

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 GONCZE; 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 GONCZE; JOHN OSBORNE BOVILL; HOME HOLDINGS PTY. LIMITED; ALLEBART PTY. LIMITED; ALLEBART INVESTMENTS PTY. LIMITED

Respondents (1st to 21st Defendants)

## APPEAL BOOK

### VOLUME 2

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.

**INSTITUTE OF ADVANCED  
LEGAL STUDIES.**

**25, RUSSELL SQUARE,**

**LONDON,**

**W.C.1.**

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. 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 GONCZE; 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 GONCZE; JOHN OSBORNE BOVILL; HOME HOLDINGS PTY. LIMITED; ALLEBART PTY. LIMITED; ALLEBART INVESTMENTS PTY. LIMITED

Respondents (1st to 21st Defendants)

## APPEAL BOOK

### VOLUME 2

SOLICITORS FOR THE APPELLANTS  
(1st to 6th Defendants);

Dare, Reed, Martin & Grant  
187 Macquarie Street,  
SYDNEY.

SOLICITORS FOR THE APPELLANT  
(Plaintiff)

McCaw, Johnson & Co.,  
60 Pitt Street,  
SYDNEY.

SOLICITORS FOR THE RESPONDENTS  
(15th to 21st Defendants)

McCaw, Johnson & Co.,  
60 Pitt Street,  
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SOLICITORS FOR THE RESPONDENTS  
(1st to 6th Defendants)

Dare, Reed, Martin & Grant,  
187 Macquarie Street,  
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(7th, 9th, 10th & 13th Defendants)

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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 GONCZE</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

TRANSCRIPT RECORD OF PROCEEDINGS

INDEX OF REFERENCE:

VOLUME II

No.	Description of Document	Date	Page
<u>CASE FOR THE PLAINTIFF Cont'd</u>			
<u>BARTON - Alexander</u>			
	Cross-Examination continued		248
	Cross-Examination continued		278
	Cross-Examined (Mr. Bennett)		413
	Recalled, further Examined		537
	Further Cross-Examined		542
	Re-Examined		561
<u>BLUNDELL - Alfred</u>			
	Examined		277
<u>VOJINOVIC - Alexander</u>			
	Examined		327
	Cross-Examined on Voir Dire		328
	Re-Examined		403
	Re-Examination continued		414
<u>BOVILL - John Osborne</u>			
	Examined		424
	Cross-Examined		438
	Re-Examined		525
<u>ANDERSON - Ian Barry</u>			
	Examined		526
	Cross-Examined		528
	Re-Examined		535

CORAM: STREET, J.

BARTON v. ARMSTRONG & ORS.

NINTH DAY - THURSDAY: 30TH MAY, 1968.

(An officer of the Postmaster-General's Department called on subpoena duces tecum by Mr. Gruzman. No answer.)

PLAINTIFF

On former oath:

HIS HONOUR: Q. You are still on your oath to tell the truth, Mr. Barton? A. Yes. 10

MR. STAFF: Q. Mr. Barton, did you visit Mr. Gruzman's chambers this morning? A. Yes.

Q. Was Mr. Jay present? A. Yes, he arrived a little bit later.

Q. Mr. Jay did not accompany you from Mr. Gruzman's chambers to the court? A. I beg your pardon?

Q. Mr. Jay did not accompany you from Mr. Gruzman's chambers to the court? A. No. I was supposed to meet him there. 20

Q. You were supposed to meet him there? A. Yes.

Q. But he was not there, is that the fact of the matter? A. Yes.

Q. He was not there at all this morning? A. No, he was not there.

Q. So that whatever discussion you had this morning in Mr. Gruzman's chambers did not take place in the presence of three counsel and two solicitors?

A. I had no discussion this morning. I was having a cup of tea. 30

Q. You just went there for a cup of tea before you came to court? A. I went, as usual, to come to court.

Q. That is the only place you can get a cup of tea, is it? A. No.

Q. (Minute book shown to witness.) The letter of 28th April, 1967 to Mr. Dobbie - that will be the one with the slip of paper in it? A. Yes.

Q. You have it there now? A. Yes, I have.

Q. Mr. Barton, you said in that letter in the middle of p.3 that you had made verbal arrangements with Stocks & Holdings Limited for it to enter into a contract now to purchase the estate? A. Yes. 40

Q. Was that true? A. Yes.

Q. So that when you wrote this letter you did not

have any need to re-finance the Paradise Waters Estate, did you? A. Yes, I still had.

Q. You made the arrangement to sell it to Stocks & Holdings immediately? A. As you read it, verbal arrangement.

Q. You regarded it as a firm arrangement, did you? A. No. I regard a firm arrangement when there is documents signed and money paid.

Q. So that you did not regard yourself as having reached a firm arrangement with Stocks & Holdings when you wrote this letter? Is that what you say? A. That was my understanding. 10

Q. And, of course, a short time after you wrote this letter you wrote to the bank, telling them that you no longer required the \$300,000 to pay out Southern Tablelands Finance Company which you had requested in the letter of 28th April, didn't you? A. I wrote to the Bank?

Q. Yes? A. I don't recall that. If you show me the letter --- 20

Q. You don't recall that? A. No.

Q. You, of course, recall the fact that you did write to the Bank asking for this temporary overdraft accommodation which is mentioned in the letter of 28th April? A. Yes, quite clearly.

Q. You recall that you did not get that accommodation, do you? A. I beg your pardon?

Q. Did you get that accommodation, or any of it? A. No. I had been told by Mr. Dobbie that it is not bank business to do such a thing and in his opinion the Company is over the wall. 30

Q. Did the bank write a letter to you in reply to your letter of 28th April? A. I don't think so.

Q. Have you got any recollection one way or the other? A. I think my recollection is we has not got a reply.

Q. Do you not recall that you wrote to the bank shortly after 28th April, saying that you no longer required the \$300,000 which you had been seeking from the bank to pay out Southern Tablelands Finance Company? A. No, I don't. 40

Q. Do you remember writing to the bank saying that you didn't require that money because you had agreed with Stocks & Holdings that they would lend you immediately \$750,000? A. I don't.

Q. No recollection of that? A. No. I have the recollection that I gave the bank a photostat copy of the letter what I got from Stocks & Holdings - what the company got from Stocks & Holdings. 50

Q. At any rate, it was true, was it, when you wrote the letter of 28th April, that negotiations with other finance companies were proceeding satisfactorily? A. Yes.

Q. And it would not be true, would it, to say that when you wrote this letter to the Bank of New South Wales if was your last effort to raise finance?  
A. That was in my opinion the last effort to save the company. 10

Q. You say that the writing of the letter was your last effort to re-finance Paradise Waters? A. In my own opinion that was my last possibility, yes.

Q. You, of course, negotiated thereafter, didn't you, to re-finance Paradise Waters? A. Yes, I negotiated with a number of people and the proposition has been hawked around by everybody.

Q. It was true, was it, on 28th April, that negotiations with other finance companies were then proceeding satisfactorily? A. Yes. 20

Q. That was your view on 28th April? A. That was the company's view.

Q. Was it your view? A. My view was all the time that all financiers will come to one conclusion, that the time of development of the company - the time what it has taken to develop the estate and sell the estate as forecast by the company was in the eyes of the financiers too short; they thought it would take double time. And also financiers thought the selling prices what the company said we will reach is too high; they thought the prices that may be reached for the blocks of land are a lot less. This all arose from the view which U.D.C. had, and the withdrawal of U.D.C.'s support from Paradise Waters. 30

Q. Do you then mean to say that in your belief at 28th April negotiations with other finance companies were not proceeding satisfactorily? A. The company belief was that it was proceeding satisfactorily. I always knew that at one stage they would arrive at the same conclusion what I just mentioned. 40

Q. Will you answer the question I asked you? Was it then your own belief, irrespective of what you say the company's belief was, that negotiations with other finance companies were not proceeding satisfactorily at 28th April? A. It is hard to answer yes or no.

Q. Of course, if you, at 28th April, believed that none of the negotiations which were proceeding would result favourably you could not, could you, believe that they were proceeding satisfactorily? A. Would you divide the question into two? I can answer it then. 50

Q. I think you have told us, haven't you, that

at 28th April you believed that none of the negotiations which were going on with other finance companies would result in the re-financing of the Paradise Waters Estate? A. Yes.

Q. If you believed that on 28th April you could not have believed that the negotiations with other finance companies were proceeding satisfactorily, could you? A. I could, because at the time it has not reached a point - reached a decision that they will make up their minds whether they re-finance it, or not. 10

Q. Mr. Barton, of course, the purpose of the negotiations was to seek to find a finance company which would lend the money? A. Yes.

Q. You have told us you believed that none would lend the money? A. Yes.

Q. How, then, could you believe that a negotiation with any one of these companies was proceeding satisfactorily? (Objected to - allowed.) 20

Q. I want you to look at a letter of 9th May, 1967, and tell me whether the signature is yours - (Objected to; allowed.) A. The signature is mine.

Q. Were the statements which you made in that letter true when you made them, Mr. Barton? A. Yes, they are true.

(Letter dated 9th May, 1967 to Bank of New South Wales, tendered and marked Exhibit 19.)

Q. I show you a letter dated 23rd December 1966 addressed to Mr. Dobbie, of the Bank of New South Wales. Is the signature on that letter your signature? Mr. Barton, have you got any doubt about the signature? A. No. I was just reading the letter. 30

Q. Will you answer my question? A. You asked if the signature is mine?

Q. Yes. A. Yes.

Q. Now, will you look at the letter. Are the statements contained in it true? A. Yes, it is true.

Q. The money referred to was used on the settlement of 17/18th January, wasn't it? A. Yes, which has been obtained for a different purpose. 40

(Letter dated 23rd December 1966 to Bank of New South Wales tendered and marked Exhibit 20.)

Q. Will you look at the letter of 16th December, 1966 and tell me whether the signature on it is your signature? A. It is my signature.

Q. Is the statement contained in it true, or was it true when you wrote the document? A. Do you want me to answer the letter, or the enclosure as well? 50



Q. Was what was said in the letter true, I asked you, Mr. Barton. (Objected to.)

HIS HONOUR: Q. I understand the question is being confined to the letter. You are not asked to verify the annexure. A. Yes.

MR. STAFF: Q. Now do you believe the information in the annexure to be true? A. Yes, it is true at the time. This is a cash forecast.

(Letter dated 16th December, 1966, and annexure, to Bank of New South Wales tendered and marked Exhibit 21.) 10

HIS HONOUR: Q. Mr. Barton, in this cash forecast, December 1966, you show payments of \$477,000-odd to Paradise Waters, and receipts of \$480,000-odd. You might like to have a look at it. You see the two figures? A. Yes.

Q. That is the MacIntosh Island project, is it? A. Yes. It was \$400,000 supposed to come from U.D.C., and going out to George Armstrong & Son. 20

Q. What do you say was your anticipation as to the source of the \$480,000? A. \$400,000 was from U.D.C. to repay George Armstrong & Son.

Q. Yes. A. And \$80,000 was the company secretary was estimating the worth, finally estimated by the engineers to be \$87,000, to be got from U.D.C. on progress certificates.

Q. Where does the cash payment of the \$400,000 to George Armstrong & Son fit in? A. That is included in the \$477,000. \$400,000 is supposed to go to George Armstrong & Son and \$77,000 to the contractors. 30

Q. May I take it that any development expenses would be covered by the \$80,000 drawing that you anticipated making on United Dominions? A. Yes. Finally it became \$87,000, when the engineer's certificate ---

Q. That is the actual developmental improvement of the site? A. Yes. Of that month.

Q. \$80,000 or thereabouts? A. Yes. 40

MR. STAFF: Q. I want you to look at the minute book. Do you recall a meeting of the directors of Paradise Waters Limited of 14th December 1966 at, which you, as chairman, Mr. Armstrong, Mr. Beale and Mr. Bovill were present as directors, and Mr. Marks, secretary, Mr. Peter Bowen and Mr. Grant were in attendance? Do you recall such a meeting? A. I did that time, yes.

Q. Do you recall a meeting about that time at which Mr. Peter Bowen was appointed alternate director for Mr. Cotter? A. Yes. 50

Q. Would you look at the minute appearing in the minute book purporting to be the minute of the meeting of 14th December, 1966, and tell me whether that is a true and correct minute of the proceedings at that meeting? A. Yes.

(Minutes of meeting, Paradise Waters Limited, 14th December 1966, tendered and marked Exhibit 22.)

Q. At p.34 of your evidence in chief you told us that before 14th December, and round about 10th or 11th December, you had a letter from United Dominions Corporation. Do you remember that? A. Yes. 10

Q. And you said that you had a conversation also with Mr. Honey? A. Yes.

Q. And that Mr. Honey told you that U.D.C. had decided not to advance the \$400,000 due to Southern Tablelands Finance Company? A. And George Armstrong.

Q. He also told you you would receive a letter, and informed you that the letter would say that they no longer would pay the progress certificates? A. Yes. 20

Q. And that was before 14th December, wasn't it? A. Yes.

Q. Indeed, I think you say that the letter was received round about 10th or 11th December? That is what you said? A. What letter are you referring to?

Q. Mr. Barton, you told us at p.34 that you had a conversation with Mr. Honey? A. Yes. 30

Q. And that he told you that U.D.C. had decided not to advance money to Landmark to pay out the \$400,000? A. Yes.

Q. And that you would shortly receive a letter that they were no longer going to pay the progress certificates? A. Yes.

Q. Do you remember giving that evidence? A. Yes, I do.

Q. Did such a conversation take place with Mr. Honey? A. Yes. 40

Q. And do you remember giving some evidence that round about 10th or 11th December a letter was received from U.D.C? A. Yes, a letter. A letter has been received from U.D.C.

Q. That was the letter which Mr. Honey told you you would receive, saying they would make no progress payments? A. No.

Q. When did you get that letter? A. I don't know. Some time in the middle of December. 50

Q. Before or after the 14th? A. After the 14th.

Q. Between the 7th and 14th you formed the view that the prospects of the company were hopeless, didn't you? A. That is correct.

Q. So that by the 14th you had formed that view?

A. In the middle of December I formed that opinion.

Q. And, Mr. Barton, in that state of mind you made the report, as managing director, contained in the minute of 14th December which was shown to you, didn't you? A. Yes.

10

Q. What I want to put to you is that to make that report in that frame of mind was thoroughly dishonest, wasn't it? A. No, it was not.

Q. Mr. Barton, what I want to put to you is that you had told us that you formed the view that by 14th December the prospects of the company were hopeless? A. I said, "middle of December".

Q. The middle of December, when you say you formed that view, you are telling a lie, aren't you? A. I am telling the truth.

20

Q. What I want to put to you is that when you told us that at 17th January you believed that the present and future value of the shares that you were purchasing was nil you are telling a lie? A. That was the truth then.

Q. Now, Mr. Barton, you have given some evidence about negotiations which you had with Mr. Smith which led up to the execution of the documents on 17th and 18th January? A. Yes.

30

Q. Do you say the first occasions on which you saw Mr. Smith to negotiate with him about that matter was the 3rd or 4th January 1967? A. That is my best recollection, yes.

Q. And your recollection is good about such an important matter, isn't it? A. Yes.

Q. And it was certainly after the new year, was it? A. I can't answer yes or no, but I can tell you one incident which has occurred before the new year.

40

Q. I don't want to know the incident --- (Objected to; allowed.)

Q. Can you tell us whether you had any negotiation or discussion with Mr. Smith in relation to proposals for settlement prior to your going to Surfer's Paradise just before Christmas? A. Would you repeat the question, please? I don't remember the first sentence. I had a discussion or a negotiation? What was the question?

50

Q. Did you have any discussion with Mr. Smith

about a proposal for settlement of your dispute with Mr. Armstrong and the companies with which he was connected prior to your leaving for Surfer's Paradise on 24th December, which I think was the date you told us? A. Not in that nature.

Q. Not of that nature? ---

HIS HONOUR: "Not in that nature".

MR. STAFF: Q. Did you have any discussion at all with Mr. Smith in relation to a proposal or any proposal for the settlement of the disputes existing between you and Mr. Armstrong and the companies? 10

A. Not in that nature.

Q. What do you mean by that? Can't you answer the question? A. That is what I was trying to tell you before.

Q. Did you have any discussion at all with Mr. Smith about anything before you went to Surfer's Paradise? A. Yes.

Q. What did you discuss with him before you went to Surfer's Paradise? A. I discussed a letter what the company and every director of the company received from Mr. Armstrong when he asking the company to authorize Mr. Smith and his firm, B.O. Smith & Son, to investigate the company affairs and the company books, and the company refused this on the ground that Mr. Smith is chairman of a company which is in competition with Landmark Corporation Limited and I had a discussion with Mr. Smith about that matter. 20 30

Q. And about nothing else other than that matter is that what you say? A. Yes, that is what I recollect.

Q. You went to Surfer's Paradise on 24th December, did you not? A. I am not sure. It could be on the Saturday or on Sunday.

Q. Sunday was Christmas Day? A. Yes, it could be on Christmas Day or on Saturday. I am not sure. More likely Saturday.

Q. Did you talk to Mr. Smith on the Saturday or the Sunday - Christmas Day, or the day before? A. Christmas Day I didn't. 40

Q. And you were in Surfer's Paradise until, I think, 2nd January, weren't you? A. I am not quite sure about the date. I tried to recollect it.

Q. You came back after the New Year? A. Yes.

Q. Did you have any discussion with Mr. Smith between Christmas and New Year whilst you were in Surfer's Paradise? A. No.

Q. Well now, can you tell me, do you say that the first discussion you had with Mr. Smith relating 50

to any proposal for the settlement of the disputes you had with Mr. Armstrong or Landmark companies had with the companies with which Mr. Armstrong was connected was after the New Year? A. Yes.

Q. And I think you told us (p.35) that you had been approached by Mr. Smith on or about 3rd or 4th January 1967? A. Yes.

Q. When he said to you that he wanted to negotiate on behalf of Mr. Armstrong? A. Yes. 10

Q. Was that, do you say, the first occasion on which you discussed such a matter with Mr. Smith?

A. Yes, this is my best recollection.

Q. You have no doubt about that, have you? A. I said it is my best recollection, Mr. Staff. That is my answer.

Q. Have you any doubt in your mind as to the correctness of your recollection? A. No I has not. I still say it is my best recollection.

Q. Now, Mr. Barton, what I want to put to you is this: on 14th December 1966, Mr. Smith phoned you, and saw you at 1.30 that day. Would you agree with that? A. He saw me where? In the street or in the picture or a theatre, or where? 20

Q. Have you got any recollection that on 14th December 1966 Mr. Smith telephoned you and subsequently saw you that day at 1.30? A. No.

Q. I want to put to you that on 14th December 1966 during a discussion which commenced at 1.30 negotiations took place between you and Mr. Smith in relation to the settlement of the outstanding disputes with Mr. Armstrong and with the Landmark companies and the companies with which Mr. Smith (sic) was connected? A. It is not correct. 30

Q. It never happened? Is that what you say?  
A. Would you repeat the question. I was not careful.

Q. What I put to you is that on 14th December 1966 during a meeting which commenced at 1.30 or thereabouts on that day Mr. Smith discussed with you proposals for the settlement of the disputes with Mr. Armstrong and with the companies with which he was connected? A. The answer is no. 40

Q. You say it just didn't happen? A. Yes, that is what I say.

Q. I want to put to you that on that day you told Mr. Smith that by 10.00 a.m., on Friday, 16th December, 1966, you would endeavour to reach a firm agreement on a basis which was then particularised by you? A. No. 50

Q. You say that didn't happen? A. That didn't happen.

Q. And there is no room for mistake about whether this happened or not, is there, Mr. Barton? A. No, no room for mistake.

Q. You have no doubt in your mind whatever that nothing like that happened on this date? A. On 14th December? No, definitely not.

Q. And the proposal I want to put to you which you said you would consider and endeavour to reach agreement on by Friday, 16th December, was that the mortgage debt of \$400,000 plus interest would be repaid; that the Finlayside shares in Paradise Waters (Sales) - what is called the 40% interest - should be sold for \$100,000 cash; that there should be an option to buy any 30 blocks during the next two months for the list price less 40% on the basis of 10% deposit and the balance over five years; 7½% interest reducible on annual rests; that you made the suggestion of the \$100,000 cash and the options on that day as an alternative to a proposal Mr. Smith had put to you that the Paradise Waters equity should be purchased for \$175,000? A. This is not true. 10 20

Q. That is not true? A. No.

Q. Did you have any discussion with Mr. Smith on that basis? Ever have any discussion with Mr. Smith on that basis? A. I have a lot of discussions with Mr. Smith on different bases. I cannot recollect any exact basis. You should know that with Mr. Armstrong if you are trying to make any agreement you have to make 20 agreements, because you never go on - there are variations and changes and so on. I had a lot of discussions with Mr. Smith and Mr. Smith was telling me that now Mr. Armstrong is demanding this; demanding that, and we had a lot of discussions. But all in January. 30

Q. What I am putting to you is that on 14th December 1966, during the discussion with Mr. Smith, Mr. Smith proposed as terms of settlement that the mortgage debt should be paid out; \$400,000 plus interest; that Paradise Waters (Sales) Pty. Limited shares should be purchased from Finlayside for \$175,000, and that 30,000 shares approximately of A.E. Armstrong should be purchased for 60 cents a share; upon completion Mr. Armstrong and his nominees should resign from the various boards in the Landmark companies. Did Mr. Smith ever put such a proposal to you at any time? A. No. 40

Q. You deny that? A. Yes.

Q. No room for mistake about it, is there? A. No. 50

Q. It just could never have happened, you say? A. A proposal what was put to me is different. What was put to me is different.

Q. I put it to you that on the same day you suggested that \$100,000 cash and the options should

be given for the Finlayside shares in Paradise Waters (Sales) instead of \$175,000 cash? A. That is not true.

Q. And that 300,000 shares should be purchased at 60 cents each; consideration payable over three years at annual rests free of interest, total consideration to be guaranteed by you; parcel to be split up to nine other parties each of whom will guarantee their individual parcel. Parcel holders to be acceptable to Mr. Smith. A. That is not true. That is not true on 14th December, and that is not true in January because all these proposals came in bits and pieces. 10

Q. What I want to put, it was also put, as part of the proposition that you said you would seek to reach a firm agreement by the 16th December on this basis, that Mr. Armstrong should be entitled to the current dividend but no other dividend declared on the shares? A. No, not true. 20

Q. And there was no room for doubt about that?  
A. No room for doubt. 14th December is a very important date. I remember that clearly.

Q. Later on the same day, 14th December, Mr. Smith phoned you back and told you what Mr. Armstrong's comments were about the proposal? A. That is not true.

Q. I put it to you that on 16th December 1966 you called on Mr. Bruce Smith at his office. Is that true? A. On what? 30

Q. On 16th December 1966 I put it to you that you called on Mr. Bruce Smith at his office? A. That is not true.

Q. You didn't go to his office that day? A. I didn't know him at that time, except I know of him.

Q. Well, you could not have gone to his office on that day? A. No.

Q. There is no room for mistake about that, Mr. Barton? A. No, no room for mistake.

Q. On that day I put it to you that you went to his office and took a copy of the cash forecast, which is part of Exhibit 7? A. No, I didn't. 40

Q. Did you send him a copy of the cash forecast?  
A. I told you I didn't know him. I only heard of him.

Q. So that there is no room for mistake about that? A. No.

Q. Well, since you say - since you tell us it didn't happen and there is no room for mistake I will not put to you the detail of what happened. I want to put to you that on 19th December 1966 during that morning you again saw Mr. Smith? A. I didn't. 50

Q. No room for mistake about that? A. No room for mistake.

Q. I want to put to you that again, on 21st December, you spoke with Mr. Smith? A. About what?

Q. About anything? A. I tried to place that letter. I spoke to Mr. Smith on the phone about that letter that Mr. Armstrong wrote to every director. I had one short telephone call from him. I think most likely it was in November. It is in the minute books. If I had the minute books I could tell you the date. I think most likely it was in November. As soon as the board resolved it we did send him the letter - we sent Armstrong the letter telling him that we are not accepting Mr. Smith to inspect the company's books because he is chairman of a company, Project Development Corporation Limited, which is in direct competition with Landmark, and Mr. Smith phoned me I think a day or two after and told me that I am wrong - that Project Development is not a company which is in competition with Landmark; that they are in the real estate field, but they are builders and not developers. That is all the conversation what I had with Mr. Smith in 1966.

HIS HONOUR: Q. That is on any topic at all? No other conversation with him on any topic at all? A. No, none whatsoever.

Q. You can fix this telephone call, can you, by referring to some letter in the minute book? A. Yes, a resolution by the board to say ---

HIS HONOUR: I don't want to ask you about that.

MR. STAFF: Q. That is the only conversation you had in 1966 with Mr. Smith? A. Yes. Personally I met Mr. Smith I think the first time in my life in -

Q. In January? A. Yes.

Q. And there is no room for mistake about that? A. No.

Q. What I want to put to you - will you look at the photostat of the letter which I show you? A. That is the letter I am referring to.

Q. That is the one you are referring to? A. Yes.

Q. It is in relation to the subject matter of that letter that you had the telephone conversation with Mr. Smith? A. Yes, that letter dated 12th December.

Q. Some very short time after the date of it, I suppose, Mr. Barton? A. I beg your pardon?

Q. Some short time after the date of that letter I suppose, this conversation, was it Mr. Barton? A. Yes.



Q. But it was only about the subject matter of that? A. Only that subject matter.

(Letter dated 12th December 1966 re B.H.SMITH tendered and marked Exhibit 23.)

Q. Mr. Barton, I was putting to you that on 21st December you had a telephone conversation with Mr. Smith? A. No, I didn't.

Q. About matters other than those connected with the letter? A. I have not. 10

Q. That you had a telephone conversation on that day in which, amongst other things, you said to Mr. Smith that Mr. Armstrong "has requested a board meeting tomorrow, which was against the suggestion made yesterday"? A. No, I didn't.

Q. Do you say you had no discussion whatever with Mr. Smith on that day about a proposal, one of the terms of which was that Landmark would sell for \$150,000 its equity in Paradise Waters? A. No, I didn't. 20

Q. There is no room for mistake about that? A. No.

Q. What I want to put to you now is that on 3rd January 1967 Mr. Smith saw you at Landmark Corporation office? A. On 3rd January?

Q. Yes. A. Yes, that is correct.

Q. And that on that day --- A. 3rd or 4th. I am not quite definite. But more likely on the 3rd.

Q. I want to put to you that on the 3rd - I want to put to you that on 3rd January Mr. Smith saw you at the Landmark office, discussed a number of proposals which you put to him, that in your presence - I withdraw that - that you put --- A. Who was present? 30

Q. You put to Mr. Smith at this discussion a number of proposals for the settlement of the disputes? A. I didn't.

Q. No room for mistake about that? A. No room for mistake.

Q. What I want to put to you is that you put to Mr. Smith a proposal in these terms; the mortgage to George Armstrong & Sons be discharged; Finlay-side sell its shares in Paradise Waters (Sales) for \$100,000; the Penthouse to be sold by Landmark (Queensland) for \$60,000; that Mr. Armstrong or one company connected with him lend \$300,000 for one year at 12% on second mortgage - I am sorry, your proposal was that the mortgage of \$300,000 for one year be at 7½% simple; that Mr. Armstrong had an option to buy 35 blocks of Paradise Waters Estate at half-list price on conditions --- A. It all was my proposal? 40 50

Q. Yes. One of the terms was that the end finance of Vista Court at Rozelle be ratified? A. I categorically tell you I did not make any propositions to Mr. Smith.

Q. I am wrong. The "end finance at Rozelle" I withdraw as a condition on the third condition.

A. What about the rest of it?

Q. A further term of the proposal outlined by you on that day, I put to you, was that Mr. Armstrong's shares and those of A.E. Armstrong Pty. Limited be sold to nominees to be guaranteed by you at 60 cents ex dividend upon certain terms and conditions then indicated, and that you were to provide the names of the nominees by 13th January 1967. Further, that completion should take place by 13th January 1967 and, if not, you were to resign from the board of Landmark Corporation. A. I cannot answer this question, because you say "proposal". I don't know whose proposal.

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HIS HONOUR: Mr. Staff, Mr. Barton is not clear whether this is a proposal that he originated or Mr. Smith originated.

MR. STAFF: I will go back and put it more clearly. I thought I had put it clearly.

Q. What I am putting to you is that on 3rd January in discussion with Mr. Smith you put these proposals to Mr. Smith for the settlement of the outstanding disputes:-

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- (1) That the mortgage to George Armstrong & Sons be discharged;
- (2) Finlayside sell shares in Paradise Waters (Sales) for \$100,000;
- (3) Penthouse to be sold by Landmark (Queensland) for \$60,000;
- (4) that Mr. Armstrong or a company with which he was connected should lend \$300,000 for one year at 7½% on second mortgage;
- (5) that Mr. Armstrong have an option to buy 35 blocks at Paradise Waters Estate at half list price on certain conditions;
- (6) that the shares of Mr. Armstrong and A.E. Armstrong Pty. Limited be sold to nominees guaranteed by you at 60 cents per share ex dividend upon certain terms and conditions then indicated; that you would provide the names of the purchasers other than yourself by 13th January, 1967.

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A. Not true.

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Q. Nothing like that happened as a proposal by you on that date? A. No, there was no proposal by me.

Q. I want to put to you that on 4th January Mr. Smith again spoke to you and said that, subject to the interest rate on the mortgage for \$300,000 being paid 12%; subject to the arrangements in respect of end finance at Rozelle being ratified, and

subject to completion taking place by 13th January 1967 - and if not you resigned from the board of Landmark Corporation - if completed on that date Mr. Smith became chairman of Landmark, and Mr. Armstrong to resign from the board and Mr. Howley to be appointed to the board, your proposals of the 3rd were agreed to? A. Not true.

Q. What I put to you is that when Mr. Smith on the 4th put these matters to you you said "Yes", and you each agreed that the matter should be sent to the solicitor for the respective parties for the necessary documentation? A. No. 10

Q. I want to put to you that on 4th January 1967 the whole arrangement in principle had been agreed subject only to the solicitors preparing the requisite documents? A. No.

(Short adjournment.)

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

MR. STAFF: Q. I want to ask you this; at any time in your discussions with Mr. Smith in relation to the settlement of the disputes did you ever put a proposal to Mr. Smith in these terms, that the due date for the repayment of the mortgage - the George Armstrong mortgage - should be extended to the 30th April 1967 with interest at the rate of 12% per annum? A. No. 20

Q. That the amount of that mortgage should be increased to \$500,000? A. No.

Q. That 17 units in Paradise Towers having a list price of \$344,800 be added as additional security subject to a provision for partial discharges to the extent of \$250,000? A. No, I could not, because the units already been mortgaged. 30

Q. There should be a second mortgage over Landmark House subject to a partial discharge provision? A. No.

Q. You say that you never at any time put a proposal containing terms of that character, along with others? A. Your question was that I did put the proposition? 40

Q. You did not put the proposal? A. No.

Q. Did you ever put such a proposal? A. No.

Q. Did he put such a proposal to you? A. Would you repeat the proposal you are referring to?

Q. Anyway, there is no room for mistake that you say he never - you never put such a proposal to Mr. Smith, is there? A. That is correct. That is right.

Q. No room for mistake at all about that? A. No, no room. 50

Q. It just didn't happen? A. It just didn't happen.

Q. And, particularly, it didn't happen on 16th December? A. Particularly on 16th December.

Q. Mr. Barton, you told us earlier that apart from one telephone conversation with Mr. Smith in 1966 you had never had any conversations with him until 1967. You told us that earlier, didn't you?  
A. Yes.

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Q. Either on the telephone or in person? A. Yes.

Q. And there is no room for mistake about that, either? A. I already said no room for mistake.

Q. If the facts should be otherwise, you are just not telling the truth --- (Objected to; rejected.)

Q. Mr. Barton, you recall having some negotiations with Mr. Smith in relation to the Chevron Hotel? A. Yes.

Q. In the middle of 1966? A. Yes.

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Q. So that when you told us that you had never had a conversation with him before that was untrue, wasn't it? A. Yes.

Q. Deliberately untrue, wasn't it, Mr. Barton?  
A. Not deliberately. I just didn't recollect ---

Q. I put it to you that you told a deliberate lie about that matter? A. No.

Q. You agreed, Mr. Barton, didn't you, that there was no room for mistake about the answer you gave? A. Yes.

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Q. So that you were not mistaken, were you? A. I was mistaken, but not deliberately mistaken.

Q. You told us also that you had never met him before 1967, didn't you? A. Yes. I missed that occasion, yes.

Q. And that was untrue, wasn't it? A. Yes.

Q. I put it to you, deliberately untrue? A. Not deliberately untrue.

Q. You had a number of discussions with him about the Chevron Hotel, didn't you? A. I think two discussions.

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Q. You were negotiating to buy it, were you?  
A. I beg your pardon?

Q. You were negotiating buying the Chevron Hotel? A. Yes.

Q. For Landmark? A. Yes. With Mr. Armstrong together.

Q. And that was an important matter, wasn't it?  
A. Yes.

Q. And your great famous memory forgot an important matter, did it? A. Yes. I told you that my memory works that if a matter is of importance to remember I generally do remember. I slipped on that.

Q. Mr. Barton, won't you agree now that you had some discussions with Mr. Smith about other matters in 1966 than the Chevron Hotel and the letter you have referred to? A. No. 10

Q. Can you offer any explanation whatever, Mr. Barton, for your answers given earlier, that there could be no mistake about your not having spoken to Mr. Smith except on one occasion in 1966? A. You were referring to - you were talking about negotiations with Mr. Armstrong, if I recall it correctly.

Q. You volunteered the answer yourself, didn't you, that you had never met him before 1967? A. Yes. It was a mistake. It slipped my mind - that negotiation regarding the Chevron Hotel, which is two conferences. 20

Q. And these negotiations had been in August 1966, or thereabouts, hadn't they - some of them?  
A. I don't know. There is a minute in the Landmark minute book.

Q. Have a look at the minute book of 5th August 1966? A. Yes.

Q. Do you agree that your negotiations with Mr. Smith took place round about the beginning of August? A. Yes. 30

Q. Some of them, anyway? A. Yes.

Q. Just a few months - four or five months - earlier? A. Yes.

Q. Than the period we are talking about? A. Yes.

Q. Now, Mr. Barton, do you still say that your answers were the result merely of a lapse of memory?  
A. Yes.

Q. Of course you appreciate, don't you, that if you had been negotiating in the way I put to you with Mr. Smith from 14th December onwards the story you have told us of your negotiations is quite false, isn't it? A. Could you repeat that question please? (Question objected to; rejected.) 40

Q. Mr. Barton, the substance of your evidence about these negotiations for settlement is that they started about 3rd or 4th January? A. Yes.

Q. And went on until practically the day of execution of the deed? A. Yes. Not story, but fact.

Q. And of course you told us that it could not have been otherwise, because you had never met Mr. Smith before 1967 but for one telephone conversation? A. Yes, Mr. Staff, I already admitted I was mistaken. I am just human.

Q. You told a lie, didn't you? A. I didn't. I just ---

Q. Why won't you admit you told a lie? A. It just slipped my memory. I not told a lie deliberately here or anywhere else. 10

Q. Of course if in fact you had been negotiating on 14th December and virtually agreed - if you had been negotiating from the 14th December and virtually agreed upon the ultimate settlement by the 4th January it would alter the complexion of the case considerable, wouldn't it? (Objected to - rejected.)

Q. Mr. Barton, you told us in your affidavit that you went to the C.I.B. on a Sunday morning? A. Yes. 20

Q. You went down there with Mr. Muir, as he then was, Mr. Miller and his (sic) son, did you? A. Yes.

Q. And you saw Inspector Lendrum? A. Yes.

Q. And Sergeant Wild and Constable Follington?  
A. Yes. Mr. Lendrum called them in later.

HIS HONOUR: Q. I didn't hear that. A. Mr. Lendrum called Mr. Wild and Mr. Follington in a little bit later on.

MR. STAFF: Q. Mr. Muir, of course, knew Inspector Lendrum, didn't he? A. I don't know. 30

Q. That was obvious to you when you arrived, wasn't it? A. Yes.

Q. And I think they addressed each other by Christian names, didn't they? A. I don't recall that.

Q. You don't? A. What I have recollection is that he knew Mr. Lendrum before. That was ---

Q. Mr. Muir introduced you all to Inspector Lendrum, didn't he? A. Yes. 40

Q. And Inspector Lendrum made - was making some notes as the conversation between those present proceeded, wasn't he? A. He made some notes, yes.

Q. And Sergeant Wild was making notes in shorthand as the interview proceeded, wasn't he? A. Yes, they all made notes of certain things. Not all of them.

Q. After the introductions Mr. Miller proceeded to do the talking for quite a time, didn't he? A. Yes. 50

Q. And I think the first thing that was done was that addresses and telephone numbers of the various people were taken? A. No.

Q. No talk about telephone numbers? No inquiry about telephone numbers? A. Yes. At some stage, yes.

Q. What I put to you is that that was the first thing that happened after the introductions? A. No.

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Q. Mr. Miller then proceeded, didn't he, to give a history - a short history about Landmark Corporation and your association with it and Mr. Armstrong's association with it. Do you recall that? A. If you want me to say in sequence of what happened I have to think a little bit more.

Q. Do you recall Mr. Miller talking about Landmark Corporation in the earlier part of the interview and telling Inspector Lendrum and others there about it? A. Yes.

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Q. And Mr. Miller said, didn't he, that Landmark Corporation was a public company, listed on the Stock Exchange? A. I suppose so.

Q. He told you - he told those present that it was formerly Palgrave Corporation? A. Yes.

Q. Which had been in operation for many years?  
A. Yes.

Q. In 1961 he said, didn't he, that it came under the control of Mr. Alec Armstrong as chairman? A. Yes.

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Q. He said that Mr. Armstrong had a diverse range of real estate interests? A. Yes. But he said many other things as well.

Q. He said, didn't he, that the company did not do particularly well? A. Till I came.

Q. And then you came and joined Landmark. Did he say that? A. Yes, and he also said about his associations with Mr. Armstrong in Australian Factors Limited.

Q. Will you just answer the questions I ask you?  
A. Yes.

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Q. Did he say that Mr. Armstrong was also the chairman of another company, Australian Factors Limited? A. Yes.

Q. Did he say that there had been a proxy fight between you and Mr. Armstrong to gain control of Landmark in relation to a meeting on 2nd December?  
A. Yes.

Q. And did he say that the shareholders had favoured you? A. Yes.

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Q. Did Mr. Miller say that before that Mr. Armstrong had had conversations with another director of Landmark named Mr. Bovill? A. Yes.

Q. And that Mr. Bovill said that Mr. Armstrong had said that people could be hired in Sydney for £2,000 to "bump off" other people? A. Yes.

Q. And Mr. Miller then said that that conversation was not taken seriously? A. No, he didn't.

Q. Do you deny Mr. Miller said that that conversation with Mr. Bovill was not taken seriously, Mr. Barton? Do you deny that? A. Could you repeat it again, please? 10

Q. I want to put to you that, Mr. Miller having said that Mr. Bovill had had a conversation with Mr. Armstrong to the effect I stated - I will withdraw that. Mr. Miller, I am putting to you, said to the people present in the room that Mr. Bovill had said that he had had a conversation with Mr. Armstrong in which it had been said that people could be hired in Sydney for £2,000 to bump off other people? 20  
A. Mr. Miller didn't say anything to me.

Q. What? A. Mr. Miller has not said anything to me.

Q. Did Mr. Miller say that in your presence, and in the presence of Inspector Lendrum and Sergeant Wild, on this Sunday morning at the C.I.B? A. You just said that Mr. Miller told me.

Q. I didn't say that, Mr. Barton. I am putting it to you that Mr. Miller - after you arrived at the C.I.B. where Mr. Alex Muir, as he then was, was present with Inspector Lendrum and Sergeant Wild, that Mr. Miller said, in front of you all in that room in the C.I.B., that Mr. Bovill had said that he had had a conversation with Mr. Armstrong in which this statement about people being hired to bump others off had been made? A. Yes. 30

Q. That Mr. Miller then said that that statement had not been taken seriously? A. I don't recollect it. 40

Q. Do you deny that it happened in front of all these people? Do you deny it? A. Yes, I certainly have not heard it myself, because I took it seriously.

Q. Of course, you have got to say that, haven't you? A. Not got to, that is why I went to the C.I.B.

Q. You were terrified when Mr. Bovill had his conversation with you and recounted the story about this conversation with Mr. Armstrong, weren't you? 50  
A. Yes.

Q. And Mr. Bovill, you say, was white-faced?  
A. That is right.



Q. And that is what prompted you to ask Mr. Bovill about his conversation? A. That is right.

Q. And you yourself were a quivering mass, were you? A. Would you just repeat that?

Q. You yourself were utterly terrified when Mr. Bovill told you about this conversation? A. Yes. I has been frightened and disgusted, yes.

Q. There is a bit of difference, isn't there, between fright and disgust? A. I was both. Both. 10

Q. Were you terrified? A. Possibly.

Q. Did you go away and hide? A. Not then, but later I did.

Q. Did you get some bodyguards around you? A. No.

Q. What I want to put to you is that at this interview at the C.I.B. Mr. Miller said that that conversation, or the account of that conversation given to you had not been taken seriously? A. This is not --- 20

Q. And that you made no dissent from that statement? A. That is not true.

Q. And did Mr. Miller also say that he arrived back in Sydney on 23rd December 1966 and that a meeting of directors had been held at twelve noon? A. Yes.

Q. A breach had occurred, and it appeared that Landmark would fail? A. Yes.

Q. That Mr. Barton has not prevented this, and there had been some discussion between representatives of Barton and Armstrong regarding a compromise? A. Some discussion, yes. That is on 8th January Mr. Miller said some discussions. 30

Q. Did Mr. Miller then go on to say that these discussions had resulted in a discussion "last Wednesday" in which an agreement by way of compromise had been reached? A. No.

Q. "Last Wednesday", of course was 4th January, wasn't it? A. Yes, that is right.

Q. Have you got any doubt about whether Mr. Miller said that the discussions about compromise had resulted in a discussion "last Wednesday" in which an agreement had been reached? A. I have no doubt about it. Mr. Miller said that some discussion taking place and his firm has been instructed to receive some documents. 40

Q. Did he ever say that last Wednesday, 4th January, Mr. B.H. Smith, a representative of Mr. Armstrong, and Mr. Barton had reached agreement subject to being legally documented? A. No, he did not say had reached agreement. 50

Q. Did he say that documents had been prepared and had been submitted to the solicitors on Friday last? A. Yes, he said that.

Q. That is Friday, 6th January? A. Yes.

Q. Of course, those documents incorporated the proposals which you and Mr. Smith had already agreed upon, didn't they? A. No, I did not agree with Mr. Smith at all.

Q. At that point of time I put to you Mr. Miller passed over the telling of the story to you. You then went on to tell about the telephone call you had received the previous day, and other events? 10  
A. Yes.

Q. Do you agree that down to the point where Mr. Miller said the documents had been prepared and submitted on Friday last Mr. Miller recounted the matter - Mr. Miller had carried out the conversation to that point? A. Mr. Miller carried on the conversation further. 20

Q. At least he carried it down to that point, did he? A. He carried - he spoke, I spoke, he spoke, I spoke, my son spoke. Everybody said what happened.

MR. STAFF: Q. What I want to put to you is that at no point during that interview with the police, C.I.B., did Mr. Miller say that he knew this was serious because he had been threatened by Mr. Armstrong himself? A. Yes, he did say it.

Q. Of course, when you first spoke to Mr. Miller on the Sunday morning before going to the C.I.B., Mr. Miller had said the whole thing was fantastic? 30  
A. Yes, something like that.

Q. That was his first reaction, wasn't it, when you told him? A. Yes. He said it was so fantastic that Mr. Armstrong will go that far.

Q. That is not what you swore in your affidavit of 4th January 1968 is it? A. I do not know exactly what I swore.

Q. In para. 29 of that affidavit you said this: 40  
"The following morning, Sunday 8th January, I rang the company solicitor, Mr. Fred W. Miller and told him what had happened. He said that the whole thing was so fantastic"? A. Yes. In my affidavit -

Q. Just answer the questions. That is quite different --- A. What is the question?

Q. What you swore there in your affidavit is quite different from the answer you gave a moment or two ago, isn't it? A. It is not different.

Q. That you consider to be an honest answer to the question, do you? A. Yes. This affidavit has been prepared in a rush and a lot of details is not there. 50

Q. It states half a conversation instead of ---

A. It states my conversation but it did not state what I told Mr. Miller.

Q. It leaves out the important bit of conversation, doesn't it? A. No. It fairly refers to the facts.

Q. You regard three weeks as a rush to prepare an affidavit, do you? A. It was Christmas holidays.

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Q. Just answer the question? A. It was not three weeks.

Q. These proceedings were in the course of preparation on 19th November, 1967, were they not? A. That is not correct.

Q. That is not true? A. No.

Q. Earlier? A. Later.

Q. How much later do you say? A. I could not tell you exactly.

Q. What is the date you say? A. The day before Christmas.

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Q. You say you had done nothing, nor had your representatives done anything, toward the preparation of these proceedings, until 24th December? Is that what you say? A. I do not understand. Your question is not clear. You said my representative making an affidavit. I am making the affidavit myself. With legal advice I have to answer to certain questions.

Q. Because it was hurried did you think that entitled you to swear to something that you said was not true? A. No. The whole thing is true but it is not in as much detail as I could tell you.

30

Q. What you are saying now is that when you swore that Mr. Miller said to you the whole thing was so fantastic, you were only stating half of the sentence which he expressed? A. Yes. We had about five minutes' conversation.

Q. Is it in accord with your understanding of truth to state half a conversation? A. This is true. The rest of them is only comments --

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Q. Anyway, that statement accords with your standards of truth, does it? A. My standard of truth ---

HIS HONOUR: (After discussion between counsel.) I allow the question but point out that the point has been inescapably made by now.

MR. STAFF: Q. During the discussion at the C.I.B. on the Sunday morning there was nothing said by you, was there, that morning, to the effect that you wanted to pay money to the witness from Queensland (name deleted by direction)? A. No.

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HIS HONOUR: (After discussion between counsel): I directed that the name be suppressed but I think it preferable that he be not referred to in Court.

MR. STAFF: I do not propose, unless directed by your Honour, to put any questions to this witness in an ambiguous form. The truth of his answer may depend upon his understanding of "the witness in Queensland".

HIS HONOUR: As I have indicated before, I am not completely convinced as to the necessity for suppressing the name but if there is genuine doubt entertained I think it is not unreasonable to take a view which prevents any possible risk of harm. I see no reason why he cannot be referred to as "the witness from Queensland".

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Q. You have no doubt who is referred to by the phrase "the witness from Queensland"? A. Yes.

Q. That is quite clear in your mind? A. Yes.

MR. STAFF: I would protest about being directed to use that expression in the course of cross-examination. If your Honour directs me to, I will, of course, do it but, I would protest ... I understood your Honour's ruling previously given, that the name simply be not published. That extends to the use of it by counsel and now that that is intended I shall adhere to it, your Honour.

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HIS HONOUR: I think it is preferable to avoid using it. I give you leave, if and when the witness is called, to probe this aspect before he gives his evidence, after he has been sworn, in terms that I shall direct not be published, and I shall reconsider whether I should revoke the order.

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MR. GRUZMAN: This was an invitation we extended to your Honour at an early stage.

MR. STAFF: Q. You wanted to pay money to the man in Queensland? A. No.

Q. The first time that any discussion with any police-officer, in relation to such a subject, took place, was at the Darlinghurst Police Station on Sunday evening, wasn't it? A. Not in Darlinghurst Police Station. It was at the C.I.B. on Sunday night.

40

Q. You went to the Darlinghurst Police Station -  
A. No.

Q. - before you met the man from Queensland on the Sunday evening? A. No, I went to the C.I.B.

Q. You are quite sure you did not go near Darlinghurst Police Station on that evening, 8th January ---- A. I do not know where the Darlinghurst Police Station is, therefore I cannot be specific, but I do not go near to it.

50

Q. Did you go to a police station at Darlinghurst?  
A. No.

Q. Anywhere near Darlinghurst? A. I went to the Rex Hotel.

Q. Do you regard that as a police station? A. No. You said "anywhere near".

Q. I said did you go to a police station anywhere near Darlinghurst? A. I said no. The only place I went was to the C.I.B. 10

Q. Then it would be quite untrue, would it, to say that you went on the Sunday evening, before you met the man from Queensland, to the Darlinghurst Police Station? A. Yes. This would be quite untrue.

Q. What I want to put to you is that Sergeant Wild met you and Constable Follington that evening at the Darlinghurst Police Station. A. That is not true.

Q. And from there you went to a place opposite St. Vincent's Hospital, on the corner of Burton Street? A. I went straight from home, on instruction of Mr. Follington, who has been designated by Inspector Lendrum to give me instructions what to do all day on Sunday. He was with me at the C.I.B. He came home with me and he stayed with me when I left to the place where I met the witness from Queensland. 20

Q. Would you answer the question I asked you? Can't you remember this without repeating long parts of the story you told us in chief? A. Would you repeat the question please? 30

Q. I put it to you that you never went near the corner of Riley Street to meet the man from Queensland that Sunday evening. A. I went to the corner opposite the hospital. That is where I have been directed by Mr. Follington, and I went straight from home. I did not go from Darlinghurst Police Station. I did not meet Mr. Wild there either.

Q. Where you met the man from Queensland was on the corner of Burton Street opposite St. Vincent's Hospital, wasn't it? A. Opposite St. Vincent's Hospital. I do not know Burton Street. 40

Q. That is nowhere near Riley Street, is it?  
A. As I said before ---

Q. Will you answer the question? A. I am not a street directory, therefore I cannot tell you.

Q. You told us in your evidence in chief that you went to the corner of Riley Street and another street, didn't you? Was that untrue? A. I think your question is untrue, because I say that the man gave two streets as a corner, which was not a corner, and the C.I.B. figured it out, where I should go to. 50

Q. I put it to you that the only policemen in the vicinity when you met the man from Queensland, were Sergeant Wild and Detective Follington? A. I seen only one, Detective Follington. But I have been told ---

Q. I did not ask you what you had been told. The only policeman you saw, you say, was Constable Follington? A. Yes.

Q. Do you deny that Sergeant Wild was present? 10  
A. Yes.

Q. And you say you saw no one else whom you knew to be a policeman? A. No.

Q. I put it to you that when you met this man from Queensland, you, Sergeant Wild and Constable Follington simply walked up to him and asked him if he would go to the C.I.B? A. No.

Q. They did not take hold of him in any way? A. They got Mr. Follington ---

Q. I put it to you that neither Sergeant Wild nor Det. Follington laid their hands on the man from Queensland? A. Mr. Follington laid his hands on him and twisted it under his back. 20

Q. I put it to you that Const. Follington did not grab both of this man's hands from the back? A. He did.

Q. In your evidence at page 41 you told his Honour, after saying that 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." Was that true? A. Yes. 30

Q. You told us a moment ago that Mr. Follington was the only policeman whom you knew to be a policeman at the scene? A. Yes.

Q. Was that untrue? A. It was not untrue.

Q. So you knew that there were some other detectives on the scene when you met this man, did you?  
A. I have been told by Mr. Lendrum ---

Q. I did not ask you that. Just answer the question? A. I cannot answer yes or no. 40

Q. Did you see people you knew to be policemen in the vicinity of the man from Queensland when you spoke to him? A. I seen people there who I suppose was policemen.

Q. Just answer the question? A. That is what I am doing.

Q. You did not know whether they were or not? Is that what you say? A. Except Mr. Follington.

Q. And you swore in chief that some other detectives came around, didn't you? A. Yes. 50

Q. I want to put to you that before you went to the spot where you met the man from Queensland on the Sunday evening, you told Sergeant Wild that you had £500 which you wanted to give to a man you called Alec? A. That is right.

Q. Is that true? A. That is not true.

Q. You went to the meeting place with £500, didn't you? A. Yes.

Q. You had it in your pocket? A. Yes. 10

Q. And you got in on that Sunday, did you? A. Yes.

Q. Where did you get it, on a Sunday? A. I rang my friend, Mrs. Anne Martin, with Mr. Follington present, and I asked her if she had any cash at home because I needed \$1000 and she said yes and she drove up to my house and Mr. Follington was there when she brought the \$1000 in.

Q. Where does she live? What is her address?  
A. Whose address, Mr. Follington or Mrs. Anne Martin? 20

Q. You mentioned a woman? A. Yes. She lives at 13 Euryalus Street, Beauty Point, Mosman.

Q. Did you ring her? A. I rang her early in the afternoon.

Q. And she drove from Beauty Point to your house?  
A. Yes.

Q. Bringing you \$1000? A. That is right.

Q. What sort of notes were they? A. I beg your pardon? 30

Q. What type of notes were they? (No answer.)

Q. You cannot remember? A. I can remember. Let me cogitate a little bit more and I will tell you. \$10 notes.

Q. All \$10? A. Yes.

Q. Clean notes or dirty notes? A. I did not look at them.

Q. You did not look at them? A. No.

Q. You did not count it? A. No.

Q. Were they wrapped up in a bundle? A. No. 40

Q. A piece of brown paper? A. There was a rubber ring around it.

Q. What did the notes on top look like, dirty or clean? A. They were ordinary bank notes.

Q. Clean or dirty? A. As clean as you see.

- Q. They were not muddy? A. No.
- Q. Looking as though they were a bit muddy? A. No.
- Q. You carried that \$1000 to the meeting with the man from Queensland? A. Yes.
- Q. And took it home afterwards? A. Yes.
- Q. On the Sunday night? A. Yes.
- Q. And gave them back to Mrs. Anne Martin? A. No. I gave her it back during the week. 10
- Q. You told us in your evidence-in-chief that on the following day you put \$400 on Sergeant Wild's desk? A. Yes.
- Q. Was Sergeant Wild there? A. Oh yes. Not only I put it there ---
- Q. And Mr. Follington too? A. Yes.
- Q. You just took it out of your pocket and put it on his desk? A. No, I did not.
- Q. Did you have \$400 in your pocket? A. Yes. I still had a thousand dollars. 20
- Q. You took 400 out of that? A. Yes.
- Q. You put it on Sergeant Wild's desk? A. I gave it to him.
- Q. Did you put it on his desk or give it to him?  
A. I put it in front of him and he just counted it.
- Q. He gave you a receipt for it? A. No.
- Q. Did you ask him for a receipt? A. No.
- Q. Did you ever get it back? A. No.
- Q. Did you ever ask anybody for it back? A. No. 30
- Q. Did you ever ask anybody if they gave it to the man from Queensland? A. Yes.
- Q. Who did you ask that? A. Mr. Follington.
- Q. When? A. During the same week.
- Q. What, the beginning or the end of the week, or when? A. During the week. I was keeping going to the C.I.B. and keeping ringing them to find out the progress they make.
- Q. You are aware that there were a number of conversations between police officers and Mr. Muir about this matter after the Sunday, are you not?  
A. No, I do not know. 40



Q. You never heard anything through Mr. Muir or Mr. Miller? A. No.

Q. And they never spoke to you again after the Sunday about this matter? A. I saw Mr. Miller only that morning.

Q. You never had any report from Allen, Allen & Hemsley of any conversation between Mr. Muir and officers of the C.I.B.? A. No. His duty was plainly ---

10

Q. I am not asking you that. Did you ever have any report of any conversations? A. No.

Q. I put it to you when you told Sergeant Wild that you had £500 which you wanted to give to Alec on the Sunday evening, he told you you should not give him anything? A. I did not talk to Mr. Wild that Sunday evening until I got to the C.I.B.

Q. I put it to you that that conversation took place? A. No.

Q. Before you went to the place at which you met the man from Queensland? A. No. I went from home on my own; direct to the meeting place, as directed by the C.I.B.

20

Q. I put it to you that you never saw Sergeant Wild after the Sunday night, until 11th January? A. That is untrue.

Q. I put it to you that you saw neither Sergeant Wild nor Constable Follington nor any other officer at the C.I.B., about this matter, on Monday, 9th January? A. I have.

30

Q. What time did you get to the C.I.B., on the Monday, the 9th? A. About 9.30.

Q. Where did you go? A. I went straight to Mr. Wild's office.

Q. Did you find him there at 9.30 on the Monday morning? A. Yes.

Q. He was on duty, sitting in his office, when you went there? A. That is right.

Q. You found your own way to his office, did you? A. That is right.

40

Q. Did you ask anybody to take you to it or tell him you were there? A. At first I did, one policeman. He was standing there and checked if he was in and he showed me the way to go.

Q. Did Sergeant Wild have an office of his own or did he appear to share it with others? A. That office is divided with cabinets, not proper walls. Cabinets have been set up in such a way that an office has been created.

Q. Of course, on the Sunday you went to Superintendent Blissett's office, didn't you? A. Yes.

Q. And you went back there on the Sunday evening, when you spent some time with Inspector Lendrum?  
A. That is right.

Q. You never went near Sergeant Wild's office on the Sunday, did you? A. Sunday night?

Q. At any time on the Sunday? A. To his office?

Q. Yes? A. No.

10

Q. Yet you found your way there unerringly, without the aid of anybody, at 9.30 next morning? A. The constable said to just go there and there is where I went.

MR. GRUZMAN: May I remind my friend we are not at issue on these alleged conversations with Mr. Smith, in that my friend has suggested to the witness two conversations, one on 19th December and one on 21st December, as to which he has not put any detail to the witness.

20

HIS HONOUR: The evidence has been given. It does not call for any comment from me at this stage.

(Luncheon adjournment.)

ALFRED BLUNDELL

On subpoena duces tecum:

MR. GRUZMAN: Q. What is your name? A. Alfred Blundell.

Q. You are an officer of the Postmaster-General's Department? A. Yes.

Q. Do you produce to the court a subpoena duces tecum served on the Postmaster-General? A. I do.

30

Q. That subpoena calls for two letters, dated 9th December from Landmark Corporation to the Postmaster-General and a letter of 20th December 1966 from the Postmaster-General to Mr. Barton, T.C.6/9535. Do you produce to the court those letters? A. No.

Q. Tell the court why. A. These documents - (Objected to by Mr. Staff.)

MR. GRUZMAN: (After conferring with Mr. Staff.) There is no agreement. I will have to call evidence at a later date.

40

(Subpoena produced at request of Mr. Gruzman; m.f.i. 10.)

(Witness retired.)

(James Ashcroft called on subpoena duces tecum; no response.)

Plaintiff, xx,  
interposed.

A. Blundell, x on subpoena  
duces tecum, ret'd.

MR. GRUZMAN: We do not anticipate any reply. Our instructions are that the witness said he would not come; he was getting a plane to Brisbane. We have no way of getting in touch with the witness. At the moment I indicate that some application might have to be made at a later date.

I ask my friend, pursuant to his indication this morning, in regard to subpoenas duces tecum, Southern Tablelands Finance Pty. Limited and Goulburn Acceptance Corporation Pty. Limited, both of 28th May. 10

MR. STAFF: In respect of the first subpoena, we move to set it aside. Both subpoenas are in the same terms. (Second subpoena also objected to.)

HIS HONOUR: (After argument.) As at present advised I prefer to defer ruling on whether this is too wide until there is some evidence which would indicate whether it would be oppressive to get these documents out. I think the same comment applies to both. It may turn out, when some investigation is made, it is in fact not oppressive. 20

MR. STAFF: We will conduct a search, but certainly we have not yet had time to do it.

MR. GRUZMAN: In respect of the subpoena dated the 28th May to my friend's solicitor, I must agree there has not been reasonable time.

HIS HONOUR: It may well be that the subpoena does not require a great deal of material to be produced.

MR. GRUZMAN: If there is a great mass of documents I invite my friend or his solicitor to tell me. 30

HIS HONOUR: I defer any further proceedings on the subpoenas duces tecum addressed to Southern Tablelands Co. Pty. Ltd., and to Goulburn Acceptance Pty. Limited., until 10 a.m., on Tuesday next.

MR. STAFF: We will seek to discover how much search is necessary and whether we will be in a position to answer. The defendants in this case have been served with a great number of subpoenas. In respect of these two, and I think in respect of the others, no tender of conduct money has been made. 40

HIS HONOUR: I think conduct money ought to be tendered in accordance with the rules.

MR. STAFF: Q. You told us in the week following your visit, on the Sunday night, to the C.I.B., you gave back to Mrs. Martin \$1000? A. During the week, yes.

Q. Did you give it to her in cash or by cheque?  
A. I gave it to her back in cash, the same as I got it. 50

Q. You had used \$400 of the cash you got from her, hadn't you? A. 500.

Q. 500? A. I purchased the gun.

Q. You used her money to purchase the gun too?  
A. Yes.

Q. But you did not buy a gun? A. No, my son and Mr. Follington.

Q. You did not even go to the shop to buy it, did you? A. No, but I paid for it.

Q. You gave your son some money before he went into the shop? A. Yes.

Q. Then you got another \$500 in cash and put with the 400 (sic) remaining and gave it back to Mrs. Martin? A. Yes. 10

Q. That would be after 11th January, would it?  
A. When I gave back the money?

Q. Yes? A. Yes.

Q. Where did you get the 500 cash that you replaced? A. I draw it out of loan account from Allebart or Allebart Investments. Which company I do not remember.

Q. You did not draw it from your personal account? A. No. 20

Q. You drew it from one of the Allebart companies?  
A. I had loans to those companies.

Q. And the company would have a cheque butt in respect of that drawing? A. I suppose so.

Q. You know, don't you? A. Yes, surely.

Q. That would be in the week following 11th January and during that week? A. Following 8th January of that week.

Q. But you drew this out after the 11th, didn't you? A. I do not know which date I drew it out, possibly on the 11th or 12th. 30

Q. How much did you give your son to pay for the gun? A. \$100.

Q. Did he give you any back? A. Yes.

Q. How much? A. I think the gun cost \$87 and 50-some cents.

Q. You do not remember how much that he gave you back? A. No. I just put it in my pocket, what he gave me back. 40

Q. You had no money of your own, in cash, at that point of time? A. Yes, I had.

Q. What, on the Sunday? A. Yes.

Q. How much? A. I do not know, a small amount, possibly \$100.

- Q. \$100 or less? A. I do not know.
- Q. You are quite sure you drew \$500 from one of your family companies? A. Yes.
- Q. In that week? A. Yes.
- Q. And you drew it out in cash, did you? A. Yes.
- Q. Did you go to a bank and present a cheque and pick up the cash? A. No.
- Q. Or did you send someone? A. No, I sent someone. 10
- Q. Who did you send? A. I cannot recall.
- Q. You produced here your personal cheque books for a period? A. Yes.
- Q. I think you agree that in a period of eight months you drew eight personal cheques? A. I beg your pardon?
- Q. I think you agree that in a period of eight months you drew about eight personal cheques? A. Very little, yes. 20
- Q. You do not operate on your own bank account very much? A. I do not spend any money.
- Q. You drew \$500 just before Christmas? A. Yes.
- Q. And had you spent that all by 8th January?  
A. I went to Surfers Paradise.
- Q. Had you spent it all by 8th January? A. Probably not.
- Q. After the settlement of the agreements executed, all the agreements, about 18th January, do you recollect having a conversation with Mr. Smith, very soon after the settlement, either the same day or the following day? A. Yes. I was trying to reach him on the same night and I could not reach him. 30
- Q. You spoke to him the following day, did you?  
A. Yes. I spoke to him on the following morning.
- HIS HONOUR: Q. This would be on Thursday, 19th?  
A. Yes.
- MR. STAFF: Q. I think you spoke to Mr. Smith on the telephone and then went to his office, didn't you? A. No. 40
- Q. You did not go to his office? A. No.
- Q. Within a day or two of the settlement? A. No.
- Q. You are quite sure of that? A. Quite sure.

Q. In your conversation with Mr. Smith I put it to you he said to you, "On the evening of 13th January 1967 Mr. Armstrong had withdrawn the condition that Mr. Hawley and I should join the Board and finalisation had been left to the solicitors". Do you remember Mr. Smith saying that to you? A. No.

Q. Did you say to him, "Don't worry about that. What I will like to do is to congratulate you on having organised the deal"? A. No. 10

Q. Did you say anything like that? A. Nothing like it.

Q. Did you say to Smith, "I think it was a miracle. I did not think Armstrong would complete"? A. No.

Q. Did you say that? A. No, I did not. Are you still talking about 13th January?

Q. I am talking about a conversation you had with Mr. Smith within one or two days of the completion of the settlement? A. No, I did not. 20

Q. Did you say, "I believe the company's worries are over now and that U.D.C. will give us all the money we want"? A. I did not.

Q. Did Mr. Smith say, "Thank you. I would like to wish you every success. I trust the company will become prosperous in due course"? A. He did not.

Q. Anything like it? A. Nothing like it.

Q. Did he say to you, "I think you have to let me have audited balance sheets of your private companies under the agreement"? A. He did not. 30

Q. Did you say, "That is right. I am still waiting on the auditors. I will let you know when they are ready"? A. I did not.

Q. "You cannot show them to Armstrong"? A. I did not.

Q. Of course, under the terms of the agreement, you were supposed to supply audited balance sheets of the family companies to Mr. Smith, were you not? A. On a later date, at the end of the year - four months after 30th June. 40

Q. And you never did, did you? A. Yes, I did.

Q. Do you say you supplied the balance sheets of your private companies to Mr. Smith? A. That is right.

Q. After the settlement had been completed do you remember Mr. Grant putting his head in the door of your office and having a short conversation with you? A. I was in the board room with Mr. Grant and other persons. 50

Q. After the settlement was all completed, I put it to you Mr. Grant put his head in the door of your office, where you were, and had a conversation with you. Do you recall that? A. No. We all been together in the board room, Mr. Grant ---

Q. Do you know that that happened? A. Yes.

Q. And I put it to you that you said to Mr. Grant, "Thank you for organising the settlement smoothly and not having Armstrong there"? A. No. 10

Q. Nothing like it? A. Nothing like it - the reverse. Mr. Grant was asking permission that Mr. Armstrong should not be present.

Q. He was not present on the settlement, was he? A. No. Mr. Grant was asking his solicitors that Mr. Armstrong could be excused to be present and he will be able to present his resignation, Mr. Grant.

Q. I am putting to you that after the settlement had been completed, Mr. Grant put his head in your office door and said this to you and you said to him what I put to you, and you also said words of the effect, "Now that the matter is settled we will soon be able to pay the costs due to your firm"? A. No. 20

Q. There was a large sum of costs due to Mr. Grant's firm, was there not? A. It was a large sum of costs Mr. Grant was claiming under sec. 222 from the company.

Q. At that time? A. No, soon after.

Q. You deny any conversation to the effect I have put, took place? A. Yes. 30

Q. Or anything like it? A. Yes.

Q. And very soon after settlement you rang Constable Follington and told him everything had gone well and the deal was settled, didn't you? A. I did not.

Q. Do you deny having such a conversation with Constable Follington? A. No.

Q. Nothing like it? A. Nothing like it.

Q. At any time about 18th or 19th January? You deny having any such conversation with Constable Follington on either 18th or 19th January? A. Yes I deny it. 40

Q. Or any time near there? A. Any time near.

Q. You deny having any such conversation at any point of time at all? A. No, I do not.

Q. You told him something like that at some time, did you? A. Yes.

Q. When? A. I took Mr. Follington to Peter

Bowen's office in November, 1967.

Q. Then you told him, did you, that everything went well on the settlement? A. I did not say everything went well.

Q. I asked you if you had ever told Constable Follington anything to the effect that settlement had gone well and everything was all right and you said you had. A. And you added, "or nothing like it". I told him in November 1967. 10

Q. So you told him in November 1967 something like that the settlement had gone well and everything was all right? A. No, I did not, but I said to him something like it.

Q. You told us in your evidence-in-chief at page 42 - this was after the witness from Queensland had gone back to the C.I.B. - you said you were having some conversation with Inspector Lendrum -? A. Yes.

Q. You said at page 42, "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."? A. That is correct. 20

Q. I put it to you that you never had any such conversation with Inspector Lendrum? A. I had.

Q. I put it to you that Inspector Lendrum did not say to you, "Alec has admitted everything in the line as my allegations has been made this morning"? A. He did. 30

Q. You told us in evidence that that was exactly what he said. That was not true, was it? A. That was true, maybe wrong words.

Q. He used the words, did he, "Alec has admitted everything in the line as my allegations has been made this morning"? A. Not the same words, the same thing.

Q. I put it to you that on that evening Inspector Lendrum simply told you at some point of the social conversation he was having with you, that he would go and look and see how Sergeant Wild was getting on? A. He did. 40

Q. That he went away and came back and told you they would be some time and that you should go home and get a night's sleep? A. No.

Q. I put it to you that Inspector Lendrum never said to you that you were in danger, that you had to be careful that you did not expose yourself? A. He did.

Q. There was no room for mistake about this? A. I beg your pardon? 50

Q. There is no room for mistake about this or



faulty recollection, is there, on your part? A. Words could be different. The substance - there cannot be any mistake and cannot be any room for mistake.

Q. No room whatever? A. None whatsoever.

Q. It is not a case in which you might some time later or today or next week, recall some failure of your recollection? A. No.

Q. Not like the one this morning? A. No. 10

Q. There is absolutely no room for mistake? A. No.

Q. I put it to you that it was not till 11th January that you made your second visit to the C.I.B: I suppose it was your third visit to the C.I.B? A. On Monday morning ---

Q. I beg your pardon? A. I went on Sunday morning, Sunday night, Monday morning, Wednesday morning.

Q. I put it to you that you did not go near the C.I.B. or Sergeant Wild at the C.I.B., on the Monday morning? A. I did. 20

Q. Again there is no room for mistake about that?  
A. No room, definitely no room for mistake.

Q. I put it to you on the morning of 11th January in company with Constable Follington, you had a conversation with Sergeant Wild at the C.I.B? A. Yes.

Q. That was what, about 9.30 in the morning? A. Yes, about. 30

Q. And your son was with you, was he? A. Yes.

Q. I put it to you that on that occasion Sergeant Wild told you that his feeling in the matter, having interviewed the man from Queensland, was that that man was lying and had gained sufficient knowledge to frighten you into paying for the information? A. No, that is not true.

Q. Did Sergeant Wild say anything like that?  
A. No, nothing like that, just the opposite.

Q. I put it to you it was then you said you wanted to get a pistol and Sergeant Wild told you it was unnecessary? A. That is not true. It was unnecessary. Why he rung the Chatswood police station to get me a licence in a hurry, and why he had advised me to purchase a gun? 40

Q. Have you finished? A. Yes.

Q. I put it to you that Sergeant Wild told you on that morning that his advice was strongly against getting this pistol? A. No, opposite.

Q. He recommended you get a pistol, did he? A. He recommended to get a gun.

Q. A pistol? A. A gun.

Q. Did he say anything about his views on getting a pistol? A. Yes.

Q. Did he recommend getting a pistol? A. He said it was impossible to get a licence at that short notice. He made enquiries at the Chatswood police station, in my district where I belonged to, and he was satisfied he could not get me a pistol licence. 10

Q. You did not want a gun and a pistol yourself, did you? A. Yes, I wanted a pistol.

Q. But you wanted your son to get a pistol or a gun, not you, didn't you? A. I wanted a pistol. When he mentioned a gun I did not like it.

Q. You liked pistols, but not guns? A. I did not like either of them.

Q. You did not want a pistol for yourself; you wanted it for your son? A. No. I wanted it for myself. 20

Q. While you were prepared to get a pistol for yourself and wanted to get one for yourself, you would not get yourself a gun? Is that the position? A. I cannot answer yes or no, but I can tell you what was in my mind.

Q. This gun you did not like was a .22, wasn't it? A. I do not know what kind of gun. I am not expert in guns. 30

Q. You do not know anything about guns? A. I do not know much about them.

Q. An officer in the Hungarian Army knows nothing about guns? A. This kind of gun I do not know anything about.

Q. You had never heard of a .22? A. I had heard the name of .22, but I never saw one.

Q. You, of course, did not go with your son to learn to use the rifle or .22, whatever it was? A. No, I did not. 40

Q. You told us in your evidence-in-chief that your son fired 200 bullets? A. That is what he said.

Q. He told you that? A. Yes.

Q. There is no room for mistake about that? A. He said about 200, 200 bullets, and he also ---

Q. You are quite certain that your son told you that he fired about 200 bullets? A. Yes.

- Q. On that morning or that day of 11th January?  
A. That afternoon, on 11th January.
- Q. At the police range? A. Yes.
- Q. Did your son have any bullets when he came home with the rifle? A. Yes.
- Q. How many did he have? Did you count them? A. I did not count them.
- Q. What I want to put to you is that your son fired at most, 12 bullets at the police rifle range? 10  
A. My son told me when he came home, he fired about 200 bullets. He used that rifle what he purchased. He used Mr. Follington's pistol. He used other gun what Mr. Follington gave him to use. He said he had all afternoon shooting and ---
- Q. All afternoon shooting away at the police range? A. Yes.
- Q. With a number of different guns? A. Yes.
- Q. Did he tell you he shot his own .22 down there?  
A. Yes. 20
- Q. And then late in the afternoon came home, did he? A. Yes.
- Q. What, to Castlecrag? A. No, to Landmark office.
- Q. That is home, is it? That is what you describe as home, is it? A. Landmark office.
- Q. Did he walk into Landmark office carrying a rifle or a .22? A. No. That was in the boot of my car what he had with him.
- Q. He had taken your car down to the C.I.B., had he? A. No. He came with me to the C.I.B. at 9.30 and we went to purchase the gun. We went back to the C.I.B. and from the C.I.B. he took the car and went to the rifle range and I took a cab and went back to Landmark office. 30
- Q. Did he come out of the C.I.B. building with you? A. No. I came out first.
- Q. You came out on your own and got a cab? A. Yes - I beg your pardon?
- Q. You came out on your own and got a cab back to the office? A. Yes. 40
- Q. Did your son tell you that he had gone from the C.I.B. to the rifle range? A. Yes.
- Q. You are quite sure about that? A. Yes.
- Q. He had left the C.I.B. building and taken your car, had he? A. I do not know what he had done. He said he went to the rifle range and also

Mr. Follington told me later that he had a good training with Tommy.

Q. What I want to put to you is that after you had seen Sergeant Wild and Constable Follington during the morning of 11th January, you and your son went away and later in the day your son came back and saw Constable Follington and said that you insisted that he buy a rifle? A. Not true.

Q. That your son went back alone and went off with Constable Follington alone, to purchase the weapon? A. Not true. 10

Q. And that no conversation took place between you and Constable Follington in a vehicle - A. Yes, it did.

Q. On the way to buy a rifle? A. Yes.

Q. At page 14 you gave evidence that on an occasion in May 1966 you had a conversation with Mr. Armstrong in which you said to him, "You are a vicious and ruthless man. You are only interested in your own financial affairs", and so on? A. I beg your pardon? 20

Q. And some things more? A. What is the more?

Q. Do you remember that conversation? A. Yes.

Q. Well, what is the more? A. "You are a vicious and ruthless man. You are only interested in your own financial affairs. You go as far as death, conspiring with injustice. You can get anybody in any high position, including Judges, to get your own way". 30

Q. You have memorised that conversation, have you? A. I memorised it because I was surprised he has not denied it.

Q. This, of course, was your assertion to Mr. Armstrong? A. No.

Q. This was what you said to Mr. Armstrong, wasn't it? A. Yes.

Q. I put it to you that that conversation never took place? A. It took place and Mr. Armstrong has not denied it. 40

Q. At page 9 you gave evidence about a conversation in which you said Mr. Armstrong said, amongst other things, "I employ him permanently and he does all the strong-arm work I may require". I put it to you that that was never said to you by Mr. Armstrong? A. It has been said to me.

Q. I put it to you that on that occasion Mr. Armstrong did not say to you, "Mr. Hopgood might put up a fight if we try and get this machinery. I have a man who does all my dirty work. I employ him permanently"? A. He did. 50

Q. Do you recall what else you told us the other day Mr. Armstrong said on that occasion? Leave out what I have put to you. Do you recollect what else he said during the course of that conversation?

A. Yes. How far did you get? Can you tell me the last half sentence?

Q. I put two sentences to you. Tell me the rest of what happened on that occasion. A. I lost it.

HIS HONOUR: I think, to be fair to the witness, the two parts you put were not in the sequence in which he said them. 10

MR. STAFF: I did that deliberately, for a particular reason.

HIS HONOUR: I do not think it is fair. If you put two topics, what others were there?

MR. STAFF: Q. The position, I suppose, is you cannot tell us about part of a conversation unless you can tell us the whole of it, can you? A. Oh yes I can. 20

Q. When do you say this last conversation took place? A. July, in Surfers Paradise.

Q. When in July, the first half or second half? A. The second half.

Q. The second half? A. Yes, in the middle of July, the second half.

Q. Was it the middle, second half or first half? A. The middle or the second half.

Q. (Approaches witness.) The photograph I show you I put to you is a photograph of a group of people at a dinner party at Margo Kelly's Restaurant in Surfers Paradise, at about the time of the seizure of the Hopgood machinery. Would you agree with that? A. No, I do not. 30

Q. Would you agree it is a photograph of a dinner party at Margo Kelly's Restaurant? A. It looks like it. I am not sure.

Q. That is at Surfers Paradise? A. Yes.

Q. And you can recognise the people in the photograph, including yourself, I suppose, can you? A. Yes. I can recognise myself. 40

Q. And Mr. Armstrong? A. Yes.

Q. And his wife? A. Yes.

Q. And other people? A. I can recognise only one more, that man, Morton Cansdale.

Q. You cannot recognise the man on the left hand side? A. He is Mr. Armstrong.

Q. No, the next one from the left? A. It is a very bad photograph. I think Doug Bryant. But I am not sure.

Q. You have not any doubt it is Mr. Bryant, have you? A. Not really, but it seems to me it is a bad photograph of him. It is disordered and black colour.

Q. It is not the best of photographs? A. No.

Q. Don't you recognise the woman sitting between Mr. Armstrong and Mr. Bryant? A. No. 10

Q. No recollection of her at all? A. No.

Q. What about the woman sitting on the left hand side of Mr. Bryant? A. That is Mrs. Armstrong.

Q. You are next? A. Yes.

Q. And the woman sitting between you and Mr. Cansdale? A. I do not know who she is.

Q. You have not the faintest idea? A. No.

Q. What about the other one on the extreme right hand side? A. I do not know who she is, either. 20

Q. Seeing the photograph does not recall the occasion to you? A. No.

Q. Don't you recall it was a pretty happy party?  
A. No.

Q. Would you agree that you look quite happy?  
A. Yes.

Q. With reason, perhaps. I see you are drinking champagne? A. I cannot see any champagne there.

(Abovementioned photograph m.f.i. 11.)

WITNESS: May I finish my last sentence? 30

MR. STAFF: Q. Yes? A. I notice that Frederick Hume is not in the photograph. It could not be taken on that occasion.

Q. What occasion? A. When we were just referring to.

Q. I asked you whether that photograph, to your recollection, was taken at or about the time of the incident which you have told us about in relation to the seizure of the Hopgood machinery? A. I have no recollection of the picture. 40

Q. (Approaches witness.) I show you a document and ask you whether you have not seen this document. I do not think you will need to read it right through to tell me? A. I have to if you want me to recognise it.

Q. Before you do, just look at the document.

It is headed, "Landmark Ltd., responsibilities and duties of the chairman, managing director and secretary". Under the description of "chairman" there are certain paragraphs. On the second page, under the description "secretary" there appears a number of paragraphs and, on the next page, under the description "managing director", there appear some 20 paragraphs? A. I have not seen that.

Q. You have never seen that document before? A. 10  
No.

Q. Or a copy of it? A. No.

Q. Or the original of which that is a copy? A.  
No.

(Abovementioned document m.f.i. 12.)

Q. On page 12 you gave some evidence that you heard Mr. Armstrong and his wife had arrived at Landmark Corporation office after their return from overseas in 1966 and you went to him and said, "I am not prepared to work with you in any circumstances. 20 I see only one alternative, that you resign and get out of Landmark Corporation Ltd. I can't resign myself, as much as I would like to, because of my responsibility to shareholders, United Dominions Corporation Ltd., and other persons and parties connected with the projects which are under consideration"? A. That is right.

Q. Do you remember giving that evidence? A. Yes.

Q. I put it to you that that conversation did not take place? A. It took place in front of Mr. 30 and Mrs. Armstrong. Both of them were present.

Q. You regarded yourself as indispensable to the company, did you? A. No. Nobody is indispensable, but I thought ---

Q. You regarded yourself then as tied irrevocably by your responsibilities to shareholders, to U.D.C, and other people, to the company? A. Up until the time the projects were completed with the money the company borrowed, yes.

Q. You regarded yourself as being in a position 40 where you could not please yourself whether you stayed or went? A. No. I am not such a person.

Q. But at least you say you told Mr. Armstrong that you could not resign, much as you would like to, because of your responsibility to shareholders, United Dominions Corporation, and other persons? A. That is right.

Q. Was that true? A. Yes.

Q. I put it to you that when you gave evidence that Mr. Armstrong replied that he was not prepared to resign and said that the city is not as safe as you might think between office and home, that 50

he would see what he could do against you and you would regret the day when you decided not to work with him, that was quite untrue? A. That is true.

Q. You told us that that conversation took place really as soon as you heard that Mr. Armstrong and Mrs. Armstrong had come into the office after their return from overseas? A. Yes. It was about 4 o'clock in the afternoon.

Q. That was the first time you had seen Mr. Armstrong since his return from abroad? A. That is correct. 10

Q. I think you told us at page 17 that that conversation took place just a few days before the board meeting of 24th October. Do you recall that? A. That is right, at a board meeting on the 19th, I think, and the 24th.

Q. What was that answer again? A, I think we had a board meeting on the 19th and 24th October, and that conversation took place before that. 20

Q. Which one? A. Before the 19th.

Q. Do you recollect, at page 17, being asked these questions:

"Q. Just to have it 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.

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." 30

A. Yes.

Q. What you are now saying is it was a week? A. The same meaning. I said, "A few days before". I did not say three or four or five, just a few days before.

Q. You did not say seven, either, did you? A. No, a few days before. 40

Q. Do you say your answer should have been, "before a board meeting on 18th October"? A. No.

Q. There was a board meeting on 18th October, was there not? A. Most likely the 19th. It is quite clear as soon as they returned and came to the office, that clarified the time and place.

Q. You have a good recollection of the board meeting of 24th October? A. Yes.

Q. That is the one that passed all the resolutions you had prepared? A. Yes. 50



Q. Was it a few days before that meeting or a few days before the earlier meeting that you had this conversation? A. A few days before the board meeting of 24th.

Q. Look at that and I think you will find the minutes of the meeting of 18th October? A. Yes.

Q. Do you say this conversation of which you have given evidence at page 12 and page 17, took place a few days before 24th October or a few days before 18th October? A. It took place before this board meeting, as soon as Mr. Armstrong arrived back from overseas and came first to Landmark office. That is when it happened. 10

Q. I put it to you that on 17th October Mr. Armstrong, in Mrs. Armstrong's presence, spoke to you in the Landmark office when you were very upset and indignant about the fact that Mr. Armstrong had spoken to Mr. Bovill about the Hoggett transaction? A. No. 20

Q. It never happened? Did that not happen? A. Yes. Bovill talked to Hoggett, yes. It happened.

Q. Do you say you did not speak to Mr. Armstrong about his discussions in the Hoggett transaction with Mr. Bovill on 17th October? A. No.

Q. I put it to you on 17th October he and Mrs. Armstrong came into the office and the subject of discussion on that day was your indignation about Mr. Armstrong having spoken to Mr. Bovill about the Hoggett transactions? Is that so? A. I told you that in September I made up my mind and if you want to know I will tell you why I am so sure - (to his Honour): I said before, I am sure in September I made up my mind and I decided as soon as I saw Mr. Armstrong I would confront him with this again and I indicated to Mr. Staff, and I can prove it, it was in September, if he is interested to listen to me. 30

MR. STAFF: Q. What I asked you was whether there was a discussion with Mr. Armstrong on 17th October in the presence of Mrs. Armstrong in which you expressed indignation at Mr. Armstrong spoken to Mr. Bovill about your deal with Hoggett? A. No. 40

Q. Mr. Barton, you told us at p. 26 of the transcript that you had a conversation with Mr. Armstrong at some point of time? A. When?

Q. You told at p.26 of the transcript that you had a conversation with Mr. Armstrong when Mr. Armstrong said, "I am of German origin, and Germans fight to the death. I will show you what I can do against you. You had better watch out. You can get killed." Do you remember giving that evidence? A. Yes. 50

Q. When did you think that conversation was? When did you have that conversation, do you say? A. That was in late November.

Q. What? A. It was in late November.

Q. I put it to you Mr. Barton, that that conversation never took place? A. That is not true.

Q. Of course, you knew that Mr. Armstrong's name was Alexander Ewan Armstrong, didn't you? A. Yes. I also know -

Q. You have never heard of a less German-like name, have you? A. I always - my answer is "No".

Q. At pp. 24 and 25 of the transcript you gave some evidence about seeing men standing about outside your house. Do you remember that? A. Yes. 10

Q. And I think you said they were standing across the road? A. I beg your pardon?

Q. They were across the road, you told us, from your house? You told us they were across the road from your house, didn't you? A. Yes. At the substation. Behind the substation - between the telephone pole and the substation.

Q. Of course, the substation is in an island at the junction of the road? A. Yes. 20

Q. The junction is pretty well opposite your house, isn't it? A. Not the junction. A road leading down, and there are two roads by-passing this.

Q. There are two roads - a road on each side of the area of land on which the substation stands? A. Yes.

Q. And then behind the substation the road goes up in the other direction? A. Going down. 30

Q. Downhill? A. Yes.

Q. And your house is facing - on the other side of the road facing the substation and the road that runs down the hill? A. My house facing the substation and also facing the bay.

Q. And, of course, if anybody had been standing about watching any one of a dozen houses they might well have been standing around that area, might they not? A. Possibly.

Q. And anybody standing there would be in full view of the occupants of four or five other houses? A. No, only our house. 40

Q. Oh, Mr. Barton, you are not serious in that answer, are you? You are not serious in that answer? A. Yes, I am.

Q. There are houses on this road that runs down the hill right up to the corner, aren't there? A. On my side of the road -

Q. Just answer my question. A. That is what I am answering. All right, the answer is "No".

Q. You say there are no houses on the road - on the other side of the road - that goes down the hill in the vicinity of the substation, do you? A. Going down? Yes, there are plenty of houses.

Q. Plenty of houses? A. Yes, there are plenty of houses.

Q. The whole area is built on, with houses next-door to each other? A. Yes. 10

Q. And if the man was standing behind the substation - that is, behind the substation looking out from your place, he would be in full view of three or four houses in the other street, wouldn't he? A. If he was looking in the opposite direction, but he was looking to my direction. In that direction he could not see anybody else.

Q. You told us you saw a man standing looking out behind the substation? A. Yes. 20

Q. Did you mean that he was behind the substation, looking at it from your house? A. Yes, behind the substation, looking at my house between the telephone pole and the substation.

Q. If anybody in any of the houses near the corner of the road that goes down the hill had looked out, this man would have been in their full view, wouldn't he? A. Yes.

Q. You told us, at the top of p.24 of the transcript, that you saw a man standing there all day - for all day. That was not true, was it? A. Yes. 30

Q. You stood or sat in the house watching him all day long, did you, and saw him standing there for the whole day? A. When I seen him I kept watching, yes.

Q. You watched all day long? A. Yes.

Q. You say you did not go away all day? A. I was keep looking, you know, and went away and looked again.

Q. And he stood there in the same spot all day, did he? A. No, not the same spot. From time to time he put his head out and was looking towards the direction of my house. 40

Q. When did you see him? You saw him in the early hours of the morning? You saw him quite early in the morning? A. No.

Q. Or late in the afternoon? A. Yes.

Q. Late in the afternoon. And he stood there all day, and you watched him all day, did you? A. I watched him --- 50

Q. How long did you watch him? A. I watched him on and off all day.

Q. When did you first see him? Early in the morning? A. I seen him first on one Saturday morning.

Q. Early in the morning? A. Not early.

Q. About what time? A. About 10.30.

Q. And you kept your eye on him? Kept watching him all day long, did you? A. No. First I was reading some documents, and I looked up to think about it. That is the first time I noticed him. I didn't take too much notice of him. 10

Q. You would not, the first time you ever saw a man standing near the substation, would you? A. No. I didn't.

Q. I suppose you had seen many men standing near the substation on other occasions, hadn't you? A. Yes. Repair men and other men.

Q. Yes. A. Later on I looked up again and see him putting his head out again. At that time I thought, "That is funny". I never thought there was anything wrong. And then I started to be interested. 20

Q. About what time was this, Mr. Barton? A. It was about 12 o'clock.

Q. Did you then watch him all day long? A. Then what I done - I got into my car and went up to the shopping centre and bought a packet of cigarettes and I drove down on the road which is leading behind the substation and I seen the men standing there. 30

Q. Seen the men standing there? A. Yes.

Q. How many men? A. One.

Q. Yes. A. I go back on a different road, and went back to my house, and I was on and off kept looking out at him and I realized what happened - that someone is watching me, and watching my home.

Q. When did you last see him that day, Mr. Barton? What time did you last see him? A. I think it was about 5.30. 40

Q. Then he went away? A. I don't know. That is the last time I seen him.

Q. You gave up watching him? A. I drew the curtain.

Q. Drew the curtain? A. Yes.

Q. And did not bother about him any more? A. No, I bothered about him, and I have decided that I have to do something about it.

Q. So that you went and informed the local police, I suppose, that night, did you? A. No.

Q. Or the next morning? A. No.

Q. Or the next day? A. No.

Q. Monday morning? A. No.

Q. Never made a complaint to the local police?  
A. No.

Q. These men were all mythical, weren't they?  
A. I beg your pardon? 10

Q. What I put to you is that these men that you said you had seen standing around there never were there? A. They were there.

Q. Mr. Barton, after the first time you saw a man standing there of which you have told us you said, on p.24, that you saw a man day after day until practically the 8th January 1967. Do you recall giving that evidence in the fourth question down on p.24? A. I said I seen him there, yes.

Q. Day after day? A. Day after day. 20

Q. Until practically 8th January 1967? A. Yes.

Q. Was that a true answer? A. That is true.

Q. But you only saw a man there once or twice a day? A. Yes.

Q. You are prepared to say he was there all day, are you? A. I can't say all day. But I am prepared to say that members of my family and friends seen him, too.

Q. And they were there, I suppose - they were there through December practically every day until 8th January 1967, is that right? A. I don't know. 30

Q. That is what you told us the other day in your evidence in chief, Mr. Barton. Was it true, or not? A. True.

Q. They were there day after day while you were in Surfer's Paradise from Christmas Eve until New Year's Day or the day after, weren't they? Is that what you say? A. No, I don't mean that. I didn't mean that. I meant they were there at the time when I was home. 40

Q. At the time when you were home and when you looked? Is that what you say? A. At the time when I was in Sydney. At a time when my mother and mother-in-law and my father-in-law and my son seen him, and some of my friends.

Q. Mr. Barton, I did not ask you what other people saw. You know, don't you, that you are not supposed to tell what other people told you? A. I am here to tell the truth.

Q. You say also, at the foot of p.24, that you saw people standing in Pitt Street opposite the Landmark office? A. Yes.

Q. I suppose you see people standing in Pitt Street opposite the Landmark office very time you look out the window, don't you? A. Yes, possibly.

Q. It is highly improbable there is not someone standing in Pitt Street opposite the Landmark office on any business day, isn't it Mr. Barton? A. It is possible. 10

Q. Is it possible, or probable? A. Probable.

Q. Have you got an office which looks out on to Pitt Street? A. Yes, had. I had.

Q. I am sorry. You had an office which looked out on to Pitt Street? A. Yes.

Q. Has there ever been a day, a business day, on which you have looked out of your office window without seeing someone standing in Pitt Street? A. I probably didn't look out every day while I was in the office. 20

Q. You would expect to see people standing there in Pitt Street, wouldn't you? A. Yes. I was not expecting these people following, either.

Q. You say you had people following you? A. Yes, there has been people following me.

Q. You made a complaint to the police about that, didn't you? A. No. I had a bodyguard.

Q. You didn't bother complaining to the police, and asking them to see if they could catch them? A. No. 30

Q. And did your bodyguard try to catch them? A. No. The bodyguard was trying to protect me. That is all.

Q. And these people were following you only during the few days when you had the bodyguard, were they? A. No.

Q. Who did you have to protect you when you didn't have a bodyguard? A. If you like, I can explain to you. 40

Q. You had a bodyguard for about eight days, didn't you? A. I think it was ten days.

Q. For eight or ten days? A. Yes.

Q. Did people follow you, do you say, before you had a bodyguard and after you had the bodyguard? Let us take it bit by bit. Do you say anybody followed you to the city, before you got a bodyguard? A. I cannot be sure.

Q. Did anybody, do you say, follow you after your bodyguard was discharged, in the city? A. Yes.

Q. I see. Did you then go to the police and tell them that people were following you and ask them to see if they could catch them? Did you do that? A. No, I didn't.

Q. And you didn't put the bodyguard back on?

A. No. If you like, I can explain to you why not.

10

Q. Of course, the bodyguard was not costing you anything, was he, when he was on? A. That is why I stopped him, because it was too costly.

Q. Didn't cost you anything, did it? A. No.

Q. Simply sending the bill to Landmark Corporation? A. That is right.

Q. And these people, you say, were following you at times in the city, and from your office to your home, do you? A. Yes, and I seen cars following me. People in it.

20

Q. When you were living at the Wentworth did you get followed from the office to the Wentworth? A. I was - I made sure nobody followed me.

Q. You walked from your office to the Wentworth? A. Yes.

Q. And made sure nobody followed you? A. That is right.

Q. Hid behind corners, did you? A. I beg your pardon?

30

Q. Hid behind corners? A. No.

Q. Ducked through doors? A. No. I just made sure no one followed me.

Q. Just made sure no one followed you? A. Yes.

Q. What did you do to make sure no one followed you? Peered over your shoulder as you walked along the street? A. Would you repeat?

Q. Did you peer over your shoulder as you walked along the street? A. No, I just went in a different direction first, and I approached the Wentworth Hotel from a direction where I can see that there is no one following me.

40

Q. If someone was following you --- A. I beg your pardon?

Q. If someone was following you they could have followed at a distance? A. I told you I made sure no one followed me as I approached the Wentworth Hotel. That was my definite approach.

Q. Did anyone follow you when you left the office and went in the other direction? A. I could not say that anyone followed me then.

Q. Mr. Barton, the evidence you have given as to being followed is a figment of your imagination, isn't it? A. It is not. It is true.

Q. Now, Mr. Barton, at pp.27 and 28 you told us about a lot of telephone calls. A. I beg your pardon? 10

Q. You told us about a lot of telephone calls?  
A. Yes.

Q. I think you told us that over a period of time you received telephone calls early in the morning between four o'clock and five o'clock? A. Yes.

Q. Always between 4 a.m., and 5 a.m.? A. Yes.

Q. And on these calls, of course, except for one or two occasions, no voice answered? A. Yes.

Q. And extended over this 18 months period with great frequency and regularity, is that what you say? A. I didn't say that. I said on and off. I had a few days in a row, and a break, and started again and off again. 20

Q. And that continued on as the pattern for some 18 months? A. Yes, except about two and a half months when Mr. Armstrong has been overseas.

Q. Which two and a half months is that? A. I beg your pardon?

Q. Which two and a half months is that? A. I am not sure. I told you that before. 30

Q. Don't you remember? A. No.

Q. Well, in which year did this period of two and a half months in which you got no calls at all take place? A. In 1967.

Q. In the first half or the second half of 1967?  
A. Better I say I don't know, because I have two recollections. Therefore better I say I don't know.

Q. You recall that I showed you an answer you had given to an interrogatory the other day in which you said that it was about two and a half months, I think, during September and October 1967? A. I think it was August and September. 40

Q. What? A. I think it was August-September.

Q. August-September? Just a moment, and I will check it. Yes, I think your recollection is right. You said there was no occasion during the period of about two and a half months in approximately August and September 1967? A. Yes.



Q. So that it was in the second half of the year?

A. That is my best recollection. I cannot be very sure.

Q. So that whilst Mr. Armstrong was away in 1967 I put it to you these calls you say went on, and almost immediately he came back to Australia they stopped for two and a half months. What do you say to that? A. Would you repeat again? I missed it.

Q. The time Mr. Armstrong was away in 1967 was from the end of April to the end of July, wasn't it?

10

A. I don't know.

Q. Anyway, the calls stopped immediately after he came back to Australia, didn't they, according to your story? A. Stopped?

Q. Stopped, yes. That is what you are saying, isn't it? A. No. It is not what I am saying. The calls stopped when he left.

Q. Well you know, then, when Mr. Armstrong left Australia. What I want to put to you is that Mr. Armstrong left Australia on 30th April 1967 and returned to Australia on 31st August 1967? A. 31st August?

20

Q. 31st July, I am sorry. 31st July he returned to Australia. A. I don't know.

Q. But you just told us that these calls were going on, and only stopped when he was away? A. Yes, that was my best recollection.

Q. And you say, Mr. Barton, that they stopped for a period of about two and a half months in approximately August and September 1967? A. Yes.

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Q. Are you telling the truth, Mr. Barton? A. Yes, I am.

Q. Mr. Barton, of course you have sought the assistance of the Postmaster-General in tracing the caller who makes these regular early-morning calls, haven't you? A. Yes, I did.

Q. And the P.M.G. has lent his assistance? A. Yes.

Q. And caught him, has he? A. They made a hell of a mess of it.

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Q. What? A. They made a hell of a mess of it, what they done.

Q. Don't tell me what they have done. Thank you for your comment. You say that you asked the P.M.G. to trace these calls and the source of them and that in the course of 18 months right up to the end of 1967 they have been quite unable to do it? Is that what you are telling us? A. No.

Q. And you tell us that these calls have gone

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on right through 1967 except for this period in August and September or thereabouts of two and a half months? A. Yes. I indicated to you I am prepared to tell you -

Q. Throughout that whole time it has been quite impossible for the P.M.G. you say, do you, to trace the source of these calls? A. I didn't say that. I said they made a hell of a mess of it.

HIS HONOUR: Mr. Barton, I don't think we will have extravagant language. 10

WITNESS: I am sorry.

MR. STAFF: Q. Mr. Barton, I think you told us at one stage, on p.25 of the transcript - I don't think you told us this in your evidence; my friend may correct me if I am wrong - in para. 25 of your affidavit of 4th January 1968 you said, in relation to the telephone calls, "Frequently the caller apparently left the telephone off the hook so that my telephone was unusable for long periods"? A. Yes. 20

Q. Was that true? A. That is true.

Q. And you told the Postmaster General too, I suppose, did you? A. Yes.

Q. So that there were many periods of time when your telephone was unusable? A. Yes.

Q. And you asked the Postmaster General to trace the calls - the source of them? Yes? A. That is right.

Q. Tell me, in the Landmark Corporation building the lift was automatic, wasn't it? A. The lift? 30

Q. The lift. Elevator. You know? A. Yes.

Q. The thing that went up and down? A. Yes, what you call automatic. Press a button and goes.

Q. No lift driver? Nobody drove the lift? A. No.

Q. Except the passengers? A. Yes.

Q. By pushing the button? A. Yes.

Q. Do you recall that you gave some evidence, on p. 95 of the transcript, your answer being this. This is the second-last answer on the page: "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 switch girl and a lift driver ..."? A. Yes. The lift driver is in 126 Phillip Street. 40

Q. An employee of the company? A. No, an employee of Vanguard Insurance.

Q. Although you said - what you said was

"... Mr. Armstrong ran my reputation down, not only with Mr. Bovill, but employees of the company, including a switch girl and a lift driver and real estate agents and company representative at Surfers Paradise"? A. Yes.

Q. You say some lift driver way away from the Landmark office? A. No. We had an office there at 126 Phillip Street.

Q. That was in 1964, was it? A. Yes. 10

Q. You say you are talking in this answer about a lift driver to whom something was said in 1964, or before then? A. That is general. That is a general complaint I was talking about.

Q. What you were talking about was a lift driver in a building you had left years before, was it?  
A. Yes.

Q. In answer to a question about Mr. Armstrong's latest attempt to run your reputation down? (No answer.) 20

HIS HONOUR: To be fair to the witness, Mr. Staff, you may remind him of the earlier part of the answer.

MR. STAFF: Yes. He said he was objecting for a long time that Mr. Armstrong ran his reputation down.

Q. Your objection to Mr. Armstrong running your reputation down has been a continuing one over two or three years, hasn't it? A. Yes. Always promised me not to do it again, and always broke his promise. 30

Q. Ever since you knew him? A. Starting in 1964.

Q. Well, that was very soon after you first met him, wasn't it? A. No.

Q. Very soon after you first had any business association with him? A. That was in the middle of 1963.

Q. So that it happened within six months, or a little more --- A. Yes.

Q. - of your first going to the company? A. Yes. 40

Q. And continued thereafter? A. Yes.

Q. Repeatedly and frequently? A. Yes. Regardless of his promise that he was not going to do it.

Q. And your relationship remained fairly friendly until July or September, 1966, notwithstanding? A. On the surface. I don't like to make any remark against Mr. Armstrong unduly. Therefore I am satisfied with that answer.

Q. (Approaching witness.) Mr. Barton, I just

want you to look at the notice dated 14th November 1966. Is that Mr. Hoggett's signature appearing on it? A. Yes.

Q. Do there follow copies of two letters - one of 24th November and one of 23rd November 1966 - one, I think, signed by you? A. Yes.

Q. Is that your signature, as Chairman of Directors? A. Yes.

Q. 24th November? A. That is my initials. 10

Q. And the other appears to have been signed by Mr. Marks? A. Yes.

Q. Is the notice signed by Mr. Hoggett one which was received by the company about 14th November? A. Yes.

Q. And the copy letters are copies of letters written on or about the dates they bear? A. Yes.

(Letters tendered; objected to; tender not pressed.)

Q. At p.34 of the transcript you gave some evidence of a conversation which you said you had with Mr. Armstrong, that on 7th December, at a Paradise Waters (Sales) meeting, in front of everybody present Mr. Armstrong, you said, said to you "You can employ as many bodyguards as you want. I will still fix you"? A. Yes. 20

Q. And the people present at that meeting, Mr. Barton, were yourself, Mr. Armstrong, Mr. Beale, Mr. Bovill, and Mr. Cotter as directors; and in attendance Mr. Marks, Mr. Peter Bowen, Mr. Solomon of Allen, Allen & Hemsley and Mr. Grant? A. Yes. 30

Q. Is that right? A. If you say so, yes. I will take your word for it.

Q. Would you like to look at the minute? A. No. I take your word for it.

Q. You are prepared to accept that? A. Yes.

Q. You say this conversation took place in front of all those people, and in their hearing, do you? A. Most of them was present. I don't know what time they arrived. This was just before the meeting started. 40

Q. You say it took place before the meeting started, do you? A. During the ---

Q. In the course of the meeting? A. Everyone was settled into the table. In front of everybody. But I don't know when the solicitors arrived. I know Mr. Grant was present, because he came with Mr. Armstrong, but I am doubtful about Solomon or Peter Bowen.

Q. You said in your evidence in chief, "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'?" A. Yes.

Q. Now, were all these people I read out - the names I read out to you - were they all present when you say this conversation took place? A. Yes. I don't know if all of them was present. There can be one missing. But most of them was present, I am satisfied, at that time. 10

Q. It took place during the course of a board meeting? A. I think just before the meeting has been opened, or just when it has been opened.

Q. Of course, at this point of time when Mr. Armstrong came into board meetings he came with Mr. Grant, didn't he? A. Yes.

Q. And he used to leave with Mr. Grant, didn't he? A. Yes. I said that Mr. Grant was present all the time. 20

Q. And on the 7th December at this meeting Mr. Bowen tabled the judgment in the proceedings by Finlayside v. Landmark & Ors. Do you recall that? A. I think that was the meeting.

Q. What I want to put to you is that that conversation of which you gave evidence did not take place? A. It took place.

Q. Do you say it took place in the hearing of all those present at that meeting? A. It is up to them what they heard, but it took place in front of them. 30

Q. Of course, you did not have any bodyguards at that point of time, did you? A. No.

Q. You put them off? A. Yes.

Q. And you never again got them? A. I got one on the 17th January for the Rex Hotel.

Q. He was not a bodyguard. He was only an observer, wasn't he? A. No, he was a bodyguard. I ordered a bodyguard to protect me when I visited the witness from Queensland at the Rex Hotel. 40

Q. And after three hours you discharged him? A. I beg your pardon?

Q. After three hours that evening you discharged him, and told him he was not further needed? A. I have not seen the man.

Q. What I want to put to you is that you engaged him simply to watch you? A. I engaged him to protect me for that single time.

Q. You say you never saw him that night? A. No. 50

Q. And you didn't dismiss him? A. I beg your pardon?

Q. You didn't dismiss him after three hours?  
A. No. What I done, I rang Mr. Fleming, and told him I have to go and meet ----

Q. I didn't ask you that, Mr. Barton. A. I beg your pardon.

Q. You say you did not see the man on the Sunday night - on the Saturday night? A. Saturday night. 10  
No, I didn't.

Q. So that you did not yourself dismiss him? A. No. I only hired him for that period.

Q. And you, of course, want to tell us that Mr. Armstrong said, "You can employ as many bodyguards as you want. I will still fix you". You didn't go and re-arrange for another bodyguard? A. No.

Q. But that statement terrified you, I suppose, did it? A. Oh yes. I was frightened all the time at that period. 20

Q. Did you get more frightened when he said that to you? A. Yes.

Q. Much more frightened? (No answer.)

Q. More frightened, less frightened, or just stayed frightened - the same degree of fright? A. The same degree.

Q. So that this statement which you say was made did not add anything to the fright you already felt?

A. Yes. It just made me think more of the danger. 30

Q. And on 14th December, of course, there was a board meeting of Paradise Waters (Sales), I think, or Paradise Waters - one of the Paradise companies, wasn't there? Paradise Waters Limited. I will put it all over again? A. Yes.

Q. On 14th December there was a meeting of Paradise Waters? A. A board meeting, yes.

Q. And present at that meeting were yourself and Mr. Armstrong and Mr. Beale and Mr. Bovill, and in attendance Mr. Marks, Mr. Bowen and Mr. Grant? A. Yes. 40

Q. Mr. Armstrong, of course, arrived with Mr. Grant? A. Yes.

Q. And he went away with Mr. Grant? A. Yes.

Q. At p.34A of the transcript you told us that Mr. Armstrong persuaded you to leave the boardroom?  
A. Yes.

Q. Was that at the end of the meeting, during

the meeting or at the beginning of the meeting?

A. That was at the end of the meeting.

Q. After all the business was over? A. I think so.

Q. He persuaded you to come out of the boardroom?

A. Yes.

Q. And go to your office, you say? A. Yes.

Q. And you were terrified about going into your office, were you? A. Well, I didn't want to be on my own with Mr. Armstrong. 10

Q. Were you terrified of being with him on your own? A. I was not terrified. I didn't like much. I didn't like the idea.

Q. You were not then frightened, were you, of being alone with Mr. Armstrong in your office? A. I promised my co-directors that I don't talk to Mr. Armstrong on my own without witnesses. Therefore I didn't want to go.

Q. Yet you say you went into your office with him on your own? A. Yes. 20

Q. Did you have a witness? A. I had my co-directors seen it, and Mr. Armstrong said "very important" and I went.

Q. Mr. Grant was there, of course, when this happened, wasn't he? A. At the board meeting, yes.

Q. He was in the office when this happened, you say? Mr. Grant, you say, was there when Mr. Armstrong asked you to leave the boardroom and go into the office with him? A. Yes. 30

Q. So that you ultimately went? A. Yes.

Q. What I want to put to you is that the conversation you have given evidence of at p.34A of the transcript which you say you had with Mr. Armstrong on that occasion didn't take place? A. It did take place.

Q. I put it to you the words, "I will have you fixed" were not used? A. Has been used.

Q. You say they were used on that occasion? A. Yes. 40

Q. I put it to you that Mr. Armstrong did not go into your office with you alone on that day? A. He did.

(Further hearing adjourned to 10.00 a.m., on Tuesday, 4th June, 1968.)

IN EQUITY

No. 23 of 1968

CORAM: STREET, J.

BARTON -v- ARMSTRONG & ORS.

TENTH DAY - TUESDAY, 4th JUNE, 1968.

HIS HONOUR: It can be noted that a call is made on Allebart Investments Pty. Limited, Allebart Pty. Limited and Home Holdings Pty. Limited to produce certain documents said to be covered by subpoena duces tecum and that the documents are produced by the plaintiff's counsel to the defendant's counsel.

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PLAINTIFF

On former oath:

HIS HONOUR: Q. You are still on your oath to tell the truth, Mr. Barton? A. Yes.

MR. STAFF: Q. Mr. Barton, the defendant Landmark Corporation Limited is in the course of being wound up under an order of the Supreme Court of New South Wales, is that right? A. Yes.

Q. And I think the defendant, Landmark (Queensland) Pty. Limited and the defendant Landmark Housing and Development Pty. Limited are companies which are in the course of being wound up under orders made by the Supreme Court of Queensland? A. Yes.

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Q. And the defendant Landmark (Queensland) Pty. Limited was a wholly owned subsidiary of Landmark Corporation Limited, wasn't it? A. Yes.

Q. Paradise Waters (Sales) Pty. Limited at the date of commencement of the suit was also a wholly owned subsidiary of Landmark Corporation Limited? A. Yes.

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Q. Paradise Waters Limited was a wholly owned subsidiary of Paradise Waters (Sales) Pty. Limited? A. Yes.

Q. The defendant Goondoo Pty. Limited was a wholly owned subsidiary of Landmark Corporation Limited, wasn't it? A. I am not sure about that.

Q. Or, if it was not, it was a wholly owned subsidiary of a company which was a subsidiary of Landmark Corporation was it? A. That is right, one or the other.

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Q. Landmark Home Units Pty. Limited was a wholly owned subsidiary of Landmark Corporation Limited? A. Yes.

Q. Landmark Finance Pty. Limited was a wholly owned subsidiary of Landmark Corporation? A. No.

Q. It was not? A. No.



Q. The 13th defendant, Landmark Housing and Development Pty. Limited was a subsidiary of Landmark Corporation? A. Yes.

Q. Landmark Finance Pty. Limited - the 12th defendant - was a subsidiary of Hawkesbury Finance. A. Hawkesbury Development.

Q. Hawksbury Development Pty. Limited? A. Yes.

Q. Although I think the position is not now the same, Hawkesbury Development Pty. Limited I think was - had been prior to the institution of the suit, a subsidiary of Landmark Corporation Limited. A. Partly owned by Landmark. 10

Q. Partly owned by Landmark Corporation? A. Yes.

Q. Home Holdings Pty. Limited, Allebart Pty. Limited and Allebart (Investments) Pty. Limited, the 19th, 20th and 21st defendants, are companies the shareholders in which are you, your wife or your son, aren't they, or one of those companies? A. One of those companies, yes. 20

Q. Will you look at the cheques which I show you? Will you see on the cover that they have the name Allebart Pty. Limited? A. Yes.

Q. Are those books I show you - are they cheque books of that company? A. Yes.

Q. The butts are butts of cheques drawn by that company? A. They are the cheque books.

Q. The third one produced this morning has the name "Allebart Investments Pty. Limited" on it. Will you look at that? A. Yes. 30

Q. That is the cheque book of that company is it? A. Yes.

Q. Is there a cheque book with any butts for cheques drawn by Home Holdings Pty. Limited? A. No.

Q. It has no cheque book? A. But I have got a bank statement for this period that the subpoena was for.

Q. I show you a bank statement of Home Holdings Pty. Limited? A. Yes.

Q. You see the first entry, dated 25th July 1966? A. Yes. 40

Q. The particulars are "C/bk. debit \$4"? A. Yes.

Q. That is a debit for a cheque book? A. Yes.

Q. What happened to that cheque book? I have no idea. This company has not traded. I made a full search for that yesterday, and I found no cheque book, and the bank statement is showing the whole transaction that this company carried through.

Q. Mr. Barton, at p. 27 of the transcript, about two-thirds of the way down the page, you gave evidence that you recognised Mr. Armstrong's voice on the telephone in January 1967 on an occasion on 50

which you said that Mr. Armstrong said simply the words, "You will get killed?" A. Yes.

Q. Was that conversation, you say, before or after 17th or 18th January? A. Before.

Q. Before? A. Yes.

Q. How much before do you say that conversation was?  
A. I don't know.

Q. What I put to you is that on no occasion did you recognise a voice as Mr. Armstrong's voice saying "You will get killed." What do you say to that? A. That is not true. 10

Q. Mr. Barton, on p. 34A, at the top of the page, you told us that on 14th December in your office Mr. Armstrong said to you, "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 cents each I will have you fixed." A. That is true. 20

Q. What I want to put to you is that that conversation did not take place? A. That took place, that conversation did take place.

Q. You say, do you, that the words at the end of the conversation used by Mr. Armstrong were, "I will have you fixed?" A. Yes.

Q. Mr. Barton, you told us on p.6 that in the second half of 1963 you were invited to join the Board of Landmark Corporation Limited. What I want to put to you is that it was not until 15th October, 1964 that you were appointed as a director of Landmark. Do you agree with that? A. No. I don't. 30

Q. That is about a year after you said you had an invitation. What do you say about that? A. No. In 1964 I has been appointed as managing director. I already been a member of the Board.

Q. At pp.49, 50, and 54 & 56 you gave some evidence as to looking at a document in the C.I.B. in the presence of Detective Follington which you described and said had the heading, "Record of Interview between Detective Sgt. Wild and Frederick Hume?" A. Yes. 40

Q. You recall giving that evidence? A. Yes.

Q. What I want to put to you about that is that you did not look at a document so headed in the C.I.B. in the presence of Constable Follington? A. I did.

Q. On that day or on any other day? A. I did.

Q. You say it was taken out of Sergeant Wild's locker, do you? A. No, I said it is taken out of a steel locker. I don't know whose locker it was. 50

Q. Do you tell his Honour that the locker was locked when Constable Follington went to it, or unlocked? A. I did not say it is locked. It is unlocked.

Q. It was unlocked? A. Yes.

Q. At pp. 52 and 58 of the transcript you gave some evidence in which you said that on 12th January you had a telephone conversation with Mr. Armstrong when you were at Landmark Office? A. Yes.

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Q. You had told us in that conversation Mr. Armstrong said to you, "You had better sign this agreement, or else?" A. Yes.

Q. And that you said to him that you would not let yourself be blackmailed into any agreement. That is in the middle of p. 52? A. Yes.

Q. What I want to put to you is that on 12th January you had no such conversation with Mr. Armstrong. A. I had.

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Q. Then at pp. 58 and 59 of the transcript - just at the top of p.59, in answer to the question which starts on p. 58, you said that you received a phone call about 8.20 a.m. on the morning of the 16th January from Mr. Armstrong. Can you recall giving that evidence? A. Yes.

Q. Where were you when you received that telephone call? A. I was in Landmark Corporation office.

Q. I see. You said on that occasion that Mr. Armstrong said to you, "Unless you sign that document you will be dead - you will be killed." A. I didn't say "You will be dead".

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Q. Your answer - I will read it to you - was, "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." A. No.

Q. That was not the conversation? A. That is not my answer. "You will get killed" - that was Mr. Armstrong's statement not, "You will be dead".

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Q. What I want to put to you is that your evidence as to that conversation is untrue? A. It is incorrectly recorded.

Q. I want to put to you that no such conversation took place on the morning of 16th January? A. It did.

Q. You were not in the habit of going to Landmark Office at 8.20 or thereabouts in the morning, were you? A. Not usually.

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Q. Not usually? A. No.

Q. It was usually much later when you arrived at Landmark Office, wasn't it? A. Yes. But this time early in January I arrived very early.

Q. At pp.27 to 29 of the transcript you gave some evidence about receiving a number of telephone calls. Now, Mr. Barton, I want to put to you that the employment of security guards or bodyguards about which you have told us ceased at the end of - ceased at about 7 a.m. on 3rd December, 1966?  
A. 3rd December, Yes.

Q. I put it to you at about 7 a.m. That is in the early morning of that day? A. I don't know. 10

Q. The general meeting had been held on 2nd hadn't it? A. Yes.

Q. And in the days prior to the general meeting these bodyguards - some of them - were used to collect proxies from shareholders for the purpose of the general meeting, weren't they? A. No.

Q. On no occasion, do you say? A. None whatsoever.

Q. In any event, we have your evidence about the threats, you say, which had been made to you up to the 3rd December? A. Yes. 20

Q. And is it correct that what you have told us is that the threats got worse after that date? A. Yes.

Q. You got more frightened? A. Yes.

Q. So that as the threats got worse you discharged the bodyguards and did without them? A. I discharged the bodyguards after the general meeting because I thought that Mr. Armstrong will accept the shareholders decision and -

Q. Then you tell us, do you, that the threats got worse? A. Yes. 30

Q. And you didn't - your terror or your fright got worse? A. Yes.

Q. So you proceeded on without bodyguards? A. Yes.

Q. As things got worse? A. Yes.

Q. And then you got to the 13th January. At that point of time your idea of your duty to the shareholders of the company prevailed over your terror did it? A. Will you repeat that question please?

Q. By the 13th January you had become - A. 1967?

Q. By the 13th January 1967 you had become very terrified, hadn't you? A. Yes. 40

Q. And on that day you stopped and thought about the situation, did you? A. Yes.

Q. And it was on that day, was it, that your conception of your duty to the shareholders overcame your terror? A. No.

Q. But you have told us that on the day you formed the view that you would not go on - you would not

be forced into signing the agreement? A. Yes. I told Mr. Smith.

Q. And you decided, didn't you, on that day, that because of what you had thought to be your duty to the shareholders you should stand up and not be terrorised into signing the agreement? A. No I had been promised protection by the C.I.B. They said they would protect me whatever happened.

Q. They said that to you? A. Yes.

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Q. When did they tell you - A. All the time.

Q. Anyway, by 13th January you overcame your terror and you decided you would not go on with the proposed transaction, is that right? A. I not completely overcame the terror as you put it, but I thought I should not go into this agreement.

HIS HONOUR: Q. What was that? You thought you - A. "I not go into the agreement."

MR. STAFF: Q. Anyway, you tell us that on 10th January you said to Mr. Armstrong that you would not let yourself be blackmailed into the agreement? A. Yes.

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Q. And the next day you told Mr. Smith you were not prepared to sign an exchange document on behalf of yourself and you were not prepared to advise your co-directors on behalf of Landmark Corporation? A. I did.

Q. Is that right? A. Yes.

Q. So that by that Friday, 13th January, you had decided, had you not, that you just would not go on with the matter? A. Yes.

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Q. And that, notwithstanding your terror, you were not going to enter into the agreement to pay? A. Yes.

Q. And then over the weekend - I am sorry, then on the Monday morning you say you had another telephone call from Mr. Armstrong? A. Yes.

Q. And what he said on this day was no different from what you say he had said to you previously was it? A. He said that unless I signed the agreement I will get killed -

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Q. And that was no different from - no different sort of threat than that which you say he had made to you earlier, was it? A. It was the way he said it was different. Slightly.

Q. Did he say it more ferociously? A. No He said it very calmly, very oalculated way.

Q. Very - A. Very caloulated way.

Q. These earlier conversations in which you say he made threats to you had not been said in a calculated way? A. Most of the time, yes. Some of the time he was excited.

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Q. When he was excited you were inclined to take little notice of him were you? A. No Mr. Staff, I don't want to give answers which unduly are only expressing my own opinion, but I have a reason - a good reason - to tell and to believe that Mr. Armstrong's threats are true, and what he threatens against my wife.

Q. I didn't ask you that. Anyway, on the 17th January this conversation revived all your old terror and fear did it? A. On 16th. 10

Q. On 16th was it? This revived all your old terror and fear, did it? A. Not revived. Just continued it. It made me to decide that I should more worry about my safety than to sign any document.

Q. You decided then that it was not your duty, you tell us, to get killed? A. Yes I told Mr. Smith. I rang him after nine o'clock.

A. Anyway, on that day, as the result of one telephone call which you say you had with Mr. Armstrong. you decided that it was not your duty to be killed? A. Not that one phone call. All of the happenings. 20

Q. But on the Friday you had decided that you would take the chance hadn't you? A. Yes.

Q. And one telephone call on Monday morning changed your mind? A. Yes.

Q. And you tell us at p. 54 of the transcript that you had a conversation with Mr. Bovill about the matter? A. Yes.

Q. And you told us, at the top of p. 54 that you told Mr. Bovill you did not think it was your duty as a director to go that far that you should get killed. You told Mr. Bovill that? A. I didn't tell that to Mr. Bovill. 30

HIS HONOUR: What was that answer? A. I didn't tell that to Mr. Bovill. I hold Mr. Bovill that now I strongly recommend him to sign the agreement, and I gave him that comment.

Q. "I gave ..." A. I gave him this comment that I told Mr. Bovill that my duty as a director don't go as far as to get killed. 40

MR. STAFF: Q. You say you told Mr. Bovill that? A. I didn't.

Q. Do you recall at p. 53 of the transcript saying that after the phone call from Mr. Armstrong which you received in the morning about 8.20 "I phoned Bovill and asked him to come to Landmark Corporation Office and I have told him that I have direct threats to kill by Mr. Armstrong." A. Yes.

A. And I also have been threatened by other people what I can't disclose because that is under investigations by the C.I.B.? A. Yes. 50

Q. You told him that, did you? A. Yes.

Q. Do you recall also saying "I also told him that I purchased a rifle for self-defence." Did you tell him that? A. Yes.

Q. "And he already knew that I am not living at home." A. Yes.

Q. "I told him before that I am living at the Wentworth Hotel." A. Yes.

A. And then do you recall saying "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." A. I told him that I no longer - 10

Q. Do you recall giving that evidence in your examination in chief? A. Half of it, yes. Half of it I said -

Q. Do you deny that you gave the evidence in chief recorded at the top of p.54 in the transcript in these words, "Then I told Mr. Bovill that I am no longer prepared to refuse the demands of Mr. Armstrong." A. Up to there, yes. I said up to there. 20

Q. "Because I just don't think it is my duty as a director to go that far that I should get killed." A. That is my comment. That is my comment -

Q. I think you told us a few moments ago that you said to Mr. Bovill "I strongly recommend signing the agreement". A. Yes, I did. 30

Q. And that is what you told him that morning, was it? A. I told him all of this what you -

Q. But you didn't tell him- you say you did not tell him what is recorded at p.54 of the transcript: "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...?" A. I did tell him I am no longer prepared to refuse the demand of Mr. Armstrong, but I said because - myself, I came to the conclusion my duty as a director don't go that far to be killed. 40

Q. And when you told Mr. Bovill what you did in this conversation he commenced to analyse the agreement? A. Yes.

Q. Is that correct? A. Yes.

Q. Now on this occasion do you say that you in fact recommended to Mr. Bovill that the company should enter into the agreement? A. Yes I did.

Q. And that is in substance what you told him, was it, on that morning? A. No I told him a lot of other things that has not been questions asked about. 50

Q. What? A. I spent long hours with John Bovill.

HIS HONOUR Q. "Long?" A. "Long hours."

Q. You spent long hours with Mr. Bovill. A. Yes.

MR. STAFF: Q. You told him, did you, that it was a good commercial deal for the company? Did you tell him that, or something like that? A. Something like it, yes.

Q. Did you tell him you were quite happy to enter into the deal yourself, or something like that? 10  
A. No.

Q. Something like that? A No.

Q. Did he ask you whether you were content to buy the shares that you were buying? A. I told him I have decided to buy those shares.

Q. He didn't ask you what you thought about that as a commercial proposition? A. No.

Q. What I want to put to you is that when you came to sign these agreements your view was that they constituted an advantageous commercial proposition both for the companies and for yourself? A. That is untrue. 20

Q. Now, Mr. Barton, do you recall some proceedings being commenced in June 1967 in which Landmark Corporation Limited was the plaintiff and Southern Tablelands Finance Pty. Ltd. was the defendant?  
A. June?

Q. June 1967? A. It is possible.

Q. Do you recall about that time some proceedings were commenced by Landmark Corporation to restrain the presentation of a winding up petition? A. For what? 30

Q. A claim made by Southern Tablelands Finance Company for payment of the dividend? A. Yes.

Q. Do you recall that you swore two affidavits in those proceedings? A. I don't recall that I swore two affidavits, but possible.

MR. STAFF: May I have the papers in suit 650 of 1967?

Q. Whilst they are being found, Mr. Barton, the cheque books for Allebart Investments Pty. Limited, - I will withdraw that for the moment. There are, of course cheque butts in respect of cheques drawn by Allebart Investments Pty. Limited and Allebart Pty. Ltd. which do not appear in these books? A. I don't know. 40

Q. Transactions of these companies were under your control? A. Yes.

Q. At all times? A. Under my control, as a 40% owner of them. 50



Q. I suppose you drew most of the cheques, did you?  
A. Yes.

Q. Signed most of the cheques? A. Yes.

Q. In June 1967 Allebart Investments Pty. Limited bought shares in Landmark Corporation, didn't it?  
A. In June?

Q. June 1967? A. No. It paid for the shares at that time. It has not bought at that time.

Q. On 7th June 1967 it paid a broker \$2482 odd?  
A. Yes.

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Q. For 8,800 shares in Landmark? A. Yes.

Q. Which it had bought? A. Yes.

Q. A purchase of which you approved, I suppose?  
A. Oh yes. I had a very good reason for it in the best interests of the creditors and the shareholders.

Q. And in December, 1966 the company bought shares in Landmark Corporation didn't it? A. Yes. Possible. Had a very good reason. That has been suggested by Mr. Polkinghorne, the chairman of the Sydney Stock Exchange.

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Q. And in January 1967 Allebart Investments Pty. Limited lent some money to Landmark Corporation?  
A. January 1967?

Q. January 1967? A. Yes.

Q. This is a loan to a company whose prospects you considered hopeless? A. It was on 2nd or 3rd mortgage on some Real Estate properties mainly to see that the company's salaries and wages are paid, and, I might add, on a very low interest rate, which I never collected.

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HIS HONOUR: Mr. Staff, if Mr. Gruzman does not ask it in re-examination I should like to ask what are the circumstances surrounding the June 1967 purchase. You may prefer to ask some questions on it, so that you can cross-examine on anything further.

MR. STAFF: I am quite content.

Q. Can you tell us approximately when you gave the buying order or the company gave the buying order for these shares which were paid for in June 1967?  
A. I think in April 1967.

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Q. And you bought shares at 28 cents? A. I don't recall.

Q. Don't you recall? A. No. But it is possible.

Q. What? A. I don't recall, but it is quite possible.

Q. What I put to you is that the only time the shares

were at 28 cents or thereabouts was about 5th April - 9th May. Does that help you? A. Would you repeat the question please?

Q. I want to put to you that it was - I am sorry, perhaps I won't put that. You say in April, do you? A. Yes.

Q. That is your recollection? A. I think it is April, yes.

Q. And you bought, or the company bought some 8800 shares? A. Yes, I was trying to keep up the value of the Landmark shares. 10

Q. And this is at a time when you regarded the shares as worthless? A. Yes.

Q. You spent the Allebart Companies money in buying up at 28 cents shares that you thought were worthless? A. Yes. In the best interest of the creditors and shareholders of Landmark Corporation Limited.

Q. Will you tell us in what circumstances you bought the shares? A. Yes. When the negotiations with Stook & Holdings has broken down on the Paradise Waters Estate the managing director of Stook & Holdings suggested to me that he was interested to take over Landmark Corporation Limited - the whole company - and I thought it is very good idea in the interests of the creditors and shareholders because I knew that creditors not likely to get paid, and I knew that the shareholders get nothing, and negotiations which has lasted about two weeks was taking place with Irving Graff and Julius Varga. We spent long hours, and these lasted about 2 weeks. They asked me questions about the assets and liabilities of Landmark and I took with me as much information as I can. This was taking place in Stock & Holdings office and on these negotiations Irvine Graff came to the conclusion that the company's assets worth 3 cents and the tax loss worth 20 cents, and he says that he prepared to offer to the shareholders 23 cents for the shares, subject if the auditors were satisfied themselves with this information - satisfied that these informations what I have gave them is correct, and that no danger will come to them about tax investigations which was in progress against Landmark at that time, and when he asked me what is my opinion about the possible liability of these tax investigations I told him it would be between \$200,000 and \$300,000 and then he decided not to go on with it. 20 30 40

I purchased these shares - not me, but Allebart Investments - to keep their values up on the market at the time when I was negotiating with Stook & Holdings. 50

Q. When do you say these negotiations took place?  
A. I think it is April.

Q. Do you say that it took place after the negotiations with Stocks & Holdings to buy the Paradise Waters estate had broken down? A. Yes.

Q. Of course, may I remind you that on 9th May 1967 you wrote to the Bank of N.S.W. telling them that you did not need any money to re-finance the mortgage? A. I didn't recall that letter. Stock & Holdings - I could be wrong in dates, but I think it was 31st March when Stock & Holdings wrote that letter, or round about that time, and the solicitor acting for me got Fairley Q.C. from Brisbane down to advise us and also Stock & Holdings regarding the legal position of the titles of Paradise Waters Estate and also the options which has been given to Mr. Armstrong or his nominees and how this is affecting Stocks & Holdings.

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Q. Do you recall that last week I showed you a letter you had written to the Bank of N.S.W. on 28th April, in which you had said that Stocks & Holdings - arrangements had been made with Stocks & Holdings to enter into a contract? A. Yes. All of them was at that time - at the end of April or early May. I don't know. But I am sure Stocks & Holdings has a good file on it.

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Q. You bought the shares on the Stock Exchange, or the company bought the shares on the Stock Exchange? A. Yes.

Q. Through a broker? A. Yes.

Q. And paid the broker in July - in June. Paid the broker on 7th June 1967? A. I had accounts with him. I paid him when he sent the account.

Q. Do you usually take 2 or 3 months to pay your broker? A. Not 2 or 3 months. I always paid out when he sent me the invoices. It is most likely I purchased in early May or the end of April.

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Q. Cheque butt 22549, dated 7th June, 1967, to Ian H. Platt-Hepworth, purchase of 8,800 Landmark Corporation shares, \$2,482.30? A. This has been purchased through a long period. I instructed him to keep trying to hold the market up as much as he could.

Q. Through a long period? A. Through a couple of weeks probably, or something like that.

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Q. Were they at different prices, or at the one price? A. I don't know. Probably different prices.

Q. You had told us, I think, that you had continued to receive some telephone calls through 1967? A. Yes.

Q. And I think you gave some evidence of having received - this is on pp.125 and 126 of the transcript - you gave evidence that you received some telephone calls during that year in which no voice spoke? A. Yes.

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MR. GRUZMAN: I take general objection to these questions.

HIS HONOUR: Yes, I will allow them.

Q. I take it that throughout the year 1967, almost to the end of it, you continued - you say you continued to remain in terror of your life? A. Yes.

Q. And is that, do you say, why you did nothing to attack the validity of the agreements at an earlier point of time than January 1968? A. Yes. I has been advised by the C.I.B. during the year on many occasions that the arrest of the people responsible to my fears will happen, and I thought it is a matter for the C.I.B. and not a matter for me, and I then thought that if I start any action myself I finally will get killed because all these people were, according to my knowledge except the witness from Queensland, at large, but in early July 1967 when Bruce Henry Smith has been appointed to be the trustee elect of Landmark Corporation scheme of arrangement at his invitation I went with him to Brisbane to see Kratzmann, and on the airplane I told Mr. Smith that I think it is my duty now, because he has brought to the firm a scheme of arrangement, that he should know what really happened to me in 1966 and early 1967, and I told him all about Mr. Armstrong's threats. I told him about the visit to the C.I.B. and I told him the reason why I purchased the shares. I told him the reason why I talked the company to enter into the agreement, and I told him in great detail that he should know what he is doing because I wanted to put the responsibility off my shoulders to Mr. Smith's shoulders of this matter, and then he said to me. "Oh, Alex, you have no problem. You can claim duress." I told him, "Yes, I know that, but I don't dare."

Q. Before you had the conversation which you say you had with Mr. Smith, you knew, as you put it, that you could claim duress to escape obligations? A. I knew that this agreement was not a commercial transaction. Put it this way: I knew I can have some legal remedies.

Q. You knew that? A. Yes.

Q. At what time did you know that? A. I beg your pardon?

Q. At what time did you become aware of that?. A. I think in April or May.

Q. And the reason you say why you did not do something about it was that you feared throughout the rest of that year for your life? A. Yes.

Q. And safety? A. Yes. And, as I said before, the C.I.B. advised me from time to time that the arrest is just around the corner.

Q. And, who told you this? Who told you this from the C.I.B. - these things? A. Mr. Follington.

Q. Always Mr. Follington? Anyone else? A. Mr. Follington. He was designated by Mr. Lendrum, to be in touch with me.

Q. Was there anyone else who told you other than Mr. Follington? Anyone other than Mr. Follington who told you any of these things during 1967? That is after, say, January, 1967? A. After January 1967 it was only Follington.

Q. How did he tell you? In writing? A. No.

Q. On the telephone? A. I phoned him many times.

Q. You phoned him? A. Yes, and also he came to the Landmark Corporation office at the end of February and he told me that I have to be very careful now; Mr. Armstrong has just been in the C.I.B. and blown his top, and he also told me to be very careful of Mr. Wild because he is working with Mr. Armstrong, and he also told me that he was keeping Mr. Armstrong under surveillance from time to time and did find Mr. Armstrong go into such a place where normally businessmen don't go and he also asked me if I am prepared to spend a couple of hundred dollars he will use his four days off to keep Mr. Armstrong under surveillance and bring about the arrest, and he said the reason why Mr. Armstrong blew his top in the C.I.B. was because that the witness from Queensland told the Court in Victoria when he has been arrested that he has been framed, and he made a statement in the C.I.B. which is involving Mr. Armstrong M.L.C. and a man called Frederick Hume and another man called Momo, who also used other names, and said it at the Court. I told Mr. Follington would he get me the record of this Court hearing. He said he can't, but he can give me the photostat copy of the witnesses' original statement what he made at the C.I.B., and next day he brought it along and gave it to me. That is how it was in my possession to put in in with my affidavit to the Court.

Q. All of this conversation, you say, took place in February 1967? A. Yes.

Q. Then throughout the year you had a number of other conversations with Constable Follington? A. When he bought this -

Q. Will you just answer the question I ask you? Throughout the year after February, 1967, did you have another or a number of other conversations with Constable Follington? A. I had a number of conversations with Mr. Follington. One of them was in Peter Bowen's office.

Q. The subsequent conversations, you had took place when - approximately? A. Subsequent conversations took place the next day.

Q. When, approximately, was the next one? A. I phoned him.

Q. Approximately when? A. Practioally every week.

Q. Praotically every week? A. I met him on 3 or 4 occasions.

Q. In the subsequent conversations shortly after February did Constable Follington tell you that something was likely to happen to clear up the problem you had? A. Yes.

Q. And something was likely to happen shortly thereafter? A. Yes.

Q. And this is the reason, is it, that you say you waited without doing anything about attacking the agreement? A. I had two reasons.

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Q. You what? A. I had two reasons. One is the C.I.B. indicated to me that the persons and parties to this thing will be arrested.

Q. When you say the C.I.B. you mean to say Constable Follington, do you? A. Yes.

A. What was the second reason? A. I beg your pardon.

Q. What was your second reason? A. The second reason that I was in fear of my life to do anything else.

Q. And that position continued, and you continued to be in fear of your life up until about the beginning of 1968 - the beginning of January 1968? A. I still in fear of my life.

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Q. Did something happen in round about December or early January 1968 which persuaded you to start these proceedings, notwithstanding your fear? A. It happened in November.

Q. In November? A. In November, yes.

Q. And what was that? What was the reason that persuaded you to take the risk of these proceedings, notwithstanding your terror and fear? Was the reason that persuaded you to take the risk of these proceedings that it was getting close to the time when you would have to pay something; was that the reason that persuaded you to take the risk? A. It had nothing to do with that time.

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Q. Your terror stopped you from bringing them? A. I beg your pardon?

Q. Your terror was so great that you were too frightened to start any proceedings before November, of 1967, wasn't it? A. Yes.

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Q. And you say in 1967, - November 1967 - something happened which persuaded you to start the proceedings? A. Not persuaded me. Made it possible.

Q. But you were still in terror of your life, you say? A. Yes.

Q. Did something happen in November, 1967 which made it possible to start these proceedings, even though your terror continued to exist? Is that what you say? Something happened in November 1967 which made

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it possible to start these, even though your terror continued to exist? A. Yes.

Q. Which had not been possible before, because of your terror? A. Yes.

Q. And it became possible after - (Objected to).

Q. Do you want to qualify the answer you gave?

A. I lost my concentration. I am right now. Because of terror and because of the promises by the C.I.B. that they are going to do something about it. 10

Q. You mean because of what you say was the promise of Constable Follington, don't you? A. I treated Constable Follington as a contact man between myself and the C.I.B. designated by Mr. Lendrum, who said to me that he is a very good man; studying to be a barrister, and I had all reason to believe that he is a proper person.

Q. Anyway, something happened in November which decided you to start the proceedings? A. Yes.

Q. Although you were still in fear that your life would be lost? A. Yes. 20

Q. What I want to put to you is that what happened was that you realised the time was coming when you had to pay some money? A. No. But if you like I will tell you what was my reason.

Q. Mr. Barton, of course, during 1967 - you have previously sworn that you had a number of conversations with Mr. Armstrong in which you were threatened haven't you? A. I beg your pardon?

Q. You have previously sworn - I don't mean in the course of your evidence here in this proceedings - you have previously sworn that during 1967 you had a number of conversations with Mr. Armstrong in which you were threatened - do you recall that? 30  
A. I had a number - in 1967, I had a number of conversations with Mr. Armstrong when he has threatened me?

Q. Yes? A. Yes.

Q. You had a number of such conversations after the agreements had been executed? A. Yes. 40

Q. And one, you say, was towards the end of March 1967? A. The end of March or early April 1967.

Q. What do you say was said to you on that occasion?  
A. Mr. Armstrong said to me "You want me to produce my diaries. Unless I get my money, you bastard, I will get you killed".

HIS HONOUR: Q. What was the beginning of that answer? A. "You want me to produce my diaries".

MR. STAFF: Q. You also say, do you not, that you had a conversation with Mr. Armstrong about the middle of November, 1967, A. Yes, in November, 1967. 50

Q. And you were threatened on that occasion?

A. After the creditors' meeting.

Q. What was said? A. Next day, after the creditors' meeting called by Bruce Henry Smith has been held.

Q. What do you say was said in the course of that conversation? A. Mr. Armstrong said to me, "It is time for you to use the money what you have stacked away, and fix up Kratzmann. Unless you do I will get you killed."

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Q. Mr. Barton, there are only two conversations which you say you had with Mr. Armstrong after the execution of the agreement, are there? They are the only two conversations are they? A. No.

Q. In which he threatened you? A. No.

Q. You say there were others, do you? A. I had some early morning phone calls.

Q. When did you have those? A. I cannot give you any time of those conversations.

Q. What was said on the first occasion on which you had such a call? That is after the execution of the agreement on the second. What was said on the first occasion? A. Could you repeat the question, please?

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Q. After the agreements had been executed and the whole matter completed by the settlement do you say you had some telephone calls in which you had conversation with Mr. Armstrong? A. During that year.

Q. When he threatened you? A. During that year?

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Q. During the year, yes. A. Yes.

Q. Now would you tell us how long approximately after the settlement was the first conversation in which Mr. Armstrong spoke to you and made what you say was a threat? A. That was the 31st - the end of March or early April. That was the time when I recognised his voice.

Q. That was the conversation you told us about a few minutes ago? A. Yes.

Q. Well now, how much later in the year was the next one in which you say Mr. Armstrong spoke and uttered what you say was a threat? A. I don't know. I can't tell you, and I am not prepared to guess.

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Q. Can you recall any conversation which you had on the telephone with Mr. Armstrong in which he uttered what you describe as a threat, other than the one about November, that you have told us about? A. Yes. I recognised his voice twice saying "I will get you killed".

Q. And that is all he said A. Yes.

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Q. And you didn't say anything? A. I told him to go to Callan Park.

Q. And these took place between - the first one at the end of March 1967, of which you have just told us, and the one in November of 1967, did they?

A. The last one was 11th January 1968 - the last of the early morning calls. The day of this Court hearing.

Q. All in all there were four, you say? A. I beg your pardon? 10

Q. There were four from after the date of settlement until 11th January 1968? (Objected to: allowed).

Q. Is that what you are saying? Is not what you are saying that there were four calls in which you had a conversation with Mr. Armstrong in which he uttered what you say were threats between the date of settlement of the agreements and the 11th January 1968? A. Yes. Once he rang me when the company had subpoenaed his diaries; once he rang me after the creditors' meeting in November. He rang me on at least two occasions when I recognised his voice saying, "I will get you killed" and I received a number of - a large number of early morning telephone calls when no voice was speaking - just breathing into the telephone. 20

HIS HONOUR: Q. I think you said twice he rang, and there was no one there? -

MR. GRUZMAN: He said twice he recognised his voice.

MR. STAFF: Q. Those are all the occasions in which you had a conversation with Mr. Armstrong in that period in which he uttered what you considered to be a threat, was it? A. I think so. 30

Q. And those four conversations kept you in constant terror of your life throughout 1967? A. Plus what I learned from the C.I.B.

Q. Now, Mr. Barton, I want you to look at two affidavits, the first sworn on 9th June 1967 and the second dated 22nd June 1967 and I want to ask you a few questions about them. Will you just look at the documents which are handed to you? A. 9th June and 22nd June, yes. 40

Q. You might look at the last page of each - as a matter of fact, I don't think it is the last page - and tell me whether your signature is there. Do you see the place where your signature appears? A. My signature is there, but it is not on the last page. It is on p.3.

Q. Do you recognise those as affidavits which you swore in June 1967? A. Yes.

Q. Do you recall that they were sworn for the purposes of the proceeding to restrain the presentation of a winding-up petition by Southern Tablelands Finance Company against Landmark Corporation? A. I don't know. I would have to read it first. 50

Q. Now, would you look at the first affidavit of 9th June 1967? A. Yes.

(Affidavit sworn by Alexandar Barton on 9th June 1967 in No. 650/67 tendered and marked Exhibit 24.)

(Affidavit sworn by Alexandar Barton on 22nd June 1967 No. 650/67 tendered and marked Exhibit 25.)

Q. Will you take both affidavits now and turn first of all to the affidavit of 9th June 1967? I would like you to read paras. 5 and 6. If you wish, you can read the rest. 10

Q. Are the matters stated in para. 5 and 6 true?  
A. Yes, they are true.

Q. Will you turn to the affidavit of 22nd June 1967? I would like you to read paras. 4, 5 and 6.  
A. Yes.

Q. Are the matters stated in those paragraphs true?  
A. Yes, true. 20

Q. Now, Mr. Barton, I want to put it to you that the evidence you gave a little while ago as to the four conversations with Mr. Armstrong between March - about the end of March 1967 and 11th January 1968 is untrue? A. It is not.

Q. Mr. Barton, I want to put to you that after the meeting of creditors on 22nd November, 1967 you put a proposal to Mr. Smith for the purpose of arranging to eliminate Mr. Kratzmann's opposition to the scheme of arrangement? A. Yes, I did. I am sorry, I would like to correct myself. I think that came out at a discussion between Mr. Smith and myself. It came out a very sensible proposition, but Mr. Armstrong did not agree. 30

Q. And you sent Mr. Smith a document dated 12th December, 1967, setting out the proposal, did you not? A. No.

Q. You don't recall this? A. No.

Q. Do you recall receiving or seeing a document - a typewritten document - in which the suggestion that you had met and discussed with Mr. Smith - A. No, this document has been prepared by Mr. Smith on the conversation that I had with him on the basis which he thought might be acceptable to Mr. Armstrong. 40

Q. Will you look at the typewritten sheet which I show you? Just look through it will you? A. Yes.

Q. Does that set out the suggestion of which you have just been giving evidence? A. Yes, it sets out the discussions what Mr. Smith and myself arrived at it is worthwhile to try. 50

Q. And this suggestion had your agreement didn't it?  
A. What do you call by "my agreement"?

Q. Mr. Barton, your position was that you would have agreed - you were in agreement that this proposal should be put to Mr. Armstrong and carried out if Mr. Armstrong was prepared to agree, wasn't it? A. Yes. With one exception to it.

Q. What was that one exception? You say there was one exception? A. Yes.

Q. What was that one exception? A. That any benefit which is coming from this agreement. I told Mr. Bovill that the benefit - 10

HIS HONOUR: Q. You told Mr. Bovill --A. Yes, that the benefit will be the benefit of Landmark Corporation. (Objected to).

HIS HONOUR: Will you put the question again Mr. Staff?

MR. STAFF: You mentioned an exception? A. Yes.

Q. In your previous answer? A. Yes.

Q. And I asked you what was that exception. Not what you told someone else, but what was the exception which you mentioned? A. The exception that if Mr. Armstrong would have agreed to this and this would have come into operation and a scheme of arrangement would have been satisfactorily completed some benefit would have come to me and to Mr. Armstrong under that proposed transaction, and I classed it that these benefits should not come to me - they should come to Landmark Corporation. I classed it myself that that benefit if ever it happens, should not come to me, but should come to Landmark Corporation. 20 30

HIS HONOUR: Q. At the beginning of that answer you said "if Mr. Armstrong did not agree" or "does agree?" A. "Does agree".

(Document containing proposal re scheme tendered and marked Exhibit 26).

MR. STAFF: Q. The decisions to engage Smith's Services for the purpose of formulating a scheme of arrangement was made at the end of June 1967, wasn't it? A. No, early June. 40

Q. In June? A. Early June.

Q. And not long thereafter an application was made to the Court to call a meeting in respect of that proposed scheme, wasn't it? A. Application has been made to the Court.

Q. Yes, A. I think it was in July.

Q. At the time that application was made Mr. Armstrong and the companies with which he was connected were supporting the scheme of arrangement proposed, weren't they? A. Were supporting on very expensive terms. 50

Plaintiff, xx

Q. And that support of the scheme of arrangement continued through 1967, didn't it? A. No.

Q. When the matter came on in January 1968 there was an application, a petition, to sanction the scheme. Mr. Armstrong and the companies with which he was connected supported the application, didn't they? A. Yes, but not continually. He was on and off.

Q. Would you look at the letter I show you of 28th 10 December, 1966? A. Yes.

Q. I show you the signature. Is that a copy of the letter which you saw or received on or about 3rd January 1967? A. I received it some time later. I do not know what day I received it.

Q. There is a receipt stamp, 3rd January, 1966.  
A. Yes.

Q. Would you agree that appears to be a Landmark Office receipt stamp? A. It looks like it.

HIS HONOUR: It ought to be 1967, I take it? 20

MR. STAFF: Yes.

WITNESS: That is why I am a little bit confused.

MR. STAFF: Q. Look at the other document I show you is that a document received in relation to the same subject matter? A. Yes.

Q. About the same time? A. Yes.

(Above mentioned two documents shown to witness m.f.i.13).

MR. STAFF: That concludes my cross-examination.

MR. GRUZMAN: I will reserve the re-examination. I 30 wish to call the witness from Queensland.

HIS HONOUR: Is there to be any re-examination on topics specifically to be dealt with by the next witness?

MR. GRUZMAN: No.

HIS HONOUR: In that case I will allow you to reserve your re-examination.

(Witness stood down).

ALEXANDAR VOJINOVIC  
Sworn, examined, deposed:

MR. GRUZMAN: Q. Have a look at the paper which I 40 now show you. (Referring to p. 5 of transcript). Don't read it out, but do you see something written there? The name. A. Yes.

Plaintiff, xx  
Stood down,

327. A. Vojinovic, x

A. Vojinovic, x

Q. Is that your name? If it is not correct, you can alter the spelling? A. No.

Q. Would you like to alter this document? A. Yes. (Name altered to read as above).

HIS HONOUR: I direct that the witness' name be not published.

MR. GRUZMAN: Q. As to your address, you are at present a prisoner in jail in another state, are you not? A. Yes.

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(Mr. Staff made application to examine the witness on the voir dire - granted.).

HIS HONOUR: The following evidence is not evidence in the suit, and until I have heard it I shall reserve the question as to whether its publication should be withheld.

Q. Witness, I understand that you wish your identity not to be disclosed. A. That is right.

Q. You are about to be asked some questions regarding the reason for your wishing your identity not to be disclosed. Until I have heard the answers you give to those questions I shall not permit either those questions or your answers to be published. Do you understand? A. Yes.

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Q. After I have heard these questions and your answers I shall then decide whether these questions and answers should be allowed to be published, and I shall decide whether your name shall be allowed to be published. Do you understand what is now about to take place? A. Yes.

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ON VOIR DIRE

MR. STAFF: Q. How long have you been in the prison from which you have come, approximately? A. About five or six months.

Q. You tell us that you are fearful of something which may happen to you whilst you are in that prison, do you? A. That is right.

Q. Because you have come down here to give evidence, is that what you say? A. Well, if you can understand, between the criminals it is such a law; it is only between the criminals, which no other criminal would like to see his friend give evidence to Court or help the law in any way. That would be, in other words, if anybody comes to me and complains about it, I have to fight him and I have to be locked up in a punishment cell and do my jail much harder than I am doing now in the ordinary way.

40

Q. What you say you are frightened about is that somebody else in the prison where you are will frighten you or do something to you simply because you have gone to a Court to give evidence? A. That is correct.

50

Q. It would not matter which court you went to?

A. It would not matter which court as long as you give evidence.

Q. It would not matter who the people concerned in the case were, or what the case was about, is that what you say? A. Not really.

Q. Of course, you have come to Sydney on at least two occasions, have you not? A. Yes.

Q. In relation to possibly giving evidence in this case? A. That is right. 10

Q. You have left prison in custody of the jail authorities each time, haven't you? A. Yes.

Q. And travelled down in public transport? A. Yes.

Q. I suppose you would agree that everybody in prison has got a good idea what you have been let out for? A. Not really, because to most of the people, any persons who are my associates in jail, I have sort of told them that I was arrested in Melbourne on a charge to which I pleaded not guilty and to which I am not guilty, and that by barrister and solicitor are doing something about my case to prove my innocence. That is the explanation I have given. I do not need to actually give any explanation as long as there is no bother and questions are asked and things like that. 20

Q. This matter in Victoria was one in which you appealed, didn't you? A. Yes.

Q. And your appeal was dismissed? A. That is right.

Q. What are you fearful might happen to you if your name is disclosed? A. Well, I suppose it would not happen, nothing seriously, except I would have to get into a few fights and sort of lose friendship with fellows you have established when you are there in prison, so you are on your own. 30

Q. These are consequences which would happen to any prisoner that came out to give evidence and the fact of whose giving evidence was known? A. That is right.

Q. It would apply to everybody in prison? A. Yes.

Q. And it would not matter which prison you were in, in your view, is that what you say? A. Not really. 40

MR. GRUZMAN: Q. I do not know whether you quite understood; you started by telling his Honour you were fearful because of the law of the criminals about giving evidence, to help the law in any way. Do you remember saying that? A. Yes.

Q. When you were telling the other barrister that you would be in trouble if you gave evidence, did you mean if you gave evidence of that kind, that is evidence to help the law? A. That is right. 50

A. Vojinovic x.

Q. If it was known in the prison that you had gone to the police and told them about other criminals who were engaged to do a job, what would happen then? A. Do you mean if it was ever known I had gone to the police and given up, do you mean?

HIS HONOUR: There is no question this witness went to the police.

MR. GRUZMAN: Q. If it was known you had given up other criminals, what would happen to you? A. I suppose the same thing. It would be the rough period of your sentence. 10

Q. You were asked whether you were brought in public transport. You were brought in handcuffs, were you not? A. Yes.

Q. And the handcuffs were removed actually only when you were in an aeroplane? A. Yes.

Q. And when actually you were brought into Court? A. Yes.

Q. In the precincts of the Court you have been wearing handcuffs, have you not? A. That is right. 20

HIS HONOUR: I think the most convenient course is for me to see both senior counsel in private chambers and hear what they have to say about the matter further.

(VOIR DIRE EXAMINATION CONCLUDED)

(Luncheon adjournment).

AT 2p.m.

HIS HONOUR: This witness has been brought here by order of the Court to give evidence. He does not come here voluntarily. He has asked that his identity be not disclosed and that publication of his name be suppressed. He has given evidence that he fears that by being required to come here and be sworn as a witness to give evidence in the suit, he is being forced into lending his aid to the due administration of the law. This, he says, will expose him to retribution at the hands of other persons who have said this is against the law. His fear is a general fear of infringement of what is said to be a code of conduct amongst such persons. His fear is not directly related to any person concerned in this litigation. 30 40

It is a fundamental principle of the administration of the laws of this country that hearings take place in open Court. Protection of the interests of the public demands that the proceedings of the Courts shall be open to all. Special considerations have led to certain types of proceedings being authorised by Statute to be heard in private or with limited publicity, and this Court has an inherent jurisdiction in particular cases where the interests of justice demand it to control or restrict the publication of proceedings before it. The general 50

A. Vojinovic x.  
On Voir Dire

principle is, however, as clear as it is important.

I accept the claim by this witness that he is in fear, but I cannot treat this fear, as he has expressed it, as sufficient to justify his case being regarded as an exception to the general principle. To do so would be to counterance this code said to exist amongst those who set themselves against the law. It is totally unacceptable that a Court should permit the due and regular public conduct of its proceedings to be adjusted by reference to this alleged code of conduct.

10

Reluctant though I am to expose this witness to the harm which he fears, it is better in the overall interests of justice that the importance of the general principle be recognised and carried into effect.

I rescind the interim direction that I gave forbidding publication of his name, and I rescind the interim direction that I gave forbidding publication of the early part of his evidence today.

20

Having made those rulings I wish to add this rider: the witness has been brought here by order of the Court to give evidence in a civil contest essentially between Mr. Barton and Mr. Armstrong. I have said that I accept his evidence that he is in fear. I do not see any significance attaching to his name, and it is a matter for the press representatives to determine for themselves, what, if any, publicity they choose to give to his name.

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MR. STAFF: I take it it is a consequence of your Honour's ruling that he be treated in the normal way.

HIS HONOUR: Yes. His name will be used in the normal way, and he will be treated as an ordinary witness. The rider I have added forms no part of my ruling. I have rescinded the earlier directions.

MR. GRUZMAN: Q. Have a look at this document which is Exhibit "D". (Objected to - rejected.).

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Q. Have a look at this document; is that your signature on the first page? A. Yes.

Q. Is that your signature on the second page? A. Yes.

Q. And on the third page? A. Yes.

Q. And on the fourth page? A. Yes.

Q. And on the fifth page? A. Yes.

Q. And on the sixth page? A. That is right.

Q. When you signed it did somebody else sign it?  
A. Yes.

Q. Who was that? A. Detective Sergeant Wild.

50



Q. Were the contents of that document true?  
(Objected to - rejected).

Q. I want to ask you some additional questions.  
Were you acquainted with the man who is known as  
Momo? A. Yes. (Objected to).

HIS HONOUR: I am of the view this evidence should  
be admitted at this stage. Whether it ultimately  
has any probative effect may well depend upon what  
other evidence is before the Court at the end of  
the hearing. That is a matter which of course must  
await the completion of the evidence from both sides.  
At this point of time I will allow the question. 10

MR. GRUZMAN: Q. Were you acquainted with the man  
who is known as Momo? A. Yes.

Q. When did you first meet him? (Objected to -  
allowed). A. I first met Momo - I think it was in  
1962 in Pentridge Gaol.

Q. Did you work together with him or did you have  
some association with him? (Objected to - rejected). 20

Q. Did you do any work with Momo? (Objected to -  
allowed). A. You mean at the time?

Q. At any time from 1962 onwards? (Objected to -  
rejected).

Q. You have told us you met Momo in Pentridge  
Gaol. When did you first come in contact with  
him after you left the gaol? (Objected to - allowed).  
A. After I left the gaol?

Q. After you left the gaol? A. I think it was at  
the time I was released I came in touch with Momo  
in Fitzroy, Gertrude Street. In a Yugoslav cafe. 30

HIS HONOUR: Q. What is the name of the street.  
A. Could I write it down (Permission granted. The  
witness wrote "Gertrude Street").

MR. GRUZMAN: Q. Following that meeting did you do  
some work with Momo? (Objected to - allowed). A. I  
don't know how to answer this. You see, if I do  
answer the question I might incriminate myself.

HIS HONOUR: I should advise you that you are not  
obliged to answer any question asked if you fear  
that the answer to the question may expose you to  
proceedings for any criminal offence. 40

Q. Do you understand? A. Yes.

HIS HONOUR: I won't require an answer to that  
question.

MR. GRUZMAN: Q. I want to deal with that in this  
way. Following that work .... (Interrupted).

HIS HONOUR: There is no work.

MR. GRUZMAN: I would ask your Honour to bear with me  
for a moment. 50

A. Vojinovic x.

Q. Did you subsequently serve another period in gaol? (Objected to allowed)? A. Yes, I did.

Q. Did that arise out of your association with Momo? (objected to - rejected).

Q. Following 1962 did you subsequently meet Momo again? (Objected to - allowed)? A. I did meet Momo. I met Momo a few times after that actually. It was once in Sydney here at Kings X. It was 1964, I think and then I next met Momo in late 1965. 10

Q. In late 1965 did you do some work with Momo? (Objected to - rejected).

Q. During 1965 did you have any conviction in connection with carrying a gun? (Objected to - withdrawn).

Q. Did you during 1965 have in your possession a gun, without having a license for it? A. Yes.

Q. Was that a pistol or a revolver? A. A revolver.

Q. In respect of that matter did they send you to gaol? A. That is right. 20

Q. And that was in Rockhampton? A. That is right.

Q. When did you meet Momo again after that? (objected to - allowed).

Q. Am I correct in saying you got 12 months imprisonment for the unlicensed pistol? A. Yes.

Q. At the same time did you get three months imprisonment for illegally using a motor vehicle? (Objected to - rejected).

Q. Can you remember when you next met Momo? (Objected to - allowed). A. Yes, it could be just before New Year 1966. 30

Q. Did you do any work with Momo at that time; A. (Objected to - rejected.)

Q. During 1966 how often did you see Momo? A. Every day, nearly every day. I may have missed a day sometimes, but I usually seen him one way or the other every night.

Q. During 1966 did you see a man called Fred Hume? (Objected to - allowed). A. Yes.

Q. Where did you see him? (Objected to - allowed). A. At first on the corner of Riley and William Streets. 40

Q. I will come to that in a moment. Where did you see Hume the first time you ever saw him? (Objected to - allowed). A. It was in a cafe at Kings X. I saw Hume sitting in a cafe having a cup of coffee with some persons. I didn't know any of them. He got pointed out, but I didn't know Hume then.

Q. What was the name of this place? (Objected to).

HIS HONOUR: It does not matter what the name of the place was.

MR. GRUZMAN: Q. When was it that you first saw Hume? (Objected to - allowed). A. I am not quite sure whether it was 1961 or 1962. About that time, 1961 or 1962.

Q. From that time onwards did you see Hume from time to time? (Objected to - allowed). A. Not till 1966. 10

Q. Don't answer this until his Honour has ruled on it. Was Hume known to you by reputation for a number of years prior to the end of 1966? (Objected to - rejected).

Q. During 1966, you told us, you met Momo practically every day, more or less. What were you doing with Momo at that time? (Objected to - allowed). A. If I do answer this question do I have to indicate places which are concerned in it? 20

HIS HONOUR: I have already advised you if you fear that the answers to the questions you are being asked may incriminate you, then you may say so, and if I am satisfied there is a reasonable basis for such fear then you are not obliged to answer the questions.

Q. Do you understand what I am saying? A. Yes.

Q. The question being asked at the moment - do you fear you may incriminate yourself by answering it? A. If I answer the question it will. 30

HIS HONOUR: I won't require an answer to that.

MR. GRUZMAN: Q. Do you understand from what the Judge has said you do not have to answer that question? A. Yes.

Q. But I would still like you to tell us, if you will, what you were doing with Momo during 1966? (Objected to).

HIS HONOUR: Q. You are quite clear in what I have advised you, are you? You are not obliged to answer the question you have just been asked, as to what you were doing with this man Momo in 1966, do you understand? A. Yes. 40

Q. You having told me you fear the answer may incriminate you. A. That is right.

Q. You are now being asked whether although you are not bound to answer it, you are willing to answer. Do you understand what counsel is asking you? A. Yes.

Q. You are still not bound to answer it unless you want to, do you understand that? A. Yes.

MR. GRUZMAN: Q. Understanding that, what were you doing with Momo during 1966? (Objected to - allowed). 50

A. ~~Being-break-and-enters~~. (Objected to by Mr. Staff).  
(His Honour directed the answer be struck out. Mr. Gruzman pressed that the answer be allowed to stand).

HIS HONOUR: What is this leading to?

MR. GRUZMAN: We want to show these were both criminals working together, and this is to support the inference that one was to help the other to kill Mr. Barton. We are going to prove the car that was used for these break-and-enters was Hume's car. 10

HIS HONOUR: You will have to ask him what he did. You cannot do it in this general way. I direct that the answer be struck out.

MR. GRUZMAN: Q. Could you be a little more explicit about what you were doing with Momo during 1966? You need not tell us addresses, but what were the operations which were going on? (Objected to - rejected at this stage.)

HIS HONOUR: It does not seem to me the matter is advanced to any degree by these questions and answers given if the witness does not wish to refrain from answering on the ground that it may incriminate him, and it is a matter of practical expediency, quite apart from anything else. It seems to me the evidence should not be allowed at this stage. It seems to me it is open to you to tender evidence of how it came about that the threat this witness made to Mr. Barton was made. It is within that general field of inquiry I have allowed these questions. I do not know where each of the questions has been leading, but that is the basic concept I have in mind. I have rejected the general questions. 20 30

MR. GRUZMAN: Q. You have told us that you saw Momo frequently during 1966. Did you ever go in a motor-car with him during that year? (Objected to: allowed). A. Yes.

Q. What motorcar was that? (Objected to - allowed). A. A Falcon sedan. 40

Q. What colour? (Objected to - allowed). A. Blue colour.

Q. Whose car was it? (Objected to - rejected).

Q. Whose car did you believe it was? (Objected to - rejected).

Q. Who normally drove the car when you were in the car? (Objected to - allowed). A. Either me or Momo.

Q. Where was the car usually parked? (Objected to - allowed). A. It was usually parked in Bayswater Road, or behind where Momo lived, in a laneway. 50

Q. In a laneway behind where Momo lived? A. Yes.

Q. Who, in relation to this car or to Momo or to

yourself lived in Bayswater Road? (Objected to - allowed). A. I lived in Bayswater Road and Momo lived in Bayswater Road.

Q. What was your address in Bayswater Road at that time? (Objected to - allowed). A. 48, I think, I am not quite sure.

Q. And Momo's address? (Objected to - allowed).

A. 38 I suppose, or something like that.

Q. Quite close to you? A. Yes.

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Q. When you went out in the car with Momo, did you carry any cards with you? (Objected to - allowed).

A. Yes.

Q. What sort of cards? (Objected to - allowed).

A. Business cards.

HIS HONOUR: You can have the answer "Business cards". If you want to prove whose business cards they were ..... (Interrupted).

MR. GRUZMAN: They are here on subpoena.

HIS HONOUR: I don't care whether they are here on subpoena or not. The answer, "Business cards" can stand, the remainder will be struck out.

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MR. GRUZMAN: Q. There is a book there and they are contained in that book. Have a look at these cards and tell me whether the business cards you referred to were similar to one of those cards. (Objected to - allowed).

Q. Were the cards like one of those? (Objected to - allowed). A. Something like the white ones.

Q. Have a look at the printing on the card which you have selected, the white one and the name there. Can you recognise that name as having been on the card that you carried? (Objected to - rejected).

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(White card said by the witness to be something like the cards carried, m.f.i.14).

Q. Do you know what happened to the cards you carried at the time? (Objected to - allowed.) A. I am not quite sure, but it could be still in some of my property.

Q. Do you know whether you can find it or not? (Objected to - allowed). A. It is hard to say, because I have not actually looked for it.

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Q. How many of those cards did you have? (Objected to - allowed). A. One card.

Q. Where is your property now? (Objected to - allowed). A. In prison.

Q. I want to take you to a conversation with Momo, and by way of identification of this conversation

I would like you to tell us the first time that you heard Mr. Barton's name mentioned. (Objected to - allowed).

HIS HONOUR: I will allow this conversation.

WITNESS: The first time I ever heard Mr. Barton's name mentioned, it was in a car, in the same blue Faloon with Momo, and Momo mentioned it to me after a few minutes of conversation about some matter.

MR. GRUZMAN: Q. What did he tell you. (Objected to - allowed). A. He told me - do you want me to say the conversation altogether? 10

Q. Yes, just as it happened. A. We were sitting in the car, discussing the position of how to make money, because actually Momo didn't have any, and I did not have much. So we were thinking about where to go and make some money. Then Momo said he knows where we could make some money, but no one of us would be capable of willing to do a thing like that. I asked him what, and he said that there is a fellow to be killed. First I thought he was joking like, and I did not actually believe him. And then he said if we could find somebody to do the job we could split the £500 which he would have from the job when it is done. So I told him - I actually asked him how much would he pay the fellow who will do the job, and he said £500. I still thought that he was...(Objected to)...joking. 20

Q. What did you say when he said, "£500"? A. I said, "You could not kill a drunk for that." 30

Q. What did you say next? (Objected to).

HIS HONOUR: The objection will cover all this conversation, Mr. Staff.

MR. GRUZMAN: Q. What did you say next, or what did he say? A. I said to him, "How do you know that I would not be interested in a thing like that?" He said that he knew of me doing everything else, but he never knew me as a person who would kill someone. Then I told him "A person who needs money and he is in a bad position will almost do anything." I told him not for that price what he is offering. Then he said to me that he will have a word with some other person. 40

Q. Did he mention a name? A. Yes.

Q. What did he say? A. After he said he has to (Objected to: allowed.) He said he has to take to a person to find out if they would pay any more, and I asked him who is the person and he said "Frederick Hume. It goes through him for someone else." Then I asked him "Who is someone else?" He told me, "A man by the name of Armstrong." "Well," I said, "That is all right. You can go and ring Hume and talk to him." ~~So he did~~ (Objected to; by direction portion indicated struck out). 50

Q. Was anything said about - (Objection to leading - rejected).

Q. What else was said? You mentioned that it went back to Armstrong? (Objection to - rejected).

Q. Can you remember what else was said? A. Well, it was said - actually I asked Momo "Why do they want Mr. Barton killed?" So he explained it to me.

HIS HONOUR: Q. He what? A. He explained it to me that Mr. Armstrong and Mr. Barton had some sort of trouble between them and that Mr. Armstrong was a chairman of a company so Mr. Barton somehow got him off and got the position, or something like that, so I suppose he just wants revenge or get rid of him. Then I said to him, "Fellows in that position, of course, they would pay more than that; they would pay more for a thing like that than £1000". which is £500 to the fellow who does the job and £500 for Momo. Anyway, he explained to me about the matter between this and Mr. Barton (sic).

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MR. GRUZMAN: Q. Explained about - A. Mr. Barton and Mr. Armstrong. That they had this trouble, and got the business. I don't know which the business was and the company, or anything. So there was one thing to find out - if they would pay more for the killing, or not. So I seen Momo, I think it was two days after that, and he came back (Objection to).

Q. You have told us where the first conversation took place, and how. Where did the next conversation take place? A. The next conversation was in a car.

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Q. Which car? A. The same Falcon.

Q. The same Falcon? A. Yes.

Q. You said two days after the first conversation? A. Yes.

Q. What was said on this occasion? (Objection to: allowed). A. He said that they would - he said actually that he did talk to Frederick Hume and they did tell him that they would pay up to £2000 to the fellow who does it.

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Q. What was said then? (Objection to).

HIS HONOUR: The objection covers the whole conversation, Mr. Staff.

MR. GRUZMAN: Q. What was said then? A. Well, I told him - well actually Momo - when he told they would pay £2000 - I told Momo to tell I would do it; they were to give me £500 advance money and a gun.

Q. Yes? A. ~~So he had to go and talk to Fred Hume again~~ (Objection to; by direction struck out as indicated).

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Q. You cannot say that. A. I asked for £500 in

advance and a gun - a revolver - and he said that Frederick Hume will supply me with the gun; it won't be any trouble. So of course he had to go back and see him.

Q. Did he say he had to go back? A. Yes.

Q. What was the next thing that happened? Did he leave you then, or was there any more conversation?

A. That was all that day.

Q. Yes. What happened next? When did you see Momo again. (Objected to - allowed) A. I actually went next morning to Momo's place where he lived in his room. I knocked at the door, and he was still at home, because I saw the car, and it was a boarding house.

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Q. It was a boarding house? A. It was a boarding house, and he only had a single room in it, so you can walk upstairs and go straight to his room and knock on the door, and if he is home he would answer. When I come out of the place where I -

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Q. Yes. He was home when you called? A. Yes.

Q. Did you go in and have a conversation with him? A. Yes.

Q. What was the conversation? (Objected to: allowed).

Q. What was your conversation? A. I asked Momo would they do anything else about this matter without killing Mr. Barton; or just doing some sort of harm to him, like rob the place or destroy the place or splash something around or something like that. So Momo said to me that they would not do anything like that, because he actually told me that there is a profit in Mr. Barton's house, which could be robbed, and also told me that there is a diamond ring that Mrs. Barton wears which is worth £6000, so if we took the ring at the same time we could sell it - give it to Hume and he will pay us for it. Well I asked Momo actually would they leave it just at that - to rob the place and sort of damage the place without killing Mr. Barton. He said, "No".

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Q. Yes? A. "We could go and actually kill Mr. Barton and take the property and we will be (sic) easy to sell to Hume" ..

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HIS HONOUR: "And we will be..." A. Take the property at the same time - like, the ring - and sell it to Hume.

MR. GRUZMAN: Well, what happened after that?

A. Actually I did ask Momo to go and see Hume and ask him, you know, for the last time if he would go and just have Mr. Barton's place robbed. So it was left at that - I don't know exactly for how long - for a couple of days, anyway, until I seen Momo again, and he told me that - (Objected to).

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Q. Where was this conversation? Where did you have it? A. In the car.



Q. The same car? A. Yes, the same car.

Q. Do you remember the number of this car, by the way? A. No, I don't think so.

Q. It may come to you later? A. I didn't take much notice.

Q. You had another conversation in the car. What was that conversation? A. That is right. Momo - (Objected to: allowed). Momo told me that any time when I wanted to that things would be waiting for me - the £500 and the gun, and I left it at that until -

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HIS HONOUR: Q. I am sorry, I did not hear the last phrase, "I left it at that..."? A. Yes. It all was in between two weeks. It is hard to remember exactly the period between occasions when we did have conversation about that matter.

MR. GRUZMAN: Did you go anywhere? A. Yes. I think it was on the last occasion - (Objected to: allowed).

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Q. That is the occasion of the last conversation? A. The last conversation what I had with Momo. That was in the car.

Q. Yes? A. We talked about it and I actually wanted to make sure -

HIS HONOUR: You can't have that, Mr. Gruzman.

MR. GRUZMAN: Q. On the occasion of the last conversation in the car with Momo did you go somewhere? A. Yes, we went to Riley Street.

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Q. Riley Street? A. Yes.

Q. What time of the day was this? (Objected to: allowed). A. It was half past six or seven o'clock. Something like that. About that time.

Q. Night or morning? A. In the evening.

Q. In the evening? A. Yes.

Q. Whereabouts in Riley Street did you go? (Objected to - allowed). A. We drew up to the corner of William & Riley Street.

Q. William & Riley Street? A. Yes.

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Q. Did you have a conversation with Momo prior to going to this place? A. Yes.

Q. What was the conversation? (Objected to: rejected).

Q. You told us, I think, some conversation that you had in the car on this occasion - (Objected to: rejected).

Q. Was anything else said between you and Momo in

the car before you went to Riley Street? (Objected to: allowed). A. It was said that I am going to actually meet Hume and talk to him.

Q. Momo said what ? A. I said that I wanted to meet Hume and talk to him.

Q. Yes? A. ~~So Momo did get out of the car.~~ (Objected to: by direction struck out as indicated).

Q. After you had made that statement that you have just mentioned what did Momo do? (Objected to: allowed). 10

Q. What you saw him do? A. He got out of the car and went to the telephone box.

Q. And then did he come back to the car? A. He came back to the car.

Q. What did he say to you then? (Objected to: allowed). A. "We will go down to William Street - the corner of William Street and Riley Street - and we will meet Hume up there."

Q. Well then, you drove around to where? Can you tell the Court exactly where you drove to? (Objected to: allowed). A. We drove actually out of Kellett Street - I was actually driving - and made a turn - 20

Q. You came down William Street. Tell us where in relation to the corner of William & Riley Street you drove down to? A. We came to the corner of William Street and Riley Street. Momo pointed out to me that that is where we were supposed to meet Hume. So actually when he pointed the corner to me I automatically turned left into Riley Street and I seen Hume standing right on the corner of the footpath of the corner of William and Riley Street. 30

Q. Yes? A. So I drove for about ten yards off the corner between William Street and the laneway parallel -

Q. Parallel with William Street? A. William Street. I stopped there and Momo told me to stay in the car and drive a bit further down so that I won't be in anyone's way. So I did. I drove past the laneway and I parked the car about 30 yards down the street in Riley Street. 40

Q. Yes? A. By the time I parked the car Momo and Fred Hume were walking towards the car, and they stopped about 10 yards off the car and they had a conversation. After about 15 minutes Momo came back into the car and asked me to drive. I said to him I wanted to talk to Fred. Momo said, "Well, he prefers the connection between you and him goes through me." So I actually could not come and talk to him face to face. 50

Q. All right. Well then, what happened next? Was there any further conversation about this matter on

that night? That is right. I made a mistake. That is actually the time when Momo said to me that whenever I feel like doing it that I can contact Fred or him and the matter will be always at hand, like about the gun and the £500. So I said, "That's all right. That's all right with me."

Q. What is the next thing that happened? A. The next thing that happened - (Objected to: allowed).

Q. What is the next thing that happened? A. The next thing that happened, it was about 4 days later that I rang up Mr. Barton and Mr. Barton was not at home that time, so I made an appointment to ring up, and I wanted to talk to him. I didn't say anything to the person who answered the phone. 10

Q. Just before you go on, where did you get the telephone number? A. ~~The telephone number - (Objected to: allowed). The telephone number was written on a piece of paper together with Mr. Barton's name, and it was behind the sunshield of the car on the same Falcon.~~ (Objected to: by direction answer struck out as indicated). 20

Q. You mentioned that there was a slip of paper under the sun visor? -

HIS HONOUR: He has not. That has been struck out.

MR. GRUZMAN: Q. Did you every see a strip of paper under the sun visor of the Falcon? (Objected to - allowed)? A. Yes.

Q. In what circumstances. (Objected to: allowed)? A. I seen the piece of paper on the first conversation about Mr. Barton. I am sorry I forgot to mention it, but when Momo did explain to me about Mr. Barton and Mr. Armstrong he also showed me that piece of paper ~~in Mr. Barton's name.~~ (Objected to: by direction portion of answer indicated struck out). 30

Q. What happened to the piece of paper? (Objected to: rejected).

Q. So far as you know what happened to the piece of paper? (Objected to: allowed). A. Don't know. Got lost somehow. 40

Q. What was on the piece of paper? (Objected to: rejected).

Q. Where did you see it last? A. (Objected to: allowed).

Q. Where did you see the piece of paper last? A. Under the sunshield.

Q. Under the sunshield? A. Yes.

Q. Well, was it under the sunshield when you last saw the car. (Objected to: allowed)? A. No. 50

Q. No? A. No.

Q. You don't know where it got to in between those two times? A. No.

Q. Well, I will ask the question: What was on the piece of paper?

HIS HONOUR: I reject that.

MR. GRUZMAN: Q. You told us that you rang Mr. Barton. What telephone number did you ring? (Objected to - allowed). A. I am not quite sure, but I will try, anyway. I think it is 95-6294.

10

Q. You told us of an occasion that you rang Mr. Barton and he was out, or he was not there. Will you tell us what happened next? What did you do then? (Objected to: allowed). A. I made an appointment with the person whoever answered the phone that I will ring Mr. Barton. I think it was five o'clock or half past five to six, something like that. I am not quite sure, but in that area in the afternoon.

Q. What time was it that you telephoned the home?  
A. I think it was six o'clock.

20

A. No. the first time? A. The first time?

Q. Yes. Approximately? A. I think it was about dinner time.

Q. The middle of the day? A. That's right.

Q. What did you do? You say you telephoned and made an appointment. What did you do after that? (Objected to: allowed). A. I rang up Mr. Barton again, and the second time the same person I think answered, and after --- (Objected to).

30

HIS HONOUR: Mr. Gruzman, some of these questions have been objected to and allowed, and it has turned out that the answer has been inadmissible, such as, for example, the first telephone call when, according to the witness, an appointment was made. Answers to questions, where they are clearly inadmissible, such as that, will be disregarded. You will have to try and control the witness.

MR. GRUZMAN: Q. You rang a second time. Did you speak to Mr. Barton on that occasion? A. Yes.

40

Q. What was said. (Objected to - allowed).

Q. Will you tell us what you said to Mr. Barton on the telephone? A. I said to Mr. Barton that I would like to talk to him in private, and that there is some matters I would like him to know. Mr. Barton asked me what sort of matters, I told him that there is somebody who wants to do him some harm, and I would like to explain to him.

HIS HONOUR: Q. "And I would like to..." A. "Explain it to him".

50

MR. GRUZMAN: Q. Yes? A. I actually made an appointment

to see Mr. Barton in the same street where he lives by the Post Office. I did go out there and I did see Mr. Barton.

Q. Was anything else said about the appointment? What was said about it. (Objected to).

HIS HONOUR: To relieve you of the necessity of objecting repeatedly, Mr. Staff, I will rule in general terms that the conversations between this witness and Mr. Barton are admissible. They will all be taken to have been objected to. 10

MR. GRUZMAN: Q. Was anything said about the appointment between you and Mr. Barton? (Objected to).

HIS HONOUR: Put the whole conversation to him again, Mr. Gruzman.

MR. GRUZMAN: Will you please tell us on the telephone conversation with Mr. Barton what you said, and what he said to you? A. Well, I actually asked Mr. Barton to come on his own to the appointment place. 20

Q. What did he say about the appointment place? What appointment was fixed? What was said about it? We don't know what you said and what he said about this appointment. Did you tell him where to go, or did he tell you where to go? A. No. I asked Mr. Barton to come to the meeting place.

Q. Well, what was said? You didn't say, "The meeting place". Where did you tell him to come to? A. I asked Mr. Barton if he would come to - I have forgot the street number, anyway, but I explained to him that there is a Post Office and a telephone booth in the street where he lives and if he would drive this car and park by the Post Office I would recognise him and I will approach him then and talk to him. 30

Q. Can you tell us, had something happened that you could recognise this car? A. Yes, there is, because I had seen the car earlier - the same car; a white Mercedes.

Q. Whereabouts? In what circumstances. (Objected to; allowed). A. I seen it in front of Mr. Barton's house one evening. 40

Q. How did you come to be there (Objected to; allowed). A. Driving with Momo to the place where Mr. Barton lives.

Q. When was that? Say in relation to this conversation with Mr. Barton? When had you gone with Momo in the car to Mr. Barton's house? (Objected to - allowed). A. I think it was some time between the first and second meeting I had with Momo. 50

Q. Well then, all right, now, I just want to ask you this, you say you rang Mr. Barton once, and he was out? A. Yes.

A. Vojinovic x.

Q. And then you rang a second time. Did you do anything between making those two phone calls? (Objected to - allowed)? A. Yes, Before I rung up the second time I was to ring up Hume's office.

Q. Yes. What happened when you rang Hume's office? (Objected to - allowed).

Q. What happened when you rang Hume's office?

A. I told Fred Hume that I would like to come away and talk to him about the matter, that I had a conversation with Momo. 10

Q. Yes? A. Freddie Hume - when I told him, he said, "Yes". "Could you come down to my office in half an hour?" I said to him, "not in half an hour" because by the time I rang up it was about half past five I think. I made an appointment at half past eight in the evening to come and talk with him. He said that would be all right.

Q. And it was after that that you rang Barton the second time? A. Straight after, yes. 20

Q. When you rang Hume's office did he answer the telephone himself at first? A. No, a woman or girl answered the phone.

(Further hearing adjourned to 9.45a.m. Wednesday, 5th June, 1968).

BARTON -v- ARMSTRONG & ORS.

ELEVENTH DAY, WEDNESDAY, 5TH JUNE, 1968.

MR. PRIESTLEY: There are two corrections to the transcript, on p.214. The answer to the second question on that page is recorded as "It was a large sum of costs Mr. Grant was claiming under s. 32 from the company." "S.32" should be "s.222". 10

The answer to the seventh last question is recorded as "I took Mr. Follington to Peter Thorpe's office in November, 1967. "Peter Thorpe's" should be "Peter Bowen's".

MR. BAINTON: On p.213 of the transcript, in the first question, the reference to "Mr. Hall" should be "Mr. Hawley". The answer to the fourth question - it is actually part of the question. The question is recorded as "Did you say to Smith 'I think it was a miracle. I did not think Armstrong was complete'. The "was complete" should be "would complete". 20

HIS HONOUR: On p. 252 of the transcript there is an amendment to be made in the ruling I gave yesterday on the publication of this witness' evidence. In the first paragraph, in the fourth sentence, it reads in the transcript "This, he says, will expose him to retribution at the hands of other persons who have said this is against the law." My wording was "...at the hands of other persons who have set themselves against the law." 30

ALEXANDAR VOJINOVIC

On former oath:

HIS HONOUR: Q. You are still on the oath which was administered to you yesterday to tell the truth, do you understand? A. Yes.

MR. GRUZMAN: Q. I just want to ask you one question about the period when you were in the - going around in the blue Falcon with Momo during 1966 and before these events happened that you have told us about. During that period, do you understand, before you ever heard of Mr. Barton's name? A. Yes. 40

Q. When you were going to places in the blue Falcon with Momo. During that time - (Objected to).

Q. The person who has been called Momo - by what other name was he known to you? A. Michael Novak.

Q. Any other name? A. No.

Q. During that period when you were going in the blue Falcon with Novak did Novak have a piece of paper with certain things on it? A. That is right. (Objected to: allowed). 50

MR. GRUZMAN: Your Honour, I won't ask the witness to answer this question until your Honour has had a chance to rule on it. I am basing the question on the High Court decision that I think your Honour referred to dealing with the label on the bottle.

HIS HONOUR: Yes.

MR. GRUZMAN: Q. Don't answer this question until the Court has a chance to deal with it. Did that piece of paper have names and addresses and telephone numbers on it (Objected to: allowed). 10

Q. Did the piece of paper have on it certain names and addresses and telephone numbers? A. Yes.

Q. And where did you see that piece of paper? (Objected to: allowed). A. I was shown that by Michael Novak.

Q. Don't answer this question until it has been dealt with. Did you and Michael Novak go to the addresses shown on the paper? (Objected to: rejected). 20

Q. I will ask you this question. Again, don't answer it. Did you make use of the telephone numbers shown on the paper? (Objected to: rejected).

Q. All right. Now I remind you that yesterday you had told his Honour that you rang Mr. Barton and he was not there and subsequently you rang him again, and in between you telephoned Mr. Hume. I think you told us about your conversation with Mr. Barton on the second occasion that you rang. Do you remember that? A. Yes. 30

Q. Well, what did you do after that? A. Well, I rang up Mr. Barton and made the appointment for Mr. Barton to meet me, that I want to talk to him and tell him certain things.

Q. After the appointment was made what did you do? A. I went into the taxi - (Objected to: allowed).

Q. You said you went into a taxi? A. I went into the taxi and I drive up to Cradle Crest, was the suburb, I think - the spot where I made the appointment at the Post Office and telephone booth. 40

Q. I suggest -

HIS HONOUR: I don't think you ought to suggest anything, Mr. Gruzman.

MR. GRUZMAN: Q. You say you can't remember the name of the suburb? (Objected to: rejected).

Q. The question I asked was after your conversation with Mr. Barton when you made the appointment what did you do after that? A. I went into a taxi and drove up to Cradle Crest, I think it is, the name of the suburb. 50



A. Vojinovic x.

Q. And where did you go then? A. To the spot where I made the appointment at the Post Office with the telephone booth right in front of it.

Q. What did you see or do whilst you were there?

A. Well, when I made the appointment I asked Mr. Barton to come on his own.

Q. Yes? A. I arrived at the spot. I seen Mr. Barton was standing by the telephone booth and the white Mercedes, and across the street was a Valiant parked in a garage itself and a few people around it which I didn't know. So I told previously Mr. Barton I wanted him alone.

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HIS HONOUR: You will have to control the witness, Mr. Gruzman. I stopped you from interrupting because you were going to lead, but, at the same time you have a duty to interrupt if the witness in his answer travels beyond the question.

MR. GRUZMAN: Q. You told us that you saw the Mercedes and saw the Valiant and some people there which you didn't know. What did you do? A. I went back to Kings Cross.

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Q. Went back to Kings Cross? A. Yes.

Q. Well, what did you do then? A. Then I rang up Mr. Barton again and made an appointment.

MR. STAFF: This is covered by my objection?

HIS HONOUR: Yes.

WITNESS: I made appointment to see Mr. Barton at the Rex Hotel.

MR. GRUZMAN: Q. You had better tell us what you said. What did you say to him? What did you say to Mr. Barton? You did not say "I made an appointment". What did you say, can you remember? As near as you can get it, tell us what you said? A. When I rang up Mr. Barton the second time after the first appointment (Objected to: rejected).

30

Q. Well, can you remember? If you can't remember the exact words, say so. First of all, can you remember the words of your conversation with Mr. Barton over the telephone after the failure of the first appointment? A. I think I told Mr. Barton that I could not find the spot where the meeting was supposed to be.

40

Q. What else did you say? A. Well, I made an appointment with Mr. Barton to -

Q. Will you try and tell us what you said? You did not say, "I will make an appointment". You probably said "I will meet you", or something like that. What did you say? A. I said to Mr. Barton if he drives his car to Kings Cross in front of the Rex Hotel I will recognise it and I will approach him then and then I made the time to come. I think it was quarter past nine, or something like that.

50

A. Vojinovic  
rec'd x.

A. Vojinovic x.

Q. What did he say, do you remember? A. He said - I think he said that he had some guests at home. I can't remember.

Q. Well, if you can't remember the exact words, tell us the substance of what was said? A. Anyway, Mr. Barton said that a quarter past nine or half past nine would be all right - that he would be at the front of the Rex Hotel.

Q. Yes? A. So I said I would be there waiting for him. 10

Q. Yes. All right. Well, what did you do then? (Objected to: allowed).

Q. What did you do? A. I went to the Rex Hotel and I found a friend of mine - a fellow I knew.

Q. What was his name? By the name of - A. Caruga.

Q. You had some conversation with him? A. Yes.

Q. After that conversation where did you go yourself? A. I went into a lounge of the Rex Hotel.

Q. What was the next thing that you did? A. The next thing was that I was standing by the bar and Caruga and Mr. Barton walked into the lounge. 20

Q. What was said? A. So I said to Caruga, "Thank you very much", and he walked away.

Q. And what did you say to Mr. Barton, or what did he say to you? (Objected to: allowed). A. Well, Mr. Barton walked up to me and he said "My name is..."

HIS HONOUR: Q. I didn't hear the beginning of that. A. Mr. Barton walked up to me and he said "My name is Barton. Are you Alec?" because he only knew me by the name of "Aleo". I said "That is right. I had rung up and made an appointment with you." 30

MR. GRUZMAN: Q. Yes? A. So I told Mr. Barton that there is a person which I learned was doing some harm to him.

HIS HONOUR: Q. There is a person..." I'm sorry, I could not hear that? A. "There is a person which I learned that he was to do some harm to you, " and Mr. Barton said, "I think I can guess who it is." 40 I said, "Anyway, it has actually nothing to do with me," but there is a fellow by the name of Michael Novak who I was sort of friendly, and I learnt from him through him and through Freddie Hume Mr. Armstrong arranged to get Mr. Barton killed.

MR. GRUZMAN: Q. Yes? A. Mr. Barton said "Well, I am not surprised at that", or something like that - that he expected something like that to be the first time I rang up. So I said "I don't think there is much I can do about it except to let you know what is going on, and you can see what you 50

A. Vojinovic  
rec'd x.

can do about it". Then Mr. Barton asked me how come that I came to the knowledge of that position that they want to kill him. I told him that I have been friendly with Michael Novak for a few years now and that he was actually looking for somebody who would kill Mr. Barton for £500 and told me all about it; that I asked him if they would pay more, and I told him how Michael Novak...

MR. STAFF: I can't hear what the witness is saying. 10

MR. GRUZMAN: Q. You told him how Michael Novak -  
A. How Michael Novak told me that he was actually getting £1000 for it and he would pay £500 and keep £500 for himself. Then I told him that would not be enough so I asked him to go and see them if they would pay more than that. I told Mr. Barton that they agreed in paying £2000, which I only done to make sure that Novak is not telling lies to me or anything like that, just to find out for certain before I ring him up. Then Mr. Barton said to me that he would pay as much as they would if he could - if I would - how will I say? - If I would see to it that Freddie Hume and Michael Novak and Mr. Armstrong got the justice - justice done about it, sort of. I told Mr. Barton I am not in a position to go to the police right then because I had a Court case and I was on bail then and I didn't have much money to arrange for the solicitor and all things like that in a case if I have to go to Court there and then to my own Court, because I had a girl and a baby boy at the time living with me, so I had to support them some way. Then Mr. Barton said that he would take care of all expenses if I would go to the police and make a statement, or to his barrister. I said to Mr. Barton that I would go to a certain police officer - a detective - in Darlington, and try to make arrangements with him and then call Mr. Barton and I would make a statement because I could trust the detective myself. Mr. Barton agreed with it. I did try to get in touch with a certain detective in Darlington -

Q. You say that Mr. Barton agreed that you should get in touch with the Detective. Was anything else said then? A. Yes. It was actually said to Mr. Barton "If I am going to go through with it and go to the police and all these things I would need some money".

Q. Did you say how much? A. Yes. I asked Mr. Barton for £200. 50

Q. You asked Mr. Barton for £200? A. Yes.

Q. And did Mr. Barton say something. A. Mr. Barton said that the moment we get to the detective or the police station and we talk to them that he would give it to me on account of expenses and so that I would not have to go and, of course, do anything silly.

HIS HONOUR: Q. "So that I would not have to go...". What was the rest of the answer? A. "...and do anything silly", because I didn't have any money then.

MR. GRUZMAN: Q. Is that more or less the end of the conversation? A. Yes.

Q. You mentioned a detective at Darlington. Who was that detective? A. I don't know the detective by his first name. Actually I knew him, but I forgot. But I knew him by his nickname. Actually everybody else knew him by the same name - Detective-Sergeant Mackie.

Q. And I believe, by way of identification -

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HIS HONOUR: I don't know what you are going to volunteer, Mr. Gruzman, but Mr. Staff is objecting to the whole general tenor of this evidence and I do not think you ought to volunteer anything to the witness.

MR. GRUZMAN: Q. Is there more than one Detective-Sergeant Mackie?

MR. STAFF: "Mickie", he said.

WITNESS: "Mackie".

MR. GRUZMAN: Q. Is there more than one Detective-Sergeant of that name at Darlington? A. Yes, there are two of them.

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Q. Between the two, how do you describe the one that you knew? (Objected to: rejected).

Q. Well then, did you in fact contact this detective? (Objected to: question not pressed.)

Q. Then, all right. You made some telephone call, and then what did you do after that? What did you do after the telephone call? (Objected to: allowed).

A. After I made some telephone calls I rang up Mr. Barton.

30

Q. You rang up Mr. Barton? A. That is right.

Q. Yes. And then what happened? What was the conversation on this occasion? A. I told Mr. Barton that I tried to get in touch with Detective-Sergeant Mackie.

MR. STAFF: I take it this is covered by the objection?

HIS HONOUR: Yes. I allow the conversation.

MR. GRUZMAN: Q. Yes? A. I told Mr. Barton that I tried to get in touch with Mr. Mackie - Detective Mackie - and he was not at the police station at the time, and they told me on the phone he will be back at nine o'clock in the morning.

40

Q. Yes? A. I told Mr. Barton that I will try again in the morning and get in touch with Mr. Mackie - Detective Mackie.

Q. Yes. Well then, was anything else said when you spoke to Mr. Barton around this time? I will ask you

this question: had there been any further appointment made? A. Yes. It was, but I am not quite certain if that appointment which I am thinking of was...

Q. At the moment, whenever it was, will you tell his Honour the conversation you had when that appointment was made? (Objected to: allowed) A. I did make Mr. Barton an appointment because I needed the money, and I made an appointment to see Mr. Barton at -- I think I made a mistake the first time, and made an appointment on the corner of Victoria Street and Riley Street, which is actually not Riley Street. It is another street. I have forgotten the name of it anyway. I went back to the telephone booth and rang up Mr. Barton again, but Mr. Barton left by that time. I rang up and I think Mrs. Barton answered the phone. I told Mrs. Barton - 10

Q. This is a conversation with Mrs. Barton, you say? A. Yes. (Objected to: rejected). 20

Q. You said - I think you used the expression - some reference to money? (Objected to).

Q. How much money? (Objected to: rejected).

Q. I would like to go back again to that conversation when this appointment was made when you mentioned Victoria Street. See if you can remember the details of what you said in that conversation (Objected to: allowed).

Q. Just sit quietly and think of the details of that conversation when the appointment was made for Victoria Street? A. The appointment was made for Victoria Street, and I did ask Mr. Barton to come down and bring £200 with him because I needed it for my Court case and I had to pay my solicitor, which I didn't. 30

Q. Can you remember any more details of what happened? I would like you to think as to whether there was anything else said as to the purpose of this meeting? A. I think I told Mr. Barton that I could not get in touch with Detective Mackie and I had to wait until nine o'clock in the morning. I told Mr. Barton that - that I could not get in touch with Detective Mackie and I had to wait until the morning at nine o'clock. That is about all, I think. 40

Q. I see. I propose to lead - (Objected to).

Q. Was anything said about a plan of yours to bring these people to justice? A. Yes.

Q. What did you tell Mr. Barton about that? (Objected to: allowed). A. I told Mr. Barton that if he would go - I had to actually talk to Detective Mackie and arrange to do it in my own way, and I was sure that Mr. Detective Mackie would see to it that it was done, so Mr. Barton asked me "What sort of way?" and I told him that I could go and make appointment with 50

Fred Hume for collecting £500 and a gun in advance and go to Mr. Barton's home and fire a couple of bullets in the air and just put it through the news that a fellow got shot at his home and so, of course, I would go straight and make an appointment with Fred Hume to pay me the rest of the money, and when he does the police would be there and actually catch him with his own gun and the money given.

Q. Well then, you told us that you made this appointment. Now, what did you do after that? (Objected to: allowed). A. When I actually did come to the meeting place where I was supposed to meet Mr. Barton I found out that there is no corner of Victoria and Riley Street. So I went to the telephone booth and rang up again, just in case Mr. Barton was still at home. I did ring up. (Objected to). 10

HIS HONOUR: Is this conversation with Mr. Barton or Mrs. Barton? 20

MR. GRUZMAN: I think not with Mr. Barton.

HIS HONOUR: Just ascertain.

MR. GRUZMAN: Q. You rang - so far you told us you rang, and you thought something. Did you ring again, or what did you do? Tell us what you did?

A. After I made the appointment in Victoria Street I rang up the second time.

Q. Second time? A. Yes.

Q. Second time? A. Yes.

Q. You didn't speak to Mr. Barton? A. No, I didn't speak to Mr. Barton. 30

Q. What did you do then? A. I left a message for Mr. Barton.

Q. It doesn't matter what the message was, I suppose. What did you do then? A. I went to the corner of Victoria Street and - I don't know - anyway, it was Victoria and Liverpool Street, I think it was - right in front of a hospital. St. Vincents Hospital. St. Vincents Hospital, I think it was.

Q. What did you do when you got there? What did you see, or what happened? What happened when you got there? A. I was standing on the corner and seen across the road the white Mercedes with Mr. Barton in it. So I walked across the road to join Mr. Barton. Just as I approached Mr. Barton Mr. Barton said "Hullo," to me, and behind me another fellow did come and introduce himself as Detective - I forget his name. 40

Q. Well, can you tell us what he said? A. Yes. When he approached me he said "I am a police officer, and I would like you to accompany me to the police station. I would like to ask you some questions." Then at the same time Mr. Barton said, "Don't worry about it." 50

I arranged for this, and everything will be in order," so actually I didn't have to worry.

Q. You can't tell us that. That is what Mr. Barton said? A. Yes, that is what Mr. Barton said.

Q. Then what happened? A. Well, I went in the back seat of Mr. Barton's car. We sat there for a while until a police car came along, and we went into the police car and drove to the C.I.B. I think it was.

Q. Drove to the C.I.B.? A. Yes, I think it was. 10

Q. Yes. What happened when you got there? A. When we got there there was another detective who drove the police car - Detective-Sergeant Wild.

Q. Let me get this clear. You don't know the - is this the position, that you don't know the name of the detective who approached you first? A. I know the name. I just can't think of it.

Q. Do I understand it was or was not Detective-Sergeant Wild? You know Wild? A. Yes, I know Wild.

Q. Was it him, or not? A. No, it was not Wild. 20

Q. It was not Wild? A. No, it was not.

Q. You say Wild drove the car? A. Wild drove the car, yes.

Q. Tell us what happened when you got into the C.I.B.? (Objected to: rejected).

Q. At the C.I.B. did you make a statement to the police substantially about these matters? (Objected to: rejected).

Q. Did you make a statement to the police? A. Yes.

Q. Both in writing and in conversation? A. Yes, that is right. 30

Q. (Exhibit "D" shown to witness) Will you look at this document on which I think you identified your signature yesterday. Is that the written statement which you made to the police? Is that the statement? A. That is right.

Q. Now, in the - don't answer this for the moment - in the course of your discussions with the police did you have a discussion about a plan to catch these men? (Objected to: rejected). 40

Q. Were you charged with any charge arising out of these events that you have told us about? (Objected to: question not pressed).

Q. You told his Honour before that you asked for, I think £200 from Mr. Barton. A. Yes.

Q. Did you receive any money at Victoria Street? (Objected to: allowed).

A. Vojinovic x.

Q. Did you receive any money at Victoria Street?  
When you were at Victoria Street on that night did  
you receive any money? A. No.

Q. Did you ever receive any money? (Objected to).

Q. Did you receive any money at any time? (Objected  
to).

Q. In connection with this matter at the C.I.B.  
office? (Objected to: allowed).

Q. Did you receive some money at the C.I.B. office 10  
- at the C.I.B. - in connection with this matter?  
A. Not at the C.I.B.

Q. Not at the C.I.B.? A. No.

Q. Where did you receive the money? (Objected to:  
rejected.)

Q. Did you receive any money in connection with this  
matter? (Objected to: allowed). A. Yes.

Q. How much did you receive? (Objected to: allowed).  
A. \$300.

Q. \$300. A. Yes. 20

Q. Where did you receive that? (Objected to:  
allowed). A. It was a street with the post office -

Q. A street near the post office where? A. At  
Kings Cross, between the Copenhagen Hotel and the  
Rex Hotel.

Q. Not Macleay Street. A street off Macleay Street,  
is that right? A. Yes.

Q. Between the Copenhagen and the Rex Hotel? A. Yes.

Q. Not Springfield Avenue. It is the other one. Who  
gave it to you? (Objected to: allowed). 30

Q. Who gave it to you? A. Detective-Sergeant Wild  
gave it to me.

Q. Was anyone with him at the time? (Objected to:  
allowed). A. The same detective who approached me  
the time I met Mr. Barton at Victoria Street.

Q. When did you receive this \$300? A. It was a few  
days after the statement I made in the C.I.B.

Q. What conversation was there between you and  
Sergeant Wild when you were paid the \$300? (Objected  
to: rejected). 40

Q. When you made your statement to the police that  
you have mentioned what policemen or police officers  
were present? (Objected to: allowed).

Q. When you made your statement in the C.I.B. what  
police officers were present? A. There was



Detective-Sergeant Wild, the fellow who approached me at Victoria Street - Detective -

Q. What was he doing?

HIS HONOUR: Unless there was anybody else, that is all you need for identification.

MR. GRUZMAN: Q. I take it it was the same man then outside St. Vincents Hospital who was present when you were giving your statement in the C.I.B. is that right? A. That is right.

10

Q. Were there any other police officers present when you gave your statement than that man and Detective-Sergeant Wild? Were there any others present? A. No.

Q. And the man who was with Detective-Sergeant Wild when you received with \$300 - have you seen him before? (Objected to).

HIS HONOUR: The witness has already said that was the same man.

That is correct, isn't it, Mr. Staff?

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MR. STAFF: Yes.

MR. GRUZMAN: Q. After you had received this money what did you do? (Objected to. Witness retired from the Court. Mr. Gruzman addressed his Honour).

HIS HONOUR: In support of the question which is asked, and to which objection is taken, Mr. Gruzman has outlined the topic that he is now seeking to elucidate from the evidence of this witness. Briefly, that topic is that this witness and Novak travelled to Melbourne in the blue Falcon car which has been mentioned in evidence already; that Novak arranged for this witness to take the car to Mount Gambier; that Novak reported the car to the Melbourne police authorities as having been stolen; that this witness was apprehended by the police, charged with stealing the car, and in due course convicted and sentenced. This is pressed as being admissible in connection with proof of the relationship between this witness and Novak. I have already admitted a considerable amount of evidence from this witness, the ultimate significance of which can only be evaluated at the end of the whole of the evidence. Such evidence as I have admitted, however, has appeared to me to be possibly capable of supporting an inference of a matter relevant to this suit when taken in conjunction with other evidence which may be before the Court when the case comes to an end. I fail to see how the transactions between this witness and Novak in Victoria concerning this car, even taking the most broad view of what further evidence may be called, could have any probative relevance to any issue falling for decision in the suit.

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I accordingly reject this question, and I

reject the proffered evidence of the transactions between Novak and this witness in Victoria.

(Witness returned into Court).

HIS HONOUR: Q. You are still on your previous oath? A. Yes.

MR. GRUZMAN: Q. Will you look at this document, and tell me whether that correctly sets out your conviction? A. Yes.

MR. GRUZMAN: I will tender that document. 10

MR. STAFF: I have no objection.

(Criminal record of Alexandar Vojinovic tendered; not objected to; admitted and marked Exhibit "0").

MR. GRUZMAN: Q. You are at present in gaol, aren't you? A. Yes, that is right.

Q. In respect of what charge were you convicted?  
A. Breaking, entering and stealing.

Q. Breaking entering and stealing? A. Yes.

Q. And when were you convicted of that offence? 20  
A. I was sentenced on 18th January.

Q. 18th January this year? A. This year, yes.

Q. What was the length of the sentence? A. Two years.

CROSS-EXAMINATION.

MR. STAFF: Q. Mr. Vojinovic, you arrived in Australia in April, 1959, did you not? A. Yes.

Q. From Yugoslavia? A. No.

Q. From Europe? A. Europe.

Q. You were born in Yugoslavia, were you? A. That is right. 30

Q. And what is your present age? A. 31.

Q. 31? A. 31.

Q. And you were then 21 or 22 when you left Europe and came to this country, were you? A. I was 22.

Q. You were 22 when you came to this country? A. Yes.

Q. Mr. Vojinovic, you told us yesterday of some conversations you had with Novak. You know Novak as Michael Ziric also, don't you? A. Michael Zirio? No.

Q. Not a name you know? A. No.

Q. And you, of course, have used a name other than Vojinovic on occasions, haven't you? A. I beg your pardon? 40

Q. You have used a name other than Vojinovic? A. Yes.

Q. You have used the name "Pid", have you? A. That is right.

Q. And others? A. Yes.

Q. And you have used those to conceal yourself, have you? A. Well, I used those names - how would you say? - Well, if I use a different name than which I have, like my own name, well you get into less trouble with the police by the time you get to Court. 10

Q. Mr. Vojinovic, do you come to tell us that you are a person who would murder for money? A. No.

Q. You would never do that sort of thing, is that what you say? A. Exactly. I would never do it.

Q. And you would - of course, you are a person who would tell lies for money or for your own benefit, aren't you? A. No.

Q. You told us yesterday that you said to Momo or Novak that you were prepared to kill Mr. Barton, didn't you? A. I said to Momo that I would do it? 20

Q. Yes. That is what you told us yesterday, isn't it? A. Not exactly.

Q. From p. 258 of the transcript - just before I go to that, at that time you say Novak was a friend of yours, was he? A. Well, he was a friend because I knew him, but not a closest friend which I would class as a friend that I would trust with any special secrets. 30

Q. You were seeing him every day during 1966, you told us, didn't you? A. Just about it.

Q. Practically? A. Yes.

Q. Right through the year from beginning to end, is that what you say? A. From the beginning of 1966 to the end of 1966?

Q. Yes? A. No.

Q. When were you seeing him practically every day in 1966? A. I was seeing Michael Novak or Momo practically every day till I go to gaol. That is right. 40

Q. Till you went to gaol? A. Yes.

Q. When did you go to gaol? A. I can't remember the date. It was when Michael Novak reported his car stolen.

HIS HONOUR: Do you want the date from the exhibit, Mr. Staff?

MR. STAFF: I think I will let it go.

Q. Do you remember yesterday being asked these questions - and I will read them to you, with your answers: "Q. Can you remember when you next met Momo?" and your answer was "Yes, it could be just before New Year, 1966". Then you were asked "During 1966 how often did you see Momo?" and your answer "Every day, nearly every day. I may have missed a day sometimes, but I usually seen him one way or the other every night." Do you remember those questions and answers yesterday? A. Yes. That is right, yes. 10

Q. Was that true, or untrue? A. Well, it was true, because -

Q. I don't want to know why, Mr. Vojinovic, at the moment. Mr. Vojinovic, during 1966 where were you living? A. In 1966?

Q. Yes. Throughout 1966. Which place? If there was more than one, I want to know. Where were you living? A. I was living in Elizabeth Gardens for a time. 20

Q. Whereabouts? A. I think it was 37 Elizabeth Gardens.

Q. Anywhere else? A. Yes, 48, I think it was, Bayswater Road.

Q. I beg your pardon? A. 48 Bayswater Road.

Q. Yes? A. I was in Crown Street. I have forgotten the number of the place.

Q. Anywhere else you can think of? A. I lived in a few different places, but they would be the main places where I stayed. 30

Q. And you were living throughout the year in one place or another in Sydney, were you? A. Yes, that is right.

Q. You were never in Surfers' Paradise in 1966?  
A. I did go to Surfers' Paradise, yes. I went for holidays.

Q. You went to Surfers' Paradise for holidays?  
A. Yes.

Q. So that you didn't live in Sydney all the year?  
A. Well, if you count holidays, a trip to Brisbane and back. 40

Q. You went to Brisbane, did you? A. Yes. I went to Surfers' Paradise. To Brisbane. I attended the races, and went back to Sydney.

Q. How long were you away? A. About a week, or a week and a half, or something.

Q. When was that? A. I can't remember the exact date.

Q. You can't remember when it was? A. I can't remember the exact date. 50

Q. Well, was it summer, or was it winter? A. It was the beginning of winter.

Q. The beginning of winter? A. Yes. I don't know exactly when.

Q. Somewhere about the beginning of winter, was it?  
A. I can remember one thing. It was a special meeting at Eagle Farm, and I went on purpose to go to the races.

Q. Was it the Stradbroke meeting or the Brisbane Cup meeting? A. It could be the Stradbroke meeting. 10

Q. Did you see Novak in Surfers' Paradise or Brisbane when you were there? A. At that time?

Q. Yes? A. Not that time, no.

Q. Were you away from Sydney at any other time in that year - 1966? A. I did go a few times just for short holidays up to The Entrance and Newcastle.

Q. Yes? A. But just weekends, or something like that.

Q. Did you go out of New South Wales at any time during that year other than on this trip which you have told us about? A. 1966 No. 20

Q. Now, I want you to think carefully about this. I read you two questions and the answers you gave yesterday, and you said during 1966 you saw Novak nearly every day or night. That is not true, is it? A. Every night for a period of time. Not for the whole year.

Q. What period of the year do you say you saw him every day, or nearly every day or every night? A. Well, the period of time that I was mostly connected with Momo would be up to 9th or 10th January. 30

Q. In 1966? A. That is right.

Q. Mr. Vojinovic, you said yesterday - and I read you your answer to the question a few moments ago - that during 1966 you saw Novak nearly every day or night? A. That is right.

Q. You recall that I read that to you? A. Yes.

Q. I just asked you whether that was true or not, and you said "Not throughout the whole year." I asked you in what period in 1966 you say you saw Novak practically every day or every night. You understood that, didn't you? A. Yes. 40

Q. And you answered "The period up to 9th or 10th January, 1966"? (Objected to: rejected).

Q. I will ask you again: during 1966 over what period do you say you saw Novak nearly every day or nearly every night? Over what period? A. If I can put it this way, the most I seen him and been with Michael Novak mostly every day would be the fortnight before 50

the happening of Mr. Barton and Mr. Armstrong. That would be the most times that I seen Momo.

Q. And that was the part of 1966, wasn't it, which you intended to indicate when you gave your answer yesterday, that you saw him nearly every day or every night during 1966? Is that right? A. That is right, yes.

Q. During the rest of 1966 you only saw him occasionally, did you? Or did you see him at all? If you don't remember, say so? A. I can't say that I didn't see him at all, because I did see him - Michael Novak. 10

Q. Is this the position, that you can't remember whether you saw him once or twice or a hundred times during the rest of the year? Is that right? A. That is right.

Q. You might only have seen him once? Once or twice? A. It would be more than that.

Q. But you can't say whether you saw him frequently or infrequently A. I don't quite understand what you mean. 20

Q. Mr. Vojinovic, you told us yesterday, at p.258, that at the time when you had your first conversation with Novak you said to him "How do you know that I would not be interested in a thing like that?" and that he said to you "that he knew of me doing everything else, but he never knew me as a person who would kill someone." Then you said you told him "A person who needs money and he is in a bad position will do almost anything." You said "I told him not for that price what he is offering." A. That is correct. 30

Q. Do you say that evidence is true? Is it a true account of what you said to Novak on that occasion? A. Well, if you are saying that I said to Momo did I mean what I said - would I really kill, or just find it out if the thing is true what is there? (Sic).

Q. Is what you said to Novak on that occasion true, or not? A. What I said to him, yes. 40

Q. You told him later on, didn't you, that you would - at p.259 you told Novak that you would do the job if they gave you £500 advance money and a gun? A. That is right.

Q. Was that true? Was that true, what you told Novak? A. I told Novak, yes.

Q. Was it true, that for £500 advance money and a gun you would kill someone? A. No.

Q. So that you told Novak a lie, did you? A. Not exactly. 50

Q. You didn't tell him the truth, did you? A. Well

if I would have told him the truth, of course, he would not be interested to talk to me, would he?

Q. You didn't tell him the truth, did you? A. No. Not exactly, no.

Q. Did you at that time have in mind to go to Mr. Barton and ask him for money in exchange for information? A. No.

Q. That didn't cross your mind? A. No.

Q. Do you say that when you told Novak that you would do the job you had no intention of doing it? A. That is correct. 10

Q. At that time, of course - it was soon after that, of course, that you rang Mr. Barton? A. That is right.

Q. And when you rang Mr. Barton your intention was to try and get some money from Mr. Barton in exchange for information, wasn't it? A. No, not at all.

Q. You just wanted to do Mr. Barton a good turn, did you? A. I just wanted - I don't know Mr. Barton. I never met him or anything like that, and I just wanted to do a good turn to a person and do harm to Frederick Hume and Michael Novak. 20

Q. You didn't like Mr. Hume, did you? A. No.

Q. Indeed, you had a great deal of bitterness towards Mr. Hume, didn't you? A. I beg your pardon?

Q. You were very bitter about Mr. Hume, weren't you? A. That is right.

Q. And you had never met Mr. Hume yourself, had you? A. In person, no. 30

Q. Never spoken to him, had you? A. No. Except on the telephone.

HIS HONOUR: Q. I didn't hear that answer? A. Except on the telephone on one occasion.

MR. STAFF: Q. When you rang Mr. Barton you had never previously spoken to Mr. Hume, had you, on the telephone or anywhere? A. When I spoke to Mr. Barton?

Q. The first time? A. When I spoke to Mr. Barton the first time?

Q. Yes? A. No, no. 40

Q. And you had in your mind when you spoke to him the first time that by telling Mr. Barton what you did tell him you might do some harm to Frederick Hume? A. That is right. (Objected to).

MR. GRUZMAN: There may be uncertainty in the witness' mind as to what is meant by "the first time".

HIS HONOUR: I do not myself see what room there may

be for uncertainty, I will not interfere with the cross-examination.

(Questions \* to \* inclusive read by Court Reporter).

MR. STAFF: Q. You then contacted Mr. Barton with the intention of doing some harm to Hume, whom you had never met or spoken to? That is right, isn't it? A. I beg your pardon?

Q. You first rang up Mr. Barton? A. That is right. 10

Q. With the intention of doing some harm to Frederick Hume, whom you had never met or spoken to? (Objected to; allowed).

Q. Mr. Vojinovic, before you ever spoke to Mr. Barton at any time you had made up your mind, had you not, to try and do some harm to Frederick Hume? A. Yes.

Q. And when you made up your mind to try and do some harm to Frederick Hume you had never ever met him or spoken to him, had you? A. I seen him, but never talked to him, no. 20

Q. And at the same time you had the intention of doing - trying to do some harm to Novak, did you? A. That is right.

Q. And he was the person you had described as being - yourself being friendly with, wasn't he? (Objected to; rejected).

Q. You regarded him at that time as your friend, didn't you? A. As my friend, in a different way of looking at a friend. 30

Q. Anyway, you regarded him as your friend to whom you wanted to do some harm? A. I beg your pardon?

Q. You regarded him as your friend whom you wanted to hurt? (Objected to; allowed). That is right, isn't it? A. Yes, that is right.

Q. And you would not mind telling some lies to hurt Novak and Hume, would you? A. Well, to tell a complete lie to hurt them, I would not do it.

HIS HONOUR: Q. "To tell a complete lie to hurt..." what was the balance of your answer? A. To tell a complete lie to hurt him or Hume - I would not tell a lie without a background to be some facts in it, or something to do with it. 40

MR. STAFF: Q. Of course, it quickly occurred to you that you might get some money from Mr. Barton for the information you told him you had, didn't it? A. No.

Q. That didn't cross your mind? A. No, not at all.

Q. And do you say - did you ever - do you say you asked Mr. Barton for some money? A. That is right. 50



Q. Or that Mr. Barton offered it to you? A. Well, when I first met with Mr. Barton when I told him that there is some people that wants to do him harm I didn't ask him for any money, but when Mr. Barton offered money so that I would go to the solicitor or barrister of his or to the police, he would pay as much as they offered to kill him if I go through with it.

Q. And you say - up to that point of time it had not crossed your mind that you might get some money from Mr. Barton? A. No. 10

Q. For telling him this matter? A. That is right.

Q. Mr. Vojinovic, you don't much mind what you do to get money, do you? A. Well, it all depends.

Q. You are prepared to live off the earnings of prostitution, aren't you? A. No, not really.

Q. You were convicted for that offence, weren't you? A. Yes, I was convicted.

Q. And you remember you had one or two conversations with Detective-Sergeant Wild after the first time you went to the C.I.B. didn't you? A. I beg your pardon? 20

Q. You had one or two conversations with Detective-Sergeant Wild following upon the night you went to the C.I.B. and made the statement of which you have told us? A. You mean that I knew Detective-Sergeant Wild before I made this statement?

Q. No. You went to the C.I.B. and made a statement on Sunday night, did you not? A. That is right, or I think it is. 30

Q. On the Monday, in the afternoon, you telephoned Sergeant - telephoned Detective-Sergeant Wild, didn't you? A. That is right.

Q. And you met him near the Potts Point post office? A. That is right.

Q. And you told him, did you not, that you had some information about a man who had been shot in Kellett Street, Kings Cross? A. A man - ?

Q. I put it to you that you told him that you had some information about a man who had been shot in Kellett Street, Kings Cross? A. I had some information about a fellow who was shot? No. 40

Q. Do you deny telling him that, or don't you remember? A. Well, if you put it a different way it may come to me.

Q. Do you remember, anyway, meeting Detective-Sergeant Wild at Potts Point post office on the Monday afternoon following the night on which you made the statement at the C.I.B.? Do you remember that? A. Yes, that is right. 50

Q. And do you remember Sergeant Wild asking you about - asking you about your mode of life? The way you lived. Do you remember him asking you about that?  
A. Yes.

Q. And do you remember that on that occasion you told Detective-Sergeant Wild that since leaving Yugoslavia you had lived by crime? A. No, I never.

Q. You never? A. No.

Q. That is untrue, is it? A. That I told Mr. Wild that I lived by crime? 10

Q. By crime? A. That is untrue, yes.

Q. I put it to you that you told him that you engaged in smuggling from country to country before you came to Australia? A. That I told Mr. Wild? No.

Q. And that before you came to Australia you had been to Austria? A. That is correct.

Q. And whilst in Austria you had gathered some evidence of impropriety by the Croatian and Serbian representatives there? A. I beg your pardon? 20

Q. I put it to you that you told Detective-Sergeant Wild that whilst you were in Austria you had come across some evidence against the Croatian and Serbian representatives in Austria? A. Talking to Mr. Wild about religions and about the behaviour of Serbians (sic) and Croats. The only thing I told Mr. Wild is that it is run by smart fellows who like to make money for themselves. That is right. 30

Q. You told him, didn't you, that you found some evidence and blackmailed them, didn't you? You told him that, didn't you? A. No, I didn't.

Q. You told him, didn't you, that you would do anything to get a quid? A. Not anything.

Q. Pretty nearly anything? A. It all depends what you require.

Q. But didn't you say that to Detective-Sergeant Wild on this occasion? A. I don't think so, no.

Q. I suggest to you that on the same occasion you told Detective-Sergeant Wild that you had found out that Novak had gone - had taken a man to Brisbane who had been shot by a police officer. Do you remember that? A. What I told Mr. Wild is that Michael Novak is gone to Brisbane. 40

Q. Do you want to add something? A. But nothing about a fellow being shot or that I knew anything about it. But I heard that Michael Novak did go to Brisbane, and he should be on his way back; if they wanted him they could get him. 50

Q. What I want to put to you is that you told him

that Novak had gone to Brisbane, and taken with him a man who had been shot in Kelllett Street, Kings Cross, for the purpose of getting treatment for that man in Brisbane? A. I didn't know nothing about it. I could not have told him.

Q. On the following Wednesday, 11th January, you again made an appointment to see Sergeant Wild near the Potts Point post office, didn't you? A. That is correct, yes. 10

Q. And you did in fact see him there, didn't you?  
A. That is right.

Q. And did you tell Sergeant Wild that you had tried to contact Mr. Barton by telephone? A. Yes, that is correct.

Q. And did you tell him that you wanted to know what about the money Mr. Barton had promised you? A. That I wanted to know about the money?

Q. Yes? A. I told Detective Wild -

Q. Come on? (Objected to: allowed). 20

Q. You told Detective Wild that you wanted to know when you were going to get the money Mr. Barton had promised you? A. That is correct, yes.

Q. And it was a day or so after that that you left for Victoria, wasn't it? A. Day after?

Q. It was a day or two after that conversation with Sergeant Wild that you left for Victoria with Novak, wasn't it? A. Yes, it would be something like that.

Q. You were arrested down there on 24th January, weren't you? A. 24th January, that is right. 30

Q. And you had been in Victoria for some few days?  
A. Yes.

Q. Now, Mr. Vojinovic, you told us yesterday that you first met Novak when you were in Pentridge Gaol in 1961. Do you remember that? 1962, I'm sorry, In 1962? A. That is right. '61 or '62 sometime, yes.

Q. What you told us yesterday was that you first met Novak in 1962 when you were in Pentridge Gaol. Do you remember that? A. In 1962?

Q. Yes. You were then serving a sentence, were you? 40  
A. That is right.

Q. Do you say that Novak was then also serving some sentence? A. He was on remand.

HIS HONOUR: Q. What was that answer? A. He was on remand. He was in the remand yard while I was serving my sentence.

MR. STAFF: Q. He was in the remand yard and you were serving a sentence, and you met him, did you? A. That is right.

Q. Of course, Mr. Vojinovic, since the time when you had your conversation with Mr. Barton you have become even more bitter about Novak, haven't you?

A. Not really, no.

Q. But you blame him, don't you, for having been convicted for unlawfully using - for illegally using a motor vehicle in Victoria? A. I beg your pardon?

Q. You regard Novak, don't you, as having been responsible for getting you convicted for illegally using a motor car in Victoria? A. Yes, he did. 10

Q. You believe he did, don't you? That is what you say, isn't it? A. I don't quite understand you.

Q. What I am putting to you is that you believe - I will withdraw that. What I am putting to you is that since January, 1966 - 1967 - I will start again. Since January, 1967 you regard yourself as having even more cause for doing harm to Novak than you had before January, 1967, don't you? A. 20  
No.

Q. You told us yesterday that you regarded Novak as having framed you on the illegally using charge in Victoria in January, 1967, didn't you? A. That is correct.

Q. And you don't regard that as being any cause for any greater dislike of Novak than you had previously? Is that what you are saying? A. Well, Michael Novak - he never done actually any harm to me, because he - I suppose he didn't have a chance. But I knew that he works with Fred Hume, and that he also has got a reputation as a pimp the same as Frederick Hume, and I have been warned nearly every day by people I could not expect anything. 30

Q. So that you really set out to do Mr. Hume harm rather than Novak, did you? A. If I had a chance, yes.

Q. That is your attitude now, isn't it? A. Well, they both belong in the same category, so I can't separate them really. 40

Q. If you could do them some harm today you would, wouldn't you? A. If I could do them harm?

Q. Yes? A. Which they deserve, yes.

HIS HONOUR: Q. I did not hear the first part of the answer? A. Which they deserve.

MR. STAFF: Q. You would tell a lie for this purpose, wouldn't you? A. No.

Q. Not a lie at all? A. Not a lie at all. Not if - how to express this - if I wanted to have Michael Novak or Freddie Hume like you are putting it, to do some harm by telling lies, I would have done that long ago. In other words, when there is a chance, yes, I would put them in, but not telling a lie just to harm them. 50

Q. You have told lies before, haven't you, to try and do them some harm? A. Told lies to do them harm, no.

Q. Won't you agree that in attempting to do them some harm you have told lies in the past? A. No.

Q. Would you ever tell a lie to the police? A. Well, it all depends.

Q. If you wanted to do a policeman some harm would you tell a lie about him? A. If I wanted to do a policeman harm I would not tell a lie which would not have fact. I would not tell a lie to harm a polioeman or something like that if I would not have a fact. 10

Q. If you had a fact you would tell a lie? A. No, If I had a fact I don't need to tell a lie.

Q. So that you would not tell a lie about a policeman? A. Not really, no.

Q. Tell me, would you tell a lie to do yourself some good? A. You are putting it very difficult to answer. Would I tell a lie to help myself? 20

Q. Yes? A. In what sort?

Q. Any way? A. Any way? No.

Q. You are truthful man, are you? A. Yes.

Q. Always tell the truth? A. That is right.

Q. I suppose you say you have told the truth in giving your evidence in this Court yesterday and today, have you? A. I am telling the truth?

Q. Yes? A. Yes.

Q. Tell me, Mr. Vojinovic, you, I suppose, told the truth to the polioemen when you made the statement at the C.I.B., did you? A. Told the truth? 30

Q. Yes? A. Correct.

Q. Everything you said there was the absolute truth, was it? A. Everything I said there was the truth.

Q. You say everything you have told us in this Court room has been the truth, too? A. That is correct.

Q. Of course, you told the police at the C.I.B., didn't you - I withdraw that - you were asked this question, weren't you, by the police at the C.I.B. on Sunday afternoon; "Q. When you first told by Momo of these arrangements to kill Mr. Barton why didn't you report it to the police?" and the answer "Because I just wanted to harm Frederick Hume." Do you remember that? A. Yes. 40

Q. That was true, was it? A. It was true, yes.

Q. And did you tell the police officers, or were

you asked by the police officers this question:  
"Q. Mr. Alexandar Barton has reported certain incidents to this department, and by arrangement you met him tonight at 7.30p.m. Will you tell us the whole of the facts surrounding your association with Mr. Barton." Do you remember being asked that? A. Yes.

Q. And did you say "A fellow approached me about two weeks ago, which I knew from Sydney, but I only knew his name as Momo." Did you say that? 10  
A. That is right.

Q. "He is a Yugoslav boy that I know around the Cross. He said to me, do I know any job which we could earn a quid from." Was that true? A. That is right.

Q. "I told him I don't know and he said 'I know a job but neither you or me would be game to do it.' I said 'What is it?'. He said 'Well, a fellow offered me if I knew a fellow who would kill a fellow and he would pay me £2000 for it.' Is that true? A. No. it is not true. 20

Q. So that you told the police a lie, did you? A. No, I never told them a lie.

Q. Your answer there is not true, you say? A. No, just a minute. This is Michael Novak talking to me. It is to be £1000, not £2000. Just a mistake.

Q. You were asked this question: "Q. Did he tell you any more about that particular job?" and you answered "I said to him 'That is a bit interesting,' and I talked to him about it, and I said 'I don't think any of our sort of people would do it.' Did you tell the police that? A. That is right. 30

Q. "He said 'It is a good thing if you can do that sort of thing' Was that true, when you told the police that is what he said? A. That Michael Novak said?

Q. Yes? A. "It would be a good thing if you can do it."

Q. "If you can do that sort of thing." "Was it true when you told the police that that is what Novak had said? A. That is what I said. 40

Q. I put it to you that what you told the police, Mr. Vojinovic, was this: "I said to him 'That is a bit interesting,' and I talked to him about it, and I said 'I don't think any of our sort of people would do it". You are agreeing that you told the police that is what you had said? A. "I don't think that any of our people would do it."

Q. Mr. Vojinovic, can you read? A. Yes. 50

Q. Would you like to look at the statement which you identified as the one you made to the policemen? Would you like to read it as we go along? A. It is unnecessary.

Q. All right? A. It is just the point that you are saying that Michael Novak said -

Luncheon adjournment).

AT TWO P.M.

HIS HONOUR: You are still on your former oath to tell the truth? A. Yes.

MR. STAFF: A. (Exhibit "D" handed to witness) I want you to look, Mr. Vojinovic, at the fifth answer on the first page. You see the answer? A. Yes.

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Q. Just read it through? A. Yes.

Q. Now, you signed this statement, didn't you? You signed the statement? A. Yes.

Q. And you read it before you signed it, didn't you? A. Yes.

Q. And you said it was correct, didn't you? A. Yes.

Q. And that answer, is that the answer what you told the policemen? It is, isn't it? A. It is, except "£2000".

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Q. Everything else in it except £2000 is correct? A. Is correct.

Q. What do you say the £2000 should be? A. \$2000.

Q. I see. You told me you read it through before you signed it? A. Yes.

Q. You didn't correct it then, did you? A. No, I didn't take notice of the signs about pounds and dollars.

Q. Will you read the next question? You were asked: "Did he tell you any more about that particular job." Will you just read your answer? A. Yes.

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Q. That is the answer you gave the police, wasn't it? A. That is right.

Q. That is the answer you gave? A. Yes.

Q. When you gave that answer to the police you were telling them the truth, or a lie? A. The truth.

Q. You were telling them the truth? A. Yes.

Q. Now, would you now read the next question: "Did the man Momo discuss with you who the person was that was to be killed?" Will you read your answer to that? A. Yes.

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Q. Was that true, or - I withdraw that. That incorrectly records what you told the police, doesn't it? A. It is correct, except for one sentence.

Q. Which is the sentence which is not correct?

A. It says here "German". I didn't refer to a German. I referred to a Jew.

Q. You referred to a Jew, and not a German? A. It was not actually a talk about Germans or any nationality. I referred to a Jew fellow.

Q. And then you were asked the question "Where did this conversation take place?" and your answer was "I met Momo at the Cross and he was driving his car and he talked to me while we drove around." Is that what you told the policeman? A. Yes.

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Q. That was true then, wasn't it? A. That is right.

Q. You were then asked about the type of car, and this question follows: "Q. Was there any further discussion regarding Mr. Barton and Mr. Armstrong." A. That is right.

Q. Then would you read your answer, at the foot of the page? A. Yes, that is right.

Q. Is that the answer that you told the police? A. Yes, that is right.

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Q. And is that what happened in fact? A. That is correct.

Q. Now, will you go over the next page, and look at the second question on the page? A. Yes.

Q. You were asked, "What discussion did you have with Momo regarding Frederick Hume?" and your answer was "Well, I asked Momo how he was mixed up in this and he told me that Fred Hume was the man in-between and that he is the man paying the £2000 to get Mr. Barton killed." Is that what you told the police? A. That is right. Except the £2000.

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Q. Didn't you see the pounds sign again? A. No.

Q. You say that is what you told the police? A. That is correct, except \$2000.

Q. And of course, Mr. Vojinovic, you are, are you not, a Serbian? A. That is right.

Q. You believe Mr. Hume to be a Croatian? A. I would not know.

Q. Don't you? Haven't you got a belief about it? A. No. I was not interested.

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Q. You don't know - you don't really know much about Mr. Hume at all? A. No, not really. Only what I hear.

Q. Now would you go down to the fifth question on p.27? You were asked "Have you ever met Mr. Armstrong or Frederick Hume?" You answered "No, but I have saw Frederick Hume the night after I spoke to Momo." Is that what you told the police? A. I think it was, yes.

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Q. You think it was? A. Yes.

Q. And of course, you told the police you knew that Hume was a Yugoslav, didn't you? A. Was Yugoslav, yes.

Q. And will you look at the next question after the one I just directed your attention to? A. Yes.

Q. You were asked: "Where was that?" That is, where you saw Frederick Hume the night after you spoke to Momo. You were asked "Where was that?" and your answer - will you read it? A. Yes. 10

Q. When you answered that question did you tell the policemen the truth, or not? (Objected to: allowed).

Q. When you answered that question did you tell the policemen the truth, or tell them a lie? (Objected to).

Q. Mr. Vojinovic, you told us you read through this record before you signed it and that you signed it, didn't you? A. That is right. I had a look through, yes. 20

Q. And when you signed it you looked through it and believed it to be correct, didn't you? A. Yes. I believed it was correct, yes.

Q. And on p.6, the second last question, if you will turn over to it, you were asked this question: "Q. Will you read this record of interview over, and if it is correct, sign it?" and you answered "Yes"? A. Yes.

Q. And you read it over and then signed it, didn't you? A. That is right. 30

Q. Now, will you go back to p.2, to the answer I showed you. Is that answer a correct statement of what you told the policemen on this occasion? A. The same you mentioned before?

HIS HONOUR: He wants to know which question, Mr. Staff.

MR. STAFF: Q. That is the sixth question down, and the sixth answer, right in the middle of the page? A. I don't think it is exactly as I said it, because - 40

Q. Tell me, why did you sign the record as being correct, if it was not correct? A. Well, I didn't read the statement right through it word by word. I read it just because I was sitting next to the detective who typed it, so I guess I more or less trusted him to be correct as it was said.

Q. You watched him as he typed it? A. I was sitting next to him. I didn't watch every word he typed. A. Of course not.

Q. Do you deny that the sixth answer down on p.2 does not record what you said? (Sic) I will withdraw 50

that. Do you deny that the sixth answer on p. 2 is what you told the police on that occasion in answer to the sixth question? A. That is correct.

Q. That is correct? A. Yes.

Q. Of course you appreciate, don't you, that it is quite different from the evidence you gave this morning? A. It is different just when you look at the statement closely.

HIS HONOUR: Q. "It is different when you look..." 10  
A. When you look at the statement closely to read it word by word it should not be - like here, question 5 - "Have you ever met Mr. Armstrong or Frederick Hume?" "No, but I have saw Frederick Hume the night after I spoke to Momo." That should be the night after the arrangement with Momo for £500 of advance. That was the next night that we did drive to the corner of William Street and Riley Street to meet Hume, and I was not driving around looking for jobs; it was driving down on purpose 20 to meet Hume.

MR. STAFF: Q. You say you were not driving around with Momo in his car to see if you could get a quid? A. Not that night when we seen Hume on the corner of William Street, and Riley Street.

Q. Do you say Momo didn't say "I have to see this fellow Hume, and you can wait in the car." A. He did say that. When we arrived at the spot he said to me to wait in the car. But I knew already who he was going to meet, because we arranged it. 30

Q. It is not true, then, - what is said in the answer is not true: "He drove to William Street and turned into Riley Street." Is that what you say? A. He drove?

Q. Yes? A. I was driving the car.

Q. Will you just look at the answer I directed your attention to before, and which you told me was correct. You see it says "He drove to William and turned into Riley Street". (Objected to).

HIS HONOUR: What the witness said was that that was a correct transcription of what he said. 40

MR. STAFF: Q. You see in the answer it says "He drove to William Street and turned into Riley Street". A. Which answer is that?

Q. The sixth answer from the top of p. 2? A. It is over the page?

Q. The sixth question on p. 2 - the one you read earlier? A. Yes.

Q. The question you were asked was "Where was that?" and you said "At the corner of William Street and Riley Street". A. That is right. 50

Q. It proceeds "I was driving around with Momo in

his car to see if we could get a quid." Now, you agree that you told the policemen that, don't you?

A. No. I never. That is what I said.

Q. You deny, then, that you told the policemen that you were driving around with Momo in his car to see if "we could get a quid"? A. On that particular night we were driving on purpose.

Q. Will you just answer the question I ask you? Do you deny you told the policemen on this occasion, in answer to the question "Where was that?", the answer "At the corner of William Street and Riley Street. I was driving around with Momo in his car to see if we could get a quid." A. I deny that, yes.

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Q. You deny that? A. Yes, I deny that.

Q. Do you deny that you said "and Momo said "I have to see this fellow Hume, and you can wait in the car". Do you deny that is what you told the police? A. Did I -

Q. Will you just answer the question? A. It is very difficult to answer the question.

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Q. If you can't answer it, say so? A. Well, I can't answer, because it is not in the place.

Q. Mr. Vojinovic, I want to put this to you: do you agree that the policemen asked you this question: "Q. Have you ever met Mr. Armstrong or Frederick Hume?" A. That is correct.

Q. Do you agree that your answer was "No, but I have saw Frederick Hume the night after I spoke to Momo"? A. No, not the first time after I have spoken to Momo, if that is what you are referring to.

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Q. Do you say that answer was not the answer you gave to the policeman? A. That is correct.

Q. After answering that question were you asked "Where was that?" A. No.

Q. You deny that question was asked at all, do you? A. Would not deny the question, if that would be the night that we went to the police station - the night after I talked to Momo about £500 and the gun. That would be correct. But not in the position the first night after I met Momo. I deny this, yes.

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Q. Do you deny you said to the policeman, in answer to the question "Where was that?" "At the corner of William Street and Riley Street, I was driving around with Momo in his car to see if we could get a quid and Momo said 'I have to see this fellow Hume and you can wait in the car' He drove to William Street and turned into Riley Street. Momo got out of the car and walked to the corner and he met a man and I recognised him as a Yugoslav I had seen around the Cross. When Momo came back to the car I said 'Is that the fellow Fred you were talking about?' and he said 'Yes', and I said 'I recognised

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him. I see him around the Cross.' Do you deny you gave that answer to the police? A. I deny that, yes.

Q. Of course, it is quite different from the evidence you gave this morning, isn't it? A. It is different altogether. Not different only to the answer I give; it is different from the truth.

Q. And you signed the statement, didn't you?  
A. That is right.

Q. And you signed on each page, didn't you? A. That is right. 10

Q. Now, you were asked the question which follows - the seventh question on p.2 - "Did you talk further with Momo that night about the Barton matter?" You were asked that question? A. That is right.

Q. And you answered "No. we didn't say anything?"  
A. Yes.

Q. So that that is a correct record of what you said, is it? A. Yes, that is right.

Q. The question and the answer? A. The question and the answer is in a place - the wrong place following the sixth question and answer. 20

Q. And you watched the constable type this document as you were asked questions and answered them?  
A. If you mean did I peer into the typewriter and read it after him, I didn't.

Q. You were asked that evening the question that appeared eighth on p.2: "Q. Have you every mentioned the Barton matter to Momo since that night?" and you answered "No really, we have not. I see him hearly every day and we talk, but not about Mr. Barton."? A. Yes. 30

Q. That is correct, is it? A. Yes.

Q. And that was the truth, was it? A. That was the truth.

Q. And were you asked the question appearing next on p.2: "Q. When you first discussed this matter with Momo did he indicate to you how Mr. Barton could be killed?" and did you answer "No"? A. That is right. 40

Q. That correctly records the question and the answer, does it? A. That is correct, yes.

Q. And that was the truth, was it? A. That was the truth.

Q. Nothing was said about guns? Nothing was said about shooting Mr. Barton when you first discussed the matter with Momo? A. Nothing was said exactly about a gun or what you are going to use.

Q. Will you look at the next question on p.2?

Before you do, will you look at this gentleman?  
(Mr. Frank Clifford Bailey stands up in Court at  
the request of Mr. Staff).

Q. Do you recognise the gentleman who is standing  
just behind me? A. Yes.

Q. Mr. Bailey had an interview with you, did he  
not, at a prison in Queensland some couple of  
weeks ago? A. That is right.

Q. And did Mr. Bailey then say to you, or rather, 10  
did he ask you who you were? A. Yes.

Q. And did you tell you you were Alexandar Vojinovic?  
A. That is right.

Q. Did Mr. Bailey say to you: "Do you know you are  
going to Sydney tomorrow to give evidence in Court?"  
A. That is right.

Q. And you answered "Yes?" A. Yes.

Q. And I think at that stage a prison officer  
who was present said to you that you need not  
answer any questions? A. That is right. 20

Q. You were then asked by Mr. Bailey: "Do you  
know that the case concerns Mr. Barton and Mr.  
Armstrong?" A. Yes.

Q. You answered "Yes?" A. Yes.

Q. You were asked then "Do you know Mr. Barton?"  
to which you answered "Yes?" A. That is correct.

Q. And then "Do you know of Mr. Armstrong?" A. I  
beg your pardon?

Q. You were then asked "Do you know of Mr. Armstrong?"  
A. Yes. 30

Q. And you answered "Yes?" A. Yes.

Q. You were then asked "Do you remember being in-  
terviewed at the Criminal Investigation Branch,  
Sydney, on January 8th, 1967?" and you answered  
"Yes", is that right? A. That is right.

Q. Do you remember then you were asked "Do you  
remember Sergeant Wild was present?" and you  
answered "Yes?" A. Yes.

Q. You were then asked "Do you remember giving a  
statement?" and you answered "Yes?" A. That is 40  
correct.

Q. Mr. Bailey then read these statements - a state-  
ment through to you, didn't he, from beginning to  
end, I put to you? A. That he read to me?

Q. A statement from beginning to end? A. No, he  
didn't.

Q. You deny that happened? A. That is correct.

Q. I put it to you that, having read it to you, Mr. Bailey then showed you a photostat copy of the statement and asked you if it was a copy of the statement which you had given to Sergeant Wild, and you said "Yes?" A. That is correct.

Q. He then showed you the signature at the bottom of the statement at the end of the statement - and asked you if it was your signature at the end of the statement, and you answered "Yes?" A. That is right. 10

Q. And I put it to you that he then asked you "Do you know the man Momo?" and you answered "Yes?" A. That is right.

Q. Is that right? A. Yes.

Q. He then asked you "Did he ask you to kill Barton?" and you answered "Yes". Do you deny that, or do you admit it? A. Did -

Q. The question he asked you was "Did he asked you to kill Barton?" and your answer was "Yes?". A. No. I didn't put it that way. 20

Q. I put it to you he then asked you "Do you know Fred Hume?" and you said "Yes?" A. That is right.

Q. He then said to you "Did Fred Hume ask Momo to kill Barton?" and your answer was "Yes?" A. Never asked me that.

Q. He then said to you "Is the statement true?" - the statement of which you had seen the photostat copy - and your answer was "Yes?" A. That is correct. 30

Q. He said "Do you wish to change it in any way?" and your answer was "No?" A. That is right.

Q. "Do you wish to add anything to it?" and your answer was "No?" A. That is right.

Q. Were those last three answers true, or false? A. The last three answers?

HIS HONOUR: I think you had better put them separately, Mr. Staff.

MR. STAFF: Q. Mr. Bailey asked you "Is the statement true?" and your answer "Yes?" A. Yes. 40

Q. Was that a true answer to Mr. Bailey? A. Yes.

Q. And when you were asked the question "Do you wish to change it in any way?" and you answered "No," was that true? A. Correct.

Q. And when you were asked the question "Do you wish to add anything to it?" you said "No?" A. "No".

Q. Was that a true answer? A. True answer.

Q. So that you agree you told Mr. Bailey in those

answers that what was in the statement was true, didn't you? A. I believed it is true, yes.

Q. And you say now, do you, that there is a lot that is not true? A. I am only saying that on p.2 there is a question and answer which should not be there, and the rest is true, which should belong to the night before we made the statement.

Q. Now, will you tell me which is the question and answer which you say is the only one on p.2 - I withdraw that. You said there is a question and answer which should not be there on p.2? A. Yes, that is right.

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Q. Which question and answer is that? A. I will tell you. 5 and 6.

Q. So that there are two questions and two answers now, are there? A. That is what I referred to, because if you like I will explain to you. Can I explain them?

Q. Just a moment. I will ask you a question about it in a moment. Before I do, Mr. Vojinovic, would you agree that the photostat copy of the statement which Mr. Bailey showed you on the occasion I asked you about was a photostat copy of the statement you have in front of you now? (Exhibit "D"). (Objected to).

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Q. (Approaching witness). I want you to look at the photostat copy which I show you, consisting, of a second page - perhaps two questions in the middle of the second page - and the signature at the foot of it. I show you the third page, and the signature at the foot of it; the fourth page with the signature; the fifth page, and the sixth page with the signatures in the middle of the page? A. Yes.

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Q. Do you agree that was the document which Mr. Bailey showed you in Brisbane on the occasion we have been talking about? A. Now can I say exactly the way Mr. Bailey showed to me the statement?

HIS HONOUR: Mr. Staff, I think I should allow the witness to do that. As I understand the evidence this far Mr. Bailey didn't give it to him to read it; Mr. Bailey elected to read it out to him. Why, I don't know. I think I should allow him to say what he wants to say about this aspect. It is better that he do so now.

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Q. What do you want to say about it? A. When Mr. Bailey came to the window I was inside the gaol. Mr. Bailey was outside, in an office which is outside the gaol walls. There are bars between us. Mr. Bailey had a statement - first page of the statement in his hand. He said "Is your name Alexandar Vojinovic?" I said "Yes". He also asked me do I remember making a statement at the C.I.B. in Sydney which is made by Detective Wild. I said "Yes, I remember". Then he said "Is there anything that you want to change in the statement?"

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I said "No". He said "You mentioned in the statement of a fellow named Momo". I said "Yes, that is right." He said "Do you know Momo?" I said "Yes." Then he said "Are you sure that such a fellow exists?" I said "Of course I am sure." I said "It is the same fellow which is under the name of Michael Novak and which I done six months gaol over in Melbourne before I came up to Queensland". He said "You don't want to make any changes in the statement?" I said "No", and that was all. I never had the statement in my hand to look at it or read it or anything like that, but he said to me "Do you know Momo?", and things like that. Nothing else. 10

(Document produced by Mr. Bailey and shown to witness m.f.i.15).

MR. STAFF: Q. When you told Mr. Bailey in answer to his question whether what was in the statement was true, and you answered 'yes', you told me earlier that was a true answer? A. That is correct. 20

Q. What you intended Mr. Bailey to understand was that everything that was in the statement you had made at the C.I.B. on the 8th January, 1967, was true, was it not? A. That is correct.

Q. You now say it is not true? A. What I said to Mr. Bailey in the statement which I made at the C.I.B. the statement which I did make, not the statement what Police made, it is my fault, because I didn't check it but I said to the Police and said it to be right, that is the statement I referred to - 30

HIS HONOUR: You will have to take it more slowly. It is impossible to get this down.

MR. STAFF: Q. You told us that Mr. Bailey showed you a photostat document on this occasion? A. That is correct.

Q. And you saw your signature on at least one page of it did you not? A. That is correct.

Q. When you were talking to Mr. Bailey you believed that what Mr. Bailey showed you was the statement which you had signed at the C.I.B. on the 8th January, 1967, did you not? A. No. 40

Q. You believed Mr. Bailey was showing you a statement which had been taken on some other occasion did you? A. No.

Q. Did you believe he was showing you a forged document? A. No.

Q. Did you believe that the document he was showing you with your signature on it was a genuine document? A. What is genuine? 50

Q. Did you believe that the document which Mr. Bailey showed you with your signature on the bottom of one page was a copy of the statement which you had



signed at the C.I.B. on the 8th January, 1967?

A. I believed that, yes.

Q. And when Mr. Bailey asked you whether the statement, a photocopy of which he had shown you, was true, you answered "Yes?" A. He never asked me if it is true or anything.

Q. A short time ago I asked you this question: did Mr. Bailey say to you "Is the statement", a photocopy of which he has shown you "true?" I put it to you you answered "yes". You agreed that it was what Bailey said and what you answered. Was that a true answer or was it false? A. Mr. Bailey didn't --

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Q. Just answer the question. Was it true or false that you gave that evidence in this Court a few moments ago? A. I cannot answer that question.

Q. You agree that five minutes ago I asked you a question: is the statement, a photocopy of which Mr. Bailey showed you - (withdrawn).

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Q. Would you agree with me some minutes ago I asked you whether on the occasion of this interview Mr. Bailey had said to you, "Is the statement" a photocopy of which he had shown to you, "true?" and that you answered "yes".

MR. GRUZMAN: I do not think that was the question.

HIS HONOUR: It was.

MR. STAFF: Q. Do you remember that? A. I remember that, yes.

Q. And you said that was your answer to Mr. Bailey did you not? A. When you asked me if the statement that Mr. Bailey asked me was true, I referred to that --

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HIS HONOUR: Q. Mr. Bailey asked you? A. If the statement is true. I am certain that the answer on which he really asked me was did I want to change anything in the statement. I said no, I did why want to change because it is true. That is who I gave that answer as true. It may be a mistake in expression. I suppose I cannot understand everything as maybe a barrister would. What I mean is that this statement which I made at the C.I.B. Office is true.

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MR. STAFF: Q. Would you go back to page 2 of the document in front of you and would you go to the third last question on page 2. The question is recorded, "What is the next incident that occurred in connection with this inquiry? A. The day before yesterday I got into Momo's car and I seen the same piece of paper in the sunshield and I pulled it out and I said, 'You still got this,' and he said 'That's where it is, I was looking for it'. Then I had a look at it again and I decided to ring Mr. Barton." Was that the answer which you gave to the policeman? A. That is correct.

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Q. That correctly records what you told the policeman on this occasion? A. On the question.

Q. That is true is it also? A. Yes, that is true.

Q. Were you then asked the question, "Did you tell Momo that you intended to ring Mr. Barton?"

A. No. No, that is correct.

Q. Were you then asked, "What because of the piece of paper with the names and telephone numbers on?"

A. I gave it to Momo." Is that correct? A. Yes, correct.

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Q. Are those three answers all truthful answers?

A. All truthful answers, yes.

Q. And it was true then that you decided to ring up Mr. Barton when you saw this piece of paper in the sunshield and pulled it out. That is true?

A. What was that again?

Q. When you were sitting in the car and saw this piece of paper in the sunshield and pulled it out and had a look at it again that is when you decided to ring up Mr. Barton was it? A. Not really because a second --

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Q. You just told us the answer to that question, the third last question, was true? A. Yes, it is true.

Q. You do not want to say it was untrue? A. No.

Q. Would you go over to page 3, the second question, "What happened after you saw Momo the day before yesterday?" Do you see that question? A. Yes.

Q. You appreciate you had just been asked about the piece of paper at the foot of the previous page. You remember that do you? A. Right.

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Q. And then after being asked where Momo lives you were asked, "What happened after you saw Momo the day before yesterday? A. Well I left him soon after and I went to the telephone and rang Mr. Barton. If you count to-day it would be yesterday.- Saturday".

Q. Is that a correct record of the answer you gave to the policeman? A. That is correct.

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Q. Was that a truthful answer? A. Yes.

Q. So that the day after you last saw the piece of paper you went and rang Mr. Barton, that is right is it? A. The last time I seen the piece of paper was on the Saturday, is that what you mean?

Q. You see the third question on page 3? The answer to the second question was "...I went to the telephone and rang Mr. Barton ..." The next question was "What time was that?". Do you see that, the third question from the top of page 3? A. Yes.

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Q. Your answer was, "About 9 o'clock in the night-time. I ring him once before, it would be about 5 o'clock and I couldn't find him." Was that the answer you gave to the policeman? A. That is correct, yes.

Q. That was the truth when you told him that was it? A. Yes.

Q. You were then asked, "What do you mean you couldn't find him? A. He told me to come and see him in some shopping centre, I think it is the Castlecrag Post Office, but I couldn't find him and I go back to the Cross. I think it was six o'clock or something, he told me he had some guests and I think he told me to see him at six o'clock." That was the answer you gave the policeman was it not? A. No, that is not correct.

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Q. What is wrong with it? A. First of all, Mr. Barton didn't make any appointment and any place either.

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HIS HONOUR: Q. Didn't make any appointment in this place? A. Yes that is right, because I suggested it and it could not be Mr. Barton told me.

MR. STAFF: Q. Apart from that, what is wrong with it? A. It is actually that I suggested it to meet Mr. Barton at the Post Office at Castlecrag at six o'clock. I asked him to come alone.

HIS HONOUR: Q. To what? A. To come alone, that is right, Here it says he told me to come and see him.

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MR. STAFF: Q. Apart from that is the rest of the answer what you told the policemen? A. It is correct. He said he had some guests and to meet him at six o'clock, that is correct.

Q. The rest of it is correct, is it? A. Yes.

Q. So that it is correct that you told the policeman, "but I couldn't find him and I go back to the Cross." That is what you told the policeman is it not? A. That is not in the question, this part --

Q. The answer is "He told me to come and see him in some shopping centre, I think it is Castlecrag Post Office, but I couldn't find him and I go back to the Cross. I think it was six o'clock or something. He told me he had some guests and I think he told me to see him at six o'clock." That is the answer is it not? A. No, it is not.

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Q. You told us that that answer did not correctly record what you told the policeman in relation to a number of things. Do you now say it does not correctly record what you told the policeman in that part of it which says "but I could not find him and I go back to the Cross?" A. No, that is not correct.

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Q. Did you tell the policeman that whether it is

truth or not? A. No. I don't remember telling him. I couldn't find him.

HIS HONOUR: A. What? A. I don't remember telling the police I couldn't find Mr. Barton.

MR. STAFF: Q. You realise you have taken an oath to tell the truth? A. That is correct.

Q. And you are aware of the consequences of not telling the truth? A. Yes.

Q. Would you look at the next question, "What do you mean you couldn't find him?". Were you asked that question? (Question withdrawn). 10

Q. Go back to the third question. You told us some little time ago you were asked the question "What time was that?" A. Yes.

Q. And you told us that your answer as recorded was correct. You said "About 9 o'clock in the night time. I ring him once before, it would be about 5 o'clock and I couldn't find him.". A. That is correct. 20

Q. That is what you told the policeman is it not? A. That is correct, yes.

Q. And you were telling the truth then were you? A. That is correct.

Q. Then I put it to you the policeman asked, "What do you mean you couldn't find him?". Is that a correct statement of the question you were asked? A. The answer to the fourth question - it is in the wrong place.

Q. You have told us already that the answer to the third question is correct, it correctly records what you said to the police? A. Yes. 30

Q. And that it is the truth? A. Correct.

Q. Do you want to say now when you said that it was not the truth? A. No, it is true.

A. So, you did say to the policeman, "About 9 o'clock in the night time. I ring him once before it would be about 5 o'clock and I couldn't find him. " A. I ring him about 5 o'clock and I couldn't find him - that is correct, because he was not home. 40

Q. You were then asked, "What do you mean you couldn't find him?" A. Yes.

Q. I put it to you you answered, "He told me to come and see him in some shopping centre. I think it is Castle-crag Post Office but I couldn't find him and I go back to the Cross." A. That is out of place.

Q. Would you go down to the next question. You were asked by the Police, "When you rang Mr. Barton at 5 o'clock, what conversation did you have with him? A. Yes. 50

Q. You were asked that question were you? Can't you answer that question or are you reading the answer first? A. No, I am not reading the answer first.

Q. Would you agree the question recorded there which I read to you was asked of you? A. Yes.

Q. Would you now look at the answer. Would you agree you have said, "I said 'Mr. Barton I have something to tell you which I think you be very interested in and would like to know' and he said 'what's it all about?' I said 'Its a matter that somebody wants to do something to you and I would like to explain it to you and tell you what it is. So if you could see me I will tell you all about it.' Stopping there, is that what you told the policeman? A. Yes, but it is not 5 o'clock. It is actually the first time I rang Mr. Barton was 5 o'clock. Mr. Barton was not home. I was told he would be home about 6 o'clock.

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Q. You then rang him up at 6 o'clock do you say? A. That is correct.

Q. You then made an appointment to meet him at the Post Office did you? A. Yes.

Q. What time were you going to meet him at the Post Office? A. I think it was half past six. I am not sure. I think it was.

Q. When you rang him you were at Kings Cross were you? A. When I rang Mr. Barton?

Q. Yes. When you rang Mr. Barton at 6 o'clock you were at Kings Cross were you not? A. Yes, that is correct.

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Q. And you made an appointment to meet him at 6.30 on Friday night, is that where you tell us, at Castlecrag? A. Friday night? - Saturday night.

Q. Saturday night? A. That is correct.

Q. So you got in a taxi did you? A. Yes.

Q. And drove somewhere looking for Castlecrag? A. I knew where Castlecrag was.

Q. Would you go down to the fifth answer. I took you part way through it, "So he said, 'Alright, I'm meet you at the Post Office, but then I forgot the name of where it was,'. Did you say that to the policeman? Can't you tell us? A. If I can hear it again.

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Q. You see in the middle of that answer, the one I have been asking about? A. Yes.

Q. The fifth answer on page 3, the words "So he said, 'Alright I'll meet you at the Post Office but then I forgot the name of where it was.' Do you see those words? A. "I forgot the name of where it was" - yes.

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Q. Is that what you told the policeman? A. Yes.

Q. That was a truthful answer was it not? A. That is correct.

Q. So that after making an appointment with Mr. Barton to meet him at the Castlecrag Post Office --? A. That is what I referred to. I forgot the Castlecrag.

Q. You forgot the name of where the Post Office was? A. I didn't forgot where it was. I forgot the name Castlecrag but I indicated the Post Office and a garage and a telephone booth. 10

Q. Look at the next question on page 3. You were asked, "Did you keep that at the Post Office with Mr. Barton?" You were asked that question? A. Yes.

Q. Your answer was, "I tried to find him but I couldn't find him." Did you say that to the Policeman? A. No, I didn't.

Q. You deny that do you? A. That is right.

Q. You say you did find him? A. Yes. 20

Q. You were asked the question then, "How were you travelling?" A. Yes.

Q. Did you then answer it, "I got a taxi, Mr. Barton tell me he pay for the taxi." Did you say that to the policeman, is that correct? You see the question, "how were you travelling?" A. Yes.

Q. You agree that question was asked by the police? A. Yes.

Q. Would you then look at your answer in these words "I got a taxi." Did you say that? A. Yes. 30

Q. Did you then say, "Mr. Barton tell me he pay for the taxi?" A. He will pay for the taxi, yes.

Q. And they were both truthful answers to the questions? A. That is correct.

Q. Did you then say, "but I couldn't find it?" A. No.

Q. Did you then say, "And I didn't have much money to pay the taxi running around." Did you say that? A. I might have said that but not under them circumstances in the statement here now.

Q. Did you say to the policeman, "So I told him to drive me back to the Cross?" A. I told the taxi driver to drive me back to the Cross? 40

Q. Yes. A. No.

Q. Did you say to the policeman, "It cost me about 29 bob for the taxi when I got back to the Cross?" A. That is right.

Q. Were you then asked, "What happened next?" Look at the next question. A. Yes.

Q. Just read the answer you gave before I ask you any more questions. A. Yes.

Q. Have you read the answer carefully? A. Yes.

Q. Is that a correct record of what you said to the policeman in answer to the question which was asked? A. Not exactly.

Q. What is wrong with it? A. Well, when I ring Mr. Barton the second time I told him to come to the Cross and I told him that the people was it the garage and I didn't know any of them so I didn't want to come anyway so I went to the Cross. I wanted him to come to the Cross. There is nothing like - I did not want to tell him I couldn't find it because I could find it in the middle of the night.

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Q. Tell me which words in the answer to that question you say you didn't speak to the policeman? A. "I didn't want him to know that I couldn't find it."

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Q. You are prepared to deny here to-day that you spoke those words to the policeman? A. That is correct.

A. Would you go to page 4. Do you see the question at the top of the page? A. Yes.

Q. You had been asked some questions on the previous page about Caruga meeting Barton and bringing him to the Rex Hotel? A. Yes.

Q. Once you met Mr. Barton you were asked the question "What happened then?" Is that right? A. Correct.

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Q. Would you then read the answer to that question which is recorded and tell me whether that correctly records what you told the policeman? A. Yes.

Q. Does that correctly record what you told the policeman in answer to the first question on page 4? A. That is correct.

Q. You have no doubt about it? A. No.

Q. Was what you told the policeman true? A. Yes.

Q. You have got no doubt about that? A. No.

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Q. When you told Mr. Barton "Somebody wants to kill you" his reaction was to laugh, he laughed, did he not? A. You could say he laughed, yes.

MR. GRUZMAN: The witness is rather inarticulate and was trying to get out an answer and my friend stopped him in the middle. The witness was trying to explain. My friend let him say so much that went on the transcript and then stopped him.

HIS HONOUR: The immediate question is that is what he told the police. What is the sentence

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in the answer. Do you have a copy of it there?

MR. GRUZMAN: "Mr. Barton, somebody wants to kill you" and he laughed at me and said "Yes, I know". The immediately preceding question was "You say he laughed?" The witness was starting to say something shrugging his shoulders, and he was stopped.

HIS HONOUR: I see nothing unfair about the question. Perhaps Mr. Staff may have added "at me" but I do not think it adds anything. 10

MR. STAFF: Q. Would you go down to the third question on page 4. You were asked the question, "Was there any other conversation?" Would you now read your answer to that question. Read it carefully? A. Yes.

Q. Does that answer correctly record what you told the policeman on that occasion? A. No.

Q. What is wrong with it. What is incorrect about it, the whole of it or part of it? A. Part of it. 20

Q. Which part? A. "Was there any other conversation?" that is correct "Yes I told him, "he wants you really bad and he is paying £2000 to this fellow Hume for someone who will do it."

Q. Was that right or wrong? A. It is wrong.

Q. What is wrong about it? A. It is wrong that Hume is paying £2000 to the fellow who will do it.

Q. That is the only way in which it differs from what you told the Police? A. Different?

Q. That is the only thing different from what you told to the policeman? A. Oh no, no. 30

Q. Would you tell me what was incorrect about the recorded answer to the third question on page 4. You told us something about the first sentence. What else is incorrect? A. This part here "I told him then that they would get him killed and also rob his wife of her ring."

Q. Was that bit right or wrong?

MR. GRUZMAN: You had asked him to read something. Let him finish. 40

MR. STAFF: The question I asked was to tell me what was incorrect about that answer.

HIS HONOUR: Q. You understand what you are being asked? A. Yes. That part "I told him then they would get him killed and rob his wife of her ring", that is correct, "and I told him that they told me it was worth \$6000-00." That is supposed to be £6000.0.0. "He said 'its not \$6000-00 it is £15,000 and I know and I paid cash for it'".



HIS HONOUR: Q: You were asked if that is correct or incorrect? A. That part he said about \$6000-00 is £6000 actually, and it is correct also that Mr. Barton said "It is not £6000 it is \$15,000-0-0 and I know and I paid for it cash."

MR. STAFF: Q. What is recorded as £15000 you say is incorrect A. That is correct but \$6000 is incorrect.

Q. You say you did not say to the policeman "He wants you really bad and he is paying £2000.0.0 to this fellow Hume for someone who will do it." You say you did not tell the policeman, that is what he told you? A. I said "He wants you really bad." 10

Q. I didn't ask you that. I asked you whether you are saying that you did not tell the policeman on this occasion "He wants you really bad and he is paying £2000 to this fellow Hume for someone who will do it." 20

HIS HONOUR: I would find it hard to answer a lot of these questions in an intelligible sense. It would be much easier if you asked him what corrections he wants to make. It seems to me there are three symbols that need to be corrected in what he is saying and that is all.

MR. STAFF: Q. Apart from the pound and dollar signs in the answer would you agree that everything else is a correct record of what you told the policeman? A. No. 30

Q. You told us the reference to \$6000-00 should have been £6000? A. That is right.

Q. You told us the £15,000 reference was correct? A. Yes.

Q. What about the £2000? A. The £2000 is correct except that as it says here it says Mr. Armstrong in other words pays him £2000 to get someone to do the job. It should not be. It should be "He wants you really bad and Hume is paying £2000 to someone who will do it." 40

Q. Otherwise the answer is correct? A. Otherwise the answer is correct except the dollars --

Q. Would you go down to the sixth question. "What other conversation did you have?" Is that a correct statement of the question asked? A. Yes.

Q. Did you answer, "Mr. Barton asked me if he could bring Armstrong and Hume to the justice he would pay also as much as they paid to be over with it." Is that the answer you gave? A. No.

Q. You say the policeman has not recorded your answer correctly? A. Not in that same way that I imagine saying it in words. It is not the same. 50

Q. Were you asked the question "Did he tell me who

he would pay this money to?" You see the question immediately below? A. Yes.

Q. Were you asked that question? A. "Did he tell me who he would pay this money to?"

Q. Were you asked that question? A. Actually did he tell me?

Q. Did the policeman ask you that question? A. I do not think he did.

Q. Did you say to the policeman, "Yes, he said that if I can help him to get these people he would pay me the money. They offer £2000 and he say that he would pay that much?" A. That is correct. 10

Q. The last question on that page. You were asked, "Did you ask Mr. Barton for £500 to be paid to you to start helping him?" A. Yes.

Q. Is that a correct record of the question the policeman asked you? A. That is correct.

Q. Look at your answer now. Read it through. A. Yes.

Q. Does that answer correctly record the answer you gave to the policeman? A. Yes. 20

Q. Now would you look at the fifth question on page 5, "Did you ring Mr. Barton's home again?" This was after you had met him at the Rex Hotel, and on Sunday I gather, the second call you made on Sunday after attempting to reach Detective Mackie. You were asked the question, "Did you ring Mr. Barton's home again?" A. Yes.

Q. Would you read your answer to that question? A. Yes. 30

Q. Did you give that answer to the policeman? A. Yes.

Q. And it is a correct record of what you told the policeman? A. That is correct.

Q. Would you look at the last question on page 5. You had better look at the answer you gave to the previous question? A. To the question "Why was that?"

Q. Yes. You had said that you wanted to harm Frederick Hume. You were asked, "Why was that?" Is that correct? A. Yes. 40

Q. Would you read your answer now? A. Yes.

Q. Is that a correct record of what you told the policeman? A. Can I go through it again?

Q. Yes, read it again. Does that correctly record what you told the policeman on that occasion? A. Well, this statement, especially this part here requires the part of the plan which I had towards the conversation with Mr. Barton and the Police.

HIS HONOUR: Repeat that answer. A. This special part here.

Q. He is pointing to the answer to the last question on page 5. A. It says I wanted him to get caught without getting easy out of it. That was the part, the answer to my plan.

Q. The part that says you wanted Hume to get caught without getting easy out of it? A. Yes.

Q. What you are being asked is what part of that answer is incorrect? 10

MR. GRUZMAN: Was what the witness said recorded? There were those words "That was part of the answer to my plan."

HIS HONOUR: I think it is clear.

MR. GRUZMAN: I think I understand what it means.

HIS HONOUR: It is noted the witness also said, "That was part of the answer to my plan." Put the question again.

MR. STAFF: We would not agree with what Mr. Gruzman said. 20

HIS HONOUR: He did say something about a plan.

MR. STAFF: Q. In the second last answer on p.5 you answered the policeman "Because I just wanted to harm Frederick Hume," Did you not, the second last answer on the page? A. Could I read the question?

Q. Have you read the second last question and your answer? A. Yes.

Q. You were then asked, "Why was that?" A. Yes. 30

Q. Your answer is recorded there. Would you read it? A. Yes, I read it.

Q. Is that answer a correct record of what you said to the policeman in answer to the question "Why was that?" A. It is hard to say because I think that the question and the last answer has got nothing to do actually with the statement. It belongs somewhere else.

Q. You were being asked by the policeman why you wanted to harm Frederick Hume, do you understand that? 40  
A. Yes.

Q. In answer to that question did you say, "Because he done wrong many things to his own countrymen." A. That is correct.

Q. That is what you said to the policeman? A. That is what I said to the policeman.

Q. Did you also say to the policeman, "I thought it would be a wise thing to get Mr. Barton and

and speak to him and try to get Hume into trouble."

A. It is incorrect.

Q. You did not say that to the policeman? A. No. Actually I didn't put it that way.

Q. What do you say you said to the policeman about that matter? A. I would say I got in touch with Mr. Barton and told him all about it because I am afraid Hume has to get into trouble with me but where it says here, it is out of place. If they were to ask me "Why did you want to go by your plan?" then I would say, "Because I didn't want Hume just to report to the police and we would go out of course very easy." It is just my word against his. But the other way I would have him where he is.

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Q. You mean you knew nobody would take your word against Hume's? A. No, it is not that. It is part of it, yes. His record and my record is two different things are they not?

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Q. Very different are they not? A. Yes.

Q. You believed that Hume had been responsible for having some of your friends convicted and put in gaol did you not? A. That is correct.

Q. And that is why you hated him and wanted to hurt him was it not? A. In my own way, yes.

Q. When you gave evidence yesterday at pages 263 to 4 you said at some stage you went and rang up Mr. Hume. That was a lie was it not? A. I beg your pardon?

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Q. Do you recall telling us earlier that before you ever spoke to Mr. Barton you had never met or spoken to Hume?

MR. GRUZMAN: I have just forgotten, I do not think that question was answered in that way. I thought my friend did not persevere with the question. I must confess I am not certain. I remember your Honour allowing it by my recollection was my friend didn't pursue it. I am open to correction.

HIS HONOUR: It is better to put it afresh.

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MR. STAFF: Q. You told us yesterday you had a telephone conversation with somebody in Hume's office on one occasion? A. That is right.

Q. That was at a point of time after you had spoken to Mr. Barton on the telephone was it not? A. That was just before I spoke to Mr. Barton.

Q. Before you ever spoke to him? A. That is correct.

Q. So before you ever spoke to Mr. Barton, and you are quite sure about this, you rang up Mr. Hume's office? A. That is correct.

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Q. And you spoke to a woman? A. That is right.

Q. And then you said yesterday you spoke to Mr. Hume? A. That is correct.

Q. You had never spoken to him before that had you?  
A. No.

Q. You had never met him before that? A. I had seen him.

Q. You had never met him had you? A. I never met him personally to talk to him but I seen him. 10

Q. And you do not know whether the person you say you spoke to on this occasion was Mr. Hume or not do you? A. I asked for him.

Q. And that is the only thing, the only reason why you say it was Mr. Hume because you asked somebody else to put him on the telephone? A. In his own office, yes.

Q. This was on a Saturday afternoon was it? A. It was Saturday afternoon, that is correct.

Q. You are quite sure about that? A. Yes. 20

Q. It was not Saturday evening? A. Saturday afternoon.

Q. About what time on Saturday afternoon? A. I am not sure about the time.

Q. What is your best recollection? A. My best recollection would be afternoon on Saturday before I rang up Mr. Barton, before I talk to Mr. Barton.

Q. What time did you talk to Mr. Barton? A. I talk to Mr. Barton about six o'clock I think.

Q. That was the first time you had ever spoken to Mr. Barton in your life was it? A. That is correct. 30

Q. Before that you say you spoke to somebody who you thought was Mr. Hume anyway? A. That is correct.

Q. And there is no doubt about that, that was the order? A. That is correct.

Q. You told us you spoke to Mr. Barton the first time somewhere around six o'clock? A. Six o'clock.

Q. Yes. A. Yes.

Q. On Saturday afternoon? A. Yes.

Q. I think you told us on Saturday afternoon? A. Yes. 40

Q. And you told us did you not that before that - I want you to be quite clear about this - that before that do I understand you correctly to say you spoke to someone you thought was Mr. Hume?  
A. That is correct.

Q. And that you spoke to that person you believed to be Mr. Hume and you told him that you could not come down to his office in half an hour? A. That is correct.

Q. That may I take it was because you had an appointment? A. I beg your pardon?

Q. That was because you had an appointment was it?

A. Well, I do not remember saying anything about an appointment. 10

Q. You say you told him you could not come down in half an hour anyway? A. That is correct.

Q. Do you remember why you could not go down in half an hour? A. Because I didn't want to go down in half an hour.

Q. It was not because you had an appointment? A. No. Do you want me to tell you?

Q. Of course you didn't want to go down and see him but you made an appointment to see him at a later point of time? A. That is correct. 20

Q. But you still didn't want to see him? A. That is right.

Q. So you made an appointment to see this person? A. Yes.

Q. Is that what you are saying? A. Yes.

HIS HONOUR: Q. What is it you want to say? A. When I rang up Mr. Hume I told him I could not make it in half an hour just because I wanted to get in touch with Mr. Barton after I ring him up. If I go in half an hour I won't have time to talk to Mr. Barton. If I ring him before actually for the last time I won't be certain about the murder that is true because I never heard it from him himself except from Michael Novak or Momo so I ring him up actually to make certain. I think I left it until half past eight to come down to his office, I am not sure, so it would give me enough time to meet Mr. Barton and talk to him. 30

HIS HONOUR: I think that is sufficient.

MR. STAFF: Q. You had not spoken to Mr. Barton at this point of time? A. No but I had intentions. 40

Q. You didn't know when you were going to see him. How could you know? A. If you look in my statement I rang Mr. Barton at five o'clock and he was not at home.

Q. It was five o'clock now was it? A. It was five o'clock all the time.

Q. Do you remember yesterday at p. 262 "Q. What time was it you telephoned the home? A. I think it was

six o'clock." Do you recall saying that? A. I talked to him, yes.

Q. Was that a true answer? A. Yes.

Q. So it was not five o'clock you phoned him?

HIS HONOUR: I think you are at cross purposes. That six o'clock call is the time he actually spoke to Mr. Barton. There is some inconsistency of the time of the preceding call two answers down compared to the statement on p.3. 10

MR. STAFF: Q. Do you recall saying yesterday that the first time you telephoned Mr. Barton's home was dinner time, the middle of the day? A. The first time?

Q. The first time you telephoned Mr. Barton's home. Was it about dinner time in the middle of the day when you first telephoned Mr. Barton's home? A. I think it was at five o'clock.

Q. Do you recall being asked these questions yesterday at p.262: 20

"Q. What time was it that you telephone the home? A. I think it was six o'clock.

Q. No, the first time? A. The first time?

Q. Yes, approximately? A. I think it was about dinner time.

Q. The middle of the day? A. That is right."

Were they correct or were they not, those answers? A. Oh.

Q. You don't know, is that what you said?

HIS HONOUR: He said "Oh". 30

MR. STAFF: Q. If you do not know, say so. A. I say dinner time - I am sure it was five o'clock.

Q. Just listen to this:

"Q. You told us of an occasion that you rang Mr. Barton and he was out, or he was not there. Will you tell us what happened next. What did you do then? A. I made an appointment with the person whoever answered the phone that I will ring Mr. Barton. I think it was five o'clock or half past five to six, something like that. I am not quite sure, but in that area in the afternoon." 40

Q. What time was it you telephoned the home? A. I think it was six o'clock.

Q. Do you recall those questions and answers? A. Yes.

Q. I put it to you again: Was it about the middle of

the day, dinnertime, when you first telephoned the home and arranged an appointment to ring Mr. Barton at five o'clock or half past five to six, something like that? A. It was the best I could think of. I know I had an appointment at six but I cannot be quite sure. It was at five o'clock, two o'clock or half past two. I know I rang up earlier and made an appointment to talk to Mr. Barton again and just before I did I rang Freddie Hume.

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Q. On no occasion you had ever spoken on the telephone or in person to Frederick Hume about anything?  
A. I beg your pardon?

Q. What I am suggesting to you is that you have never had any conversation whatever with Frederick Hume either on the telephone or anywhere else?  
A. I would say it is ridiculous.

Q. Your evidence you have spoken on the telephone to Frederick Hume is quite untrue? A. It is true.

Q. You told us earlier today that you would not tell a lie? Q. Yes.

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Q. Do I take it that for no purpose you would tell a lie? A. Yes.

Q. Do I take it that for no purpose you would tell a lie? A. I would not.

Q. Are you too highly principled to tell a lie about anything? A. About anything serious, yes.

Q. Your moral principles do not permit you, is that right? A. Yes.

Q. But you would agree your moral principles permit you to steal? A. I am doing it so I suppose it does.

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Q. You have been doing it for years have you not? A. No, not actually for years.

Q. Plenty of years? A. Since I come to Australia.

Q. You have no conscience about that in any way?  
A. Not about - I have not.

Q. You are a strong able bodied man are you not?  
A. No, I am not really.

Q. You are not ill, you are not unable to work are you? A. No.

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Q. You prefer to steal than to work do you? A. No really.

Q. You don't tell us you cannot get work, I mean when you are out of prison? A. I do work sometimes.

(Further hearing adjourned to 10 a.m. on Thursday, 6th June, 1968).



BARTON V. ARMSTRONG & ORS.

TWELFTH DAY, THURSDAY, 6TH JUNE, 1968.

MR. BAINTON: There are some corrections to the transcript. On page 182, the third last question, the answer is recorded as: "As soon as United Dominion withdrew and bought up the mortgage and George Armstrong resigned." "Bought up" should be "called up".

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On page 185, going over into page 186, the answer to the last question is recorded as "Yes, we had not reached the stage when they didn't find the fault in the security, in the secretary himself." "In the secretary himself" should be altered to "in the security itself."

On page 187, in the answer to the first question, the last word in the third last line of the answer should be "save" instead of "have".

At page 196, in the sixth question, the question is recorded as "what I am putting to you is that on 14th December 1966, during the discussion with Mr. Smith, Mr. Smith proposed his terms of settlement that the mortgage debt should be paid out of \$400,000 plus interest.." The "of" should be deleted.

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HIS HONOUR: "Of" will be deleted, and a semicolon inserted instead of "of".

ALEXANDAR VOJINOVIC

On former oath.

HIS HONOUR Q: You are still on the oath to tell the truth which was administered to you previously, do you understand? A. Yes.

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MR. STAFF Q: Do you know a man called Muki? M-U-K-I I think it is spelt? A. I know a fellow by the nickname of Muki, yes.

Q. Do you know him well? A. Not really well, but I know him.

Q. You knew him in January, 1967, I suppose? A. Yes.

MR. GRUZMAN: Perhaps my friend might identify the witness by his true name, also.

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HIS HONOUR: I will not require that. You can re-examine on it, if you wish, but I do not see any reason to interrupt the cross-examination for that purpose.

MR. STAFF Q: Do you know this man's surname? A. No.

Q. What I want to put to you is that on 9th January, on the Monday after you made your statement at the

C.I.B., you telephoned Sgt. Wild and told him you had some information which you could give him about Muki? A. About Muki? No.

Q. And you agreed yesterday, I think you did telephone Sgt. Wild on that Monday, 9th January?  
A. That is right.

Q. And later met him by appointment? A. That is right.

Q. And had some discussion with him? A. That is right.

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Q. You told us something about the discussion. Do you deny there was any discussion about the man you knew as Muki on that occasion? A. I am not sure about, it but -

Q. I am sorry, go on? A. Because my intentions - I rang Mr. Wild - it is for Momo's benefit, because he asked me whereabouts is Momo - if I would know. That was the reason I rang up.

Q. You say that was the reason you rang him, and you arranged to meet him somewhere else? A. That is right.

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Q. And when you rang him you knew something, did you, about the whereabouts of Novak? A. That is right.

Q. But you didn't tell him over the telephone, did you? A. No, didn't tell him.

Q. You asked him to meet you? A. That is right.

Q. And he subsequently met you. I put it to you you told him that Momo was away from Sydney with Muki? A. I told Mr. Wild that Momo is away - on his way to Brisbane.

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Q. And had gone with Muki, didn't you? A. Not exactly. I don't think I mentioned any other matters except Momo.

Q. You, of course, knew that a little earlier Muki had been shot, didn't you? A. No, I don't think - no. I knew that Momo was going to Brisbane, but I didn't know that Momo was taking anybody, or what he was doing.

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Q. Now will you answer the question I asked you? You knew, didn't you, at the time you spoke to Sgt. Wild on that morning that Muki had been shot a few days earlier? A. I knew that Muki was shot, yes.

Q. Shot by a policeman when he was trying to escape arrest. You knew that, didn't you. A. I don't know who he was shot by; I was not there to see. But I knew he was shot.

Q. You heard he had been shot in the course of trying to escape by a policeman, didn't you? A. I don't think it was put to me exactly that way. I knew he was shot, but who by I didn't know -

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Q. You knew when you spoke to Sgt. Wild on this day that the police were looking for Muki, didn't you? You knew that? A. No.

Q. No idea of that? A. Put it this way: if I did hear it I didn't take much notice of it.

Q. Do you still deny having told Sgt. Wild that Novak had gone to Brisbane to take Muki there for treatment? A. Not actually deny it. I don't think that I did mention it. I am not sure if I did, or not. 10

Q. What I want to put to you is that you, on both 9th and 11th January - Monday and Wednesday - when you saw Sgt. Wild offered to him information about people - I am sorry, I will withdraw that. What I put to you is that on the Monday when you saw Sgt. Wild you offered him information about Muki. Would you deny that? A. I can't remember.

Q. Would you deny that on the Wednesday you offered your services as an informer to Sgt. Wild? A. I deny that, yes. 20

Q. Did you offer to give Sgt. Wild information from time to time about people the police might be looking for? A. Do I deny that?

Q. Yes. Do you deny that? Do you deny you offered? A. That is correct.

HIS HONOUR Q: When you say "That is correct" you mean you deny it? A. Yes.

MR. STAFF: Q: Mr. Vojinovic, you told us yesterday in answer to some questions I asked you that Mr. Bailey had a discussion with you a few weeks ago about the statement you made at the C.I.B. Do you remember that? A. Yes, that is right. 30

Q. You have had discussions with other people in relation to what you know about this matter, have you? Had discussions with other people than Mr. Bailey? A. Do you mean in the presence of Mr. Bailey?

Q. No. You told us of the occasion with Mr. Bailey yesterday, didn't you? A. Yes.

Q. Have you had any discussion or talk with anybody else about this matter since the time you went to the C.I.B.? A. I don't think I did mention to anybody else. I might have said something to my girlfriend which was living with me at the time. 40

Q. You went to Victoria soon after - within a few days, didn't you, after you made the statement? A. Yes.

Q. And then you served a sentence in Victoria? A. That is right.

Q. You left Victoria and went to Queensland when you were released? A. That is right. 50

Q. Did you discuss the matter of which you have

told us with anybody whilst you were in the Victorian gaol? A. If you mean anybody - anybody of my friends or anything like that, who I am associated with, or do you mean the police, or the law?

Q. I will withdraw the question and put it this way. Did you talk about this matter - have you talked about this matter with anybody who told you that he was representing Mr. Barton? A. That he was representing Mr. Barton? No.

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Q. Have you talked with anybody who told you he was a solicitor acting for Mr. Barton, or a barrister acting for Mr. Barton? A. Yes, that is right.

Q. Now, when did you first talk to a person who told you one or other of those things? A. It was after I was arrested in Brisbane.

Q. Well now, you were convicted in Brisbane in January of 1968, weren't you? A. That is correct.

Q. How long before you were convicted was it that you were arrested? Do you remember how long it was before you were convicted that you were arrested? A. I think I was about two months on remand. About two months before. Something like that.

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Q. Was it during that period of two months that someone saw you and spoke to you about this matter? I will withdraw that. Can I help you this way? Was it before Christmas last year that this person you have mentioned spoke to you about this matter? A. Before Christmas -

Q. 1967? A. 1967? No, I don't think so.

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Q. Was it before the New Year? Was it before the beginning of 1968, or was it between Christmas and the New Year? A. No.

Q. Was it about the time you were convicted? Just before your trial? A. It was after I was convicted.

Q. It was after you were convicted? A. Yes.

Q. You told us a few minutes ago it was while you were on remand. (Objected to: question withdrawn).

Q. Mr. Vojinovic, you say it was after you were convicted? A. That is right.

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Q. After your trial had taken place? A. That is right.

Q. And while you were - after you had commenced to serve the sentence that was imposed? A. Yes.

Q. How long after that, approximately? A. It has to be later than a fortnight after my sentence. I would not know the exact date.

Q. Was it a long time or a short time? A. Not real long. It could be three weeks after the sentence to a month, or a month and a half.

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- Q. Somewhere within a couple of months, anyway?  
A. That is right.
- Q. Who was it you saw? Do you remember his name?  
A. Yes. It was Mr. Barton, Mr. Gruzman, and I believe it was Mr. Moore.
- Q. Three gentlemen came along? A. That is right.
- Q. And saw you? A. Yes, that is right.
- Q. They all saw you? A. Yes.
- Q. While each was present? A. That is right. 10
- Q. And did you - how long approximately were they with you on that day? A. How long they were with me?
- Q. Yes. A. At that time?
- Q. Yes. A. Anything from an hour to an hour and a half to two hours. Something like that.
- Q. And after that did you see anybody again on a later occasion who talked to you about this matter who you believed to be representing Mr. Barton? Or did you see Mr. Barton? A. That is right, yes. I seen Mr. Barton again, and I think it was Mr. Barton, Mr. Gruzman and - I am not sure. 20
- Q. Was there anybody else there on the second time when you saw Mr. Gruzman and Mr. Barton? A. I think it was somebody else, but I am not sure of the identity of the person.
- Q. When was this, approximately? Can you remember?  
A. It could be a week or two or within three weeks. I didn't take much notice.
- Q. What. After the first occasion? A. That is right. 30
- Q. Did anybody else visit you in Queensland at the gaol? Did any of these people visit you again after the second occasion? A. Yes.
- Q. Who was that? A. Actually that was at my request that they did come.
- Q. Who came to see you? A. It was Mr. Barton, Mr. Jay, and another gentleman.
- Q. You don't remember his name? A. No, I don't remember.
- Q. When was that? When was that? Could you tell us when that was? A. Not long after the second visit. A fortnight, or something like that. 40
- Q. Have you seen this other man whom you say you don't remember in Court, in the last few days? That is the one who was there on the third occasion, who came in response to your request. Have you seen him in Court. or about the Court? A. I am not sure, because it looks a bit different in plain clothes

and uniform, but I think it was the gentlemen that was sitting next to Mr. Gruzman on his right. Not the same fellow.

Q. Not this gentleman sitting here today? A. No.

Q. Someone who was sitting there the other day?

A. That is right.

Q. Do you remember whether his name was Mr. Priestley or Mr. Purvis? Does that ring a bell?

A. No. I didn't take much notice.

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Q. Was this gentleman the same one as had been there on the previous occasion whose name you could not remember, or a different one? A. I am not sure. I think it was Mr. Jay.

Q. On the previous occasion? A. That is right. On the second. Because I remember that I was told that Mr. Moore could not come, and I think it was Mr. Jay who replaced him actually - the third person.

Q. And after that did you see anybody? Was there any fourth occasion on which anyone saw you, leaving out Mr. Bailey? A. Yes. It was Mr. Gruzman and Mr. Jay.

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Q. When was that? A. It could be a week or a fortnight, just before I came down to Court. Something like that, anyway.

Q. And after that did you see anybody else, leaving out Mr. Bailey, A. No.

Q. You saw Mr. Bailey after the last visit from Mr. Gruzman and Mr. Jay, did you, before you came down? A. That is right.

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Q. And then you came down here? A. That is right.

Q. And you had a trip down here and you went back to Queensland, didn't you? A. That is right.

Q. Did you see anybody during the period you were back in Brisbane before you came back here the second time? A. No.

Q. Would you tell me, Mr. Vojinovic, when was it that you expressed to someone a fear that if your name was revealed in these proceedings you would be getting into fights and have trouble with the prisoners? Perhaps I will withdraw that. Did you ever say to any of these people that you did not want your name disclosed in these proceedings? A. You mean all these people who visited me?

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Q. Yes. A. Yes, I think I did say it. I am not sure to who. Mr. Barton, or Mr. Gruzman, or somebody, anyway, of the visitors.

Q. Did you say this, or did someone suggest to you that you would not want your name disclosed? A. No. I suggested it, yes.

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Q. You suggested it? A. I think, yes, But it was...

Q. Mr. Vojinovic, when you first saw the three gentlemen on the first occasion you told us about did they show you a copy of the statement which you had made at the C.I.B.? A. Yes, it was a copy there, but the copy was sort of bad printed; you could not read anything about it. You could not actually see - you could not read it clearly.

Q. Did you try to read it? A. No I didn't. 10

Q. You didn't? A. No.

Q. And on any of the subsequent occasions were you shown a copy of the statement you had made at the C.I.B.? A. After the first occasion, no.

Q. After the first occasion? A. No.

Q. You are quite sure about that? Apart from Mr. Bailey, I mean. Nobody ever showed you or offered you a copy of the statement you had made at the C.I.B.? A. I don't think anybody did, no.

Q. On the first occasion they were there, did anybody ask you - that is on the first occasion these people saw you - did anybody ask you whether what you said in your statement was true - (Objected to; rejected). 20

Q. On this occasion - that is, the first occasion - did anybody read what was in the statement to you? A. No. I don't think they did, no.

Q. Did anybody tell you what you said in the statement? A. No.

Q. On the second occasion how long did the discussion you had continue? A. I would not be sure about the time. Approximately it could be an hour, or something like that. 30

Q. And on each of the second, third and fourth occasions? A. I suppose about that, yes.

Q. Mr. Vojinovic, I want to put to you that round about January of 1967, you had learned of some dispute between Mr. Barton and Mr. Armstrong, That is right, isn't it? A. I beg your pardon? I didn't understand that. 40

Q. In December or in January of 1967, you discovered - read somewhere, or discovered that Mr. Barton and Mr. Armstrong had had a dispute? A. In December 1967?

Q. Let us take December first. In December 1966? A. The first time I heard about Mr. Barton and Mr. Armstrong would be something like very late December or early January.

Q. Late in December or early January? A. Yes, that is right. 50

Q. And you heard that they had had some sort of a dispute, didn't you? A. Yes, I was told.

Q. What I want to put to you is that you then thought to yourself that here was an opportunity to possibly get some money from Mr. Barton, and at the same time hurt Mr. Hume. Now that is what you thought, isn't it? A. Not really, no.

Q. I put it to you that you then went - you went to Mr. Barton with that thought in your mind, and told him the story which you thought would probably bring you some money, and hurt Hume at the same time? A. Well if I thought of that then naturally I would ask Mr. Barton for money before I told him anything, wouldn't I? But I didn't ask anything.

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Q. Mr. Vojinovic, you didn't have to ask Mr. Barton, did you? He offered you money? A. He offered me afterwards, yes.

Q. You told him the story and he immediately offered you money, didn't he? A. If I co-operated. That is right.

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Q. So that you did not have to ask him, did you, for money, the way it worked out? A. Yes, but the way you put it it would be a bit late for me to expect my money, wouldn't it?

A. I suppose you have had some experience getting a quid, haven't you? A. Experience in different ways. If you mean this way, no.

Q. This was the first time you had told a story like this to someone, was it? A. To tell a story - the way you put it it could be - it could mean a lot of different things.

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Q. What I am putting to you quite simply is that you made up the story you told to Mr. Barton, and told it to him in the hope that you would get Hume into some trouble and you would get some money yourself. Won't you agree that is what you did? A. No.

RE-EXAMINATION

MR. GRUZMAN Q: Mr. Staff just asked you whether you had heard of the dispute between Barton and Armstrong. From whom did you hear of that dispute? A. From whom did I hear?

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Q. Who told you? A. Michael Novak.

Q. Michael Novak told you? A. Yes, that is right.

Q. And before that had you ever heard or read anything about Armstrong or Barton? A. No, not at all.

MR. GRUZMAN: There is one question I would like to cover which did not arise out of cross-examination, and this is a question which I should have elucidated in chief. The witness gave some evidence

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as to being approached by the police outside St. Vincent's Hospital. That was, I think the expression which he used. I want to ask him exactly what occurred.

HIS HONOUR: Yes, very well, you may do that. Mr. Staff, I will permit you to cross-examine further on this.

MR. GRUZMAN: Q. Mr. Vojinovic, in the course of your evidence you told his Honour that outside St. Vincent's Hospital you were approached by the police. Would you tell his Honour exactly what happened with the policeman and you? A. Well, I walked across the street from one corner to the other. 10

Q. Yes? A. And of course when I seen Mr. Armstrong's car pulled up - the white Mercedes - and on my way to join Mr. Barton I seen him getting out of the car and standing next to the car. Well, I approached him, and I said -

Q. Whatever you said then did something happen? 20  
A. Yes.

Q. What was that? Tell us what happened? A. While I was facing Mr. Barton another person was walking behind me and grabbed me by the arm and he had sort of like the cover of a notebook - the thing the police carry to identify themselves.

Q. Someone grabbed you by the arm, and had something that the police identified themselves with in his hand? A. Yes.

Q. You were asked a lot of questions by Mr. Staff about interviews that you had in Brisbane. First of all, did all of those interviews take place at the gaol? A. At the gaol, yes. 30

A. And there has to be official permission given for the interviews to take place? A. That is correct.

Q. On each occasion did somebody present take notes - write down what was being said? A. That is right.

Q. Now, don't answer this until there has been a chance to object to it. Did you give a great deal of detailed evidence of your activities with Hume and Momo (Objected to; rejected). 40

Q. Mr. Staff asked you a number of questions about Muki and a man being shot, and at one stage you said that you wanted to explain. Would you please explain to his Honour exactly what you told Mr. Wild about this matter - what you told Det. Sgt. Wild about this matter? A. The intention when I did ring Mr. Wild - Det. Sgt. Wild - it was because he asked me, if I knew the whereabouts of Michael Novak - Momo - to let him know. 50

Q. Just wait for a moment. When had he told you that? A. He told me that at the time when I made the statement.

A, Vojinovic, re-x.

Q. Would you try and tell the Court what you said to Sgt. Wild and what he said to you at the time you saw Sgt. Wild. A. He asked me to let him know where Novak could be found. (Objected to; allowed).

Q. Just tell us the whole of that conversation. Tell us what you said and what he said leading up to this matter? A. You mean the time he met me?

Q. No, not the time he met you, but the time when he told you - asked you to give information about where they could find Novak. Just think about it, and tell us all that was said then? How that came about? A. Well he did say - that was after I made my statement - that he would like to find Momo and question him about this matter - actually to find him in a time before the news come around the place that I made a statement against him and Hume. 10

HIS HONOUR: Q. "Before the news got around the place...." what was the balance of the answer?

A. Before the news get around the place that I made a statement against Momo and Hume, because they had to go and interview Hume about it, and if they didn't find Momo, of course Hume would tell him. 20

MR. GRUZMAN: Q. Is this what Sgt. Wild said. A. Correct.

Q. By the way, at that stage you mentioned in the course of your evidence the words "a plan". Was there any discussion on that subject matter with Sgt. Wild? (Objected to; rejected). 30

Q. You just might finish. You told us that he asked you to let him have information about Novak for the reasons which he told you? A. Yes.

Q. Was there anything else said at the time? (No answer).

Q. Then you were released from the C.I.B. after the questions? A. Yes.

Q. Then tell us what happened next? A. The other detective who was present when the statement was made and who actually arrested me at St. Vincent's Hospital - he drove me home. 40

Q. He drove you home? A. That is correct.

Q. What was the next thing that occurred with respect to Sgt. Wild or the other detective that you mentioned? (Objected to; rejected).

Q. Did you get certain information? Don't tell us what it is? A. Yes.

Q. Then did you ring Sgt. Wild? A. Yes.

Q. What did you say on the telephone to him?

A. I said on the telephone "I would like to see you and talk to you about Momo." 50

Q. And there was an appointment made, was there?

A. Yes.

Q. And did you both meet on that appointment at Kings Cross? A. Yes.

Q. What did you say and what did he say? A. I told Sgt. Wild - he asked me if I heard anything about Michael Novak or see his car I said to him I didn't see Michael Novak or his car, but I heard from a person that he went up to Brisbane and he should be on his way back now. 10

A. What did Sgt. Wild say? A. He said - he asked me a few questions how do I know, and where did I hear it from, and I told him that I got a message from another fellow and that he can count on it that it is certain that Michael Novak did go to Brisbane and should be on his way back now, and he said? "Thank you very much," and that was actually it - the conversation.

Q. Was anything said about Muki? A. No. No. 20

Q. You were asked a number of questions by Mr. Staff about whether you thought - whether you blamed Novak for your conviction in Melbourne for unlawfully using the car. Do you remember that? A. Yes.

Q. Mr. Staff asked you those questions? A. Yes.

Q. I want to ask you this: did you have Novak's permission to use that car? (Objected to: allowed).

Q. Did you have permission to use the car? A. Yes.

Q. From whom did you get the permission? (Objected to: allowed). A. Michael Novak. 30

Q. Where were you to take the car? (Objected to; rejected).

Q. Would you tell us what car that was? (Objected to; allowed). A. Falcon Sedan.

Q. What colour. A. Blue.

Q. Where had you seen this car previously? (Objected to; allowed). A. Sydney.

Q. You have referred to a blue Falcon car earlier in your evidence. Is the car you are now speaking of the same blue Falcon, or a different one? (Objected to as leading). 40

HIS HONOUR: In the course of this witness' evidence-in-chief at p.2 I rejected evidence of the transactions between Novak and this witness in Victoria. The subject was opened up in cross-examination at p.282, and I consider that the plaintiff is entitled to re-examine on so much of what took place in Victoria as concerns the conviction for illegally using the motorcar. This general ruling will relieve defendants' counsel from the obligation of objecting to each question on that subject matter. 50

I reject the present question as leading.

MR. GRUZMAN Q: Had you been in this car prior to the occasion when you were arrested for illegally using it? A. Yes.

Q. Who with? A. Michael Novak.

Q. On how many occasion? A. Ten - 20. I could not say exactly.

Q. You have given evidence that you drove down William Street on one occasion and saw Frederick Hume. What car was used on that occasion? (Objected to; allowed). A. The same Faloon. The same blue Faloon. 10

Q. You have given evidence that you went to see - you went with the man you call Momo to Castleorag in a car. What car was used on that occasion? (Objected to; allowed). A. The same Faloon.

Q. You have given evidence that you went to Melbourne with Michael Novak. How did you travel to Melbourne? A. By car. 20

Q. Which car? A. The same blue Faloon.

Q. Did you have a discussion with Michael Novak prior to driving the blue Faloon? (Objected to; rejected).

Q. Prior to the occasion when you drove the car and when you were subsequently arrested whilst driving it, did you have a discussion with Michael Novak about the car? A. Yes.

Q. Would you tell his Honour what that discussion was? A. I just want to make something clear, You mean a discussion I had before I was arrested in the same car? 30

Q. The discussion you had with Novak before you were arrested for driving that car? A. Yes. It was in Melbourne. We lived in actually a boarding-house in Park Street, St. Kilda - me and Michael Novak - and two nights before I left Melbourne with the same car I took Michael Novak out to a night-club. We came a bit early and had to wait for the floorshow so I met a couple of girls there and Michael Novak stayed for a while. (Objected to). 40

Q. You might just tell us this: where were you driving the car at the time of your arrest? From where to where? A. I was driving from Mt. Gambier to Hamilton.

Q. From Mt. Gambier to Hamilton? A. Yes.

Q. Had you had some discussion with Michael Novak about that trip? A. About the special trip from Mt. Gambier to Hamilton? 50

Q. Well, about going to Mt. Gambier. Had there been some discussion A. Yes.

Q. Will you tell his Honour that discussion, please? A. Actually when we started from Sydney the point was - (Objected to).

Q. What was the discussion in Sydney, if that is when the discussion took place, about going to Mt. Gambier? (Objected to: allowed).

HIS HONOUR: Q. It was on the Mt. Gambier trip that you were arrested, is that correct? A. Not actually, I was already in Mt. Gambier on my own when I gave two of my countrymen a lift to Hamilton to catch a train and go to Melbourne, just as a favour. That is when I was arrested. 10

MR. GRUZMAN Q: Will you tell us the discussion - wherever it took place - as the result of which you drove that car to Mt. Gambier? A. Well it was the purpose that we left Sydney, to go to Mt. Gambier.

Q. What was the talk between you and Michael Novak about this matter? A. I asked Michael Novak if he would come with me to Mt. Gambier. He asked me why did I want to go there, and I told him that I had a good job lined up to make some money. So he agreed, and so we left Sydney to go to Mt. Gambier. 20

Q. Was there a discussion in Melbourne as a result of which you went on your own to Mt. Gambier? A. Yes, that is right.

Q. Tell us about that? What was that discussion? A. I asked Michael Novak to come to Mt. Gambier on the morning when I left Melbourne. Michael Novak said that he would like to stay for a couple of extra days in Melbourne. I explained to him that if he did stay a few more days in Melbourne we would run out of money. So I wanted to go to Mt. Gambier. He said: "Well, you can go to Mt. Gambier and I will meet you there later." I asked him, "How much later?", because I was not going to wait for ever, and he said "In a few days," and actually before - 30

Q. You are saying what you thought? A. No, I told him, actually. It happened before that conversation took place. I told him I was stopped by the police in Chapel Street, Melbourne, and that they searched the car and found some tools which they didn't belong to my trade or his, and they questioned me about it and booked the car and everything, and that is why I didn't want to actually stay any longer in Melbourne, and I told him all about that. He was a bit upset, but at the end he said: "You can go, and I will meet you there later." 40 50

Q. Then you drove to Mt. Gambier, and you have told us you were then arrested at Hamilton? A. Yes, that is right.

Q. And then did you inform the police that you have told us here? (Objected to; rejected).

Q. You were charged before a police court at Hamilton. Did Michael Novak give evidence? A. At Hamilton?

Q. Yes. A. No.

Q. Then you were sentenced, I think to six months' imprisonment at Hamilton? A. No, in Melbourne.

Q. I see. The case was heard - you were remanded from Hamilton to Melbourne police court, is that right? A. Yes, that is right. 10

Q. And did Michael Novak give evidence in Melbourne?

A. Yes.

Q. Before the magistrate? Before the magistrate?

A. Yes.

Q. Did he tell the truth? (Objected to; rejected).

Q. Did Novak - I will lead on this; my friend will be entitled to object. (Objected to; rejected).

Q. Will you tell the Court what Michael Novak said (Objected to). 20

HIS HONOUR: Ask the leading question, Mr. Gruzman.

MR. GRUZMAN: Q. Did Michael Novak tell the Court that you had permission to use the car? A. Did he tell the Court that I had permission to use the car?

Q. Did he? A. No, he did not.

Q. You were convicted. Did you tell the Court that you did have permission? A. Yes.

Q. And then were you convicted and sentenced to six months' imprisonment? A. Yes. 30

Q. And was there an appeal? That is correct, is it? A. Yes.

Q. Was there an appeal to the County Court in Victoria before a judge? A. Yes.

Q. And did Michael Novak again give evidence?

A. Yes.

Q. And did he on this occasion again deny that you had permission to use the car? A. Yes.

A. And did you inform the judge that you did have permission? A. Yes. 40

HIS HONOUR: Q. Did you give evidence on oath, or make a statement? A. On oath.

MR. GRUZMAN Q. And did you also give a great deal of evidence surrounding this matter? (Objected to; rejected).

Q. Was the appeal subsequently dismissed, and the conviction confirmed? A. Yes.

Q. In the course of your statement to the police you said this: My friend asked you some questions about it, and you said, at p. 4: - you were asked: "What happened then?" and you said: "Well, he brought Mr. Barton to the lounge and I said to Caruga 'Thank you', so he left." I said to Mr. Barton - I asked him if he wanted a drink, so he said: 'Yes' and I ordered a whisky and soda and so Mr. Barton did. Mr. Barton paid for the drinks and I said 'Mr. Barton, somebody wants to kill you', and he laughed at me and said: "Yes, I know. I thought it was something like that when you didn't want to talk to me over the phone..." etc. My friend, Mr. Staff, asked you some questions about whether he laughed at you, and you started to say something. Would you try and describe, the best way you can, Mr. Barton's reaction - what you saw of him when you told him "Someone wants to kill you." A. Well, Mr. Barton didn't actually laugh like you would like at a comic, or something. He was actually expecting it, and nervous about it, and sort of upset. He sort of give a grin, and, well, he didn't actually enjoy the smile. 10 20

Q. Now I want to ask you something about the statement generally. First of all, when you got to the C.I.B. did the police immediately start to take down a statement from you (Objected to; argument ensued). 30

HIS HONOUR: The witness was asked in chief at p. 271 what happened when he reached the C.I.B. The question was objected to, and I rejected it, the reason I stated for the rejection of that question being that what took place between the police and this witness and the C.I.B. was not relevant to any issue, and was therefore inadmissible. The significant and relevant event at the C.I.B. was that a statement came into existence signed by the witness which was shown to Mr. Barton. I upheld Mr. Staff's objection to the events at the C.I.B. being opened in the witness' evidence-in-chief. The witness has been cross-examined as to credit on the contents of that statement, and I am of the view that that has opened up the question which Mr. Gruzman now asks. I allow the question. 40

(Short adjournment).

HIS HONOUR: Q. You are still on oath? A. Yes.

MR. GRUZMAN Q: I was asking you before the adjournment, or about to ask you, what occurred at the C.I.B., and I just want you to tell us first of all was there a discussion with the police. Did you have a talk with them? A. Yes. 50

Q. For how long did that talk go on? A. It could be half an hour or 40 minutes. Something like that.

Q. What did you tell them during that discussion? (Objected to: allowed).

A. Vojinovic, re-x.

Q. What did you tell them during that discussion?  
A. Well, they asked me where I lived and all sorts of things. I told them where I lived.

Q. Yes? A. They asked me about this case.

HIS HONOUR: Q. They asked you ... A. They asked me about this case -- what do I know about what Mr. Barton complained about. ~~So I told them all about the case~~ (Objected to: by direction portion indicated struck out).

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MR. GRUZMAN Q: Well then, you told us that there was a discussion that went on for about 30 or 40 minutes? A. That is right.

Q. Was that about the events of this matter?  
A. Yes.

Q. Now subsequently was a statement prepared?  
A. A statement was prepared after the conversation.

Q. Yes. Well, would you tell us how that statement was prepared? In other words, did you dictate the statement, or just how did the words that are in the statement come into existence? A. Well, in the discussion we had earlier Det. Sgt. Wild almost knew everything about the case, so he would say a sentence and then ask me was it right, and I would say: "Yes". I am not quite sure if Mr. Wild typed it himself, I think he did. I am not sure of it.

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Q. Well, you say that is how it came into existence, that Sgt. Wild would type a sentence, and say: "Is that right?" and then you would go on?  
A. Yes.

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Q. Is that what you said? A. Yes.

Q. In the course of the statement were there any subject matters dealt with which do not appear in the statement? (Objected to; rejected).

Q. Mr. Vojinovic, during the course of the conversation which you told us of with the police, was there a discussion about your plan to capture the people involved? (Objected to; rejected).

Q. During the course of your discussion with the police was there a discussion about your plan? (Objected to; rejected).

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Q. Was there a discussion about your plan -

HIS HONOUR: I reject that. I will ask the question.

Q. During the course of your discussion with the police a statement was prepared - was taken down?  
A. Yes.

Q. You read that statement through on the night that it was taken down before you signed it? A. Not exactly.

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A. Vojinovic re-x.

Q. You glanced through it? A. That is right.

Q. Were there other matters discussed beyond those that you saw in it when you glanced through it?

HIS HONOUR: Do you object to that question, Mr. Staff?

MR. STAFF: No.

HIS HONOUR Q: Were there other matters discussed that night beyond those that you observed in the statement when you glanced through it? A. If they did I don't think I did notice it, because I actually didn't read it through, and, I am not an expert to look. But I glanced to see the corrections -

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HIS HONOUR: I think that really amounts to "I don't know", Mr. Gruzman.

MR. GRUZMAN. Q: There is only one other matter I want to ask you about. That is about this blue Falcon. Were you driving that car on the occasion when it was booked by the police? (Objected to; rejected).

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Q. Now, just one other thing before you leave the Court. During the course of your interview with the police did something happen about a suitcase? (Objected to; allowed).

Q. What happened about a suitcase? A. While I was at the police station two other -

Q. You can't tell us things that you didn't see yourself. A. A suitcase was brought from the place where I lived with some tools inside it - brought to the police station.

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Q. And was that brought whilst this statement was being prepared, or while this discussion was taking place? A. Somewhere in the middle.

Q. Whose suitcase was it? A. Mine.

Q. And what did it contain? What sort of things?  
A. It contained a drill gun.

Q. Various tools, and so on? A. Yes.

Q. Where had you last seen these? A. In the police station.

Q. But before that, where had you seen them? A. At my home.

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Q. At your home. A. Yes.

MR. GRUZMAN: I don't propose to carry that any further.

HIS HONOUR: If that is so I will have it struck out, Mr. Gruzman.

I will leave it on the footing that the evidence can stand, but had I known that that is all there was to be given regarding the suitcase I doubt whether I would have allowed the questions to be asked or answered.

MR. GRUZMAN: Q: What was said to you about this suitcase? A. When they brought the suitcase to the police station, Det. Sgt. Wild asked me: "Does that belong to you?" I said "Yes, " and he asked me: "What do you use this and that for?" I told him no special reason for it, and he just sort of left it at that.

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HIS HONOUR: Q. "And he..."? A. "He just left it at that."

MR. GRUZMAN: I would ask that the witness be now permitted to retire from the Court to read his statement. As I mentioned before, he is a slow reader, and it will probably take him up to half an hour. To avoid wasting time I ask that he leave the Court and I can re-examine the plaintiff while that is taking place.

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HIS HONOUR: All you are asking leave to reserve are questions as to whether there was any discussion about matters not included within the statement?

MR. GRUZMAN: Yes.

HIS HONOUR: I think perhaps you can put the question to the witness now, and he can read the statement and answer it, and that will effectively confine what is to happen.

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MR. GRUZMAN Q: Mr. Vojinovic, you are going to be given - an opportunity is going to be made for you to leave the Court now and read your statement that you made to the police on 8th January 1967. When you return to Court you are going to be asked whether matters were discussed between you and the police relating to this case which do not appear in that statement. Do you understand that? A. Yes.

(Witness retired from Court to read Exhibit "D").

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PLAINTIFF

On former oath:

HIS HONOUR: Q. You are once again on your oath which was administered to you to tell the truth, Mr. Barton? A. Yes.

MR. BENNETT: I would seek leave to cross-examine the plaintiff at this stage.

HIS HONOUR: Yes.

MR. BENNETT: Q. Mr. Barton, the deed of 17th January, 1967- who signed that deed on behalf of Landmark

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Corporation Ltd.? A. I think myself and the company secretary.

Q. At the time the deed was signed did you consider that it was in the best interests of Landmark Corporation Ltd.? A. No.

RE-EXAMINATION

MR. GRUZMAN Q; (Exhibit 2 shown to witness). Now I show you Exhibit 2, which is a photograph. At the time when my learned friend showed it to you were looking at the photograph and you wanted to give some explanation about it. Please tell us what you can tell us about that photograph. (Objected to: allowed).

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Q. I want you to look at the photograph and tell me, by reference to the photograph, whether you can tell us when it was taken? A. That photograph definitely was not taken in August 1966 when Mr. Armstrong went overseas, because the photograph -

HIS HONOUR: You cannot give the reason.

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MR. GRUZMAN Q: You will see one of the persons on the photograph is Miss Armstrong, isn't it? A. Yes.

Q. On the occasion when Mr. Armstrong went overseas in 1966, was Miss Armstrong present at the airport? A. No. She was overseas. She went overseas before.

Q. When do you say that photograph was taken? A. In 1964.

Q. 1964? A. Yes.

(Witness stood down).

ALEXANDAR VOJINOVIC

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On former oath:

HIS HONOUR Q: You are still on your former oath? A. Yes.

MR. GRUZMAN Q: You have now had a chance to read your statement? A. Yes.

Q. Having read it, can you tell the Court whether there were matters discussed between you and the police at the C.I.B. relating to this case, which do not appear in the statement? A. Yes.

MR. STAFF Q: Mr. Vojinovic, do you recall in your evidence the day before yesterday - I am sorry, do you recall in your evidence yesterday morning Mr. Gruzman asked you these questions? Perhaps I should tell you that just before this you said you had gone to the corner of Victoria Street and a street you didn't know, opposite St. Vincent's Hospital? A. Yes.

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Plaintiff xx, re-x  
Stood Down.  
A. Vojinovic rec'd,  
further re-x.

Q. You were then asked this question: "Q. What did you do when you got there? What did you see or what happened? What happened when you got there?" and you answered: "I was standing on the corner and seen across the road the white Mercedes with Mr. Barton in it. So I walked across the road to join Mr. Barton. Just as I approached Mr. Barton, Mr. Barton said: "Hello" to me, and behind me another fellow did come and introduced himself as Detective - 10 I forget his name." Was that a true answer? A. I might have sounded like you just said. It would be true, yes.

Q. You were then asked this question: "Q. Well, can you tell us what he said?" and you answered: "Yes. When he approached me he said: 'I am a police officer, and I would like you to accompany me to the police station. I would like to ask you some questions.' Then at the same time Mr. Barton said: 'Don't worry about it. I arranged for this, 20 and everything will be in order,' so actually I didn't have to worry." Was that a true answer? A. Yes.

Q. So that what happened was that as you approached Mr. Barton this detective, whose name you don't remember, came behind you and introduced himself, saying: "I am a police officer, and I would like you to accompany me to the police station", did he? A. Can I have that again, please?

Q. You said: "I was standing" - your answers were: 30 "I was standing on the corner and seen across the road the white Mercedes with Mr. Barton in it. So I walked across the road to join Mr. Barton. Just as I approached Mr. Barton Mr. Barton said: 'Hello' to me, and behind him another fellow did come and introduce himself as Det. - I forget his name." You were asked: "Well, can you tell us what he said?" and you answered: "Yes". When he approached me he said: 'I am a police officer, and I would like you to accompany me to the police station. I would 40 like to ask you some questions.' Then at the same time Mr. Barton said: 'Don't worry about it. I arranged for this, and everything will be in order...'

Now, that is what happened, isn't it? A. That is right.

Q. The police officer came up behind you and introduced himself as Det. So-and-so, saying: "I am a police officer ...". A. Well -

Q. That is what you said? A. Yes, that is right, except I didn't want to - 50

Q. That was the truth? (Objection to interruption of witness' answer).

WITNESS: I didn't want to say exact that the policeman who approached me grabbed me by the arm. It is normal that if anybody makes an arrest he would not say - he would not come in front of you and bow to you and say: "I am a police officer." That is why I

said: "He approached." In other words, if you ever see an arrest, he grabs you by the arm and says: "I am a police officer. I want you to come with me to the police station".

Q. But you were not arrested, were you? A. I didn't have the choice to walk away, did I?

Q. No police officer said anything whatever about arresting you, did they? A. No, he didn't say "arrest".

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Q. And, as you told us, this police officer said: "I would like you to accompany me to the police station. I would like to ask you some questions"? A. That is right.

Q. You have been arrested plenty of times, haven't you? A. That is right.

Q. When later this morning - some little time ago - you told us in answer to a question by Mr. Gruzman that the police officer came up behind you and grabbed your arm - you had forgotten about that yesterday, hadn't you? A. No.

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Q. You deliberately left it out yesterday, did you? A. No. Not really, no.

Q. You just left it out? A. No. I was not asked to describe it.

Q. Do you remember being asked this question yesterday: "What did you do when you got there? What did you see, or what happened? What happened when you got there?" Do you remember being asked that question yesterday? A. Yes.

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Q. And then you gave the answer in which you said that you approached Mr. Barton and "another fellow came behind me and introduced himself ..." (Objected to).

HIS HONOUR: You have read the answer twice, and I think it is sufficient to remind him of the answers that he gave.

MR. STAFF: Q. Do you remember you were asked the question: "What did you do when you got there? What did you see, or what happened? What happened when you got there?" You knew when you were asked those questions that you were being asked to describe what in fact happened, didn't you? A. Not in every detail, no.

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Q. You told us what happened, didn't you? A. That is right.

Q. And when you told us what happened did you have in your mind that you were leaving some things out? A. I don't think so. It actually explains. The position can be seen how it was.

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Q. Which arm did the detective grab, do you say? A. I beg your pardon?

A. Vojinovic re-x.

Q. Which arm did this detective grab? A. He grabbed me by the left arm.

Q. The left arm? A. Yes.

Q. Whereabouts? A. Just here (indicating).

HIS HONOUR: It may be noted the witness indicates his right elbow.

MR. STAFF: Q. Did he grab you tightly, or just put his arm there - his hand there? A. Well, he didn't grab me and hurt my arm really bad, but he held there firmly and strongly, like.

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Q. Did he twist your arm up behind your back?  
A. No he didn't.

Q. You are quite sure about that? A. Quite sure about it.

Q. Did he twist your arm in any direction? A. No, not at all. He just held it there, and I didn't move.

Q. You told us this morning that when the suitcase was brought into the C.I.B. with the tools in it Det. Sgt. Wild asked you what you used them for, did he? A. That is right.

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Q. And you told him "No special reason"? A. That is right.

Q. That was a lie, wasn't it? (Objected to; rejected).

MR. GRUZMAN Q: You were asked by my friend whether you had been arrested on many occasions. Do you remember that? A. Yes.

Q. And you were also asked whether on this occasion the officer used the word "arrest"? A. Yes.

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Q. You said that he didn't. What I want to ask you is, in your experience of being arrested, do police officers normally use the word "arrest" when they are arresting you, or, if not, what form of words do they use? (Objected to; rejected).

(Witness retired).

PLAINTIFF

On former oath:

HIS HONOUR: Q: You are still on oath, Mr. Barton? A. Yes.

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MR. BENNETT: Q. Mr. Barton, when was the decision made to affix the seal of Landmark Corporation Ltd. to the deed of 17th January? A. In Landmark Corporation office.

Q. When was it made? A. On 17th January, 1967, and has been confirmed in minutes of the corporation on 18th January 1967.

A. Vojinovic re-x  
ret'd.  
Plaintiff rec'd, re-x.

Q. Were you present at that board meeting? A. Yes.

Q. What was your vote at that board meeting on this subject? A. I voted for it.

Q. And at the time you made that vote, what was your view about the advantageousness of the deed to the company? A. It was bad for the company.

Q. And was that also your view when the decision was made on 17th January? A. Yes.

MR. GRUZMAN Q: Mr. Barton, you were asked by my friend as to how you were sure - you were asked on page 95 this question: "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?" and you answered? "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." 10

Q. Why are you so sure about September? (Objected to; allowed). A. May I see the document, please? (Referring to Exhibit 5). Before I answer the question may I state what is the document? 20

HIS HONOUR: Yes.

WITNESS: It is a document which has been put into better English by Oscar Guth, and this document has been completed in September. I am sure it has been done, because for some time I had ordered through the architect to put up Mr. Armstrong's office, and I have put up a wall into Mr. Armstrong's office. That is showing my final decision that I am going to go through with this resolution to put this motion to the board. 30

MR. GRUZMAN Q: When was the wall through Mr. Armstrong's office actually built? (Objected to; allowed). A. It has been built in September. It was finished and painted when Mr. Armstrong returned.

HIS HONOUR Q: Finished prior to ... A. Finished in September and been painted before he returned. It was finished. It was completely finished when Mr. Armstrong returned. 40

MR. GRUZMAN Q. Did you say: "It being painted" or "been painted"? A. "Been painted". Finished.

Q. It had been painted prior to Mr. Armstrong's return? A. Yes.

Q. Did you have some other reason (Objected to; rejected).

WITNESS: I would like to say something about when Mr. Armstrong went overseas, and I gave a go-away present to Mrs. Armstrong - 50

HIS HONOUR: No.

MR. GRUZMAN: Q. On the subject you just mentioned, there was a conversation with Mrs. Armstrong before Mr. Armstrong went overseas? A. Yes.

Q. You wanted to mention that in the context of this? (Objected to; rejected).

Q. Now you were asked by Mr. Staff at p. 128 whether in effect you had declared a statutory declaration on 18th January that no petition is pending to wind up, which was in fact incorrect. Do you remember questions along those lines?  
A. Yes.

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Q. Will you tell us the facts relating to that petition so far as they were within your knowledge? (Objected to; rejected).

Q. At the time that you declared the statutory declaration did you believe it to be correct? A. Yes.

Q. Don't answer this question: Prior to swearing that declaration had you seen a newspaper containing material relating to this petition? (Objected to; allowed). A. Yes.

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Q. Will you look at the right-hand cutting in that volume? A. Yes.

Q. Is that an extract from the Financial Review of 1st December 1966? A. Yes.

Q. Will you tell his Honour when you saw that in the Financial Review? (Objected to; allowed). A. I seen it on the same day. On the same day when it appeared.

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(Newspaper clipping dated 1st December 1966 tendered and admitted as Exhibit "P").

HIS HONOUR: I will note that Exhibit "P" is not yet lodged in Court.

MR. GRUZMAN Q: Two more questions on that topic. First of all, who was the solicitor handling the petition from the company's point of view? A. Mr. Solomon, from Allen Allen & Hemsley.

Q. Who was the solicitor who prepared the declaration which you signed? A. The same solicitor.

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Q. You were asked at p. 76 about your visits to Mr. Armstrong's house, a context suggesting a friendly relationship between you and Mr. Armstrong. Will you tell us over the period of three years, I think it was, that you were associated with him in business on how many occasions did you have Mr. Armstrong to your home? (Objected to by Mr. Staff; allowed).  
A. Four times.

Q. You were asked at p. 136 about a letter written on 16th December, 1966 to U.D.C. - United Dominions Corporation - which subsequently became Exhibit 7. You were asked some questions about that letter. Why

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was that letter written? (Objected to by Mr. Staff).

Q. You might tell his Honour the circumstances under which that letter was written (Objected to by Mr. Staff: allowed).

Q. Would you tell his Honour the circumstances in which that letter was written? A. ~~After-obtaining-legal-advice-that-this-letter-of-the-23rd-November-1966-is-not-an-enforceable-document -~~ (Objected to by Mr. Staff: struck out). 10

Q. You had received a letter dated 23rd November 1966 in which U.D.C. had offered to provide some \$450,000 if Mr. Armstrong left the company? A. Yes. (Questions disallowed).

HIS HONOUR: Q. You had received a letter of the 23rd November, which is part of Exhibit "C"? A. Yes.

MR. GRUZMAN: A. Had you received that letter of the 23rd November, part of Exhibit "C"? A. Yes. 20

Q. Subsequent to the general meeting held on the 2nd December 1966 did U.D.C. call up its existing mortgage? (Objected to by Mr. Staff: allowed).

Q. Would you tell us the circumstances in which you wrote that letter of the 16th December, 1966 to U.D.C? A. I had obtained legal advice and I have been advised that -

Q. You had obtained certain legal advice? A. Yes.

Q. ~~Yes. A. And then I wrote that letter for the purpose to start U.D.C. -- to put the receiver into the Paradise Waters Companies~~ (Objected to by Mr. Staff: struck out). 30

Q. On the 13th December 1966 had a letter been written to U.D.C. threatening action on their letter of the 23rd November 1966? A. Yes.

Q. Subsequently you received certain legal advice? A. Yes.

Q. At this time did you receive any notification from U.D.C. of their intentions? (Objected to by Mr. Staff: allowed). A. Mr. Honey informed me that they are going to put a receiver into the Paradise Waters company. 40

MR. STAFF: That is utterly inconsistent with the evidence that this witness gave in chief at p. 34.

MR. GRUZMAN: Q. What did you do then? A. Then I wrote that letter on the 16th December, 1966 ~~for the purpose to start them to put a receiver in.~~ (Objected to by Mr. Staff: struck out).

Q. What was your purpose in writing that letter? (Objected to by Mr. Staff: disallowed; objection withdrawn). 50

Q. What was your purpose in writing that letter? A. To start U.D.C. to put a receiver into Paradise Waters company.

Q. You were asked a number of questions about the payment of the dividends of the company and the propriety of paying those dividends. Did Mr. Armstrong issue to the company a 222 notice in respect of the non-payment of dividends on the shares owned by his companies? (Objected to by Mr. Staff). 10

Q. Were notices under Section 222 of the Companies Act received from the companies controlled by Mr. Armstrong in respect of non-payment of dividend to those companies? (Objected to by Mr. Staff. Notice called for by Mr. Gruzman: not produced. Question rejected).

Q. You were asked something about giving a statement of asset backing of shares in a letter, I think some annexure to Mr. Dobbie of the Bank of New South Wales, if I remember correctly? A. Yes. 20

Q. What is your concept of asset backing? (Objected to by Mr. Staff: allowed). A. Not only my concept - everybody's concept, - (rejected).

Q. Your concept of asset backing? (Objected to by Mr. Staff).

Q. I will read you the statement; it appears in this letter which is Exhibit 14, on page 4: "Asset backing of the company's shares is over \$1. per share, paid up capital 1,753,000 \$1. shares". What did you mean by the statement "asset backing?" 30  
A. I mean assets backing is the added up book value of all assets, deduct all liabilities from this amount, and the remaining amount to be divided by the number of shares issued, and the figure which came out showing the asset backing.

Q. You have had considerable experience in financial matters, have you not? A. I have.

Q. Do you, for example, read the Stock Exchange Gazette? A. Yes, I read it. 40

Q. Is there a column there showing asset backing of shares in that publication? A. Yes.

Q. Is that worked out on the same basis as you regard asset backing? A. Yes. (Question objected to by Mr. Staff: rejected).

Q. Don't answer this for the moment but is it your belief that when someone speaks of asset backing of shares generally they are referring to book values the same way as you have? A. Yes (Question objected to by Mr. Staff: rejected). 50

Q. At p. 244 you were asked by my friend some questions about conversations with Const. Follington - a number of them occurred during the year - one of them was in Peter Bowen's office - and then you were

asked about something happen in around about December or early January 1968 which persuaded you to start these proceedings notwithstanding your fear - it happened in November. What was the reason that persuaded you to take the risk of these proceedings notwithstanding your terror and fear etc. - what was the reason? (Objected to by Mr. Staff: allowed).

Q. What was it that occurred in November, 1967? 10

A. Early in 1967 Mr. Follington came to my home on a Friday afternoon about five thirty and I was swimming in the swimming pool and I came out and he told me that he had very good news for me because a robbery had just happened during that week. They followed the thing up and two pieces of jewellery finished up in Mr. Armstrong's possession and one of them was a ring which was worn by Mrs. Armstrong. I told him that I would not - (Objected to by Mr. Staff: disallowed). 20

Q. What was the next thing that happened about that time? (Objected to by Mr. Staff; disallowed).

Q. What happened next about this specific matter which provided the reason? A. I may say conversation? I have to say conversation between myself and Mr. Follington.

HIS HONOUR: Q. This is something that you said to him or a question you asked of him? A. About what I said to him and followed up with a question that I asked him. 30

Q. Yes, what you said - this is a continuation, is it, from where I stopped you a moment ago? A. Yes.

Q. Continue. A. I told Mr. Follington that I don't want to deal with this kind of matter myself if he will be prepared to come to see my solicitors, and he then said that Mr. Armstrong's arrest is just about happening now.

Q. Mr. Armstrong's arrest - A. - is just will happen now and because Mr. Armstrong is an M.L.C. they didn't want to question him about my whole matter before, but now if they have got something concrete on him that all my problem will be solved, and then he agreed to come to my solicitor - (Objected to by Mr. Staff). 40

MR. GRUZMAN: Q. What did he say? A. I asked him, "I don't think I want to handle this matter myself. Are you prepared to come and see my solicitor?" He said, "Oh yes, it is no problem," and I then told him I am going to make an appointment with Mr. Peter Bowen and I am going to ring him as soon as this appointment has been made. 50

Then on Monday morning - sorry - on Saturday morning I tried to reach Peter Bowen and he was not in Sydney. I rang him on Monday morning and I made an appointment with him first for myself and I told him -

Q. You had a conversation with Mr. Bowen? A. I had a conversation with Mr. Bowen about the matter and Mr. Bowen then made the appointment for me to see me and Mr. Follington together in his office at Double Bay about the middle of November - the 14th or 16th November, - and I telephoned Follington. I did meet him at the car park at Double Bay by arrangement. We walked up together to Peter Bowen's office and I told Peter Bowen that this is Mr. Follington and better you talk to him, I don't want to handle this matter myself. After Mr. Follington and myself left I went back to Peter Bowen's office and he said to me, "Now we can start to consider the action that you can take."

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Q. Certain matters were put to you by my friend by way of suggesting that you were anxious to make this deal of the 17th January. Do you remember a series of questions along that line? A. Yes.

Q. On the 16th January you told his Honour that you spoke to Mr. Smith after certain things had happened? A. Yes.

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Q. In order to get your mind on to the topic, was something said about a cheque by Mr. Smith on that occasion? A. Yes. I rang Mr. Smith about nine o'clock in the morning, just before nine o'clock, in the morning - (Objected to by Mr. Staff: not pressed).

Q. Whilst you were being cross-examined did you produce to the Court under subpoena duces tecum your cheque butts relating to transactions which occurred specifically over the January 1967 period? A. Yes, I did.

30

Q. Were they made available to Mr. Staff? A. Yes.

Q. Is that a cheque butt dated 16th January, 1967? A. Yes.

Q. Did you prepare that cheque and do certain things with it? (Objected to by Mr. Staff; not pressed).

Q. Will you have a look at the other document which I now show you. Is that the duplicate of a letter which you wrote on the 16th January, 1967? A. Yes.

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Q. And did you deliver that letter? A. Yes. (Objected to by Mr. Staff: allowed).

(Document m.f.i. "16").

Q. (By leave). Did you become aware some years before the events which occurred in 1966-67 about some happenings in Goulburn? (Objected to by Mr. Staff; rejected).

(Witness retired).

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JOHN OSBORNE BOVILL

Sworn, examined as under:

MR. GRUZMAN: Q. Is your full name John Osborne Bovill? A. It is.

Q. Do you reside at 36 Drumalbyn Road, Bellevue Hill? A. I do.

Q. I think you are a company director? A. I am.

Q. I will lead subject to objection. I think you are at present a shareholder in Landmark Corporation and I think that your family companies Ballindoun Pty. Limited and Resauri Pty. Limited held shares in Landmark Corporation in excess of some 50,000? A. They do. 10

Q. I think you were a director of Landmark Corporation Limited during the last three years? A. I was.

Q. I think you first became associated with Palgrave Corporation Limited about 1951 when you inherited some shares in that company and you subsequently added to those shares? A. I did. 20

Q. I think that a company in which you are a substantial shareholder, namely, Plantations Limited, owned a coffee plantation in New Guinea & in 1961 or 1962 the shares in that company were purchased by Landmark as a result of which you acquired a substantial parcel of shares in Landmark? (Objected to by Mr. Staff: rejected).

Q. I think that shortly after you acquired your shares Landmark was taken over by Palgrave and that changed its name to Landmark Corporation Limited? A. I don't understand that question. Shortly after I acquired my shares in what company? 30

Q. In Landmark? A. In Landmark Limited, yes.

Q. It was taken over by Palgrave Corporation Limited? A. That is correct.

A. And that changed its name to Landmark Corporation Limited? A. That is right.

Q. Then I think certain events occurred and you spoke to Mr. Armstrong? A. I did.

Q. What was your conversation? (Objected to by Mr. Staff: allowed). 40

Q. When did you have this conversation with Mr. Armstrong, approximately? A. Subsequent to the company announcing losses and not paying the dividend as foreshadowed in the take-over.

Q. What was your conversation with Mr. Armstrong? A. I told him that I was dissatisfied with the performance of the company as I had been told prior to the take-over that 10% - (disallowed).

Q. Did you tell Mr. Armstrong that you proposed 50

to stand for election to the Board? A. I did.

Q. What did he say? A. I told Mr. Armstrong that I -

Q. Don't tell us all the details. A. He said that he would invite me on to the Board but would not invite the man I wanted to come on with me, Mr. B.W. Manell, as he was an accountant and they already had one accountant on the Board.

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Q. Then I think that there were certain further discussions and did you stand for election to the Board? A. I stood for election to the Board at the meeting of shareholders - I think the date was 1962.

A. Were you successful or not? A. I was not successful.

Q. Then late in 1963 did you have a discussion with Mr. Armstrong and, to get you on to the subject matter, about the employment of Mr. Barton? (Objected to by Mr. Staff; rejected).

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Q. At a later stage about the end of 1963 were you issued with an invitation to join the Board?  
A. I was.

Q. Did you understand that that was with Mr. Armstrong's approval? A. I did.

Q. I just want to take you up now to about 1964/65. I think the company moved into a new office in Pitt Street, did it not, at that period? A. Yes.

Q. I don't want you to tell us all about certain conversations that took place between you and Mr. Armstrong at that stage but how would you describe the relationship between Mr. Barton and Mr. Armstrong at that period? (Objected to by Mr. Staff; rejected).

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Q. I would like you to tell us about a transaction in connection with the Vista Court flats at Rozelle. A. Vista Court Flats - (Objected to by Mr. Staff; allowed).

Q. Without going into the transaction in detail, had the company built a block of flats at Rozelle named Vista Court? A. It had.

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Q. Was this block of flats purchased by Mr. Armstrong? (Objected to by Mr. Staff.)

Q. Had there been a transaction between Mr. Armstrong or one of his companies in respect of these flats? A. There had been.

Q. Subsequently did Mr. Barton go overseas?  
A. He did.

Q. And then were there some discussions by Mr. Armstrong with yourself and Mr. Cotter about that transaction? A. There were.

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Q. What were they? What did Mr. Armstrong say in connection with this matter? (Objected to by Mr. Staff: allowed). A. Mr. Armstrong wanted us - (Objected to by Mr. Staff).

Q. What did he say? A. Mr. Armstrong said that the contract should be re-negotiated and that the company was bound to lend monies on the building or on the flats in the building and that we should re-negotiate this contract as we were in default in certain interest payments and therefore monies were callable. This was the substance of his conversation to me. 10

A. Did he say what would happen if there was not - (Objected to by Mr. Staff).

Q. Was anything further said by Mr. Armstrong? Mr. Armstrong said that he may be forced to issue a 222 notice.

Q. What did you say to that? A. I said that this would have a very damaging effect on the company, the shareholders, and Mr. Armstrong's shares in particular, he being a large shareholder in the company. 20

Q. Then did he say something to you about this again being while Mr. Barton was overseas - his opinion of Mr. Barton? A. He did.

Q. What did he say? (Objected to by Mr. Staff: allowed). A. He said that Mr. Barton was overseas could not be contacted, and had very likely - if I use his own words - "shot through" 30

Q. Did he tell you anything about his opinion of Mr. Barton at that time? A. At that time - this was in 1966 on the occasion of Mr. Barton's trip overseas - he said that he was not running the company properly, that the creditors were in a very bad position, we could not pay our bills, and that Mr. Barton was not to be trusted.

Q. What did you say to that? A. I said that I did not believe that Mr. Barton had gone overseas for any purpose other than for the company; I believed that Mr. Barton would come back; I believed that Mr. Barton would be able to arrange for the payment of the creditors, and I undertook to ring Mr. Barton overseas and to carry out the instructions of the Board to see that Mr. Barton was recalled. 40

Q. Did that occur? A. I did contact Mr. Barton and he did return.

Q. This was when? You mentioned a date - towards the end of 1966 did you say? A. No. This would be while Mr. Barton was away. I think this would be April May, June - that sort of period. 50

Q. When Mr. Barton came back were you present at Board meetings with him? A. I was.

Q. Would you tell us what Mr. Armstrong said or

did at those Board meetings around this time?  
(Objected to by Mr. Staff; rejected).

Q. Will you give us some specific instance of what Mr. Armstrong said at a Board meeting which comes to your mind - after Mr. Barton returned about the middle of 1966? A. The middle of 1966? (Objected to by Mr. Staff; withdrawn).

Q. I want you to come towards the end of 1966, a period towards the time of the annual general meeting. I want you to try and fix in your mind a Board meeting prior to that? A. Yes. 10

Q. Now I want you to try and explain to his Honour if you can by reference to what Mr. Armstrong said and did what you recollect of him at that Board meeting? A. The Board meeting that I most clearly recollect in regard to the relationships between the two was where Mr. Armstrong was continually making remarks such as, "Have you had any more 222 notices?" "Have you bought any more shares lately?" "Have you had any rings from the creditors?" 20

Q. How did Mr. Armstrong look when he was saying those things? (Objected to by Mr. Staff; pressed: allowed). A. ~~I would say that the remarks were both fibs and menacing~~ (Struck out by direction).

Q. What did you observe about Mr. Armstrong? What did you observe yourself about Mr. Armstrong's appearance when he was making statements such as this at this Board meeting? A. He appeared to be under emotional strain. He would gulp, he would make continual asides, his face would change colour, his eyes would pop out. It was most disturbing the way he carried on his duties as a chairman. We would not follow the agenda. (Objected to by Mr. Staff). 30

HIS HONOUR: Q. It is not easy to formulate a question or to answer a question on this topic, but the type of observation which would be in answer to the question would be whether Mr. Armstrong was laughing or whether he was frowning when he made these observations. Do you understand what I am seeking? A. Yes. 40

Q. It must be a more specific observation of what you observed about his facial expression when making the type of observation you have mentioned about 222 notices - whether it was said with a laugh or a frown. Do you follow? A. I do.

MR. GRUZMAN: Q. You heard the way his Honour put it. When, for example, he spoke about 222 notices, to give you a specific instance, what was his facial expression? A. I would class it as a sneer. 50

Q. You have mentioned that there were occasions when his face would change colour. When would that occur? A. If you argued with him on any point with which he disagreed.



Q. You said his eyes would pop out. When would that occur? A. At the same time - if you happened to cross him.

Q. Do you remember a conversation with him about this time in relation to suing for negligence? A. I do.

Q. Tell his Honour of that conversation.  
(Objected to by Mr. Staff: allowed). A. Mr. Armstrong said to me "You could be sued for negligence for the condition that Landmark is in" -- I said to him, "You are a director of this company as well as I am, and you could be on the wrong end of the same writ" -- He said "What would happen if John Cetter was sued for negligence?" -- I said, "It would very likely make him very sick, -- He would probably get a coronary and you wouldn't want that, would you?" -- He said, "I couldn't care if John Cetter lived or died." -- I said, "I don't think that is a very appropriate attitude to have to a co-director."  
(Objected to by Mr. Staff: struck out).

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(Further hearing adjourned until Wednesday 12th June, 1968).

BARTON v. ARMSTRONG & ORS.

THIRTEENTH DAY, WEDNESDAY, 12th JUNE, 1968.

JOHN OSBORNE BOVILL

On former oath:

HIS HONOUR: Q. Mr. Bovill, you are still on the oath administered to you to tell the truth? A. Yes.

MR. GRUZMAN: I press the last evidence - the evidence of the last conversation on pp. 326 and 327 of the transcript. Before doing so I will ask a question of the witness. 10

Q. Mr. Bovill, I think you remember that when the matter was last before the court you told his Honour of a conversation with Mr. Armstrong with respect to suing for negligence? Do you remember that conversation? A. That is so, yes.

Q. Was Mr. Barton present at that conversation?  
A. He was.

MR. GRUZMAN: I now re-press that conversation. 20

HIS HONOUR: No. I think it is too far removed from what I am concerned with here.

MR. GRUZMAN: Q. Don't answer this question for the moment, Mr. Bovill. Mr. Bovill, I would ask you now to tell us again all that conversation in relation to that subject matter (Objected to; rejected).

Q. Now I want to take you now to a meeting which occurred, I think, on 22nd October when the resolution was passed giving Mr. Armstrong 14 days to leave the premises. Following that 14 days did you have a conversation with Mr. Armstrong? A. I had a conversation with Mr. Armstrong at which Mr. Barton was present. 30

Q. Yes. What was that conversation (Objected to; allowed)? A. Your Honour, I am somewhat confused at this point. The conversation to which I am referring was the one during which part of it related to the remarks Mr. Armstrong made about Mr. Cotter. There were several other items which are very heavily impressed upon my mind at that conversation which I have not said yet, but this is the one that I believe Mr. Gruzman is referring to. 40

HIS HONOUR: Mr. Bovill, I think the best course is for you to state your recollection of it in answer to the question. If it turns out to be inadmissible for technical reasons which need not trouble you I can just record having it struck out. Such portion as is not admissible will be struck out. A direction to strike out evidence is by no means a reflection on the witness; it is merely a necessary step to keep 50

inadmissible material out of the transcript. It is not in any respect intended, and should not be taken, as criticism of the witness.

MR. GRUZMAN: Q. Will you tell us your recollection of this conversation? A. I entered the board room in which Mr. Barton and Mr. Armstrong were standing, and there was an argument taking place. I said to Mr. Armstrong "This argument that is going on can only have a damaging effect upon this company and the shareholders generally." I said "We are directors. It is our duty to see to it that any argument that takes place within the board room is kept within the confines of the board room, as otherwise the company is likely to suffer harm, and the shareholders with it." Mr. Armstrong's reply as to what it could do to the shareholders - I don't know whether, your Honour, you would wish me to say it in open court, but I would be very happy to write it down. 10  
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MR. GRUZMAN: It may be desirable if the expression is written down.

HIS HONOUR: Do you prefer that it be written down, or said, Mr. Staff?

MR. STAFF: I don't mind.

HIS HONOUR: The witness can perhaps write it down.

(Witness writes "fuck the shareholders" on sheet of paper which was handed to his Honour and counsel).

MR. GRUZMAN: Q. What other conversation took place? A. I said I thought that was an extremely wrong attitude to take to his responsibilities. Mr. Armstrong then went off at what I would call a tangent, and said "You are a miserable sort of bastard. You would not give me a trip around the world when you gave the managing director one." I said "He went on business to obtain moneys for the company, and on your recommendation." Mr. Armstrong said "That was a holiday, and you knew it." I said that I had no idea that the trip was entirely a holiday - in fact I believed the reverse to be the case. He said "Don't be so bloody naive". I said "I still don't consider that the shareholders should pay for a holiday trip for you and your wife as you have suggested, especially after what you have had to say about the condition of the company at this moment." He made various other remarks and interjections and then said, with what appeared to be an enraged look on his face which I have described in my previous evidence, "I don't like the way you have been prying into my expenses." I said "I don't like having shareholders' pockets piked behind their back, and I don't consider that your expenses were justified that I have discovered." He said "If you make a remark like that I will bloody well fix you," and came towards me. I stood my ground, and he did nothing further. 30  
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Q. What was his appearance like at that moment?

Q. I thought that he was going to strike me, but he made no more than a step towards me.

HIS HONOUR: I will allow that conversation.

MR. STAFF: I ask for the whole conversation to be struck out.

HIS HONOUR: I have allowed the conversation because I regard it as relevant to establish the context in which the events in question in this suit took place.

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MR. GRUZMAN: Q. I would like you to come now to some events which occurred at or following the board meeting of Landmark Corporation Limited on 30th November, 1966. I think the board meeting had been held earlier in the day, and then did you hear something being said? A. At the board meeting on 30th November I was seated at the end of the board table facing the door. I was going through some papers when I heard Mr. Armstrong's voice in the entrance hall say the word "bodyguard". He came into the Board room. He shouted "You stink; you stink I will fix you." ~~These remarks appeared to be addressed to Mr. Barton.~~ (Objected to; by direction portion indicated struck out).

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Q. Was Mr. Barton present? A. Mr. Barton was present when Mr. Armstrong rushed in. Mr. Barton went down the passageway following Mr. Armstrong.

Q. Mr. Barton - let me get this right - you heard something being said outside - (Objected to; rejected).

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Q. You might just tell us again the positions of the various persons at the time that you heard the various peices of conversations? A. Mr. Barton and I were in the board room at the time. Mr. Armstrong uttered the words "you stink; you stink. I will fix you," from within the board room. Mr. Armstrong turned, went out of the board room, tore down the passage. Mr. Barton followed him and returned shortly afterwards, looking very shaken. (Objected to: allowed).

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Q. At the time that the words "you stink; you stink" were used, where were Mr. Barton and Mr. Armstrong standing? A. Mr. Armstrong was standing close to the door Mr. Barton was standing at his chair, or very close to it.

Q. About how much distance separated the two men?  
A. I would say from where I am sitting here to the young man at the end of the table.

Q. About eight feet perhaps? A. About that, yes.

Q. And in what direction was Mr. Armstrong facing when he said these words? A. Straight at Mr. Barton, who was there, and Mr. Armstrong would be where - possibly where the court officer is.

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Q. So that you were about another six or eight feet away? A. I would be some distance further away.

Q. Yes, Well then, I think that - you say that Mr. Barton came back, and what did he do then? Don't tell us what was said. What did he do? (Objected to: rejected).

Q. Well then, did some other men arrive? (Objected to: allowed). A. Some short time afterwards during the - I recall the currency of the board meeting - (Objected to: rejected).

Q. Did some men arrive? A. Yes. 10

Q. Who were they? (Objected to: rejected).

Q. Well then, was there - did the members of the board deal with this incident in some way? (Objected to: allowed).

HIS HONOUR: Q. Did the board discuss it? A. We ~~resolved that Mr. Cecil Coleman~~ - (Objected to: by direction answer struck out as indicated).

MR. GRUZMAN: Q. Did the board deal with the incident in some way? A. Yes. (Objected to: allowed).

Q. Subsequently did you speak to Mr. Armstrong? 20  
A. I did.

Q. What did you say? (Objected to).

Q. Did this conversation that you had in mind - was that a conversation which took place on 30th November, 1966? A. Yes.

Q. Where did that conversation take place?  
A. In the Board room.

Q. In the board room? A. Yes.

Q. In the beginning did the conversation relate to something the board had just done? A. It did. 30

Q. What was that conversation, Mr. Bovill? (Objected to: allowed). A. The board meeting itself had finished. I had gone to the washroom and I returned to the Landmark offices. The board room door was open. I saw Mr. Armstrong inside. I walked in. The annual meeting was approaching, and I said to Mr. Armstrong "please let us do what we can to patch up this breach so as to enable the annual meeting - so that the annual meeting does not resolve itself into an open brawl which can only harm the company." I said "please don't regard the bodyguard that is in this office as an insult aimed at you by the board. Mr. Barton feels justified in having him." Before I could finish my sentence Mr. Armstrong wheeled around on me and said "Why do you keep on supporting that crook against me all the time?" ~~I was unable to answer the question~~ - (Objected to; by direction portion indicated struck out). 40

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Q. Yes. A He wheeled around on me, pulled out his gold pass from his pocket, and started waving it under my nose, and saying "I can have that bodyguard removed, if I want to. I could have you arrested in Pitt Street." I said "On what charge, Alec?" He said "This represents the Government" - he was waving the gold pass at me - "and I would only have to say to the policeman that you threatened and molested me and he would arrest you." I said "I don't believe you can do that without some evidence." He said "They would look after the evidence at the police station." I said "What on earth do you mean by that?" He said "They beat people up and get confessions." I said "I don't believe anything like that could happen to a reputable citizen. No policeman or police station would allow such a thing to happen, as there would be an inquiry that would blow the roof off the whole police force." Armstrong said "With this" - and he again waved the gold pass - "and with enough money I can get the police to do anything; alter or destroy evidence, or do anything I want." I said "Look, Alec, this is not Chicago." I said "You could not do these things with the police force in Australia." "Not Chicago?", he said, "This city has reached two-million people, and organised crime moves in." He said "You can have someone killed for ..." - and I can't recall whether it was "one-thousand quid" or "£1,000" or "\$2,000." I said "Alec, I don't believe Sydney has come to this state." He said "There is going to be gang war break out soon. Reilly " and some other man's name - Scottish or Irish; I can't recall it, but I can recall Reilly - "are going to end up being gunned down by the Melbourne mob as they move in to take over the rackets. I would not go out to Kings Cross if I were you; you could get caught in a hail of bullets." I said "I don't spend much time in Kings Cross." "He said "I would not let my children go to Kings Cross, either." I said "I never let my children go to Kings Cross. They very rarely go through the place." He said "They could get hooked on drugs." I said "What do you mean by that?" He said "Well, they go to The Villa, don't they?" I said "I don't recall them ever having been there." He said "Well, you can take it from me this city has got like that", or some such remark; I said, "Well, how do you come to know so much about this, Alec?" He said "I make it my business to know it." I said "Well, you are in the government. It is your duty as a public man to expose this and to bring some action to bear." He said "What, and get shot?" I said "I still think it is your duty to do something about it." Then he started - he said "That guard is terrified now. You can see by the look of his face." ~~I could see my object was completely incapable of achieving -~~ (Objected to; by direction portion indicated struck out).

Q. Will you try and describe to his Honour how Mr. Armstrong looked? Describe his appearance whilst he was saying these things? A. Well, he was white in the face this time, and when

he was waving the gold pass he was, I thought extremely irrational. Words were coming out at odd intervals. Various interjections. I am saying or explaining that there were interjections in this. I have tried to relate in a conversation as I remember it. There was such things as "if you think so much of Barton why don't you buy my shares?", and various remarks of this nature going on, and I would say - I would answer them at the time, but I don't recall when they took place. But they did take place. Armstrong's voice was not raised, but he was white in the face. He was shaking his gold pass under my nose practically all the time during the time he was talking about the police - not when talking about the organised crime (Objected to: allowed).

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Q. Mr. Bovill, following this conversation did you see Mr. Barton? A. I did.

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Q. How long after having the conversation with Mr. Armstrong did you see Mr. Barton? A. To the best of my recollection I walked straight down the passage and walked into Mr. Barton's office.

Q. Did you have a conversation with Mr. Barton?  
A. I did.

Q. What was that conversation (Objected to: allowed).

Q. Will you tell us what that conversation was?  
A. I said to Mr. Barton "I have just left the board room, where I have had a most extraordinary conversation with Mr. Armstrong which I wish to relate to you while it is fresh in my mind, as I consider that any conversation such as this between directors should be known to you immediately." ~~I then related the conversation~~ (Objected to: by direction portion of answer indicated struck out).

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Q. Tell us the conversation. What did you say?  
A. I said to him - as I have just said - "I have just left Mr. Armstrong in the board room, where I had a most extraordinary conversation which I will now relate to you verbatim." I then said "I walked into Mr. Armstrong, who was in the board room, as I wished to try and stop the annual general meeting becoming a brawl." I said to Barton that Armstrong had wheeled round on me, pulled out his gold pass, told me that he could have the armed guard - body guard, rather - thrown out; that he could have me arrested in Pitt Street; beaten up in the police station; that he could have evidence obtained or altered or lost. Barton did not say anything, but listened carefully. I said that Armstrong then continued to tell me that organised crime had moved into the city and that it was possible to have somebody killed for, as I say, £1,000. The amount I am sure of. I told Barton that. I then said that Armstrong had told me about the gang war, and that Reilly and this Scotsman were likely to be at war. At this point Barton

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said to me "Do you think he could get one of them to have me shot?" I said "I wish to make no comment but to merely repeat this conversation verbatim to you so that you can form your own conclusions." I then went on and said to Mr. Barton that Mr. Armstrong had told me of the dangers to myself if I went up to Kings Cross, and to my children. I told him that I had told Mr. Barton that I considered that he, as a public man, had the duty to expose rackets and the threatened gang war fear and drug traffic, particularly if he had knowledge of where this was going on, and I then told him that Mr. Armstrong had said to me, in answer to my question to Mr. Armstrong as to how he knew this, that Mr. Armstrong had told me that it was his business to know it. Mr. Barton was obviously shaken by this. He went very white, and kept on asking me whether I thought that Armstrong would - (Objected to: allowed). Mr. Barton said to me on more than one occasion "Do you think he could get these gangsters or Reilly or this Scotsman to have me shot for £1,000?" He said this on more than one occasion. I made no comment of my opinion or otherwise. I left Mr. Barton very shortly afterwards.

Q. I want to ask you about another conversation. I want you to come to a conversation, if you can, somewhere about the middle of December, and the subject was Mr. Barton's resignation. First of all, can you tell us where the conversation took place. (Objected to: allowed). A. The conversation in December relating to Mr. Barton's resignation I recall was at the time of Mr. Barton writing a letter to United Dominions Corporation or when I was discussing that letter with him. Mr. Barton said to me - at least - I apologise, your Honour, I am trying to phrase the conversation as I recall it - I said to Mr. Barton "that letter will completely ruin our chance of getting money from U.D.C. I think it is a bad letter, and you were unwise to have written it." He said to me "The money has not come through. I don't think it will come through. I would like to resign." I said "It is no way to treat your friends, writing letters like that." He said "I don't think we can get the money any other way. I think that it is finished." I said "Well, I would like to do it on the basis of co-operation, and to call upon the chairman of the company, in company with Mr. Cotter." Barton said "Go ahead, but I don't think you will get it." That is, to the best of my recollection, the wording of the conversation.

Q. Well then, will you look at part of exhibit 7, which is a letter of 13th December, 1966. Is that the letter you were referring to in the course of your evidence just now? Is that the letter? A. That was the letter.

Q. And following your conversation with Mr. Barton was the further letter written to U.D.C.? A. It was.

Q. Will you just turn the pages over, and you



will come to a letter. Is that the letter which was written to U.D.C.? A. It was.

Q. That is a letter dated 16th December, 1967?  
A. It is.

Q. Now, Mr. Bovill, I want you to come to a conversation sometime during January of 1967, and the subject matter is statements by Mr. Barton relating to positive threats on him, and so on - can I get you on to that - and the subject of criminals? A. Early in January 1967 (Objected to: allowed). Mr. Barton said to me early in January 1967, shortly after his return from Surfers Paradise, "The threats are getting worse. He has now hired criminals to kill me." ~~By Me~~ - (Objected to: by direction struck out as indicated).

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I said "This has got far too serious and away beyond body guards. You must take this to the police through the company's solicitor and if, necessary, through a Q.C., as there could be some substance in the claims that Mr. Armstrong has made about his influence with the police." Mr. Barton said "I have already done that".

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Q. Some time after that was there another conversation on a similar subject matter? A. Sometime, probably within a week after that, Mr. Barton told me (Objected to: allowed) Mr. Barton said to me "I have moved my family to the Wentworth and bought a rifle and Tommy, my son, has been taught how to use it".

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Q. Yes. A. "I want you to know where I am in case you have to get in touch with me in a hurry. I want you to be the only one who knows about my whereabouts."

Q. Now would you tell us - first of all I want you to come to the date, if you can, about 13th January. Do you recall that date? A. I can recall the period, but not any one particular day.

Q. Well, had there been some conversation prior to that date with Mr. Barton on the subject matter of offers by Mr. Armstrong in relation to the company? A. Can I ask counsel a question, your Honour, on this one?

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HIS HONOUR: Yes.

WITNESS: Are you referring to the purchase of Mr. Armstrong's shares in Paradise Waters and Landmark companies?

MR. GRUZMAN: Q. Had there been some discussion about a general settlement with Mr. Armstrong as a result of which he would leave the company? A. Yes, there had been. At about the 13th yes, ~~which proved abortive, if my memory is right.~~ (Objected to: by direction portion struck out as indicated).

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A. As at 13th January you say there had already been some discussions intended to lead up to a general settlement? A. Yes.

Q. Can you recollect what Mr. Barton had told you, or any conversation with Mr. Barton as at that date? I am trying to fix it at round about the 13th. The documents were signed on 17th and 18th, so that we are speaking of a period three or four days before the documents were signed. Do you understand? A. I do. 10

Q. Have you got that period? A. Yes.

Q. Now at that particular time can you tell his Honour of a conversation where Mr. Barton expressed his views as to the desirability of entering into this transaction? (Objected to; allowed). A. ~~Mr. Barton rejected the first set of proposals that were submitted.~~ (Objected to; by direction answer struck out as indicated).

Q. What I was asking you is can you tell us of a conversation between yourself and Mr. Barton at about this date - 13th January - in which Mr. Barton expressed his views as to the desirability or otherwise of entering into this transaction? A. Mr. Barton said to me about the first set of agreements that were prepared - he said "It is" - I think I can recall his exact words - "It is a bad business. It is risky. We should not execute these agreements." I said to him I thought the price was high but I believed that the settlement with Armstrong was a pre-requisite to financing the company. Mr. Barton said "I don't believe the finance will necessarily be forthcoming. I don't think these agreements should be signed." I therefore put them out of my mind, and that was the end of them so far as I was concerned. 20 30

Q. I now want to bring you to 16th January, which is the day before the first of the agreements were signed. Will you tell his Honour, did you receive some sort of communication from Mr. Barton on that date? A. As I recall it, the day before the agreements were actually signed I was at my office at Homebush and I received a telephone call from Mr. Barton asking me to come in urgently. He said "I think we should do a deal with Armstrong, and I think that we should treat this as urgent, before he changes his mind." I said "Well in those circumstances I will come into the office to discuss it with you." This I did. Barton told me that he had been under continual threats (Objected to; disallowed). Barton said to me "I have been under continual threats. I cannot run the company properly. I have got to come to some arrangement to resolve this matter, and I will now recommend that we sign the agreements." I said "I think the price that we are paying is high, but if this is your recommendation I believe that settlement with Armstrong is a pre requisite to finance, and therefore I agree to go along with this." 40 50 60

Q. Did you have a copy of the agreement or some document in front of you at the time? A. I don't recall having the document in front of me at the time. I do recall Barton outlining to me the basis of the agreements.

Q. Did you give some consideration to the details of the proposal at that time? A. The consideration that I mainly gave to the document -

Q. Did you have a conversation in which you spoke of the details of the proposals? A. Yes. 10

(Short adjournment).

Q. There is one further matter I would like to ask you, Mr. Bovill. As at the 16th 17th January when these agreements were signed would you describe to his Honour the physical appearance of Mr. Barton? (Objected to: allowed).

HIS HONOUR: Try and keep it entirely in terms of objective observation, you understand, Mr. Bovill?

A. Yes. I noticed that he appeared grey in the face - greyer than usual. His speech was quick and his concentration appeared to have deteriorated - I could not get him to follow in logical sequence so far as the normal running of the company's business was concerned, ~~which was most foreign to Mr. Barton~~ (Objected to: by direction portion indicated struck out). 20

Q. Did you notice anything else about him that you could see? Anything that you observed yourself?

A. Well, his hair appeared to have gone suddenly grey. It has since resumed its normal colour. 30

#### CROSS-EXAMINATION

MR. BAINTON: Q. Mr. Bovill, you have described your occupation as being a company director? A. That is right.

Q. Is that your sole occupation, or do you have some other? A. Well, I am managing director of Wolf Sales Pty. Limited. I class that as being a company director.

Q. You in effect might be described as a professional company director, are you? A. I am managing director of Wolf Sales Pty. Limited. I am paid a salary. 40

Q. You are a director of other companies, of course? A. I am a director of Landmark (in liquidation) and subsidiaries - such subsidiaries as are in liquidation, or out of it.

Q. And of other companies as well? A. I am no longer a director of my family companies. I was, during the period with Landmark Corporation during 1966. Towards the end of 1967 I resigned from the board of the family companies. 50

Q. You told us on Thursday that you had an

interest in other companies which had been taken over by various companies from time to time? A. What was that? Yes, that is correct.

Q. You mentioned the original Landmark Limited and one or two other companies. I take it you were a director of those companies? A. I was not a director of Plantations Limited. I was not a director of Palgrave Corporation at the time of the takeovers. I only subsequently joined the board of Palgrave I think at the end of 1963. 10

Q. Before you joined the board of Palgrave you or your family companies had acquired a not inconsiderable shareholding in the company? A. That is so.

Q. May I take it the same applies to Wolf Sales Pty. Limited? A. No, no shareholding at all in that, either through myself or my family companies.

Q. What about its associated company? A. No, not Wolf Electric Tools, either. 20

Q. No company associated with it? A. No company associated with it.

Q. You are in effect an employee-director?  
A. Yes.

Q. An employee-director? A. Yes.

Q. How long have you held that position? A. Since the end of 1960.

Q. Prior to that what was your occupation? A. Prior to that I was employed by L.J. Hooker Investment Corporation in their Australian Landtrusts Company, and prior to that by Mainguard Australia Limited in its various subsidiary companies in which I was manager of the project in South Australia. 30

Q. May I take it that your employment with Wolf Sales has allowed you to take whatever time off you needed to devote to the affairs of Landmark Corporation? A. Yes.

Q. Did you acquire any further shareholding interest in Landmark Corporation after becoming a director, either personally or through any of the family companies? A. I think that is a question which is capable of an answer in two ways, with respect. I acquired through one of my family companies additional shares at the end of 1966. 40

Q. Considering yourself and your family companies as just one group for a moment, did that group acquire any further shares in Landmark Corporation after you went onto the board of directors? A. We didn't acquire any shares after I went onto the board of directors of Landmark Corporation, except those which are subject to the disputed agreements of 17th January, 1967. 50

Q. You went on the board, I think - you initially attempted to go on the board because you were

dissatisfied with the performance of the company, is that right? A. Yes, that is right.

Q. Your object, I take it, was to see what you could do to look after your investment? A. That was one of my objects. I was also highly suspicious as to what had gone on and what was going on.

Q. When did that suspicion arise? Shortly before you first stood for election? A. This is going back a long way, sir. I am trying to my first - 10

Q. If you don't mind, you told us that you had some suspicions. I would like you to tell me when you acquired them. I would like you to tell me when you first acquired these suspicions? When the company failed to pay the ten per cent dividend that had been foreshadowed prior to the takeover of Landmark Limited by Palgrave Corporation, and they made certain announcements :-

Q. I suggest to you that was in the early part of 1962. Would you agree with that? A. You are better equipped there than I am. You have the records. I don't recall the actual time. It could be May 1962; it could be early 1962. 20

Q. Sometime in 1962; not later than the middle of the year, would accord with your recollection? A. That would be about it, yes.

Q. You stood for the board at the annual general meeting at the end of 1962? A. That is right.

Q. And you say, do you, you had two reasons for that: one to protect your investment, and the other to inquire into the subject matter of your suspicions? A. Yes. 30

Q. You were not elected to the board then? A. That is right.

Q. You were invited to join the board, and you did join it in 1963? A. Yes.

Q. When you were invited to join it and agreed to do so did you accept the invitation for the same two reasons, or did you have others? Were there other reasons as well? A. I accepted the invitation for the same two reasons, but I did have others. I considered that a continuing watching brief would be highly desirable. 40

Q. May I take it that you are aware of what a director's duties are? A. Yes.

Q. To consider the interests of the company?  
A. Yes.

Q. You are aware of them? A. Yes. I think I exhibit those qualities, too. 50

Q. And should any conflict arise between the company's interests and your own personal interests you favour...

HIS HONOUR: Q. Would you repeat that, Mr. Bainton, please? You drop your voice at the end of your questions.

MR. BAINTON: Q. Should any conflict arise between the company's interests and your own personal interests you prefer the company's interest? A. Yes.

Q. And, again, you would have done that? A. I cannot think of any occasion when it has been necessary. 10

Q. Should it ever become necessary there would be no doubt as to the course you would take? A. No doubt.

Q. You, as you have told us, have had quite a few years experience acting as director of one company or another? A. Yes.

Q. May I take it that throughout that period you would claim to have discharged your duties?

A. As a director?

Q. Yes? A. Yes, I would say so. 20

Q. And to have done it promptly and carefully?

A. Yes, to the best of my own personal knowledge and skills.

Q. And honestly, of course? A. Oh yes.

Q. When any question has arisen before the board you looked into it to the best of your ability? A. Yes.

Q. And you have given the board the benefit of your best judgment in the matter? A. That is right.

Q. And I think in addition to serving as a director of companies, you have told us you served as executive officer of a company? A. Yes. 30

Q. May I take it you have endeavoured to discharge your duties as an executive similarly carefully? A. Yes.

Q. And honestly? A. Yes.

Q. Would there be any occasion that you can recollect that you regarded yourself as having failed to discharge these duties, either as director or as an executive? A. I can think of no occasion where I have failed to discharge my duties as I see them and saw them. My judgment has been wrong on occasions, I think everyone has to admit to that. 40

Q. I am not asking about an error in judgment at the moment, but whether you are aware of any occasion when you know you have failed to discharge your duty as a director or as an executive? A. No. I know of no occasion.

Q. Would it in your belief be improper for a director to allow himself to participate in any 50

act that was designed just to benefit some other director rather than the company? A. Certainly not (sic).

Q. That would be most improper? A. Yes. Would you repeat the question, please? I am not quite sure I heard it correctly.

Q. Would you regard it as improper for any director to participate in any course of conduct which was intended to benefit another director rather than to benefit the company? A. As a director I would. Highly improper. 10

Q. That would be highly improper? A. Yes.

Q. That is not something which you would ever have done? A. Not to my knowledge.

Q. To your knowledge, any way. Now what, in your view, would be the proper course for a director to take if the other directors proposed to take that step; namely, to do something for the benefit of the director and not for the benefit of the company? A. I would do everything I could to stop them from doing it. 20

Q. Supposing by a majority of other directors they passed a resolution that should be done, what, in your view, would be the proper step for a dissenting director to take in those circumstances? In your view what would be the proper step for him to take in those circumstances. A. I would say that under such circumstances as that you would - I would weigh the consequences of my act of resignation and thereby making the way well and truly open for the other directors to pursue their plans unfettered, with the other attendant damage to the image of the company by my resignation, and the effect that such resignation could have on the company generally. I would weigh these things up. I would not be a party to any gain on my part from any such act, and never have been. 30

Q. Let me put this to you: If the other directors made it clear to you that they intended to take a course that you knew to be for the benefit of one of them, and not to be for the benefit of the company, and they started to do it, what in your view would it be proper for you to do? A. That is rather a hypothetical question. I would like to have a specific - (Objected to). 40

Q. Assuming you were one of a board of directors of a company and the other directors proposed to resolve that they should buy something for the company - should buy something at a gross over value. That would be in your view improper I take it? A. I think that the sale or purchase of any property of the company between directors and the company basically is wrong. There may be circumstances - 50

Q. Would you mind? If you don't understand the question I will perhaps put it again. If you did

understand it I would be obliged if you would answer it. Did you follow what I was putting to you? A. To be quite honest I can't see what you are trying to get at.

Q. Will you please listen to the question and, if you understand it, answer it? A. Yes.

Q. If you were one of a board of directors and the remaining directors resolved to purchase, or one of them resolved that the company should purchase from one of them some assets at a gross over value what would you regard as the proper course for you to take? 10

HIS HONOUR: I suppose you mean an asset that the company did not need? I won't force that on you, Mr. Bainton.

WITNESS: I would first have to ask you what are the functions of the company? The terms of the purchase? What is the condition of the company? Are there any considerations attached to the purchase? There are so many things. A straight out plain purchase of land at over value from a director - certainly nothing doing. 20

MR. BAINTON: Q. Irrespective of what the terms are. I want you to assume that you personally regard it as a most highly improper transaction? A. If I regarded it as an improper transaction quite obviously I would vote against it.

Q. You would vote against it? A. Yes.

Q. Having voted against it, and ascertained that the remaining directors proposed to pursue it, what in your view would be the proper course for you to take? (Objected to; allowed). 30

Q. Having voted against it, and ascertained that the remaining directors proposed to pursue it, what would be the proper course, in your view, for you to take? A. I think that I have already answered that. I think - I would weigh the advantages and disadvantages to the company of my resignation, or otherwise of making it public. I would take legal advice. There are a whole host of things open to a director in such circumstances. But I would basically do everything I could to oppose such a transaction. 40

Q. Would one of the things you may possibly do be to sit quietly and do nothing? Would that be one of the things you might possibly do? A. I think that would be pretty well out of character.

Q. Supposing, though, a board of directors of which you are a member proposed by a majority to vote against you to take some course with which you disagreed on the basis that you thought it was unwise and improper. May I take it for a start you would vote against it? A. Yes. 50

Q. Having been outvoted on that course - on that



matter - what, in your view, would be the proper course for you then to take (Objected.to: allowed).

Q. I want you to assume that the majority of directors proposed to take a course which in your belief was both unwise and improper. You said that you would vote against it? A. Yes.

Q. And then I put it to you that the majority carried it, despite your dissent. I wanted to know what, in your belief, would be the proper course for you to take? A. To take legal action - to take legal advice, and act on the best legal advice that I could obtain. 10

Q. To do what? A. To take legal advice, and act on the best legal advice I can obtain.

Q. Is that the only course you would think that you would take? A. Obviously I can resign. There are a lot of things open to a director. You can go to the company's office. He could - I presume there would be something that could make it possible for him to call a special meeting of shareholders. There are still a lot of other actions that could be taken. But in a case such as this I would weigh the overall interests of the company, as I said before, against any future action that I decided to take. 20

Q. In that situation, is one of the courses which you may contemplate taking just sitting and doing nothing? Is that one of the course you may contemplate taking? A. No.

Q. You would not do that? Again, may I take it that you, as a director of the company or as executive officer, would not be a party to the putting out by the company of false and misleading information? A. Certainly not. 30

Q. Supposing the other directors proposed to do just that, and outvoted you on the proposal? Supposing that occurred. What, in those circumstances, would you consider the proper course for you to take? A. When you are talking about misleading information, what form of information is that to which you are referring? Are you referring to the prospectus, or are you referring to the annual report. 40

Q. Take a prospectus, for a start? A. Yes.

Q. Assuming that you became aware that the other directors proposed to put out a false and misleading prospectus, what, in your view, would be the proper course for you, as a dissenting director, to take? A. Immediate resignation on a false and misleading prospectus, because I have no desire to end up in gaol, which, I understand is what is the right thing to happen to such directors. 50

Q. Supposing the information was supposed to be put out to shareholders in an annual return and in your view it was false and misleading? A. I would consider that highly immoral, and would not be a party to it.

Q. What would you do if the remaining directors started to do it? A. Started to do it?

Q. Yes. A. Do everything I could to persuade them - to convince them with reasoned and rational agrument that they were wrong.

Q. Supposing you failed to convince them, and they made it clear to you that they were going ahead. What would you do then? (Objected to: allowed). A. Would you mind re-phrasing the question? 10

Q. What I want to ask you is this. I wanted you to assume that the majority of directors, against your opposition, were putting out false and misleading information to shareholders in the annual return. I want to ask you what, in your opinion or belief, was the proper course for you to take in those circumstances? A. I take it that you are allowing that I have had access to the company's auditors and the company's solicitors? 20

HIS HONOUR: I would interrupt you for a moment, Mr. Bainton. I don't think the question is a fair one. "Annual return" is filed at the Companies office, and -

MR. BAINTON: I am sorry, I meant "annual report".

WITNESS: I was understanding it as "annual report".

MR. BAINTON: Q. I want you to assume that you are firmly of the belief that the information in it is false and misleading, and the other directors are going to go ahead and send it out. What, in your belief, is the proper course for you to take? A. I believe that the ultimate action that you can take is to resign and to state your reasons. If you are convinced by - after full discussion with the company's auditors, and they have been unable to satisfy you, and discussion with the company's solicitors, and they have been unable to satisfy you, then I believe that you would have no alternative but to resign. 30

Q. Supposing that the directors proposed, in the course of making application to the bank for finance, to put before the bank false and misleading information, which you knew to be false, and they intended to go ahead with it against your opposition, what, in this situation, would you consider to be the proper course for you to take? A. If I was convinced that that information was false and misleading I would not be a party to it, because it could involve a large sum of money which the bank or any other financial institution could lose. 40 50

Q. What, then, would you do if the board of which you were a member proposed to send out this false and misleading information? A. I would have no alternative, I think, but to resign.

Q. Now supposing again that the board of directors

of which you were a member against your opposition proposed to put to the stock exchange false and misleading information against your opposition? A. Again, I think I would like to know the nature of that false and misleading information. There can be certain information that is supplied to the Stock Exchange, for instance in relation to mining shares, which is all a matter of opinion. Some of it is the opinion of experts. Experts differ. Directors can differ. There are certain shades of opinion. I might differ with my board on things where are not of great and material moment. But if it related obviously to a material matter in the reporting of the state of affairs of the company I would, after consultation with the company's legal advisers and auditors, and I was still unconvinced, I would have no alternative but to resign. 10

Q. May I take it that with false and misleading information proposed to be sent out in any of these circumstances you would resign, and not be a party to it? A. It could result in my doing so. 20

MR. BAINTON: Q. What other possibility may there be? A. That the interests of the company would be better served by my not doing so.

Q. By remaining there and sitting quietly?  
A. Not sitting quietly.

Q. You would make your views public? A. I do not say I would do that. It may not be in the interests of the company. We are on hypothetical grounds that I do not understand. 30

Q. Is there any situation you envisage in which you would sit quietly while your other directors misled the shareholders, the Stock Exchange or a bank. A. There could be times when the directors have had different opinions to me, which is different to misleading.

Q. I am not asking you about differences of opinion but a course of conduct intended to mislead (Objected to: allowed). 40

Q. You would not be a party to a course of conduct of a board of directors intended to mislead?  
A. Certainly not.

Q. If you formed the belief that that course was being undertaken except in exceptional circumstances you would resign? A. Yes.

Q. May I take it there have been many occasions in which your opinion on matters has differed from the opinions of your co-directors? A. Yes, that is so. 50

Q. You would regard that as normal in the carrying on of the affairs of the company? A. My judgment and their judgment is not always parallel.

Q. Outside the field of judgment if the directors

proposed to falsely mis-state facts you would not be a party to it? A. No.

Q. If they indicated an intention to go on you would in all probability resign? A. Yes, in all probability.

Q. There would need to be exceptional circumstances to cause you not to resign if the other directors proposed to do that? A. Yes, there would.

Q. May we take it throughout the time you have been a director and executive of various companies the occasion to resign for any of those reasons has never arisen? A. Would you excuse my pause. I am trying to give consideration to the latter days of Landmark. 10

Q. Since you have been a director of any company there has not, to your knowledge, been any occasion when the board of directors, against your opposition, has set about doing any of the things which you have told me would cause you to resign (Objected to: rejected). 20

Q. In the last ten years has there been any occasion in respect of the affairs of any company of which you have been a director when the other directors have taken any of the courses of conduct which you have told us would lead you to resign except in the most exceptional circumstances? (Objected to: rejected).

Q. Within the last five years? A. The only companies that I can recall at this time ever having resigned from is one company called Jemma which was taken over and I resigned to make way for the directors; the subsidiaries of Mainguard to make way for L.J. Hooker's directors. 30

Q. The occasion has never arisen when you have had to consider whether you should resign for the reasons I have been putting to you? (Objected to: rejected).

Q. Have you ever considered whether or not you should resign from any company of which you have been a director except in the case of the family company or because the company has been taken over by some other company (Objected to: rejected). 40

Q. During the last five years have you ever had to consider whether or not you should resign from any company of which you have been a director other than the family company and other than by reason of the company having been taken over by some other company (Objected to: allowed). A. On one occasion I did consider very early in the piece resigning from the Landmark Corporation Board when Mr. Armstrong said to me that he would threaten Mr. Justice Dovey. I considered resigning on the spot. 50

Q. When was this? A. The end of 1963 or 1964.

HIS HONOUR: Q. Mr. Armstrong told you he had threatened Mr. Justice Dovey? A. He threatened to

make a statement to the Upper House concerning Mr. Justice Dovey. I thought of resigning but I did not because I thought that no good purpose would be served by my resigning.

MR. BAINTON: Q. Is that the only occasion? A. That is the only occasion.

Q. You are still a director of a number of subsidiaries of Landmark Corporation? A. Yes, that is correct.

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Q. From the time you joined the board of Landmark in 1963 until its winding up you remained on the board? A. Yes.

Q. Throughout that period with the exception of a short period you were disqualified for re-appointment? A. May I give an explanation for that? I do not consider I was disqualified, but for safety I did --

Q. Whether or not you were or not, apart from that period you remained on the board from the time you joined until it was wound up? A. Yes.

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Q. During that period Mr. Armstrong remained a director? A. No.

Q. Throughout that period until the 18th January 1967 Mr. Armstrong remained a director? A. Yes.

Q. Throughout the whole of the period, Mr. Cotter remained a director? A. Yes.

Q. During the period Mr. Barton remained a director? A. Yes.

Q. Was it the policy of the board of directors of Landmark to meet at regular intervals or only when the occasion arose? A. That policy changed from time to time to meet the exigencies of the time.

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Q. There were times when there were regular meetings and when meetings were called to deal with particular problems? A. Yes, very rapidly.

Q. And often problems arose which had to be referred to the board. A. Yes.

Q. Amongst the members of the board there were differences of opinion as to how those problems should be tackled? A. Yes.

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Q. That had been the case throughout the whole period you were associated with Landmark Corporation Limited? A. Yes. I was away during 1965 overseas on leave of absence, and at certain times interstate when I had leave of absence.

Q. While you were here and attending the board meetings there were frequent disagreements amongst the members of the board? A. Up to 1966 the disagreements were containable.

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Q. They were ironed out? A. Containable is the best way of describing them. They were resolved.

Q. Resolved by discussion at the board? A. Yes, resolved by discussion at the board, outside the board - negotiation generally.

Q. Is it your recollection that resolutions of the directors until the time you told us were unanimous on most matters? A. Except where a record of any director's dissent was made.

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Q. Do you recollect any director wanting a dissent noted? A. Mr. Armstrong dissented on certain occasions, and I think Mr. Barton did.

Q. The disputes were not always resolved to the best of your recollection? A. Before the middle of 1966 I would say they were. You can correct me there. I cannot recall that they were not. Yes, I can recall one. The case of Vista Court which was not resolved.

Q. From the period about the middle of 1966 onwards the disputes or disagreements did not become any the less easy to resolve? A. Yes.

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Q. They were considerably more difficult to resolve? A. Yes.

Q. Because they were disputes on much more important matters? A. I do not understand where you say they were disputes as to much more important matters.

Q. Up until the middle of 1966 the disputes were as to matters of policy and administration, in the main? A. Yes, I would say that that is a fair general description.

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Q. From the middle of 1966 different sorts of disputes arose? A. They did.

Q. Regarding among other things, the accounts of the company? A. And Vista Court.

Q. They related to the accounts of the company?  
A. Yes.

Q. Relating to the proper method of assessing the profit? A. Yes.

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Q. They were relating to Vista Court? A. Yes, that is correct.

Q. And quite a number of other matters? A. That is correct.

Q. On a large number of those disputes it became clear that three directors were aligned against one? A. One was aligned against three.

Q. What is the difference in your opinion between the way I put it and the way you put it? A. I consider that we three directors were pursuing a normal

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course whereas the other director was endeavouring to force his will on us.

Q. Do you mean by that that you are confident that your views were correct and that Mr. Armstrong's views were incorrect? A. At the time I held those views I believe that those views were correct. I still believe they were correct under normal business circumstances.

Q. You have not changed the view you formed at the time, namely, that the views you took on these various questions and the opinions you formed were the correct opinions? A. I think we are painting with a fairly broad brush. Could we get on to a specific item and I could give you a view on each specific item in turn, because obviously the turn of events changed? 10

Q. Start with the Paradise Waters project. There were a number of disputes relating to the administration of the project? A. There were disputes. I am trying to think in terms of a time table. 20

Q. Do that to yourself. Is it not a fact that after the period you put as the middle of 1966 there were disputes relating to the administration of the Paradise Waters project? A. There were disputes both inside and outside the company.

Q. Within the company among the directors? A. From the middle of 1966 after Mr. Armstrong's return from overseas the disputes in regard to the whole companies, and Paradise Waters in particular became more acute. 30

Q. In those disputes concerning Paradise Waters project the alignment was Mr. Barton, yourself and Mr. Cotter? A. Yes.

Q. And Mr. Armstrong taking a different view? A. Yes.

Q. When you took the view did you considered it to be the proper view in the circumstances? A. Naturally. Of course. 40

Q. You relied on your judgment in the conclusion you reached? A. Yes.

Q. Do I take it you still remain of the view that the conclusion you reached on these disputes was the correct one? (Objected to: rejected).

Q. Did you have in your mind particular matters on which there were disputes relating to the Paradise Waters project? A. The disputes with the contractors.

Q. Within the board, and not with out-siders? A. Within the board to the best of my recollection up to the return of Mr. Armstrong, Mr. Grant acted for him and there was no dispute. Everything was agreed, but upon Mr. Armstrong's return there were disputes. 50

Q. There were disputes after he returned?

A. Yes.

Q. Do you carry a recollection of what they were? A. Could you remind me?

Q. Do you carry any recollection of what the disputes were concerned with? A. I think some of the disputes concerned the charges -

Q. I want you to tell me- yes or no - whether you carry a recollection of what the disputes were? (Objected to; rejected). 10

Q. Do you carry any personal recollection of any of the matters concerning the Paradise Waters project as to which there were disputes within the board after Mr. Armstrong returned from overseas?

A. My main recollection of the disputes on the Paradise Waters project were all those surrounding the final agreements over the project. The rest of the disputes - I must confess - have gone to the back of my memory. If you remind me I might be able to throw some light on it, and I sincerely wish to do so. 20

Q. Were there any disputes relating to the administration and control of the project? A. The contract was changed from outside contract.

Q. After Mr. Armstrong returned from overseas?

A. I remember him questioning the charges put through. He questioned whether the Landmark Corporation could and should charge overhead. They were the only two disputes I recall at all in detail, but there may be others. If you could fill me in I will do better for you. 30

Q. Do you recollect the assertion that the management and control was such that the work was way behind schedule, and something should be done about it? A. If Mr. Armstrong made that assertion he did not make it in my presence to my recollection.

Q. You have no recollection of any dispute at board level concerning that matter? A. I have no recollection. I am not saying it did not happen because there were disputes about an outside contractor to Boardwater. Mr. Grant approved of everything and when Mr. Armstrong returned he disapproved. 40

Q. Were there disputes about whether the view Mr. Armstrong was then taking was correct or not?

A. About the progress of the project?

Q. Yes? A. Not that I can recall.

Q. Were there any disputes you recollect after Mr. Armstrong returned from overseas in 1966 relating to the provision of finance for the Vista Court project? A. Yes, there were. 50

Q. In those disputes again the line-up on the board was three against one - Mr. Armstrong being in the minority? A. Yes.



Q. May I take it you formed a judgment on what ought to be done? A. I formed the judgment that the sale should stand as previously negotiated while I was in the U.K. and it was made known to me on my return that Mr. Armstrong had some buy back provisions. In my view the sale had to stand.

Q. You adhered to your judgment? A. Yes, and I still adhere to it.

Q. There were disputes relating to the method of preparation of the accounts? A. Yes. 10

Q. As to the amount of profit shown for the year ended 30th June 1966? A. Yes.

Q. On those disputes Mr. Armstrong took one view, and the remaining directors took another view? A. No, not in every case. In many cases we bent with him to comply with his wishes, as we were doing everything possible to avoid the schism which wrecked the company.

Q. The directors did reduce the profit which they had previously announced? A. Yes, we did. 20

Q. The profit so reduced was still the subject of disagreements between you? A. Never a specific item was mentioned by Mr. Armstrong. We went through the profits and assets which he previously personally valued on two occasions, and his demand was to write them down further, and we refused to go beyond the level of the auditors, after much discussion and the auditors still stood by their guns. 30

Q. I take it the answer is yes? A. Yes.

Q. Would it not be simple to say that? A. I am under the impression that I am here to tell the truth and the whole truth. It was not possible to say yes.

Q. Would it not have suited your views just to say yes? A. I am here to throw light on matters.

Q. Why did you consider it necessary to tell me why, in your view, Mr. Armstrong's view was wrong in relation to all matters? A. What was that again? 40

Q. Why did you consider it necessary instead of answering the question with a simple yes to tell me a lot of matters, and tell me that your view was that Mr. Armstrong was wrong on every one of them? A. It is not possible always to give a simple yes or no answer. I am not very adept. I am trying to give my understanding.

Q. Do you not think it was possible to simply answer yes or no? A. Not to tell the whole truth.

Q. What do you regard as the whole truth in the answer to a question? A. About which question are you referring? 50

Q. I asked you a question a few moments ago and you gave me a long answer? A. What was the question?

Q. The question I asked you was this; it concerned disputes relating to the accounts, and you gave a long answer and you took pains to tell me that Mr. Armstrong was wrong about a lot of matters?

A. Yes.

Q. I asked you if the answer was simply yes, and you said it was, and I asked you why you gave the long answer and you said the answer yes did not tell the whole truth? A. Yes.

10

Q. What, in your view, is the whole truth?

A. We, the directors who opposed Mr. Armstrong's view of the various items in the accounts, held those views supported by the auditors and by legal advice; supported by valuations that had been previously made by Mr. Armstrong which he subsequently wished to alter. If I had made a straight out yes I do not think I would have informed the court.

20

Q. You would not have made it clear it was your view that you were clearly right in the disputes?

A. I believe we were right on the disputes.

Q. You wanted to make it clear that everybody knows it? A. Yes, naturally.

Q. You are not telling the whole truth unless you tell everybody that you believe your views were clearly right? A. That is right.

(Luncheon adjournment).

AT 2 P.M.

30

Q. Before I come back to the matters in dispute after Mr. Armstrong returned from overseas, I want you to look at the document now shown to you. Is that a carbon duplicate of a document that the company solicitors prepared sometime after you joined the Board for the purpose of indicating what were the respective duties of the Chairman of Directors, the Managing Director and the Secretary. (Shown).

A. You are asking me if I remember this?

Q. Not so much whether you remember it, but whether you identify it as being such a document? A. I cannot identify this document. I won't say it did not happen.

40

Q. You glanced through it, but perhaps have not read it? A. Yes.

Q. Will you read it through, if you wish. Does it set out the duties of the Chairman of Directors, the Managing Director and the Secretary? A. Before I could give a flat answer I think I would have to go through each individual item ticking each one or querying each one. I am trying to help you. I do not recognise it.

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Q. Would you read it and without checking each item tell me generally speaking if you agree it sets out the duties that those three officers performed. When you are looking through it would you tell me if it appears to set out what the officers were in fact doing, whether or not it is an exhaustive document? A. There is one section of the duties of the Secretary with which I do not agree, "Implementing the Chairman's direction with regard to all finance" It should be more properly the Board's direction as regard to all finance. I would like time to analyse it and go through it all, but generally speaking this covers the functions of the various officers you have described, and probably there would be a considerable number more.

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Q. Is this a fair statement: It appears to set out, generally speaking, what the three officers were performing, but there may be some matters of detail with which you do not agree and there may be some matters that they were doing not shown on the document? A. I think that is a fairly broad description of the situation.

20

Q. Before lunch I was asking you whether or not there had been disputes between the Board of Landmark Corporation relating to a number of matters. I dealt with the Paradise Waters project and Vista Court project and with the accounts, and you told me there were disputes relating to those matters. Were there not also disputes relating to the Deep Deme project? A. The Deep Deme project -

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Q. I am asking you were there disputes relating to that project between Mr. Armstrong and other members of the Board after Mr. Armstrong's return from overseas, and I do not want the details of the dispute but merely to be told whether or not there were any? A. My recollection at the time was that the Deep Deme project was lying fallow. I do not recall it being the subject of dispute at that time, but I could be wrong.

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Q. Another matter that gave rise to disputes between Mr. Armstrong on the one hand and the remaining members of the Board on the other after Mr. Armstrong's return from overseas in 1966 was the company's failure to repay a large number of ordinary trade creditors? A. Yes, that is so.

Q. That gave rise to disputes? A. It gave rise to continual disputes with Mr. Armstrong, and that would have been after his return.

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Q. Mr. Armstrong was asserting that these people should be paid? A. I think the whole Board was asserting that view.

Q. The difficulty was how to pay them? A. That is correct, or that they would have been paid, or when to pay. Some accounts were not approved as they were under dispute.

Q. Apart from them the accounts were not being

paid as they fell due? A. There were outstanding creditors at the time.

Q. Mr. Armstrong did not approve of that? A. No, he did not.

Q. I take it the other members of the Board didn't approve of it? A. No, we did not approve of it.

Q. The disputes were concerning what should be done to rectify the position? A. The disputes arose from steps to be taken to rectify the situation, but I think that would be more in the line of getting action than disputing what action was taken or attempted to be taken. 10

Q. Does this summarise the position: Mr. Armstrong's view as that not enough action was being taken. Do you agree with that? A. I do not know what Mr. Armstrong's view was.

Q. Did he not express one? A. He expressed the view that we should pay the creditors, himself mainly. He was always wanting payment of his own interest. 20

Q. He was probably the major overdue creditor at that stage? A. Yes, that is so, and he was, I agree, wanting action to provide cash to pay the creditors.

Q. Did you take the view that it was unreasonable that Mr. Armstrong should be paid the money then due to him or some of the companies? A. I took the view in certain instances that it was.

Q. Notwithstanding that there was no dispute at all that the money was then due? A. There were certain differing occasions of moneys becoming due. After all these months I am a little hazy as to which one we are referring to. 30

Q. There were undoubtedly a number of occasions on which money became due from Landmark or one of the subsidiaries to Mr. Armstrong by one of his companies, and he was not paid for quite some time? A. That is correct.

Q. Did you take the view it was unreasonable that he should wish that those debts should be paid? A. My view was that Mr. Armstrong precipitated the company into certain projects beyond its likely liquidity and had contributed to some of the problems. I thought in the interests of the company he should defer his demands. 40

Q. Which project do you have in mind? A. Toffmarks.

Q. Any other? A. Deep Deme, and he wanted the company to buy Tresco.

Q. Are there any other projects that you had in mind - A. They were the two. 50

Q. Do you say money was spent on those projects?  
A. No, but in the preparation for them.

Mr. Armstrong might have provided for some which were falling due.

Q. Do you say that Mr. Armstrong prevailed upon the other directors to undertake those projects?

A. I think Mr. Armstrong negotiated the purchase of Toffmarks. It was done when I was away. This is hearsay.

Q. What about Deep Deme, do you say he virtually forced this? A. I say he was very much in favour of buying that and Tresco which was next door so that there would be a complete block. He said he thought he could force the Navy out.

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Q. Did the remaining members concur? A. Yes.

Q. Notwithstanding that you formed the view that it was unreasonable that Mr. Armstrong should want the debts due to him paid? A. At the time the purchase was agreed to Mr. Armstrong's provision of moneys was something that he had always done, and up to 1966 when the big falling-out occurred, those moneys had been provided by him.

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Q. Mr. Armstrong had carried a very considerable part of the burden of financing the operation for a long while? A. That is correct, and he could call up his amounts when he felt like it.

Q. It was your view that it was unreasonable of him to want to be paid? A. At the time of the Company's condition, yes.

Q. It was your view that he should continue to carry the burden of financing the company? A. I thought in the interests of the company he should.

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Q. Did any of the other directors volunteers to assist? A. I volunteered on one occasion some time before. I am not nearly as rich a man as Mr. Armstrong.

Q. You say because Mr. Armstrong is a rich man he should continue to come to the assistance of the company? A. No, I did not think that at all.

Q. Why did you form the view that it was unreasonable that he should want to be paid what was due to him? A. Because he knew that pressure on the company's liquid resources would make it difficult. I do not believe he needed the money, and he was the chairman and it was in the interests of the company to allow it time to become liquid without putting pressure on it. That was my view.

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Q. The Company's chairman, apart from his other obligations, had the obligation to carry it financially? A. It is not right for a company chairman to pull out his funds at a time which is very inconvenient to the company, having up to that time got along with it

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Q. Had he resigned as chairman it would be quite

in order for him to do so? A. Of course it would be legally in order for him to do so. There could be a moral question.

Q. You thought he was being quite unreasonable?  
A. Yes.

Q. Did you express that view to your other directors? A. Yes, to Mr. Barton and to Mr. Cotter.

Q. Did they concur in the view which you expressed to them? A. I certainly do not recall them disagreeing. We did everything we could to try and satisfy Mr. Armstrong. 10

Q. Short of paying him? A. Yes, short of paying him.

Q. You said a moment ago you did not think it was Mr. Armstrong's duty to pull money out of the company while he was chairman. What about after he ceased to be chairman, did you continue to hold the view that he should leave his money in? A. The way in which Mr. Armstrong ceased to be chairman - the factors surrounding that were of a nature which made the breach public and one from which I think Mr. Armstrong if he wanted to withdraw his money should have resigned as a director. He knew the inside finances of the company and was as well aware as when he was chairman. 20

Q. Do you say it was unreasonable after he ceased to be chairman to have withdrawn his money? A. I think it was unwise and unreasonable.

Q. Do you think it was still unreasonable of him? A. Yes, I do. 30

Q. And unwise? A. Yes.

Q. Have you had any reason to change either of those views since you formed them at the end of 1966? A. Had Mr. Armstrong not taken -

Q. You might be able to answer yes or no. A. I am trying to answer. I must say by way of explanation -

Q. Have you changed the opinion you formed back in 1966? A. In the context of the times I formed the opinion I still hold to them. 40

Q. The answer is that you have not changed the opinion you formed as to the unreasonableness and the unwisdom of it? A. That is right.

Q. Another subject matter which gave rise to disputes was the refusal of the Board of Directors of Landmark Corporation to allow Mr. Armstrong to inspect the proxies sent in to the annual general meeting? A. Yes.

Q. Did you concur in the resolution of the Board not to permit that inspection? A. I did. 50

Q. Did you think it was a proper decision to have reached at the time? A. Mr. Armstrong's behaviour I thought, rendered it proper at that time.

Q. You considered it proper? A. Yes. I might add that I asked to see the proxies that he had when I stood for a director some years before, and I recall I was unable to do that. It was not a case of an eye for an eye. What was okay for him was okay for me. 10

Q. Is that the principle on which you normally conduct your business? A. No.

Q. Why did it influence you? A. Because I did not think his behaviour at the time was in the interests of the company, to let him have access.

Q. You did not think it was in the company's interest to give him any opportunity to remain on the Board or get his nominees on it? A. He would have had control of the Board and I thought it was against the interests of the company. If I thought it was in the company's interests I would have made it clear for them. 20

Q. You took whatever steps you could to prevent his nominees coming on - I do not mean illegal steps, but anything open to you? A. Yes, upon advice by our legal advisers.

Q. Another matter which gave rise to disputes was relating to the employment of Mr. Hoggett? A. Yes. 30

Q. Almost immediately after Mr. Armstrong's return from overseas he spoke to you about that matter? A. Yes, he spoke to me about that matter almost immediately after his return.

Q. He took a very strong view as to what happened and told you his view? A. Yes, he did.

Q. The view he expressed to you was that it had been highly improper for the company's managing director to sell shares to a prospective employee considerably above market price? A. Yes, he put that to me. 40

Q. He expressed some annoyance that it had been done? A. Yes, he did.

Q. You reported to Mr. Barton the subject matter of that conversation? A. I think if we are going to deal with the Hoggett matter that I should deal with it from the beginning.

Q. Did you report to Mr. Barton the conversation Mr. Armstrong had with you concerning that matter? A. I reported first of all this conversation to Mr. Miller who advised me - 50

Q. Did you tell Mr. Barton what Mr. Armstrong said to you? A. On Mr. Miller's advice.

Q. You did it? A. Yes, I confronted him with it.

Q. I am not seeking to go into the rights and wrongs of it, but it is clear that this subject matter gave rise to quite acrimonious disputes?

A. Yes.

Q. These disputes were never resolved so far as Mr. Armstrong was concerned and Mr. Barton?

A. I have no idea whether Mr. Armstrong and Mr. Barton resolved them personally. As far as I was concerned I was satisfied that the whole Hoggett incident was a well conceived plan to try and discredit Mr. Barton in my eyes.

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Q. When did you form that view? A. After I found out that Mr. Hoggett was a member of Mr. Armstrong's committee to try and get on the Board, and after conversations with Mr. Hoggett.

Q. Mr. Hoggett's prospective engagement took place a long while before the annual general meeting? A. Yes.

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Q. He had been dismissed well before he was nominated by Mr. Armstrong as a candidate for election to the Board? A. It was on Mr. Armstrong's recommendation that he be dismissed.

Q. Do you regard that as an answer to the question? A. I might have run ahead of you.

Q. I asked you was not the dismissal of Mr. Hoggett quite some time before his nomination as a candidate? A. Yes, it was.

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Q. You find some connection between those two events? You think because he was nominated by Mr. Armstrong that it was some plot to discredit Mr. Barton and you? A. I did not say that.

Q. You say because of that factor you regarded there to have been a plot to discredit Mr. Barton in your eyes? A. Yes.

Q. You formed that opinion after it came to your knowledge that Mr. Hoggett had been nominated to the Board? A. I think it was before I knew Mr. Hoggett came on the Board. I can tell you this date. I formed the opinion on 20th October, 1966.

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Q. The fact that Mr. Hoggett was subsequently nominated to the Board had nothing to do with forming that opinion? A. No, I would not say it had anything to do with it. It confirmed it.

Q. In that transaction Mr. Barton had arranged to engage Mr. Hoggett as General Manager? A. I am not sure whether it was General Manager or Assistant to the General Manager.

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Q. He had sold a large parcel of shares to him well above the market price? A. I ascertained that



he sold a large parcel of shares, but I did not ascertain the price at the time.

Q. It had not come to your knowledge that the sale was well above market price. Is that what you say? A. Later it did.

Q. How much later? A. I think it was around about the 18th or 19th October.

Q. Before you formed the opinion you have told us about? A. Yes, that is right. At that stage, until the 20th, I was somewhat disquieted. 10

Q. At this stage you were aware that Mr. Hoggett had commenced proceedings against the company and against Mr. Barton? A. If he had been dismissed by them he would have commenced proceedings. I do not know when he commenced proceedings.

Q. You attended the meetings of the Directors of Landmark during the year 1966 with an occasional exception? (No answer).

Q. If you were away it was not because you were absent overseas? A. I was in Western Australia and New Zealand for three or four weeks. 20

Q. When was that? A. It is in the minutes. It is some time in September or October. It was early September and October.

Q. When did you first find out that Mr. Barton had sold shares to Mr. Hoggett? A. Mr. Armstrong rang me before he went overseas and said, "I want you to visit the share registry because Barton is selling his shares and I am very worried." I said, "I will do that." I went to the share registry and searched. The only transfer I could find was Mr. Barton to one of his companies, or vice versa. It was about a day before Mr. Armstrong went overseas. 30

Q. And you went to the share registry? A. Yes, at Mr. Armstrong's request. I found no transfer from Barton to Mr. Hoggett, but while I was there the clerk in charge said to me, "You are very likely looking for the transfer that Mr. Armstrong's solicitors are looking for." I then realised the whole reason for my trip, and I went to Mr. Barton and questioned him, and he told me the facts. 40

Q. He said he sold shares to Mr. Hoggett? A. Yes.

Q. Well above market price? A. He did not tell me the price. The market value at the time was pretty meaningless. A thousand shares would make it fluctuate a few cents.

Q. Would you regard 14-cents per share above the market value as quite insignificant? A. 14-cents a share above the then prevailing market value, I think you would have to go to a stock broker to obtain the price you would have to pay to get a large parcel of Landmark shares at that time. I cannot judge that. 50

Q. The information that it was above market value was not volunteered to you? A. I do not recall because I got a whole lot of other information when I got there which satisfied me at the time.

Q. It did not come to your knowledge that Mr. Armstrong had told you? A. No, not until after Mr. Armstrong told me to go to the share registry.

Q. It did not come to your knowledge that it was 14-cents above the value until Mr. Armstrong told you after his return from overseas? A. That is right. I would like to withdraw that. Mr. Barton may have told me it was above the market value, but other conversations he had with me at the time satisfied me that the price was reasonable.

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Q. Do you have a recollection whether he told you or not? A. I cannot tell you for certain. I do not recall.

Q. What disquieted you when Mr. Armstrong spoke to you after his return from overseas? A. The conversation I had with him in the Board room when he said Hoggett had to buy his job. It was as a result of that conversation that I saw Mr. Miller the following day.

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Q. There was no mention at any meeting of Directors of Landmark that the Managing Director had sold a large parcel of shares to a prospective employee, or of any price? A. Not that I recall at a meeting of Directors. It might have happened while I was away.

Q. Not while you were there? A. I cannot recall, and I am sure I would have.

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Q. Are you prepared to say it happened? A. I would not go quite that far.

Q. When you found out what the price was, did it strike you as being an unreasonable price, or quite reasonable? A. When I found out the price, and the circumstances surrounding the whole transaction of Mr. Barton offering to take the shares back, it did not.

Q. It appeared to you not to be unreasonable in relation to a large parcel of shares? A. That is right, not where the market was so volatile.

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Q. You thought that the shares were worth what was paid for them? A. To somebody who wanted to acquire the shares you would very likely have to pay that amount.

Q. You would not want to acquire them at an over-value? A. You can easily acquire a share at a price in a company in which you think it will go very much higher than the market price. Certain people acquired large parcels in Project Development in the last few weeks at more than the value, and got good value. It is very hard to put a figure on it.

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Q. When you learned the price it struck you as being quite a reasonable price for the shares?

A. When I learned of the circumstances I thought it was reasonable.

Q. Was there a particular circumstance which influenced you? A. Mr. Barton told me that he had offered Mr. Hoggett the shares back from him and Mr. Hoggett had given him back his scrip, and Mr. Barton gave him back his cheque and finally Mr. Hoggett came back and said, "I want to go through with it".

10

Q. When he came back and said he wanted to go through with it at the price you thought it was reasonable? A. He had his chance to get out of the deal. This was while Mr. Armstrong was away, and it had never been put to me that Hoggett had to buy his job.

Q. What was your view as to the reasonableness of the price? A. I have told you. A reasonable price is not a thing that I would be expert on with a large parcel of shares in a volatile stock. I would not have paid it, but I did not want more shares.

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Q. Because you did not think they were worth the price? A. No, I was not a keen and eager buyer.

Q. You would not have bought them at any price?  
A. I would not have bought them or sold them.

Q. While Mr. Armstrong was overseas, did you express the view to your fellow directors that you thought the shares were worth par or more, \$1-00? A. The only attempt of assessment -

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Q. Did you express to any of your co-directors that the shares were worth \$1-00 or more each?  
A. At what time?

Q. During Mr. Armstrong's absence in 1966? A. I cannot recall any circumstances which would have made me say that. I cannot recall how I would have said it.

Q. Do you recall if your co-directors expressed to you that the shares were worth \$1-00 or more in that period? A. I cannot recall any real discussion on the value of shares.

40

Q. The answer is that you cannot recall? A. That is right, but I am not saying it did not happen, and that is the point.

Q. At any time during the year 1966, from 1st January to the last day of the year, did you ever hold the view that the Landmark shares were worth \$1-00 or more? A. Where, on the Stock Exchange? I could not have held that view. They never hit that price. I think 67-cents was the highest price. Somebody might have had to pay \$1-00.

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Q. Do you regard the price at which they changed

hands on the Stock Exchange as the real value ?  
A. No. A company could be offered a take-over,  
for example.

Q. Did you ever hold the view in 1966 that the  
shares were worth \$1-00 or more? A. The only time  
I recall that any reference was made as to the  
value of the shares -

Q. I am asking you of your personal view?

A. Did I hold the view that they were worth  
\$1-00 or more? 10

Q. Yes. A. No, I did not because for a thing to  
be worth \$1-00 you have to be able to get it for  
that.

Q. You did not hold that view at any time in  
1966? A. Not that they were worth \$1-00.

Q. Did you hold that view after 1966 that they  
were worth \$1-00? A. Good Heavens, no.

Q. You have not the slightest doubt about that?

A. Not after the annual general meeting. 20

Q. From 1967? A. They plummeted pretty well.

Q. You did not hold that view that they were  
worth \$1-00? A. No, I must make the distinction  
between asset-backing value and worth.

Q. Did you hold the view in 1966 that the  
asset-backing was \$1-00? A. In keeping with all  
the other directors I did. I think we sent a note  
to the Stock Exchange that the asset value was  
worth \$1-00.

Q. Did you cease to hold that view after you  
formed it? A. Yes, when the battle for schism took  
place, after Mr. Armstrong's return I was very cer- 30  
tain that they were not worth that.

Q. On an asset-backing basis? A. No. I was mis-  
understanding your question.

Q. You have told me that you held the view at  
one stage in 1965 and 1966 that the value of the  
shares on an asset-backing basis was \$1-00? A. Yes.

Q. You ceased to hold that belief at some time?

A. Yes. 40

Q. When was that? A. When finance looked like  
not coming through.

Q. When was that? A. In my opinion it was about  
April 1967, but Mr. Barton did not have that view,  
and Mr. Cotter did not have that view. They thought  
the finance would not come through considerably  
earlier.

Q. You maintained that view until April 1967 and  
then lost it in regard to the asset-backing? A. I  
did not think we would have to face liquidation, and  
I thought that we could trade it out. 50

Q. Did you maintain the opinion that the asset-backing of the shares remained at \$1-00 or more per share? A. I would say until February when the first of my doubts materialised, when we ran into trouble with Landmark House in Brisbane.

Q. This was February 1967? A. It could have been.

Q. You changed your mind at the time of the difficulties over the Landmark House project?

A. Yes, we were unable to complete our projects and it looked as if they were falling from our grasp and control. 10

Q. This started with difficulties over Landmark House? A. It was the first one I recall falling to pieces. It could have been the foreclosure of mortgages in Paradise Towers. I would have to refresh my memory from the minutes.

Q. It would be one or other of those two? A. Yes, I would say so.

Q. Mr. Cotter changed his view at an earlier point of time to you? A. Yes. 20

Q. When did he say he changed his view? A. I think Mr. Cotter changed his view in about early February 1967 at the latest, after meeting with the United Dominion Corporation.

Q. Did Mr. Barton tell you when he changed his view? A. Yes, he told me when he wrote that letter that I objected to in December.

Q. Did he tell you he changed his mind? A. He never changed his mind. He never repeated it, but did not change his mind. 30

Q. Did not he repeat the view he put to you? You said he did not repeat it? A. I am not sure what he did not repeat. Mr. Barton told me in December -

Q. When you objected to the letter? A. Yes, he said "It is definite. He won't get finance".

Q. And that is what he did not repeat? A. Yes.

HIS HONOUR: It is to be noted that it is a letter which is part of Exhibit 7. 40

MR. BAINTON: Q. Do you remember Mr. Barton circulating among the Directors of Landmark Corporation, a document dealing with his disputes with Mr. Armstrong? A. Could I see the document?

Q. Do you remember such a document? A. I remember a document that he presented to the Board some time in November setting out his complaints about Mr. Armstrong's office, his use of company staff and his interference generally, Is that what you are referring to? 50

Q. Is this the document you remember receiving

(Shown Exhibit 5). A. Yes, this is the one that was in my mind when I was speaking.

Q. Did you get a document of which this is a copy a little while later which was circulated to the Directors? (Shown) A. Yes, I recall that.

Q. Do you remember who gave you your copy?  
A. No, I thought it was in the minutes.

Q. We have been told there was a practice that the Secretary presented a folder of documents to the Directors? A. Yes, I do not know whether it was in my copy or not. 10

Q. You do remember getting the document? A. Yes.  
(Document dated 24th October, 1966, m.f.i. 7, tendered and marked Exhibit 27).

HIS HONOUR: I will have it noted in connection with the time given to perusing the document, m.f.i. 12. The witness did not read it through in meticulous detail.

MR. BAINTON: Q. You did read it through? A. I read only the headings. I did not read it with meticulous detail. 20

Q. Did you read it without endeavouring to absorb completely everything written on the document?  
A. I read only the headings, and that was sufficient to broadly answer the question.

Q. Would you read it now from start to finish. (Shown document). A. I have now read that right through.

Q. Do you want to change the answers you gave?  
A. I have not absorbed it. 30

Q. You have read it? A. I have read it, but to absorb all that and give objective thought to it is not what I could do so quickly.

Q. Having read it through, did you find anything in it to change the answer you gave earlier? A. What was the answer?

Q. I put it to you that the document generally speaking sets out your understanding of the duties of the respective three officers - the Chairman, the Managing Director and Secretary, with some exceptions and omissions? A. Yes, some things I do not think they were doing in entirety, and some they were doing more. 40

Q. Having read it through, do you adhere to your answer? A. Yes, in essence.

Q. I show you Exhibits 5 and 27. You had those documents in your possession before the Directors Meeting of 24th October 1966? A. Yes.

Q. They were prepared for the purpose of that meeting? A. Yes. 50

Q. Had the subject matter of those documents been discussed between yourself and Mr. Barton prior to the commencement of the Directors meeting? A. Yes, they had.

Q. Both of them? A. Yes.

Q. Had they been discussed between you and Mr. Cotter? A. I cannot tell you that. I am pretty sure they had.

Q. Are you able to say whether they had been discussed between Mr. Barton and Mr. Cotter? A. I would have to ask Mr. Barton and Mr. Cotter. I think this was generally discussed before. 10

Q. As far as you personally are concerned, did the discussions concerning those matters take place the day of the meeting the day before or a few days before? A. I really do not know when. It could have been a few days before, but I could be wrong.

Q. To the best of your recollection it would be the day prior to the day of the meeting? A. Yes. 20

Q. And within a few days prior? A. I would say so, yes.

Q. Would it have been as long as a week before? A. I would be purely guessing. I just do not remember.

Q. What is your best recollection? A. Can I say that I have none.

Q. You cannot say whether or not it could have been as long ago as a week before? A. That I could not say. It could have been a week or two or three days. It was no longer than a week, I think. 30

Q. Is it the sort of thing you expect to be discussing over a week? A. Yes, with the relations that existed then.

Q. Do you remember there was a Board meeting between when you first started to talk about it and the meeting of the 24th when it was tabled? A. Do you mean this document or the problems the document sought to solve? 40

Q. When you first started to talk about the problems mentioned in the document? A. The problems mentioned in the document had been going on for some time, I think.

Q. After you got the document I take it you had some discussions about its contents before the Board meeting? A. Yes.

Q. Do you recollect whether the document (Exhibit 5) was discussed at the Board meeting held next after, or was there any meeting intervening? A. I honestly could not tell you. I do not think there was a meeting intervening. 50

Q. Had there been one you would have expected some discussion relating to those matters to have taken place at that meeting? A. At the time this was taking place I would not necessarily have expected it, but as this would appear to have been addressed to the Board of Directors, I would assume it, especially seeing the second page is a resolution and I would think that resolution would have been put forward at the first meeting after the preparation of the document.

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Q. There are some pretty strong statements on the first page. (Witness reads document).

Q. Have you read enough to agree with me that it is highly critical of Mr. Armstrong? A. Yes.

Q. And not the sort of thing that you expect Mr. Armstrong to let go back without saying something? A. I would not have expected it.

Q. You would be highly surprised if he let the meeting go by without saying something about this matter? A. Yes.

20

Q. Look at the minute book of Landmark Corporation. They are the minutes of meetings of 24th October and 18th October at which you are reported as having been present. Tell me whether you were present at those meetings? A. Yes, I recall being present on the 18th.

Q. Will you glance at the matters discussed at that meeting? A. Yes.

Q. Look briefly at the one of the 24th, and I direct your attention particularly to the paragraph at the bottom of the first page referring to the tabling of a statement? A. Do you mean the last paragraph: "Mr. Barton tabled a statement to the Board which was discussed?"

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Q. Yes. Do you agree it was a reference to the statement (Exhibit 5) which you have just been reading? A. I would as the following resolution follows straight on.

Q. Having looked at those two, do you agree that those documents, particularly Exhibit 5, was circulated after 18th October. A. Yes, I would think so. I cannot tell you. I do not know.

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Q. If they had gone around before 18th October something would have been said at that time? A. I don't know. Mr. Armstrong's ways were sometimes unpredictable. I think he would have said something, but I do not know.

Q. Do you have any doubt in your mind? A. I honestly do not know what he would do. He was a little unpredictable, therefore I must have some doubt. I do not believe he would have, but he could.

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Q. You personally when you went to the meeting of



24th October anticipated a somewhat stormy meeting?

A. Yes.

Q. The company solicitors had been asked along?

A. Yes.

Q. And the meeting was convened for a particular purpose? A. Yes, to deal with the accounts and Mr. Barton's statement.

Q. Primarily to deal with Mr. Barton's statement, Exhibit 5? A. I think the 1966 accounts came before that. They were adjourned again until the 28th.

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Q. Do you suggest the company's solicitor was brought there because of the accounts? A. No, the auditor was brought along because of the accounts.

Q. Do you suggest a tape-recorder was brought along because the accounts would be mentioned? A. It was brought there in the hope that Mr. Armstrong would stick to the agenda rather than to deviate as had been his practice in the past.

Q. The agenda primarily was the statement of Mr. Barton (Exhibit 5). A. It would have been as circulated to the Board in which Mr. Barton's statement may or may not have been a part.

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Q. Was there any doubt in your mind when you went there that you would be going there to pass a resolution set out in Exhibit 5? A. Would you fill me in with the agenda? cannot recall.

Q. I am not suggesting it was the only business on the agenda, but the prime business? A. I think we were running out of time for the accounts. I think the accounts were pretty important.

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Q. You had to have a meeting, you say, to consider the accounts? A. Yes.

Q. The occasion then, was taken to bring up at that meeting Mr. Barton's statement (Exhibit 5). Would that be a statement you would agree with? A. I think it could have been, yes.

Q. I put it to you that when you personally went to the meeting you went there with the intention yourself of voting in favour of the resolutions that are set out in Exhibit 5? A. Of passing them?

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Q. Yes? A. Yes.

Q. You had a discussion with Mr. Barton of the joint intention so to do? A. Yes.

Q. You believed that Mr. Cotter would do likewise? A. Yes, I would think that.

Q. I beg your pardon? A. I would think that.

Q. And between the three of you the passing of these resolutions had in fact been pre-arranged? The passing of the resolutions in effect had been

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pre-arranged between the three of you? A. I would not say that at all.

Q. You would not? A. Not pre-arranged, no. Not pre-arranged.

Q. Arranged before you attended the meeting?  
A. That is different. There is a difference between pre-arrangement and discussing with a view to understanding.

Q. You had discussed it between you? A. Yes, we had discussed it between us. 10

Q. And you had indicated to the others that you intended to vote in favour of it? A. I was intending to vote in favour of it. Something could have transpired which might have made me change my view. It was unlikely that it would, but it could have happened.

Q. You believed that Mr. Barton would vote in favour of it? A. Yes, I did. He could have changed his mind, too. 20

Q. Did you believe that Mr. Cotter intended to vote in favour of it? A. I believed that he was likely to vote in favour of it, yes.

Q. You believed, unless something unexpected would happen, this resolution would be passed? A. Yes, I did.

Q. What, in your view, was the purpose of passing it? A. I think that was very well described in the preambles to the resolutions in the previous exhibit I have just looked at. 30

Q. You think that the statements in the first page of Exhibit 5 disclose the position? A. That is right. (Objected to: allowed).

Q. I think you stated to me that the matter set out in the first page of exhibit five put your reasons for voting in favour of the resolution?  
A. Yes.

Q. And they come down to this, that you formed the view that Mr. Armstrong had been unduly interfering in the administration by Mr. Barton with the affairs of the company? A. Yes, that is right. 40

Q. And you thought that a reason to justify removing him from his office as Chairman? A. Was that covered in that particular resolution? I don't think it was.

Q. I am sorry. Removing him from the office that he occupied? A. Yes.

Q. In the company's premises. You had taken away any executive authority that he had? A. Yes.

Q. This you considered to be called for because of the disagreement between two men? A. Not because 50

of the disagreement, but because of Mr. Armstrong's actions as set out on p. 1 of the exhibit.

Q. Because of his actions. Pursuant or in furtherance of the disagreement. No other reason than that. No other reason than that. (Objected to).

A. That is entirely due to Mr. Armstrong's actions. Not anything to do with the disagreement between Barton and Armstrong.

Q. The actions of Mr. Barton's statement. Nothing else at all led you to vote in favour of this resolution? A. No. I think they were adequate. 10

Q. I am reminded of one matter. There is a statement in the document which reads this way: "However, in view of the ... any longer." A. Yes.

Q. What did you understand to be the latest attempt to run down Mr. Barton's reputation?

A. The Hoggett matter.

Q. The Hoggett matter? A. Yes.

Q. One of the results of the resolutions passed at the meeting of 24th October was that Mr. Armstrong was required to vacate the offices that he had previously occupied in the company's premises? A. Yes. 20

Q. This was to prevent, in your view, his interference with Mr. Barton's carrying on of his duties? A. His interference with the staff primarily.

Q. You did not propose that for any other reason than that reason? A. I felt that -

HIS HONOUR: "You did not propose it ..." What was the balance of the question, Mr. Bainton? 30

MR. BAINTON: Q. You did not propose that for any other reason than the reason that you have just given? A. I think that the whole thing should be treated in toto rather than in isolation.

Q. Can I put this to you directly: It was not your view that Mr. Armstrong had not previously been entitled to the use of these offices and the assistance he had? A. Entitled in my view, no. I never considered that he should have the services of the staff to the extent that he did have. I went along with it, though. 40

Q. You had never previously seen any reason to take steps to bring it to an end, had you? A. Not previously, no.

Q. And the reason for bringing it to an end at this stage was to prevent, as you put it, interference with the staff? A. Continual interference, despite repeated requests not to do so.

Q. Another matter that came up at the meeting was taking away, in effect, Mr. Armstrong's use of a company car? A. Yes. 50

Q. He had had that for a long time, hadn't he?

A. I beg your pardon?

Q. You have never previously thought it necessary or proper to deprive the company's chairman of the use of that car? A. No.

Q. But you thought it proper to do it on this occasion, is that so? A. It was an in toto deal.

Q. The reason for taking away the car was to attempt to prevent interference with the staff? 10

A. Not interference with the staff, but in general we decided steps had to be taken, and that these steps, long overdue, should be taken.

Q. A step to get Mr. Armstrong right out, if you could? A. Right out of the management of the company. Not out of the chairmanship or off the board - just out of the Company.

Q. Taking away the car was a step in this? A. It was just one of the things that we considered were unjustified and might well be corrected with one fell swoop, if I can put it that way. 20

Q. You had previously held the view that Mr. Armstrong's use of his car was justified had you not? A. I did not object to the use of the car by Mr. Armstrong. I rather think the car was used by his wife. I would not be sure.

Q. Whoever used it, you rather thought its use was justified? A. I was not prepared to precipitate a battle about the car.

Q. You had at all times known of the existence and use of it? A. I had. 30

Q. After the meeting of 24th October, the minutes of which you have been just looking at, it was not long that steps were taken to remove Mr. Armstrong from his office as chairman? A. Correct.

Q. Were the taking of these steps discussed beforehand between yourself and Mr. Barton? A. About a day before it was between myself and Mr. Barton, and I am not sure whether Mr. Cotter was present at the time. I rather think that Mr. Barton could have discussed it with Mr. Cotter separately, and discussed it with me separately. 40

Q. Did you discuss it with Mr. Cotter? A. I could not tell you that. I don't know. I might have.

Q. May I take it when you went to the meeting you went there with the intention of voting in favour of the resolution which would have the effect of removing Mr. Armstrong from the chair? A. At that time Mr. Armstrong had refused to sign the accounts. Yes, I did. 50

Q. Is that the reason you voted in favour - Mr. Armstrong's refusal to sign the accounts? Is that the reason you voted in favour? A. We

could not get any reasons out of him. His actions in my view were damaging to the company. His power in the position of chairman in my view was a detriment to the company. At the time I thought it was in the company's interest that we do it.

Q. Let us take it step by step. He had refused to sign the accounts? A. Yes.

Q. That is right? A. Yes.

Q. The reason Mr. Armstrong gave was that he did not agree with them? A. Yes, that is right. 10

Q. The remaining directors did not agree with his disagreement? A. That is right.

Q. And you regarded, did you, his disagreement as completely unreasonable? A. After discussing it with the company's auditors, and solicitors and secretary - company secretary, yes.

Q. You regarded Mr. Armstrong's persistence in his refusal to sign the accounts as sufficient reason to remove him from the chair? A. I regarded his decision to refuse to sign the accounts as being frivolous, or motivated by some cause other than known to me - known only to Armstrong. 20

Q. You did not think there was possibly any room for disagreement about the accounts? A. I thought that after all the changes that we had agreed to at Mr. Armstrong's request there was no possible reason for any further change.

Q. So that I take it the position was completely unreasonable? Your view was that the position was completely unreasonable? A. That was my view. At that time that was my view. 30

Q. And a position of sufficient justification to remove the person who persisted in that view from the chair? A. Yes.

Q. Before the meeting at which the resolution removing Mr. Armstrong from the chair was passed litigation had been commenced in this court?  
A. Yes.

Q. By companies which you would have described as Mr. Armstrong's companies against the Paradise Waters Companies? A. Yes. 40

Q. And this had been brought to the knowledge of the directors of Landmark? A. Yes.

Q. And may I take it it had been brought to your knowledge, as a director? A. Yes.

Q. That the purpose of the litigation was to have a nominee of Mr. Armstrong's companies - that is, Finlayside and George Armstrong and Son. Pty. Limited - appointed to the boards of the two Paradise Waters companies? A. Yes. I think it was nominees, wasn't it, giving them control, with Mr. Armstrong being in the chair. 50

Q. The justification advanced being that Paradise Waters Companies, which were then under the control of Landmark Corporation, did not comply with the provisions of the agreements? A. I think that was the reason for the litigation, yes.

Q. One of the agreements - the principal one - being the agreement under which \$400,000 had been lent by George Armstrong to one of the Paradise Waters Companies? A. I think to purchase land. 10

Q. Whatever the purpose was, that was the agreement that the litigation was centred around? A. Yes.

Q. And that agreement, may I take it, in these terms was present to the mind of the board when they considered whether or not they should resist these two suits? A. Yes.

Q. And one of the provisions of that agreement provided that the money should become due if Mr. Armstrong was removed from the chair of Landmark Corporation? A. I was under the impression that it was if he was removed from the chair of The Paradise Waters Companies. I could be wrong. 20

Q. From the chair of one of the companies?  
A. Yes.

Q. And you knew this when you went to the meeting on 11th November? A. Yes.

Q. And you intended to remove Mr. Armstrong?  
A. If you say the litigation had started I would have known about it.

Q. So that you knew that consequence of the step you were proposing to take? You knew a consequence of the step you were proposing to take was that \$400,000 would become immediately due? A. Yes. 30

Q. May I take it that before you voted in favour of that resolution you satisfied yourself that Landmark Corporation could pay this money? A. To the best of my belief it was able to.

Q. What was the source of the satisfaction? Was it some document? A. Report from Mr. Barton. Just one minute. The timing of this is important. I would have to refer to the documents before I would be able to throw any light on that. My feelings are and my belief is now that when he was voted out of the chair we were confident that the moneys would be forthcoming. I cannot recall whether at that time there were any documents - 40

Q. Would you for one moment contemplate voting in favour of that resolution without being confident of the \$400,000? A. No, I am sure I was confident at that time. 50

Q. It is quite clear that Landmark and its subsidiaries had no means to pay it out of its own resources? A. That is right.

Q. You were confident you could have obtained it? A. Yes, I would think so.

Q. The source of your confidence was in part something Mr. Barton told you? A. Yes, it would have come from Mr. Barton.

Q. What did Mr. Barton tell you? A. I honestly can't recall what Mr. Barton told me round about October 14th, which I take is the time. I can recall clearly later -

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Q. I think the time was round about 19th November. That is the meeting at which Mr. Armstrong was removed from the chair. A. I am sorry. I was still back on the 24th October. At that time Mr. Barton would have had his conversations with U.D.C., and would have reported back to me, and very likely would have discussed it with Mr. Honey and Mr. Beardsmore, and been satisfied.

Q. I want your recollection? A. My recollection is that when we voted him out of the chair I was confident that the moneys would be forthcoming. That is my recollection.

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Q. The source of that confidence in part at any rate was what Mr. Barton told you? A. Yes.

Q. What was that? What had Mr. Barton told you? A. That U.D.C. would be prepared to provide the finance. I would have got it from Mr. Barton.

Q. You regarded that as sufficient to justify your confidence, did you? A. I can't recall if Mr. Barton had a letter, a document, or what he had. But I am sure that I was assured either by Mr. Barton and/or Mr. Honey and Mr. Beardsmore about the money coming through before I would have gone ahead with it.

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Q. Do you recollect any document at all concerning this money? A. Yes.

Q. That became available to you before the meeting when Mr. Armstrong was removed? A. I don't recall the document. I do recall a letter afterwards.

Q. Afterwards? A. Yes. I can't recollect it before. It may have been in our hands.

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Q. So that at the time of the meeting you were dependent upon what Mr. Barton told you? A. I can't say I was doing otherwise.

Q. And he told you in effect that he had made arrangements with U.D.C.? A. This would be what I would think.

HIS HONOUR: Q. "This would be ..." A. "What I would think."

MR. BAINTON: Q. And you had sufficient confidence, may I take it - A. Yes.

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Q. To take that as being good enough? A. I would have had sufficient confidence in Mr. Barton and in my findings in discussions with U.D.C.

Q. Had you personally had discussions with these officers prior to that date? A. I did have discussions with them. I don't know that I had them prior.

Q. How many times did you have discussions with them? A. I should think over the whole period I should have had about three, four or five. I should think about three, four or five times I had discussions. 10

Q. A number of these were certainly after the Annual General Meeting? A. Yes.

Q. Do you recall any prior to the Annual General Meeting? A. Yes I do.

Q. When did those prior to the Annual General Meeting that you do recollect take place? (Objected to: witness retired from court whilst argument ensued. Witness returned into court. Question allowed). 20

Q. Would this sum up your thoughts at that time, that you were confident the money would be forthcoming, and that you depended in reaching that view on what Mr. Barton had told you because you expected it and trusted him? A. I would say that was the case.

Q. No case of any independent inquiries you made yourself at that time? It was not because of any independent inquiries you yourself made? A. I could not say that I had not made them, and I could not say that I had made them. I believe that I had made them. 30

Q. But your main reason is the discussion with Mr. Barton? A. It would have been primarily from Mr. Barton's assertions.

Q. The removal of Mr. Armstrong was during the currency of the equity proceedings that had been brought against the Paradise Waters companies? A. Was it? 40

Q. You may take it from me that it was? A. Yes.

Q. I put it to you that Mr. Armstrong had stated quite clearly and had warned the other directors that in his opinion Landmark Corporation could not find the money to repay his \$400,000. Did that occur? A. Yes, I think Mr. Armstrong did make some remark to that effect, but Mr. Armstrong made many remarks which were not correct.

Q. He did express that view, didn't he? A. I think he did. 50

Q. It was your conclusion that it should be disregarded? A. That is right.



Q. And that Mr. Barton's assertion should be preferred to Mr. Armstrong? A. Yes.

Q. When Mr. Armstrong was removed from the chair he did cause George Armstrong and Son Pty. Limited to require payment of \$400,000? A. That is right.

Q. You accepted that? A. Yes.

Q. And you set about undertaking the payment of that money? A. Yes.

Q. Would you tell me what was done to get the money? A. Approaches were made to U.D.C. A letter was obtained from U.D.C. 10

Q. But, Mr. Bovill, had not approaches already been made to U.D.C.? A. Approaches, of course, had been made to U.D.C. We notified them of the demand and requested the money.

Q. You told them you wanted the money? A. Yes.

Q. And what happened then? A. I think we received a letter from them saying that subject to documentation the money would be forthcoming. 20

Q. (Exhibit "C" handed to witness). I think you will find the letter of 23rd November preceding the minute of 24th November? A. That is right, yes. November 23rd.

Q. That is the letter that was received? A. Yes.

Q. Now, I put it to you that that was got for the purpose of bringing it up to court to get an adjournment of these proceedings that were then being heard? A. It was got for the purpose of bringing it to court here? 30

Q. Bringing it to this court for the purpose of supporting an application for the adjournment of proceedings then being heard? A. Well, I would not agree with what you put to me. My understanding was that this letter was obtained by Mr. Barton at the request of Mr. Cotter and myself to get some undertaking. This is a letter that I pinned my faith on for getting the money.

Q. You already had, you told us, through Mr. Barton assurances. A. Yes. 40

Q. That that would be forthcoming? A. Yes. This was confirmation of those assurances.

Q. You had got a verbal assurance? A. Yes.

Q. And you thought that ought to be confirmed in writing? A. Yes.

Q. Why? A. Because in the event of the shareholders' meeting that was coming up very rapidly it was necessary to have this sort of information as word of mouth is not nearly as well accepted by shareholders, by members and by the Stock Exchange 50

as is a written letter. That was why it was obtained. I don't think it was solely obtained for bringing to this court at all.

Q. George Armstrong and Son at that stage was pressing for repayment? A. Yes.

Q. The letter, when produced to it, produced this reaction, didn't it, that it would wait for a reasonable time to allow the money to be forthcoming? A. I cannot recall what the reaction of George Armstrong was, or the court hearing. This is something I don't remember.

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Q. You had earlier formed the view that U.D.C. had committed itself to provide this money, otherwise you would never have removed Mr. Armstrong?

A. I was firmly of the opinion that U.D.C. would honour its undertaking to us, yes.

Q. You wanted a letter? A. Yes, I wanted a letter.

Q. To produce to other people? A. For the annual meeting; for the shareholders; for the Stock Exchange.

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Q. What steps were in fact taken so far as you were aware to procure money? A. To procure money?

Q. To get it to pay to George Armstrong and Sons?

A. My recollection is that we obtained \$50,000 of it sometime in December. On asking U.D.C. for it that \$50,000 was obtained, and was paid over. That was in settlement of the amount of \$450,000, if my recollection serves me right. May I refer to a document? There was another document sent down to us more or less in the form of a letter which was executed under seal of the company, and we then wrote to U.D.C. to pay carry-on finance and pay the balance of the \$400,000. These requests were made to them, and the last of what I call a series of approaches to U.D.C. took place when Mr. Barton wrote to them I think on 13th December.

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Q. You are aware, aren't you, that during the period from about 20th November onwards the solicitors acting for George Armstrong had prepared the documents to discharge the mortgage and were pressing for payment? A. I was not aware of that.

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Q. You thought the matter was just being allowed to drift on, did you? A. I thought that the matter - my memory of the litigation and the settlements with George Armstrong and Finlayside at that time is extremely hazy. I know we were doing everything we could to get money from U.D.C., and the annual meeting was on our hands and I don't recall paying all that much attention to what the solicitors of George Armstrong were doing.

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Q. You came to the conclusion at some stage - you came to form the opinion at some stage that U.D.C. were not going to honour their obligation? A. I believed U.D.C. would honour their obligation once Mr. Armstrong was off the Landmark board. I was alone, perhaps, in that view.

Q. Right off the board? A. Right off the board, and paid out and got rid of.

HIS HONOUR: Q. "Paid out ..."? A. And got rid of, yes. Off the board of Paradise Waters. That was my view, that they would go through with it, right up to early February at least.

MR. BAINTON: Q. When Mr. Barton told you sometime before 19th November that U.D.C. had promised money you did not regard it then as a condition of their providing the loan that Mr. Armstrong should get right out, did you? A. At that time, no, because I had not had the series of talks I had with Mr. Honey and Mr. Beardsmore. 10

Q. When did you first form the view that the money would not be provided unless Mr. Armstrong got right off the board? A. When I first formed the view was when - confirmed the view - was, I think, in January. I suspected and believed, but I was confirmed in the view in January upon receipt of another letter from U.D.C. Mr. Malouf, I should say. 20

Q. What time in January would you place it? Before or after the 17th? A. Can I see the letter from Mr. Malouf?

Q. Will you give me your recollection at the moment whether it was before or after the deed of 17th January? A. I would say it was possibly two days or three days before.

Q. When did you begin to suspect - when did you first begin to suspect this would be U.D.C's attitude? A. From conversations I had with Mr. Honey and Mr. Beardsmore. 30

Q. When were they? A. December, I would say.

Q. What part of December? A. Between, I would say, the receipt or the writing of Barton's letter and Christmas Eve.

Q. Somewhere between the 13th and 24th? A. I would say that would be right.

Q. Do you recollect the meeting of the board of directors at which you were present on 22nd December which Mr. Grant attended, and made some proposals? A. I do, yes. 40

Q. Had you formed a suspicion at that stage? A. Had I formed a suspicion?

Q. Had you formed the suspicion which you just told us of prior to that meeting, or did it come after? A. It was prior to that meeting.

Q. Well then, what was put by Mr. Grant at that meeting must have dispelled your suspicion entirely at that stage? A. I didn't believe it. 50

Q. You didn't believe it? A. No.

Q. You thought Mr. Grant was telling lies? A. I thought that Mr. Grant was acting under Mr. Armstrong's instructions and that he was -

Q. When he said that U.D.C. would do certain things you thought that he was telling untruths?

A. I did not believe what was put to us from Mr. Armstrong's quarters.

Q. So that can I take it that when Mr. Grant told you that U.D.C. were prepared to do certain things in certain events you did not believe it? 10

A. I disbelieved Mr. Grant because I knew he was acting for Armstrong.

Q. Did you suspect that Mr. Grant was telling lies? A. I did not believe Mr. Grant. I think Mr. Grant might have believed it himself. He might not have made sufficient inquiries. I am not saying Mr. Grant is a liar.

Q. Didn't Mr. Grant begin this discussion by informing those present that he had just come from a discussion with representatives with U.D.C.? 20

A. I take your point. He did. I recall that now. You are quite right.

Q. He went on to say that these representatives had said that U.D.C. would do certain things if Mr. Armstrong did certain things? A. Yes.

Q. You disbelieved this conversation? A. After my prior conversation with Mr. Honey and Mr. Beardsmore, yes.

Q. Are you suggesting that Mr. Grant was lying or that Mr. Grant had been misled? A. I am suggesting that Mr. Grant was acting for Mr. Armstrong. What I thought was that Mr. Grant was acting for Mr. Armstrong and I did not accept what he said. 30

Q. Did you assume that he was telling lies, or did you assume that he had been misled by U.D.C., or is there some other possibility? A. When you say did I assume he was telling lies, I did not accept what he said as being the truth of what would happen. We had acceded to this. I thought that was final so far as finance from U.D.C. was concerned, so strong was the impression I had gained from Mr. Honey and Mr. Beardsmore as to their opinion of Mr. Armstrong. 40

Q. Was it your view when Mr. Grant said that U.D.C. would do certain things if certain things were done that U.D.C. misled him; that they would not do them at all? A. I did not believe they would do it if Mr. Armstrong was still connected with the company. 50

Q. Do you remember the proposal that was in fact put? A. That Mr. Armstrong become executive director: that Mr. Armstrong would buy the penthouse? You mean that one?

Q. Yes. A. There were various other things

there. That Mr. Barton would vacate the chair. The effect of it was, in my recollection, that it was going to give the company back to Mr. Armstrong's control without any firm undertaking of finance or continued support. This is my recollection of it. I could be so wrong.

HIS HONOUR: What is the date of this?

MR. BAINTON: 22nd December.

HIS HONOUR: It can be noted that Mr. Bainton asked Mr. Grant to leave the court at this stage. 10

MR. BAINTON: Q. Did not at this discussion Mr. Grant say to you that he had come from a discussion with U.D.C.? A. Yes.

Q. And, in particular, with Mr. Malouf, their solicitor? A. I don't recall him saying Mr. Malouf.

Q. Didn't he say this, that U.D.C. told him, and he was passing it on amongst other things, that if the proposal was acceptable U.D.C. would not appoint a receiver before 21st January 1967? A. I recall Mr. Grant saying that he had come from U.D.C. I don't recall the details of whether or not a receiver would or would not be appointed. I do recall my opinion at that time was that U.D.C. would not lend any money or be a party to any deal while Mr. Armstrong was in the chair. 20

Q. Well then, I put it to you specifically, didn't Mr. Grant say that U.D.C. had informed him, and he was passing it on to the board, that if the proposal he was then putting was acceptable no receiver would be appointed prior to 21st January 1967? A. Mr. Grant very likely said it. I don't think I necessarily believed him. 30

Q. If you didn't believe him did you think he was lying, or that what he had been told was wrong? A. If I had to take a choice of the two I would say that Mr. Grant was lying.

Q. It must be one of the two? A. One of the two. I did not believe what was said to me - said to us, as a board. 40

Q. Did you say that at the time? A. I don't think I had an opportunity to. Mr. Armstrong -

Q. Did you say it? A. I don't think I had an opportunity to say it.

Q. You didn't say it? A. I don't think I did.

Q. Did you take any steps to check it from U.D.C.? A. At that time I don't recall having taken any steps to check it. I think I went to Fred Millar. That was my immediate reaction.

Q. He, of course, was Landmark's solicitor? A. Yes. 50

Q. It would have been a matter of a couple of

minutes to ring Mr. Honey and confirm it? A. It would have.

Q. Why didn't you do it? A. I don't know.

Q. Was it the position at that stage that your mind was so completely closed to anything that you would not explore it? A. No, my mind was not closed to it. I did have a fixation, I suppose you could call it, that U.D.C. would lend money and honour their undertakings they had given both verbally and in writing if Armstrong was off the board. I believed that, and nothing else could sway my views. 10

Q. The proposal that Mr. Grant put, had it been agreed to, would at least have provided a satisfactory interlude between December and January? A. With Armstrong in control, and we would be very unlikely to get control back from him if the deal didn't go through. It was too high a price to pay. I still thought we would get the finance when he came off the board. That is why I did it. 20

Q. Were there any steps at that stage to get him off the board? A. No.

Q. Were you contemplating taking any? A. I don't know at that stage. I can't recall contemplating any.

Q. Did you ask Mr. Armstrong would he get off the board? A. I think we had asked him several weeks to get off the board. 30

Q. Did you repeat the request? A. I don't recall. I think he already said "I will get off the board only when it suits me, or in my own time."

Q. Was it put to him by you that it was your belief that if he got off the board U.D.C. would provide money, and all the troubles would be over? A. I can't recall who put it to him.

Q. Did you ever put it to him? A. It is very hard to remember. I don't think I did put it to him. I might have put it to Mr. Grant, because Mr. Armstrong left the meeting very shortly afterwards - after it had started - and called Mr. Barton out to talk to him privately. I do recall that part. 40

Q. I want to put to you also that Mr. Grant said at the meeting that the proposal from U.D.C. which he was conveying on was that the purpose of not appointing a receiver before 21st January was so that there could be a joint investigation of Landmark by U.D.C. representatives and Armstrong representatives in order to see whether it would be reasonable for Mr. Armstrong himself to advance further moneys for Landmark? A. Wrapped up with that, of course, was Mr. Barton's resignation and Mr. Armstrong getting in the chair. It was part of the deal, which was in the form of a letter, if my recollection is right, which Mr. Grant may or may not have read out. 50

Q. When Mr. Grant told you this from U.D.C. did you believe it? A. I treated the whole thing in globo.

Q. You thought that was another lie? A. The whole thing I thought was just not on so far as U.D.C. was concerned.

Q. Did you think when Mr. Grant told you that that he was lying to the board of Landmark? A. No, I didn't think it at the time. I thought the whole thing was not acceptable to U.D.C., and the whole thing fell down on that basis; therefore I did not believe Mr. Grant. 10

Q. Did he also put as part of what U.D.C. had proposed to him, and he was conveying on, that if after this investigation Mr. Armstrong did not lend more money through one of his companies to Landmark Mr. Armstrong would resign from the position of executive chairman to which he was to be put as part of the proposal, and that U.D.C. would appoint a receiver? A. I considered that the company would have been so finished at that point of time that any chance of finding any sort of alternative solution would have gone. 20

Q. The period involved was from 22nd December to 21st January - less than four weeks, including the Christmas break? A. By which time the image of the company would have been tarnished beyond repair.

Q. Apart from the sale of the penthouse, Mr. Barton's resignation as chairman, Messrs. Cotter, Barton and yourself remaining on the board and Mr. Beale going onto the board, Mr. Armstrong being executive chairman until 21st January 1967, a joint investigation of its affairs, a decision whether Mr. Armstrong would lend some money, and if he didn't, U.D.C. appointing a receiver - was that your understanding of it? A. That was my understanding of what Mr. Grant proposed, yes. I didn't accept it that U.D.C. would provide money under those circumstances - 30 40

Q. There is not one word in that proposal about U.D.C. providing any money, but the proposal was that Armstrong would provide it. You understood that? A. Yes.

Q. And you rejected it out of hand because you did not believe it could happen? A. I did not believe it would happen.

Q. You thought for a period of three weeks in effect the image of this company would be so tarnished that this was not worth a go? A. No, I did not think it was worth a go with Mr. Armstrong back in the chair; it being announced to the financial world at large that Mr. Armstrong had got into control of the company I thought the chance of our standing as directors would be so impaired that we would never have a chance of getting money from any other source if U.D.C. did not come through with it. 50

Q. What money? A. Carrying on finance for the financing of the project, Carry on finance.

Q. That is what Mr. Armstrong was providing?

A. I did not believe Mr. Armstrong would provide money for a project of that size.

Q. It was your considered opinion that this should be rejected out of hand, without even checking with U.D.C.? A. Yes.

Q. And that is what you did? A. That is what I did.

10

Q. You thought it would be a very great blow to the prestige of the remaining directors if Mr. Armstrong came back so soon after the meeting?

A. No, I thought it would finish the company's chance of getting money. Not the directors. They would have been only too happy to get out. But the company's chance - it would have been a complete negation of what the shareholders had previously voted at the meeting.

20

Q. Notwithstanding that this was a proposal from U.D.C. itself? A. I did not believe this was a U.D.C. proposal.

Q. You did not think it worth a few moments phone call to check it? A. Not after what I had gleaned from U.D.C.'s top executives.

Q. They could have changed their mind? A. They could have. I didn't check it.

(Further hearing adjourned to 10.30 a.m. on Thursday, 13th June, 1968).

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BARTON -v- ARMSTRONG & ORS.

FOURTEENTH DAY, THURSDAY, 13TH JUNE, 1968.

JOHN OSBORNE BOVILL

On former oath:

HIS HONOUR: Q. Mr. Bovill, you are still on the oath administered to you to tell the truth? A. Yes.

MR. BENNETT: Would it be convenient, in view of the views expressed by Mr. Staff previously about cross-examination, for my cross-examination to be interposed at this stage? 10

HIS HONOUR: Not unless Mr. Bainton assents to it. I would not interrupt without his consent. I think he is entitled to pursue his cross-examination without interruption if he wishes.

MR. BAINTON: I would not be disposed to consent at this stage.

MR. STAFF: Before Mr. Bainton continues his cross-examination I wish to draw your Honour's attention to a report which appeared in this morning's Daily Telegraph of the proceedings in this Court yesterday. The report appeared on the front page of this morning's Daily Telegraph, and on the placards as well. I hand your Honour a copy of the report. Your Honour can see the copy of the heading in bold and direct type, calculated to draw the maximum coverage, no doubt. The evidence to which it refers was given at p.331 of the transcript. Your Honour will see just a little above the middle of the page what was said there: "He said 'You can have someone killed for...' and so on. 20 30

MR. GRUZMAN: It also appears at p. 332, in the middle, in a slightly different form.

MR. STAFF: In each of these places it is in different form from that in which it is featured and spread by this morning's newspaper. One knows that the paper has wide and extensive circulation, and this has been published on the front page. I draw your Honour's attention to it. Your Honour, of course, has powers in respect of such matters. The matter is regarded seriously and we would submit it is clearly a gross breach of the obligations of the press. 40

HIS HONOUR: I think I ought to read the whole of what is here, Mr. Staff. Yes, I have read the newspaper article.

MR. STAFF: We would wish to draw it to your Honour's attention. It clearly does not accord with the evidence which was given, and conveys a completely different impression. One knows, of course, with a case of this character what gets into the press are mere snippets of the whole mass of evidence, and when the press takes the course of reporting small segments, often out of context, it behoves the press, 50

in our submission, to report it with scrupulous accuracy and certainly to report it, so far as possible, in the context in which the evidence is given - certainly not, as we would submit, twisting it in the way in which this must have been twisted. Somebody has, in our submission, turned this evidence around. It is difficult to resist the conclusion that the evidence - that the matter as appearing in the press could not have been heard or taken during the course of the proceedings in the form in which it was published. Whilst it may be said that the defendant has remedies available to it, they are only available at a remote point of time, and we would submit that the occasion is a proper one for the Court to exercise, if not its own powers, for the Court to indicate its disapproval of the course taken and its wish that the obligations of the press, in reporting material which is freely given and open to publication, in the interests of justice should be performed in accordance with the law and in accordance with fair play. 10 20

HIS HONOUR: Mr. Staff, I have given you freedom to draw attention to this report in this morning's Telegraph. I think it preferable that I do not say anything more than to record that the transcript of yesterday's hearing at p. 331 correctly states the evidence as given, the relevant portion of which I shall read in the terms in which it was given. "He wheeled around on me, pulled out his gold pass from his pocket, and started waving it under my nose, and saying 'I can have that bodyguard removed, if I want to. I could have you arrested in Pitt Street.' I said to him 'On what charge, Alec?' He said, 'This represents the government' - he was waving the gold pass at me - 'and I would only have to say to the policeman that you threatened and molested me and he would arrest you.' I said 'I don't believe you can do that without some evidence.' He said 'They would look after the evidence at the police station'. I said 'What on earth do you mean by that?' He said, 'They beat people up and get confessions.' I said, 'I don't believe anything like that could happen to a reputable citizen. No policeman or police station would allow such a thing to happen, as there would be an inquiry that would blow the roof off the whole police force.' Armstrong said 'With this' - and he again waved the gold pass - 'and with enough money I can get the police to do anything; alter or destroy evidence, or do anything I want.' I said 'Look, Alec, this is not Chicago.' I said 'You could not do these things with the police force in Australia.' 'Not Chicago?' he said, 'this city has reached two-million people and organised crime moves in.' He said 'You can have someone killed for... - and I can't recall whether it was 'one-thousand quid' or '£1000' or '\$2000'. I said 'Alec, I don't believe Sydney has come to this state.' 30 40 50

So that there may be no doubt as to the precise terms in which the evidence was given I shall allow the press to have access to the official Court transcript at p. 331, the relevant extract from which I have just read. For a variety of reasons I think it preferable that I go no further than to take that course.

There was no evidence given yesterday which stated precisely that Mr. Armstrong had said "I can get people killed." The meaning to be given to the evidence of this conversation is a matter that I may have to consider when it comes to deciding this case, and for that reason, amongst others, I think it preferable that I make no further comment than to record the literal absence of specific evidence that Mr. Armstrong said "I can get people killed." I shall make p. 331 available to the press, and ask that it be returned some time later in the day. 10

MR. BAINTON: Q. Mr. Bovill, since one o'clock yesterday have you had any discussions with any of the counsel in this case representing Mr. Barton?  
A. No.

Q. Were you in Wentworth Chambers this morning?  
A. I was.

Q. For the purpose of seeing any particular person? A. No, not for the purpose of seeing any particular person. 20

Q. You just happened to be there by coincidence?  
A. No, I was not there by coincidence.

Q. What was your purpose in being there? A. To read the transcript.

Q. To read the transcript? A. Yes.

Q. Where did you go to read that? A. I read that in the chambers of Mr. Purvis.

Q. Might I ask you, did you do that because you wanted to read it, or because someone suggested that you should read it? (Objected to: allowed). A. I wished to read the transcript, and I was told that it would be available. 30

Q. It was at your request? A. I wished to read it.

Q. What was your reason for wanting to read it?  
A. I wanted to be sure that I was reported correctly.

Q. You thought that may not have happened? A. There may have been some errors, yes. 40

Q. Did you find any? A. I did find one.

Q. What was it? A. It was the name of "Armstrong" to be substituted for the name of "Barton" in one of the references.

Q. Are you able to tell us where that is? A. I could not tell you the page, but that is there, and there was one word "from" instead of "through". I would be able to find it again if I was given the transcript.

Q. Mr. Bovill, you personally contracted to purchase 30,000 shares in Landmark Corporation from 50

George Armstrong, or from A.E. Armstrong and Son?

A. I could not tell you which one it was that I contracted to purchase them from, but I did contract to purchase 30,000 shares.

Q. You personally contracted to purchase, 30,000 shares? A. Yes.

Q. At a price of 60-cents a share? A. Yes, that is right.

Q. And the price has become due? A. Yes, under these agreements, if they are in force.

10

Q. You have not paid it? A. I have not.

Q. Why haven't you paid it? A. Because I consider that the agreements are unenforceable as a result of duress, and I would say fraud.

Q. Who told you that? A. Mr. Barton told me that he had been under duress.

Q. Who told you that that could render your obligations unenforceable? A. I considered - I consulted with my solicitor, and was advised that, one agreement - the main agreement - Mr. Barton's agreement - being unenforceable, all were unenforceable.

20

Q. You took the view, did you, that you were not obliged to pay? You take the view that you are not obliged to pay for the shares? A. I do.

Q. You take the view that you would resist any attempt to enforce payment? A. I would.

Q. You have not done anything yourself to try and set the agreement aside? A. No, nothing. This I consider redundant.

30

Q. Will you look, please, at the letter of 16th December, 1966 written by the managing director of Landmark Corporation to the managing director of United Dominions Corporation, which is part of Exhibit 7? A. Yes.

Q. Were you consulted before that letter was written? A. I am looking at the moment at a letter of 16th December.

Q. Yes? A. Yes, I was.

40

Q. Did you concur in the sending of that letter? A. Yes, I did.

Q. Did you consider the letter as an accurate statement of the facts in it? A. It was an accurate statement of the facts at the time so far as I understood.

Q. Do you say that that letter which you now have in front of you - the single page letter without any enclosures of 16th December - was, when it was written, true and correct in all respects? A. As I understood it, yes.

50

Q. You understood, then, that the company was in the course, on 16th December, of making other arrangements for finance? A. I believed that Mr. Barton was, yes.

Q. You believed Mr. Barton was? A. Yes.

Q. What were the other arrangements you believed were being made? A. There were so many attempts at arrangements at that time I could not tell you. I have forgotten. 10

Q. Tell us what other attempts to arrange finance were being made in December, 1966, would you?

A. I recall Mr. Barton approaching the bank, and reporting that. I recall no others.

Q. The approach to the bank was noted in the Minutes? A. I don't remember.

Q. You don't? A. No.

Q. Which bank do you recall being approached?

A. I recall the Bank of New South Wales as being the bank. That would be the only one, I think that would have been approached. 20

Q. That is the only one approached? A. That would be the only one I think that would have been approached.

Q. That letter of 16th December that you have in front of you was written a mere three days after the letter of 13th December in the same bundle threatening action against U.D.C. for specific performance of the agreement to lend? A. This letter was written after a discussion I had with Mr. Beards- 30 more of U.D.C., I believe, and probably Mr. Honey as well.

Q. Would you mind answering the question that I ask you, and not volunteering information I do not ask you? A. Yes.

Q. Do you recall having told us yesterday of a letter of 13th December which Mr. Barton wrote and which you disapproved of when you saw it? Do you remember telling us of that letter yesterday? A. Yes. 40

Q. Three days later the letter which is there in front of you was written? A. Yes.

Q. And it states categorically that the company is making other arrangements for its finance?

A. Endeavouring to make other arrangements was my impression, yes.

Q. That is not what the letter says, is it? That is not what it says? A. No, it is not.

Q. You concurred in sending it? A. I knew of its going and I did not oppose it. I understood - 50

Q. You said three minutes ago you concurred in sending it? A. Yes.

Q. Do you want to change that? A. No.

Q. You concurred in making the statement to U.D.C. that the company no longer required its money, because it was making other arrangements. You concurred in that? A. I did.

Q. You told us yesterday that it was a matter of extreme importance to be sure that the money necessary to repay George Armstrong and Son Pty. Limited should be found? A. That is right.

10

Q. You accepted Mr. Barton's assurance that it could be found? A. I did.

Q. And the source you believed it would come from was United Dominions Corporation? A. I did at the time.

Q. And nothing occurred, you told us yesterday, to change that view until after 16th December?  
A. I must confess, Mr. Bainton, that my recollection of the time-table is hazy. To the best of my recollection the letter of Mr. Barton's that he wrote, I think on 13th December - I did not expect to get the finance, and when told that we were not to get it by telephone, and after my further conversations with Mr. Beardsmore and/or Mr. Honey I thought that the only way to get the finance was to virtually take back what we had said on the 13th, and that was our attempt to do so.

20

Q. Are you saying you were told by some representative of U.D.C. between 13th and 16th December that that company would not provide finance? A. I cannot tell you how I came to believe it. I came to believe it; I cannot tell you how I came to believe it. It may have been through Mr. Barton or through Mr. Honey and Mr. Beardsmore.

30

Q. Could it have been from any other source than Mr. Barton or some officer from U.D.C.? A. I can't think so.

Q. So that when you concurred in writing that letter it was your belief that U.D.C. had made it clear that the money would not be forthcoming from that company? A. Not until we withdrew our letter of 13th December. This was our attempt to withdraw it. I cannot recall the details too clearly. I think that this letter may have been prepared by our solicitors.

40

Q. Are you saying that someone had said on behalf of U.D.C. that if the letter of 13th December was withdrawn the money would be forthcoming? A. Not would be forthcoming, but there was only one way it could be forthcoming, was to withdraw.

50

Q. That it might be forthcoming? A. Yes, might be. I thought it might be.

Q. So that the method of withdrawing the demand for money is to write a letter saying that you no

longer want it? The method of withdrawing the demand is to write a letter saying you do not any longer want it? A. That was the form I understand we were advised to write the letter in. I can't recall it, I'm sorry.

Q. Will you please tell me what were the other arrangements in your belief mentioned in that letter? A. I understood that Mr. Barton had had discussions with other sources, and I believed it was a bank. 10

Q. So that you have really gone entirely on what Mr. Barton told you? A. That is right. On that occasion, yes.

Q. Did you yourself make any investigations or inquiries? Did you make any independent investigations or inquiries yourself? A. I did not think that any independent investigations or inquiries I could make with the bank would be helpful. I had already made my own independent inquiries with U.D.C., and Mr. Honey and Mr. Beardsmore, as I have already said. 20

Q. The letter referred to "other arrangements." That is other than U.D.C.? A. Other than the previous arrangements on which we acted to demand moneys.

Q. Do you see the last paragraph of the letter where it speaks of other arrangements? A. Yes. 30

Q. Do you say that that paragraph, where it speaks of other arrangements, may be referring to a fresh arrangement with U.D.C. Was that your belief? A. I told you that my impressions surrounding the letter are hazy, except that I do know that it was a letter after my calls to these people. I cannot really throw any more light on it

Q. And what is in it has its source in what Mr. Barton told you, or what Mr. Barton himself did? A. That is my belief, yes. 40

Q. Do you know of any other arrangement for finance being pursued by Mr. Barton at that stage than the approach to U.D.C.? A. Mr. Barton had made other approaches in the past. I could not tell you if I knew of any he was making at this particular point of time, or not.

Q. When you concurred in writing a letter saying other arrangements were being made you did not have the faintest notion what they were? A. I did. They were the bank. I did know at the time, but I don't remember now. 50

Q. Did Mr. Barton tell you that the bank would lend enough money to replace the U.D.C. finance? A. I tell you I don't know. He may have said so. If I had not been of that opinion I don't think I would have approved of the letter at the time. Of course, things changed so quickly.

Q. There was a large amount of money involved. \$450,000? A. Yes.

Q. An amount of finance that you do not usually expect to be able to arrange overnight? A. You don't.

Q. And do you think on 16th December the Board of Directors of Landmark would have been writing to U.D.C. saying they did not want its money without having made some firm arrangements? A. We had hoped that U.D.C., on receipt of this letter, would reconsider the matter, as it has been indicated to us that this could happen. That is the best I can recall of the times. 10

Q. You told me initially that the letter was true and correct? A. Yes.

Q. Is that still your view? A. That is still my view.

Q. Was it an attempt in effect to try and mislead U.D.C.? A. I beg your pardon? 20

Q. Was it an attempt to try and mislead U.D.C.? A. Not at all.

Q. So that in fact other arrangements were being made? A. Were being attempted to be made.

Q. Were being attempted to be made? A. Yes.

Q. That is not what the letter said? A. Mr. Barton was searching around desperately trying to get money when he wrote this letter with my concurrence. I won't deny that. But it was also at the instigation of U.D.C. 30

Q. Was it your belief then on 16th December that finance would be arranged to pay out George Armstrong and Son Pty. Limited? A. I had that hope on 16th December that finance would eventually be forthcoming, yes.

Q. And did you at any time see reason to change that belief or hope? A. Yes.

Q. When was that? A. I think it would be about February, after the meeting that we had with the U.D.C. board. 40

Q. In about February? A. Yes, I think it was February. It may have been January. It was in response to a letter. It was a meeting that resulted from a letter I had written under the dictation of Mr. Millar some time in December.

HIS HONOUR: Q. Under the dictation of Mr. Malouf? A. Mr. Millar. Under the dictation of Mr. Millar.

MR. BAINTON: Q. After the deed of 17th January? A. Before. The letter I wrote to U.D.C. 50



Q. The meeting? A. After 17th January.

Q. Did you at any time yourself ever believe the money would be obtained from any other source?

A. I did.

Q. When did you form that belief? When did you form that belief, and what was the source you had in mind? A. I had hoped that the moneys could come from C.A.G.A.

Q. When did you form that belief? A. Sometime after 17th January. Mr. Barton was negotiating with them. 10

HIS HONOUR: Mr. Bainton, I think you and Mr. Bovill are at cross-purposes. You asked him when he had formed the belief, and Mr. Bovill has replied that he had hopes.

MR. BAINTON: Q. Perhaps I had better go back to the beginning. I asked you if at any time you believed finance would be obtained from any other source, and you said that you had hopes. Do you distinguish between the two? A. I would say that I had hopes, which came to beliefs, that C.A.G.A. - 20

Q. And when did you first acquire these hopes, and when did they turn to beliefs? A. They turned to beliefs when C.A.G.A. sent two of their legal representatives to Surfers' Paradise - to Queensland rather - to Brisbane - and went through the various deeds at the Lands Office and came back, and also had actuarial valuations of our mortgages. Then I believed that the money would come. 30

Q. When was that? At what period was that?

A. It would have been after 17th January. I could not tell you just when, but it would have been after 17th January.

Q. Did you acquire hopes or form beliefs that money could be obtained from any other source?

A. I hoped it would be coming from Stocks and Holdings during the time that Mr. Barton tried to negotiate there.

Q. When did you form that hope? A. Also after 17th January. 40

Q. After 17th January? A. Yes.

Q. How long after, do you say? A. I should think April, May. I would not have any idea.

Q. That was a result of Mr. Barton's activities?

A. Yes.

Q. Any other source? A. We did endeavour to obtain contact with Mercantile Credits. That proved abortive. I don't believe they would ever provide us with the money. The only great hopes I had were C.A.G.A. and Stocks & Holdings. 50

Q. You at some stage believed that Stocks &

Holdings would provide the money? A. I did believe it was possible.

Q. Did you carry on negotiations? Did you carry on negotiations with them? A. No.

Q. So that your hope extended from what Mr. Barton told you? A. Yes, that is right.

Q. And you accepted what he said? A. I accepted what he said.

Q. You told us yesterday that on 22nd December, 1966 when Mr. Grant came to the meeting of the board of Landmark to put a proposal you did not accept for one moment what he was putting? A. That is right. 10

Q. Your reason, among others, was because you had then come to believe that United Dominions Corporation would not provide money while Mr. Armstrong remained connected with the company? A. Yes.

Q. And you had held that belief for some days? A. Yes. 20

Q. Mr. Armstrong and companies which he controlled were probably - were certainly among the largest holders of shares in Landmark? A. That is right.

Q. Now do you recollect whether or not this letter which I show you, which is part of Exhibit 14 - do you remember that letter? A. Yes. There is something been rubbed out. I don't know what it means. I assume that it has nothing to do with the letter. 30

Q. Just assume that for the moment? A. Yes.

Q. That is the letter of 16th December? A. Yes.

Q. Or copy letter of 16th December, from the Secretary (Companies) of the Stock Exchange to the managing director of Landmark? A. Yes.

Q. Do you recall whether there was any discussion amongst the directors of Landmark Corporation as to the reply which should be given to that letter? Was there any discussion in regard to that? A. Yes, there was. 40

Q. Among whom were the discussions held? A. They would have been held I presume from recollection - from my recollection Mr. Cotter, Mr. Barton and I would have discussed it. I cannot recall if Mr. Armstrong was there, or not. He may have been. I don't think so.

Q. Do you recall whether it was ever discussed at a formal meeting of the Board? A. I don't recall.

Q. Will you look at the reply that was sent, and tell me if the sending of the reply had your concurrence? A. Yes. I recognise that letter. 50

Q. Was the sending of that letter done with your concurrence? A. It was.

Q. Did any director with whom it was discussed so far as you are aware dissent from sending that letter? A. They didn't.

Q. Did any director dissent from the expressions in the letter? A. No.

Q. So that that letter, you say, went with your concurrence? A. It did. 10

Q. And, so far as you are aware, with Mr. Barton's concurrence? A. It did.

Q. And Mr. Cotter's? A. Yes.

Q. When it was sent did you believe that the statements made in it were correct? A. I did.

Q. Where, in your view, was the money to pay the dividend to come from? A. Mr. Barton had made arrangements so far as I recollect with either C.A.G.A. or with U.D.C. to borrow certain money on certain securities. This money eventually was used to buy Mr. Armstrong's Paradise Waters holdings - not the dividend. 20

Q. So that when the letter was written it was your firm belief that the dividend would be paid out as stated in the letter? A. Yes.

Q. Out of money borrowed? A. Yes. Having had legal advice that such action was justified.

Q. May I take it it was your view, as director, that it was proper, notwithstanding the tight liquidity situation of this company, to borrow money to pay the dividend? A. Yes. 30

Q. Notwithstanding that at that time the company was unable to pay a considerable number of its unsecured trade creditors? A. That is right. At this point of time, yes.

Q. And Mr. Armstrong was pressing? A. Yes.

Q. Pressing for repayment of \$450,000 due to him? A. Yes.

Q. And it was your belief at the time that letter was written that the arrangements to provide that money from U.D.C. had broken down? A. At the time that the letter was written the arrangement with U.D.C. had broken down I believed because Armstrong was still associated with the company, yes, and on the Board. 40

Q. When you concurred in the letter of 20th December was it your belief that steps were in train to get Mr. Armstrong out of the company? A. No, they were not.

Q. They were not in train? A. No. 50

Q. So that it was your view that he was likely to remain a shareholder and director? A. I thought he would remain a shareholder, but I thought that he would resign as a director. I thought that we would be able to persuade him to get off the Board in the interests of the company. I hoped he would.

Q. Without paying the money due to him? A. I thought we would eventually be able to arrange with U.D.C. to get moneys to pay over to him, At that time I did. 10

Q. When you concurred in writing a letter saying that the dividend would be paid by a particular date in January may I take it, for a start, you were aware that the Stock Exchange would cause that statement to be published in the press?

A. I was.

Q. You were aware of that? A. Yes.

Q. So that in effect you were informing the shareholders of Landmark that the dividend would be paid? A. Yes. I believed it would be. 20

Q. And you were making that information available not only to people who then held shares, but to people who may be likely to buy them? A. Yes.

Q. Inter alia, on faith of that statement? A. Yes.

Q. You made it at a time when money had to be borrowed for that purpose? A. Yes.

Q. And when arrangements - if you can call them that - to get money to pay out George Armstrong and Son Pty. Limited were most tentative? A. That is right. We did. It was an error of judgment. I can say that now. 30

Q. No more than an error of judgment? A. That is what I would call it.

Q. What about the declaration of the dividend, or the recommendation of the directors to declare a dividend made to the annual general meeting? Do you think that now was an error of judgment too? A. In hindsight I think it was, but at the time I don't think it was an error of judgment. If the money had come through as promised I think everything would have been all right. 40

Q. When, with the aid of hindsight, did you come to recognise that had been an error of judgment?

A. I would say when U.D.C., or when our final attempt to provide finance in the first part of 1967 failed. That is when I considered it an error of judgment.

Q. January, February, March? A. It would be, I think, when we could see that we were not going to get finance, I still considered we should pay the dividend, once having declared it, but if you ask me would I, in hindsight now, or at any time in 1967, have not recommended it, I would 50

say not have recommended it if I had known there would have been any trouble in finding finance.

Q. You told us there was a meeting of representatives of U.D.C. after the deed of 17th January, 1967 had been signed? A. That is right.

Q. After that Mr. Armstrong ceased to be a director? A. After the meeting of U.D.C.?

Q. He ceased to be a director of Landmark and its subsidiaries on 18th January? A. Yes.

10

Q. On 18th January all shares which either Mr. Armstrong held himself or which were held by companies with which he was associated were transferred? A. Yes.

Q. So that he ceased to have any shareholding interest? A. Yes, that is right.

Q. Ceased to be on the Board? A. Yes.

Q. You had a meeting with U.D.C. after all that happened? A. Yes.

Q. And the money was not forthcoming? A. Yes, that is right.

20

Q. Now, did you at that point of time form the view that U.D.C. would not provide it? A. I formed the view that U.D.C. were unlikely to provide it at that time except possibly in partnership with some other finance company, but I thought that the chances at this time were fairly slim.

Q. The probabilities were against it? A. The probabilities were against it, yes.

Q. And at that stage - that is some time in the second half of January - you had not formed any belief or entertained any hope that the money could be obtained either from Stocks & Holdings or from C.A.G.A.? A. Yes. We had other irons in the fire, if I may put it that way. I think Mr. Barton was also approaching these other companies, and had hopes. That is the best of my recollection.

30

Q. Mr. Barton had been approaching other people?  
A. That is the best of my recollection, yes.

40

Q. That was what he reported back to you, was it? A. Yes.

Q. You told me some time ago that the only beliefs you formed of the probability of money being forthcoming were formed in relation to C.A.G.A.?  
A. And Stocks & Holdings.

Q. And Stocks & Holdings? A. Yes.

Q. You formed these beliefs subsequently to January, 1967? A. I cannot tell you the timing, Mr. Bainton. I wish I could, but I cannot.

Q. In between, as I understand it, other approaches were being made to various people by Mr. Barton? A. Yes, that is right.

Q. He was coming back and telling you that he was hopeful it might be successful? A. Yes.

Q. And you were accepting these statements?  
A. Yes, I was accepting them.

Q. And you yourself were reasonably confident that something would happen? A. Hopeful. 10

Q. Hopeful? A. Yes, I was hopeful.

Q. And Mr. Barton, may I take it, was also hopeful? A. I took it from his appearance and from his words that he was.

Q. Confident, too? A. I thought so, yes.

Q. Would you look, please at the two documents comprising Exhibit 15? They are the letter of 24th January from the Stock Exchange, and Landmark's reply of 25th January? A. That letter may have been written before our meeting - our joint meeting with 20 U.D.C. I could not tell you whether it was or not.

Q. If it was not, the reference must have been to negotiations with someone other than U.D.C.?  
A. Yes, that is right.

Q. With whom could those negotiations have been at that stage, do you know? A. I could not tell you. I have not got a time-table of these negotiations in my head, Mr. Barton would know. I would not know.

Q. When the letter was written may I take it that you believed the contents to be true? A. Oh, yes. 30

Q. And the source of your belief, may I take it, was what Mr. Barton had told you? A. Not necessarily at that time. If this was written prior to our meeting with U.D.C., I would have known all about the forthcoming meeting with U.D.C. having arranged for what I considered was the pre-requisite in getting rid of Mr. Armstrong. There fore at this time I would have been of the belief that these re-negotiations would take place. 40

Q. That letter is dated seven days after you had got rid of Mr. Armstrong? A. Yes.

Q. Is it likely, in the state that the company was then in, that it would let seven days go by without an approach to U.D.C.? A. I believed that the meeting was being arranged, and I could not tell you whether we had the meeting before or after 25th January. But certainly we were endeavouring to renegotiate the finance from then on. We were doing everything we could to renegotiate, and I think that when this letter was written we had expected them - whatever ones were in train at that time - to be completed virtually as is said in the last paragraph of the letter. 50

Q. The belief you entertained in the last paragraph of the letter arose either from your own discussions with representatives of U.D.C. or from what Mr. Barton told you? A. It would have, yes.

Q. Or from both? A. Could have been from one or other or both.

Q. I don't suppose it is conceivable, is it, that U.D.C. could have been saying one thing and Mr. Barton quite another at that stage? A. I can hardly think that. 10

Q. That would have been a remarkable state of affairs? A. I would not think that that would be happening. I have never found Mr. Barton to tell me a lie on this sort of thing, or any other.

Q. You in January were hopeful of getting finance?  
A. Yes.

Q. Probably from U.D.C.? A. Yes, probably.

Q. And so was Mr. Barton? A. I would think he was, yes, probably. I don't know. 20

Q. Did he say anything to you to indicate that he was not? A. The only time Mr. Barton said that he did not think we would get finance - and I never heard him say anything and go back on it - was at time he wrote the original letter to U.D.C. when he said he thought things were finished.

Q. That was on 13th December? A. Yes, that is right.

Q. You said yesterday he never repeated that?  
A. I did not hear him repeat it. I never heard him repeat that. He never went back on it, either. 30

Q. When there was a discussion as to what reply should be made to that letter of 25th January, nothing was then said by Mr. Barton to indicate disagreement with the contents of the letter?  
A. No

Q. Or any belief on his part that the negotiations would not be successful? A. No.

Q. Or any belief on his part that the money would not become available? A. No. 40

Q. Will you look, please, at the two letters which appear in the company's Minute Book? The Stock Exchange letter of 13th February and Landmark's reply of 3rd March? A. Yes, that is right. I recognise that letter.

Q. Was the receipt of the Stock Exchange letter discussed between yourself and Mr. Barton? A. Yes.

Q. And some time went by before a reply was sent? A. Yes. 50

Q. Was there some particular reason for the delay? A. We hoped we would be able to make an announcement and that the dividend would be paid on a definite date. I cannot even recall whether we did not hope that we would be sending out cheques, or send out cheques and make the announcement at the same time.

Q. The cheques were made out at the annual meeting?  
A. Yes, that is right.

10

Q. You delayed replying to the Stock Exchange letter of 13th February because you were hopeful of being able to say "The cheques are going out"? A. Yes. And I seem to recall that - I am not quite sure of that - I do remember that there was some delay here, because there was hope that something would be finalised.

Q. Before you could pay the dividend you had to raise money from some outside source? A. Yes.

Q. You were hopeful during this period that it would be arranged for in a very short space of time?  
A. I was.

20

Q. Were you yourself negotiating provision of this money? Were you yourself negotiating? A. No, apart from talks with U.D.C. I was not negotiating with C.A.G.A. or Stocks & Holdings.

Q. Mr. Barton was doing that, was he? A. Yes, Mr. Barton was doing that.

Q. Your optimism, if I can so describe it, extended from what Mr. Barton told you? A. Yes, it would.

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Q. He was reporting that he thought the money would be available at any tick of the clock? A. I cannot say that he actually said "I think money will be available". I think his report would have been "Negotiations are proceeding quite well," or words along those lines. "They are wanting this; they are wanting that". "This is what is happening". I can't recall his exact words, but I certainly gained the impression that we were justified in writing that letter.

40

Q. That was the impression he gave you? A. Yes.

Q. He certainly did not give the contrary impression, that there was no hope of getting money?  
A. No. He was working very, very hard to get it.

Q. Do you recall on 22nd December, 1966, after the Board had rejected the proposals which Mr. Grant put to them, that there was some further discussion among the members of the Board present? A. There was, yes.

50

Q. As at 22nd December, 1966 the company was in quite urgent need of money to meet its current commitments? A. It was.



Q. Apart from the \$450,000 due to George Armstrong and Son? A. Yes.

Q. Do you recall that also interest was then overdue to United Dominions Corporation? A. That is right.

Q. And that company was pressing for payment of the interest? A. I was not consciously aware that I was aware at that time that they were pressing for payment of the interest.

10

Q. You now know? A. I now know, yes.

Q. You must have been aware on 22nd December?  
A. Yes.

Q. You were aware that interest was due to them?  
A. Yes. It was due. I cannot say I knew it was due, but I knew that we had to pay them interest.

Q. Somewhere about \$60,000? A. I could not tell you the amount.

Q. It was a substantial amount? A. I cannot recall the amount.

20

Q. Not just a few dollars? A. I can't recall it. The literal amount I cannot recall. I know that there was interest owing to U.D.C.

Q. You can't recall whether it was mentioned in tens, hundreds, or thousands? A. I can't recall what the amount was.

Q. Do you remember any discussion as to how the money could be found to pay U.D.C.? A. Which money?

Q. Enough money to pay what was due to U.D.C.? Do you remember any discussion as to how that could be found? A. I can't recall that.

30

Q. You were present at the next meeting of the Board of Directors of Landmark which was held on 18th January, 1967? A. Yes.

Q. And was it the practice of the Board of Directors to have read, for the purpose of confirming them, the Minutes of the previous meeting? A. Yes, it was normally.

Q. Were they actually read, or was a copy circulated? A. A copy was circulated normally.

40

Q. So that by 18th January anyway you personally would have had a copy of the Minutes of 22nd December, 1966? A. Probably we received them at the time of the meeting, although I won't swear they were not circulated to us before then.

Q. At any rate, by the time of the commencement of the next meeting you would have had a copy of the Minutes of the preceding meeting? A. I would think so.

Q. Was it your habit to read the Minutes to see that they were accurate? A. In a normal meeting, yes. But on 18th January it was somewhat abnormal. I might easily have not done so.

Q. Would you mind looking at the Minutes of 22nd December, 1966, to see if they set out, so far as you can now recollect, the business of that meeting? On your present recollection is there anything in the Minutes of the meeting of 22nd December that does not accurately record what it purports to record? A. When you say "accurately" perhaps you can ask me any part of it I think is inaccurate. 10

Q. Is there any part you think is inaccurate? A. I think that sets out - as I have told you, I could not remember what happened after that meeting. Probably it more or less - we dealt with Mr. Grant's proposals, which I more or less put out of my mind. I assume if these were signed as correct - as a correct record on January 18th, as they were, that none of us, when it was fresh in our memory, dissented from them. 20

Q. Let me again put it to you that by the end of December, and particularly on the 22nd, Landmark Corporation was in urgent need of money? A. Yes.

Q. To pay its then current commitments? A. Yes.

Q. You had at the meeting rejected the proposal put by Mr. Grant? A. Yes.

Q. Which might have solved the problem? A. It might have also wrecked the company. 30

Q. You rejected it? A. Yes.

Q. Was there then pending any other proposal to provide money that you can now remember? A. Mr. Barton always had some proposal from which he could obtain moneys from some source or other, and usually did so. We had never experienced this before, and I had no reason to suspect that he would not be able to provide the money that I see here was owing. 40

Q. You had, I take it, personally a great deal of confidence in Mr. Barton's ability to find money when he said he would find it? A. I had.

Q. I would like you to look particularly at the statement in the Minutes that Mr. Barton said he would provide \$60,000 for the purpose of paying out to U.D.C.? A. I think he said he would be able to provide it.

Q. Would be able to provide it? A. Yes. I think that is what he said. 50

Q. Do you remember what he said about that? A. I think he was going to borrow some money on one of our properties. I can't recall which one.

Q. He was not offering to provide it out of his

own resources in any way? A. I can't recall if he was doing so. I think I would have remembered if he said he personally would lend the money. I can't recall it.

Q. It was going to be borrowed on a company asset?  
A. Yes.

Q. Did he indicate from where he would be likely to be able to get it? A. I can't recall it. I can't recall what asset it would be. There were so many assets being discharged and reborrowed on I can't recall it at the moment. 10

Q. Clearly enough it would not have been from U.D.C. that he borrowed it, because it was to pay it to them? A. He used to borrow from them to pay them by giving fresh securities. It could have been something of this nature. I can't recall what it was. He had so many different sources. I just can't recall where he was going to get it from.

Q. Your belief goes no further than this, that he said he would get it? A. Yes. 20

Q. And you had no doubt that, having said so, he would be able to get it? A. That is what I thought.

Q. That was 22nd December, 1966? A. Yes.

Q. And on that date you were quite confident that Mr. Barton would be able to find the money necessary to get the company out of its then current difficulties? A. Subject to Mr. Armstrong resigning from the Board. 30

Q. Of course, that was no part of any proposal that had been put at that stage? A. Not at that stage.

Q. That was something you had in your mind, and part of your belief? A. Yes.

Q. You did not carry it to the extent of asking Mr. Armstrong would he resign? A. I think Mr. Barton did, at that meeting. I had, I think, done it on several occasions before. I can't recall on how many occasions. One or more occasion - I can't recall how many. 40

Q. Mr. Armstrong had made it clear, hadn't he, that he was not going to resign? A. That is right. I hoped common sense would prevail on him and that he would do so.

Q. You thought that, notwithstanding \$450,000 was owed to a company with which he was associated and that he and these companies were substantial shareholders - probably the largest in the company - that he would resign from the Board. (Objected to: allowed). A. I thought that when he did so the moneys would be provided and available to pay him out. 50

Q. And the troubles would be over? A. Yes.

Q. And you thought you would be able to persuade him to take this course? A. Yes.

Q. Did you have these thoughts in your mind when you, together with Mr. Cotter, sent off this letter of 28th December, which, I think, is part of Exhibit 16? No, I am sorry, it is part of Exhibit 7?

A. That letter is the letter I referred to previously, dictated by Mr. Fred Millar.

Q. When you wrote that letter you had those beliefs you had told us of. A. I had. Possibly "hopes" would be the better word. 10

Q. And that is the letter that led to the subsequent discussion with representatives of U.D.C.?

A. Yes.

Q. Which did not take place until after 17th January? A. Yes.

Q. Was the writing of that letter which you now have in front of you discussed with Mr. Barton?

A. It was. 20

Q. And what were his views about approaches to U.D.C. at that stage? A. He was quite happy that we should write this letter, as Fred Millar had dictated it.

Q. You would not have written it unless you thought it would do some good? A. I thought it might prevent some harm.

Q. And do some good? A. In preventing harm I regarded it as doing good.

Q. Getting some money? A. Staving off the Receiver. Staving off the action they were taking, and getting us around a table, rather than across solicitors' desks. 30

Q. And getting you the extra money you needed? A. Getting us extra money eventually, yes.

Q. Did Mr. Barton concur in this view? A. What?

Q. Did he concur in this view that this letter may bring about some of these results? A. It could not do any harm. This was his view.

Q. That is what he actually said? A. I cannot recall what he said. I think I phoned him at Surfers' Paradise and said "I have this letter dictated by Fred Millar. Do you agree?" I can't recall what he said; all I know is that he did not dissent from the letter. 40

Q. He did not dissent from it? A. No.

Q. He did not say it was a waste of time, or anything like that? A. He could have easily said so, but he did not dissent. He was not in opposition to it, anyway. 50

Q. You were still at that stage quite confident in his ability to provide money? A. At that stage I was quite confident in the integrity of U.D.C. to go through with their undertaking to us, and of Mr. Barton's ability.

Q. Still confident in Mr. Barton's ability to procure the finance necessary to carry the company on? A. That is right.

Q. And I take it nothing Mr. Barton ever said to you throughout this period caused you to doubt him? (Objected to). 10

Q. Nothing Mr. Barton said to you from December, 1966 until ultimately the company did fail caused you to doubt him; to change your belief? (Objected to: rejected).

Q. You had this belief in December, 1966? A. I had the belief that U.D.C. -

Q. You had the belief that you have told us in Mr. Barton's ability to provide the necessary finance in December, 1966? A. I believed he would do it. I believed if he applied himself to it he would do it. 20

Q. You continued in that belief until June, 1967, or close to it? A. When you say "continued in that belief", my hopes did not die until that time, but my hopes were waning very rapidly. I will put it that way.

Q. Your hopes of getting money, your confidence in Mr. Barton's ability, or both? A. My hopes of getting money. Not my confidence in Mr. Barton's ability. 30

Q. Nothing Mr. Barton said to you in December, 1966 or January, 1967 shook your confidence in any way? A. In 1966 my confidence was shaken when he - when I criticised his letter to U.D.C. of 13th December, when he said he thought it was finished. I was shaken. But when he wanted to resign I told him how he could not - that we had got to get our back into this and not let the shareholders down. I never heard him say that he was not going to do it, or his confidence was shaken. 40

Q. He did not resign, and your confidence was restored? A. In Mr. Barton, yes. He was wavering then. He wavered a couple of other times.

Q. Do you recollect being present at a meeting of directors of Landmark Corporation on 16th May, 1967, in which, among other things, the Board discussed a letter, which, on 28th April, Mr. Barton had written to the Manager of the Bank of New South Wales. A. Yes. 50

Q. And I think perhaps you might like to see the letter before I ask you anything about it. I don't necessarily want you to read it in full?  
A. May I refresh my memory on points in the letter?

Q. Yes, you may. If you would like to read the letter through, please do. It would be enough at the moment if you simply assured yourself in your own mind that you know the letter? A. Yes, I know the letter.

Q. It was disoussed, may I take it, at a meeting of directors? A. Yes, it was.

Q. Did any director at that meeting object to anything that was said in the letter? A. No. 10

Q. Did anybody suggest that anything that was in the letter was misleading? A. No.

Q. Did Mr. Barton in particular say to anybody at the meeting that he had no confidence whatever in the approach to the bank; that he was making it as a matter of form, or something like that? A. I don't recall him saying that, but I think he did say he did not think that the bank would come through with any money; we had to try this - it was just another avenue. 20

Q. It was put forward by Mr. Barton, wasn't it, as one of his genuine attempts to procure finance? A. Yes.

Q. And one that he thought had some prospects when he made it? A. Yes.

Q. If you will look at the letter - I think it may be the fourth page: I am not sure - there is a reference to the asset backing of the shares in Landmark at the time the letter was written? A. Yes. 30

Q. Do you see that reference? A. Yes, I see it.

Q. Did you, when you considered that letter at the meeting of 9th May, consider that statement to be a truthful and accurate statement? A. As a going concern, yes.

Q. Well, what was your understanding of the meaning there of the expression "asset backing?" What was your understanding of the meaning there? A. Asset backing on my understanding in that case is your assets less liability - the nett tangible backing; what they are worth in the company's books, as a fair realisable value. 40

Q. That may not be the same? A. What they were on the company's books as being fair value.

Q. You thought then that the assets in the books were a fair value? A. A fair value as a going concern.

Q. And would realise, as a going concern, at the figure in the books, as at 28th April, 1967? A. Yes.

Q. And on that basis the asset backing of the shares was par at least? A. About that, yes. 50

Q. May I ask you what was the source of your belief? A. The figures that had been prepared by

the company's secretary and the auditors. It had only recently been audited, and had been the subject of considerable checking and debate.

Q. The auditors and the secretary would not have valued assets, would they? A. No.

Q. Did you yourself form an opinion as to the value of the assets? A. The assets had been valued by both Mr. Barton and Mr. Armstrong on previous occasions. Sales which had been made had been deducted, and purchases added on, and that was the end result. I think there is a schedule of the assets at the end of the letter. 10

Q. I didn't think you had much confidence in Mr. Armstrong? A. His ability to value assets? I think his knowledge of real estate values, when he wants to apply it, is acceptable.

Q. Is acceptable? A. Yes.

Q. The valuation which you mentioned he made and Mr. Barton made you regarded as an acceptable valuation? A. The one that they made some months previously, as the result of which an announcement was made to the Stock Exchange that the asset backing was over a dollar - that I accepted as a reasonable valuation. 20

Q. That was in the second half of 1966? A. I think it would be.

Q. Prior to November? A. Yes, I think it would be prior to November. There had been no change for the worse, and I thought it would be fairly well in line. 30

Q. Among other things, work on the Paradise Waters project had been at a standstill for about four months when that letter was written, hadn't it? A. I don't think that you'd be correct there. I don't think the work came to a stop at Paradise Waters until some time in 1967. I could be wrong. As I say, my time-table is poor.

Q. That letter is 28th April, 1967? A. 1967, yes.

Q. Up until that point of time the endeavours to arrange finance had not been successful? A. That is right. 40

Q. There was no money to pay interest to U.D.C.? A. That is right.

Q. Or the contractors? A. Yes.

Q. And the contractors had not been paid for a long time? A. That is right.

Q. You are not suggesting, are you, that they were working on and on without payment? A. I cannot recall when the work actually stopped on Paradise Waters, but that was put to the bank 50

as the situation of the company as a going concern after discussions with the bank - with Mr. Dobbie and Mr. Richardson, I think - which I attended.

Q. Was it your belief in 1967 that the value of the company's assets on a going concern basis had not deteriorated since the middle of 1966 - the second half of 1966? A. The actual value of the company's assets I didn't think had deteriorated.

Q. On a going concern basis? A. On a going concern basis. 10

Q. You discussed this with the other directors? A. Yes.

Q. Had any other director expressed a contrary view? A. No, not to my recollection.

Q. You would have recollected an expression of a contrary view on that matter, surely? A. I would have.

Q. Mr. Barton did not disagree? A. No, not to my recollection. 20

Q. Well, again - A. If Mr. Barton had had a contrary view I don't think this letter would ever have been written.

Q. If he had ever told you he had a contrary view you would not have been a party to sending it? A. I would not. You are quite right.

Q. May I take it that there is no doubt in your mind that Mr. Barton never did indicate a contrary view to you? A. No.

Q. Indeed, he said clearly enough to you more than once, I suppose, that the letter was his view? A. Yes. 30

Q. Would it concur with your recollection that the letter you have just been looking at of 28th April was a request for temporary overdraft accommodation? A. Yes, it was.

Q. Do you recollect that in the letter the bank is being informed of negotiations for what might be termed long-term finance as against a temporary arrangement? A. Yes.

Q. The statement appears, inter alia, that the company was then negotiating with U.D.C. for it to finance the full development? A. Yes. 40

Q. And that U.D.C. had indicated that it was looking for a partner which would contribute dollar for dollar? A. Yes.

Q. Was that piece of information something you had learned from Mr. Barton before you had sent this letter? Had it been discussed amongst the directors? A. Yes, I think it had.

Q. Had Mr. Barton indicated whether he thought it was likely to eventuate? A. Yes, he did. He 50



told me negotiations were in train, and I therefore interpreted this as an indication that he had hopes that it could go through.

Q. The statement also appears that negotiations with other finance companies are proceeding satisfactorily, but no final decision has yet been made?

A. Yes.

Q. Again, would that fact have been reported to you from time to time by Mr. Barton? A. He would have told me of the negotiations, yes. He would have told me of the negotiations.

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Q. And it was his belief that they were proceeding satisfactorily? A. He may have said that. I don't know what his belief was. I would have gathered the impression that that was the case, that they were proceeding satisfactorily.

Q. That is what he said? A. What? I cannot say what he said. I gathered the impression from him that they were proceeding satisfactorily, and I believed it.

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Q. You got the impression that he believed they were proceeding satisfactorily? A. Yes.

Q. And that indicated to you that there was a prospect of success? A. A probability.

Q. A probability of success? A. Yes.

Q. There were more than one of these other finance companies? A. Yes.

Q. Do you remember who they were? A. There was Commercial and General Acceptance and Stocks & Holdings who, I believe, were negotiating with Australian Guarantee Corporation. I could be wrong there. That is only my understanding. I believe also they may have been having discussions with Industrial Acceptance, but I don't know that for a fact. That was my impression, that they were.

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Q. You were not taking part in the negotiations? You were not conducting any of the negotiations yourself? A. No.

Q. Mr. Barton was doing it all? A. Yes.

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Q. Do you recall also that in the letter the bank was informed that "verbal arrangements have been made with Stocks & 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 of the profits."

A. I do recall that, yes.

Q. Again, that would have come from Mr. Barton?  
A. Yes, that is right.

Q. Did he indicate the view that he thought there was probability of success? A. I was optimistic that it would come to fruition. I don't

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know whether I was unduly optimistic. I gained this impression from what Mr. Barton said, or from what he inferred. I was certainly optimistic that it would take place. I don't know whether or not I was unduly optimistic, but I was certainly optimistic it would take place.

Q. Your optimism was from what Mr. Barton said? The source of your belief came from Mr. Barton?

A. Yes.

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Q. The letter went on 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. When you came to consider this letter did you agree with that statement yourself? (Objected to witness retired from Court whilst argument ensued. Witness returned into Court (Question allowed).

The question that I asked you was whether or not the statement in the letter to the bank - the particular statement in the letter to the bank that "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" accorded with your personal belief? A. That accorded with my personal belief at the time, yes.

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Q. Did it accord with what Mr. Barton's belief was, so far as you could gather from what he said to you? A. I gathered that Mr. Barton concurred in having the letter written and later concurred in its contents.

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Q. Not very long before that letter was written some litigation between Paradise Waters (Sales) Pty. Limited and other subsidiaries of Landmark Corporation as plaintiffs and Southern Tablelands Finance Co. Pty. Limited as defendant had been settled? A. Yes.

Q. I think you were aware of that litigation?

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A. I was aware of the litigation, yes.

Q. You knew what it concerned? A. Yes, I knew roughly what it concerned.

Q. The substantial question was whether or not Southern Tablelands Finance Co. Pty. Limited was entitled to immediate repayment of the full amount of the mortgage? A. Yes, that is right.

Q. That had been granted on 18th January, 1967?

A. That is right, yes.

Q. And I think you were aware that the dispute was settled? A. Yes.

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Q. And aware, generally speaking, of the terms of settlement? A. Yes.

Q. I think you were in fact present in the Chambers of Mr. Deane? A. I was.

Q. When the settlement was arranged? A. Yes.

Q. Let me put this to you directly: didn't Mr. Barton, in the course of that conversation tell Mr. Deane for him to pass on to counsel for Southern Tablelands Finance Co. Pty. Limited that he was quite confident that the principal amount of mortgage, \$300,000, could in fact be paid on or before 30th June, 1967? (Objected to; allowed). 10  
A. I don't recall it. I don't remember it. I don't remember him telling Mr. Deane anything along those lines. He may have done so, I won't say that he didn't, but I don't remember him telling Mr. Deane anything along those lines.

Q. So far as you could observe from what he was saying to you as one of the directors at that time, was he expressing any doubt that the company could repay the money when he was promising to do so? 20  
A. My recollection as director was that if we did not undertake to settle by the 20th June we were to lose the case, and we would have to settle immediately. That is my recollection. I cannot go any further than that.

Q. The settlement required the money to be repaid on or before 30th June, 1967? A. That is right.

Q. And that obligation was being undertaken by the directors of Paradise Waters (Sales) Pty. Limited and Landmark Corporation as guarantor? 30  
A. Yes.

Q. Well now, did Mr. Barton at any time express to you any doubt that that obligation could be discharged when it fell due? A. I cannot recall him having done so. Otherwise - I can't recall him having done so, no. That was the way to do it - it would give us time to get the money.

Q. Did you yourself have the view that it could be done by 30th June? A. What date was this on?

Q. 30th June? A. What date was this on? 40

Q. Some time in April, before the letter was written to the bank? A. Yes, I would have thought by April we could have done so.

Q. Nothing Mr. Barton said or did to you prior to that time gave you any reason to doubt his confidence that it could be done? A. No.

Q. Had the money been raised to repay that sum on 30th June, in your view may I take it the asset backing value of the shares would have continued as it had done? A. Yes, I think it would have. 50

Q. And the company in your view would have prospered? A. It could have, yes.

Q. Did Mr. Barton ever say anything to you prior to this time to indicate that he had any different view from that? A. No.

Q. I think generally speaking you are familiar with the arrangements made that are in the deed of 17th January, 1967? A. Generally speaking.

Q. There was a meeting of directors of Landmark Corporation Limited on 17th January, 1967? A. Yes.

Q. I'm sorry, on 18th January, 1967 - ratifying and approving the execution of that document? A. Yes. 10

Q. Now would you tell me to the best of your recollection when you first saw the proposed deed in written form? When did you first see the proposed deed in written form? A. I am very hazy on when I saw the proposed deed in written form. I cannot recall whether Barton showed me an outline of it - a precis - or whether the first time I saw it was when the solicitor arrived with it. I think it could have been when the solicitor arrived with it for execution. 20

Q. Well now, prior to that had you seen any draft of the deed? A. I cannot recall having seen a draft of the final one, no.

Q. Or the draft of any earlier one? A. I think I had seen one early in January which, as I said before, was thrown out. I think I had seen some draft. It may even have been a precis also. I can't recall it. 30

Q. Can you recall who showed it to you? A. No, I can't. I can't recall who showed it to me.

Q. Did you play any part in giving instructions to the solicitors on behalf of Landmark Corporation Limited or any of its subsidiaries to have this deed prepared or approved? A. I cannot recall having done so. It would not be my normal function to do so. I cannot recall having done so.

Q. Was there any discussion? A. There was discussion between Barton and I. 40

Q. Regarding the engagement of solicitors to prepare or approve the proposed deed of settlement? A. There could have been. I think there would have been. But, when I say that, the company's solicitors were Allen Allen and Hemsley, and they were, I think, the solicitors who prepared the agreement. I think it would have been the normal function that Mr. Barton would have gone to them, with or without discussing it with me.

Q. Is it your recollection that it got to the solicitors for their attention on behalf of Landmark and its subsidiaries before the sending of it to them was discussed with you? A. I could not tell you. I 50

really don't remember those sort of details over this length of time.

Q. May I take it that you were not first asked did you approve of engaging solicitors to draw up or approve the deed? A. I could not tell you. I could not tell you.

Q. Were you told at any stage by Mr. Barton that there had been earlier proposals than those which ended up in the deed of 17th January? A. There was one that was in the first week in January that I recall, which was thrown out. 10

Q. What is your recollection of what that proposal was? A. I recall fairly similar to the one that was accepted. I cannot recall what difference there was in it.

Q. You cannot recall any particular difference? A. No, I cannot recall any particular difference.

Q. Well now, apart from that, and apart from what Mr. Grant put on 22nd December that was rejected, were you told of any other proposals? A. No. 20

Q. Put to Mr. Barton, or by him? A. No.

Q. None were discussed by him with you? A. Any other proposals, do you mean, in relation to Mr. Armstrong, or outside parties?

Q. Relating to Mr. Armstrong? A. No, I can't recall any.

Q. The sale of his shares or the refinancing of the George Armstrong loan? A. I am talking here of a joint package deal of the sale of shares and refinancing of the loan. 30

Q. Or either of them? A. No, I can't recall it.

Q. Apart from what Mr. Grant put, and what you say was thrown out early in January, which might have been different from the 17th January, but you cannot recall any particular difference, you have no knowledge of any other proposal put by Mr. Barton, or to him? A. No.

Q. None were discussed with you? A. None that I can recollect. 40

Q. At that stage any such proposals in your view were matters of very real importance to the company? A. Yes, very real.

Q. You would not be likely to have forgotten them? A. No, I don't think I would.

(Luncheon adjournment).

AT TWO P.M.

HIS HONOUR: Q. You are still on your oath, Mr. Bovill? A. Yes.

MR. BAINTON: Q. You told me immediately before the luncheon adjournment of the knowledge you did have by 17th January of any proposals that had been made by either Mr. Armstrong or Mr. Barton prior to the deed of 17th January? A. I told you the knowledge that I had, yes.

Q. May we take it that when you attended the Board meeting on 17th January - I'm sorry - on 18th January - of Landmark Corporation Limited, when the execution of that deed was approved and ratified, you knew what it was that you were approving and ratifying? A. Yes. I think I learned the broad outline of that on the 16th, a couple of days earlier. 10

Q. And, having learned what was proposed to be done, you gave it your best consideration. A. Yes.

Q. And you concurred in it? A. I did.

Q. You thought it was beneficial to Landmark Corporation Limited for reasons that seemed to you sufficient? A. I thought the price was high, but I thought it was beneficial. 20

Q. Of course, the only price that Landmark Corporation was paying for anything - A. Was for shares in the Paradise Waters company.

Q. And if the project went through and was completed as forecast the profits would have exceeded \$1,000,000? A. They would have been of that order, I would think, yes.

Q. And what your company purchased for \$100,000 was a 40-percent interest? A. Yes. 30

Q. You say you regarded that as high in the circumstances? A. I thought it was high in the circumstances, as this profit had to be made, and it was by no means certain. It was a long-term project. Present values have to be taken into account with moneys and the like. But I thought in the interests of Landmark we should go through with the deal.

Q. May we take it you would equally have considered that to offer Landmark's 60-percent to Mr. Armstrong at \$150,000 would have been to offer that proportion also at a high price? A. I don't think there was ever any question of that, was there? 40

Q. If it happened you would have regarded the price at which it was offered as a high one? (Objected to: allowed).

Q. I will put it perhaps a little differently. Did you regard Landmark Corporation's 60-percent interest in the project as being worth \$150,000? A. Yes, I would have considered it was worth it. 50

Q. At what figure was the 60-percent in the books? A. I don't know, I could not tell you.

Q. When the calculation was made of the asset backing value of the shares of which you talked this morning are you able to tell us what value was attributed to Landmark's interest in the Paradise Waters project? A. I don't think that I could tell you.

Q. You were satisfied this morning that the asset backing value on a going concern basis exceeded a dollar per share, or was not less than one dollar per share? A. Yes.

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Q. Among the assets of Landmark Corporation was its interest in the Paradise Waters company?  
A. Yes.

Q. Which owned 60-percent, in effect - or, rather, Landmark through its companies owned 60-percent of the Paradise Waters project? A. Yes.

Q. A project which, I would assume, was taken into account in valuing the asset backing? A. Yes.

Q. Are you able to tell us even approximately what was the value ascribed to it? A. I am not.

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Q. You are not? A. No.

Q. The view you formed before you approved and ratified it on 17th January, 1967 was that the price to be paid to Finlayside Pty. Limited for its shareholding in Paradise Waters (Sales) Pty. Limited was somewhat high? A. I thought it was high.

Q. But in the circumstances, worth it? A. In the circumstances worth it, as part of the package deal to get rid of Mr. Armstrong.

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Q. There were no other aspects of the deal of which you had criticism? A. It was all part of the package deal to get rid of Mr. Armstrong - what I would consider a paramount pre-requisite to re-finance.

Q. In the circumstances, a good commercial deal?  
A. Good commercial deal?

Q. Yes? A. It was a pre-requisite for finance - a pre-requisite for the continued financial life of the company. I don't know that it is a good deal - I think it is Hobson's Choice.

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Q. Necessary for the company in the circumstances?  
A. Yes.

Q. Taking some of the aspects of it, amongst other things you would repay to George Armstrong and Son Pty. Limited what was due to it? A. Yes.

Q. You could hardly cavil at that, could you?  
A. No, unless it was called forward at a time unexpected.

Q. The sum had been overdue for nearly two months?  
A. Yes.

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Q. So that you could not possibly cavil at that?  
A. No.

Q. A sum of money was lent by Southern Tablelands Finance Pty. Limited at a rate of interest less than you were proposing to pay to U.D.C.? A. Yes.

Q. You could not cavil at that? A. No.

Q. An option was given to purchase some land in the subdivision when complete? A. Yes.

Q. At below list price? A. Yes. 10

Q. You did not, in the circumstances, cavil at that? A. No.

Q. You thought that was a reasonable part of the deal? A. Yes.

Q. There was a sale for cash of the penthouse?  
A. Yes.

Q. You found nothing to object to in that? A. I think it had been normally forecast that we would get more for the penthouse than we had, but I didn't cavil at it. It was part of the package deal to get rid of Mr. Armstrong. 20

Q. You had not at any time been able to sell the penthouse? A. No. That is right.

Q. And this was a cash sale? A. Yes.

Q. You found nothing to cavil at in that? A. No.

Q. There remained, so far as you were concerned, the proposal that you should purchase some shares?  
A. Yes.

Q. I think Mr. Barton put that to you, is that right? A. Yes, that is right. 30

Q. You accepted it without hesitation? A. Mr. Barton asked me to do it. I said that I did not want any more shares, but in order to bring this getting rid of Mr. Armstrong to fruition I was prepared to do it.

Q. I think there remains only one matter concerned with the deed that I have not put to you, and that is the proposal that there should be what was described as end finance for the Vista Court project. You understood that to be that Landmark Finance Pty. Limited was to provide mortgage finance for prospective purchasers of those flats? A. Yes. 40

Q. At ordinary commercial rates? A. Yes, that is right.

Q. For a start, was that your understanding of what was intended? A. The Vista Court understanding - was that mentioned -



Q. You can take it it is mentioned in the deed. Your understanding of what was proposed, I put to you, was that Landmark Finance was to provide mortgage finance to prospective purchasers of units in the building at ordinary commercial rates? A. There was to be the same house financing arrangement that we would have entered into to find finance for our own home unit sales.

Q. There was nothing that could conceivably be regarded as objectionable in that? A. Not if it was on normal terms - what we would normally deal at, no. 10

Q. From the point of view of Landmark Finance, it was a source of prospective profit? A. It could be. Maybe not cash, but a profit.

Q. It involved putting cash out on mortgage?  
A. Yes.

Q. And earning a good rate of interest on it?  
A. Yes. 20

Q. And, of course, Mr. Armstrong was to resign from the Board. That, no doubt, had your approval?  
A. That had my approval, yes.

Q. And the transactions were to be carried out promptly? A. Promptly.

Q. No doubt with your approval? A. Yes, and Mr. Smith was to come on the Board too, and that had my approval.

Q. That, I think you may take it, was not in the deed, but had been discussed at a prior point of time. 30

HIS HONOUR: Clause 17(g), Mr. Bainton. It does not matter, but you had put it to Mr. Bovill that that was not in the deed.

MR. BAINTON: Q. The deed contained in effect a promise on behalf of Landmark to appoint Mr. Smith and Mr. Hawley to the Board? A. That is right.

Q. As it transpired - and I don't want to go into the details of it - they did not accept that appointment? A. They did not. 40

Q. For the sake of completion, Mr. Armstrong was to retire from the Boards of the subsidiaries of which he was a director as well? A. Yes.

Q. And that had your approval? A. Yes.

Q. May I take it these matters were discussed with Mr. Cotter? A. Yes.

Q. Did he express any disapproval of anything?  
A. I don't recall him having mentioned any disapproval that I have not already raised, except the price of Paradise Waters. But I don't recall his having brought any violent opposition to it. 50

- Q. Equally, you discussed it with Mr. Barton?  
A. Yes.
- Q. And he was in favour, I think you told us?  
A. Very much in favour.
- Q. Very much so? A. Yes.
- Q. He had, you say, I think, a discussion with you round about the 13th? A. 13th, yes.
- Q. In which he indicated unwillingness, you say, to enter - A. He said "It is not good business". 10
- Q. Not good business? A. Yes.
- Q. What did you understand him to mean when he said that? A. Meaning that he did not think that it was justified for the company to take this risk and pay this amount of money for the shares, buy out Armstrong and to go ahead with it because the chances of finance were by no means certain, and there were risks attached to it, and he did not think we should do it.
- Q. Did you understand him to be saying in effect there had been a proposal which had come from Armstrong or his companies which he was then unwilling to accept? A. By the 13th I did, yes. 20
- Q. He didn't give you to understand at any stage that he himself had put this proposal? A. No, not that he himself.
- Q. As something he was willing to do? A. No.
- Q. Prior to 13th January? A. No.
- Q. Nothing was ever said by him to convey that impression to you? Nothing he ever said conveyed that impression to you? A. No. 30
- Q. He was in effect, may I take it, telling you that he was not then willing to agree to something that had come from the other side, as it were?  
A. He was in effect telling me that, yes.
- Q. On 16th January, which I think was the date you mentioned of the subsequent conversation, he said he had changed his mind? A. That is so.
- Q. During this period the company was having other trouble? A. Yes. 40
- Q. With other people, mainly stemming from lack of money? A. That is right.
- Q. And being pressed somewhat hardly by people not connected in any way with Mr. Armstrong? A. I will not say they were not connected in any way with Mr. Armstrong, but it was being pressed hardly.
- Q. It was being pressed by ordinary trade creditors? A. By trade creditors.

Q. Not connected with Mr. Armstrong? A. I would not say that they were not in some way connected with or inspired by Armstrong.

Q. Do you think he would get to trade creditors and ask them to press for money due to them.

A. I have no reason not to suspect it.

Q. This is some suspicion in your mind? A. Yes.

Q. Was it your view that it was unreasonable for these creditors to want to be paid what was due to them? A. I think it was reasonable, but we had not got the money until we could refinance the Paradise Waters project. 10

Q. Did you consider they would not in any event have been pressing for payment? A. I think they would have requested payment, but I think they could have been persuaded to wait a little longer and not to take any precipitate steps towards putting the company any precipitate steps which would put the company into difficulties. That was my view. 20

Q. You think that would have been the creditors' views, notwithstanding the company had publicly announced it was going to pay its dividend in January? A. I think the creditors would have been prepared to wait until finance did come through, because we confidently expected it to come through.

Q. The control of the administration of the company throughout this period was in Mr. Barton's hands, as managing director? A. Such control as there was. And the Secretary, of course, in charge of the accounts. 30

Q. Mr. Barton primarily had to cope with all these problems? A. Yes.

Q. And they were considerable problems at this time? A. They were.

Q. Ones which required necessarily a deal of time and attention? A. Well, I don't think he was necessarily applying himself to the running of the company at that stage. He seemed to be applying himself much more over the period of the second week in January, after his return, to the thoughts of getting Mr. Armstrong out of the company. 40

Q. You think he was trying to shelve other problems? A. I found it very hard to get any cohesion from him on these problems.

Q. You did endeavour to discuss them with him, did you? A. Yes, I endeavoured to.

Q. You found him not very receptive to discussion of these matters at that time? A. That is right. 50

Q. He was primarily concerned, you say, with trying to reach an arrangement to get Mr. Armstrong out of the company? A. He seemed to be completely not

with it. You could not get him into any money discussion which would provide a solution. His mind seemed to be on other things.

Q. You did find it possible to discuss these matters with him at least on 13th and 16th January?

A. On these matters. He would concentrate on them with added concentration.

Q. And coherence? A. Coherence, yes.

Q. I want to return briefly to the Hoggett transaction? A. Yes.

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Q. You told me yesterday that Mr. Armstrong spoke of this to you shortly after his return from overseas? A. Shortly after his return from overseas, yes.

Q. That is right? A. Yes.

Q. And expressed extreme displeasure at what had happened? A. Yes.

Q. Took the view, and stated it to you, that he thought that what Mr. Barton had done was highly improper? (Objected to: rejected).

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Q. He stated to you that his view was that what Mr. Barton had done was highly improper? A. He did.

Q. And he asked you, did he not, at that time to treat his disclosures to you of this transaction as confidential? A. He did not at this particular stage ask me to treat these conversations as confidential. He said them in front of Mr. Cotter in the Board room.

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Q. The initial discussion on this you say was in front of Mr. Cotter? A. Not the initial one. The one before he went overseas was on the telephone.

Q. I am talking about the discussion after Mr. Armstrong's return from overseas, when he expressed the view I have just put to you, which you agree he did express? A. Yes.

Q. I am putting it to you that he asked you to treat what he was putting to you as at that stage confidential? A. Not on that occasion. It was in front of Mr. Cotter, and it was as a result of this that I discussed it with Mr. Cotter afterwards and decided to get the advice of Mr. Millar, of Allen Allen and Hemsley, as to what we should do, and I acted on that advice.

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Q. You told Mr. Barton almost immediately? A. When Mr. Millar advised me what to do I followed his advice. I followed his instructions. I followed his instructions to front Mr. Barton with it. I told Mr. Armstrong that I was going to front Mr. Barton.

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Q. Did you tell Mr. Armstrong? A. Yes, I told him.

Q. What did he say? A. Mr. Armstrong said to me over the phone: "Please don't do this. I know a lot about Millar." I don't know what he meant by that.

Q. You said yesterday, Mr. Bovill, in chief that it had been your view that when Mr. Barton went overseas in 1966 he went on a business trip? A. That was on the recommendation of the chairman of the Board that he go overseas to endeavour to obtain mortgage money. Therefore it was my opinion that was what he was doing. 10

Q. You knew that his wife was going with him?  
A. It was resolved that his wife go with him, as it was considered she could help.

Q. Help? A. Helpful in obtaining - helpful to Mr. Barton in his endeavours to obtain money.

Q. What was she to do, in your belief? A. I think it is not unusual for the wife and managing director to both be present when discussing financial arrangements for a company on an overseas trip. It has happened on various other occasions, I understand. 20

Q. Did you see, before Mr. Barton went overseas, the itinerary that had been prepared by the Bank of New South Wales for him? A. I don't recall having seen it? (Objected to: question withdrawn).

Q. When you spoke to Mr. Armstrong on this occasion were you telling him what you believed was the truth? A. I won't say when you are passing through somewhere you don't stop off somewhere on a weekend, but the prime cause for his trip was for business reasons. That was my belief, and it still is. 30

Q. Did you see the itinerary? A. I don't recall having seen the itinerary.

Q. Were you aware what the itinerary was? A. I don't know.

Q. Were you aware of the places to which Mr. Barton was going and the periods he was going to stay there? (Witness retired from Court whilst discussion ensued between his Honour and Mr. Bainton. Witness returned to the Court). 40

MR. BAINTON: Q. Were you aware of the places to which Mr. Barton was going and the periods he was proposing to stay there? A. I was not. I was aware that Mr. Barton was going to New York and Texas, I think to see Mr. Green, one of the major overseas shareholders, and I also understood he was going to Canada, where he had associates in the mortgage business. Apart from that I didn't pay any attention, or know, to the best of my knowledge, anything to do with his trip. 50

Q. Would you agree that he left on 26th May, or thereabouts? A. I would not know what date he

left. I did go and see him off. I went and saw him off, but I would not know what date he left.

Q. Towards the end of May? A. Could have been. I don't recall the date.

Q. Do you recall how long he was away before he was recalled? A. I don't recall that. I think it would be about three or four weeks.

Q. Do you recall how far he had got on his trip?  
A. He had got to the United States. I am sure of that. 10

Q. To the stage of interviewing any of the people he had gone to see? A. I don't know.

Q. You don't know? A. No.

Q. Did he report on his return that he had negotiated for, or arranged any finance? A. He didn't.

Q. Did you inquire of him after his return whether he had done any useful business on behalf of the company? A. I think there were too many other things occupying our minds at that stage to inquire into that. Mr. Armstrong was about to take off overseas, but I don't think I did inquire into what he had done to get a detailed report. I am not sure whether one was in fact given. 20

Q. Mr. Barton was recalled because of the state which the company's affairs had got into? (Objected to: allowed).

Q. Mr. Barton was recalled because of the extreme liquidity problem which had arisen in the affairs of the company? A. Mr. Armstrong was most apprehensive, and wanted him recalled. He persuaded the Board to recall him, and we did it. 30

Q. Did you agree there was a problem arisen?  
A. I did agree there was a problem.

Q. Did you think it was proper to recall him?  
A. I did.

Q. And he was recalled for the purpose of seeing what he could do about this problem? A. He was.

Q. And I think not very long after his return Mr. Armstrong went overseas? A. That is right. 40

Q. You told us that after his return - that is, Mr. Armstrong's return - you had a number of conversations with him? A. That is right.

Q. And one of them related to a bodyguard, which was some man who was then at Landmark premises - at the Landmark office? A. Yes.

Q. You said to him "Please don't regard the bodyguard that is in this office as an insult aimed at you by the Board. Mr. Barton feels justified in having him." A. That is right. 50

Q. You said that to make it clear to Mr. Armstrong, may I take it, that the bodyguard's presence had nothing to do with Mr. Armstrong? A. I wanted to open the conversation, to try and pour oil on troubled waters. That was the only way I could think of doing so.

Q. You wished to convey to Mr. Armstrong that perhaps the bodyguard had nothing to do with him?

A. With us - that is, Cotter and I and the Board - that it was Mr. Barton who wanted the bodyguard there.

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Q. You did concur in the proposal later that the company should pay the charges of these people?

A. I did.

Q. Why did you agree to that? A. Because I thought Mr. Barton was justified, after what I saw later.

Q. Do you recall when the payments were made?

A. I think they were made some time at the annual meeting. I think it was some time around about the annual meeting.

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Q. About the time? A. I think that would be right. I could not tell you for certain.

Q. You may take it from me it was after that?

A. It could have been.

Q. At the time that it was made you concurred in the making of that payment? A. I did.

Q. By Landmark Corporation? A. I did.

Q. Because you thought it was justified? A. I did.

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Q. That was because these people were used, inter alia, at the annual general meeting, I take it?

A. Not only at the annual general meeting - in the office, while the dispute over the annual general meeting was in process.

Q. A dispute over the proxies? A. Over the proxies.

Q. That was your understanding - to make sure no-one got to the proxies? A. To make sure no-one got to the proxies and to Mr. Barton.

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Q. And to Mr. Barton? A. Yes.

Q. So that no-one spoke to him? A. No. That nobody harmed him. That is why Mr. Barton wanted the bodyguard there.

Q. That is why he wanted someone at the office?

A. Yes, and for the proxies. as well, and generally to maintain order.

Q. What about other records of the company? Were they being kept under guard by this person? A. They

were being kept by the normal methods of security. It was the proxies that were important at that stage.

Q. Had you been consulted at the time of the engagement of these people? A. That I cannot tell you for sure.

Q. Shortly afterwards, do you think? A. When I saw the bodyguard there I would have asked the question and been told. I could not tell you whether I had asked before, or after. 10

Q. You opened the conversation with Mr. Armstrong by telling him that he was not to regard the bodyguard as an insult aimed at him by the Board, and that Mr. Barton wanted it? A. That is the way I opened the conversation. I hoped to be able to pour oil on trouble water.

Q. At that stage Mr. Armstrong had been pressing as hard as he could to be allowed to inspect these proxies? A. I would not say at which stage he had asked to inspect the proxies. I could not tell you. 20

Q. Do you remember the litigation here at this Court? The litigation heard in this Court? A. I don't. I don't remember it.

Q. Do you remember that Mr. Armstrong had been pressing at that stage to be given director's access to have the records of the company, the accounting records particularly? A. I don't recall that.

Q. Do you recall any of the directors of the company in your presence anyway resolving to refuse that access to Mr. Armstrong? A. Not to Mr. Armstrong, but to his agents. I do recall that he wanted someone to look at the company's books, and I do recall we refused to let this particular person. I think it was Mr. B.H. Smith. 30

Q. This was prior to the annual general meeting? A. I could not tell you. I don't know whether it was before or after.

MR. BAINTON: Q. I want to direct your attention to events prior to the annual general meeting. Before that meeting Mr. Armstrong had been seeking to inspect records of the company, particularly accounting records, which had been refused to him? A. I do not think Mr. Armstrong had been refused to inspect them. At one stage it might have been Mr. Hartigan he wanted. Things changed so rapidly, I cannot recall. 40

Q. Prior to the meeting Mr. Armstrong had been seeking to inspect the records of the Paradise Waters Companies, particularly accounting records, and had been refused? A. I cannot recall that. 50

Q. You have no recollection of letters coming from Mr. Beale seeking such a right to inspect the Paradise Waters' records? A. I have a vague recollection, but it was jumbled up with the litigation, and I cannot throw any light on it at all.



Q. Do you remember whether any instruction was issued to officers of the company relating to the inspection of those records? A. The only instructions, to the best of my recollection, were given under legal advice.

Q. I am not asking you why they were given. Do you recollect instructions being given? A. I am afraid I do not recollect. I certainly gave no instructions myself.

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Q. Did you ever see a document issued over Mr. Barton's hand giving instructions that records were not to be made available to anybody without his personal approval? A. I do not recall it, but I won't say it did not happen.

Q. If it happened it was not done in prior consultation with you? A. I do not remember the incident or the discussion on it.

Q. Do you remember ever having been asked to join in a resolution of the Board by any of these companies refusing inspection to Mr. Armstrong of the proxies or accounting records or other records? A. We refused Mr. Armstrong an inspection of the proxies.

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Q. Do you recall joining in a resolution to refuse access to the other directors? A. To Mr. Armstrong's agents, but not to Mr. Armstrong I do not think it would be legal for us to refuse a director.

Q. You did not join in any resolution in relation to Mr. B. Smith? A. Yes, I recall that.

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Q. Did you join any such resolution apart from that? A. It could be related to a request by Mr. Armstrong to have Hartigan look at something. I could not be sure because this is too hazy.

Q. Have you ever seen the original of this document circulated in the company, or any other copy? (shown). A. I seem to recall some such letter but I could not say with absolute certainty that I did see it.

Q. What is the best of your recollection? A. That it was circulated.

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Q. Did you approve of the circulation of it? A. I do not think I was consulted before it was sent out.

(Copy document dated 15th November 1966 m.f.i. 17).

Q. After the conversation which you say began when you spoke to Mr. Armstrong about the bodyguard you went straight away to recount what had been said to Mr. Barton? A. Yes.

Q. Did you recount it to any of the other directors? A. No, only to Mr. Barton at that time.

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Q. You thought it was something you should tell Mr. Barton? A. Yes.

Q. What led you to form that view? A. I felt I had been threatened and I was concerned that if anything happened to me that Mr. Barton should be told about it. I felt that threats had been made by Mr. Armstrong against him and that he should know about it.

Q. What had been said amounted to a personal threat against you? A. I interpreted it that way.

Q. You thought Mr. Barton should know there had been made to you this personal threat? A. Yes. 10

Q. You did not think the other directors should know? A. Only Mr. Cotter.

Q. You did not think he should know about it? A. I did not think he should know about it, or needed to know about it at that stage.

Q. You took this seriously? A. Yes. I took this seriously, and I still do.

Q. Seriously enough to tell Mr. Barton? A. Yes.

Q. But not seriously enough to tell anybody else or to do anything else? A. No, not at that time. At this moment I am having my house watched by the police. 20

Q. What has this got to do with it? A. That I took it seriously.

Q. Seriously enough to tell Mr. Barton and nobody else? A. Yes. I was a very small pawn in the game.

Q. It worried you? A. Yes, it worried me only to that extent.

Q. Just to the extent that you thought Mr. Barton should know about it? A. Yes. 30

Q. Notwithstanding all these things being said and the threat, you say this? A. Yes, I did not think that Armstrong would attack me himself.

Q. You say what you told Mr. Armstrong is that you simply did not believe it? A. What?

Q. That is what you said. It was one of the things you said in conversation? A. What?

Q. You did not believe some of the things he was telling you? A. Yes. I said that I did not want him to think that he was bluffing me in any way. I did not think it was likely that I would be beaten up by the police. 40

Q. Do you say the statements which you told us you made to Mr. Armstrong when you made them were true? A. I do not believe you could be beaten up by the police or be killed for £1000, and I did believe that Mr. Armstrong might adopt some method to do something to me, and I wanted Mr. Barton to know about it in the event of this happening, and 50

because of the threats that had been applied to him. This was my main reason for telling Mr. Barton.

Q. You told us this conversation occurred about the 30th November 1966? A. It happened on the 30th November, 1966.

Q. You say Mr. Barton told you before that he had been threatened? A. Yes.

Q. When had he made that statement to you?

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A. Some days before it.

Q. What had he said? A. He said "Armstrong is threatening to kill me," or words to that effect.

Q. Where was this conversation? A. In his office.

Q. In Mr. Barton's office? A. Yes, in Mr. Barton's office.

Q. What led up to it, do you recollect? A. The continual arguments and the bodyguard coming there. I think Mr. Barton said, "I have hired a bodyguard because he is threatening to kill me".

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Q. This was after the bodyguard had been hired, to your recollection? A. What was that?

Q. This was in Mr. Barton's office? A. No, I cannot recall whether it was before or after he hired the bodyguard, but it would have been an explanation of his hiring the bodyguard.

Q. It must have been afterwards? A. Yes.

Q. In his office? A. Yes, in Mr. Barton's office.

Q. Do you recollect anything else being discussed on this occasion? A. Only the proxy battles and the tactics for the annual meeting. It was very close to the annual meeting, and the fears of not being able to get to the annual meeting.

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Q. Are there any other occasions you can bring to mind? A. No, I think there was only the occasion at that time that he told me of these threats.

Q. Did he say what had been said? A. No, other than that he had been threatened over the telephone, and had had numerous calls in the middle of the night.

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Q. And he told you all these things prior to the 30th November? A. He may have told me about the telephone calls subsequently.

Q. What did he tell you before the 30th November when there was this conversation with Mr. Armstrong? A. He said that Armstrong threatened to kill him and Armstrong said, "You may not get to the annual meeting. If you keep on this fight you are likely to be killed or likely not to get to the annual meeting." This was said to Barton over the telephone, and he related these things to me.

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Q. He said that they were said to him over the telephone by Mr. Armstrong before the 30th November?

A. Yes.

Q. It was said in the one conversation, was it?

A. I do not recall whether it was one or two conversations. It may have been that Mr. Barton told me that Armstrong threatened him personally in person. I cannot recall. It all happened so quickly. It was a long time ago. That was the reason that I told Mr. Barton the way I interpreted Armstrong's threats to me.

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Q. Mr. Barton appeared on the 30th November to you to be concerned and worried about this? A. When I told him about Riley and the £1000 he seemed to be very worried.

Q. Prior to the 30th November when he told you these things he seemed to be worried? A. Worried sufficiently to employ a bodyguard.

Q. He told you he took them seriously? A. Yes.

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Q. He regarded them as threats to his life?

A. Yes. He regarded them as threats to his life and to the security of the company.

Q. They were not the sort of things he would forget about later? A. No. I would not think so.

Q. You used the expression, "A threat to the security of the company." What did you mean by that? A. If Mr. Barton was killed the company was finished in my view.

Q. He was carrying the whole thing on his shoulders? 30

A. On him rested the future of the Company.

Q. Did he express that belief himself - Mr. Barton?

A. I do not know whether he expressed it to me, but it was my view that if anything happened to Mr. Barton the company was in real trouble.

Q. He was more probably able to arrange the finance? A. Yes, that is right.

Q. Much more likely than Mr. Armstrong? A. I would think so, yes.

Q. You said that Barton said there had been threats to his life and to the security of the company? A. Threats to his life were a threat to the security of the company. 40

Q. That is what you meant? A. Yes.

Q. That is what you took Mr. Barton to mean?

A. Yes, that is what I took Mr. Barton to mean.

Q. A threat to him was a threat to the security of the company? A. That is right, and that is why he was employing a bodyguard.

Q. And that is why you agreed that the company should pay for that? A. Yes, that is right.

Q. Subsequently Mr. Barton told you that he had gone to the Wentworth Hotel? A. Yes.

Q. This was after he indicated that he had been to the police? A. Yes.

Q. When you advised him that he should tell you, he had done so? A. It might have been a day or so after that he told me he went to the Wentworth Hotel. 10

Q. He said he was not letting anyone else know where he was? A. Yes, he wanted me to know.

Q. That is because you were closest to him in the affairs of the company? A. I suppose it was because I was closest to him. If I knew nobody else would know if he asked me not to tell them.

Q. Mr. Cotter was not told? A. I did not tell him.

Q. Do you know if Mr. Barton told him? A. I don't know. 20

Q. It did not seem to you proper that the other directors should know where the Managing Director was? A. Mr. Cotter could always contact me and I contact Mr. Barton. Mr. Barton asked me specifically not to tell a soul.

Q. Was he coming to the office each day?  
A. Yes.

Q. That was not very far from the Wentworth Hotel? A. No.

Q. Was he coming in early? A. Sometimes very early; 8.30 or 9 o'clock; the first thing in the morning. 30

Q. Was he working the usual hours until the end of the day? A. I was not there every day, but I would have seen he was working.

Q. He had a secretary? A. Yes.

Q. His duties took him outside the office from time to time? A. Yes, sometimes.

Q. There was no bodyguard at that stage? A. To the best of my recollection, there was no bodyguard. 40

Q. Did Mr. Barton say anything to you about this time indicating that there ought to be a bodyguard? A. No, not at this stage. He had already gone to the police and he had done everything legally necessary and had taken legal advice, and the police were alerted. I told him to drop the bodyguards and get on to the police.

Q. This was in January? A. Yes.

Q. The annual general meeting was finished? A. Yes.

Q. The proxies had been seen? A. Yes.

Q. The company had agreed that Mr. Smith should have access to the records, and he was doing it?

A. What was that?

Q. That Mr. Smith should have access to the financial records of Landmark and its subsidiaries in order to prepare a report, and either he or members of his staff were doing it at that stage?

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A. This was in June to the best of my recollection when Mr. Smith was preparing the report. Was there another time?

Q. Do you have any knowledge that in January, during the first half, employees of Bruce Henry Smith were investigating the accounting records of the Landmark Corporation on behalf of Mr. Armstrong? A. Yes, I recall there was something of that nature.

Q. Were there no proxies left to be concealed or guarded, and no need of bodyguards? A. That is so. He had been in touch with the police and there was no need of a bodyguard.

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Q. You are not suggesting it was a policeman?

A. No. It was in the hands of the police and I thought he was safe.

Q. Safe at the Wentworth Hotel or anywhere? A. That the threats against him were made known to the police through the right channels.

Q. There was no need in hiding? A. Mr. Barton wanted to be sure that he was not at his house which is deserted in Castlecrag, and he would be in a fairly safe, central place, and that is why he wanted to be at the Wentworth Hotel.

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Q. What do you mean when you say his house was deserted? A. It is an ordinary suburban street and capable of any one breaking in.

Q. Why, in your view, was there any need for secrecy as to where he was? A. Because being at the Wentworth Hotel the night time would be the most dangerous time to attack. Lots of people are moving around, and it would be a lot safer than a house in the suburbs.

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Q. Why the secrecy that he was there? A. To make it more difficult for Mr. Armstrong to find out where he was so that if he wanted to get at him it would be more difficult for him to do so. I would not say that it was water-tight security.

Q. The man was working at the Landmark office and going to the Wentworth Hotel through open streets and you say nobody could watch him? A. Yes, they could, and Mr. Barton told me once that he was watched.

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Q. The first time he was watched and seen to go into the Wentworth Hotel his whereabouts are known?

A. Yes.

Q. It is a bit theatrical? A. I do not think so.

Q. You have told us that Mr. Barton said something to you which caused you to advise him to go to the police, and he said he had already done this? A. Yes.

Q. This was before he went to the Wentworth Hotel? 10

A. Yes, it was.

Q. He subsequently, having gone to the hotel, told you that that is where he was? A. Yes, or it might have been the day he went there. I could not pinpoint a day.

Q. On this occasion Mr. Barton, in effect, said that he had been to the Criminal Investigation Branch and had told you what had gone on, and that they were investigating it? A. Yes, that is right.

Q. I suppose you asked him for some of the details? A. He said he would not tell me. He said it was better that I should not know the details. 20

Q. That was the reason he gave? A. Yes. He said, "It is under investigation by the C.I.B. It is better I do not tell you the details for your own good".

Q. You did not inquire what he meant? A. Yes.

Q. This was prior to him taking up residence at the hotel? A. Yes.

Q. Was this matter discussed between you subsequently subsequent to the time he first told you? A. Do you mean since 1966? 30

Q. Within the next three weeks? A. He said that he went there because these criminals had been hired to kill him, and he referred back to that conversation.

Q. Did he speak of it again? A. He spoke of it several times again.

Q. When was the next time he mentioned it? A. I could not tell you. Over the last year there were discussions about it. 40

Q. Do you mean a year back from now? A. Yes.

Q. Within a month or so, during January 1967 was it further discussed between you? A. Towards the end of January I think we discussed it again.

Q. That was after Mr. Armstrong was out? A. Yes, after Mr. Armstrong was out.

Q. Was it discussed before he was out of the company? A. No, it was not.

Q. Was it put to you as a reason why Mr. Barton changed his mind and wanted to sign the deed? A. Yes.

Q. When? A. Towards the end of January or early February.

Q. Before the deed was signed it was not? A. No, it was not.

Q. Mr. Barton did not say he was only signing the deed because he had been threatened that if he did not something would happen? A. Mr. Barton did not say to me "Armstrong has said if I don't sign this deed you will be shot." He said "This man is threatening me. He has hired criminals to kill me. I have to get him out of my hair and out of the company's hair". 10

Q. When was that? A. Before the signing of the deed.

Q. How long before? A. It could have been a day or two before the signing of the deed, to the best of my recollection. 20

Q. Where was this conversation? A. In Mr. Barton's office.

Q. How did it come up? A. When he called me in urgently. He said, "I want you urgently to come in. I want to finalise this deed to get Armstrong out before he changes his mind. It is most urgent. Will you come in quickly?" I came in.

Q. Did he say he was afraid Mr. Armstrong would change his mind? A. Yes, he told me this over the phone. 30

Q. That he would change his mind and not sign it?  
A. Yes, Mr. Barton told me this.

Q. And this is when Mr. Barton said he strongly recommended it? A. Yes.

Q. And when you considered it? A. Yes.

Q. And approved? A. Yes.

Q. As a result of that it was executed? A. Yes.

Q. You were asked yesterday to give an account of what happened on the 15th, a couple of days beforehand, and you did not tell us that? A. What? 40

Q. The conversation which you have just recounted now? A. I think I told you that.

Q. You said yesterday that Mr. Barton said, "I think we should do a deal with Armstrong, and I think that we should treat this as urgent before he changes his mind." And you said "Well in those circumstances I will come into the office to discuss it with you." You did that. Mr. Barton said "I have been under continual threats. I cannot run the company property. I have got to come to some 50



arrangement to resolve this matter and I will now recommend that we sign the agreements" You said something about the price? A. Yes.

Q. You said, ".....but if this is your recommendation I believe that settlement with Armstrong is a pre-requisite to finance, and therefore I agree to go along with this." A. Yes.

Q. It was your recollection of what occurred?  
A. Yes.

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Q. You have now recollected a little more about the conversation? A. About the threats to his life. He has to get him out of his hair and out of the company's hair. That is another sentence he used. That is the tenor of the conversation. It is very hard to recall conversations with Mr. Barton because of his language difficulties.

Q. You said you discussed those matters again with him in the last twelve months, with Mr. Barton?  
A. Yes.

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Q. When were you first asked to provide to the solicitors your recollection of the account?  
A. My recollection was that I wanted it put into the hands of the solicitors -

Q. When were you first asked to give to solicitors your recollection of what had taken place and what had been said in those conversations? A. I think it would have been in December 1967 or January 1968.

Q. Had you discussed them with Mr. Barton prior to that? A. I had.

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Q. And subsequently? A. And subsequently.

Q. I think you were asked to give the opportunity to the solicitors representing some of the defendants your recollection, and you declined to do it?  
A. Yes, I was.

Q. You were asked for an interview and you declined? A. Yes, on the advice of my personal solicitors.

Q. May I ask who that was? A. My personal solicitors are Gaden, Brown & Stewart.

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Q. The same solicitors as Mr. Barton? A. Yes, they had been my solicitors for many years.

Q. It was their view that you should not say anything? A. That is so (Objected to - rejected).

Q. This did not prevent you from discussing it with Mr. Barton as freely as you thought proper? A. Yes.

Q. I suppose you told him your recollection of these conversations? A. I do not recall having told Mr. Barton my recollection other than the discussions we had over the period.

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Q. In which the conversations were gone through?  
A. No, not gone through in detail.

Q. Gone through to some extent? A. No, not the conversations gone through.

Q. Not mentioned at all? A. The mention of what happened and what built up.

Q. As to who said this or that? A. No.

Q. Not at all? A. Not to my recollection.

Q. Did Mr. Barton tell you what he recollected? 10  
A. He told me what happened and he would tell me of a similar incident three or four months later in another conversation. I do not recall the details or when they happened.

Q. They have been going on apart from the early occasions since the middle of last year? A. I would say they have been concentrated in the period of March to June, and then there was the period in which the company was under the trusteeship of Mr. B.H. Smith, virtually. I gave not much thought 20 to the company or to Mr. Barton.

Q. And since then? A. Since then, no, I would not say I have had discussions with Mr. Barton of the conversations. While it was under Mr. Smith's trusteeship I more or less dropped out of it.

Q. I want to put to you that the account you gave yesterday of the conversation with Mr. Armstrong - that there was no such conversation between you on that occasion or at all? A. I put it to you there 30 definitely was that conversation.

Q. You carry a clear recollection of the things you said were in fact spoken? A. A completely clear recollection.

Q. They were spoken in the sequence you set them out? A. To my recollection it was the way it was said. The conversation was interspersed with interjections. Those were the words used by Mr. Armstrong, and to the best of my recollection they were my replies. 40

Q. You have no doubt that Mr. Armstrong used the words and the expressions you have told us about?  
A. That is right, except where I qualified it.

Q. You have some doubt as to the things you said personally? A. My replies might have been phrased in different words, but in essence they were as per what I said.

Q. You did not commit this to writing? A. I did not.

Q. Until fairly recently when asked to do so by the solicitor? A. I was asked by a solicitor for it and I repeated it, not in writing. I just spoke it. 50

Q. You carried it clearly in your mind? A. Yes, I refreshed my memory by going through it in my mind.

Q. When did you first try to refresh your mind?  
A. When I had to repeat it to a solicitor.

Q. Within the last three or four months? A. That is right.

Q. It had lain dormant in your mind? A. No, I remembered it very well.

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Q. Without any particular need to remember it?  
A. I remembered the conversation and the line it took.

Q. Which do you say you remember, the conversation or the line of the conversation or both? A. Basically the words used. Some of them stuck perfectly in my mind.

Q. Which ones? A. "You can get someone killed for \$2000, 1000 quid or \$1000".

Q. Any others? A. "I could have you arrested in Pitt Street." "I can get anything I want done by the police by putting the gold pass under their nose. With this and enough money you can get them to do anything, to lose and alter evidence." I remember this vividly because they were said forcibly to me.

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Q. Did you believe it? A. No, I did not. I have a very high regard for our police force.

Q. You have never at any time been on friendly terms with Mr. Armstrong? A. I would not say that.

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Q. Were you at one stage? A. Yes, at one stage when I first joined the Board of the company I tried to be on a friendly basis with him.

Q. Did you succeed in becoming on a friendly basis? A. I do not think I ever succeeded in becoming on a friendly basis.

Q. Even before you joined the Board there was an exchange of fairly acrimonious letters between you and Armstrong in the press? A. Yes, in my attempt to get on the Board.

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Q. Between you and Mr. Armstrong in the press?  
A. Yes, I was prepared to bury the hatchet.

Q. You did not like him? A. I did not dislike him until 1966.

Q. You disliked him in 1966 and have done so ever since? A. Yes.

RE-EXAMINATION

MR. GRUZMAN: Q. You told my learned friend that you considered resigning on an occasion when

J.O. Bovill, re-x.

Mr. Armstrong said that he would threaten Mr. Justice Dovey. What was that conversation? (Objected to - rejected).

Q. In the course of your cross-examination you were asked something about your reasons for attempting to get on the Board in the first place and you said you had been led to believe that you were to get ten per cent on your investment? A. That is correct.

Q. With whom did you have the conversation which led to that belief? (Objected to - allowed).

Q. Did you have a conversation relating to this ten per cent? A. I did.

Q With whom? A. Mr. Eskell.

Q. In brief what was the conversation? (Objected to).

(Witness stood down).

IAN BARRY ANDERSON

(Interposed sworn examined as under:

MR. GRUZMAN: Q. What is your full name? A. Ian Barry Anderson.

Q. You are a Sergeant of Police stationed at No. 20 Division, and you are the officer in charge of the Criminal Correspondence Branch in the Commissioner's office? A. That is correct.

Q. You have been deputed by the Commissioner of Police to assist with certain inquiries? (Objected to - rejected).

Q. Would you tell his Honour what your work entails? (Objected to - allowed). A. Dealing with correspondence in the office of the Commissioner of Police entails the preparation and submission of papers for signature by the Commissioner or by the Assistant Commissioners.

Q. By virtue of your position are you in a position to locate within the police force documents which are in the official custody of the Force or a member of the Police Force? (Objected to - allowed). A. Yes.

Q. Have you endeavoured to find a record of interview between Det. Sgt. Wild and Frederick Hume taken at the Criminal Investigation Branch, Sydney during January 1967 (Objected to: question withdrawn).

Q. What, if any, efforts have you made to locate the record of interview between Det. Sgt. Wild and Frederick Hume taken at the Criminal Investigation Branch, Sydney, during January 1967? (Objected to: rejected).

Q. Tell his Honour what, if any, efforts you have made to locate a document purporting to be

J.O. Bovill re-x  
Stood down,

526: I.B. Anderson x.

a record of interview between Det. Sgt. Wild and Frederick Hume taken at the Criminal Investigation Branch Sydney during January 1967? A. In February 1968 I made a personal search of the records maintained in the office of the Commissioner of Police. I spoke to the officer in charge of the Modus Operandi Section at the Criminal Investigation Branch. I spoke to the Superintendent in charge of the Criminal Investigation Branch; to the senior clerk in whose charge the records of the Criminal Investigation Branch correspondence is held; Det. Sgt. Butler of the Criminal Investigation Branch; Det. Inspector Lendrum of the Criminal Investigation Branch; Det. Sgt. Wild of the Criminal Investigation Branch, and Det. Senior Constable Follington of the Criminal Investigation Branch.

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Q. With your knowledge of the organisation of the Police Force, the possible places where a document of this kind could be if it still existed, are you able to tell his Honour of any other inquiries which could be made to ascertain the location of that document? (Objected to - rejected.)

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Q. With your specialised knowledge of the organisation of the Police Force can you tell his Honour whether there is any other inquiry that could be made to ascertain in the existence of any such document? A. I know of no other inquiry which should be made.

Q. If a document purporting to be a record of interview of the kind that I have mentioned to you still existed in the records of the New South Wales Police Department or any of its offices, are you satisfied that your inquiries would have revealed the existence of that document? A. They should have revealed the document.

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Q. Did the inquiries you made reveal the existence of that document? A. No.  
(Witness stood down.)

JOHN OSBORNE BOVILL  
On former oath!

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MR. BENNETT: Q. You signed the deed of the 17th January on behalf of Landmark Corporation Limited? A. I believe I did. I would have to refresh my memory. I am not quite sure whether I signed it or was present and approved the signing of it.

Q. You were present when the Seal was affixed? A. Yes.

Q. You were present at the meeting at which it was decided to affix the Seal? A. Yes, I was.

Q. Did you vote at that meeting? A. Yes.

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Q. Did you vote in favour of the Seal being affixed? A. Yes.

Q. At the time that you so voted at that meeting

I.B. Anderson x,  
stood down,

what was your view as to the extent to which that deed was for the benefit of the Landmark Corporation Limited? A. I thought this deed was necessary for the continued existence of Landmark as it was a prerequisite in my view to obtain finance, which was so needed.

MR. GRUZMAN: Q. Is it now your view that it was in the interests of Landmark to have entered into this Deed on the 17th or 18th January 1967. (Objected to). 10

Q. If you had been aware of the threats made against Mr. Barton as disclosed to you by him late in January or early February 1967, would you have been a party to entering into that deed on behalf of the company? (Objected to: rejected).

(Witness retired)

IAN BARRY ANDERSON  
On former oath:

MR. BENNETT: No questions. 20

CROSS-EXAMINATION

MR. STAFF: Q. In the course of the search which you told us you made with the aid of your knowledge of the organisation of the department, you I suppose made inquiries as to the existence at any time of the document which you were asked to search for (Objected to: allowed). A. Yes.

Q. You yourself were conducting a search for a document, the existence or otherwise of which at any point of time you had no knowledge personally? A. That is so. 30

Q. I take it you were asked to look to search to see if a document answering the particular description you have given could be found in the files of the department? A. That is correct.

Q. You yourself had no knowledge whether that document had ever existed? A. No.

Q. I take it in the course of your inquiries you directed inquiries to all the persons from whom you made inquiries as to whether they had it, as to whether they knew anything of its existence at any time. (Objected to: allowed). A. Yes. 40

Q. From your knowledge of the organisation and the records and the method of keeping the records of the department if such a document had ever existed would you have expected in all probability to find it as a result of the inquiries you made? A. Yes.

Q. Did the inquiries which you made indicate to you that the person of whom you inquired either had no knowledge whatever as to whether the document had ever existed or denied it had ever existed? (Objected to: rejected). 50

J.O. Bovill, x,  
witness ret'd

Q. Did some of the persons from whom you inquired simply say they knew nothing of it at any time, of the existence of that document? (Objected to: allowed).

Q. The question I have asked you was whether some of those persons of whom you inquired of the document told you that they knew nothing of its existence at any point of time? A. Words to that effect.

Q. In other words they had no knowledge as to whether there had ever been such a document at all? A. Yes. 10

Q. Did anybody express or tell you anything as to whether such a document had ever existed? (Objected to: allowed). A. No.

Q. Did you, in the course of your inquiries, find any person who told you that he had ever seen such a document at any point of time? A. Not within the department.

Q. Or inquiries in the department? A. No. 20

Q. You of course told us that you made an inquiry of Det. Sgt. Wild? A. Yes.

Q. He was one of the persons who might have had some knowledge of what happened to such a document, if it ever existed? A. Yes.

Q. Sergeant Wild told you that no such document ever existed? (Objected to: pressed).

HIS HONOUR: It will be noted that I am of the view that it is open to Mr. Staff in cross-examining this witness to probe the nature of his investigations and the result so far as he is concerned. It is foreseeable that some doubt might arise as to whether the information received by Sergeant Anderson in the course of his inquiries and given in evidence in this Court should be treated as having any evidentiary weight whatever of the truth of the information received. Neither counsel asks me to rule upon that point at this stage. The evidence is admissible for the ground I have set out, and I allow the question. 30

(Question read): A. Words to that effect. 40

MR. STAFF: Q. You had been asked initially by some officer of the department to conduct this search, or did the request come from outside the department direct to you? A. The request came with a subpoena served upon the Commissioner of Police, substituted service for Det. Sgt. Wild for the production of that particular document, among other things, and the subpoena and the accompanying letter were directed to me for inquiry by the Commissioner.

Q. The request that came to the department described a particular document? A. Yes. 50

Q. Do you recall how the document which you were asked to search for was described in the request which

came from outside the department? A. It is my recollection that it was described as a record of interview with Frederick Hume by Det. Sgt. Wild in January 1967.

Q. It was by that description that you sought to trace it? A. Yes.

Q. In the course of your inquiries you have told us that Det. Sgt. Wild told you that no such document had ever existed, or words to that effect?

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A. That is so.

Q. Did he also tell you that he did not take the document described as a record of interview from Mr. Hume at or about that time. (Objected to).

(Further hearing adjourned to Tuesday, 18th June, 1968 at 10 a.m.)



BARTON v. ARMSTRONG & ORS.

FIFTEENTH DAY: WEDNESDAY, 19TH JUNE, 1968

(Registrar of Companies called on subpoena duces tecum by Mr. Gruzman. Charles Smith appeared in answer to the subpoena, produced a copy of the subpoena and the minute book called for under the subpoena. Mr. Smith stated that the Registrar of Companies was prepared to produce the document to the Court but desired access to it from time to time for their own purposes. 10

Mr. Swan, from the State Crown Solicitor's Office, then advised the Court that he acted on the production of the document, and stated that there was no objection to the production of the minute book but asked that his Honour grant to the Registrar of Companies and his staff and the Crown Solicitor and his staff access to the minute book at reasonable times. His Honour stated that the application would be acceded to). 20

IAN BARRY ANDERSON

On former oath:

HIS HONOUR: Q. You are still on the oath administered to you last week? A. Yes.

MR. STAFF: There was a question which I put at the adjournment, a question on p. 411. I will not press that question. 30

HIS HONOUR: It may be noted that the last question on p. 411 is not pressed.

MR. STAFF: Q. Sgt. Anderson, you told us the other day that you had made inquiries from the Superintendent in charge - I am sorry, from the officer in charge of the modus operandi section of the Criminal Investigation Branch? A. Yes.

Q. That is one of the persons from whom you inquired? A. Yes.

Q. May I take it you asked him whether he knew of the whereabouts of the document such as that which had been described to you? A. Well, I asked him if there were any records in his section under the names Alexander Barton and Alexander Ewan Armstrong. 40

Q. What reply did you get from him? A. Some little time later he told me that he had made a search, and those names did not appear in his records.

Q. Did you then go - or amongst those to whom you went, did you speak to the superintendent in charge of the Criminal Investigation Branch? A. Yes. 50

Q. What did you ask him, Sgt. Anderson? A. I asked him particularly whether he had any knowledge of a record of interview between Det. Sgt. Wild and Frederick Hume taken about January 1967.

Q. What did he say in answer to that? A. He said that he had no knowledge of such a document.

Q. Did you make any other inquiries of that gentleman about the matter, or was that how it finished? A. I did ask him whether he had any knowledge of other documents connected with the matter, and his reply to that was that the only documents he knew of were those which had been submitted with the papers round about 1st or 2nd February this year, 1968, which have been produced to the Court. 10

Q. Well then, you also spoke to the Senior Clerk in whose charge the records of the Criminal Investigation Branch correspondence was? A. Yes.

Q. Now, what inquiries did you make of him? What did you say to him? A. I asked him if there was any record in the records of correspondence at the Criminal Investigation Branch of any papers other than those which had already been submitted by the Superintendent in charge to the Commissioner of Police, and I asked him to make a search back to the beginning of 1967. Sometime later he telephoned me and said that he had done that, and could find no record of any other papers. 20

Q. And that was the whole of the answer he gave you, was it? A. Yes. 30

Q. You also told us that you spoke to Det. Sgt. Butler of the C.I.B.? A. Yes, that is right.

Q. And did you ask him? What was the conversation with him? A. I asked Det. Sgt. Butler if he had any knowledge of any other papers other than those which had been submitted with his report, which was early in February 1968, and he said that he did not know of any other papers.

Q. You also spoke to Inspector Lendrum of the C.I.B.? A. Yes. 40

Q. Will you tell us what conversation about the matter you had with him? A. There were a number of matters which I mentioned to Det. Insp. Lendrum in relation to particular documents, and I cannot remember the exact conversation, but I asked him particularly about a record of interview between Wild and Hume during January 1967, notes made by him respecting his interview with Mr. Barton and some other people during January 1967, and any other entries which he may have made in a notebook or diary or any other papers which he had relating to any of the matters affecting Barton and Armstrong. Det. Insp. Lendrum spoke to me again later and produced to me certain books. There was a notebook - a green covered notebook - his diary, and - I think that was all. He said they were all the documents which he 50

had, or had any knowledge of - I will withdraw that, if I may, your Honour - all the documents which he had, concerning Barton and Armstrong and all of the documents which he gave me were produced to this Court.

Q. Did you ask him at that time any specific question about a record of interview of the character you have described? A. Yes.

Q. What did you say to him about that? A. I said to him "In particular, do you have any knowledge of a record of interview between Det. Sgt. Wild and Frederick Hume during 1967?" 10

Q. What did he say to that? He said "No, I don't know of any such document".

Q. Well then you spoke also, you told us, to Det. Sgt. Wild. Would you tell us what conversation you had with him about a record of interview of this character, and what he said to you. (Objected to: allowed). 20

Q. Will you tell us what you said to Det. Sgt. Wild, and what he said to you? A. Yes. I said to Det. Sgt. Wild "A subpoena has been served on the Commissioner for Police addressed to you, which calls for the production of a number of documents before the Supreme Court in the matter of Barton v. Armstrong." I said "A number of documents are listed in the subpoena, and the first one is a record of interview between yourself and Frederick Hume during January 1967. Have you any knowledge of that document?" and Det. Sgt. Wild said "The document does not exist." He said "I didn't make any record of my interview with Frederick Hume during that interview in January 1967". 30

Q. Did you have any more conversation about that at that time with him? A. No. I then went on to the remainder of the documents which were listed in the subpoena.

Q. You also told us - did you at any time subsequently make any further or other inquiry of Det. Sgt. Wild about the record of interview? A. Yes. On a later date I said to Det. Sgt. Wild "Is there any reason you didn't make a record of the interview with Hume?" He said "When I saw Hume I put the allegations made by Mr. Barton to him - (Objected to: his Honour directed that the answer should not proceed further.) 40

Q. Did you, subsequently to the first occasion of which you have told us, have any conversation with Det. Sgt. Wild by way of inquiry further from him as to where or in whose custody the record of interview might be found. (Objected to: allowed). 50

Q. Can you recall the question? A. I had a number of conversations with Det. Sgt. Wild over a fairly lengthy period.

Q. About this subject matter? A. About a number

of things affecting or bearing upon these proceedings between Mr. Barton and Mr. Armstrong and the other persons involved, and during those conversations things were said concerning the existence or non-existence of this particular document. I have to be fair on this. The matter of my search was completed prior to those conversations.

Q. I ask you this question. Just pause for a moment before answering it. In any of those subsequent conversations of which you have just spoken were you given any indication as to where or in whose custody such documents might be found. (Objected to: allowed). A. No. 10

Q. Again I will ask you this question: you might pause before you answer it. In the course of those conversations was anything said to you which indicated to you that such a document had ever existed (Objected to: allowed).

Q. In the course of those conversations was anything said to you which indicated to you such a document had ever existed? A. My inquiries within the Police Department? 20

Q. Yes. A. No.

Q. Now you also said you spoke to Det. Snr. Const. Follington about the matter. Would you tell us what conversation you had with him (Objected to).

HIS HONOUR: Q. Sgt. Anderson, in answering this question I would ask you to confine the conversation to so much as relates to the document as distinct from what might have transpired between Follington and you? A. Yes. I said to Det. Const. Follington "A subpoena has been served on the Commissioner for Police for production by you of certain documents in the Supreme Court in the matter of Barton v Armstrong. One of the documents specified is a record of interview between Det. Sgt. Wild and Frederick Hume during January 1967. Have you any knowledge of such a document?", and Det. Const. Follington said "No". 30 40

MR. STAFF: Q. Were there any further conversations between you and Det. Const. Follington about that matter or was that the whole of it, on that or any other occasion? A. In addition to that Det. Const. Follington said "I was not present at the interview between Det. Sgt. Wild and Frederick Hume".

Q. Now, Sergeant, from your knowledge of the organisation of the Criminal Investigation Branch and the system relating to the keeping of records of that branch, in whose custody would you ordinarily expect to find a record of interview of the character described if it existed? A. Either in the possession of the Police connected with the particular matter, or at the modus operandi section of the C.I.B. 50

Q. In the present case - in the case of the present document which has been described - that would mean either in the possession - in the custody of Det.

Sgt. Wild, or in the modus operandi branch?

A. Or Det. Const. Follington.

Q. One or other of those two, or the modus operandi branch? A. Yes. In addition to that, certain inquiries had also been made by Det. Sgt. Butler in January 1968, and such a document could have been in his possession.

Q. Sgt. Wild, I take it, is at present carrying out his duties in Sydney, is he? A. Yes he is.

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Q. And Const. Follington similarly, is that right? A. Yes.

Q. And Insp. Lendrum I think also is carrying out his ordinary duties in Sydney at the present time? A. Yes.

RE-EXAMINATION:

MR. GRUZMAN: Q. You are aware, are you not, that Sgt. Wild has visited Mr. Staff's chambers? A. I have been told that.

Q. And Const. Follington? A. Yes.

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Q. And Insp. Lendrum? A. Yes.

Q. That is in the last week or two? A. I don't know when. It is within the last month or 5 weeks.

Q. Will you look at this document, m.f.i. 5? You produced that to the Court, I think, pursuant to the subpoena served on the Commissioner of Police? A. Yes. I think it was 15th February, 1968.

Q. Will you tell his Honour whence you obtained that document. (Objected to: question withdrawn).

Q. In the course of - you told my friend Mr. Staff about a number of conversations which you had in connection with the subpoena served on the Commissioner of Police? A. Yes.

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Q. In the course of any of those conversations was there produced to you that document? A. Yes, (Objected to: allowed).

Q. Who produced it to you (Objected to).

HIS HONOUR: Mr. Staff has foreshadowed seeking to derive some probative weight from the cross-examination of Sgt. Anderson on the point of whether or not there ever was a record of interview with Frederick Hume taken in January 1967? This being so, I am of the view that I should permit Mr. Gruzman to re-examine in particular with the question now asked and to which objection is taken. Mr. Gruzman has indicated that he will be later contending that hearsay evidence will provide evidence of the facts. Without in any way expressing my assent to that general proposition, both counsel appear to be of the view that some probative weight

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of the existence or otherwise of the document can attach to Sgt. Anderson's cross-examination, and I allow this question in re-examination.

MR. GRUZMAN:Q. Who gave you that document, m.f.i.57.A. Det. Const. Follington.

Q. From where did he have that document? (Objected to: question withdrawn).

Q. Did you see where Const. Follington took that document from? A. No.

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Q. Well, in what circumstances was it produced to you? A. Well, I rang Det. Const. Follington from my office and told him that a subpoena had been received, and he was to bring all documents mentioned in the subpoena down to me at my office, and he came down, and one of them was this.

Q. At the time you received that folder, what was in it? A. There were some copies of a record of interview between Alexander Vojinovic and Det. Sgt. Wild taken in January 1967. I think there was also a copy of a report by Det. Sgt. Butler and Det. Const. Bull dated sometime in January 1968. The originals of those documents have been produced to the Court.

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Q. Was the second document you mentioned - don't answer this for the moment - the record of interview with Frederick Hume dated January 1968? A. I didn't say Frederick Hume.

Q. Well, was it? (Objected to: rejected).

Q. Sgt. Anderson, did you - are you aware of the office - aware of the location of the office in which Sgt. Wild worked in January 1967? A. Only that it is at the Police Administrative building in Campbell St, Sydney.

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Q. Do I understand from that that you are not familiar with the exact office? A. No, I am not familiar with it.

Q. Can you tell us whether it is usual for a man in the position of Sgt. Wild to have a steel cabinet in which to keep documents. (Objected to: allowed).

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Q. Can you tell us whether it is usual for a man in the position of Sgt. Wild to have a steel cabinet in which to keep documents? A. I think there are two parts to that question. First of all, it is the practice for an officer such as Det. Sgt. Wild to have a steel cabinet for his own use. The second part of the question is - or the second answer - the answer to the second part of the question is that some Police do use these cabinets to keep papers in.

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Q. As a result of your inquiries are you able to tell us whether Det. Sgt. Wild used his steel cabinet. (Objected to: rejected).

Q. Used a steel cabinet to keep documents in.  
(Objected to: rejected).

(Manilla folder - m.f.i.5 - tendered, admitted  
and marked Exhibit "Q").

MR. GRUZMAN: I would like to tender as part of the  
exhibit the subpoena in respect of which that  
folder was produced to the Court. (Objected to:  
rejected).

(Witness retired).

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PLAINTIFF

Sworn, examined, deposed:

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

Q. In the course of your evidence earlier at  
p. 45 of the transcript you told his Honour that  
on 11th January you went to the C.I.B., and sub-  
sequently something occurred in connection with the  
purchase of a rifle. You came back, and you say  
that Det. Follington went to a steel cabinet and  
took out a brown folder which had big letters  
marked "Barton and Armstrong", opened it up, and  
took out a document? A. Yes.

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Q. Will you tell us what happened then, please?  
(Objected to).

Q. Perhaps I should refer to p. 55 of the trans-  
cript where you were asked "What was the title on  
the document?" and you answered "Record of Inter-  
view between Det. Sgt. Wild and Frederick Hume  
taken at the C.I.B. Sydney." You mentioned some-  
thing about the description of the document? A. Yes.

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Q. Would you tell his Honour what happened in re-  
lation to that document at that time. (Objected to:  
allowed).

Q. Would you tell his Honour what happened in  
relation to the document? A. I was sitting on a  
chair in front of Sgt. Wild's desk with Mr. Folling-  
ton on one side and my son on the other side. Mr.  
Follington took out the record of interview between  
Det. Sgt. Wild and Frederick Hume out of this brown  
folder and gave it to me to read (objected to: by  
direction "a document" substituted for "record of  
interview", in the foregoing answer).

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Q. That is the document m.f.i.5? A. Yes.

Q. You say he took out another document. Is  
that the folder from which he took it out? A. That  
is the one.

Q. Well then, what was done with the document that  
you have referred to? A. Mr. Follington authorised  
me to read it.

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Q. What did he say. (Objected to: allowed).

A. He said "This is the document what I was talking about in the car, and you can read it."

Q. Did you read it? A. Yes.

Q. What was in the document? (Objected to).

HIS HONOUR: I have already admitted evidence of events, of statements made to Mr. Barton, and of documents read by him which could be regarded as referable to his state of mind at the time of his signing the agreement in question. Amongst the documents which I have admitted on this basis is a statement by the witness Vojinovic, and Mr. Gruzman now seeks to tender secondary evidence of the contents of another document which Mr. Barton says that he saw at the Criminal Investigation Branch on 11th January 1967 - a document purporting to be a record of an interview with Frederick Hume. The plaintiff has stated specifically that the document purporting to be a record of such an interview was shown to him, and that he read it on 11th January. As a preliminary to tendering secondary evidence of the contents of the document Mr. Gruzman has called Sgt. Anderson, officer in charge of the Criminal Correspondence Branch in the Commissioner's office, who has said - and I accept this as reliable - that he is in a position to locate within the Police Force documents which are in the official custody of the Force or a member of the Police Force. Mr. Gruzman asks me to find that the evidence given by Sgt. Anderson proves a sufficient search for the document referred to by Mr. Barton in his evidence. It is quite clear that the real contest between the parties does not concern the sufficiency or otherwise of Sgt. Anderson's search, but the contest ultimately will be whether there ever was such a document in existence at any point of time. I am of the view that Sgt. Anderson's evidence is adequate to establish the sufficiency of the search for such a document as Mr. Barton has referred to in his evidence, and I should perhaps have added that no such document was forthcoming as a result of Sgt. Anderson's searches. This being so, I am of the view that I should admit the secondary evidence of the document. In so doing I am not to be taken as concluding what will obviously be a heated question of fact - namely, whether there was or was not any such document ever in existence, but it seems to me that, Mr. Barton having sworn that he saw such a document, and the other ground for secondary evidence having been established, the secondary evidence is accordingly admissible. The decision upon whether such a document ever existed, and, accordingly, the veracity of the secondary evidence now tendered, is proper to be determined along with the other questions of fact at the end of the suit, and does not arise for determination on this question of admissibility of evidence. In this respect there is a contrast between the finding which I now make that the search was, having regard to the real contest between the parties concerning this document, sufficient to let in the secondary evidence. I accordingly allow the question.

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MR. GRUZMAN: Q. You might just tell us, Mr. Barton, before you answer the question, whether you remember the whole of the document - every word that was in the document - or some parts of it (Objected to: rejected).

Q. The question was, what was in the document? Will you answer that question to the best of your ability? A. "Interview between Sgt. - Det. Sgt. Wild and Frederick Hume, taken at the Criminal Investigation Branch in Sydney." It was a foolsoap document - (Objected to: rejected). On the first page, round about the middle, was a question - (Objected to).

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HIS HONOUR: Mr. Gruzman, so far as possible I think you ought to invite Mr. Barton to give the narrative contents of what was in the document. I don't mean a narrative of the contents, but to recount, as best he can recollect, in the sequence in which it appeared in the document, what it said.

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MR. GRUZMAN: Q. In giving your answer to this question would you answer it as if you were reading the document to his Honour. Don't say - if you want to say there was a question, just tell us what was on the document, and not your interpretation of what was there? Do you understand? Try and do it in that form. Do you understand? A. Not exactly.

A. Do it to the best of your ability? A. May I ask a question?

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HIS HONOUR: Q. Yes. A. I recollect certain questions and answers. Questions and answers on different pages of this document.

Q. Yes. A. I am able to recall the questions and the answers to them. I am not able to recall all the document - only certain parts.

Q. Mr. Barton, you can give secondary evidence of so much of the document as you recall, but, if you are able to do it, it should be in the sequence in which it appears in the document. (Objected to by Mr. Staff: allowed).

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MR. GRUZMAN: Q. Will you proceed, please? A. On the first page, about the middle, there was a question "Do you know a Yugoslav named Alec Vojinovic?"

A. No. Q. Now I show you a photograph of that man. Do you recognise that man? A. Oh yes. I have seen him around the Cross and at the Kellett Club.

Q. How many times have you seen him? A. Few times, when I was looking for somebody. Q. What you know about him? A. He is a bad criminal hanging around with criminals mostly at the Kellett Club. Q. Have you seen him with Momo? A. Yes but I told him to keep away from him."

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On the second page, close to the top, "Q. What is Momo's real name? A. Michael Ziric. Q. Has he got any other name what he uses? A. I don't think so. I should know if he would have.

Q. Have you ever employed or hired Momo? A. Yes, I wanted to help him as a friend. I have hired him many times in my work as private investigator to help me."

HIS HONOUR: Q. To help "me" or "him"? A. "To help me".

MR. GRUZMAN: Q. Yes. A. "Q. What you mean by help me? A. You know, to do little things following people and report back to me. Q. Would you find Momo for us in a hurry? A. Yes, I can bring him in within 24 hours." 10

Now, close to the bottom of the second page "Q. Do you know Alexander Barton from Landmark Corporation Limited? A. Yes, I done a job for him at Surfers' Paradise. Q. What kind of job? A. Mr. Barton and Mr. Armstrong had a company which had some trouble with contractors."

HIS HONOUR: Q. Trouble with what? A. "With a contractor, and Mr. Barton hired me to take possession of some machinery." 20

At page 3, right at the top "Q. You previously mentioned the name 'Armstrong'. This is Alexander Armstrong M.L.C.? A. Yes. Q. How well you know him? A. He is my friend and my best client. Q. What you mean 'he is my friend'? A. You know, I with him a lot socially, and I play tennis with him. Q. How often you see him? A. Two or three times a week, when he is in Sydney. Q. What you mean 'he is my best client'? A. He give me a lot of investigation to do and I am earning good money from him. Q. What you mean by 'earning good money from him'? A. I give him big bills and he always pays. Q. How much money you got from him lately? A. I don't remember, but not much." 30

Close to the bottom of that same page there is a question that "Allegations has been made that you has been hired by Armstrong to employ criminals to kill Mr. Barton. These are very serious allegations. What you say to that? A. I hired Momo and his friend to follow Mr. Barton and if and when opportunity arises to do him over a bit to frighten him and to tell him there was more to come. Q. What friend of Momo you are talking about? A. Alec. You showed me his photograph." 40

On the next page - page 4 - close to the middle of the top half. "Q. What you mean by saying that Mr. Armstrong is a bad man? A. He do a lot of illegal things. For example, he is buying stolen jewellery. Q. What he does with his stolen jewellery? A. He keeps it in his house. Q. You know where he keeps it? A. Yes. Q. Where he keeps it? A. I can draw you a sketch as best as I can.", or "I will draw you a sketch as best as I can." Then a sketch appeared - the full length (sic) of the size of the paper, about 5" length, and showing certain rooms, and a "X" on the sketch. 50

MR. GRUZMAN: Q. If I hand you a piece of paper can you reproduce that sketch? A. Yes. It was a very rough and very bad sketch. I know Mr. Armstrong's house myself. (Objected to: allowed).

(Sketch drawn by witness tendered and marked Exhibit "R").

Q. Yes. Anything else? A. On the next page, close to the top, the question "Do you know why Mr. Armstrong wants to harm Mr. Barton as the way you have admitted? A. Mr. Armstrong was chairman of a big company and Mr. Barton pushed him out. Mr. Armstrong wanted to get even with him and get his position back. Q. How long you and your man followed Mr. Barton? A. Since the end of October to now." This is my recollection of the document which has been signed by -

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Q. I am sorry, you were telling us about something else on the document. What else appeared on the document that you recollect. (Objected to: allowed).

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Q. What else appeared on the document that you can recollect? A. There appeared a signature. (Objected to).

Q. There appeared some writing. There appeared some writing? A. Yes.

Q. That is in handwriting? A. In handwriting, yes.

Q. Where did the handwriting appear that you saw? A. At the bottom of every page and at the end of the interview paper.

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HIS HONOUR: Q. "At the end of ..."? A. "Interview".

Q. At the end of the other writing on the document? A. Yes.

MR. GRUZMAN: Q. With the writing that you saw - was that all in one handwriting, or the same handwriting, or were there different handwritings. (Objected to: rejected).

Q. Will you tell us what the words were that you saw written in handwriting? A. "Frederick Hume".

Q. In each place that you saw handwriting? A. Yes.

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Q. Did you recognise that handwriting? A. Yes. (Objected to: question not pressed).

Q. Earlier in your evidence in chief you described to his Honour the document - a document - which was taken from a folder by Det. Follington and read by you? A. Yes.

Q. Do you remember that? Do you remember giving that evidence? A. Yes.

Q. Is that the same document that you have just referred to in your evidence. (Objected to: rejected)

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(Short adjournment).

Q. Mr. Barton, were there other topics referred to in the document other than the matters of which you have told us. (Objected to: allowed).

Q. Were there other documents referred to in the document other than the matters that you have told us of in evidence? A. Yes.

Q. What were those topics (Objected to: rejected).

CROSS-EXAMINATION

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MR. STAFF: Q. Mr. Barton, it is your custom, isn't it, to go to a particular hairdresser (Objected to: allowed). (Question withdrawn).

Q. Mr. Barton, in the years 1966 and the early part of 1967 it was your custom to go to a particular hairdresser? A. No.

Q. Wasn't it? A. No.

Q. Your custom was to go to anybody in Sydney you happened to pass when you wanted a haircut?  
A. No.

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Q. And it was your custom, wasn't it, about that time to have your hair tinted from time to time. (Objected to: allowed).

Q. It was your custom about that time, wasn't it, to have your hair tinted from time to time?  
A. Could I hear the question again, please?

Q. It was your custom, wasn't it, about that time to have your hair tinted from time to time?  
A. I don't understand the words "about that time".

Q. During 1966 and 1967? A. No.

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Q. In 1966 did you occasionally have your hair tinted or dyed, if you like the word better? A. I got it twice in January and February 1966.

Q. And later in the year? A. No.

Q. In 1967? A. No.

Q. Not at all? A. No. I didn't like it.

HIS HONOUR: Q. I didn't hear the answer? A. I didn't like it.

MR. STAFF: Q. What I want to put to you is that at that time you frequently had the cutting of your hair attended to by hairdressers in the Arcade between Wynyard and Menzies Hotel, is that right?  
A. It is not right. The early part of 1966 is right. After that I am still going to the Wentworth Hotel hairdresser.

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Q. Since early 1966 you say you were going to the

Wentworth Hotel, do you? A. Since when I came back from overseas in June, 1966.

Q. Up till you went overseas did you go to these hairdressers in the arcade which I mentioned?

A. Yes.

Q. Quite frequently? Did you go there quite frequently? A. Every fortnight.

Q. What I want to put to you is that it was your habit frequently to have your hair dyed or tinted black or dark brown colour? A. I already said twice.

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Q. You say you have never had it done since?

A. No.

Q. You are quite sure of that? A. I am positive.

Q. No room for mistake about that? A. No room.

Q. Mr. Barton, you told us in your evidence in chief that after Mr. Hume attended to the work you gave him in relation to the obtaining possession of Hopgood's machinery he sent to Landmark an account for that work? A. He brought his account in himself.

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HIS HONOUR: Q. I didn't hear that? A. He brought his account in himself. He didn't send it.

MR. STAFF: On that occasion I think you said - on the occasion of receiving that account you, I suppose, saw the signature on the account? A. Yes.

Q. What was the writing on that account that you saw by way of signature? A. "F. Hume" in very little small letters.

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Q. "F. Hume?" A. Yes.

Q. After that occasion I take it you did not see any signature of "F. Hume" prior to the end of 1966, did you? A. No.

Q. And up to the 11th January 1966 you had not seen any signature using the words or letters - letters and words "F. Hume", had you? A. No, I have not.

Q. You tell us, do you, that on 11th January 1967 you saw two handwritten words "Frederick Hume" on pages of this document you have spoken of? A. Yes.

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Q. And you are quite clear that the words you saw - the words you say you saw were "Frederick Hume"? A. Yes.

Q. And those words, you say, appeared on each page, and at the end of the last page? A. Yes.

Q. And you, of course, didn't take with you down

to the C.I.B. on 11th January any specimen of the signature "F. Hume" or "Frederick Hume", did you?  
A. No, I didn't.

Q. You had never seen before the signature or words in writing "Frederick Hume", had you? A. I seen his signature before.

Q. You had never previously ever seen the words in writing "Frederick Hume", had you? A. I seen -

Q. Answer my question? A. That is what I am trying to do. 10

Q. You can answer that yes or no. You can answer my question yes or no. Now, answer it yes or no?  
A. I can't answer yes or no.

Q. I will put it to you again. Prior to 11th January 1967 you had never seen the words - the two words "Frederick Hume" in writing, had you?  
A. Seen one word written, and not the other.

Q. Of course, what I put to you is that the evidence you have given this morning as to seeing questions and answers is a complete fabrication? 20  
A. That is not true.

Q. What do you say to that? A. That is not true.

Q. Did you ever write down - did you ever write down your recollection of the questions and answers you say you saw in this document? A. Yes, I did.

Q. You say you did? A. Yes.

Q. When did you first write them down, Mr. Barton?  
A. Two or three days after when the Police - on the second occasion - tendered the documents, and that document was still missing. 30

Q. That was two or three days after you saw the document on 11th January, was it? A. No, two or three days after when the Police on the second occasion answering the subpoena tendered a lot of documents. You recall at first they said they had no documents except Vojinovic's statement, and the second time they brought along a bundle of documents.

Q. I didn't ask you that. I asked you when.

HIS HONOUR: Mr. Staff, I think you are at cross purposes with the witness. I understood the witness in his answer to be referring to the second occasion in Court this year. 40

MR. STAFF: Q. When do you say approximately - in what year, or in what month, do you say you first reduced to writing your recollection of the document which you say you saw on 11th January 1967?  
A. This year. 1968.

Q. Which month? A. February or March. I don't know. 50

Q. You can remember a whole host of questions in precise terms and answers in precise terms, and you can't remember when you first wrote them down on a piece of paper. Is that what you say?

A. What I say is that it was two or three days after when the Police produced a bundle of documents, and this document was still missing.

Q. Which month was that? A. I don't know. I think February or March.

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Q. This year? A. February or March this year.

Q. Up to that point of time you had never previously attempted to write down on a piece of paper your recollection of these things? A. No. These things -

Q. Just answer the question. Your answer is "No." ? A. What is your question?

Q. Aren't you bothering to listen to the question, Mr. Barton? A. Mr. Staff, you are giving me the question and the answer as well. I would like to be very clear on this matter.

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Q. You just listen to the question and just answer it, will you? A. Yes.

Q. Prior to this occasion of which you have told us you had never attempted, had you, to write down your recollection of what you say you read in the document? A. No.

Q. Didn't think it was of any importance before then, I suppose, did you? A. No. I thought it was available at any time required.

Q. Just answer the question, will you. (Objected to: allowed).

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Q. Mr. Barton, you swore an affidavit in this matter in January of 1968, didn't you? A. Yes.

Q. Of course, you didn't think it was of any importance to mention having read this statement in that affidavit, did you? A. I can write a book to be an affidavit.

Q. A novel? A. Not novel, Mr. Staff. A book of facts. A book of facts.

Q. The fact is, of course, you said not a word about ever having seen such a document as the one you told us about this morning in your affidavit of January 1968, did you? A. No I didn't.

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Q. Forgot about it then, did you? A. No I didn't.

Q. You left it out deliberately, did you? A. No I didn't.

Q. You didn't think it was of any consequence. Is that what you say? A. I don't know what you mean by "any consequence".

Q. Hadn't you thought it up by then? A. What do you mean, I thought it up by then? I can't understand.

Q. You understood, of course, all the words that you say you read in this document, did you? A. Could you repeat it again? I am sorry.

Q. Did you understand all the words you say you read in this document in January 1967? A. That part that I recall, yes.

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Q. Did you fail to understand some words in any other part of it? A. No. I just didn't recall it. I recollect only what I thought -

Q. You read this document through once, didn't you? A. No.

Q. Read it through once? A. Two or three occasions. Three times. I went back and back to certain parts which I thought is different to what I knew about the whole matter.

Q. Did you read the whole document through once, or more than once? A. I read it through - I read through the whole document once, and some parts of it two or three times.

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Q. You went back and read some parts of it two or three times? A. Yes.

Q. Did you read a date on the document? A. Possibly. I don't recall.

Q. You don't know? A. No.

Q. It was typewritten? A. It was typewritten. It was a typist, but I don't recall it - who it was.

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Q. Was there anything in it saying who had typed it? A. Yes, it was there, but I -

Q. But you don't recollect who the name was? A. No.

Q. That would help find him? That might help find him, might it not? A. I beg your pardon?

Q. That might help find out something, if you knew whose name was on it, might it not? A. I have no idea.

Q. A name you had never heard before? A. That is correct.

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Q. So that you are quite sure it was not Const. Follington's name you saw there? A. I am sure it was not Const. Follington.

Q. It was not Det. Sgt. Wild? A. Who typed it.

Q. The name there as to who typed it? A. The typist's name I don't recall.

Q. But it was not a name that you had previously



heard, you told me a moment ago? A. I am not sure.

Q. Oh, you are not sure now. Is that what you are saying? A. I seen Sgt. Wild's name on the document.

Q. Do you want to withdraw the answer you gave a few moments ago? A. No.

Q. Do you agree, then, that the name, that appeared there as the name of the person who had typed the document was a name which you had never heard of before? A. It could be. I didn't concentrate on it - who typed it. I just didn't. Therefore, I don't remember.

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Q. Tell me, what was the opening question in the document? What was the first question you read?  
A. I don't know.

Q. What was the first answer? Do you remember that? A. No.

Q. You remember nothing until you got down to the middle of the first page? A. Yes.

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Q. And then you remember four or five questions and answers, do you? A. Yes.

Q. Did that take you to the bottom of the first page? A. I beg your pardon?

Q. Did that take you to the bottom of the first page? A. No. That was in the middle of the first page.

Q. Four or five questions and answers were in the middle, were they? A. Yes.

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Q. Where did they start? At the middle, or above the middle, or below the middle? Where did they start? A. They started about the middle.

Q. How much space did they take up on the sheet of paper? A. About three or four inches.

Q. Three or four inches? A. Yes.

Q. So that they took you down well towards the bottom of the page, I suppose? That took you down towards the bottom of the page, did it? A. No.

Q. Well, the last question and the last answer you told us about this morning. Where were they?  
A. It was in the middle of the page.

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Q. That was in the middle of the page? A. The whole of this was in the middle of the page.

Q. You say it was typewritten, do you? A. I beg your pardon?

Q. It was typewritten, was it? A. Yes.

Q. Single spacing? A. Yes.

- Q. Single spacing? A. Single spacing.
- Q. Any spacing between questions and answers, or just single space? A. Just single space.
- Q. How many pages were there? A. I think it was five pages.
- Q. You don't remember? A. That is my recollection - five pages.
- Q. It might have been four; it might have been six? A. No. It could be 5 pages. 10
- Q. You are quite clear about it? A. That is my recollection, yes. That is my recollection.
- Q. And when you reduced your recollection of the document to writing how many pages did that document cover? A. Five pages.
- Q. That covered five pages? A. Yes.
- Q. And that was in single space, was it? A. I don't think so. I just typed it double space, or triple space.
- Q. You typed it yourself? A. No, I did not type it myself. I dictated it to my son. 20
- Q. Dictated it to your son? A. Yes.
- Q. And he typed it, did he? A. Yes, he typed it. I told him what page, and where it is.
- Q. You saw this document while he was typing it? You saw this other document while he was typing it? A. Yes.
- Q. Don't you recall whether it was single, double, triple or quadruple spacing? A. It was not single, for sure, and the rest of it I did not pay any importance to it. Therefore I suppose it was double spacing. That is all I can say. 30
- Q. And it covered five pages? It covered 5 pages? A. Yes.
- Q. When you reduced your recollection of this document which you dictated to your son you started in the middle of the first page, did you? A. Yes.
- Q. Didn't you start at the top? A. No. Just put the heading on it.
- Q. At the top? A. Yes. 40
- Q. And started in the middle of the first page? A. Yes at the places where I remember seeing it.
- Q. Well, where did the typing of the first four, five or six questions which started in the middle of the page - where did the typing finish with those on your son's document? Over the second page? A. No, on the first page. There was a big blank between

that one and the questions and answers on the bottom of the page. I am sorry, I must correct myself. It finished about - my son's typing finished about 3" or 4" from the bottom.

Q. That was about the same space - about the same distance from the bottom that the document you say you read? A. No.

Q. It was not a chinese copy of the document you read? A. One was single space and this was possibly double spacing, therefore there must have been a difference between the two. 10

Q. You suddenly thought of that, didn't you?  
A. No.

MR. STAFF: I call for the document typed by Mr. Barton's son.

MR. GRUZMAN: If it is here it will certainly be produced.

MR. STAFF: Q. Mr. Barton, do you know where this document is that you say your son typed? A. I did hand it to my solicitor. 20

Q. Who was that? A. Peter Jay.

Q. Shortly after it was typed? Did you hand it to him shortly after it was typed? A. At first I did hand it to Ian Moore, but he got a car accident, and then I gave it to Mr. Peter Jay.

Q. You picked it up personally from Mr. Moore, did you, and gave it to Mr. Jay? A. Yes.

MR. GRUZMAN: I produce the document. I have written something on it, not realising it was the original document. There is only one word on it, and you will see it is in ink. It may be shown to the witness. I believe that is the document. 30

HIS HONOUR: Q. Mr. Barton, is that the document your son typed? A. Yes, this is the document.

MR. STAFF: Q. Mr. Barton, after you dictated this document to your son did you immediately give it to Mr. Moore? A. I dictated it on a Sunday morning and gave it to Mr. Moore I think about Tuesday.

Q. You dictated it to your son at home, did you? A. Yes, I dictated it to him at home. 40

Q. Just you and your son present? A. Yes.

Q. I suppose you read it over after that, did you? A. Yes.

Q. After it had been typed? A. Yes.

Q. You gave it to Mr. Moore on the Tuesday?  
A. Yes.

Q. Did you keep a copy for yourself? A. No.

Q. You didn't? A. No.

Q. Your son did not make a copy? A. No. But I got a photostat copy of it. I don't want to mislead you.

Q. You got a photostat copy of it? A. Yes I did.

Q. What, from Mr. Moore? A. I think from Mr. Jay.

Q. And you have memorised it, haven't you? A. I memorised it in January 1967.

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Q. You, of course, kept a copy - you got a copy so that you could read it over before you gave your evidence here, didn't you? A. I got a copy because I wanted to read it a few times, yes.

Q. So that you could memorise it before you gave your evidence here? A. I didn't need it to memorise at all. I was well memorised through the year 1967.

Q. Well, what did you want a copy for? A. You usually keep a copy.

Q. You told us you wanted a copy so that you could read it a few times? A. I didn't say I wanted a copy to read it over a few times. I said I read it over a few times.

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Q. What did you read it over a few times for if you remember it so well? A. I beg your pardon?

Q. Why did you read it over a few times if you remembered it so well? A. I read it over a few times to make sure that it is my true recollection. I don't want to make any mistakes, and in the view that this document might turn up I wanted to be sure that these two documents is the same.

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Q. You wanted to be quite sure that the evidence you gave here today, or whenever you gave it, would be identical with the document you and your son composed early this year? A. No, it was the document which I read at the C.I.B. on 11th January 1967.

Q. You would agree, wouldn't you, that the evidence you have given today is verbatim - identical with the document - with what is in the document (Objected to: question withdrawn).

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Q. I will put it another way. You believe, don't you, that the evidence you have given today as to the contents of the document which you say you saw on 11th January 1967 - A. Yes.

Q. You believe that evidence is word for word identical with the words in this document, don't you? A. It could be not the words - the same words. I am positive of the substance, but the words could be different.

Q. You, when you gave your evidence, believed, did you not, that you were recounting the words that appeared in this document which has been produced. (Objected to: allowed).

Q. It is true, isn't it? A. What was the question, Mr. Staff?

Q. When you gave your evidence you believed, did you not, that you were recounting the words that appeared in this document which has been produced? A. No. 10

Q. Did you read this document this morning? A. No.

Q. Yesterday? A. No.

Q. Last night? A. No.

Q. When did you last read it, or a copy of it?  
A. About four weeks ago.

Q. When you were in the course of giving evidence?  
A. No.

Q. Earlier in this case? A. No. Before I gave evidence. 20

Q. I see. You read it before you went into the witness box to give evidence? A. I read it the day before, yes.

Q. So that you would know what was in it? A. No. I just read it.

Q. How many times did you read it? A. I beg your pardon?

Q. How many times did you read it? A. On that occasion only once. 30

Q. How many times have you read it since it was first typed, Mr. Barton? A. Four or five times.

Q. You say that you have not read it for more than a month? A. Yes.

Q. Is that what you say solemnly? A. Yes, that is what I say.

Q. Nor a copy of it? A. Nor a copy of it.

Q. Have you got any memory as to whether the words you gave in evidence today as being contained in the document you saw on 11th January 1967 are word for word the words which appear in this document? A. That is my best recollection. 40

Q. You believe they are, is that what you say?  
A. Yes, I believe that is my best recollection.

Q. Tell me, Mr. Barton, you say - you told us that there was a question which you read in this

document in these terms "Q. What do you mean by saying that Mr. Armstrong is a bad man?" Do you remember telling us that? Do you remember that?

A. Yes.

Q. Have you got no recollection of what appeared in the document before that question was asked?

A. Right before that question?

Q. Yes. Have you no recollection of what appeared in the document before that question? A. No.

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Q. Have you got no recollection about anything being said - or rather, I will withdraw that, and put it this way: have you got no recollection of reading anything in the document which said Mr. Armstrong was a bad man prior to that question?

A. No.

Q. None at all? A. No.

Q. Of course, you would remember anything that said Mr. Armstrong was a bad man, wouldn't you?

A. I beg your pardon?

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Q. You would remember everything about Mr. Armstrong being a bad man, wouldn't you? A. Mostly everything, yes.

Q. But you can't remember reading anything in this document before that question to that effect?

A. No.

Q. And you have got a clear recollection, have you, that Mr. Hume said that Mr. Armstrong was "my friend" and "my best client"? A. Yes.

Q. And you say, then, you recollect him very soon after being recorded in this document as saying that "Mr. Armstrong does a lot of illegal things. For example, he buys stolen jewellery"?

A. Yes.

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Q. And going on to tell the Police where they could find the stolen jewellery? A. Yes.

Q. You are serious in saying that is your recollection, are you? A. I am positive.

Q. It would be a very odd thing for a friend to tell the Police, wouldn't it? A. I beg your pardon?

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Q. It is a very odd thing for someone who says he is a friend to tell the Police about his best client?

A. If you like I can tell you how I seen his answers. I am prepared to tell you.

Q. You say you don't think it is odd that that should have happened? A. I am prepared to tell you what I think, if you want me to.

Q. I am not asking you that. I am asking you whether you think that is an odd thing to happen? A. I cannot answer that question yes or no.

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Q. What you say you read through was a document with a drawing or a sketch of where to find stolen jewellery in Mr. Armstrong's house? A. Yes.

Q. You of course, I suppose, immediately thereafter went to see Insp. Lendrum, did you? A. No, I did not.

Q. You asked Const. Follington, I suppose, whether the Police had been out to search Armstrong's house?  
A. Yes I did.

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Q. And he said "Yes", did he? A. No, he said "No".

Q. He said No? A. That is right.

Q. Did you ask him why they had not been out to search the house to find the stolen jewellery?  
A. Yes I did.

Q. You did ask him that? A. Yes.

Q. What did he say to that? A. He said that because Mr. Armstrong is a Member of Parliament he has to be caught red-handed.

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Q. They could not go and search in this place that Hume had told them to look for? A. He said they don't want to take the risk.

Q. You of course would think, would you, that having jewellery - finding stolen jewellery in a man's house is not catching him red-handed? A. I don't think anything. I am just repeating the conversation.

Q. You accepted this, did you? You accepted Follington's answer, did you? A. It was not my business to accept it or reject it. It was Police business - not my business.

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Q. It was not your business: But you had made Mr. Armstrong your business at this point of time, hadn't you? You had gone to the Police about him?  
A. That is right.

Q. And you were anxious that they catch him? A. Yes.

Q. And get you out of your terrified state? A. Yes.

Q. And put him behind bars, where he could do you no more harm? A. Yes. Or some other place.

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Q. Did you think, Mr. Barton, that finding stolen jewellery in his house would be to catch him red-handed? A. Mr. Staff, I believe the Police know better what they are doing. It was not my business.

Q. Now would you answer my question? A. What is the question?

Q. I asked you did you think that to find stolen

jewellery in Mr. Armstrong's house would be to catch him red-handed, or not? A. I think so.

Q. And you never said anything about this to anyone in the Department other than Follington, you say? A. Yes.

Q. You didn't speak to Wild about whether any inquiries had been made to catch Mr. Armstrong red-handed? A. No.

Q. You didn't speak to Insp. Lendrum? A. No, I did not talk to anybody except Follington. 10

Q. You didn't speak to Mr. Alec Muir of Queen's Counsel, as he then was, about what ought to be done? A. No. His job was only to take us -

Q. I didn't ask you that. You didn't speak to him about it, did you, after you say you read this statement? A. I didn't speak to him at all.

Q. You didn't speak to Mr. Millar about what ought to be done after you read this statement, did you? A. I did. 20

Q. Did you tell him what Follington had told you? A. What Follington told me?

Q. Yes. A. No, I don't think so.

Q. And time went by, and you did nothing to try and pursue inquiries - to try and press the Police into making inquiries about stolen jewellery?  
A. It was not my business. My business was only to catch the people who has been hired to kill me. That was my only interest. The rest of it is not my business. 30

Q. You could not care whether Mr. Armstrong had been stealing jewellery or not. Is that what you say? A. I don't say I could not care. It was not my business.

Q. It had nothing to do with you? A. No. Nothing to do with me.

Q. The fact that if Police inquiries and action had followed and stolen jewellery had been found that Mr. Armstrong might go to prison would not have meant anything to you? A. The only thing it meant to me to catch the criminals which has been hired to kill me and catch Mr. Armstrong with - together. 40

Q. You told us you believed Mr. Armstrong was responsible for all of these things? A. Yes.

Q. And throughout 1967 you have told us from time to time he was ringing you up, threatening you further?  
A. That is right.

Q. And terrifying you until you were in a state of absolute fright and fear? A. Yes. And I still am. 50



Q. And you thought it would be - I suppose you thought if Mr. Armstrong went to prison he would still be ringing you up and terrifying you? A. I don't think he can ring me up from the prison, but he can terrify me from the prison, yes.

Q. At any rate, you didn't think it was your business to prod the Police into doing anything about stolen jewellery? A. Can I answer the question, or not?

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Q. You can answer yes or no, can't you? A. Yes. I was keeping pushing Mr. Follington to get results.

Q. Mr. Follington was getting none, and you didn't go anywhere else, did you? A. Well, where else to go?

Q. You directed attentions of the inquiries to a Constable rather than to a solicitor or barrister or the senior police officers you met, didn't you? A. He has been designated to be contact with me, and I acted on the instructions that I got from Mr. Lendrum. I got instructions from Mr. Lendrum.

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Q. You say it never occurred to you that you ought to go to anybody higher up in the Department than a constable to try and get some action? A. I went to the top and I made allegations and the rest is up to them - not to me.

Q. You say after that day, 8th January, it never occurred to you that you might hurry things along or get some action by going back to someone a bit more senior than a constable? A. No.

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Q. Of course, it is your practice, I suppose, in commercial affairs to deal with clerks and underlings, is it? A. No.

Q. You would not insist upon talking about your business with the managing director or a senior executive? A. Yes, I always do talk to the top man, yes.

Q. In this case you were prepared to talk to a constable? A. No. I did talk to the top men and I has been informed that my case will be properly taken care of and the contact man between me and the C.I.B. is Mr. Follington.

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Q. And for 12 months you were content with that, and there was nothing happening? A. Yes. Mr. Follington was keeping informing me he was making progress.

Q. And there is still no progress? A. I beg your pardon.

Q. You have still got no progress, have you? A. He had big hopes all the time.

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Q. Mr. Barton, when the documents which resulted in the deed of 17th and 18th January 1967 were being dealt with by the solicitors Mr. Coleman was

primarily responsible for advising and looking after Landmark's interests and those of the subsidiary companies, wasn't he? A. I think his firm, Allen Allen & Hemsley.

Q. Mr. Coleman was the gentleman dealing with that? A. Mr. Solomom and Mr. Coleman, Mr. Coleman and Mr. Solomom.

Q. Mr. Coleman also was keeping an eye on your personal interests for you, along with Mr. Peter Bowen? A. No. 10

Q. Of course you are aware, are you not, that Peter Bowen asked Mr. Coleman to keep an eye on your interests as well as those of Landmark? A. I don't think so. I employed Gaden Bowen & Stewart to look after my interests.

Q. You were content, then, to leave it to Mr. Bowen to look after your interests in whatever way they thought proper, were you? A. I beg your pardon? 20

Q. In whatever way they thought proper? A. No. The way I have instructed them.

Q. You, of course, were dealing with and having conversations with Mr. Coleman in relation to the settlement of the final agreements, weren't you? A. Possibly. But I mainly talked to Mr. Solomon.

Q. Don't you remember, Mr. Barton? A. I am just telling you possibly. Mainly I was dealing with Mr. Solomon.

Q. You had many conversations with Mr. Coleman about this particular matter, I put to you. Have you any recollection, or not? A. Yes I have. 30

Q. Many conversations? A. Probably two or three.

Q. Only two or three? A. Yes.

Q. Are you quite sure about that? A. I am quite sure.

Q. Your memory is not letting you down about that? A. No.

Q. How many conversations do you remember having with Mr. Solomon? A. Three or four. 40

Q. Is that all? A. Yes.

Q. Now, your memory is not letting you down about that? A. No.

Q. What were these? 30 seconds, 2 minutes or 5 minute conversations, or longer than that? Have you any recollection? A. 5 minute conversations.

Q. You say that you had three or four conversations with Mr. Solomom? Would you say that they

were all 5 minute conversations? Were they all 5 minute conversations? A. Yes.

Q. Or half hour conversations? A. No, 5 minutes.

Q. Were they telephone conversations, or did you go to the office? A. Telephone conversations, and when he got the deed over to the office then I had a longer time with him, but the discussion was short.

Q. Mr. Coleman; I think you said that you had two or three with Mr. Coleman? A. Yes. 10

Q. Were they 5, 10, 15, 30 minutes? A. Very short conversations. He asked me a question and I answered it, and that is all.

Q. On each of those two or three occasions?  
A. Yes.

Q. What were they? Were they telephone conversations? A. Yes.

Q. Never spoke to him personally? Never spoke to him in each other's presence about this matter. Is that what you say? A. In what period of time are you referring to? 20

Q. While the negotiations for the agreement were going on between the solicitors? A. No, I had only personal conversations with Mr. Solomon.

Q. How many times did you speak to Mr. Peter Bowen about it at that time? A. Two or three times, I think,

Q. Two or three times? A. Yes.

Q. Conversations like these that you had with Mr. Solomon or Mr. Coleman? A. I just gave him instructions. 30

Q. And said "Go ahead"? A. Yes.

Q. On the telephone, Mr. Barton? A. I beg your pardon?

Q. On the telephone, or in his physical presence?  
A. I think he visited me once in my office and one or two occasions on the telephone.

Q. And that is all the discussion you had with your personal solicitor, Mr. Peter Bowen, about it? A. Yes. 40

Q. You were content to accept his advice as to what form the document should take so far as you personally were concerned? A. I was not concerned about the form of the document - I gave my instructions, what I wanted to do.

Q. And left it to him to work out - to satisfy himself that the form of the document achieved what you told him you wanted to achieve, is that right? A. That is right.

Q. And you gave Mr. Solomon and Mr. Coleman similar instructions on behalf of the Landmark Company and the group? A. Yes.

Q. And you had your conversations with Mr. Solomon and Mr. Coleman over a period of a couple of weeks or more? A. Yes.

Q. And your first conversations, of course, were conversations in which you told them each what you wanted? A. I beg your pardon. 10

Q. The first conversations were conversations in which you gave them instructions as to what you wanted, weren't they? A. The first conversation -

Q. I am not asking you what was said in that conversation. I am just asking you whether that was the sequence of the conversation? A. No.

Q. Now, Mr. Barton, I want you to look at this document which the officer will show you. I just want you to look at the signature at the foot of the second page of the document, or the facsimile of the signature, and tell me whether that is a facsimile annexed with your authority? A. I beg your pardon? 20

Q. Is that copy of your signature put there with your authority? A. I don't know. I would have to read the paper before I know.

Q. It is a reproduction of your signature?  
A. It is a reproduction of my signature, yes.

Q. Will you now have a look at the document? What I want to ask you is whether the signature is there on that document with your authority? 30  
A. Yes, it is with my authority.

(Message to shareholders, 22nd November, 1966, tendered and marked Exhibit 28).

(Typescript dictated by plaintiff to his son tendered and marked Exhibit 29).

(Luncheon adjournment).

AT 2 P.M.

HIS HONOUR: Q. You are still on your oath, Mr. Barton?  
A. Yes. 40

MR. STAFF: Q. Mr. Barton, during 1967 - during the second half of 1967 you were seeing Mr. Smith on fairly frequent occasions, weren't you? A. Yes. (Objected to: allowed).

Q. Mr. Barton, during October you had a number of conversations from time to time with Mr. Smith did you not? A. Since the middle of June until the end of the year, yes.

Q. I put it to you that in October of 1967 you, in the course of one conversation with Mr. Smith, 50

asked him whether he would act on your behalf in approaching Mr. Armstrong to attempt to negotiate an extension of time for payment of the money due for the shares in January of 1968? A. I didn't.

Q. You deny that? A. Yes.

Q. Do you deny any conversation with Mr. Smith to that effect? A. Yes. I do.

Q. Anything like that? A. Yes.

Q. No room for mistake about that? A. No room. 10

Q. Do you deny that any such conversation - I am sorry, do you deny that any conversation of that character concerning that matter - that subject matter - took place with Mr. Smith at any time in the latter half of 1967? A. Are you referring to the extension of time?

Q. Yes. A. No.

Q. Nothing like that in, say, November 1967?  
A. Nothing ever happened.

Q. Or October 1967? A. Never happened. 20

Q. Or before that? A. Never happened.

Q. It was in November 1967 that you put to Mr. Smith a proposal for a joint arrangement with Mr. Armstrong in relation to Mr. Kratzmann's company's debt, wasn't it? A. I had a discussion with Mr. Smith.

Q. About that. You told us about it the other day? A. Not my proposal, or Mr. Smith's proposal. It was a sensible proposal which was designed to make a settlement with Kratzmann, and a scheme of arrangement could go on. 30

Q. You were anxious, of course, at that time, if something could be worked out, that the scheme of arrangement should be able to be brought to fruition, weren't you? I thought that if settlement could be reached with Kratzmann for \$100,000 it would be the best interests of the creditors and the shareholders for the scheme of arrangement to go on.

Q. And you were keen to see it go through at that time, weren't you? A. Yes. 40

Q. Mr. Barton I put it to you - I want to ask you do you recall an occasion on 9th February this year when this matter was before the Court in relation to a subpoena, which has been issued. Do you recall early in February - I put it to you the 9th February - such an occasion? A. I recall only the hearing on 11th February - 11th January.

Q. I am putting it to you that after these proceedings had been commenced you came to this Court on an occasion and some discussion took place - some proceedings took place in relation to subpoenas which had been 50

issued by your legal representatives? A. I was at Court on every occasion.

Q. You have been at Court on every occasion?

A. On every occasion. Not the last few days. I missed the last few days.

Q. What I want to put to you is that on 9th February you had a conversation outside this Court room about 11.45 a.m. with Det. Const. Follington. Do you recall that? A. I had no conversation. He said something to me. 10

Q. Do you recall on Friday, 9th February, having a conversation or some discussion outside this Court with Det. Const. Follington? A. I had no discussion.

Q. Do you recall having any conversation with Det. Const. Follington on such an occasion? A. No.

Q. On such occasion? A. No.

Q. You say on no occasion did you outside this Court in this building have a conversation with Det. Const. Follington in February of this year? A. He said something to me. 20

Q. And you, you say, had no conversation with him? A. No.

Q. You said nothing to him? A. Nothing.

Q. Do you say that you have said nothing to Const. Follington outside this Court room in this building on any occasion in February of 1968? A. I has not had any conversation with him at all since that date you mentioned.

Q. That is since 9th February? A. And then I had no conversation with him at all. He said something to me. 30

Q. You say he said something to you? A. Yes.

Q. You said nothing to him on that occasion? A. That is right.

Q. Do you say that on no occasion in February 1968 outside this Court and in this building did you have - did you say anything to Const. Follington? A. I said nothing to him.

Q. And I take it there is no room for mistake about that? A. No room for mistake. None whatsoever. 40

Q. None whatsoever? A. None whatsoever.

Q. I put it to you that on the occasion - the date and the time I mentioned to you - I put it to you that about 11.45 a.m. on 9th February 1968 outside this Court room you said to Det. Const. Follington these words, or words to this effect "If you don't do it I will say that you

told me that Mr. Armstrong deals in stolen jewellery".  
A. That is not true.

Q. Do you deny you said those words, or words to that effect, to Const. Follington? A. I didn't say a word to him.

Q. And it was after 9th February 1968, wasn't it, that you dictated the document that you identified this morning to your son? A. Yes.

RE-EXAMINATION:

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MR. GRUZMAN: Q. Mr. Barton, what did Const. Follington say to you on the occasion you have mentioned? (Objected to: allowed). A. Mr. Follington said that he has been questioned by his superiors about this matter and he made a written statement that I was in fear of my life in January 1967 and he also said that if I say anything else he will deny it.

Q. You were asked whether - I think you answered some questions asked by my friend. You said you had pushed - I think you used the expression that you had pushed Follington, or some such expression, in relation to inquiries about this matter. Do you remember that line of questions? A. Yes.

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Q. You might just tell us, when you used the expression "pushed Follington" what did you mean by that? A. I kept asking him when some action will happen - when these criminals will be brought to justice.

Q. Did you pay him money? A. Yes.

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Q. What money did you pay him? A. I paid him three times \$200 each.

Q. And what were the conversations which led up to each of those payments of money. (Objected to: allowed).

Q. Would you tell his Honour the conversations which led up to each of these payments of money? (Objected to: allowed).

Q. When was the first conversation as a result of which you paid the sum of \$200 to Const. Follington? A. I think it was in February 1967. Mr. Follington came to me and said that they are keeping Mr. Armstrong under surveillance.

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HIS HONOUR: He said to you - A. That. they - the C.I.B. - are keeping Mr. Armstrong under surveillance, but they are short of men, and he would like to do these things during his four days off if I am prepared to pay for that, and then I agreed and on his request I gave him \$200 for that purpose. On the second occasion, which was sometime in March or early April, he came to me and asked me if I knew any matter that Mr. Armstrong was involved in which is worthwhile to investigate - that they can get something on Mr. Armstrong - and then I told him that the matter in Goulburn is worthwhile to be investigated.

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Q. That the matter - A. That the matter in Goulburn is worthwhile to investigate, and I told him what I heard about it from different people, and he did then say he was prepared to spend one week of his holiday in Goulburn to investigate this matter, and then I gave him another \$200.

MR. GRUZMAN: Yes. A. When he approached me about three weeks later and I asked what he did find out in Goulburn he said he cannot disclose it to me and it is a matter for the Police, and then I gave him another \$200 in the middle of August - round about the middle of August. 10

Q. What was the conversation regarding that payment to him? A. He then said they are getting closer and closer to be effective of an arrest of Mr. Armstrong and he needs to keep up his surveillance of Mr. Armstrong and he said he has followed Mr. Armstrong to different places where a normal businessman don't go. 20

Q. Did he mention the places? Did he say the places where he followed him to? A. He mentioned it with description. By description.

Q. What did he tell you? A. I would not like to say to the Court. I don't like to create undue publicity. I am prepared to write it down on a piece of paper. (Witness supplied with sheet of paper on which he writes).

MR. GRUZMAN: I can hardly read it. I will write underneath it, if I may - 30

HIS HONOUR: I think it should be shown to Mr. Staff first. The evidence is admissible, or not, and if it is admissible it should be given in open Court.

MR. STAFF: I think I can read the words.

HIS HONOUR: I think the second name is spelt wrongly, isn't it?

MR. GRUZMAN: Yes.

HIS HONOUR: I am not prepared to have any concealment about matters of this sort. If you want the question answered, the witness can give the answer - 40

WITNESS: Please do not ask the question. My personal safety is more precious to me.

HIS HONOUR: I intend to destroy the piece of paper and disregard it.

MR. GRUZMAN: I will withdraw the question.

HIS HONOUR: I will destroy the piece of paper.

MR. GRUZMAN: Q. I think you told Mr. Staff - I think he asked you whether for a period of 12 months you were content with what had occurred between you and Follington, and I think you answered along the lines 50



that he had big hopes, or words to that effect. Do you remember that? A. Yes.

Q. You might just tell his Honour what conversation you had with Det. Follington which formed the basis for that statement by you? A. (Objected to: rejected).

Q. Mr. Barton, in the course of your cross-examination I think Mr. Staff asked you whether for a period of 12 months you were content with dealing with Follington, and you answered words to the effect that he had big hopes. (Objected to: allowed). 10

Q. Will you tell his Honour what was the conversation with Follington which you summarised by saying he had big hopes? A. Mr. Follington told me on many occasions - (Objected to).

Q. Just confine yourself to one occasion? A. Mr. Follington told me that the arrest of these persons responsible for the attempt on my life will happen shortly because they are getting closer and closer to getting results. 20

Q. And that was said on a number of occasions, was it? A. Yes.

Q. And I think you were asked something about Mr. Muir. Did Mr. Muir act as your counsel or counsel instructed on your behalf in respect of any matter other than the attendance at the C.I.B.? A. No. Mr. Muir only has been asked by Fred Millar to represent me to the extent that we can get to the top of the C.I.B. and not just any detective. 30

(Witness retired).

MR. GRUZMAN: I will tender the following documents; cheque for \$1094.30, m.f.i.4; cheque for \$500 of 7th November 1966 drawn by Pacific Panorama Pty. Limited in favour of Hume's Investigations; the documents certified by the Registrar of Companies in Brisbane to be photographic copies of the records held by the Registrar of Companies in Brisbane relating to Pacific Panorama Pty. Limited and Pacific Panorama (Sales) Pty. Limited; the cash book of Pacific Panorama Pty. Limited; m.f.i.2, being an account from Frederick Hume addressed to A. Barton, Landmark, 2nd August 1966; certificate under s. 12 of the Motor Traffic Act in respect of motor car EBD-703 in the name of Mr. Frederick Hume; hire purchase agreement (m.f.i.6) between Frederick Hume and Traders Finance Corporation Limited. 40

HIS HONOUR: I reject the documents produced out of the custody of the Registrar-General in Queensland relating to the incorporation, annual returns including particulars of directors, and the allotments of shares in a company Pacific Panorama (Sales) Pty. Limited. I fail to see those documents have any relevance to anything arising in this suit. 50

There is also tendered some documents said to be relevant in establishing a link between the first

defendant and Frederick Hume and Michael Novak and  
Alexandar Vojinovic.

These documents fall into two categories.  
The first category comprises a hire purchase  
agreement dated 14th March 1966 whereby Frederick  
Hume entered into an agreement to take on hire with  
an option of purchase a powder-blue Falcon sedan.  
Together with that document is tendered a certifi-  
cate under s. 12 of the Motor Traffic Act showing  
that a Ford car with the same registration number  
as that mentioned in the hire purchase agreement,  
EBD-703, was registered in the name of Frederick  
Hume on the 14th March 1966, that the registration  
was transferred to Michael Novak on 29th December  
1966 and other later and irrelevant details.

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This car is said to be the car in which  
Vojinovic has given evidence that he drove to look  
at the plaintiff's home and in which he drove with  
Novak to an appointment with Hume at the corner  
of William and Riley Streets. It was also the car  
referred to elsewhere in Vojinovic's evidence as  
having been used by him and Novak and in respect of  
the alleged theft of which he, Vojinovic, was  
charged and convicted.

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The other category of documents is two  
cheques, one drawn on the 7th November 1966 for  
\$500 in favour of Hume's Investigation by Pacific  
Panorama Pty. Limited and the other drawn on the  
4th January 1967 for \$1094.30 in favour of Hume's  
Investigations by Southern Tablelands Finance Co.  
Pty. Limited. Both of these cheques were produced  
on subpoena by the respective banks on which they  
were drawn and they appear to have been paid by  
those banks.

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The Pacific Panorama cheque is signed by  
Mr. Armstrong and another signatory and there is  
tendered in association with this document a bundle  
of documents from the custody of the Registrar of  
Companies in Brisbane establishing that Mr. Armstrong  
was a director and a shareholder of Pacific Panorama  
Pty. Limited throughout the period relevant to this  
litigation.

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It is established on the pleadings that  
Mr. Armstrong, who is one of the two signatories of  
the Southern Tablelands Finance cheque, was a dir-  
ector of Southern Tablelands Finance Co. Pty.  
Limited throughout the period relevant to this suit.

Together with a cheque drawn by Pacific  
Panorama there is tendered the cashbook of that  
company but it takes the payment effected by the  
cheque no further than the cheque itself.

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Whilst there is undoubtedly a link in terms  
of names in that Mr. Armstrong is a signatory of each  
of these two cheques in favour of Hume's Investiga-  
tions, a business name used by Frederick Hume, and  
there is a link between Hume and Novak in respect  
of the transfer of the registration of the car. I  
am of the view that now the whole of the evidence  
on this topic is before me this evidence, as far  
as it goes at the present time, would not in law

support an inference of any particular relationship along the chair I have mentioned other than the bare fact of the transactions recorded in these documents. That bare fact does not appear to me to have any relevance or probative significance in the suit and without precluding these documents from having some significance perhaps at a later stage of the suit after cross-examination, when other evidence may have been tendered demonstrating that they do have some real significance, it seems to me at the present time the documents are inadmissible and I accordingly reject them.

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The documents I reject then are as follows: the hire purchase agreement I have mentioned, being m.f.i.6, the certificate under s. 12 of the Motor Traffic Act, the cheque for \$500 being m.f.i.3, the cheque for \$1094.30 being m.f.i.4, the cashbook of Pacific Panorama Pty. Limited and the documents produced by the Registrar of Companies Brisbane relating to Pacific Panorama Pty. Limited.

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There remains as part of the bundle of documents tendered an account dated 2nd August 1966, which was m.f.i.2. No portion of the contents of this document so far as I am aware was placed before the Court when the plaintiff was in the witness box. The cross-examination of the plaintiff today has opened up some aspects of the contents of that document but I am of the view I should admit the account.

(Account dated 2nd August 1966 being m.f.i.2 marked EXHIBIT "S").

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(Original copy of Financial Review, p. 10, substituted for photostat copy being EXHIBIT "P").

CASE FOR PLAINTIFF CLOSED.

(Mr. Staff sought a release from the undertaking given by the first to sixth defendants inclusive at the interlocutory stage of the proceedings in respect of the 15th-21st defendants).

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HIS HONOUR: I note I defer entertaining these motions.

(Mr. Staff granted leave to take out motion for Friday.)

(Mr. Staff formally closed case for the fifth defendant and moved for a decree on behalf of that defendant. Further consideration deferred until resumption of further hearing).

(Deed of contract for loan dated 18th January 1967 tendered in the case of Southern Tablelands Finance Co. Pty. Limited; tender objected to by Mr. Gruzman and tender rejected. Deed m.f.i. 18).

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(Deed dated 18th January 1967 expressed to be made between Paradise Waters Sales Pty. Limited and Southern Tablelands Finance Co. Pty. Limited, together with certificate of registration of

deed, tendered: tender objected to. Tender of certificate of registration withdrawn with leave to re-tender. Tender of deed rejected and m.f.i.19).

(Deed dated 18th January 1967 expressed to be made between Paradise Waters Limited and Southern Tablelands Finance Co. Pty. Limited tendered; tender objected to and tender rejected. Deed m.f.i.20).

(Deed dated 18th January 1967 between Landmark Corporation Ltd. and Southern Tablelands Finance Co. Pty. Limited tendered; tender objected to and tender rejected. Deed m.f.i.21). 10

(Deed dated 18th January 1967 between Landmark Corporation Ltd. and Southern Tablelands Finance Co. Pty. Limited tendered; tender objected to and tender rejected. Deed m.f.i. 22).

(FURTHER HEARING ADJOURNED UNTIL 10 A.M. THURSDAY, 20TH JUNE 1968).