night. Sgt. Wild said that Alec admitted everything and they let him go last night and he ask me if I am prepared to give him money to pass it over to Alec till he doing the service for the C.I.B.

Q. Would you repeat that? A. To giving money to Sgt. Wild and Follington to be passed over to Alec till he help the C.I.B. to get the, to catch the people who hire him. I ask Sgt. Wild how much money he recommend and he said, "Oh, \$400 will do." I went to my pocket and I gave \$400 to put it on desk of Sgt. Wild in the presence of Follington and Wild. 10

Then I ask him how far the interrogation of Alec went and Sgt. Wild took out an interview from his drawer and said, "You can read it", and I went through - I read Alec's statement what he made. 20

(Document comprising six sheets produced from police records made available to Mr. Gruzman.)

MR. GRUZMAN: Q. Is that the document (handed to witness) which was shown to you and which you read at the C.I.B. at the time you have mentioned? A. Yes, this is the document.

(Document tendered; objected to.)

HIS HONOUR: I think the statement is admissible. It will be admitted and marked Exhibit "D".

(Document comprising six sheets and bearing date 8th January 1967 admitted and marked Exhibit "D".) 30

HIS HONOUR: I give the same direction in regard to this exhibit I did at the outset. There will be no publication in the press as to the name of the man whose signature this document purports to bear. The remainder of the document will be evidence in the limited sense in which I have admitted the document, as something which Mr. Barton saw, but not as evidence of the facts stated in it. 40

MR. GRUZMAN: Q. There is mention in part of your evidence of a diamond ring. I would like you to tell his Honour something about that diamond ring? (Objected to; witness retired from Court.)

MR. GRUZMAN: The type of evidence that we are proposing to adduce is this, that it is tendered to meet a possible defence by Mr. Armstrong that - I think it was suggested before - that the witness from Queensland was acting on his own account and not on any instructions or any previous knowledge of the defendant or anyone associated with him. We will seek to answer that in a number of ways. One way is that this witness' knowledge of the existence of this valuable diamond ring is significant, because of the very limited number of persons who would know of its existence and possession by Mr. Barton. What 50

we foreshadow is this - and I hope I have got this accurately - this was a ring which came up for sale which, I think, Mr. Armstrong was going to buy, which Mr. Barton subsequently bought, and it was not a purchase which was publicised, and I think the ring was in fact either not worn, or very seldom worn, and it was anticipated that the evidence will show that Mr. Armstrong was one of a very limited group of people who knew of this ring's existence. 10

Would your Honour defer ruling on it until I get a more accurate statement as to how far the evidence will go?

HIS HONOUR: I will not defer ruling on it. As at present advised I think I should reject the evidence, but if you can refer me to authority which would support the admissibility of evidence of this sort I shall leave it open for you to re-tender it. At the moment I think it is too tenuous to be regarded as evidence upon which the Court should act. If you can refer me to authority at a later stage to support its admission in evidence you may have leave to re-tender it. 20

(Witness returned into Court.)

MR. GRUZMAN: Q. Would you tell his Honour how you felt - what was your state of mind - at the time following on these incidents with the man from Queensland, and seeing the contents of his statement, and having a conversation with Inspector Lendrum? What was your state of mind at the time following - (Objected to; rejected.) 30

Q. You had told his Honour earlier that on 3rd or 4th January you had a discussion with Mr. Smith on behalf of Mr. Armstrong. You told his Honour that earlier? A. Yes.

Q. You had a discussion with Mr. Smith, on behalf of Mr. Armstrong, about the proposed agreement? A. Yes.

Q. By the way, who approached whom? Who made the first approach? A. Mr. Smith has approached me. 40

Q. Mr. Smith approached you? A. Yes.

Q. Where did this interview take place? A. Mr. Smith rang me, and he said that he - he said that Mr. Armstrong had asked him to negotiate on behalf of him in view to get agreement with me to get Mr. Armstrong out of Landmark Corporation.(sic.)

Q. Where did the interview take place? Did you go to Mr. Smith's office, or did Mr. Smith come to your office? Where did the interview take place? A. Mr. Smith came to Landmark Corporation's office. 50

Q. And saw you there? A. And saw me there, yes.

Q. Were there any other discussions between yourself and Mr. Smith prior to 9th January on this subject? A. Yes, I had two further discussions with him.

Q. You had two further discussions with him? A. Yes.

Q. How did these discussions take place? Were they personal, or by telephone? A. On the telephone.

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Q. On the telephone? A. Yes.

Q. Can you relate them to the period between - to the dates between 3rd and 4th, and say the 9th? Or take it up to Saturday, the 7th. Can you relate it to dates between the 3rd and 4th and Saturday the 7th? A. It was before Saturday, 7th.

Q. So that it was somewhere in the week prior to Saturday the 7th? A. Yes.

Q. Can you help us any further? A. Yes. In the course negotiation was going on and I talked to Mr. Smith again on 10th.

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Q. On the 10th January? A. On the 10th January, and practically every day till the last one was on 13th January, 1967.

Q. Now as at 10th January, what was your state of mind? A. I was in fear of my life. ~~I seen the trigger-man-which-has-arrived-which-I-been-threatened-with.~~

HIS HONOUR: Q. I did not follow that. What did you say? A. ~~I saw that a trigger-man has arrived which-I-have-been-threatened-with-before.~~ (Objected to; by direction answer to this question and the preceding question struck out as indicated.)

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WITNESS: May I correct it? I was extremely in fear of my life.

MR. GRUZMAN: Q. What did you do? I think you have told us that on the 9th January you had seen this statement. What was your next contact with the police? A. ~~I made arrangement to conceal my family first.~~ (Objected to; by direction struck out as indicated.)

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Q. Being in fear of your life, as you have told us, what did you do at that time? A. ~~I made arrangement to conceal my family.~~ (Objected to; by direction struck out as indicated.)

Q. What did you do exactly? Who did you telephone? What arrangements did you make? Tell us what you did exactly? A. First I rang Medlow Bath to try and find accommodation for my mother, my mother-in-law and my father-in-law there, and there was no place available, and then I rang Carrabella at Katoomba and I explained to the manager that I

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badly needed accommodation as something happened which caused me to send these people away straight away, and he said if I will be satisfied that they will be moved from one room to another if necessary they would give us accommodation for three persons - a double room and a single room.

Q. Just to finish off that subject, what arrangements did you make about your parents physically?

A. Physically I booked them into the Swiss Inn at Katoomba. I drove them up to Central Railway Station, booked them on to the train and went up to Katoomba and told them to stay there, and I will contact them every day and I will tell them when they can come back. 10

HIS HONOUR: I am sorry, I could not hear that?

A. I will tell them when they can come back.

MR. GRUZMAN: Q. Can you remember what date that was? Can you remember what date they left Sydney?

A. I beg your pardon? 20

Q. Can you remember what date they left Sydney?

A. 9th or 10th. Possibly on the 9th.

Q. Well then, what else did you do? You told us of some arrangements you made and things you did in relation to your parents? A. Yes.

Q. What else did you do? A. On 11th January I went to the C.I.B. again.

Q. Pardon me. I wanted to direct your mind to your living arrangements? A. Yes.

Q. Yes. What did you do? A. I went to the C.I.B. on 11th January, 1967. 30

Q. Yes? A. I went to the C.I.B., and I seen Sgt. Wild and Follington, and I asked Sgt. Wild that if he can get me a pistol licence what I can buy a pistol for self-defence, and Sgt. Wild rang the Chatswood Police Station because he said that Castlecrag belonged to the Chatswood Police Station and talked to the Sergeant - I don't know his name - and after the conversation with the Sergeant he said I cannot get a licence in one day, but he advised me to buy a rifle, what I don't need any licence for, and then Mr. Wild said that Det. Follington will assist us to purchase a rifle. Then my son and myself and Mr. Follington got into my car and we drove to the end of George Street near to the Central Railway and on the way to the place where we finally bought the gun Mr. Follington informed me that they got Hume in and got an interview taken by Hume. I told Mr. Follington I would like to see that interview, and he said, "No problem. As soon as we purchase the rifle you come back with me to the C.I.B. and I will show it to you." 40

Q. Yes? A. My son and Mr. Follington went to the shop, and about 15 minutes later came out with a rifle and some ammunition. 50



Q. You might tell us, what are your parents' names? A. My mother's name is Bucchalter.

Q. And that was your former name? A. Yes.

Q. And your wife's parents' name? (Objected to; allowed.)

Q. What is their name? A. Gonczi.

Q. Will you look at this copy account? Is that an account which you paid? A. Yes.

Q. You had told us that you went with Const. Follington and bought the gun and had some conversation with him, and after you got back in the car, or your son got back in the car with Follington and the gun, was something said? You are back in the car. Was something said? A. We went back to the C.I.B., and went to Sgt. Wild's office, and he was not there, and then Det. Follington went into a steel cabinet, and took -

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Q. Just prior to that, was something said further about this gun? A. Not at that time.

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Q. Was something said about learning about - (Objected to.) A. That was afterwards.

Q. What did happen? You say you were in the office there? A. Yes. We went - Det. Follington went to a steel cabinet and took out a brown folder which had big letters marked "Barton and Armstrong" and took it to Sgt. Wild's desk, opened it up, took out a document ~~and-I-sat-next-to-him,--My-son-was-sitting-on-the-other-side-of-the-desk-leaning-over,~~ and-I-read-the-interview-between-Det.,-Sgt.,-Wild-and-Frederick-Hume. (Objected to; by direction portion indicated struck out.)

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(Further hearing adjourned to 10 a.m., on Wednesday, 22nd May, 1968.)

CORAM: STREET, J.

BARTON v. ARMSTRONG & ORS.

FIFTH DAY: WEDNESDAY 22nd MAY, 1968

PLAINTIFF

On former oath:

HIS HONOUR: Q. You are still on your oath to tell the truth, Mr. Barton. A. Yes.

MR. STAFF: There are a number of corrections in the transcript. On p.32, in the third last answer, the transcript says ... "and I gave him instructions to check everybody who was not a shareholder but coming in with a proxy, and if any people who he suspected might be dangerous to my safety, to keep me under very strong surveillance." That "me" should, I think, be "them". 10

HIS HONOUR: My impression was that the witness said "me".

MR. GRUZMAN: My impression accords with that of my learned friend, that the witness said "them". 20

HIS HONOUR: Perhaps that can be cleared up in evidence, Mr. Gruzman.

MR. STAFF: At p.34a, in the third question - the answer to the third question - it is recorded as "After this conversation I called my solicitor, Mr. Peter Coleman, of Landmark to my office ..." That "Peter Coleman" should be Peter Bowen. I don't know what "of Landmark to my office" means.

HIS HONOUR: "Coleman" should be altered to "Bowen". Perhaps, Mr. Gruzman you could clear up that question also in evidence. 30

MR. STAFF: On p.40, the second line, the transcript shows, "I rang Fred Miller & Co., solicitor". That should be "Fred Miller, the company's solicitor".

HIS HONOUR: That correction will be made.

MR. GRUZMAN: On p.39 the transcript shows:

"(His Honour directed Mr. Gruzman's attention to the fact that the person referred to was directed by his Honour before he entered the witness box to be referred to as 'witness')." 40

The "referred" where secondly appeared should read that he was to be "addressed as 'witness'".

MR. GRUZMAN: Q. Mr. Barton, in the course of your evidence yesterday you were asked at the bottom of p. 32 about the arrangements made at the general meeting, and what you stated was this, as recorded: "One bodyguard was standing in the door with the company secretary, and I gave him instructions to check everybody who was not a shareholder but coming

in with a proxy, and if any people who he suspected might be dangerous to my safety, to keep me under very strong surveillance." Is that what you said?  
A. "Keep them".

HIS HONOUR: At p.32 of the transcript "me" will be altered to "them".

MR. GRUZMAN: Q. At p.34a, in the course of your evidence yesterday, this question and answer is recorded. I asked you "With respect to your position in the company, did you at any stage make any offer to resign?" and you answered "Yes. After this conversation I called my solicitor, Mr. Peter Coleman, of Landmark to my office ..."  
A. "Peter Bowen."

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Q. What about the words "of Landmark, to my office"?  
A. To the Landmark office.

Q. To the Landmark office? Is that what happened?  
A. Yes.

Q. Mr. Peter Bowen came to the Landmark office?  
A. Yes.

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HIS HONOUR: On p.34a of the transcript I will alter the answer to the third question beginning on that page from "Mr. Peter Coleman, of Landmark to my office" to "Mr. Peter Bowen to the Landmark office".

MR. GRUZMAN: I call for letter of 9th November 1966 from Gaden Bowen and Stewart to Dare Reed Martin and Grant. (Produced.)

Q. I will ask you this, if I may; at some stage was there a conversation with Mr. Barton - with Mr. Armstrong - about the sale of shares?  
A. Yes.

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Q. When was that conversation?  
A. That was early in November.

Q. Early in November 1966?  
A. November 1966.

Q. What was the conversation?  
A. Mr. Armstrong offered me to buy my share holdings in Landmark Corporation Limited for 70 cents each.

Q. Mr. Armstrong offered to you to buy your shareholdings out in Landmark for 70 cents each?  
A. Yes.

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Q. When did this conversation take place?  
A. In early November 1966.

Q. What did you answer to that?  
A. I told him I was prepared to do it but he would have to deal through my solicitor, Peter Bowen, from Gaden Bowen and Stewart.

Q. What happened then?  
A. Mr. Armstrong rung me on Saturday morning at home and told me that he was calling a board meeting of Landmark Corporation Limited for Monday afternoon and I could pick up

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the draft agreement of the purchase of my shareholdings from his solicitor's home at Wollstonecraft.

Q. That is Mr. Grant, is it? A. Mr. Grant.

Q. Did you in fact pick up the document? A. I sent my son and he picked up an envelope which contained a copy of a letter addressed to Gaden Bowen and Stewart and a copy of an agreement.

Q. Draft heads of agreement? A. Yes.

Q. In your discussion with Mr. Armstrong had there been any suggestion of conditions to be attached to this sale? A. No conditions. Straight out sale. No string attached. 10

Q. Will you have a look at this document? First of all look at this document. Is that the original of the letter and the enclosed draft heads of agreement which were sent to Messrs. Gaden Bowen and Stewart? A. Yes.

Q. Will you have a look at this document? Is that the reply sent on your instructions to Dare Reed Martin and Grant? A. Yes. 20

(Letter dated 4.11.66 and enclosure, and letter dated 9.11.66 tendered and marked Exhibit "E".)

Q. Why did you not accept the offer? A. I think that the offer was dishonest to the shareholders.

Q. Why did you think it was dishonest to the shareholders? A. Because it required me to stay on as manager for a further three months and support Mr. Armstrong in any way he likes it, and also this sale of shares would have taken place after the general meeting and that would not have been disclosed to the shareholders that I was only a puppet for Mr. Armstrong. 30

Q. It would not have been disclosed to the shareholders that you were only a puppet for Mr. Armstrong? A. Yes.

Q. And you therefore immediately rejected the offer? A. Yes.

MR. GRUZMAN: I desire to put further argument on the admissibility of secondary evidence of the document that Mr. Barton says that he saw at the C.I.B. on 11th January 1967. The submission we wish to put is this: If the question was whether secondary evidence of a document as such were admissible then the submissions put forward by my learned friend would be substantially accurate. If the question, however, is what was operating on Mr. Barton's mind then those technical considerations as to whether the document or his recollection of it is admissible is different. The only question is what was in his mind. Indeed, the contents of the document per se for this purpose are irrelevant, 40 50

and that is the argument which my friend put, albeit not successfully, but it was put yesterday in respect of the statement of the witness from Queensland. He put it to your Honour that it is only what this witness recollected of it which was really relevant. But here certainly we can put that argument, and properly so, in our submission, because the question is what was in his mind. We submit that the technical rules applicable to the admission of secondary evidence of a document do not apply to the question of what was operating on this witness's mind. 10

HIS HONOUR: I am of the view that already the necessity of investigating what was operating in Mr. Barton's mind has opened the door to a great deal of evidence which would normally not be admissible, and in the present case care must be exercised ultimately to distinguish between material proved to be present to Mr. Barton's mind as one type of evidentiary matter, and, on the other hand, material which is evidence of the existence of the fact stated in it. This particular point regarding the document said to have been seen by Mr. Barton on 11th January 1967 falls within the general field of evidence admissible as material operating on Mr. Barton's mind as distinct from being evidence of the facts stated in it. The particular ground, however, upon which it is now pressed on me does not appear to me to be valid inasmuch as the matter said to be operating on Mr. Barton's mind was that which he read in the document. It may be that there has been some confusion in appreciating the precise basis upon which this evidence will be admitted - confusion perhaps assisted by a claim put on behalf of the defendants that the plaintiff must prove execution of the document, of which I expressed disagreement yesterday when the matter was first raised. On the approach that I have taken to evidence of this sort the relevant and admissible subject matter is that which came to Mr. Barton's notice. In this instance it is a piece of paper bearing on it writing, and the admissibility of secondary evidence of what was on that piece of paper will be dealt with in accordance with ordinary evidentiary rules. 20 30 40

MR. GRUZMAN: There is one other matter arising from this. I would like - although your Honour has given an indication to the contrary - to identify this document, if I can, not by way of content but by way of description as to what the document was, because that may become necessary after other evidence is brought. 50

HIS HONOUR: I think you are quite entitled to do that as part of the ground work in seeking to lead secondary evidence.

MR. GRUZMAN: Q. You gave evidence yesterday that Det. Follington went to a steel cabinet and took out a brown folder which had big letters marked "Barton" and "Armstrong"? A. Yes.

Q. Would you have a look at this document I now 60

show to you, and tell me have you seen that document or object before? A. Yes, I have seen it.

Q. You have seen that before? A. Yes.

Q. Where have you seen that before? A. The first time I seen it at the C.I.B. on 11th January 1966 - 1967.

Q. Is that the document - the object - which you described as a brown folder which had big letters marked "Barton" and "Armstrong"? A. Yes.

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Q. You said in your evidence that Mr. Follington took it to Sgt. Wild's desk, opened it up and took out a document? A. Yes.

Q. Would you tell his Honour - would you describe precisely the document to which you refer as having been taken from that folder? A. Foolscap white - (Objected to. Argument ensued. At the request of Mr. Gruzman his Honour deferred ruling on the objection pending further argument after the morning tea adjournment.)

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(Folder m.f.i. 5.)

Q. Perhaps I might just lead this evidence. What did you do in respect of the document? A. I read the document right through, and I went back and read certain parts of it two or three times.

Q. I will not ask you any more questions on this subject matter at this stage, but I think that you left the C.I.B., and where did you and your son respectively go? A. Mr. Follington then said that he would like to take my son to the police rifle range and train him how to use the gun which has been purchased on the same morning, and I have agreed, and I went back to the Landmark Corporation with a cab and my son used my car and went with Mr. Follington to a rifle range, and later I learned from my son he spent all the afternoon and was shooting some 200 bullets.

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Q. I see? A. Then while these things was going on at the rifle range I have decided that I don't want to shoot it out with any criminals; I don't want to let my son's life be in danger to use the gun himself in self defence, and I rang the Wentworth Hotel and I made arrangements that we move in the same afternoon, and myself, my wife and my son moved in to the Wentworth Hotel on this afternoon.

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Q. Will you just tell his Honour for how long you and your family remained living at the Wentworth Hotel? A. I think 19th January, 1967.

Q. 19th January 1967? A. Yes.

Q. Does that mean from the 11th to 19th January 1967 you and your family lived at the Wentworth Hotel? A. Yes.

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Q. Will you look at this account? Will you first have a look at the two cards - the front of this pile of documents - and tell me in whose handwriting they are? A. The top one is my son's handwriting. The second one is my own handwriting.

Q. Have a look at the two accounts. That is, I take it, apart from notations on these cards which have apparently been made in the office at the Wentworth Hotel? A. Yes.

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Q. And these two accounts - were they paid by you? A. Yes. Actually three accounts.

Q. Three accounts? A. Yes.

Q. Would you care to look at the originals? Are these the three actual accounts which you paid? A. These accounts what I got and I paid.

(Wentworth Hotel accounts, 11th January 1967 to 19th January 1967, tendered and marked Exhibit "F".)

Q. Will you now look at this document now shown to you, and tell me whether that is an account which you paid at Smith's Sports Store for the rifle and the ammunition? A. Yes. That account has been paid by my son. I gave him the money before he went to the shop.

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(Smith's Sports Store account dated 11th January 1967 tendered and marked Exhibit "G".)

Q. What did you do with the rifle when you went to the Wentworth Hotel? A. Took it with me in a suit cover.

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Q. You took it with you in a suit cover? A. Yes.

Q. What was your state of mind at that time? A. I was extremely frightened. I was so frightened that I did not tell even to my own brother and friends where I am staying. The only person who knew it was John Bovill. I told him because I thought he might have to contact me in my capacity as director of Landmark Corporation Limited.

Q. At about this time or over this period - I am dealing now with the early part of January - I think you had mentioned that you had had some connection with Mr. Bruce Smith. Can you try and tell us over this period - say from the 7th to the 12th January - what communication you had with Mr. Bruce Smith? A. First Mr. Smith rung me, and he said that Mr. Armstrong -

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Q. Are you going back now to the first interview? A. Yes.

Q. You mentioned that earlier. I would like you to come up to any conversation that took place at around this period whilst this problem was going on, or shortly before or shortly after you moved

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to the Wentworth Hotel? A. Yes. Mr. Smith rang me and said that Mr. Armstrong now also demanding option on 100 blocks of land on Paradise Waters Estate at Surfers Paradise in addition to his earlier demands. I told him that it was out of the question first, and then he said, "What about 50 blocks?" and I told him, "It is out of the question", and then he said "35 blocks". I said to Smith, as I earlier told him, that I have no authority to agree with him on behalf of Landmark Corporation and I am only go as far as that to let him to prepare some sort of head agreement what can be shown to me and Landmark advisers and finally the Board have to agree or disagree with anything that is in that document.

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Q. What was your belief -

HIS HONOUR: I don't know how clearly that last answer will appear in the transcript. (Preceding answer read by Court Reporter.)

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WITNESS: May I continue?

MR. GRUZMAN: Q. Yes. A. Mr. Smith rang me again and he said that Mr. Armstrong wants him to be appointed chairman of Landmark Corporation Limited and also he wants Mr. Arthur Hawley to be appointed as a director of Landmark Corporation Limited. He said then that his instructions from Mr. Armstrong is such that then Mr. Armstrong will be satisfied that the share values of Landmark Corporation Limited can be maintained, and he also said that he is chairman of Project Development Corporation Limited and director of other companies and he will be able to finance Paradise Waters Estate and other projects of Landmark Corporation Limited, and I said to him that it could be a good idea, and this might restore the public confidence in Landmark Corporation.

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Q. Can you fix the date for his Honour of this last conversation that you mentioned? Can you tell us the date? A. It was on or about 10th January 1967.

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Q. Could you tell his Honour the effect of the events which were happening - other events you have mentioned which were happening at round about this time - on what you told Mr. Smith? (Objected to; rejected.)

Q. As at 10th January you told us that you had a conversation on commercial lines with Mr. Smith. What caused you to have that conversation in that way? A. First of all I thought that Mr. Armstrong was misleading Mr. Smith. I was convinced that Mr. Smith was trying to do a genuine commercial transaction. In the same time a background of Mr. Armstrong and criminals employed by him putting pressure on me what Mr. Smith don't know anything about, and when Mr. Smith rung me with any demands what was in my mind is what will be the consequences if I don't agree.

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Q. What did you believe the consequences would be if you did not agree? A. I realised that these criminals are at large, and I realised that there has been hired to kill me. My only thought was that I get killed.

Q. Did you tell Mr. Smith - and if so, when - what you were prepared to do about an agreement? A. I did not sign any agreement at that stage. No agreement.

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Q. What did you tell Mr. Smith as to various propositions that had been put to you? A. First of all on 12th January 1967 Mr. Armstrong rung me at Landmark office and said "You had better sign this agreement, or else", and I told him I did not let myself be blackmailed into any agreement. Next day, on 13th January 1967, Bruce Smith rung me and he said he get instructions from Mr. Armstrong that the documents which is now getting - got finalised - have to be signed and exchanged today - "unless this is done the deal is off". I told Mr. Smith, "I am not prepared to sign or exchange the document on behalf of myself, and also I am not prepared to advise my co-directors on behalf of Landmark Corporation to do so". That was on the Friday.

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HIS HONOUR: Q. That was on Friday? A. Friday morning.

MR. GRUZMAN: Q. What was your belief as to the effect of you saying "the deal is off". What was your belief as to the effect of that? A. I thought it was taking great risk that I get killed.

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Q. In the meantime were you having discussions with Mr. Bovill? A. I seen Mr. Bovill the same Friday evening, and had discussions with him about - (Objected to; not pressed.)

Q. Mr. Bovill was a co-director? A. Yes.

Q. So that so far as this transaction was concerned, it could not go through without Mr. Bovill's consent? A. That is correct. It could have gone through if Mr. Cotter - we had three on the board, and two of them had to be agreed.

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Q. Two had to agree? A. Yes.

Q. What did you - don't answer this for the moment - what did you say to Mr. Bovill about this agreement? Don't answer that, in case it is objected to. (Objected to; allowed.)

Q. You have told us, Mr. Barton, that Mr. Bovill was a co-director, and that you had to secure the support of one or other of your co-directors for this agreement to be approved - to have this agreement approved by the company. I would like to ask you this question; what was your opinion at the time as to whether Mr. Bovill was a man who would be coerced into agreeing to something? A. Would you repeat the question?

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Q. What was your opinion as to whether or not Mr. Bovill could be coerced into agreeing to something? A. Yes, I thought that Mr. Bovill will disagree.

Q. Does that mean - what did you mean by that? Would you mind explaining what you mean more fully?

A. I know Mr. Bovill is a very conscientious director and he has his own mind. He is exercising his duties in a proper manner and even if I wanted to agree myself Landmark might not agree to the document, and I am consequently and finally will be killed.

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Q. Your problem was that if Landmark would not agree you would be killed? A. Yes.

Q. You tell us that you had these views of Mr. Bovill as a conscientious director? A. Yes.

Q. Those being the circumstances, will you tell his Honour what discussion you had with Mr. Bovill about this matter? A. I had two discussions with Mr. Bovill again. One on the Friday afternoon, when I told Mr. Smith that I am not going to exchange and sign the documents on behalf of myself -

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HIS HONOUR: I have lost the sequence of this. I am not sure whether this is what Mr. Barton said to Mr. Bovill. I have lost the sequence of it.

MR. GRUZMAN: Q. This is on the afternoon of Friday, 13th January? A. Yes.

Q. What did you say to Mr. Bovill? A. I told Mr. Bovill that Mr. Smith rung me and said that he has instructions from Mr. Armstrong that the documents which are now ready have to be signed and exchanged in the same day. I told Mr. Smith that I am not prepared to sign it and exchange it myself, and I am not prepared to recommend it to Landmark Corporation Limited.

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Q. Yes. Now, did you tell Mr. Bovill about these events which had happened in connection with the witness from Queensland? (Objected to; allowed.)

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Q. Did you tell Mr. Bovill at round about this time about the events which had occurred in connection with the witness from Queensland? A. I didn't tell him the events what happened, ~~but-I-indicated-to-him~~ (Objected to; by direction portion indicated struck out.)

Q. I will try and make it more specific. Certain events happened which you have given here in evidence in relation to the Rex Hotel, police, and the witness from Queensland. Did you inform Mr. Bovill at round about this time, or any time prior to 17th January, of those specific events? A. Part of it yes, part of it no.

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Q. Well, can you recollect any conversation

when you discussed these matters with Mr. Bovill?

A. Yes.

Q. When was that conversation? A. The main conversation was with Mr. Bovill on 16th January.

Q. We have not come to that yet. Tell us what that conversation was? A. I told Mr. Bovill that I have received 'phone call from Mr. Armstrong this morning about 8.20 a.m. As soon as I walked into the office the telephone was ringing. Mr. Armstrong said to me that "unless you sign this document I will get you killed". I 'phoned Bovill and asked him to come to Landmark Corporation office and I have told him that I have direct threats of kill by Mr. Armstrong and I also have been threatened by other people what I can't disclose because that is under investigations by the C.I.B. I also told him that I purchased a rifle for self defence, and he already knew that I am not living at home. I told him before that I am living at the Wentworth Hotel. Then I told Mr. Bovill that I am no longer prepared to refuse the demands of Mr. Armstrong because I just don't think it is my duty as a director to go that far that I should get killed; I just completely was willing to give in to any demand whatever Mr. Armstrong wanted - I just did not want to get killed.

Q. What did Mr. Bovill say to this? A. Mr. Bovill first started to analyse the possible effect of the agreement to Landmark, and I tried to influence his views with the direction that he should agree.

Q. What was the relationship between you and Mr. Bovill in the conduct of the company? (Objected to; rejected.)

Q. I will ask you this leading question; perhaps Mr. Staff may not object to it; did Mr. Bovill look to you for advice and guidance in the conduct of the company? (Objected to; rejected.)

Q. You told us that you tried to persuade Mr. Bovill, and in the end did Mr. Bovill agree or disagree? A. In the end Mr. Bovill agreed.

(Short adjournment.)

ON RESUMPTION:

(Argument continued on admissibility of question on p.50 of the transcript.)

HIS HONOUR: There has been argument as to the extent to which evidence may be given by Mr. Barton descriptive of the document that he says he saw at the C.I.B. on 11th January 1967. Having been referred to the decision of the High Court in Commissioner for Railways v. Young (106 C.L.R. 535) and in particular to what Menzies, J., said at 553, I am of the view that it is open to the plaintiff to lead evidence descriptive of that document, but

to a limited extent. This will not permit evidence of the substance of the contents to be led as part of the description, and in admitting this evidence I draw attention to the fact that the description does not necessarily provide evidence that the document was what it may be said to purport to have been.

(Mr. Gruzman further addressed.)

HIS HONOUR: Counsel for the plaintiff seeks, consistently with the extract from the judgment of Baron Martin, quoted by Menzies, J., at p. 553, to lead evidence of the whole of the contents of the document Mr. Barton said that he saw, this evidence being said to be admissible, and, accordingly, proper to be used only for the purpose of identification. I do not read the extract on p. 553 as necessarily entitling the present plaintiff to tender evidence of the whole of the contents. In my view the law as there stated permits a party to tender evidence only of so much of the contents as is fairly necessary to identify the document. There is no point whatever in travelling beyond this, as the evidence can only be used as evidence of identification. I shall accordingly reject any attempt to tender a precise and detailed account of the contents, and shall confine the evidence that I shall admit to so much of the contents only as is fairly necessary to identify the document.

MR. GRUZMAN: Q. You referred in your evidence to a document taken from a folder by Det. Follington, and read by you? A. Yes.

Q. First of all, what size was the paper? A. Foolscap size.

Q. Foolscap size? A. Yes.

Q. How many pages were comprised in it? A. Five or six pages.

Q. Did you recognise any of the handwriting in the document? A. Yes.

Q. Whose handwriting was that? A. Frederick Hume.

Q. Did the handwriting that you refer to appear on the document once, or more than once? A. It was on every page.

Q. It was on every page? A. Yes.

Q. I don't want you to tell me the contents, but from the form of the document was it a document with large paragraphs, or with small paragraphs such as question and answer form? (Objected to; allowed.) A. It was questions and answers.

HIS HONOUR: Q. It was - A. Questions and answers.

MR. GRUZMAN: Q. Did the document have a title to it? A. Yes.

Q. Don't answer this for the moment. What was the title on the document? A. Record of interview between Det. Sgt. Wild and Frederick Hume taken at the C.I.B. Sydney.

Q. Just one other matter. You have mentioned that the contents of the document were in a question and answer form? A. Yes.

10

Q. Was there - I don't want to deal with what it is, but in any part of the document was there something other than writing in the form of questions and answers? A. Yes.

Q. What was that? A. It was a drawing.

Q. A drawing? A. Yes.

Q. Approximately how much of a page did the drawing occupy? A. About 40 per cent. of a page.

Q. On the top or the bottom? A. On the bottom.

Q. You have told his Honour that you have read the document. I don't want you to tell us what you read, but in the document was there a reference to you? A. To me?

20

Q. Yes? A. Yes.

MR. GRUZMAN: Q. Were there other names in the document which you recognised? A. Yes.

Q. You have told us - were you concerned in any other matter which might have been under investigation by the C.I.B. in or about January 1967? (Objected to; allowed.)

30

Q. As far as you are aware, were you under investigation by the police, or were you concerned in any way in any police investigation at the C.I.B. in about January 1967? A. Yes, I was concerned about the investigation against a person known as Momo.

Q. These are matters - (Objected to as leading.)

Q. How did the police investigation into Momo have anything to do with you in January 1967? (Objected to; disallowed.)

40

Q. Mr. Barton, I do not want you to mention any names, but apart from persons connected with the same subject matter as was contained in the statement or record of interview to which you have just referred - apart from matters connected with that, were you to your knowledge either under investigation by the C.I.B. or in any way connected with any investigation by the C.I.B. in or about January 1967? A. I was only concerned with my own case.

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Q. By your own case, you mean this case in which this settlement appeared? A. Yes.

Q. Again for the sake of completeness, I would like to go back again. You told his Honour that when you went to Surfers - when you went to Surfers Paradise about Christmas in 1966? A. Yes.

Q. Whilst you were there did you receive a 'phone call from Mr. Bovill? A. Yes.

MR. GRUZMAN: I will lead on this, subject to objection by my friend. 10

Q. Did you authorise the sending of a letter by Messrs. Bovill and Cotter to U.D.C.? A. Yes, I did.

Q. On or subsequent to 13th January did you receive a letter from Messrs. Philip Malouf & Co., acting for U.D.C.? A. Yes, I did.

Q. And did you reply to that letter by letter dated 16th January? A. Yes.

Q. And letter dated 19th January? A. That is right. 20

Q. Would you have a look at these documents and tell me whether they are photostat copies of those letters? A. (After examining documents.) Yes, these are those letters.

(Letters sought to be tendered.)

Q. While my friend is looking at that - with the letter of the 19th January were there certain annexures? A. Yes.

Q. Would you have a look at this document and tell me whether all the documents there, apart from another photostat copy of the letter of the 13th January, were annexed to the copy of the letter of the 19th January? A. Yes, it is a duplicate copy of the folder which went with the letter of the 19th January. 1967. 30

MR. GRUZMAN: With my friend's permission I will withdraw the tender of those two letters, which are also contained in this document, and instead tender the whole of the documents. 40

(Tender deferred until after the luncheon adjournment to enable counsel for the defendant to examine it.)

Q. Mr. Barton, I would like to just deal now with, if I may, your state of mind as at, first of all, the 13th January 1967. As at 13th January what were your views as to the prospects of the company being successful? A. In the middle of December I was fully convinced that U.D.C. will not finance Paradise Waters because I made approach to 50

Mr. Honey, after I received letter, when they withdraw finance for the project; and he point blank tell me they are not prepared to finance Paradise Waters in any way at all; and he also convinced me that any approach to them cannot be successful whatsoever; and I also realised that once one finance company withdraw its finance from a project (asked to be repeated), if one finance company withdraw the finance from a project, is impossible to finance it with other finance companies because of the doubt of the values of the land; and also the reason why the money has been withdrawn will stop them to finance the same project. 10

As at 13th January 1967 I had one more reason to believe that no finance can be obtained; because if the managing director of a public company - his life is threatened at a time when the company itself publicly has been damaged - just was not really prospect of obtaining money from anywhere. 20

Q. What were your views as to the chances of success with the fresh approach to U.D.C., arising from receipt of the letter from Mr. Malouf, their solicitors, on or after 13th January? A. I tell Bovill, when he ring me at Surfers Paradise, that he wasted his time; that the letter should not be written; and I also ---

Q. Which letter - of the 28th December? A. Yes.

HIS HONOUR: Q. You said the letter should not be written? A. Yes; should not be written because we are wasting our time; and I tell Bovill also that Mr. Cotter informed me that he met Mr. Harry Beardsmore, chairman of United Dominion Corporation (Australia) Limited, and Mr. Honey, managing director of the same company, at the Union Club, and they had a very strong disagreement about withdrawing the finance by U.D.C. 30

Q. Incidentally, when you say that you told Mr. Bovill the letter should not be written, would you just be a little more explicit about that. In other words, did you authorise the sending of the letter or not? A. Finally I have authorised it; but I tell him is wasting his time; there is no point to go back to U.D.C. I have been informed by Mr. Honey; but finally I agreed to send letter. I say cannot do any harm, but certainly in my opinion will not do any good. 40

Q. Why did you believe that this approach to U.D.C., would not do any good, while you were getting estimates of the project, caluations of what had been done, and a statement of the future prospects? (Objected to; not pressed.) 50

Q. At some stage had there been some discussion with respect to the \$400,000 which you had given evidence of which Mr. Armstrong demanded repayment. At that stage had there been some discussion with somebody whereby that demand was changed? (Objected to; pressed; allowed.)

Q. You may tell us what that discussion was. You had given in evidence if I might remind you, that Mr. Armstrong had wanted his \$400,000 repaid. Were there any discussions as a result of which the form of the repayment, or the amount to actually be repaid, was altered? A. I remember two discussions. One took place at the annual general meeting. One of the shareholders asked Mr. Armstrong if he has demanded that money, and Mr. Armstrong said "No", he has not demanded that money; and then the shareholder went to his pocket and told Mr. Armstrong, "Why did you write to me letter saying you are going to withdraw your demand if my nominees will be elected." 10

Q. Was there a discussion where this \$400,000 claim was altered into a different form? (Not answered.)

Q. Perhaps you might think about discussions with Smith? A. During that negotiation with Mr. Smith I indicated to him that Landmark Company is not in a position to pay Mr. Armstrong \$400,000; and then Mr. Smith ask me if this mortgage can be reduced; and ask him how much deduction he propose. First he proposes \$200,000 and then he proposes \$100,000, and he ask me if he can incorporate these into the proposed agreement - proposed head of agreement which will be presented to me and to Landmark. 20

Q. And did you agree? A. Yes. 30

Q. You may just tell us this; the \$400,000 security; in whose favour was that security document? A. That was in favour of Southern Tablelands Finance Pty. Limited.

Q. Of the \$300,000 security subsequently - (Objected to and rejected.)

Q. You tell us that on Friday 13th January you received several telephone calls; one from Mr. Smith and one from Mr. Armstrong - one from Mr. Smith anyway? A. Phone call from Mr. Armstrong was the day before; and Mr. Smith's 'phone call was on the 13th. 40

Q. You might just tell us whether the market price of Landmark shares at this - say on the 13th January - A. I do not know exactly, but was about 30 or 40 cents? (Objected to and rejected.)

MR. STAFF: The Stock Exchange Gazettes are here.

(Prepared statement from firm of share brokers sought to be tendered. Documents to be dealt with after the luncheon adjournment.) 50

MR. GRUZMAN: Q. On the 13th January you told Mr. Smith - you had a conversation with someone about not being blackmailed into signing any agreement? A. I had a conversation with Mr. Armstrong on the 12th December - 12th ---



HIS HONOUR: Q. You had a conversation with Mr. Armstrong? A. On the 12th January.

MR. GRUZMAN: Q. Which has already been given in evidence? A. Yes.

Q. In which you said you would not be blackmailed into signing the agreement? A. Yes.

Q. On the 13th you tell us of a conversation with Mr. Smith who rang you and said it had to be signed today or the deal was off, and you said the deal was off? A. Yes. 10

Q. I think the documents had been prepared at this stage, had they not? A. Has not seen any documents myself.

Q. You yourself had not seen any documents? A. No, but I had been informed that the document has been prepared and has been completed.

Q. ~~Were documents then passed to the hands of your solicitor?~~ (Objected to.) A. Yes. (Ordered to be struck out.) 20

Q. Subsequently did you see a document in the hands of your solicitor? A. Yes.

Q. Who was that? A. Peter Bowen of Gaden Bowen and Stewart. I also seen some document in the hands of Cec Coleman and Zig Sullamon of Allen Allen & Hemsley.

Q. You tell us of this conversation on the 12th and 13th January and of the decision that you had made, that you would not sign the document. Did something happen between then and the 17th January which had any affect on your decision? A. Yes, I have received a 'phone call at about 8.20 on the morning of the 16th January from Mr. Armstrong saying "Unless you sign that document, you will be dead - you will be killed - you will get killed" - I am sorry. 30

Q. Did you believe that statement? A. Yes.

Q. As a result of that statement what did you decide to do? A. I decided to sign agreement on behalf of myself; and on the telephone John Bovill ask me to go to Landmark Corporation office. I tell him that the best thing we can do in the circumstances that Landmark agree to a settlement with Mr. Armstrong on the basis set out in the document. 40

MR. GRUZMAN: I call for the agreement of the 17th January, without notice to produce. (Document produced.)

Q. Have a look at the documents and tell me if each of the 11 signatures "A. Barton" on the documents are yours? A. I did not hear the question. 50

Q. Have a look at the back of the documents and

tell me whether each of the signatures "A. Barton" on that document are your signature? I think there are 11 of them. A. Yes.

Q. Where did you sign that document? A. In the office of Landmark Corporation Limited.

(Deed of the 17th January 1967 tendered and without objection admitted as Exhibit "H".)

HIS HONOUR: This is the deed which is referred to in the statement of claim? 10

MR. GRUZMAN: Yes.

HIS HONOUR: The main document?

MR. GRUZMAN: That is the main document.

Financially, the agreement provided for, first of all, the repayment to Mr. Armstrong - when I say "Mr. Armstrong" I mean one or other of the Armstrong companies - and I think they are so described - the repayment to Mr. Armstrong of \$100,000 and a fresh security entered into for \$300,000. This being in respect of part of the \$400,000 already owing to Mr. Armstrong. Secondly, in respect of the anticipated profit of the Paradise Waters deal, 40 per cent. of that profit had been secured to Mr. Armstrong by an interest, to that amount, in Paradise Waters (Sales) Pty. Limited. That interest was sold back to Landmark for \$100,000. Thirdly, Mr. Armstrong held, in various companies - 200,000 shares in Landmark - and these were sold and agreed to be purchased by nominees of Mr. Barton, and guaranteed by Mr. Barton personally at 60 cents plus five cents unpaid dividend; a total figure of approximately \$120,000 - or \$180,000. Fourthly, Mr. Armstrong received options on 35 blocks of land in the Surfers Paradise Estate at approximately half price, and this would amount to a value of approximately \$180,000. 20 30

Then, of course, there are numerous ancillary matters dealt with. There was a settlement of various litigation between the parties and matters of that kind, and Mr. Armstrong resigned from various positions. It resulted in - in I think the words of Mr. Smith - "Mr. Armstrong getting out of the company on these terms". I would not like to say I had said everything. 40

HIS HONOUR: I will read the document in detail, but that will assist me to give certain respect to what you say.

MR. GRUZMAN: Q. Did you receive from Mr. Armstrong through the solicitor, these documents bearing Mr. Armstrong's signature - bearing date 13th January (handed to witness). Perhaps without you going through them, I will tender them and hand them to my friend. A. Yes, I have received. 50

(Documents sought to be tendered.)

(Luncheon adjournment.)

ON RESUMPTION:

PLAINTIFF

On former oath:

HIS HONOUR: You are still on your former oath.

MR. STAFF: I have no objection to these documents.

(Six deeds of guarantee of 13th January 1967  
tendered and admitted as Exhibit "J".)

MR. STAFF: Your Honour will see that they are un- 10  
executed by the guarantor.

MR. GRUZMAN: I call for the counterparts of the  
deeds which now comprise Exhibit "J". (Not produc-  
ed at this stage.)

I call for, without notice to produce, all  
the original agreements signed between any of the  
parties on the 17th or 18th January 1967? (Not pro-  
duced at this stage.)

Q. Do you recollect the time of the day of the 20  
17th that the document, which I think was Exhibit  
"H", was signed? A. No, I cannot.

Q. That was signed where; at the Landmark of-  
fice? A. Yes.

Q. Were Mr. Armstrong or his solicitor present?  
A. No.

Q. Tell us what happened on the 18th? A. On 30  
the 18th January 1967 a settlement supposed to be  
taking place at 4.30 in the afternoon, and Mr.  
Grant from Dare Read Martin and Grant arrived at  
the time, and also was present was solicitors for  
myself, Peter Bowen from Gaden Bowen and Stewart,  
and Mr. Sullamon from Allen Allen and Hemsley re-  
presenting Landmark Corporation Limited and John  
Bovill and Cotter, my co-directors in Landmark Cor-  
poration Limited and the subsidiary, and the com-  
pany secretary of Landmark Corporation Limited. We  
were waiting for the arrival of Mr. Smith with Mr.  
Hawley. We were waiting for him to close to seven  
o'clock - or 6.30 about probably - and then we have 40  
realised that they were not coming; and we all  
went to the board room, and before the settlement  
started, Mr. Grant said to Mr. Sullamon if he agree-  
ing to turn the clock back to 10 past five, and  
he agreed; and then heap of documents have been  
placed on the board table by both solicitors, and  
settlement started to take place, and it was fin-  
ished about 8.30 the same night.

Q. There were many documents signed and cheques  
passed hands? A. Yes.

Q. And so on? A. Yes. 50

Q. In point of fact were the two amounts of \$100,000 paid to Mr. Armstrong's company? A. Yes.

Q. With respect to share options that you mentioned; how were the prices of the options arrived at? How were the prices for which the land was to be sold - land options? A. Land options.

Q. How were the prices, at which the land was to be sold pursuant to the options, arrived at? (Objected to; disallowed.)

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Q. You mentioned discussions with Mr. Smith about options to purchase land? A. Yes.

Q. Did Mr. Smith say anything about a price at which those options would be made? A. He said Mr. Armstrong wanted an option at half-price of the prices.

Q. Half price? A. Half price of the existing prices.

Q. By that you mean the prices which were anticipated? A. Yes, printed prices.

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HIS HONOUR: Q. Half price of the what? A. Printed price list.

Q. Are you saying "price list" or "prices"? A. Price list which has been attached to the document.

MR. GRUZMAN: Q. At the time that you executed this agreement you knew it provided for you to pay a substantial sum of money for those shares? (Not answered.)

Q. In this agreement of the 17th January, you knew that it provided for payment - a guarantee by you of payment of a large sum of money for the shares which were being sold by Mr. Armstrong to you or your nominees? A. Yes.

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Q. Did you have the money to comply with that agreement? A. No.

Q. What was your belief as to the present and future value of the shares which you agreed to buy at 60 cents plus five cents dividend? A. In my opinion the shares were worthless.

Q. What is the value of the shares today? A. Nil.

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Q. ~~You-tell-his-Honour-that-your-recollection-of-the-value-price-of-them-on-the-Stock-Exchange-on-that-day-was-something-like-20-to-30-cents--I-think-you-said-earlier?~~ (Interrupted.)

HIS HONOUR: He did not say that. You asked him and I rejected the question.

MR. GRUZMAN: I ask that that be struck out. (So ordered.)

Q. I would like you to tell us firstly what was your opinion as to the value of the parcel of 170,000 shares at 17th January 1967 if one wanted to either buy them or sell them? A. The parcel was of 300,000 shares, and my opinion of the value was worthless.

Q. Your own value of them was worthless? A. Yes.

Q. What was your opinion as to the future value of them? A. Same. 10

Q. Why, if the shares had a certain value on the Stock Exchange on that day, do you express the opinion - on what basis do you express the opinion that the parcel of 300,000 on that date was worthless? A. I was better informed myself as the ordinary buyer on the market; and secondly, the shares cannot be marketed. There were no buyers for any quantity of shares on the market.

Q. "There were no buyers for any of quantity of shares on the market"? A. Yes. 20

Q. If somebody had put 300,000 shares on the market at that date, in your opinion what would have been the price? A. It would have gone down to practically nil and could not be sold.

(Price list of Landmark shares - Stock Exchange prices - tendered and without objection admitted as Exhibit "K".)

Q. Following the settlement, what was the next thing that happened so far as it affected your mind? A. I was telephoned Det. Follington and ask him about inquiries - (Objected to; pressed.) 30

HIS HONOUR: Mr. Gruzman now foreshadows tendering evidence to explain the delay between the execution of the documents and the institution of the suit. The present question is said to be relevant to that explanation, and that only.

The defendant objects to the tender of evidence on delay as being irrelevant. It is put by defendants' counsel that explanation of the delay forms no necessary part of the plaintiff's case in chief. There is no defence of delay pleaded, and in such circumstances it does not seem to me to be relevant at this point of time to receive and consider evidence purely related to the question of delay; and accordingly I reject the question. 40

By way of elaboration of what I have just said, I shall add that Mr. Staff does not contend that delay may not at a later stage of this suit become relevant. His contention merely being that it is not relevant at this stage. Unless and until some significance is sought to be attached to delay on behalf of the defendant, I agree with Mr. Staff's submission that the delay is not presently relevant. 50

MR. GRUZMAN: Q. The two amounts of \$100,000 - that is the \$200,000 which was paid to Mr. Armstrong or his company on the 18th January 1967; where did that money come from? A. From the funds of Landmark Corporation Limited.

Q. You have told us something about Mr. Hawley and Mr. Smith going on the board? A. Yes.

Q. Just tell us what happened about that after the 18th January? A. I rang Mr. Smith on the 19th January 1967 at about 9 o'clock in the morning and I asked him why he did not turn up to the board meeting as he has been invited, and he said he and Mr. Hawley have decided not to join the board of Landmark Corporation Limited. 10

Q. On the 18th January 1967 did Mr. Armstrong resign from the board of directors of Landmark? A. Yes.

Q. On or shortly after the 14th March 1967 did the company receive from Mr. Armstrong through Mr. Grant, as his attorney, an exercise of the option in respect of the groups of shares, and is this the document which you received. Do you recognise Mr. Grant's signature on the document? (Handed to witness.) A. Yes, this is the document. 20

(Exercise of option tendered and admitted without objection as Exhibit "L".)

(Folder containing U.D.C. correspondence - January 1967 - tendered and without objection admitted as Exhibit "M".) 30

Q. Would you have a look at the signature appearing on this application for - each document attached to this file, and tell me whether you recognise the signature at the bottom? A. Yes, I recognise it as the signature of Frederick Hume.

(Sought to be tendered; objected to; counsel made submissions.)

HIS HONOUR: At this stage I am not satisfied that the car has sufficient relationship to the issues to make the document admissible. 40

(Form signed by Frederick Hume, being part of the documents produced by Traders Finance Corporation, m.f.i. 6.)

MR. GRUZMAN: I re-tender the cheque from Southern Tablelands Finance Co. to Hume's Investigations of 4th January, 1967. (Objected to; rejected.)

(Pacific Panorama Pty. Limited called on subpoena duces tecum. Mr. Grant, solicitor, appeared in answer to the subpoena, and was questioned as under in relation to the documents produced.) 50

MR. GRUZMAN: Q. What is your full name? A. Robert Ian Grant.

Plaintiff, x, interposed  
R. I. Grant, x on

Q. You are appearing in answer to the subpoena to Pacific Panorama Pty. Limited? A. Yes.

Q. I think you are the solicitor for the defendants, and you are a director of Pacific Panorama Pty. Limited? A. Yes.

Q. I think that company was served with a subpoena duces tecum, and do you produce to the Court the subpoena served on the company and such of the company's documents called for by the subpoena as are in New South Wales? A. Yes. 10

HIS HONOUR: Q. Does the company have any objection to the documents being seen, Mr. Grant? A. Yes it does.

Q. Are they currently required? A. There are books of account of the company, and monthly entries have to be made in relation to them.

MR. GRUZMAN: We seek leave to inspect the documents.

HIS HONOUR: Q. Mr. Grant, do you have any objection to folios 15 of the cash receipts and cash payments and folios 9 and 10 of the ledger being seen by the parties? I shall pass those down, if you would like to have a look at them. It seems to me, as at present advised, that those folios could be made available for inspection? A. The complete folios, or only the relevant entry concerning --- 20

Q. I am not concerned with the admissibility. I am only concerned with whether I am exposing your client, which is a stranger to the litigation, to unnecessary and avoidable disclosure of its internal affairs? A. This I would seek to avoid. I would have no objection to the entry relating to the cheque of 7th November, folio 15. 30

Q. That is the cash book, is it? A. Yes.

Q. And I think the ledger account? A. The same entry in the ledger account. The corresponding entry in the ledger account.

Q. In the ledger account that has the name of A.E. Armstrong Pty. Limited on those folios - I think it is folios 9 and 10? A. Yes. 40

Q. As at present advised I think it is not unreasonable that the whole of that ledger account should be made available. I do not want to disclose what is in it in argument, Mr. Grant, if you want to press the confidential nature of what is there, but you will observe the title in the cash payment entry and then the name of the account to which that has been carried in the ledger? A. I observe this. I would ask your Honour to limit any inspection to those two entries, and perhaps to the account heading of folio 10. 50

Q. What is there that, in the interests of Pacific

Panorama, you feel you would prefer not to have disclosed? A. There are a large number of entries. There are inter-company cash transactions and inter-company loan transactions which are of no relevance to this case.

HIS HONOUR: Mr. Gruzman, such portions as I make available to you should, I think, only be made available to you, your juniors or your solicitor. I do not fetter you in respect of the questions you may put, but merely in respect of any inspection. I think that those folios should be made available. I will make them available for inspection by you and your two juniors and your solicitor. That will be folios 9 and 10 of the ledger and two folios number 15 in the cash book. 10

MR. GRUZMAN: There is one additional matter. I am instructed that the actual subpoena in this case was served on Mr. Thorpe, the secretary of the company. It has been answered by Mr. Grant, as a director of the company. These books of the company would be under the control of its board and, although some of them are in Queensland, I submit we are entitled to have them brought here under the subpoena. 20

HIS HONOUR: What are you asking me to do, Mr. Gruzman?

MR. GRUZMAN: Perhaps I should indicate that I will call Mr. Thorpe on the subpoena that was served on him tomorrow morning, unless my friend is prepared, or Mr. Grant is prepared to say that they will get the remainder of the books brought down from Queensland. 30

HIS HONOUR: What is that address in Pitt Street?

MR. GRUZMAN: My instructing solicitor tells me that it is the address of the company in New South Wales. That is where Mr. Thorpe is, and where all the Armstrong companies are, and where Mr. Thorpe was served. 40

HIS HONOUR: Q. Mr. Grant, what is the position regarding the remaining documents covered by the subpoena? Will they be forthcoming on a voluntary footing, or is it sought that that appropriate process under the Service and Execution of Process Act if necessary be issued? A. They can be brought down. There is only the question about time, and the requirements of the Companies Act to keep them at the registered office.

HIS HONOUR: I should think if they could be brought down and brought to Court when the hearing is resumed next Tuesday? 50

Is that satisfactory, Mr. Gruzman?

MR. GRUZMAN: Yes.



MR. GRANT: Steps will be taken to do that.

(Call on subpoena concluded.)

MR. GRUZMAN: Would your Honour allow me to notionally re-tender what I might refer to as the dog incident at Surfers Paradise as a matter affecting Mr. Barton's mind? At the time that evidence was tendered - I think it would have been the first of the evidence tendered on that basis; indeed, I am not certain it was put on that basis - in the light of your Honour's subsequent rulings in our submission that evidence is admissible on that basis that it would have had a marked affect on Mr. Barton's mind in any matter in which Hume, guns, and such matters were mentioned.

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HIS HONOUR: This is the evidence about the shooting of the dogs?

MR. GRUZMAN: Yes, and what Mr. Armstrong was prepared to order Hume to do.

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HIS HONOUR: I don't think I am prepared to reconsider that.

MR. STAFF: We have the contracts my friend called for. There are one or two which we cannot locate at the moment. There is a note there of those that are missing. I think one is in the course of registration still.

MR. GRUZMAN: Doubtless my friend would wish to commence his cross-examination. Perhaps I may have an opportunity to examine these, and re-open on them at a later stage if necessary?

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HIS HONOUR: You can tender them in the morning.

PLAINTIFF

CROSS-EXAMINATION:

MR. STAFF: Q. Mr. Barton, you told us some time ago that some \$200,000 was paid to what you described as the Armstrong companies on settlement, I think, on 18th January of the transaction of which you have given evidence. Do you recall that piece of evidence? A. Yes.

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Q. What was the \$200,000 paid for, and to which company was it paid, Mr. Barton? A. \$100,000 has been paid to Finlayside Pty. Limited, owners of 2000 shares in Paradise Waters (Sales) Pty. Limited, and \$400,000 has been paid to Southern Tablelands Finance Pty. Limited, and one company controlled by Mr. Armstrong lent fresh another \$300,000.

Q. Anything else you want to say? A. That is the end of the question.

Q. \$200,000 was not paid to the Armstrong

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companies on settlement, that correct? A. A net \$200,000.

Q. So that \$100,000 you say was paid to Finlay-side? A. Yes.

Q. \$400,000 was paid to - A. Southern Tablelands Finance.

Q. Southern Tablelands Finance? A. Yes.

Q. And you say you got \$300,000 back from another Armstrong company? A. Yes.

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Q. Well, how did you get that? That \$300,000?  
A. I don't understand your question. If you can clarify it for me, please? Can you clarify the question?

Q. You don't understand that question of how you got \$300,000 from one of the Armstrong companies?

A. I got it?

Q. How Landmark, or whoever got it, got it. You don't understand? Is that what you are saying?

A. I don't understand what you mean by how I got \$300,000. I have not got any money.

20

Q. You told us that \$300,000 was paid on this date of settlement by one of the Armstrong companies? A. Yes. Has been lent on the security for Paradise Waters Estate.

Q. To whom was it paid? A. It was paid to the company's solicitor.

Q. To whom? By cheque? A. I beg your pardon?

Q. By cheque? A. Yes, I think so.

HIS HONOUR: Q. I didn't hear the answer. A. I think so.

30

MR. STAFF: Q. By a bank cheque? A. I have no recollection.

Q. Have you any recollection of which company - of the person in whose favour that cheque was drawn? A. Person?

Q. Or company? Have you any recollection of the person or company in whose favour that cheque was drawn? A. I think it was Paradise Waters (Sales) Pty. Limited, but I can't be sure.

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Q. You were managing director of all these companies in the Landmark group? A. Yes.

Q. You had a very close association with their affairs? A very close acquaintance with their affairs? A. Yes.

Q. You did all the business yourself, did you not, with the aid of clerical staff? A. What do you mean, I did all the business?

Q. You were controlling the whole of the business affairs? A. Yes. The board of Landmark Corporation was controlling it, and I was managing director of that company.

Q. Chairman of the board? A. By accident, yes.

Q. You were, I think, managing director of the subsidiary companies too, weren't you? A. Yes.

Q. You tell me you don't recollect whether the £300,000 which was paid to one of the Landmark group of companies was paid by bank cheque or not, is that right? A. Mr. Staff, I don't know if you want to confuse me, or not. You are talking about £300,000 now. 10

Q. I am sorry. \$300,000. A. Would you repeat the question, please?

Q. You don't recall whether or not the \$300,000 was paid by bank cheque, do you? A. I cannot be certain, but I think it was a bank cheque.

Q. What I want to put to you is that that \$300,000 was paid to one of the Landmark group of companies by Southern Tablelands Finance Pty. Limited? A. I already told you that one of the companies controlled by Mr. Armstrong - 20

Q. You don't know whether it was Southern Tablelands Finance or not? A. No.

Q. No recollection? A. So many changes have been made of lending and repaying and relending of this Paradise Waters money and from time to time Finlayside, George Armstrong & Sons, and Southern Tablelands Finance was the lender from time to time. 30

Q. You are a careful man, aren't you? A. Yes, I am.

Q. You are always careful in your affairs and your answers to questions? A. I think I am reasonably careful, yes.

Q. Are not you always careful? A. Yes, I am.

Q. I suppose particularly careful when you are under oath? A. Yes, most certainly.

Q. And you have sworn here on a number of occasions that prior to January 1967 at the time of this settlement your company owed some \$400,000 - your companies owed some \$400,000 to Southern Tablelands Finance Company, haven't you? A. I would like to see the transcript. 40

Q. What is your recollection now as to whom that money was owed by Landmark Corporation - that is, \$400,000, during November and December 1966? A. Southern Tablelands Finance Pty. Limited.

Q. Of course, you had considerable concern 50

during November and December 1966 with some litigation which was proceeding between various of the Landmark companies on the one hand and a company Finlayside Pty. Limited on the other, didn't you?

A. Yes. Finlayside - it was a company controlled by Mr. Armstrong.

Q. You recall, do you not, that there was a proceeding brought by Finlayside Pty. Limited against Paradise Waters (Sales) and other companies in the Landmark group? A. Yes.

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Q. And that was in November-December of 1966? A. Yes.

Q. And you were vitally concerned as managing director of the company with what was happening in these proceedings, weren't you? A. I was not greatly concerned.

Q. You were also aware, weren't you, that at the same time some proceedings were continuing - A. I beg your pardon?

20

Q. You were aware at the same time there were some proceedings going on between George Armstrong & Son Pty. Limited and companies in the Landmark Group? A. When was that?

Q. November-December 1966? A. I said before I don't know which companies controlled by Mr. Armstrong was suing exactly what companies of Landmark, but I know what it was all about.

Q. You don't remember who the parties to the litigation were in November and December 1966? A. Yes, I remember Paradise Waters (Sales) Pty. Limited on the one hand and Finlayside on the other.

30

Q. Do you recall that there was another piece of litigation as well? A. Some litigation regarding the inspection of proxies.

Q. Do you recall that there was another suit against some of the Landmark companies by George Armstrong & Son Pty. Limited at the same time? A. Yes, I recall that.

Q. And you tell us you don't recall to whom the sum of \$400,000 - to which company the sum of \$400,000 principal was owing in November-December? A. I said it was owing to Southern Tablelands Finance Pty. Limited.

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Q. And that is still your best recollection, is it? A. Yes, that is my best recollection.

Q. You have no doubt about it? A. That is my best recollection. That is as far as I can go.

Q. Your recollection is very good, is it? A. Yes, it is.

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Q. You remember dates and places and times well? A. Yes.

Q. You are not one of those people who have to rely on notes or records as to the dates on which various events occur? A. No, I am not one of those persons.

Q. You are a lucky man. May I take it also that you are one of those fortunate people who can remember quite clearly, long after the event, names of people and places and conversations which took place? A. Yes. 10

Q. Now I think, Mr. Barton, you told us the other day that you first had some contact with Mr. Armstrong about 1962 or 1963? A. Yes.

Q. And that, I think, was at a time when your company, Home Septic Tanks, or a company of that description, with which you were associated was doing some business with Factors? A. Australian Factors Limited. Not Factors. Factors is the older company. Australian Factors Limited.

Q. And the business you did brought you into contact with some of the executive officers of Australian Factors Limited? A. That is right, yes. 20

Q. They in turn ultimately introduced you to Mr. Armstrong, did they not? A. Will you repeat the question?

Q. They in turn introduced you to Mr. Armstrong? A. Not they. Mr. Walter Lammerton, who was then the managing director of Australian Factors Limited, and also a director of Landmark Corporation Limited.

Q. And he introduced you then to Mr. Armstrong? A. Yes. 30

Q. And I think sometime after you met Mr. Armstrong on the first occasion you then had some discussion with him, did you not, about the prospects of joining Landmark, or, as it was then known, Palgrave Corporation? A. Yes.

Q. And I think you asked Mr. Armstrong if he might arrange that you could work for some two or three months in Landmark to see whether you liked it, and whether they liked you? A. No. 40

Q. Your recollection is quite clear about that? A. Very clear.

Q. I think you were appointed general manager of Landmark Corporation as it is now known, as from 1st July 1963, weren't you? A. Yes.

Q. That appointment was made, do you recall, on 19th July 1963? A. No, it has been made on 1st July.

Q. You, of course, were not a member of the board at that time, were you? A. I was not. 50

Q. And you, I think, were working at Palgrave

Corporation in April of 1963, were you not? A. In April?

Q. Yes? A. Yes.

Q. And you had some three months or so before you became general manager? A. I was not working there. I had permission from Mr. Armstrong and Mr. Lammerton to look into the affairs of Palgrave Corporation Limited in a view that if I think the problems there can be solved by me I will sell my private company and be prepared to join as general manager. 10

Q. Anyway, you joined in July 1963 as general manager? A. Yes.

Q. And some months later you, I think, sold your private company to Landmark Corporation? A. Not some months later. I sold it on 1st July. The document has been executed only later.

Q. And the purchase of Home Holdings Pty. Limited was completed on 18th October, 1963? A. About that time, yes. 20

Q. I think it was just a little later that Mr. Bovill joined the board of Palgrave as a director? A. Yes.

Q. And then in July of 1964 your position as general manager was reviewed by the company, wasn't it? A. In July 1964?

Q. Yes. A. Yes.

Q. And about that time your remuneration and commissions were reviewed and increased, do you recall? A. My answer is no to one and yes to the other. 30

Q. Your salary stayed the same, you say? A. I beg your pardon?

Q. You say your salary went up? A. Yes.

Q. And your commission went up? A. Commission ceased.

Q. Your commission - A. Is finished.

Q. Your recollection is that in July the arrangement under which you took a salary together with Commission or bonus terminated in July 1964? A. Yes. 40

Q. That is your recollection? A. Yes.

Q. Is it? A. Yes.

Q. I show you the minutes of the meeting of directors of Palgrave Corporation, 7th July 1964. Will you have a look at the minute under the side heading "general manager's remuneration"? A. Yes.

Q. Just read it, will you? Read it to yourself.  
A. Yes. I have read it.

Q. You have read it? A. Yes.

Q. Is it still your recollection that the arrangement for commission or bonus on profits terminated in July 1964? A. Mr. Staff, before you asked me the question we were talking about commission. Now you are talking about bonus. They are two different things.

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Q. You just answer the question I asked you. Is it still your recollection that the arrangement for a commission or bonus from profits terminated at July 1964? (Objected to; question withdrawn.)

Q. Mr. Barton, in July of 1964 your remuneration as general manager was fixed at a basic salary of £8000 per annum? A. Yes.

Q. Together with an annual bonus upon consolidated net profit before tax in excess of £100,000 at two per cent., a bonus of three per cent., upon consolidated net profit between £200,000 and £300,000, and a bonus of four per cent. for every pound over £300,000? A. Yes.

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Q. You agree that that arrangement was made on 1st July 1964? A. Yes.

Q. At that time, of course, you were on quite friendly terms with Mr. Armstrong, weren't you? A. Fairly friendly.

Q. Only fairly friendly? A. Yes.

Q. Were you not on quite friendly terms with Mr. Armstrong in September 1964? A. Mr. Staff, I would like you to qualify what "friendly terms" means. If I agreed with Mr. Armstrong's activities or I was friendly to him or him friendly to me? I would like to know what you mean me to answer.

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Q. Well, with whatever meaning "friendly" has to you, were you on friendly terms with Mr. Armstrong? (Objected to; question withdrawn.)

Q. In September 1964 Mr. Armstrong, I think, went away for some time and appointed you as his alternate director, didn't he? A. I beg your pardon? I can't hear you very well.

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Q. In September 1964 Mr. Armstrong appointed you as his alternate director for meetings of Palgrave Corporation, didn't he? A. I think it was August or September, yes.

Q. And I think in October you then became managing director, is that right? A. That is right.

Q. And thereafter you acted as such during the early part of 1965. I think you were considerably concerned in negotiations in relation to the

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proposed purchase of MacIntosh Island? A. Yes.

Q. And ultimately you reported to the board on that matter? A. Yes.

Q. And strongly recommended the purchase on the terms which you had negotiated? A. That is right.

(Further hearing adjourned to 10 a.m., on Thursday, 23rd May, 1968.)



CORAM: STREET, J.

BARTON v. ARMSTRONG & ORS.

SIXTH DAY: THURSDAY 23rd MAY, 1968.

HIS HONOUR: There is a correction on p.23 of the transcript I wish to point out. It is on the eighth line above the word "PLAINTIFF". There is the phrase "at the present point of time" which I think should come out.

(Bank of N.S.W. called on subpoena duces tecum by Mr. Staff. T.M. Finlay, an officer of the Bank of N.S.W., appeared in answer to the subpoena. Mr. Finlay produced the documents called for in the subpoena, together with a copy of the subpoena, and stated that the Bank has no objection to the documents produced being seen by the parties, nor were the documents required urgently by the Bank. Excused.) 10

(United Dominions Corporation called on subpoena duces tecum by Mr. Staff. Mr. R. P. Woodward, an officer of United Dominions Corporation, appeared in answer to the subpoena. Mr. Woodward produced the documents called for in the subpoena, together with a copy of the subpoena, and stated that there was no objection to the documents produced being seen by the parties, nor was their return required as a matter of urgency. Excused.) 20

(Ezekiel Solomon called on subpoena duces tecum by Mr. Staff. Mr. Masterman, of counsel, appeared to answer the subpoena on behalf of Mr. Solomon and objected to the production of the documents on the ground of privilege. Following argument his Honour stated that he would defer any further proceedings on the subpoena until Mr. Staff raised the matter at a later point of time.) 30

(Plaintiff called on subpoena duces tecum by Mr. Staff. The plaintiff produced a copy of the subpoena and stated that he did not have the documents called for in the subpoena. Excused.) 40

(Sergeant Anderson recalled on subpoena duces tecum by Mr. Gruzman, and questioned as hereunder.)

MR. GRUZMAN: Q. Your name is Ian Barry Anderson?  
A. Yes.

Q. You are recalled to give further answer to the subpoena served on the Commissioner of Police, which you first answered, I think, on Tuesday? A. Yes. 50

Q. In the meantime have you looked and obtained

certain further documents which answer that subpoena?  
A. Yes. A note book of Const. J.D. Flanagan,  
page 29 and part page 30, under date 13th August  
1967; and diary of Det. Snr. Constable Garth, part  
of p.23, dated 13th August 1967 and the diary of  
Const. J.D. Flanagan, part of p.32 and part of p.33  
under the date 13th August 1967.

HIS HONOUR: Q. Is the return of these documents 10  
required as a matter of urgency? A. In respect of  
the note book there is no great urgency for its re-  
turn. It is a complete note book. I ask that the  
two diaries be returned. I have prepared photostat  
copies of the material in the relevant entries which  
may remain with the Court.

MR. GRUZMAN: We do not seek to retain the diaries.

HIS HONOUR: Q. You may retain the diaries, if you  
will leave the photostats.

Is there any objection to these being seen? 20  
Do you wish me to follow the same course with these  
documents as on the last occasion? A. Yes.

HIS HONOUR: Do you wish to see them, Mr. Gruzman?

MR. GRUZMAN: I do.

HIS HONOUR: I think that these documents are rele-  
vant to the subject matter that is being investigat-  
ed, and I shall make them available only in so far  
as they are not masked.

SGT. ANDERSON: There is another document mentioned 30  
in the note book under the heading "List of Property".  
I made inquiries about that, and that document was  
destroyed after being transcribed on to other  
material which has already been produced.

HIS HONOUR: It is mentioned in the diary.

SGT. ANDERSON: It is mentioned in the note book,  
too.

HIS HONOUR: These documents will be placed with  
the documents produced last week, and they will be  
made available for inspection.

(It was arranged that at a convenient stage 40  
the note book should be released to Sgt.  
Anderson and that a photostat copy of the  
relevant entries should be produced to the  
Court. Sgt. Anderson excused.)

PLAINTIFF  
On former oath:

HIS HONOUR: Q. Mr. Barton, you are still on your  
oath to tell the truth? A. Yes, your Honour.

MR. STAFF: Q. Mr. Barton, you told me yesterday

I.B. Anderson, x on sub-  
poena duces tecum, excused.

that you had, in 1965, investigated the MacIntosh Island project, which became really the Paradise Waters Estate? A. Yes.

Q. And you submitted a report to the Board of Landmark - then Palgrave Corporation Limited - recommending the purchase of that? A. Yes.

Q. At that time I think the company had in mind developing the estate in conjunction with Stocks & Holdings Limited? A. Some negotiation was going on with Stocks & Holdings. 10

Q. And your recommendation was a specific recommendation as to the price to be offered for the purchase of the estate, wasn't it? A. I can't catch that.

Q. You put to the Board your specific recommendation as to what price should be offered to purchase the estate? A. Yes. It is attached to the minutes of the Board meeting.

Q. You regarded the purchase on that basis as being a very satisfactory one for the company, didn't you? A. Yes. In that conditions. 20

HIS HONOUR: "Yes, it was - "? A. Yes, in the conditions attached to the purchase.

MR. STAFF: Q. And your view continued that the company had - after it purchased the estate - had made a very good buy for a long time, didn't it? A. Yes.

Q. I think in February 1966 negotiations with Stocks & Holdings for the joint development of the estate broke down, did they not? A. I don't know the exact date when it broke down, but at some stage it did. 30

Q. Early in 1966? A. Yes, it is possible.

Q. And do you recall that as a result of that some variations of the arrangement which had been made to purchase the estate were made with the vendors? A. Yes. (Objected to; allowed.)

Q. In relation to the original negotiations for the purchase of Paradise Waters Estate and in the subsequent variation in negotiations your dealings were primarily with Mr. Armstrong, weren't they? A. Yes. 40

Q. And in the end you regarded your negotiations with Mr. Armstrong as having produced to the company a very satisfactory state? A. Yes. I regarded it as a very advantageous purchase for Landmark because Mr. Armstrong lent all the money which was necessary to purchase Goondoo Pty. Limited which owned this development - Paradise Waters Estate. In my opinion the company got the project without putting up a penny. 50

Q. Without putting up any money? A. Yes.

Q. Throughout your negotiations with Mr. Armstrong throughout this period of time they were friendly and amicable negotiations, weren't they?  
A. Yes.

Q. I think you told us the other day that at an early stage in your association with Mr. Armstrong you had become associated in a business venture called "The Sands"? A. Yes. 10

Q. And that was a project in Surfers Paradise wasn't it? A. Yes.

Q. And it was carried out by a company called Pacific Panorama Pty. Limited or Pacific Panorama (Sales) Pty. Limited? A. Pacific Panorama Pty. Limited.

Q. And I think your part in that project, which was the building and sale of a multi-storeyed home unit building, was to provide services in the form of advice and know-how in respect of the planning, design, construction and sale of the units? A. Yes. 20

Q. The building, I think, was built by Mainline Constructions, is that right? A. Yes.

Q. You provided some services for the company, Pacific Panorama Pty. Limited, in the respects that I have mentioned? A. Yes.

Q. Know-how, and so on? A. Yes.

Q. Your arrangement with Mr. Armstrong originally was that you should provide these services. That was never reduced to writing in the beginning, was it? A. It was not. 30

Q. And I think Mr. Armstrong or his companies - one or more of his companies - provided the finance for the project? A. Very little finance. Most of the finance came from outside sources.

Q. That project was not completed, I think, until sometime in 1966, was it? A. Yes.

Q. Well into 1966? A. Yes.

Q. And your relations with Mr. Armstrong throughout the continuation of that project were friendly and amicable, weren't they? A. Until the middle of July it was fairly amicable. 40

Q. Up to the beginning of July - the beginning of 1966 - would you agree they were friendly and amicable? That your relations with Mr. Armstrong were friendly and amicable? A. Beginning of 1966?

Q. Yes. A. Yes. I did not agree with Armstrong's business methods or did not agree to many things, but it was fairly - 50

HIS HONOUR: I am sorry, I could not hear that.

A. I did not agree with his business methods or did not agree with many business activities of Mr. Armstrong. I always told him what was my opinion. But it was fairly friendly.

MR. STAFF: Q. You had from time to time, no doubt, disagreement as to what course ought to be pursued on a particular matter or on particular matters, did you? A. I beg your pardon?

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Q. You had disagreements with him from time to time as to what ought to be done in a business sense in relation to particular matters? A. In Landmark, yes.

Q. Not in any of the other matters with which you were associated with him? A. No. I have not been associated with him in any other matter.

HIS HONOUR: Q. I did not hear that? A. I has not been associated with him in any other business matter except -

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Q. I still have not got that.

MR. GRUZMAN: "I have not been associated with him in any other business matter except this project."

MR. STAFF: Q. In April 1964 I think - 1966, I am sorry - in April 1966, Mr. Barton, you commenced to discuss with Mr. Armstrong and Mr. Goodwin another business venture, didn't you? A. Yes.

HIS HONOUR: Goodwin, or Goodman?

MR. STAFF: Goodwin.

Q. That, I think, was a business venture which you and Mr. Armstrong had contemplated that you would subscribe £60,000 each, wasn't it? A. It was not.

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Q. Was not the basis of the proposal that each of you and Mr. Armstrong should put in, if you decided to go ahead with the transaction, £60,000 each? A. No.

Q. What is your recollection of the amount that you and he contemplated subscribing? A. I would have to go a little bit further back to answer properly. To answer I will have to go a little bit further back.

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Q. You say you can't answer that question? A. Not in that sense.

Q. You did have a discussion with Mr. Armstrong in April 1966 and with Mr. Goodwin about the possibility of you and Mr. Armstrong entering into a venture with Mr. Goodwin concerned with the salvage of a ship off the Australian Coast in the Pacific Ocean, did you not? A. Yes, I had a discussion, yes.

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Q. And did not that discussion proceed with Mr. Goodwin on the footing that you and Mr. Armstrong would each, if you decided to go ahead with the proposal, put in £60,000? A. I cannot answer this question unless I can say what happened on the first discussion with Mr. Armstrong.

Q. Mr. Armstrong, I think, first referred that proposal to you to see whether Landmark or one of the Landmark companies would be interested in it, didn't he? A. Yes. (Objected to; allowed.) 10

Q. And I think your immediate answer to Mr. Armstrong was that Landmark would not be interested? A. Yes. I told Mr. Armstrong this speculating type of transaction cannot be any proposition for Landmark.

Q. Then you and Mr. Armstrong discussed with Mr. Goodwin the possibility - and I do not suggest it was any more than a possibility - that you and Mr. Armstrong might enter into the transaction? A. Yes. I wanted to keep this ship away from Landmark and to try to shift it in the direction which is not affecting Landmark. 20

HIS HONOUR: Q. I am sorry, I could not hear that. "I tried to shift it in the direction ..." A. "Where it is not affecting Landmark."

MR. STAFF: Q. You thought in the first instance - your first impression was that it might be a good commercial venture? A. My first impression was that the course has been recommended by Mr. McCrossen, and he is an actuary, and according to Mr. Armstrong Mr. McCrossen told him it is a good proposition - that they don't want to be involved in it because it is very speculative, and I think it was worthwhile to look into it and investigate it. 30

Q. At any rate, during April 1964 (sic) you had some investigations carried out about the title to the ship and the like, didn't you? A. No.

Q. By your solicitor? A. No.

Q. Or Mr. Armstrong's solicitor? A. Mr. Armstrong's solicitor, yes. 40

Q. And you gave consideration to going in to a venture of some magnitude with Mr. Armstrong at that point of time? A. No it was not. (sic).

Q. Mr. Barton, would not you agree that had you decided that the proposal made by Mr. Goodwin was a worthwhile commercial proposal you would, in April 1966, have been quite happy to enter into a joint venture arrangement with Mr. Armstrong?

HIS HONOUR: Mr. Staff, you have got 1966 and 1964 sprinkled through this. Which is it? 1966 or 1964? 50

MR. STAFF: 1966. I withdraw that, and I will put

it again. Would you agree that during April 1966, had you come to the conclusion that the Goodwin proposal was a worthwhile commercial venture you would have been quite happy then to enter into the joint venture with Mr. Armstrong? A. No.

Q. And at that time you would instinctively have described Mr. Armstrong, if anyone had asked you, as your friend, wouldn't you? A. No. I would describe him as chairman of directors of Landmark Corporation Limited. 10

Q. You would not have described him as your friend in April, 1966? A. I don't think Mr. Armstrong has ever been my friend. We had a very fair business relationship.

Q. And you, I suppose, would certainly not have described Mr. Armstrong as "my friend" in September 1966, would you? A. In September 1966? No.

Q. You are quite sure about that? A. Yes.

Q. It would be quite impossible for you to describe him truthfully as "my friend" in September 1966, wouldn't it? Don't look at Mr. Gruzman. Just answer the question? A. I don't need to look at him. I am just - can you repeat the question? 20

Q. It would be quite impossible, wouldn't it, for you in September 1966 to have described Mr. Armstrong truthfully as "my friend". That would have been quite impossible in September, 1966, for you to have described him as "my friend"? A. Yes, I could not say that Mr. Armstrong is my friend. 30

Q. If you had said that in September 1966 it would have been a lie, wouldn't it? A. I don't accept that description.

Q. It would not have been true, would it? A. It would not be completely true.

Q. Completely? A. It would not be completely true.

Q. It would not have been at all true, would it, according to you? A. I already answered it, Mr. Staff. 40

Q. I think in the course of your relationship with Mr. Armstrong you very often dined with him at public places, and elsewhere? A. I don't know what you call "very often" I can say we had business lunches and went out of the office together to have lunches with other people - other business people - and privately I probably had dined with him or been at a party with him probably four or five times in a year.

Q. You and Mrs. Barton and Mr. and Mrs. Armstrong dined together on numerous occasions? A. Yes. 50

Q. And you dined both on occasions when there were only you and Mr. and Mrs. Armstrong or your wife, and when other outsiders were present? A. When other outsiders were present.

Q. And you took your wife and family from time to time to the airport to see Mr. Armstrong off, didn't you, when he went away? A. I took my wife, yes.

Q. Your wife and your family? A. Yes, I think my wife and my son. 10

Q. You did that on a number of occasions, didn't you? A. On two occasions.

Q. And you went to see Mr. Armstrong off when he went away in 1966, didn't you? A. Yes.

Q. And I think you were invited by Mr. Armstrong along with Mr. Honey in August 1966 for the opening of Parliament, weren't you? A. No. I has been invited.

Q. You were invited? A. Yes, and I passed over my invitation to Mr. Honey because he was more interested to see the opening of the Parliament and I thought I give him the benefit of it. 20

Q. And this is at a time when your relations with Mr. Armstrong were very bad? A. What is the time?

Q. August 1966? A. Yes.

Q. And on numerous occasions you were invited and went to Mr. Armstrong's home, didn't you? A. Taking about three years from 1963 till 1966 I has been invited to Mr. Armstrong's home probably two or three times for dinner and I has been invited for three or four parties there when a number of people was present. 30

HIS HONOUR: Q. I did not hear the last? A. Three or four parties, where a large number of people was present.

MR. STAFF: Q. You were invited to his home during 1966 and went, didn't you? A. Partly correct. It is definitely not after July 1966. I has not been to Mr. Armstrong's place. 40

Q. In July 1966 you had dinner with your wife, yourself and the Vasseys at the Gap Tavern? A. Yes.

Q. With Mr. and Mrs. Armstrong? A. Mr. Vasseys invited us.

Q. I think also in 1966 you were invited to the Australian Club Cocktail Party by Mr. Armstrong?  
A. What time in 1966?

Q. Don't you recall? A. I was in there once. I don't know which time. 50



Q. (Approaching witness with photograph.) I want you to look at a photograph. Just look at the photograph, will you? A. Yes.

Q. Do you recognise the people in the photograph?  
A. Yes.

Q. I think they are yourself and Mr. Armstrong side by side? A. Yes.

Q. Your son? A. Yes.

Q. And your wife? A. Yes. 10

Q. Alongside your son? A. Yes.

Q. And Mrs. Armstrong? A. Yes.

Q. And Miss Armstrong? A. Yes.

Q. And Mrs. Dakin, is it? I can't read the name my friend has here. Can you recognise the next one? A. She is an old friend of Mrs. Armstrong, going back for many years.

Q. Who else? Who is the gentleman? A. This gentleman is a very old friend and escort of Mrs. Armstrong. His name is Morton Cansdale. 20

Q. Will you agree that that photograph depicts a happy group of people? A. No.

Q. You have got a broad smile on your face, haven't you? A. Will you show me the photograph please? I would like to look at something in the photograph.

HIS HONOUR: Q. Do you want to qualify your last answer? You were asked did you agree that it shows a happy group of people? A. I say it shows a group of people - not a happy group of people. 30

MR. STAFF: Q. You would not agree that the people present appear to be a happy group of people? A. No. I was not happy myself. Therefore it cannot be a happy group.

Q. You had a broad grin on your face, didn't you? A. When a photograph is taken you are told "cheese" or "smile", and you just smile.

Q. The photograph was taken on an occasion when an. Armstrong was leaving for abroad, wasn't it?  
A. Yes. 40

Q. Taken at the airport? A. Yes.

Q. And typical, isn't it, of the sort of occasion on which you saw Mr. Armstrong off on a number of occasions. (Objected to; rejected.)

(Photograph tendered and marked Exhibit 2.)

Q. I think in the middle of the front row is Mr. Armstrong's second daughter? A. Yes.

Q. You, I think, left this country on overseas trip - on an overseas trip - in May - ? A. May I qualify my last answer before this question?

HIS HONOUR: Yes.

WITNESS: When this photograph was taken I gave a small cocktail ring to Mrs. Armstrong made by my brother and I told her that -

HIS HONOUR: You cannot say that, Mr. Barton. You do not have to take this, Mr. Staff. 10

MR. STAFF: Q. You, I think, left for overseas in May - late-ish May in 1966? A. Yes.

Q. And you returned towards the end of June 1966? A. Towards the end, yes.

Q. I beg your pardon? A. Yes.

Q. And I think you had originally anticipated being away for another month or so, had you not?

A. About another two weeks.

Q. Another two weeks? A. Yes.

Q. Your trip abroad was cut short by a decision of the Board to ask you to return for a particular meeting, wasn't it? A. Yes. 20

Q. And you returned for a meeting of the Board on 26th June, do you recall it? A. I don't know whether it was the 26th or 27th. It was towards the end of June. Very close to the end of June.

WITNESS: I would like to qualify my last answer. I has been telephoned by Joseph Stewart, the company's secretary, and he reached me I think in New York, and he said to me --- 30

HIS HONOUR: Just a moment. Mr. Staff, that has probably been opened up by your question.

MR. STAFF: I think I will probably get it, anyway.

HIS HONOUR: Q. Go on? A. Mr. Stewart told me that I should come back urgently because Mr. Armstrong is mucking up everything and the company is short of funds and nobody knows where we can negotiate the necessary funds.

MR. STAFF: Q. Before you left you left a memorandum with Mr. Stewart relating to the affairs of the company and the matters which might need attention while you were away? A. Possibly. I don't recall it. 40

Q. Don't you recall that? A. No.

Q. Don't you recall, before you went away, preparing a memorandum for Mr. Stewart setting out what arrangements you had made in relation to meeting liabilities in various projects? A. I

remember I had a very long discussion with him, and if you have such a memorandum possibly I just made it sure that he remembers all I have discussed with him and put it down on paper for him.

Q. Do you recall that when you returned you found that Mr. Armstrong had presented to the Board some notes in relation to matters dealt with in your memorandum in which he contained some criticism of some of the things contained in your memorandum? 10  
A. I think Mr. Armstrong had a difficulty to understand what the memorandum contains.

HIS HONOUR: Q. I did not hear that. I could not hear the beginning of that? A. That Mr. Armstrong had great difficulty to understand what was in the memorandum.

MR. STAFF: Q. Will you answer the question I asked you? You learnt when you returned from abroad that during your absence Mr. Barton - I am sorry, Mr. Armstrong - had presented some notes of his own to the Board which were in some respects critical of some of the matter contained in your memorandum? 20  
A. As soon as I return Mr. Bovill and Mr. Cotter tell me that Mr. Armstrong -

Q. Will you answer my question? Do you say you never had any knowledge of some notes presented to the Board by Mr. Armstrong during your absence which were in some respects critical of the memorandum which you had left Mr. Stewart? A. I don't say that. Mr. Armstrong might have done a lot of things while I have been away. I don't know. 30

Q. You know that he presented such a note, don't you? A. Mr. Staff, any time when I leave Sydney even for two days Mr. Armstrong was working behind of my back all the time.

Q. Will you just answer the question yes or no? You knew that Mr. Armstrong, in your absence, presented a note to the Board - presented some notes to the Board which were critical of the memorandum which you had left Mr. Stewart? A. I can't answer to that question before you show me the memorandum, and therefore I don't know what criticism you are talking about. 40

Q. You have no recollection of having heard or seen documents such as I have described to you? Is that what you say? A. I don't know what document you are talking about, quite frankly. Therefore I cannot refer to it.

Q. Has it ever been your habit to keep a diary? A. No. 50

Q. Have you never kept a personal diary? A. No.

Q. Have you never kept a personal diary in the Landmark office? A. No.

Q. Or a diary in relation to Landmark affairs? A. No.

Q. You are quite sure of that? A. Yes, quite.

Q. It would be quite untrue, would it, to say that in 1966 you kept a diary at 109 Pitt Street?

A. I did not keep a diary.

Q. You never did? A. No.

Q. You are quite sure about that? A. Yes.

Q. I want to give you every chance to be clear about your recollection? A. Yes. I didn't keep a diary.

10

Q. Now, Mr. Barton, you told us, I think, that you returned from your trip overseas towards the end of June, having had the trip cut short by a request from the Board to come home? A. Yes.

Q. Do you recall how far you got on that trip before you got that message? A. To New York.

Q. To New York? A. Yes.

Q. Most of the time you were away had been spent on holidaying, hadn't it, up to that point of time?

A. No. I went on a business trip.

20

Q. And you stayed some days in Tahiti, did you not? A. Yes.

Q. And some days in Acapulco? A. Yes.

Q. And then in a somewhat leisurely fashion you moved up through the United States to New York?

A. Not in a leisurely fashion. With great speed.

Q. Your wife was accompanying you, wasn't she?

A. Yes.

Q. At the company's expense? A. Yes. By the resolution of the Board.

30

Q. You were, I suppose, somewhat disappointed at the trip being cut short, weren't you? A. I beg your pardon?

Q. You were somewhat disappointed, weren't you, at your trip being cut short? A. Yes, I was very disappointed, because I just reached a point when up to the stage I was studying only developments, and in New York I started to arrange finance for the corporation, and my main aim was to go to Canada where the housing insurance business is going on for 10 or 15 years and a mortgage market was existing in Canada and one of the Landmark subsidiaries - Landmark Finance Pty. Limited - has been appointed a lender under the scheme, and my aim was to establish a connection in that mortgage market to sell Australian securities which is guaranteed by the Government.

40

Q. And that had been the primary purpose of your trip? A. No. There were two purposes. One

to study developments and the other purpose to arrange finance and establish this selling of mortgages what the corporation had.

Q. Do you recall that at a meeting of directors of Landmark held on 16th June 1966 a resolution was passed instructing you to return to Australia so as to be present at the company's office not later than 27th June? A. I recall that minute. I seen it after my return.

10

Q. Of course, you were not present at the meeting. You were still away? A. Yes.

Q. But you had knowledge that that resolution was passed? A. Yes. I might like to add, Mr. Staff, that I went overseas in December 1963 on my own expense, and has been recalled at the time still urgently because my presence was always urgent.

Q. We can understand how disappointed you must have been, and you came back to find some liquidity problem in the company, didn't you? A. Yes. It was full of problems and there was -

20

Q. I would like you to look at this copy. I want you to ignore the writing in red pencil on it. Will you look at the copy document I show you, which is dated 19th May, 1966? A. Yes, I see the document.

Q. Would you agree that is a copy of the memorandum that you left with Mr. Stewart shortly before you left for overseas? A. Possibly. I cannot be sure, because it is not signed me, but it is possibly that that is the document.

30

Q. Have you any doubt that it is the document you left with Mr. Stewart before you went away? A. Anything which Mr. Armstrong has I have doubts.

Q. Would you just read the document yourself, and then tell us if you have still got any doubts? (Witness peruses document.)

WITNESS: Yes, these are my instructions.

MR. STAFF: Q. That is a copy of your document?  
A. Yes.

Q. Do you now recall that subsequently you learned that Mr. Armstrong had written some notes in relation to some of the matters dealt with by that memorandum? A. So I heard.

40

Q. Do you recall that in some respects those notes were somewhat critical of observations made by you in your memorandum? A. Only from you. I only recollect it from you, the criticism.

Q. Would you look at copy of a letter dated 1st June 1966. Is that a copy of a letter which you received from Mr. Armstrong whilst you were abroad?  
A. I have not received any letter from Mr. Armstrong.

50

Q. You say you did not receive the original of the letter of which that is a copy? A. No. I recall it after I returned.

Q. You received it after you returned, did you?  
A. Yes.

Q. Would you then look at a document dated 24th June 1966, three pages of it, and tell me whether after you returned from abroad you saw and read that?

10

MR. GRUZMAN: Would your Honour permit me to put this: one does not know what my friend is leading to. Our object is to object to matters which will enlarge the scope of the inquiry and go into irrelevant matters. On the other hand it is not our object to interfere with my friend's proper cross-examination. We have no way of knowing whether matters such as this will be matters of credit or otherwise relevant at this stage. May we have the benefit of saying we object generally to these extraneous matters and leave it to your Honour -

20

HIS HONOUR: I think it preferable that you take objections from time to time. There are two very important witnesses in this suit, the plaintiff and the first defendant and I am very reluctant to be hasty in limiting cross-examination. You may anticipate the same degree of latitude. I am essentially in the hands of counsel in regard to this.

MR. STAFF: Q. You have read that document? A. Yes.

30

Q. Do you agree that you saw and read a copy of that document after you returned to Australia? A. I seen that document when I returned.

Q. You are aware, are you not, that that document comprised certain notes which Mr. Armstrong put to the Board during your absence? A. I do not know if it has been put to the Board or not. There are certain of Mr. Armstrong's views with which I am not agreeing.

(Letters and documents of May-June 1966 tendered; objected to.)

40

HIS HONOUR: I am of the view that these documents should be admitted. They are strongly pressed by Mr. Staff upon the basis that they touch the relationship between the parties. This is relevant both in itself and also in a secondary sense in respect of credit, and I think I should admit the evidence at this point of time.

(Copy memorandum from plaintiff to Mr. Stewart dated 19th May 1966, copy letter of 1st June, 1966 from Mr. Armstrong to plaintiff, notes of Mr. Armstrong dated 24th June 1966 admitted and marked Exhibit 3. Red pencil additions not included.)

50

MR. STAFF: Q. Would you look at exhibit 3. I want you to look at the first page of your memorandum to Mr. Stewart. Mr. Stewart's Christian name, or the name by which he was called, was Joe, was it not?  
A. Yes.

Q. You understood the reference in Mr. Armstrong's letter of 1st June to Joe, writing the letter with Joe, as a reference to Mr. Stewart, did you? A. Yes, I think so. 10

Q. I would like you to look towards the bottom of the first page of your memorandum to Mr. Stewart, under the heading of "Landmark House". You say, "no progress payments will be required ... 30th August of this year". You see that? A. Yes.

Q. That was a true statement, was it? A. I think so.

Q. You proceed: "He verbally postponed his mortgages until that date and I am sure he will co-operate with you if so required in relation to I.A.C."? A. Yes. 20

Q. You wrote that? A. Yes.

Q. And it was true when you wrote it, was it?  
A. Yes.

Q. You were quite sure that Mr. Armstrong would co-operate in relation to the postponement of his mortgages? A. He said so to me.

Q. And you were quite confident in your own mind that he would, weren't you? A. Yes.

Q. Landmark House, of course, was a multi-storey building in course of construction in Queensland?  
A. Yes. 30

Q. Under the next item, "McIntosh Island", you wrote "arrangements to finance the project will be ... which is due to Mr. Armstrong's company". A. Yes.

Q. That was a true statement, was it? A. By me, it will be completed?

Q. Yes? A. That is the indication what I got from United Dominion Corporation Limited. 40

Q. It was not in fact paid while you were away was it? A. I do not know.

Q. At that point of time it was your belief, was it not, that in relation to any liquidity problems which the company had, Mr. Armstrong would do all he could to co-operate with Landmark? A. No.

Q. You also left instructions to Mr. Stewart to call upon Mr. Armstrong's assistance in relation to various matters did you not? A. Not on various matters; I think in one matter. It is clear in the document what assistance I asked. 50

Q. You expected that during your absence Mr. Armstrong's assistance would be called in by Mr. Stewart in many respects? A. No, I did not. As a matter of fact I had instructed Mr. Stewart the opposite, to leave Mr. Armstrong out of any of his dealings.

Q. It was your belief in May 1966 that Mr. Armstrong should be excluded from any participation in the conduct of the affairs of Landmark other than at Board level? A. Yes. 10

Q. Shortly after you returned from overseas when you learned of what had happened while you were away, and these documents, exhibit 3, you felt some irritation, coupled with your disappointment, against Mr. Armstrong, did you not? A. I was disappointed that Stewart could not handle the company's affairs better. Talking about \$10,000, \$20,000, which was not a problem for Landmark to find any time at all, and as soon as I have arrived back from overseas within a couple of days I arranged a \$1,000,000 loan from United Dominion Corporation Limited, and these problems just not existed. 20

Q. They disappeared entirely did they not? A. Yes.

Q. As soon as you got back? A. Yes.

Q. Within a few days? A. Yes.

Q. Will you tell why your company did not within the ensuing months repay the deposits which were returnable to purchasers? A. Which deposits are you referring to? 30

Q. Deposits returnable to purchasers in respect of contracts in relation to Paradise Towers which were cancelled? A. Because these deposits was not returnable. According to contract if the company produced its strata title before the end of June 1966 these contracts are binding contracts. I so have been advised by Mr. Grant. I would like to add something more, your Honour. In fact Mr. Grant went personally to Brisbane and made sure on my instructions that these Strata Title will be approved before the end of the month, that all the contracts should be binding contracts. 40

Q. Very soon after your return from abroad you executed an agreement in relation to remuneration which should be paid to Allebart Pty. Limited in respect of the provision of know-how and the Sands? A. Yes.

Q. You told me earlier that at that time the building was virtually complete and the units virtually all sold? A. Yes. 50

Q. This on 1st July was executed between A.E. Armstrong Pty. Limited and Allebart Pty. Ltd., Pacific Panorama Sales Pty. Limited and Pacific



Panorama Pty, Ltd., a deed providing for payment of remuneration in respect to the provisions of know-how? A. Yes.

Q. Allebart Pty. Ltd., was a company in which you and your family have the shareholding interests?

A. Yes, I had 40 per cent. shareholding and my wife and my son had the rest.

Q. Under that agreement Allebart Pty. Ltd., received from A.E. Armstrong Pty. Ltd., \$93,400 as remuneration? A. I was supposed to receive, but in fact I received receipts and I received some \$5,000 and some hundred cash, a cheque for \$5,000 and some hundreds cash. 10

Q. You say the company did not receive as remuneration \$93,400? A. Yes, according to documents the company received it, but at the same time I had to purchase 39,000 Landmark shares from Mr. Armstrong and in all I got cash \$5,000 and some hundreds and the rest of that was receipts. 20

Q. The agreement that was reached between A.E. Armstrong Pty. Ltd., and Allebart Pty. Ltd., provided for that company to get \$93,400 as remuneration for its services in respect of the Sands? A. Yes.

Q. That was concluded between you and Mr. Armstrong on behalf of the two companies in July 1966 was it not? A. Agreement has been negotiated between me and Armstrong in the first half of 1963 and the documentation has been prepared in the first half of 1966. Mr. Grant was acting for both parties and Mr. Grant was a director of Mr. Armstrong's company and I had doubts that this agreement is conflicting with my Managing Director position which, at the time when I made the agreement with Mr. Armstrong, I was not even employed by Landmark but at the time when I was able to get this remuneration I was then - I have instructed Mr. Grant to get me a Queen's Counsel opinion regarding my position in connection with that matter, and he obtained one and I was not fully satisfied with that and I did ask him to obtain another one, and I say whatever I got out of it in cash is \$5,000 and some hundreds. The rest of that was receipts. 30 40

Q. The rest of it was in other property? A. The rest of them was 39,000 Landmark shares and I purchased a penthouse in the Sands for \$20,000 and I also repaid a loan to Mr. Armstrong which he lent on another matter to Mrs. Barton, and paid Mr. Armstrong some interest, I think \$4,500 interest. That is the only condition what he was prepared to pay me anything at all. I made the agreement with him at a time I hardly knew him. I knew him only as a Member of the Upper House and a grazier and Chairman of Australian Factors and Landmark and I made this agreement and I thought this agreement was an agreement, and it turned out this agreement has been switched and changed and tossed, and in the end that is how I finished up. 50

Q. In the end your company got \$93,000 odd and you spent that money paying off some debts and in buying a penthouse and some shares? A. That was the condition I enter into this agreement.

Q. In fact the 39,000 shares which were purchased by an agreement made on 1st July 1966 were purchased at 60 cents a share, were they not? A. I think \$23,400 I paid for it for all. Whether 60 cents I do not know. Very close to it. 10

Q. Would you look at this document (shown)? A. Yes, 60 cents.

Q. Some little time later Mr. Armstrong went overseas did he not? A. Yes.

Q. Do you recall the month in which he left? A. Yes, I think it was August.

Q. You went out to the airport to see him off, did you not? A. Yes, I did.

Q. And wished him a good trip? A. Yes, possibly. 20

Q. Then Mr. Armstrong was away until about the middle of October 1966 was he not? A. Yes, till about 17th or 20th October.

Q. He returned only a few days before you had the conversation which you told us about, and you say you said to him, "I cannot work with you any more"? A. As soon as he returned. As soon as I have seen him.

Q. It was some days after he returned, was it not? A. I do not know. As soon as he came to Landmark office and I seen him, I went to him and told him. 30

Q. You knew he had been back for a few days, did you not? A. No, I did not. In fact Mr. Armstrong said they had just returned.

Q. The first thing Mr. Armstrong did, you say, was to come into the Landmark office when he arrived back? Was that the first thing he did when he came home, to go to the Landmark office? A. I do not know. 40

Q. You had, of course, not long before, engaged Mr. Hoggett as Assistant General Manager of Landmark had you not? A. I practically engaged him before I went overseas. I engaged him in the middle of May.

Q. He took up his position from 1st September, did he not? A. Yes, he wanted to take up the position immediately and I told him "I am going overseas" and he will not last as long as I return if he is there because Mr. Armstrong will shove him around and I will have no use of him then. 50

Q. Mr. Stewart terminated his appointment on 31st July, did he not? A. No, he advised me before I left for overseas and I think he terminated his employment ---

Q. He gave you three months' notice did he not?

A. Stewart told me he will stay as long as the balance sheets are completed. He did not want to leave me - he said he is not prepared to work for Landmark any more but he did not want to be unfair to me and will stay as long as the balance sheets are completed. He understood the difficulty if the company secretary leave at the end of the financial year. 10

Q. Will you have a look at the minute of the meeting of 8th July 1966, the first item, against the marginal heading "staff"? A. Yes.

Q. Does that correctly record what you told the Board on that day about Mr. Stewart? A. Yes. This shows 31st August, not 31st July, as you suggested. 20

Q. 31st August? A. That is right.

Q. Mr. Hoggett was engaged as Assistant General Manager to commence on Mr. Stewart's termination, that is on 1st September, was he not? A. Yes. What happened ---

Q. I do not want to know what happened. I just want you to answer my question. You engaged Mr. Hoggett - and don't look at the minutes please; I want your recollection - you engaged Mr. Hoggett, did you not, after you knew Mr. Stewart was leaving, and to commence from 1st September 1966? A. That is right. That was in May 1966. 30

MR. GRUZMAN: If your Honour does not see the minutes your Honour does not know whether they confirm or do not confirm it.

(Minutes of meeting of 8th July 1966 tendered and marked Exhibit 4.)

MR. STAFF: Q. When you engaged Mr. Hoggett at the same time you arranged with him to sell him shares in Landmark Corporation did you not? A. No, I did not. 40

Q. You sold to Mr. Hoggett shares in Landmark Corporation during 1966 did you not? A. Yes.

Q. When do you say that you made the arrangements for the sale of those shares? A. At a time when he bought them.

Q. He bought them in the middle of 1966 did he not? A. I am not sure of the date.

Q. They were transferred to him, were they not, in August 1966? A. I know he bought them on a Saturday morning. 50

Q. And you sold him yourself some 6,550 shares in Landmark at 76 cents per share did you not? A. How much?

Q. 76 cents a share? A. If that is on the document, yes.

Q. At the same time you arranged the sale by Allebart Investments Pty. Limited of 7,250 shares at 75 cents a share, did you not? A. I just took out the shares what I got at home and I just took out as much as he required, I did not look at the company or myself or anything. 10

Q. I put to you that transfers were executed on 12th August 1966? A. Yes, it could be.

Q. You would agree at the time you sold those shares to Mr. Hoggett you sold them to him at a price considerably above the market stock exchange price did you not? A. I do not know if it was considerable. It was above the stock exchange price, yes. 20

Q. What is your recollection as to how much above the stock exchange price? A. Probably ten cents.

Q. And you made this arrangement with him before he took up his appointment, commenced his appointment as assistant general manager, did you not? A. No, I did not. Well after. Commenced - well after when I employed him.

Q. Will you look at the two transfers which are shown to you? A. Yes.

Q. The first one is a transfer by Allebart Investments Pty. Ltd? A. That is right. 30

Q. To Mr. Hoggett? A. Yes.

Q. Dated 12th August 1966? A. Yes.

Q. Would you agree the price for those shares was 75 cents? A. 75, yes, 75 cents.

Q. The second transfer was executed at the same time was it not? A. Yes, it is undated, but it was at the same time.

Q. That was a transfer by you personally to Mr. Hoggett? A. Yes. 40

Q. At 76 cents per share? A. Yes. No interest in price of 75 or 76 because he bought \$20,000 worth of shares; I do not know who put the price. He asked me to sell him \$20,000 worth of shares at a price of 76 cents.

Q. These two transfers add up to just a little over \$10,000 don't they, consideration for these two parcels? A. 10,000?

Q. Have a look at them. The consideration in

those two transfers is a little over \$10,000, is it not? A. Was a round figure, what Mr. Hoggett paid.

Q. About \$10,000 in those two transfers, is there not? A. My recollection still is he gave me a cheque for \$20,000.

Q. What did you give him for the other \$10,000?

A. I am a little bit lost actually. I do not recollect.

HIS HONOUR: Q. Do you want time to think? A. 10  
Yes. I am very sure, your Honour, the amount in question was \$20,000 and the share price was 76 cents and I gave him as much scrip as he was - some 130, 140 more because the right numbers did not come out, it was a Saturday morning at my home and I just gave it to him. That is how the difference came out. I am lost with the \$10,000 or \$20,000.

MR. STAFF: Q. At that time the market price of Landmark shares was 61 cents was it not? A. This 20  
could be.

Q. You sold shares to a person who was about to become an employee under your control, at something 14 cents above the market? A. No. He has already been employed by me in May 1966.

Q. He had not commenced work, had he? A. No.

Q. And there was no written agreement? A. No.

Q. There was no written agreement signed between Mr. Hoggett and the company was there? A. No, but there was a witness present called Oscar Guth. He was present when all these things happened. 30

Q. You had not, at the time you sold these shares to Mr. Hoggett, reported to the Board or obtained authority from the Board for his employment as Assistant General Manager had you? A. I did not get the question.

Q. By 12th August 1966 you had obtained no authority from the Board to employ Mr. Hoggett as assistant general manager had you? A. I do not think I needed it.

Q. You had not reported to the Board any proposal to employ him? A. Yes, I discussed it with all the Board members, but when Stewart gave me notice that he will leave the company I told him that I do not think I will find a person in the compass of the capability of Stewart, therefore I want to divide up his position and I want to employ a secretary and one assistant general manager in the view that that assistant general manager have to have enough knowledge about the projects. On the recommendation of Mr. Charody, the general manager of Stocks & Holdings Limited, I employed Hoggett in about the middle of May, 1966. 40 50

MR. GRUZMAN: Might I see these documents which have been produced on subpoena duces tecum.

HIS HONOUR: Yes.

MR. STAFF: Q. Do you recall on what date you made the arrangement with Mr. Hoggett to sell him shares in Landmark at 14 cents above the market price or thereabouts? A. At that Saturday morning, I do not know the date.

Q. When was it, a Saturday in what month do you say? A. July or August - end of July or early August. 10

Q. When you sold the shares to him you told him, did you not, that they were shortly going to rise substantially on the market? A. I did not.

Q. Not very long after Mr. Hoggett commenced as assistant general manager he was discharged by you was he not? A. He was dismissed.

Q. Subsequently he brought an action for wrongful dismissal against the company did he not? A. Yes, he has.

Q. And he brought an action against you in respect of the sale of the shares? A. Yes, he has. 20

Q. I think ultimately those proceedings were settled? A. Yes, including this defamation of character suit I brought.

Q. Will you tell us why, as managing director of Landmark, you sold to an employee or prospective employee shares at some 14 cents or thereabouts above the market price? A. I will tell you because Mr. Hoggett was trying to buy shares since August. He told me he bought a few little parcels and he could not buy a parcel. I told him in May that if he joined Landmark Corporation Limited I want him, if he can afford it, to buy shares in the company that he had an interest to work for. When I have been employed by Landmark I undertook to buy 100,000 shares. When I employed George Summers as Manager of Landmark Limited I told him he should buy shares, and he did too, and I think it is for the interest of the company to see that an employee in that position has some interest in the company's affairs; and I might add that that is the only parcel of shares what I sold during the time I am associated with Landmark, and I bought many other parcels myself for the same reason, and I would like to add that I have informed the company secretary about this sale, and also I like to add that on Monday morning Mr. Hoggett came to my office and he said he changed his mind, he thinks the price of the shares is too much and he do not like to buy. I went to my pocket, I still had his cheque there. I did hand it back to him and he gave me back the scrip. I was quite happy. I was not a seller of Landmark shares, I had no intention to sell. I sold them because he could not buy it as well --- 30 40 50

Q. Is what you are saying that you cancelled the deal on the Monday morning following the signing of

the transfers? A. I do not know following the signing of the transfers. I say on the Saturday morning he gave me the cheque and I gave him the scrips. On Monday morning he came to my office and said he do not want the shares, he think the price is too high and he has changed his mind. I gave him his cheque back and he gave me the scrip and the transaction has been finished. At the end of the day, about 5 o'clock he came back to me and he said that he went to his broker and was trying to buy a parcel and cannot buy it, and he changed his mind again; he wants it. Then I returned the scrip to him and he then returned the cheque. 10

Q. 62 cents had been the highest price the shares had stood at since they had been converted in February 1966 into dollar units was it not? A. I do not know.

Q. That is right, is it not? A. If you say so.

Q. A month or so earlier you had bought 39,000 odd of the shares from Mr. Armstrong for 60 cents, had you not? A. Yes. 20

Q. You were making a nice profit on a sale to a prospective subordinate employee, were you not?  
A. No, I did not.

Q. I asked you earlier why did you sell shares which were on the market at 61 cents or thereabouts to a prospective subordinate employee about to take up his position, at some 75 cents? A. The Board of Landmark Corporation has an opinion that Landmark shares were worth above a dollar. That was my opinion and the rest of the Board was of the opinion. 30

HIS HONOUR: Q. There is one point I do not follow. I understood you to say earlier you are not sure who fixed the price at 75 or 76 cents? A. Yes.

Q. On the Monday morning was there any discussion as to who had fixed the price for the Saturday transaction? A. No. Your Honour, what I recollect, I think the price was fixed at 76 cents and because I have not got the right number of scrip, I gave him a little more, I think 125 more, because the certificates was in such numbers --- 40

Q. Who did fix the price at 75 or 76 cents?  
A. I think the company secretary made this transfer and I just signed it.

MR. GRUZMAN: I think I understand what the witness is trying to say, that he fixed a price of 76 cents but that on the numbers in the share scrip, perhaps 125 shares more, so on the average someone worked it out at \$20,000, some of the shares would have to be marked at 75 cents - not suggesting that somebody other than him actually fixed the price at 75 cents. 50

HIS HONOUR: I understood his earlier answer to me was he was not sure whether it was he or Hoggett who put this price.

WITNESS: No, your Honour. I want to make it quite clear that I fixed the price of 76 cents but it came a little bit less because of this difficulty to give him the scrip.

MR. STAFF: Q. You told us the Board at this time had the view that the shares were worth in excess of a dollar? A. Yes.

Q. That was a view, you say, which the Board had held for some little time? A. Yes. 10

Q. So when Mr. Armstrong on 1st July 1966 sold you 39,000 at 60 cents, you thought he was giving you a big present didn't you? Do you agree with that? A. I was not unhappy with the price. I did not particularly want to buy shares at that time.

(Luncheon adjournment.)

AT 2.00 P.M.

MR. STAFF: Q. Shortly after Mr. Armstrong returned from overseas in August 1966 he discussed with you the Hoggett matter, did he not? A. He did not return in August 1966. 20

Q. In October. You agreed earlier that Mr. Armstrong returned in October 1966? A. That is right.

Q. Shortly after his return he discussed with you, did he not, the sale by you of your shares and the sale by Allebart of its shares to Mr. Hoggett? A. He did not.

Q. What I want to put to you is he discussed it with you and expressed strong disapproval of it? A. He did not. 30

Q. You are aware that very shortly after his return Mr. Armstrong learned about that transaction, are you not? A. I do not know when he learned about it.

Q. You were aware at the time, were you not, very shortly after his return, he had some discussions with Mr. Bovill about the transaction? A. Yes, I was aware of that.

Q. You were intensely angry that Mr. Armstrong should discuss that matter with Mr. Bovill were you not? A. No, I was not. 40

Q. Were you angry at all? A. No. I am not an angry person.

Q. You resented very much the fact that Mr. Armstrong discussed the Hoggett transaction with Mr. Bovill did you not? A. No, I did not resent it.

Q. Did you not resent what you regarded as derogatory remarks made by Mr. Armstrong to his co-director, Mr. Bovill? A. I do not know what remarks he made to Mr. Bovill. 50



Q. Mr. Bovill told you about the conversation with Mr. Armstrong did he not? A. Yes, Mr. Bovill came to me and said he had a discussion with Mr. Armstrong about shares that I sold to Mr. Hoggett, and I told him that Mr. Armstrong's system was to try to use one person against another and in this case I think the best course to follow, now it came to my knowledge this is an issue, that Mr. Bovill should stay with me until he can talk to Hoggett himself, and consequently we rang Mr. Hoggett's home and he was not home - that was about 4 o'clock in the afternoon. Mr. Bovill asked Mrs. Hoggett to 'phone back as soon as Mr. Hoggett arrived. He did not 'phone back. About 6.30 we got into my car, we drove to Mr. Hoggett's home, Mr. Hoggett was not there. Mrs. Hoggett said her husband used to go around in Menzies bar and we went back to the city and went into Menzies Hotel, went through every bar, and we drove two or three more places until about 11 o'clock at night, and then we see a small possibility we can talk to Hoggett the same night, and I agreed with John Bovill I do not talk to Hoggett but he should contact him himself. Mr. Bovill rang me next morning about 7.30 at home and informed me he talked to Hoggett and he satisfied himself my actions according to him were nothing wrong. 10

Q. At this stage Mr. Hoggett had been dismissed, had he, or was he still an employee of the company? A. He was still employed by the company. 30

Q. And it was not long afterwards that Mr. Hoggett commenced an action against you in respect of those transactions? A. No, it was long after.

Q. You were aware at this time, were you not, that Mr. Armstrong disapproved very strongly of the transaction with Hoggett which you had entered into? A. No, I do not know, because he has not reported anything to the Board. It was his duty.

Q. You, of course, had not reported the transaction to the Board had you? A. My duty as a director was only to inform the company secretary if I am buying or selling company shares, and that is the only parcel of shares I sold and I duly reported it to the company secretary. It was not a secret. 40

Q. Did you report the price? A. Yes.

Q. Did you tell your co-directors, before Mr. Armstrong spoke to Mr. Bovill about the matter, that you had engaged in this transaction with a subordinate employee of the company? A. It had no point. 50

Q. You did not conceive it to be your duty as managing director to inform your co-directors of such a transaction? A. No, I done my duty, I informed the company secretary and it has been registered in a directors' shareholdings register and all directors had a proper opportunity to peruse

this register. I done it myself many times.

Q. The price at which you sold would not appear in the directors' register of shareholdings, would it? A. Yes, it has appeared on the transfers of the share register, which has been tabled in the board meeting.

Q. The transfers went through in August? A. I do not know.

Q. They went through while Mr. Armstrong was away, did they not? A. I do not know. 10

Q. You did not draw the attention of Mr. Cotter or Mr. Bovill specifically to the transfer when it was registered? A. I already say I did not.

Q. What I want to put to you is that when you learned in October that Mr. Armstrong had expressed his strong disapproval of the transaction to Mr. Bovill you were very angry about the matter? A. First of all I do not know if that was in October. Secondly I was not angry. 20

Q. You thought it was an attempt by Mr. Armstrong to run your reputation down in the eyes of your co-directors, did you not? A. Not exactly, but Mr. Armstrong every time when I left Sydney, when I was not present, he was trying to say something against me.

Q. I did not ask you that. What was your belief or what was your thought as to Mr. Armstrong having told Mr. Bovill of this Hoggett transaction into which you had entered? A. I thought it is the consequence when I told him I am not prepared to work with him. 30

Q. And it was because of this that you said to him you were not prepared to work any longer and one or other would have to go, was it not? A. No, no, no, that was well after. As soon as Mr. Armstrong walked into Landmark office returned from overseas with his wife, I told him then, as soon as they arrived. As a matter of fact I would like to qualify it, your Honour. 40

HIS HONOUR: Q. What do you want to say? A. That Mr. Bovill contacted the company's solicitor and Mr. Bovill made a note of the whole discussion, and all actions about shares, and dates and everything could be found on his notes. I know the existence of those notes, therefore, it cannot be insinuated it happened before I told Mr. Armstrong I am not prepared to work with him.

MR. STAFF: Q. On 13th October you prepared a statement, did you not, for presentation to the Board meeting intended to be held on 24th October? A. I do not know what date I prepared it. 50

Q. You prepared it some five or six days before the Board meeting was held, did you? A. I prepared

it well before, about a month before the Board meeting, with assistance. The first draft was with the assistance of Oscar Guth and the final draft was with the assistance of Fred Miller.

Q. When do you say you prepared the final draft?  
A. Before Mr. Armstrong returned from overseas.

Q. You are quite sure about that? There is no doubt about that in your mind about that, is there? If there is tell us. A. On a final draft? 10

Q. Yes? A. I am not quite sure. I know I gave Fred Miller the final draft, what I saw as a final draft, and he made some correction on it and that became the final draft then.

Q. How long before the meeting do you say the final draft was prepared by you? A. Which final draft do you refer to? Which has already been vett-ed by Fred Miller, or my draft?

Q. You told us a few minutes ago you prepared a final draft with the aid of Mr. Miller. That is the final draft I am speaking about. How long before the Board meeting do you say you prepared that final draft? (Objected to.) 20

Q. You are aware, of course, that Mr. Miller is out of Australia at the present time, are you not?  
A. So I heard.

Q. You have already told us you prepared a draft?  
A. Yes.

Q. How long before the meeting of 24th October did you prepare that draft, that is the first draft?  
A. It was in the month of September. 30

Q. Before Mr. Armstrong's return? A. Yes.

Q. And then you made some alterations to that draft, did you? A. Not me; Oscar Guth, the public relations man for Landmark, put it in a better style.

Q. I am talking about the report you made to the Board meeting on 24th October? A. My motion regarding to cut the power of Mr. Armstrong, is that what you are talking about? My motion which finally has been adopted by the Board to cut Mr. Armstrong's powers? 40

Q. Yes, this is the meeting I am speaking about?  
A. Yes.

Q. You say after you prepared the first draft Mr. Guth made some alterations to it, put it into better language? A. Yes.

Q. Did you then take that to Mr. Miller? A. Yes.

Q. And did he make some alterations also? A. Yes. 50

Q. How long before the meeting was that? A. I cannot tell you exactly.

Q. Was it days, weeks or a month? A. Days. If I have to choose between days, weeks or months, I will say days.

Q. When Mr. Miller made his alterations did you make any subsequent alterations before the meeting?  
A. Yes, on Mr. Bovill's recommendation the company secretary made a correction, one more alteration on it.

10

Q. One word alteration, did you say? A. Yes, that was an alteration to take away the car from Mr. Armstrong which was used by Mrs. Armstrong permanently, and I thought is not very gentlemanlike for me to take away a car which is used by the Chairman's wife. I think I was wrong and I have been convinced by Bovill this is the right thing to do, and I done it.

Q. So that you had the statement in its final form anyway a few days before the meeting? A. Yes.

20

Q. Was this before or after Mr. Armstrong returned to Australia? A. That was after Mr. Armstrong returned to Australia.

Q. It was, of course, after you had heard of Mr. Armstrong's conversation about the Hoggett matter with Mr. Bovill, was it not? A. No, that was well before that.

Q. You know, do you not, that Mr. Armstrong's conversation with Mr. Bovill about the Hoggett matter occurred almost immediately after his return to Australia? A. I do not know when, the exact date.

30

Q. I did not ask the exact date. Almost immediately after his return? A. I do not know.

Q. And before the meeting of 24th October? A. I do not know. I just made a statement I know the existence of a document when John Bovill wrote it down for himself and his conversation with Mr. Armstrong, with Mr. Miller, with Mr. Hoggett, and with me. As a proper record I think you will be able to find out from these documents all the dates.

40

MR. STAFF: I call, not on notice, for a document entitled "Statement to the Board of Directors of Landmark Corporation Ltd., by the managing director Mr. A. Barton", and annexure dated 18th October, 1966, and further document headed "24th October 1966" commencing, "I, Alexander Barton, further move and ask that the following resolutions be seconded and carried". (Not produced.)

Q. (Approaching.) I want to show you a photocopy of a document with a signature appearing at the end, A. Barton, and the date 18th October, 1966? A. Yes.

50

Q. Is the signature a reproduction of your signature? A. Yes.

Q. Is the document a document which you prepared in anticipation of the meeting of 24th October, 1966? A. Yes, it is a photostat copy of a document that I signed.

Q. I want you to look at another one here. Would you look at it, and would you agree the second one I show you is an identical reproduction of the same document as the first? A. It looks to be. I did not check it word for word but it looks to me to be - 10

Q. Perhaps you will take my word for it at this stage? A. Yes, I will.

Q. I want you to look at the first page of the two pages that are pinned together and tell me whether the first page is a copy, a reproduction of a statement which you prepared for presentation to the Board on 24th October at this meeting on this date? A. This is what I was referring to. It was drafted by Mr. Oscar Guth, and off my own --- 20

Q. Off your own original? A. Off my own original, yes.

Q. I want you to look at a third sheet of paper headed "24th October 1966" which I show you. Is that a photo-copy of a further document which was prepared by or for you and presented to the meeting of 24th October? A. I do not recognise this.

(Two page statement dated 18/10/66 tendered and marked Exhibit 5.) 30

(Single page document marked for identification 7.)

WITNESS: Your Honour, the first page of this document and the second page of the document was originally one document. I wanted to tell the Board what is the reasons why I am doing all this, and the other one is the motion that I put to the Board.

MR. STAFF: The document exhibit 5, was in fact presented by you to the Board meeting of 24th October was it not? A. It is in the minute book. 40

Q. You say it is in the minute book, do you?  
A. I possibly read my statement and I read my motion and that was attached to the minutes.

Q. What I want to put to you was you handed to each of the directors at the meeting a copy of the statement and of the motion? A. Yes.

Q. That is a copy of each page? A. Yes.

Q. And then read the statement. Is that what happened? A. Yes, I think so. Not me. The practice was in Board meetings the company secretary - any documents presented to the Board, the company 50

secretary made enough copies and put copies in every director's folder, therefore it is possible every director had this.

Q. This was the meeting at which Mr. Miller was present in the early stage and took a tape recorder?  
A. Yes.

Q. In your statement you said, amongst other things, "At the Board level such incidents as Mr. Armstrong's telephone discussions with Mr. J. Bovill and Mr. R. Proctor have shown clearly he is playing directors against one another to suit his own personal interests"? A. Yes. 10

Q. That was a reference to Mr. Armstrong's discussions with Mr. Bovill about the Hoggett transaction, was it not? A. No..

Q. Nothing to do with it, you say? A. Nothing to do with it.

Q. In another part of it you said: "However, in view of the fact that Mr. Armstrong has broken all his past ... I cannot tolerate the situation any longer". Do you remember saying that? A. Would you read that again, I am sorry? 20

Q. Would you look at exhibit 5, the fourth last paragraph? A. Yes, I see it.

Q. What I want to put to you is that the statement: "In view of his own attempt to run ... on this Board, Mr. Bovill" was a reference by you to the discussions between Mr. Armstrong and Mr. Bovill about the Hoggett matter, was it not? A. I do not know. 30

Q. You have a little doubt, have you? A. Not a little doubt. I do not know.

Q. What was it a reference to? Discussions about what? A. Mr. Armstrong's system - as I said earlier in that same thing - was to use one person against another; any time I got outside of the office and had a chance to talk to anybody he tried to keep his power and run my reputation down.

Q. This, of course, was presented to the Board shortly after Mr. Armstrong's return from abroad, was it not - very soon after? A. This document was prepared in September, that first page. 40

Q. What was the "latest attempt to run my own reputation down in the eyes of a co-director on this board, Mr. Bovill" that you had in mind when you prepared it? A. I do not know. I think possibly I referred to that document that you have tendered this morning; while I have been overseas Mr. Armstrong said a lot of things to the Board members, that the company has no funds and it could not meet little commitments like \$13,000 or \$20,000 and this kind of thing, which is unfounded and untrue, and as soon as I returned I proved it. This 50

is business which can be handled properly by any executive of a company.

Q. Do you recall on 18th October 1966 a Board meeting of Landmark Corporation was held? A. 18th or 19th. I am not sure of the date.

Q. It was after that meeting had been held that you prepared, I want to put to you, the final draft of this statement, exhibit 5? (Objected to; allowed.)

10

Q. You recall a meeting of 18th or 19th October of the directors of Landmark Corporation? A. Yes.

Q. What I am putting to you is your statement, which is exhibit 5, was prepared after that meeting? A. It was before that meeting.

Q. You did not present it to that meeting did you? A. It was a very short meeting, and I have to think about it, why - (Objected to as unfair; allowed.)

Q. At that meeting, which you recall as being 18th or 19th October, and you say it was a short meeting, Mr. Armstrong was of course present, was he not? A. I do not know.

20

Q. Do you recall that at that meeting the balance sheet and profit and loss account for the year ended 30th June 1966 was considered by the Board? (No answer.)

Q. Do you recall that? A. Yes, I think was some matter raised about the balance sheet at that Board meeting.

30

Q. And the draft directors' report to accompany the balance sheet was considered at the same meeting, was it not? A. I do not know. I do not think it can be expected from me. That is why we are keeping minutes.

Q. Have a look at the minute? A. Yes, now I recollect.

Q. Now do you recall that at that meeting Mr. Armstrong was present? A. Yes.

Q. And that the meeting considered the draft directors report and the balance sheet for the year ended 30th June 1966? A. Yes.

40

Q. I put it to you again it was after that meeting that you prepared the statement which is exhibit 5? A. No, I prepared the first half of it in the final form in September, and the motion part of it I cannot give you the date; and I do not think that this is the final thing which went to the Board.

Q. What I want to put to you is that the statement on the first sheet of exhibit 5 was finally settled by you after the meeting of 18th October?

50

A. No, it has been settled in September and I can tell you, if you are interested to know, why I am so sure about September.

Q. Did the paragraph fourth from the end of the statement in these terms: "However, in view of the fact ... the situation any longer", appear in the first draft? A. Yes.

Q. What was the latest attempt to run your reputation down? A. I think there have been many things while I have been overseas. 10

Q. You describe it as "his latest attempt". What is that? A. I am referring to these documents which have been tabled.

HIS HONOUR: Exhibit 3.

MR. STAFF: Q. What did he do, attempt to do to run your reputation down in relation to the documents in exhibit 3 in respect to Mr. Bovill? A. You should ask Mr. Bovill or Mr. Armstrong. I cannot say. 20

Q. I thought you told us yesterday you had a very good memory, a good recollection of dates, times, places and events, did you not? A. Yes. I have a very good memory and I use it in such a way that matters which are important and not documented I remember. The documents and draft which is in the minutes I am relying on documents. It is more important to have my memory on matters which are not part and parcel of minutes or relevant documents.

Q. You regarded Mr. Armstrong's latest attempt to run your reputation down in the eyes of Mr. Bovill as very important, did you not? A. I was objecting for a long time that Mr. Armstrong ran my reputation down, not only with Mr. Bovill, but employees of the company, including a switchgirl and a lift driver and real estate agents and company representative at Surfers Paradise. Mr. Armstrong wanted to be the big powerful man and everybody else should be the servants of his wishes. 30

Q. You wanted to be the big powerful man too, did you not? A. Oh no. I showed it, because on my motion Mr. Armstrong has been removed from the chair, and I nominated Mr. Bovill for the chair, but unfortunately Mr. Armstrong has challenged his qualification, therefore I had no choice but to take the chair myself, and I say at a general meeting I am going to relinquish this position because I do not think it is proper for one person to occupy the chairman and managing director positions - as soon as I can. 40 50

Q. You had another director, Mr. Cotter, who could have occupied the chair, didn't you? You had Mr. Cotter, didn't you? A. Yes.

Q. And Mr. Cotter is a very well known and very experienced accountant of this city? A. Yes, he is.



Q. And was, in days gone by, a member of a firm of accountants in this city with a very illustrious reputation, wasn't he? A. Would you repeat, I am sorry? I lost you.

Q. He had been a member of a firm of highly reputed accountants in this city? A. Yes.

Q. But you had to take the chair, nevertheless, when Mr. Bovill was disqualified? A. Yes.

Q. May I come back again? Is this the truth of the matter, that you cannot tell us what the latest attempt to run your reputation down with Mr. Bovill to which you refer in that statement was? A. I just told you that it is those matters which you have tabled this morning - tendered this morning. (Exhibit 3.) 10

Q. And they were matters which occurred in June, 1966? A. Yes.

Q. On 24th October, 1966, when you circulated this statement to the Board of Directors, the latest attempt you were referring to was something that had happened in June, was it? A. Yes, because Mr. Armstrong had been away overseas from early August. In July Mr. Armstrong was at Surfers Paradise I think for two weeks, and he had no opportunity then to talk to Mr. Cotter or Mr. Bovill. 20

Q. So what you were referring to in that paragraph I put to you was something that happened nearly four months before? It was something that happened nearly four months before? A. Yes. 30

Q. Is that what you are saying? A. That has been prepared and finalised in September. I indicated to you I can give you my recollection why I am so good, if you wish.

Q. I want to put to you again - and I would like you to answer it, if you would - the fourth last paragraph of the statement, Exhibit 5, is directed to something which had happened four months before the meeting of 24th October, or almost four months before? A. Which happened in June, yes. 40

Q. And that was the straw which broke your back and brought you to the decision that you could not tolerate the situation any longer, was it? A. This and the threats to kill me.

Q. They, of course, on your story, had happened some months back, too? A. Not my story. These are the facts. It happened in July at Surfers Paradise.

Q. And at the Board meeting the resolutions which you moved were altered, weren't they? The resolutions you moved were altered? A. May I look at the minute book? 50

Q. Yes. Perhaps you had better have Exhibit 5,

as well as the minute book? A. Yes. It is a draft of the final what I put to the Board which has been vetted by Fred Millar and corrected by the company secretary before the meeting.

Q. During the Board meeting? A. Not during the meeting. Before.

Q. What I want to put to you is that the terms of the resolution you put to the Board meeting were altered during the course of the meeting? A. No, it was not altered. It was exactly adopted as I put it. 10

Q. Have you got a copy of the resolutions in the final form in which you say you handed them around to the directors? A. No, I have not got any copy of this myself.

HIS HONOUR: Q. I am sorry, I could not hear that?

A. I has not got any copy of it - no motion, or my statement.

MR. STAFF: Q. I want to go back about a week to the meeting of the 18th October, when you told us that there was some discussion about accounts - draft accounts for 1966? A. Yes. 20

Q. Would you agree that at that meeting Mr. Armstrong disagreed with the method - Mr. Armstrong disagreed with certain aspects of the method with which the accounts had been compiled? A. Yes. Mr. Armstrong started to use the balance sheet which is already prepared and agreed before for his own purpose. 30

Q. Mr. Armstrong returned to Australia a day or two before the meeting on 18th October, didn't he?

A. Yes.

Q. That is correct? A. Yes.

Q. And that was the first time the draft accounts were presented to a board of directors of Landmark or to the directors for consideration? A. It has been discussed with Mr. Armstrong before he left the principles which we adopted in the balance sheet. 40

Q. When was that? A. That was in July.

Q. When he was at Surfers Paradise? A. He was not at Surfers Paradise all the month, early in July.

Q. Early in July. The draft accounts for the year ended 30th June were in your hands, were they, early in July? A. No it was not. I told you, the principles on which the balance sheet will be prepared have been discussed by Mr. Stewart, myself and Mr. Armstrong, because Mr. Stewart was anxious to complete it because we have to leave. 50

Q. And, Mr. Barton, where was this? Where was

this discussion with Mr. Armstrong? A. In Landmark Corporation office.

Q. Early in July, you say? A. Yes, early in July.

Q. In the first half of July? A. The first half of July, yes.

Q. Now, after the 18th October it became quite apparent to you that Mr. Armstrong was in serious disagreement with you about the method of presentation of the accounts, wasn't he? A. It was apparent to me that Mr. Armstrong wants to use the adoption of the balance sheet for his own purposes. 10

Q. Are you deliberately refusing to answer the question you are asked? A. No.

Q. Would you listen to the question, please, and answer it now? It became apparent to you after the meeting of 18th October, didn't it, that you and Mr. Armstrong were in disagreement about the method of presentation of the 1966 accounts? A. I have to qualify that. Mr. Armstrong was on one side; myself, Bovill, Cotter and the company secretary had a different view from Mr. Armstrong. 20

Q. And that disagreement in principle continued throughout October and November, didn't it? A. It was not a great disagreement. It was only one item of \$30,000 was involved. The company had a court case with H. & V. Development and some \$30,000 was included in the balance sheet and first I obtained written opinion from Mr. Grant. Mr. Grant's written opinion was that it should be included in the balance sheet, which was the same as the company secretary's opinion. Then I discussed it with Hungerford Spooner & Kirkhope - with Mr. Cameron - and he said he cannot decide himself either way; he just does not know. He went and consulted one of his senior partners, Mr. Watts, who later came to the Board meeting, and this question was raised, and that was the basis of the disagreement. 30

Q. Do you seriously say that was the only matter of disagreement in relation to the accounts between you, on the one hand and Mr. Armstrong on the other hand? A. I never - (Objected to.) 40

Q. You disagreed with Mr. Armstrong and Mr. Armstrong's views about the method of presentation of the accounts, did you not? A. Yes.

Q. Now, do you say that the only matter in relation to the presentation of the accounts which you personally disagreed with Mr. Armstrong about was this sum of \$30,000? Do you seriously say that? A. Yes. 50

Q. You know, of course, that Mr. Armstrong raised a number of other matters in relation to the presentation of the accounts, don't you? A. I know that Mr. Armstrong went to the senior partner of

his own company's accountant, which was ---

HIS HONOUR: Q. I am sorry, I could not hear that?

A. Mr. Armstrong went to his own company's accountant. He went to the accountants. I have to think about the name.

MR. STAFF: Q. You need not worry about the name?

A. I have to worry about it, because it is a very important matter. Your Honour, I will refer to the name later on. I state it now that it is a firm of accountants who are auditing Mr. Armstrong's company's books. 10

Q. Yes? A. That was come to my notice, which was a very serious matter. Landmark Corporation had a firm of accountants which reputation was unquestionable, and that Mr. Armstrong should go to the other accountants, I formed the view that Mr. Armstrong tried to attack the company with knowledge gaining from other firm of accountants or people. It was not his own views. 20

Q. Now, can you answer the question I asked you? Would you please answer it now? A. Yes. What is the question?

Q. You have forgotten it, have you? Have you forgotten the question I asked you? A. If I did I am sorry. I had no intention.

Q. The question I asked you was whether you are saying now that there was no matter with which you disagreed with Mr. Armstrong other than in regard to the sum of \$30,000 in relation to the accounts? 30

A. I say that myself and my co-directors and the company secretary had no matters of dispute. May I continue with my answer? I would like to finish the question, if I may.

HIS HONOUR: Q. What do you want to say? A. All the three of us - two of my co-directors and myself - and the company secretary came to the view that Mr. Armstrong using the balance sheet for his own advantage - for his own position - and therefore Mr. Cotter had recommended to the Board that to be on the safe side to put a general provision into the balance sheet - I think it was \$100,000 - against the current year's profit or against the real estate values in the current year's balance, and that was adopted to make sure that this balance sheet position cannot be used by Mr. Armstrong for his own benefit. 40

MR. STAFF: Q. Mr. Barton, during November disagreement arose also between you and your co-directors and Mr. Armstrong upon the question of whether a dividend should be recommended for the year, didn't it? A. Was not. Was not disagreement. 50

Q. Do you say Mr. Armstrong agreed that a dividend should be recommended? A. Has been decided before Mr. Armstrong returned. His alternate director - I think Mr. Grant - was present when it has been discussed, and announced on the Stock Exchange.

HIS HONOUR: Q. What was that? Which has been discussed and - A. Which has been discussed and announced on the Stock Exchange.

MR. STAFF: Q. What I asked you was, would not you agree that during November 1966, while the accounts for 1966 were being finalised, disagreement arose between Mr. Armstrong on the one hand and you and the other directors on the other hand as to whether the declaration of a dividend should be recommended to the shareholders at the general meeting? A. Yes, that has been made for the same purpose, to give him something where he can attack the company with. 10

Q. Mr. Armstrong's view about the recommendation of the dividend was that it should not be recommended until and unless funds to satisfy any such a dividend were with certainty able to be seen to be available, wasn't it? A. Mr. Armstrong agreed to the dividend in principle in a discussion in July, and also his alternate director voted for the dividend himself, and then - 20

Q. Mr. Barton, I did not ask you that. Would you just try and answer the questions I ask you, please? A. Yes.

Q. Is it not a fact that Mr. Armstrong's views - his view, expressed at the directors' meeting, was that unless and until a certain source for payment of the dividend could be seen a dividend should not be recommended? Was not that Mr. Armstrong's view expressed at the directors' meeting? A. I will have to give a qualified answer. I cannot answer with one word. 30

Q. Did he say that to you and your co-directors at a board meeting during November? A. I will have to give a qualified answer to that.

Q. Would you just answer that question? Was that said to you and your co-directors during November at one of the Board meetings - at one or more Board meetings - by Mr. Armstrong? A. Yes, it has been said. I would like to qualify that later. 40

HIS HONOUR: Do you want a qualification, Mr. Staff?

MR. STAFF: No.

HIS HONOUR: Mr. Gruzman will ask you any later questions which may be admissible, Mr. Barton.

MR. STAFF: Q. Mr. Barton, I want you to look at the minutes of the meeting held on 8th November - at the minutes of a meeting of directors held on 8th November, and the document immediately following them, headed "Notes re Annual Accounts." Will you just look at those documents? Will you look at the minutes, and then the document following them - two pages? Will you look at those? A. Yes. 50

Q. Would you agree that the document headed

"Notes re annual accounts" was presented to the meeting on 8th November by Mr. Armstrong? A. I don't know.

Q. No recollection, Mr. Barton? A. No.

Q. Can you suggest any reason why they are in the minute book following the minutes of that meeting if they were not presented to the meeting on that day? A. I don't say it has not been presented. I don't recollect. I don't know if it was presented by Armstrong. I accept the note on top "Presented by Armstrong". 10

Q. Whose handwriting is that? A. It is the handwriting of the secretary.

Q. You have not any doubt now, have you, that the document was presented to the board meeting on 8th November by Mr. Armstrong? A. None whatsoever.

Q. And it raised a number of matters in relation to the accounts other than the security deposit of \$30,000, didn't it? It raised a number of other matters? A. Yes. 20

Q. And you and your directors - you and your co-directors disagreed with Mr. Armstrong about each of the matters raised by that memorandum, didn't you? A. We didn't disagree fully, but we understood and Mr. Armstrong did not understand the balance sheet what already has been incorporated in it.

Q. You didn't disagree, you say, but he didn't understand and you did understand. Is that what you say? A. That document you are referring to marked "Re Annual Accounts" we disagreed partly. On the other hand, Mr. Armstrong didn't understand what the balance sheet was incorporating - what items was incorporating in the balance sheet. 30

Q. Mr. Barton, at the meeting of 8th November it was resolved that the accounts be adjusted in a certain respect and be adopted for presentation to the general meeting, wasn't it? A. That is right.

Q. And Mr. Armstrong dissented? A. Yes.

Q. And it was then resolved that you and Mr. Bovill should sign the balance sheets and profit and loss accounts, and you sign the directors' report as managing director? A. Yes. 40

Q. And the reason for that was that Mr. Armstrong would not sign, as chairman, accounts with which he disagreed, wasn't it? A. Mr. Armstrong - what date are you referring to? 8th November, is it?

Q. Come on -

HIS HONOUR: Mr. Barton is asking what date the minute is, Mr. Staff. 50

MR. STAFF: Q. At the moment I refer the question

to Mr. Barton in this way: Do you recall that when the accounts were adopted for presentation, with Mr. Armstrong dissenting, a resolution was put that the profit and loss accounts and balance sheet be signed by Mr. Barton and Mr. Bovill, and that you sign the directors' report? A. Yes.

Q. What I am putting to you is that the reason for that resolution was that Mr. Armstrong would not sign those documents as chairman? A. Mr. Armstrong did not sign this document or any other document and did not agree to this or any other things what the other directors wanted.

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Q. Mr. Armstrong said that he would refuse to sign the accounts in the form in which you and your co-directors adopted them, didn't he? A. That is correct.

MR. STAFF: I will tender the document following the minute of 8th November headed "Notes re Annual Accounts".

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MR. GRUZMAN: I do not object to that, but I would add to the tender, in order to make it intelligible, the minutes of the meeting of Friday, 16th September, dealing with the draft 1966 accounts, and the provision of the \$100,000 -

HIS HONOUR: Although it is open to either party to tender exhibits at any point of time, Mr. Gruzman, you cannot necessarily force a tender in as part of Mr. Staff's tender. Do you have any objection to my admitting this document?

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MR. GRUZMAN: None, except that that document on its own just does not present a correct picture. It is a document annexed to a minute ---

MR. STAFF: I will tender the minute with it.

(Minutes of 8th November 1966 and "Notes re Annual Accounts" immediately following tendered and marked Exhibit 6.)

HIS HONOUR: So far as your purported tender is concerned, Mr. Gruzman, I don't think I should interrupt Mr. Staff's cross-examination. You can tender that later, and I will rule upon admissibility when it is tendered.

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MR. STAFF: Q. You told me a little while ago, Mr. Barton, that there was disagreement between Mr. Armstrong on the one hand and the rest of the Board as to the recommendation of the directors for payment of a dividend? A. Yes.

Q. And in the end the Board, with Mr. Armstrong dissenting, recommended a dividend? A. Yes.

Q. The shareholders passed a resolution declaring that dividend? A. Yes.

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Q. And there never was money to pay it, was there?

A. No, because it has been paid to Mr. Armstrong's company.

Q. It has never been paid to this date, has it?  
A. The dividend?

Q. Yes. It has never been paid to this date, has it? A. No, because \$200,000 has been paid to Mr. Armstrong's companies in January.

Q. From the day it was declared the company never had the money to pay it, did it? A. No.

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Q. And you, as a director, put forward at the general meeting the recommendation to pay a dividend which at that point of time you did not have the - the company did not have the money to pay? A. At that time the company had the money.

Q. It had it, did it? A. Yes.

Q. At the date of the shareholders' meeting? A. Yes.

Q. Where did it have it? A. I beg your pardon?

Q. Where did the company have it? In the bank?  
A. The company had funds - had assets - which has been used permanently to provide funds for the company.

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Q. The company did not pay money out of these funds - dividends out of these funds which it had, did it? A. No.

Q. Didn't proceed to pay the dividend immediately after it was declared, as is normal, did it? A. No, it didn't.

Q. That was because it didn't have the money, wasn't it? A. No.

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Q. And in fact it never had the money - never found the money to pay it, did it? A. No.

Q. And of course on numerous occasions you told the Stock Exchange that it would be paid shortly thereafter, didn't you? A. I think the company told the Stock Exchange that payment of the dividend will be made when the Paradise Waters Estate will be re-financed. On 14th December there is a deadline in Landmark Corporation affairs. At that time was quite clear that finance from the United Dominions Corporation was not coming forward. Existing agreement to finance Paradise Waters with United Dominions Corporation Limited has been withdrawn. Mr. Armstrong's companies had already overdue demands existing, and the company already took up obligations with suppliers, and contractors connected with the Paradise Waters Estate, which company was relying on the funds coming from United Dominions Corporation Ltd., on the engineers' certificates. Engineers' certificates has been given to United Dominions on 8th December 1966 which first one of which has not

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been paid by them, and they called up the rest of the money which all became due. Therefore, in one week between the 7th and 14th December a good company changed into the company which was attacked by all directions.

Q. And a company which, by 14th December or a little earlier, you regarded the shares in as being worthless? A. Worthless?

Q. By 14th December this was a company the shares in which in your view became worthless? A. Mr. Staff, I purchased shares myself on 1st December. 10

Q. If you will answer the question? A. The answer is no. My answer is no.

Q. At the latest, on 14th December 1966 you had formed the view that the shares in this company were worthless, had you not? A. 14th December?

Q. Yes? A. Round about that time, yes.

Q. Well, that is what you told us in your evidence in chief, wasn't it? A. I think I said on 17th January, but at that time - that is when I formed this opinion. 20

Q. You heard Mr. Gruzman open this case, and say that by the middle of December your view was that they were worthless? A. Yes.

Q. Was that true? Is that true, that your view was that they were worthless by the middle of December? A. Yes.

Q. You immediately, as chairman and managing director of the company, so informed the Stock Exchange, did you? A. No I did not. 30

Q. Why not, Mr. Barton? A. It was a matter for the Board; not for myself.

Q. You immediately informed the Board, did you?  
A. Oh yes. All the Board members was fully aware of the problems.

Q. That is not the question I asked you, you know. As soon as you formed this view did you inform the Board of this company of the view which you had formed? ( Objected to; allowed.) A. Yes. 40

Q. When was that Board meeting? A. We had none.

Q. You had none? A. No.

Q. So that you did not inform the Board? A. Yes, I informed each of them.

Q. Who did you inform? A. Each of the directors - Cotter and Bovill.

Q. Who were they? A. Mr. Cotter and Mr. Bovill.

Q. What about Mr. Armstrong? A. Mr. Armstrong cannot be contacted.

Q. You tried to contact him, did you? A. I didn't.

Q. You didn't? A. No.

Q. But within a day or two of the 14th December you had a conversation with him, didn't you? Within a day or two of 14th December you had a conversation with Mr. Armstrong? A. Yes.

Q. Did you tell him that? A. I never rang Mr. Armstrong. 10

Q. Did you tell him in the conversation you had shortly after 14th December? A. No.

Q. You did not? A. No.

Q. So that you did not inform the Board, did you?  
A. I informed two of the Board members, Cotter and Bovill, what is my view about the company position.

Q. Did you also inform the shareholders? A. No.

Q. You had told them only a short time before that the shares were worth more than a dollar, hadn't you? A. Yes. 20

Q. You didn't think you ought to tell them that they were now worth nothing? A. No.

Q. Did you tell the shareholders that the dividend would not be paid? A. No I didn't.

Q. Did you tell the Stock Exchange the dividend would not be paid? A. No I didn't.

Q. Did you tell your co-directors - any of them - that a dividend could not be paid? A. Yes, I did.

Q. Indeed, you proceeded to tell the Stock Exchange that the dividend would be paid, didn't you? A. In the event of the Paradise Waters Estate will be re-financed. 30

Q. But you knew there was no chance of it. That was your view, wasn't it? A. That was my view, but some other people had some other view.

Q. Mr. Cotter and Mr. Bovill disagreed with your view, did they? A. I don't know. You should ask them.

Q. Did you discuss with Mr. Cotter and Mr. Bovill and Mr. Armstrong, or any of them, the propriety of telling the Stock Exchange what view you had formed? A. Yes, we discussed it with Mr. Bovill and Mr. Cotter. 40

Q. What did they say to you about the propriety of telling the Stock Exchange and the shareholders?

A. None of us was talking about that urgent action should be taken with regard to the Stock Exchange.

Q. You just said, didn't you, that you discussed the propriety of telling the Stock Exchange and the shareholders? A. I didn't.

Q. With Mr. Bovill and Mr. Cotter? A. I don't think so. I didn't say that.

Q. You didn't? A. I didn't.

Q. You just told them your view was that the shares were worthless, and what did they say to you?

A. I didn't say that. I said to them that in my opinion the company is in big trouble - "Over night from a good company we have a company now which has money been called up by the first mortgagee on the Paradise Waters, and the second mortgagee called up his loan." The same time the Queensland Government was pressing Paradise Waters Limited - I am sorry, Goondoo Pty. Limited - to fulfil its obligations under the lease. Therefore the company position changed completely, and I thought myself that I have to consider what is my own position and then I decided I offer my resignation to my co-directors. 10 20

Q. At that stage you were prepared to abandon the shareholders' interests, were you? A. I offered.

Q. Of course, cheques for the payment of the dividend were written out, weren't they, ready to be sent out? A. That is right.

Q. Very soon after the date of the annual general meeting? A. That is right.

Q. And within a day or two of the annual general meeting they were all prepared and waiting for some money to come from somewhere to enable you to despatch them? A. Not from somewhere. Money to come from United Dominions Corporation to pay out Mr. Armstrong's companies and - 30

Q. And pay the dividend? A. - and pay the contractor of the Paradise Waters and suppliers of Paradise Waters Estate.

Q. And pay the dividend? A. And pay the dividend from other sources of the corporation. 40

Q. And did you tell the shareholders at the general meeting at which you recommended them to declare this dividend that the company's ability to pay it depended upon United Dominions Corporation lending you some more money? A. No, I don't need to. It was in clear conscience said to the shareholders "I have arranged it for United Dominions Corporation to pay out all moneys due to Mr. Armstrong". The solicitor acting for United Dominions Corporation stood up at the general meeting and said to the shareholders - 300 shareholders were present - "I am a shareholder myself, and I also solicitor for United Dominions Corporation Limited, and agreement has been made with Mr. Barton that moneys due to Mr. Armstrong will be paid out, with no string attached". 50

Q. You did not tell the shareholders that unless you got the money from United Dominions Corporation you were expecting you would have no money to pay the dividend you were asking them to declare? A. There was not any need to.

Q. When did you arrive in this country? A. 4th May, 1950.

Q. Did you leave Hungary after the war? A. Yes, I left Hungary in 1949. 10

Q. What time in 1949, roughly? A. I think a week or two after Easter.

Q. I think before the war you had been concerned in Hungary with a brick and tile works, hadn't you?  
A. Yes.

Q. And you saw some service during the war? A. I beg your pardon?

Q. You saw some service during the war? A. Source?

Q. Saw service. You served in the military forces during the war, did you? A. Yes. I served - I don't know how to describe it - labour force. I was not eligible for ordinary military service because I was of Jewish origin. 20

Q. And then you went back to Hungary after the war, did you? A. Yes. In 1943. 1942 or 1943.

Q. And after the war did you resume the same activities again in connection with the brick and tile works? Did you resume some activities in that connection? A. Yes. 30

Q. And then you finally decided to leave Hungary, did you? A. Yes.

Q. And I take it you slipped out of Hungary, did you? A. I beg your pardon?

Q. You slipped away from Hungary whilst it was in Russian occupation? A. Yes, you can put it this way.

Q. And you, Mr. Barton, went with your son to buy a rifle, you tell us? A. Yes.

Q. And your son you allowed to go off to learn to handle a rifle? A. Yes. 40

Q. I think you told us that? A. Yes.

Q. Of course, you were the one who had been threatened, you tell us, don't you? A. Yes.

Q. Were you looking to your son to protect you?  
A. I am certainly not the kind of person who likes guns. I don't like them.

Q. You preferred to leave the task of learning to handle the gun and shoot it to your son? A. I did not leave it to him as you see from the facts. I made proper arrangements. As you see from the facts I did not leave it to my son to shoot it out with criminals. I just moved to the Wentworth Hotel instead.

Q. Your first reaction was to allow your son to protect you, was it and not look after yourself? 10

A. No, it just happened that when we went to the C.I.B., and the rifle has been purchased and Follington said he will take out Tommy to the rifle range and teach him how to use the gun. It just happened. It has not been planned.

Q. Mr. Barton, of course it is not true, to say, is it - it would not be true to say, would it, that you served as an officer in the Hungarian Army on the Russian front during the war in combat? A. No, I didn't. 20

Q. It would be quite untrue to say that, would it? A. Yes.

Q. And I suppose you would say that you never told anybody that that is what you did during the war? A. No I did not. But I was an officer in the Hungarian Army.

Q. I beg your pardon? A. I was an officer in the Hungarian Army before the war, when I has been called up for National service. But to say - (Interrupted.) 30

HIS HONOUR: Q. Just a moment. Do you want to add something? A. When the Hitler era came every Jewish origin lost his rank and has been put into this - what did I call it before? - labour army.

MR. STAFF: Q. As an officer, of course, you had training in the handling of guns of various descriptions, didn't you? A. Yes.

Q. And I suppose you knew - you know all about handling and loading and firing rifles? A. I have not had a gun in my hand since 1942. During the war. 40

Q. You had guns in your hands during the war up to 1943, did you?

HIS HONOUR: "1942" he said.

MR. STAFF: Q. I am sorry. You had guns in your hands during the war up to 1942, did you? A. Not all the time. That is the last time I had a gun in my hand.

Q. Would you just have a look at Exhibit 6 - the minute of the meeting of directors of 8th November? Will you have a look at those minutes again? You see there a note that \$50,000 owing to Southern Tablelands Finance Company would be repaid by 25th November? A. Yes. 50

Q. That was a note made in the minutes as a consequence of a report made by you to the Board, wasn't it? A. By -?

Q. A statement made by you to the Board? A. Yes.

Q. And you assured the Board that this amount of \$50,000 would be repaid by 25th November, didn't you? A. Not only assured the Board, but to me arrangements has been confirmed in writing by United Dominions Corporation that money will be available for this purpose. 10

Q. And you told the Board on this day that there is no question that it would be repaid by 25th November? A. Yes.

Q. And it was not, was it? A. It was not.

Q. And that sum of \$50,000 had been over due for months, hadn't it, to Southern Tablelands Finance Company? A. Yes. Loans to Mr. Armstrong has always been due because that is how Mr. Armstrong arranged it - lent it on short terms. 20

Q. That sum of \$50,000 had been over due since the end of June - since the beginning of July, hadn't it? A. I don't know.

Q. Anyway, you were prepared on this day, 8th November, to give the Board a solemn assurance that it would be paid by 25th November? A. Yes, with the clearest conscience.

Q. And on that date, of course, that company had not called up the \$50,000, had it? A. This company came to this honourable Court and made application to this Court to restrain Landmark to accept this money from United Dominions Corporation Limited. 30

Q. On 8th November Southern Tablelands had not called up that sum of \$50,000, had it? A. Yes, it has been called up in such a way that it is payable on 25th November.

Q. What I want to put to you is that it had become payable about 30th June by the terms of the original loan? A. It could be. I don't know. 40

Q. Thereafter proceedings were commenced by Finlayside Pty. Limited against Landmark Corporation, Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited. Do you remember that? A. Yes.

Q. And they were commenced, I put it to you, by an originating summons dated 15th November 1966. Do you agree with that? A. I don't know. I don't agree with you. I don't know.

Q. Would you agree that the relief or orders which were sought in that proceeding were the appointment of nominees of Finlayside Pty. Limited 50

to the Boards of directors of Paradise Waters Limited and Paradise Waters (Sales) Pty. Limited?

A. Yes.

Q. And they were commenced because you and your co-directors had refused to appoint nominees of Finlayside to boards of these two companies? A. That is correct.

Q. At the same time, in suit 1263/66, George Armstrong & Son Pty. Limited commenced a proceeding against Landmark Corporation Limited. Do you remember that? A. Yes. 10

Q. The objective of the orders sought in that suit were to have representatives or nominees of George Armstrong & Son Pty. Ltd., appointed to the boards of Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited? A. Yes.

Q. Under the terms of the respective agreements between Finlayside and the Landmark group and George Armstrong & Son Pty. Limited and the Landmark group there were provisions for the appointment of nominees under certain events? A. Yes. 20

Q. And it was appointments of that character which you and your co-directors refused to make?

A. We refused to make these things -

Q. You did not make them? A. - on a principle that we purchased the company called Goondoo Pty. Limited from Mr. Armstrong with the money lent by Mr. Armstrong. Then the corporation spent its own money on development, and also borrowed money from United Dominions Corporation Limited which has been spent on the project. If we not let Mr. Armstrong just grab these projects, with additional assets already built into it, for nothing. 30

Q. Under the terms of the contract with Finlayside Pty. Limited in certain events Mr. Armstrong's company, or Finlayside Pty. Limited, was entitled to have nominees appointed to the Board, wasn't it?

A. I had legal advice from Mr. St. John Q.C., and Senior Counsel advised me what to do. 40

Q. You agree the documents appear to - A. Appear to me, as a non-lawyer.

Q. The proceedings by Finlayside was an attempt to enforce what the documents appear to say, wasn't it? A. On the face, but in fact I think it was trying to enforce to grab the project from Landmark to Mr. Armstrong.

Q. Of course, the effect of getting nominees on the Board of Paradise Waters (Sales) and Paradise Waters Limited would merely have been to give Mr. Armstrong's nominees or Finlayside's nominees control of the Boards of these companies? A. And consequently to transfer the rest of the Paradise Waters (Sales) shares to Finlayside, and in that case the whole company would become Mr. Armstrong's 50

company. That is a very important factor, Mr. Staff.

Q. We will see what the contract has to say. The contract made provision for all these things? A. Yes. On the face.

HIS HONOUR: I don't contemplate reopening that litigation in this suit, Mr. Staff.

MR. GRUZMAN: May I be taken as objecting to this subject matter?

HIS HONOUR: Yes. I allow it. It is relevant as part of the events at the point of time when the agreement under challenge was being negotiated. But there is a limit to the relevance of the detail of the suit. 10

MR. STAFF: Q. You would agree, wouldn't you, that under the terms of the loan agreements between Landmark Corporation and George Armstrong & Son Pty. Limited in the event that Mr. Armstrong was removed as chairman of Landmark Corporation the moneys become due and payable, or able to be called up? A. Yes. A difference of opinion. The document says, if I recall, that the money will become due on the following events. 20

Q. One of them being Mr. Armstrong being removed? A. Yes. But one thought - there was difference of opinion - one thought was that it became due in the event of one happening, and one thought it was all of them happening.

Q. At any rate you were conscious, weren't you, when you suggested to your co-directors that Mr. Armstrong should be removed as chairman that the moneys due to George Armstrong & Son Pty, Limited would, as a consequence, become due, or probably become due? A. Yes. I said that. I furthermore said that I am not prepared to remove him from the chair unless he gets his money as well. I made proper arrangements with United Dominions in early November. I got them to confirm it in writing, because Mr. Armstrong made certain statements in the press, and I was fully satisfied that this money was coming forward. I can assure you that without that arrangement of money I would not have myself removed Mr. Armstrong from the chair and put this mortgage into the position where it became due. 30 40

Q. You would have been prepared to tolerate Mr. Armstrong for a longer period, would you? A. I would have been prepared to get out myself.

Q. Would you have been prepared to take Mr. Armstrong's offer of 60 cents, or whatever it was, a share? 70 cents? A. No. Possibly would have resigned and kept my shares. I would never have accepted that offer for the shares. That offer was not an offer which I could accept. 50

Q. You, of course, thought you had quite a firm arrangement with United Dominions Corporation to



get some money from it, didn't you? A. Yes.

Q. Did you seek any advice as to whether that arrangement which you thought you had made was a binding arrangement? A. When this arrangement has been -

Q. I am not asking you what the advice was. I am only asking you did you seek any legal advice?  
A. At any time, do you mean?

Q. Did you seek any legal advice before you set about getting rid of Mr. Armstrong? A. No. The word of United Dominions was good enough for me. 10

Q. Of course, what they said was "subject to satisfactory documentation", wasn't it? A. Which was a letter when Landmark and Paradise Waters authorised U.D.C. to pay moneys without engineers' certificate, which finally has been signed, and finally that \$50,000 has been paid, and for some reason which is unknown to me the \$400,000 has not. That is how all these problems arose. I assure you that I made proper arrangement. I believed that this arrangement will be kept. I had reason to believe that United Dominions will pay this money and I say that this money was Mr. Armstrong's or his company's money, and I wanted to remove him from the chair because I thought that was the right thing to do, and I also thought it would be the right thing to do to pay his money. 20

Q. Because you knew, Mr. Barton, didn't you once you set about trying to remove Mr. Armstrong from any position as director or as chairman of the company - once you set about that you knew that Mr. Armstrong would call up, when he was able to, the moneys which were owing to the company? A. Yes. 30

Q. You knew you would have to make provision for that? A. That is right. That is why I made the provision.

Q. Before you got the money you were prepared to go ahead and take steps to, as you put it, remove Mr. Armstrong from the company? A. To me and to my co-directors the promise of the Board of United Dominions Corporation Limited was good enough. 40

Q. Of course, your reliance upon what you thought was a firm promise brought the company to the ground in the end, didn't it? A. Not only that one thing. All things together.

Q. That was the primary cause, wasn't it? A. No, I think it was the primary cause of Mr. Armstrong's attack on the company, and the public - 50

HIS HONOUR: Q. Public what? A. Public quarrel between board members and companies of Landmark and Mr. Armstrong, and the publicity which arose from these matters.

Plaintiff, xx

MR. STAFF: Q. Mr. Barton, would not you agree that the real cause of the company being brought to the ground was your determination to get rid of Mr. Armstrong from the company? A. No, I don't think it was my determination. I think it was the interest of the shareholders, really.

(Further hearing adjourned to 10.00 a.m., on Tuesday, 28th May, 1968.)

CORAM: STREET, J.BARTON v. ARMSTRONG & ORS.SEVENTH DAY, TUESDAY, 28TH MAY, 1968.

(Ezekiel Solomon called on subpoena duces tecum by Mr. Bainton. Mr. Solomon, a solicitor with Allen Allen and Hemsley, 55 Hunter Street, Sydney, produced a copy of the subpoena together with the documents called for in the subpoena. Mr. Solomon raised the question of professional privilege. Mr. Bainton applies for access to the documents and, after examining the documents produced, his Honour stated that Mr. Bainton might have access to the Paradise Waters books and the Paradise Waters (Sales) books. Mr. Solomon excused.) 10

(Secretary of the Sydney Stock Exchange called on subpoena duces tecum by Mr. Bainton. Leslie Foldes appeared in answer to the subpoena, produced a copy of the subpoena and the documents called for thereunder. Mr. Foldes stated that there was no objection to the documents produced being seen by the parties to the litigation, nor were they required to be returned as a matter of urgency.) 20

(Post-Master General's Department called on subpoena duces tecum. James Stanley Bayle appeared in answer to the subpoena. Mr. Bayle produced a copy of the subpoena and stated that no documents were produced in answer thereto. Mr. Bayle excused.) 30

(Subpoena directed to the Post-Master General m.f.i. 8.)

(Australian Watching Co. (N.S.W.) Pty. Limited called on subpoena duces tecum by Mr. Bainton. Alan Henry Mundy appeared in answer to the subpoena. Mr. Mundy stated that in the documents produced in answer to the subpoena there were entries concerning the affairs of persons other than those concerned in this litigation. He stated that there was no objection to information relating to the parties to the litigation being made available for inspection. His Honour permitted the parties to avail themselves of such information in the documents produced as directly concerned the current litigation. Mr. Mundy excused.) 40

(Plaintiff called on subpoena duces tecum by Mr. Bainton. Mr. Gruzman answered the subpoena on behalf of the plaintiff and produced a set of cheque butts in answer to the subpoena.) 50

(United Dominions Corporation recalled on subpoena duces tecum by Mr. Bainton. Ronald Peter Woodward, an officer of United Dominions Corporation, appeared before the Court. Mr.

Woodward stated that he now produced some further documents in conformity with the subpoena answered by him on 23rd May, 1968. Mr. Woodward stated that two of the documents produced on 23rd May were photostat copies, of which he now produced the originals, together with an original letter which had since been located at the company's solicitor's office. Mr. Woodward stated that there was no objection to the two original letters and the additional letter produced being seen by the parties to the litigation. Documents produced by Mr. Woodward added to the documents produced on the 23rd May, and made available to the parties for inspection.)

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(Documents produced by Bank of New South Wales on subpoena duces tecum on 23rd May, 1968, made available for inspection.)

PLAINTIFF

On former oath:

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HIS HONOUR: Q. You are still on your oath to tell the truth, Mr. Barton? A. Yes, your Honour.

MR. STAFF: Q. Mr. Barton, do you recall an occasion on 16th March, 1967 on which you gave evidence in a proceeding in Queensland between, among other people, Sandpumping Pty. Limited, V.E. Hopgood and Co., (Construction) Pty. Limited, V.E. Hopgood and Co., and Edgar Verden Hopgood against Goondoo Pty. Limited, Alexander Ewan Armstrong, Alexander Barton, Paradise Waters Limited and Landmark Corporation Limited as defendants? A. Yes. (Objected to; allowed.)

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Q. Have you a recollection that you gave evidence in the Supreme Court of Queensland in the matter I mentioned on 16th March, 1967? A. I already said I been a witness, yes.

Q. Do you recall that in the course of giving your evidence in that matter you said, at p. 793 of the transcript, in answer to the question, "Q. You have an excellent memory of everything that was said in that conversation?", "Yes, and any conversation what I had going back the last ten years. I have a very excellent memory. As a matter of fact I am famous for it in Sydney". Do you remember that question and answer? A. Yes.

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Q. Was that true? A. Yes, that is true, I still say I have an excellent memory.

Q. And you can remember any conversation you had going back the last ten years? A. In substance, yes.

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Q. Well now, - A. I would like to add to it, I think. Every important conversation.

Q. And you remember events and happenings just as well, don't you? You remember events and happenings just as well as conversations? A. Yes. If it is important to me, yes.

Q. Mr. Barton, you, of course, come here to this Court to tell the truth, don't you? A. Of course.

Q. I suppose you tell his Honour you are a truthful and honest man, are you? A. Yes, I am.

Q. You always tell the truth? A. Yes, I do.

Q. Both in Court and in your business affairs?  
A. Yes.

Q. And in your personal affairs? A. Yes.

Q. You have no doubt about that? A. I have no doubt. 10

Q. And you hold yourself out, do you, as an honourable man? A. Yes, I am.

Q. Honourable in social affairs, personal affairs, and business dealings? A. Yes.

Q. I think you told us the other day that you say also that you are a careful man, is that so? A. I don't know what you mean by "careful". I am human like anybody else, you know. I am careful, yes.

Q. Do you recall saying at p.66 the other day, towards the foot of the page - the question you were asked was: "You are a careful man, aren't you?" and you answered, "Yes, I am". Is that true? A. Yes, that is true. 20

Q. Did you understand that question when you answered it? A. Yes, the same way as I understand it now.

Q. You were asked these further questions: "You are always careful in your affairs and your answers to questions?" to which you answered "I think I am reasonably careful, yes". You were asked, "Are not you always careful?" to which you answered, "Yes, I am"? A. Yes. 30

Q. Were those answers true? A. Yes, those answers are true, except that I would like to add that I am human, like anyone else.

Q. A further question was asked, "I suppose particularly careful when you are under oath". You were asked that question, and you answered, "Yes, most certainly". Was that true? A. Yes, that was true. 40

Q. And, Mr. Barton, you are not a person who would tell a lie under oath? A. No, I am not.

Q. You are not a person who would tell a lie at any time, are you? A. No, I am not.

Q. And you would not tell a deliberate lie? A. No.

Q. Under oath? A. I dislike people who tell lies.

Q. Mr. Barton, do you recall an occasion on which you swore an affidavit in a proceeding between one Goodwin and Southern Tablelands Finance Co. Pty. Limited? A. Possibly I have.

Q. Do you recall giving evidence in such a proceeding in the witness box? A. Yes, I do.

Q. And do you recall before you gave evidence you swore an affidavit for use in those proceedings? A. Possibly, yes.

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Q. Do you recall that in September, 1966 you gave evidence in those proceedings before his Honour, the Chief Judge in Equity, Mr. Justice McLelland?

A. September?

Q. September, 1966? A. Yes.

Q. Do you recall that during the course of your evidence you were cross-examined by the plaintiff, Mr. Goodwin, who appeared in person? A. Yes, I do.

Q. Do you recall that you were asked these questions in the course of your cross-examination: "Q. I have asked you when did you first hear of this proposition?" (the proposition being the salvage proposition which Mr. Goodwin had discussed earlier with you), and you answered, "I cannot tell you the exact date. I would have to consult my diary to find out". Do you recall that question and answer? A. I don't recall it perfectly. I have a vague recollection.

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Q. You were then asked these questions:

"Q. Approximately? A. Three or four months ago.

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Q. How long before the 4th April did you hear of this proposition? A. I do not think I have that good a memory that I can tell you dates.

Q. Approximately? A. A month.

Q. Before the 4th April? A. Don't quote me on dates, because I have to refer to diaries to get myself acquainted with dates."

Do you remember those questions and answers? A. Yes, I recall it, but I mean the diary is ---

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Q. Will you just answer the question? A. Appointment ---

Q. Will you answer the question? Do you recall that his Honour the Chief Judge in Equity then asked you, "Where is your diary?" and you answered, "109 Pitt Street". Do you recall that? A. Yes, I recall it. I recall it. My answer is that ---

Q. Just answer the question? A. Appointment diary, which is - for appointment by my secretary.

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Q. You recall his Honour the Chief Judge in Equity asking you where your diary was, that day in September of 1966? A. Yes.

Q. And you told his Honour that your diary was at 109 Pitt Street? A. Yes.

Q. 109 Pitt Street was the Landmark office, wasn't it? A. Yes.

Q. And on that day did you have a diary at 109 Pitt Street? A. Yes. I had an appointment diary. I had an appointment diary, kept by my secretary. 10

Q. You had a diary, did you? A. We have two sorts of diaries. If you refer to one diary - (answer interrupted.)

Q. Is it true that on the date in September on which you gave evidence before the Chief Judge in Equity in the proceeding Goodwin v. Southern Tablelands Finance Co. Pty. Limited that you had a diary which was at 109 Pitt Street, Sydney? A. Yes. I had an appointment diary. 20

Q. Now you recall, of course, that I asked you some questions the other day about whether you had ever kept or had a diary? Do you recall I asked you some questions about that the other day? A. Yes.

Q. On p. 79 of the transcript, towards the foot of the page, I asked you, "Has it ever been your habit to keep a diary?" to which you answered "No". Was that true or untrue? A. That is true.

Q. I asked you, "Have you never kept a personal diary?" to which you answered "No". You were asked the question, "Have you never kept a personal diary in the Landmark office?" and you answered "No". Is that right? A. That is correct. 30

Q. Is that true? A. Yes.

Q. You were asked, "Or a diary in relation to Landmark affairs". You answered "No"? A. That is true.

Q. You were asked, "You are quite sure of that?" and you answered, "Yes, quite". You were asked, "It would be quite untrue, would it, to say that in 1966 you kept a diary at 109 Pitt Street?" to which you answered "I did not keep a diary". Is that right? A. That is correct. 40

Q. That was untrue, wasn't it? A. I didn't kept a diary. That is true. It is true that I didn't kept a diary.

Q. I then said to you - the question I put to you was, "It would be quite untrue, would it, to say that in 1966 you kept a diary at 109 Pitt Street?" and your answer was "I did not keep a diary". Do 50

you say that was true? Do you still say that was true? A. Yes, that was true.

Q. You told his Honour, the Chief Judge in Equity, in September, 1966 that you had a diary at 109 Pitt Street, didn't you? A. I had an appointment diary kept by my secretary.

Q. Do you say that when you told his Honour the Chief Judge in Equity in September, 1966 that your diary was at 109 Pitt Street, Sydney, that was a true answer? Do you say that that was a true answer? A. Yes. I was referring to the appointment diary. Mr. Goodwin --- 10

Q. Not your diary at all? Not a diary of yours?  
A. A diary of Landmark Corporation Limited.

Q. Were you referring to a diary of yours? A. I was referring to a diary which had appointments which has been put in and the dates of the appointments was kept.

Q. Put in by you? A. Mostly my secretary, and in her absence I put some in. 20

Q. In a book you referred to at that time as your diary? That was the book you referred to? A. Yes. That is my diary as managing director.

Q. Kept at 109 Pitt Street, Sydney? A. Yes, that is right.

Q. Why, then, did you tell us the other day that you did not keep a diary at 109 Pitt Street, Sydney?  
A. My understanding of a diary is a diary when you record events and happenings and I has not had any such diary. A diary which is including all the appointments - such a diary I have. 30

Q. What I want to put to you is that last week when you told his Honour in answer to my question that you did not keep a diary at 109 Pitt Street you told a deliberate untruth? A. No, that was true. (Objected to; allowed.)

Q. Now, during the course of your cross-examination in the proceedings Goodwin v. Southern Tablelands Finance Co. Pty. Limited - do you remember saying - do you remember being asked this question: "Q. So you did not help me, you thought the security was there. Is that so. Did you help me obtain the £5000 in the manner in which I did obtain it?" to which you answered, "Yes, I did recommend it to Mr. Armstrong. He would not have given it to you if I did not recommend it". Do you remember giving that piece of evidence? A. Yes. 40

Q. Do you remember also saying - do you remember being asked these questions: "And whilst I did not succeed you still were prepared to get hold of the security of the ship, were you not?" to which you answered, "I was not interested in the security of the ship". You were asked, "But you did, in fact, 50



did you not?" and you answered, "You had no security to offer". You were asked, "But you did in fact get the security of the ship?" and you answered, "It is nothing to get the security of the ship. We did not want your ship. We did not want to get hold of the security of the ship". You were asked, "But you did in fact, did you not?" and you answered, "Not me, Southern Tablelands Finance Company". You were asked, "Of course, you had nothing to do with Southern Tablelands?" and you answered, "Of course, I had not, it is a company run by my friend and I recommended him to lend you money, unfortunately".

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Do you recall giving those answers? Do you recall being asked those questions and giving those answers? A. Yes, I recall the evidence, except that I did not recollect when I called him "my friend" or "business friend". I did not recollect whether I called him "friend" or "business friend".

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Q. Do you recall being asked - with your memory - with your good memory - do you recall being asked the question: "Of course, you had nothing to do with Southern Tablelands?" and your answer, "Of course I had not, it is a company run by my friend and I recommended him to lend you money, unfortunately". Do you remember being asked that question? A. Yes.

Q. And giving that answer? A. Yes.

Q. And you were giving evidence on oath, weren't you? A. Yes.

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Q. As a careful man? A. Yes.

Q. Being careful that your answers were true and correct? A. Yes.

Q. And you gave the evidence that Southern Tablelands Finance Co. Pty. Limited was run by your friend in September, 1966, didn't you? A. My business friend.

Q. You were referring, of course, to Mr. Armstrong, weren't you? A. Yes.

Q. Was your answer that it was "a company run by my friend" true or false? (Objected to; allowed.)

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Q. Do you recall at p.75 of the transcript in this case - at the foot of the page - the other day I asked you - this is evidence at the foot of p.75 going over to p.76, these questions:

"Q. Would you agree that during April of 1966 had you come to the conclusion that the Goodwin proposal was a worthwhile commercial venture you would have been quite happy then to enter into the joint venture with Mr. Armstrong? A. No.

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Q. And at that time you would instinctively

have described Mr. Armstrong, if anyone had asked you, as your friend wouldn't you? A. No. I would describe him as chairman of directors of Landmark Corporation Limited.

Q. You would not have described him as your friend in April, 1966? A. I don't think Mr. Armstrong has ever been my friend. We had a very fair business relationship.

Q. And you, I suppose, would certainly not have described Mr. Armstrong as 'my friend' in September, 1966, would you? A. In September 1966, no. 10

Q. You are quite sure about that? A. Yes.

Q. It would be quite impossible, wouldn't it, for you in September, 1966 to have described Mr. Armstrong truthfully as 'my friend'. That would have been quite impossible in September, 1966, for you to have described him as 'my friend'? A. Yes, I could not say that Mr. Armstrong is my friend. 20

Q. If you had said that in September, 1966 it would have been a lie, wouldn't it? A. I don't accept that description.

Q. It would not have been true, would it?  
A. It would not be completely true.

Q. Completely? A. It would not be completely true."

Was the evidence you gave in this proceeding the other day in relation to that matter which I have read to you true? Was that evidence true which you gave the other day in relation to that matter? A. In a way as probably you refer to "my learned friend" or to some people which you are connected with with some sort of relationship like I had with Mr. Armstrong in business, but in a true sense Mr. Armstrong has never been my friend. 30

Q. So that you are saying, are you, that when you gave the answer in the course of the proceedings between Goodwin and Southern Tablelands Finance Company, "Of course I had not, it is a company run by my friend and I recommended him to lend you money, unfortunately". A. I should have said, "my learned friend" or "my business friend", or something of that nature. That is what I meant. 40

Q. You are saying that that answer was not true?  
A. It was true. It was true in a sense.

Q. Of course it was in September, wasn't it, that you had come to the conclusion that you could not tolerate Armstrong in any business affair - you could not tolerate working with Mr. Armstrong in any business affair whatever? It was in September that you had come to that conclusion? A. Not in September. In July. 50

Q. What? A. In July. Not in September.

Q. And so in September, 1966, in the course of giving evidence, you referred to that man of whom you had formed the opinion you could not work with him any more, as your friend? A. I was relating to a matter which was four months before, and, secondly, I used it as "friend" like it is used by people like "my learned friend" or "my business friend" and so on. You cannot take such a distinction between words and meanings. 10

Q. Of course, if what you said in September, 1966 - "Mr. Armstrong was my friend" - if that were true, at that stage a great deal of the evidence you have given here would be untrue, wouldn't it? (Objected to; rejected.)

Q. Now, you are aware - you recall that a few minutes ago I read to you this question and answer of your evidence the other day? "It would be quite impossible, wouldn't it, for you in September, 1966 to have described Mr. Armstrong truthfully as 'my friend'?", to which you replied: "Yes, I could not say that Mr. Armstrong is my friend". A. Yes, I recall that. 20

Q. Of course, when you answered, "Yes" to the question, "It would be quite impossible, wouldn't it, for you in September, 1966 to have described Mr. Armstrong truthfully as 'my friend'!", that was untrue, wasn't it? A. No, that was true.

Q. You agree now, do you, that you did in fact use the description "my friend" in relation to Mr. Armstrong in September, 1966? You agree that you did use that description in September 1966, in relation to Mr. Armstrong? A. If you say so it is in the transcript - I used the phrase with a different meaning. 30

Q. Now, do you recall - perhaps I might hand this to you. The officer will show you an affidavit which appears to have your signature on it, sworn on 12th September, 1966, and I would like you to look at paragraph 2 of that affidavit. I would like to refer you to paragraph 2 of that affidavit. Will you just read it to yourself? Just paragraph 2? A. Yes. That is what I am reading. 40

Q. Do you recall that on 12th September, 1966 you swore that affidavit? A. Yes.

Q. You recall that? A. Yes.

Q. And when you swore that affidavit you understood that you were swearing to the truth of what you said in the affidavit? A. Yes. 50

Q. And amongst other things in para. 2 you said, did you not, that "The proposal" - that is, the salvage proposal - "involved Mr. Armstrong and I each contributing £60,000"? A. Yes.

Q. You see that in paragraph 2? A. Yes.

Q. Was that then true? A. It was not my proposal. I was not agreed to it myself.

Q. You then said, "The proposal" - that is, Mr. Goodwin's proposal - "involved Mr. Armstrong and I each contributing £60,000"? A. Yes.

Q. When you said that in your affidavit were you saying something that you believed to be true? A. That was his proposal, yes.

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Q. And in the course of giving your oral evidence before the Chief Judge in Equity do you recall being asked these questions: "Mr. Barton, where was the money going to come from to finance this proposition if it had been accepted by you?" and you answered, £60,000 from myself and £60,000 from Mr. Armstrong". His Honour asked you: "Do you mean you were going to find £60,000 and Mr. Armstrong was going to find £60,000?" to which you answered: "Yes". Do you remember that? Was that true, when you gave those answers? A. Yes, it was true.

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Q. Do you recall that I asked you some questions about this proposal last week? A. Yes, I do.

Q. Do you recall that I asked you this question, on p. 74 of the transcript, "That, I think, was a business venture which you and Mr. Armstrong had contemplated that you would subscribe £60,000 each, wasn't it?" to which you answered, "It was not". I asked you: "Was not the basis of the proposal that each of you and Mr. Armstrong should put in, if you decided to go ahead with the transaction, £60,000 each?" to which you answered "No". Do you remember those questions and answers? A. Yes.

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Q. Those answers were untrue, were they not? A. Would you repeat it to me, because what I thought was about "proposal" but it was not my proposal or agreement.

Q. The question I asked you was - I will read it to you again - I asked you, "That, I think, was a business venture which you and Mr. Armstrong had contemplated that you would subscribe £60,000 each, wasn't it?" to which you answered, "It was not". I asked you, "Was not the basis of the proposal that each of you and Mr. Armstrong should put in, if you decided to go ahead with the transaction, £60,000 each?", to which you answered, "No". Those answers were quite untrue, weren't they? A. Was not untrue.

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Q. Was the evidence you gave before his Honour the Chief Judge in Equity untrue? A. Would you read the transcript what I said there again, please?

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Q. You have got a very good memory, haven't you?  
A. Yes, I have.

Q. One that enables you to remember your

conversations almost word for word that happened ten years ago? A. I didn't say word for word.

Q. You can remember any conversation you had in the last ten years, can't you? A. Any important conversation, yes.

Q. Can't you remember the evidence I read to you three or four minutes ago? A. I can remember the whole transaction, but it is the way you put it to me - it is very difficult for me to give you the right answers. 10

Q. I will read to you again what you said in paragraph 2 of your affidavit of 12th September, 1966: "The proposal involved Mr. Armstrong and I each contributing £60,000"? A. Yes.

Q. Was that true? A. Yes.

Q. Then the question I asked you the other day was, "Was not the basis of the proposal that each of you and Mr. Armstrong should put in, if you decided to go ahead with the transaction, £60,000 each?" to which you answered "No". Was that true, or false? A. That is different. You said, "If you are going ahead with the proposal". I never seriously wanted to go ahead with the proposal. My main aim was to get the project away from Landmark Corporation Limited. It was a highly speculative project which I didn't want Mr. Armstrong to force this project on Landmark. 20

Q. Let me just read to you again the oral evidence which you gave before his Honour the Chief Judge in Equity in September, 1966, on p.25 of the transcript: "Mr. Barton, where was the money going to come from to finance this proposition if it had been accepted by you?" and you answered: "£60,000 from myself and £60,000 from Mr. Armstrong". Was that true? A. Yes. 30

Q. Well then, will you listen again to the question that was put to you at p. 74 of the transcript last week: "Was not the basis of the proposal that each of you and Mr. Armstrong should put in, if you decided to go ahead with the transaction, £60,000 each". To that you answered, "No". The two answers are utterly inconsistent, are they not? A. You can put it this way. In my own mind I gave true answers on both occasions. 40

Q. One answer is correct and one is untrue, isn't it? A. I can't accept that.

Q. Which is true? A. The true fact is that the proposal has been put to me about the ship to be a project of Landmark Corporation Limited. I didn't want it, because it is highly speculative and not the type of project which Landmark Corporation can be interested about. To protect the company that Mr. Armstrong forced his proposition to the company I agreed to investigate this proposition on behalf of Mr. Armstrong and myself, and that is as far as I went. 50

Q. Of course, as soon as you said to Mr. Armstrong that Landmark could not be interested he accepted that, didn't he? A. Not readily. He was trying to convince me - he was trying to convince me of the good profits of the proposition.

Q. Is that what you told his Honour, the Chief Judge in Equity, in the course of giving your evidence in Goodwin v. Southern Tablelands Finance Co. Pty. Limited? That is not what you told his Honour is it? A. I just was answering questions. I just was answering the question. 10

Q. Were you answering them truthfully, or not?  
A. Truthfully.

(Short adjournment.)

Q. You told us on p.12 of the transcript the other day that your relationship with Mr. Armstrong - you were asked this question at the top of p.12 of the transcript: "After the incident at Surfers' Paradise were you on friendly terms with Mr. Armstrong?" and you answered, "Fairly friendly, but I was disgusted with the things that happened at Surfers' Paradise". Do you remember that evidence? 20  
A. Yes.

Q. Now, that was a piece of evidence you gave in relation to the situation about July of 1966, wasn't it? A. Yes.

Q. July-August, 1966? A. July.

Q. So that, subject to your disgust about things that happened at Surfers' Paradise, you were on fairly friendly terms, you said? A. Yes. 30

Q. And Mr. Armstrong, of course, went overseas in August, 1966, didn't he? A. Yes.

Q. And then you told us, I think, that by August or September, 1966 you had concluded that you could not work with Mr. Armstrong any longer? A. Yes, I came to that conclusion in July.

Q. In which? A. In July.

Q. Of course, prior to July, 1966, may I take it that your relationship with Mr. Armstrong had been quite friendly? A. Fairly. Fairly friendly. I had my opinion of Mr. Armstrong. The relationship was fairly friendly. 40

Q. Of course, you told us that after July, or in July, after the events at Surfers' Paradise that you have referred to your relationship - you were on fairly friendly terms with Mr. Armstrong? A. Yes.

Q. I take it that before that time terms were even more friendly? A. They were the same. I had my opinion of Mr. Armstrong. I was disgusted with his activities, and that July incident made me 50

think a lot harder, and I did find that the only possible way for me was to sever my connections with Mr. Armstrong.

Q. You would not presently describe his relationship with Mr. Armstrong as having been never pleasant, would you? A. They have never been pleasant.

Q. You are saying that you were on fairly friendly terms, but your relationship was never pleasant. Is that what you are saying? A. Yes. 10

Q. You would regard Mr. Armstrong - the terms of your association with Mr. Armstrong - as fairly friendly? A. Yes.

Q. And, at the same time, as never being pleasant? A. Never been pleasant.

Q. You recall, of course, the other day that you told his Honour - you recall that before the adjournment I read to you some answers of yours to questions given by you for his Honour the Chief Judge in Equity in relation to the basis of the proposal which Goodwin put to you involving you and Mr. Armstrong providing £60,000 each. You recall that? A. Yes, I do. 20

Q. Do you recall saying to his Honour the Chief Judge that you had at that time £60,000 available to put into the venture? A. I did not say that.

Q. Are you quite sure you did not tell his Honour the Chief Judge that? A. Yes, I am quite sure.

Q. Do you recall these questions and answers? His Honour asked you: "Do you mean you were going to find £60,000 and Mr. Armstrong was going to find £60,000?" to which you answered "Yes". His Honour asked, "You could have found it, if it were necessary?" and you answered "Yes, I could have". Mr. Goodwin, asked: "By way of security, of course?" and you answered: "I do not know what you mean - by way of security". His Honour asked: "He had £60,000 of his money at his disposal which he could have used had he gone on with it?" to which you answered "Yes". Mr. Goodwin then asked: "You would have lodged some sort of security?" and you answered, "I do not know what I would have done. I had means, if that is what you want to know, to go into a venture to the extent of £60,000 and my answer is yes". Mr. Goodwin asked: "You would have put in £60,000 and Mr. Armstrong would have put in £60,000?" and you said, "Yes". Do you recall giving that evidence? A. Yes. 30 40

Q. And was it true, that in April or thereabouts in 1966 you had £60,000 which you could have used, if you had decided to go into this salvage venture, for that purpose? A. I didn't say I had £60,000. I said I could provide £60,000. 50

Q. Do you recall answering his Honour, the Chief

Judge's question: "He had £60,000 of his money at his disposal which he could have used had he gone on with it" and your answer "Yes"? A. On my disposal, yes.

Q. You had then at that time £60,000 which could have been committed to this somewhat speculative salvage venture? A. On my disposal, yes.

Q. You said, in further answer, "I had means, if that is what you want to know, to go into a venture to the extent of £60,000, and my answer is yes"? A. Yes.

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Q. That was true? A. Yes, that was true.

Q. This, of course, was before you had received, or Allebart Pty. Limited had received any money from The Sands business, wasn't it? A. Yes. I received money from The Sands later, yes.

Q. And were you referring to £60,000 which you could raise on security of your own assets? A. I said I have £60,000 on my disposal.

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Q. Where were you going to get the £60,000? A. Where was I going to get it?

Q. Yes. Where were you going to get the £60,000? A. I didn't give it much thought.

Q. You didn't know? Is that what you are saying? A. Yes, I had means to find £60,000 at that time.

Q. Out of your assets? A. Assets of my family and other means.

Q. What other means? (Objected to; allowed.)

Q. Where was the £60,000 to come from, Mr. Barton? A. I didn't give too much thought of it because I had no - at the time when I gave evidence I knew I had no intention to go into a venture in any circumstance, and if you are asking me how I can raise £60,000 my answer is that with my family funds, myself, my wife, and other member of my family, I think, at the time bank overdraft which I had not used fully, and also I can borrow money for business purposes from finance companies.

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Q. And when you told his Honour the Chief Judge in Equity that you had at your disposal, if you decided to go on with the proposition, £60,000, you were referring to money which you could obtain from your family, from family companies, from your own assets, and on overdraft from your bank? A. Yes.

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Q. Were you talking also of raising money from a finance company on the security of assets? A. I didn't define in my mind where I am going to get the money. I had means of getting £60,000. This is the fact.

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Q. Of course, you know what the meaning of



getting money on security or against security is, don't you? A. Yes, I do.

Q. And you told Mr. Goodwin, of course, you didn't know what he was talking about when he mentioned getting money for this venture on security, didn't you? A. I told you just before that I didn't give too much thought where the money will come from at all because I had means to find £60,000 at that time.

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Q. May I take it that you continued to have those means during the 12 months thereafter? A. I had the same means 12 months -

Q. The means to get £60,000 if you wanted it, didn't you, throughout 1966? A. Yes.

Q. And throughout 1967? A. Possibly.

Q. Surely you know? (Objected to; allowed.)

Q. Anyway, you say throughout 1967 possibly you had - still had the means to raise £60,000 if you wanted to? A. Yes.

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Q. Can you do a little better than "possibly"? You know what your means are, don't you? A. Yes, I do.

Q. Isn't it true that throughout 1967 you, if you had wanted £60,000, had the means to raise it? A. Yes.

Q. And when you signed the deed of 17th January, 1967 - the settlement deed - you, of course, bought - under that arrangement you agreed to buy 30,000 Landmark shares at 60 cents each, payable in three instalments over three years? A. Yes.

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Q. And that was payable interest-free? A. Yes.

Q. And, of course, that means that you had to find \$6,000 per year for each of the succeeding three years? A. Yes.

Q. As well, you undertook to guarantee the obligations of some other people who also purchased shares? A. Yes.

Q. Do you recall that you swore an affidavit in this matter on 4th January 1968? A. Yes.

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Q. When you signed the deed of 17th January, 1967, you, of course, foresaw no difficulty in being able to raise \$6,000 in each of the succeeding three years, did you? A. Not for myself, no, but the nominees -

Q. Will you just answer my question, please? Do you recall in para. 39 of your affidavit sworn by you on 4th January, 1968 you said this: "After the deed of settlement was signed I moved back to my home. I realised that I was unable to pay for the shares which I had contracted to buy"? A. Yes.

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Q. That was untrue, wasn't it? A. It was true, because my nominees -

Q. Will you just answer the question? (Objected to; allowed.)

Q. You contracted to buy 30,000 shares, didn't you? A. I contracted to buy all of the shares except Mr. Bovill's. (Objected to.)

Q. Mr. Barton, under the settlement arrangement of January 1967 you agreed to purchase 30,000 shares in Landmark Corporation yourself, did you not? --- 10

HIS HONOUR: Q. In your personal capacity? A. I agreed to purchase 270,000 shares.

MR. STAFF: Q. You are being careful and giving us your serious answer, are you? A. Yes.

Q. As you understood what you were doing? A. My nominees except Mr. Bovill or the member of my family without any means and they hold it in trust for me.

Q. Ten people bought parcels of shares in Landmark, didn't they? A. No, they didn't. 20

Q. Under the arrangement Mr. Bovill signed an agreement to buy a parcel of shares? A. Yes.

Q. You had no doubt in January, 1967 that Mr. Bovill was financially able to pay for these shares? A. I had no doubt.

Q. And you yourself guaranteed to A.E. Armstrong Pty. Limited that Mr. Bovill would pay for the shares? A. Yes.

Q. Under the arrangements your wife and your son signed agreements to purchase parcels of shares? A. No, they did not. 30

Q. Didn't they? Mr. Barton, do you recall what the total number of shares which was sold by A.E. Armstrong Pty. Limited to you and people nominated by you was? A. Yes. Close to 300,000.

Q. At 60 cents each? A. Yes.

Q. And payable over three years? A. Yes.

Q. Something like \$180,000 to be found over three years? A. Yes. Plus five cents if it had not been paid. 40

Q. \$180,000 over the three years, plus dividends if Landmark didn't pay it? A. Yes.

Q. And you tell us that throughout 1967 you, of course, could have raised £60,000? A. Yes.

Q. So that throughout 1967 if you had been required to you would have been able to raise \$120,000

at least? A. No, I purchased -

Q. Is that right? A. I beg your pardon?

Q. Is that right? A. No, not right.

Q. What is wrong with it, Mr. Barton? A. I beg your pardon, I can't hear you.

Q. Was it or was it not possible for you during 1967 to have raised £60,000 or \$120,000 if you had needed to do so? A. Yes.

Q. So that in January 1967 when this matter was settled you knew that if necessary you could raise \$120,000 to pay for the shares which you were purchasing and others were purchasing, whose purchases you guaranteed? A. Yes. 10

Q. But, of course, you were aware that Mr. Bovill could pay for his? You were aware of that? A. Yes.

Q. Do you recall how many Mr. Bovill was purchasing? A. 30,000 shares.

Q. That is another \$18,000-odd for his parcel? A. Yes. 20

Q. So that you could - A. Plus \$1500 for the five cents if the dividend has not been paid.

Q. But that was a year away, wasn't it? A. Yes.

Q. That was not to be paid until January 1968, if Landmark did not pay the dividend? A. Yes.

Q. And, of course, in January 1967 you were confident that the dividend would be paid, weren't you? A. No, I was not.

Q. You were not? A. No, I was not.

Q. But it was your belief that it would be paid within the next month or two, wasn't it, after the 17th January? A. It was not. 30

Q. At any rate, when you agreed to purchase these shares and to guarantee the obligations of other purchasers you were conscious that you could have put your hands on most of the purchase money that you may have expected to have to pay? A. Not most of the purchase money.

Q. Well, \$120,000 of it? A. Yes.

Q. No problem about that? A. I don't say no problem. But the answer is "yes". 40

Q. And in July 1966, apart from £60,000 you had available if you needed it, in April, 1966 you got another \$93,000 worth of assets as a result of The Sands? A. I calculated with these assets in it.

HIS HONOUR: Q. I'm sorry, I did not hear that?

A. I have calculated these assets into my general assets.

MR. STAFF: Q. One of the purchasers was your brother, Terrence Barton, 30,000 shares? A. Yes.

Q. And another his wife, Clare Barton, for 30,000 shares? A. Yes, that is right.

Q. And you were conscious in January 1967, weren't you, that they would, if called upon during that year, have the money to pay for the shares they were paying? A. No. 10

Q. You say they could not have found \$36,000? A. I beg your pardon?

Q. Their parcels would have cost them some \$36,000? A. Yes.

Q. You say they could not have found \$36,000? A. They had no means. I had them myself.

Q. You say they could not pay \$36,000 over three years? A. Yes, they could not. I had myself to finance them. 20

Q. And your father-in-law, Mr. Gonczi? A. Yes.

Q. He agreed to take 30,000 shares? A. Yes.

Q. \$18,000 over three years to be paid? A. Yes.

Q. Do you not agree that he had assets which would have enabled him to pay that \$18,000 if required? A. No, he did not. He is a pensioner, and he is badly needing my support. He is 75 years of age.

Q. You procured him, knowing he had no assets, to enter into this contract, did you? A. Yes. He knew it was really my obligation, and not his. 30

Q. And the other purchasers were three companies, Allebart Investment Pty. Limited, Allebart Pty. Limited, and Home Holdings Pty. Limited? A. Yes.

Q. Of course, they each had assets, didn't they? A. Some, yes.

HIS HONOUR: Mr. Staff, there are only six of the deeds in evidence. I don't know if anything turns on them, but the two not tendered are Mr. Gonczi's and Allebart Investments. I merely mention it if it is desired that they should all be in evidence. 40

MR. STAFF: Thank you, your Honour. They will all be in at some stage.

Q. Mr. Barton, in January, 1967, assuming that only Mr. Bovill paid for his shares and you had to buy shares and find the money to pay for everybody else who agreed to buy shares you would have needed something round about \$150,000 wouldn't you? A. No, I think close to \$170,000.

Q. There were 292,500 shares sold? Something less than 300,000? A. Yes.

Q. And, leaving out Mr. Bovill's purchase money, wouldn't you agree that at 60 cents each the amount required would have been somewhere about - I put \$150,000; I think it is close to \$160,000? A. Yes, plus the five cents.

Q. Leave that aside for the moment, will you?  
A. Yes.

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Q. About \$160,000 at the price of 60 cents a share? A. Yes.

Q. And that was to be paid in three annual instalments without interest? A. Yes.

Q. So that in January, 1967 you would have been quite confident that you could have found, by January 1968 the first instalment of \$50,000 odd?  
A. I could have found it, yes.

Q. And you would have been confident that at the end of the second year you would find the second instalment of \$50-odd thousand? A. No, I would not.

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Q. Mr. Barton, you told us a while ago that you could have raised \$120,000 in 1967? A. Yes.

Q. Well, there would have been still some left of that, wouldn't there, to have paid the second instalment? A. I don't know what would have been left.

Q. What I put to you is that it is quite untrue to say that it was your belief and understanding in January 1967 that you were quite unable to pay for the shares which you and nominees had contracted to buy? A. That was true.

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Q. Nevertheless, you were quite conscious that you could go a long way towards paying for them with the assets you had and what you could realise and raise? A. With all my assets it would not pay for the shares.

Q. It would have gone very close to it, wouldn't it? A. I don't know.

Q. But your belief was that it would have, wasn't it? A. No, I don't know.

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Q. What? A. I don't know.

Q. You don't know? A. No.

Q. And, Mr. Barton, in January of this year you, of course, were quite capable of finding the total amount of the first instalment required under the settlement arrangement, weren't you? A. No, it was not comfortable to find ---

HIS HONOUR: Q. What was that? "It was not comfortable to find it"? A. Yes.

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MR. STAFF: Q. But you were quite able to find it if you realised your assets, weren't you? A. Yes. If I sell my house and all my assets, possibly, yes.

Q. Of course, in January, 1968 it would have been quite untrue to say, wouldn't it, that you were unable to meet the payment required by the deed in January 1968 - the first payment? A. Would you repeat the question again? I don't like to give you a wrong answer. 10

Q. I will leave that. Mr. Barton, you, of course, were aware that during 1967 Mr. Armstrong went overseas for some 2½ months or so, aren't you? A. In 1967?

Q. In 1967, yes? A. Yes. That is my knowledge, which is second-hand.

Q. And you are aware, aren't you, that he left Australia about the end of April, 1967? A. I don't know when. 20

Q. And returned at the end of July? A. I don't know when. (Objected to.)

HIS HONOUR: Mr. Staff, as I understand it you are putting this on the basis of the issue of the state of mind at the time of the agreement?

MR. STAFF: Yes, both that, and credit generally.

HIS HONOUR: In those circumstances I allow it.

MR. STAFF: Q. I was putting to you that you were aware that Mr. Armstrong had gone overseas about the end of April, 1967 and returned about the end of July, 1967 - towards the end of July, 1967? A. I am aware that Mr. Armstrong has been away. I don't know when he left and I don't know when he returned. 30

Q. But you are aware of which part of the year his absence occurred in, aren't you? A. Yes. I think it is the middle of the year, yes.

Q. Is it your belief that his absence was in round about the period I put to you, at the end of April up towards the end of July? A. I don't know, and I have no beliefs about it at all, either. 40

Q. Is it your belief that his absence was mostly in the first half of the year? A. Possibly, yes.

Q. Well, is it? A. Yes.

Q. Mr. Barton, do you recall that some interrogatories were administered to you, and that you swore to some answers to interrogatories? A. Yes.

Q. Do you recall that some of the questions which you were required to answer related to the

occasions on which you were saying you had telephone calls in the early hours of the morning? A. Yes.

Q. During 1967? A. Yes.

Q. Will you look at Exhibit 1? Would you look at interrogatory No. 7? A. Yes.

Q. And will you look at the answer on p.5 of the document to interrogatory 7(b)(i)? On the last page, I think, above your signature. You see, at the top of the page, the answer to interrogatory 7, and go down to (b) (i)? A. Yes.

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Q. Would you read the answer which you gave there? A. Yes.

Q. Just read it to yourself, will you? A. I beg your pardon?

Q. Just read it to yourself, will you? A. Yes, I did.

Q. Now, is that answer true? A. That is my belief still.

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Q. You swore answers to these interrogatories only on 22nd March of this year? A. Yes.

Q. And you considered carefully what you were saying? A. Yes.

Q. And you then said, in answer to interrogatory 7, "On a number of occasions which the plaintiff cannot specify exactly beyond saying that there was no occasion during the period of about 2½ months ... early hours of the morning"? A. Yes.

Q. You were saying that on a number of occasions throughout the period of 1967 - throughout 1967 - except for the period of 2½ months about August and September you received telephone calls early in the morning when no voice spoke? A. On some occasions some voice is speaking.

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Q. I beg your pardon? A. On some occasions some voice is speaking.

Q. On most occasions when you received the calls you say no voice spoke? A. Yes.

Q. And you say, do you, that during the period of 2½ months approximately August-September, 1967 you received no such calls? A. Yes.

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Q. Are you quite sure that is the period? You are quite sure that is the period, are you? A. That is my best recollection.

Q. With the aid of your good memory? A. Yes.

Q. When during 1967 approximately do you say you had two calls in which you recognised Mr. Armstrong's voice? A. I can't remember the date of it.

Q. Can't you say any month, approximately?  
Can't you give us the approximate month? A. No, I can't. I would have said it in my affidavit if I can have remembered it. I tried. I tried to remember the time, and I just could not.

Q. You didn't write it down in your diary? A. I didn't kept any.

Q. Or your appointment book? A. He was not asking for an appointment. 10

Q. Do you recall that at the time when the settlement agreements were made you were required to make a statutory declaration to hand over to Mr. Grant, acting on behalf of the first defendant and other defendants --- A. Yes.

Q. And you, of course, considered carefully what you said in that statutory declaration, didn't you?  
A. Yes.

Q. You were conscious that you were under an obligation to tell the truth in that? You were conscious of that obligation to tell the truth on that occasion? A. Yes. 20

Q. And one of the matters you said in para. 2 of that statutory declaration was "The mortgagor company" - that is, Landmark Corporation Limited - you said, "The mortgagor company is not in liquidation, and no petition is pending to wind the mortgagor company up". Do you remember that? Do you remember that in the declaration? A. I remember the form of declaration. 30

Q. Just a moment, and I will show you the declaration. Will you look at the statutory declaration which the officer will show you? Will you have a look at that? A. Yes.

Q. Will you read the first paragraph? A. Yes.

Q. Is the signature appearing on the document your signature? A. Yes, it is mine. It is my signature.

Q. The "A. Barton" is yours? A. Yes.

Q. Will you read the second paragraph? A. Yes. 40

Q. Do you recall affirming and declaring the truth of those statements? A. Yes.

Q. Of course, in fact on 18th January 1967 a petition to wind up Landmark Corporation was pending, wasn't it? A. Not with my knowledge.

Q. You are aware - you were aware, weren't you, that a petition was presented by Decor Associates Pty. Limited to wind up the company, Landmark, on 30th November 1966? A. Yes. I learned it from the press. As soon as I learned it I paid the money to Allen Allen and Hemsley and satisfied Decor. 50



Q. You learned of the presentation of that petition, didn't you? You learned that the petition had been filed in the Court? A. In the press. I learned it in the press.

Q. At the end of November? A. Yes.

Q. Or the beginning of December, 1966? A. Yes.

Q. And will you not agree that it was not until 13th February 1967 that that petition was disposed of by the Court? A. As soon as I learned about the petition - 10

Q. Will you just answer the question? A. I can't answer the question.

Q. Did you learn that a petition to wind up the company had been presented to the Court by Decor Associates Pty. Limited? A. Yes.

Q. Prior to the holding of the annual general meeting? A. Yes.

Q. And was it shortly before that? A. Yes. And for that purpose, too. 20

Q. Are you aware that the petition which had been presented of which you learned before the annual general meeting was not disposed of by the Court until 13th February, 1967? Just tell me if you know that? A. I cannot answer this question just like that.

Q. You communicated with the company's solicitors, did you not, when you heard about the presentation of the petition, didn't you? A. Yes.

Q. And these solicitors were Allen Allen and Hemsley, were they not? A. Yes. 30

Q. In February, 1967 did you learn from any source that the petition which had been presented by Decor Associates Pty. Limited had been disposed of on or about 13th February, 1967? A. I cannot answer the question on its own with a simple yes or no, but I am quite happy to tell you all the facts.

Q. Now, when you subscribed and declared the declaration, or before you subscribed and declared it, in which para. 2 says "The mortgagor company is not in liquidation and no petition is pending to wind the mortgagor company up", did you make any inquiry whatever of anybody as to what had happened to the petition presented by Decor Associates? A. As soon as I learned that the petition against the company - 40

Q. Will you just answer the question I asked you?  
A. Would you repeat the question again, please?

Q. Mr. Barton, at or about the time when you subscribed and declared the statutory declaration dated 18th January, 1967 in which you said that no 50

petition is pending to wind the mortgagor company up, did you make any inquiry of anybody as to whether the petition presented by Decor Associates had been dismissed or withdrawn? A. I didn't make any inquiries because I knew there was no petition standing.

Q. Mr. Barton, did you ever see a copy of the petition which was presented by Decor Associates Pty. Limited to wind up Landmark Corporation? A. Yes. 10

Q. Will you look at the document which the officer will show you (from suit 1368/66)? A. Yes.

Q. You see that document? A. Yes.

Q. Is that the copy of the petition of which you had seen a copy? Is that a copy of the document which you have seen, so far as you can recollect? A. Yes.

Q. You see that it bears date 30th November 1966? A. Yes. 20

Q. At any rate, when you - you say, do you, you don't know when that petition was dismissed by the Court? Is that what you are saying? A. No, not. I am saying that as soon as the petition has been served that money has been paid. As soon as the petition has been served on the company money has been paid to Allen Allen and Hemsley, and they advised me that -

Q. We don't want what Allen Allen and Hemsley advised you. That is a matter of privilege. Do you say that you know on or about what date that petition which I showed you was disposed of by the Court? A. To give a true answer, I learned it - 30

Q. Do you know on or about what date, and if so, what date? A. I don't, no.

Q. Did you ever learn that it had not been disposed of until February, 1967? A. Yes.

Q. And of course, when you said in your statutory declaration that no petition was pending to wind the company up on 18th January, 1967, that was untrue, wasn't it? A. No, that was true. 40

Q. Although you say that you subsequently learned that on 18th January, 1967 there was a petition still pending to wind the company up? A. Yes.

Q. Mr. Barton, you told us in your evidence the other day that you employed the Australian Watching Company to provide some bodyguards for you? A. Yes.

Q. I think you told us that you employed them to do that between 20th and 21st November and 3rd December, is that right? A. Something like that. I am not sure of the dates. 50

Q. You dispensed with them just after the annual general meeting? A. Yes.

Q. And never re-engaged them? A. I re-engaged them on 7th January, 1967 for one occasion to watch me at the Rex Hotel.

Q. Now you remember - you swore an affidavit on 4th January, 1968 in this proceeding. You remember you swore an affidavit on 4th January, 1968 in this proceeding? A. Yes.

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Q. Do you recall that in paragraph 18 of that affidavit you said, "I took the above threat seriously and employed the Metropolitan Security Service to watch my house day and night and also to be with me at my office"? A. Yes.

Q. Was that true? A. Yes.

Q. So you employed the Metropolitan Security Service as well as the Australian Watching Company, did you? A. No. I rang the Metropolitan Security Service -

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Q. Did you employ both people? A. No.

Q. Or one of them? Now come on, tell us? A. The two is one.

Q. Of course, Australian Watching Company in 1967 - I'm sorry, I will withdraw that. You say, do you, that the Australian Watching Company (N.S.W.) Pty. Limited is the same organisation as the Metropolitan Security Service? A. No.

Q. You know it is not, don't you? A. Know it now, yes.

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Q. Of course, Metropolitan Security Service and Australian Watching Company have nothing to do with each other, have they? A. I don't know.

Q. Did you ever employ the Metropolitan Security Service to watch your home day and night and be with you at your office? A. Yes. I rang the Metropolitan -

Q. When did you employ them, and over what period, Mr. Barton? I don't want to know what you said to them. I want to know when you commenced to employ Metropolitan Security Service, and for how long? A. In my own mind the two names, Metropolitan Security Service and Australian Watching Company, was in one.

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Q. Of course, Mr. Barton, you, of course, did not employ the Australian Watching Company (N.S.W.) Pty. Limited personally, did you? A. Yes.

Q. You engaged them personally? A. Yes.

Q. For the period 20-21st November to 3rd December, did you? A. About that time, yes.

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Q. Of course, you attended to the matter yourself, did you? You spoke to some representative of that company and asked them to provide this body-guard service yourself? A. Yes.

Q. And you told them, did you, that the service was to be provided for Landmark Corporation Limited, 1st Floor, 109 Pitt Street, Sydney, did you? A. No, I didn't.

HIS HONOUR: Q. I'm sorry, what was the answer? A. 10  
I didn't.

MR. STAFF: Q. And they rendered accounts, didn't they, to Landmark Corporation Limited, 1st Floor, 109 Pitt Street, Sydney? A. Yes, they did.

Q. And they were paid some \$1110 by Landmark on 22nd December, 1966 weren't they? A. Yes, about that figure.

Q. You didn't pay it? You never paid that yourself, did you? A. No, I didn't.

Q. And won't you agree that you told them to 20  
send the account to Landmark Corporation? A. Yes.

Q. And they did send it? A. Yes.

Q. And you directed that it be paid by Landmark Corporation Limited? A. I got the consent of my co-directors.

Q. You say you got the consent of your co-directors? A. Yes.

Q. Which co-directors? A. Bovill and Cotter.

Q. What about Mr. Armstrong? A. I was not on 30  
talking terms with Mr. Armstrong then, except on early mornings.

Q. He was attending board meetings. It was your habit at that time not to speak to Mr. Armstrong at all, except as you say, on early mornings, was it? A. Yes.

(Luncheon adjournment.)

AT TWO P.M.:

HIS HONOUR: You are still on your oath to tell the truth, Mr. Barton? A. Yes.

MR. STAFF: I would like to have the statutory de- 40  
claration marked for identification.

(Statutory declaration referred to in cross-examination before the luncheon adjournment, m.f.i. 9.)

Q. Mr. Barton, you told me before the adjournment that you personally spoke to the representative of the Australian Watching Company (N.S.W.) Pty.

Limited when you engaged that company to provide a bodyguard? A. Yes.

Q. Do you remember that? Do you remember telling me that? A. Yes.

Q. And I asked you whether at that time you told - at that time or subsequently you told the company to send the accounts - charge the services to Landmark Corporation? A. Yes.

Q. You did give that instruction, did you, to the company? A. Not at the time of employ. 10

Q. At the time, or subsequently? A. Not at the time. Subsequently, yes.

Q. What? The day after? The day after you employed them, did you tell them that? A. I think two or three days after.

Q. Shortly afterwards, anyhow? A. Shortly afterwards.

Q. Of course, when you employed that company there was on foot some litigation with Mr. Armstrong, wasn't there? I'm sorry. I withdraw that. When you engaged this company there were on foot some proceedings between Finlayside and Landmark and others, and between George Armstrong and Sons and Landmark Corporation and others, wasn't there? A. I don't know. It could be that litigation just started shortly after. 20

Q. What I am putting to you is that these proceedings commenced a short time before you employed the Australian Watching Company (N.S.W.) Pty. Limited? A. I don't know. I don't know. 30

Q. You don't know? A. No, I don't know.

Q. And it was about that time - about the same time, wasn't it, that you gave a direction to the secretary of the company to make no information available to any director of Landmark or the subsidiary companies without your consent? A. No, I instructed the secretary to give no information to Mr. Armstrong without my consent.

Q. Mr. Barton, did you not tell the secretary round about this time when you engaged the bodyguards that no information was to be made available to any director without your consent? A. It could be. I think it was not to give information to Mr. Armstrong. 40

Q. And not to allow any director - you told him, didn't you - to have access to any of the company records without your consent? A. I am not quite sure. I think it was only to Mr. Armstrong, but it could be general instructions. 50

Q. At any rate, you intended the instruction, did you, to be that Mr. Armstrong should not be

permitted to see anything relating to the company's affairs without your consent? A. Yes.

Q. And you had come to a firm conclusion, had you not, that Mr. Armstrong would try and get access to information relating to Paradise Waters Estate and the Company's affairs? A. I was referring to Mr. Armstrong trying to get information regarding his attack against the company.

Q. And it was with that in mind, was it - to protect Landmark information and documents - that you engaged the Australian Watching Company (N.S.W.) Pty. Limited? A. No. 10

Q. To provide a bodyguard? A. No.

Q. To prevent any attempt by Mr. Armstrong to obtain information? A. Definitely not.

Q. Definitely not? A. No.

Q. And you say you engaged that company to provide a purely personal service for the protection of your own physical safety? A. Yes. 20

Q. Something for your own personal benefit? A. And the company.

Q. Didn't you think you should pay for this protection of your own personal safety yourself? A. No, I don't think so.

Q. You didn't think so? A. I didn't.

Q. You thought it was proper, did you, to charge that expenditure to the Landmark Corporation? A. Yes.

Q. And you say, do you, that the provision of the service had nothing to do with your decision to seek to prevent Mr. Armstrong getting access to any of the company records or affairs? A. None whatsoever. 30

Q. Of course, if it had been in relation to that matter it would have been eminently proper to charge it to the company, wouldn't it? A. I could not hear your question.

Q. I won't press it. Mr. Barton, the service commenced from the Australian Watching Company (N.S.W.) Pty. Limited on 24th November, didn't it? A. I don't know exactly, I don't know the exact date. 40

Q. Will you have a look at the sheet that the officer will show you? A. Yes.

Q. Will you agree with me that the service was commenced on 24th November? A. According to the book, yes.

Q. Having looked at the book, have you got any

recollection one way or another as to whether it was 24th November, or some other date? A. Yes, I have.

Q. What is the best of your recollection now? A. It took two or three days for Mr. Fleming to organise. What happened, Mr. Fleming came to the office -

Q. Yes. I am not asking you that. I am asking what your recollection now is as to the date on which the service started? A. I have no recollection. 10

Q. Have you any recollection as to the date on which it finished? A. Yes, it was one day after the general meeting which was on 2nd December.

Q. It finished after the night of the meeting, didn't it? A. My recollection, it was the day after the meeting.

Q. I am putting to you that the service terminated at the end of the night shift of 2nd and 3rd December. Have you any recollection? A. My recollection is that it terminated the next day. 20

Q. And I suggest before the annual general meeting there had been some proceedings in the Equity Court, hadn't there? A. Yes.

Q. Related to the right of Mr. Armstrong as a director to see documents? A. Yes.

Q. Proxies? A. Yes.

Q. And of course, as a result of that decision, you became aware of the right of the director to see documents and information relating to a company's affairs, didn't you? A. No, never been asked to show the proxies, because I would have shown the proxies in any case. The first thing I learned about it that action has been taken in this honourable Court through Mr. Armstrong in respect of proxies. I have never been asked. 30

Q. As a result of that decision - as a result of that decision in relation to the proxies you came to appreciate, did you not, that a director was entitled to reasonable inspection of a company's records? A. I was fully aware all the time. 40

Q. You were fully aware of it all the time? A. Yes.

Q. Will you tell me then why, as managing director, you instructed your legal representatives to defend the proceedings which were brought to compel production of the proxies? A. I think generally we defended any action what Mr. Armstrong took.

Q. Although you personally were well aware, as you say, that Mr. Armstrong was entitled and had a right to look at proxies? A. Yes. At a time I knew that Mr. Armstrong was not a proper person to 50

be a director of the company. Therefore, I denied his right.

Q. Knowing full well that it existed? A. Yes.

Q. And committed the company in the end to the payment of the costs of defending the proceedings?

A. Yes.

Q. And of course within a day, or 36 hours, or thereabouts of the results of that proceeding you terminated the employment of the security guards?

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A. Yes.

Q. You say, of course, that had nothing to do with the fact that the Court had established that you - you realise that the Court had established the right of the director to look at them? A. None whatsoever. Nothing whatsoever.

Q. Just a coincidence, was it? A. Yes, a coincidence.

HIS HONOUR: Was not there some qualified order for costs? I have just forgotten what happened.

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MR. STAFF: Mr. Bainton reminds me that we did not get the costs of the subsequent argument. He tells me that your Honour gave the plaintiff the costs of the suit, but there was an argument as to the time by which production should be made, which was dealt with the following day, and your Honour did not make any order as to the costs of those proceedings.

Q. Now, Mr. Barton, you recall, I suppose, that on 31st March, 1967 Paradise Waters (Sales) Pty. Limited and other companies instituted some proceedings against Southern Tablelands Finance Co. Pty. Limited? A. Yes.

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Q. And I think you recall that one of these proceedings was in the common law jurisdiction for orders under s.30 of the Money-lenders and Infants Loans Act for the re-opening of the loan transaction which had been the result of the settlement of 17th or 18th January. Do you recall that? A. Yes. I am not completely familiar with the legal implications, but generally speaking I knew about the proceedings.

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Q. There was a proceeding in the common law jurisdiction to that effect, and at the same time a proceeding was instituted in this Court for an injunction to restrain Southern Tablelands Finance Company from exercising any of its rights under the security documents until the determination of the other matter? A. Yes.

Q. And of course these proceedings were instituted on your instructions, weren't they? A. Yes.

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Q. And I think in those proceedings Mr. Deane, Q.C., with, of course, a junior, appeared for the plaintiff company? A. I recall Mr. Deane was appearing.



Q. In those matters? A. In those matters, yes.

Q. And for the purposes of those proceedings you yourself swore a number of affidavits, did you not?

A. I don't know if it was a number of affidavits. I recalled I signed some affidavits.

Q. What I want to put here is that in those affidavits - one or more of them - you gave a history of the settlement negotiations which resulted in the execution of the deed of 17th and 18th January, 1967?

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A. I don't recall that.

Q. What? A. I don't recall that.

MR. STAFF: May I have the papers in suit 127 of 1967?

MR. GRUZMAN: While that is being found, I desire to take objection to my learned friend's cross-examination, which I would characterise as unfair based on the Australian Watching Service. My friend put to the witness that the Watching had to do with something other than the personal safety of the witness. My friend then had in front of him, and indeed, showed to the witness, a document which contains the actual instructions, and I hand to your Honour this document which my friend had, and which he handed to the witness, and I ask your Honour to rule as to whether the questions put to the witness were fair, having regard to the material on which they were based. I might also hand to your Honour other documents which were with those documents and, in particular, the first paragraph of a letter to which my friend had access before asking these questions.

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HIS HONOUR: What application are you making, Mr. Gruzman?

MR. GRUZMAN: It is very difficult. If I had been aware of the contents of the document at the time I would have objected to the questions as being unfair. It is sufficient for our purposes to ask your Honour to indicate that, having regard to the material on which the questions were based, that the questions were not justified - the inference implicit in the questions was not justified.

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HIS HONOUR: Mr. Staff, you heard what Mr. Gruzman said. It is suggested that the information which you had available to you was consistent with what the witness had earlier said, and inconsistent with the suggestion you were putting to him. What do you say about that?

MR. STAFF: All I would say is that I have never before heard that counsel is bound to take what the witness has said. I showed Mr. Barton the document for the purpose of refreshing his recollection as to the date. I put nothing to him as to the terms of the main written document.

50

HIS HONOUR: Mr. Gruzman, I think it was clearly

open to Mr. Staff to probe the real reason why the bodyguard was employed. He is not, of course, necessarily bound by what the witness had said. Mr. Barton was shown, as I understand it, this page with the instructions ---

MR. GRUZMAN: He was only asked to look at the date of commencement.

HIS HONOUR: I think it is sufficient for me to permit you to tender at this stage - whether admissible or not I do not say - to tender copy of the instructions given, which will then complete that aspect of it. 10

MR. GRUZMAN: I will be satisfied with that.

HIS HONOUR: That seems to me to be as far as I need take the matter. If the carbon copy is tendered at this stage it then completes that aspect of the matter. What do you say, Mr. Staff?

MR. STAFF: I have no objection. That is Sheet 418.

MR. GRUZMAN: I am satisfied with that. 20

(Copy of the order to the Australian Watching Company for service to staff 24th November, 1966, including service instructions, tendered and marked Exhibit "N".)

HIS HONOUR: I will read on the record the relevant part: "Service instructions are noted as being the guard to be with and receive instructions from Mr. Barton, managing director, Landmark Corporation Limited, Guard to be responsible for Mr. Barton's safety 24 hours per day until 2nd December, 1966". The document purports to be signed, "D.B. Fleming, 25th November, 1966". 30

MR. STAFF: Q. I ask the officer to show you this affidavit. Will you look at the affidavit which the officer will show you, Mr. Barton - an affidavit of 31st March, 1967 in the proceeding 298/67 between Paradise Waters (Sales) Pty. Limited and other companies against Southern Tablelands Finance Company Pty. Limited. Do you agree with that? A. "Matter of the Money-lenders act and Paradise Waters..." 40

HIS HONOUR: What was that last answer?

MR. GRUZMAN: "In the matter of the Money-lenders Act..."

MR. STAFF: Q. What happened? Have the headings been amended? You see on the back sheet the heading has been altered in ink to "In Equity. 298/67 between Paradise Waters (Sales) Pty. Limited and Ors., v. Southern Tablelands Finance Co. Pty. Limited"? You see that? A. Yes, I see that. 50

Q. And inside on the top you see it has "term No. 298/67"? A. Yes.

Q. "And in the matter of an application under s.30 of the Money-lenders Act"? A. Yes.

MR. STAFF: It has been sworn and prepared in the other proceedings, and subsequently used in the equity matter.

Q. Now would you look, Mr. Barton, at the sixth page, I think, of that affidavit, which has the signature, "A. Barton" there. Is that your signature? A. Yes, it is.

10

Q. And you will agree this is an affidavit which you swore in connection with proceedings which commenced about 31st March, the date of the affidavit? A. Yes.

Q. Would you turn to para. 6 of the affidavit, and read the paragraph to yourself? A. Yes.

Q. Is that paragraph true and correct, Mr. Barton? A. Yes.

Q. And would you then pass on to para. 8 - the first sentence in para. 8. Is that a true statement? A. Yes, it is.

20

MR. STAFF: Q. Would you go to paragraph 9? A. Yes.

Q. Read that, and tell me whether that is a true statement? A. Yes, it is.

Q. Would you then read paragraphs 10 and 11, and tell me whether they are true statements? A. Yes, that is true.

Q. You have read 11 as well, have you? A. Yes, that is true.

30

Q. And paragraph 12, Mr. Barton? A. Yes, that is true.

Q. Paragraph 13? A. Yes, that is true.

Q. And 14? A. Yes, that is true.

Q. Everything, you say, in those paragraphs is true? A. Yes.

Q. And of course you were aware when you swore this affidavit that the purpose of these proceedings was to find some way to avoid having to repay to Southern Tablelands Developments Finance Company Pty. Limited the whole sum of \$300,000 which that company was asserting had become due? A. I say it didn't become due.

40

Q. And the purpose of the proceedings for which you swore this affidavit was to seek to prevent Southern Tablelands from exercising the powers for enforcing payment? A. Yes, according to my legal advice, and my own knowledge, that money was not due that Mr. Armstrong has demanded.

Q. And you were concerned, for that purpose, to tell the Court by this affidavit what the true facts were in relation to the agreement which had been made in January? A. I told the Court certain commercial facts, yes.

Q. You, of course, said not a word about being compelled to enter into these agreements by terror and fear? A. I did not, because my solicitors had been fully aware of it; and secondly, I didn't like to start the terror against me again, and I just didn't want to get killed. 10

Q. And you say, do you, that you told your legal representatives all about this terror and fear and threats before this affidavit was sworn? A. They knew it in January.

Q. Who do you say knew it? A. Mr. Fred Miller was one of them; he came with me to the C.I.B. The other one is Peter Bowen, from Gaden, Bowen & Stewart. 20

Q. Of course Mr. Miller had nothing to do with this matter in March-April, 1967; did he, Mr. Barton? A. No.

Q. You didn't see him at this time in relation to this matter? A. I seen him very frequent.

Q. You didn't consult him in relation to this matter, did you? A. This matter was understood by Mr. Solomon, and he knew it in January as well.

Q. You say Mr. Solomon knew about in January, did he? A. Yes. 30

Q. And you had told Mr. Solomon in January, had you, that you executed deeds of the 17th and 18th January in fear of your life? A. No, I think Mr. Miller told Mr. Solomon that he had been with me at the C.I.B., and told Mr. Solomon what happened with that meeting at the Rex Hotel, and Mr. Solomon referred it to me, you know, saying it is terrible that these things can happen.

Q. Mr. Solomon said that to you? A. Yes.

Q. Of course, you told him, did you, the only reason you were signing the documents of the 17th and 18th January was that you were in fear of your life? A. I told him nothing further. 40

Q. In relation to these proceedings in March and April, 1967, did you tell Mr. Solomon that you had executed the deeds of January in fear of your life? A. No, I did not.

Q. Or something to that effect? A. I did not.

Q. You had conferences with Mr. Dean? A. Yes.

Q. In relation to the matters? A. Yes. 50

Q. Did you tell him? A. No, I did not.

Q. And you were, of course, looking for a way to avoid the Landmark Companies having to pay to Southern Tablelands Finance \$300,000? A. Yes.

Q. I think you swore another affidavit on 11th April, 1967, do you recall, in connection with the same proceedings? A. I don't recall it. If you show it to me, I will recognise it.

Q. Would you look at the affidavit of 11th April, 1967, filed in proceedings Term No. 127 of 1967? (Shown to witness.) A. I think it is exactly the same affidavit. 10

Q. I can tell you, Mr. Barton, it is not exactly the same, but very similar; would you look at paragraphs 6, 8 and 9? A. It seems to me exactly the same.

Q. 10, 11, 12, 13, 14 and 15 - have you read those, Mr. Barton? Are they all true statements? A. Yes, they are all true. 20

Q. Not a word in that affidavit about having executed the deeds of the 17th and 18th January in fear of your life? A. No.

Q. And of course you swore that affidavit on 11th April, 1967? A. Yes.

Q. On the 14th April, 1967 you obtained from a meeting of the Board of Directors of Landmark Corporation authority to negotiate for settlement of these proceedings we have been talking about, on the footing that the loan should be paid out by 30th June? A. Yes. 30

Q. So that two or three days after you swore your affidavit, you sought that authority from the Board? A. Yes.

Q. Was there a reason for that, Mr. Barton? A. Yes, there was a very good reason.

Q. What was that? A. I received a further threat from Mr. Armstrong.

Q. You told the Board that, I suppose? A. No.

Q. You told them something else as the reason, did you? A. I didn't tell them. 40

Q. Do you remember telling them any reason for wanting to settle on the footing that you would pay up by the 30th June? A. Yes, I told the Board that Mr. Dean advised us that the question was really that the interest was due on 18th March, which was a Saturday, and I was in Brisbane on that Court as a witness, at the time. Friday afternoon I rang the Company Secretary and he informed me that interest was due to Mr. Armstrong's Company on Saturday. I told him to try to order the Directors 50

to sign the cheque and he said he would try and then I told him, "It will be all right, I will be back before Monday and we will pay it on Monday morning". When I took legal advice, Mr. Dean advised me that he has not got any precedent for this type of thing, but in his opinion it is a 40 per cent. chance to succeed, and 60 per cent. chance not to succeed. I particularly did ask him the percentage in his opinion. I told him, because the Banks are not open on Saturday, and Mr. Armstrong's office is not open on Saturday, I don't think Mr. Armstrong's Company would suffer if he had got paid at 9 o'clock on Monday morning. Mr. Dean said that money due on the 18th, if it is on Saturday, should have been paid on Friday to be on the safe side, and he then said, after answering my question, that he would class it that the chance to succeed is 40 per cent. 10

Q. May I have the minutes of Landmark Corporation your Honour? What you told the Board on that occasion, in effect, Mr. Barton, was that the reason you wanted to negotiate to see if you could settle the proceedings on the footing that the money became available on the 30th June, 1967, was to allow the Company time to refinance, so as not to take the risk of losing the case on technicalities. You thought at this stage that you could refinance and pay off by the 30th June without any trouble? 20  
 A. I did not think that, but I very strongly negotiated to refinance Paradise Waters. 30

Q. You told the Board, did you not, on 14th April, that you were confident that you could refinance and pay off by the 30th June? A. No I did not. In fact, I told the Board I don't want his money immediately because of this technicality, dated Saturday, payment of interest. I thought it was too rough. I don't think any other people in Sydney will do it, to take up a loan when the interest is paid on Monday morning. 40

Q. After the 14th April, you know, of course, that negotiations were conducted by Mr. Dean for the settlement of the case, don't you? A. Yes.

Q. And I think you are aware, are you not, that on the morning on which the case was fixed for hearing, the matter was finally settled? A. Yes.

Q. And Mr. Dean conducted negotiations for the settlement on that point, didn't he? A. Yes.

Q. Don't answer this question immediately - there may be some objection to it. What I want to put to you is that on that morning you told Mr. Dean for the purpose which he said he wanted to have it passed on to Southern Tablelands Finance Company's representatives, you were confident the money would be forthcoming, to pay off Southern Tablelands Finance Company on the 30th June? (Objection.) 50

(Counsel address.)

HIS HONOUR: I will allow the question. I have ruled that a question along those lines is admissible; Mr. Staff will re-frame such a question.

MR. STAFF: Q. Mr. Barton, what I want to put to you is that on the morning on which proceedings of March-April, 1967 were finally settled, in Mr. Dean's Chambers you were asked by Mr. Dean, told that the information was required to be passed on to representatives of Southern Tablelands Finance Company Pty. Limited, what your belief as to the probability of the monies being available by 30th June, 1967 to pay off Southern Tablelands Finance Company was; and that you then told Mr. Dean that you were confident that the monies would be available to pay off on 30th June, 1967? (Objection; rejected.) 10

MR. STAFF: Q. On the morning on which these March-April proceedings were settled, what I want to put to you is that you authorised Mr. Dean to inform the representatives of Southern Tablelands Finance Company that you were confident that the monies payable to Southern Tablelands Finance Company would be able to be paid on 30th June, 1967? A. No. (Objection; allowed.) 20

Q. Did you authorise Mr. Dean to convey information to the representatives of Southern Tablelands Finance Company to that effect? A. No.

Q. Or anything like it? A. I don't know what you mean, "anything like it". If you ask me a question, I shall answer it. 30

Q. Very well, Mr. Barton, I will not trouble you any more about that. Did you authorise on that occasion Mr. Dean to convey to the representatives of Southern Tablelands Finance any information as to your belief as to the probability or otherwise of the monies being able to be paid by Landmark or one of the other companies to Southern Tablelands Finance Company on 30th June? A. No.

Q. You have no doubt about that? A. No.

Q. You have told us that between 7th and 14th December, 1966, you became aware, as you say, that United Dominions Corporation would not lend any more money to Landmark Corporation? A. Correct. 40

Q. Would not provide the \$400,000 to pay off George Armstrong & Sons Pty. Ltd? A. Correct.

Q. Of course, you recall that on the 16th December, 1966, you wrote a letter to United Dominions Corporation about the matter? A. Yes.

Q. And what is your recollection of what you said in the letter of 16th December, 1966 that you wrote to the United Dominions Corporation? A. I went to Mr. --- 50

Q. I don't want to know what you "went to do", I am asking you what is your recollection of what

you wrote in the letter of 16th December, 1966 to United Dominions Corporation? (Objection.)

HIS HONOUR: Mr. Barton, do not ponder on it out loud. The only question is, can you recall what you said in the letter? A. I can.

Q. Tell us what you said in the letter? A. I can't quote it word by word.

MR. STAFF: Q. What you recall of what you wrote, Mr. Barton? A. I was referring to my previous conversation with Mr. Honey, and his letter dated 23rd November, 1966, and I repeated his letter and I said that this money is no longer required. I would like to qualify, your Honour - I wrote this letter for the purpose --- 10

HIS HONOUR: Just a moment - the only question is the contents.

MR. STAFF: Q. Would you look at the letter dated 16th December, 1966, produced by United Dominions Corporation. The signature on that letter is yours? A. Yes, it is mine. 20

Q. Is that the letter to which you have just referred? A. Yes.

Q. And you in fact wrote on that day saying that you no longer required the money referred to? A. Yes.

Q. And other arrangements had been made? A. Being made.

Q. On the same day, a little earlier on that day, I put to you that you wrote another letter to United Dominions Corporation - do you recall that? A. I don't know if it was earlier or later, but I wrote another letter, yes. 30

Q. Would you look at the letter and annexure? A. Yes.

Q. Is that a letter which you wrote to United Dominions Corporation on 16th December prior to sending the other letter of the same date? A. This is on the same day, I remember; I don't know which one is - yes, this one is stamped 3 p.m.; the other is 4.55 p.m. 40

Q. The one with the enclosure is 3 p.m.? A. Yes, according to United Dominions Corporation it is the earliest. I have no recollection which one is the earlier.

Q. You have no recollection which you sent off first? A. No.

Q. Would you look at the letter of 28th December 1966 which I show you, and tell me whether the signatures are those of Mr. Cotter and Mr. Bovill? A. Yes. 50



Q. Is that the letter to which you refer in your evidence as having authorised Mr. Cotter and Mr. Bovill to write? A. Yes, it is the letter.

Q. While you were at Surfer's Paradise? A. This is the letter I referred to. I didn't know the contents of the letter.

Q. Would you look also at a further letter I show you of 13th December, 1966, addressed by you to Mr. R.E. Honey, Managing Director of United Dominions Corporation? A. Yes, I wrote this letter to U.D.C. 10

Q. And is this the way the matter ran, that on 13th December you wrote to U.D.C. threatening specific performance of loan agreements if they did not meet some certificates to pay the money to pay off George Armstrong? A. Yes.

Q. On 16th December you sent them a cash forecast in relation to the Company's affairs? A. That is not the sequence. 20

Q. On the 16th December you wrote a letter saying, "Don't worry about the \$400,000. We don't require it any more; other arrangements are being made"? A. Yes.

Q. And this is the time when you regarded the prospect of refinancing as hopeless, was it? A. Yes.

Q. When you say, "Other arrangements are being made," what did you refer to? A. I was referring to my visit to the Bank of New South Wales. 30

Q. What visit? A. I went to Mr. Dobbie, Bank of New South Wales. I told Mr. Dobbie that United Dominions Corporation is not honouring the letter when they promised us to pay the \$400,000, and I informed him I went to senior counsel for legal advice and they advised me that this letter is not an enforceable document; and I did ask him if he will provide some money temporarily, increase our overdraft, so that the company can carry on and fulfil the immediate and urgent obligations; and he said I should make a formal application to the Bank, which meant that he will not help. 40

Q. This was before the 16th December? A. Yes.

Q. With that knowledge you wrote to U.D.C. and said that "Other arrangements are being made, we don't need any money"? A. Yes.

Q. That was untrue? A. It was not untrue because Mr. Dobbie told me that I should make a formal application.

Q. But you understood that to mean that you would not get any money from the Bank for this purpose, didn't you? A. This letter has for the purpose to stop U.D.C. to put the Receiver into Paradise Waters Pty. Limited. 50

Q. For that purpose you told them an untruth?  
A. I did not tell them an untruth - this is true.

Q. Tell me again, what arrangements were being made on the 16th December which meant that you did not require any money from U.D.C.? A. I approached the Bank.

Q. And by the 16th December, when you wrote that letter, you believed that the bank would not provide the money you wanted? A. I go as far as to say I have great doubts that they will provide the money. 10

Q. A moment ago you told us that when he said "Make a formal application" you knew that they were not going to help you? A. That is ---

Q. This is true, Mr. Barton? A. It is practically the fact, but you still have a chance when you have been told to "make a formal application and we will put it to the Board".

Q. Did you make a formal application? A. Yes, later on I did. 20

Q. When - before Xmas? A. No.

Q. Before the end of January? A. No, I don't know the time but I certainly made ---

Q. When you wrote the letter of 16th December to U.D.C. saying "Other arrangements are being made, we don't need your money", in effect, that was untrue, was it? A. It was not untrue.

Q. I put to you you wrote an untruth to that Company? A. I never write untruths. 30

Q. It was true then was it? A. Yes.

Q. Would you please tell me what arrangements were being made which meant that you did not need \$400,000 from U.D.C.? A. As I said, I approached the Bank - no other arrangement has been made - and the purpose of this letter was to stop U.D.C. to put a Receiver in.

Q. And that is why you wrote an untruth, is it?  
A. I didn't write untruths. U.D.C. took legal advice and Mr. Honey has informed me that in no circumstances they will lend us money, and furthermore that U.D.C. was not prepared to answer my letters - their solicitors answered my letters. It was clearly showing the position that U.D.C. was in. 40

Q. Did you ever get a letter dated 10th December or thereabouts from the United Dominions Corporation saying they would not advance the money? A. Yes, it was before the Board.

Q. Where is the letter, Mr. Barton? A. It is not with me - it must be with the company. 50

Q. Have you made any attempt to find it? A. I have no control of the companies, as you know.

Q. Are you aware that there is no such letter in the file of correspondence produced by United Dominions Corporation? A. I don't know what is in the file. I had no opportunity to look at it.

Q. Do you still say that you are quite positive that United Dominions Corporation wrote a letter at any time in December 1966 saying that they would not provide \$400,000 - that is, before 16th December, I will qualify that. Before your letter of the 16th December, 1966? A. He wrote us a letter that called up the original mortgage. 10

Q. That was after your letter of 16th December, 1966, was it not? A. I don't know. I have been advised by Mr. Honey verbally that they don't pay the \$400,000 and also they are going to call up the first mortgage at Paradise Waters, full stop.

Q. Would you also look at a further letter of 13th December, 1966 addressed to Mr. R.E. Honey at United Dominions Corporation, and tell me whether that is a further letter you wrote on that date? A. Yes. 20

(U.D.C. letters dated 13th December, 1966, 13th December, 1966, 16th December, 1966, 16th December, 1966 and 28th December, 1966, with respective enclosures tendered and marked Exhibit 7.)

HIS HONOUR: For convenience sake I will have it noted in the record that these letters in Exhibit 6 are preceded by the letter of 23rd November 1966, which is part of Exhibit "C", and they are followed by the document in the file which is Exhibit "M". 30

MR. STAFF: Q. I want you to look at the signature on the second page of the letter of the 7th March. Tell me whether that is your signature? A. It is mine.

Q. On that date, I put to you, you wrote a letter to the General Manager of United Dominions Corporation - do you recall that? (Objection.) 40

Q. Would you look at the letter? (Shown to witness.) Would you read that part of it, to the end of the 6th Paragraph? A. Yes. (Objection.)

Q. Were the statements in those first six paragraphs true when you wrote them? A. I can't see any statements made in those paragraphs.

Q. Was what was written in those paragraphs true? A. Everything that I wrote in this letter, including every paragraph, is true. 50

Q. On the 7th March, 1967 it was your belief, was it, that when a letter or document from the Lands Commission to the effect that you were not in

breach of the Paradise Waters lease was received, you had an excellent chance of having the project refinanced - that was your belief, was it, on the 7th March, 1967? A. It is what the company believed.

Q. That was your belief? A. That was what the company believed.

Q. You wrote the letter and signed it, did you not? A. Yes, I was the Managing Director of that company; I wrote on behalf of the company. 10

Q. Then you wrote the words, "I believe that when this is obtained we have an excellent chance of having this project refinanced", was that a true and correct statement of your belief? A. Not my belief - the company belief.

Q. So that you wrote the words, "I believe that when this is obtained we have an excellent chance" when it was not your belief, did you? A. That was bad, the letter should have been, "we believe". 20

Q. Mr. Barton, are you saying that when you wrote the words, "I believe that when this is obtained we have an excellent chance of having this project refinanced", that you wrote something untrue? A. I never write anything which is untrue.

Q. So it was your belief, when you wrote this letter on 7th March 1967 that the company had an excellent chance of having the project refinanced? A. It was not my belief.

Q. And yet you maintain that what you wrote was true? A. Yes. 30

Q. Of course, on 3rd March, 1967, you had had a discussion with the General Manager about the matter, hadn't you? A. I had discussion with the General Manager of U.D.C., and many other people. I try to help you, Mr. Staff - I made all efforts to refinance Paradise Waters. I used my best endeavour and I tried it because that was the duty of my position as Managing Director of Landmark to make all effort to try to save the Company. It is just the same as when a man is thrown overboard one hundred miles from shore, I made the effort to swim to the shore and I knew it that I couldn't swim that far. 40

Q. And of course, in making the effort and in writing the letters, you always told the truth, did you? A. I say what was the belief of the company. I am one person and the board is a different identity.

Q. And I suppose when you signed this letter of the 7th March, you had first of all dictated it, had you not? A. Yes. 50

Q. And the Board hadn't dictated it? A. No, the Board hadn't dictated it.

Q. You composed it? A. Yes, I was representing the Board.

Q. And you signed it? A. Yes, that was the Board's view.

Q. And when you said in this letter of 7th March 1967, "I am confident that we will be able to meet commitments over the next two or three months, by which time our financial problems should be resolved," was that a true statement as to what your confidence was? A. That was the Board's view. 10

Q. When you wrote, "I am confident", that was untrue then, was it? A. It should have been typed, "We", not "I".

Q. When you wrote, "I am confident that we will be able to meet commitments", that was untrue, was it? A. It was not untrue; I signed on behalf of the company, therefore any reference to "I" is wrong.

Q. You don't usually call a company "I", do you? A. No I don't. 20

Q. You call yourself "I", don't you? A. That is right.

Q. Do you still say that that statement was true? A. Yes.

Q. Was it true when you wrote, "I also mention to you that we have several possibilities with regard to the Paradise Waters project, and I am confident that one of these will be successfully negotiated and finalised within a month"? A. That was the company view. 30

Q. Mr. Barton, you said, "I am confident one of these will be successfully negotiated and finalised within a month"? A. It should read, "We are confident".

Q. And then you said, "We have reluctantly decided not to pay the dividend which we have declared" - was that true? A. Yes.

Q. "I do not anticipate any insurmountable difficulties in this regard" - was that true? A. Which regard? 40

Q. That is what you wrote, Mr. Barton? A. Yes, but reading paragraphs, half sentences, I cannot place it.

Q. I will read you the whole paragraph. "I also mention to you that we have several possibilities with regard to the Paradise Waters project and I am confident that one of these will be successfully negotiated and finalised within a month. We have reluctantly decided not to pay the dividend which we have declared. I do not anticipate any insurmountable difficulties in this regard." Was all that true? A. Yes. 50

Q. So you did not anticipate any insurmountable difficulties arising from non-payment of the dividend? A. No I did not.

Q. And you were confident that you would successfully negotiate and finalise within a month one of several possibilities with regard to Paradise Waters?

A. The company was confident.

Q. Of course, by this letter of the 7th March 1967, you made proposals to United Dominions Corporation for assistance, didn't you? A. Yes, I made several representations to United Dominions and other people - I told you before. 10

Q. You finished up saying, "If you would agree to either of these proposals I would give you a categorical undertaking that we would make no further requests for assistance, and I also confirm that irrespective of whether your Board agrees to either of these requests, Landmark Finance will give you an irrevocable authority to transfer to your company all future funds which are credited to the bank account of Landmark Finance Pty. Limited"? A. Yes. 20

Q. When you said, "I would give you a categorical undertaking that we would make no further requests for assistance", you were speaking of yourself personally giving an undertaking? A. Bad English; it means the company give an undertaking. U.D.C. never wanted my personal guarantees or undertaking.

Q. There is nothing wrong with the English, is there? It makes perfect sense? A. Yes. 30

Q. Except that it does not suit you, does it, to have it understood in its literal sense? A. It suits me; unfortunately I was not born here and I still have a handicap with accent and slight difficulty in the language - not great.

Q. You recall writing to United Dominions Corporation on 21st March 1967 a letter by which you enclose for the confidential information of the General Manager, a letter received from Stocks & Holdings Limited in connection with MacIntosh Island Development at Surfer's Paradise? A. Yes. 40

MR. GRUZMAN: Your Honour, I take it all this is subject to my objection?

HIS HONOUR: Yes. Sometime, Mr. Staff, you will have to make an express statement as to whether you rely upon delay or not. All this is consistent with what I have already allowed, but I do not want the hearing to become too technically complicated. I do not think it will assist, in being too precise, in deciding to what the matter is relevant. However, I will allow this question on the same basis as the earlier questions. 50

MR. GRUZMAN: May I be taken, with respect, as not agreeing with the way your Honour has put it.

HIS HONOUR: Yes. If these matters are opened up in cross-examination you, of course, are entitled to re-examine at large on the question of delay. I left that open when I ruled, and I still leave it open. I foresee there is going to be an argument on it at some point of time.

MR. STAFF: Q. Mr. Barton, do you remember writing about 21st March 1967, a letter in relation to that matter? A. Yes.

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Q. Do you remember saying, "We wish to inform you that further negotiations yesterday for the same firm bring us closer to the conclusion of these arrangements"? A. Yes.

Q. And you enclose with that letter a letter dated 13th March, 1967 from Stocks & Holdings Limited? A. Yes.

Q. Was what you wrote in the letter to United Dominions Corporation on the 21st March, 1967 true? A. True; that is what the company believes.

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Q. And I suppose you conducted the further negotiations on 20th March with Stocks & Holdings Limited? A. Yes.

Q. And you were the only representative of the company who conducted those negotiations, were you not? A. Yes.

Q. And you reported on those negotiations to United Dominions Corporation immediately afterwards? A. Yes.

Q. And was it not your view on 21st March that those negotiations had brought you closer to the concluding of the arrangements mentioned in the Stocks & Holdings letter which is enclosed? A. This was the company's view. My own view was that as soon as Stocks & Holdings, even if he agrees with Landmark, tried to borrow money, from outside sources, he will find his way back to United Dominions withdrawing his money, and nobody will be financed for it.

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Q. And it was whose view in the company that the negotiations which you had conducted alone on the previous day with Stocks & Holdings had brought you closer to concluding arrangements? A. They was very confident in my ability and my activity, regardless of what I told them about my own opinion.

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Q. And regardless of what you told them about the negotiations you had had personally with Stocks & Holdings? A. No, basically the crux of the matter was, in my opinion, that as soon as the finance company withdrew from a large project, and this project has been put into doubt as to the value of the security, and the title of the security has been questioned by U.D.C., there was not the possibility that any other finance company will accept us as security for a basis of lending money. This was my

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opinion - not necessarily that people agree - but it has been proved. Even United Dominions under the scheme of arrangement were not prepared to commit themselves to lend money, and at that time there was not any danger to anybody as attacking me.

MR. STAFF: I tender the letters of the 7th, 13th and 21st March, 1967, your Honour.

MR. GRUZMAN: I object your Honour.

(Counsel address.)

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HIS HONOUR: I think I prefer to defer ruling on this until tomorrow morning. Until that time I will pass them back.

(Hearing adjourned until 10 a.m., on Wednesday, 29th May, 1968.)



CORAM: STREET, J.

BARTON -v- ARMSTRONG & ORS.

EIGHTH DAY, WEDNESDAY, 29TH MAY, 1968.

MR. BAINTON: There are a few matters in the transcript. The first one is at p. 77, the seventh question. That reads, "I think also in 1966 you were invited to the Australian Cocktail Club by Mr. Armstrong". I think, "Australian Cocktail Club" should read, "The Australian Club's Cocktail party".

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On p. 78, the third question, the question reads, "I think in the middle of the front row is Mr. Armstrong's secretary". "Secretary" should read "second daughter".

On p.80, the sixth question from the bottom, the question reads, "Do you recall that at a meeting of directors from Landmark held on 16th January 1966, a resolution was passed instructing you to return to Australia ...". "16th January, 1966" should be "16th June, 1966".

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On p.82, the fifth question down, at the end of the question, "A.I.C." should read, "I.A.C.".

On p.87, in the second last question, the answer reads, "Yes, including this defamation of character suit". I think that there was something further said - "which I brought", or something to that effect.

MR. GRUZMAN: At any rate, it is the fact.

HIS HONOUR: You suggest there should be added to that answer the words "which I brought"?

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MR. BAINTON: Yes, or to that effect.

MR. GRUZMAN: I agree to that.

HIS HONOUR: The answer on p. 87 to the second last question will be amended to read, "Yes, including this defamation of character suit which I brought".

MR. BAINTON: On p. 99, the third question, the transcript reads: "What I asked you was, would not you agree that during November, 1966, whilst the accounts for 1966 were being finalised, disagreement arose between Mr. Armstrong on the one hand and you and the other directors on the other hand as to whether a declaration for dividend should be recommended to the shareholders at the general meeting". The words "a declaration for dividend" should be "whether the declaration of a dividend".

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MR. GRUZMAN: I cannot say that I have any recollection. It reads all right to me at the moment. If Mr. Staff wants to amend it it can be amended so far as we are concerned.

HIS HONOUR: In the third question on p. 99, the

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words "whether a declaration for dividend ..." will be altered to read "whether the declaration of a dividend ..."

MR. BAINTON: On p.118 of the transcript, in the seventh question, in the middle of the page, the answer is recorded as "You can put it this way. In my own mind I gave two answers on both occasions". What the witness said was "In my own mind I gave true answers on both occasions". In the following question, "One answer is incorrect and one is untrue, isn't it?" the word "incorrect" should read "correct". 10

On p.137, the sixth last question from the bottom, the transcript shows, "Q. And that is why you wrote an untruth, is it? A. I didn't write untruths. U.D.C. took legal advice and Mr. Honey has informed me that in all circumstances they will lend us money ..." My recollection is that the witness said "In no circumstances", and not "in all circumstances". 20

HIS HONOUR: "In all circumstances" should read "in no circumstances".

MR. BAINTON: On p.138, the fifth question from the bottom, the transcript reads, "You wrote the letter on Sunday, did you not?" That should be "you wrote the letter and signed it, did you not?"

MR. PRIESTLEY: In the second last question on p. 141 the answer is recorded as "I was very confident in my ability and my activity. I recall clearly that Mr. Barton did not say, "I was very confident". He was saying either that the directors were very confident or the Board was very confident. 30

MR. STAFF: I think he said "they was".

HIS HONOUR: On p.141 the answer to the ninth question should commence, instead of "I was very confident ...", "They was very confident ..."

PLAINTIFF

On former oath:

HIS HONOUR: Q. You are still on your oath to tell the truth, Mr. Barton? A. Yes, your Honour. 40

MR. STAFF: I think I had tendered two letters of 7th March, 1967 and 21st March, 1967 from Landmark to United Dominions Corporation. My friend had objected to them.

HIS HONOUR: Have you anything further to add, Mr. Gruzman?

MR. GRUZMAN: No, your Honour.

HIS HONOUR: In the course of his evidence in chief the plaintiff was asked without objection his opinion as to the worth of the shares in Landmark Corporation at the time that he entered into the agreement of 17th January, 1967. This evidence 50

was presumably tendered and allowed to go without objection upon the basis that the state of the plaintiff's mind regarding the worth of the shares which he had agreed to buy has relevance to the main question of whether he was induced to enter into the agreement by undue influence. If, of course, the agreement could be seen to be one for proper value then that might tend against the probability of the plaintiff having been influenced into it by anything other than business considerations. If, on the other hand, the shares were, as the plaintiff had sworn he believed them to be, worthless, then that creates a situation in which the probability of the presence of undue influence is enhanced. It follows that evidence has been tendered upon the basis that the plaintiff's belief as to the worth of the shares on 17th January is relevant to the issue. Mr. Staff has cross-examined upon some correspondence signed by the plaintiff in March, 1967 which is said to be inconsistent with his having a belief that the shares were worthless at the relevant time. Mr. Gruzman objects to the admission into evidence of this correspondence upon its tender by Mr. Staff upon the basis that at the most the evidence of the events in 1967 to which this correspondence relates, and which have been referred to in connection with the correspondence in cross-examination, are relevant only on credit, and, as the plaintiff has admitted the terms of the letters, there is no basis for their being received in evidence themselves.

It seems to me that the plaintiff's evidence as to his belief regarding the worth of the shares has thus far been dealt with on the basis of being relevant to an issue, and I am accordingly of the view that the letters should be admitted in evidence in connection with this issue. The fact that they may also bear upon credit is, of course, no basis for applying to them rules of evidence particularly limited to cross-examination as to credit. I shall accordingly admit the letters, and they will be marked Exhibit 8. This exhibit will follow in sequence after Exhibit "M".

(Letters dated 7th March, 1967 and 21st March, 1967, with enclosures, tendered and admitted as Exhibit 8.)

MR. GRUZMAN: In view of the fact that your Honour has summarised my submission, our understanding of this was that my friend put these letters upon the basis that they were evidence of the state of mind of the plaintiff on 17th January, and our submission was that if your Honour - first of all, we said they were too remote in point of time to be evidence of that state of fact, but if, on the other hand, your Honour were disposed to admit them we submitted to your Honour that that means that, contrary to my friend's earlier submission, evidence of facts subsequent to 17th January are admissible to show the plaintiff's state of mind; the plaintiff's state of mind at that time. It was then pointed out by your Honour that your Honour, in rejecting

evidence of events subsequent to 17th January, had rejected them solely on a basis unconnected with state of mind. The nett result, as we see it, and we would submit, is this, that if your Honour admits these letters, then their evidence, as we understand it, will be used by my friend as evidence of the plaintiff's state of mind on that particular date - at that particular date, albeit your Honour may say in respect of a particular point. We would therefore believe that we can introduce, by way of re-examination, other matters relating to the subject matter - the same subject matter - that is, his state of mind on 17th January - as disclosed by events which occurred after that date. 10

HIS HONOUR: I will rule on that if and when questions in re-examination are asked. The earlier ruling I gave was quite specifically limited to the only basis then put forward in support of the evidence. The objection was a general objection, and this seems to me to be a matter which may fall for consideration in re-examination. 20

MR. STAFF: Q. I will tender two affidavits ---

HIS HONOUR: Mr. Staff, I would like to show this letter to Mr. Barton first.

Q. Mr. Barton, I show you this letter of 17th March, part of Exhibit 8. Who is the lender referred to in the first few paragraphs? A. C.A.G.A.

MR. STAFF: I tender two affidavits, the first one an affidavit of 31st March, sworn by Mr. Barton in proceeding in equity 298/67, paragraphs 6 to 15, and the second an affidavit of 11th April, 1967 sworn by Mr. Barton in term No. 127/67, also paragraphs 6 to 15. 30

MR. GRUZMAN: I don't object to my friend's tender, but I would tender the remainder of the affidavits.

HIS HONOUR: Are you prepared to accept the remainder of the documents - the remainder of the affidavits - as part of your tender, Mr. Staff?

MR. STAFF: I submit they are irrelevant and would just add to the mass of paper. 40

HIS HONOUR: I think paragraphs 1 to 5 in each affidavit could be added.

Mr. Gruzman, do you say Mr. Barton was cross-examined about the remaining matter in the subject paragraphs? He gave evidence about it in cross-examination, but whether he was cross-examined about it -

MR. GRUZMAN: I can't remember how it came about that the subject matter was dealt with. (Argument ensued.) 50

HIS HONOUR: I shall admit as Exhibit 9 paragraphs 1 to 15 of the affidavit of Alexander Barton in

298/67 sworn 31st March, 1967 and paragraphs 1 to 15 of the affidavit of Alexander Barton in Term No. 127/67, sworn 11th April, 1967.

I shall also have it noted that Mr. Gruzman has sought to tender the balance of each of these affidavits. I reject the tender upon the ground that the remainder of these affidavits was not opened up in cross-examination.

(Paras. 1 to 15 of affidavit of A. Barton in 298/67 sworn 31st March, 1967 and paras. 1 to 15 of the affidavit of A. Barton in term No. 127/67 sworn 11th April, 1967 admitted and marked Exhibit 9, and 10 respectively.) 10

MR. STAFF: I tender terms of settlement in proceeding term No. 127/67 and those filed in proceeding 298/67. (Objected to.)

HIS HONOUR: Mr. Staff now tenders the terms of settlement in the proceedings brought by Landmark Corporation and the Paradise Waters companies and others v. Southern Tablelands Finance Company. The terms of settlement are dated April, 1967. It has been made clear by Mr. Staff that the documents are sought to be admitted in evidence solely as being relevant to Mr. Barton's state of mind regarding the worth of Landmark shares at the time of the January 1967 transaction. No relevance is sought to be attached to them for any other purpose. Mr. Gruzman objects to their admission into evidence upon the ground that they do not bear upon Mr. Barton's state of mind in January, 1967. 20 30

It seems to me that the documents are admissible for the limited purpose for which Mr. Staff tenders them. What Mr. Barton said and did and what was done, presumably on his instructions, by the Landmark companies in the period reasonably close to the date of January does in my view bear upon his state of mind or his belief as to the worth of the shares in January 1967, and these terms of settlement including, as they do, recognition by the Landmark Corporation of the contemplation of being able to make the payments as set out in the terms is relevant to the financial position of the Landmark companies. I accordingly admit the documents. 40

(Terms of settlement in proceeding term No. 127/67 and terms of settlement in proceeding 298/67 admitted and marked Exhibit 11.)

Q. These two matters were settled in April, 1967 would that be correct? I don't ask you to accept the date because I am putting it to you? A. I would like to separate the two matters. Which is the two matters? 50

Q. The matter of the case against the Southern Tablelands Finance Company brought by Paradise Waters (Sales) and the money-lending claim - the two matters in respect of which you swore affidavits? A. Yes, April, 1967.

MR. STAFF: Q. Mr. Barton, when these matters were settled in April, 1967 you told me yesterday that you were aware they were settled by negotiations on behalf of Landmark companies conducted by Mr. Dean?  
A. Yes.

Q. And they were settled on the morning on which the case was in the list and disposed of as a result of the settlement? A. Possibly. I don't know the exact time.

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Q. You told us yesterday you knew that? A. I beg your pardon?

Q. You told us yesterday, in the middle of p.134, that the negotiations were conducted by Mr. Dean. I asked you, "And I think you are aware, are you not, that on the morning on which the case was fixed for hearing the matter was finally settled?" and you answered "Yes". A. Yes.

Q. I asked you "And Mr. Dean conducted negotiations for the settlement on that point, didn't he" and you answered, "Yes". A. Yes.

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Q. And you were present in Mr. Dean's chambers on that morning, weren't you, Mr. Barton? A. Yes.

Q. With representatives of Allen Allen and Hemsley? A. Yes.

Q. And Mr. Sheppard? A. Who?

Q. Mr. Sheppard. Mr. Ian Sheppard, who appeared with Mr. Dean? A. I am not sure about that. Also Mr. John Bovill.

Q. Mr. Cotter was not present? A. I don't think so.

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Q. And you gave instructions to Mr. Dean to settle on the terms which are set out in the terms of settlement, didn't you? A. Not me, the company - Landmark Corporation.

Q. You were the managing director? A. Yes.

Q. You were there? A. Yes.

Q. And you in fact gave the instructions, didn't you? (Objected to; rejected.)

HIS HONOUR: At the foot of p.134, the fourth line from the bottom, after "objection" there should be noted "rejected", and the fourth line on p. 135, after the word, "objection" there should be noted the ruling, "allowed".

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MR. STAFF: Q. Mr. Barton, it had been you, of course, whom the board of Landmark authorised to negotiate the terms of settlement of 14th April, hadn't it? A. Yes and no.

Q. Well, Mr. Barton, you recall the resolution

passed in relation to that matter? A. Yes.

Q. And it authorised you to attempt to negotiate a settlement on the basis that the moneys were repayable on 30th June - on or before 30th June, 1967?

A. Yes. But I found it necessary for Mr. Bovill to accompany me.

Q. You were given that authority by the board of the company, weren't you? A. Yes. But I did not accept it.

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Q. There was no other board meeting - no further board meeting of the company at which the matter of settlement was discussed, was there? A. No.

Q. Mr. Bovill had no executive position with the company, did he? A. No.

Q. And you told us Mr. Cotter was not present on the morning on which the matter was settled? A. I told you I am not sure. I don't think he was present.

Q. Are you sure whether Mr. Bovill was there or not? A. I am sure Mr. Bovill was there.

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Q. Mr. Barton, on 22nd December, 1966 there was a meeting of directors of Landmark Corporation. Do you recall that? A. Yes.

Q. And you, Mr. Cotter, Mr. Bovill, and Mr. Armstrong were present, as directors? A. Yes.

Q. Do you remember that? A. Yes.

Q. And do you remember that there was then a discussion which Mr. Grant who was in attendance, reported that he and Mr. Armstrong had had with Mr. Malouf, solicitor for United Dominions Corporation? A. Yes.

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Q. Do you remember that Mr. Grant said that Mr. Malouf had said that United Dominions Corporation had executed documents in Queensland to appoint a receiver for the Paradise Waters project? A. Yes. I had no knowledge of it before that.

Q. You heard about it, anyway? This is what Mr. Grant reported at the meeting? A. Mr. Grant did put a proposition to the meeting. He has not reported.

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Q. Do you say that Mr. Grant did not report that he had a discussion with Mr. Armstrong - that he and Mr. Armstrong had had a discussion with Mr. Malouf, solicitor of United Dominions Corporation? A. Mr. Grant had no right to report anything. Mr. Grant was there as a solicitor for Mr. Armstrong. He did put the proposition to the board.

Q. Mr. Barton, did Mr. Grant report a discussion he and Mr. Armstrong had had with Mr. Malouf, solicitor for United Dominions Corporation? A. If it says in the minutes so, yes. If it is not, no. My

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recollection is that Mr. Grant did put the ridiculous proposition to the board.

Q. Mr. Barton, of course you signed the minutes of that meeting as a correct record, didn't you? A. If you show me I will recognise my signature. If you show me I will recognise the signature.

Q. Will you look at the heading I show you? A. Yes.

Q. Minutes of meeting of Directors of Landmark, held 22nd December, 1966? A. Yes. 10

Q. Look at the next page. There is a signature appearing in the middle of the second page? A. Yes.

Q. Is that your signature? A. Yes, that is my signature.

Q. You signed that as a correct record on 18th January, 1967? A. Yes.

Q. I want you to look at the first item - "report re Paradise Waters Project"? A. Yes.

Q. "Mr. Grant reported and discussed that he and Mr. Armstrong -", I'm sorry, "Mr. Grant reported a discussion that he and Mr. Armstrong had had with Mr. Malouf, solicitor for United Dominions Corporation Limited". A. Yes. 20

Q. And it goes on? A. Yes.

Q. Is that correct? A. That is right.

Q. So that Mr. Grant did report a discussion he had had, did he? (Objected to; allowed.)

Q. Mr. Grant told you - told the meeting, didn't he, Mr. Barton, that United - that he had heard from Mr. Malouf that United Dominions Corporation had executed documents to appoint a receiver for the Paradise Waters project? A. Yes. 30

Q. Who had agreed to a deferment until 2.30 p.m. that day to allow an agreement to be reached if possible? A. Yes, if it so says.

Q. Have you got no recollection? A. Yes, I have a recollection, but I ---

Q. Mr. Grant also said that Mr. Malouf had indicated that if a reduction of \$60,000 on the United Dominions Corporation mortgages was made that day United Dominions Corporation would postpone their actions until 21st January, 1967 to allow further negotiations and investigations of the accounts. Is that right? A. That was right. 40

Q. At this meeting Mr. Grant outlined a proposal which was - which he said was designed to overcome the immediate problem, didn't he? A. No, which was designed to have a payment of \$60,000.



MR. STAFF: Will your Honour ask the witness to answer the question, and restrict himself to an answer to the question?

HIS HONOUR: Yes. If you can, Mr. Barton, I think Mr. Staff is entitled, if you can answer the question yes or no, to have you do so. If you are unable to answer yes or no, you can say that you can't answer yes or no, and if you are asked for the explanation you can give it. 10

MR. STAFF: Q. Did Mr. Grant at this meeting outline a proposal which he said was designed to overcome the immediate problem? A. That is what he said.

Q. And he put to the meeting a proposal that a penthouse in Paradise Towers be sold to Goulburn Acceptance Pty. Limited for \$60,000? A. That is not the whole proposal.

Q. Was that one of the terms of the proposal? Was that one of the terms? A. Would you repeat the question, please? 20

Q. That the penthouse in Paradise Towers should be sold to Goulburn Acceptance Pty. Limited for \$60,000? Was that one of the terms? A. Yes.

Q. Was it another term of the proposal that you should resign that day as chairman and managing director? A. Yes.

Q. Was it a third term of the proposal that Mr. Cotter and Mr. Bovill and Mr. Barton should remain on the board? 30

HIS HONOUR: You mean Mr. Cotter, Mr. Bovill and Mr. Armstrong?

MR. STAFF: Mr. Barton should remain on the board.

WITNESS: Only chairman of directors.

MR. STAFF: Q. You were to resign as chairman of directors? A. Yes.

Q. I put it to you you were also to resign, under the terms of the proposal, as managing director? A. No.

Q. I put it to you that Mr. Cotter and Mr. Bovill and yourself were to remain on the board as directors? A. Yes. 40

Q. Was that said? A. I think so, yes.

Q. The fourth term was that Mr. Beale was to become a director of Landmark Corporation? A. Yes. (Objected to.)

HIS HONOUR: You are putting this on credit at the moment, Mr. Staff?

MR. STAFF: Yes. Your Honour will in due course see what the relevance is, with respect.

HIS HONOUR: I will not interfere if you are putting it on credit.

MR. STAFF: Q. The fifth condition of the proposal, I put to you, was that Mr. Armstrong become executive chairman of the board until 21st January, 1967? A. No. I agree the first part is yes; the second half is no.

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Q. Which is yes and which is no? A. That for the payment of \$60,000 to United Dominions Corporation Mr. Armstrong wanted to get the control of the company. That is the yes. The "no" is the restriction to 21st January. That is the "no".

Q. In other words, there was never any - it was not a term of the proposition that Mr. Armstrong should become executive chairman until 21st January 1967? Is that what you say? A. That is right.

Q. And I put it to you that it was a further term of the proposition - of the proposal - that Mr. Armstrong and United Dominions Corporation should investigate to determine whether Mr. Armstrong would lend additional moneys? A. No, Mr. Staff. At that point of time I stopped Mr. Grant's proposition. I told him the board was not interested to hear about it. I did put it to the board.

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Q. Was that a term of the proposal which was outlined by Mr. Grant to the board meeting? A. No.

Q. Nothing like that was said? A. No. I stopped Mr. Grant and told him it was a ridiculous proposition.

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HIS HONOUR: Q. I'm sorry, you told Mr. Grant -? A. I told Mr. Grant that his ridiculous proposition is not interested me, and I put it to the board members if they wanted to further hear Mr. Grant, and they said no.

MR. STAFF: Q. You say, then, that Mr. Grant was stopped? That the proposal was not outlined in full? A. Yes.

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Q. You only got half the proposal, or some part of the proposal? A. Yes.

(Short adjournment.)

Q. I want to put to you that another condition which Mr. Grant outlined to the board on this date, 22nd December, was that the whole proposal was conditional upon United Dominions Corporation not appointing a receiver before 21st January 1967. Did he say that? A. I stopped Mr. Grant before he finished his proposal.

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Q. Do you say he didn't say that? A. Yes, he didn't say it.

Q. He didn't say it? I want to put to you that he also said that another condition was that if no further funds were lent by Mr. Armstrong or a company connected with Mr. Armstrong, Mr. Armstrong would resign and U.D.C. would appoint a receiver?  
A. No.

Q. And finally, that he put as a condition of the proposal that if Mr. Armstrong or a company with which he was connected should decide to lend further moneys to help finance the project Mr. Barton should resign as a director thereupon? A. No. 10

Q. Mr. Barton, at the meeting was the proposal outlined by Mr. Grant - by the way, at the meeting, did you move that Mr. Armstrong's (sic) proposal be rejected? A. Yes.

Q. You say you had only heard half of it, or part of it? A. Yes.

Q. But you moved that the proposal be rejected?  
A. Yes. As far as we heard. 20

Q. The motion was carried? A. Yes.

Q. And did you tell the meeting that you would provide \$60,000 to United Dominions Corporation if so required? A. Possibly.

Q. Did you? Don't you remember? A. I don't remember if I said \$60,000 or \$60,000 security, or "the company" or "myself". I am not quite sure.

Q. Will you look at the paragraph - will you look at the second paragraph appearing on p.2 of the minutes, and tell me whether that refreshes your recollection? A. Yes, it refreshes my recollection. 30

Q. Do you now recall that at that meeting you told the meeting that you would provide \$60,000 if so required by United Dominions Corporation? A. Yes. Not meaning myself, but I would provide on behalf of the company.

Q. Out of your own money? A. No.

Q. Whose money? A. From the company.

Q. Which company? A. Landmark Corporation Limited. 40

Q. Mr. Barton, are you serious? A. Yes, I am very serious.

Q. You see what is recorded in the minutes which you signed as a correct record? A. Yes.

Q. You say that is incorrect? A. I don't think it is incorrect. The minute is correct.

Q. Mr. Barton, the paragraph reads, "Mr. Barton also advised that he would be able to provide

"\$60,000 for United Dominions Corporation Limited if so required"? A. Yes, in my capacity as managing director.

Q. That is not what it says, is it? A. No, it is not. It is not what it says, but that is what it means.

Q. And, Mr. Barton, what I want to put to you is that on that day you told the meeting that you would personally be able to provide \$60,000 for United Dominions Corporation if so required? A. I did not say personally. 10

Q. Did you say that you would provide it out of Landmark funds? A. That was the natural consequence when I said as managing director that I would provide.

Q. Of course, you agree, don't you, that the statement in the minutes has not got that meaning at all, has it? A. It has got that meaning.

HIS HONOUR: Q. It has, or it has not? What was your answer? A. It has got the meaning that I will provide in my capacity as managing director - not in my personal capacity. 20

MR. STAFF: Q. Of course, at that stage you tell us United Dominions Corporation had refused to give you any more money? A. Yes.

Q. And you were aware, of course, that they had executed the documents in Queensland to appoint a receiver? A. Yes.

Q. And the company could not pay any money to anybody? It did not have the money to pay to anybody, did it? A. The company had some money, and some assets. 30

Q. It didn't have the money to pay United Dominions Corporation, did it? A. No. That was a very large sum of money. We have not got that large sum of money.

Q. It did not have the money to pay George Armstrong and Son Pty. Limited, did it? A. No, it didn't. 40

Q. It did not have the money to pay the contractors of the Paradise Waters project, did it? A. Partly yes and partly no.

Q. But you had sent the engineers' certificates along to get that money from United Dominions Corporation, and they had refused to give it to you, hadn't they? A. Yes, that is right.

Q. And you did not have the money to pay these contractors, did you? A. I already said that we can pay something of it and not pay all of it. 50

Q. You told us that about 16th December you had

gone to the bank to try and get money? You told us that, didn't you? A. Yes.

Q. And you knew it was not forthcoming from the bank? A. Yes, but it was a different kind of money. Not \$60,000. It was \$1,000,000.

Q. You wanted a million dollars from the bank, did you? A. I wanted the bank to pay out U.D.C. and George Armstrong and Son plus provide the \$264,000 which was contracted with U.D.C. to be lent to Landmark Corporation Limited on the engineers' certificates which U.D.C. said will not be forthcoming. I wanted to replace the deficiency in the cash flow which has occurred by the payment of Mr. George Armstrong and Son Pty. Limited, United Dominions Corporation plus \$264,000 which was missing because U.D.C. called up the original mortgage. That provided about \$1,200,000 deficiency in the cash flow. 10

Q. Of course you had no hope of paying the debts, in your view, at that point of time, did you? A. No. 20

Q. That is what you told us? A. That was my view.

Q. And you had no belief in the possibility of refinancing the project? A. That is so.

Q. And you had no money to pay Mr. Kratzmann in respect of Landmark House project, had you? A. At that stage we had, because we had arrangement with I.A.C. to pay progress certificates, and they did pay them at that time. The only trouble we had with Kratzmann at that time was that Mr. Armstrong rang Mr. Kratzmann and asked him to put a s.222 into the company in connection with the Paradise Towers project, and Mr. Kratzmann rung me and asked me what it is all about - "Your chairman is mad telling me that he is putting s. 222 into the company and wants to liquidate it and wants me to do the same thing". That was in November. He wrote me a letter about that. He said Mr. Armstrong wanted him to send a telegram - 30 40

Q. He wrote you a letter, you say? A. Yes, he wrote me.

Q. Where is that letter? A. The letter? I think with my legal advisers.

MR. STAFF: I call for that letter.

MR. GRUZMAN: It will be produced.

(Minutes of 22nd December, 1966 tendered and marked Exhibit 12.)

MR. GRUZMAN: I produce a photostat of a letter from Kratzmann Holdings Pty. Limited to managing director, Landmark Corporation Limited, dated 14th November, 1966. 50

MR. STAFF: Q. Will you look at that letter - that photostat letter - which has been produced and tell me if that is the letter to which you referred? Is that the letter to which you referred? A. Yes, that is the one.

Q. Mr. Barton, you received this letter, I suppose, a day or so after it was written? A. Yes.

Q. And when you received it, of course, proceedings by Finlayside and George Armstrong and Son Pty. Limited had been commenced against your company? A. I don't know. I don't think so. 10

Q. And of course, you owed - at the date of this letter you owed Southern Tablelands Finance Company something in excess of \$50,000? A. Yes.

Q. And you knew that within a very short time you would have to pay George Armstrong and Son out? A. Yes.

Q. \$400,000? A. Not then.

Q. What? A. Not then, because that became due when Mr. Armstrong has been removed from the chair, which was 19th November. That happened the day before Mr. Armstrong had to vacate his office and take his private companies out from Landmark Corporation premises. 20

Q. On 15th November proceedings were commenced by Finlayside against Landmark Corporation and others, weren't they? A. I don't know the date when it commenced.

Q. And you, of course, at that point of time had determined you were going to pay Mr. Armstrong off? A. That time I had nothing to repay to Mr. Armstrong except \$50,000. 30

Q. But you, Mr. Barton, had made up your mind that you were going to keep Mr. Armstrong out and pay his companies their debts? A. No, I only made up my mind to remove Mr. Armstrong from the company premises, and I was quite satisfied that he remain as chairman, without any power.

Q. That is a serious answer? A truthful answer, is it? A. That is a very truthful answer. 40

Q. Of course, it is quite contrary to what you told us the other day? A. It is not contrary.

Q. You say it is the same as what you told us? Is that what you say? A. I say this, that what I am telling you is the truth.

Q. Of course, you had a telephone conversation with Mr. Kratzmann on 14th, did you? A. That is right.

Q. A telephone conversation with Mr. Kratzmann on 14th November? A. That is right. 50

Q. And you told him that the company was not in any financial trouble at all, did you? A. That is right.

Q. And of course at that point of time you owed Mr. Kratzmann a considerable sum of money, didn't you? A. No.

Q. Or his company? A. No.

Q. You didn't owe him anything? A. No. According to my belief I didn't. We didn't. 10

Q. Did Landmark (Queensland) owe him a considerable sum of money? A. I had a dispute between Landmark (Queensland) and Kratzmann. His progress certificate has not been paid because the architects ----

Q. I did not ask you about that. I asked you did you owe Mr. Kratzmann at that point of time - or his company - through one of the Landmark group a considerable sum of money? (Objected to,)

HIS HONOUR: Mr. Barton, if you are unable to answer yes or no you are at liberty to say you cannot answer yes or no. 20

MR. STAFF: Q. Can you answer that yes or no? A. Can you repeat the question, please?

MR. STAFF: Q. At 14th November 1966, was it not the fact that Landmark (Queensland) Pty. Limited or one of the other Landmark companies owed Mr. Kratzmann's company a very considerable sum of money? A. I don't know what you call a very considerable amount of money - hundreds of thousands of dollars, or ten-thousand dollars. 30

(Letter dated 14th November, 1966 from Kratzmann Holdings Limited tendered and marked Exhibit 13.)

Q. I want you to come back now with me to the meeting of 22nd December, 1966. Would you look at the middle of the page, where the minute records that Mr. Grant then outlined a proposal by Mr. Armstrong to overcome the immediate problem? A. Yes.

Q. And there are six paragraphs then? A. Yes. 40

Q. Which purport to record the proposal, don't they? A. Yes.

Q. Would you agree with that? A. Yes, I do.

Q. One of the conditions is (6), that Mr. Armstrong be reappointed chairman and executive director until 21st January 1967? A. Yes.

Q. Was that discussed? Was that condition discussed? A. Not according to my recollection.

HIS HONOUR: Q. You say not? A. Not according to my recollection. 50

MR. STAFF: Q. In your view the minutes in stating that as part of the proposal are incorrect, are they?

A. I don't think so. The minute is correct.

Q. Your denial that that was a term which Mr. Grant ever indicated was incorrect, was it? A. I still have the same recollection like I had before.

Q. Which - the minute or your recollection - do you say is now incorrect? A. I have to accept the minute.

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Q. The answer you gave a short time ago was untrue, was it? A. It was not untrue. That was my best recollection.

Q. Now, Mr. Barton, would you accept that the statement in the minutes on p. 2 in the second paragraph is completely accurate? Would you accept that? A. In a sense, yes.

Q. In the sense in which it is expressed there, Mr. Barton? A. In the sense that myself as managing director of this company will be able to provide \$60,000 if so required.

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Q. Mr. Barton, will you not agree that the minute states that you, and means that you personally, would provide the \$60,000 to Landmark to pay off or to reduce U.D.C.'s debt? A. No.

Q. That, you say, is not the meaning of the words written in the second paragraph on p.2? A. That is what I say.

Q. And you are attempting to be truthful and frank, are you? A. Not attempting. I am determined.

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Q. Now, of course, you are conscious, aren't you, that no-one who believed that the prospects of the company were hopeless and that the shares were worthless would offer to put up \$60,000 of his own money to reduce the company debt, aren't you? A. That is not impossible.

Q. It would be highly unlikely wouldn't it? A. On securities. It has been proved when Landmark Corporation borrowed further money on securities.

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Q. If at 22nd December it was your belief that the company's prospects were hopeless and that the shares were worthless you would not offer to put up \$60,000 to reduce United Dominions Corporation's debt, would you? A. I cannot answer yes or no to that question, but I can tell you what is my answer if you like.

Q. You cannot answer yes or no? A. No.

Q. And, Mr. Barton, at 22nd December, 1966, of course, it would have been quite possible financially for you to find \$60,000, wouldn't it? A. No.

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Q. You did not have \$60,000 which you could put your hands on? A. No.

Q. If you had wanted to? A. No.

Q. You could not have got it from anywhere? A. I don't know.

Q. You could not have got \$60,000 for any purpose on 22nd December, 1966 that you might want it for? Is that what you mean to say? A. I don't know what you mean by "any purpose".

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Q. Well, if you wanted \$60,000 to spend on something - wanted to buy something or to lend to someone else - you say you could not have obtained that out of your own resources or those of your family companies? A. Mr. Staff, my biggest asset was, in the year of 1966, my shareholding in Landmark Corporation Limited. At that time this shareholding became worthless, and I admit I gave you a wrong answer yesterday by mistake; I am just human. When you were talking about April, 1966 at the time Landmark shares had a good value, but in December, 1966 they had no value at all - had no way to sell it; had no way to borrow money against.

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Q. You say - what was the incorrect answer that you gave yesterday, Mr. Barton? When you say you gave an incorrect answer, what was the incorrect answer which you gave yesterday? A. If you would repeat yesterday's questions, I will tell you.

Q. You said you gave an incorrect answer. What is the answer you say you gave incorrectly? A. My financial position at the end of 1966.

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Q. Which question, Mr. Barton? A. You asked me if I could lay my hand on £60,000 in December, 1966.

Q. Of course, what you were asked at p. 121 was - I had asked you about being able to find £60,000 in April, and I said to you: "Q. May I take it that you continued to have those means during the 12 months thereafter?" and you answered, "I had the same means 12 months ---" I asked you, "The means to get £60,000 if you wanted it, didn't you, throughout 1966?" and you answered "Yes". A. Yes.

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Q. That was untrue, was it? A. That was a wrong answer. It was a mistake on my part.

Q. Was it untrue? A. I think it was given in the haste, without consideration.

Q. You were asked, "And throughout 1967?" and your answer was "Possibly". I asked you, "Surely you know? Anyway, you say throughout 1967 possibly you had - still had the means to raise £60,000 if you wanted to?" and you answered, "Yes". I asked you, "Can you do a little better than 'possibly'? You know what your means are, don't you?" and you answered, "Yes, I do". I asked you, "Isn't it true that throughout 1967 you, if you had wanted £60,000,

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had the means to raise it?" and you answered, "Yes".

Mr. Barton, do you now say those answers were untrue? A. I don't say it was untrue intentionally. I say that the answer was given without good consideration.

Q. Then, Mr. Barton, you mean that you gave those answers without seeing what the consequence of those answers might be? A. No, what I mean ---

Q. Just answer my question, please? A. Would you repeat the question again? 10

Q. You say, do you, that those answers to questions that I have just read to you were not true? A. The questions (sic) are true, but not in the sense that I said.

Q. Are you saying the answers are true - not the questions? The answers we are concerned with? A. Your Honour, can I give an explanation?

HIS HONOUR: Q. Can you answer the question? What do you want to say? A. Yesterday when I gave those answers I knew I could rely on my family if I have to. 20

HIS HONOUR: Q. On your family for help? A. For help, yes. If I have to.

Q. Yes? A. Now, my wife had assets of probably \$50,000 or \$60,000, and I knew that any time when I need to rely on her she would come to my assistance.

Q. Yes? A. Now, I did put it in the concept when Mr. Staff asked me if I could find £60,000 - I made a truthful answer that I can, because I knew I can rely on my family, and so on. Now if you put it in a different prospect that if what assets I had of my own, in that case the answer was wrong. At this time Landmark shares were not saleable, and could not borrow against it. I myself was in overdraft in the bank, and private companies where I have controlling interest had little assets. 30

MR. STAFF: Q. At 22nd December, 1966 if you had wanted \$60,000 for some purpose, if you had wanted it do you say your wife would not have helped you? A. I don't know. I didn't try it. 40

Q. You are quite sure that earlier in the year, of course, she would have helped you? A. Earlier in the year I could have relied on my own financial strength.

Q. For £60,000 in the early part of the year? A. Yes, you see then I had, I think, about 170,000 Landmark shares which had a good value at that time.

Q. Mr. Barton, are you saying that in about April, 1966 you personally, out of your own assets, could have put your hands on \$120,000 if you wanted to? A. Yes. 50

Q. And more? A. Not much more.

Q. And at the same time do I understand you to say that your wife could have provided for you, if you had wanted it, something in the order of \$50,000 or \$60,000? A. I didn't say that. I said my wife had assets of that vicinity, but I didn't know ---

Q. Didn't you tell us that? A. I don't know she goes as far as to sell her half in our joint house to provide me with money. 10

Q. You did a little while ago, didn't you, tell us that if you had wanted help from your wife she would have provided \$50,000 or \$60,000? A. I didn't say that. I didn't say that.

Q. Maybe my recollection is wrong about it. We will see later on. Of course, your wife didn't have any substantial number of shares in Landmark Corporation, did she? A. No.

Q. So that her financial position by the end of the year had not altered much, had it? A. No. 20

Q. And your family companies, of course, had assets in the early part of 1966 as well, didn't they? A. Mainly Landmark shares.

Q. In the early part of the year? A. Yes.

Q. And you yourself - I think you said that you had something like 70,000 Landmark shares in April? A. I said altogether the family company and myself had about 170,000 shares.

Q. 170,000 shares? A. Yes.

Q. In April, 1966? A. Yes. 30

Q. Or thereabouts? A. I will have to correct myself again, if you put it at April, 1967.

HIS HONOUR: Q. 1966? A. 1966. It is probably 39,000 less what I got on 1st July, 1966.

MR. STAFF: Q. What is the final figure? A. 130,000 approximately in April, and 170,000 in July.

Q. And then you sold some, didn't you? A. Yes.

Q. And made a profit out of those you sold? A. I don't know what you call a profit.

Q. 15-cents a share I call a profit? A. Yes. 40

Q. Didn't you? You sold it at a profit? A. Yes.

Q. How many did you have by 22nd December, 1966? A. Mr. Staff, I cannot give you details of my shareholding.

Q. Approximately? A. I can tell you one thing,

that the only parcel of shares what I sold you are referring to, and I kept buying shares on the market as well myself. I was a buyer.

Q. How many shares do you say you had by 22nd December, 1966?

HIS HONOUR: By "you" you mean Mr. Barton, his family and his company?

MR. STAFF: Yes.

Q. How many shares do you say you had by 22nd December, 1966? A. Slightly over 200,000. Mr. Armstrong was selling before the general meeting, and I was buying. 10

Q. How many have you got now? A. I beg your pardon?

Q. How many have you and the company got now?  
A. The same amount.

Q. Mr. Barton, you say today, do you, that at 22nd December, 1966 you could not have found from your own resources and those of the family companies and your wife's resources \$60,000 to provide for Landmark Corporation? A. Leave my wife's resources out, because it is not under my control, but I only assume what I can do with my wife's resources, but my own resources --- 20

Q. What about your own, together with the family companies? A. No.

Q. You say seriously? A. Yes.

Q. You could not have got \$60,000 from those sources on 22nd December, 1966? A. I lost most of my assets in the middle of December, 1966. 30

Q. So that the answers you gave yesterday that you had the means to get £60,000 if you wanted it throughout 1966 and throughout 1967 were untrue, weren't they? A. It was not untrue. It was in the wrong concept.

Q. Do you understand the difference between truth and untruth? A. Yes.

Q. What is it in your understanding? Will you tell us? A. It is not difficult to tell. 40

Q. Tell us? A. Truth is truth. That is all there is to it.

Q. What is untruth? What is an untruth, in your understanding? A. When someone is deliberately telling something which he knows is not true.

Q. He has to know, does he? A. I beg your pardon?

Q. He has to know that something is untrue before it is untrue? Is that your understanding?

A. Oh, I don't think so. I think a bigger weight he has to know it is untrue, but even if he says something which he thinks is not untrue but turns out to be untrue it is an untrue statement.

Q. Do you say if you don't know whether a fact is true or not and you say it is true you are telling the truth? A. That is an untrue statement.

Q. That is an untrue statement? A. Yes.

Q. If you make a statement which is incorrect - that is an incorrect statement of fact - would not you agree that is untrue? A. I think it is untrue. 10

Q. And whenever someone states a fact which is contrary to the fact would not you agree that that statement of fact is untrue? A. Yes, I think it is untrue.

Q. And would not you then agree when you said yesterday that throughout 1966 and 1967 you had the means to raise \$120,000 if you wanted it that, you are now saying, is contrary to the fact? (Objected to; question withdrawn.) A. I am not able to give you any better answers on this than I have already said. 20

Q. Is this the position, that you are quite incapable of admitting that you have ever made a mistake? A. No, I am not. I make many mistakes, like anybody else.

Q. Is this the position, that you are quite incapable of admitting that you could have told a lie? A. Yes, I never tell a lie.

Q. You are quite incapable of admitting that any statement you ever made could be untrue, is that so? A. I could admit a mistake. 30

Q. But even though you make a mistake, what you said is not untrue, is that what you say? A. What is your question in full, please, Mr. Staff?

Q. What I am putting to you is that you are quite incapable of admitting that any statement you have ever made is untrue? A. That is not right.

Q. You say you are quite prepared - if it is pointed out to you where you have made a mistake - you say that you are capable and prepared to admit - let me put it this way; if it is pointed out to you where you have made an incorrect statement you are capable and prepared to admit that you have made a statement which is untrue? A. Yes. 40

Q. Well, will you not admit, having regard to what you have said today, that when you answered this question, "Isn't it true that throughout 1967 you, if you had wanted £60,000 had the means to raise it?", and you answered, "Yes", you gave an untrue answer? A. I could not give you any better answer than I already gave you. 50

Q. Thank you, Mr. Barton. Now, Mr. Barton, of course you have told us, I think - do you recall that on 16th December, 1966 you received a letter addressed to you as managing director of Landmark Corporation from the Secretary (Companies) of the Sydney Stock Exchange in which you were asked for advice as to the dates on which the company's dividend would be paid? A. Yes. I don't recall the date, but I recall the letter.

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Q. Just look at the letter which the officer will show you? A. Yes, I recall that.

Q. You recall that letter? A. Yes, I recall it.

Q. Of course, when you received it it was your view, wasn't it, that the company's position was hopeless and there was no prospect of getting money to pay the dividend or re-finance any of the Paradise Waters projects? A. Yes.

Q. And that was your view on 20th December, 1966 also wasn't it? A. Yes.

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Q. And on 20th December, 1966 do you recall signing a letter as managing director of Landmark to the Secretary (Companies) Sydney Stock Exchange, in answer to that letter? A. Show me my signature and I will recognise it.

Q. Will you have a look at that letter? Is that your signature? A. Yes, that is my signature.

Q. And on that day, with your own belief that there was no prospect in the world of paying the dividend, you wrote to the Secretary (Companies) of the Sydney Stock Exchange saying, "Referring to your letter dated 16th December, 1966 we wish to inform you that the dividend which the companies recently declared will be paid on or before 23rd January, 1967". (Objected to; rejected.)

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Q. Now, Mr. Barton, on 20th December, 1966 you wrote to the Secretary (Companies) Sydney Stock Exchange in these terms: "Referring to your letter dated 16th December, 1966 we wish to inform you that the dividend which the companies recently declared will be paid on or before 23rd January, 1967". You wrote that letter to the Secretary (Companies) Sydney Stock Exchange, did you not, on 20th December, 1966? A. The company, yes - Landmark Corporation to the Stock Exchange.

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Q. You dictated the letter, did you not? A. Yes.

Q. To a typist? You dictated it to a typist? A. Yes.

Q. You signed the letter? A. Yes, I did.

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Q. Personally? A. In my capacity as managing director.

Q. You intended the Stock Exchange to understand that you were saying the dividend would be paid on or before 23rd January, 1967, didn't you? A. Not to me to say. The company to say.

Q. I beg your pardon? A. Not me to say. The company to say.

Q. You intended the Stock Exchange to understand that you, as managing director, were saying that the dividend would be paid on or before 23rd January 1967? A. Not me. The company. 10

Q. Mr. Barton, you signed the letter as managing director, didn't you? A. Yes, that is right.

Q. And you intended the addressee of the letter to see and read your signature as the managing director's signature? A. Yes.

Q. And, Mr. Barton, at the date this was written did you believe that there was any chance in the world of the dividend being paid on or before 23rd January, 1967? A. I cannot answer yes or no. I cannot answer that question yes or no, but I can give you my answer. 20

Q. Did you have a belief on 20th December, 1967 (sic) that the dividend would be paid on or before 23rd January, 1967? A. I cannot answer yes or no, but I can tell you the company's view.

Q. Did you have, on 20th December, 1966, a belief that the dividend would not be paid and could not be paid on or before 23rd January, 1967? A. Myself, or the company? 30

Q. You yourself? A. I had grave doubts about it. I has not got a concrete view myself.

HIS HONOUR: Q. I missed part of your answer. You said, "I had grave doubts about it". I did not hear the balance of your answer? A. I have not got a concrete view what is possible. As I understood at the time that the company can pay dividend only out of profits and not from capital now at the time it was very grave doubt that what is this money coming from, and the view of the board was that the dividend should be paid because it has been declared and has been promised to the shareholders and as a matter of fact I took steps to find that money and I have found the money but found that it has been paid to Mr. Armstrong on 18th January instead of to the shareholders. 40

MR. STAFF: Q. Do you say that you wrote this letter of 20th December, 1966 to the Sydney Stock Exchange upon the instructions of some other person? A. No, I wrote it on behalf of the company; on behalf of the board. 50

Q. Did you write it on instructions from the board of directors of the company? Did you write it on instructions of the board? A. If you see the

letter what the Stock Exchange wrote? They wrote to the company, and the company answered to the Stock Exchange.

Q. Did you have any instructions from the board of directors of the company to write a letter in the terms of that which you signed on 20th December, 1966 to the Stock Exchange? A. Yes.

Q. You had instructions to do that? A. Yes.

Q. Would you look at the minutes of the company and show us where the instruction from the board of directors of the company to that effect is? 10

MR. GRUZMAN: I would agree there is no minute relating to this matter.

WITNESS: There is no minute of it.

MR. STAFF: Q. So that there was no instruction from the board of directors? A. Yes.

Q. At what meeting of the board did you get such an instruction? Who were the directors present? At what meeting? At what meeting of the board did you get such an instruction? A. Mr. Bovill, Mr. Cotter and myself been together practically every day at that time. This was a very crucial time of the company, and we been together and we was acting together. 20

Q. At what meeting of the board did you get the instruction you have sworn was given to you? At what meeting of the board was that instruction given to you? A. I told you we had no minutes. (Objected to.) 30

Q. At this time Mr. Armstrong was a member of the board of directors, wasn't he? A. Yes.

Q. From whom did you get an instruction to write the letter in the terms of that dated 20th December, 1966? A. Three of us - Mr. Bovill, Mr. Cotter, and myself - discussed the letter that we received from the Stock Exchange. The three of us discussed the letter that we received and the three of us decided to this answer given to the Stock Exchange and we had not consulted Mr. Armstrong because we believed that Mr. Armstrong is not a proper director and was not fit to be a director. 40

Q. And you agreed that this letter should be written? A. Yes.

Q. So that you agreed with Mr. Cotter and Mr. Bovill, did you, or only one of them? A. No, it was all the three of us agreed. We discussed all aspects of it, and we thought it is the right thing to do.

Q. You are saying, then, that you, Mr. Cotter and Mr. Bovill agreed that that letter of 20th December, 1966 should be written to the Stock Exchange? A. Yes. 50



Q. That is correct? A. Yes, that is right.

Q. And written in terms which stated unequivocally that the dividend would be paid on or before 23rd January, 1967? A. Yes.

Q. A statement which you yourself did not believe to be true? A. I didn't say that.

Q. Won't you agree that when you wrote the letter and signed the letter you did not believe it to be true? A. Already I said it, Mr. Staff, that I believed that the company was in serious trouble. I believed that the refinancing of the Paradise Waters in my own eyes and with my own experience is impossible. But, on the other hand, a dividend has been announced early in the second half of 1966 and has been recommended to the general meeting; has been accepted by the meeting, and we thought that the right thing to do to pay the dividend. The company had assets which the company borrowed money on and which money finally has been used to repay Mr. Armstrong's companies.

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Q. Would not you agree what you are saying is that you agreed with Mr. Cotter and Mr. Bovill to tell the Stock Exchange that the dividend would be paid on or before 23rd January, 1967, when you personally had no belief whatever that that could be done? A. I did not say that. I didn't say that, Mr. Staff.

Q. I know you didn't say it. I am asking do you agree that is the fact? A. No. I say that my belief was that the dividend will be paid on or before that date.

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Q. You believed on 20th December, 1966 that you would have money to pay the dividend and the other creditors of the company, did you? A. No. I believed that we have money to pay the dividend.

Q. Mr. Barton, you, of course, would not think of paying shareholders a dividend before you paid the creditors, would you? A. That is why we did not pay the dividend.

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Q. And you would not contemplate paying shareholders a dividend when you did not know whether you would be able to pay your unsecured and secured creditors? (Objected to; allowed.)

Q. That is right, isn't it? You would not contemplate paying shareholders a dividend when you did not know whether you would be able to pay your unsecured and secured creditors? A. I think the shareholders was at that time the same creditors as others. I got legal advice on the matter and I has been told the declared dividend is ranked the same as any other creditor.

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Q. Your view was that the company was on the verge of liquidation, wasn't it? A. Yes, my view was that the company was in bad financial trouble.

HIS HONOUR: Q. I am not clear whether this belief that Mr. Staff is asking you about is a belief that you dissociated yourself from personally by saying that was only the company belief, or whether you are now saying it was your belief. I am not quite clear on that. What is the position? A. Also - I said it many times - this is the conflict what I had - my own belief, and the other directors' belief.

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Q. The belief in this matter Mr. Staff is asking you about was both your belief as well as the corporate belief you are expressing? A. I had grave doubts about it myself, as I said before, but ---

MR. STAFF: Q. Did you or did you not have a belief on 20th December, 1966 yourself that the dividend would be paid on or before 23rd January, 1967? Did you or did you not have a belief on 20th December, 1966 that the dividend would be paid on or before 23rd January, 1967? A. Yes. I said I had grave doubts about it, but I agreed to it.

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Q. So that you agreed to tell the Stock Exchange something which you had grave doubts about, did you? A. I didn't tell anything about the Stock Exchange on behalf of myself. I said it on behalf of the board of the company as agreed by the directors. You see, it is my duty to inform the Stock Exchange about the company belief and the directors' decision. Not about my own.

Q. If your co-directors or some of your co-directors told you to tell a lie to the Stock Exchange would you do it? A. My co-directors can't tell me to tell a lie to the Stock Exchange. My co-directors can only make a resolution, and if the resolution has been made then it is my duty to act accordingly.

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Q. There was no resolution directing you to write a letter. There was no resolution directing you to write a letter of 20th December, was there? A. There has been the decision by the board.

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Q. Mr. Barton, I think you told me you did not consult Mr. Armstrong about the matter? A. I told you many times I didn't want to see him. In our opinion Mr. Armstrong was not a proper director - was not a proper person to be a director. I told you many times. Don't ask me all the time. I don't like to say it all the time.

Q. You, of course, are well aware that in order to have a valid board meeting and a valid resolution of a board you must at least give notice to all directors of the company of the meeting? You are aware of that, aren't you? A. I took legal advice on this matter, and I has been satisfied that I am acting properly.

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Q. You say you took legal advice? A. Yes.

Q. From whom did you get this legal advice, Mr.

Barton? A. From the company's solicitor.

Q. Who was the person? A. Your Honour, I don't like to bring in other people who is not involved in this matter. If I have to, I will answer the question.

HIS HONOUR: Mr. Staff, do you want an answer?

MR. STAFF: Yes.

HIS HONOUR: Mr. Barton, I think you should answer the question.

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MR. STAFF: Q. Who? A. Mr. Coleman.

Q. When did you get that advice from Mr. Coleman?  
A. I got it practically all the time since 15th December (sic) till the general meeting. Mr. Coleman explained to me very clearly that Mr. Armstrong's action with Mr. Kratzmann and Mr. Armstrong's attack against the company -

Q. I did not ask you that. Will you tell us when you got the advice which you say you got from Mr. Coleman? That was the question I asked you. When did you get that advice from Mr. Coleman? A. Between 15th November and 2nd December.

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Q. Of course, right up to the 18th January you held a number of board meetings of which you gave notice to Mr. Armstrong and which he attended, didn't you? A. I suppose in reverse - the board meeting has been called by Mr. Armstrong, and I attended it.

Q. Is that the only sort of board meeting that ever got recorded in the minute book? Is it? Come on? A. No, don't rush me, Mr. Staff. I have to concentrate on my answers. I mean, I want to concentrate on my answers. Can you put the question again? I have to apologise to you. I mean no offence.

30

Q. Were the only board meetings of which minutes were ever put in the minute book those which were called by Mr. Armstrong? A. My answer is "no", because you don't mention any periods.

Q. Your answer is no? A. You don't mention any periods. That is going back for very many years.

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Q. Between 15th November, 1966 and 18th January, 1967 were there any meeting of directors of Landmark Corporation Limited, minutes of which meetings appear in the minute book, which were called by anyone other than Mr. Armstrong? A. Yes.

Q. There were? A. Yes.

Q. And at each of the meetings between 15th November, 1966 and 18th January, 1967 Mr. Armstrong attended, didn't he? I'm sorry, I will withdraw that. Excluding the meeting of directors of

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Landmark Corporation held on 7th December, at 47 minutes past 12 o'clock in the afternoon - A. When? What is the date?

Q. 7th December, 1966. Were there any meetings of directors of Landmark Corporation which Mr. Armstrong did not attend? That is between 15th November, 1966 and 18th January, 1967? A. I can't tell you without checking the minute books to see who was present. I am not prepared to give ---

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Q. I won't pursue it. Mr. Armstrong - A. I am not Mr. Armstrong.

Q. I'm sorry, Mr. Barton. Will you --- A. I would like to finish my sentence, if I may. I clearly recall that in the minute book one of my co-directors was objecting to Mr. Armstrong calling meeting after meeting on short notice. They say they have other duties besides Landmark Corporation and subsidiaries, and they just not prepared to attend board meetings twice a day or on half-an-hour's notice.

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(Luncheon adjournment.)

AT TWO P.M.:

Q. Mr. Barton, there are minutes in the minute book of a meeting of directors of Landmark which record that the meeting was held on 7th December, 1966 at 47 minutes past 12 o'clock. Do you remember those minutes being inserted in the minute book?

A. If you show me I will.

Q. (Minute book shown to witness.) You see, Mr. Barton - A. Yes.

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Q. Was that meeting held at 47 minutes after 12 o'clock in the afternoon of 7th December, 1966? A. It looks like it.

Q. Well, you have signed the minutes as a correct record? A. Yes. At that time.

Q. Was the meeting held on that day at all? A. It must have been if I signed it.

Q. Have you any recollection as to whether it was held on that day, or some other day? A. No, I have not.

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Q. Mr. Barton, at 11.30 on 7th December a meeting of directors was held, wasn't it? A. Yes.

Q. And you signed the minutes of that meeting as a correct record? A. Yes, I did.

Q. And at that meeting the then directors were all present, weren't they - Mr. Barton, Mr. Armstrong, and Mr. Cotter? A. And Mr. Bovill.

Q. Mr. Barton, Mr. Bovill was not then a director, was he? A. I has been advised that Mr. Bovill ---

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Q. Mr. Barton, at that meeting - at the time of that meeting following the annual general meeting Mr. Bovill was not a director, was he? (Objected to.)

Q. At the beginning of the meeting? A. At the beginning of the meeting his position was doubtful. At the end of the meeting he was a director of the company.

Q. At the annual general meeting Mr. Bovill - it was said that Mr. Bovill was not a director, and was not standing for election because he has not been able to be nominated in time, wasn't it? A. It has been said by Mr. Armstrong that he has not got the qualification shares and he is not a director. According to Landmark legal advisers, Mr. Coleman said Mr. Bovill is a director, but to avoid any challenge by Mr. Armstrong the company should treat Mr. Bovill as a non-director. 10

Q. And Mr. Bovill, who, if he had been a director, was due to retire and stand for re-election at the annual general meeting, did not offer himself for election, did he? A. I don't know. 20

Q. I will take that. You don't know. The directors recorded as being present at the meeting held at 11.30 a.m., on 7th December, 1966 are yourself, Mr. Armstrong, and Mr. Cotter, aren't they? A. Yes.

Q. And the only business at that meeting was a resolution appointing Mr. Bovill to be a director? A. Yes. 30

Q. Tell me, were Mr. Cotter and Mr. Armstrong given notice of the meeting to be held at 47 minutes past 12 o'clock in the afternoon of the same day? Were Mr. Cotter and Mr. Armstrong given notice of that meeting? A. I don't know.

Q. The only two people recorded as being present are you and Mr. Bovill? A. Yes.

Q. And that part of the minute is written in ink, as is the date, isn't it? A. I beg your pardon? 40

Q. That part of the minute is written in ink? A. Yes.

Q. As is the date? A. Yes.

Q. Mr. Barton, what I want to put to you is that Mr. Armstrong was not given any notice of the intention to hold that meeting? A. I don't know.

Q. It was to be held and purports to have been held some little over an hour after the earlier meeting on the same day? A. Yes, it looks like it. 50

Q. When all directors - then directors - were present an hour earlier? A. Yes.

Q. Can you tell me why it was necessary to transact the business done at the later meeting at a later meeting rather than at the earlier one? A. Has no significance.

Q. Has no significance? A. No.

Q. You didn't want to conceal it from Mr. Armstrong, did you? A. Possibly not.

Q. Possibly you did, is that what you are saying?  
A. No.

10

Q. Well, was the minute prepared later on, Mr. Armstrong (sic) and inserted in the book? A. No.

Q. It is quite different paper from any of the other minutes in the minute book, isn't it? A. I don't know.

Q. Well, just have a look? A. Your Honour, I have seen three different types of paper in the three pages so far.

Q. What I want to put to you - A. Which was also private paper. That is private paper.

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Q. What I want to put to you is that minute is on different sized paper from any other minutes in the minute book, and I would suggest to you in different type? A. Yes. Many different sizes of paper and many different qualities of paper.

Q. May I take it you have no independent recollection of that meeting being held at the time stated on that date? A. It must have been when I signed it. I had a recollection when I have signed it; I has not got the recollection now. At the time I signed it I had the recollection.

30

Q. Now, Mr. Barton, would you agree that this is the only minute in the minute book between 14th November, 1966 and up to 17th January, 1967 at which Mr. Armstrong is not shown as having been in attendance? A. I don't know. I would have to look at the minute book and look at the minutes which has been held between these times. But if you say so, I accept.

MR. GRUZMAN: There is only one minute between those two dates - 7th December and 18th January.

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MR. STAFF: I said, "14th November". I make it six lots of minutes.

WITNESS: If you say so, I accept it.

MR. STAFF: Q. Do you say there were other meetings of the board of directors of Landmark Corporation, minutes of which are not recorded in the minute book, in the period from 14th November, 1966 to 17th January, 1967? A. No formal meetings.

Q. No meetings? A. May I make quite clear what I said?

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HIS HONOUR: Q. The answer is in now - "no formal meetings". A. No formal meetings. We had meetings of directors considering many matters.

MR. STAFF: Q. You had no meetings of the board of directors during the period other than those minutes which appear in the book, is that what you say? A. I already said we had no formal meetings.

Q. You are saying, are you, that although you had no other meetings of directors - of the board of directors - you had discussions with one or more of the persons who in fact were directors? A. Yes. 10

Q. Won't you agree they were not meetings of the board of directors? A. I cannot answer yes or no.

Q. Now, Mr. Barton, you will agree, will you, that when you wrote the letter of 20th December, 1966 to the Sydney Stock Exchange in relation to the payment of the dividend there had been no meeting of the board of directors authorising or instructing you to write that letter? A. I had a meeting with Mr. Bovill and Mr. Cotter and on that meeting it has been decided that I should write that letter. 20

Q. At that discussion did you tell Mr. Cotter - take Mr. Cotter first - did you tell Mr. Cotter that in your view you believed there were very grave doubts as to whether you could pay the dividend by 23rd January, 1967? Did you say that to Mr. Cotter? A. I told him that I had grave doubt what is the right thing to do. 30

Q. Will you just answer the question I asked you? Did you tell him that you had very grave doubts that the dividend could be paid by 23rd January, 1967? A. I don't know.

Q. Did you tell Mr. Bovill that you had very grave doubts whether the dividend could be paid by 23rd January, 1967? A. It was not a question could be paid. It is a question if it is to be paid or would be paid.

Q. Did you tell Mr. Bovill that you had very grave doubts whether the dividend could be paid by 23rd January, 1967? A. I did not discuss this matter with the individual two gentlemen. We had a meeting and considered the matter of the Sydney Stock Exchange, and the result of that meeting I has been authorised by both of them to write this letter on behalf of the company. 40

Q. Are you unwilling to answer the question I asked you? A. I am very willing.

Q. You, of course, as you told us yesterday, had a memory which can recall conversations - any conversations in the last ten years. Was that true, or untrue? A. It is true. Conversations which I class myself important. 50

Q. Did you regard it as important to tell the

Stock Exchange whether or not you had the capacity to pay a dividend which had been declared by 23rd January? Did you regard that as important? A. Yes, that is important.

Q. Well now, will you tell us, did you tell Mr. Bovill in conversation you had with him and Mr. Cotter that you had grave doubts that the dividend could be paid by 23rd January, 1967? A. That was not the basis of the discussion. The basis of the discussion was different. 10

Q. Mr. Barton, that answer means, doesn't it, you did not tell Mr. Bovill that you had grave doubts that the dividend could be paid by 23rd January 1967. It means that, doesn't it? A. They already know my views.

Q. Well then, you would agree, wouldn't you, that you did not tell him, when you discussed writing this letter to the Stock Exchange, that you had grave doubts that the dividend could be paid by 23rd January? A. It was not the subject of the discussion. 20

Q. Nor did you tell Mr. Cotter that that was your view at that time, did you? A. It was not the subject of the discussion.

HIS HONOUR: Q. Had you told them that before the letter was discussed Mr. Barton? A. Your Honour, when U.D.C., called up the mortgage ---

Q. I don't think I ought to open up a lot of details? A. Then I offered my resignation. I told both of them that in my opinion the company is in a very bad position, brought about by board fighting plus \$1,200,000 deficiency in the cash which resulted --- 30

Q. All I asked was whether you had told them you had grave doubts about the ability of the company to pay the dividend at any time prior to the Stock Exchange letter being discussed? A. Yes.

Q. You had? A. Yes. As a matter of fact, cheques were ready on 2nd December to be mailed, and I didn't mail them until this court case with Mr. Armstrong started to be resolved and the money which Mr. Armstrong was demanded is paid. I thought --- 40

MR. STAFF: Q. When did you tell Mr. Cotter that you had grave doubts whether the dividend could be paid by 23rd January, 1967? When did you tell Mr. Cotter that? A. I did not tell him about any date, but I said ---

Q. When did you tell him that you had grave doubts whether the dividend could be paid? A. When U.D.C. withdrew their support to pay \$400,000 to George Armstrong and Son and they called up the existing mortgage. 50



Q. And when, then, was it that you told Mr. Cotter? What was the date on which you told Mr. Cotter? A. I told both of them in the middle of December.

Q. In the middle of December? A. I don't know the exact date.

Q. And at almost the same time you received the letter from the Stock Exchange asking for information about when the dividend would be paid? A. Yes, that is right. 10

Q. You received that? A. Yes.

Q. And I suppose within a day or two you discussed what answer you would make with Mr. Bovill and Mr. Cotter, did you? A. Consulted the company solicitor.

Q. You took the Stock Exchange letter to the company's solicitor, did you? A. No, before that.

Q. After you received the letter from the Sydney Stock Exchange dated 16th December, 1966 and before you replied to it, did you have a discussion about the reply that should be made with Mr. Bovill and Mr. Cotter? Did you discuss with Mr. Bovill and Mr. Cotter the reply that should be made to that letter? A. Yes. I said that before. 20

Q. And you then told us that you all agreed that a letter should be written in the terms in which it was written on 20th December? A. Yes.

Q. And would you agree with me that what you said to the Stock Exchange was inconsistent with your belief? A. With my own belief? 30

Q. With your own belief? A. Not completely.

Q. Well, partly? A. Mr. Staff, I can't answer yes or no. If you want me, I can tell you all about it.

Q. You find it quite impossible to say whether it was your belief that you would be able to pay a dividend by 23rd January, 1967, or whether it was your belief to the contrary? A. It was grave doubt in my mind if it should be paid - not if it could be paid. 40

Q. That grave doubt - with grave doubt in your mind as to whether it should be paid, you wrote to the Stock Exchange -

HIS HONOUR: I don't think that the witness said that, Mr. Staff. Will you put it to him again, please?

MR. STAFF: Q. Your grave doubt was as to what? A. That it should be paid.

Q. You had grave doubt as to whether, as a matter 50

of propriety the dividend should be paid? A. Not a matter of propriety if the dividend should be paid, but if you like I will tell you my reasons.

Q. You mean you had grave doubt whether the company would be able to find money to pay it? A. No, I had no doubt about that.

Q. Mr. Barton, is what you are saying that you had grave doubt whether the dividend ought to be paid? A. Yes.

10

Q. You had no doubt in your mind that the company had the financial capacity to pay it, is that right? A. I had no doubt the company could find money physically to pay it, but I ---

Q. What were you going to say? A. How far had I got?

HIS HONOUR: Q. You said that you had no doubt the company could find the money to physically pay it? A. Physically to find the money to pay it, but I had grave doubt which creditors of the company should be paid first.

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MR. STAFF: Q. And in that state of mind you thought, did you, that it was perfectly truthful and proper to sign a letter in the terms of the letter of 20th December, 1966? A. Yes. That was the view of my two co-directors, and I finally joined with them in the view that the dividend has been declared early in the second half of the year; has been approved by the general meeting, and so it is the right thing to do to pay it.

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Q. The dividend was declared on 2nd December - declared on 2nd or 3rd December, wasn't it? A. Yes, but it has been announced to the Stock Exchange well before when the results of the company has been completed.

Q. I want to put this to you, before leaving this matter; what I put to you is that you, knowingly and deliberately, wrote the letter of 20th December, 1966 containing what you believed to be a false statement? A. That is not true.

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(Stock Exchange letters of 16th December, 1966 and 20th December, 1966 tendered and marked Exhibit 14.)

MR. GRUZMAN: Mr. Staff and I have agreed - subject entirely to what your Honour may think, that as a matter of convenience to everybody we might photostat all the exhibits and hand a copy of the photostat file to your Honour and to each of us so that everyone will have a full file of the exhibits available.

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HIS HONOUR: I think that would be a great convenience.

MR. STAFF: Q. Mr. Barton, do you recall on 24th

January, 1967 you received addressed to you, care Landmark Corporation, a letter from the Secretary (Companies) Stock Exchange, Sydney? A. If I can see the letter I will be able to recognise it.

Q. Do you recall that on 24th January the dividend had not been paid? A. Yes.

Q. And you recall that on that day about 11 a.m. a letter was delivered by hand to you at Landmark Corporation office? A. A letter, yes.

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HIS HONOUR: Q. What was that answer? A. A letter yes.

MR. STAFF: Q. Will you look at that copy letter which I show you? Will you agree that is a copy of the letter hand-delivered to you from the Sydney Stock Exchange on the date which it bears? A. Yes, I think I received that letter.

Q. You have got no doubt that you received a letter in those terms, have you, Mr. Barton? A. I have a little doubt about addressed to me care Landmark Corporation.

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Q. I want to put to you that on 25th January you signed a letter to the Sydney Stock Exchange replying to that letter, of which this is a copy? A. If you show me the letter I can recognise my signature.

Q. Following the receipt of that letter - that is, the letter from the Stock Exchange of 24th January - was a meeting of the board of directors of this company called to discuss the matter? A. I don't know. I have to look at the minute book.

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HIS HONOUR: Q. What is the answer? A. I have to look at the minute book if there is a minute prepared. Secondly, I had a meeting with Bovill and Cotter.

MR. STAFF: Q. You have no recollection? A. I have a recollection.

Q. Of a meeting of the directors - board directors - of Landmark Corporation in order to discuss the Stock Exchange letter or the reply which should be made to it? A. I don't know if it was a formal meeting or an informal meeting. I recall it quite clearly that I had a meeting with Mr. Bovill and Mr. Cotter.

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Q. Before you replied to the letter from the Stock Exchange or before you received the letter from the Stock Exchange? A. The same day when I received it.

Q. I see. You are quite clear about that? A. Yes, I am.

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Q. You rang up Mr. Bovill and Mr. Cotter and asked them to come in, did you? A. Mr. Cotter had his office in the same building as we have, and I rang Mr. Bovill.

Q. You are quite sure Mr. Cotter was in Sydney on that day? A. Yes, I am quite sure.

Q. You are quite sure? A. Yes.

Q. 24th January, 1967. You are quite sure Mr. Bovill was in Sydney? A. Yes, I am quite sure.

Q. I suppose there can be no doubt in your mind about that? A. This is my best recollection.

Q. Well, have you got some doubt about it now?  
A. I have not. 10

Q. You had not a moment ago? A. I have not.

Q. You would agree, wouldn't you, that you have no recollection of a resolution ever being recorded in the minute book of the board of Landmark Corporation deciding to postpone payment of the dividend? You have no recollection of such a resolution? A. No, I have not.

Q. Would you look now at the letter which the officer will show you? Did you write that letter?  
A. Yes, I wrote that letter, on behalf of the company. 20

Q. You composed the letter, didn't you? A. I think the three of us composed it together.

Q. You dictated the letter, didn't you, to the secretary? A. I think it was written out by long-hand by Mr. Cotter and typed by the secretary.

Q. And you wrote to the Stock Exchange in these terms, did you not - I will withdraw that for the moment. You agreed to the letter being sent? A. Yes.

Q. And you agreed to what was put in it? You agreed with the statements that were made in it? A. Yes. 30

Q. And you agreed that the Stock Exchange should be told each of the matters which are set out in the letter? A. Would you repeat that?

Q. You agreed that the statements contained in the letter should be there, and conveyed to the Stock Exchange? A. I agreed for the full contents of the letter.

Q. I beg your pardon? A. I agreed for the full contents of the letter. 40

Q. And you believed, did you, when you agreed to this letter being written, that what was in it was true? A. I don't thought at the writing to the Stock Exchange that I have been at the C.I.B., or whatever else I have done - only answer to the inquiries about the dividend.

Q. When you agreed to the letter being written in the terms in which it was written, did you believe

the statements contained in it to be true? A. Yes.

Q. When it said, "It is expected that our negotiations will be concluded shortly, when a further announcement in respect of payment of the dividend will be made" you firmly believed that to be true?

A. That was the company's view.

Q. That was the company's view? A. Yes.

Q. And you shared the belief that that was true, didn't you? A. I said it about twenty times before that my own belief was that the re-financing of the Paradise Waters Estate is commercially impossible. 10

Q. You told us that you believed that what was said in the letter was true. Was that a false answer? A. I can't answer it yes or no to that question.

Q. Why not? You know when something is false or not, don't you? A. Yes.

Q. When you told his Honour a few questions ago that you believed that what was written in the letter was true on the day it was written, was that true or false? A. Neither. 20

Q. It was not true then? A. That was the company's view.

Q. You recall the question I asked you was when you agreed to the letter being written in these terms was it your belief that what was written in that letter was true. You answered, "Yes". Is that not so? A. I can't answer the question the way it has been put to me. 30

Q. You won't answer, will you? The reason you say you cannot answer is that you do not know whether to say it was true or false, is it?

MR. GRUZMAN: That is an unfair question. If your Honour would look at the letter and the terms of it and then consider from that what possible answer a witness could give.

HIS HONOUR: I will not say anything about the terms of the letter but I do not know that this particular question is getting us anywhere. 40

MR. STAFF: I will not press this particular question.

Q. The letter which you signed as managing director on the 25th January was in these terms: "The board of Landmark Corporation has decided to postpone temporarily the payment of the dividend declared on the 2nd December, 1966, in view of the necessity to renegotiate on existing arrangements for financing the development of the Paradise Waters Estate". When you agreed to this letter going to the Stock Exchange and signed it did you believe that statement to be true? A. It was the company view. 50

Q. Did you personally believe that statement to be true, irrespective of what the company's belief was? A. I can't answer this question.

Q. Why not? A. Because this in my opinion is not a fair question after my answers that I already gave.

Q. I shall ask you once more: When the letter was written, which you signed, saying, "The board of Landmark Corporation Limited has decided to postpone temporarily payment of the dividend declared on the 2nd December, 1966, in view of the necessity to renegotiate on existing arrangements for financing the development of the Paradise Waters Estate", did you personally believe that statement to be true? A. I can't answer this question. 10

Q. Did you have any belief as to whether it was true or false? A. To refinance the Paradise Estate?

Q Will you just answer the question you are asked, I want no other answer? 20

HIS HONOUR: I think it would be preferable if you showed the witness the letter, or so much of it as you are asking him about.

MR. GRUZMAN: May I anticipate a little by saying in the last question as framed there were about three assertions.

HIS HONOUR: There was only one statement in that, and that is that the board had decided.

WITNESS: That is what I am trying to say, your Honour. 30

MR. STAFF: Q. Would you look at the first sentence? (Shown.) "The board of Landmark Corporation has decided to postpone temporarily the payment of the dividend declared on the 2nd December, 1966", let us take that part. When you signed the letter did you believe that to be a true statement? A. That was a true statement by the board of Landmark Corporation, as has been written here.

Q. Did you personally believe it to be a true statement? (No answer.) 40

MR. GRUZMAN: I think this is ambiguous. There are two possibilities: Either that is what the board decided or the other possibility is did the board correctly decide?

HIS HONOUR: I understand the question is directed to whether or not this had been dealt with by the board at all. This is going back to Mr. Armstrong's exclusion.

MR. STAFF: I am seeking to find out whether this witness had a personal belief in the truth of the statement contained in the letter. 50

HIS HONOUR: I think we may be at cross-purposes. The only statement of fact so far is "The board has decided". Either the board had decided or the board had not decided.

MR. STAFF: There is another possibility; whatever the board had decided or not, Mr. Barton may have believed that it had decided. I am seeking what was his belief as to what happened.

HIS HONOUR: I am right in understanding that you are probing his belief as to what had happened in the board? 10

MR. STAFF: As to whether the board had made such a decision, yes.

HIS HONOUR: That includes the question of the personnel of the board?

MR. STAFF: That question is resolved at this point of time. Mr. Armstrong had resigned by this point of time.

HIS HONOUR: I do not see any difficulty about the question. 20

MR. GRUZMAN: I did not appreciate what my friend was putting. What he is really asking is whether it is a true statement that the board had made a decision.

MR. STAFF: Q. When those words were written, "The board of Landmark Corporation Limited has decided to postpone temporarily payment of the dividend declared on 2nd December, 1966" did you believe them to be true? A. You should put the question to me a different way because this is not a way I can answer it. 30

Q. Did you have any belief at all in your mind as to whether the board of Landmark Corporation had decided to postpone temporarily payment of the dividend? A. I had no doubt about that, that the board had decided to postpone temporarily the payment of the dividend.

Q. So it was your belief that the board had decided to postpone temporarily payment of the dividend? A. Yes, the board. 40

Q. The sentence proceeds to state a reason, would you agree with that, for the postponement? A. Yes.

Q. The reason given is the necessity to re-negotiate on existing arrangements for financing the development of the Paradise Waters Estate? Is that right? That is the reason which was given? A. Yes, It was my ---

Q. Just answer the question. Did you believe the reason which you have agreed was given was true? (Not answered; withdrawn.) 50

Q. Did you believe that there was a necessity at this point of time to re-negotiate on existing arrangements for financing the development of the Paradise Waters Estate? A. Yes, was a necessity because the first mortgage has been called up.

Q. You believed that there was such a necessity?  
A. Yes. Also I believed that it was a commercial impossibility.

Q. The next sentence is in these terms: "This necessity arose because of the internal dispute". That is the first part of the next sentence. Did you believe that to be a true statement as to why the necessity arose? A. Yes I did. 10

Q. It proceeds, "Which has now been solved by Landmark's acquisition from the Armstrong group of its interest in the Paradise Waters Estate". Was that in your belief a true statement? A. This was a statement by the board.

Q. Did you believe personally that statement, which you say was by the board, to be true? A. I can't answer this yes or no. 20

Q. Did you believe that statement to be false?  
A. No, I can't answer - sorry, I correct myself. I can't answer yes or no.

Q. Did you believe that statement to be untrue?  
A. I can't answer yes or no.

Q. Was it your belief that the internal dispute had been solved by Landmark's acquisition from the Armstrong group of its interests in the Paradise Waters Estate? A. I can't answer that yes or no. 30

Q. The next sentence of the letter is, "It is expected that the renegotiations will be concluded shortly". Was it your belief that that was a true statement? A. The way you put the question I can't answer yes or no.

Q. Did you expect on the 25th January 1967 that the re-negotiations would be concluded shortly?  
A. In such a way as you put the question I can't answer yes or no. 40

Q. Did you have any expectation on the 25th January 1967 that the re-negotiations mentioned in the letter would be concluded shortly? A. That was a view of the board, not mine.

Q. Did you agree with the view of the board or disagree? A. I disagreed with the view of the board.

Q. So you did not expect that the re-negotiations would be concluded shortly? A. No, I was ---

Q. Just answer yes or no? A. No. 50

Q. Did you or did you not expect on the 25th



January 1967 that the re-negotiations would be concluded shortly? A. No.

Q. So that your view on the 25th January was that it would be misleading and untrue to say that it was expected that the re-negotiations would be concluded shortly, was it not? A. This is a very unfair question. This was a view of the board and as the board's view it was true, and my view is different from the board and, therefore, with the way you put the question I find it difficult to answer. 10

Q. Anyway, you have told us that on this date you did not expect the re-negotiations to be concluded shortly. That is right, isn't it? A. That is right.

Q. You wrote a letter, or rather you signed the letter, saying above your signature, "It is expected that the re-negotiations will be concluded shortly". A. I signed it as the managing director of the company.

Q. You put your signature to a statement which you did not expect? A. You very well know when you have boards, when you have decisions reached by the board you have 4 to 2 or 3 to 1 or anyway and this is the board decision. 20

Q. This is a decision of the board of which there are no minutes? A. I don't know if there were no minutes.

Q. No written statement to back your assertion? A. Maybe it will turn up.

Q. Will you not agree that you put your signature to a document which you knew was intended to go to the Sydney Stock Exchange? That is right, isn't it? A. I put my signature to a letter which was a board resolution and approved by the board. 30

Q. You put your signature on a letter which contained a statement of an expectation with which you did not agree? A. I can't answer this question yes or no.

Q. Did somebody suggest to you during the adjournment that if you got into difficulty you should say you could not answer a question yes or no? A. No, it was not suggested to me anything. 40

Q. Did you talk to anyone during the adjournment? A. Yes.

Q. Anybody connected with this case? A. What you mean, "Anybody connected with the case"?

Q. Anybody representing you in this case? A. Not about the case.

Q. Did you talk to anybody appearing in this case in your interests? A. I was present in the chambers, if that is what you mean. 50

Q. Whose chambers? A. In Mr. Gruzman's chambers.

Q. You went there during the lunch adjournment?  
A. Yes, I go there.

Q. In the middle of your cross-examination? A.  
Yes, I am having lunch there.

Q. You were invited there were you? A. Yes, we  
were pursuing further.

Q. Pursuing further? A. Using the time. For in-  
stance, this lunch time I rang Mr. Neilson --- 10

Q. I don't want to know what you did? A. You  
asked me ---

Q. You went to Mr. Gruzman's chambers during the  
adjournment on invitation? A. I had a standing in-  
vitation to have lunch there.

Q. In the middle of your cross-examination? A.  
I don't know what difference it can make.

(Stock Exchange letters of 24th January 1967  
and 25th January 1967 tendered; admitted and  
marked Exhibit 15.) 20

MR. GRUZMAN: In view of my friend's suggestion, may  
it be noted that the recollection of those on our  
side of the Bar Table is that the witness first said  
this morning ---

MR. STAFF: I object to this.

MR. GRUZMAN: Your Honour suggested to the witness  
this morning, before lunch time, that if he could  
not answer yes or no he should say so.

HIS HONOUR: That will appear in the record.

MR. STAFF: Q. Do you recall receiving a letter, of  
which I show you a copy, dated 13th January 1967  
from the secretary of the Sydney Stock Exchange?  
A. Yes. 30

Q. Having received that did you have a conversa-  
tion with Mr. Foldes, secretary (companies) Sydney  
Stock Exchange? A. I replied to him in writing.

Q. After the 13th February? A. Yes, I think so.

Q. What I put to you is you had a conversation  
with him when it was arranged that you could have  
till the 1st March 1967 to make an announcement? A. 40  
I had a conversation with Mr. Foldes to ask him to  
give me time to answer this letter, when I can an-  
swer. He said unless we answer to this letter he  
will take us to the Committee of the Stock Exchange.  
And I asked him to give us a bit of time to consider  
our answer.

Q. On the 3rd March, 1967 did you write a letter  
in the form of the typescript of the letter which I

show you? I am sorry, did the secretary of the company write the letter in the form of the typescript which I show you? (Shown.) A. Yes, I recollect that letter, signed by Mr. Marks.

Q. I think the letter has some alterations in ink, which appear to be alterations by the Stock Exchange. Would you agree with that? A. I don't know who made these marks on it and alterations. I have no control over that. 10

Q. Was a board meeting held before that letter was written, to consider the question of the reply that should be made? A. Yes. I don't know if it was a formal meeting or an informal meeting but that has been had and the secretary has been instructed to write that letter.

Q. I take it you agreed that the secretary should be instructed to write that letter? A. The board agreed.

Q. Did you agree with the board's decision? A. I could not answer to this question. 20

Q. Do you remember whether you agreed with the decision of the board to instruct to write the letter I showed you or whether you disagreed? A. I could not answer that yes or no to either of them.

Q. Would you look at the minutes of the meeting of directors of 3rd March? (Shown.) Against the marginal heading, "Sydney Stock Exchange" do you see a decision recorded? A. Yes.

Q. Did you agree with the instruction noted there? A. Yes. 30

Q. You agreed that the secretary should be instructed to write a letter in reply to the Stock Exchange in the form mentioned? A. Yes.

Q. Would you agree that the letter which I showed you dated 3rd March, written by Mr. Marks, is the letter referred to? A. Yes.

Q. You agreed that that letter should be written? A. I more so agreed to the letter which is attached to that minute, which has not got those corrections. 40

Q. The copy immediately following the minute of the 3rd March is in the typescript form of the letter which I earlier showed you, without the ink alterations? A. Yes.

Q. You have told us you agreed to that letter being sent to the Stock Exchange? A. Yes, that was the board's resolution.

Q. You agreed and voted in favour of that resolution? A. I have not dissented. 50

Q. That means you voted in favour of it, doesn't

it? A. It is a bit different between the two.

Q. That means you agreed with it? A. I can't answer yes or no.

Q. The letter that was sent to the Stock Exchange said, and I think you can follow it by looking at the letter following the minutes which you have in front of you, the letter was in these terms, "I am directed by the board to inform you that it confirms statements made in the previous letter of the 25th January to the effect that the dividend declared on December 2nd will be paid as soon as the re-financing of the Paradise Waters project is completed". A. That is right. 10

Q. You agreed that that statement should be made to the Stock Exchange? A. Yes, that was the board's view.

Q. Knowing, of course, that the statement would be published by the Stock Exchange for the information of shareholders and the public? A. Yes. 20

Q. At that point of time did you have any belief whatever that the Paradise Waters project could be re-financed? A. None whatsoever.

Q. It was your belief that there was no hope whatever of re-financing the Paradise Waters project? A. That is correct.

Q. Yet, with that belief, you agreed to the letter being written to the Stock Exchange? A. I did not dissent with ---

Q. Knowing --- A. I said I did not dissent with the resolution. 30

Q. With that belief you agreed to a letter being written to the Stock Exchange indicating that re-financing was going on as a possibility? A. The company wrote the letter.

Q. You agreed that it should be written? A. I have not dissented.

Q. Didn't you think with the view you held that you ought to make your views known to the investing public and to the shareholders? A. I tried in the middle of December and offered my resignation. That would be reflecting my complete view. 40

Q. You did not tell the shareholders or the investing public about that? A. No, I did not.

Q. You had been telling them the shares were worth more than a dollar early in December, hadn't you? A. Worth more than a dollar?

Q. Yes? A. Up till the time before U.D.C. withdrew its support to pay out George Armstrong & Son Pty. Limited and called up the first mortgage of Paradise Waters Estate it was my belief that the 50

shares in Landmark Corporation were worth its par value.

Q. That was a dollar? A. Yes.

Q. You had told the shareholders that publicly?  
A. Yes, I think so; I am not sure, but I have my written statement what I said to the public.

Q. In March, on the 3rd March, 1967, you did not think that you ought to tell the public that your view was that the shares were worthless? A. We were considering by that time what to do and we were considering to ask the bank to put a receiver in or we were considering to try a scheme of arrangement. 10

Q. That came very much later? A. No.

Q. That came in June? A. No, I don't know if there were any minutes about it. I must have a look at the minute book later. It was a permanent question of the company position between the directors, put it this way.

(Stock Exchange letter of 13th February 1966, minute of 3rd March 1967 and letter 3rd March 1967 tendered; admitted and marked Exhibit 16.) 20

Q. Do you recall that in April of 1967 the market price of shares in Landmark Corporation Limited fell from 28 buyer, 32 seller to 20 buyer, 26 seller?  
A. I don't recall what those values of the shares were on any day but if you say so I will accept it.

Q. Do you recall that in April 1967 there was quite a sharp drop in the market price of the shares? A. I don't recollect dates of the shares but it was fluctuating very much. 30

Q. Do you recollect an occasion in April 1967 when Mr. Foldes of the Stock Exchange spoke to you about a sharp drop in the shares of Landmark Corporation Limited? (Objected to.)

HIS HONOUR: How far are you going to take this line of cross-examination?

MR. STAFF: I want to take it a little further on material that I have. 40

HIS HONOUR: I propose to allow this evidence.

MR. STAFF: Q. Do you recall an occasion in April 1967 when Mr. Foldes of the Sydney Stock Exchange spoke to you and asked whether you knew of any reason for a sudden drop in the shares? A. No, I don't.

Q. Do you recall that ever happening? A. No.

Q. Do you say it did not happen? A. I don't recall it, that is what I say. 50

Q. What I put to you is that you told Mr. Foldes that you knew of no reason for the sudden drop and that the position was unchanged since your latest advice to the Stock Exchange? A. I don't recall it.

Q. Why do you always look to the other end of the courtroom before you answer my questions? A. I look at Mr. Senes, I look at Mr. Armstrong; I am looking what they are doing.

10

Q. You turn your eyes towards this end of the courtroom? A. That is where they sit. That is where Mr. Senes sits; I just noticed he came into the courtroom a short time before.

Q. And you look at him before you answer practically every question? A. I don't look at him before I answer every question. I don't need to look at anyone.

Q. Would you just keep your attention to this side of the court and answer the questions? A. I will try.

20

Q. I want to put to you that Mr. Foldes rang you, asked whether you knew of any reason for the sudden drop in the shares, that you told him you knew of no reason, the position was unchanged since your latest advice to the Stock Exchange and as soon as any further information on the dividend was available you would contact the Stock Exchange immediately? A. I don't recall this conversation. I recall a conversation in which Mr. Foldes kept pressing me for statements regarding the dividend.

30

Q. You have no recollection of a call from Mr. Foldes in which he asked you if you knew any reason for the sudden drop in the price of the shares? A. The sudden drop happened a lot before; it happened in 1966.

Q. You are quite clear you have no recollection of such a conversation with Mr. Foldes? A. No, I have not.

Q. You would agree that such an inquiry by the Stock Exchange is an important matter? A. Yes, it would have been an important matter and if such an information would have been important it would have been written by him in letter form, like he always done before, and should have been answered by the company in letter form.

40

Q. Are you saying the conversation never took place? A. I just say I have no recollection.

Q. Are you prepared to deny that such a conversation took place? A. I just say I have no recollection.

50

Q. Are you prepared to deny it? (Objected to.)

HIS HONOUR: The witness has said he does not recollect it.

MR. STAFF: Q. Have you any recollection of writing a letter in April 1967 to Mr. Dobbie, the Deputy Manager of the Bank of New South Wales? A. 1966 or 1967?

Q. 1967? A. Yes. I wrote a letter, I don't know what date. I wrote a letter to Mr. Dobbie, the Bank of New South Wales. I referred to it in my earlier evidence but I do not recollect the date when I wrote the letter.

10

Q. Would you look at the minutes of the meeting of directors of 10th February 1967? (Shown.) Is the signature appearing at the foot of those minutes your signature? A. Yes.

Q. You signed the minutes as a correct record of the proceedings of that day? A. Yes, it is.

Q. Would you look at the item "finance" towards the foot of the page? A. Yes.

Q. Are the two paragraphs appearing opposite and below that item true and correct records of the day's proceedings? A. Yes.

20

Q. It is then true that the board on that day passed a resolution in the terms of the last paragraph appearing on that page? A. Yes.

(Minute of 10th February 1967 tendered, admitted and marked Exhibit 17.)

Q. You agreed with that decision recorded in that minute? A. This was a board decision.

Q. You agreed that that resolution should be passed? A. I have not dissented.

30

Q. What you are deciding to do is to pay a dividend? A. Yes, and I myself did not carry out the board's resolution. I did not pay the dividend.

Q. It was three days later that you got the inquiry from the Stock Exchange as to what the position was? A. I don't know if it was three days later. I did not look at the dates so carefully. In my own mind it was wrong to pay the dividend and I did not pay it, even if the board has resolved it.

40

Q. You did not dissent from the resolution? A. No.

Q. You did not tell your co-directors when it was passed that you did not agree with it? A. I expressed my views on it.

Q. Did you say you disagreed? A. I said I had great doubt if the dividend should be paid.

Q. And this was one time when you did not do your duty? A. I did my duty. After this board resolution, when I went home, I applied my mind to it very carefully.

50

Q. And you decided not to carry it out? A. I decided to discuss the matter further with my co-directors and convince them it is not the right thing to do.

Q. You did not bother documenting it or having any meeting to deal with it? A. Not on the same date.

Q. Or any day? A. I don't know if it was a formal meeting but on the next day immediately I told them that I did not send the cheques out and I think it is wrong for these cheques to be sent out. 10

Q. Previously you have told us that when the board made a decision it was your duty to carry it out whether you agreed with it or not? A. Yes.

Q. This was one occasion on which you did not think it was your duty to carry it out? A. I think it was my duty but I applied my mind to it very hard at night and I came to the conclusion that I should talk to the board again about it before I should carry it out. 20

Q. You had applied your mind to the financial position of the company before this meeting of the 10th February? A. Yes.

Q. You had tabled a financial report, so that it may be dealt with? A. Yes, that is right. Not that I had prepared, the company's secretary prepared it and I or he tabled it.

Q. You say the company secretary tabled it? A. I said I or the company secretary. 30

Q. You agreed with the material in it? You did not disagree with the financial statement that was tabled at the meeting? A. I don't think so.

Q. I want to put it to you it was really your document, your report? A. Yes, I was responsible for the document which was made.

Q. It was after having considered that that the board decided to pay the dividend? A. May I have a look at the minute book, if any financial report has been attached to it? 40

Q. I have no objection. (Shown.) A. I don't think it has been presented to the board on that date.

Q. Look at the minute of the 10th February, immediately above the minute in relation to the dividend? A. Yes, this financial report is signed by myself and the company secretary.

Q. You had applied your mind very hard to the financial situation when you were compiling the financial report? A. Yes. 50



Q. You say you went home and applied your mind even harder after that meeting? A. Yes, I applied it harder and I came to the conclusion that the value of the Paradise Waters Estate is dependent on the finance. If the company has no finance to develop the estate the value in the book, the book value, of this asset and the same value which has been carried forward into that financial report cannot be realised. Therefore I told my co-directors that I must insist that dividends should not be paid up till the time the Paradise Waters is re-financed, and that is my opinion; it was a commercial impossibility, therefore the dividend has never been paid. 10

Q. Your view was it was an impossibility to re-finance back on the 14th December 1966? A. As soon as United Dominion withdrew and bought up the mortgage and George Armstrong resigned.

Q. At the time of the board meeting on the 10th February you had a different view? A. I always had the same view, never changed. 20

Q. Why couldn't you tell the board members at your meeting of the 10th February that it was impossible to refinance and you should not pay the dividend? A. The co-directors have their own views, their own minds and they are entitled to their own views. I told them what is my own view. I offered my resignation at the time.

Q. At the meeting of the 10th February? A. In the middle of December, and they knew what my view was about the company position and the Paradise Waters Estate. Their view could be different, it could be the same, I don't know. 30

Q. In that situation you came to the meeting of the 10th February and agreed in the passage of the resolution to pay a dividend after considering the financial position shown in your report? A. No. In the middle of December my two co-directors ---

Q. Would you answer the question I asked you and not volunteer something which happened months before? A. I can't answer yes or no to this question unless I can say what is leading to it. 40

Q. At the meeting of the 10th February 1967 you agreed in the passage of the resolution for the payment of the dividend, did you not? A. I could not answer to your question yes or no.

Q. At the meeting of the 10th February 1967 you and your co-directors considered the financial report which was tabled? Say you cannot answer if you don't want to? A. Would you just repeat your question? 50

Q. At the meeting of the 10th February you and your co-directors considered the financial report which was tabled at that meeting, did you not? A. That was that financial report which Mr. Gruzman

is just looking at now? That was the date of that meeting?

Q. I am not asking you whether something Mr. Gruzman is looking at --- A. May I see the minute book please?

Q. Yes, I don't mind you seeing the minute book. (Shown to witness.) On the 10th February 1967 you and your co-directors considered the financial report which was tabled at that meeting, did you not? 10

A. Yes, we did.

Q. Having considered that financial report you and your co-directors passed a resolution for the payment of the dividend? A. I have not dissented.

Q. I did not ask you that? A. This is my answer.

Q. You joined with your co-directors in passing the resolution for the payment of the dividend? A. I could not answer yes or no.

Q. Did you vote on the resolution one way or the other? A. I can't answer yes or no. 20

Q. You had some inspiration on the night of the 10th February, did you? A. What do you mean "inspiration"?

Q. Some sudden inspiration which lead you to decide that you could not possibly pay this dividend and you were going to insist on your co-directors rescinding the resolution? A. If you call this inspiration, I had this inspiration on the 14th December, 1966.

Q. Nothing happened at the 10th February to change your situation from that which had existed on the 14th December 1966? A. Not in my mind. In my mind could have changed only one thing, the money in the bank for the Paradise Waters project. 30

Q. You told me you had a recollection of having written a letter in April 1967 to Mr. Dobbie of the Bank of New South Wales? (Objected to.)

HIS HONOUR: I have already allowed evidence about what happened in April. I will allow this but I do not think it is fair to put to the witness what he may have told you at some earlier point of time. 40

MR. STAFF: I am going to show him the letter which he wrote.

HIS HONOUR: The question did have overtones that you may have been trying to trap him as to when it was he wrote to Mr. Dobbie. I think it is fairer to show him the document.

MR. STAFF: Q. I want you to look at the minutes of the meeting of directors held on the 16th May 1967? (Shown.) A. Yes. 50

Q. They are signed by you as a correct record?

A. Yes.

Q. Against the item "financial report" on p.2 appears an item "The managing director submitted letters he had written to the Bank of New South Wales requesting temporary overdraft facilities together with a summary of the company's assets and liabilities". Is that correct? (Objected to; allowed.)

Q. There is a copy of a letter following that, some pages over in the minutes, dated 28th April, 1967, addressed to L.L.W. Dobbie, Deputy Manager, Bank of New South Wales. I show you the last page of it, p. 5. Do you agree that is a copy of a letter which you wrote? A. Fortunately this letter has not got my signature on it. Yes. 10

Q. It is a copy of the letter which you wrote to the bank? A. Yes.

Q. Just keep it in front of you. In the first page you set out some history of the Paradise Waters Estate, covering the acquisition of it, disputes with Mr. Armstrong in November 1966, the situation with United Dominions Corporation in December 1966? A. Yes. 20

Q. I do not want you to go into detail, I want you to refresh your memory as to what you said. Do you recall that? A. Yes.

Q. On p.2 you proceeded to indicate that United Dominions Corporation had declined to advance the \$400,000 and other moneys to the company? A. The \$264,000, yes. 30

Q. You then go on to say that it was necessary to proceed with the development "as the development lease provides we have to carry out development continuously and to the satisfaction of the minister"? A. That is right.

Q. Then you say, "If development had stopped we face a possibility of committing a breach of the development lease and suffering a joint loss by way of forfeit. The development has now reached a stage where this danger no longer exists"? A. Yes. 40

Q. That was true, was it? A. Yes.

Q. You then say, "At the time United Dominions Corporation indicated that when the dispute with Mr. Armstrong had been resolved it would be prepared to continue to finance the development. In the meantime, although we considered that U.D.C. was more than adequately covered for moneys advanced by it, further security was given to it". Was that true? A. Yes. 50

Q. That was given at about the 23rd or 24th December? A. Yes, it was given on the Friday before Christmas.

Q. Just before Christmas? A. Yes, and after Mr. Grant, on the 22nd December, proposed to buy the penthouse and so on.

Q. You then say to the bank, "In this way it was felt that U.D.C.'s confidence in this company would be enhanced and this company could look forward to U.D.C. making further moneys available for development as soon as a settlement had been reached with Mr. Armstrong". Was that true when you wrote it? A. I am referring to a letter I received from Phillip Malouf and Company. 10

Q. What letter? A. A letter dated 13th January 1967 from Phillip Malouf and Company; it is included in that folder. (Indicating.)

Q. In January 1967 it was felt that U.D.C.'s confidence in the company would be enhanced and that this company could look forward to U.D.C. making further moneys available for development as soon as a settlement had been reached with Mr. Armstrong? A. That was a company view. 20

Q. And that was your view? A. That was a company view.

Q. Did you believe the company view or not? A. I beg your pardon?

Q. Did you believe that the company view was correct or not? A. I believed it was not correct.

Q. You believed it was not? A. Yes, I believed that commercially impossible without refinancing of Paradise Waters. 30

Q. When this letter was written, and you wrote the statement, "In this way it was felt that U.D.C.'s confidence in this company would be enhanced and this company could look forward to U.D.C. making further moneys for development as soon as a settlement had been reached with Mr. Armstrong", you were writing something which you believed to be untrue? A. No, I just was telling the bank on the 28th April how badly we have been treated by U.D.C. This is all background. 40

Q. Does that mean that it does not matter whether it is true or false? A. These are quotations or the substance of a letter that the company had received. What I was trying to do in here was to show to the bank, as I told you yesterday - without you asking me I admit - that I negotiated with many different companies and banks to refinance Paradise Waters. I did put my best effort forward, as requested by my two co-directors, when I offered them my resignation. They said then they don't want me to resign and they have a trust in my ability and they want all my effort to refinance Paradise Waters and I did. 50

Q. You have told us that quite irrelevantly a number of times. In December or January of 1967

did your company receive a letter from United Dominions Corporation saying that Landmark could look forward to United Dominions Corporation making further moneys available for development as soon as a settlement had been reached with Mr. Armstrong? A. We received a letter from Phillip Malouf, solicitor for United Dominions Corporation, setting out points, what they like to see.

Q. You then proceeded in the next paragraph on p.2 of the letter, to write this "In fact settlement with Mr. Armstrong was effected on 18th January 1967 when, inter alia, we reduced the principal sum secured by mortgage held by Mr. Armstrong's company to \$300,000 and agreed to pay interest thereon at the rate of 1% per month on the 18th of each month". Was that a true statement? A. Yes, that is a fact. 10

Q. You proceeded to recount some facts about the calling up of the \$300,000 for non-payment of interest on the due date? A. Yes. 20

Q. And proceeded to say "finally we made an out-of-court settlement to pay the \$300,000 which was formerly due in January 1968 on or about the 30th June 1967". That was true, was it? A. Yes, everything that is in that letter is true.

Q. Then you proceed to say how much your company has invested and on p.3, towards the top of the page, you say, "We have commenced negotiations to refinance the estate. At the present time the situation is as follows: (a) We are now negotiating with U.D.C. for it to finance the full development. U.D.C. has indicated that it is looking for a partner" and so on. Then in (b) you say: "Negotiations with other finance companies are proceeding satisfactorily but no final decision has yet been made". A. Yes, we had not reached the stage when they didn't find the fault in the security, in the security itself. 30

Q. You then proceeded to say "(c) verbal arrangements have been made with Stocks and Holdings Limited for it to enter into a contract now to purchase the estate and to pay, in due course, the sum of \$2,636,000 together with a share in the profits" A. That is right. 40

Q. Was that true? A. Yes.

Q. And thereafter you expand the statement of the arrangements with Stocks and Holdings? A. I see you have a copy of the letter already.

Q. Are the matters stated in (a) (b) and (c) on p.3 all true statements? A. Yes. 50

Q. Then you proceeded to say, "Any one of the foregoing arrangements would be the answer to our liquidity problem and in any one case the amount owing to Mr. Armstrong's company would be paid out immediately"? A. Yes.

Q. That, I suppose, you believed to be a true statement? A. Yes.

Q. You then state the present position of the company and its subsidiaries, its liabilities and the like? A. Yes.

Q. If you go to p.4, about a third of the way down, you insert this statement "Asset backing of the company shares is over \$1 per share". A. Yes.

Q. Is that true? A. That is a company view, yes. 10

Q. Was it your view? A. Accounts-wise, yes, market-wise, no.

Q. It was your view in April 1967 that the shares were worthless? A. That is right.

Q. So it could not have been correct, could it, to say the asset backing of the shares is over \$1 a share? A. That is a true statement. The Paradise Waters Estate and all the rest of the company - the secretary worked it out scientifically how this figure is arrived. 20

Q. You wrote this statement to the bank in support of an application for money? A. Yes, I accept full responsibility for it, there is no question about that.

Q. You wrote this letter a fortnight before you tabled it at a board meeting? A. I don't know.

HIS HONOUR: It would be a great deal easier to follow a lot of what is being put to the witness and I think it would shorten it, if you could get these letters identified and then tender them so that I may read them, instead of reading great slabs onto the transcript. I would find it easier to follow. 30

MR. STAFF: I would adopt your Honour's suggestion and tender the letter forthwith.

(Copy letter to Bank of New South Wales of 28th April, 1967 (in minute book) tendered; noted letter objected to on the ground of remoteness in point of time but not otherwise; admitted and marked 40

Q. I am showing you the sentence on p.4 just under "assets and liabilities" where you said, "asset backing of the company is over \$1 per share". When you wrote that you intended the bank to believe the company's assets represented in value more than \$1 per share? A. I intended to show the bank how are the assets in company books relating to the share values.

Q. You intended the bank to believe that the asset backing of the company's shares was over \$1 per share? Mr. Barton, please --- A. You want 50

me to give you a true answer, please don't rush me. What I like to show to the bank is to say that if the Paradise Waters project is completed and carried forward and if the press re by George Armstrong & Son and U.D.C. and other creditors removed from the company, this is the company position. I wanted to put it to the bank fairly, that if you want this company to go into liquidation or you want to save this company after what those people done to this company. This was the whole contents of that letter. 10

Q. When you wrote this letter you intended that the bank should believe that the value of the company's assets was such that the asset backing in value supporting the shares was in excess of \$1 per share? A. No, only I wanted to show to the bank what is the company asset position in the books, and I told the bank that this asset position could be saved if finance was coming from some sources and those pressures which are applied on the company by George Armstrong & Son, United Dominion Corporation and many other creditors, plus the unpaid dividend were removed from this company this can be saved, otherwise the company will be finished. 20

Q. Did you tell the bank anywhere that your view was that at the date you wrote this letter the shares were worthless? You know you didn't don't you? A. It is not the question. I had a long discussion with Mr. Dobbie. As a matter of fact, I never got an answer to that letter. I gave him this letter, we read it, we had a long discussion and he told me that this type of proposition is not a proposition for the bank, and he asked me if I wanted to pursue it any further to the board they might have a different view from his, but he can't give his own recommendation to it. 30

Q. When did you have this conversation with Mr. Dobbie? A. When I gave him the letter.

Q. On the 28th or 29th April? A. I don't remember the date I gave it but I took it to him personally. 40

Q. About the time it was dated? You did not put a date on it a long time after it was written and send it to the bank? A. I think I drafted the letter and finished the letter and then I made an appointment with Mr. Dobbie. I don't know what date I got the appointment, when I got it I did hand it to him.

Q. Do you say that you told Mr. Dobbie orally that in your view the shares were worthless? A. No, I didn't. I told him but he did not need to be told, he knew the company was in bad trouble. He said it himself. 50

Q. You were asking the bank to lend your company money on a temporary basis? A. I asked the bank to save the company.

Q. You asked for a temporary overdraft accommodation? A. Yes.

Q. And you were hoping that you would get it, weren't you? A. I was convinced in my own mind that I will not get it.

Q. But you were hoping that, nevertheless, the bank might give it to you? A. I was convinced they will not give it to me, but I thought -

Q. Why ask? A. Because of my responsibility to the shareholders and the creditors, I have to make all efforts, and I did.

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Q. So you wrote the letter without thinking that it would produce any result but hoping that it might? That is the position, isn't it? A. No, I never was not hoping.

Q. If the bank had offered you the temporary accommodation you had asked for would you have accepted it? A. Yes.

Q. You wrote the letter to see whether you might get a favourable answer from the bank? A. I wrote the letter because it was my last effort to refinance Paradise Waters.

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Q. And you wrote it believing that if the bank did not give you the money the company would fail? A. No, I believed that in the middle of December.

Q. Did you believe it when you wrote this letter asking the bank for temporary overdraft accommodation? So that you believed that if you did not get the money the temporary overdraft accommodation, the company would fail almost immediately? A. I believed that in the middle of December.

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(Further hearing adjourned until 10 a.m., Thursday, 30th May, 1968.)