

IN THE SUPREME COURT)

OF NEW SOUTH WALES)

COURT OF APPEAL)

15 1972
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 4

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(14th Defendant)

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SYDNEY.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

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)
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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 & 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 & 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

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CASE FOR THE 1ST NAMED DEFENDANT

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IN EQUITY

CORAM: STREET, J.

BARTON -v- ARMSTRONG & ORS.

TWENTY-THIRD DAY: WEDNESDAY, 14th AUGUST, 1968.

FIRST-NAMED DEFENDANT

On former oath:

HIS HONOUR: You are still on your former oath, Mr. Armstrong? A. Yes, your Honour.

MR. STAFF: Q. Mr. Armstrong, I want to remind you of some evidence that Mr. Barton gave at p. 48. He said that he had a conversation with you about the sale of shares about early in November 1966, when you offered to buy Mr. Barton's shareholdings in Landmark Corporation for 70¢ each. Did such a conversation take place? A. Yes. 10

Q. To the best of your recollection what was that conversation? What did you say to Mr. Barton and what did Mr. Barton say to you? A. I could not recollect it very clearly, Mr. Staff, but the essence of it was set out in heads of agreement prepared by Mr. Grant and given to Mr. Barton. 20

Q. Do you recall that Mr. Barton said in evidence that he had had that draft head of agreement picked up on Saturday afternoon by his son from Mr. Grant, and that in the discussion with you none of the conditions that appeared in the draft head of agreement had been mentioned? A. I think they had been fully discussed before the heads of agreement had been prepared between Mr. Barton and myself.

Q. At p. 52 Mr. Barton gave some evidence that on the 12th - in the middle of p. 52 - that on 12th January 1967 you rang him up at the Landmark office and said these words "You had better sign this agreement, or else." The answer was "First of all on 12th January 1967 Mr. Armstrong rung me at Landmark office and said 'You had better sign this agreement, or else', and I told him I did not let myself be blackmailed into any agreements". Do you recall Mr. Barton giving that evidence? A. I recall him giving the evidence, yes. 30 40

Q. Did that conversation take place? A. No.

Q. At p. 53 - and I think virtually the same evidence was given at p. 59 and 235-6 in respect of the same occasion - Mr. Barton said, at the foot of p. 53, that on 16th January he received a telephone call from you at about 8.20 in the morning at the Landmark office; that you said to him "Unless you sign this document I will get you killed". Did such a conversation take place? A. No.

Q. Then at p. 57, at the foot of the page, Mr. Barton said that he recalled two discussions when you had said you wanted \$400,000 repaid. He was asked "Were there any discussions as a result of which the form of the repayment, or the amount to actually be repaid, was altered?" and Mr. Barton said 50

that he remembered two discussions. He said "One took place at the annual general meeting. One of the shareholders asked Mr. Armstrong if he has demanded that money, and Mr. Armstrong said 'No', he has not demanded that money; and then the shareholder went to his pocket and told Mr. Armstrong, 'Why did you write to me letter saying you are going to withdraw your demand if my nominees will be elected'."

What is your recollection as to that matter occurring at the annual general meeting? A. The annual meeting was fairly heated, Mr. Staff, and I possibly could have made a mistake and said "No, I didn't demand the money". What I meant was that I would withdraw my demand if my nominees were elected. I had in fact demanded the money, as proved by the documentation before that time. 10

Q. At p. 59 again Mr. Barton gave some evidence that on the 16th January at 8.20 in the morning he received a phone call from you saying "Unless you sign that document you will be dead - you will be killed - you will get killed." You have already denied that conversation? A. That is right. 20

Q. At the top of p. 59? A. Yes.

HIS HONOUR: It is also on p. 53 and another page you mentioned, Mr. Staff?

MR. STAFF: Yes. P. 235, going over to p. 236.

Q. At pp.89 and 90 Mr. Barton gave some evidence in answer to some questions which I asked him about discussions with you in relation to the Hoggett matter. That is on p. 89, going over to p. 90. Would you tell us what discussions you had with Mr. Barton about that matter? A. I had some discussions with Mr. Barton on the day I returned home from overseas, and also in the week preceding - in the week after I returned home from overseas. I told Mr. Barton that I thought he should not have sold the shares to Mr. Hoggett at a price above market. (Objected to). 30

HIS HONOUR: Q. As far as possible give the conversation in the terms I said and he said, using the words used. A. I cannot recall them at the moment. I can only paraphrase it. It is too long for me to recall in the form I said and he said. I am afraid I could not help in that way, unless I was allowed to say the effect of it. There were many conversations over this period, The main point of the conversation was - (Objected to). 40

Q. The next stage, if you can't recollect the direct words, is to paraphrase it as you did start to do. A. The conversation occurred when I returned home. I asked Mr. Barton did he sell some shares to Mr. Hoggett, and as I recall, he said "Yes". I said, "Don't you think it was unusual to do that", when Mr. Barton and I had a personal agreement - a gentleman's agreement - to tell each other whenever we bought or sold shares in Landmark Corporation, because we were both large shareholders. I said "You 50

have broken your solemn agreement with me". I said also "I think you have done the wrong thing in selling shares to an assistant general manager at well above the market value." There would have been other conversations to this effect. I can't remember them in detail.

MR. STAFF: Q. Have you any recollection of what answer Mr. Barton gave you, what he said at that time? A. He stated that Mr. Hoggett was very anxious to purchase the shares and that he had offered - at one stage Mr. Hoggett had said he didn't want them. Mr. Barton said "You can have your cheque back." Then he said that Mr. Hoggett changed his mind and came back and said "I will buy them". 10

Q. These conversations, you say, were on the day you returned from overseas? A. On the day I returned from overseas - or I would image mostly, yes.

Q. Had you at that time had any conversations with Mr. Hoggett about that sale and purchase? A. Yes, I had had a conversation with him before that. 20

Q. When was that? A. Mr. Hoggett first reported the matter to me - (Objected to: not pressed).

Q. I think you told us you subsequently in the following week had a further conversation with Mr. Barton? You had further conversations with Mr. Barton about the matter? A. Yes.

Q. What is your recollection of those conversations? A. I have not got a clear recollection of them. ~~I think Mr. Barton felt that he had done the right thing.~~ (Objected to; by direction portion indicated struck out). 30

Q. Mr. Armstrong, at p. 97 of the transcript Mr. Barton, in the middle of the page, said that the draft accounts for the year ended 30th June - I am sorry, I will withdraw that. He said that the principles on which the balance sheet for that year - the year ended 30th June - would be prepared had been discussed between you, Mr. Stewart, and Mr. Barton? A. Between who? 40

Q. Between Mr. Barton, Mr. Stewart and yourself? A. Yes.

Q. Have you any recollection of any such discussion relating to that subject matter? A. No recollection.

Q. At p. 95 Mr. Armstrong - I am sorry, I missed this section - at p. 95 Mr. Barton gave this evidence, that you had - that he had objected for a long time that you ran his reputation down with employees of the company, including a switch girl, a lift driver, real estate agents and company representatives at Surfers' Paradise. What do you say about that? A. I say that did not run his reputation down. On the contrary, I endeavoured to built it up wherever possible. 50

Q. On p. 99 Mr. Barton, about one-third of the way down the page, gave evidence that you had agreed to the dividend in principle in a discussion in July. That would be July 1966. Mr. Armstrong. Did you have any such discussion with Mr. Barton?

A. We may have discussed the dividend, Mr. Staff but there was no agreement. The accounts were not ready at that time.

Q. Now at p. 126 of the transcript Mr. Barton gave some evidence in relation to telephone calls which he received during 1967. Will you tell us, Mr. Armstrong, the approximate period, or the precise period if you can recollect it, during which you were overseas in 1967. A. This could easily be proved from my passport, but to the best of my recollection I was overseas from 30th April until approximately 1st August 1967.

Q. At p. 133 of the transcript Mr. Barton gave some evidence that on or about 14th April, 1967 - I am not sure whether the evidence places it exactly on that date, or not, but somewhere about that time - Mr. Barton gave evidence that he received a threat from you by telephone whilst the proceedings relating to the Landmark Corporation which were commenced about the end of March 1967 and settled towards the end of April or early in May were on foot. Did you make any such threat?

A. No.

Q. At that time? A. No.

HIS HONOUR: On p. 133?

MR. STAFF: P. 133, about the fourth question from the bottom.

I may be wrong in saying that it was by telephone. It may not have been specified. It was my impression. The matter drifted over a few pages, and I did not want to read the whole of the evidence in detail and take up time.

Q. Perhaps I should ask this question. I asked you whether you made such a threat to Mr. Barton by telephone at that time, Mr. Armstrong. Did you make any threat by any means? A. By no means whatsoever.

Q. At p. 151 Mr. Barton, at the foot of the page, spoke of the trouble which the company had with Mr. Kratzmann, a matter round about December of 1966, and said that you had rung Mr. Kratzmann and asked him - that is Mr. Kratzmann - to put a s. 222 notice into the company in connection with the Paradise Towers project, and that Mr. Kratzmann rang Mr. Barton and asked him what it was all about. I am sorry, in November 1966 that appears to have been. Do you recall that evidence being given? A. Yes.

Q. What in your recollection about your conversation with Mr. Kratzmann? A. As far as I can recollect Mr. Kratzmann phoned me and complained that he was not being paid his accounts. I told him there was nothing I could do about it - I was no

longer Chairman of the company, or in control of the company's affairs.

Q. Yes? A. That he should ring Mr. Barton. I think Mr. Barton was away from the office at that time. That is the only reason the call came to me.

Q. Is that the whole of your recollection about that conversation, Mr. Armstrong? A. In essence, yes.

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HIS HONOUR: I am not clear. Mr. Armstrong is denying this evidence at p. 151, is he?

MR. STAFF: Q. Perhaps I will put this to you specifically. Mr. Armstrong, did you at that time in the telephone conversation with Mr. Kratzmann - in the telephone call to Mr. Kratzmann - ask him to put a s. 222 notice into the company - that is Landmark - in connection with the Paradise Towers project? A. No.

Q. Now I come to p. 219. I would like you to look at the document, m.f.i.11, which is m.f.i. at the foot of p. 219 of the transcript, and tell me whether you are able - whether you have any recollection as to the time at which that photograph was taken, and the place? A. I am certain of the place, That would be Margot Kelly's restaurant at Surfers' Paradise. The time I think is some time in July 1966.

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Q. Can you identify the people in the photograph?
A. I can.

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Q. Will you just tell us their names, running from left to right? A. From left to right there is myself and Mrs. - it is a peculiar name - Giulia Korman - Mr. Douglas Bryant, my wife, Mrs. Armstrong, Mr. Barton, another girl whose name I think was Diane King - I think her Christian name was Diane - and Morton Cansdell, of Mr. Doug Bryant's office in Surfers' Paradise. I can't recall the other girl's name.

Q. And that was an occasion on which all of you had dinner, I gather from the appearance of the photograph, was that so? A. That would be correct, yes.

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(Photograph, m.f.i. 11, tendered and admitted as Exhibit 55).

Q. At p. 229 of the transcript Mr. Barton amplified to some extent evidence which he had earlier given about which I have asked you, that he had been objecting for a long time that you ran his reputation down with various people, and he said, at p. 229, that the lift driver about whom he made such objection to you was an employee of Vanguard, at 126 Phillip Street, and that you had run his reputation down with that person in 1964. What do you say about that? A. I have no recollection of so doing. It is a long time ago I am certain I didn't.

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Q. Is it your habit to discuss managing directors or general managers with lift drivers? A. Certainly not.

Q. Now, Mr. Barton on the same page said that you from time to time always promised him not to do it again. That is, to run his reputation down. Did you make any such promises? A. No.

Q. At p. 245 Mr. Barton gave some evidence that in March or April 1967 you said to him - the third last question and answer on p. 245 - you said to him "You want me to produce my diaries. Unless I get my money, you bastard, I will get you killed." What do you say about that? A. I did not make any such statement.

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Q. Then at the top - or the bottom of 245 going over to 246 Mr. Barton said that about the middle of November - on November 19 after the creditors' meeting in relation to the scheme of arrangement next day, I think he put the conversation you said to him "It is time for you to use the money what you have stacked away, and fix up Pratt's man. Unless you do I will get you killed". What do you say? A. I did not say anything like that. I had no conversation with him.

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Q. Then towards the foot of the same page, 246, Mr. Barton said that on one occasion you said to him on the telephone - he recognised your voice, or, rather, recognised your voice twice - he recognised you saying to him over the phone "I will get you killed. Did you ever say that to him over the telephone? A. No.

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Q. And he said that the last occasion on which such a conversation occurred was 11th January 1968, a day on which this case was in this Court listed for hearing. Did that occur? A. No, it didn't occur.

MR. GRUZMAN: If I may interrupt, at p. 151 my friend called for a letter, and I am recorded as saying "It will be produced." It has not been produced up to the moment, and I produce it now. It is a letter from Kratzmann that my friend called for. I produce a photostat of that letter.

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MR. STAFF: Well, I don't -

HIS HONOUR: You are not obliged to have this interruption, Mr. Staff. I don't think you can interrupt, Mr. Gruzman. In any event, from the appearance of the letter it looks to me as if it is already in evidence, Mr. Gruzman. It is Exhibit 13.

MR. STAFF: Q. There is one that I missed, if I can take you back to p. 243. Mr. Armstrong, I want to ask you this. Did you ever go to the C.I.B. - I will withdraw that and put it this way. You may recall that at p. 243 Mr. Barton gave some evidence about a conversation he had with Const. Follington in which Mr. Barton said Const. Follington had said that you had gone into the C.I.B., and "blown your top". Do you recall that evidence being given? A. I do.

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Q. Did you ever go into the C.I.B. and blow your top? A. No.

Q. Did you ever go into the C.I.B. at all about Mr. Barton or anything related to him? A. No, not at all.

Q. At p. 325 Mr. Bovill gave some evidence in relation to a discussion which took place in relation to Vista Court. He said there were some discussions between yourself, Mr. Cotter, and Mr. Bovill about that matter, and that you said that contracts should be re-negotiated and that the company was bound to lend moneys on the building or on the flats in the building and that "we" - that is Landmark, presumably - "should re-negotiate this contract as we were in default in certain interest payments and therefore moneys were callable". He said that was the substance of your conversation with him. Did that conversation take place? A. I think there was some mention of lending money on Vista Court at a board meeting while Mr. Barton was away. I think it is minuted. 10 20

Q. Mr. Bovill said as well that you further said that you might be forced to issue a s. 222 notice. Did you say that? A. I don't recall saying that.

Q. He said also that again - he said that he spoke to you again about this while Mr. Barton was overseas, and that you spoke of your opinion of Mr. Barton. He said that you said that Mr. Barton, was overseas, could not be contacted, and had very likely "shot through". What is your recollection about that? A. I said that Mr. Barton - it was hard to contact Mr. Barton, but I did not say he had shot through. 30

Q. He said that in 1966, also on the occasion of Mr. Barton's trip overseas, you said that Barton was not running the company properly, that the creditors were in a very bad position, the company could not pay its bills, and Mr. Barton was not to be trusted. Do you recall such a conversation, or anything like that? A. The only part of that conversation that would be correct was that I said the company's liquid position was difficult. I never said that Mr. Barton was not to be trusted. 40

Q. Do you recall Mr. Bovill gave this evidence that he had said to you that he did not believe that Mr. Barton had gone overseas for any purpose other than for the company and that he believed that Mr. Barton would come back; he believed that Mr. Barton would be able to arrange finance for the payment of creditors, and he undertook to ring Mr. Barton overseas and to carry out the instructions of the board to see that Mr. Barton was recalled. A. I don't recall that clearly. I do recall that Mr. Stewart, the Assistant General Manager and Secretary of the Company, was instructed to ring Mr. Barton overseas and ask him to return. 50

HIS HONOUR: Before you leave p. 325, the name in the answer to the eighth question of "Conter" I think ought to be "Cotter"?

MR. STAFF: Yes.

Q. Then at p. 326 Mr. Bovill was asked of some incidents or events or discussions or occurrences which occurred after Mr. Barton returned about the middle of 1966 at board meetings or such occasions, and he was asked to go to the period towards the end of 1966 approaching the time of the annual general meeting. He was then asked this question, Mr. Armstrong: "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". Mr. Bovill gave this answer "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?'"

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What do you say about that? A. I have no clear recollection of this board meeting. There were so many of them, and some of them were somewhat heated at that time.

Q. Have you any recollection of making remarks such as Mr. Bovill has given in evidence? A. No, not clearly.

Q. Then Mr. Bovill said, in answer to the question "What did you observe yourself about Mr. Armstrong's appearance when he was making statements such as this at this board meeting?"

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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 could not follow the agenda."

What do you say as to that? A. I don't think I was Chairman at the time of this meeting of 30th November. I was not chairman at the time of the meeting of 30th November. I hope I did not behave in the manner Mr. Bovill describes.

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Q. When did you cease to be Chairman? A. I think on or about 17th November 1966.

Q. From that time onwards the meetings became very numerous? A. They were numerous, yes.

Q. Did they not? A. Yes.

Q. Mr. Bovill also on that page said that when you were speaking about the s. 222 notices he would describe your facial expression, as a sneer. Are you conscious of having exhibited such facial expressions? A. I don't think so, Mr. Staff. I could not remember what my facial expression was at that time.

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Q. I suppose you could say the same as to your face changing colour and your eyes popping out? A. Yes, I would hope it did not occur.

Q. At p. 328, at the foot of the page, Mr. Bovill gave some evidence. Actually, the first of it commences in the middle of p. 328. He gave some evidence that on 22nd October, when the resolution was passed giving you 14 days to leave the offices of Landmark, after that meeting, or following the expiration of 14 days, he had a conversation with you at which Mr. Barton was present, and during the course of that conversation Mr. Bovill said he entered the board room in which you and Mr. Barton was standing, when an argument was taking place. He said to you "This argument that is going on, can only have a damaging effect upon this company and the shareholders generally." He 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". He then said that you replied as to what it could do to the shareholders. He wrote down on a piece of paper the precise expression which he said you used in relation to the shareholders. Do you recall that evidence? A. I do recall it being given.

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Q. First of all, I want to ask you did such a conversation take place at or about that time? A. I can't recall clearly what conversation took place at that time.

Q. Did you have round about that time many discussions with Mr. Bovill? A. At or about that time. I cannot fix that time, Mr. Staff, with respect, very clearly from your reading out. I don't recall there was a board meeting on 22nd October, but there may have been. I would have to see the minute book to get my chronology right there.

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Q. I think I can remind you that the meeting, although Mr. Bovill had assented to the proposition that the meeting was 22nd October, or seemed to answer the question on that assumption, was in fact on 24th October? A. That is what I thought. From my memory I don't think there was a meeting on 22nd October.

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Q. At any rate, did you say what is alleged by Mr. Bovill? It was either following that meeting or following the expiration of 14 days which was said to have been the time given to you to vacate the offices that Mr. Bovill said that this conversation took place. Now first of all do you recall any conversation in which Mr. Bovill said something to the effect that it was your duty to see that if any argument that takes place within the board room is kept within the confines of the board room? A. This could have been said early in November when Mr. Bovill and I had a discussion with Mr. Barton about purchasing his shares. That is the only time I think it could have been said. I cannot recall it clearly.

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Q. You recall the expression which was written on the sheet of paper that Mr. Bovill said you had used in relation to the shareholders, do you? A. Yes.

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Q. Did you ever use that expression? A. Certainly not. I was the largest shareholder. May I be corrected? My companies were the largest shareholders.

Q. At p. 329 Mr. Bovill was asked "What other conversation took place?", and Mr. Bovill said that he had said that he thought that was an extremely wrong attitude to take to your responsibilities. He said that you then went off at what he called 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." He said that he said "He went on business to obtain moneys for the company, and on your recommendation." He said that you said "That was a holiday, and you knew it". He said that he said that he had no idea that the trip was entirely a holiday - in fact, he believed the reverse to be the case, and that you said "Don't be so bloody naive." He 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 said that you made various other remarks and interjections, and then said, with what appeared to be an enraged look on your face, which he said he had described in his previous evidence, "I don't like the way you have been prying into my expenses". He said that he said "I don't like having shareholders' pockets picked behind their back, and I don't consider that your expenses were justified that I have discovered." He said that you said "If you make a remark like that I will bloody well fix you," and that you came towards him. He said that he stood his ground, and you did nothing further.

What do you say about that? A. I don't recall any conversation to that effect, and I certainly never uttered any threats to fix Mr. Bovill.

Q. Then Mr. Bovill towards the foot of p. 329 gave some evidence that at or following the board of Landmark Corporation on 30th November 1966 he was seated at the end of the board table facing the door. He was going through some papers, and he heard your voice in the entry hall saying the word "body-guard". He said you came into the room, and you shouted "You stink; you stink. I will fix you." Did that occur, Mr. Armstrong? A. No, Mr. Staff.

Q. Do you recall an incident at or about 30th November at which you took some objection to the presence of a person? A. I do recall some incident to that effect.

Q. What did you do and say on that occasion? Who was present? A. When I walked into my office to attend the board meeting on 30th November there was a gentleman seated in my secretary's office just outside my own office. I did not know who he was, and I did not think he was a normal member of the staff. I asked him to identify himself and he said he would not.

Q. Yes. What happened? A. I then asked the secretary

could he tell me who he was, and he said he was not supposed to. I cannot recollect if I asked Mr. Barton or Mr. Bovill or not about that, but I could get no satisfactory answer from any member of the board or from the secretary as to who the gentleman was. I then said "I will call the Phillip Street Police Station and ask them to send two officers down there to see if this man is either authorised by the board or not." Two officers came down. They questioned the man, and I think to the best of my recollection Mr. Coleman of Allen, Allen & Hemsley, spoke to the two officers and told them who the man was, that he was a security man - and advised me of that fact. The two police officers then left.

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Q. Mr. Armstrong, at any time any of these men were seen by you or referred to by you, did you describe them, or any of them as bodyguards? A. No, I only saw one. That is the only security man that I saw, and only on that occasion.

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Q. Mr. Bovill said at the foot of p. 329 in amplification of the earlier material that he and Mr. Barton were in the board room at the time that you rushed into the board room, or, rather, you uttered "You stink; you stink. I will fix you" from within the board room. First of all, did you utter those words within the board room, or anywhere? A. No, I did not.

Q. Mr. Bovill also said that after you had uttered those words you went out of the board room, and tore down the passage. Mr. Barton followed you and returned shortly afterwards, looking very shaken. Did that happen? A. Not as far as I know. I certainly didn't tear down the passage, and I don't remember Mr. Barton following.

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Q. Will you look at the minutes of the meeting of directors of Landmark Corporation of 30th November 1966 which the officer will show you? I refer you to the first two items in the minutes. First of all, those present. Those present were described as Mr. Barton, yourself and Mr. Cotter. Is it your recollection that those persons were present at the board meeting on 30th November? A. Yes, I believe they were.

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Q. You see then that the minute records that in attendance were Mr. Marks, the secretary? A. Yes.

Q. Is that your recollection? A. Yes.

Q. Mr. Kewin, of Hungerford Spooner & Kirkhope?
A. Yes.

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Q. Mr. Bovill? A. Yes.

Q. Mr. Coleman? A. Yes.

Q. And Mr. Solomon? A. Yes.

Q. The latter two being members of the firm of Allen, Allen & Hemsley? A. Yes.

Q. Or representatives of the firm? A. Yes.

Q. Is it your recollection that those persons were present during the board meeting? A. Yes, it is.

Q. At the foot of p. 330 Mr. Bovill said that on 30th November in the board room he had a conversation with you after the board meeting itself had finished. He said that he had gone to the washroom and returned to the Landmark offices. The board room door was open. He saw you inside. He walked in. He said to you "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. 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." Now, did that conversation occur? A. I don't recall it.

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Q. Have you any recollection of any conversation of that character? A. I cannot say I can recollect it clearly at all.

Q. Mr. Bovill continued "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?'" Did you say that?

A. No, I did not say that.

Q. He said that you wheeled around on him, pulled out your gold pass from your pocket, and started waving it under his nose, saying "I can have that bodyguard removed if I want to. I could have you arrested in Pitt Street." What do you say to that?

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A. Quite incorrect.

Q. He said that he said, "On what charge, Alec?" and that you said "This represents the Government. I would only have to say to the policeman that you threatened and molested me and he would arrest you." Did that occur at any time? A. No.

Q. You recall that Mr. Bovill then gave some evidence of detailed conversations between you and him at the same time? A. I do, yes.

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Q. Would you tell his Honour what you say as to Mr. Bovill's evidence as to those conversations?

Q. Quite incorrect.

Q. Did any of those conversations to your recollection take place between you at that time, or at any other time? A. Certainly not at that time. The only conversation that possibly could have taken place between Mr. Bovill and I was in connection with drug traffic, which in my view would have taken place at least six months earlier.

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Q. What is your recollection as to such conversation with Mr. Bovill about drug traffic?

A. I think I had joined the Society for Prevention of Alcoholism and Drug Dependence and

we may have discussed that at some stage, and at that time the drug traffic was fairly well in the newspapers. I can't recall any more than that.

Q. To save time and going through it in detail, if I can, Mr. Armstrong amongst the conversation which he described as having taken place on that occasion, he said that you said "You can have someone killed for -", and he could not recall whether it was "£1,000" or "1,000 quid" or "£2,000". Did you say those words, or anything like it? A. No. 10

Q. And, Mr. Armstrong, have you ever pulled out your gold pass or used it for any purpose in the Landmark office that you can recollect? A. Only on that occasion to identify myself to the policemen who came down.

Q. That is on the occasion -? A. On the occasion, I think it was 30th November, at this meeting.

Q. Have you ever waved your gold pass under Mr. Bovill's nose? A. I certainly have not. 20

Q. Mr. Armstrong, Mr. Bovill, at p. 362, a little below the middle of the page, said that he thought you had made some remark to the effect - a remark by way of warning to the directors that in your opinion Landmark Corporation could not find the money to repay your \$400,000 and Mr. Bovill's answer to the question was "Yes, I think Mr. Armstrong did make some remark to that effect, but Mr. Armstrong made many remarks which were not correct". Do you recall on any occasion making such a remark by way of warning to the directors of Landmark? A. I believe I warned the directors on certain occasions that they were unwise to dismiss me before they could be sure they had the finance to pay me out. 30

Q. Can you remember any specific occasion? A. I can't remember any specific occasion, but I certainly did warn them.

Q. Was it your belief at the time of making these statements that Landmark would not be able to find \$400,000 to repay debts? A. I didn't know whether they could or not, but I told them they should make sure to find out before they made mine due. 40

Q. At p. 396 Mr. Bovill gave some evidence - at the foot of the page, and going over the page - that you spoke to him shortly after your return from overseas in 1966 about the Hoggett matter, and expressed extreme displeasure that what had happened as to the sale of the shares by Barton to Hoggett? A. Yes.

Q. Do you agree that that conversation occurred? A. Yes, I think it did. 50

Q. And that you also said that it was your view that what Mr. Barton had done was highly improper? A. Yes, I think I did say that.

Q. And do you recall asking Mr. Bovill to do anything, or not to do anything in relation to your

discussion with him about that matter? A. I asked him to keep it confidential for a day or two.

Q. Mr. Armstrong, this question was asked of Mr. Bovill after he had agreed that you had spoken to him shortly after your return from overseas, and expressed extreme displeasure about the matter, and said that in your view it was highly improper. He was asked this question: "And he" - that is, Mr. Armstrong - "asked you, did he not, at that time to treat his disclosures to you of this transaction as confidential?". He answered "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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What is your recollection of that? A. I don't think I did say them in front of Mr. Cotter in the board room. I think I may have said them at lunch with Mr. Cotter and Mr. Bovill. My recollection is not clear, but I think both Mr. Cotter and Mr. Bovill knew of this - of my discussions about share prices - at that time, and I asked them both to keep them confidential for a day or two.

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Perhaps, your Honour, could I make an explanation here? Or would that be out of order?

HIS HONOUR: Not unless you are asked to. If Mr. Staff wants to ask for an explanation he may.

MR. STAFF: Q. I don't want you to speculate, but will it clear the matter best if I ask you this question: What is your recollection of the way in which you spoke to Mr. Bovill or Mr. Cotter about this transaction at the time when you expressed the view that it was improper? A. I may have spoken to them in the board room after the meeting, or I may have spoken to them at lunch. But it would certainly have been on the day of the first meeting after I came home.

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Q. That is, after you returned from overseas?
A. Yes.

Q. In 1966? A. Yes. It definitely was not done at the meeting itself, and it was not done in Mr. Barton's presence, so far as I can recollect.

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HIS HONOUR: Mr. Armstrong, I don't think we have the dates of your absence in 1966. Can you give us those? A. Approximately 1st September to the 15th or 16th October 1966. I think I returned - it was a Sunday that I returned. I think it was the 15th. It could be checked by looking at the diary.

CROSS EXAMINATION:

MR. BENNETT: Q. You were a director of Landmark until the board meeting of 17th January 1966? A. 17th or 18th. I think it may have been the 18th.

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Q. Your resignation was accepted at the end of the board meeting which approved the agreement of 17th January? A. I believe so. Mr. Grant was representing me at that board meeting.

Q. You are, of course, aware of the contents of that agreement? A. I am.

Q. And you are aware that one part of the agreement was that option in shares entitling holders to certain blocks of land in Paradise Waters (Sales) were granted to you? A. Yes.

Q. Did you feel that the granting of these options to you was beneficial to Paradise Waters (Sales)? A. I don't quite understand your question. 10

Q. Did you feel that the options were being given to you at a price which was reasonable, having regard to the interests of Paradise Waters (Sales)? A. Yes. (Objected to by Mr. Staff).

Q. The agreement also provided, I think, that the purchase price of \$100,000 should be paid for 2,000 shares held by Finlayside Pty. Limited in Paradise Waters (Sales). Did you consider that to be a reasonable price? (Objected to by Mr. Staff; rejected). 20

Q. Did you feel that the agreement whereby \$100,000 was to be paid for 2,000 shares held by Finlayside in Paradise Waters (Sales) was reasonable, bearing in mind the interests of the purchaser of those shares? (Objected to by Mr. Staff; ruling on admissibility deferred by his Honour until the conclusion of cross-examination by Mr. Gruzman).

Q. In Mr. Barton's affidavit filed in these proceedings, sworn on 4th January he makes this statement in para. (c) (i) "Mr. Armstrong charged his private expenditure to the company Landmark Corporation Limited on a large scale including such matters as membership fees to numerous clubs, food and drink for private parties in his home, travelling expenses, for himself and his wife to his grazing property near Canberra, and repairs to his boat". Are any of those allegations correct? A. Some of them are, yes. 30

Q. In respect of which clubs were any clubs membership fees charged? A. I could not recall that, Mr. Bennett. Those matters would be matters of record in the books of the company. 40

Q. It is also stated in the same affidavit para. (b), "Mr. Armstrong had some 20 private companies which were engaged in various operations. The registered office of these companies were at the office of Landmark Corporation Limited and the staff and facilities of Landmark Corporation Limited were used for such private companies without any recompense to Landmark Corporation Limited." Is that allegation correct? A. Yes. That well known to all the directors. 50

Q. The affidavit continues "From time to time I objected in my capacity as managing director of Landmark companies but without succeeding or bringing about any alteration in this position." Is that correct? A. No.

(Short adjournment).

MR. GRUZMAN: Q. Mr. Armstrong, in your evidence you have denied a number of allegations made by Mr. Barton. You say they are not true? A. Yes.

Q. And a number of allegations made by Mr. Bovill, haven't you? A. Yes, I have.

Q. You say those allegations are not true?
A. Correct.

Q. I suppose you put yourself before this Court as a man of honour? A. I don't think I put myself before this Court as anything. I am just an ordinary individual, Mr. Gruzman. 10

Q. Do you disclaim the actual use of honour?
A. No, I would not.

Q. Do you claim to be a man of honour? A. I claim to be a man of my word.

Q. Do you claim to be a man of honour? A. Yes.

Q. Do you have any difficulty in understanding that question? A. No. 20

Q. It is quite clear you claim to be a man of honour? A. Yes.

Q. Do you claim to be a man of truth? A. Yes.

Q. Do you regard yourself as a person who has sworn to uphold the laws of this State? A. I certainly do.

Q. I think you are a member of the Legislative Council? A. Yes.

Q. Of this State? A. Yes.

Q. Would you regard yourself as a person who would seek to pervert the course of justice? A. I would not. 30

Q. Would you say that you were a person who would bribe a Judge if it suited you? A. Certainly not.

Q. Would you regard yourself as a person who would attack a Judge who crossed your path? A. Under no circumstances.

Q. You see, Mr. Barton in his evidence said that there was a conversation which went like this. He said that he said to you "You are a vicious and ruthless man. You are only interested in your own financial affairs. You go as far as death, conspiring to mislead justice, would attack anybody in any high position, including Judges." Was that said? A. No. 40

Q. Or anything like that? A. Nothing like that.

Q. Is it true that you are a vicious man? A. No.

Q. Is it true that you are a ruthless man? A. No.

Q. Do you regard yourself as a ruthless man?
A. No. I don't.

Q. Or as a vicious man? A. No, I don't.

Q. Is it true that you are interested only in your own financial affairs? A. No. I don't think so. I am interested in any other man's.

Q. Is it true that money is your God? A. No.

Q. Is it true that you would go as far as death? A. Definitely not. 10

Q. Conspiring to mislead justice? A. No.

Q. Attack anybody in any high position, including Judges? A. Certainly not, sir.

Q. There is no possibility of any truth in that?
A. That would be correct.

Q. Neither in thought nor in action? A. Neither in thought nor in action.

Q. Look sir, would you be a man who would sell a woman whom he loved for financial gain? A. I find that question rather offensive, Mr. Gruzman. 20

Q. Would you answer it nevertheless? A. No, I would not.

Q. Would you sell a woman's honour - a woman whom you loved - for your financial gain? (Objected to; allowed).

Q. Are you a man who would sell the honour of a woman he loved for financial gain? A. Definitely not.

Q. You were associated with a man called Eskell, weren't you, in business? A. I was. 30

Q. That is Stanley Eskell, who is also a Member of the Legislative Council? A. Yes.

Q. And Mr. Eskell wanted a divorce, didn't he?
A. May I address your Honour in this matter for a moment?

HIS HONOUR: Yes.

WITNESS: I think that this cross-examination could be very damaging to Brigadier-General Stanley Eskell because of his position in the Cabinet. I would just draw attention to that. If you don't mind, I can answer your questions. 40

HIS HONOUR: I think that the cross-examination is permissible. It is on credit.

WITNESS: Could I make this statement? If you don't mind me saying this, Mr. Eskell would be very

worried about this cross-examination, and I would hate him to feel that anything that I said was directed against him.

HIS HONOUR: I understand your reluctance.

WITNESS: I am reluctant to answer these questions on the credit of Mr. Eskell, who is a well known soldier and a Member of Parliament.

HIS HONOUR: Mr. Armstrong, I can relieve you of any concern in that regard by saying that if the question is admissible, as I have ruled that it is, on credit, you are obliged to answer it, so that it is not a matter where you are placed in the position of volunteering information. 10

MR. GRUZMAN: Q. Mr. Eskell wanted a divorce, didn't he? A. I don't know.

Q. You don't know? At a time shortly before the proceedings in the Eskell v. Eskell divorce came to hearing you were aware that Mr. Eskell was seeking a divorce, weren't you? A. I am not sure whether Mr. Eskell or Mrs. Eskell was seeking a divorce. 20

Q. Did you know that Mr. Eskell wanted a divorce? (Objected to).

(Mr. Gruzman undertook to make the question directly relevant to this witness' credit, Allowed).

WITNESS: May I address you, your Honour, on this matter?

HIS HONOUR: Yes.

WITNESS: I do feel very strongly on this matter, as a man of Mr. Eskell's reputation is not in the same street as Mr. Vojinovic or Mr. Hume. 30

HIS HONOUR: It is in exactly the same position.

WITNESS: I would like an adjournment to consult my counsel about this matter; five minutes, if I may.

HIS HONOUR: Lest there be any doubt about it at all, there is not the slightest difference as far as one individual or another is concerned.

WITNESS: I appreciate that, sir.

HIS HONOUR: I think that is a reasonable request. 40

(Short adjournment).

(Following this short adjournment, Mr. Staff informed his Honour in Court that the witness was anxious that Mr. Eskell be given the opportunity to attend Court and hear Mr. Gruzman's cross-examination concerning him (Mr. Eskell). There being no objection, his Honour accordingly adjourned for a further period).

MR. STAFF: Unfortunately no one has been able to communicate with Mr. Eskell. He is in the city somewhere but is moving about between Parliament House and his office, and no one knows where he is.

HIS HONOUR: Very well. Mr. Gruzman, would you proceed?

MR. GRUZMAN: Q. You are aware that the Eskell -v- Eskell divorce was heard somewhere about the middle of 1962, are you not? A. Not clear on that.

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Q. Not clear? A. No.

Q. But you remember the incident, don't you?
A. Yes. I remember the incident but I am not clear of the time.

Q. Well, taking the time back from your recollection of the hearing of the divorce suit - do you understand what I mean? In your own mind; the hearing of the divorce suit? A. When did you say that was?

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Q. I suggested to you in the middle of 1962. A. I think that could be correct. I am not clear on it but you could easily refresh my memory.

Q. I suggest to you that it was actually heard on 25th June 1962. The question which I asked you immediate prior to your application was whether shortly before the hearing of that suit, you were aware that Mr. Eskell wanted a divorce. Do you remember that? That was the question. A. That was the question, yes.

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Q. What was your answer? A. I can't recollect whether I was or I wasn't.

Q. I suggest to you that that answer is untrue.
A. I suggest to you it is not.

Q. Look, sir, are you prepared to swear on your oath that in January 1962 there was no conversation between you and Mr. Eskell about his divorce? A. I can't recollect it. I didn't say I would swear anything, but I couldn't recollect it.

Q. Is this the position: You will neither admit nor deny that in January 1962 you had a conversation with Mr. Eskell about the divorce? A. I just said I could not recollect it.

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Q. I put to you that that answer is untrue. A. I cannot recollect any conversation about it at all. It is a long time ago. It is over six years ago.

Q. Are you prepared to swear that there is no recollection in your mind at this time as to any conversations between yourself and Mr. Eskell about his divorce? A. I am not prepared to swear it. I said I could not recollect it.

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Q. What I am asking you to state your oath on is

that you have no present recollection of any conversations between yourself and Mr. Eskell relating to his divorce? A. I did not say I would state my oath on anything. I said I had no recollection of any conversation between Mr. Eskell and myself.

Q. Perhaps you are not understanding me. I suggest to you that you have a very clear and vivid recollection of these conversations and you have denied that. Do you understand? That is the position, isn't it? A. I can hear what you are saying. 10

Q. I want to know, will you swear positively that you have no recollection in your mind at this moment of conversations between yourself and Mr. Eskell relating to the Eskell -v- Eskell divorce? (Objected to by Mr. Staff).

Q. Will you swear on your oath that you have no recollection at this time of any conversations between yourself and Mr. Eskell between 1st January 1962 and 30th June 1962 relating to the Eskell -v- Eskell divorce? A. I have no clear recollection. 20

Q. Well, in other words, I understand your answer to mean that you have some recollection. Is that correct? A. No clear recollection.

Q. But you have some recollection? A. There may have been or there may not have been conversations.

Q. Will you admit that in January 1962 Mr. Eskell approached you about his divorce? A. I don't remember that. 30

Q. Are you prepared to swear it did not happen?
A. I don't know.

Q. Mr. Armstrong, I am not suggesting to you that there was some casual conversation. The suggestion is of a conversation by Mr. Eskell designed to have the effect of misleading the Divorce Court. Do you understand that? A. I cannot recollect.

Q. In other words, I am putting to you a conversation - (withdrawn).

Q. You would regard a conversation which amounted to a suggestion of a conspiracy to mislead the divorce court as a very serious and important conversation, wouldn't you? A. I do not regard Mr. Eskell - remember Mr. Eskell putting any suggestion of conspiracy to me. 40

Q. But you would regard a conversation in which anyone suggested to you that there should be some conspiracy to mislead the Divorce Court as a serious and important conversation? A. I do not know how I would regard it. 50

Q. I take it, then, that if someone made a suggestion to you involving a conspiracy to mislead the Divorce Court, you would not regard that as a very important sort of conversation? A. I would not know how I would regard it.

Q. Is that a serious answer? A. Yes, because - there was no conversation of conspiracy to mislead, put to me so I do not know how I would regard it. That is a hypothetical question.

Q. Sitting in the witness box and applying your intellect to the matter, cannot you tell his Honour how you would regard a suggestion put to you that you should be party to a conspiracy to mislead the Divorce Court? A. I was not any party to it. 10

Q. But cannot you tell us how your mind works? In other words, how you would regard such a suggestion? A. Very difficult to tell you how my mind worked six years ago.

Q. But now. A. Now, I might consider it serious but six years ago I cannot remember. I do not know what I thought six years ago.

Q. Do I understand that you would now appreciate that such a conversation, to your mind, would be an important and serious one? A. Important one, yes. 20

Q. And serious? A. I suppose so.

Q. But what you are telling the Court is, you may not have so regarded such a conversation six years ago? A. Can you put your question again?

Q. That if someone had suggested to you that you be party to a conspiracy to mislead the divorce court six years ago you may not then have regarded that as either serious or important? A. I think I would have. I do not remember much about how I regarded at that time. 30

Q. Would it be the sort of conversation which could have taken place which you might have just forgotten? A. May have forgotten it. I do not recollect it clearly at all, this conversation. I do not remember any conspiracy whatsoever.

Q. I understand you now to be saying that if a conversation such as I have suggested to you had taken place in 1962 you might have forgotten it? A. I may have, I may not have.

Q. If you could have forgotten it the position must be that such a conversation might have taken place? A. May have. May not have. 40

Q. That is, that Mr. Eskell, M.L.C., may have asked you, Mr. Armstrong M.L.C., to be a party to a conspiracy to mislead the Divorce Court. That is the possibility, isn't it? A. I suppose it is possible.

Q. Were you revolted by such a suggestion? (Objected to by Mr. Staff; withdrawn).

Q. If such a suggestion had been made, cannot you tell us now that it would have revolted you? A. You mean if it was made to me today, it would have revolted me? 50

Q. Well, yes. A. Yes, it may have - I would not have used "revolted", I would have thought it was an unwise thing to do; serious thing to do.

Q. But six years ago how would it have affected you? Q. I cannot tell you how something would have affected me six years ago. I do not remember.

Q. If a conspiracy to mislead the Divorce Court would directly or indirectly lead to financial gain for yourself, how would you regard that matter? 10

A. I think it would be very bad. If it led to any financial gain from me I would think it was an extremely serious thing to do.

Q. Improper? A. Improper.

Q. And a matter which no man in your position would dream of doing? A. I don't think any man should do it in any position.

Q. And certainly not a man in your position?

A. Correct.

Q. And that would apply to whether the financial gain was direct or indirect? A. Yes, either way. 20

Q. For example, you would regard it as wrong to conspire to mislead the Divorce Court for the purpose of assisting a man who was working with you in business? A. Yes, I would think that was incorrect.

Q. Not only incorrect but very wrong, is that right? A. Yes.

Q. Most improper. Is your answer yes? A. Yes.

Q. And I suppose that if anything could be worse than that it would be to use as a party to the conspiracy somebody whom you loved? A. That would be worse, too, yes. 30

Q. That would be, I suppose, the most disgraceful thing that any man could do? A. That would be correct, yes.

Q. And that would have been your view in 1962?

A. I would think so, yes.

Q. Have you some doubt about it? A. No.

Q. And that is your view today? A. Yes.

Q. Now look, sir, I want to put it to you that you agreed with Mr. Eskell and a lady, then Miss Margaret Cleary, that she would sign a confession of her adultery with Eskell? A. No, I did not. 40

Q. And I want to suggest to you that your purpose, as told by Miss Cleary to Mr. Eskell, was to assist Mr. Eskell because he would be a good business partner for you? A. I do not quite understand what you - would you rephrase that question?

Q. Yes. I put to you that your purpose in entering

into this conspiracy was to assist Mr. Eskell because he would be a good business partner for you. (Objected to by Mr. Staff; disallowed).

Q. I am not trying to put to you with clarity the precise suggestion that has been made; I will come to that later. I want you to understand that the suggestion that is being made to you is that you conspired with Miss Cleary and Mr. Eskell for her to provide evidence for Eskell's divorce because Eskell would be a good business partner for you?

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A. I flatly reject your suggestion.

Q. And I want to suggest to you also that the Miss Cleary involved became your wife, Mrs. Armstrong? A. The Miss Cleary involved did become my wife, that is true, yes.

Q. And in June 1962 you loved Miss. Cleary, didn't you? A. Yes, I certainly did.

Q. She is still your wife? A. Definitely.

Q. Now I want to put some specific matters to you. Is this true, that in January 1962 Eskell asked you to ask Miss Cleary - Mrs. Cleary - if he knew anyone who would admit to adultery with him to hasten his divorce case. Did that conversation take place? A. Cannot recall it.

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Q. Are you prepared to swear that it did not?
A. No.

Q. You are not? A. No. It may or it may not. I do not know. I do not recall it.

Q. If it did, it certainly did not revolt you, did it? A. I said I cannot tell you what I felt six years ago, whether it did or did not revolt me.

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Q. But I have put to you that that conversation took place in the context (a) that Miss. Cleary was the woman that you loved and (b) that the purpose of the conspiracy was to assist Eskell so that he would prove a good business partner for you. Do you understand that? A. I cannot see how his divorce had anything to do with his business partnership.

Q. But you understand that is the suggestion being put to you? A. Yes.

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Q. And you told us that that is the most disgraceful thing that a man could do? A. No. I think there are more disgraceful things than that. But it is an unpleasant thing. I reject flatly that I entered into any conspiracy between Mr. Eskell and my present wife and myself.

Q. You have already told us that to be party to a conspiracy to mislead the Divorce Court, involving a woman whom you loved, for the purpose - or one of the purposes being a good business partnership for you, would be the most disgraceful thing a man could do? A. I did.

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Q. Do you want to alter your view on that? A. No.

Q. Well, it is in that context that I am asking you whether in January 1962 Eskell asked you to ask Mrs. Cleary if she knew anyone who would admit to adultery with him to hasten his divorce case. In that context will you admit that such a conversation took place or might have taken place? A. It may have taken place. I cannot recall it clearly.

Q. So, on your own admission you may have been party to doing the - may have been party to an action which was, on your own view, a most disgraceful thing. (Objected to by Mr. Staff; not pressed).

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Q. Well, you are not prepared to deny that that conversation took place? (Objected to by Mr. Staff).

Q. You are not prepared to deny that in January 1962 Eskell asked you to ask Mrs. Cleary if she knew anyone who would admit to adultery with him to hasten his divorce case? A. It may have occurred. I am not clear on it.

Q. Would it be true that after discussion Cleary agreed? A. I do not know. You had better ask her.

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Q. But you had the discussion, didn't you? A. No, I did not have any discussion about what happened in this matter. A lot of this happened without my knowledge.

Q. Did you not, though, go to Margaret Cleary and ask her would she sign a confession? A. No, I cannot recall that at all.

Q. Are you prepared to deny that it took place?
A. I think Mr. Eskell may have gone. I did not.

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Q. How would you know that Mr. Eskell, may have gone? A. I do not know. I said he may have gone to her.

Q. That is something within your knowledge, is it? A. He may have. I said I am not clear what occurred.

Q. I thought you told us you had no recollection of any conversation with Mr. Eskell on this subject during that period? (Objected to by Mr. Staff; rejected).

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Q. Did you have a discussion with Mrs. Cleary in which she agreed to sign a confession of adultery with Mr. Eskell? A. I do not think so.

Q. You are not prepared to deny it? A. I do not think so.

Q. Did Mrs. Cleary go to Mr. Adrian Twigg's office in February 1962 and sign a confession of adultery? (Objected to by Mr. Staff).

Q. To your knowledge: To your specific and direct knowledge, did Miss. Cleary go to Adrian Twigg's office in February 1962, and sign a confession of adultery? (Objected to; rejected).

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Q. Were you aware of the existence of a document which you believed to be a confession of adultery? (Objected to by Mr. Staff; rejected).

Q. Between 1st January 1962 and 30th June 1962 to your knowledge did there come into existence a document which you regarded as a confession of adultery by Miss. Cleary? (Objected to by Mr. Staff; allowed). A. I would not know. I never saw any document.

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Q. I did not ask you that. The question was whether, between 1st January 1962 and 30th June 1962, to your knowledge there came into existence a document which you regarded as a confession of adultery by Miss. Cleary? (Objected to; allowed). A. Could you rephrase that? Just repeat that?

Q. Yes. The question is whether, between 1st January 1962 and 30th June 1962, to your knowledge there came into existence a document which you regarded as a confession of adultery by Miss. Cleary - Mrs. Cleary? A. Do you want me to ask - to tell you whether I believe I did or I know I did?

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Q. You answer the question. A. I believe there may have been one. I did not know there was one.

Q. And did you so believe during the first half of 1962? A. That there was a document came into existence?

Q. Yes. A. I think I did believe that, yes.

Q. Then did you believe during that same period that in February 1962 that document had been signed by Miss. Cleary at Mr. Adrian Twigg's office? (Objected to by Mr. Staff; allowed). A. I do not know whether she signed it. I knew Mrs. Cleary and Mr. Eskell were at that time talking together. I was not acting as an intermediary in the matter at all.

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Q. That is untrue, isn't it? A. No, that is not untrue. I had very little to do with it.

Q. Tell me, would it be true that Mrs. Cleary's sole motive was to help you by assisting him (that is Eskell) to clear up his divorce and work well with you, as she thought that you and Eskell would make a good team in business? (Objected to by Mr. Staff).

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Q. Is it true that the sole motive for this arrangement was to help you by assisting Eskell to clear up his divorce and work well with you, as she thought that you and Eskell would make a good team in business? (Objected to by Mr. Staff; disallowed).

Q. Mr. Armstrong I suggest to you that your motive - I do not want you to accede to this question as to whether the arrangement took place or not, do you understand? A. No, I do not, actually.

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Q. I want you to go on the assumption - assuming that some such arrangement was made, I want to ask you whether it was your motive - (Disallowed).

Q. You understand that the suggestion is that this arrangement sprang from the sole motive to assist you by assisting Eskell to clear up his divorce and work well with you so that you and he would make a good team in business? (Objected to: disallowed). A. I am certainly not with the question at all, your Honour. 10

Q. Mr. Armstrong, I put it to you this way: Is it true that to your knowledge Mrs. Cleary's sole motive was to help you by assisting Eskell to clear up his divorce and work well with you? (Objected to by Mr. Staff; allowed). A. I do not know what her motive was.

Q. That is not true, is it? A. I do not know what was in her mind.

Q. And you never have done so? A. I do not know - I never know what is in another person's mind. 20

Q. You never know that? A. It is very difficult to know what is in another person's mind.

Q. And you never have known it? A. I do not understand how you suggest I could know what was in her mind or Mr. Eskell's.

Q. What you say is that it is impossible that at any time you knew Mrs. Cleary's motive? A. I do not think anyone can know exactly what any person's motive is at any particular time. 30

Q. What you are saying specifically is that you were unaware at any time of what Mrs. Cleary's motive was? A. I did not say I was unaware; I said I did not know what her motive was.

Q. Do you strike a difference between "unaware" and "not knowing"? A. Somewhat, yes.

Q. Were you aware - A. When I say "know", may I explain this to you -

Q. No. Were you aware of what Mrs. Cleary's motive was? A. No, I was not. 40

Q. Not at any time? A. I do not know what her motive was.

Q. And you never knew at any time? A. I do not think I ever knew what her entire motive was.

Q. Are you prepared to swear that in fact you never knew? A. I do not think I ever knew what her motive was. She may have just wished to help Mr. Eskell. She may have liked Mr. Eskell, for all I know. 50

Q. You never thought that, did you? A. I do not know what I thought.

Q. You loved Mrs. Cleary, didn't you? A. Would not prevent her from liking Mr. Eskell because I loved her.

Q. You never thought for one moment that she had committed adultery with Mr. Eskell, did you?

Q. I do not know what she did.

Q. You never believed that she had committed adultery - A. I did not know what she had done.

Q. Look, sir, you never believed at any time that Mrs. Cleary had committed adultery with Mr. Eskell, did you? (Objected to: allowed) A. I cannot answer yes, I cannot answer no. 10

Q. You certainly had no positive belief that she had in fact committed adultery? A. Cannot answer yes, cannot answer no.

Q. That is as far as you are prepared to go?
A. That is as far as I am prepared to go.

Q. I put to you, sir, that it was your belief that Mr. Eskell had not committed adultery with Mrs. Cleary? A. Cannot answer yes, cannot answer no. 20

Q. I put to you that you knew that the confession of which you have spoken was a false and fraudulent document? A. Cannot answer yes, cannot answer no.

Q. And you, sir, were party to the procurement of that false and fraudulent document weren't you?
A. Cannot answer yes, cannot answer no.

Q. When the matter came before Mr. Justice Dovey, to your knowledge his Honour became suspicious, didn't he? (Objected to by Mr. Staff; rejected). 30

Q. Mr. Armstrong, when the matter came for hearing before his Honour Mr. Justice Dovey it was your belief that his Honour was suspicious about the proceedings, wasn't it? A. I did not know - (Objected to by Mr. Staff; allowed) I did not know anything about what his Honour thought.

Q. Do you swear that? A. Yes. He did not consult me about what he thought. 40

Q. Did you at any time become aware of what his Honour thought in relation to this matter? (Objected to; disallowed).

Q. Did you at any time form an opinion as to what his Honour thought about this matter? (Objected to; allowed).

HIS HONOUR: I do not think the cross-examination has exceeded permissible limits thus far.

MR. GRUZMAN: Q. It was your belief that his Honour Mr. Justice Dovey was suspicious about the proceedings? (Objected to: allowed). A. I had no idea what Mr. Justice Dovey thought about the proceedings at all. 50

Q. Not at any time? A. Only after - I was not in Court when he delivered his judgment. I have never seen his judgment. How could I know what he thought?

Q. Well, so far as your knowledge goes - (Withdrawn).

Q. So far as your beliefs are concerned, you never formed the belief that his Honour Mr. Justice Dovey was suspicious of the proceedings in the Eskell v Eskell divorce? A. I did not think much about it. He granted the divorce.

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Q. And you never formed the belief that his Honour was suspicious about the proceedings? A. I did not know what he thought. He could have been suspicious, he could have been not suspicious.

Q. Had you never formed the belief that he was suspicious? A. No, I do not think I formed any belief about the case at all.

Q. Are you prepared to say you never formed any belief about his Honour's views on the matter? A. He has never told me anything about it.

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Q. Are you prepared to say you never formed any belief as to his Honour's view on the Eskell v Eskell divorce? A. I could not tell you. I dismissed it from my mind long ago.

Q. Is this the position; you are unwilling to answer as to whether or not you formed an opinion as to his Honour's beliefs on that matter? A. No, I am not unwilling to answer. I just do not recollect what I formed.

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Q. Are you prepared to deny that you formed any belief? A. I cannot recall it. I just cannot recall what I thought. I do not know what his Honour thought.

Q. I suggest to you, sir, that that is untrue; you do know? A. You can suggest what you like.

(Luncheon adjournment).

MR. GRUZMAN: Q. Mr. Armstrong, I was suggesting to you before the luncheon adjournment that you became aware that his Honour Mr. Justice Dovey had become suspicious about the Eskell v Eskell divorce and you have denied it? A. No, I did not say I did not become aware of it; I could have become aware of it after he had given his judgment because he made some remarks in his judgment.

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Q. Was it your belief after the judgment that his Honour was suspicious about what had occurred in that divorce? A. I thought he might have been, I did not know. It sounded as if he was, from his judgment.

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Q. And you, of course, took steps to find out everything that had happened in the Court, didn't you?

A. No. I do not think so. I do not think I got the transcript. Cannot recall it.

Q. Are you prepared to deny that you became aware of everything which in your belief had occurred in the Court? A. No, I would not say that. I think most of it would be hearsay from what Mrs. Cleary and Mr. Eskell told me.

Q. You discussed it with Mrs. Cleary? A. Afterwards, yes.

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Q. And with Mr. Eskell? A. Yes, I did.

Q. And Mr. Twigg was your solicitor as well, wasn't he? A. No, he was not my solicitor. Not in my divorce proceedings.

Q. At around this time did you see Mr. Twigg? A. No, not that I can recall. I may have seen him - let me correct myself there. In the early stages of my own divorce proceedings, which took I think about 18 months, I did consult Mr. Twigg and then I changed from him to Mr. Grant.

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Q. Taking the second half of 1962, did you consult Mr. Twigg? A. It would be a matter of record. I cannot remember it but I am sure that Mr. Twigg would know, if he was called. I cannot recall consulting him specifically. I may have done. But it would be in connection with my own matters, not that one.

Q. What I put to you now is this: that you became aware that, to use an expression, the conspiracy had gone sour; that is, that the Judge was suspicious and that there was trouble? A. No, no one told me anything about that before the divorce proceedings in Court.

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Q. But after the divorce proceedings you formed that opinion, didn't you? A. From readings of a judgment I thought he seemed somewhat caustic in his remarks, to say the least of it.

Q. And you regarded his Honour as making an attack on you, didn't you? A. No, he did not make any attack on me.

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Q. Did not you regard - A. Excuse me. You mean about my own divorce proceedings or the Eskell proceedings?

Q. Still on the Eskell divorce? A. No, I did not regard his Honour as making any attack on me at the Eskell divorce proceedings.

Q. But you did regard his Honour as making an attack on you in your own divorce proceedings?

A. I think he expressed his view. I could not call it an attack. He is entitled to express his view.

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Q. In respect of the Eskell divorce did you form the view that Mr. Eskell had let you down over that matter? A. I would not say so, no.

Q. Did not you believe that Mr. Eskell had in some way abused the confidence which Mrs. Cleary had placed in him? A. No, I do not think he did. I think he just went ahead regardless.

Q. Did you decide to punish Mr. Eskell for what he had done in connection with Mrs. Cleary? A. I did not punish him, no.

Q. I did not ask you that, sir. Did you decide to punish Mr. Eskell for what he had done in relation to Mrs. Cleary in his divorce? A. No.

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Q. Did that thought ever enter your mind? A. I do not think so. I thought it was better, having regard to all the facts, that we sever any business relationship.

Q. You sacked him within a few days after the divorce, didn't you? A. I think, if you would like to look at the minutes, I was only the chairman of the company. There were other members of the board.

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Q. Mr. Eskell was sacked - A. I think he resigned.

Q. - within a few days - A. I do not think - I did not sack him. He was still retained in the company's employ as general manager of Turner & Henderson.

Q. Did Mr. Eskell leave the employ of Palgrave within a few days after his divorce proceedings? A. He resigned as a director.

Q. How did that come about? A. He decided to do so of his own volition as far as I know. I cannot recall how it came about.

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Q. Would it be true that in any sense you caused Mr. Eskell to resign? A. I do not think I caused him to resign.

Q. Are you prepared to deny it? A. No, I think I would say that the board - I am not sure, and I would like to have, if I may - to refresh my memory from the minutes of the board meetings. I think - don't hold me to this - I believe Mr. Eskell resigned, but I think the minutes would show it very clearly.

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Q. I am testing your veracity at the moment. I put to you that, to use a colloquialism, you sacked Mr. Eskell? A. No, I do not think I sacked Mr. Eskell.

Q. Or, to put it in another way, that you brought about his resignation? A. No, I would not say that.

Q. Are you prepared to deny it? A. No. I think it was a matter that we mutually decided that it was better for us to part.

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Q. After your discussion with him? A. I did not have much discussion with him after that.

Q. Did you have a discussion in relation to what had occurred in Court? A. Not specifically. I do not think - not a lengthy discussion. I cannot recall it.

Q. Did you have any discussion with Mr. Eskell after the Court proceedings and prior to his tendering his resignation, about the Court proceedings?

A. Only very briefly, if at all.

Q. And did you express your annoyance to him as to what had occurred? A. I thought the matter was unfortunate. 10

Q. And you told him so? A. Words to that effect I would say, yes.

Q. And it was as a result of that that he tendered his resignation? A. I do not know why he tendered his resignation.

Q. You had a difference of opinion with him over what had occurred in the divorce proceedings? A. There were other matters, too. 20

Q. And I put to you this expression: Did you decide to punish Mr. Eskell? A. No, I do not think I would be capable of punishing a man of Mr. Eskell's calibre.

Q. I did not ask you that. Did you decide to punish Mr. Eskell? A. No, I did not decide to punish Mr. Eskell. It was not within my capacity to punish him.

Q. Have you ever thought in your mind that you would or you might punish Mr. Eskell? A. I think it might be fair to say I was annoyed with Mr. Eskell but I do not think I thought I was punishing him. 30

Q. I would like to get you on that - A. I am trying to help you on this.

Q. Thank you. Did you form in your mind the view that you would or you might punish Mr. Eskell, the emphasis being on the word "punish"? A. No, I do not think I formed a view that I would punish him. I formed a view it would be better for us to part company, for political and other reasons. 40

Q. Are you prepared to deny that you formed a view that you would or you might punish Mr. Eskell?

A. No, I do not believe I formed the view that I would punish him, using the word you mentioned.

Q. Do I take it you deny forming any such view?

A. I was annoyed with him. I did not believe I was punishing him.

Q. Mr. Armstrong, will you commit your oath to saying whether or not you formed the view that you would or might punish Mr. Eskell? A. In my mind I formed the view that I would punish him? 50

Q. Yes. A. Very hard for me to tell you at this distance of time whether I formed that view or not. I could not commit my oath to my recollection of what was in my mind six years ago, I really could not.

Q. Is this the position, that you, as one Member of Parliament, may have decided to punish another Member of Parliament? (Objected to by Mr. Staff).

Q. Is this what we are to understand, that it is possible that you decided to punish Mr. Eskell? 10

A. That I decided to punish him? In what way would I decide? Would you clarify it? You asked previously "as a Member of Parliament", Members of Parliament do not punish each other.

Q. But I suggest to you, as one Member of Parliament did you decide to punish Mr. Eskell, who was in fact another Member of Parliament? (Objected to).

Q. I am putting it to you very simply. The suggestion that I make is that you formed a decision to punish Mr. Eskell. Is that true or false or you are not prepared to answer? A. I do not think I could answer truthfully after this lapse of time what I decided to do. I have never done Mr. Eskell any harm to my knowledge since that date. 20

Q. Does it in your mind follow from that that you may have decided to punish Mr. Eskell? A. No, I would not know what I felt about the matter. I felt annoyed. I did not feel any sense of retribution towards Mr. Eskell. 30

Q. I am going to show you a document. By the way, you are in the habit of making notes, aren't you? A. Usually, yes.

Q. Lengthy notes about matters that concern you?
A. From time to time, yes.

Q. (Approaches) I want you to only have a look at the heading on that document. Is that your handwriting? A. Yes, I would say so. 40

Q. Did you write these words in this document: "Notes Eskell and Cleary 30th June 1962"? A. If it is in my handwriting I should think I did, Mr. Gruzman.

Q. "1. In January - " A. I think it would be better if you showed it to me.

Q. Yes. (Approaches): "1. In January 1962 Eskell asked A. to ask Mrs. C. if she knew anyone who would admit to adultery with him to hasten his divorce case." A. Apparently I must have. It is in my handwriting. 50

Q. That was true, wasn't it? A. As far as I know, yes. Now you are refreshing my memory - I must say I have not looked at these notes for the last five or six years.

Q. When it says "Eskell asked A.", that is Armstrong? A. I think so, yes.

Q. That is you? A. That must be me.

Q. "to ask Mrs. C.", that is Mrs. Cleary? A. That would be right.

Q. I will incorporate - when it says "C" I will say "Mrs. Cleary" and when it says "A" I will say "Armstrong". A. And I will correct you if there is any difference.

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Q. "2. After discussion Cleary agreed to sign a confession of adultery and did so at Twigg's office in February 1962" A. I wrote that. I do not know that Mrs. Armstrong - I believe she may have signed it.

Q. You believe it and you believed it when you wrote this document? A. Thought she did, yes.

Q. "3. Mrs. Cleary told Eskell her sole motive was to help me by assisting him to clear up his divorce and work well with me as she thought he and I would make a good team in business." A. I wrote this, yes.

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Q. And that was your belief wasn't it? A. This is what she said was her sole motive.

Q. And you believed that to be her sole motive?
A. Yes.

Q. And you knew it at the time? A. I believed it to be, yes.

Q. "4. At this time and up till last week Mrs. Cleary, Armstrong and Messel believed Eskell to be a very good type of man." A. That would be true, yes.

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Q. Messel being Professor Harry Messel? A. Yes.

Q. Who was then on the board of Australian Factors? A. And Palgrave, I think at that time.

Q. "5. At a meeting in February Eskell told Cleary that he and his wife had agreed to an amicable divorce but his wife did not need to know who the co-re was or anything about her." Is that right? A. This is what I have written. I do not know that it is correct. I assume it would be. It is my handwriting. It should be correct. It is hearsay. You know, Eskell told Cleary and Cleary told me.

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Q. "He also expressed concern over Cleary's future security and suggested Armstrong should provide for it." A. He may have done that. I take it that is what she told me. I cannot answer what Mr. Eskell - this conversation was not in my presence. I am only relying on Mrs. Cleary's words about what Mr. Eskell said.

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Q. But this is your resume of what had taken place? A. Yes, it must be.

Q. And apparently your understanding was that Mr. Eskell had suggested that you should provide for Mrs. Cleary's future security? A. I do not know about that. He may have done so.

Q. But that is what you wrote? A. Yes.

Q. And that was your understanding at the time? A. Yes.

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Q. "6. At times -" By the way, had Mr. Eskell told you this, that you were to provide - A. No, not as far as I recollect.

Q. Are you prepared to swear that he did not? A. I could not recollect it.

Q. Weren't there discussions between you and Mr. Eskell as to who would keep Mrs. Cleary?

A. No.

Q. Is that what you wrote: "6. At times in recent months he expressed the same views to A. -" yourself? A. Yes.

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Q. "- but coloured them a little." A. I do not know what I mean by "coloured". I am sure he never suggested that he was going to keep her.

Q. But the suggestion was that you were going to keep her? A. Well, as a matter of fact, my divorce proceedings started some time after that and, of course, now she is married to me and I am keeping her.

Q. But the suggestion at the time when Cleary was the co-respondent for Eskell was that you were to undertake to keep her in the future? A. I do not know what you are getting at there. What is your actual meaning?

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Q. I am trying to find out - A. I was keeping her before this time.

Q. You were living with Mrs. Cleary at this time? A. No.

Q. But you were keeping her? A. Yes.

Q. And apparently Mr. Eskell was concerned that he might have been himself landed with some financial responsibility from Mrs. Cleary? A. No, I do not think he felt that at all. But I do not know - I am sure he did not.

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Q. But this is what you wrote. Would you explain to his Honour what you meant by it: "He -" that meant Mr. Eskell? A. Yes.

Q. " - also expressed concern over Cleary's future security and suggested Armstrong should provide for it."

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HIS HONOUR: For "it" or for "her"?

MR. GRUZMAN: For "it", it says.

Q. Right? A. Yes.

Q. You understood that to mean that Eskell was concerned about who was going to keep Cleary in the future? A. Yes, perhaps he was.

Q. And his suggestion was that you should keep Cleary? A. Well, I was keeping her. There was no doubt about that. 10

Q. And then in the next paragraph you wrote: "At times in recent months he expressed the same views to A.E. Armstrong but coloured them a little." A. Yes. I do not know what I meant by "coloured them".

Q. Apparently he - one interpretation of that is that he made it very clear to you that, whilst he was accepting Mrs. Cleary's services as a co-respondent, he would be in no way responsible for her future? A. I never thought he would be responsible for her future at any time. 20

Q. And when you say he coloured those views a little. I take it you meant by that that he expressed those views very forcibly? A. No, I would not have thought very forcibly.

Q. What did you mean by it? A. I really do not know what I meant by that word.

Q. Are you prepared to deny that he made it very very clear, and forcibly clear to you, that you would be responsible for Cleary in the future? A. I do not think he had any need to make it - I was quite happy to be responsible for Mrs. Cleary in the future. 30

Q. But he was making it clear to you that is what he wanted? A. No, I do not think so.

Q. Can you offer any other explanation as to what you meant by paragraph 6: "At times in recent months he expressed the same views to A.E.A. but coloured them a little." A. No, I really do not know what I meant by that.

Q. "7. About June 10 Eskell saw Cleary and told her to expect a call to sign a supplemental petition and have it served on her." A. Yes. 40

Q. You knew that was happening at the time?
A. Yes.

Q. Did you write this: "At this time Mrs. Dunn's name was on the same petition. Mrs. Cleary declined to acquaint A. " - that is Armstrong - " of this fact and did not even ask Eskell." A. Yes, she certainly did not acquaint me of that fact at the time. The first time I knew of Mrs. Dunn was after the Court hearing. 50

Q. You wrote that and that was your understanding - A. I thought she should have acquainted me of the second petition - second co-respondent, perhaps I should have said. Two co-respondents I thought would seem unusual. This is in hindsight after the event.

Q. You realised that that was - A. I knew nothing about that before the hearing.

Q. But you now realise it was the type of thing which would get the Judge suspicious? A. Yes, now, but not before. 10

Q. And that is why you were complaining that Mrs. Cleary had not told you that there was another co-respondent? A. Or that they had not told me.

Q. You felt that was wrong? A. I thought they should have let me know.

Q. So that the Judge could have been throughly deceived? A. No. I might have taken completely different action. 20

Q. You might not have been party to the conspiracy? A. I may have acquainted his Honour before -

Q. You might have gone to the Judge and told him that the confession was false? A. I did not know the confession was false. If I had known about this I would have acquainted his Honour - had I known of this second petition I would have acquainted his Honour.

Q. And that was because you realise now that you would expect a Judge to be suspicious if there were two co-respondents? A. Yes. 30

Q. And therefore you felt that you should have been told about the first co-respondent, because you might not then have been party to this deal? A. Yes.

Q. And your only purpose in that was that you realise that it was the second co-respondent which made the Judge suspicious? A. I do not know that. I cannot tell you what made the Judge suspicious. I cannot tell you the workings of the Judge's mind. 40

Q. But it is your belief that it was the second co-respondent? A. I think there were many factors in the divorce that may have made him suspicious.

Q. And in your mind one salient one was the two co-respondents? A. Well, it was unusual, to say the least.

Q. Then did you write: "She was very trusting and loyal to Eskell." A. I thought she was.

Q. "Paragraph 8." Did you write this: "About a week later Cleary rang Twigg and was told she had sworn - was told she sworn to adultery but would 50

have no chance to avoid going to Court. "A. I wrote this. This is what she told me.

Q. And that is what you believed? A. No, I did not - she did not tell me about this till afterwards.

Q. But at the time you wrote it you believed it happened? A. At the time I wrote it - I think this is after the case.

Q. After the case when the Judge had got suspicious you went right into the matter? A. Yes.

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Q. You questioned Cleary and questioned Eskell?
A. Yes. Mainly Cleary.

Q. And it is a result of that examination and your own previous knowledge that you prepared these notes on 30th June? A. Mostly on the basis of questions to her.

Q. Well, where it says that you were asked and there were conversations with you that would be of your own knowledge, wouldn't it? A. Yes.

Q. I will read paragraph 8 again: "About a week later Cleary rang Twigg and was told she sworn to adultery." A. I think it should read "she had sworn" to adultery, to be grammatical.

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Q. "She had sworn to adultery but would have no chance to avoid going to Court. Would be subpoenaed." A. This is what she told me.

Q. "Mrs. Cleary asked Twigg if Court appearance would hurt Armstrong's case and was assured it would not." A. This is what she told me that Twigg told her.

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Q. You felt that she had been deceived by that?
A. Yes, I would say so definitely.

Q. Was there a conference between yourself, Cleary, and Eskell shortly prior to the case? A. No, not between myself, Cleary - or Mr. Eskell and Mrs. Cleary may have met.

Q. But you were not a party to it? A. No.

Q. You are sure of that? A. I do not think so.

Q. You are not sure? A. No, but I do not think so.

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Q. Look, you were right in this conspiracy up to your neck, weren't you? A. No. That is the unfortunate part.

Q. Did you write this: "9. On June 23 Cleary -" Is that right, June 23rd? A. I do not know whether it was the 25th or the 23rd. Could be either.

Q. Looks like "23". A. Could be 23 or 25.

Q. "On June 23rd Cleary spoke to Armstrong and

Eskell -" Is that right? A. That is what is written. I do not recall this meeting at all.

Q. You are not suggesting you wrote lies in this document, are you? A. No, I do not think - we may have met. If it is there we probably did.

Q. "On June 23rd Cleary spoke to Armstrong and Eskell and was told that if she wished he would withdraw the whole case, stop the divorce, his divorce, going through." That right? Just tell me, is that right up to that point? A. Yes, I think that could be correct. I cannot recall it. These are just aid momoirs to what happened.

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Q. And this took place in Mr. Twigg's office?
A. I do not recall meeting him at his office. You note the words there are "stated by Twigg and Joel to be impossible at this stage." I do not know where that conference took place. It may have taken place on the phone. I have no recollection of where and how.

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Q. But you remember discussing it with Mr. Twigg? A. I cannot say I do. I think I remember more discussing it with Mr. Asher Joel.

Q. Who was he? A. A Member of Parliament. A well-known public relations expert, proprietor of the Mt. Isa Times and many other offices that he holds.

Q. Where did Mr. Asher Joel come into this matter? A. I think both Mr. Eskell and I discussed it with him. I cannot recall that clearly. We took some advice from Mr. Joel.

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Q. About what? A. About the proper way to proceed. I think this was after the judgment. I do not think - this "stated by Twigg and Joel to be impossible at that stage" means after Mr. Justice Dovey had given his judgment. That is what I think. Do not hold me to it.

Q. You have a heading then: "Court. Monday 25th." A. Yes.

Q. "10 a.m. Eskell and wife. Dunn and Cleary attended." A. That would be Mrs. - the previous Mrs. Stanley Eskell, yes. I was not at Court but this is what I heard.

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Q. You have "Counsel - Toose for Mrs. Eskell, Pawley for Mr. Eskell, Saywell for Mrs. Dunn."
A. That is what I have got down there. I do not know whether that is the fact or not.

Q. Where did you get this information from?
A. Probably Mrs. Cleary, I would imagine, or from the paper.

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Q. And then you have: "Mrs. Cleary was completely unrepresented as Twigg did not appear as he was too busy." A. That is what she told me.

Q. "Mr. Dezarnaulds, partner of Bryce, Jones, told her that it would be all over in five minutes."

A. Apparently, yes, that is correct.

Q. "Mr. Jones told Mrs. Cleary the same thing?"

A. Who is Mr. Jones? Partner of Dezarnaulds?

Q. Yes. A. No. This is all what Mrs. Cleary told me.

Q. These are your notes of what you understood took place? A. Yes.

10

Q. "Mr. Pawley told Cleary he would be representing her in Armstrong." Is that correct? A. That is correct, what you are reading. I do not know what he told her.

Q. "and all counsel appear to have told Cleary and Eskell it would all be over quickly."

A. Apparently they did.

Q. Then you have a heading: "Evidence Called Mrs. Eskell. Those asked usual questions. Dovey asked her had she ever seen or heard of Cleary. She said No." A. Yes, apparently. I have never seen a transcript of the evidence as far as I recollect.

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Q. But this is what your investigation showed you? A. Yes.

Q. "Dovey: How did she hear of Cleary?" A. Mrs. Eskell's husband, yes.

Q. And then you wrote: "Mrs. Eskell's husband told her he met at social functions." A. I think Mrs. Cleary had met Mr. Eskell before this period.

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Q. "Dovey then asked her if she had felt that her husband was interested in Cleary. She said no." A. I do not know what she felt. This is what I have been told.

Q. But your understanding was at the hearing before his Honour - his Honour had asked Mrs. Eskell if she thought Mr. Eskell was interested in Cleary and she said no? A. This is what I was told after the hearing, yes.

Q. Then you have: "Dovey: what date did you know of association? Answer Only when petition served."

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A. Yes, I would say - apparently that is what I have got down.

Q. Then you have: "Dovey: Lead this witness quietly." A. I do not know what I mean by that.

Q. It looks as though you must have had some more detailed knowledge, perhaps, - A. I do not even know - what does "lead this witness quietly" mean? I do not understand this legal term.

MR. STAFF: The word as spelt has two pronunciations, one of which my friend has used. He has picked one; it may be used in the other sense.

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MR. GRUZMAN: Q. Does it make any sense if you read it: "Dovey led this witness quietly." A. Which witness is this?

Q. It is your notes. It looks like Mrs. Eskell.
A. It looks like it. I would not know. It could be Mrs. Eskell that he - that is all what I have been told. They are only notes on the matter. That Dovey led this witness quietly, that he was fairly kind to Mrs. Eskell, would that be the connotation? I really do not know. 10

Q. Then you have written: "Called S.L. Eskell. Usual questions." A. I do not know what that means.

Q. But you wrote it? A. Yes.

Q. "Eskell denied adultery with Mrs. Dunn but admitted familiarity." A. Apparently, yes. That was in the paper reports of the case.

Q. On the third page: "Dovey: Why admit adultery with Cleary and not Dunn?" A. Yes, that is correct.

Q. "Answer:" correct me if I am wrong on this, "It was true that Dunn and I did not commit adultery but Cleary and I did." A. This must have been Mr. Eskell's answer. 20

Q. Then you have: "Previous. Dovey to Eskell. Was Cleary married or divorced? Eskell: doubtful answer." A. That is right, what I have there.

Q. And then you have: "Dovey to Eskell: Very honourable of you to tell your wife about Eskell and you say you did this because of a guilty conscience." A. That does not seem to make sense, does it? 30

Q. It looks like a very sarcastic remark of his Honour? A. Yes, but it does not seem to make sense, why he would say "Eskell". He may have said - Eskell says he told his wife. You would need the transcript. I am not clear whether it was Dovey to Eskell. It does not seem to me to make sense.

Q. What you have written are these words: "Dovey to Eskell: Very honourable of you to tell your wife about Eskell and you say you did this because of a guilty conscience." A. Eskell must have done it because of a guilty conscience. 40

Q. Yes. A. Apparently - that may be one interpretation.

Q. Didn't you understand that to be a sarcastic remark by his Honour Mr. Justice Dovey, suggesting that his Honour was doubtful as to the veracity of Mr. Eskell in that answer? A. This was after the case was over, yes.

Q. Then you have: "Evidence, Cleary. Before Cleary as witness Dovey stated that case was unusual and he had looked at it a week before."
A. Yes, apparently he did. 50

Q. "Dovey: Where is Cleary's counsel? Cleary: No." A. She did not have a counsel.

Q. When I have put these questions to you, you are assenting that those words are written in your document? A. That is correct.

Q. "Dovey asked Cleary if married or divorced. Cleary said facts." That is what you have written? A. Yes.

Q. "Dovey: Being in Court not new for you." A. I think it should be "n-e-w-" not "k-n-e-w". 10

Q. So his Honour was suggesting that being in Court was not an unusual occurrence for her? A. Yes. He was wrong, but he was suggesting that.

Q. And he asked her occupation: "Asked occupation and whole history and asked how you live lately." A. Yes.

Q. "Judge then stated how generous you were and that it was most unusual case." A. I take it he must have meant Mrs. Cleary was generous in giving evidence. 20

Q. And admitting to this adultery? A. Yes.

Q. Then you have: "Evidence Dunn. Dovey did not ask her much. She admitted that her husband was getting a Mexican divorce." A. I understood this was said.

Q. Will you admit now that you agreed with Mr. Eskell to procure Mrs. Cleary to provide a confession of adultery in this matter? A. No. I did not procure Mrs. Cleary. Mr. Eskell and Mrs. Cleary made their own arrangements. 30

Q. That is untrue, isn't it? A. No, it is not.

Q. The first approach was made by Mr. Eskell to you? A. To ask Mrs. Cleary would she help him in so doing. From then on I left it between the two of them. I did not want to know any more about it.

Q. The approach made to you was this, was it not, that Mr. Eskell wanted a divorce? A. I think he and his wife both wanted a divorce. 40

Q. And in order to get the divorce there had to be some evidence of adultery placed before the Court? A. I do not know. I am not a legal man. I would not know what you had to place before the Court.

Q. Was it not your belief at that time that in order to procure this divorce there had to be evidence of adultery placed before the Court? A. I did not know what evidence had to be placed before the Court. I did not continue with this situation much after Mr. Eskell and Mrs. Cleary, as she then was, started to discuss the matter. 50

Q. I will ask you again: Was it not your belief in the first half of 1962 that in order for the Eskell v Eskell divorce to be granted, there would have to be evidence of adultery placed before the Court? A. I think it might have made the granting of the divorce easier. I did not know what had to be placed before the Court to grant a divorce.

Q. And did not Mr. Eskell come to you to ask you could you provide divorce evidence? A. No. He asked to ask Mrs. Cleary could she provide divorce evidence. 10

Q. Why, in your mind - I am asking you what you understood as to the reason why Mr. Eskell would imagine that Mrs. Cleary could provide divorce evidence. (Objected to; allowed). A. I really do not know why he thought she could provide divorce evidence.

Q. That is not true, is it? A. I do not know why he thought particularly her. He could have got other people. 20

Q. You are making it embarrassing, you realise?
A. No, I do not realise why -

Q. Look, Mrs. Cleary had a former association with the sort of persons who could provide divorce evidence, did she not - (Objected to by Mr. Staff) - to your knowledge? A. What do you call an association, Mr. Gruzman? (Objected to by Mr. Staff; allowed).

Q. To your knowledge Mrs. Cleary had a former association with the sort of persons who could provide evidence of this kind, did she not? A. What sort of association - could you define that word "association"? 30

Q. If you insist I will. A. Yes, I would like you to.

Q. The suggestion is, Mr. Armstrong that Mrs. Cleary was associated with a man called Abe Saffron? A. I believe she knew him, yes.

Q. And was associated with him in a business way?
A. I do not know what business they had together. 40

Q. And the suggestion is that Mrs. Cleary was associated with girls who went out with men for payment. (Objected to by Mr. Staff; allowed). What do you say to that? A. I do not know anything about that. I did not know anything about Mrs. Cleary's previous associations until she met me. Since she met me her conduct as far as I know has been unexceptional. What she did before that I do not know anything about. 50

Q. You have not inquired? A. Not particularly. I do not know anything about it. I have heard a lot of suggestions but I do not know anything about it.

Q. What, you have heard a lot of suggestions

along the lines that I just put to you? (Objected to by Mr. Staff).

Q. You see, Mr. Armstrong, I put to you some suggestions of a very serious kind. Firstly I have suggested to you that you were a party to a conspiracy to provide evidence intended to have the effect of misleading the Divorce Court. Do you admit that or deny it? A. I think it would be fair to say that I knew something which might have been intended to mislead the Court and possibly - had I been perhaps more wise than I am - had I been as wise then as I am now I would have gone to Mr. Justice Dovey in his chambers before the case and acquainted him of the fact.

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Q. What I am putting to you is not that you were incidentally aware but that you were a prime party to the conspiracy? A. No, I would not say I was a prime party to the conspiracy, definitely not.

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Q. And what I am putting to you is that, in blunt terms, a proposition was put to you by Mr. Eskell that you should procure false evidence for the Court. Will you admit that or deny it? A. No, he did not put that proposition to me. He asked me if I knew anyone who would help him.

Q. And your understanding of that is that he was suggesting that you should find someone who would provide false evidence? A. I still do not know whether Mrs. Cleary and Mr. Eskell did commit adultery or whether they did not, to this day. So I do not know how I could be party to this. I do not know what they did before I met them.

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Q. Who would in your view know better than Mr. Eskell whether or not he committed adultery with Mrs. Cleary? A. He swore he did, didn't he?

Q. Could you imagine, if it was true, why - (Withdrawn).

Q. Can you suggest to the Court any reason why if in truth Mr. Eskell committed adultery with Mrs. Cleary, he asked you to ask her if she knew anyone who would admit to adultery with him? A. I can't think of all those hypothetical propositions now.

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Q. Look, sir, the fact is that Eskell came to you not for the purpose of asking whether Mrs. Cleary would admit to adultery but for the purpose of asking whether Mrs. Cleary would find someone who would admit to adultery? A. Whether she would help him to find someone, yes.

Q. And the reason why the approach was made to Mrs. Cleary was because Mrs. Cleary was known to you, and to your knowledge known to Mr. Eskell, as a person who associated with women who went out with men for payment? A. I do not think Mrs. Cleary associated with women who went out with men for payment.

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Q. Look, sir, it was your belief at that time

that Mrs. Cleary had associated with such persons, wasn't it? A. No, certainly not. I only knew she had some association with Mr. Saffron, or believed she had some association with Mr. Saffron.

Q. You told his Honour a little while ago that you heard suggestions - correct me if I am wrong - along the lines of the suggestion that I was making - (Objected to by Mr. Staff; rejected).

Q. In the course of an answer to a question you told his Honour that you had heard suggestions about Mrs. Cleary? A. I have heard suggestions about a lot of people. But I do not know them to be correct. 10

Q. Now, the suggestions that you have heard about Mrs. Cleary that she was an associate of persons of the type I have mentioned - (Objected to by Mr. Staff; disallowed).

MR. GRUZMAN: I gave an undertaking to your Honour in respect of certain matters and I think that undertaking has now been fulfilled. 20

Q. Mr. Armstrong, you see, what Mr. Eskell asked you in January 1962 was whether Mrs. Cleary knew anyone who would admit to adultery with him, to hasten his divorce case. That was the question, wasn't it? A. I think he asked both of us whether we knew anyone.

Q. Mr. Eskell, according to your notes in your own handwriting in January 1962, asked you to ask Mrs. Cleary if she knew anyone who would admit to adultery: That is what happened, isn't it? A. He asked us to see if we could help him in his divorce case, yes. 30

Q. Can you explain to his Honour any reason why Mr. Eskell should ask you to ask Mrs. Cleary, of all people, if she knew someone who would admit to adultery? A. No, I cannot explain any reason why he would do that. He was friendly with both of us and trusted us both, I take it.

Q. The one thing that would be clear to your mind was that what Mr. Eskell was asking was for false evidence of adultery, wasn't it? A. Not at that time, I would not have - I did not at that time - I was unwise and did not take it as seriously as I possibly do now or even later. 40

Q. But your belief at the time was that he was asking for false evidence of adultery, wasn't he? A. I think possibly, yes.

Q. And that is what you agreed to provide? A. Mrs. Cleary agreed to provide it, apparently. 50

Q. To your knowledge the confession which she signed was false and fraudulent, wasn't it? A. I do not know. I do not know whether it was or not. I cannot say to my knowledge whether Mrs. Cleary and Mr. Eskell committed adultery or not. That is something I do not know.

Q. When you became aware of that confession you believed that it was signed pursuant to the request of Mr. Eskell which you have mentioned in paragraph 1 of your notes? A. Probably, yes.

Q. And that was a request for false evidence, wasn't it? A. Apparently, yes at that time, yes.

Q. After the matter went wrong before Mr. Justice Dovey you set about attacking everybody concerned, didn't you? (Objected to by Mr. Staff; withdrawn). 10

Q. In your mind the matter went wrong before his Honour Mr. Justice Dovey? A. It exposed Mrs. Cleary to undesirable publicity.

Q. And she was to be your future wife? A. I think she was at that stage, yes.

Q. And you therefore set about attacking whoever you could, didn't you? A. I do not know what you mean by attacking whoever I could. Would you be more specific.

Q. First of all, as I have already asked you, did you decide to punish Mr. Eskell? A. No, I did not decide to punish Mr. Eskell. We decided to part company, which is quite a different matter to punishment. It might have been a good thing for Mr. Eskell if he parted company with me. 20

Q. Did you decide that you wanted to save yourself? A. No. I had nothing to save me about.

Q. That is untrue, isn't it? A. How do you mean -

Q. In your mind you felt that you were in danger, didn't you? A. In danger of what? 30

Q. In danger of being revealed as a party to this conspiracy? A. No. I did not think they would reveal it.

Q. You were frightened that Mr. Eskell might reveal it? A. No, I certainly was not.

Q. You were not even sure whether Mrs. Cleary would reveal it? A. I did not think it was very likely either of them would.

Q. But it was a possibility? A. It was a possibility but very unlikely. 40

Q. And you then set out to do two things: to save yourself and to punish Cleary, didn't you? (Withdrawn).

Q. Punish Eskell? A. No, I did not punish Mr. Eskell.

Q. Look, would you listen to the question? You set out to do two things: to save yourself and to punish Eskell, didn't you? A. No, I did not. Number 1, I did not; I had no reason to feel I was saving myself from anything. 50

Q. Number 2. A. I did not - I said - I repeat and I will repeat ad infinitum, Mr. Eskell and I decided it was better for us to gently part company after this occasion.

Q. No question of punishment? A. No Mr. Eskell went on to better things after he left me.

Q. Look, sir, firstly it is a lie that you did not want to save yourself? A. It is not a lie.

Q. And secondly it is a lie that you did not want to punish Mr. Eskell? A. No, I did not want to punish Mr. Eskell. 10

Q. (Approaches) I am showing you a part of another document which I have turned over so that only paragraph 9 of the document is revealed. Right? Did you write in your own handwriting - first of all, is that your handwriting? A. Yes.

Q. Did you write in your own handwriting in relation to this matter: "What do we want to achieve? (a) Save Alex; (b) Punish Eskell." A. Apparently, yes. That is what we wanted to achieve. It does not say that we did it. 20

Q. You did form a decision that if it was possible you would punish Mr. Eskell, didn't you? A. Part company with him.

Q. I show you again: In your own handwriting - A. Because I wrote it -

Q. "What do we want to achieve? (b) Punish Eskell." A. That is what I wrote. It does not say that is what I decided to do, simply because I wrote it. 30

Q. Is this what you say: what you wrote was untrue? A. No. That is notes. I do not know what those notes are. I have not seen them for years.

Q. Will you admit that you formed the decision that if possible you would punish Eskell? A. No. I said I formed a decision after advice to part company with Eskell.

Q. Do you still deny that one of your aims was to punish Eskell? A. To part company with Eskell. 40

(The following questions and answers were read from the shorthand notes: "Q. (Approaches) I am showing you a part of another document which I have turned overIt does not say that we did it.")

Q. You have just heard that read out, have you not? That is, you agree that what "we" - that is you and somebody else - wanted to achieve was, amongst other things, to punish Eskell? A. To part company with Eskell. This is what we did. What I discussed at the conference I do not know, except that that is a brief memo on it. But there was no question of punishing Eskell in the sense of a naughty school boy. 50

Q. It might have been something far more serious, might it not, than in the sense of a naughty school boy? A. No, it was not. We felt it was much better to part company and we parted company.

Q. He was sacked from his job, wasn't he, promptly? A. I do not think you will find he was sacked. He resigned.

Q. And do you still deny that you brought about his resignation? A. No, I think the board brought about his resignation or he resigned himself. I cannot remember that. Perhaps the minutes would enlighten us on that. 10

Q. Irrespective of what the minutes show, will you not agree that you brought about his resignation? A. No. I considered - the board thought it was wiser for him to resign, or something to that effect. I do not know what.

Q. Will you deny that it was pursuant to your aim to punish Eskell that Eskell lost his job? A. I cannot comment on that. I can't remember at this stage. It may have been; it may not have been. It might have been considered wise that we did not remain in the same company, or in too close contact. 20

Q. And that was because of the Eskell divorce, wasn't it? A. And other things.

Q. Look sir, you have told us one of the things you wanted to achieve was to save Alex? A. This may be - I don't know what this piece of paper that you have is. These may be notes of a conference which someone else said there was some necessity to save me. If you can tell me something about that piece of paper I may be able to enlighten you. 30

Q. We will come to that in a moment. In your mind as a result of the Eskell divorce did you feel that you needed saving? A. No, I didn't feel I needed saving.

Q. Did you feel there was any possibility that you could be implicated in it? A. I didn't think so, no. 40

Q. Didn't you realise that if the truth came out that you may be prosecuted for conspiracy? A. I didn't realise that at the time. Now you draw my attention to it now, that may be the case. At the time I didn't realise it. I didn't think there was much danger there.

Q. Well, is that why you got Mr. Asher Joel in? A. No. Mr. Asher Joel was a mutual friend of Mr. Eskell and myself, and still is. He advised us on the matter public relationwise. 50

Q. Were not you concerned that if the truth came out the Attorney General might investigate the matter? A. My legal knowledge was not up to the stage of what would happen.

Q. You were consulting over this period with Mr. Twigg, weren't you? A. No. Mr. Grant, I think at that stage.

Q. Mr. Grant? A. Yes.

Q. Were not you aware that if you were involved in a conspiracy to put false evidence before the Divorce Court that the Attorney-General may investigate it? A. I don't know. I don't remember what was said to me by my legal advisers at that time. 10

Q. But of your own knowledge, as a man in public life? A. I thought that many solicitors were often involved in these matters, and also barristers, so I didn't think it was very serious.

Q. Of your own knowledge as a Member of Parliament didn't you think that if it were revealed that you were party to a conspiracy to place false evidence before the Divorce Court that the Attorney-General might intervene? A. I didn't think much about it at the time, Mr. Gruzman. 20

Q. These sorts of things were of no importance?
A. It didn't occur to me much at the time.

Q. You see, sir, what you are saying is that to your mind a conspiracy to pervert justice was neither here nor there. A. I don't admit that I was party to any conspiracy.

Q. But even the possibility that you may be involved in a conspiracy to pervert the course of justice was neither here nor there to you?
A. I did not believe I was involved in a conspiracy to pervert the course of justice. Mr. /Eskell will admit that. 30

HIS HONOUR: Q. What was that? A. I was going to say possibly Mrs. Cleary and Mr. Eskell may have been.

MR. GRUZMAN: Q. You knew the first approach had been through you? A. Yes, the first approach had been through me, but I did not engineer the matter at all.

Q. But from the fact you believed that Mr. Eskell and Mrs. Cleary might be parties to a criminal conspiracy, and that you were of your own knowledge to some extent involved in it, didn't that make you realise that you were in some danger? A. No, I don't think so. I possibly, Mr. Gruzman, should have done, and acted in some different way after the event. I should have perhaps acquainted Mr. Justice Dovey of the facts, but I didn't do so. If I was wrong, I am sorry. 40

Q. But do you still maintain that at the time you thought nothing of it? A. I did not think anything serious would happen to me. I didn't perhaps have sufficient legal knowledge to realise that fact. 50

Q. What I am putting to you is that your manner of thinking or approaching justice is to believe that

a conspiracy to pervert the course of justice is not important? A. Yes, I think it is very important. An extremely important matter.

Q. When did you come to that conclusion? A. I think I came to that conclusion - probably this case has taught me a lot about it and, thinking over it months after, and discussing it with legal people. I think one ought always see that justice is done from then on. I feel that very definitely. I have considered this very carefully.

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Q. Can you fix the precise date when you came to that conclusion? A. I should say within six months of the proceedings in this matter.

Q. Six months of the proceedings in this matter?
A. In the Cleary and Eskell case.

Q. The Cleary and Eskell case - the first Cleary case took place in 1962? A. The Cleary-Eskell divorce case, yes.

Q. The Cleary-Eskell divorce case took place in 1962? A. Yes.

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Q. So that by the end of 1962 you had first come to the conclusion that conspiracy to pervert the course of justice was serious? A. I had.

Q. Did you take advice from anybody else except - you told us Mr. Asher Joel? A. Yes. Of course, Mr. Asher Joel, as you know, is not a legal man.

Q. He is not a legal man. A. No. He is not a legal man. He is a public relations man, and a Member of Parliament. A very competent politician.

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Q. A very competent politician? A. Yes.

Q. I have not quite followed where he was going to assist you. You might just tell us where you felt he could assist? (Objected to: allowed).

Q. Let me put it another way, Mr. Armstrong. Once you became aware that his Honour Mr. Justice Dovey was "on to it" to use an expression - (Objected to : rejected).

Q. Once you became aware that his Honour Mr. Justice Dovey was suspicious where did you think that Mr. Joel could help you? (Objected to: rejected).

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Q. Once you formed the belief that his Honour Mr. Justice Dovey was suspicious, where did you think that Mr. Asher Joel could help you? A. I think that Mr. Joel is a very knowledgeable man in many fields.

Q. But this was a matter involving the administration of justice, wasn't it? A. And also the New South Wales Parliament.

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Q. How did it affect the New South Wales Parliament? A. It affected the credit of the New South Wales Parliament to some extent.

Q. The fact that you and Mr. Eskell and Mrs. Cleary had made some agreement? A. I imagine it would affect the credit of Parliament to some extent.

Q. What did you think Mr. Joel could do about it? A. Advise me.

Q. In what way? A. Of the best course. (Objected to: allowed).

Q. How did you think that Mr. Joel - what did you think Mr. Joel could do about it? A. He could give me good practical advice on the matter. 10

Q. Just tell us the sort of thing you had in mind. (Objected to: allowed). A. Well, in what way do you mean, Mr. Gruzman?

Q. You were the one who approached Mr. Joel, and you have told us that you thought Mr. Joel could give you certain advice? A. I am not sure whether Mr. Eskell didn't approach him also. I am not sure of that. 20

Q. It was you alone, or you and Mr. Eskell. What sort of advice did you think Mr. Joel could give you? A. Good practical advice about what to do.

Q. What to do? A. Yes.

Q. Did it occur to you, perhaps to make a speech in Parliament about it? A. No.

Q. That never occurred to you? A. No, not on that one at all.

Q. I beg your pardon? A. It didn't occur to me to make a speech. It didn't occur to me to make a speech in Parliament about it. 30

Q. I suppose that would be absolutely shocking, to have contemplated making a speech in Parliament about his Honour, wouldn't it? A. I did not think there was any cause to make a speech in Parliament about his Honour.

Q. That is not the question. It would be absolutely shocking for you to make a speech in Parliament about his Honour, wouldn't it? A. I did not think there was any cause to make a speech in Parliament about his Honour. 40

Q. That is not the question. It would be absolutely shocking for you to make a speech in Parliament about his Honour, wouldn't it? A. In that regard, certainly.

Q. That would really be scraping the barrel, wouldn't it? A. I think it would be, yes.

Q. And you have never ever had such a thought, have you? A. Never ever gave thought to making a speech about his Honour? 50

Q. Yes. A. I may have had a thought after the case about making a speech about his Honour, yes.

Q. Do you mean to tell his Honour here that it entered your mind that you would make a speech in the New South Wales Parliament about his Honour Mr. Justice Dovey? A. In connection with allegations he reportedly made about me committing perjury in my own case, yes. That was satisfactorily resolved between counsel and Mr. Justice Dovey.

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Q. I just want to get this quite clear. There came to your knowledge a report that his Honour Mr. Justice Dovey had criticised you? A. It was reported - and I think the reports are a matter of fact - you can possibly see the newspaper. I only saw the newspaper reports.

Q. According to the report your understanding of the report was that his Honour had accused you of perjury? A. I thought he may have accused me of perjury. He made indirect statements about perjury.

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Q. And did you see Mr. Asher Joel about that matter? A. No. I saw my legal advisers.

Q. You saw your legal advisers? A. Yes.

Q. Mr. Grant at the time? A. Mr. Grant, yes.

Q. Well then, did you form the intention of making a speech in Parliament? A. No. I decided I had better not. Mr. Dovey (sic) made amends publicly in the paper, and I was quite satisfied with what he did. I think Mr. Dovey was quite fair in the matter.

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Q. If his Honour had not made amends, do I take it you would have gone ahead? A. I don't know what I would have done.

Q. That is what you had in mind, that if his Honour - ? A. I may have thought so. I don't know whether I had it in mind. I may have. I may have thought of it. I don't know what I would have done.

Q. What you had in your mind is that if his Honour failed to make amends for his statements in Court that you would make a speech in Parliament. A. I may have thought about it. I don't know what I thought at the time. I was disturbed that his Honour was perhaps misreported, and gave the impression that I had committed perjury in my own divorce case.

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Q. Did you regard that as a legitimate use of your public position? That is, to make a speech in Parliament about a Judge who criticised you personally? A. No. I didn't do it.

Q. That is what you contemplated, wasn't it? A. No. I said I thought about it. I certainly didn't do it.

50

Q. You were advised not to, were you? A. No.

Mr. Justice Dovey did the fair thing, and the matter was ended.

Q. If you had not been satisfied with his Honour's action you would have had to give the matter further thought, wouldn't you? A. I suppose I would have.

Q. And that thought would have involved possibly making a speech in Parliament about it? A. Probably no.

Q. But possibly yes. A. I don't know. I would have given it much further thought. 10

Q. But the thought was whether you would or would not make a speech in Parliament about his Honour?

A. I think we are probing very deeply into my thoughts, which I don't think I can recollect properly after a lapse of four years. The fact is I didn't criticise his Honour, and I thought his Honour behaved very fairly after he had been consulted by my legal advisers. That is the fact.

Q. You were satisfied with his Honour's behaviour? A. I thought his Honour was very fair. 20

Q. And, that being so, you refrained from attacking him? A. I didn't attack him, so that there was nothing to refrain from.

Q. Being satisfied with his Honour's behaviour you refrained from attacking him? A. I didn't say I was ever going to attack his Honour.

Q. That was your thought, wasn't it? A. I don't know what my thought was at the time. I said the thought may have crossed my mind. I cannot recollect my thoughts, and I could not give any proper indication of what my thoughts were those years ago. I told you it may have crossed my mind. 30

Q. The word "perjury" has already been suggested in these proceedings. I give you fair warning to be careful what you say? A. I will be careful.

Q. Did you contemplate making an attack on his Honour Mr. Justice Dovey in Parliament? A. No, I didn't contemplate it.

Q. Did that thought as a concrete thought ever come to your mind? A. I find it very difficult to answer these questions honestly. I find it very difficult to answer them accurately. 40

Q. You may take as long as you feel is necessary. I am sure his Honour will not object. I will ask you the question again. Did you ever form the concrete thought that you may attack his Honour Mr. Justice Dovey in the New South Wales Parliament? A. No, I don't think I formed a concrete thought.

Q. The answer is "no", is it? A. No, not a concrete thought. 50

Q. Did you ever write that you may attack - make a speech about his Honour in the New South Wales Parliament? (Objected to: question withdrawn).

Q. Did you ever write that you may make a speech about his Honour in the New South Wales Parliament?

A. I don't recollect whether I did or I did not.

Q. Well, does that mean that you may have formed the thought? A. Mr. Gruzman, I told you quite clearly that the thought of making a speech about it did cross my mind. I cannot go any further than that.

Q. And the object of the speech was what? To discipline his Honour for having criticised you? 10

A. No, I didn't want to discipline his Honour at all. I just wanted to tell the truth of the matter. His Honour had a very difficult case in our divorce to decide, and I can sympathise with some of the remarks he made.

Q. But the expression you used was that his Honour made amends? A. I don't know whether "made amends" is quite the correct expression. It is something to that effect. I don't know what his Honour did. I know only what is recorded in the paper. So far as I know Mr. Dennis Mahoney Q.C. and Mr. Goldstein spoke to his Honour. They could probably tell you what his Honour said better than I can, because I was not there. 20

Q. It was because, and only because, you were satisfied with the result of these representations that you did not make the speech? A. No, I would not say that. I would have taken very careful thought before attacking any member of the Judiciary in Parliament, and using Parliamentary privilege in that regard. I take very careful thought in the use of any Parliamentary privilege. 30

Q. Mr. Twigg acted for you in that divorce, didn't he? A. No. Which divorce are you talking about?

Q. In your own divorce? A. No. Mr. Grant.

Q. Will you have a look at this document? Is that your answer in your own divorce? Will you have a look? A. I am not sufficiently competent to say. First of all, I went to Mr. Twigg, and then I changed from Mr. Twigg to Mr. Grant. I am not a competent divorce lawyer. I don't know what this document means. Possibly you and Mr. Staff can explain to me what it is. 40

HIS HONOUR: Mr. Armstrong said this morning that it was Mr. Twigg at first, and then he changed to Mr. Grant.

MR. GRUZMAN: Q. Look, it was because this suit was originally defended and then became undefended that his Honour, Mr. Justice Dovey, was perturbed about your divorce, wasn't he? A. I really don't know, I am not technically competent on divorce law to know what he was perturbed about. I was not even present at the hearing. 50

Q. Did you, on 28th June 1962, swear a defence

to your wife's petition for divorce? A. Yes. I did defend it originally. I am sure of that.

Q. Just answer the question, please. Did you on 28th June 1962 swear an affidavit verifying your answer to your wife's petition for divorce?

A. Apparently, yes. I believe I did.

Q. And was that answer prepared by Adrian Twigg & Co.? A. Yes, I think it was.

Q. And that was what? Three days after the Eskell -v- Eskell divorce had been heard? A. Apparently, yes.

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Q. You will agree now, that you must have been in consultation with Mr. Twigg at round about that time? A. I would not remember that. I think I talked to Mr. Twigg before this period about my divorce - some months before. I am not sure of when I spoke to Mr. Twigg. Obviously he would know.

Q. Both before and after the Eskell divorce you must have spoken to Mr. Twigg at least about your own divorce? A. I imagine I must have, if I swore the affidavit.

20

Q. Would you agree that your wife's petition was sworn on 14th June 1962? A. That is apparently so, yes.

Q. By the way, the counsel who appeared for your wife in your petition - in your suit - was Mr. Basil Hogan, wasn't it? A. I think so. It would be a matter of record. I don't know.

Q. You know very well that it was Mr. Basil Hogan don't you? A. Quite frankly I can't recall Mr. Hogan at this time. The name does not mean anything to me at this moment.

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Q. I put it to you that the name Mr. Hogan does mean something to you? A. I must be honest with you. To be perfectly frank Basil Hogan, if I saw him walking into the room, I would not know who it was.

Q. Look, sir, did you take some steps to ascertain, to your satisfaction, whether there was some association between his Honour Mr. Justice Dovey and Mr. Basil Hogan? (Objected to; rejected).

40

Q. Will you have a look at this? Is that your handwriting? A. Yes, it is.

Q. Did you write the words "Recollect Hogan friend of Dovey's". A. I may have done, but it does not come to my mind at all. I must have written it, but I have no recollection of Mr. Hogan, or him being used in that way by me. I think Mr. Twigg selected his barrister. I have no recollection. To be quite frank I have not seen these documents you have got hold of for some years.

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Q. Why did you write those words "Recollect Hogan

friend of Dovey's"? A. Someone may have told me. I don't know anything about Mr. Justice Dovey's and Hogan's relationship.

Q. Did you feel that there was some impropriety between Mr. Hogan and Mr. Justice Dovey? A. I would not think so. I don't know what that means at all. It is all completely fresh - a completely fresh thing to me. I don't know anything about it.

Q. Look, sir, I put it to you some time ago, and your counsel objected - I put it to you that when you find yourself, as I put it, in trouble, you are prepared to attack anyone and everyone? A. I don't know what you mean.

10

Q. That is true, isn't it? A. I don't know what relationship this has to Mr. Hogan. If you produced Mr. Hogan in Court today I would not know who he was. I don't even recollect meeting him.

Q. Mr. Hogan acted as counsel for your wife?
A. Did he? I didn't know that.

20

Q. Are you serious? A. All this went on over a long period. Mr. Grant was handling this matter for me. I would have to go right back over this with Mr. Grant to be able to recall all these matters.

Q. Don't you remember that in your divorce suit brought by your wife against you, Mr. Hogan acted as counsel for your wife? A. I really don't know, to tell the truth. I don't recollect much about Mr. Hogan at all. My memory as regards Mr. Hogan is a blank.

30

Q. Do you believe that Mr. Hogan is a friend of his Honour's, Mr. Justice Dovey? A. I don't know. He could be or could not be. I really don't know.

Q. Do you believe that it was because Mr. Hogan was a friend - did you believe that it was because Mr. Hogan was a friend of his Honour that therefore his Honour had made this suggestion of perjury about you? A. No, I would not think that at all. I don't know what the position is. I don't know anything about Mr. Hogan. I am quite frank about it.

40

Q. The position is that you wrote out the words in relation to this matter "Recollect Hogan friend of Dovey's," and you can't offer any possible explanation for it? A. No, I can't. I must be honest with you. Unless some barrister or solicitor told me something about it, and it has completely slipped my memory as to what the position is with Hogan. I know that Duke acted as solicitor for my wife. That is a name that sticks in my mind. But I don't remember even meeting Mr. Hogan.

50

Q. There is a journalist called Browne, isn't there? Do you know a journalist called Browne? A. I know Frank, yes.

Q. His full name is Frank Browne? A. Yes.

Q. And he is a man who writes a paper, I think called "Things I hear". (Objected to; allowed).

Q. He writes a paper called "Things I hear", doesn't he? A. Yes, and it is up in the Parliament Library.

Q. And it is a paper which to your knowledge attacks people in public life from time to time? (Objected to; rejected).

Q. Look, you believe that Mr. Browne's paper, "Things I Hear" was a paper that would attack people in public life? A. I would say made statements about them. I would not say attacked them so much. I would not like to commit myself to say it attacks them. He makes statements about people - some correct; some incorrect.

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Q. You employ Mr. Browne, don't you? A. No, not for years.

Q. Did you employ Mr. Browne? A. Very slightly, some years ago. I don't know how long ago.

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Q. About how long ago? A. I can't remember. It could be four or five years ago.

Q. In what capacity did you employ him? A. Just, I think, more or less to - I can't recall exactly what capacity. I would have to search my mind on that one.

Q. Take your time, sir. A. It is hard to say in what capacity you employ Mr. Browne. I should say possibly public relations would be the nearest I could go to it, without giving it a lot of thought and looking up my records on the matter.

30

Q. Giving him information to put in his paper? A. Mr. Browne? I don't think Mr. Browne would disclose the source of information.

Q. I am not suggesting he would. Did you give him pieces of information? A. I talked to Mr. Browne about certain matters.

Q. Which would subsequently find their way into his paper? A. I don't know whether it was because of me that they found their way into his paper, or not. Mr. Browne gathers a lot of news around the town.

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Q. And he would discuss certain things with you, and you would subsequently see them in the paper?

A. I could not connect - I don't know what you are leading up to. It could be possibly I had discussions with Mr. Browne.

Q. About matters which subsequently appeared in the paper? A. Possibly yes.

Q. In other words, if you wanted to achieve a certain result you could inspire matters in Mr. Browne's paper, couldn't you? A. I don't know.

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Mr. Browne is pretty careful of what he puts in his paper.

Q. If you wanted to you believe you could?

A. No, I don't think I could inspire Mr. Browne. He would put in what he wanted. He is a pretty independent gentleman.

Q. Let us go back to the time of the Eskell divorce case. Did you consult Mr. Browne about that matter? A. I cannot recall at that time. I remember Mr. Asher Joel about that matter. I can't recall discussing it with Mr. Browne. I may have done, but I can't recall.

10

Q. Just give it some thought. A. I will. At what time would you suggest?

Q. I would suggest at a time within a month or so of the Eskell divorce. In other words, say about the end of July of 1962. Did you consult Mr. Browne? A. I really could not recall it, Mr. Gruzman. I may have. I don't know one way or the other.

20

Q. See if you can help his Honour by telling us your association with Mr. Browne at round about that time? A. I did not associate very closely with Mr. Browne. I would see him from time to time.

Q. Where would you see him? A. Sometimes at his home; sometimes at mine. Sometimes meet him at various places. I would not have met him at a great many places so far as I can recollect.

30

Q. He was a social friend of yours? A. I would not call him a social friend of mine. I knew him as most Parliamentarians would know him.

Q. Was he a man whom you consulted professionally? A. Would you say you consulted Mr. Browne professionally, in the same way as you consulted a solicitor or a doctor? I don't think he is quite a professional man. He is public relations. I would not use the word "professional". I would say "talk to him" would be better than "consult him".

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Q. Talk to him? A. Yes.

Q. Is he the sort of man to whom you would go for advice as to how to deal with Mr. Justice Dovey? (Objected to: question withdrawn).

Q. Did you think that with respect to his Honour Mr. Justice Dovey that that was a matter that had to be dealt with? A. No.

Q. With respect to what his Honour Mr. Justice Dovey had indicated in the Eskell divorce, did you feel that that was a matter which had to be dealt with in some way or another? A. In the Eskell divorce?

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Q. Yes. A. No, I didn't. I thought his Honour treated the Eskell divorce quite reasonably.

Q. Well, in relation to your own divorce, did you feel that on that occasion what his Honour had said and, indeed, his Honour, had to be dealt with in some way? A. No. I didn't think it was necessary to deal with his Honour, as you put it. There was no necessity to deal with his Honour.

Q. Did you feel that the subject matter of his Honour's remarks had to be dealt with in some way? A. No, I thought that the matter was well cleared up.

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Q. Let us take the time before it was, as you say, cleared up. Prior to that you felt it had to be dealt with? A. If my memory serves me right, Mr. Gruzman, I think it was cleared up the next day. I don't think there was any lag. I think Mr. Justice Dovey said what he had to say, and the next day said something else, and that was it - the matter was finished. I bear no grudge against Mr. Justice Dovey.

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Q. Did you, in relation to any divorce matter, consult Frank Browne? A. I don't think so. I may have talked to him about it. I would not use the word "consult". I don't know. I don't know.

Q. If you say you don't know - ? A. I can't recall consulting with him or talking with him about it. I may have.

Q. I would like you to give the Court the benefit of your recollection. Do you understand? It would be in your mind, wouldn't it, a pretty serious matter for a Parliamentarian like yourself to consult a journalist like Frank Browne about a Judge, wouldn't it? A. I wish you could give me the time that you think this took place. I may be able to think more clearly of it.

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Q. For the moment I won't suggest to you a time, because I may be wrong. I am asking you whether at any time you would regard it as pretty serious for a Parliamentarian like yourself to consult a journalist like Frank Browne about a Supreme Court Judge. (Objected to; rejected).

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Q. Look, you have told his Honour that you cannot - as I understand it, that you cannot recall one way or another whether you spoke to Frank Browne about this matter? A. That is true.

Q. That is about - I will put it this way - about Mr. Justice Dovey? A. No. I can't recollect I did one way or another.

Q. What I am putting to you is that in your mind it would be a serious matter for you to consult Frank Browne about - Mr. Justice Dovey - (Objected to: allowed).

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Q. You would regard it as a serious matter to approach Mr. Frank Browne about his Honour Mr. Justice Dovey, wouldn't you? A. Well, I can't quite follow you. Perhaps you can help me,

Mr. Gruzman. I don't know what you mean about serious matter, and approaching Mr. Browne. I can't see what is serious about it, or what you mean? I can't get the drift of what you are trying to put to me.

Q. What I am going to suggest to you is that you consulted Mr. Frank Browne as to ways in which Mr. Justice Dovey could be dealt with. Does that make it clear? A. No, I don't think I did consult with him, but, if I did, I can't see why Mr. Browne should be regarded as such a person that it would be serious if I talked to him. I don't think he is a criminal, so far as I know, and I think he is quite a reasonable journalist. 10

Q. Will you admit that you went to Mr. Frank Browne to discuss with him ways and means of dealing with his Honour Mr. Justice Dovey? A. I really don't know.

Q. You are not prepared to deny it? A. I don't know. I don't know whether I did or whether I didn't. I can't deny it, but I can't say I did. 20

Q. I suggest you have a very clear recollection of going to Mr. Frank Browne about this matter? A. I am afraid I have not. If you have got some written notes there you may be able to refresh my memory, but at the present time I have no clear recollection of going to Mr. Browne about the matter.

Q. We will probably save the written notes until tomorrow. At the moment I am trying to test your recollection. I suppose that to go to a journalist like Frank Browne to make an attack or to contemplate an attack on Mr. Justice Dovey would be disgraceful conduct in your mind? A. I would not quite agree with you. Are you asking me to say that Mr. Frank Browne is a person who makes disgraceful attacks? 30

Q. No. I didn't ask you to say that particularly. I asked you whether in your mind it would be disgraceful conduct on your part to go to Mr. Browne to discuss a contemplated attack on Mr. Justice Dovey? A. I really find it hard to answer that one - whether it would be disgraceful conduct on my part to talk to him about it. I don't know. I could not say whether it was, or not. 40

Q. In other words, you think it would be quite reasonable conduct on your part to do such a thing? A. I talk to journalists in the course of my Parliamentary work.

Q. If you have trouble with a Judge, go and see Frank Browne and ask what he can do about it? A. I don't think Frank Browne could do much about a Judge. 50

Q. That is your way of thinking? A. No.

Q. I put it to you that is the way your mind works - if you have trouble with a Judge who criticises you, you will go to Frank Browne to see what he can do? A. I would not think so. I don't

know whether I consulted him or not. I really don't. I am sure he could not do much, in any case.

Q. Whether you did or did not, your mind is such that to go to a man like Frank Browne and discuss making an attack on a Supreme Court Judge seems to you to be quite reasonable? Quite reasonable? You may have done so, or not? A. Yes. Can I ask you to clarify what you mean by "a man like Frank Browne"?

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Q. Yes. Frank Brown is known to you, isn't he, as a journalist on the fringe of journalism, who is given to making attacks on public people? (Objected to: rejected).

(Further hearing adjourned to 10 a.m. Thursday, 15th August, 1968).

BARTON v. ARMSTRONG & ORS.

TWENTY-FOURTH DAY THURSDAY, 15TH AUGUST, 1968.

FIRST NAMED DEFENDANT

On former oath:

HIS HONOUR: Q. You are still on your former oath, Mr. Armstrong? A. Yes, your Honour.

MR. GRUZMAN: Q. Mr. Armstrong, I suppose that after Mr. Eskell approached you about asking Mrs. Cleary to get some evidence you spoke to Mrs. Cleary? 10
A. I can't recall that. It may be in those documents that you have there.

Q. Well, you have had your mind well refreshed about these matters now, haven't you? A. It is still very hard for me to remember them, you see. I didn't know of those documents, which have obviously been stolen. I had forgotten that they ever existed, to be quite frank. It would certainly help me if I saw them. It would help me if you were to show them to me. 20

Q. I would like you to see what you can tell his Honour of your own recollection? A. I can't recall at this stage whether an approach to Mrs. Cleary was made - whether we both approached Mrs. Cleary together. I take it that either one of us, or both, made an approach to Mrs. Cleary.

Q. Tell his Honour, if you can, the conversation that took place with Mrs. Cleary? A. I could not recall that now. It would only be pure paraphrase. I could not recall it word for word. It would only be paraphrase. 30

Q. In paraphrase what you said to her was "Do you know someone who would provide a confession of adultery with Mr. Eskell?" A. I can't recall. I think it would be much better if you showed me the document.

Q. I am just asking you? A. And I am saying I can't recall what I said.

Q. You understand that you are obliged to give evidence to the best of your recollection? A. I don't think it is much good my giving evidence that is not correct if I can't recall it. 40

Q. You would have a better idea than anybody else, wouldn't you? A. No, I think those statements would be the best things you could use as to what I did at that time.

Q. Well, Mr. Armstrong, would you be prepared to deny that you said to Mrs. Cleary "Stan," - meaning Mr. Eskell, "wants evidence of adultery for a divorce. Do you know someone who will give a confession?" 50
A. I would not like to say whether I said it or not. I may have said to Mrs. Cleary - you understand clearly that this is my recollection and I am not

being held to it as to the fact. Is that correct, Mr. Gruzman?

Q. Just your recollection? A. The best recollection I can, as paraphrased, I may have said to Mrs. Cleary "Stan and his wife both want a divorce. Could you help them out?", or something to that effect.

Q. Yes. And what do you think she said, to the best of your recollection? A. I can't recall what she said very clearly at this stage. After all, it is six years ago. It may be seven years ago. I am not quite sure whether this was 1961 or 1962 that Mr. Eskell first discussed the matter. I think it could be 1961. That I cannot be clear on, without further reference to the obviously stolen documents. But Mrs. Cleary - my wife told me last night that she thought it might have been 1961. It is so unclear in my mind I could be saying quite wrong matters, but so far as I know she said that she may be able to help Mr. Eskell out, but she didn't like it very much - didn't like doing it very much. 10 20

Q. But she eventually agreed to do it? Did she eventually agree? A. She certainly must have. It was also - I would like to say, if I may assist the Court in this way, that the instructing solicitor, Mr. Twigg, well knew that this was a peculiar situation. Shall I put it that way?

HIS HONOUR: Q. Well knew - A - that this situation was unusual, and happily went on with it. 30

MR. GRUZMAN: Q. Are you now suggesting that Mr. Twigg was a party to the conspiracy? A. I would say - (Objected to; question rejected.)

Q. Are you now suggesting that Mr. Twigg was a party to the arrangement? A. I believe that Mr. Twigg was a party to the arrangement.

Q. Look, sir, I suggest to you, as I have suggested before, that when you think you are in any trouble you would attack anybody? A. I don't think I am in trouble. I am just trying to tell the truth. 40

Q. Look, sir, I suggest to you that you deceived Mr. Twigg, the same as you deceived Mr. Justice Dovey? A. No. I didn't.

Q. The confession of adultery was signed, according to your notes, in February, 1962, wasn't it? A. I would like to see the notes. It all helps my memory if I could see those documents. I think that, with your Honour's permission, can I tell you, sir, that these documents are impressions - aid memoirs. I don't say they are fact. 50

Q. According to your notes? A. I would like to look at the lot of them. I think they are my notes.

Q. You will just look at what I show you,

subject to anything his Honour may say? A. I find it difficult to just see a small portion of my private documents and refresh my memory without reading the lot.

HIS HONOUR: Q. Mr. Armstrong, if Mr. Staff thinks it of relevance and assistance to your case there are procedures available by which he can obtain access to them and to put to you other portions of them, or the whole document, if he thinks it necessary at the proper time. 10

MR. GRUZMAN: Q. I can inform you that in fact you saw yesterday the whole of these notes? A. I would like to look at them again. It helps me a lot if I can see them.

HIS HONOUR: Mr. Gruzman, so that there can be no doubt about it, I perhaps somewhat irregularly accepted an objection directly from the witness rather than from Mr. Staff on his behalf. I don't want to preclude you, Mr. Staff, or tie your hands by what I said to the witness. 20

MR. STAFF: I am simply waiting to see what my friend is going to ask to see what course should be taken.

MR. GRUZMAN: Q. I direct your attention to this portion of the notes where it says "After discussion C agreed to sign a confession of adultery and did so at Twigg's office in February 1962." A. This is what I believe. These are things I believe. I don't know if they are facts.

Q. Look, sir, I want to show you another document - 30

(Three sheets of original notes shown to Mr. Armstrong m.f.i. "32").

(Five Xerox copy sheets, portions of which were shown to Mr. Armstrong yesterday, m.f.i. "33").

Q. I am going to show you three original duplicate typewritten sheets. These were typed out by you, weren't they? (Objected to; allowed) A. I don't know. 40

Q. Have a look at the document. Just stop at the point that you have reached. You have looked at the first page. You see it is a document dated January 22nd, 1963? A. Yes.

Q. It is headed "Memo of informal occasions when Mrs. Armstrong was taken out by me." A. Let us be clear. I think he means the previous Mrs. Armstrong. I am not sure. (Objected to: allowed).

Q. The heading on the document is "Memo of informal occasions when Mrs. Armstrong was taken out by me". (Objected to: allowed). That is the heading? A. Yes, on that piece of paper. I don't know about the document. 50

Q. And you recognise this document as a document prepared by you, don't you? A. I don't know. I would like to have a good look at it first, and I might be able to recognise it better.

Q. What you have told his Honour is that, having seen the first page which consists of the date of the document, a heading, and a series of dates with a series of events, that you are unable, from that perusal of the document, to say whether or not that is your document? A. That is not what I was saying at all. What I was saying is that I think the document may very well have been prepared by me. I am not sure. I don't know whether the document is a forgery, or stolen or what it is. 10

Q. I will take the pin out of it. Have a look at the first page. Was that document prepared by you? A. It would appear to me, yes. I would think so. 20

Q. You think so? A. Yes.

Q. You accept it as your document? A. I certainly didn't type it because I can't type, but it appears to have been prepared by me, yes.

Q. It appears to have been prepared by you? A. Yes.

Q. And does the same apply to the second and third pages of the document? A. It would appear to be so, yes. I think these were notes I gave to Mr. Twigg or Mr. Grant. I would not know. But they appear to have been taken from my private file. 30

Q. Did you see, on p. 3 of that document: "I first consulted Mr. Twigg. Monday May 21st, 1962"? A. I may have done. I thought I consulted him before that. I was not sure. You see, these documents - had I had an idea that these questions would go on I could certainly have refreshed my memory and given a much better picture of events. I don't know about that. I didn't know they existed until they were dragged up again. I think I can truthfully say that I have not consulted them since about 1965 at the very latest. They had been in my private files, and obviously removed from same. 40

Q. Look, the position is that the allegation that Mr. Twigg was a party to this arrangement we have spoken of is a vicious lie, isn't it? A. I don't know. I think you should ask my wife that. I discussed it with my wife last night. Could enlighten your Honour on that, Your Honour?

HIS HONOUR: Q. No, not unless you are asked.

MR. GRUZMAN: Q. What you said this morning was that Mr. Twigg, knowing of the arrangement - knowing the arrangement was unusual - went happily along with it? 50

A. I believe he did. I don't know that he did.

Q. According to your records the arrangement was made, you believe, in 1961. But according to your

records not later than February 1962 the confession was signed? A. I am not clear. These records are much clearer. I think they are factual.

Q. That is what your records show? A. I don't pride my recollection of being able to recall events closely back in 1961 or 1962.

Q. But your recollection as a result of your discussions with Mrs. Cleary last night was that the arrangement with Eskell took place in 1961? A. I am not clear. I think you should get her in and ask her. 10

Q. I would be grateful if you would answer the question. Your recollection, as a result of discussions, is that the arrangement with Mr. Eskell took place in 1961 rather than 1962? A. I think my recollection could be at fault. It may have been 1961 or 1962. I really don't know.

Q. According to your notes in January 1962 Eskell approached you? A. I would imagine my notes would be correct. I thought they were my personal property. 20

Q. And according to these notes that you have just identified you first consulted Mr. Twigg on Monday, May 21, 1962? A. According to these notes. But I still feel I consulted him before that.

Q. To your knowledge the allegations that Mr. Twigg was a party to this arrangement I put it to you is a vicious lie? A. I did not say he was a party. I said I believed him to be a party to the arrangement. So my wife has told me. 30

Q. In the light of what has been shown to you now will you in this Court withdraw the allegation that Mr. Twigg was a party to the arrangement?
A. I didn't say he was a party to the arrangement. I said I believed him to be a party to the arrangement.

Q. Having now had these documents shown to you, has your belief changed? A. No.

Q. Do I understand you now, notwithstanding your own documents, still to be maintaining that Mr. Twigg was a party to the arrangement? A. I said I believed him to be a party to the arrangement. 40

Q. I will rephrase the question. Having been shown your own documents, do you still tell this Court that it is your belief that Mr. Twigg was a party to the arrangement? A. It is my belief - my firmly held belief.

Q. And it was an arrangement which you regard as an illicit arrangement? A. I don't know. From my legal knowledge I don't know whether it is illicit or not. From what I have learned over the last few days it appears illicit. I thought most - I thought that solicitors sometimes did this. 50

(Three sheets of typewriting shown to witness m.f.i. "34".)

Q. I want to put it to you very clearly that you are the type of man who would involve anyone in foul allegations to help yourself (Objected to: rejected).

Q. Look, sir, you are the type of man to whom bribery is part of your stock-in-trade (Objected to: rejected).

10

Q. You are a man who will indulge in bribery, aren't you? (Objected to).

HIS HONOUR: Mr. Armstrong, a question has been asked of you in general terms. Counsel has assured me it is being put upon the basis that further questions will follow which will later be relied upon - the questions and answers will be later relied upon as touching upon your credit. The first question asked of itself, and presumably later questions that are to follow it, relate to a matter which is a criminal offence. It is my duty to warn you that you are not obliged to answer questions if you fear that your answers may incriminate you. Do you understand that? A. Yes.

20

Q. No witness is compelled in any proceedings to incriminate himself, and if you entertain a fear on reasonable grounds that by answering the question you may incriminate yourself - that is to say, involve yourself in possible guilt on some criminal offence - the admission of possible guilt in regard to a criminal offence - you are not compelled by the process of this Court to answer this question? A. Can I seek a brief adjournment to speak to my counsel on this matter?

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HIS HONOUR: Do you have any objection, Mr. Gruzman?

MR. GRUZMAN: I would indicate that the witness would have to make a definite assertion.

HIS HONOUR: A warning in those terms and the protection that a witness has under it does not enable the witness to evade what is otherwise lawful examination by making the claim. There must be some reasonable basis for your entertaining the fear that you may incriminate yourself, if you refrain from answering.

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(Short adjournment).

(Question marked read by Court Reporter).

WITNESS: I think I had better refuse to answer that question.

MR. GRUZMAN: Q. Mr. Armstrong, if you - subject to what his Honour may say, if you refuse to answer the question you will have to swear on your oath that the answer to the question in your mind may incriminate you on a criminal offence. Are you prepared to say that? (Objected to: rejected).

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HIS HONOUR: Mr. Armstrong, I don't want you to be under any misapprehension regarding, firstly, the scope of this privilege you have, or secondly, the possible effect of your refusing to answer on this ground. The entitlement to refuse to answer proceeds purely from the basis that no man ought to be compelled to expose himself to criminal proceedings by being compelled by the ordinary evidentiary processes to answer questions in the witness box. It does not, however, follow that all you have to do is to say that you fear the answer may tend to incriminate you. I will put the position to you in the precise terms.

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On second thoughts, I think it may only confuse you if I put the legal proposition to you, but it rests in my discretion to decide whether or not the claim that you make is one which I ought to accede to, and it is open to cross-examining counsel to put to you whatever questions might be permissible in the line of cross-examination he may wish to pursue, and you are entitled to take objection to these questions one by one if you are prepared to swear that you fear the answers may incriminate you. In other words a claim to protection on these grounds will not be effective to shut out counsel's questions; it is only effective to preclude you had been obliged to answer. You understand? A. Yes, I understand that, Your Honour.

20

Q. Well now, the general question has been put to you, and you have claimed privilege from answering it. Whether I uphold that claim to privilege or not will not preclude cross-examining counsel from putting to you such further questions as may be admissible under the ordinary rules? A. May I ask a question?

30

Q. Yes. A. If I still claim privilege do I just say that I still claim privilege, or do I answer "No".

Q. You will have to make the specific claim on each occasion that you fear that by being required to answer questions you may incriminate yourself. You have to put your oath on each occasion that you wish to claim this privilege. You will have to put your oath to a fear that by answering it you may incriminate yourself. Do you understand that? A. I understand that.

40

Q. And the privilege that protects you from answering it does not preclude cross-examining counsel from asking the question. Do you understand? A. Yes.

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HIS HONOUR: Mr. Staff, do you take exception to any legal proposition in what I have put to the witness?

MR. STAFF: No.

HIS HONOUR: Mr. Gruzman?

MR. GRUZMAN: No, not to this point.

(Question marked on p. 806 read by Court Reporter).

WITNESS: I claim privilege as to answering that on my oath. Is that correct?

HIS HONOUR: Q. You understand that you wish to say that you fear that by answering that you may incriminate yourself? A. Not that particular question, but any further question.

Q. Then you must answer that question? A. What is the question again? No, I do feel that it could incriminate me. If I answer Yes or No it could incriminate me.

10

HIS HONOUR: What do you say, Mr. Gruzman.

MR. GRUZMAN: The witness has already made it clear that there is no valid claim for privilege in respect of that question. Of course, if the answer to the question is "No," no question of privilege arises.

HIS HONOUR: What is the nature of the self-incrimination you fear may be involved if I make you answer that question? A. Could I have the question again? The plain question?

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(Question marked on p. 806 read by Court Reporter).

WITNESS: Can I put a hypothetical proposition to your Honour? I don't understand the situation. This is the first time in any Court - I have certainly never been in a criminal Court in my life. Can I put a hypothetical situation to your Honour? Assume at some stage I had given a policeman in my life something in respect of a speeding charge and I answer this question, that I never indulged in bribery, I would be telling an untruth, wouldn't I?

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HIS HONOUR: Yes.

WITNESS: So if I answer this question "never" I would be telling an untruth. I believe that it would be fair to say - I am just talking aloud in this matter - it would be fair to say that at some stage I may have indulged in a mild case of bribery of that type. If I answer "Yes" to that question, if that is all that is meant, I am prepared to say that I have a certain times done mild things of that type. If you could inform that by answering "Yes" I would not be incriminating myself in any criminal prosecution I am quite prepared to answer "Yes" to the question, if you give me your assurance that it will protect me -

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HIS HONOUR: I don't think I should require an answer from the witness on this question, Mr. Gruzman, but it is open to you, as I have indicated, to put whatever other questions you wish to put.

50

I uphold your claim to privilege, Mr. Armstrong, on that question.

MR. GRUZMAN: Q. Have you bribed a policeman? A. Again I claim privilege on my oath.

Q. Because you fear that the answer to the question may incriminate you? A. Yes.

HIS HONOUR: I will not compel the witness to answer that question, Mr. Gruzman.

MR. GRUZMAN: Q. Did you bribe Sgt. Wild? A. No.

Q. Did you bribe Const. Follington? A. No.

Q. Did you ever consider bribing a Judge? 10

A. Never.

Q. If you thought that it would serve your ends would you consider bribing a Judge? A. Well, I suppose - I don't know what documents are down there. I suppose I had better say it may incriminate me if I answer that. I don't know what I thought.

HIS HONOUR: I won't uphold privilege on that.

WITNESS: I don't know what I thought about it.

MR. GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. If I thought and would I consider? These are terribly hypothetical propositions - what goes through one's mind at some particular time. It is what you do, I think, that counts, isn't it? 20

HIS HONOUR: I think the question is able to be answered, Mr. Armstrong.

WITNESS: What is the question again?

MR. GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. Do you mean would I think about it? 30

Q. Yes. A. I suppose I might think about it. There are many things one might think about and doesn't do.

Q. So that if a Judge stood in your way or annoyed you one of the matters you would consider would be whether you could bribe him? A. I don't like the word "consider". I said it could be possible would think about it.

Q. Bribing him? A. I could think about it. I am not saying that my mind is so pure that I would not think about it. 40

Q. And, having thought about it, the main question would be whether it was possible to bribe the Judge? A. I don't know what you mean by that.

Q. In your mind, you see, you have told you you would consider or think about it. I will withdraw that. You told us that you would think about bribing a Judge (Objected to: rejected).

Q. Did you give consideration to bribing Mr. Justice Dovey? A. Certainly not.

Q. There was no question of that? A. No question of that at all.

Q. Mr. Justice Dovey you felt was a problem to you, didn't you? A. No.

Q. You felt that Mr. Justice Dovey had unduly interfered in the Eskell divorce, didn't you? A. No, I didn't think he did anything wrong in the Eskell divorce. I felt that Mr. Justice Dovey did his duty in the Eskell divorce. - what he considered to be his duty, on the evidence, so far as I know. 10

Q. And you felt that you were in danger as a result of what the Judge might do, didn't you?
A. As a result of what the Judge might do to who?

Q. Do to you? A. No, I did not feel I was in danger from what the Judge might do to me.

Q. Did you feel you were in danger because the Judge might refer the whole of the Eskell divorce for investigation? A. I would not have minded if he had. 20

Q. But you felt that was a possibility? A. I didn't feel anything about it at the time so far as I know, unless you have some more stolen notes you can refer to and which will improve my recollection and which documents are, may I add, with your Honour's permission - which are only things I thought about at the time, and which I have not looked at for the past four or five years. So I can't recall what you have got in those stolen notes, Mr. Gruzman. 30

Q. Well, is this the position, that you fear that you may have expressed in writing a thought of bribing Mr. Justice Dovey? A. I don't know whether I did or not or not express it in writing. I could not tell what you have got. You might have forged it for all I know.

Q. You remember that you were shown yesterday a document in which it showed in your own writing "Save Alex." A. Yes, I saw that. It appears to be in my handwriting. I am very doubtful what is in the document now after consideration - whether they are forged, or what they are. You may have had handwriting experts to forge them. 40

Q. You told us that the words "Save Alex." was one of the things - they meant that you had some fear about yourself? A. No, very little if any. Very little fear.

Q. And whatever fears you did have stemmed from the possible actions of Mr. Justice Dovey, didn't they? A. If I had any fear. I don't think that I had any fear at all. 50

Q. If you had any fear in your mind it would be

because of possible actions by the Judge? A. Really, Mr. Gruzman, the state of my mind at that time I can't recall. I can't even tell you if your stolen notes refer accurately to the state of my mind at that time.

Q. Your usual method of operating is through underlings, isn't it? A. No, I usually do anything important myself.

Q. You prefer to act through other persons rather than directly, don't you? A. I would not say so. It depends on the importance of the matter. 10

Q. It depends how dirty it is, doesn't it? A. I don't think that matters at all if it is important. I don't do very many - anyway, I will leave that question.

Q. You would prefer not to say what you were about to say? That is, that you don't do dirty things? A. How do you know what I was about to say? You must be a mind reader. 20

Q. That is what you were about to say, wasn't it? A. No.

Q. You do do dirty things, don't you? A. No.

Q. Do you remember I asked you yesterday did you go to see Mr. Frank Browne? A. Yes. I think I said I did, didn't I, You can perhaps remind me of my answers.

Q. Did you go to see Mr. Frank Browne in connection with Mr. Justice Dovey? A. Mr. Frank Browne and Mr. Justice Dovey? After yesterday, last night I gave this some thought. 30

Q. You say that, having considered the matter overnight, you now have a recollection of consulting Mr. Frank Browne about Mr. Justice Dovey? A. Yes, I think I did.

Q. What is your recollection of what was discussed? A. May I paraphrase this? I can't use the words he said and I said.

Q. In your own words. A. This is not to be taken as strictly on my oath; it is only recollection to the best of my ability, Mr. Gruzman? 40

Q. We understand that? A. Thank you. I consulted Mr. Browne because I always believed that he was an extremely competent technical press man..Now in this matter as I recollect, of Mr. Justice Dovey the editions of the Eskell divorce came out very quickly on the street. Mr. Browne stated to me that it would have been impossible for these editions to have come out so quickly unless Mr. Justice Dovey had given some prior intention (sic) of his judgment to the press. That is what Mr. Browne informed me. I don't know whether that is correct, or not. This was the information or opinion Mr. Browne gave me, that it was physically impossible for the press to have this out. 50

You see, your Honour, at this stage my wife - perhaps Mr. Gruzman can correct me if I am wrong, because he has access to many more documents than I have at the moment - I don't think my wife had commenced divorce proceedings against me at this time, or, if it was, it was only very close to it. It was within a fortnight or so one way or the other, and I think she felt that she would like to have embarrassed me into the position of having nothing more to do with Mrs. Cleary by these allegations. This is why I consulted Mr. Browne to find out why this half past eleven edition carried all this mass of information. That is the reason why I consulted Mr. Browne.

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Q. Did you accept the conclusion that Mr. Browne had come to, that his Honour Mr. Justice Dovey had given a premature indication of his judgment to the press? A. No, I didn't accept it. I just thought about it. Mr. Browne may have been wrong; he may have been right. I don't know. It was just his opinion.

20

Q. Was there any further discussion with Mr. Browne about this matter. A. I can't recall. It may be in those notes.

Q. The discussion with Mr. Browne took place shortly after the Judge had given his judgment in the Eskell case? A. I can't recall it. My recollection is very poor on this matter. Your notes, that you have taken from my own files, would assist me in recalling it.

30

Q. Did you discuss with Mr. Browne the question of bribing Mr. Justice Dovey? A. I don't think so.

Q. But you may have done so? A. I don't know. You have got access to the notes. You had better show them to me so that I can refresh my memory.

Q. But in your mind that was possibly said?
A. I don't know. I don't know what was in my mind.

Q. Was the question of attacking the Judge raised between you and Mr. Browne? A. I can't recall that either. I don't think the word "attacking" should ever be used. I don't think any member of Parliament or any other person should ever attack a Judge in those words. I think a Judge, as any person in high positions, may at times be subject to criticism; they should never be subjected to attack or vilification of any sort.

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Q. You would think that would be a wrong thing to do? A. Attack or vilification, yes. Criticism, no.

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Q. That is the sort of thing that you, as a member of Parliament, would never contemplate? A. I would never contemplate vilifying anyone.

Q. And you would never contemplate specifically attacking a Judge? A. I don't think I would ever

contemplate attacking a Judge. Under circumstances in which I considered that a Judge would behave - if a Judge did something out of this world he may be attacked by the judicial processes.

Q. Assuming that the Judge did something that was personally offensive to you, would you be prepared to attack that Judge? A. I would have to think through this very carefully. If what he did was correct I would not criticise him. If he did something that was incorrect either to myself or any other member of the public I may consider letting him answer the criticism, the same as anyone else in Parliament or anywhere else has to answer criticism. 10

Q. I accept the distinction which you draw between criticism on the one hand and attack on the other. I would like you to confine your thoughts to the word "attack". Would you, because of something which a Judge had done to you, which you regarded as personally offensive to you, attack that Judge? A. I find it pretty difficult, you know, Mr. Gruzman, to draw a distinction between "attack" and "criticism". It is a pretty fine line, especially if you have had as much parliamentary experience as I have had. I find it very difficult to draw a fine distinction between those two words and I think I have a reasonable command of English. 20

Q. Is this the position, that you may contemplate attacking a Judge? A. I may contemplate what you call attacking, and I may call it criticising. 30

Q. Would you contemplate doing in respect of a Judge what you would call attacking? A. No, not what I would call attacking.

Q. You know what bribery means, don't you?
A. Of course.

Q. And I think you have already told us that you would never contemplate bribing a Judge in your sense of the use of the term? A. I don't think I would. I don't think a Judge would take a bribe for a start, anyway. But let us look at the notes. You may have forged them. You might have something there. 40

Q. You are suggesting - A. I am not suggesting anything.

Q. You are suggesting in this Court - you have suggested two or three times that I might personally -
A. No, not you personally. I would not think that you would do it, but - 50

Q. You think these notes may have been forged. Who do you think might have forged them? A. I prefer not to say.

Q. Prior to going to see Mr. Browne you prepared some notes for your interview with him, didn't you?
A. If you have them, I will know my own writing.

Q. I am not going to show you the whole of the notes at this stage. I am going to ask you to identify the heading and the first paragraph on the first page. The heading is "Browne" (Objected to: rejected).

Q. That is your handwriting, isn't it? A. I don't know. I am finding it hard to tell what is going on in this situation. I think it is. It could be someone has copied my handwriting. I don't know. 10

Q. It is what appears to you to be your handwriting, doesn't it? A. That one does not look as well written as the last one, but it may be.

Q. You are not prepared to deny this is your handwriting? A. I don't know whether it is or is not. It could be.

Q. Just listen to it and tell me whether this refreshes your memory as to whether you wrote this document (Objected to: rejected). 20

Q. I show you m.f.i. "33". I am reading from m.f.i. "33"? A. I presume this document will be tendered, will it?

HIS HONOUR: You have very capable counsel, Mr. Armstrong, who will protect your interests.

MR. GRUZMAN: Q. Do you remember yesterday being shown para. 9 (Objected to).

MR. STAFF: That is not m.f.i. "33" that Mr. Gruzman is referring to.

MR. GRUZMAN: I apologise. My friend is quite right. 30

Q. You remember being shown yesterday this document, and identifying para. 9 of that document as your handwriting? A. I did yesterday. I am still not dead certain about that document. I am not completely clear on the document. I find it very difficult to say whether or not these in fact are documents - may I ask your Honour a question?

HIS HONOUR: No. I have permitted you considerable latitude in addressing me. You are obliged to listen to the questions and answer them. If they exceed permissible limits Mr. Staff will protect your interests. 40

MR. GRUZMAN: Q. Mr. Armstrong, is there any difference between the handwriting in para. 9 and the handwriting in para. 1 on that same page? A. I prefer to look at the original, if I can.

Q. First of all, look at that document. Are you satisfied that it is a Xerox of the original? I am sorry, it is a different Xerox. A. It does look a different Xerox. That is why I was rather surprised about it. It did not look to be quite accurate from the writing. 50

Q. Just stay on the first page? A. It seems to me to be a copy of this, yes, so far as I can see.

Q. They are both in your handwriting, aren't they? A. They appear to be, yes.

Q. I want you to have a look at it - we will deal now with the original? A. This paper, yes.

Q. Have a look at para. 13 on the second page. The second page is also in your handwriting, isn't it? A. That is right.

Q. Did you write this "Can we attack or bribe Dovey?" A. I told you it may have passed through my mind at that time. 10

Q. The heading of the document is "Browne" isn't it? It is Browne? A. Yes. It must have passed through my mind. I don't know whether I discussed it with Mr. Browne.

Q. So that the notes you prepared for your interview with Mr. Browne contained, as para. 13 the question "Can we attack or bribe Dovey? A. It apparently must have, yes.

Q. And that was one of the matters of discussion between you and Browne? A. I can't recall the discussion on this point now. It could have been, but I don't recall it. I would not like to say what I said to Mr. Browne or he said to me. It is so long ago. I just don't recall it. 20

Q. Was the question of amount discussed? A. No, I can't remember any amount.

Q. Just try and help his Honour, if you can? A. I really can't on that matter. I don't think Mr. Browne thought that anything could be done in this regard, but I can't recall. 30

Q. It was given thought, but it didn't seem to be a very good one? A. I don't recall clearly the discussion with Mr. Browne.

Q. You would have been perfectly happy to do it if Mr. Browne had said Mr. Justice Dovey was that type of person, wouldn't you? A. No. I don't know whether I would or would not.

Q. It was your thought, wasn't it? A. As I say it must have passed through me. It must have passed through my mind, otherwise I would not have committed my thoughts to writing, which I often do. Would you like to have all your thoughts committed to writing? 40

Q. The question was whether you could ever discipline a Judge or buy him off. Those were the thoughts in your mind, weren't they? A. I didn't want to buy the Judge off particularly. At that time I really don't know. All I know is what is written on this paper- on these sheets of paper - showing what thoughts were in my mind at that time. I just don't know. I can't tell you any more. You have got what is written on the paper. That is what is written on the paper. 50

Q. One of the things you were concerned about was that the then Attorney General, and the then Minister for Justice were considering re-opening the case? A. I don't know about that. I can't remember whether Mr. Mannix and Mr. Downing were thinking of it or not. I didn't discuss it with them at that time.

Q. You had sources of information in the Government, didn't you? A. I suppose I have. I can't recall this at all. That one is a bit of news to me.

10

Q. In para. 2 of the document you have that Mannix and Downing were considering re-opening the case and calling for the transcript of evidence. That is what you read, wasn't it? A. That is what I read. I can't recall how I got that into my mind. Someone may have said they were. A lot of rumours go around Parliament you know.

Q. Para. 6 - "Remember case can be re-opened up to September 25th." A. Someone may have told me that.

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Q. Well, the judgment had been given on June 25th, hadn't it? A. Yes.

Q. And three months later made it September 25th? A. Yes. I didn't know about time. I didn't know of legal matters. Someone may have told me this. I don't know.

Q. It is your handwriting. You have written "Remember case can be re-opened up to September 25th? A. That is what I thought. I don't know whether it is fact.

30

Q. And what your concern was was that the Attorney General or the Minister would re-open the case prior to that date and involve you? A. No. I would not have minded if it involved me. I would have told the truth.

Q. What? A. I would have told the truth to the best of my ability if he re-opened the case.

Q. The same as you have done in this case? A. Yes.

Q. The same as you did in your documents before the Registrar in Divorce? A. I told the truth in those documents before the Registrar in Divorce definitely. You have shown them to me. There are interesting ones there.

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Q. Did you ask Mr. Browne what was the reason for Mr. Justice Dovey making a fuss over the case.

A. If it is on the piece of paper I may have asked him. Those are the notes. I did have an interview. I don't know what I asked him. I am sure you don't want me to make up recollections that I don't know for sure.

50

Q. Did you set out the possibilities: (a) to damage

Eskell, or (b) damage Armstrong in further proceedings in divorce? A. Frank Browne didn't know. I can't recall this discussion. I don't know whether the discussion was that possibly Mr. Justice Dovey might want to damage Eskell. I don't know why he would.

Q. Or else to damage you? A. To paraphrase this, I think there may have been some discussion. At that time I think your Honour will recall that Mr. Justice Dovey was being very outspoken about a lot of matters. I don't know why he was being outspoken, but he was. 10

HIS HONOUR: I don't think that is an answer to the question, Mr. Gruzman.

WITNESS: That is about as much as I can help you with. I am sorry.

MR. GRUZMAN: Q. Did you think that his Honour wanted to damage you in further proceedings in divorce?

A. I would not have thought so. I always got on well with his Honour and I always thought he was a nice chap at the times I had seen him at the races or anywhere. He was always pleasant. I don't know why he would ... 20

Q. There is the third possibility "Recollect Hogan friend of Dovey's." A. This Hogan person is still very unclear. You say Hogan is a friend of Dovey's, do you? I don't know about that.

Q. Counsel makes no assertion? A. I don't know of Hogan's friendship with Dovey because I don't recall meeting Mr. Hogan and discussing it with him at all. 30

Q. I will read the whole of paragraph 1 to you: "What was the reason for Dovey making a fuss over the case? (1) Damage Eskell; (2) damage Armstrong in further proceedings in divorce. Recollect Hogan friend of Dovey's." A. All I can say is that someone, who I can't recollect, could have told me that Hogan was a friend of Dovey's. But I did not know it to be a fact. 40

Q. Hogan was your wife's counsel? A. Apparently he was, according to what you say.

Q. And what you are suggesting there was that, by some arrangement between Mr. Justice Dovey and Mr. Hogan, his Honour took exception to the Eskell divorce? A. I am not suggesting anything there.

Q. That was the thought, wasn't it? A. No. I really don't know what my thought was.

Q. That was the only logical explanation of that notation? A. I don't know what my thought about Hogan was. It is very unclear, because to the best of my knowledge I have never met the chap. 50

Q. Did you think there was some illicit arrangement

or conversation between Mr. Justice Dovey and Mr. Hogan? A. I don't really know. I don't suggest there was, by any means. I just don't know about it. Someone may have told me there was a possibility of this, but I certainly have no wish to throw odium on either Hogan or Mr. Justice Dovey from my own knowledge, because I don't know anything about their relationship.

Q. That is in your discussion with Mr. Browne. He is the editor of "Things I hear"? A. Yes. I think he is the owner of it, isn't he? 10

Q. And "Things I hear" is regarded by you as a scurrilous rag? A. I would not say it is scurrilous.

Q. It is regarded by you as a publication which will attack people with or without justification? A. Yes. I think it has attacked me. You have to take these attacks.

Q. Did you tell Mr. Browne, according to your notes in para. 3, "Mrs. Armstrong knew of the matter on the Wednesday before the case opened. Hogan may have been told by Dovey." A. Wait a minute. Could we have - could we just get the time right on this, if I can assist you, Mr. Gruzman? When did the case open? Can you tell me the day the case was heard? You have all the documents. 20

Q. 25th June? A. 25th June what year?

Q. I am sorry, we have to reserve roles for a little while. You wrote this in para. 3? A. "Wednesday before..." 30

Q. "Mrs. Armstrong knew of the matter on the Wednesday before the case opened." A. Let us get this clear. We mean the previous Mrs. Armstrong don't we? Let there be no doubt in our minds.

Q. Wednesday before the case opened is a day or more prior to the commencement of the case? A. It may have been a week or a fortnight. That is what I am worrying about. It could have been two days, or ten days. These are not really precise notes, you know. 40

Q. What did you mean when you said that Mrs. Armstrong knew of the matter? A. Mrs. Armstrong. I believed, had learned of this situation between Mrs. Cleary, Mrs. Dunne, and Mr. Eskell.

Q. She knew it was a fraudulent arrangement? A. I think she may have heard some whispers to that effect. I think she did. I don't know. She is not here to answer for herself.

Q. And your belief was that it was Mr. Justice Dovey who had conveyed that information to Mr. Hogan? A. I don't know what I believed about that. That is quite beyond me. 50

Q. That is what you wrote, isn't it? A. No, I said she knew of the matter. She may have conveyed information to Mr. Hogan herself.

Q. But that is not what you wrote, is it? Let us go through it again. This is what you wrote "Mrs. Armstrong knew of the matter on the Wednesday before the case opened. Hogan may have been told by Dovey." A. May have been. I don't know. I can't recall this one at all.

Q. What you thought was that his Honour Mr. Justice Dovey had realised that the evidence to be presented to him was false, and had rung up Mr. Hogan and told him or communicated with Mr. Hogan? 10
A. No, I don't remember that at all, Mr. Gruzman, I can't recollect that fact at all. I don't think the notes show it. It does not bring it to my mind at all.

Q. Your whole thought was that the Judge had found out the truth of the matter before the case was ever heard by him, wasn't it? A. No, it was not. I didn't know what the Judge had found out.

Q. That was what you told us before, that the Judge must have told the press prematurely what he was going to say? A. I did not say that the Judge had told the press prematurely. I said Mr. Browne suggested it could have happened. 20

Q. Of course, in par. 3 you suggested that because Mrs. Armstrong knew of this arrangement on the Wednesday before the case opened one possibility was that the Judge had told Mr. Hogan?
A. No, I really can't help you there.

Q. Look, I am just asking you to tell his Honour is there any other meaning you can ascribe to this paragraph other than the suggestion that the Judge knew before - just leave the page turned over, as it was? A. If I can't read the whole of the paragraph I can't help you. 30

Q. You can read the whole of the paragraph, but not any more of the document. It is open on three lines of para. 3, which comprise the whole of para.3. Can you ascribe any other meaning to that paragraph other than that his Honour had previously -A. There is a complete paragraph here which is turned over, so I can't help on the matter. 40

Q. Just read what is open? A. "Mrs. Armstrong knew of the matter on the Wednesday before the case opened. Hogan may have been told by Byrne" - and "Byrne" is crossed out - and then "Dovey". That is the end of the paragraph. There is more in it than that. So that I cannot elucidate further.

Q. You can assume there is no more in it than that? A. I can't help you on it. 50

Q. Can you ascribe any other meaning to the paragraph other than that Mr. Justice Dovey had knowledge of the arrangement with Mrs. Cleary prior to the case commencing, and had himself communicated that knowledge to Mr. Hogan? A. I cannot ascribe any meaning to it, Mr. Gruzman. It does not have any meaning for me.

Q. That is exactly what you were expressing, isn't it? A. What?

Q. The meaning that I ascribe to it? A. There are other matters underneath this one. I think that the whole thing could be quite different to that, but I can't tell. My recollection is not good on it. There is a bit more written underneath there, which may help us in the matter.

Q. We will look at that in a moment. Tell me about the discussion with Mr. Browne. Did you discuss with him the possibility that the Judge had taken this course in order to discredit the Upper House and damage The Liberal-Country Party? A. In politics all things are possible. I may have discussed it with Browne. It could be. I don't know why the Judge would want to. 10

Q. But you accepted it as a possibility that the Judge had expressed his doubts about the Eskell divorce in order to discredit the Upper House and damage the Liberal-Country Party? A. If it is on the document I have discussed it. 20

Q. You could have discussed it? A. I suppose I could have if it is in the document.

Q. It is the sort of thing which would enter your mind? A. Well, you can never tell in politics. Anything is possible.

Q. And one of the possibilities is that a Judge would intervene in a private divorce for political purposes? A. I would not think it likely. 30

Q. In your mind that was possible? A. I don't know what I thought. I would not have thought it likely.

Q. What you wrote in para. 4 was "Is there any political implication to discredit the Upper House and damage Lib.-C.P. with a view to causing trouble." A. I may have asked Browne that - if he thought there was any political implication in it.

Q. Meaning thereby that the Judge had taken this action for political purposes? A. I don't know what he had done or why he had done it. 40

Q. What were Browne's words on that? A. I can't recall them. I can't even recall - I can't recall whether abolition of the Upper House was on at the time. That was before that, wasn't it?

Q. In casting around for motives of the Judge did you come to a question whether it had some connection - had Mr. Packer, presumably Mr. Packer of the Telegraph, made an attack on Professor Messel? A. I don't think so, I can't recall that at the moment. 50

Q. Had a man called Packer in your belief attacked a man called Messel? A. I can't recall that one. I don't think the Honourable Clyde Packer was in Parliament at that time.

Q. Let us see if you can tell us what para. 5 means "Any tie-up with Packer's attack on Messel." That is what you wrote? A. That should have a question mark after it.

Q. What was your thought there? That the Judge had been influenced by Mr. Packer? A. I would not think so.

Q. That was your thought, wasn't it? A. I can't even remember any attack on Messel by Packer. It is a long time ago. I can't remember what I thought. That is what I wrote. 10

Q. Reading now what is written, it looks as though you conceded the possibility that Mr. Packer's attack on Messel went further and enabled Mr. Packer to have influence with the Judge to attack you through Eskell? A. I would think it very unlikely. We wondered why this happened - just casting around with thoughts on why it should have happened. We could not understand why it did. 20

Q. It didn't occur to you that it was because a criminal conspiracy had occurred? That is why his Honour was suspicious? A. Well no, I don't think there was any criminal conspiracy that I can see.

Q. That was the last thing that entered into your mind, wasn't it? A. I thought that if his Honour thought there was criminal conspiracy he would not have granted a divorce.

Q. That is the very thing you were worried about - that Mannix and Downing were considering re-opening the case? A. That did not apply to me at that time. I thought if he would have had any knowledge of any criminal conspiracy before he heard the case he would not have granted it, or he would have said so at the time. 30

Q. What he said at the time to your knowledge were words to the effect that, suspicious as he was, he simply could not believe that a woman would come a perjure herself to swear to adultery that had never occurred. That is what the Judge said, wasn't it? A. I think he said words to that effect. 40

Q. And in fact you had succeeded in tricking the Judge, hadn't you? A. I didn't get anything out of tricking the Judge. I didn't trick the Judge. I didn't swear anything.

Q. But you got Cleary to, didn't you? A. I didn't. I can't make people swear things.

Q. It is part of your system of work that you work through underlings to achieve your ends?
A. I would hardly call Mrs. Cleary an underling. 50

Q. She was under your control at that time?
A. I would not say so.

Q. You were paying her £30 a week? A. I would not know exactly. It would be hard to keep her under my control.

Q. You were told to get her away and live with her towards the end of the preceding May? A. I had been told to what?

Q. To take Mrs. Cleary down to Winderadeen. That is your property? A. Actually Mr. Twigg advised me the best way to make Mrs. Armstrong make up her mind about what to do was to take her down there, and stay in Sydney with Mrs. Cleary. That is what Mr. Twigg thought would be the better course. 10

Q. Is that what you did? A. No. Mrs. Armstrong didn't want to go to Winderadeen. She liked it better in Sydney.

Q. In the period prior to 25th June you were in fact living with Mrs. Cleary? A. No, I don't think I was living with Mrs. Cleary. I went to the Union Club after my divorce.

Q. The divorce was a year later? A. After Mrs. Armstrong received an order for me to leave the home, I think my recollection is clear there. 20

Q. Did you then consider whether the best thing might be to lie low? A. How do you mean, lie low?

Q. Keep very quiet, and see if the thing would drop? A. Well, it dropped didn't it?

Q. They were the right tactics, weren't they?
A. I don't know.

Q. Apparently the best one was para. 7 was it "Keep very quiet for a time and let the matter drop." A. That would probably be Mr. Browne's advice. 30

Q. Of the various possibilities you conceived that one, to do yourself credit? A. I don't know whether he did, or whether we both did.

Q. One of your worries was that Eskell might put you in? A. No, I didn't think that he would put me in.

Q. That is a lie, isn't it? A. No, I didn't think he would, definitely.

Q. Did you write, in para. 8 "If Eskell pushed too far might put A.E.A. in as well." A. I don't know whether these are Mr. Browne's thoughts, or mine. They are my writing, but they may be his thoughts. 40

Q. That is what you wrote in para. 8? A. That appears to be so, yes.

Q. And the answer which you gave before, that you were not frightened of that, was a lie, wasn't it? A. No, it was not. I was never frightened of any of that situation occurring at all. I thought it would be very unlikely that Mr. Eskell would do anything about it. 50

Q. Then we come to para. 9 which I showed you yesterday, where you wrote "What do we want to achieve? (a) Save Alex; (b) punish Eskell. That is what you read yesterday? That is what you read?"

A. Yes. We didn't achieve it. Nothing happened very much.

Q. That is what you wanted to achieve? A. It is apparently what Browne and I thought. I am trying to interpret what I thought at the time. Sometimes you write a word quickly; when you are making a memo it does not exactly give the entire thought.

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Q. The problem was that if Eskell was pushed too far he might put you in as well? A. We might all have been in it, Mrs. Cleary, Eskell and I, I suppose, if the Judge had done something about it.

Q. You realised that the whole thing was a criminal conspiracy? A. I didn't know whether divorce actions were criminal conspiracies. I am not a lawyer.

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Q. You knew it was an arrangement? A. Mr. Eskell wanted a divorce and his wife wanted a divorce -

Q. The arrangement was to produce false evidence? A. The arrangement that Mrs. Cleary and Mr. Eskell entered into apparently had that effect.

Q. You understood in helping with that you were helping Mr. Eskell? A. I was helping a colleague, yes.

HIS HONOUR: I have permitted cross-examination regarding Mr. Armstrong having thought about attempting to bribe or attack Mr. Justice Dovey. This relates solely to the credit of Mr. Armstrong, who was asked "Would you regard yourself as a person who would bribe a Judge if it suited you?", to which he replied "Certainly not," and "Would you regard yourself as a person who would attack a Judge who crossed your path?" to which he answered "Under no circumstances".

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I must make four things abundantly clear:

1. There is no suggestion any attempt of bribery ever came to the knowledge of Mr. Justice Dovey;
2. At the slightest shadow of any suggestion of attempted bribery coming to his notice Mr. Justice Dovey, as would any other Judge, would have taken prompt and effective steps to deal with the persons involved;
3. There is no instance or suggestion of bribery of a Judge in the whole 150 or more of judicial history of this State;
4. It is totally and absolutely unthinkable that this could ever occur.

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(Short adjournment).

MR. GRUZMAN: There is one matter. I requested that Mr. Staff join with me in an application. He will not join in the application, nor consent to my seeing your Honour alone. There is a matter on which I do seek some directions from your Honour in private chambers, and I consider the matter appropriate for your Honour to deal with in private chambers.

HIS HONOUR: If there is a matter which you wish to raise in private chambers, I don't want to intervene, Mr. Staff, in whatever discussion on procedural matters may have taken place, but if there is something that one counsel wishes to advert to in private chambers it may or may not be properly the subject of something to be said in private chambers. It is too late if it is said in open Court. I think the convenient course is for me to see counsel and their instructing solicitors in private chambers to see if it is a matter which ought properly to be dealt with in open Court. If I take the view that it is a matter which ought to be dealt with in open Court, I have already made clear on a number of occasions that, unless required by an Act of Parliament my view is that all Court proceedings should be held in public Court; there must be no closed doors. However, I shall see counsel and instructing solicitors in private chambers.

(Short adjournment). 30

HIS HONOUR: I shall have it noted that nothing was decided in private chambers; no rulings were given; no indications were given and the matter mentioned does not appear to me to be one appropriate to be raised in open Court, nor to be a matter with which I need be concerned.

Are you content with that note, Mr. Staff?

MR. STAFF: Yes.

MR. GRUZMAN: Yes.

Q. Mr. Armstrong, did you make a decision prior to seeing Mr. Browne that it was better not to write anything in his "Things I hear"? A. Did I make a decision prior to seeing Mr. Browne? 40

Q. That it was better not to have anything written in "Things I hear"? A. I can't recall that.

Q. You regarded yourself as a person who could direct Mr. Browne to write or not write things? You regarded yourself as a person who could direct Mr. Browne, whether to write or not to write matters in "Things I hear", didn't you? A. No, I don't think he would take any direction from me on that, Mr. Gruzman, at all. 50

Q. On p. 2 in para. 10, you have got "Write nothing in T.I.H."? A. Yes.

Q. "T.I.H." is "Things I hear"? A. Yes.

Q. That was your direction of Mr. Browne, wasn't it? A. No, those were just notes. I think those notes were taken possibly while I was talking to Mr. Browne. I don't know when they were taken. I certainly would feel that Mr. Browne would be a most difficult person to influence in anything he wrote.

Q. Don't you think it was a terribly dangerous sort of information that you gave to Mr. Browne if he was that sort of person? A. I didn't think there was anything dangerous about it. I don't think there was anything dangerous to me. 10

Q. Discussions about bribery, and such matters? If Mr. Browne was a person you could not control wasn't he a dangerous person to put in possession of that information? A. I don't think there was anything dangerous about the information.

Q. Your view was that if Mr. Browne chose to publish any of this matter he would be quite entitled to? A. I could not stop him. I would not like him to publish it, but I certainly could not stop him. I don't know. He may have done a favour and not published it. People do favours sometimes, you know. 20

HIS HONOUR: Q. Did you want to add something?

A. Yes. People do favours at times but I certainly could not control Mr. Browne.

MR. GRUZMAN: Q. In paragraph 10 you said: "Say very little but listen - get evidence from newspaper report." Do you know what that meant? A. No, I cannot remember what that meant at this stage. 30

Q. Paragraph 11: "Would like to know why Dovey so rough on case."? A. That is true. I would have liked to know that.

Q. 12: "Seems to me that I may be being set up for trouble by Marjorie as she has tried to discredit Margaret,"? A. That is true, yes. I think that is quite possible. You could not blame her for trying to make some trouble. 40

Q. Marjorie being your then wife and Margaret being Mrs. Cleary? A. Yes. That would be a natural thing that my wife would have done.

Q. 13: "Can we attack or bribe Dovey?" That is what you wrote? A. Yes.

Q. 14: "Best line for me and Margaret to take?" A. Best course of action to take.

Q. And up to that point those were your thoughts expressed in notes which you took to Mr. Browne? A. I don't know whether I took them to him or made them when I was there. I do not know. 50

Q. Two sheets of paper, fourteen paragraphs

which I have read to you - A. Yes. Have you read the last one? Yes: "Best line for me and Margaret to take?".

Q. I suggest to you your notes of what - of some discussions that did take place with Mr. Brown?

A. I would not know. I think it could all have happened at the one time, but I am not clear. I just do not know.

Q. And these notes then say, first of all: "Get different counsel and see at different times." This was part of Mr. Brown's advice, was it not? 10

A. Cannot recall that at all. I do not want to seem malicious to Mr. Twigg but I think Mr. Browne said, "We had better get rid of him." But I cannot recall that.

Q. You are in fact being malicious towards Mr. Twigg, aren't you? A. I am trying to give you my best recollection.

Q. You have endeavoured in these proceedings to be malicious towards Mr. Twigg, haven't you? 20

A. No. I am trying to tell you the truth. You are asking for the evidence and I am trying to tell you. I am not trying to be malicious to anyone.

Q. What does it mean here: "Lindsay Clinch." Is that correct? A. Yes.

Q. "Instructed his reporter to cover case." Who is Lindsay Clinch? A. I do not know. It is so long ago. Could be that he was a newspaper man. That is all I can think of. It is the only thing that seems to make sense. 30

Q. "We go to Court at 10.00 a.m."? A. This is I think - to assist you - if I may assist the Court, this gets back again to this consultation with Mr. Browne about the possibility about the prior release of information to the reporters. I think this is what we are coming to. I think that is what it is, if I can assist you in that way.

Q. Then you have: "Check typesetting."? A. This is a - I cannot recall this clearly but I know Mr. Browne said it was very easy to check typesetting. This is again in connection with this matter of the prior release of an interview to the reporters, the type was already set to get this edition out. This is what Mr. Browne told me was a possibility. 40

Q. And you have this sentence: "Believe we should hasten slowly and not allow Eskell to believe Margaret-". What is the next word? A. "and I".

Q. "and I dislike."? A. "dislike." I do not know. I suppose it must mean we should not have - I do not know whether it should mean "dislike Eskell" or "dislike Dovey". I cannot recall what should come after that. That is what is written. 50

Q. This obviously means "not allow Eskell to

believe that Margaret and I dislike Eskell."? A. I do not know what it means. You are just as good at interpreting as I am.

Q. What you were going to do was to deceive Eskell into believing that you and Mrs. Cleary still liked him? A. No, I would not think that.

Q. You would not do such a thing, would you?

A. No, I do not think so. I think he would have got the message that I disliked him.

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Q. You would not be deceitful or dishonest?

A. I am usually fairly direct.

Q. You would not be deceitful or dishonest?

A. Not in that case. I do not think I am deceitful or dishonest.

Q. Not in any case? A. I would not say I am perfect.

Q. Far from it, aren't you? A. I find that question offensive.

Q. "Check did he give information to Mirror."?

A. I do not know who "he" would be.

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Q. Either Eskell or the Judge? A. Mr. Hogan. What it could be - this other gentleman here, I think that is what I meant.

Q. The next is: "Remember Bennyhoff."? A. I think he must refer to - Bennyhoff, he was at that time the head of U.P.I., United Press International, and was a very good friend of my previous wife.

Q. In its context it does not mean that, does it, because it says: "Believe we should hasten slowly and not allow Eskell to believe Margaret and I dislike. Check did he give information to Mirror." I suggest to you that means Eskell? A. I do not know. Could have been either.

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Q. And then you have: "Remember Bennyhoff,"?

A. Yes. That is a thought that he might have been the one who did the whole thing.

Q. Look, Sir, you were prepared to go to any lengths to attack anybody who you thought might have harmed you, weren't you? A. I do not agree with that. I did not go to any lengths.

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Q. But you were prepared to if it was necessary?

A. No.

Q. You felt subsequently that the Judge had made amends, didn't you? A. Please try and get this clear, Mr. Gruzman. The Judge never attacked me in the Eskell divorce in any shape or form.

Q. Well, you found it unnecessary to pursue the courses of action which you contemplated in this document? A. I certainly did not pursue any of them.

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Q. And that is because the thing in fact passed over? A. Well - what passed over? Which are you talking about?

Q. The Eskell divorce? A. On the Eskell divorce. I never had any quarrel with Mr. Justice Dovey's findings about me whatsoever.

Q. The first question in this document is: "What was reason for Dovey making a fuss over the case?" wasn't it? A. I thought he was probably trying in that - at that particular time my feeling was he may have been trying - I stress the word "may" - may have been trying to cause worry to Mr. Eskell. Not to me. There was no worry to me in that case. You can read press reports; there is nothing about me in them. 10

Q. Your second subheading under that was whether the reason was "to damage Armstrong in further proceedings for divorce."? A. This was - whether this could have damaged my credit in further proceedings or Mrs. Cleary's credit and, indirectly through Mrs. Cleary, damage me. But I had no quarrel with Mr. Justice Dovey at any time and especially not on the Eskell divorce. I did not mind what he said about Mr. Eskell in the Eskell divorce. It was his worry. 20

Q. Have you ever previously considered attacking a Judge? A. No. I do not usually consider criticising or attacking anyone.

Q. Have you ever previously considered bribing a Judge? A. No, not that I know of. I do not know - I cannot go back and tell you what all my innermost thoughts are. It is very difficult to tell you what they are and remember them all. 30

Q. Do you think you may have contemplated bribing other judges? A. No, cannot recall any thoughts of that. I do not know what I may have thought.

Q. That is a possibility? A. I would not think so, no. I find it very difficult to recollect my thoughts. It is hard enough to recollect your actions. 40

Q. Because, I put it to you that bribery is part of your stock-in-trade. (Objected to by Mr. Staff; rejected).

Q. Bribery is a normal business method with you? A. No, I would not agree with that.

Q. It is a matter that you consider in any appropriate case? A. No.

Q. If you want to gain your ends and you feel you could gain your ends by bribery, it would not stop you, would it? A. No, I would endeavour not to - 50

Q. And I suggest to you it does not matter

whether it is bribing a policeman for a speeding fine - that does not affront you, does it? A. I do not think it is a very serious matter to do - for a speeding fine. I do not recollect that I have ever done it.

HIS HONOUR: Q. I did not hear that? A. I do not think that to offer a policeman anything for a speeding fine is a very serious matter. I do not recollect ever having done it myself. I have heard of it occurring.

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MR. GRUZMAN: Q. Are you prepared to swear that you have never offered a policeman something for a speeding offence? A. I do not think I have ever offered him - anyone anything for a speeding offence.

Q. Are you prepared to swear positively you have never offered a policeman anything in respect of a speeding offence? A. Well, I do not think I should swear anything that I cannot absolutely recall having never done. No, I would not be prepared, but I do not think I have.

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Q. It is a possibility? A. I do not think I have on my own behalf.

Q. On whose behalf have you? A. I cannot recall that. Might have been someone that I wanted to help or something like that. I do not think I have ever done it on my own behalf.

Q. You think you may have bribed a policeman in respect of a speeding offence for somebody else? A. I do not know. I cannot recall. I do not think I have.

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Q. You may have? A. Possibly. I do not think so. I would not go on my oath that I have not.

Q. It is certainly not the sort of proceeding which would affront you? A. I do not know what you mean by "affront". I would not think it was a terribly serious offence. It is a thing better not done.

Q. But it is the sort of thing that men do? A. I think it does occur. I do not know.

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Q. You see no real harm in it? A. I do not think it is a good practice.

Q. But you see no real harm in it? A. When I was younger I may have taken it less seriously than I do now.

Q. If those are your views, why did you contemplate attacking or bribing Mr. Justice Dovey in these proceedings? A. I would much prefer if you used the word "thinking" rather than "contemplating". It is the same thing, I suppose. Thinking about it.

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Q. Why did you think about attacking or bribing

Mr. Justice Dovey in respect of the Eskell divorce?

A. I really do not know why I thought about it.

Q. But it is a serious thing to even think about, isn't it? A. I do not know how you can control your entire thinking process. I honestly do not.

Q. That is what I am putting to you, that if you are involved in a given situation you will always contemplate or think about bribery as a possible method? A. I do not always think about it at all.

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Q. But in an appropriate case you would? A. No, I do not think I would now.

Q. Perhaps not today, but last year, perhaps?
A. I would not think so.

Q. You would not be prepared to swear you never thought of it? A. No - I would not know what I thought. Could not remember what I thought, so how could I swear what I cannot remember?

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Q. And if you thought of it and then weighed it up and it seemed to be the right and proper thing to do, you would do it, wouldn't you? A. Could I have that again?

Q. Yes. If you thought of it, of that subject, and it seemed to you to be the right and proper thing to do, you would do it? A. No, because you often think of things that you do not do.

Q. You are a man who has fairly orderly thoughts aren't you? A. I would not say they are always orderly.

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Q. But you write your thoughts out, don't you?
A. Sometimes.

Q. Did you write out pieces of paper similar to those that I have shown you in respect of the Barton matter? A. I do not think so.

Q. Prepared to swear that you did not? A. What do you call "the Barton matter"?

Q. Well, any of the matters relating to Barton, Hume, and those matters that have been dealt with in this case? A. I do not think I wrote anything out about that.

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Q. Look, you are a compulsive writer, aren't you? A. No. I have been cured of it lately.

Q. But for years you have written reams of notes about every subject that is on your mind, haven't you? A. No, not every subject. I would have been very busy doing that.

Q. But it is true to say you have written reams of paper in the form of notes similar to what I have shown you? A. No, I would not think so. Not reams.

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Q. Hundreds and hundreds of pages? A. No.

Q. And, indeed, when you left the Landmark office you left quantities of paper behind you, didn't you? A. No.

Q. And a lot of these notes, of course, were in your files at Landmark, weren't they? A. A lot of these notes were all taken from my files at Landmark, in my belief, while I was overseas in 1966.

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Q. When you left the office you left substantial quantities of paper there, didn't you? A. No, not - blank writing paper, I may have, but not these notes.

Q. You do not know what you left there, do you? A. I did not leave these notes there.

Q. You do not know what you left there, do you? A. I know that my office - all my private files were taken, personally supervised by myself and taken upstairs to my own offices.

Q. You know that you left substantial quantities of paper belonging to you in the Landmark office? A. No, I do not. I did not leave notes belonging to me in the Landmark office.

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Q. I am not suggesting that you knowingly did it? A. I did not do it unknowingly, either.

Q. When you left the office you left substantial quantities of paper with whatever it was that belonged to you? A. No, the only notes I can recollect leaving in the Landmark office were brochures, possibly, of things like The Sands; commercial brochures, not private notes whatever.

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Q. As far as you know? A. I am sure of it.

(Two sheets of notes recently shown to witness, the originals of which are part of m.f.i. 33, now marked m.f.i. 35).

Q. You did have some fears as a result of the Eskell divorce, didn't you? A. No, I do not think I had any fears at all.

Q. You have said you thought that if Eskell was pushed too far he may put you in as well? A. I would not have had any great fear of it. I would not have feared.

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Q. By the way, after this divorce, Mr. Eskell wrote a letter to Mrs. Cleary, didn't he? A. I believe he did.

Q. And that letter was in your possession, wasn't it? A. I think it was in that file from which the papers were taken.

Q. Is this the letter? (Handed to witness). A. Yes, this appears to be the letter. This was in the file. 50

(Above-mentioned letter m.f.i. 36).

Q. Did you discuss that letter with Mr. Eskell?

A. No.

Q. After your divorce - the Eskell divorce was over, did you feel that you would have to be extremely careful in any further Court proceedings? A. No, I did not think so.

Q. Did not you realise that to mislead the Court was a serious matter? A. Yes, I was very correct from then on. I thought - I certainly would never have had an arrangement like this again.

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Q. In fact, you would not seek to deceive a Court at all after that, would you? A. No.

Q. Very correct and very careful? A. Yes.

Q. How long have you been in Parliament?
A. Since 1952.

Q. Continuously? A. Yes. I think 1952.

Q. So that as at 1962 when these events took place you were a Parliamentarian of some ten years' standing? A. Yes.

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Q. And up to that time you had not realised that it was a serious matter to mislead the Court?
A. Apparently I did not attach the weight to misleading the Court in divorce proceedings as perhaps I should have.

Q. But certainly after this matter you were extremely careful, is that right? A. Yes.

Q. For example, one of your obligations as the respondent to a divorce was to make a disclosure of your assets and liabilities to the Registrar in Divorce? A. I really could not tell you what my responsibilities are on that matter. I left them with my legal advisers.

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Q. Are you telling his Honour that you are unaware that you had a responsibility to disclose truthfully your financial position to the Registrar in Divorce? A. I did not know what obligations I had to the Registrar in Divorce. I left my divorce entirely to my legal advisers.

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Q. Did not you make some disclosure of your assets and liabilities to the Registrar in Divorce?
A. As far as I know Mr. Grant handled the matter. I do not know what went on there, your Honour.

Q. Didn't you believe that you were making an attempt to deceive the Court - deceive the Registrar, with respect to your financial position? A. No. I left that entirely to my legal advisers.

Q. You are suggesting - A. I have accountants and legal advisers. I do not prepare those sort of things myself.

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Q. You do know, don't you, that an attempt was made to deceive the Registrar? A. I would not know anything about that. As far as I am aware I do not know anything about that. If it was -

Q. I just want to get it clear that you never believed in your own mind that an attempt was being made to deceive the Registrar in Divorce Court as to your financial position? A. I cannot recall it now. If you have some papers that have some thoughts on that, it may well be - I do not know. At the moment I cannot recall any attempt that was made. You may be able to refresh my memory with stolen papers. 10

Q. Your belief is that it is not inconsistent with your method of operation that you might have been party to an attempt to deceive the Registrar? A. I would not know about that. I have a very involved financial set-up and I do not know what could have occurred in this matter. 20

Q. Well, you have told us that by the - certainly by the end of 1963, I think you told us yesterday, you realised what a serious matter it was to deceive the Court? A. Yes.

Q. Just have a look at this document which has on it the date 12th January, 1963. That is your handwriting, isn't it? A. Apparently, yes.

Q. Did you write this in paragraph 6: "Can't bank on Registrar not finding out that my asset position is not truly disclosed by income." Did you write that? A. Yes. 30

Q. In fact, there was an attempt to deceive the Registrar as to your true asset position, wasn't there? A. No, I would not say that. I think you would require to call Mr. Grant or Mr. Hartigan to explain the matters fully. My testamentary dispositions are made in such a way to avoid probate. When you use the words "my assets", do you mean me or companies controlled by me, which are not - notionally the holder of assets? I could not answer technical questions on those matters. 40

Q. Would you explain to his Honour what you meant when you wrote these words: "Can't bank on Registrar not finding out that my asset position is not truly disclosed by income."? A. It is too technical for me to tell you whether he would have found out or not. I do not know.

Q. Look, sir, you were aware that an attempt was being made to deceive the Registrar as to your financial position, weren't you? A. I did not think so. 50

Q. And you were concerned that you could not be sure that that attempt would succeed? A. I really do not know what the position was. I think you could ask Mr. Grant what was happening.

Q. Would you like to say that Mr. Grant was

a party to putting false information before the Court? A. I should not think so.

Q. So you would agree that in respect of Mr. Grant, if any false information was put before the Court, you were responsible? A. No, I would say that Mr. Grant had access to all my books and papers and any information he put before the Court he gleaned from a full disclosure of my books and papers.

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Q. You say you made a full disclosure? A. My accountants did. I just handed the matters over to Mr. Grant and to my accountants.

Q. So what you are saying is this, that if there was any false information put before the Court it was Mr. Grant who was responsible? A. I do not know who was responsible for it. I do not know if any false information was put before the Court.

Q. But if there was a false position put before the Court, you say you are not responsible? A. I do not know who is responsible.

20

Q. Will you accept responsibility if there was a false position put to the Court? A. Well, I suppose - I do not know. I think I would have to consult with my legal advisers to see if I should answer that question. Could I have an adjournment to see whether I should answer that question? Am I the initial one who is responsible or are they? If I give them -

HIS HONOUR: Q. The question was whether you would accept responsibility I do not think there is any necessity or justification for your consulting your legal advisers about that? A. Well, if I give them all the information - I understood that they would prepare it in the correct manner.

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MR. GRUEMAN: Q. So what you say is that you gave full information to Mr. Grant, is that right? A. I say I did, yes.

Q. And that if there was any false information put to the Court it would be Mr. Grant's responsibility? (Objected to by Mr. Staff).

40

Q. Mr. Armstrong, you say you made a full disclosure to your accountants and to your solicitor? A. I certainly do. They prepare the tax returns.

Q. "They" being Mr. Hartigan - A. Mr. Bent of Hartigan and Company is the responsible man.

Q. Mr. Bent of Hartigan and Company and Mr. Grant of Dare, Reed, Martin and Grant? A. Yes.

Q. You say you made a full disclosure to them? A. Yes.

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Q. And if anything false was put to the Court,

they or one or other of them were responsible?
(Objected to by Mr. Staff; rejected).

Q. If anything false was put to the Court, they or one of them were the people who put it to the Court? (Objected to by Mr. Staff).

Q. What you say is, Mr. Armstrong, that you disclosed everything to your accountant and to your solicitor, and as far as you were concerned you believed that they truly disclosed everything? 10

A. No, I would say I left the matter in their hands.

Q. And your belief was that they had truly disclosed all proper matters to the Court? A. I would imagine they would, yes.

Q. So that if there was any non-disclosure, you were certainly not party to it? (Objected to by Mr. Staff; allowed). A. I do not think I was party to it because all the records were given to them. I do not keep my own books. 20

Q. You say you do not think you were party to it. If what you told us is the truth - that is, you made a full disclosure to your solicitor and accountant and you believed that they had truly disclosed everything to the Court - you could not possibly be a party to any non-disclosure, could you? (Objected to by Mr. Staff; rejected).

Q. Look, Sir, you are prepared to attack your solicitor and your accountant to save yourself, aren't you? A. I am not trying to attack - I have great confidence in my solicitor and my accountant. 30

Q. The truth is that it was your who were aware that there had been some failure to truly disclose, wasn't it? A. I was not aware that there was any failure to truly disclose.

Q. But that is what you wrote: "Can't bank on Registrar not finding out that my asset position is not truly disclosed." (Objected to by Mr. Staff).

Q. "truly disclosed by income."? A. That is correct. 40

HIS HONOUR: Q. Do you mean that is what appears in the document? A. That is apparently what appears in the document.

MR. GRUZMAN: Q. And you were aware that there was a possibility that the Registrar would find out that your asset position was different to what you had asserted it was? (Objected to by Mr. Staff; disallowed).

Q. Look, it was your belief that your asset position had not been truly disclosed, wasn't it? 50

A. No, it was not my belief that my personal asset position had not been truly disclosed.

Q. What was your belief in respect of that

subject? A. I am sure it had been. My personal asset position had been truly disclosed.

Q. Why do you draw a distinction between "personal asset position" - A. I think to answer that, your Honour, it would be necessary for you to have a look at my whole system of accounting yourself, with the assistance of Mr. Bent and Mr. Grant.

Q. Look, we are trying to find out, you understand, your belief about the matter. Now, your belief was that you had concealed assets in companies in such a way that they may or may not be discovered, wasn't it? A. No, it is not a case of "may or may not have been discovered". The whole thing is completely open. 10

Q. But it would require some investigation to find it? A. I am not technically qualified to tell you what investigation would be required to find it. I am prepared to allow anyone to have a look at it. 20

Q. Your belief is that to find out your true asset position would require a very detailed investigation? A. To be quite frank, I would not know my true asset position myself at the moment.

Q. And what you disclosed to the Court was in your view something less than your true asset position, wasn't it? A. No. I do not know what I disclosed to the Court.

Q. And your concern was whether the Registrar might or might not find out that your true asset position had not been disclosed? A. I do not know whether I was concerned or not. I may have made some notes of discussions with Mr. Grant. 30

Q. And your concern was that the assets and income positions would be seen not to add up?
A. I could not say what my concern was about adding up. I could not add them up myself so I would not know much about it.

Q. And that is what you meant when you wrote: "Can't bank on Registrar not finding out that my asset position is not truly disclosed by income,"?
A. I would not know what I meant when I wrote that. I wrote it, that is all. 40

Q. Can you suggest any other meaning other than the one which I have ascribed to that sentence?
A. Probably if I had time to think about any other meaning -

Q. Well, just think and tell us? A. It is difficult to suggest another meaning without going completely through the accounts. As I have told you before, I do not know what my own true asset position is at this time, and I did not then. Personally assets - you will probably find in the course of further evidence that I will make the error of referring to companies as mine. They are not mine; they are a different entity. But one thinks of 50

things one controls as one's own; but they are not legally or accounting-wise one's own.

Q. In your own mind your asset position would be something of the order of \$2,000,000? (Objected to by Mr. Staff; not pressed; rejected).

Q. But your concern in your divorce with your wife was not so much the divorce as the commercial position, wasn't it? A. How do you mean? I was concerned with both.

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Q. Look, your main concern in your divorce was the commercial side of the matter? (Objected to by Mr. Staff. Mr. Gruzman undertook to make the phrase "commercial side" relevant. Allowed).

Q. Your main concern in the divorce was the commercial situation, wasn't it? (Objected to. In view of Mr. Gruzman's undertaking; allowed). A. I would not know whether it was at this time I cannot remember what was my main concern at that time. I was very concerned about the divorce.

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Q. You wrote: "Divorce is secondary to the commercial situation," didn't you? (Approaches with document). That is what you wrote. Paragraph 8: "Divorce is secondary to the commercial situation." A. Must have written that, if I thought that at the time. Divorce is already a fact of life, so I suppose the commercial situation was the most important.

Q. That is because money is your god, isn't it? A. No.

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Q. And you were very concerned about the company situation, weren't you? A. The situation of my companies?

Q. Yes? A. I suppose I was concerned about them yes,

Q. Your wife had some shares in the companies?
A. Naturally, yes.

Q. And it was necessary to get those shares out of your wife's name, wasn't it? A. I think that was done.

40

Q. You drove a very hard bargain with your wife, didn't you? (Objected to by Mr. Staff; rejected at this stage).

Q. What did you mean when you wrote paragraph 9: "Change control of companies without odium attaching to A.E. Armstrong." A. I cannot recollect what I meant, Mr. Grant handled all the negotiations for me in that matter.

Q. What you were trying to do was to get those shares your wife had out of her name without, as you put it, odium attaching to you? A. I cannot see how that would - any odium attaching. I gave them to her. They were mine in the first place.

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Q. What did you mean when you said: "without odium attaching" to you? A. I really do not know.

Q. Did you require that the shares - that there should be no mention of the shares in the deed of settlement which was put before the Court?

A. I do not know. I have not seen it. Mr. Grant handled those matters himself.

Q. But was that an instruction of yours, that there should be no mention of these shares in the deed of settlement put before the Court? (Objected to by Mr. Staff; rejected).

10

Q. It was your wish that there should be no mention in the deed of settlement of any shares which had belonged to your wife? A. I do not recall anything about it.

Q. Prepared to swear it did not happen? A. I do not know what happened about it. The deed of settlement would show it, I should imagine.

Q. Then you have here: "P.D.S. could call up loan." What does that mean? Paragraph 10. (Objected to by Mr. Staff; allowed).

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Q. Is that the company in respect of which there was a loan to your wife? A. I do not think so. I cannot recall that at this time at all.

Q. Paragraph 13 is in these terms, is it not: "No point in defending except on money -" underlined - "but leave condonation and connivance."?

A. I do not know what I meant by that. I believed, I think - that my wife had condoned and connived the association with Mrs. Cleary.

30

Q. What you were doing was to endeavour to drive your wife into an impossible bargaining position, weren't you? A. No. Mr. Grant was negotiating for me on this matter.

Q. It was your thought to defend on money but to leave condonation and connivance as defences? A. I really do not know. I do not know what that paragraph means. I do not know what I meant by "leave condonation and connivance".

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Q. I suggest you meant to leave open the question to be used as a bargaining point of an allegation of condonation and connivance, didn't you? A. I do not know what was the situation there.

Q. And look, Sir, in fact you swore an answer relating to those matters, didn't you? A. To condonation and connivance?

Q. Yes? A. Yes, there was condonation and connivance.

Q. I will produce the answer to you in a moment, but when the matter came before his Honour Mr. Justice Dovey in your divorce you simply withdrew that answer, didn't you? A. I do not know.

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Q. You withdrew that allegation? A. If I withdrew it I withdrew it, I suppose. Mr. Grant or my counsel did.

Q. (Approaches) You see your wife's petition was originally on the ground of - was for a judicial separation on the ground of your adultery with Mrs. Cleary? A. That is right.

Q. And that petition was issued on 14th June, 1962? A. Apparently, yes. 10

Q. And at that time you saw that the petition had been settled by Mr. Hogan of counsel? A. Yes -

Q. You see that written on the petition? A. Where is that?

Q. Over the page: "This petition was settled by Mr. B.M. Hogan of counsel."? A. Yes.

Q. On 28th June, 1962 you swore an answer: you swore an affidavit verifying the answer which was filed in that suit? A. Apparently, yes.

Q. And that answer had been prepared by Messrs. Adrian Twigg and Company? A. Yes. 20

Q. And in that answer you admitted you had been guilty - (Objected to by Mr. Staff).

(Luncheon adjournment).

Upon Resumption:

MR. GRUZMAN: Q. Mr. Armstrong, in the answer that you swore in paragraph 8 you swore that your wife had connived at and condoned the adultery with Mrs. Cleary, didn't you? A. That is correct, yes.

Q. And alleged that on Sunday, 8th May, 1960 - (Objected to by Mr. Staffed; allowed). 30

Q. What you swore, Mr. Armstrong, was that on Sunday, 8th May, 1960 you and Mrs. Cleary, at the matrimonial home at No. 9 Coolong Road, Vaucluse, informed your wife that you were in love with each other; that is, you and Mrs. Cleary? A. Yes.

Q. And that you had committed adultery to a period exceeding the previous 12-months? A. That would be correct, yes.

Q. And you also swore that on the same day at a later time it was agreed between the petitioner and the respondent - that is, between your wife and yourself- that your wife would continue to live with you and that you would continue your adulterous association with Mrs. Cleary? A. That would be correct, Mr. Gruzman, yes. 40

Q. And you also swore that in pursuance of that agreement you and your wife lived together at 9 Coolong Road, Vaucluse, until 7th June, 1962 when you left after a quarrel? A. That would be all correct, yes. 50

Q. All of that was true? A. Yes, I think that is all true. I would like to just read it, if I may. But I think that would all be true, with some slight - the date I think would be true, if I swore it at that time.

Q. I hand you the answer? A. This is paragraph 8?

Q. I invite you to read paragraph 8? A. Paragraphs 8(a) and (b) would be correct, Mr. Gruzman.

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Q. I put to you, Mr. Armstrong, that the time you swore that affidavit, that affidavit verifying your answer, paragraph 8 was untrue, and untrue to your knowledge? A. No, definitely not. That happened.

Q. Your wife was to your knowledge a moral and honourable woman, wasn't she? A. I do not think I should express any opinion as to my wife - unless his Honour directs me.

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Q. Look, Sir, your view as to your wife was that she - that is, the first Mrs. Armstrong - was a moral and honourable woman. (Objected to by Mr. Staff).

HIS HONOUR: Is this an indispensable ingredient of the material you want to propound?

MR. GRUZMAN: I could not put it so high, your Honour. I will withdraw the question.

Q. You were concerned about the financial side of your divorce, weren't you? A. I think everyone is concerned about the financial side of divorce. I certainly was. I was concerned about it.

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Q. It was your belief that if you could allege connivance or condonation against your wife, that would affect the amount of maintenance she could expect to receive? A. No, I would not know the legal - legalities of that.

HIS HONOUR: Q. You would not know - A. The legal implications of that.

MR. GRUZMAN: Q. But that was your belief, wasn't it? A. I do not know. I do not know what my belief was. I do not know the legal implications of these matters.

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Q. Look, Sir, are you prepared to swear that you never at any time had a belief that the allegation of condonation or connivance would be material on the question of maintenance? A. I do not think I knew much about the actual facts of it. The negotiations were at solicitor to solicitor level.

Q. Did you ever say to anyone: "Does the fact of Mrs. Armstrong's collusion and condonation reduce the amount of alimony she receives?" A. I do not know. I may have. I may have asked my solicitor.

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Q. You may have been told "yes"? A. Could possibly have been told "yes".

Q. I put to you you made the allegation of connivance or condonation not because you believed it was true but in order to act as a lever in your financial negotiations with your wife? A. It was true.

Q. And when the matter came before his Honour Mr. Justice Dovey did you enter the witness box and swear to the truth of what was contained in your answer? A. I was not called to Court. 10

Q. Whilst the allegation stood on the file you proceeded to negotiate with your wife, didn't you?
A. Can I correct you? My solicitors negotiated with my wife's solicitor. I was not negotiating with my wife directly.

Q. So that whilst the allegation in the terms that I have mentioned stood on the Court file, negotiations went on between the two solicitors in respect of how much your wife should receive? 20
A. Well, I would not know whether the thing was on the Court file or not. I have not got knowledge of whether it was on the Court file, but I know the solicitors were negotiating.

Q. You have seen your answer sworn in June 1962, haven't you? A. Yes, well, I am quite prepared to take your assurance that it was on the file, but I do not know that it was.

Q. Do not take it from me, Mr. Armstrong. As far as you are aware was that answer withdrawn prior to the date of hearing of your divorce? A. I would not know. 30

Q. You have no knowledge of it being withdrawn?
A. I do not know. Could have been, could not have been. I just do not know.

Q. Would you not agree that it is your belief that negotiations between yourself and your wife took place through the solicitors whilst that allegation of yours stood on the Court file? A. If it did, they did. If it was on the Court file till the date of the filing - hearing of the divorce petition, negotiations certainly took place up till that time. No question of that, I should imagine. 40

Q. And I put to you that you drove a hard bargain with your wife. (Objected go by Mr. Staff; withdrawn).

Q. I put to you that by reason of the lever of that answer you were able to drive a hard bargain with your wife? A. I do not think - (Objected to by Mr. Staff). 50

Q. I put to you that by reason of that answer being on the file you were able to drive a hard bargain with your wife. (Objected to by Mr. Staff).

HIS HONOUR: You are putting this as Mr. Armstrong's belief?

MR. GRUZMAN: Yes.

HIS HONOUR: Put it on those terms.

MR. GRUZMAN: Q. I put to you that you believed that having that answer on the file enabled you to drive a hard bargain with your wife. (Objected to by Mr. Staff; allowed). A. No. I did not think I drove a hard bargain.

Q. What? Your wife got £50 a week? (Objected to by Mr. Staff; not pressed). 10

Q. Eventually a deed was entered into between your wife and yourself, was it not? A. I think so, yes.

Q. And your wife agreed to change her petition from judicial separation to a petition for divorce? A. I understand this. It is a long time ago but I am sure it is well recorded in the deed.

Q. And when the matter came before Mr. Justice Dovey you withdrew this allegation, didn't you? A. My counsel, I understand, did. 20

Q. And your wife had sworn an affidavit to your knowledge in these terms - (Objected to by Mr. Staff; allowed).

Q. Your wife to your knowledge had sworn an affidavit in these terms: "The answers of the respondent and the co-respondent alleged on my part an agreement that they should continue their adulterous association. These allegations were quite false and besides being extremely hurtful to me were an unfounded and vicious attack upon my moral code. Also they together with the continued adulterous association of the respondent and co-respondent convinced me that I could not retain any respect for myself as the wife of the respondent and that there could never be any possibility of any reconciliation between the respondent and myself." Do you remember receiving that? A. I do not remember it now. 30

Q. But you received an affidavit along those lines? A. When was that drawn?

Q. 18th June, 1963? A. That is a long time after the previous one, isn't it? 40

Q. Yes? A. 18th June, 1963? I doubt if I have seen that affidavit.

Q. Just take it and have a look at it. Are you prepared to say you never received or saw a copy of that affidavit? A. Cannot recall it. I do not recall this one at all.

Q. Looking at the paragraph which I just read - A. I do not recall Dr. Ralph Huntley or any -

Q. Look at the paragraph on the second page of the affidavit, which I just read. Those statements by your wife are true, aren't they? A. No, they are 50

not. Your Honour, I think I will have to ask you something. Am I going to be put in the position in this Court of making an attack on my previous wife which is unjustified, because if so I would like five minutes recess to consult with my counsel.

HIS HONOUR: Q. Mr. Armstrong, such questions as are asked of you as are admissible must be answered. I do not at the moment see that there is any basis for adjourning but you may, if a question is asked about which you wish to obtain advice, then you can renew your application to me. At the moment I think you should answer questions asked.

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MR. GRUZMAN: Q. You say that is not true? A. Definitely not - (Objected to by Mr. Staff; disallowed).

Q. Mr. Armstrong, when the matter came before his Honour Mr. Justice Dovey, to your knowledge his Honour said in relation to the answer: "I repeat what I said. It is a shocking allegation -" (Objected to).

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HIS HONOUR: I am of the view that this is a legitimate challenge to credit. I think it is open to Mr. Gruzman to pursue the challenge. What some other Judge may have said about Mr. Armstrong on another occasion is not evidence of the facts; it is but a link in the chain. I would prefer Mr. Gruzman summarise rather than state verbatim what Mr. Justice Dovey had said. I accept that you still persist in your objection, but I think either the terms of what the Judge said or a summary may be used in the question. If you would prefer a summary rather than the terms, I will confine Mr. Gruzman to a summary, without thereby involving you in departing from your basic objection.

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MR. STAFF: There is a third course, and that is to show the witness a transcript of what he said and refresh his memory of it and proceed from there.

MR. GRUZMAN: I am prepared to take that course at this stage., but it is important to the development of the cross-examination the substance of what we say is this witness understanding is dealt with in evidence.

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HIS HONOUR: If it comes to a contest I will permit reference to be made, but at this point, I think it preferable to follow the course Mr. Staff suggests.

MR. GRUZMAN: Q. (Approaching witness) In relation to the answer of yours, Mr. Justice Dovey had this to say. I show you a photostat copy of the transcript of evidence on 26th June, 1963, in particular p. 8 and in particular, a paragraph marked between two ink lines? A. I didn't quite understand - some third course - do I have to read this out?

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HIS HONOUR: Read it to inform yourself as to what is reported to have been there said by his Honour.

WITNESS: Yes I have read that.

MR. GRUZMAN: Q. You are aware that this was Mr. Justice Dovey's opinion about your answer? A. It was his opinion in the transcript.

Q. You regarded his Honour as finding that you had committed perjury in relation to that answer, didn't you? A. No. I didn't think he found that I had committed perjury.

Q. What his Honour said was that it was false - (Objected to). 10

MR. STAFF: I would ask your Honour to look at what his Honour said on 28th June in relation to what he had said two days earlier - which is what my friend is referring to.

HIS HONOUR: Yes Mr. Gruzman, I think in the light of the events on 28th June, if you want to ask Mr. Armstrong his impression of the meaning of what the Judge had said, you should confine it to the view immediately after it was said, prior to the 28th June. 20

MR. GRUZMAN: Yes, which is the period I am dealing with.

HISHONOUR: I think in those circumstances I should reject this question and take the witness back again to the period immediately after this event and prior to the 28th June.

MR. GRUZMAN: Q. Immediately after the 26th June and prior to the 28th June, you regarded his Honour as having made a finding that what you had done amounted to perjury? A. No, I would not think that would be quite correct. 30

Q. In the newspaper - - - A. That is what I am referring to. I thought the newspapers had reported him, which would make everyone believe that I committed perjury. I didn't say his Honour said I had committed perjury.

Q. (Approaching witness). Would you read this photostat copy of a newspaper report? A. Yes, I believe that he had -

Q. First of all you saw that newspaper cutting? 40
A. Yes.

Q. You saw that immediately after the trial?
A. Yes I think so.

Q. What that newspaper report said - your allegation was a most serious - (Objected to).

HIS HONOUR: You are putting to him at the moment his belief?

MR. GRUZMAN: Yes.

Q. Your belief was that what his Honour found, that you were not prepared to perpetuate or repeat a lying statement made on your oath which, strictly 50

under law amounts to perjury - that was your belief as to what his Honour had found was it not? A. No it was not.

Q. You were aware at that time that his Honour had said in Court that you had made an allegation which, on the uncontradicted evidence before him was false, false to the knowledge of the person making it, relevant to the issue and therefore amounted to perjury? (Objected to; allowed). A. Aware I had contradicted the evidence? 10

Q. You were aware his Honour had said that, were you not? A. Apparently, from the newspaper report.

Q. No, from the transcript you read? A. Yes, he had said that.

Q. And you were aware also that the newspaper had reported it as his Honour having said that you had done something which, strictly under law, amounts to perjury? A. Yes, that is quite correct; I was aware of that. 20

Q. So it was your belief as at 26th June and certainly up to 28th June that his Honour had found that you had committed perjury? A. No I don't think he found I committed perjury. My belief was if he thought I had committed perjury, he should have charged me.

Q. Your belief was that rightly or wrongly, as at 26th June and up to 28th June, his Honour had found that your actions amount to perjury? A. Could you define the word "found" in legal terms? Does that mean charged or decided, I had committed perjury? I don't understand that. I don't know what you mean by "found". 30

Q. What his Honour said, to your knowledge, was that you had made an allegation which, on the uncontradicted evidence before him, was false, false to the knowledge of the person making it, relevant to the issues and therefore amounts to perjury? 40

A. He said that, yes.

Q. Did you regard that as a finding of perjury? A. Well I don't know what you mean. I wish you would tell me what you mean by "finding of perjury" or "charge of perjury".

Q. You regarded it as a charge of perjury? A. I regarded it, as far as the newspapers played it up as saying I had committed perjury, yes.

Q. You then set about dealing with Mr. Justice Dovey? (Objected to; rejected).

Q. You were concerned about this allegation? A. I certainly was. 50

Q. You then considered ways and means of having the situation altered? A. I consulted with senior counsel.

Q. Anybody else? A. As far as I know, Mr. Grant and Mr. Mahoney Q.C. and I think Mr. Goldstein was also involved.

Q. Did you consult with anybody else at that time? A. I can't recall. They were my main advisers.

Q. On the last occasion you found yourself with a similar problem with his Honour, you consulted Mr. Asher Joel, (Objected to; rejected).

Q. On a previous occasion in June of the previous year, when you felt that his Honour was suspicious about the Eskell divorce, you consulted with Mr. Asher Joel? A. I thought it was Mr. Browne you thought I consulted mainly. 10

Q. You consulted Frank Browne and Asher Joel?
A. Yes, I talked to them.

Q. Did you go to either of both of those gentlemen on this occasion? A. I can't recall.

Q. You might have done so? A. I might have done so, I don't know. If it is in those notes I probably did. I just can't recall at this time. 20

Q. As at the middle of 1963 were you prepared to attack Mr. Justice Dovey because of your beliefs as to his findings about you? A. I was prepared to criticise his findings about me, yes.

Q. I used the word "attack"? A. Not attack, criticise.

Q. Would you regard it as highly improper to attack a Judge of the Court in Parliament because of some personal criticism of you by the Judge? 30

A. Not if he made - fortunately I consulted other gentlemen in this regard too - other gentlemen consulted me, some now members of the Supreme Court bench.

Q. The suggestion is that you, as a member of Parliament, were consulted by other persons about his Honour? A. The statement was discussed.

Q. I want to get the inference clear that you were consulted as to ways and means of preventing his Honour making utterances against these people. Is that what you mean? A. No, not that. This was discussed after the whole matter was cleared up. An opinion was expressed about what happened to me. 40

Q. You understand these matters are put to you in the context that you would make a vicious attack on anybody you felt stood in your path. You understand that? A. That is what you are putting to me. I understand you are putting that, yes.

Q. The person whom you saw at Mr. Twigg's office was Adrian Twigg not Peter Twigg? A. I thought I saw them both, one on one occasion, one on another. 50

Q. You didn't see Peter Twigg? A. I saw two

gentlemen, one older one and one younger gentleman.

Q. The younger gentleman was another solicitor who was not Peter Twigg? A. I am not clear.

Q. Did you propose in relation to Mr. Justice Dovey's findings or your belief as to his findings in your divorce, to attack him in Parliament? A. I don't know. I could have thought about it, yes. I thought he should have either committed me for trial on a charge of perjury or not attacked me - one or the other.

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Q. In such an attack I suppose you would, even if you felt that you could make a statement in Parliament about a Judge - it would be confined to matters which occurred in Court, would it not? A. I don't know whether it would or not. If you make an attack in Parliament, you make an attack. If you criticise in Parliament you criticise every aspect usually.

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Q. You would not attack a man and his family for something he said in Court, would you? A. I don't know what I would do. I am being thoroughly attacked here. My family is being attacked.

Q. You would regard it as quite within your standards to attack a Judge and his family for something performed by the Judge in the course of his judicial activities? A. I would not think I would do so, no. I have never done so. I don't think I would do it.

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Q. You told us you didn't know what you would do? A. This matter - I consider - Mr. Justice Dovey apparently decided he would make some change to what he said in the first matter so apparently he was not completely sure what he said was right, otherwise he would not have changed it.

Q. Does that mean you were justified in any action you contemplated before his Honour corrected the situation? A. I didn't contemplate - I didn't take any action against his Honour except through senior counsel. I asked senior counsel to discuss the matter with him and that was ironed out and that was the end of it.

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HIS HONOUR: I thought, in fairness to Mr. Armstrong I should permit Mr. Staff to re-examine for a short time before I adjourn this afternoon, if he wishes, on the aspects of the divorce proceedings. I have in mind to offer Mr. Staff the opportunity in the last 15 minutes of this afternoon's sitting to re-examine on any aspect of this. I don't think I ought to allow the matter to go over until next Wednesday without any opportunity of matters that Mr. Staff may want to put forward being foreshadowed. Do you take exception to that course?

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MR. GRUZMAN: In a matter of this kind I am very much in your Honour's hands.

HIS HONOUR: Mr. Staff, I do not force that on you.

It is something which I proffer; you may prefer to avail yourself of it or not; you may prefer to wait until a quarter to four when I ask you again. I do not wish to put you at a disadvantage. At a quarter to four I will ask you if you wish to have the opportunity to re-examine.

MR. GRUZMAN: Q. (Approaching witness) Is that your handwriting? A. I think so, yes.

Q. It is part of an envelope is it, by the look of it? A. It looks like it, yes. 10

Q. Written on both sides? A. Yes.

Q. I am going to read the first paragraph that you have written and I am then going to ask you if you can recollect the circumstances in which this document came into existence: "Re divorce. (1) Allegation of perjury"... (Objected to: allowed).

Q. I read you the first paragraph; "Re divorce (1) Allegation of perjury. I deny this and I only withdrew my defence on my legal advice to obtain a divorce. If I had not done so I would have been living in sin for five years." The document contains 12 numbered paragraphs. Can you recollect the circumstances in which this document came into existence? A. I am not clear. I think it would be either in Mr. Grant's office or Mr. Mahoney's chambers. 20

Q. You heard your counsel, after I had indicated the question I was going to ask, suggest to his Honour that if the document was prepared by your legal advisers it would be privileged? A. I think it was where it was prepared, I cannot be clear. 30

Q. You heard Mr. Staff say that to his Honour?
A. Yes.

Q. I put it to you that this document, to your knowledge, was never prepared in the chambers of a barrister or in the office of a solicitor? A. I told you I didn't know where it was prepared. I thought it could have been, I don't know.

Q. You are not prepared to swear it was not?
A. No. I don't know where it was prepared. Written on a piece of paper like that, I don't know where it was prepared. Certainly it would not be prepared in my own office; it would not have been done on an envelope would it? 40

Q. It looks as though there are further notes prepared from a discussion with Mr. Frank Browne?
A. I don't recall.

Q. You would not be prepared to swear they were not? A. No, I just don't recall. I told you that. 50

Q. Let us look at the second paragraph (Objected to).

MR. STAFF: I submit the witness should be given the opportunity to look at the document as a whole.

HIS HONOUR: This is a document I was asked to look at earlier for the purpose of ruling on an earlier question. I don't think I will stop the cross-examination.

MR. GRUZMAN: Q. In paragraph 2 you said: "Can a Judge say I have committed perjury and not commit me for trial?" A. Yes, this is what I think - this document was done in discussion with legal gentlemen.

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Q. You are suggesting are you the possibility that all of the matters in this document were discussed with Mr. Mahoney Q.C. or Mr. Grant? A. I don't know what the others are.

Q. I know. But you are making the suggestion that all of the matters in this document may have been the subject of discussion with counsel or solicitor? A. No, I am not making suggestions. I have told you I don't know where the document was prepared. I am quite clear on that.

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Q. (4) is "Could I see the papers for wrong reporting?" Do you remember writing that? A. It must be true.

Q. (5) "Can I use Parliamentary privilege to reply?" A. Yes.

Q. (6) "If I am such a poor type surely the Judge is wrong in allowing me the custody of the children." A. Yes, that would be correct.

Q. (7) "I understand protection of the children is the prime aim of the new Act. Should this publicity be given it must harm the children at least in their social contacts"? A. That would be correct.

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Q. Take this next paragraph and tell me if you say this was discussed with any legal man: "How do we attack Dovey in the Upper, Lower or both Houses?" A. I don't know whether it was or not.

Q. This was a matter of discussion with Frank Browne, was it not? A. No I can't recall. I can't recall who it was discussed with, who prepared it or where it was prepared. All I know is that it is in my handwriting.

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Q. Did you believe that you had some knowledge about his Honour's personal life? A. Only hearsay, the same as is going on about me.

Q. You would not regard it as a thoroughly scurrilous if you believed you had any such knowledge about a Judge's personal life, to use that to attack him? A. If I knew - could you put a hypothetical case to me?

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Q. If you believed that you had - (form of question rejected) A. (Question struck out by direction, s. 57 of the Evidence Act).

Q. I put it to you that you are the sort of man who would publicly attack a Judge on personal matters? A. No I don't think so not unless they were very serious matters - and they would not be personal.

Q. I ask you to read paragraph 9 of this document. Have you read it? A. Yes.

Q. Do you understand it? A. Yes.

Q. Do you still say that you would not be prepared to attack a Judge on personal matters? A. I think I will have to reveal all these personal matters about his Honour if I have to answer this question. 10

Q. Will you answer my question. I want you to answer Yes or No. A. I don't think I can give you Yes or No without the proper context.

Q. Subject to what his Honour says, that is what you will do. Having read paragraph 9 of this document, do you still say that you are not a person who would attack a Judge on personal matters? Would you answer Yes or No? A. I don't think I can answer Yes or No unless I go into quite a long explanation. 20

Q. Answer this question. Have a look at the first six lines of paragraph 9. Have you read it? A. Yes.

Q. That relates to a personal matter relating to a Judge does it not? A. It is hearsay, yes not proved. 30

Q. It relates to a personal matter relating to a Judge does it not? A. I suppose it is personal, yes.

Q. And you were prepared to use such a personal matter to attack a Judge? A. I don't say I was prepared to use it at all. These are only notes for consultation with someone.

Q. That is what you thought of? A. It could have crossed my mind. If Judges behave in wrong manners, they should not criticise people who do the same thing. 40

Q. When you say that was done in consultation with someone, that was not done in consultation with any legal man was it? A. I don't know.

Q. Was it not done in consultation with someone like Frank Browne? A. I don't know; it could have been done in consultation with a legal gentleman.

Q. Would you be prepared, in order to gain your own ends to attack a Judge's family? A. No.

Q. I ask you to read now the last line of paragraph 9 to yourself? A. Yes. 50

Q. You were prepared were you not to attack a

Judge's family? A. I think the word "criticise" would be much better and I think you should also remember that in this particular matter there were political overtones as well.

Q. You were prepared to attack a Judge's family because the Judge had criticised you in the course of his judicial duties, were you not? A. I was not prepared. It crossed my mind, as I told you yesterday. These are notes, which crossed my mind. 10
There is nothing about preparing to do anything. The fact is I did nothing because I talked about it with my legal advisers or someone else, it does not mean I did it.

(Document the subject of cross-examination on p. 845 m.f.i. "37").

HIS HONOUR: Having made reference to s. 57 of the Evidence Act I think I should mention the terms of s. 59. (Read).

MR. GRUZMAN: Q. I show you two pages of a document in your handwriting with the date 12th January 1963? A. I have not seen this one have I? I have seen bits of it perhaps. 20

Q. I have shown you parts of it? A. Yes.

Q. It is your handwriting? A. Yes.

(Document of January, 1963 referred to about m.f.i. "38").

Q. I suggest to you that you are prepared to deceive a Court in large matters, but also in small matters? A. No I would not say that.

Q. Did you think of a scheme whereby you could pretend to the Court that you were short of money? 30
A. No.

Q. What did you mean when you wrote in this document in paragraph 6 "Why not sell house and provide unit and give Court statement as to urgent need for money?" A. I don't know what that was. I may have been thinking of selling the house and moving into a unit. I can't recall what that was, in connection with that.

Q. What it was was a scheme on your part whereby you could pretend to the Court that you were short of money, was it not? A. No, I think it would be fairly difficult to pretend to the Court I was short of money. I may have wanted the money for some purpose or decided to sell the house and move into a unit. 40

Q. What this was was a scheme on your part where you could establish, you hoped, to a Court your urgent need for money? A. I don't agree with that.

Q. And the way that was to be achieved was that you were going to sell the house and move into a unit? A. I don't agree with that. 50

Q. That is what you wrote? A. I may have written it but I don't agree with it.

Q. Another scheme you had was that you move back into the house and then default in the mortgage so that it would appear that you were short of money?

A. I don't recollect that. It never occurred.

Q. It never occurred? It was one of your little schemes was it not? A. I don't know whether it was or not. It never occurred,

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Q. This is what you wrote in this same document? (Objected to).

Q. Have a look at para. 16 and read it to yourself? A. Yes, I have seen that. It looks like something has been put up to me by my legal advisers. I don't think I would be clever enough to think of that.

Q. It is a clever little scheme, isn't it?

A. Yes. I have some good legal advisers.

Q. It is your scheme, isn't it? A. No, I don't think so.

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Q. At that time you were contemplating changing solicitors, were you not? A. I don't know. Is there any date on that document? I would not know when that document occurred.

Q. This document - these were notes prepared in contemplation of a change of solicitor? A. Was it? Well, it must have been then.

Q. If you will look again at para. 16, you will see the name of Mr. Twigg and your comments about him, and Mr. Grant, and a comment about him? A. That is right. It has got "Bob Grant, Col. C.M.F., Dare Reed Martin and Grant".

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Q. That was a document prepared by you as to your thoughts at a time when you were simply contemplating changing solicitors? A. It looks like it. I don't know.

Q. This little scheme of default in the mortgage was entirely your own work, wasn't it? A. No, I don't think it was. I think someone else may have talked to me about it, but I can't think who it was at the moment.

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Q. Not a solicitor? A. No, it may have been someone else.

Q. "Should I return to matrimonial home. Perhaps." That was your thought, wasn't it? (Objected to: rejected).

Q. The scheme involved going back into the house, a default in the mortgage, and then so establishing your shortage of cash, didn't it? (Objected to: rejected).

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Q. Mr. Armstrong, I will hand you the document.

Have it in front of you and look at para. 16. Will you explain to his Honour what the scheme was? A. No, I really don't know what the scheme was. It seems to me that I have been consulting with someone here. It does not look like my own thoughts.

Q. You have a comment about Mr. Twigg, which suggests to you that he was not the person? A. That makes me think that it was someone else. It makes me think that someone else was with me when I wrote it.

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Q. So that it was not Mr. Twigg's idea? A. No, it would not be his idea.

Q. At that stage you had not been to see Mr. Grant, had you? A. No, I don't think so. I could not tell you. There is no date on the thing, I don't think.

Q. Will you look at the date? 12th January?

A. I could not tell you whether -

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Q. Will you look at this document? Will you agree, after looking at that document, that Mr. Grant became your solicitor on 22nd January, 1963?

A. This would appear to be correct. It would appear that he officially became my solicitor, wouldn't it.

Q. So that at that time there would be no doubt in your mind that this was your own scheme, would there? A. I don't think this was my own scheme. I don't think I am clever enough to have thought this up.

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Q. It is a beauty, isn't it? A. Yes, but I think it is someone else's. I don't know whose it is.

HIS HONOUR: Q. Don't know what the scheme is? A. I don't know, to be perfectly honest.

MR. GRUZMAN: Q. Would you just tell his Honour, to the best of your knowledge -

HIS HONOUR: Q. How do you know you were not clever enough to have thought it up, if you don't know what it is? A. It is "Should I return to matrimonial home" -

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Q. What I don't understand is why you reject authorship of this scheme if you cannot say what the scheme is? A. It is a scheme to show I have no money. That is what is being inferred, isn't it?

MR. GRUZMAN: Q. That is what you understand the scheme to be? A scheme to show that you had no money? A. I don't really understand this scheme at all. I am not clear about it.

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Q. Let us see if I can help you. You see the

words "Default in mortgage". They suggest that there is a house with a mortgage over it? That suggests a house with a mortgage over it, doesn't it? A. Yes.

Q. And "Default in mortgage" suggests that someone is going to default in making payments under the mortgage? A. Yes, that could be true.

Q. And usually people don't default in making payments under a mortgage unless they are short of money, do they? A. No, I would not think so. I would not imagine so. They may default for other reasons; I can't think of any at the moment.

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Q. Para. 3 is "Need for cash"? A. Yes.

Q. So the idea was that you would cause default to occur in the mortgage over the house, and that this would demonstrate your need for cash? A. Yes. I can't quite think how I could have done it, because it would have been very difficult for me not to be proceeded against, and the people would have easily satisfied their mortgage.

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Q. Who had the mortgage on the house? A. I can't think of who had it. Some insurance company. I think.

Q. And you are well known to them, I suppose?
A. Yes, I am sure they would have sued me and got the money. There would be no difficulty in doing so. They could have realised on the security.

Q. Or could have made some arrangement with you of going through the process of calling up the mortgage, and making a deal on the side? A. I don't know what they would have done. You can imply that if you wish. I don't think it has any bearing on the matter.

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Q. In other words, you could come to Court and say "Look, your Honour I can't afford to pay the mortgage. The insurance company has called it up. They are going to sell the house over my head." (Objected to: rejected).

Q. Mr. Armstrong, have a look at para. 11 at the top of the page. That is in these terms "Why not sell house and provide unit and give Court statement as to urgent need for money." What house are you talking about there? A. I am not clear. It may be Coolong Road, Vaucluse; it may be the property at Collector.

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Q. Are you seriously telling the Court you were thinking of selling Winderadeen? A. Yes.

Q. Winderadeen is a property of how many acres?
A. 6,000 acres.

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Q. 6,000 acres? A. Yes.

Q. And when you say here "Why not sell house and provide unit" are you suggesting that you were there

referring to the 6,000 acre property? A. I am not clear on what I am suggesting. I am not clear at all.

Q. If it was not Winderadeen it must have been the house? A. It must have been one or the other, yes.

Q. It is pretty clear that we are talking in para. 11 of the house in Coolong Road? A. Yes, I would think so. I think that is what is referred to. 10

Q. In para. 16 you say "Should I return to matrimonial home." A. I have got "Perhaps" after it.

Q. Is the matrimonial home the house in Coolong Road, Vaucluse? A. I should imagine so, yes.

Q. So that the house in para. 11 and in para. 16 is the same house? The house in para. 11 and para. 16 is the same? A. It must be, I think.

Q. So that you have two alternative schemes in your mind about the same house. One is to sell the house and provide a unit, and the other is to return to the matrimonial home? A. I don't know whether it is the same scheme. There are two different things. 20

Q. You notice in para. 11 you used the term "...give Court statements as to urgent need for money." A. I never gave the Court any statement.

Q. You agree with me in para. 11 you used the term "...give Court statement as to urgent need for money." A. That is what is written here, yes. 30

Q. So that the scheme that you envisaged in para. 11 was something to do with the house, as a result of which you would be able to show to the Court that you were in urgent need of money, wasn't it? A. Apparently it looks like this, but I can't say who prepared the scheme - whether wholly mine, or whether these other people. I just can't recall it.

Q. No matter how many people were involved, the scheme envisaged by para. 11 was that you would do something with the house and be able to show the Court that you were in urgent need of money. That was the scheme, wasn't it? A. This seems to be the proposition that is put. 40

Q. The scheme in para. 16 (3) - in that scheme you used the term "Need for cash." A. 3?

Q. In para. 16 (3) you used the term "need for cash"? A. Yes.

Q. So I suggest to you that para. 16 was a different proposition with respect to the same house which would also demonstrate your need for cash? A. I may have needed some cash at that time. I can't recall. 50

Q. The scheme envisaged by para. 16 was that something would happen in relation to the house which would demonstrate your need for cash, wasn't it? That was the scheme? A. I can't recall the scheme really at all, - or what you call the scheme.

Q. I will have to ask you to be a little more exact. This is a document in your handwriting, isn't it? A. Yes, which I have not seen since about 1963, so that I don't think -

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Q. Is that true? A. I have not seen it for some considerable time. It is a long time since I have seen it. I don't know when I last saw it.

Q. You heard your counsel, Mr. Staff, say he had a copy of that document which appeared to him to be in identical terms? A. I have not seen what Mr. Staff has.

Q. Do you know how Mr. Staff came by his copy of this document? A. No.

Q. You certainly never gave it to him? A. So far as I know I never gave it to him. I don't know where it came from.

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Q. Let us go back to the document, para. 16. It involves some scheme in relation to the house, and something about need for cash, doesn't it? A. Apparently, yes.

Q. And what that scheme was was that something would be done to demonstrate your need for cash, wasn't it? A. It appears like that. I can't tell you what the thought was behind it.

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Q. By the way, you heard Mr. Staff raise a query as to who owns the house. Well, who does own the house? A. I believe it is a company called A.E. Armstrong Pty. Limited, which has three directors.

Q. Who are the directors? A. I think - can Mr. Grant answer this? I am not sure whether I am a director of that company - whether I am or am not a director of that company. I would have to get my list of private companies. Mr. Grant would answer it, I think, if he were allowed.

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Q. You control the direct operations of that company, don't you? A. Mr. Grant is quite an active director in all my companies.

Q. Mr. Grant does what you tell him? A. No he does not. We often have discussions and disagreements.

Q. Eventually what you say goes, doesn't it? A. No, I would not say so. I often take advice from Mr. Grant and act on it.

Q. In the end it is your decision, isn't it? A. I don't know. I would have to find out about some of the companies.

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Q. We are talking about A.E. Armstrong Pty. Limited?

A. I don't know how it is controlled. It is controlled by another company on top. It is a complex situation in regard to the working of the company which I am sure your Honour would appreciate, if you saw them, much better than I would.

Q. You control and direct the activities of A.E. Armstrong Pty. Limited don't you? A. I would think so. I could not be sure of it. I would imagine so, yes, in due course if I took sufficient legal steps. 10

Q. If you have co-operative directors you don't need to take legal steps, do you? A. I suppose not, no.

Q. There is a mortgage on this house, to Farmers and Graziers, I believe? A. There is no mortgage on it at the moment.

Q. At the moment? A. At the present time, no.

Q. In 1963 was there a mortgage on it? A. I think so. I would have to consult my books to follow it. 20

Q. To whom is that mortgage? A. I don't think it was Farmers and Graziers. It would be a matter of record. If you wish to find it we can find it by tomorrow - by Wednesday.

Q. As at January 1963 were you living in the matrimonial home? A. January, 1963?

Q. Yes. A. Could we look at the divorce papers again? I can't answer that without looking at them. If I can refresh my memory from the papers? 30

Q. Is that your signature on the deed of settlement? A. Yes.

Q. Is that dated - is that your wife's signature? A. Yes.

Q. Is it dated 30th April? A. What year?

Q. 1963? A. 1963. I would not have been living in it in January, would I, I don't think.

Q. It recites that the matrimonial home of the husband and wife prior to cessation of cohabitation was at Coolong Road, Vaucluse and that subsequent to cessation of cohabitation between the husband and the wife the wife has continued to reside in the matrimonial home with the two children of the marriage? A. Yes. 40

Q. So that the position is that as at January 1963 your wife was living in the home? A. That would be correct, yes.

Q. And there was a mortgage on the home? A. I believe so, yes.

Q. So that what you thought you would do was 50

that perhaps you would return to the matrimonial home? A. There seems to be two or three ideas - two ideas expressed, anyway.

Q. Let us take them one at a time in para. 16. Let us take this idea that you would return to the matrimonial home? A. That is No. 1 - "Should I return to the matrimonial home. Perhaps".

Q. That would first of all require some negotiation with your wife, to get back in? A. Apparently, yes. I think she had a prohibition against me. 10

Q. She had an injunction preventing you going in at that stage? A. Yes.

Q. And secondly, you would make default in the mortgage. That was the idea, wasn't it? A. Well, I don't know whether, if I had returned to the matrimonial home, I would make default in the mortgage. I don't know. I can't tell you whether that was the idea or not. I don't know whether the two things were continuous or not. I just can't recall the scheme at all - what it was going to do. 20

Q. Won't you admit that the scheme was that you would move back into the matrimonial home if you could; that you would then make default in the mortgage, and so demonstrate to the Court your need for cash? A. I don't think that was the idea, but I am not clear on it. I can't tell you. It confuses me.

Q. I put it to you that at that time you were not in any way short of cash? A. I did not imagine I was short of cash at that time. 30

Q. You would have been worth at that time more than \$1,000,000? A. No, I would not. Not personally. Definitely not. That is a thing you don't seem to be able to grasp - that my personal worth is very minor.

Q. Your worth in the companies you control and own was more than \$1,000,000 wasn't it. (Objected to; rejected).

Q. So that what the scheme was - whether in para. 11 or para. 16 - was that the divorce Court should be deceived into believing you were short of cash when in fact you were not short of cash? A. I don't think so. I don't think I intended to deceive the Divorce Court, and in fact I certainly didn't. 40

Q. You are not prepared to deny that the scheme, whether in para. 11 or para. 16, was to deceive the Divorce Court into believing you were short of cash when in fact you were not? A. I don't know what the scheme was, or what the object was. 50

Q. I take it your answer was that you are not prepared to deny it? A. I am not giving any answer. I don't know what the scheme was and what the reason for it was. It never took place.

Q. You were concerned, I suggest to you, that the Divorce Court - whoever the Judge might have been - should not feel that your wife had had a bad deal?

A. I didn't think I would be going to the Divorce Court at that time.

Q. Look, sir, you were concerned that at the Judge, whoever he might be, should not know that your wife had given up shares in one or more of your companies, weren't you? A. No, I don't think I was concerned about her giving up shares in the companies.

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Q. Look, will you tell us, is it true or false that it was a matter of concern to you that the Court should be unaware of share transactions between yourself and your wife? A. No, I don't think it was a matter of concern.

Q. Are you prepared to swear that it was not?

A. I don't know. I am not clear about whether it was a matter of concern or not. I don't think it was. I think it was mentioned in the deed somewhere. I'm afraid I don't know the legal implications of it.

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Q. Is that document in your handwriting? A. Yes.

Q. Did you write this? First of all, it is headed "Divorce can be shortened. Mrs. Armstrong." Did you write this in para. 2, "No reference to any, shares whatever held by her in Court settlement document." A. I tell you what I think that was about. I think it had something to do with stamp duty, but I would not be clear.

30

Q. Something to do with what? A. Something to do with stamp duty.

Q. You don't think it was a way in which the Court should not become aware of the true position?

A. No. I don't think those shares were operative.

Q. I beg your pardon? A. I don't think the shares were operative. I always held the controlling shares, as I explained.

Q. If the shares were worth nothing they would not affect stamp duty, would they? A. I can't give you real detail on this. It is too complicated. But that is what I think. I think it had some bearing on stamp duty or probate duty. I am not sure.

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Q. In respect of certain companies you said, in para. 3, "If she does not transfer 4B shares and 5 singles in private companies it won't matter anyway"?

A. This may have had something to do with stamp duty. I don't know.

Q. Para. 4 repeats again "Leave all shares out of document of settlement." A. Yes, I think it is all to do with stamp duty.

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Q. There is mention in two of the eight paragraphs

of this document? A. I think it was stamp duty. I am not clear on what the reason for it was.

Q. You are a man of business? A. Yes. These are complicated company matters here.

Q. You were familiar with the stamp duties position? A. No, I am never completely familiar with stamp duty as between State and Canberra.

Q. You say you had in mind stamp duty for the direction that the Court settlement documents should contain no reference to shares? A. I am not completely clear on it, but I think that is what it was. 10

Q. You might just tell us, what does this mean, in para. 5? "If we did divest A.E. Armstrong of income saving would only be about £300 per annum". A. I can't tell you what that means. I don't know what that means in that context now.

Q. Was this another scheme whereby you would be able to show that your income was different to what it was? A. I don't think so. It is not a very material amount, anyway, is it? 20

Q. Do you think that "If we did divest A.E. Armstrong of income saving would only be about £300 per annum" meant a saving in alimony? A. It looks like a saving in tax, but I am not sure.

Q. You pay more than £300 a year tax? A. Yes. that is why I didn't think it was relative to that matter. To either thing.

(Document shown to witness m.f.i. "39"). 30

HIS HONOUR: I will have it noted that I have thought it fair to offer to Mr. Armstrong's counsel a brief opportunity of re-examining on the matters relative to the proceedings before Mr. Justice Dovey and the associated circumstances, and to afford Mr. Armstrong's counsel an opportunity of doing this before I adjourn the suit this afternoon for a period of five days which must necessarily elapse before the Court will be free to continue with the hearing.

MR. STAFF: Q. Mr. Armstrong, I want to show you a copy of a transcript purporting to be of some proceedings before Mr. Justice Dovey on Friday, 28th June, 1963, in a suit Armstrong v. Armstrong. Did you see a copy of that transcript shortly after these proceedings took place? A. Yes, I think I did. 40

Q. And do you recall that on that day his Honour said in relation to the matter about which you were cross-examined earlier as to your belief that his Honour had two days previously made a finding of perjury - his Honour said "I did not make any finding of perjury" A. Yes. 50

Q. "Had I done so it would have been my duty to have directed a prosecution"? A. Yes.

MR. STAFF: I call for m.f.i. "37". (Produced).

Q. Would you look at the document m.f.i. "37" about which you were cross-examined? A. Yes.

Q. You said at the time that you had some - you did not really know for what purpose it was prepared or with whom it was discussed? A. Yes.

Q. I want to show you a copy of a memorandum of fees dated 2nd July 1963. I refer you to the last item on that? A. Yes.

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Q. Don't tell us what it is. Seeing that, have you any recollection of the purpose for which the document, m.f.i. "37" was prepared? A. Yes, I believe it was prepared for that purpose.

Q. For whom? For the conference with whom?
A. Messrs. Goldstein, Grant and Armstrong.

(Memorandum of fees m.f.i. "40").

MR. GRUZMAN: I require my friend to tender the document he called for at this stage.

MR. STAFF: I will tender it at the proper time if the tender is required, because it now appears that the document was privileged. My friend cross-examined on the document completely. I do not propose for the moment to tender it, unless your Honour directs it.

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MR. GRUZMAN: I will tender it.

HIS HONOUR: Have you any objection to the tender Mr. Staff. (Discussion ensued as to relevant portions subject to tender).

HIS HONOUR: I will defer ruling on the document until the adjourned hearing.

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(Newspaper article and transcript shown to Mr. Armstrong tendered by Mr. Gruzman; objected to; rejected).

(Copy newspaper article shown to Mr. Armstrong earlier in to-days's proceedings m.f.i. "41").

(Page 8 of transcript of proceedings before Mr. Justice Dovey shown to witness earlier in to-day's proceedings m.f.i. "42")

(Deed of settlement shown to witness m.f.i. "43")

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(Further hearing adjourned until 10 a.m. on Wednesday 21st August, 1968).

IN EQUITY

No. 23 of 1968.

CORAM: STREET J.

BARTON -v- ARMSTRONG & ORS.

TWENTY-FIFTH DAY: WEDNESDAY, 21ST AUGUST, 1968.

HIS HONOUR: My attention has been drawn to articles published on the front page of the Daily Mirror and the Sun on Friday, 16th August 1968. Each contained, inter alia, specific discussion of the meaning of a statement made in evidence in this Court last Thursday. The article in the Daily Mirror and, to a lesser extent, the article in the Sun, each has some at least of the hallmarks of contempt of Court. A newspaper which in this fashion publishes comment or discussion regarding the meaning of evidence in current Court proceedings must be firmly reminded that contempt of Court will not be tolerated. This rebuke will, I trust, ensure that there will be no further publications of this nature.

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FIRST-NAMED DEFENDANT

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On former oath:

HIS HONOUR: Q. You are still on your former oath, Mr. Armstrong, A. Yes.

HIS HONOUR: The stage we had reached at the adjournment last Thursday, Mr. Gruzman, was that you had tendered a document and I deferred ruling on it.

I will have it noted that I have thought it proper to look at m.f.i. 40, not as evidence in the suit but for the purpose of determining the admissibility of the document m.f.i. 37, the relevant point being the determination of the circumstances giving rise to the preparation of m.f.i. 37.

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The document, m.f.i. 37, has been tendered by Mr. Gruzman initially upon the basis that, it having been called for by Mr. Staff, he, Mr. Gruzman, is entitled to require Mr. Staff to tender it. If there be such an entitlement it does not necessarily arise until the defendants' case is about to be closed. I shall accordingly defer further consideration of the admissibility of the document on that basis until the defendants' case is about to be closed. It may be that the point will then no longer be of significance.

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Its admissibility has also been contested by Mr. Staff upon the basis that the document was prepared for the purpose of discussion between Mr. Armstrong, his senior and junior counsel, and his solicitor. The evidence on this point given by Mr. Armstrong is conflicting. The document came into existence on all accounts some years ago, and Mr. Armstrong said more than once that he could not recall the circumstances of the preparation of the document. He said he could not recall who it was discussed with, who prepared it, or where it was prepared, and that all he knew was that it is in

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his handwriting. So far as a question of fact arises in a peripheral sense concerning the admissibility or otherwise of this document, my finding is that I am not satisfied that the document was prepared in circumstances which would render it the subject of any professional privilege. Whether the document is admissible or inadmissible on other grounds is a matter I propose to leave until later in the suit.

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MR. GRUZMAN: Q. The matters about which I have asked you, and which appear in the document m.f.i. 37 were given serious consideration by you; weren't they? A. Which document is that, Mr. Gruzman?

Q. (Approaching witness). I am showing you now the original document, m.f.i. 37. The various matters which appear, first of all in para. 8 speaking about the Judge in Parliament - that was a matter that was given serious consideration by you, wasn't it? A. I would not say serious consideration. I would say that I thought about it. These are notes of my thoughts. They are not notes of fact.

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Q. There is another matter in para. 9 that I don't want to mention. You gave serious consideration to that matter? A. I thought about it.

Q. You went further than think about it. You gave serious consideration to it, didn't you? A. I can't recall whether I gave serious consideration to it or whether I thought about it. As I told his Honour in further evidence I can't even recall where or when the document was prepared. I can't recall where it was prepared. It could have been - I think it was - with my solicitor, but I don't know.

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Q. What I am putting to you is that these subject matters to which I have referred were given serious consideration by you as matters which you might carry out? A. No. I just say I thought about them, Mr. Gruzman.

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Q. Didn't you say this is the document "Consequences of action against Dovey must be thought of, but I believe his statements would not go unchallenged"? A. I thought that, apparently, yes. I must have written it. Those are notes of my thoughts. That is all I can tell you.

Q. What you did was not only to have these thoughts, but to seriously contemplate carrying them out? A. I could not tell you.

Q. You could not tell us? A. No.

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Q. And to go further and to think ahead as to what would probably happen after you had carried out your objective? A. It is very difficult for me to tell you what I thought at this distance. It is hard enough even when I have written notes to refer to.

Q. I put it to you again that you would be

prepared to seriously consider any steps to deal with anybody who crossed your path? A. No, I would not. I might think about it. I would not consider - I would not do anything about it.

Q. You blamed Mr. Eskell for what happened in the Eskell divorce, didn't you? A. In part.

Q. And you denied on a previous occasion that you set out to punish Mr. Eskell? A. I said I didn't think I punished Mr. Eskell.

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Q. Look, sir, as the result of that divorce within the space of a few weeks your attitude to Mr. Eskell completely changed; didn't it? A. It did undergo some change. I would say that, definitely. It would be only natural; I think.

Q. Mr. Eskell had not done anything to you, had he? A. Well, I would say that if you attack someone you were fond of it means the same thing as attacking you, doesn't it? A lot of things happened in this case. I don't think I should speculate on what I thought at that time.

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Q. What I am suggesting to you is that within the space of a few weeks your attitude changed from a man trying to get closer to Mr. Eskell to a man having a bitter hatred for him? A. I would not call it a bitter hatred, no.

Q. Look, sir, in May - on 14th May 1962 - were these your thoughts? Perhaps I might approach the witness. Did you write this on 14th May 1962 about Mr. Eskell - A. You have the advantage of me. I have not looked at this document, I don't think, have I?

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Q. No. This is your handwriting, isn't it?
A. I believe so.

Q. "I believe that the difficult period just passed has shown each of the three of us a new and more intimate side of the other person, and also brought out far more clearly various inherent qualities and character traits. I believe it is necessary for Eskell and I to get somewhat closer now." A. Apparently I wrote that. You have a big advantage on me with these stolen documents. If I had a look at them before you cross-examined me I would be able to help you more. I cannot quite recall what this 14th May period in 1962 refers to. This may be something that you can refresh my recollection on.

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Q. This is about the sixth occasion that you have referred to stolen documents. A. Yes. And I will continue to refer to them, too, if you don't mind.

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Q. You were not too sure at first as to whether they were stolen or forged? A. No - I think - it all depends on which ones they are.

Q. You have not withdrawn the charge of forgery, have you? A. On most of the ones I have seen. You

remember you and I both agreed that one of the photostats was a bit different, and you changed it.

Q. As to the original documents are you suggesting now that any document shown to you was forged?

A. I don't think so. Not so far.

Q. Will you utterly withdraw any such suggestion?

A. I don't think I will utterly withdraw it. I would not be certain. It is not within my power to detect handwriting. I don't think they were.

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Q. That is as far as you will go? A. Yes.

Q. Now, as to the charge that the documents were stolen, didn't you have a file containing a number of these documents on top of your locker in the Landmark office? A. I cannot recall exactly now, it is that long ago, but I had a file containing these documents which was always locked.

Q. On top of the locker in your room? A. These documents to the best of my belief were always kept under lock and key, to which only my secretary and myself had a key.

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Q. If I suggest to you that this file was found after you left the Landmark office in the presence of a number of witnesses on top of your locker would you be in any position to deny that? A. It would be terribly difficult to tell, I would think. I would say it was impossible for me to prove that the documents were stolen.

Q. Will you withdraw the charge? A. No. I allege they were stolen, but I cannot prove it.

30

Q. You heard that Mr. Bovill was one of those who was present when the file was discovered? A. No, I have never heard that before. I never heard anything about these documents until the other day.

Q. Now look, you have always wanted to have people who would do your bidding, haven't you?

A. I don't know what you mean by that. Perhaps you can -

Q. You have wanted to have around you people who would be, to use an expression, Armstrong men?

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A. I don't know that this is the case. I think that there are a lot of times I prefer to have people who will criticise me rather than people to agree with me. I think they are much more valuable.

Q. You want, and you have surrounded yourself with people who are utterly loyal to you? A. I would not think that. I think it is - unfortunately I don't agree with you in that regard at all.

Q. Your aim has been to surround yourself with people who are utterly loyal to you? A. If it is my aim I must have been very astray in my aims.

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Q. That is your aim? A. I think everyone has that aim, but I certainly didn't succeed.

Q. You regarded it as a bad trait in an associate of yours if he showed the slightest divergence from a strict loyalty to you? A. Not at all. If he was criticising any of my actions I welcomed it.

Q. Forget about criticising your actions. Will you agree with me that you would regard it as a bad trait in a person associated with you if he was not strictly and solely loyal to you? A. I would not go so far as that. I do like people who are loyal.

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Q. You mean by that people who will obey your commands? A. It depends what the commands are.

Q. Provided it is a command that you think is a proper command your associate should obey it?

A. If he thinks it is. If he does not, he should not.

Q. If he did not obey it you would regard him as disloyal, wouldn't you? A. It all depends. I would not know. I would have to know the circumstances.

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Q. You even wanted your associates to think only of you, didn't you? A. I would not know now..I don't know how I could control their thoughts, Mr. Gruzman.

Q. One might have methods of doing that, might one not? A. I have never been able to control people's thoughts.

Q. I am asking you what your aim was. Wasn't it your aim to have people so much part of you that you could control their thoughts? A. No, I would not think so.

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Q. Did you write this about Mr. Eskell, in para. 2 (c) of the document which I have just shown to you dated 14th May 1962: "Eskell, however, must settle down also to being close to me and not divert his thoughts to other people"? A. I don't know what I meant by that.

Q. What you meant by that is that you wanted him to be so close to you that he thought of you, and thought of you only? A. I would not think so, no. It may have had some reference - but please don't hold me to this, as I said before - that he should not be worried with his divorce proceedings. But I don't know. I certainly didn't want him to divert his whole thoughts on to me. He is a competent business man, and he is a General in the Army, of which I had no knowledge. How could I control his thoughts?

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Q. Would you regard it as a defect in a man that he was nice to people other than yourself? A. No, I certainly would not.

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Q. Did you write this on p. 2 of the same document: "I wish Eskell to realise that he is somewhat inclined to spread his loyalties. That is, be nice to everyone, for example". A. It could have been that, yes. I think, Mr. Eskell -

Q. Will you agree that you wanted to have in Mr. Eskell a man who was completely under your thumb? A. No. Impossible.

Q. A man who was so wholly devoted to you that he would carry out your every bidding? A. No.

Q. What was the problem? Why did you wish Mr. Eskell to realise that he is somewhat inclined to spread his loyalties? That is, be nice to everyone, for example. A. Well, I must ask his Honour if I can again. This is going to involve some more distant people. That is quite all right. If I go ahead I will involve these outside people. If I have to answer this question to explain that fully a lot more people will be involved in it.

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HIS HONOUR: The question asked at the moment is why did you wish to induce that correction of Mr. Eskell's behaviour?

Will you put the question again, Mr. Gruzman?

MR. GRUZMAN: Q. The question I am asking you is why did you "wish Eskell to realise that he is somewhat inclined to spread his loyalties, for example, be nice to everyone"? A. If you read a little further down it may be able to enlighten you there.

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Q. You then set out - the position is you can't recall it, except by looking at the document? A. It is so long ago, and these are only thoughts, after all. They are not facts. If you can help me, perhaps -

Q. A suggestion that some money be loaned - that you lend some money to a business associate? A. Yes. Mr. Cullen was a business associate.

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Q. He was a former director? A. Yes.

Q. A business associate of yours? A. Yes, I would say so.

Q. I am trying to get the subject matters of why you thought Mr. Eskell was spreading his loyalties. First of all, the suggestion that money be loaned to a business associate? A. Yes.

Q. Secondly, buying some Landmark debentures? A. I think it must be buying Landmark debentures from Downs. He was an officer of the then Palgrave Corporation.

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Q. Did you eventually persuade yourself in this document of 14th May that Mr. Eskell was very loyal to you? A. I can't recall that.

Q. Did you write "I believe Eskell to be very loyal to me"? A. I believed at that time that he was, apparently, from that document. I don't know. I must stress again these are notes of thoughts, not notes of fact.

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Q. And it is true, of course, that the reason why

Mr. Eskell was brought into the company by you was for your own personal benefit, wasn't it? A. No, I would say for the company's benefit as well as my own.

Q. It was to streamline your affairs, wasn't it? A. No. He was brought in - if you look at the minute book, he was managing director of Palgrave Corporation as it was then, and later on had some position with Australian Factors - a director of Australian Factors. 10

Q. And he was paid by these public companies, wasn't he? A. Yes.

Q. And the purpose was to look after your affairs, wasn't it? A. No, I would not say that at all.

Q. In para. 7 did you write "Please remember at all times that the original aim of his association with me was to take over and streamline my affairs"? A. No, I don't recall the aim. 20

Q. Did you write that? A. Yes, I wrote that.

Q. Is all of what I have read to you in that paragraph in your handwriting, and the words MY AFFAIRS in block capitals? A. That would be correct, yes.

Q. I will read the whole of that paragraph to you. A. Yes.

Q. Just before I do, of course, what you meant by streamlining your affairs was that your assets could be used to your best advantage, didn't you? A. I can't say what I meant at this time. I can't tell you what I meant now when I wrote that. I can only tell you what I think now, which is very difficult, when you have thoughts. It is just like reading a diary note back years after. I could be completely wrong. But I think I can help you this way, that my affairs meant the affairs of the company with which I was associated. I think that is what I had in mind at that time, but I can't tell you with certainty. 30

Q. These public companies were formed by you for the purpose of your gaining the best advantage from your assets, weren't they? A. Which ones do you mean, Mr. Gruzman? Landmark or - Palgrave Corporation was in existence for 32 years. 40

Q. It was then Palgrave? A. Yes.

Q. It was taken over by you? A. I wish you would not always say me. It was taken over by Landmark Corporation.

Q. It was taken over by Landmark? A. No. Let us get it completely correct. It was a reverse take-over of Landmark Corporation. The minute book would show the correct legal details. 50

Q. Palgrave was the vehicle by which you publicly floated your private companies, wasn't it? A. No, you have got that wrong.

Q. You tell me. A. First of all Landmark Corporation was floated by myself and Mr. Quinn as directors. I think Mr. Eskell was on the board of that when that was floated. It would assist me greatly to be accurate if I could have access to the minute books at this time. That is recollection.

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Q. Just roughly. A. Roughly after that Mr. Eskell, Mr. Cullen and I considered it would be possible to merge the interests of Landmark Corporation and the then Palgrave Corporation, or Landmark Limited I think it was called at that time. It was not called "Corporation" until a later date. I think it was Landmark Limited.

Q. Was it Landmark into which you put your private companies? A. Some of my private companies. These private companies were partially owned by Mr. Quinn and myself. Mr. Quinn had one-third and I had two-thirds. My companies had two-thirds. You will correct me, and I hope you will bear with me when I say "I". Sometimes it should mean companies owned in part by me.

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Q. The stockbrokers who had agreed to underwrite Landmark subsequently withdrew, didn't they? A. I think there was something. Mr. Eskell was handling that matter and I think it may be Messrs. Hudson, Tilly & Evans were the first underwriters. That is a long time ago. I don't want to be held to this as accurate.

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Q. What I put to you is that the object of these public company ventures was to utilise your assets for your advantage? (Objected to; rejected).

Q. There were Landmark and Palgrave, weren't there? They are two - (Objected to; rejected).

Q. Let us deal with Landmark. Landmark was a company which was formed primarily to float to the public your private companies, wasn't it? A. Companies owned by Mr. Quinn and myself.

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Q. Who owned the greater part? A. I think it was one-third and two-third interest.

Q. You had the two-thirds? A. Again please don't hold me to complete accuracy. These are all matters of record which could be easily obtained.

Q. And the object was to get the greatest utilisation out of your assets for your benefit, wasn't it? A. I really don't follow that. I don't fully understand this question. I think in business one always endeavours to utilise one's assets to the best of their advantage. One often fails to do so.

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Q. That was the object, wasn't it? A. The object was fully set out in the prospectus which I think you can easily get if you wish to Mr. Gruzman.

Q. And Mr. Eskell's job as far as you were concerned, was to utilise your assets to the best advantage? A. To assist me to utilise my assets to the best advantage, yes.

Q. Now I will read to you the whole of the paragraph of which I read part before. A. Yes.

Q. Para. 7 reads: "Please remember at all times that the original aim of his association with me was to take over and streamline my affairs and to so organise the situation that I did less, not more work, please keep this in mind and recognise that my affairs are important and for mutual benefit we must fully utilise my assets." A. That is quite correct. 10

Q. And those were your views of Mr. Eskell and the relationship between you six weeks before the Eskell divorce? A. No. I think those were my views probably at the time we were forming the companies. They are a paraphrase of views at the time we were forming the companies back in 1960. That is what I believe them to be. We formed these companies, I think, in late 1959 or early 1960. 20

Q. These are notes made on 14th May 1962.
A. Yes, I believe so.

Q. They start by saying "I believe that the difficult period just passed has shown..."? A. Of course. I think I know what that refers to.

Q. This was the framework within which these notes were prepared? A. It is the framework of a summary of the relationship between Eskell and I probably from the first time we became mutually associated in business. 30

Q. You said "Eskell, however, must settle down also to being close to me and not divert his thoughts to other people." That was about the future? A. He may have been diverting his thoughts. He was spending a fair amount of time on military business in the past.

Q. What you were talking about was in the future - "Eskell, however, must settle down also to being close to me and not divert his thoughts to other people." You said "I wish Eskell to realise that he is somewhat inclined to spread his loyalties." A. Yes. 40

Q. You said "I believe Eskell to be very loyal."
A. Yes.

Q. I am omitting substantial portions of the document. A. You are tendering this, are you?

Q. Don't worry about that, Mr. Armstrong. Well then, perhaps I should read to you the whole of that paragraph. I am omitting four matters. I am omitting four matters where you said he spread his loyalties, which you say involves other people, which it does, and then it goes on "I believe Eskell 50

to be very loyal to me, but from now on I want our object to be (a) Does it benefit the shareholders, if a public company. (b) Is it beneficial or likely to be beneficial to Eskell and I having in mind the amount of work involved and time consumed." That is what you wrote? A. Yes, that is right.

Q. These were your thoughts as at 14th May 1962? A. My thoughts apparently,

Q. About Mr. Eskell? A. Yes, apparently. 10

Q. I want to take you now to the Eskell divorce. That occurred on 25th June 1962, didn't it? A. Yes.

Q. I want to take you now to your thoughts about Mr. Eskell on 27th June. The document that I have just shown you represented your views of Mr. Eskell on 14th May 1962? A. I would like you to use the words "My thoughts" of Mr. Eskell over quite a long period. I don't know of any particular date. It was written down on that date, apparently.

Q. I don't want to go through that again. What you told us in that document were thoughts were thoughts as to the future - the present and the future? A. Past, present and future. I would say. 20

Q. And substantially they were your thoughts as to what Eskell must do in the future and how he must act towards you in the future, weren't they? A. They are just what is written down there. That is all I can tell you.

Q. "Eskell must settle down also to being close to me and not divert his thoughts to other people." You were talking about the future relationship, weren't you? A. Yes. 30

Q. And I put it to you that as a result of this divorce - as the result of this divorce your attitude to Mr. Eskell completely changed? A. I would think it did, yes. Definitely.

Q. Did you suddenly come to believe that Mr. Eskell was a con man? A. I don't know what you mean by "con man". I feel - perhaps if you can let me have a look at the document I can help you more quickly. 40

Q. Did you suddenly come to believe that Mr. Eskell was a con man? A. Would you define that for me?

Q. Do you know what a con man is? A. There are many descriptions of that.

Q. What is your belief as to the meaning of the word "con man" if you use it of someone? A. Someone who perhaps - this is just very quick thinking - someone who uses his friendship to perhaps extract favours from someone, or uses his ability to represent things in a not correct light. That is one of the definitions. There are many definitions of "con man". 50

Q. That is your view of it? A. That is one of them, yes.

Q. Was that your view of Mr. Eskell on 27th June? (Objected to: allowed).

Q. You see, Mr. Armstrong, what I am putting to you is that no reasonable person could have supposed, whatever the arrangement, that Mr. Eskell was really responsible for what went wrong? A. Well, I would have to tell you the whole detail of this to help you, Mr. Gruzman. A lot of it would be supposition, but if you wish I can try and go through it to the best of my recollection right from the beginning. 10

Q. I am going to suggest to you that it reflects on your credit that you, in strong terms, criticised Mr. Eskell for what went wrong with the Eskell divorce. Now, if you have some explanation which you say justifies your views I invite you to give it? A. Well now, can you just tell me - you are suggesting that I wrote that Mr. Eskell - you are suggesting that I wrote that I thought Mr. Eskell was a con man, is that right? 20

Q. Yes. That is the suggestion. A. Now, I think I don't like the word "con" very much. Perhaps we can find a better word than that. I will use it if you like. I believe that Mr. Eskell did not fully disclose the circumstances of his divorce to Mrs. Cleary first of all when she agreed to assist him, and, secondly, as the divorce action or divorce statements apparently proceeded on, and I must also say, your Honour, that Mrs. Cleary apparently for some reason best known to herself did not acquaint me of the fact of this second co-respondent until after the matter had been heard by his Honour. This was a thing to which I took exception, too, that Mr. Eskell, while asking to be assisted by Mrs. Cleary, did not fully acquaint me of the true facts of the situation. That is why I think I wrote that matter. I did not mean that Mr. Eskell was a con man in any sense of money or any matter - just in this divorce situation I felt that Mrs. Cleary had helped Mr. Eskell without any idea of the situation into which she was getting herself. 30 40

Q. Is that your full justification for the thoughts which you had about Mr. Eskell as at, say, 27th June?

A. Unless you have something else that would be the main one, because I think that would be the time we were considering the Eskell divorce. If you have some other thoughts written down there I am sure if you show them to me I may be able to recollect some other matters and thoughts. But that was one of the chief ones. There may be others you can help me with. 50

Q. I am prepared to do that. Did you write these words of Mr. Eskell? By the way, this is in your handwriting - these two documents? A. Yes.

Q. Pages 1 and 2. A. Yes.

Q. The first page is headed "Confidential. Eskell Notes, June 27". A. Yes.

Q. That is June 27th, 1962? A. I believe it to be. They appear to be.

Q. First of all, did you set out in this document the whole of your relationship with Mr. Eskell?

A. Well, I have not seen the document, so I can't say what I have set out.

Q. In para. 1 - I will paraphrase some of it, to try and reduce the bulk. (Objected to).

Q. First of all, para. 1 reads "Leaves Yaffa and comes to help me via Prof. Messel recommendation." A. Yes. 10

Q. That is written there? A. Yes.

Q. That is apparently what happened? A. Yes.

Q. Yaffa was a private company of Mr. Eskell's was it? A. I think the Yaffa syndicate was a private company of Mr. Eskell's father-in-law at that time.

Q. "2. We form Landmark Ltd. in period May-November 1960". A. Yes, that is right.

Q. "Tilley's reneged on u/w." That is "underwriting"? A. Yes. 20

Q. Why did they to your knowledge, to use your expression, renege? A. I don't know what the reason was at that time. I can't recall it completely. At that time the land boom was nearing its end. I think that may have been one of the reasons.

Q. "3. Urged strongly by Eskell to form Landmark. Lent Eskell and Quinn money to buy shares. Ian Walton helped us to do so and get nominees". A. Yes, I think Mr. Eskell and I negotiated with Mr. Walton at that stage. 30

Q. That was Mr. Quinn's money, was it - one-third? A. I think Mr. Quinn put all his money into Landmark that he had in private companies, so far as I can recollect.

Q. What you told his Honour was that Quinn owned one-third? A. Of the private companies.

Q. Is that right? A. As to the exact figures - he may have held more than one-third in some and less than one-third in others, but in the general scope he owned one-third, yes. 40

Q. Why did you lend Mr. Quinn the money to buy shares? A. I think he may have wanted to buy extra shares at that time.

Q. More than a third? A. In Landmark Limited.

Q. Did he buy more than a third? A. I can't recall. It would be a matter of record.

Q. You would expect if he had an equity of a

third that he would not need to borrow money, would he, to buy shares in that company? A. I think he may have wanted more than one-third. I am not sure of that. That is a matter of record.

Q. "4. Undermined Quinn and urged me to get Messel on Landmark Board." What you are saying is that Mr. Eskell undermined Quinn and wanted to get him out? A. He may have undermined him. He may have thought he was incompetent. 10

Q. You didn't think Quinn was incompetent? A. Yes, I did later on. I agreed with Mr. Eskell on that.

Q. "5. January 3-61. Armstrong and Cullen were influenced to merge companies." A. That is right, yes.

Q. That is, to merge Palgrave and Landmark?
A. Yes. I was Chairman of Landmark, and I believe that Mr. Paul Cullen was Chairman of Palgrave at that time.

Q. "6. We buy Korfena at a fairly reasonable price"? A. Yes. 20

Q. "7. We buy Barlex at a reasonable to cheap figure." A. Yes.

Q. "8. We merge with Palgrave with strong mental reservations as to advisability of service on Armstrong's part." What does that mean? A. I don't know, to tell the truth.

Q. "and strong mental reservations on all except Eskell on Palgrave Board". A. Yes.

Q. "9. Cullen informs that he may not have objected to service agreements being made public." We won't go into that. That is a long matter, isn't it? A. No, not very long. 30

Q. It is a long matter? A. No, it is not a long matter. It is a matter of record in the minute books, actually.

Q. "10. Eskell informed Jamieson Nielson and I that the price of the merger was the service agreement"? A. Yes.

Q. "11. Different story on negotiations re sale of T. & H. from Cullen and Eskell." That is Turner & Henderson? A. Yes. 40

Q. On p. 2, para. 12: "Eskell nominated own salary." A. Yes.

Q. "13. Eskell sell Downs Korfena debenture to A.E.A. and lands extra money from A.E.A. to Palgrave Subsidiaries? A. Yes.

Q. "14. Eskell stops sale T. & H. to Dodge in July 61 to consolidate his own position." A. Yes.

Q. "15. Did not conform to Anderson's instruction 50

re Miller or re Gas Co. printing mistake? A. That I cannot recall.

Q. These were all Mr. Eskell's peccadillos in your mind? A. I would not say peccadillos. These were things - I don't know what I can say about them. After the divorce they stuck in my mind as things that could have been represented to me in a different light to perhaps what they were.

Q. I think after the divorce you became very suspicious of Mr. Eskell? A. I would say to some extent that is true. 10

Q. Of everything he had ever done? A. I would not say everything he had ever done. I would say possibly I looked at it in a different light.

Q. "16. Did not allow Anderson to participate in T. & H. management at all"? A. Yes.

Q. "17. Caused Hudson to waste time in Europe through bad advice." A. This I don't understand - what it means at this stage. 20

Q. "18. Told Cullen and Anderson before merger that Eskell would arrange the merger of Factors and Palgrave in June 1961 when there was no thought in my mind of a merger." A. There was certainly no thought in my mind at that time.

Q. And you have written after that in red pencil "BAD"? A. It would be bad to have merged those two companies.

Q. "19. Probably signed agreement wrongly - " It is something to do with the Cannon matter? A. I will help you with that when you get to the Australian Factors matter. 30

Q. Is this now the conclusion that you came to about your friend Mr. Eskell: "His mind is devious and sick. He is either a con man or an idiot and is either a liar or a concealer and perverter of the truth." A. That is what I wrote down.

Q. Was that your view of the kind of man - your view of the man to whom you wanted to get closer six weeks before? A. Apparently I was very wrong in the view six weeks before. 40

Q. "21. He caused great loss on the Factor law case and has caused Sizer" - ? A. I think that should be "Seizer".

Q. " - to issue a writ for 96,000" - I presume that is £96,000? A. That would be a matter of fact. That would be correct.

Q. "by this poor handling of this matter."
A. Yes.

Q. And did you end up by saying "All in all a shameful record." A. That is right. 50

Q. Look, sir, did you really believe these things that you wrote about Mr. Eskell? A. I would not know whether I believed them. I wrote them down. I am not saying they were all facts. Some may be wrong; some may be right.

Q. Whose mind would you say is devious and sick? Yours or Eskell's? A. I would not care to answer that question.

Q. You are prepared to accuse Mr. Eskell of having a devious and sick mind? A. That is what I wrote in private papers. I did not accuse Mr. Eskell in public at any time of having a devious and sick mind. 10

Q. I beg your pardon? A. I have never accused Mr. Eskell in public of having a devious or sick mind.

Q. They were your thoughts? A. These papers were written entirely for my own consumption.

Q. Your mind is sick, isn't it? A. No. 20

Q. And it is devious? Your mind is devious?
A. No, it is very direct.

Q. You regarded him as a con man. That was your thought about it. (Objected to: rejected).

Q. You had two alternatives in your thoughts about Mr. Eskell - that he was either a con man or an idiot? A. That is what I wrote down, apparently.

Q. They were your thoughts about him? A. Apparently they were thoughts which I may have written down at the time. I am not saying they were correct. 30

Q. And a liar, or a concealer or perverter of the truth? A. I wrote this down, yes.

Q. And all of this because of the Eskell divorce?
A. No. Those other matters entered into it too.

Q. The other matters were raked up because of your thoughts about the Eskell divorce, weren't they? A. May I perhaps assist on one matter? The Cullen-Anderson service agreement was broken by Mr. Millar on his advice, so that it is a matter of record. 40

Q. You know what happened there, don't you? You know what happened there. If you wish to go into it - ?

A. We will go into the Cullen-Anderson agreement.

Q. Service agreements were entered into paid for a few months, and then you declared them invalid after you had taken over the company, is that right?
A. That is not correct at all.

Q. That is what happened? A. No. The service agreements - the letter was referred to Mr. Millar and he 50

advised on it. I would refer you to the documents on that.

Q. The service agreements amounted to £25,000 odd. After the takeover some £3,000 or £4,000 was paid under them? A. Yes. We found they had not been executed properly. We found they had been executed incorrectly.

Q. And you then reniged on them? A. The board decided - I didn't renige on them. The board decided to seek legal advice and on legal advice they were cancelled. I think that Mr. Cullen cancelled his voluntarily, and I think there was some legal matter with Mr. Anderson.

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Q. The board being whom? Who was on the board?
A. The board at that time was myself as chairman, Mr. Eskell, Mr. Cotter, and Professor Messel, I think.

Q. And at that time they did what you said, didn't they? A. I would not say these gentlemen did what I said. If they did they were not acting in their proper duties as directors.

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Q. And your only complaint against Mr. Eskell about the divorce was that he failed to disclose to you that there was a previous or other co-respondent? A. I don't know whether there are any other complaints I can think of. I don't want to go over the divorce.

Q. That is the only complaint that comes to your mind? A. I think in hindsight neither Mr. Eskell or I should have had anything to do with the divorce.

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Q. So far as you can call to mind at this moment your only complaint about Mr. Eskell's conduct in the divorce was that he failed to tell you about Mrs. Dunne, the other co-respondent? A. Unless there are some written notes about them I cannot think at the moment.

Q. That is the best of your recollection? A. That is the best of my recollection at the moment. I am not saying there could not be other things written down.

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Q. The reason why you were annoyed with Mr. Eskell for failing to disclose this was that it was the existence of the other co-respondent which made Mr. Justice Dovey suspicious, wasn't it? A. I am not clear on that. I am not clear what made Mr. Justice Dovey suspicious. Many aspects of the divorce perhaps made him suspicious. I don't think that was the only one.

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Q. In your mind your belief was that his Honour became suspicious because of the existence of the other co-respondent? A. No. I think there were other factors.

Q. You think there were other factors? A. Yes.

Q. Why were you so angry with Mr. Eskell for failing to disclose to you the existence of Mrs. Dunne? A. That was only one matter. Now you are refreshing my memory.

Q. Please answer the question. Why were you so angry with Mr. Eskell for failing to disclose to you the existence of Mrs. Dunne? A. I can't recall why I was so angry about Mrs. Dunne.

Q. The reason was that you believed Mr. Justice Dovey's suspicions were aroused by the fact that there was a co-respondent, Mrs. Dunne, in respect of whom no adultery was sought to be proved? A. No, only familiarity. Can I help you there? Not one case - another reason I would like to tell you is this: apparently Mr. Justice Dovey's suspicions were aroused by the fact of the evidence given by Mrs. Cleary and Mr. Eskell as well. 10

Q. That had to be given, anyway. In other words, Mrs. Eskell had never heard of Mrs. Cleary, had she? A. Apparently from what came out in the Court, yes. 20

Q. It was obvious to you that that much would have to come out in evidence? A. I don't know what was going to come out in evidence.

Q. Your complaint against Mr. Eskell was that he had not told you about the complication of Mrs. Dunne? A. And many other facts. He had not been frank with me about the whole matter.

Q. What else was there? What else had he not been frank with you about in the whole arrangement? A. First of all - and this, may I say again, your Honour, is hearsay evidence through my wife? I don't know this to be a fact. Mr. Eskell told my wife that all she would have to do would be to go and see Mr. Justice Dovey for five minutes in Chambers and that would be the end of the matter, because Mr. Twigg had said that was the way it was going to be handled. This is hearsay evidence through my wife. 30 40

Q. I have no instructions about this, but I suggest to you that is another shocking, vicious lie? A. It certainly is not.

Q. It is a product of your disordered mind, isn't it? A. No, not at all.

Q. Are you seriously saying to this Court that it was your belief that in the State of New South Wales a divorce is handled in that way? A. I have no knowledge. I have certain beliefs about how divorces are handled. I have no knowledge of how they are handled. 50

Q. As a Member of Parliament for ten years at that time? A. Yes.

Q. One of the legislators of this State, weren't you? A. I think -

Q. Do you want to add something? Perhaps you had better not. You are telling this Court here that you believed that Mr. Eskell would get a divorce if Mrs. Cleary saw his Honour Mr. Justice Dovey in Chambers for five minutes, is that what you are saying? A. No, I am not saying that at all.

Q. That is what you have said, isn't it? A. No. If you want me to go right through the whole thing about this whole arrangement it will take us at least two hours of this Court's time, and you would really require to call Mrs. Cleary. 10

Q. This Court will not be troubled with time, you may take it. The question I asked you which gave rise to this is whether - in what other respects, other than the failure to disclose Mrs. Dunne's connection with the matter you felt Mr. Eskell had misled you or not been frank with you? A. There are many matters. This one comes to mind, that the divorce would have been a very simple matter, and not a public affair. I don't think Mr. Eskell probably thought it was going to be as public as it was. 20

Q. Look, sir, is there any matter other than the failure to disclose the name of Mrs. Dunne and her connection with the matter, that you charge against Mr. Eskell as unfrankness? A. Unfrankness, I would say - not being frank.

Q. Is there any matter other than Mrs. Dunne? A. And the frankness. 30

Q. Frankness about any matter other than Mrs. Dunne? A. Yes, other matters.

Q. Other matters? What other matters? A. One I just told you, about consideration of the case with which the divorce would be procured.

Q. You have told us that one, any others? A. He said that there would be absolutely no publicity in the case. He believed there would be no publicity.

Q. Mr. Eskell told you this? A. Told Mrs. Cleary this, yes. 40

Q. Anything else? A. I believe he told Mrs. Cleary that the case would not cause any harm to my projected divorce when it came up. I cannot think of any other - just general lack of frankness. I cannot think of other matters specifically apart from those raised.

Q. I put it to you that the only matter that you really charge against Mr. Eskell was that he had not told you about Mrs. Dunne. That is the only matter of substance, isn't it? A. No. I would not say that. 50

Q. Look, sir, it is your belief that it was the existence of Mrs. Eskell - I am sorry, the existence of Mrs. Dunne - which caused his Honour to be suspicious? A. No.

Q. That is your belief? A. That and other matters.

Q. That certainly was one of the matters which in your mind caused his Honour to be suspicious?

A. Yes. And the evidence that was given in the case.

Q. And so your complaint against Mr. Eskell is because he was not frank with you about something which raised his Honour's suspicions? A. Apparently that is one complaint, yes.

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Q. In other words if the divorce had gone through quietly and the Court had been fully deceived you would have had no complaints against Mr. Eskell, would you? A. I could not tell you what would have happened in this hypothetical situation, no.

Q. Look, sir, as at 14th May all you wanted to do was to get closer to Mr. Eskell, didn't you?

A. That is what is written down there.

Q. You wanted to control his very thoughts, didn't you? A. No.

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Q. You wanted him to be loyal to you? A. Yes.

Q. And it was only because of the divorce that your attitude changed? A. And other matters, one having to do with the Australian Factors dispute.

Q. That had happened ages ago, hadn't it? A. Fairly early.

Q. That had happened before 14th May 1962, hadn't it? Long before. A. Yes, but this was a summary of the situation on 14th May.

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Q. There are other matters in the document of 14th May, but as at 14th May you were hoping to in the future get closer to Mr. Eskell, weren't you, whatever your complaints may have been about him at that time? A. Apparently so, yes.

Q. And the only reason why you turned against him was because of the divorce going wrong? A. No. I would not say that. I would say that I found Mr. Eskell out - his behaviour over the divorce.

Q. And it was as a result of that that you came to the conclusion about his mind, his veracity and so on that you have mentioned? A. If you form a conclusion about a person, Mr. Gruzman, you of ten - other matters which they have done often appear in a less favourable light. I always try to view a person in a favourable light first.

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Q. And that is how it was because of the divorce, you say, you found out about Mr. Eskell? A. I changed my views about Mr. Eskell - about certain actions of Mr. Eskell.

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Q. In the terms of the expression you used, when you say you found out about him, you found out about

him in connection with the divorce? A. What I said to you was, I think - if I can have it read back - that I changed my views about Mr. Eskell about certain other actions of Mr. Eskell, because of the way he had acted in the proceedings leading up to the divorce.

(Document comprising three sheets, dated 14th May 1962, m.f.i. 44).

(Document comprising two sheets, dated 27th June m.f.i. 45).

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Q. Are these views that you expressed in that document still your views about Mr. Eskell? (Objected to: rejected).

Q. These matters of sick and liar and so on - are they still your views? (Objected to: rejected).

Q. As at the date of the commencement of your cross-examination were those your views about Mr. Eskell? (Objected to).

Q. You remember when the cross-examination commenced about Mr. Eskell you sought an adjournment in this Court, didn't you? A. Yes.

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Q. In order to have Mr. Eskell brought to the Court? A. Yes. That was one of the purposes - and to consult my counsel.

Q. At that time had your views about Mr. Eskell changed, (Objected to: rejected).

Q. Do you remember, Mr. Armstrong, when this matter of Mr. Eskell was first raised his Honour permitted that cross-examination, and you then said to his Honour "Could I make this statement? If you don't mind me saying this Mr. Eskell would be very worried about this cross-examination and I would hate him to feel that anything I said was directed against him." Do you remember that you said that? A. Yes. I remember that.

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Q. Was that true? A. I would hate him to feel anything I said was directed against him, yes.

Q. Have your thoughts about Mr. Eskell changed?
A. Could you tell me exactly what you are putting to me about my thoughts?

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Q. Those which I read out to you, and which I don't want to repeat unnecessarily. You know the ones I am speaking about? A. We were talking about thoughts -

Q. Expressed in the document of 27th, about Mr. Eskell's veracity? A. When I was probably under some emotional strain those thoughts would have been after the divorce. I would say, yes, my views have mellowed towards Mr. Eskell in the intervening period.

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Q. So that you would hate anything you said -

hate to feel that anything you said was directed against him? A. Yes.

Q. What was the reluctance to answer these questions? A. I didn't want to injure Mr. Eskeil in his position as the new Liberal leader in the Upper House and a possible Cabinet aspirant.

(Short adjournment).

MR. GRUZMAN: Q. Mr. Armstrong, do you remember in the course of your evidence before saying that Quinn had put in one-third of the capital, if I understood you correctly, into Landmark? A. No, I would not be clear on that one. He had one-third in most cases of the private companies which were merged together and floated off as Landmark. That is what I understand.

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Q. He had one-third and you had two-thirds of the private companies? A. Yes, as I recollect.

Q. And your joint assets became the basis of Landmark, is that right? A. The joint assets of those companies became the basis of Landmark as I recollect.

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Q. So that you regarded yourself as putting in two-thirds of the cash and Mr. Quinn as putting in one-third of the cash? A. I don't know really what I regarded at that time - it is so long ago, Mr. Gruzman.

Q. You regarded yourself as putting in two thirds of the substance and Quinn as putting in one-third, is that right? A. I could not be accurate on it. This is a very -

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Q. I won't hold you to 30 percent or 40 percent. I won't even hold you to 50 percent. Do you understand? Recognising that the percentage may be reasonably inaccurate, did you regard yourself as putting in a very substantial part of the cash and Quinn putting in a less substantial part of the cash into Landmark? A. It would not be correct to say cash. These companies already had assets which were sold to Landmark. Correct.

Q. The private companies? A. Private companies. There would not be much cash put in at that stage.

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Q. In other words, you would not be paying in cash and Quinn would not be paying in cash? A. I cannot recollect it clearly.

Q. In substance what happened, if I understand you correctly, is that you have private companies and Quinn had private companies? A. Yes, but I can't recall the details clearly at this stage. They are matters of record, and they can be easily obtained.

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Q. I am not holding you within close percentages, you understand, but I am taking you up on your gratuitous statement that Quinn put in one-third and you put in two-thirds? (Objected to: rejected).

Q. Do you in substance tell his Honour that in Landmark Quinn put in one-third and you put in two-thirds? A. I don't recall accurately.

Q. Substantially? A. I don't recall accurately.

Q. Substantially? A. I don't recall accurately.

Q. Are you prepared to make any statement as to what you and Quinn respectively put into Landmark?

A. I don't think I should, because I don't recall it accurately. It can be so easily obtained from the prospectus or the books, and then there is no question of my memory. 10

Q. Whether what went into Landmark was cash or assets you would say, would you, in substance that you and Quinn both put cash or assets into Landmark?

A. I don't remember exactly.

Q. You see, sir, you have not told the truth about this, have you? A. I don't remember exactly. I have told you that all along.

Q. Would it be true to say that Quinn really put nothing into Landmark? A. No, I would not think that would be correct. 20

Q. What are you prepared to stake your oath on?

A. Nothing as regards this matter.

Q. Nothing? A. I have no clear recollection of nine years ago exactly what the position was with Landmark. I could easily find it out for you if I am allowed to refer to the books, so I don't see why I should have to stake my oath on something I don't recollect. 30

Q. You had a recollection before of you and Quinn being in the proportions of one-third and two thirds, didn't you? A. I said I had some recollection of that. I never said I was accurate on it. There could have been some other cash introduced. It is very simple to find out - if it is relevant.

Q. You see, sir, I put it to you that Landmark was all your assets and not Quinn's at all? A. No, I would not agree with that.

Q. But the substance of the matter was that Landmark was your flotation and that Quinn was, so far as the asset position was concerned, a nonentity in the matter? A. No, I would not agree with that at all. He had a lot of shares in Landmark, if you look at the float. 40

Q. You told us before you lent the money to buy them? A. No, not all of them. I don't recall the proportions of lending, or what occurred at that time.

Q. Did you write this? Perhaps I might show you this, first of all. Under notes headed "Eskell. April 6 '61" did you write "3. I have been far too good to Quinn. Remember he has put no cash into 50

L/M and has been overpaid on his collections for all companies before Landmark was formed."? A. That appears to be right. When I said the companies were floated, Quinn's efforts were considered worth one-third of the assets of the companies. That is where he got the shares of the first one-third situation, so that when Landmark was formed he got a basic one-third of the assets of the companies so far as I can recollect. I don't recall this matter clearly. If it is relevant I can easily find out further details on the matter.

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Q. They were your private companies which were floated, weren't they? A. Private companies.

Q. They were your private companies? A. I can give the exact shareholdings if I am allowed to do so.

Q. They were your private companies in substance which were floated into Landmark, weren't they? A. I don't call something mine if someone else has an average of one-third interest in it.

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Q. Did Quinn prior to the formation of Landmark have a one-third interest in most of your private companies? A. As I recollect - I am not clear - when I say most of my private companies, most of my private companies which went into Landmark, I would think he did. I am not clear.

Q. That was his own money? That one-third interest was represented by his own money? He held it beneficially, in other words? A. I don't quite know what you are getting at here. All I know is that in these companies I believe - I think Quinn had probably one-third, and I had two-thirds.

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Q. And that third that Quinn had, he owned for himself? A. I am not sure if he owned it for himself. I think he may have owned it for some of his private companies.

Q. No idea? A. No.

Q. What did you mean when you said "I have been far too good to Quinn. Remember he has put no cash into Landmark"? A. What I meant there was that most of these private companies, I had made loans to them from my own assets. They were loans to the company's entity itself, not loans to Quinn.

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Q. So that the private companies that went into Landmark were operating on your money? A. Some of them. I think there was some borrowed money.

Q. But not Quinn's money? A. I don't think Quinn lent any money to them. I still am not clear.

Q. All Quinn had was an interest in the profits, if any? (Objected to: rejected).

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Q. You see, you made a statement that Eskell undermined Quinn, didn't you? That was one of your statements? A. I wish you would not - could we

be more specific? I wrote down my thoughts that he undermined Quinn. I didn't make the statement that he undermined Quinn.

Q. You had a thought in a document? A. Yes.

Q. That Eskell undermined Quinn? A. That was a thought, yes.

Q. April 6th, 1961 - I won't read all of it - in para. 1 (c): "Quinn grossly over-paid and does not work". That is in your handwriting, isn't it?
A. Yes, it looks like a medium of discussion with Eskell and myself.

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Q. These notes are headed April 6, 1961? A. I don't know what they were for.

Q. "2. I feel we should not upset Quinn until after the Korfena take-over, but unless Palgrave follows within say three months Eskell must come in as managing director and Quinn return to development." A. Yes.

Q. "3. I must get some market for Landmark shares or get some placed privately." A. Yes.

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Q. What were you doing or getting out of the market for the Landmark shares? A. I was not selling any. I don't know what I was doing at that stage. That is nine years ago.

Q. Para. 1 reads "Cannot go on being a fairy godmother to Landmark forever. (a) Loan should be repaid" etc. "(b) Supporting the shares. Check amount spent." A. This would be the -

Q. Were you building up the share price of Landmark shares? A. I don't know. I can't recall what I was doing. That is what I wrote down.

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Q. That is what you were doing? A. I don't know.

Q. "Cannot go on being a fairy godmother to Landmark forever." A. I don't know. That would refer to loans.

Q. In para. 4, the words "I must get some market for Landmark shares, or get some placed privately". What does that mean? A. I don't recall what I was doing then.

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Q. "5. Constable owes us a favour. He was very lucky to have Messel and float so easily." Constable being the sharebroker? A. Apparently, yes.

Q. You thought Constable owed you a favour because you gave him an easy flotation? A. I don't know what that was referring to. I can't recall what that referred to.

Q. It could not mean anything else? A. What was the flotation that we gave Mr. Constable?

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Q. What flotation was there in which Mr. Constable

was the stockbroker and Professor Messel was involved? A. That must have been Australian Factors I suppose.

Q. Australian Factors? A. Yes.

Q. Then you say - I can't read something in red pencil. Perhaps you might care to read it. What is that in red pencil at the bottom of the document. There are a number of other paragraphs which have not been read? A. This is just thoughts of mine. I don't know whether it was even written at the same time. 10

Q. Read out what it was? A. "Necessary to do something about my organisation, accounts and control. This cannot be let go for ever while other jobs are attended to." I take it I was probably attending to too much from Landmark.

Q. What does it say at the bottom? A. "Goulburn for instance needs attention".

Q. "Goulburn for instance needs attention"? A. Yes. 20

MR. GRUZMAN: Q. I will come back to that. Do you remember in a conversation, which you have denied, Mr. Barton said you would go as far as death? A. Was this a conversation in which Mr. Barton said I would go as far as death?

Q. Yes. A. I recollect him making that allegation.

Q. And you denied that allegation? A. Yes.

Q. Do you remember some considerable time prior to that having a conversation with Mr. Barton where he told you that there were rumours that you had been responsible for the death of a person in Goulburn? (Objected to: allowed). 30

Q. Do you remember Mr. Barton said to you that there were rumours that you were responsible for the death of a person in Goulburn? A. I cannot recollect this conversation clearly at all.

Q. You are not prepared to deny it, are you? A. I do not recollect it. When was it supposed to have taken place?

Q. I will give you that in a moment? Do you remember saying to... (interrupted). 40

HIS HONOUR: I think you ought to give the date. If you are going on to the conversation, Mr. Gruzman, it is not unreasonable for the witness to ask the alleged date.

MR. GRUZMAN: Q. The conversation I suggest to you took place during the year 1965 in the Landmark office with Mr. Barton. A. I cannot recollect it.

Q. Do you remember referring Mr. Barton to Mr. Lammerton, and you said "Ask Mr. Lammerton about it. I won't talk about it."? A. I cannot say I do. 50

Q. You had some companies in Goulburn, didn't you? A. That is right.

Q. And those companies were finance companies?
A. That is correct.

Q. There was a firm of accountants in Goulburn called C.M. Alders & Co., who were looking after the companies, wasn't there? A. That is correct.

Q. The gentlemen concerned were Carl Alders, the principal, and Mr. Chester, who was the man who actually looked after it? A. I think they were partners actually. 10

Q. And you decided to float those companies into a public company, did you not? (Objected to)

MR. GRUZMAN: This is related to that same matter. I will withdraw that question.

HIS HONOUR: Mr. Staff, it seems to me you are entitled, in protection of your client, to have this substantial allegation made at the outset, and attention drawn to it, rather than have the ground-work laid. I think you will have to take your own course on this, Mr. Gruzman. I understand you to be putting this on the basis this is some entire series of events. 20

MR. GRUZMAN: It is. I am prepared to put the substantial allegation.

Q. I am going to suggest to you that you brought extreme and ruthless pressure to bear on Mr. Chester and another person, with the result that they committed suicide? (Objected to). 30

HIS HONOUR: I won't require an answer to that question. The witness' mind has been directed to it. I am prepared to reject it; on the other hand, it seems appropriate, in the witness' interests, he should know what the subject matter relates to.

MR. GRUZMAN: Q. I want you to understand I am going to ask you a series of questions now relating to events in Goulburn, and the suggestion I am going to make to you is that you applied extreme and ruthless pressure to certain men there with the result that they committed suicide. Do you understand I do not require an answer, except you do understand that is the suggestion I am going to make to you in this series of questions? A. That you are going to go on in this vein? 40

Q. Yes. A. Yes, I understand that.

Q. You had these finance companies in Goulburn, did you not? (Objected to - rejected).

Q. Did you have some business interests in Goulburn? A. That is correct. 50

Q. Were they finance companies? A. Mainly, yes. Some were building. There was one building company. Moneylending companies I would call them in principle.

Q. What were the names of them? A. As I recall, Southern Tablelands Finance Co.; Goulburn Acceptance Pty. Ltd.; Finlayside Pty. Ltd.; Armchest Pty. Ltd.; Chesarm Pty. Ltd. How many is that? There were six. I think there were six.

Q. That is five. A. I cannot think of the other name at the present time.

Q. The accounts of these companies were looked after by C.M. Alders & Co., weren't they? (Objected to). 10

Q. When were these companies formed? A. I cannot recall exactly.

Q. What is the best of your recollection? A. About 1955 or 1956. Something about that. I am not sure.

Q. When they were formed, who looked after the accounts? (Objected to).

Q. The firm C.M. Alders & Co. consisted of Mr. Alders and Mr. Chester, didn't it? A. I am not sure whether there was another partner. I cannot recollect this at the moment. The first was called C.M. Alders & Co. 20

Q. To your recollection there were two partners, were there? A. There were certainly two. There might have been more.

Q. One was Mr. Carl Alders, and the other was Mr. Chester? A. Yes.

Q. Was that firm entrusted with the accountancy work for the companies that you have mentioned? A. It was entrusted with more than the accountancy work. It was entrusted with the entire running of the companies. Mr. Chester was a director of the companies. He was an active participator in the lending. 30

Q. What do you mean by "an active participator in the lending"? A. He actually ran the companies. He was the man who did the work.

Q. He approved the loans? A. That is right.

Q. He was an accountant, was he? A. He was an accountant, and also he had been engaged in finance work before. 40

Q. His job was something far more than accountancy? A. Much more. He was a director of the companies. He was the managing director of the companies.

Q. You say he had the whole control and management of the companies do you? A. Basically. He used to confer with me. He had the active writing of the papers; or somebody under him. He was responsible for it.

Q. When it came to making a loan, who was responsible for it? A. Mr. Chester. 50

Q. Not you? A. Mostly Mr. Chester. He was mostly on motor vehicles.

Q. Didn't you go into it with him? A. No. I might have seen him once a fortnight, or once a week.

Q. How long did that situation continue? A. I am not clear at the moment. I do not recall the date exactly when Mr. Chester did commit suicide, but it may be on records in police files.

Q. He was missing on 18th September, 1958 and found drowned on 3rd October 1958. A. I thought it might have been later. 10

Q. Did you say he handled the affairs of these companies in this way until the date he was drowned? A. Basically. Possibly a few days before. There was an investigation by a firm of accountants. Up to three months before he was missing he handled the affairs of the company. He was managing director or manager of the company. I do not know when we found out there was some irregularity in his management. Don't hold me to a date. Up to the date he was missing there was some irregularity; before the date he went missing. 20

Q. Would it be fair to say up to three months before he went missing, he had control and management of the companies in the way which you have told us? A. I think it would be. I would not go and state my oath on it, but I think it would be something like that period.

Q. How long before he went missing was it that you discovered these irregularities? A. I cannot recollect that now, exactly. 30

Q. To the best of your recollection? A. I really cannot recollect it accurately.

Q. I won't hold you to within a month. A. I cannot say within a month.

Q. Three months? Six months? A. I do not think it would be as long as six months. It may be as long as three months, but I am not accurate on it.

Q. That is your recollection, is it? A. Yes. 40

Q. And what you decided to do was float these companies into public companies, wasn't it? A. No, I did not decide to do it. I decided to take advice as to whether it would be wise to float them into public companies.

Q. This was your plan? A. If the companies were good enough, yes.

Q. For that purpose you engaged this firm of accountants? A. Yes, that is correct, I think.

Q. And they made an investigation of the affairs of the companies? A. Yes. 50

Q. You might tell his Honour what that investigation showed. (Objected to - rejected).

Q. Did you believe as a result of that investigation that you had lost a substantial sum of money?

A. I think the facts proved that these companies had lost a substantial sum of money. I do not know what the amount lost was. It would be hard to know at this stage. Some was recovered later. I think it would be fair to say the investigations showed irregularities in the lending methods of the companies.

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Q. When you say the companies had lost money, it was your money, wasn't it? A. Monies owned to companies belonging to me. Mr. Chester was also a shareholder in some of these companies. His partner was a shareholder, and they had procured loans from some of their clients for the companies, but it is a long time ago. I would hate to say, without going back through the books.

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Q. As a result of the investigation you believed you had lost a great deal of money, didn't you? A. I do not know what amount of money I had lost at that time, and I do not know what amount I did actually lose in those companies.

Q. If I can suggest a figure to you, that was in your mind at the time, did you believe you had lost something of the order of £40,000? A. No, I think it would be less than that. £20,000 to £30,000. I would not be clear. As you know, with many hire purchase debts, some is collected and some is not.

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Q. Did you attribute the blame for your loss to the negligence of Mr. Chester? A. I suppose it would be incompetence and negligence and possibly something a little worse than that.

Q. There never was any suggestion of anything worse than incompetence or negligence, was there?

A. I would have said yes.

Q. That is a gratuitous insult to a dead man, isn't it? A. The way you put it; it is not meant to be at all, but if I have the documents I can tell you what occurred.

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Q. The accusation against Mr. Chester is that he was both incompetent and negligent. A. And dishonest.

Q. I put it to you you never thought at any stage, nor did anybody else, that Mr. Chester was dishonest.

A. I think he was. He did not even acquaint his partner of some of the things he had done. His partner did the audits, and took his word for it. I do not know if you call that dishonest. I think it is.

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Q. The complaints against Mr. Chester were that he made improvident loans to people who did not pay. That was one series of complaints, wasn't it? A. Yes.

Q. And the other complaint was he was not sufficiently hard about recovering payments? A. I just said he was not

competent in managing the business. He also made some very unusual loans.

Q. When you say he was incompetent in managing the business, you mean he did not recover from borrowers the payments in the way that he should have, do you? A. I do not know that he lent the money in the way he should have in the first place.

Q. The nett result was that money was loaned out to people and not recovered. A. Some money was lent without any security at all. 10

Q. And you then proceeded to endeavour to get the money from Mr. Chester, didn't you? A. I would not have had much chance of that.

Q. Will you agree that you applied pressure on Mr. Chester to re-pay to you himself, personally, the loss sustained by the company. A. I cannot recollect that. I do not remember it at the time. I could have thought that, but I do not think he had sufficient assets to do so. 20

Q. This is a serious matter. Is the best you can say on your oath in this Court that you cannot recollect whether or not you applied pressure to Mr. Chester to repay personally the monies lost by the companies? A. Could you define "applying pressure"?

Q. Did you make efforts to get Mr. Chester personally to repay to you the monies lost by the companies? A. I cannot recollect what I did in any detail at this stage.

Q. You threatened to sell his house, didn't you? A. No, I do not recall this. I do not think I had a mortgage over it. I think he had a mortgage over it which he was paying off. So I could not sell it unless he was in default in his mortgage. I do not recall it. I had solicitors acting for me in the matter. 30

Q. Did you send some men to Goulburn? A. The investigating accountant, do you mean?

Q. Apart from him. A. Not that I can think of. Only eventually to take over the management of the business. 40

Q. Did you send Mr. Lammerton down? A. No. I think Mr. Hulls and Mr. Lammerton went first together. I do not recall.

Q. Mr. Hulls being an investigating accountant? A. Yes, and Mr. Lammerton was sent to help Mr. Hulls.

Q. Did you send another man down? A. Not at that time. I cannot recollect when another man went down.

Q. Was one of the people who owned a substantial sum of money a man called Churchill? A. I cannot recollect that. It would have been. I would have to 50

have documents. There were hundreds of transactions on the files of this company.

Q. Don't you recall Mr. Churchill at all? A. No. I think there was a Churchill engaged in some kind of produce enterprise, but whether a loan was made to Mr. Churchill or his company I cannot recall.

Q. You know the man I refer to, don't you? A. Very vaguely.

Q. Don't you know this man committed suicide too? 10

A. No, I do not remember that.

Q. You cannot recollect that? A. I do not recall that one in connection with this matter. It is nine years ago. It may be I could recall it if I had newspaper cuttings on it. I do not recall it clearly at the moment at all.

Q. Doesn't it come clearly to your mind that some three months after you discovered these irregularities, two men committed suicide within ten days of each other in Goulburn? A. No, I cannot say it does. I remember Mr. Chester, but I cannot remember much facts about the other matters. 20

Q. Wasn't Mr. Churchill and the produce firm with which he was associated, or in which he was a partner, the biggest single creditor? A. I would not have thought so, but I would not know.

HIS HONOUR: Creditor or debtor?

MR. GRUZMAN: Debtor.

HIS HONOUR: You said creditor.

MR. GRUZMAN: Q. Were you not aware that Mr. Churchill or the produce company with which he was associated was one, at least, of the largest single debtors of the finance companies? A. I cannot recollect that now. 30

Q. Hadn't they financed six trucks in a transaction? A. Look, I could not recall this now.

Q. Do I understand you to say that up to this moment you have no knowledge of Mr. Churchill committing suicide? A. No, I cannot say I can recall it. Now you mention something about the man, something does seem to come back to my mind, but Mr. Chester was the only one I connected with my company. Mr. Churchill is just a name to me. 40

Q. What was your general attitude when you found out this money was missing? A. I could not recollect what my general attitude was at that time.

Q. Were you prepared just to accept it? A. No, I did my best to recover it, or my agents did.

Q. Your agents being whom? A. Mr. Chester for a while was said to recover it, and my agent at the time would have been Mr. Hulls mainly, and in the actual 50

management of the business, the final collection of the business, I would say Mr. Ashcroft.

Q. What I understand you to say is that there is not now and never was present to your mind the dramatic fact that two men associated with the company committed suicide within something like ten days of each other. (Objected to - rejected.)

Q. You have no recollection of it at all?

A. Not clearly, no. I never considered that the debtors of the company were associated with it in any shape or form. They were just debtors.

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Q. I will put it to you simply: do you tell his Honour you have not now in your mind and never have had in your mind the thought that Mr. Churchill and Mr. Chester both committed suicide within ten days of each other? A. I do not even remember it was the fact that they did commit suicide within ten days of each other. I don't know.

Q. Do you remember the produce store? A. Not clearly.

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Q. But you have got a recollection of it? A. Very vague at this time.

Q. Who was the man in the produce store? (Objected to).

Q. Don't you remember Mr. Churchill as the person who dealt with your companies on behalf of the produce store? A. I have no clear recollection of it.

Q. Did you also seek to recover your losses from Mr. Alders? A. I believe I did. I believe I actually did recover some of this. In fact I think his Honour was in some way involved in this. I cannot recollect it clearly. I think an opinion was sought from his Honour.

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HIS HONOUR: I have a vague recollection this man Chester's name was mentioned when I was at the Bar. I think it was in the late '50's. I would not have any recollection of the circumstances or the individuals.

WITNESS: I think your Honour was asked your opinion at this time.

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HIS HONOUR: I think I should turn this up.

(His Honour perused private documents).

The only recollection I have of anything to do with this is that the name Chester is familiar. I remember a suicide. I remember a company with financial complications on which I was consulted. I have no recollection who the other individuals concerned with this financial problem were. I have no recollection of the financial problem itself, except that it concerned hire purchase transactions, a type

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of transaction that frequently gives rise to financial failures. I apparently wrote an advice on 20th October, 1959 in connection with the affairs of C.M. Alders and Co., coupled with a memorandum of the same date. On 7th December, 1959 I wrote a memorandum on a deed, having settled that deed in November, and I have a note of a conference on 21st December which I presume was with a solicitor without a client present. I would only say from the financial records I have in the matter that so far as I was concerned it must have been a matter that so far as I was concerned it must have been a matter of very minor concern. I do not feel the slightest bit embarrassed about it. 10

MR. GRUZMAN: Q. Did you also seek to recover your losses from Mr. Alders? A. I think it would be correct to say from C.M. Alders & Co. Mr. Alders or C.M. Alders & Co.

Q. In fact did Mr. Alders suffer a nervous breakdown? (Objected to - rejected). 20

Q. Do you know a Dr. McCaffrey? A. Yes, I think I do recall Mr. McCaffrey in Goulburn.

Q. He was in Goulburn at the time? A. I think so, yes.

Q. Did you know him as a friend of Mr. Chester's? A. I do not recall very much. I used to know Dr. McCaffrey. I knew him reasonably in Goulburn. I do not recall whether he was a friend of Mr. Chester or not. He could have been.

Q. Do you know whether Dr. McCaffrey saw Mr. Chester on the day he disappeared? (Objected to). A. I do not recall much about the detail of it now. 30

Q. Mr. Chester was a soft-hearted man normally, wasn't he? (Objected to - rejected).

Q. I will withdraw that. Mr. Chester was a man who in your belief was not sufficiently firm with debtors to the company, wasn't he? A. I cannot recall what I thought about him at that time.

Q. And he was a man who in your view was himself susceptible of pressure, wasn't he? A. I could not answer that. I do not know what he was susceptible to. 40

Q. Susceptible to pressure? A. I would not know.

Q. And you were seeking to compel him to sell up his assets to refund your money? A. I do not recall this at all. My legal advisers were acting in the matter, I think in that case.

Q. You have received letters from Mr. Alders, haven't you, from time to time? A. I cannot recollect these.

Q. Do you recognise Mr. Alders' handwriting? A. No, I could not say I do at this stage. 50

Q. I want you to assume for a moment that the document which I am now showing you, and which consists of two pencil pages, was written by Mr. Alders a good many years ago. A. You want me to assume that?

Q. Yes. Mr. Alders is now dead, is he not?

A. I do not know.

Q. You do not know? A. No.

Q. I want you to read to yourself paragraph (2) of the document, down to the words "I think"? (Objected to - allowed). 10

Q. I will mark with a cross within a circle at the beginning and end of the passage which I ask you to read. A. Yes, I have read that.

Q. I want to ask you some questions about the events which occurred prior to Mr. Chester's death. First of all, did you allege that the firm of C.M. Alders & Co. had failed to conduct an audit? A. I do not know whether I alleged it or whether my solicitors alleged it. 20

Q. And that firm was liable for the partner's negligence? A. I think this was a statement that could have been made by my solicitors.

Q. And securities had not been taken for all loans? A. It is very vague. I do not know whether I alleged it or it was alleged in proceedings, but it appears to me that should have occurred.

Q. Would you agree that extreme and ruthless pressure was brought to bear on Mr. Chester and Mr. Alders? A. I would not think so. 30

Q. Will you agree that the result of that pressure was two lives lost? A. No.

Q. And that Mr. Alders was unable to carry on business because of a nervous breakdown? A. No.

Q. Is it true that you undermined Mr. Chester's position, and knew of these irregularities which you yourself instigated? A. Certainly not.

Q. And you placed Mr. Chester in an impossible position, didn't you? A. I do not think so. No. The thing was such a quick situation. I did not know much about it until the irregularities had actually occurred. I did not suspect there were any irregularities at all till I sent the auditor up there. 40

Q. But you knew for some three months before Mr. Chester died of these irregularities, didn't you? A. No. You will remember I was very vague on that. I did not know whether it was a week or three months or six months.

Q. You did not say that, did you? A. I said I did not recall clearly. 50

Q. You said it was not as long as six months, but

it could have been three months, didn't you?
(Objected to).

HIS HONOUR: The witness was careful not to commit himself.

(Third last answer on p. 878 read)

MR. GRUZMAN: Q. Anyway, it was a period of some months? A. No, I do not know how long it was. It could have been a week. I am not accurate on it.

Q. I want to show you another document. Examine that document. Have a look at the heading. I am pointing out to you the heading on the document. 10
A. Yes.

Q. I want you to look at paragraph 6 of the document. A. Yes.

Q. Will you now admit that extreme pressure was brought to bear on Mr. Chester, with the result that he finally committed suicide? A. No. These are only Mr. Alders' thoughts again.

Q. Mr. Alders was an honourable man, wasn't he? 20
(Objected to - rejected).

Q. Mr. Alders was present in Goulburn when you discovered these irregularities, wasn't he? (Objected to - allowed). A. They were brought to his attention, I think, by Mr. Hulls.

Q. And throughout the period of the investigation and up to the disappearance of Mr. Chester, Mr. Alders was Mr. Chester's partner, wasn't he? A. As far as I know, yes.

Q. And daily associated with him in the business? 30
A. They were in the same office. I do not know whether they were daily associated. I would not know what they did.

Q. You would have every reason to believe that, wouldn't you? A. No. I would not. I would not have thought that.

Q. Did you make any efforts to get money from Mr. Chester or Mr. Alders? A. I cannot recall clearly what they were, but as far as I know some writs were issued against both of them, or one of them, or the partnership. I am not clear. I think I made some effort to get them, or my solicitor did. 40

Q. I suggest to you there was no writ issued against Mr. Chester. A. I could not recall that.

Q. But you have a recollection, have you, of attempting to get money from Mr. Chester? A. I cannot recollect.

Q. You are not prepared to deny it? A. I really do not recall it. I think the suicide occurred so quickly after we discovered the events, I would not know. 50

I would not know whether we attempted to get money from Mr. Chester or not.

Q. You are not prepared to deny you made efforts to get money from Mr. Chester, are you? (Objected to - rejected).

(Documents on which marks were placed for the witness's identification, m.f.i. "46").

(Document on which the witness was asked to read paragraph 6, m.f.i. "47").

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(Notes previously referred to, headed "Eskell April 6, 1961", m.f.i. "48").

Q. At this period of your life, that is going back now to 1958, were you ruthless in business? A. I don't think so.

Q. Would you expect people who were working for you in business to be ruthless? A. I would not think so.

Q. That is not true, is it? A. I cannot recollect what I thought back in 1958 about people working for me. I have told you that. I just cannot recollect it.

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Q. It is quite possible, is it, that you did expect the people who worked for you in 1958 to be ruthless in business matters? A. I cannot recollect it.

Q. Have a look at this letter dated 8th September 1958, addressed to Mr. Alders. That is your signature, is it not? A. It appears to be, yes.

Q. And it is your handwriting? A. I think so, yes.

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Q. "Dear Carl". Did you read this? A. Yes.

Q. "I am writing to confirm our phone talk yesterday as to policy regarding the six finance companies. We may adopt a different policy after we meet, but at the present time proceed as below. (1) No further lending whatever except on Powell's Floor plan, this to be restricted as much as possible." A. That is right.

Q. "(2). Concentrate on collection of outstanding debts. I wish to be quite ruthless as regards debtors whose contracts are in arrears and whose cars when repossessed and sold will easily recover our losses." A. That is right.

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Q. That was your view, was it? A. I do not think the word "ruthless" is taken in the right context there. I just mean they should recover the cars efficiently, and repossess them.

Q. Don't you know what "ruthless" means? A. In the context I meant they be efficiently repossessed.

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Q. Not only "ruthless", but "quite ruthless"?

A. That does not mean anything serious to me there.

Q. What you wanted Mr. Alders to do was to be, as you said, "quite ruthless", where you could get a car and sell it and get your money, wasn't it?

A. Repossess the car and sell it, and recover the money.

Q. Then you went on to say "In the case of the others, whose asset is not so good, proceed cautiously, but try to collect it," A. That is right. 10

(Luncheon adjournment).

AT 2 P.M.

(Mr. Gruzman formally called on subpoena the Southern Tablelands Finance Co. Mr. Bainton produced certain documents. Counsel addressed).

HIS HONOUR: The secretary is the proper officer to produce the records which would fall within the subpoena, both to produce and to answer any questions that might be put to him to probe the sufficiency of the answer. I will defer further proceedings on the subpoena until 10 o'clock in the morning when I hope the secretary will be in attendance. 20

(Mr. Gruzman sought leave to peruse document produced on subpoena from the Justice Department)

MR. GRUZMAN: Q. I ask you to read to yourself a letter, for identification dated 22nd December, 1959. A. Yes, I have read that.

Q. Now I would like you to read this letter dated 2nd March, 1960, between the same parties. A. Yes. 30

Q. Will you agree with me that there was no suggestion of dishonesty on the part of Mr. Chester?

A. I could not tell what those letters meant by reading them like that.

Q. Have another look. Look at this, the indented paragraph towards the bottom of the first page. A. I do not know what it means. I cannot comment.

Q. You see what it says, don't you? A. Yes, but I cannot comment. 40

Q. And you see what the other letter says, don't you? A. Relating to £1,000?

Q. Yes. Will you agree there never was any suggestion of dishonesty on the part of Mr. Chester or anyone else in Mr. Alders' office? (Objected to - rejected).

Q. There was never any suggestion by you of dishonesty on the part of Mr. Chester or anyone else in Mr. Alders' office, was there? A. I could not tell you what I suggested. 50

(Letter dated 22nd December, 1959, m.f.i. "49")

(Letter dated 2nd March, 1960 m.f.i. "50")

(Documents from Justice Department produced to Mr. Gruzman).

Q. I have made a number of suggestions to you respecting your credit in this case, haven't I? You have appreciated that? A. Yes, I believe so.

Q. I am now going to ask you whether you have been party to a transaction whereby you threatened exposure of the Commission of criminal offences against a man in return for or in a threat to obtain information. Have you ever done such a thing? A. Could we go through that again? I would like it slowly. 10

Q. Yes. I am asking you whether you have threatened a man with exposure for the commission of criminal offences as a threat to compel the man to give you information. (Objected to).

HIS HONOUR: I think you should put it more grammatically, Mr. Gruzman. 20

MR. GRUZMAN: Q. Have you ever said to a man in effect "I will reveal that you have committed criminal offences unless you assist me with information"? A. I cannot quite understand the question even now. Could you tell me what it is intended to mean?

Q. I do not want to use the term, but have you indulged in what is popularly thought to be blackmail to get information? (Objected to).

HIS HONOUR: I do not like the phrase "popularly thought to be". 30

MR. GRUZMAN: Q. Would you understand that if you threatened to reveal that a person had committed a criminal offence and by that threat obtained or sought to obtain some benefit, that you would understand that to be blackmail? A. I am still not with the question. I do not know what it is alluding to. It appears to be purely hypothetical.

Q. Don't worry for the moment whether it is hypothetical or not. Is it your understanding of the meaning of the word "blackmail" that it includes the case of a person to reveal the commission of a criminal offence for the purpose of obtaining some benefit? A. I have never thought of it in that light. Blackmail I have always thought has been more simply expressed. 40

Q. How would you express it? A. I find it difficult. I am finding the same difficulty as you are. What I would exactly describe as blackmail. Using some knowledge that you had over somebody to get some benefit for yourself. That is how I would describe "blackmail" more simply. 50

Q. And in that sense, have you ever blackmailed anyone? A. I do not think so.

Q. Aren't you sure? A. I cannot recollect any occasion of so doing.

Q. Is it possible that blackmail is in your repertoire? A. I cannot recollect it.

Q. Is blackmail a form of pressure that you use? A. I cannot recollect it.

Q. I say again, as a member of Parliament do you concede the possibility that you have blackmailed a person? A. No, I did not concede anything. 10

Q. Are you prepared to say categorically on your oath "No, I have never been party to anything that could be called blackmail"? A. I do not know what you might call "anything". It is very difficult.

Q. Are you prepared to say on your oath "I have never been a party to anything which I, Mr. Armstrong, would regard as blackmail"? A. I find the question very difficult to answer. 20

Q. You see, you know that blackmail is also part of your stock-in-trade, is it not? A. I find that question offensive.

Q. Are you prepared to answer it? A. No. I just find it offensive.

MR. GRUZMAN: I will be entirely guided by your Honour in this. Your Honour sees the nature of the suggestion, and the name of the person is obviously - I say it is a name which has been referred to in this Court. I am not out to involve people who for all we know, may be perfectly innocent. I prefer to call him "Mr. A." 30

HIS HONOUR: I do not like the unnecessarily dramatic mystery that surrounds the use of a pseudonym such as "Mr. A." or anything else it may be. I do not think there is any satisfactory alternative between using no name at all, which is what I would prefer if you are able to conduct the cross-examination along those lines, or if that is impossible, writing the name on a piece of paper. You may show the name on a piece of paper to the witness. I do not like the use of abbreviations. 40

MR. GRUZMAN: Q. I have written a name on a piece of paper which the Court officer has now handed to you.
A. Yes.

(Abovementioned piece of paper m.f.i. "51").

Q. I want you to understand that the questions I am about to ask you relate to the person who is named on that piece of paper. Do you understand?
A. Yes. 50

Q. We won't refer to him by name. A. Yes, or by pseudonym or anything?

Q. Yes. Did you believe that man had committed a criminal offence? (Objected to).

HIS HONOUR: I think you should put a time to the witness, Mr. Gruzman.

MR. GRUZMAN: Q. During the year was it your belief that at some time prior to that time, this man had committed a criminal offence. (Objected to).

HIS HONOUR: What I shall do with this piece of paper is have it handed up and placed in an envelope and retained with the Court papers. At this point of time I do not see, whatever this name is, that it need necessarily be stated, but if at a later point of time it does become of any significance and understanding in pursuing cross-examination or re-examination, then I shall re-consider the matter. I have no idea what the name is, but the fewer strangers that find themselves the subject of evidence in this allegation the better. Having given that general ruling, I think the general question asked is admissible. 10 20

MR. GRUZMAN: Q. During the year 1962 was it your belief that this man had committed a criminal offence? A. I do not think so. I can recollect it.

Q. I will put it specifically to you. Did you believe that he had committed a robbery involving the sum of £1,500? A. No, I cannot recollect this. It is a long time ago. I just cannot recall it.

Q. Wasn't this man a man whom you sent to Goulburn? A. I employed him at Goulburn. 30

HIS HONOUR: Q. In Goulburn? A. The group of finance companies employed him at Goulburn to take over the business previously run by Mr. Chester, in conjunction with another accountant who was there. This man did the more physical work of repossessing and reselling the cars.

MR. GRUZMAN: Q. Did you believe that this man had broken into or otherwise illegally removed assets from a garage at Goulburn amounting to £1,500? A. I cannot recollect that at all. 40

Q. That would be a dramatic occurrence, wouldn't it? (Objected to - rejected).

Q. That would be an occurrence, if it occurred which would impress itself upon your memory, wouldn't it? A. I do not think so. If he broke into a garage - I do not know that he ever did. I just cannot recall it.

Q. Is this the position, that you are saying on your oath you have no knowledge as to whether or not this man was involved in a robbery at a garage involving £1,500? A. Where was the garage? Can you refresh my memory a bit? I might be able to help you. 50

Q. I suggest the garage was at Goulburn? A. I cannot recollect it.

Q. Wherever the garage was, are you prepared to say on your oath that you have no knowledge of a robbery at a garage involving the figure of £1,500 by this man? A. No, I cannot recollect it.

Q. You cannot recollect it one way or the other?
A. I do not think it was likely, but I cannot recollect any details about it.

Q. But this might have happened, might it? A. I do not know. As far as I know there are not any convictions against this man.. I do not know. I have known his father for many years. 10

Q. I am not suggesting to you there were any convictions. I want you to understand the suggestion to be you had knowledge that could have resulted in a conviction? A. No, I would not think so. I would not think I would have knowledge that could have resulted in a conviction.

Q. Are you prepared to swear that you had no such knowledge? A. I just cannot recollect it. 20

Q. That is an evasive answer, is it not? A. No. I just cannot recollect it.

Q. Are you suggesting to his Honour that you may or may not have had knowledge that this man committed such a robbery? A. I just say I cannot recollect it. I do not think he did commit a robbery. I cannot recollect it.

Q. Did you believe that this man was involved in some tax theft or fraud involving the sum of £1,100?
A. I cannot recollect that either. 30

Q. Do these figures and suggestions mean nothing to you? A. They do not ring a bell.

Q. They do not ring a bell? A. As far as I can recollect, no.

Q. I suggest to you, and I have to be a little vague as to whether it is a theft or a fraud involving the tax of £1,100, that took place whilst you were away in 1961. A. If you can be a bit more specific, please do so. My memory does not go back to 1961 on a matter of £1,100. 40

Q. Do you recall a fire at the Farmers and Graziers building at Goulburn? A. Could you be more specific?

Q. The Farmers and Graziers office in Goulburn retained records relating to your sheep sales and so on, didn't it? A. I do not know what it retained.

Q. Do you recall a fire when those records were destroyed? A. No, I do not.

Q. Did that happen? A. I don't know.

Q. Did this man obtain from Mrs. Armstrong a loan to your knowledge? A. I do not know what Mrs. Armstrong 50

did at that time. You mean the previous Mrs. Armstrong, do you?

Q. I mean the former Mrs. Armstrong, A. I do not know. I was overseas at that time. I do not know what they did. I do not recall.

Q. Was it your belief that whilst you were overseas in 1961 the former Mrs. Armstrong loaned two thousand pounds to this man? A. I do not know.

Q. You have a convenient memory, haven't you? A. No, I just do not know. I do not know what she did. She had her own bank account. 10

Q. I suggest to you this is a matter which is clearly within your knowledge. A. I do not. I cannot recollect it.

Q. When you were seeking to divorce your wife you were anxious to get information about her, weren't you? (Objected to - rejected).

Q. Whilst the divorce relating to your first wife was pending, you believed it was to your advantage if you could obtain information that she had committed adultery, didn't you? A. It would have been to my advantage if I had been able to obtain it, I suppose. I don't know. 20

Q. And you believed that would have had an effect on any property settlement or maintenance? A. I am not competent to tell you that; what I believed.

Q. That is in fact what you knew as a result of what you were told at that time, isn't it? A. I do not know what I knew as to property settlement. 30

Q. You had been told if you could get evidence of adultery against the former Mrs. Armstrong it would have had an effect in your favour on property settlement or maintenance, hadn't you? A. I do not recall that. What I was told was it might prevent getting a divorce at all.

Q. For whatever reason, you did believe it was to your advantage if you had evidence of your wife's adultery at that time, didn't you? A. I do not know what you mean by to my advantage. It depends what you consider my aim was. 40

Q. What was it? A. I cannot tell you what my aim was at that time. My aims changed. Firstly my wife, if I recall correctly, applied for judicial separation. Then she changed the petition to divorce. I do not know what my aim was at a particular time.

Q. At the time she was seeking a judicial separation, your only chance of a divorce was if your wife had committed adultery, wasn't it? A. I do not know what my chances of divorce were. You would know much better than I about that. 50

Q. Don't some of your constituents come to you sometimes for advice? A. No, not much.

Q. Is not that part of your Parliamentary duties?
A. They usually go to the Lower House members.

Q. Don't you feel you should have some working knowledge of the laws that you assist to make and administer? A. Not a great deal about divorce in particular cases. I would have a rough working knowledge of divorce law.

Q. Do you tell his Honour you were and still are unaware that if your wife was seeking judicial separation only, and you wanted a divorce, that evidence of your wife's adultery would be beneficial to you? A. I thought it might clear the issues. 10

Q. Would enable you to get a divorce, whereas you otherwise could not get it? A. I assume it might. I don't know.

Q. That was your assumption, was it? A. That was - that could be my assumption.

Q. And you believed that this man was a person who could, if he wished to, give you information about your wife, the former Mrs. Armstrong, didn't you? A. That man? 20

Q. Yes. A. No, he was not that type of man. He was friendly with Mrs. Armstrong and myself. He was not the type of man to put Mrs. Armstrong in, in any shape or form.

Q. Was it your belief during 1962 that he was a man who could give you, if he chose to, information about Mrs. Armstrong? A. I do not think he could give me much, and I do not think he would have if he could have. 30

Q. But did you believe that if you applied sufficient pressure to him he would give you information?
A. No.

Q. Do you say that thought never came to you?
A. I do not think so.

Q. You are not prepared to deny it, are you?
A. I cannot recollect it.

Q. But you are not prepared to deny it, are you? A. I cannot recollect it. I had private inquiry agents also looking at Mrs. Armstrong. 40

Q. For the purpose of seeking evidence of adultery?
A. I would imagine so. I think we have a record of that.

Q. That is a fairly expensive business, is it not, having private inquiry agents? (Objected to - rejected).

Q. You must have realised very clearly that to obtain this evidence was beneficial to you at that time?
A. I told you I thought it might assist in clearing the issues. 50

Q. That is clearing the issues by enabling you to get a divorce, whereas your wife wanted a judicial separation; that is what you meant, is it?

A. I do not know what I meant at that time. My thoughts changed quite a lot over that period.

Q. When you described it to his Honour just now as clearing the issues, what you meant was that since your wife was seeking a judicial separation and you wanted a divorce, the obtaining of evidence of adultery by your wife would enable you to get what you wanted, wasn't it? A. I do not know whether the fact that my wife committed adultery and I also had committed adultery would enable us to get a divorce or not. One matter which my legal advisers told me was that it probably might not.

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Q. Nevertheless, you employed private inquiry agents to get this evidence? A. I think for a short time, yes.

Q. Did you think that this man was loyal to you?

A. I did not know whether he was loyal to me or not.

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Q. I put it to you before that you surround yourself with people who you regard as loyal to you, don't you? A. You put that to me, yes.

Q. And that is what you do, is it not? A. Whenever possible, yes.

Q. And that is so you can use those people as your tools, is it not? A. No, I would not agree with that.

Q. Did you believe that this man was loyal to you? A. Reasonably so, I would say.

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Q. Did you suspect that possibly his loyalty to you was wavering? A. I would not know. I think he was probably sorry to see our marriage breaking up. He had known us both for quite a considerable time.

Q. Did you suspect that his loyalty to you was wavering? A. No, I could not say that one way or the other.

Q. Did you ever suspect the possibility that he might dislike you? A. I do not think so particularly.

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Q. Did you threaten to expose this man in respect of the robbery, the tax, and the loan, unless he gave you information? A. No, I do not think so. I do not recall the robbery or the tax or the loan, you see.

Q. In respect of the robbery, would you agree that it would be a shocking and disgraceful act to threaten to expose him unless he gave you information? (Objected to).

HIS HONOUR: It is two questions in one, and I think you will have to put it hypothetically.

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MR. GRUZMAN: Q. If you threatened to expose this man in respect of a robbery, unless he gave you information, that would be a disgraceful act, wouldn't it? (Objected to.)

HIS HONOUR: It might be better if the whole question is hypothetical.

MR. GRUZMAN: Q. If anyone threatened anybody with exposure in respect of a robbery committed by that person, unless that person gave information, that would be a disgraceful act, in your eyes, wouldn't it? A. I suppose so, yes. 10

Q. And a shocking act? A. I don't know. These dramatic words of yours - you can use them if you like. Shocking. Disgraceful. Yes, I suppose so.

Q. And if you threatened to expose this man in respect of a robbery unless he gave information, you would regard that as shocking, wouldn't you? A. Yes, I would think so.

Q. And disgraceful? A. I would think so, yes. 20

Q. I show you a card on which appears a 'phone number "371391, 9 Coolong Road, Vaucluse". (Objected to - rejected.)

Q. Have a look at this card. It is your card, is it not? A. I think so, yes.

Q. And it is your telephone number and your address which is printed on it? A. Yes.

Q. On each side of the card is writing in your handwriting, is it not? A. It appears to be, yes.

Q. And at the top of the card is written a name the same as the name you were shown when I commenced this line of cross-examination? A. Yes. 30

Q. So you have no doubt that the contents of this card refer to that man, have you? A. I would think so.

Q. And the first item on it is "Robbery garage £1,500". A. That is right.

Q. Would you tell his Honour what you had in mind when you wrote those words in your own handwriting? A. I don't know. They were thoughts. Somebody said there was some rumour there was a robbery at his garage. I did not know whether it was the fact or not. 40

Q. What was the rumour? A. I cannot recollect at this stage.

Q. Try and help his Honour. A. I cannot recollect what this rumour was. Some possible robbery at some garage. I really cannot recollect it.

Q. Just turn over in your mind the fact that he

is employed by the finance companies, and part of his work is the repossession of motor cars that went into the garage. Does that help? A. Yes, but that does not help me recall any robbery.

Q. Doesn't it? A. No.

Q. Did you believe this man had acted improperly in respect of some of the cars he had repossessed for your finance companies? A. No, I do not think so.

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Q. You do not think so? A. No.

Q. You wrote these words, didn't you? A. They were thoughts. I cannot recollect what that means at the moment there.

Q. Take the next paragraph too. "Tax while away '61 £1100". That is what you wrote, is it not?

A. Yes.

Q. What does that mean? A. I cannot recall that either.

Q. What would be this man's connection with tax that you would know about? A. I cannot say.

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Q. Did he collect the tax for employees? A. I do not think so. I think that would be done by the accountant.

Q. Can't you offer some explanation to his Honour as to why you wrote those words "Tax while away 61 £1100"? A. No. I cannot.

Q. None whatsoever? A. I cannot recollect.

Q. It could relate to some theft or fraud in respect of tax, couldn't it? (Objected to - allowed).

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Q. That reference to the tax, £1100, could relate to some theft or fraud in respect of tax money to that amount, couldn't it? A. I would not think so. I cannot recollect it.

Q. That is the best you can do, is it? A. That is the best I can do.

Q. Item 3. "Loan from Mrs. A. 2,000 while away 61". I presume that is £2,000. Does that ring a bell now? A. No, I cannot recollect that now. That is another rumour, I think. She was not telling me who she was lending money to at that time.

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Q. This was something in your mind, was it? A. A. rumour I would say.

Q. You believe that this man had obtained £2,000 by way of loan from your wife, did you? A. It was a rumour. I was not sure of it. She would not have admitted it either.

Q. It was your belief? A. It was a rumour. I do not know it was my belief.

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Q. What about the tax? Was that a rumour? A. I don't know. I tell you I cannot recollect it.

Q. Did you believe you had some more information adverse to this man? A. Did I what?

Q. Did you believe that you had further information adverse to this man? (Objected to - rejected).

Q. Did you think that the rumour about the robbery at the garage was adverse to this man? (Objected to).

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HIS HONOUR: You may not have correctly described the rumour Mr. Armstrong had about the garage. It may be as well to ascertain what the rumour was, and then put your present question.

MR. GRUZMAN: Q. Would you tell us just what this rumour was? A. No, I cannot recollect this rumour. It is just a vague thing in my mind.

Q. What was in your mind? A. I cannot recollect.

Q. Wait a moment. The rumour was this man had robbed a garage in respect of the sum of £1,500, wasn't it? A. I cannot recollect this clearly at all.

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Q. But that was the type of matter you had in your mind, wasn't it? A. I cannot recall it clearly at this time. I cannot help you any further, I am sorry.

Q. It was your belief that this was the type of information which, if revealed, would involve this man in trouble. (Objected to).

HIS HONOUR: I think the identification of this type of information needs to be more specific.

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MR. GRUZMAN: Q. A rumour that somebody was connected with a robbery is information which you would regard as adverse to that person, isn't it? A. I do not even know that the rumour was that that man had committed a robbery. I do not recall anything about it.

Q. I am asking you your views on these things for the moment. A rumour that a person was connected with a robbery is information which you would regard as adverse to that person, isn't it? A. I suppose so, yes.

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Q. It would be the type of information which you would feel that person would not want revealed, wouldn't it? A. I just cannot answer that. (Objected to - allowed).

Q. This is the type of information which you would think a person would not want revealed. (Objected to).

Q. A rumour that a person was connected with a

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robbery, is the type of information which you would believe a person would not wish to have revealed, isn't it? A. I do not know whether it would have worried him much or not.

Q. It would not worry you, I suppose? A. I am not commenting I find that question offensive. I do not indulge in robberies.

Q. We will come back to that. I would ask you to think before you answer for your own protection. Do you not regard. (Objected to - rejected). 10

Q. Do you not regard a rumour involving a person in a robbery as the type of information such a person would not wish to have revealed? A. I don't know. It would all depend on the person.

Q. Are you suggesting to his Honour that this person - you know who I mean - was the sort of person who would not care if it was said of him that he was involved in a robbery? A. I am not suggesting anything. 20

Q. Perhaps you might confine your thoughts now to this person. Would you not agree that a rumour that this person was involved in a robbery is the sort of information that this person would not wish to have revealed? A. I really would not know what the answer to that would be, whether he would or whether he would not.

Q. Are you serious about that? A. It was only a rumour. I do not even know the rumour was this person committed a robbery, so how would I know whether or not he would worry about it being revealed. 30

Q. This person was employed by you wasn't he?
A. Part-time. Not a full time employee.

Q. You told me he was employed by you to manage the companies in Goulburn, didn't you? (Objected to - withdrawn).

Q. Did you tell his Honour before that this man took over the business previously conducted by Mr. Chester? A. Part of it. There was an accountant at Goulburn employed as well. This man did not work full time on this business all the time. 40

Q. But he was employed by your companies? A. Part-time.

Q. Do you tell his Honour he was the sort of man who in your belief would not care if it were said of him that there was a rumour that he was involved in a robbery? A. I really do not know what he would care. I do not know what thoughts he would have in 1962. 50

Q. I put it to you you were then well aware, that you

had knowledge that constituted a threat to this man's security? A. I would not agree with that.

Q. And I suggest to you that you had other knowledge of a similar kind. A. About this man?

Q. Yes. A. No, I would not say so.

Q. Did you write this "Have not done too badly. Would you like me to give you any more?" Did you write that? A. Yes.

Q. What did you mean when you wrote "Would you like me to give you any more?" A. I don't know. 10

Q. I suggest to you that could only mean you had further information similar to the matters set out on this card, (1) (2) and (3). A. What are you suggesting? Let me get that clearly.

Q. When you wrote the words "Would you like me to give you any more?" that you were suggesting you had further information of the same type as appeared in paragraphs (1), (2) and (3) on this card. A. I would only be speculating. 20

Q. What is your best recollection of it? A. I cannot recollect it clearly at all. I do not think it has to do with any more information, but I cannot recollect it.

Q. Then you wrote this; "(4) Not loyal to me?" On the next line "Actively disliked me". A. And the query brackets both.

Q. The query brackets both. You were asking yourself, or asking this man, and I will ask you to tell me which it was, "Are you not loyal to me, do you actively dislike me?" A. No, I was not asking that at all. I was speculating my own thoughts again. 30

Q. When you wrote the words "Would you like me to give you any more?" you were speculating to yourself, were you? A. I cannot recollect what I meant by that. It does not seem to me to be very precise or grammatical.

Q. This is a threatening note addressed to this man, is it not? A. No, I would not agree with that at all. 40

Q. And you are saying to him "Are you not loyal to me?" A. No. Do you remember before in my evidence a few moments ago, I told you that this man was liked by both the previous Mrs. Armstrong and myself, and I was just wondering whether he was, as in all divorce cases, trying to be neutral, and finding it difficult. I think that is what that meant in that context, but I am not clear on the note at all.

Q. Those words were said by you in an intimidatory way, weren't they? A. This is not a record of interview. 50

Q. This was a note addressed to this man, wasn't it?

A. It has his name, I believe, there. It refers to my thoughts about him at the time. It is not addressed to him at all.

Q. Are you sure of that? A. So far as I know.

Q. You remember the card? You remember the card, do you? A. Not clearly now. I would never have thought of it if I had not seen it.

Q. What did you do with the card? A. I don't know. It was amongst my private papers, I suppose. 10

Q. Did you think that this gentleman had close ties with Mrs. Armstrong? A. I knew that he liked Mrs. Armstrong, as I think he liked me.

Q. And she used to help him out of trouble?
A. I would not know in regard to help him out of trouble. Perhaps assist him financially from time to time. That appears to have been so by the terms of that note.

Q. "Close ties Mrs. A." That is what you wrote?
A. Yes. He liked her; she likes him. 20

Q. "She seems to help you out of trouble". A. I suppose it is some financial trouble or difficulty into which he got. That is what he probably wanted the loan for. I am only speculating.

Q. Can you tell his Honour the reason for writing these things on a card? A. No, I cannot. I am unable to say - except to aid my memory.

Q. You wanted to remember that there was a rumour that he had been involved in the robbery of a garage? A. It may have been that. I can't tell you the reason I wrote these things. 30

Q. Did you want to remember there was some question about tax, £1100? A. I wrote that. I don't remember what I wrote it for.

Q. Can't you offer some explanation to his Honour as to why you wrote these notes? A. Not a sensible explanation, except to aid my memory to keep a record of some allegations or thoughts at that time.

Q. Were these notes prepared for a conference with someone? A. I don't think so. Just purely notes, I would imagine. I think they were purely private notes. 40

Q. What would you say if I suggest that the purpose of that document was to intimidate this man into giving you news or information about Mrs. Armstrong? (Objected to; question withdrawn).

Q. Mr. Armstrong, will you agree with me that the purpose of writing that card was to intimidate this man into giving you news or information about Mrs. Armstrong? A. No, I won't. 50

Q. Will you agree that the contents of this card

amount to blackmail in your sense of the term? A. No. I don't know that I ever showed it to him or talked to him about it. In fact, I am almost certain I never discussed these sorts of matters with him.

Q. Are you prepared to swear you didn't? A. No, I won't swear it. I don't think I did. Why don't you call him, and find out?

Q. That is the best you can help us? A. He would help you. 10

Q. I beg your pardon? A. He would help you in the matter.

Q. He would help us, would he? A. Yes.

Q. Do you think he would tell the truth? A. I think so.

Q. I put it to you that the purpose of this card was to obtain from this man by these threats news or information about Mrs. Armstrong? A. No, I don't agree with you. 20

Q. Well, why did you write "May be you will have some news or information"? A. I don't know why I wrote it.

Q. What did that mean? A. I told you I don't know much about this card at all. I could hardly recollect writing it, until you showed it to me.

Q. Are you still prepared to swear that the object of writing these matters on this card was to intimidate this man into giving you information (sic)? A. No. I told you I was not prepared to swear that. You stated the question wrongly, I think. 30

Q. Well, I suggest to you that, having put this matter before him, you told him he had better think it over. A. I don't recall putting it before him.

Q. Look, this is what you wrote, isn't it? After "Maybe you will have some news or information", you then wrote the words "Think it over"? A. That does not say I put that card before him at any time, and I don't believe I did. 40

Q. Well, to whom were the words "Think it over" addressed? A. These are my notes. These are aide memoires.

Q. "Maybe you will have some news or information"? A. That is just a note. I can't recall it at all.

Q. I ask you who is the "you" in this sentence - "Maybe you will have some news or information"? Who is the "you"? A. I don't know. I would only be speculating.

Q. Do your best. A. If I speculate, it may have been Mr. Ashcroft. 50

Q. In the first sentence on the back of the card, "Close ties Mrs. Armstrong. She seems to help you out of trouble." Who is "you"? A. Him, I suppose.

Q. In the second part of para. 3, "Would you like me to give you any more?" Who is the "you" there?

A. It looks like him, I think. It may be - I have just thought of one thing. "Would you like me to give you any more money or any more salary?" I am not sure of that, but it could be. You can put any construction you like on these small notes. I am beginning to think that is what it was.

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Q. Was he still working for you? A. In 1962? I don't recall that. I am not sure at round about that time. I am not sure whether he was or not at that time.

Q. A man about whom you were aware there was a rumour that he had committed robbery? (Objected to; rejected).

Q. Anyway, you say your belief - correct me if I am wrong - do you say that it is your belief that this man was working for you at the time? A. I am not clear. He may have still been tidying up some loose ends with the business. I am not sure whether he was working for me full-time or not at the time. I just can't recall that.

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Q. You say that the words "Would you like me to give you any more" could refer to additional salary or more money? A. It could do, yes.

Q. And that is an honest belief? A. It is an honest belief, yes. I think he may have complained that he was finishing up these jobs and was not getting sufficient recompense for so doing.

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Q. But at that time you believed that he was not loyal to you? A. No, I didn't say I believed it. I think you will notice there is a question mark. Loyal or not? Dislike or not? I didn't know his feelings. I thought his feelings might have been in some way dividend as to my wife and myself.

Q. You might just tell his Honour what news or information you were referring to in the paragraph "Maybe you will have some news or information".

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A. I could not recall what that could be. It could have been matters about my wife. It could have been matters about things going on at Goulburn. It could have been any number of things. I just cannot recall.

Q. You see, there is a reference to "close ties, Mrs. Armstrong. She seems to help you out of trouble."

A. I take that to mean that he may have been short of some money, and wanted a loan. I don't think he was in any trouble.

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Q. And what you were saying is, "I have these matters which I could reveal about you. You are closely associated with my wife. Get me information or I will reveal these matters"? A. No.

Q. That is exactly what this card meant, wasn't it? A. No.

Q. That is exactly what you conveyed to Ashcroft?
A. No.

(Card with first defendant's writing on it tendered and admitted as Exhibit "W").

Q. You see, Mr. Armstrong, that card was another - the contents of it were another form of pressure which you used to gain your ends. (Objected to; rejected). 10

Q. Mr. Armstrong, that card and the contents of it constituted a form of pressure used by you to gain your own ends? A. No, I would not agree.

Q. And it is not only in important matters, but even in unimportant matters that you use pressure to gain your ends, don't you? A. I don't know what you are talking about now.

Q. Look, sir, your property "Winderadeen" in Goulburn is a very large and valuable property, isn't it? (Objected to; allowed). 20

Q. That property in Goulburn is a very large and valuable property, isn't it? A. It all depends what you call very large and very valuable, Mr. Gruzman.

Q. Comparatively large and valuable. A. I would not know what you call large and valuable, Mr. Gruzman.

Q. 6,000 acres at Goulburn? A. It is a reasonable property. It is not an enormous property by any chance. 30

Q. And you have workmen on your property, don't you? A. Yes.

Q. You had a man called Tony Rankin working for you, did you not? A. Yes. Tony Rankin. He was working for me.

Q. He was working for you, wasn't he? A. Yes.

Q. And he gave you notice? A. Yes. He got a better job.

Q. He was a good man? A. A very good man, yes.

Q. Did you physically threaten him? A. No, not that I recall. 40

Q. Not that you remember? A. No, he is not the sort of man you would physically threaten.

Q. Did you say to him "I have handled tougher men than you"? A. No, I can't recall this at all.

Q. Did you jerk your finger at him? A. I can't recall this.

Q. Did he come at you? A. No.

Q. And walk you back around the house and up the verandah? A. No.

Q. Did you refuse to give him the half sheep that he was entitled to? A. No, he got his half sheep. More than he was entitled to.

Q. Did you refuse to give it to him in the first instance? A. No. We parted quite happily so far as I can recall.

10

Q. That is the best of your recollection? A. I don't really recall much about disgruntled employees.

Q. This was a disgruntled employee now, was it?
A. I don't know what he was disgruntled about. He didn't like the previous manager who had left before that. He left to get a better job, as I understood it.

Q. Had this man cut firewood for himself and his family? A. Yes, in my time, with my machinery.

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Q. And you told him that if he took one stick of firewood to his new job he could not use the truck to carry his goods? A. No, I lent him the truck to take his firewood and his goods.

Q. He was entitled to the truck under the award, wasn't he? A. No.

Q. Entitled to the truck to carry his goods to the railway station? A. He was not carrying them to the railway station, for one thing.

Q. To another property? A. To a cottage, I understand. He had the truck.

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Q. You told him if he took one stick of firewood that he had cut he could not use the truck?
A. No.

Q. He asked you about his holiday pay, didn't he? A. I don't recall this.

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

Q. And you told him that you were in with the heads of the union? A. No.

Q. Didn't you tell him that? A. No.

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Q. Are you in with the heads of the union?
A. No.

Q. Didn't you threaten this man that he could go to the union and it would do him no good? A. No.

Q. Did you ever pay him his holiday pay? A. That would be a matter of record. If he was entitled to it he got it.

Q. The man was entitled to six months' holiday pay - entitled to holiday pay in respect of six months, wasn't he? A. I don't know what he was entitled to. I have not kept records of all my employees, Mr. Gruzman.

Q. And he never got paid it? A. I don't think he was entitled to it. Certainly he would have been paid it if he was entitled to it.

Q. You only had about four or five employees on the whole place? A. More than that from time to time. Sometimes more, sometimes less. 10

Q. You have got no recollection of this man, Tony Rankin? A. I know who he was, yes. I never had any trouble that I consider with Rankin. We sorted out our things quite amicably in my view.

Q. You say he is friendly disposed towards you? A. I would not know what he is. I have not seen him since he left.

Q. Won't you agree with me that you said to him - he said to you, in respect of the half-sheep that he had got none the first week he was there, so he was entitled to one now? A. I can't recall this business about the sheep one way or the other. 20

Q. And he said he would go to the union? A. I don't think so.

Q. And you said that you would go through the house that he was living in and see if there was any damage to it so that you could see him? A. No. It was left in a very dirty condition. These are rather minor matters, but I can go into them all. I can also go into the fact that this man was always paid above the award, and always had large amounts of overtime as a tractor driver. There are definitely two sides to this question. 30

Q. Did you say "So far as you are concerned you will do no good with the union because I am in thick with the heads in Sydney and I can get what I want from them"? A. No. 40

Q. Did you say "If you want your holiday pay you will have to see my Sydney accountant"? A. He was not entitled to holiday pay. Do you know much about pastoral unions, Mr. Gruzman?

Q. Yes. A. Any employee who leaves of his own accord is not entitled to holiday pay. If he is dismissed he is entitled to holiday pay, depending on the period he has been there.

Q. And this is the technicality on which this man did not receive his - (Objected to; rejected). 50

Q. He was there with you for five years? A. I don't recall exactly. Four to five years. It may have been longer.

Q. You know very well that you never paid the man holiday pay? A. I never said I did. He was not entitled to it. So far as I can recall I don't think he was entitled to it. If he was, I am very certain that the very efficient officers of the A.W.U. would have got it for him; there would not have been any trouble if he was entitled to it.

Q. And you told him if he wanted holiday pay to go to the union, didn't you? A. I advised him - I told him I didn't think he was entitled to holiday pay. I can't recall exactly what I said to him word for word. But I told him I would imagine that if he did think - if he thought that he was entitled to holiday pay he should consult the union because I didn't think he was entitled to it, or the Graziers' Association didn't think he was entitled to it. I usually conducted these things through the Graziers' Association.

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Q. You had some trouble with Douglas John Hodgen, another employee, didn't you? Is that right? A. I would not say any trouble with him.

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Q. And he was told by you "If you want any holiday pay get it through the union"? A. If you are interested I can go into some more details.

Q. Is that right, or wrong? (Objected to; rejected).

Q. Look, Mr. Armstrong, I have put to you on a number of occasions that you used people in the sense of using a man to do work, if I may use a vernacular expression, as a front for you? (Objected to; rejected).

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Q. You see, your method is to employ a man who is in ostensible authority so that he takes the blame if things go wrong, whilst you yourself are the real authority? A. No, I would not agree with you there.

Q. Well, I will not be going into this terribly deeply. Let us take as an illustration Australian Factors. This was a company that failed to the extent of some \$7,000,000, didn't it? A. Before we get on to Australian Factors, may I ask you a question, your Honour?

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HIS HONOUR: Q. Yes. What do you wish to ask?

A. Mr. Justice Helsham, when examining me, told me I should not discuss Australian Factors at any time until his report was published. I am just mentioning that to your Honour. I am certainly bound, of course, by your Honour's ruling.

HIS HONOUR: If questions are asked of you in this Court you should answer them.

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MR. GRUZMAN: That is substantially correct, that Australian Factors failed to the extent of some \$7,000,000? A. I would not know the exact figures now.

Q. This is an approximation? A. I would not know that. I could not tell you. The accounts have been in the hands of the Receivers since 1963, I think.

Q. That is Mr. Bridges, M.L.C.? and - ? A. At first, and later on his partner, Mr. Eragg.

Q. Anyway, Australian Factors failed to the extent of more than \$1,000,000, didn't it? (Objected to; rejected). 10

Q. There was a very substantial loss, wasn't there? A. I would say so, yes. I made a very substantial loss myself.

Q. Of course, you were the Chairman of Directors, weren't you? A. I was.

Q. And you were not only the Chairman, but in fact you to a large extent ran the business, didn't you? A. I would not agree with that. It depends on what you define as "running the business". 20

Q. You took a direct part in the day to day control and transactions of the business, didn't you? A. No. That would not be correct.

HIS HONOUR: Q. That would not be correct? A. That would not be correct, your Honour.

MR. GRUZMAN: Q. You employed a man as New South Wales General Manager didn't you? (Objected to).

Q. You were responsible for the employment of a particular person as New South Wales General Manager, weren't you? A. No, I would not say I was, Mr. Gruzman. 30

Q. Who was responsible? A. Mr. Lammerton, I would say.

Q. Mr. Lammerton? A. Can you refer me to the gentlemen you are talking about? A. I am talking about Mr. Ashley Corne? A. There was a little bit of difficulty; at different times there were three men who took the main responsibility. Mr. Corne was New South Wales General Manager. He was one of the first employees. He was employed by Mr. Lammerton after Mr. Cox. 40

Q. You say there were three people took the responsibility, to use your expression - Cox, Lammerton and Corne? A. Yes. I would not say they took the responsibility. They were three executive officers of the company. The Board naturally took the responsibility in the long run.

Q. The Board being who? Who comprised the board?
A. First of all, in the first stages of Australian Factors, myself, Mr. Eskell, Professor Messel, and I think - I don't know whether Mr. Nielson was on the board at the beginning. Mr. Lammerton joined the board 50

later. He may have been on the board from the beginning. I am not quite clear. I think he was on the board from the beginning. And then we were joined by Mr. Frederick Millar of Allen & Hemsley, Mr. McCrossen and Mr. Roberts.

Q. That was at a later stage? A. Yes.

Q. At the early stages of the company everyone on the board did what you told them? A. No, I would not think so.

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Q. Are you suggesting that Professor Messel had some detailed knowledge of running a business company? Detailed knowledge of running a finance company? A. I would not think so, no. Mr. Lammerton was the conceiver of the idea.

Q. Lammerton was the man you sent in 1958 to Goulburn? A. No. I think he went with Mr. Hulls. He was a chartered accountant.

Q. So that he was not an independent person, was he - Mr. Lammerton? A. I think he was very independent - Mr. Lammerton.

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Q. Was he? A. Very independent.

Q. And Mr. Eskell - you are not suggesting that he was independent of you at this time, are you?
A. I really don't know what you mean by independent of me.

Q. Independent in the sense that he would take positive steps opposed to your interests if he believed they were right for the company? A. Could we have that one again?

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Q. Yes. I am suggesting to you that at that time Mr. Eskell was not independent in the sense that he would take positive steps opposed to your interests, if your interests conflicted with those of the company? A. This is very hypothetical. I think Mr. Eskell would do what he thought was the correct thing as a member of the board.

Q. You have already told us he was brought in to streamline your affairs? A. I don't know what you mean by that.

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Q. That is what you said in one of your documents, wasn't it? A. It is one of these aide memoires. I never said what Mr. Eskell was brought in for. They were notes to me.

Q. You may take it that is what you said. A. That is on the notes, but that does not mean they were facts - those notes.

Q. Of course, the day-to-day management of the company do you say was in the hands of Mr. Ashley Corne? A. No. What period are you referring to?

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Q. I am speaking from the time Mr. Ashley Corne

was appointed New South Wales Manager? A. Can you tell me when that was?

Q. Yes. That was 1962. A. What time in 1962?

Q. During the 12 months or so until the company crashed? A. The day-to-day management of part of the company was in Mr. Corne's hands. Not all of it.

Q. I put it to you that to your knowledge Mr. Corne didn't have the slightest qualification to be an executive of a company of that kind? (Objected to; question withdrawn). 10

Q. I put it to you that you were responsible first of all for the employment of Mr. Corne?

A. No, I won't agree with you there.

Q. You say it was the board? A. No. I say Mr. Lammerton picked him and the Board confirmed him.

Q. I put it to you to your knowledge Mr. Corne had first of all no business experience at all in any relative sense? A. I would not know about his business experience. I thought he was a capable and energetic young man when he joined the company. 20

Q. He had come to Australia at the age of 18 in the year 1951, hadn't he? (Objected to; rejected).

Q. Mr. Armstrong, after the company failed did you speak to Mr. Corne? A. I had a meeting with Mr. Corne and Cox and Mr. Killip, one of the auditors. This is a long time ago and really, your Honour, I would have to spend at least two days to get anywhere near the true picture of Australian Factors. At least that. It might be a week. 30

Q. Did you procure Mr. Corne to sign a document? A. No, I would not say so.

Q. Did Mr. Corne sign a document? A. I would like to see the document you are referring to. If it is there it may refresh my memory. I didn't procure him to sign anything.

Q. We won't worry about the document at the moment. To your knowledge did Mr. Corne sign a document in which he admitted responsibility for many of the problems of Australian Factors? (Objected to). 40

HIS HONOUR: The question now asked of the witness seeks to ascertain whether a document answering a description put to the witness was, to his knowledge, signed. I am not concerned in these proceedings with the objective material contained in this document. It seems to me that, Mr. Armstrong, being a party, he can legitimately be asked to assent to a matter such as is put to him in this question. I think the question is admissible. 50

(Question read by Court Reporter as follows:

Q. We won't worry about the document at the moment. To your knowledge, did Mr. Corne sign a document in which he admitted responsibility for many of the problems of Australian Factors?"

WITNESS: I can't recall the document clearly now. I don't think Mr. Corne admitted much responsibility in it, but if I had the document I could help.

MR. GRUZMAN: Q. In your impression of the document, it was a document in which he took part at least of the responsibility? A. It is only a vague impression in my mind, Mr. Gruzman..In fact, I may be able to help you. I think there may have been two documents in which he admitted responsibility, one of which may have been done at one stage, and one later. I am not clear of these two documents. One may have been where Mr. Roberts was talking to hkm. I am not clear on this matter. 10

Q. However, it is your understanding of this matter that Mr. Corne in certain documents admitted to substantial responsibility for Australian Factors problems? A. No, I would not agree that he admitted to substantial responsibility. I cannot recall the document clearly. If you can help me with the document I can go through it with you. 20

Q. We won't take up time with the document, but it is your impression that he admitted a measure of responsibility? A. Only a measure of responsibility. Not a great measure of responsibility. It is only an impression if I may say so, at this time. It is about four years since that document was produced. 30

Q. Can you tell us the circumstances in which Mr. Corne came to sign this document? A. Not clearly now, Mr. Gruzman.

Q. Did you have some discussions with him? A. I don't recall them clearly. I had some discussions with him. I think Mr. Killip was there at some stage. 40

Q. I beg your pardon? A. I don't know who was present. There were other people present at the moment.

Q. What were the circumstances surrounding the discussion? A. To help you with this we would have to start at the beginning of all the disclosures which Mr. Millar found out at Australian Factors and to through from there. It would take some time to lead up to the signing of the document.

Q. In brief, you say that the discovery was that certain of the bad debts of Australian Factors had been put into certain companies. Would that summarise the matter? A. No, it is much to easy to summarise it like that. You would have to go much more fully into it. 50

1st named defendant, xx

Q. Was not that - correct me if I am wrong - was not that one of the principal matters? (Objected to; rejected).

WITNESS: Could I say this to your Honour before we adjourn? A lot of my documents would still be in the possession of inspectors, if I were asked to help in this case.

(Further hearing adjourned to 10 a.m. Thursday, 22nd August, 1968).

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BARTON v. ARMSTRONG & ORS.

TWENTY-SIXTH DAY: THURSDAY, 22ND AUGUST, 1968.

MR. GRUZMAN: I call the Southern Tablelands Finance Co. Pty. Limited on subpoena duces tecum.

(Cyril Garnet Thorpe, an officer of Southern Tablelands Finance Co. Pty. Limited answered the subpoena on behalf of the company and produced to the Court a copy of the subpoena served on the company together with the documents called for under the subpoena, being a cash book, ledger, journal and cheque book. In answer to a question from his Honour Mr. Thorpe stated that he would prefer that Mr. Bainton represent the company in regard to any question relating to inspection of the documents.

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Mr. Bainton stated that there was no objection to inspection of the relevant entries in the documents produced under subpoena. His Honour ruled that Mr. Gruzman may see the documents in relation to entries where there were paper markers in the book)

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CYRIL GARNET THORPE

(On the voir dire)

MR. GRUZMAN: Q. What is your full name? A. Cyril Garnet Thorpe.

Q. I believe you are the Secretary of Southern Tablelands Finance Co. Pty. Limited. A. That is so.

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Q. And you were instructed by the company to make answer to this Court in respect of that subpoena, - in respect of the subpoena served on the company?
A. Yes.

Q. And the subpoena called for the company to produce all records relating to a transaction or transactions in respect of which a cheque dated 5th January 1967 for \$1,094.30 was paid to Frederick Hume. A. Yes.

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Q. You understood that, did you not? A. Yes.

Q. And you have produced to the Court first of all an invoice from Frederick Hume dated 21st December 1966 claiming this sum? A. Yes.

Q. And, for example, relating to travelling expenses - referring to travelling expenses, accommodation, meals, petrol and time, is that right? A. Yes.

Q. Are there no vouchers in existence in the company relating to moneys paid out by him for accommodation and such matters? A. No, none whatsoever.

Q. None whatsoever? A. That is the only document I have had - the invoice.

Q. You say that you have been deputed by the company to answer this subpoena, and the subpoena called for all records relating to the transaction or transactions in respect of which this cheque was paid. You understood that did you? A. I do, certainly, Yes. 10

Q. And the invoice refers to work done by Mr. Hume at Thredbo, Jindabyne and Goulburn, and in respect of various matters of Mr. Hoffman, etc. Are there any records in existence relating to any transaction in respect of which Mr. Hume made this claim? A. Not in my possession, No. 20

Q. Where would one find those documents (Objected to by Mr. Bainton; rejected).

Q. These investigations were paid for by the company; were they not? A. That is right.

Q. And carried out on behalf of the company? A. To the best of my knowledge and belief.

Q. Otherwise you would not have authorised the payment? A. No. I simply drew the cheque and presented it for a second signature.

Q. To whom? A. Mr. Armstrong (Objected to by Mr. Bainton; allowed). 30

Q. I assume that the company has records relating to transactions in respect of which investigations are carried out? A. No other records other than that account.

Q. But look, Sir, if the Company had a transaction as a result of which it was required that Frederick Hume should travel from Sydney, to Goulburn, to Canberra, on 10th November 1966 at a cost of \$65 would the company not have records relating to that investigation or travel (Objected to by Mr. Bainton; rejected). 40

Q. I want to refer you to one item which appeared in the invoice - the second item. It says "To time taken travelling from Sydney - Goulburn- Canberra on 10th November 1966; \$65: to travelling expenses on 10th November 1966; \$20". These two items - those two matters together comprise one item of a number of items in this invoice. Does not the company have records relating to the matter in respect of which Mr. Hume claims \$85 in respect of that work? A. To the best of my knowledge the company has no other records than that presented here today. 50

Q. Look, Sir, if the company pays money for an

investigation you would assume it is an investigation on behalf of the company? A. I would assume so, Yes.

Q. If the company has a matter it usually involves the preparation of such documents doesn't it? A. Well, the invoice is the document that was presented to me.

Q. The company is a finance company is it? 10
A. Yes.

Q. A finance company? A. Yes.

Q. And I suppose the only sorts of investigations that would be carried out would be in respect of applications for finance or repossessions or something of that kind (Objected to by Mr. Bainton; rejected).

Q. When you paid this invoice what did you believe was the transaction in respect of which - I want to single out this particular claim. A. I 20
assumed they were investigations carried out on behalf of Mr. Armstrong. That is all I know.

Q. But on the company's business? A. Well, I presume so, I don't know. I don't know anything else about the matter.

Q. Well, who is the officer of the company who would know the reason for these investigations so that he would know what records to look for (Objected to by Mr. Bainton; rejected).

Q. What other officer of the company would be 30
aware of the whereabouts of records relating to matters in respect of invoices in such a case?
A. The only other officer in the company I am connected with is Mr. Armstrong, as a director. There is no other officer in the company so far as I am concerned, apart from Mr. Grant, who is a director too, but Mr. Armstrong was the other director. I am the Secretary and I answer to him.

Q. You answer to Mr. Armstrong? A. That is 40
right.

MR. BAINTON: Q. Are the records of the company kept in your possession? A. Yes they are.

MR. GRUZMAN: Q. Where are the mass of records of the company kept? (Objected to by Mr. Bainton).

Q. Where are the records of the company physically kept? A. In my office, at 70 Pitt Street, Sydney.

Q. And they are readily available? A. Yes.

(Witness retired)

(Mr. Bainton called on a subpoena duces tecum addressed to the plaintiff. Mr. Gruzman moved to set the subpoena aside. Argument ensued) 50

HIS HONOUR: A subpoena has been addressed to the plaintiff requiring him to produce "documents in his possession or under his control which are or are believed to be in the handwriting of the defendant, Alexander Ewan Armstrong." The subpoena was made returnable yesterday, and it has been the subject of a call this morning. Upon the call being made on the subpoena counsel for the plaintiff moved to set it aside as an abuse of process. I am of the view that it is inexpedient that I should permit any further proceedings to be taken on this subpoena or upon the application to set it aside until the end of the cross-examination of Mr. Armstrong. I do not think that it is in the interests of justice that cross-examining counsel should be fettered in the conduct of his cross-examination by being called upon to produce documents which are in the handwriting of the witness being cross-examined or are believed to be in his handwriting, and the existence of which in the hands of cross-examining counsel, as well as the uncertainty as to what they may be, are in my view conducive to enabling cross-examining counsel to elicit a more reliable version of the matters being cross-examined upon than would be the case if he did not hold such documents. I am accordingly of the view that further proceedings on the subpoena should be deferred until the end of the cross-examination, and I shall then entertain whatever further application may be made on it.

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(Subpoena duces tecum m.f.i. "52")

(m.f.i. "46" tendered by Mr. Gruzman; objected to. Argument ensued).

HIS HONOUR: The plaintiff has tendered a document which is said to be an account written by C.M. Alders of certain events that took place in Goulburn in 1959 or thereabouts. For the purpose of considering the admissibility of this document I shall proceed upon the assurance that Mr. Gruzman has given me that he would, if it were necessary and if the document were otherwise admissible, establish by evidence the death of Mr. Alders and the fact that the document was written by him.

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It is alleged that the document contains statements in support of the propositions put to Mr. Armstrong in cross-examination at page 883. The substance of the allegations may perhaps be summarised as being that it is alleged that Mr. Armstrong, having suffered a financial loss by reason of the negligence of the late Mr. Chester, brought what is said to be extreme and ruthless pressure to bear on Mr. Chester presumably for the purpose of exacting from Mr. Chester full compensation for the loss that Mr. Armstrong had suffered. It is further suggested that so great was the degree of this pressure that Mr. Chester ultimately took his own life.

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Mr. Gruzman presses upon me the admissibility of independent evidence in the form of this statement written by the deceased Mr. Alders as falling within

s. 14B of the Evidence Act, In order to be admissible under this section the contents of the document would have to be such that if Mr. Alders were called as a witness it would be open to Mr. Gruzman to obtain from him direct oral evidence of these matters. There is a well drawn line of distinction in the Rules of Evidence between questions and matters relevant to the credit of a witness and questions and matters relevant to the issue in contest in the proceedings. The issue in the present suit turns upon the claim that Mr. Armstrong coerced Mr. Barton by duress into signing the agreement of January 1967. There is a substantial conflict between the evidence given by Mr. Barton and the evidence given by Mr. Armstrong upon the circumstances leading up to the signing of this agreement. In accordance with the ordinary progress of a suit of this nature both Mr. Barton and Mr. Armstrong have been cross-examined upon matters touching their credit. This evidence insofar as it comprises questions asked of them in cross-examination can be used, inter alia, for the purpose of deciding ultimately what, if any, weight can be put upon the various parts of their evidence. In challenging the credit of a witness in cross-examination it is open to cross-examining counsel to travel far beyond matters that are necessarily related directly to the matters in issue. Where, however, the challenge to credit is sought to be pursued further with independent evidence such as, for example, this document said to be written by Mr. Alders, the independent evidence will only be admitted if it is relevant to the fact in issue, that is, in this case, to the claim that duress was brought to bear by Mr. Armstrong. Mr. Gruzman has strongly contended that it is open to him to attempt to prove that Mr. Armstrong brought to bear upon Mr. Chester what is said to be extreme and ruthless pressure. This evidence is pressed upon the basis that it amounts to a similar act on Mr. Armstrong's part such as to render it more probable than not that he brought to bear duress upon Mr. Barton at the end of 1966 and early 1967.

Mr. Gruzman has referred me to the lengthy discussion of this and related principles of evidence contained in the judgment of Evatt, J. in *Martin v Osborne* (55 C.L.R. 367 at 381-402. He has also referred me to the words of Dixon, J. in that case, to which I shall refer presently; to the later decision of the High Court in *Plomp v The Queen* (110 C.L.R. 234 at 243), where Dixon C.J. reiterates the proposition stated by him in the earlier case; to what is said to be the analogous case in the Court of Criminal Appeal of *R. v Chandler* (56 S.R. 335), and the earlier High Court decision, *McConville v Bayley* (17 C.L.R. 509). I do not intend to embark upon a discussion of the various cases or the principles enunciated in them. The passage in the judgment of Dixon, J. in *Martin v Osborne*, appearing on page 375 of that report, appears to me to be all that I need make specific reference to in support of the rejection of the evidence which Mr. Gruzman tenders:

"The moral tendencies of person their

proneness to acts or omissions of a particular description, their reputations and their associations are in general not matters which it is lawful to take into account, and evidence disclosing them, if not otherwise relevant, is rigidly excluded."

This observation is, of course, confined to independent evidence. It does not govern the width of cross-examination of a witness himself upon matters touching his credit. But the point that arises upon Mr. Gruzman's present tender concerns the independent evidence said to exist in Mr. Alders' statement.

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In my view there is no sufficient nexus between the material which Mr. Gruzman seeks thus to prove by independent evidence and the matters in issue in this suit to justify the admission of this independent evidence. I am accordingly of the view that the tender of the document should be rejected.

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(Commissioner for Taxation called on subpoena duces tecum by Mr. Gruzman. (Donald Philip Wall, an officer of the Income Tax Department produced a copy of the subpoena together with the documents called for under the subpoena, Mr. Wall informed the Court that on behalf of the Commissioner he claimed privilege in accordance with the provisions of s. 16 (3) of the Income Tax Act).

MR. GRUZMAN: I will not be disputing the right to claim privilege.

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(Subpoena addressed to the Commissioner of Taxation m.f.i. "53").

(m.f.i. "47" tendered by Mr. Gruzman. Mr. Staff objected to the tender of the document at this stage and his Honour ruled that the tender should be deferred).

(Mr. Gruzman sought access to Mr. Armstrong's diary for the period 1st to 19th January 1967. Mr. Staff stated that he had no objection to the entries for 6th, 7th, 9th, 10th, 13th, 16th, 17th, 18th, and 19th January being purused by Mr. Gruzman).

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FIRST-NAMED DEFENDANT

On former oath:

HIS HONOUR: Q. You are still on your former oath?

A. Yes.

MR. GRUZMAN: Q. Mr. Armstrong, did you threaten Ashley Corne with police action? A. At no time.

Q. I put it to you that you threatened Ashley Corne that you would have him charged by the Fraud Squad unless he signed a document amounting to a confession? A. Certainly not. I treated Mr. Ashley Corne with kindness and consideration during that inquiry, as the transcript will show.

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Q. Have a look at this document. You remember you told us yesterday that you wanted to see the document which I described as a confession? A. Yes.

Q. Tell me, is that the document - a photostat copy of the document that Mr. Corne signed? A. Without reading it very carefully, Mr. Gruzman, I would not like to say it is, but we could certainly perhaps help you with this, I think, as I have another copy of it. I think it probably is. There is another one which has more writing on the back, and in which his signature is better identified. 10

Q. You have it in Court? Do you have it in Court?

A. I don't know whether it is in Court, but I have copies of the document. I want to be careful of this. Why I want to be careful in regard to this, Mr. Corne did make a couple of these reports. I think one may have been the first draft. But my copy has more writing, and his signature is better defined. That is all I can say on that. I think it is one of two documents. 20

Q. You would not really have any doubt? A. One of them, anyway, if there are two about.

Q. I don't want to take up time, but would you fairly describe the document as a confession?

A. No. (Objected to; allowed).

Q. Would you fairly describe the document as a confession? A. No. I would describe it as an explanation of certain events which occurred. I think Mr. Corne was trying to help both myself and the Board of Australian Factors in giving us this explanation. I would not call it a confession at all. 30

Q. It was exculpatory of you wasn't it? A. No. I would not think so.

Q. It is addressed to you, isn't it? A. It is addressed to the Chairman of Australian Factors.

Q. Mr. A.E. Armstrong? A. Yes.

Q. The second paragraph, which deals with some of the matters mentioned in the first paragraph - "I deeply regret my failure to report either directly firstly to you or then to the Board the steps that have been taken to protect Australian Factors Limited in the cases of fraud which have occurred to this date." (Objected to). 40

WITNESS: May I make some explanation to you, your Honour, concerning how this matter arose?

HIS HONOUR: No, Mr. Armstrong. Just read the document.

WITNESS: I have had a general look at it. Perhaps we can take particular bits of it. I have had a general look at it. 50

MR. GRUZMAN: I want your idea of what that document

does. First of all, would you agree that in the document Mr. Corne takes responsibility for having concealed from you certain matters affecting Australian Factors. A. No, I would not go so far as that. To give you a proper explanation of the document I have to give you the context in which Mr. Corne wrote the document.

Q. Perhaps we can come to that in a moment. I want to know what the document is. A. I would call the document an explanation of the irregularities which were discovered by Mr. Millar in Australian Factors, I think in the document, if you look carefully at it, you will see that Mr. Corne said that he told Mr. Lammerton certain things, but Mr. Lammerton denied that Mr. Corne told him them. I was trying to get at the truth of the matter between these three individuals. 10

Q. What the document says, in terms, is that Mr. Corne told Mr. Lammerton about these matters, but never told you. That is what the document says. A. It says a lot of things. I would not say that it says one thing. I think it is a very reasonable explanation. 20

Q. I am only trying to arrive at this point, that in the document Mr. Corne says that he did certain things and told Mr. Lammerton about them, but that he never told Mr. Armstrong about them. A. And the Board or the Auditors.

Q. That is correct? A. He did not tell the Board and the Auditors about them. Definitely not. There is no doubt about that. 30

Q. And he says that he never reported it to you doesn't he? A. Yes, because this document is the result of this interview with Messrs. Corne, Lammerton, Cox and myself. I don't know what will occur about that. I don't know whether that will be tendered or not. But I would like everyone to see it, including his Honour.

Q. It was important to you to get such a document wasn't it? A. This sort of document? 40

Q. Yes. A. Now, could you tell me, important in what way?

Q. You see, certain irregularities had occurred in Australian Factors accounts hadn't they? A. Yes, that is right.

Q. And the effect of these irregularities was that the apparent profits in the accounts had not in fact been realised? A. I don't know what you are getting at, really. 50

Q. Isn't that what happened? A. The accounts that year had not been prepared when that document was written.

Q. What was discovered was that bad debts of the

company had been covered up by the formation of other companies which issued fictitious invoices, which were apparently factored (Objected to; rejected).

Q. Wasn't it your belief at the time that bad debts of Australian Factors had been covered up by forming companies which issued invoices which were factored to Australian Factors so that they appeared to be good debts? Wasn't that your belief at the time? A. No. I could not tell you what my belief was at the time of this. We had only just discovered it, and we did not know where we were. We did not know what had happened. We knew afterwards, but when this was taken out this was an attempt to discover the truth. That is all it was. 10

Q. It says "I feel my greatest mistake was when we decided to cover the problem accounts - " (Objected to; rejected).

Q. Mr. Armstrong, read this passage. Will you read this passage, starting from the words "I feel". A. Yes. 20

Q. Down to the word "incorrectly". A. Yes. You have to go down to there (indicating).

Q. Go to the end of the paragraph? A. Yes.

Q. I ask you wasn't it your understanding at the time that fictitious invoices had been raised by companies formed for that purpose. A. We didn't know at that time what had happened. We were trying to elicit facts. 30

Q. Is not this what Mr. Corne told you in the documents? (Objected to; rejected).

Q. Did you believe what Mr. Corne told you? A. I didn't believe it and I didn't disbelieve it. We were all so confused at that time. We had no idea what was going on. I didn't know what was going on. We did not know who was telling the truth amongst these three gentlemen.

Q. One thing you did know, I suggest to you, was that fictitious invoices had been raised. A. I didn't know that. 40

Q. Never knew anything of it? Did not know anything about it? A. I heard about it. I did not know they had been raised.

Q. Isn't this what Mr. Millar told you? A. No. Mr. Millar does quite different things to that.

Q. Did it never come to your knowledge that the profits of Australian Factors had been increased wrongly by raising fictitious invoices to cover bad debts? A. Yes. Much later it certainly did come to my knowledge. Much later it certainly did. 50

Q. As at 24th July 1963, which is the date of

this document, didn't that come to your knowledge?

A. Not to my certain knowledge. No, not to my certain knowledge at all, Mr. Gruzman.

Q. Well, Mr. Corne told you so, didn't he, at about that time? A. I don't think he said anything about fictitious invoices. I can't recall what he told me. I know it is in that document.

Q. Do you draw a distinction between what he told you verbally and what is in the document?

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A. Yes. I really can't answer these questions intelligently unless I can give the Court some idea of the whole series of events leading up to this situation. I am just answering quite unintelligently.

Q. What I am putting to you is very simple. You told Mr. Corne that you would have him charged by the Fraud Squad unless he gave you a document admitting liability and exculpating you. That is the position, is it? You told Mr. Corne that you would have him charged by the Fraud Squad unless he gave you a document admitting liability and exculpating you? A. No I didn't.

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Q. You say nothing like that ever took place?

A. No. I didn't want to see Mr. Corne charged. I didn't know whether he had any reason to be charged at that time.

Q. You say, I suppose, that Mr. Corne just voluntarily came to you and accepted responsibility for the Australian Factors' debacle? A. No unfortunately he did not come voluntarily. He came after Mr. Lammerton had made - came after Mr. Millar had made certain discoveries. I wish he had come voluntarily before the discoveries.

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Q. What happened. You say that Mr. Corne came and proffered you this document? A. I think he felt that the matter was now out in the open, and he was trying at that time to assist as much as he could in clearing it up in a genuine way, which I respect him for.

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Q. The effect of the document was to involve Mr. Cox, Mr. Lammerton, and everybody concerned except you. That was the effect of the document wasn't it? A. No, not except me. I took responsibility as Chairman of Australian Factors, for any of my actions.

Q. Does not this document say that you knew nothing about it? A. I didn't know anything about it. You don't think I would have let it go on if I knew anything about it, do you?

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Q. Did you subsequently become interested in the Hotel Terrigal? A. Not that I can recollect.

Q. Provide finance for it? A. I can't recall. I don't think so.

Q. Was Mr. Corne interested in the Hotel Terrigal? A. I don't know. I have no idea.

(Document on which witness cross-examined m.f.i. "54")

Q. In connection with Australian Factors and Palgrave there was a period when Australian Factors shares were going up wasn't it there? There was a period when the shares were going up? A. Yes, there was .

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Q. At that point did you direct that £100,000 be lent by Australian Factors to Palgrave. A. Did I direct? I would have to see some records on this to let me know.

Q. I think you will agree that £100,000, even to you, is not a small sum of money is it? A. At that time Australian Factors was taking money on call, and it was lent by who to who? By Australian Factors to Palgrave? Lent by Australian Factors to Palgrave?

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Q. Yes. A. They may have had excess money on call there. But there was a case in which the Board of Australian Factors lent money to the Board of Palgrave. Both Boards knew the whole transaction. Both Boards knew of it. The whole transaction is in the minutes, so far as I can recollect.

Q. You were the Chairman of Australian Factors. A. And of Palgrave too.

Q. And of Palgrave? A. Yes.

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Q. And the money was lent to Palgrave by Australian Factors A. I understand, I think so.

Q. It had been deposited or advanced to Australian Factors by the public for the purpose of Australian Factors, this money, hadn't it? A. I don't know which money. I don't know how you can pinpoint the money.

Q. Can you tell his Honour what Palgrave did with this £100,000 (Objected to; question withdrawn).

Q. Was that £100,000 used by Palgrave to buy Australian Factors shares. A. I can't recall that completely without the documents. I would be all in the minute books, Mr. Gruzman, I can't recall it without the documents. It would be in the minute books.

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Q. Are you prepared to deny here that Australian Factors lent to Palgrave £100,000 to buy Australian Factors shares? Are you prepared to deny that? A. No, I don't think we actually pinpointed that £100,000 to buy Australian Factors shares. There may have been some debentures as well as shares purchased. I don't see how you can pinpoint £100,000. There was some money lent. There was no mystery about it. There was no mystery about it at all.

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Q. Was it that Australian Factors Board lent to Palgrave £100,000? A. Yes. I am not sure whether - and this is where I need records to help me - I am not sure whether all of that was used to purchase shares or whether some of it was used to purchase debentures. The sum used to purchase shares - that escapes my memory. I am not sure whether all was used to purchase shares or whether some was used for debentures.

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Q. The bulk at least of the £100,000 was used by Palgrave to purchase Australian Factors shares.

A. I cannot answer that without the records. If I had the records I would be able to answer the question.

Q. Are you prepared to deny it? A. No, I would not. I don't know.

Q. Are you seriously telling us that you don't know - A. I can't recall -

Q. Are you seriously telling us that you don't know whether or not this £100,000 borrowed by Palgrave, of which you were the Chairman, was used for the purchase of shares in Landmark (sic)?

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A. I have said that I don't know exactly. It is very easy to find out, actually. I think it was used partially for debentures and partially for shares. The proportions of each I don't recall at this stage, but I think it was used partially for debentures and partially for shares.

Q. Well, the bulk of it was shares? A. No. I thought the bulk was debentures, but I am not sure.

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Q. Was this an ordinary commercial transaction?

A. This was a transaction between the boards of the two companies. All the directors knew of it.

Q. The directors being? A. Whoever they were at that time.

Q. All the people who would do what you wanted them to do? A. I would not agree with that.

Q. And the £100,000 worth of shares or debentures, whatever they were - what happened to them in the hands of Palgrave? Whether they were shares or debentures, what happened to them in the hands of Palgrave? A. The debentures I think were retained. I am not clear. This is 1961 or 1962, and I cannot give you accurate answers, and I pride myself on trying to give accurate answers. When things are readily available by looking at the records of the company I don't want to be bound down to answers which can be inaccurate in my memory.

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Q. We won't hold you to a few thousand here or there. Would you agree that the substance of the transaction was this: that Australian Factors lent to Palgrave £100,000 which was used to purchase shares and some debentures in Australian Factors, which were then on a rising market, and these were sold by Palgrave

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to A.E. Armstrong Pty. Limited, so that Palgrave made a profit, and the £100,000 was put back into Australian Factors. Is that the substance of what happened. A. I am not clear who the shares were sold to. You see, you cannot pinpoint it. Some of these shares could have been sold to Darling and Co., or anyone. You cannot say the shares of the company were sold to one individual. It was a commercial transaction agreed on by the boards of both companies. 10

Q. For what purpose? A. Can I give a long explanation of the purpose, your Honour?

HIS HONOUR: Yes. You have been asked the purpose.

WITNESS: The purpose of the matter goes back to the history of the formation of the two companies. In the early stages Palgrave gave a lot of assistance to Australian Factors both in office staff and executive staff, such as Mr. Eskell was used quite a lot. In helping in the formation of Australian Factors, in the underwriting and in many other ways, Mr. Eskell was a very valuable contributor. He, however, was managing director of Palgrave Corporation. Mr. Lammerton was then managing director of Australian Factors. Now, I think the feeling was that all of this had been - Mr. Eskell's feeling, and mine, and the feeling of the boards of both companies was that Palgrave had perhaps contributed quite a lot for which it had received no recompense in the early days of Australian Factors. This was some way of giving a small recompense back to Palgrave from Australian Factors. I think the profit on the transaction perhaps would have been £20,000 to Palgrave. I think Mr. Eskell and Mr. Lammerton felt that this was one way of doing it rather than just raising a charge of £20,000 for services rendered by Palgrave to Australian Factors in its formative period. That is my best explanation of the transaction. 20 30 40

MR. GRUZMAN: Q. There is no doubt that the object of the exercise was to transfer £20,000 from Australian Factors to Palgrave? There is no doubt about that? A. I don't know what the amount was, but to give Palgrave some recompense for the formative work which it had done with Australian Factors which I think was well worth the profit handed over to it.

Q. Just to get it clear, the object of the exercise was the method of transferring from Australian Factors to Palgrave a substantial sum of money? A. You could call it that, I think, Yes. 50

Q. And it was achieved by lending £100,000 to Palgrave, Palgrave buying Australian Factors shares which were rising, and then selling them and getting a profit? A. Yes. Of course, they could have taken a fall. They would have risen or fallen. I don't think they changed much in value. I don't think they did at that time change

much in value. Palgrave took the risk of them falling, too. I don't think they did at that time, but Palgrave did take the risk of them falling.

Q. For how long were they retained by Palgrave?

A. I could not recall that. It could be three to six months. I can't recall clearly. That is again a matter of record.

Q. The market price at that time was something like 12/11d? A. I could not agree with this proposition. I just don't know, Mr. Gruzman.

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Q. They were bought by Palgrave from Australian Factors at 5s. A. I don't think that is a correct assumption, but I just cannot agree. I just don't know.

Q. They were sold at 9/3d.? A. I could not tell you that. Whatever they were sold at would be a matter of record in the company books.

Q. They were sold by Palgrave at 9/3d. to one of your companies? A. No, I don't think it was one of my companies at all. One of my companies sold shares to Darlings, and the same number were sold back to me. I don't know. Certainly that transaction didn't advantage me.

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Q. The net effect of the transaction was that moneys which should have gone to Australian Factors was distributed between Palgrave and, I suggest, A.E. Armstrong Pty. Ltd. A. No I would not agree with that. I think it was a fair transaction, considering the commercial realities of both sides.

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Q. I would like to correct that. The shares eventually, I suggest, went to George Armstrong Pty. Limited. A. What shares are you talking about now?

Q. That is evidently the destination of those shares purchased for £100,000 - not A.E. Armstrong, but George Armstrong Pty. Limited. A. I am mixed up there. What are you trying to say now?

Q. That the shares purchased by Palgrave found their way eventually to George Armstrong Pty. Ltd. rather than to A.E. Armstrong Pty. Ltd. A. It could have been. I did not specifically earmark those shares. There were many share transactions at that time. It would be a matter of record and quite open and above board.

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Q. By the way, would it be true to say that the £100,000 was advanced not originally by way of a board resolution, but by a piece of paper written by you to Mr. Lammerton? A. No, I don't think so. I can't recall that at all.

Q. You just wrote it on a piece of paper and handed it to Mr. Lammerton did you not, saying in effect "Advance £100,000." A. No. I am sure it was discussed, I think Mr. Eskell and I discussed it. I am sure that Mr. Eskell was in on that discussion.

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Q. These shares were sold outside the market. It was a private transaction? A. I don't recall.

Q. Did you regard that as an honest transaction?
A. I thought in the general effect of it it was reasonable to help Palgrave by paying for this work it had done in forming Australian Factors.

Q. By the way, do you recollect the date of the minute of the Board? The date of the meeting of the Board? Do you recollect that date? A. No I could not recollect that. 10

Q. You say that there is a minute? A. I would imagine there should be. I don't know. If there was not there should have been.

Q. You are not sure whether there is a minute?
A. I am not clear at this stage, No.

Q. Can you tell us the date of the transaction?
A. Not to the - within a few weeks. Somewhere about January 1962, I think. I think it was January 1962. I am not very clear on the exact dates of this. I am not clear as to the exact date but I think it would be some time about January 1962. 20

Q. I will have to ask you the further question. What was the commercial advantage to Australian Factors in that transaction? A. Well there is another matter here which I can't recall clearly at this time. In fact, I can't recall it. I would not say there was any great commercial advantage to Australian Factors in this transaction. It was just paying back to Palgrave for Palgrave's help. 30

Q. Palgrave had made some losses at that time?
A. It was nothing to do with it. They had spent a lot of money in helping to establish Australian Factors.

Q. However, you regarded it as a perfectly honest normal transaction? A. I would not go so far as to say that. I think it was a transaction disclosed to the Boards of both companies, and a reasonable commercial transaction. I will go that far. Possibly it would have been better, again in hindsight, to have paid the sum direct of £20,000 (sic) to Palgrave. There would have been no reason for it to be queried at this stage, if that had been done. 40

Q. I put it to you that this was one of your schemes, and it was a dishonest scheme? A. No, it was not one of my schemes, and it was not dishonest in my view. I believe it was a scheme that Mr. Eskell conceived originally, and we discussed it with Mr. Lammerton and it was discussed in both companies, and everyone knew all about it. It was not underhand at all. 50

Q. It was the sole product of your imagination?
A. No, it was not the sole produce of my imagination at all.

HIS HONOUR: Q. You say it was not a transaction which was dishonest in your view? A. It was possibly - it didn't - let me clear my thinking on this. It was a transaction which was a commercial one, but would have looked better, in hindsight, done in another way,

MR. GRUZMAN: Q. I am showing you the minute book of Australian Factors. A. Yes.

Q. I show you the minute of 4th January 1962. That is the minute of 4th January 1962 over your signature. Do you agree with that? A. Yes. 10

Q. That appears to be a form of application by Palgrave for the issue of 100,000 fully paid stock units? A. Yes, it appears to be. Yes, £25,000 worth of stock. You may note, though, that I was not even present at the meeting.

Q. You were not present at the meeting? A. So far as I can recollect; I am not marked as being present. 20

HIS HONOUR: What is the date?

MR. GRUZMAN: 4th January 1962. I am sorry, 29th December 1961, confirmed on 4th January 1962.

Q. Well, you might have a look at the minutes there and just show us the minutes where the Board resolved that this £100,000 be lent. A. Perhaps you can help me.

Q. No, it is your minute book. You were chairman at the time, Mr. Armstrong. A. I can't see it.

Q. You can't find any minute. A. I have not looked right through the book. 30

Q. What I put to you is that this was entirely your scheme which was carried into effect by a piece of paper in which you directed Mr. Lamerton to make the advance. A. No.

Q. And that piece of paper is to your knowledge with the gentlemen who investigated Australian Factors. A. I don't think so. I don't recall any piece of paper.

HIS HONOUR: Q. Mr. Armstrong, I am just concerned at your saying you see nothing dishonest about that transaction even at this point of time? A. This transaction was revealed to the incoming directors. I can remember Mr. Millar commenting on it, and explaining it at an annual meeting - I can remember him saying he regarded it as something, as I have said, better not done, but he was quite prepared to defend it at the next annual meeting if it was questioned by the shareholders. That is Mr. F.W. Millar. I think it would have been much better done another way, and I think that opinion would be shared by the other directors who were involved in it at that time. 40 50

Q. Were you aware that by the Companies Act of 1961, which had been passed by Parliament in 1961, but, did not come into force until July 1962, so therefore it was not operative at that time - were you aware that this transaction may have been a criminal offence under that Act? A. No, I was not aware of that. There is another matter -

Q. Are you aware of that now? Have you ever become aware that this may have amounted to a criminal offence under the Companies Act 1961? A. Does that mean lending money to buy shares - 10

Q. Yes. A. I would be aware of it now, Yes. But could I explain to your Honour? There was another matter in connection with this that has not been brought up by Mr. Gruzman. It was necessary for Palgrave to subscribe for a certain number of shares in connection with this Minister Trust application which had been negotiated in London by Mr. Eskell and myself. That also was brought into the matter, and in effect the funds that were used to make this advance to Palgrave were on deposit, only earning nominal interest in Australian Factors' books at that time, as I recall. That is one of the explanations. I am quite prepared to say in hindsight, after discussing the matter with Mr. Millar and the other directors, I would have preferred we had done the matter in another way. I am not proud of the matter, but I don't think we had any dishonest or commercial - any dishonest commercial intent when we did it. I very seriously say I wish this hadn't occurred when I mentioned this fact to the inspectors. 20 30

MR. GRUZMAN: Q. You were speaking of your intent. Was it significant that at the next meeting, five days later, there was an interim dividend recommended at 12½ per cent. for the six months ending 31st December 1961? A. I don't think there is anything very significant in it.

HIS HONOUR: Q. I could not hear that. A. I don't think there was anything significant in that. 40

MR. GRUZMAN: Didn't you think that the 5s. shares might be worth a little more if you were paying a 12½% interim dividend for six months? A. No. A 12½ per cent. annual dividend at the rate of -

Q. A 12½% annual dividend. A. Yes.

Q. An interim dividend at the rate of 12½ per cent. for six months at the end of 31st December 1961? A. I don't think there was any sinister intent. We had already decided to pay the dividend. 50

Q. I am putting to you that you had already decided that? A. Already considered that.

Q. You knew what you were going to do at the time you made this deal whereby Palgrave bought all these shares? A. I am not denying, Mr. Gruzman, that Palgrave made a profit on the deal.

Q. And that you knew, and intended that? A. I said that, I think, in the beginning.

Q. Of course so far as all the other shareholders were concerned - those on 4th January 1962 - in respect of them it was resolved that the company issue 260,000 5s. shares at par on the basis of one for every five held by shareholders - A. Could I have a look at the entry?

Q. I am showing you the next minute following the one you referred to. The next minute is in respect of a meeting on 4th January 1962? A. Yes. 10

Q. At that meeting first of all this dividend was recommended? A. Yes.

Q. And secondly, a new issue of shares at par on the basis of one for five was resolved? A. I think those were issued. I am not clear on this. I would have to try and get back to my records. Were these issued to the general public or the Minister Trust? I am not clear on that. 20

Q. "Resolved that the company issue 260,000 5s. shares at par on the basis of one for every five held by shareholders on 25th January 1962". A. Yes.

Q. "Payable 21st February 1962, to rank for dividend as from 1.1.62". A. That was done to raise capital. I don't know whether that had some connection with the Minister Turst or not. I am not clear on that.

Q. What you did was to give to Palgrave shares which you knew at that time were very valuable didn't you? A. No. I told you, as I said to you in answer to your very first question, the effect of the transaction was to give some money back to Palgrave. I am not denying that. 30

HIS HONOUR: Q. Australian Factors was a public company at that date was it? A. Yes, at that stage, Yes.

MR. GRUZMAN: Q. At a meeting of Palgrave on 10th April 1962, confirmed by you on 22nd May 1962, and at which you were present - the Honourable A.E. Armstrong, Chairman? A. Yes. 40

Q. The Honourable S.L. Eskell, Mr. Cotter, Professor Messel and Mr. Nielson? A. Yes.

Q. Mr. Eskell reported that he had successfully negotiated the sale of the company's holding of 100,000 stock units in Australian Factors Limited by an off-market sale at a net price of 10/3d per share. A. Yes.

Q. Palgrave made 100 per cent. profit? A. No. £25,000 profit. That is what I told you at the beginning. 50

Q. It was resolved that that sale be approved?
A. Yes.

Q. I suppose on the strength of that you were able to make the next resolution of an interim dividend of 5per cent. A. I would not know that. It could be correct. I would not know.

HIS HONOUR: You mean capital profit, apart from any dividend?

MR. GRUZMAN: Yes.

WITNESS: With respect, less interest and holding charges on the money. Palgrave was paying interest on the money the whole time.

10

MR. GRUZMAN: Q. Was Palgrave a public company then?

A. Yes.

(Copy of minute, Palgrave, 10th April 1962 m.f.i. "54").

MR. GRUZMAN: Q. Palgrave was a public company, too wasn't it? A. Yes. it was. Palgrave was a public company. They both were.

Q. Did you think it was a proper course not to disclose in the minute who the purchaser was.

20

A. I didn't think - I don't know whether I was the purchaser or not, at that time. I could have been. But I had already sold some shares to Darling and Company, I think, before that time. These were re-purchases of shares that I had sold for some other reason. You would have to look at Australian Factors.

Q. The object of the deal was that you were to acquire the shares? A. No. The object of the deal was that Palgrave should make some money.

30

Q. And if there was any left over it was for you? A. There was not much left over, because these shares were valueless.

Q. What was left over you got? A. I didn't, because I held my shares to the end.

Q. At the end there was a profit, at 10/3d?

A. Very little.

Q. What there was to be made, you made by -

A. I didn't make a profit.

Q. Your intention was to make a profit? A. No, the intention was to replace the Darling shares. I remember that.

40

Q. You agree that in the minutes of the public company there is no reference to who the purchaser of these shares was in the off-market sale? A. I don't think there is any significance in that.

Q. You don't think it was significant? A. They could have been purchases by anyone. There was nothing sinister about them being purchased by one of my companies, if they were.

50

Q. Are not you supposed to acknowledge an interest if you are party to a resolution involving one of your companies in which you are interested (Objected to: rejected).

Q. Didn't you think you should disclose who the purchaser was if you might have an interest in it? A. If I bought them - and I am not having that I did buy them - I don't know that I bought them at this stage, but the whole thing was completely open and aboveboard. All the Board members knew where it was going. 10

Q. By the way, the remainder of the £100,000 - 100,000 stock units only cost £25,000. A. Yes.

Q. And I suggest to you that there was £100,000 involved. A. I think that is correct, Yes.

Q. You think that is correct. A. Yes.

Q. And in fact the £75,000 was taken up in first mortgage debenture stock? A. Yes.

Q. And that was sold by Palgrave? That was sold by Palgrave, wasn't it? A. I believe so. 20

Q. At a profit? Sold at a profit? A. I don't think there was any profit, and, if so, very little. It was just ordinary debenture stock. The profit would be very minor.

Q. I show you part only of a photostat of a meeting that has your signature. It is a meeting of 22nd May 1962. A. Yes. That is the same one.

Q. Is it the same one? A. I think so, Yes.

Q. It looks as though it is the same meeting, but this page does not correspond to that page, does it? A. I am not sure. 30

Q. I don't suggest there is anything sinister in it. It is just the way the photostats are. I am showing you a photostat. Will you agree that this is a photostat of your signature, and the date 22nd May 1962? A. Yes, I would say so.

Q. And it appears to you to be a photostat of a minute of Palgrave? A. Well, this is a little bit difficult for me to say this. It appears to be Palgrave. I think it must be Palgrave, but I can't be certain of it. 40

Q. Will you agree that the minute that you confirmed on this page is in these terms (Objected to; rejected).

(Luncheon Adjournment)

AT 2. P.M.

Q. Would you agree that your actions in respect of that £100,000 transaction showed a cynical disregard of the interests of the shareholders. A. No. 50

Q. What you did was to divert from the individual shareholders part of their rights to take up the new issue, didn't you? A. No, I would not agree with that.

Q. The shareholders became entitled to a one for 5 issue didn't they? A. I can't recall whether they actually became entitled or whether that agreement was later legally disbarred. A. I can't recall that.

10

Q. The resolution was certainly passed on 4th January 1962 to give to shareholders a one for five issue. A. Yes.

Q. And that meant that the individual shareholder had the right to take up a share for 5s. which was then worth something in excess of 10s.?

A. No, I don't think at that time. I don't think it was at that time. Unless you have the Stock Exchange Gazette I would not agree with that. I don't know.

20

Q. Once the 12½ per cent. dividend - once the dividend at the rate of 12½ per cent. had been declared, these shares become worth something of the order of 10s. didn't they? A. I don't know. I don't know what the market was for them at that time.

Q. I put it to you that you were well aware that in entering into this transaction involving a £100,000 loan to Palgrave you were knowingly cheating the shareholders of Australian Factors?

A. No I would not agree with that.

30

Q. I put it to you that your attitude to the shareholders showed a cynical disregard of them?

A. No.

Q. Do you remember in part of the evidence here it was suggested that you had said the words "F - the shareholders"? A. Yes.

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

Q. That fairly represents your attitude to the shareholders doesn't it? A. Definitely not, definitely not. I was one of the largest shareholders in Australian Factors. It is a ridiculous statement to say that -

40

Q. I put it to you that you have a complete disregard for the shareholders in a public company in which you are a director? A. Definitely not.

Q. Mr. Lamerton was someone who you trusted wasn't he? A. Yes, definitely. For a time.

Q. And one of the people whom you regarded as loyal to you? A. No. I was never too sure about Mr. Lamerton.

50

Q. But you did your best to ensure his loyalty

didn't you? A. I don't know what you mean by doing my best to ensure his loyalty. I expected his loyalty. It should have been properly given, Yes.

Q. Would you regard it as proper for Australian Factors to lend £20,000 to a director for twenty years at no interest? A. In the circumstances at the time the Board so regarded it as proper.

Q. Do you think it was a proper course to take commercially? A. In the circumstances at the time. 10

Q. What you are saying is you agree with me, first of all, that Australian Factors lent to Mr. Lamerton £20,000 of its money for twenty years with no interest (Objected to; rejected).

Q. Perhaps I should ask you this in a slightly different way. Did Australian Factors lend to Mr. Lamerton £20,000? A. No, that is incorrect. Not specific fact.

Q. Did they lend him some substantial money? A. It is a matter of record. It is in the minutes. It is a complete distortion to say that £20,000 was lent to Mr. Lamerton. £19,000 was lent to one of Mr. Lamerton's companies, as I recall, and £1000 to Mr. Lamerton, but this was on the agreement to stop him from refraining (sic) from factoring for some considerable period. That was the reason for the loan. 20

Q. £19,000 was lent to one of Mr. Lamerton's companies, is that what you say? A. I believe so, Yes. 30

Q. Lamerton Investments Pty. Ltd. A. Yes.

Q. And £1000 was lent to Mr. Lamerton personally? A. I would think that would be correct.

Q. Was the period of the loan twenty years? A. I believe it was 15 years. I would not be sure. It is very easily checked by the documentation.

Q. Was there any interest payable? A. I don't recall it.

Q. Is that an honest answer? A. I don't really know of this one. It is easily checked. It can be easily checked by the documentation. 40

Q. Where will we check it? A. It should be in the minute book, I think.

Q. What date was this, do you know? A. Round about towards the end of June or early July 1963, I think.

Q. (Approaching witness). Well, on 4th July 1963 there was a meeting at which you were present yourself, Mr. Lamerton, Mr. McCrossin, Mr. Roberts and Mr. Cox

as Secretary, and there was a heading "Covenant on Mr. W.S. Lamerton: It was noted that the Board has for some time been concerned to ensure that should Mr. W.F. Lamerton cease to be managing director of the company that he could not make his services available to any other company concerned in the business of factoring and whereas Mr. Lamerton has now stated to the Board that he would be prepared to covenant that he would in the event of his ceasing to be managing director, for a period of three years thereafter, be associated with any other company which itself or through any subsidiary carries on the business of factoring in consideration of (a) payment to him of £1,000, and (b) the making by the company of an interest-free loan to Lamerton Investments Pty. Ltd. of £19,000 payable in fifteen years' time. And whereas the Board considers such a covenant to be advantageous to the company on these terms. It was resolved that the Board approves of such payment and loan in return for the covenant and agrees along the lines of the draft submitted to the Board at this meeting and approves that the seal of the company should be affixed to such a document when prepared and approved by the company's solicitors."

Now look, Sir, that was a £1,000 gift or payment to him? A. Yes.

Q. Plus £19,000 interest-free loan to his company for fifteen years? A. That is right.

Q. And I suggest to you that this covenant was an illusory advantage to the company? A. No, I would not have thought so.

Q. I suggest to you that this was a way in which you used public money to secure the loyalty to Mr. Lamerton? A. Quits incorrect. Can I make one explanation to your Honour on this matter or not?

HIS HONOUR: Q. I would like to ask you some questions about some documents that are called for on subpoena. Just before I do that, will you agree with me that on 11th April 1962 A.G. Armstrong Pty. Limited paid £51,250 to Palgrave Pty. Limited in respect of those shares. A. I don't know. It could be; it could not be. It is a matter of record. I don't know. That would be a matter of record.

Q. Well, I will show you what I suggest to you is a photostat of folio 25 of the cash book of Palgrave. (Objected to: rejected).

Q. I show you this document, and I indicate an entry here? A. I would not know what it is, but I suggest -

Q. You might just tell me, having looked at that document, would you agree that on 11th April 1962 A.G. Armstrong Pty. Ltd. paid to Palgrave £51,250? A. "A.G. Armstrong, " is incorrect. It

is definitely "A.E." and it should be "A.E." for a start. I don't know what it is, you see.

Q. Mr. Armstrong, I think you were present in court this morning when Mr. Thorpe, Secretary of Southern Tablelands Finance Co. Pty. Ltd., was asked some questions on the voir dire in relation to a subpoena duces tecum? You were in Court at that stage? A. Yes, I was.

Q. And I think you heard Mr. Thorpe inform the court that you were the officer of the company who would know the whereabouts of records, A. He would know more about records - the whereabouts of records than I would. I am sure that he would give you a truthful answer. 10

Q. I want you to see if you can assist us. First of all what is the business of Southern Tablelands Finance Co. Pty. Ltd. shortly? What is the business of Southern Tablelands Finance Company?

A. It is a lending and development company. It has got all sorts of interests. Mainly money-lending at the present time - but mainly now to my own companies. A sort of holding company at the present time. 20

Q. Has it employed the services of Frederick Hume? A. Apparently, by this statement, Yes.

Q. Well, from the form of your answer do I understand that were it not for the document to which you referred you would not know whether the company had employed the services of Frederick Hume? A. I think the services were charged to that company, Yes. 30

Q. Honestly charged to that company? A. Yes, I would say so.

Q. By "honestly charged" I mean charged to that company for work done on behalf of that company? A. I think if you show me the document I can assist you, Mr. Gruzman?

Q. Just answer the question first of all? A. It is hard to answer the question. I don't know what you mean by it. One sometimes charges one thing to one company, and one thing to another, for different reasons. I can assist you if you show me the document, if you wish. 40

Q. You are aware, of course, that the company paid a substantial sum to Mr. Hume? A. Certainly.

Q. Was that paid by the company to Mr. Hume for work done by Mr. Hume on behalf of the Company? A. Some of it was; some of it wasn't.

Q. Well, how did it come about that the company would pay moneys to Mr. Hume for work not done on behalf of the company? A. Well, that is a question that I would allocate where I would put certain 50

things, There may be no particular place. It could have been paid by A.E. Armstrong. It just happened on this occasion it was paid by Southern Tablelands which pays quite a lot of accounts.

Q. Well, are there any shareholders of Southern Tablelands Finance Co. Pty. Ltd. who don't hold shares on your behalf? A. I cannot recall. I would not think many, anyway.

Q. And the company, of course, is perfectly solvent? A. Yes. I hope so. 10

Q. So that moneys in the company could fairly be used for your purposes without hurting anyone? A. I would say so, Yes.

Q. There would be no reason for any deceit in obtaining moneys from the company to pay Mr. Hume. A. No, I would not think so, No.

Q. (Approaching witness). I show you now a document which is headed "Humes Investigations", and dated 21st December 1962, and addressed to the Accountant, Southern Tablelands Finance Co. Pty. Ltd. A. Yes. 20

Q. Did you receive that document? A. Yes. When I say that, Southern Tablelands received it. It was posted to Southern Tablelands. It came to Southern Tablelands.

Q. It came to your personal knowledge? A. Yes, when the cheque was paid.

Q. You received the invoice. A. Yes.

Q. You authorised payment of the invoice, is that correct? A. Yes, that is correct. 30

Q. And you signed the cheque? A. I did.

Q. And did you regard the invoice as an honest invoice? A. Yes.

Q. In other words, what you were paying for was for the work shown by that invoice? A. Yes, except that I have to give you some explanation of these entries here.

Q. Just pausing for the moment, did you take any steps to check the amounts charged on the invoice. A. Yes, I knew what they were for. 40

Q. For example, "travelling expenses" and so on. Did you take any steps to check them? A. Yes. I asked Mr. Hume if they were reasonable and he said they were, and I believed what he said.

Q. Did you ask for invoices. A. No.

Q. Dockets of some kind? A. No.

Q. Some of them would quite obviously give rise

to documents, such as accommodation and matters such as that? A. Yes. I believed him to be at the places. I did not ask him to produce his motel receipts and that sort of thing.

Q. Perhaps you may then go through it. Just before we do that, are there any documents relating to any of these matters. A. No. No, Mr. Gruzman.

Q. No documents at all? A. No.

Q. But you see, take one you may have heard me refer to this morning - time taken travelling Sydney-Goulburn-Canberra on 10th November 1966. A. To save time I can help you on that if you would let me. 10

Q. Have you any recollection of that? A. Yes, I know what they are. I will have to tell you about them in one group. There are several which fall into just the one group. Can I show you, just to help you?

A. Yes. A. This one is - 20

Q. These are investigations carried out at Double Bay, Mr. Hoffman? A. Would you like me to explain these to you?

Q. Yes. A. Mr. Hoffman and Mrs. Hoffman were at that time in partnership with my wife in a shop called Hermes at Double Bay, and there were some thefts at the shop and this is an investigation on behalf of Mr. Hoffman of those thefts.

Q. What you are telling his Honour is that Mr. Hoffman was a party to the investigation? A. He knew about it, Yes. 30

Q. He knew about it? A. Yes.

Q. And had requested it? A. Yes.

Q. So did you report anything to him? Was any report made to him? A. I don't think there was any report, but you can check with Mr. Hoffman.

Q. You say we can check with Mr. Hoffman. Would it surprise you to know that we have? A. I would not be surprised what you have done.

Q. Mr. Hoffman does not know of any investigation? A. I would be surprised if he said that, Yes. Very. 40

Q. Let us take the next one. A. Well, the next one, I would like to get a bulk of these. We have to bulk a lot of these together. We have to bulk the ones from there (indicating) to there in one bulk payment.

Q. I will just identify those. A. They are all in connection with one particular item.

Q. It deals with a trip from Sydney-Goulburn-Canberra on 10th November; a trip from Canberra to Sydney on the 11th November, and from Sydney to Collector on 11th November and Collector, Queanbeyan, Cooma, Jindabyne on 12th, and Jindabyne, Adaminaby, Cooma and Thredbo on the 13th November and Thredbo to Sydney on 14th November, and Sydney-Jindabyne-Goulburn-Collector-Queanbeyan-Cooma-Jindabyne on 25th November, And Jindabyne etc. to Sydney on 26th and 27th November, is that right? 10

A. I have not been watching you. It goes down to here (indicating).

Q. Now would you mind telling his Honour about it? A. Well, you will recall at that time it was just before the Federal Elections and I was using Mr. Hume's services, and his secretary, to go down and interview a number of people around the Snowy Mountains, mainly Yugoslavs and people of that nationality, to assist in the Liberal-Country Party Campaign in that area, and that is what Mr. Hume was doing, and that is why it was not detailed out. I am not saying Mr. Hume might not have to make some payment to some of the men or distribute literature. Therefore I didn't ask for a complete report. He was down there. That could be checked with Mr. Pratten, the Country Party candidate, and and Mr. Brewer. I saw him with his secretary at Goulburn. That is the reason for these expenses - electioneering expenses. 20

Q. What payment did you think Mr. Hume would have to make to some of the men? A. I would not know. He was doing an electioneering job. I would not know if he was making any payment. But these were his expenses for doing the job for which he was fitted. He understood their language and had dealt with many compensation cases for them. He had dealt with them in relation to compensation cases and they had some confidence in him. 30

Q. This was a Federal Election? A. A Federal Election. 40

Q. You were employing Mr. Hume to electioneer?
A. To assist in the Election campaign - the Federal Liberal-Country Party.

Q. You employed Mr. Hume for that purpose? A. It was like making a donation to the Party. The same thing.

Q. The same thing? A. Yes.

Q. Did you have particular individuals whom you wanted Mr. Hume to interview. A. No, I left that to Hume. I left it in his hands. 50

Q. This was a form of electioneering where Mr. Hume was sent out to approach what? People he knew?
A. Mainly construction workers on the Snowy Mountains Project.

Q. What was he to do? To make speeches? A. No,

to talk to them about the merits of the Liberal-Country Party Candidates. To ask them to vote for them.

Q. To get their votes? A. That is right - the best way he thought he could.

Q. And to pay for their votes, if necessary?
A. I would not say to pay for the votes. I was paying Mr. Hume to do the best work he could in the electioneering.

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Q. When you spoke of making small payments to some of the men, that would be paying for their vote? A. I would not know. That is why I said I did not check Mr. Hume's accounts and ask him to put a docket in for everything he did.

Q. Because you thought it would be embarrassing?
A. No.

Q. It would not embarrass you to find that Mr. Hume had paid someone \$2 for his vote? A. I think it would be entirely unusual, but it would be a matter for Mr. Hume and the man concerned. But he would not buy votes. You don't buy votes these days.

20

Q. I have not quite understood the campaign?
A. It was the Federal Election Campaign, for the Federal seat of Eden-Monaro.

Q. Who was the member? A. The sitting member was Mr. Graser (Objected to: allowed).

Q. Who were the opposing parties? A. Mr. Fraser was the sitting member who has been there for 25 years, and is very well known to me. I saw him that day in Cooma myself. I saw Mr. Hume and his secretary. The other two were Mr. Pratten, and Mr. Dougall Munro, who won the seat for the Country Party. I was supporting Mr. Munro and Mr. Pratten. I did not care which one got in.

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Q. You were down there with Hume? A. No, I did not go down to the Snowy Mountains with him but I saw him at Cooma and Goulburn - I think I was with him on one of the occasions mentioned. I spent most of the Federal Election Day in Cooma.

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Q. The day of the Federal Election you spent in Cooma? A. Most of it.

Q. Most of that day? A. Yes.

Q. What day was that? Do you remember the date?
A. Whatever the date of the Federal Election was.

Q. Would it have been - A. I think it was 25th November.

Q. 25th November? A. It would be one of the days on some of these invoices.

Q. Has Mr. Hume got any electioneering qualifications? A. I apparently believed so, or I would not have paid him.

Q. To your knowledge had he done any electioneering work before? A. I think I know a little bit more about electioneering than you would, Mr. Gruzman, with respect, and I would say that you often influence votes - you don't influence votes these days by making speeches; you go around saying "Mr. Munro is a nice type of man. Vote for him", if you are a friend of his. Some of these men will vote for him. It is done in a much more subtle way than making speeches. 10

Q. What party is Mr. Hume? A. I would not know.

Q. ~~Do you know if he is a member of the Communist Party?~~ (Objected to; by direction question struck out as indicated).

Q. Usually people who are electioneering electioneer for their own parties, don't they? 20
A. No, you can employ a public relations agent. You find people from a Commonwealth Public Relations firm do work for the Labour Party - it does not say they are members of the Labour Party.

Q. The fact is that you don't know Mr. Hume's particular brand of politics. A. I would not know. He was quite prepared to support the two candidates. That was all I was interested in.

Q. Can you name any persons whose vote he influenced. A. It was a secret ballot, Mr. Gruzman. 30

Q. You realise I am putting to you that your answers to these questions are thoroughly untrue?
A. I am putting to you they are the perfect truth. The absolute truth.

Q. I want to get this right. This was an electioneering campaign, and Mr. Hume was to go around and talk to people in the area. A. On the Snowy Mountains Construction sites mainly.

Q. And I suppose he was to spend as much time as possible with them? That was his first job? A. As long as he could, Yes, depending on the time spent. He had to get there and come back. 40

Q. I suppose that the time to get and talk to people is down in the pub. after work? A. I would not know how he did it. I was not with him.

Q. You know a lot about politics and influencing people. Would not you expect that this sort of personal approach would be made by going to the hotel after work? A. At many places.

Q. At some meetings? A. No, not meetings much now. There are a lot of shift workers. He could have met them at any time. 50

Q. I suppose the last thing you would expect him

to do would be to go down and back and down and back? A. He went twice - on two occasions I think.

Q. What was the necessity to go down and back?

A. Well, he was not going to spend all his time there.

Q. But he was to go down on an electioneering campaign, wasn't he? A. Mr. Gruzman, what I am putting to you is perfectly true. You can keep on talking about it forever, but that is the fact-- what he did. 10

Q. Your secretary was with him? I am sorry, I didn't quite understand. Did your secretary go with him? A. No, my secretary did not go with him. His own secretary, I think.

Q. His own secretary? A. Yes.

Q. Was her time involved in the electioneering? A. I don't know. She was with him. I don't know whether she was helping him or what she was doing. 20

Q. You never asked him to report, I suppose?

A. Yes, he gave plenty of verbal reports.

Q. What about written reports? Did you ask him for a written report? A. No, I did not ask for a written report.

Q. You are a man who is very keen on writing?

A. I didn't want written reports. It either worked out well and we won the election. Who is to know whether he influenced any votes? You can never tell in electioneering. 30

Q. You will have to forgive my lack of politics, but does a politician get a tax deduction for moneys spent on electioneering? A. No.

Q. His expenses are not deductible? A. No.

Q. Are you sure of that? A. Only a very minor amount.

Q. If he employs a public relations man you say that such expenditure is not deductible? A. Not supposed to be, I don't think. There are strict electoral laws on that, that you are only supposed to spend so much. 40

Q. But this was a Federal campaign and you were just assisting? A. I was only assisting. This was not a charge on any of the candidates at all. This was just myself.

Q. It was really part of your existence as a State Politician to render some assistance in a Federal Election? A. Yes, you do that.

Q. And that would have been a deduction from your income tax wouldn't it? A. No, it was not. It was charged to general expenses. 50

Q. It was charged to the company? A. Yes.

Q. The company could not get a deduction for it? A. No, I didn't claim a deduction.

Q. But you could have, couldn't you? A. I did not claim any. It was charged to the company.

Q. Yes. They were your expenses, weren't they?
A. What are you trying to put to me, Mr. Gruzman?

Q. What I am trying to put to you is that this document is a lie. A. It is not a lie. 10

Q. I am putting it to you, amongst other things, that if these were genuine electioneering expenses you would have paid them yourself and claimed a tax deduction? (Objected to; rejected).

Q. The fact is you paid \$1,094 to Mr. Hume on what date? A. 5th January, I think.

Q. 5th January? A. Yes.

Q. You might just tell his Honour in your own words - that is 1967? A. Yes.

Q. You might just tell his Honour in your own words how you would describe your relationship with Mr. Hume. A. Just an average relationship. 20

Q. Would you enlarge on it a little? A. In the first place I was introduced to him by Dr. Max Burns. I don't know how long ago. It may have been 1965 or 1966. I met him through tennis. And after that he did - the first time I ever engaged him professionally was the time Mr. Barton and I engaged him to do the repossession at Surfers Paradise, and that was the only occasion he worked for that company. He did do some further investigations for me at Surfers at the Paradise Waters Project, for which he was paid by another company. One occasion he was paid by Landmark, one occasion by this company and another occasion by Pacific Panorama Pty. Ltd. I think you have the accounts. Those are the three occasions I met (sic) him. From time to time I met him and played tennis with him, and once or twice I have taken him up the river water ski-ing. 30 40

HIS HONOUR: Q. Those are the three times you employed him? I think you said "The three occasions I met him". You meant the three occasions you employed him? A. Those are the three times I employed him I may play tennis with him once a week.

MR. GRUZMAN: Q. Over what period may you have played tennis with him once a week? A. I could not remember that. I don't think it would even be in my diary.

Q. Give his Honour the best indication you can?
A. I would not know, because sometimes I was overseas. I was overseas for three months last year so I did not see him at all for three months last year. 50

Q. Whilst you were in Sydney would it be every week? A. I would not think so. Definitely not.

Q. Almost every week? A. No. It may be three times one week and not again for three weeks.

Q. An average of once a week? A. I could not average. I could not speculate on it.

Q. That was purely social? A. I would say so. Yes.

Q. Go out to dinner with him occasionally? 10

A. I don't think I have been to dinner with him outside my home more than three or four times. I could have been. I don't know. Not very often.

Q. When he comes to your home and you play tennis does he have dinner at your home? A. Sometimes he will have a cup of tea after tennis, Yes, in company with other people.

Q. A friend of the family? A. No, I would not call him a friend of the family.

Q. A friend of yours? A. He is an acquaintance. 20
That is all.

Q. Do you have friends that come as frequently as that? A. I don't think there is any significance in this at all. I am quite happy to say I am quite friendly with Mr. Hume, Yes, if that helps you.

Q. Are you still friendly with him? A. Yes.

Q. Still on the same basis? A. He plays tennis with me from time to time, Yes.

Q. You are aware that he does work for the police? A. I am only aware of what I heard in this Court about that. 30

Q. That has not altered your views about him?
A. No.

Q. He is known to you as a police informer, isn't he? A. You said he was Sergeant Wild said something different.

Q. Well, so far as you are concerned, do you know he is a person who gains the confidence of criminals and tells the police about them? A. Well, I don't know that. I believe he assists the police. That is what I have been told. 40

Q. Have you discussed that with him? A. Not much, No. I know that he received a commendation from the Commissioner, and is reputedly supposed to have assisted the Commonwealth Police.

Q. Have you put to him "Look, it was said in court that you are a police informer. Is this true?" A. The line seemed to be very finely drawn on this "police informer". I don't know the

difference between a police informer - I listened to what was said in this Court, and from what I heard the interpretation I put on it is this: that a police informer is a person, generally a criminal who informs on other criminals for gain. I understand that this description does not apply to Mr. Hume.

Q. Do you understand that the description that could be applied to Mr. Hume is that he is a person who knows criminals, gains their confidence and passed information on to police (Objected to: rejected). 10

Q. You certainly know that Mr. Hume is an associate of criminals, don't you? A. I don't know what you call an associate of criminals.

Q. That is a person who is known to and known by criminals? (Objected to).

HIS HONOUR: The plaintiff's case is that Mr. Armstrong engaged Mr. Hume as a means of bringing pressure to bear on Mr. Barton to sign the agreement. Mr. Gruzman has asked Mr. Armstrong in cross-examination a question directed to ascertaining Mr. Armstrong's view of the type of man that Mr. Hume was. This question is objected to, and indeed it is said that to permit cross-examination on this point would be unprecedented. Whether this be so or not, I am of the view it is relevant on the probabilities to permit Mr. Gruzman to probe Mr. Armstrong in cross-examination upon, inter alia, his belief of the type of man Mr. Armstrong that he engaged Mr. Hume for this purpose. I allow the question. 20 30

MR. GRUZMAN: Q. In the sense in which I have used the term, did you regard Hume as an associate of criminals? A. Could you define "the sense in which you use the term"?

Q. Yes. A person known to and known by criminals. (Objected to).

Q. Did you regard Hume as a person who had a knowledge of the criminal world? A. In the same sense as a policeman, yes, or a criminal lawyer, for example. 40

Q. You have told us that you understood that he assisted the police. A. I learnt most of this in this Court.

Q. What was your understanding of how you understood he assisted the police? (Objected to - rejected).

Q. Prior to this case commencing, do you tell his Honour that you had no knowledge that Hume was a person who knew the criminal world: A. No, I would not say that. Hume told me himself that he had assisted the police on occasions. 50

Q. What did you understand that to mean? A. I did not go very closely into it. That he assisted

police in the apprehension of criminals. That is what he told me, that he assisted the police. We did not go into the details of it.

Q. Hume is a Yugoslav, isn't he? A. Yes, I understand so.

Q. You yourself have used him to make contact with other Yugoslavs, haven't you? A. Yes, that was the use of him in this electioneering campaign.

Q. Was it your understanding on what Hume told you that he applied his knowledge of Yugoslavs in the underworld to help the police? (Objected to - allowed). 10

HIS HONOUR: I do not think it is necessary to state further reasons. I am of the view this question is admissible for the reasons I outlined a few moments ago.

(Last question read,)

WITNESS: I would not know particularly of that. Nothing detailed. The only thing I thought was he may be able to assist. These are my thoughts, not knowledge and understanding of him. That he could speak the language. These are only my thoughts. I want to make this clear. Not understanding. 20

MR. GRUZMAN: Q. Hume was rather proud of the way in which he assisted the police, wasn't he? A. He said he received this commendation, which I understand is a matter of record.

Q. Did he tell you he had been responsible for the arrest of two men who had committed a number of offences of breaking and entering hotels? A. I cannot recollect. 30

Q. He may have told you something about that?
A. I do not recall this, about breaking and entering hotels. I do not recall that.

Q. Did he tell you that he had been responsible for the arrest of a man who had been sought for maliciously wounding another man? (Objected to: allowed).

Q. Did you understand from Hume that he was responsible for the arrest of a man at Kings Cross whilst he was attempting to sell a diamond ring? 40
A. No.

Q. Didn't Hume discuss that matter with you? A. No.

Q. Did he not tell you now pleased he was to be able to assist the police as a citizen in that matter?
A. No.

Q. Did he tell you that he was responsible for the arrest of a man who obtained by false pretences certain electrical goods? A. No, I do not recall that. 50

Q. Did he tell you that he was responsible for the arrest of a man who had broken and entered the East Cooma Post Office? A. No, I do not recall that.

MR. STAFF: I take it my objection will cover the whole of this?

HIS HONOUR: Yes.

MR. GRUZMAN: Q. Did he tell you he was responsible for the arrest of another man who had assaulted a police officer? A. No, I do not recall that one. 10

Q. Did he tell you he was responsible for the arrest of these men who had come from Victoria, where they were wanted? A. No, I do not recall that. Our whole time was not spent in discussing police matters.

Q. You have told us you were aware that he had this police commendation. A. He told me that.

Q. And you were aware this was for assisting the police? A. I did not know in what manner. 20

Q. You do not know the precise thing? A. No.

Q. But you knew the sort of thing? A. No, I did not.

Q. I suppose the matters I have just put to you as a result of your conversation with Hume would not sound foreign, from what you knew of Hume? A. I cannot answer that. It does not make sense to me.

Q. You had a discussion with him about assisting the police, did you not? A. Of being commended for bravery. That is the only discussion I had with him. 30

Q. This, in your own words, was the discussion with Hume about assisting the police, was it?
A. That is about all I discussed with him before this case.

Q. You are still friends with him, aren't you?
A. Yes, I am still friends with him.

Q. You now know what precise connection Hume has with the police, don't you? A. I know what you have just read to me. I know it now. I did not know it before today. 40

Q. That does not alter your association with him? A. I do not see why it should.

Q. I put it to you that Hume was a man whom you regarded as a link with the underworld. A. No.

Q. I put it to you you regarded Hume as a man to whom you could turn if you wanted to employ a criminal. A. Completely false.

Q. When it came to the Surfers' Paradise incident, you did employ Hume, didn't you? A. Landmark. Mr. Barton and I employed Hume, yes.

Q. Why was Hume brought in? A. He was the only one I could think of at the time. Mr. Barton could not think of anyone. We cast our minds around. Hume Investigations struck a cord with me. I had known him through Dr. Bryne, playing tennis, and he seemed a reasonable type of chap, and he was conducting a business at that time in Surfer's Paradise. He was there at the time. We could just as easily have got Webster's, but he was in Queensland. 10

Q. You expected some trouble, did you? A. No, no trouble.

Q. There were very large sums of money involved, weren't there? A. Not in the repossession of machinery.

Q. It was not the company's machinery to repossess, was it? A. I would not like to comment on the legal situation. There was a case in Queensland over that. 20

Q. The position was Landmark had employed some contractors, wasn't it? A. Please do not ask me to give you the legal details.

Q. Not the details, but Landmark had employed contractors to do certain dredging work, hadn't it? A. That is correct.

Q. And at a certain stage the contract was terminated? A. I believe so. 30

Q. It was your belief that in a clause in the contract Landmark had a right to seize the contractor's machinery, wasn't it? A. Mr. Barton informed me that was the case.

Q. And you anticipated that the contractors would resist, perhaps violently, the seizure of their property? A. I would not have thought so.

Q. Why didn't you go and say "Please hand over the machinery"? A. We had to serve notice on them. 40

Q. That is no trouble, is it? A clerk in a solicitor's office can do that. A. Mr. Barton and I both thought it was hardly in line to go taking dredges, with some of which the title was probably doubtful. They were probably mortgaged to somebody else. Mr. Barton and I did not want to get ourselves in trouble seizing a dredge belonging to Customs Credit or some other company.

Q. Hume was known to you as a strong-arm man, wasn't he? A. No. 50

Q. He was a man you could rely on, wasn't he?

A man who could use physical violence if necessary?
A. Not at all. I have never seen him use physical violence in his life.

Q. I put it to you the reason for the employment of Hume was that he was regarded as a man who would use physical violence if necessary? A. No, not at all.

Q. There are plenty of inquiry agents in Brisbane, aren't there? A. We did not think of one, and we wanted one quickly. 10

Q. You had solicitors there, didn't you? A. Mr. Barton and I regarded this matter as urgent. We wanted to get on with the matter.

Q. The company had a large building in the city of Brisbane at the time, didn't it? A. It was building a building. Kratzmann was building a building.

Q. You had various projects at Surfer's Paradise, didn't you? A. Yes, we certainly did. 20

Q. So that you were familiar with Brisbane, and it is 60 miles from Surfer's Paradise? A. Yes.

Q. What was the necessity to fly a man from Sydney especially to serve some notices? A. I thought he would be a good man, and Mr. Barton when he met him, agreed.

Q. You believed him to be a man who would use violence if necessary, didn't you? A. No.

Q. You believed him to be a man who would employ criminals if it was necessary, didn't you? A. No. 30

Q. It was your belief, wasn't it, that it might become necessary to have a gang of men to take over this machinery? A. No.

Q. You expected physical resistance from the contractors, didn't you? A. I do not know what I expected. We just behaved in a correct commercial manner, in my view. Both Mr. Barton and I. We employed an investigator rather than do it ourselves. It is quite possible they might have resisted Mr. Barton and myself. We did not intend to get into any fights over repossession of machinery. 40

Q. You wanted a man who was known to you as a strong-arm man, didn't you? A. He was not known to me as a strong-arm man.

Q. Why did your wife have Hume's phone number in her notebook? A. She often rings up when I ask her to ring up people to get them to come to tennis. That is the reason. 50

Q. When Hume's name was suggested your wife said

"Mr. Barton - or Alec - won't like Hume's methods", or words to that effect, didn't she? A. My wife did not use those words.

Q. She was there at the time, wasn't she? A. She was there.

Q. She was there at the time when Hume's name was first mentioned? A. She was there and got it out of the book.

Q. And her immediate reaction was "Alec won't approve of Hume's methods", or words like that? 10
A. Quite incorrect and false.

Q. Did you think Mr. Barton would approve of Hume's methods? A. Mr. Barton did not have knowledge of Hume's methods any more than I had. He was happy. He paid him.

Q. He paid him? A. Landmark paid him.

Q. Landmark? Who paid him? A. Landmark paid him.

Q. You said he paid him, didn't you? A. Landmark. 20

Q. Who paid him? Again? A. Landmark paid him for the work at Surfer's Paradise as far as I know, unless I have been falsely shown books on it, because I understand he was paid by somebody.

Q. What is your recollection of payments to Hume? A. My payments to Hume?

Q. Yes. A. I told you. There were only two.

Q. At Surfer's Paradise, that is your recollection of how Hume got paid? A. Hume told me - I do not know this to be a fact - he came to the office of Landmark in Sydney and was paid, after the whole job was completed. 30

MR. STAFF: By Barton.

WITNESS: By Mr. Barton. That is what Hume told me.

MR. GRUZMAN: Q. Mr. Staff assisted you there, and you accept it. A. He did not.

Q. You accept that Hume came to Landmark's office and was paid by Mr. Barton, do you? A. That is what Hume told me. 40

Q. That is your belief? A. Yes. I was not signing the cheques for Landmark at that time. I did not sign the cheque for him. He must have been paid. That is what I was told.

Q. Didn't you instruct Kilmartin in Surfer's Paradise to pay some money to Hume personally? A. I do not recall that, unless it was on account of some matters.

Q. You think you might have forgotten? A. I don't recall.

Q. You have just told us you accepted Hume's statement that his payment had been made by Mr. Barton in Sydney, haven't you? A. His final payment. There may have been payments on account.

Q. His final payment? A. That is what I think.

Q. You do not recollect... (Interrupted). A. I don't know. It could have been. 10

Q. Will you agree that Kilmartin paid to Hume the sum of \$200 in an account dated 2nd August 1966? A. I have never seen this, I don't know.

Q. Will you agree, having seen this document, that Kilmartin paid this money to Hume on your personal instructions? A. I would not say that. It could have been Kilmartin paid this money to Hume on my instructions. I was carrying on all the work at that time at Surfer's Paradise.

Q. Will you admit, having seen this document, that Kilmartin paid these moneys to Hume on your personal instructions? A. I don't remember giving instructions, but I could have. I do not remember giving them. There is nothing mysterious about it. I could easily have said to make a payment to Hume on account. This is the way things were done. 20

Q. Having seen the document will you admit. (Interrupted). A. I am not admitting anything. There is nothing mysterious about it. 30

Q. Will you agree the document is correct in this respect? (Objected to - rejected).

Q. Is that Frederick Hume's signature? A. It appears to be. I imagine it is.

Q. Will you agree that on 26th July 1966 he was paid by Kilmartin the sum of \$240? (Objected to).

Q. I will withdraw the question. Read the document carefully to yourself. Now put the document away. Will you agree that on 26th July 1966 Hume was paid \$240 by Kilmartin? (Objected to. Allowed by his Honour only after telling Mr. Armstrong he is not obliged to agree or disagree, or to accept the identity of the document or the accuracy of it). 40

HIS HONOUR: Q. Do you understand you are under no obligation to agree one way or the other? A. All I can say is I think this document looks genuine. It looks as if Kilmartin may have advanced him some money. His account was much more than that. I understand his account was finally okayed by Mr. Barton at Landmark's office. 50

MR. GRUZMAN: Q. There is no doubt in your mind these moneys were paid on your personal instructions, is there? A. I do not think they were on my personal instructions any more than anybody else's. I was looking after the matter at the time. Mr. Barton was in Sydney, and I may have said to Kilmartin "Give Hume an advance of \$200". I cannot recollect. I am not saying it was on my personal instructions or that it was not. 10

(Abovementioned document which was shown to witness m.f.i. 55).

Q. I want to take you to something which is out of sequence. I want to take you to a time after January 1967. You have heard some evidence here about the Vojinovic matter? A. Yes.

Q. And the evidence which he gave of his discussions with Mr. Barton. Do you remember that? A. You mean the Vojinovic affidavit basically? 20

Q. The Vojinovic evidence, which he gave here, and Mr. Barton's evidence on that subject matter? A. Yes. That time after 1st January, 1967.

Q. Yes. When was the first time that you had any knowledge of that subject matter? A. This is something I have been trying to recall for certain reasons. As far as I can recollect it could not have been before about the middle of March or towards the end of March 1967.

Q. In what circumstances did you come by knowledge at that time? A. I think -and I cannot even recall this clearly - I am only thinking now - I am not saying this in an absolute true recurrence of the matter. It could have been before this. Something about he had been called in by the police. Some story about Mr. Barton. I did not take much notice. The police thought nothing of it. Nobody said anything about it except Hume, and I did not hear anything more from that time till the proceedings commenced. 30 40

Q. Did you regard it as a serious matter? A. No, I thought it was just a joke.

Q. Hume told you, did he, that he had been interviewed by the police? A. He told me he had been asked to come in and see the police, and they thought it was a matter of no importance.

Q. This is what Hume told you, is it? A. Something to that effect. It did not make any impression on me, what Hume said, and it did not seem to make any impression on him. 50

Q. Did you discuss it with your solicitor at all? A. I do not think so. Not at that time.

Q. Any time prior to January 1968 when these

proceedings commenced, did you discuss that matter with Mr. Grant or any other solicitor?

A. I cannot remember. I do not think so.

Q. Did Hume tell you the nature of the allegations put to him by the police? A. No. It was a very short discussion. He told me, something about Mr. Barton going to the Wentworth. I wondered why he wanted to go to the Wentworth at all.

Q. What conclusion did you come to? A. I could not make out what was going on. I can state here publicly I wish I had heard more about it earlier. 10

Q. You were seeing Hume at least once a week over this period, weren't you? A. No, not much over this period. I generally go to Shoal Bay on holidays in February. I am sure Hume did not speak to me at the earliest about this until at least the 1st March, and I think later on March, I did not take it seriously at all.

Q. Did you take any action as a result of anything Hume told you? A. No action whatsoever. 20

Q. Nothing? A. Nothing.

Q. You are aware Hume made an affidavit in these proceedings are you not? A. I understood Mr. Hume made an affidavit some time in 1968.

Q. I want to ask you this: Did Hume ever tell you that after the incident at the Rex Hotel a man named Caruga said "Mr. Barton then sat down and asked me to leave, and I then had a few drinks nearby and when Mr. Barton left I asked Vojinovic what was going on, and he told me 'This man is a wealthy businessman and is giving me money, plus he has got a big job for me to do'. He mentioned the sum of half a million pounds. I then said - I being Hume - to Caruga 'I don't think this man called Barton has that much money, and I could not possibly see what Vojinovic could do for him'. Did Hume say that to you, or something like that? A. No. The whole conversation I had with Hume wouldn't be as long as all that. 30 40

Q. Did Hume then ask you whether you were insured for half a million pounds? A. No.

Q. Were you? A. I don't know. I don't think so at that time.

Q. Have you ever been insured for half a million pounds? A. No. (Objected to; rejected).

Q. Did you tell Hume that in case of death Mr. Barton would stand to gain a lot of money, as he was the second largest shareholder in the company? A. No. 50

Q. Was it the fact? A. I don't know what you are talking about. (Objected to).

Q. I will withdraw that question and start at the

other end, and come back. What I put to you is that Hume said to you that "I will withdraw that. I put it to you there was a discussion between you and Hume in which it was said by one or other of you that you were insured for half a million pounds, and in case of death Mr. Barton would stand to gain a lot of money, as he was the second largest shareholder in the company, and that you ignored it, and said "Barton loves drama, but just in case I will have my insurance policy re-vo- 10
ked". A. No, nothing to that effect at all.

Q. Did you have an insurance policy at about this time, this time being January 1967? (Objected to - allowed).

Q. Did you have an insurance policy in January 1967. A. I did not have an insurance policy, no

Q. Did Landmark have an insurance policy? A. I think so, yes.

Q. On your life? A. And Mr. Barton's. 20

Q. What was the amount of the policy on your life? A. (Objected to).

Q. Was there a policy for half a million pounds or some such figure? Some similar figure? (Objected to - allowed) A. No, there was not for that figure.

Q. Was there a policy for a figure of some hundreds of thousands of pounds? (Objected to - allowed) A. I believe there to be a policy for £300,000 on my life, and Mr. Barton's. That could easily be checked. I think that could only be paid on 30
the death of either of us. Not both of us. But that could be checked.

Q. Was it the factual position if you died Landmark would benefit by £300,000? (Objected to - rejected). (Question pressed. Rejected).

Q. Was it your belief that if you died the company would benefit by £300,000? (Objected to).

HIS HONOUR: This is again put in the probabilities of this conversation?

MR. GRUZMAN: Yes. 40

HIS HONOUR: I think that is going too far. I reject that.

MR. GRUZMAN: Q. Was Mr. Barton the second largest shareholder in the company? A. I don't know. (Objected to - allowed).

Q. You don't know? A. I don't know at that time. What time are you talking about?

Q. I am speaking now of approximately January 1967. A. Are you talking of before he purchased my shares or after? 50

Q. Before. (Objected to - allowed as directed to this defendant, but with the observation the admission would not be binding on any other defendant).

Q. At the time you mentioned was Mr. Barton the second largest shareholder in the company? A. I would not know. I think he might have been the largest. I am not clear. I had no access to the share register for that period. All the documents were kept from me at that time.

10

Q. Were you or Mr. Barton the second largest shareholder? A. I would not know.

Q. Are you serious? A. Quite serious.

Q. A public company, of which you were the chairman ... (Objected to - rejected).

Q. Of which you had been the chairman up till two months before? A. Yes.

Q. There had been a fraction fight for control of the company. (Objected to - rejected). A. I can help you with one thing ... (interrupted).

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HIS HONOUR: Just wait till the question is asked.

MR. GRUZMAN: Q. Was that insurance policy revoked? A. No. (Objected to - allowed).

Q. During the first half of 1967 was the insurance policy for £300,000 that you have mentioned revoked? (Objected to - rejected).

Q. Did you have that insurance policy revoked? (Objected to).

HIS HONOUR: I will allow "Did you cause it to be revoked". I take it that will be objected to, Mr. Staff.

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MR. STAFF: Yes.

HIS HONOUR: I will allow the question.

MR. GRUZMAN: Q. During the period that I have mentioned, that is the first half of 1967, did you cause the insurance policy to be revoked?
A. No.

Q. Did you see Hume during January, 1967?
A. Early in January, I think, yes.

40

Q. What do you mean by "early in January"?
A. It may be in my diary. I could not tell you clearly.

Q. I would sooner have your recollection.
A. I did not see much of Hume certainly after the last couple of weeks in January, for about a month.

Q. Now let us deal with January itself. Did

you see much of Hume during January 1967? A. I saw him for one weekend, I think, on the Hawkesbury. Somewhere about the 7th January or something like that, and I think it would be mainly - I cannot recall how many times I saw him.

Q. Your recollection is that the weekend of 7th January - and correct me if I am wrong - you spent on the Hawkesbury with Hume? A. That sticks in my mind. I think it is 7th January. One weekend.

10

Q. Was that in some accommodation? A. No, I had my boat up there. I was water skiing with Mr. Murray.

Q. Who is that? A. John Murray. A. Well-known car trial driver.

Q. The one we know as Jack Murray? A. Gelignite Jack.

Q. This is a weekend that sticks in your mind, is it? A. I know that weekend was before 15th January. It was in the first half of January.

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Q. The weekend you think included 7th January do you? A. I think so. I am not sure.

Q. What is the name of your boat? A. It is a Flying Bridge Bertram, 25 feet.

Q. Who was there that weekend? A. It would help my recollection if I could look at my diary.

Q. I would rather not. A. I was there myself. Mrs. John Larkin. Mr. Murray. Mr. Hume and his secretary. And there were some other people. One of the other people might be Mr. Miles. That nearly exhausts the numbers. There may have been a Miss. Rosewall too.

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Q. About six people? A. Those are the ones I can recall.

Q. They didn't all sleep on the Bertram 25, did they? A. No, Mr. Murray has a small house up there.

Q. Where is that? A. At Sackville.

Q. How long did you spend up there? A. I think - don't hold me to my recollection - the Saturday evening. The Saturday and Sunday. We stayed one evening.

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Q. Have you done that before? A. Yes. I have often been up there.

Q. With Hume? A. No, I do not think so. I do not know how many occasions he has been there. I think twice in all my associations with him. Two or three times.

Q. When did you first start to recollect

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what you were doing on the weekend of 7th January?

A. I have known for some time.

Q. We now know the weekend of 7th January is when the Vojinovic matter took place. A. That is right.

Q. When was the first time you started to re-collect what took place on the weekend of 7th January, as far as you were concerned? A. I don't know when I first started to recollect what took place on the weekend of 7th January. I would just refer to my diary. It may not be the 7th. I am testing my memory. It may have been another time; It was some time before the 15th, I know.

10

Q. The first time you knew that the date, 7th January, was significant, was some time in January 1968? A. I do not think it was very significant at all. I do not recall knowing it was significant at all till the proceedings came on.

Q. In January 1968 you received Mr. Barton's affidavit, and you will agree you then believed that the 7th-8th January were significant dates, won't you? A. I don't recall. I do not really remember. I was mainly interested in Mr. Barton's affidavit. I was not taking much interest in Vojinovic's.

20

Q. Prior to receiving Mr. Barton's affidavit, what you did on 7th January was not a matter of importance to you? A. It was not. I recorded it in my diary. I could not fix it in my mind. It would assist perhaps if I could peruse my diary, because I can assure you it has the correct date.

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Q. You say you have ways of fixing it in your mind, do you? A. Mainly the diary. The other people would probably remember too.

Q. Apart from the diary, did you say you could fix the date in your mind? A. I did not say I could fix it perfectly at the 7th. I said some time before the 15th. I said if I could look at my diary I could fix it more accurately.

40

Q. Tell us your recollection. A. I think I left Sydney on the Saturday morning and came back on the Sunday night.

Q. You left with Hume, did you? A. No, Mrs. Larkin came with me.

Q. Did you meet Hume there? A. He drove up himself.

Q. You went in your car with Mrs. Larkin and he went in his car? A. With his secretary.

Q. And some other people went up there, and you met up there? A. Yes. Mr. Murray was already there

50

Q. Who slept on the boat? A. I think Mr. Hume and Miss. Catt slept on the boat. I was more comfortable in Mr. Murray's cottage.

Q. Have you discussed this weekend recently with Hume? A. No, not recently.

Q. Have you discussed it at all? A. Yes, with some of the other people there.

Q. Have you discussed it with Hume? A. No, not really.

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Q. Do you say you have never discussed it with him? A. I would not say I have never discussed it with him.

Q. When did you discuss it with him? A. I cannot recollect exactly. Probably some time after these proceedings.

Q. Tell us what that discussion was. A. I think just the relevant fact he was up there some time early in that period, which was in my view - I think on that 7th weekend.

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Q. Did he have an independent recollection of that? A. Yes, he did, and so did his secretary.

Q. Did he fix it in reference to something?
A. I don't know how he fixed it, but he had a recollection of it.

Q. Where is your 1966 diary? A. All these diaries are destroyed now.

Q. Don't tell me your diaries are destroyed:
A. Yes, all the others are, apart from 1967-8.

Q. That must be a tragedy for you. A. It is, yes. 30

Q. How did such a terrible tragedy occur? A. There were a lot of personal notes in them, and I decided after considering the matter, to get rid of them, prior to about September-October, 1967, I think it would be, and keep one diary thereafter.

Q. When did you make that decision? A. Some time about September-October 1967, I think.

Q. It was after you were aware that the police were investigating the Vojinovic-Barton matter? A. No.

Q. I thought you told us that you became aware some time in March or April from Hume that the police were investigating this Vojinovic - Barton matter? A. No. (Objected to).

40

Q. You did become aware, I thought you said, in March or April from Hume that he had been interviewed by the police about the Vojinovic matter?
A. In a very light way. No significance on the matter of diaries.

Q. It was after that subject matter came to your

knowledge that you destroyed your diaries? A. No. I will give you the reason why I destroyed my diaries.

Q. Answer the question. A. That is not the reason.

Q. It was after that subject matter came to your knowledge that you destroyed your diaries?
A. The time, yes.

Q. How did you destroy them? A. I just tore them up and threw them out. 10

Q. In the garbage tin? A. They were well torn up. In the garbage tin.

Q. How many diaries did you destroy? A. From 1961 to 1966.

Q. What size were they? A. Similar to those. (referring to diary in Court).

Q. Similar to this here? A. Yes.

Q. With as much writing in as this one?
A. Just about the same, I would say. 20

HIS HONOUR: Q. By "this here" you refer to the 1967 diary, do you? A. Yes. Practically the same.

MR. GRUZMAN: Q. Something more than an inch thick?
A. Yes.

Q. Do you remember being subpoenaed to produce your diaries to the Court in March or April 1967?
A. Yes, I do.

Q. The diaries were in existence then, weren't they? In other proceedings. A. Yes.

Q. The diaries were in existence then? A. Yes. 30

Q. Do you remember having a conversation with Mr. Barton about this matter? A. About what matter?

Q. About the fact that your diaries had been subpoenaed to the Court. A. No, not at all.

Q. After you received that subpoena you telephoned Mr. Barton, and you said "You have subpoenaed my diaries, you bastard", didn't you?
A. No, I did not telephone him at all.

Q. And you said "Unless I get my money you will get killed". A. I did not telephone him or communicate with him in any way. 40

Q. You have told us you were not cured of writing until quite recently. That is right, is it not? A. No, I still write. You can see my 1968 diary if you wish.

Q. I suppose you are a little more careful now.
A. No, I still write the truth.

Q. In March or April 1967, when you received that subpoena, there was in your possession your 1966 diary, and diaries for earlier years? A. That is right.

Q. I suppose those diaries contained detailed statements of what you had done over that period?

A. No. Thoughts. Not as detailed as a lot the things you have told of.

Q. You could tell your movements from them? A. Yes.

10

Q. You could tell the people you had met? A. Sometimes. I do not always write a diary the exact day. It may be a week after, and it may not be accurate. Those things you have are very accurate.

Q. If you wanted to check something you did in the year 1966, for example, your diary would be invaluable, wouldn't it? A. Not particularly. It could be accurate or it could not be accurate. It would depend what I put in at the time.

20

Q. You told us you wrote the truth, did you not? A. Yes.

Q. And your recollection even a week or so after the event would be better than years later, wouldn't it? A. I suppose it would assist me, yes.

Q. For example, you have told his Honour that you would dearly like to see your 1967 diary to know what you did on 7th January? A. It would fix it more accurately. I would hope it would, if the entry is correct.

30

Q. In the same way you would like to have your 1966 diary, wouldn't you? A. No, I do not want it.

Q. Your 1966 diary should have shown about your trip to the Snowy area, shouldn't it? A. It may. I can easily prove I was down there, if that is what is worrying you.

Q. It should have shown something about taking Hume down there? A. Probably.

40

Q. And your thoughts as to what Hume could do? A. I doubt if I would worry about that. I don't know.

Q. You are the sort of man who would have written in your diary "Hume the man to interview Yugoslavs in Snowy area", aren't you? A. I do not think I would have written that.

Q. Something like that? A. It is hard for me to tell you what I would have written.

Q. You are also the sort of man who would write in the diary "Must have powerful threat for Barton", aren't you? A. No, I never threatened Mr. Barton, so I would not have written it.

50

Q. You could have written in your diary "Get Hume to get criminal to threaten..." (Objected to - rejected).

Q. I put it to you that you must have had - that you in fact had - a powerful motive for destroying the records of your movements during 1966.

A. No.

Q. I put it to you that you regarded your 1966 diary as constituting evidence incriminating you. (Objected to). 10

HIS HONOUR: Q. You said a moment ago you would state the reason you destroyed the diaries late in 1967. What was it? A. The reason was that when this subpoena was issued in March or April 1967, I had a consultation with Mr. Staff. Until that time I had thought the diaries were privileged documents, and could not be called up by a court. These diaries were of the period, if my memory serves me, from 1962 to 1967. These diaries contained all the privileged details about the Eskell divorce, many of my personal thoughts and feelings, and after consultation with Mr. Staff and Mr. Grant, rather than not answer the subpoena, I decided to destroy the diaries, with much regret. 20

MR. GRUZMAN: Q. In other words, you felt that those diaries might incriminate you? A. No, I did not. There was nothing to incriminate me about.

Q. Did you discuss with Frederick Hume the destruction of your diaries? A. Certainly not. 30

Q. Do you know whether Frederick Hume had a consultation with your legal advisers about diaries? A. As far as I know he would not have had a consultation with my legal advisers.

Q. Are you aware that Frederick Hume's diary for the same period is missing? A. I heard something about it in this court. Otherwise not.

Q. Frederick Hume had an unfortunate fire, or burglary was it? (Objected to - rejected). 40

Q. It is within your knowledge, is it not, that Frederick Hume's diary for the same period is missing? A. Only what I heard in this Court. I never heard of it before.

Q. You know now it is missing, don't you? A. Yes. I don't know what sort of a diary he writes. I have never seen it.

Q. You mentioned you made another payment to Hume of \$500. (Objected to).

Q. On 9th November 1966 did Pacific Panaroma Pty. Ltd. pay to Frederick Hume \$500? A. That is right. 50

Q. Is this the cheque from Southern Tablelands

Finance Co. Pty. Ltd. for \$1094.30 paid to Hume Investigations? A. Yes. (Objected to - allowed).

Q. That is your signature on the document, is it not? A. Yes, I think it is. (Objected to) It appears to me to be.

Q. It is, is it not? A. I think it is the cheque that was paid to Hume. It came from the bank. It appears to be my signature.

Q. Account 4th January 1967. \$1094.30. A. Yes, 10
it appears to be. (Referring to m.f.i. 4).

Q. In the same way I show you m.f.i. 3. Is that your signature? (Objected to - allowed).

Q. Your signature and Mr. Thorpes? A. It appears to be.

Q. A cheque for \$500? A. Yes.

Q. 7th November 1966, paid to Hume Investigations? A. Yes.

Q. What for? A. That was paid for work done on behalf of investigating what was going on at Paradise Waters in Surfer's Paradise. 20

Q. Could you give us some more details? A. You will recollect that at some time early in November 1966 all documents were cut off from my inspection by express order of Mr. Barton and the authority of the Board of Landmark, or the purported authority of the Board of Landmark. Therefore I could get no information as to what was going on in the company. This company owed me on Paradise Waters \$400,000, and I wanted to see how the project was going on. The key men were about to leave the project at that time, because they were not being paid. I sent Hume up to get confidential information for me, because he was not known to the workers on the project. If I approached the project I would get nothing, because all the workers were instructed to tell me nothing. That is the reason that was paid. 30

Q. Is there an invoice? A. Not for that one.

Q. There is not? A. I cannot recollect one. 40

Q. Was there some written report of Hume's about this? A. I think there was. I am not clear on that.

Q. Where would that be? A. I don't know where they would be, even if they are in existence now. It was not of much importance - to say one dredge was not pumping sand. I think I can find them. I cannot guarantee to find them, but I know there was some report on this matter.

Q. Where do you think these written reports may be? A. I cannot tell. I would have to make diligent search. 50

Q. Would you do that by Tuesday? A. Yes, if I can.

Q. You will be seeing Hume over the weekend, will you? A. I don't know. I will be going away for the weekend.

Q. You may assume I may ask you questions critical of you and your discussions and associations with Hume throughout this case. A. Then I won't see Hume. I will try and get the document for you.

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HIS HONOUR: I think it would be imprudent for you to discuss the matter with Hume at this stage.

MR. GRUZMAN: Q. We would be very grateful if you would offer to make diligent search among your records for any reports from Hume about any work done by him. Would you do that? A. Yes.

MR. STAFF: He did not offer to do this. It was one document.

HIS HONOUR: Q. I am not directing you not to speak to Hume; you are to be guided by your own counsel in that matter. So far as concerns the documents that Mr. Gruzman has mentioned, if within your own resources, without having to contact Hume, they are available to you will you bring them in?
A. Yes.

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(Further hearing adjourned until Tuesday, 27th August, 1968).

BARTON v. ARMSTRONG & ORS.

TWENTY-SEVENTH DAY - TUESDAY; 27TH AUGUST, 1968.

FIRST-NAMED DEFENDANT
On former oath.

HIS HONOUR: Q. You are still on your oath, Mr. Armstrong. A. Yes, your Honour.

HIS HONOUR: Mr. Staff, at page 943 of the transcript I asked Mr. Armstrong, just after the fifth question, whether he would state a reason. My recollection is that I enquired whether you took exception to me asking that question. 10

MR. STAFF: I think that is so. I have a recollection of that being asked at some point, anyway.

HIS HONOUR: I think the understanding was if I didn't ask it you would ask it in reply.

MR. STAFF: I have a strong recollection of that.

MR. GRUZMAN: Q. Mr. Armstrong, I want to put it to you that if you believe it suits your own ends you will tell any lie that comes into your head? 20
A. Not at all, Mr. Gruzman.

Q. I put it to you that it does not matter to you that such a lie may constitute an unjustified attack on someone else? A. No.

Q. I put it to you that this whole story about Hume being engaged in electioneering is a lie.
A. Not at all, Mr. Gruzman.

Q. I put it to you that it constitutes a vicious and unjustified attack on the morals of the Liberal Party. (Objected to; rejected.) 30

Q. Would not you regard it as discreditable if a political party engaged the services of a man like Hume on the basis that you mentioned to get votes? (Objected to; rejected.)

Q. I want to repeat this question to you, and I would like you to consider your answer. Are you not prepared to say anything which you believe will help you, irrespective of the results to other people?
A. What is the question again? 40

Q. Are you not prepared to say anything, in court or otherwise, which you believe will help you, irrespective of the results of your statements to other people? A. No, certainly not.

Q. You still maintain, do you, that Hume was employed by you to perform electioneering work on behalf of the Liberal Party? A. Most certainly.

Q. And in the way in which you have mentioned?
A. Yes.

Q. Up to this moment can you tell us of one specific incident that Hume has related to you relating to his electioneering work? A. I can tell you that I was with him myself quite a lot of the time. On the day, for example, of polling day. On that day he was handing out cards; he was talking to people coming to the polling booths. His secretary was handing out cards. And also I can tell you an incident where we called at the Liberal Party - I am sorry, the Country Party headquarters in Goulburn on the first visit. He there met Mr. Pratten and Mr. Brewer M.L.A. 10

Q. For what purpose? A. For the purpose of electioneering.

Q. I am suggesting - do you say that you introduced Hume at Liberal Party headquarters as a person engaged or to be engaged in electioneering for the Liberal Party? A. On my behalf, for both parties. 20

Q. This is to whom? A. To people in the Liberal Party headquarters. Mr. Brewer, for one.

Q. Mr. Brewer? A. Yes.

Q. Tell us what you said to him. A. I can't remember what I said to him after two years. I said "He is a man that could be useful, because he has knowledge of the Yugoslav language, in assisting in the campaign, mainly in the Snowy Mountains area - amongst Snowy Mountain workers." 30

Q. And what did Mr. Brewer say to that? A. I can't remember at this stage what Mr. Brewer said. Mr. Brewer was very glad to get any assistance, as most people are in their electioneering when their campaign is on.

Q. I don't want to put words into your mouth or indirectly into Mr. Brewer's mouth, but I want to ask you what was the purport, do you say, of what Mr. Brewer said? A. I can't recall it at this time. 40

Q. Do you suggest to the Court that Mr. Brewer said in effect "Yes, we want Mr. Hume to work for us in this way."? A. I don't know what Mr. Brewer said. The fact was that Hume worked for the Party.

Q. Are you suggesting here that Hume's activities in the Eden-Monaro area had the express assent of officers of the Liberal Party? (Objected to; rejected.) 50

Q. Do you say that Hume's activities in the

Eden-Monaro area during the election had the express assent of officers of the Liberal Party?
(Objected to; rejected.)

Q. Do you say that any activities of Mr. Hume in the Eden-Monaro area in connexion with the election had the express consent of officers of the Liberal Party? A. First of all, would you define "express assent of the officers of the Liberal Party?" 10

Q. Yes. What I am asking you is whether officers of the Liberal Party were informed of what you proposed Mr. Hume should do, and whether they, by their words, indicated that they approved of such a course? A. I am sure they were informed. But, you see, let me explain something to you. Assume I took you on an electioneering campaign - and you would be very good at it in many respects, I must say - if I took you on an electioneering campaign-- 20

HIS HONOUR: Q. I think it would be better to leave it in the third person, Mr. Armstrong. A. If I took anyone electioneering, as a Member of Parliament since 1952 I would not have to ask permission of anyone to take them. No. 1. That would be the first assumption. There would be no need for any assent. If I took him that would be sufficient. If I took anyone I would not have to ask for a written assent "Can I use this man, or can I do that?". Do you follow what I mean? There would be no question of any assent or dissent by members of the party if I was assisting them in an electioneering campaign. 30

MR. GRUZMAN: Q. May I take it that what you say is that nobody in the Liberal Party in words agreed to the employment of Hume? A. I would say that there was no need for them to agree. In actual fact the County Party were the people I was dealing with more than the Liberal Party. I believe in working with both parties, but my actual affiliation is with the Country Party. Mr. Brewer is a member of the Country Party, and he knew all about it. He was the sitting member for Goulburn in the State House, and Mr. Pratten was the aspiring member for Eden-Monaro, and he knew all about it. 40

Q. I understand you to tell the Court that neither of these gentlemen, nor anybody else in either the Country Party or the Liberal Party expressly said that they agreed to the employment of Hume? A. I think they probably expressly agreed. I can't recall exactly what they said. The question of express agreement did not come into the matter. 50

Q. It never happened, did it? A. It certainly did happen. He was there. You can call Mr. Brewer and Mr. Pratten if you like.

First-named
Defendant

Q. Have you discussed it with them? A. No.

Q. I am only trying to find out what you say occurred, and I will ask you again. Do you say Mr. Brewer, if informed that you proposed to employ Hume in electioneering, would have agreed to that course? A. I don't think it was ever discussed. He just took it as a matter of course that it would be a good thing to do. I discussed the matter with him. I didn't write him a letter, nor did he write me a letter saying "I agree to the appointment of Hume." 10

Q. You say that he verbally agreed? A. I would say so, yes.

Q. And that Mr. Pratten, being informed that you proposed to employ Hume for electioneering purposes, also agreed? A. That would be right.

Q. Did you tell them exactly how you proposed to employ Hume? A. I don't recall that. I think I told him what I told you - that he was to be used to assist in the campaign amongst the non-English-speaking people at the Snowy Mountains primarily. Just what I told you last week. 20

Q. That is, he was to go out and meet individuals and talk to them, is that right? A. Yes, that is right.

Q. And do I understand that he was to buy them a few drinks? A. Possibly.

Q. Perhaps even give them a few dollars? A. I would not think so. 30

Q. But possibly? A. He was allowed - he was given no specific instructions. He was not given specific instructions. Often if you talk to a number of people in an election campaign you buy them a few drinks.

Q. Do I understand you to say that you told Mr. Brewer and Mr. Pratten that the activities that you proposed to follow were the activities you have just spoken of? A. I would say so. I would not be clear on what I said, at this stage. You don't go around spelling out everything you are going to do. 40

Q. Do you say that what you told Mr. Brewer and Mr. Pratten about Hume - about what he proposed to do - was the same as you have just told the Court? A. I would think so. I would not be clear exactly what I told them, but the substance of it or the essence of it would be the same as what I told the Court. 50

Q. I put it to you that that is completely

untrue. A. You can put it as long as you like.
It is not.

Q. But you will never admit it, will you?

A. It is not a question of admitting it, that is
the truth.

Q. Lock, Sir, did you say this to Mr. Bovill at
a time when Mr. Bovill was on the board of Land-
mark these words which I am about to put to you, or
words similar: "You are interested in politics,
aren't you? You have done a lot of public speaking
and have been on the local council. You ought to
sit for the Upper House." Do you remember having
a conversation with Mr. Bovill like that? A con-
versation in terms similar to that. A. A long
time ago I think there was some discussion. Mr.
Bovill thought that he would be interested in
getting in the Upper House, yes. 10

Q. What did he say? Did he say "I would be very
interested in doing that, Alex. It is not full-
time."? A. "That House is not fulltime."? 20

Q. Yes. A. Yes, he could have said some words
to this effect. This would be long before--
(Answer not completed.)

Q. Did you say "You want to get alongside Ted
Warren. He picks all the Liberal boys. And then
you want to hand out £5,000, and you are in."?
A. No, I would not have said anything to that
effect. 30

Q. Did he say "What do you mean by that?" and he
(sic) said "You will get it back in the first three
years."? A. No.

Q. That you said - I will put it again. I put
it to you that he asked you "What do you mean by
that?" and that you said "Don't worry, you will
get it back in the first three years."? A. No.

Q. And he said "I don't think I am that in-
terested, Alex."?
A. I don't recall that. 40

Q. In 1963 you were not endorsed by the Liberal
Party were you? A. No. I was not a Liberal
Party member in 1963.

Q. Of what party were you a member? (Objected
to; allowed.)

Q. You see, Mr. Armstrong, I put it to you
earlier in this case that bribery is part of your
stock in trade, didn't I? A. You are always
putting that, yes.

Q. And it is apropos to that that I take you
back now to the 1963 period, when you were not 50

endorsed by the Liberal Party, were you?

A. I naturally would not be endorsed by the Liberal Party. At that time I was a member of the Country Party.

Q. In 1963 were elections coming up? A. 1964, I think.

Q. 1964 the elections were coming up? A. Yes.

Q. Were you endorsed for these elections?

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A. Yes, by the Country Party.

Q. I beg your pardon? A. By the Country Party.

Q. Endorsed, were you? A. Yes.

Q. Was there any doubt that you would be elected?

A. There is always doubt that you will be elected in the Upper House.

Q. Did you pay £15,000 to ensure your election?

A. Certainly not.

Q. Did you pay - I am going to write some names and amounts on a piece of paper--

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HIS HONOUR: You may see the paper if you wish, Mr. Staff.

MR. GRUZMAN: Q. I show you this document. Just keep the document in front of you for the moment. You see there are five names, are there not, on that piece of paper? There are five names written on that piece of paper, aren't there? A. Yes.

Q. Do you know each of those five people?

A. Yes, I do.

* Q. Did you pay the first man whose name is mentioned there £3,000 to organize your election?
A. Before I answer that can I ask your Honour a question?

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HIS HONOUR: Yes.

WITNESS: I feel this cross-examination is throwing distinct dishonour on parliament. I believe that if these men should be named - this is the way we go in parliament - you don't allow this insinuation about bribery that didn't occur without the men being named and given an opportunity to defend themselves.

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HIS HONOUR: At the moment a question has been asked and I think you should answer it. What may ultimately flow from this is a matter which will be seen when the case proceeds further.

MR. STAFF: May I be permitted to know what the questions are about? May I see the document?

HIS HONOUR: Yes, certainly.

I do not regard this as a call for the document, Mr. Gruzman.

MR. GRUZMAN: Of course not.

MR. STAFF: I object to the question.

(Question marked with an asterisk above read by Court Reporter. Question rejected.)

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WITNESS: May I ask one question, your Honour?

HIS HONOUR: Yes.

WITNESS: Is there any reason for me, because of the processes of this Court, to keep this document private?

HIS HONOUR: You mean after you leave the witness box?

WITNESS: Yes.

HIS HONOUR: No.

WITNESS: I can mention this to anyone I like?

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HIS HONOUR: I am not putting any restraint on those who have seen the document.

MR. GRUZMAN: Q. The suggestion which I make to you is that you paid money to the first man named on the document so that he would arrange for improper payments of money to other persons named on that document to so ensure your election? A. Quite incorrect, and false, and scurrilous.

Q. Do you say that you paid no such money?
A. No.

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HIS HONOUR: Q. You do say that you paid no such money? A. I did not pay such money.

MR. GRUZMAN: Q. To your knowledge did four of the persons - the last four persons named on that document vote for you? (Objected to; rejected.)

WITNESS: There is no way of telling who votes for you. It is a secret ballot - completely secret.

MR. GRUZMAN: Q. Come, come. Are you serious in that statement? A. Yes. You cannot tell who exactly votes for you. It is a secret ballot.

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Q. Does not each party lay down a ticket to be voted? A. I don't think they did at this election. They do now, but they had not laid down this ticket I don't think at that time.

And even then it is impossible to see how you are voted for exactly. It is impossible to tell exactly how you are voted for.

Q. The object of the tickets put forward by each Party is so that it can be ascertained who voted against the Party ticket, isn't it?

A. This is mostly in by-elections. It is very difficult to tell in a general election.

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HIS HONOUR: Mr. Gruzman, I think if there is some legislation requiring this to be done by secret ballot as at present advised I am not disposed to permit cross-examination to probe what may have been required to be done by secret ballot.

MR. GRUZMAN: I will not pursue the matter at this stage.

(Document shown to witness - m.f.i. 56.)

Q. I want to go back for a moment to something you told us. I would like to come back to what you told us about the weekend at Mr. Murray's home on the Hawkesbury River. Do you remember that? A. Yes.

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Q. A small house, I am sorry. Mr. Murray's small house. Do you remember that? You were telling us about the weekend. On p. 939 of the transcript you were telling us about that. A. Yes.

Q. I want to put it fairly to you so that you won't misunderstand the purpose of these questions. I suggest to you that you had in mind that an alibi was required by Mr. Hume for the weekend which included 7th January 1967? A. No.

30

Q. Has that never occurred to you? A. No, not at all.

Q. Are you unaware up to this moment that Vojinovic had said that he had seen Hume during the course of that weekend? A. No, I was only aware of that when I heard it in this Court.

Q. You are aware of it now? A. Yes, certainly.

Q. Aware that Vojinovic had said that? A. Yes. (Objected to.)

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Q. I will come back to that. While that is being looked up, in giving your evidence about this weekend you mentioned a number of persons who were present? A. Yes.

Q. Will you tell us again who was present, please? A. Yes. There was - I think they are recorded in the evidence - Mrs. Joan Larkin, who is the wife of John Larkin, Miss Dorothy Rosewell, and Mr. Jack Murray. That is all I can remember. I can't

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remember the others as specifically as I can remember those. And there was Mr. Hume, and his secretary, Miss Catt. I think I stated that last Thursday.

Q. I think you mentioned seven names on the last occasion? A. I think Mr. Miles could have been there at some time during the weekend. He was not specifically staying there.

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Q. But you have mentioned seven people who stayed there that weekend. A. Well, anyway, I have not counted them in my mind, but I think that would be correct. I am sorry, six, because Mr. Miles didn't stay there. He has his own caravan further down the river.

Q. That six stayed overnight that weekend?
A. Yes.

Q. Where did they stay? A. Mr. Hume and Miss Catt stayed in my cruiser, and Mrs. Larkin, Miss Rosewall and Mr. Murray stayed in the small shack. We will call it a house, or shack, or whatever you like to call it. Four of us stayed there.

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Q. In the house? A. It is a small ski-ing shack.

Q. A ski-ing shack? A. Yes.

Q. And the four of you stayed in the ski-ing shack on the Saturday night? A. Yes.

Q. No doubt about it? A. No doubt in my mind. As I said, I think it was the 7th. I wanted to consult my diary. In my own mind I am sure it is the 7th.

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Q. You are aware that Hume and Miss Catt slept on the boat? A. So far as I know. They went to sleep on the boat. They were there when I got up in the morning. I didn't sit up all night watching them sleep on the boat.

Q. To your observations they were there from what time on Saturday? A. I think that they arrived about midday.

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Q. Midday on the Saturday. What time did they go to sleep on the boat? A. I would not like to go very close to that. Say about ten o'clock, or something like that.

Q. About ten o'clock they went to sleep on the boat? A. Right.

Q. You were all up in the shack prior to that, and they went off to sleep? A. Yes, the boat is moored right alongside the shore.

Q. Moored right alongside the shore? A. Yes.

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Q. When did you see them in the morning? What time would you say it was you saw them in the morning? A. I would say round about five or six o'clock in the morning.

Q. Five or six o'clock in the morning? A. Yes. Light was early at that time of the year.

Q. They came to the house, did they? A. No. I think they came up to the house or I saw them on the boat. I saw them very early in the morning, I know. 10

Q. By the way, what car did you drive that weekend? A. I am not clear whether we drove my - I am not clear whether I drove my own or not. I think I drove my own Valiant station waggon.

Q. Did you take the boat up with you? A. No, the boat was already there.

Q. The boat was already there? A. Yes.

Q. Your wife didn't come with you? A. That is right. 20

Q. Was there some reason for that? A. No, I don't think any particular reason.

Q. Now, I want you to understand that in the questions I am about to ask you I am not attacking your morals as such. Do you understand? Do you appreciate that? A. I will know better when you ask the questions.

Q. There were four people sleeping in the shack that night? A. Yes, that is right. 30

Q. How many to a bed? A. I can't recall that actually. I know I didn't sleep with anyone.

Q. I beg your pardon? A. I didn't sleep with anybody. I don't know what went on between the people in the shack.

Q. Well, where did you sleep? A. I think I slept either on the floor or on a Lilo or a camp stretcher.

Q. In the shack? A. The shack has a door which opens out. It could have been outside under the protection of the door. But in the proximity of the shack, yes. 40

Q. Who else was there sleeping there that night? A. Mrs. Larkin and Mr. Murray and Miss Rosewell.

Q. Where did these three people sleep? A. As far as I can recollect they all slept on a bed or on Lilos. I am not clear where they slept or how they slept, but they were all in the shack that night.

Q. Look, Sir, I will ask you to be a little more specific. Where did each person sleep that night? A. Well, I know that I slept on either a camp stretcher or a Lilo. I think Mrs. Larkin also slept on a camp stretcher or a Lilo.

Q. Where? A. Just inside the small shed.

Q. Look, Sir, I put it to you that four people could hardly fit into this dwelling place that you have spoken of? A. No, that is not correct. 10

Q. I show you a photograph. Have a look at this photograph, and see if you recognize this structure. Is this a photograph of the establishment? A. Part of it.

Q. Part of it? A. Yes. It is taken from a different angle. This folds back, you see. This folds back here and opens out, and you can, for instance, put a stretcher here, for example, on a warm evening. This is more the kitchen area here. The main living area is in there-(indicating). 20

Q. Let us see if we can describe it. Would you agree with this description? It is a single room, made of galvanized iron. A. That would be correct. This is a good photograph of it.

Q. It is a good photograph? A. You would want some other angles. I don't know the exact size of it. That is a good photograph of it from one angle.

Q. Something like 10' x 10' altogether? A. No, it would be more than that. 30

Q. What would you say is the total dimension of the building? A. I could not tell you that. I could easily tell you by measuring it. I don't want to guess at it. It could be - I don't know what the other area is. It is about, I would say the whole thing, I would say, would be about 30 x 10, or something like that, from one end to the other - from this end to the other end.

Q. Indicate, if you would, on that photograph any dimension of the building that you say is 30 feet. A. I don't intend to speculate on the building. Let us go up and measure it, if you want it correctly. 40

Q. I will suggest to you that if one took 11' x 11' as the total dimension that would be the absolute outside? A. You may be right. I don't know.

Q. Look at this photograph. Is that a view of the back of it? A. Yes, that is a back view.

Q. That is the back view? A. Yes. 50

Q. I will mark each one as I show it to you.

No. 1 is the front view, and No. 2 the back view and No. 3 the side view. A. Yes, that is the side view.

Q. I think there is only one window in the whole building? A. Yes. The other one opens right out. There is only one window, over the sink, I think it would be.

Q. That is a little louvre window about 2'6 x 2'6? A. Something like that, I would say. 10

Q. That is No. 3 - the side view? A. Yes.

Q. This is a view of the scene outside the front door, isn't it? This is the kitchen part? A. Yes, and barbecue area.

Q. When we say the kitchen part- A. Barbecue area.

Q. The kitchen part is in a sort of lean-to outside the structure? A. Yes.

Q. And there is a barbecue, and one or two things like that? A. Yes. 20

Q. I will go through the photographs, and if there are any which give a better impression of it please say so, and I will put it in. A. I am not arguing with you about the size of it. I don't want to speculate about it. It may be 10 x 10; it could be 10 x 12, or anything like that, so far as I am concerned. I am not arguing about it. It is a matter of fact.

Q. You wanted to indicate part of the structure opens out. A. This is a good photograph, yes. This is the part which comes out, and raises up here. You can bring it back almost horizontal. 30

Q. It opens back? A. It opens up. It is hinged up here, and opens that way. (Indicating).

Q. The whole side of the building consists of galvanized iron which opens up to a horizontal position? A. Yes.

Q. And that is shown clearly in this photograph which I will mark No. 5. A. Yes, I think they are quite good photographs. 40

(Five photographs of Murray's house tendered and admitted as Exhibit "X".)

Q. Mr. Armstrong, I wonder if you would give His Honour a detailed description of the interior of the structure? A. Well possibly we could draw it perhaps. Would that help?

Q. Yes. What you say is, first of all, where you have a dotted line that is an outside wall? A. Yes. 50

Q. And outside that you have what you describe as an outside area - the outside barbecue?

A. Yes.

Q. And in the room is what? One double bed?

A. It is hardly a double bed, actually. It is probably about a 4 ft. or 4'6 bed. It is not a comfortable double bed. It is certainly not a 6 ft. bed. Say 4'6, I would say.

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Q. In case you are under a misapprehension, I think a normal double bed is 4'6. A. Well, it is a smallish bed in my view. I think the size would be 4'6 to 5'.

Q. What you mean is a bed smaller than the normal double bed? A. What I consider smaller. It may be considered in the furniture trade that 4'6 is a double bed.

Q. You regard six feet as a double bed?

A. More comfortable, yes.

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Q. We have the dresser here, and the sink down one end? A. Yes.

Q. Does not the sink go right across? A. No, I don't think so. I think it is open for storing skis and that sort of thing, and they have racks. I think these are the only fixtures. I think we can help from the photograph. I think these are the only fixtures - the only immovable objects.

Q. I can show you some photographs of the interior, but they didn't come out very well. I will show you these photographs. Can you make anything of these photographs, with your knowledge of it?

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A. These are things hanging down from the--

HIS HONOUR: You will have to keep control of the witness, Mr. Gruzman. You will have to control what is to go on the record.

WITNESS: It is about the best of my recollection that the fixed items are the sink and draining board under the window.

MR. GRUZMAN: Q. Mark a line. A. That is the window, about there. That is the sink and draining board and--(Balance of answer inaudible).

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HIS HONOUR: Mr. Gruzman, I have asked you three or four times to have some regard for the court reporter who is trying to get an intelligible transcript.

MR. GRUZMAN: Q. You indicate a rectangular part on the drawing which you have entitled "sink". You say that is a fixed structure?

A. That is a structure which you could not move out without some trouble.

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Q. You indicate another rectangular which you have entitled "dresser". A. Yes.

Q. And that is a fixed or semi-fixed structure?
A. Yes.

Q. And where there are the four crosses, that is the area which has the racks and the water skis?

A. There was nothing fixed along this area, to the best of my recollection.

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Q. What I would like to put to you is that the total area not occupied by the bed and the other objects which you have shown there would be an area of about 6' x 7'? A. No, it would be more than that, because this table can be moved out.

Q. The table can be moved out? A. Yes.

Q. How big is the table? A. I think it would be about four feet in circumference. There is ample room for two stretchers to be placed here with the table out. That would be about the situation.

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Q. I suggest to you it would be impracticable for four people to sleep in that structure?
A. No, I would not say that.

Q. You would not have any doubt, if four people slept there, where everybody was sleeping, would you? A. No, they would all be in very close proximity.

Q. And that is what you say happened? A. Yes.

Q. You say you slept the night of what, 7th January? A. If it was. It is either the 7th or the 8th. The Saturday night.

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Q. You say you slept the Saturday night in this structure? A. Yes.

Q. Slept on what? A. Either on a Lilo or a camp bed. I am not sure which. You know, one of those stretcher things.

Q. You might be good enough to draw in where--

A. This is recollection now, Mr. Gruzman. I don't want to be held to this as an exact fact. I would imagine it was either there on the floor somewhere or here, or I could even have been sleeping on this front lawn part. I would not say where I was exactly. It was in this area of the lawn and the hut itself.

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Q. Now, just to clear that up, you have drawn two rectangles. A. Yes.

Q. Which I will mark "A" and "B". A. Camp stretchers or Lilos.

Q. They represent your recollection of where

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these stretchers were on that night? A. It could have been out there. I think it was inside, probably.

Q. Which one did you sleep on, "A" or "B"?

A. I can't recollect. One of those, I think.

Q. You slept on either "A" or "B", but you can't recollect which? A. Yes, I don't recollect which. I think it would be this one, but I don't recall.

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Q. Who slept in the double bed? A. Miss Rosewall and Mr. Murray slept in here.

Q. That is where you have marked "bed"?

A. Yes.

Q. And you would agree with me that the stretcher marked "B" must have been practically touching the double bed? A. Yes, it was quite close proximity. All of them would be very close, as you suggest, in the whole room.

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Q. Practically all in the same bed, for all practical purposes, do you say? A. No, I would not say that.

Q. Not far out, is it? A. It all depends on what you call it, Mr. Gruzman.

(Sketch of shack - m.f.i. 57.)

Q. What are the lighting arrangements in this cottage? A. I think they have a portable generator that they have got connected up.

Q. It would be a pretty uncomfortable night's sleep, wouldn't it? A. We had all been water skiing. We were pretty tired. I slept quite well, as I recall. I must have woken up pretty early.

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Q. Look, Sir, your boat, Bertram, is a fine style of boat, isn't it? A. The sleeping accommodation on it is not the best, though.

Q. It is not a very large boat, but it is a good American model vessel, isn't it? A. Yes. You can go and have a look at it any time you like.

Q. And it has got quite good sleeping accommodation, hasn't it? A. No, I would not say it was very commodious, not in that model of the Bertram. As I told you in evidence the other day, I think I was more comfortable in the shack than--(interrupted.)

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Q. You suggest you were more comfortable sleeping up alongside these other people than--

A. Than alongside someone else in the Bertram, yes. There was not a great deal to choose between the two of them.

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Q. What I am putting to you is that this weekend never happened in the way in which you said it happened? A. Yes. I say that it did happen.

Q. I am putting it to you that you have concocted the story of this weekend to provide an alibi for Hume? A. Not at all. I didn't know until long after this weekend that there was anything about the set-up.

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(Luncheon adjournment.)

AT 2.00 P.M.:

HIS HONOUR: I shall reject any question the answer to which would disclose the manner in which any person entitled to vote in the Legislative Council elections did in fact vote, and the reason for the rejection is that the Act requires that the ballot shall be secret and the Court should not lend its process to open that which a Statute says should be secret.

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MR. GRUZMAN: Q. Mr. Armstrong, the position is that each candidate in the election can scrutinise the voting papers, can't he? A. Yes.

Q. So that any person who was a candidate at these elections would have been able to look at each voter's voting paper? A. Not quite as simple as that, you see. The name of the voter is not attached to the voting paper. It is torn off by the Clerk of Parliament.

Q. The answer to my question is that it is true that any person who is a candidate in these elections would have been entitled to look at all of the voting papers? A. All the ballot papers, yes.

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Q. All the ballot papers? A. Yes.

Q. And it is within your knowledge, isn't it, that after that election statements were made as to how the voting went? (Objected to; allowed.)
A. I don't quite know what you mean. Press speculation may have occurred.

Q. And the Press speculation that you speak of was that some certain members had not voted in accordance with the ticket? (Objected to; rejected.)

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Q. You regard your Membership of the Legislative Council as a valuable asset, do you not? A. No, I would not think so. Not particularly. I don't regard it as an asset at all.

Q. Your belief is that the holding of a gold pass gives you a position of power in the community?
A. No.

Q. You will not deny, will you, that you have used your gold pass to enforce threats. A. No, not at all.

HIS HONOUR: Q. You mean you will deny it?

A. Yes, I will deny it. Very strongly.

MR. GRUZMAN: Q. Has there ever been any occasion when you have shown your gold pass to Mr. Bovill? A. Not that I can recollect, except in a social manner, if at all, I don't think. The only time he could have possibly seen it was on the occasion when those two police officers came to the board room of that meeting on, I think, about 30th November. That is the only time I can recall him having the opportunity of seeing it. I may have shown it to him socially. I don't know.

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Q. But it would not be true to say, would it, that you have ever produced your gold pass and waved it in front of his face? A. Definitely untrue.

Q. In, I am suggesting to you, a threatening manner? A. Quite untrue.

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Q. Perhaps we will come back to that later. Might I just remind you of the evidence which I said I would refer you to in regard to Vojinovic? It is at p. 263 of the transcript, at the bottom of the page. Do you remember hearing this evidence: "Q. Well then, all right, now, I just want to ask you this....a woman or girl answered the phone." Do you remember those questions and answers in the evidence of the witness Vojinovic? You remember that evidence of Vojinovic, do you? A. I do now that you have read it, Mr. Gruzman. What date did it refer to? Can you refresh my memory on that?

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Q. Yes. That occurred, I think, on 4th June. Oh the conversation? A. Yes, what date was the conversation?

Q. On the Saturday. A. Saturday afternoon and evening, is that correct?

Q. Yes. A. I have heard of that. We fixed the conversation - that that occurred some time after two o'clock on the Saturday afternoon, and extending into the evening?

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Q. Some time like that. A. Yes.

Q. That happens to be the very time that you say Hume was with you at the Hawkesbury River?

A. That is correct. He was there, too.

Q. Tell me, how many other weekends have you spent with Mr. Hume and Miss Catt? A. At the Hawkesbury River?

Q. First of all at the Hawkesbury River, yes. A. I cannot recall that. Very few, actually. I should think - I can't recall clearly any others particularly that I spent. They were up at my property. They stayed one evening at my

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property when they were on the electioneering campaign, I think some time early in November. That would be one evening I can recall. I don't recall they stayed up the river on any other occasions, but there may have been one.

Q. Well-- A. But there were various little occasions when they spent an evening with me.

Q. In your whole life how many times have you slept in the company of or in the vicinity of Mr. Hume? A. It is hard to recall it. I would not think it would be more than three or four times. 10

Q. What are the three or four times? A. There was one occasion. There could be two others. I can only recall very specifically the other one, when he was staying the night on the property at Windradene some time in November 1966.

Q. One night with Miss Catt, too? A. I think she was there, yes. 20

Q. Did you sleep in the same room with them?
A. No. It was a large house up there.

Q. You have told us one night at Windradene. That was about when? A. Some time in that November period when he was passing through, going down to the Snowy River.

Q. Well, see if you can help us a bit more. Can you remember how they came to stay there? A. They drove out. I think there was an election meeting. I am not sure whether the Prime Minister was not present at this election meeting in Goulburn. Mr. Hume attended the meeting and drove out late. He arrived about eleven o'clock at my property, and left again early next morning going further - going down towards Cooma and the Snowy Mountains. 30

Q. This is before the election? A. Before the election, yes. I think it was the night that the Prime Minister was at a meeting in Goulburn. Mr. Hume could fix it quite easily. I think.

Q. Have you spoken to Mr. Hume recently? A. No. 40

Q. When was the last time you spoke to him?
A. About a fortnight ago.

Q. About a fortnight ago? A. Yes.

Q. Had that night at Windradene been arranged beforehand? A. No, I don't think so. We were going up to this meeting, and it just happened to be convenient. I suppose you could say it had been arranged a day or two before.

Q. Apart from these two nights - Windradene and the night of 7th January - can you tell us of

any other nights that you have spent in the company of Mr. Hume? A. I can't recall it clearly. Possibly if I was to read through the 1968 diary? I don't think there has been any occasion in 1968 that I can recollect.

Q. Well, what about 1967? A. I cannot recall any one clearly.

Q. Well, Mr. Armstrong, you have given us very concrete evidence of the night of 7th January, haven't you? A. Yes. That was a very easy one to pinpoint - there were so many people there. 10

Q. I want you to say on your oath whether there ever was any other night that you slept near Mr. Hume? A. I could not say on my oath, because I can't recall. There could have been, or there could not have been. I would not be clear on that. The only other occasion I would be prepared to give on my oath was the one at Windradene - at Collector. 20

Q. Did anything exceptional happen on that night down at the Hawkesbury? A. No, nothing at all.

Q. Anything to make it stick in your mind? A. Only I knew he was there. It is not often, for example, I took my large cruiser up the Hawkesbury.

Q. How did that come to be there? A. I took it up on New Year's Day and left it there anchored for the next weekend.

Q. There is no chance you just went up for the Sunday? A. No, no chance at all. 30

Q. Definitely it was the Saturday? A. Very definitely.

Q. And definitely you arrived at midday? A. Yes, a little bit before, if anything.

Q. A little before? A. If anything.

Q. Mr. Hume arrived when? A. I think he arrived at almost the same time as me, because he and his secretary didn't know the way, and they followed my car up.

Q. You came together? A. They followed us part of the way. It is very difficult to find that area. 40

Q. They followed you part of the way? A. Mrs. Larkin and I drove up. We called in at Riley Street and Mr. Hume followed us up on that morning.

Q. You went up to their flat, did you? A. No. I think we rang up and said "Be outside." I can't recall whether we went to their flat or not, but they were waiting ready to go with us.

Q. When was that arrangement made? A. I would say a couple of days before, or something like that.

Q. What was the purpose of it? A. Just an ordinary innocent weekend's ski-ing. No purpose in it at all.

Q. Your wife knew about it? A. Completely. Mrs. Larkin is a very good friend of my wife.

Q. Has been for many years? A. Yes. 10

Q. Long before the time you knew your wife?
A. She has been a friend of my wife since before I knew my wife, yes.

Q. And the other lady present was who? A. Miss Rosewell.

Q. She has also been a good friend of your wife for a long time? For many years? A. Not as long as Mrs. Larkin.

Q. But known her long before you knew her?
A. I would not know of that, really. I have known Miss Rosewell myself for at least ten years. 20

Q. She is an estate agent? A. Yes.

Q. Works on Saturdays? A. Not always on Saturdays. Not at that time of the year.

Q. What time did she arrive? A. I am not clear on when she arrived. She was there in the evening. I think she was there when I arrived. Mr. Murray was certainly there.

Q. Mr. Murray was there when you arrived?
A. I believe so. I cannot exactly recall. I am not sure whether she was there. I would not like to swear she was there, but I think she was. 30

Q. You have told us, I think, that you discussed this weekend - the fact of this weekend - with these people, haven't you? A. Not particularly, I don't think. I have discussed it with some after this case came on, I think. There is no doubt that this weekend is fact. I mean, you can probe as long as you like, but it is a fact, and it will be supported by witnesses, I understand. 40

Q. By your wife's two former friends - Miss Rosewell and Mrs. Larkin. These two ladies will support it? A. I don't know what they will do.

Q. I thought you told us they would. A. I understand that certainly Mr. Murray will support it.

Q. You have discussed it with him? A. Yes, some time before this I have. About a fortnight ago.

Q. About a fortnight ago? A. I don't know when I discussed it with him actually, but I have discussed it with him, yes.

Q. And you have checked up that he will support you? A. I think the best way will be when he is called. I assume he will support me, because it is the fact. There is no reason for him not to support it.

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Q. You spoke to him a fortnight ago? A. I am not sure. It may have been longer.

Q. When you spoke to him did you say to him "Well, look, you know I am going to say so-and-so. Will you support me?" A. No, I just asked him "Do you-". He knew the matter was a fact, and I knew it was a fact.

Q. Didn't you just start to say "I asked him 'Do you remember-'," and you didn't even finish the word "remember", and you stopped. That is what you were going to say. A. No, that is not what I was going to say.

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Q. That is a lie, isn't it? A. No, it is not a lie.

Q. You said in this Court before His Honour within the last two minutes-- A. My position is this, that the facts occurred. Mr. Murray, Miss Rosewell and Mrs. Larkin were there, and I think if necessary it would be possible to get also other witnesses that were there. I really can't say much more about that weekend. It is fact, and there is no argument any more about it.

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Q. Do you deny that you said to Mr. Murray "Do you remember?" A. I don't know whether I said "Do you remember" or not. I brought the matter to Mr. Murray's notice, and he has many ways, I am sure, to refresh his own memory apart from me.

Q. But you refreshed his memory? A. I mentioned the matter. I mentioned it to him. There is no denying it. I am not trying to deny it.

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Q. For the purpose of ensuring that he would give evidence supporting you if necessary? A. I respect Mr. Murray to be a truthful person - as a truthful person.

Q. You mentioned it to him for the purpose of ensuring that he would give evidence in support of you? A. I don't know whether he will give evidence or not. We will see in the box.

Q. The position is that, having discussed it with him, you are not sure whether he will support you or not? A. I believe he will support me.

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Q. And you believe it from what he said to you?
A. I believe he will support me.

Q. Because that is what he told you? A. Yes.

Q. It took a long time to get that, didn't it?

A. It is taking a long time to elicit the fact we were up there that weekend.

Q. You have spoken to the other two ladies, have you? A. Not particularly to Mrs. Larkin.

Q. I suppose you got your wife to do that, did you? A. No, I don't think she has been contacted by my solicitor or my wife in regard to giving evidence in this matter. 10

Q. The position is you don't know what Mrs. Larkin is going to say? A. No.

Q. You swear that? A. No, I don't know what she is going to say.

Q. You swear you don't know? A. I don't think I know. I don't believe I know what she will say.

Q. You have never had any discussion with her about it? A. I think I may have mentioned to her does she remember being up there that weekend, or something to that effect. 20

Q. When do you think you had that discussion?

A. Two or three weeks ago. Maybe longer. It is a date which had no significance in my mind until I heard the evidence in this Court.

Q. So as a result of your discussions with Mrs. Larkin you believe that she will give evidence to support you? A. I think she probably will, if called. 30

Q. And Miss Rosewell - did you have a discussion with her? A. Yes, I discussed it with her. I think she will give evidence.

Q. About the same time? A. Yes.

Q. What about Mr. Miles? A. I don't know. I have not discussed it with him.

Q. You have not seen him. A. No.

Q. Who is Mr. Miles? A. He has a big butcher shop at Double Bay.

Q. What is his name? A. Noel Miles. 40

Q. He is the one that you are now not sure whether he spent the night there or not? A. No, he didn't spend the night there.

Q. You are sure of that now? A. Yes.

Q. Who are the other witnesses who you say will support you? A. Well, they will not support me

about spending the night there. They are the only ones who can support spending the actual night there.

Q. What you have in mind, I suppose, is that plenty of people saw you there on Sunday?

A. Saturday and Sunday I would say. Naturally we didn't have numerous people all through the night there.

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Q. But you say you have got people who would support you that you were there in the daytime?

A. I can't recall who they were. I think probably Mr. Murray would remember them better than I can. I think they were probably his friends.

Q. When did this weekend arise? A. I can't recall that. I can go up to Mr. Murray's at any time. I have an open invitation to go up water ski-ing any time I like. Some weekends I would let him know the day before; other weekends I would probably ring him on the Sunday morning. But this weekend would have been fact because the boat was there. I probably was going up that weekend had it been fine.

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Q. To bring the boat back to Sydney? A. No, to water ski with the boat. His boat had broken down that weekend.

Q. His boat had broken down? A. Yes.

Q. When did you find that out? A. On the weekend, when I was there.

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Q. When you were up there? A. Yes.

Q. Were not you going to bring your boat back to Sydney? A. I think I did bring it back on the Sunday evening - on the Sunday afternoon.

Q. So your main purpose in going up to Hawkesbury that weekend was to bring your boat back, wasn't it? A. And to ski.

Q. What time did you leave? A. I think I left on Sunday afternoon. I could not recall exactly, but I think I would have been back in town by nightfall, anyway - at Vauclose - so I would have had to leave round about three o'clock, or something like that.

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Q. You would not want to leave much later? A. It does not take long to come down from there.

Q. Of course, bringing the boat down, you have to allow for breakdowns, haven't you? A. I don't allow for breakdowns. If you have a breakdown, you have one.

Q. But it is not a good thing to be caught outside in a small boat in the dark, is it? A. That is right.

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Q. Are you sure you left as late as three o'clock? A. Yes, I think about three o'clock. It might have been a bit later.

Q. What time did you arrive in Sydney? A. I think somewhere round about half past six or seven. I can't recall these things clearly. I got in before dark, I think, on this evening.

Q. You left the latest time you could have left to get in before dark? A. No, I think I left round about three o'clock.

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Q. There is no doubt that your main purpose in going to Hawkesbury was to bring your boat back? A. To have a water ski and bring my boat back, yes. I was water ski-ing on the Saturday and the Sunday.

Q. Mr. Murray normally water skis on the Sunday? A. Sometimes in the holiday period he-- (interrupted.)

Q. Normally on a Sunday? A. Yes.

Q. And normally Miss Rosewell is working on Saturday? A. Yes, really I don't have complete details as to what they normally do, Mr. Gruzman.

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Q. You know Miss Rosewell is an estate agent? A. Yes. I don't know if she works every Saturday.

Q. Isn't it your belief that she is normally working on a Saturday? A. I don't know.

Q. You what? A. I just don't know. She may work some Saturdays and not other Saturdays.

Q. Just tell us again - I don't think we have got it clearly. When was this weekend arranged? A. I could not tell you that.

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Q. Come Sir. The first weekend you ever spent with Freddy-- (Objected to; rejected.)

Q. The first weekend you ever spent with Fred Hume? A. I really don't know when it was arranged. It could have been arranged on that morning. I don't know when it was arranged.

Q. It could have been arranged on Sunday morning? A. I really don't know, Mr. Gruzman.

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Q. That could be the truth of it, couldn't it, that it was? A. I don't think it was arranged on Sunday morning. I think it would have been arranged at least on the Friday evening before. I don't know. The fact of the matter was that he went. I don't know when it was arranged.

Q. Who invited the other people who were

present? A. Mrs. Larkin skis normally with Mr. Murray and Miss Rosewall nearly every weekend.

Q. So this is the position, that your understanding of the matter is that Miss Rosewell, Mrs. Larkin and Mr. Murray would normally be ski-ing up there? A. Normally each weekend in most cases.

Q. And normally I suppose on a Sunday?

A. Normally on Sundays. Sometimes on Saturdays. Sometimes on Monday, if it is a public holiday. 10

Q. Well, can you be more specific as to when you spoke to Mr. Murray about you going up? A. I wonder if you can get this clearly in your mind, Mr. Gruzman, that I don't have to be specific about asking Mr. Murray if I have to go up there water ski-ing. I have a standing invitation to go water ski-ing; I can arrive and water ski without any invitation whatsoever.

Q. Did you do so? A. I can't recall whether I made a specific statement as to whether I was going up, or whether I turned up. 20

Q. Well, are you prepared to be specific as to when you spoke to Mr. Hume about going up?

A. No, I am not.

Q. It is quite possible you rang up on Sunday morning and said "Let's go for a run."? A. I can't recall. I think it would be earlier. I can't be specific.

Q. You never spent Saturday night there, did you? A. I tell you I did spend Saturday night there. 30

Q. Hume never spent Saturday night there?

A. He spent in my knowledge from ten-p.m. I don't know what he did. I was not awake from possibly ten-p.m. until five o'clock next morning. If he got off the boat and went to town in that period- I could not swear I saw him all that time, but I believe he was there all that period.

Q. You say you last checked up with Hume about this a fortnight ago? A. Not about this, no. There is a matter of fact. There is nothing to check up about it. 40

Q. You did speak to him about this matter?

A. Not particularly this matter.

Q. This is one of the matters you spoke to him about a fortnight ago? A. I don't think so.

Q. You would not be prepared to deny it?

A. I don't think I would have spoken to him about that in any particular context. It is just a matter of fact, and there is no argument in my mind that I was there and the other five people were there on that evening. 50

Q. By the way, there is a perfectly good motel up there, isn't there - up near Mr. Murray's place?

A. Are you referring to Mr. McLachlan's motel?

Q. Yes. A. Within a few miles, yes.

Q. Very convenient? A. Very comfortable, I have not stayed there, but it is very convenient.

Q. You have never stayed there? A. Had a drink there in passing through.

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Q. Of course, if you wanted to spend a night there that would be the place to stay, wouldn't it? A. It depends on what you wanted to do, Mr. Gruzman.

Q. If you wanted a comfortable night? A. If you wanted to. I am not suggesting where you want to stay; I am just telling you where I did stay. I can't tell you where I would like to stay. I did not stay at McLachlan's motel on that night.

Q. You are a man who likes a measure of comfort, aren't you? A. From time to time. I don't mind roughing it occasionally.

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Q. I put it to you that if you had in fact stayed the night there you would have stayed at the motel? A. No, I would not. I stayed where I told you.

Q. And I put it to you that, of course, if you had stayed at the motel there would have been a record, wouldn't there? A. I would imagine I would register if I stayed at the motel.

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Q. And that is why you are forced into the lie that you slept in the way you say you did? (Objected to; rejected.)

Q. I put it to you that what you told us about that night is a lie? A. No, not at all. Perfectly true.

Q. And I put it to you that you have been forced into the lie in order to create this alibi? (Objected to; rejected.)

Q. It is your belief, isn't it, that it is a matter of importance that there should be evidence before the Court that the conversation between Hume and Vojinovic alleged by Vojinovic could not have taken place? A. I now believe its importance. I didn't believe at that time, because I didn't know anything about what was going on.

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Q. You have told us on three or four occasions that you could check this night from your diary. I now hand you your diary. You may have access to it. I will read it to you. You are pointing first of all to the first entry in this book.
A. New Year's Day.

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Q. It is a book in very nice condition isn't it, apart from one little ink mark on the front of it?
A. Yes.

HIS HONOUR: Confine your reference to the page you want to show Mr. Armstrong, Mr. Gruzman.

MR. GRUZMAN: That page starts on 1st January. May I refer to the earlier pages in the book prior to 1st January?

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HIS HONOUR: Yes. There is nothing on them, Mr. Staff. I saw that as Mr. Gruzman was turning the pages.

MR. GRUZMAN: Q. First of all, this book has no title or name in it? A. No.

Q. And then there are a number of alphabetical pages? A. Yes.

Q. All of which are quite innocent of writing, aren't they? (Objected to)

Q. Look, you first showed me the entry on Sunday, 1st January. It is in these terms. This is the very first entry - the first bit of writing in the whole book? A. Yes. It is 1st January. 20

Q. "1st January. Joan Larkin and I took the Bertram 25 up to Jack Murray's. We had a good trip and left about 7.30 a.m. arriving 10.30. Margaret came in afternoon and we stayed with Jack and Dorothy in evening." "Margaret" being your wife?
A. Yes. I think it would be my wife, or daughter. I think it would be my wife. I think, if we go to the cottage we stay there. 30

Q. Yes. A. You can read those pages to his Honour, if you like.

Q. The second and third? A. Yes.

Q. On each occasion I will read the whole of the entry. "2nd January. Spent day ski-ing etc." Can you tell from the diary where you spent Sunday night? A. I would say I spent it in the hut.

Q. "2nd. Spent day ski-ing etc. Arnold Glass brought his new Donzi up and we had a run in it. Quite a pleasant day." "3rd. Spent most of day at Jack Murray's with Margaret. Unfortunately she had a bad headache and we decided to return home by car leaving boat anchored." A. Now I think if we return to the 7th? If we turn to the 7th. 40

Q. All right, the 7th. A. Yes.

Q. "Joan, Fred, Annette and I"-- A. Perhaps you can read that.

Q. "6th. Spent morning in office and 50

discussed matters re Earton and Landmark with Bruce Miles. There are some new proposals to finish on Friday Jan. 13th but I doubt if much will come of them." A. Yes.

Q. Now, you may just agree that you asked me to read that page on the basis that it had something to do with refreshing your memory? You will agree now there is nothing on that page which helps to refresh your memory about that weekend? A. Yes it does, actually. It shows I was not making any arrangements or planning at that particular time to go up on the weekend; I may have written about it, or not. 10

Q. You say the reason you got me to read that page out was that you thought you may have made a note there of making arrangements? A. I may or may not have. This is the 7th now.

Q. Now you agree when I read that page out it was for the purpose of refreshing your memory about arrangements for the weekend? A. I just refreshed my memory. I am not saying what for. 20

Q. On the 7th - I am reading the whole of it - on the 7th you have: "Joan, Fred, Annette and I-" A. That is Miss Catt. "Annette" is Miss Catt.

Q. You say that is Miss Catt? A. Yes.

Q. "Joan, Fred, Annette and I went to Jack Murray's boat." A. That means "boat okay".

Q. "Boat okay, and we had a ski, also Jack and Noel jumped wash." A. That is Miles. Noel Miles. 30

Q. "Jumped wash, a pleasant day." A. Yes.

Q. "Sunday 8. Spent day with Jack etc. and Joan and I brought boat home from Sackville. We arrived about 6.30 p.m. after a pleasant run. Messel had a party for Summer School scientists at Portland." A. Yes, we saw him as we went past.

Q. Those are the matters that assist you in your diary? A. Yes.

MR. GRUZMAN: Q. Was that diary in existence when you discussed with Mr. Staff destroying your other diaries? A. This entry was made, I would say, within two or three days of the events happening - these entries. 40

Q. The position was that you had discussed with your senior counsel and your solicitor the destroying of your diaries? A. the previous ones - yes - '61 to '66.

Q. When did you first come to believe that your diaries might be embarrassing to you? A. I would not say they would be embarrassing to me in 50

this case, Mr. Gruzman, but they would have enabled you to proceed as you have done on all sorts of other subjects which had nothing to do with the case.

Q. When did that realisation first occur to you?

A. I would have thought some time - I cannot pinpoint it but I know I had a number of discussions with Mr. Staff before I went overseas and did not do anything about them. I think when I came back I discussed it with him again but I cannot completely recall that. I know the diaries were destroyed some time in October-December. I think probably October-November period of 1967 as near as I can remember but I did not note it down. 10

Q. When did you go overseas in 1967? A. About 30th April - 1st May.

Q. So it was certainly prior to 30th April that you realised your diaries might be embarrassing? (Objected to). 20

Q. It was certainly to 30th April that you felt concerned about your diaries? A. I think it might be more correct to say that Mr. Staff assured me that they were no longer privileged documents; I always thought you could write something in a document and not have it subpoenaed and I learnt it could be subpoenaed. That would be correct.

Q. I suppose it was prior to seeing Mr. Staff that you yourself felt some concern about your diaries? A. Not from the point of any entries that would be embarrassing in this case, only by the entries mainly over the period that was comprised of by those other papers that came into your possession. 30

Q. That is exactly what you told His Honour earlier, that the only thing concerning you in your diaries was the Eskell divorce? (Objected to).

A. I did not say it was the only thing.

Q. One of the things that concerned you was the Eskell divorce? A. Also my personal private thoughts about many people in these diaries, some of which may have been correct and some of which may have been incorrect. 40

Q. First of all, the Eskell divorce was about 1962-1963? A. Yes.

Q. And there were entries about that matter in your diaries? A. I imagine so; something along the lines of the things you have got hold of.

Q. Because it is your habit to write voluminous things about matters which affect you? A. I just write a diary normally. 50

Q. I suppose in your 1963 diary you would have

written about the elections? A. About what elections?

Q. About your election to Parliament? A. No. That election was in 1964, I think.

Q. Your 1964 diary would have contained then all your thoughts on your election to Parliament?

A. I would not have thought so. Election to Parliament was a fact and I would have just stated I was elected to Parliament, and I do not think the fact that I was elected called for -- 10

Q. Your campaign? A. I would not have written down about the campaign in my diary.

Q. If you had been engaged in some improper practice with relation to your election to Parliament you would have written about that in your diary? A. Yes, I think if I had been, but I was not.

Q. That meant if that happened the 1964 diary would have had it? A. I said it did not. I do not know whether I would have written about that or whether I would not have. 20

Q. Have you any recollection of writing in your 1966 diary about anything which was of a serious nature and detrimental to yourself? A. No, nothing of that sort.

Q. Why did you destroy your 1966 diary?

A. Because there was again personal reference to people in it. 30

Q. You know that this Court - any Court - will protect personal thoughts and references except in so far as they reflect on your credit? A. I did not know. This is my first experience of this type of cross-examination. I did not know anything about it.

Q. Did not Mr. Staff tell you: "If it is a purely personal matter and does not reflect on your credit the Court will protect you"? (Objected to - rejected). 40

Q. I put it to you that there was only one reason that you had your 1966 diaries destroyed, and that is that they contained detailed references to your thoughts and intentions with respect to Mr. Barton? A. No, because I did not have any thoughts and intentions with respect to Mr. Barton.

Q. I put it to you that you at a later date, that is after the destruction of your earlier diaries, wrote out the diary that you produced to this Court? A. Quite incorrect. (Question objected to). 50

Q. Do you think you might have confused, accidentally, perhaps, the week-end of 7th January with the week-end of 1st January?

A. No.

Q. How many nights have you spent in Mr. Murray's place? A. I could not recall that. I have been up there over the last seven or eight years and I could not recall that with any degree of certainty.

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Q. You spent many nights there? A. Quite a number of nights.

Q. And on each occasion has Mr. Murray been there? Mr. Murray has been there each time?

A. No, sometimes. You will notice I spent one night on occasions when Mr. Murray had gone home, even in that diary, and sometimes I just spent two or three days there - my wife and myself.

Q. Have there been many occasions when you and Mr. Murray and other guests have spent a night there? A. I think there would be, but let us define "many". I cannot tell you how many. I do not know, but quite a number of occasions.

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Q. Would you say 20, 30 or more? A. I would not recall whether it would be 20, it could be 10 or 15 - I just do not know.

Q. On each of those occasions there has been a number of people there? A. It would be very difficult for more than four to sleep in the building, so four would be the usual number I would say.

Q. You told us that nothing unusual happened on the week-end of 7th January? A. What do you mean by "nothing unusual"?

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Q. For example, nobody got hurt, the boat did not sink? A. I told you, I think, Mr. Gruzman, you will recollect me telling you, that Mr. Murray's boat which we drove and ski-ed with on a large number of times broke down. That was unusual. His boat does not usually break down.

Q. Is that what fixes that week-end in your mind? A. One of the things. There is nothing that fixes it. I just know and believe I was there on that week-end.

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Q. That is as far as you take it? A. As far as I can take the other things. There was the butcher jumping the wash, and it is a big thing to jump the wash of a boat like the Bertram, if you know anything about water ski-ing.

Q. Are you suggesting it is unusual for a water skier to jump a wash? A. For a boat of that size.

Q. That is the first manoeuvre a water skier

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does after he gets up on to his skis? A. Do you mean to jump a wash or to cross a wash?

Q. Is there any difference? A. There is a lot of difference.

Q. Do you know a man called Murray Riley?

A. It does not ring a bell. Would you give it, in respect of what? I might call him to mind then but I do not recall it in particular at the moment. 10

Q. In connection with Goulburn? A. I cannot recall him at the moment.

Q. Just think about it, Mr. Armstrong? A. I cannot recall him for the moment. You may be able to say something that brings it to my mind.

Q. Did he go down to Goulburn at about the time there was trouble down there? (Objected to).

Q. In connection with the problems of the finance companies and your investigations into those problems did Mr. Murray Riley go down to Goulburn? (Objected to). 20

Q. I do not want to take up a lot of time but you did have finance companies in Goulburn, did you not? A. Yes.

Q. You did believe that you had lost a lot of money there? A. A reasonable sum, yes.

Q. There were certain investigations?
A. Right.

Q. And there were certain suicides? A. Yes.

Q. And at about the time that those matters were present to your mind were you acquainted with a man named Murray Riley? A. I cannot really recall clearly. No, I cannot recall it. I cannot say yes or no. I could have done but the name does not mean anything to me. 30

Q. A police officer? A. I do not recall whether he was. I do not recall anything about it. The name rings a faint bell but I cannot recall anything about him. You might be able to help me, I do not know, but I just cannot recall anything about him specifically. 40

Q. He is a police officer who - you compel me to put it this way when you say you have a faint recollection - subsequently served a term of imprisonment. A. I did not know that.

Q. Didn't you? A. Definitely not.

Q. You knew Murray Riley, didn't you?
A. I do not recall him.

Q. Did you not arrange for Murray Riley, who

was then a member of the N.S.W. Police Force, to go to Goulburn at the time you were investigating your finance companies and Chester? A. I do not recall.

Q. You are not prepared to deny it, are you?

A. I do not recall it; I just do not know.

Q. Is it not within your knowledge that this police officer was subsequently charged with bribing some police in New Zealand and sentenced to 12 months imprisonment? (Objected to; rejected). 10

Q. If I suggest to you that you may know him not only as a police officer but also as an Olympic sculler, does that help you? A. That is where I think I might have recalled the name. The name seemed a bit familiar and it probably could have been in that connection.

Q. And that man at your request went to Goulburn, did he not? A. I do not think so. It could have been at Mr. Ashcroft's request or someone else's request. I have very little knowledge and I certainly could not identify Mr. Riley if he was produced in court. 20

Q. I am not suggesting you could. I am specifically suggesting to you that Riley and Ashcroft went together? A. I do not know. Ashcroft could have taken him with him but I do not know.

Q. I put it to you - at your request? A. No. I say not at my request. 30

Q. And for the purpose of applying pressure?
A. Definitely not.

Q. Is it not within your own knowledge that this man, Murray Riley, was subsequently dismissed from the N.S.W. Police Force? (Objected to; rejected).

Q. In what car did Mr. Hume drive up to Hawkesbury that week-end? A. I think his M.G. Sports.

Q. Had you seen Hume in the Ford Falcon? A. I do not know. I do not think I have ever seen him in the Ford Falcon but I cannot recall. When I saw him about this time he was driving the M.G. 40

Q. You might just have a look, if you would, at this invoice from Mr. Hume? (Handed to witness).

HIS HONOUR: I think it should be described as a document, it is not in evidence.

MR. GRUZMAN: Q. Have a look at this document. Have you seen it before? A. Yes.

Q. Where did you see it? A. In this court.

Q. Have you seen it outside the court? A. I would have seen it when I paid the account, I imagine. 50

Q. Would you describe it as Mr. Hume's invoice as a result of which you paid him \$1094? (Objected to - allowed). A. I describe it as an account, actually myself.

Q. Can you tell us where that was typed? A. I have not the faintest idea. I imagine he typed it or his secretary typed it. I would not know. I did not type it.

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Q. How many days' work does that cover? A. I would have to go right through it to tell you that-- (Question objected to - allowed).

Q. How many days' work? A. Well, I could not answer the first question. I do not know how much work he did on the investigations carried out at Double Bay. I could not answer that. The others, I think, are almost self-explanatory.

Q. (Indicating on document) He refers to certain dates. We will forget about Double Bay, 4th November. That arose on the 4th November -- (Objected to; Mr. Gruzman said he proposed to tender the document.)

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Q. What you paid Mr. Hume for was work done by him? I am now going to read out a series of dates and I suggest to you that, omitting Hoffman and omitting the last two entries on the document, I am going to read out to you all the days on which Hume did work in respect of which the amount set beside the entries you paid? (Objected to).

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(Above document tendered - objected to - tender and question withdrawn.)

Q. Take this document, please. (Handed to witness). Did you arrange for the Southern Tablelands Finance Co. Pty. Ltd. to pay Mr. Hume for the work shown on that account? A. Yes.

(Above document further tendered - objected to - tender pressed together with m.f.i. 4.)

HIS HONOUR: Mr. Gruzman has tendered an account that he has shown to Mr. Armstrong and it has been identified as an account rendered by Mr. Hume to Southern Tablelands Finance Company Pty. Limited. Mr. Armstrong has stated that he arranged for Southern Tablelands Finance Company Pty. Limited to pay Mr. Hume for his work done on this account. The document is now tendered by Mr. Gruzman as part of the evidence relevant to an essential issue in this case; namely whether Mr. Armstrong engaged Mr. Hume to bring duress to bear upon Mr. Barton. The document is dated 21st December 1966, the account was apparently paid on 4th January 1967. It is pressed by Mr. Gruzman as being a part of the evidence touching the essential issue I have mentioned and I must consider its admissibility without regard

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at this point of time to its probative efficacy. On this last mentioned aspect I express no view. It may be that the document would ultimately have significance, it may be that it would not, but at the present time it seems to me that I should admit it as part of the evidence touching upon Mr. Hume's employment by Mr. Armstrong or one of Mr. Armstrong's companies relied upon by the plaintiff as relevant to the essential issue that I have mentioned. 10

I accordingly hold that the document is admissible. It will be admitted and marked Exhibit "Y".

(Account of 21st December 1966 from Hume's Investigations marked Exhibit "Y".)

It is only the account that I have admitted. 20

MR. GRUZMAN: Q. You know the cheque for \$1094? That was the cheque paid by Southern Tablelands, you say, in respect of this? A. I would say so. (Question objected to).

Q. (M.f.i. 4 shown to witness) I show you the cheque, it is your signature on that cheque, is it not? A. Yes, I believe so.

Q. That is the cheque that you caused Southern Tablelands Finance Company Pty. Limited to pay to Hume's Investigations? A. Yes. (Question objected to; allowed). 30

Q. And you say that that cheque was paid in payment of the account which has just been admitted into evidence? A. Yes. (Question objected to - allowed)

Q. That is correct, is it not? A. As far as I know yes, I paid that account with that cheque.

(M.f.i. 4 tendered)

HIS HONOUR: For reasons already stated I shall admit the cheque and include it with Exhibit "Y". 40

(M.f.i. 4, cheque for \$1094.30, marked Part of Exhibit "Y".)

MR. GRUZMAN: Q. You gave some evidence about another sum of money which you paid Mr. Hume, I think a sum of \$500? A. Yes.

Q. Have a look at this document? (Objected to).

Q. I think you gave some evidence that you caused a company called Pacific Panorama Sales Pty. Limited to pay £500 to Hume's Investigations? A. Yes. 50

Q. Have a look at this document (shown to witness) and tell me whether that is an original carbon copy of the account rendered by Mr. Hume? (Question objected to - withdrawn).

Q. You told us that you caused Pacific Panorama Sales Company Pty. Limited to pay \$500 to Mr. Hume? A. Yes.

Q. Correct me if I am wrong, but did you inform us that \$100 of that was paid to Mr. Keith Hawthorne? A. I assume Mr. Hume paid it to him. I did not know Mr. Hume paid it to him but I assume he did, if he said that he did. 10

Q. I show you the original carbon copy of the account. (Handed to witness). Tell me if that is the account in respect of which you caused Pacific Panorama Sales Company Pty. Limited to pay \$500? (Objected to).

Q. Do you recognise the document now before you in the witness box as the original carbon copy of an account rendered by Hume's Investigations as a result of which \$500 was paid? A. I do not know whether it is an original carbon copy. I do not know what it is. I do not know whether it is an original carbon copy or not. I think there may be an account, I think we may have it ourselves. 20

(MR. GRUZMAN calls for account from Hume's Investigations, unaddressed, as a result of which \$500 was paid by Pacific Panorama Sales Pty. Company Limited to Mr. Hume: not produced.) 30

Q. Where did you see the account to which you referred last? (Objected to - allowed)
A. I do not know actually.

Q. You might just have another look at this. (Document handed to witness) See if you could do your best to recollect whether or not that is a carbon copy of an original document which you saw? A. I really could not tell you. It seems to be the same. I could not tell you whether it is a carbon copy of it. I just do not know. 40

Q. You will agree that of the \$500 which you caused Pacific Panorama Sales Company Pty. Limited to pay to Mr. Hume \$100 was for payment to a man called Keith Hawthorne? A. That is what this piece of paper says.

Q. Are you prepared to deny that you paid to Mr. Hume \$500 or caused to be paid to Mr. Hume \$500 of which \$100 was to go to Keith Hawthorne? A. No. I think it is at Mr. Hume's discretion. If this is the account, which I must say it appears to be to me, that Mr. Hume presented on his return from that trip. I did not 50

specifically instruct him to pay Mr. Hawthorne \$100. He says he did, maybe he did, maybe he did not. I do not know. I trust him to do so and I would not think he would not have.

Q. Is this the position, that you accepted the position as you understood it from Hume that he had paid to Keith Hawthorne \$100? A. That would be on this account, I believe it. 10

Q. You believe him? A. Yes.

Q. That being so, you reimbursed him both for his work and the \$100 that he paid? A. Quite so.

Q. I put it to you on many occasions, and I put it to you again, that bribery is a part of your stock-in-trade? A. And I put it to you just as often that I found the question offensive.

Q. Will you tell his Honour what the \$100 was paid to Keith Hawthorne for? A. What Mr. Hume told me he paid \$100 to Keith Hawthorne for was that Mr. Hawthorne was a very valuable employee of the company and was engaged on the maintenance of the engines and the dredge pumps and he was threatening to leave. I do not think their wages had been paid, or something was wrong with the situation with Mr. Hawthorne, and Mr. Hume said "I gave him \$100 so that he would stay a bit longer." 20

Q. He was at the Landmark Corporation? A. He was employed at Landmark Corporation then. This was at the time when control of the Landmark Corporation and the Paradise Waters project had been taken out of my hands and I did not know whether in this period I would win the proxy or whether Mr. Barton's group would win the proxy and I did not want good employees to leave. With these things going on most of the employees were becoming very unsettled and threatening to leave the job. Hawthorne was a good employee. That would be my explanation, as near as I can recollect, your Honour, of the \$100. 30 40

Q. At about this time did you believe that you were being deprived of information to which you were entitled? A. Yes.

Q. Did you send Hume to Surfers Paradise as your spy? A. No. I did not have time to go myself and I just wanted to know what was going on at the works. There was nothing spying about it.

Q. The position was that you were unable to obtain official permission from the company to investigate what was going on at Surfers Paradise? A. No. I was not unable to obtain official information; I was a director of the company. 50

Q. But you were unable to obtain permission from the company to investigate what was going on?
A. No.

Q. You have already told us that you were in that position? A. No. Things were being kept from me. There was no depriving, from the company's point of view, me going to Surfers Paradise to inspect the project or the work, but I did not have the time so to do otherwise I could have done it myself. 10

Q. You were complaining about this time that there was not being disclosed to you essential information? A. Yes. I am complaining about that but I am not complaining that I could not have gone and got this information myself.

Q. And you felt that what was going to happen was that at the annual general meeting a complexion would be put on the affairs of the company by Mr. Barton and those who supported him which you felt was wrong? A. That is a very broad question. Can we be a bit more specific about that? 20

Q. Your belief was that at the general meeting Mr. Barton or Mr. Bovill might say that Surfers Paradise is going well when it was not going well or that it was going badly when it was going well?
A. They could have said that but I think I was more interested in seeing that these employees did not walk off the job when this dispute was going on, whoever won the dispute. 30

Q. You went up to Surfers Paradise on several occasions yourself during this period? A. Not very much during the November period so far as I can recollect.

Q. I am not speaking about November but going to the period towards the end of October? A. I do not know when I went. I think I went once, if I remember rightly, some time towards the end of October. But I think there is one thing I cannot understand on this account; why it is November first. To me it should be dated later. I do not know but I thought Hume went up later than that. You will recollect, Mr. Gruzman, I have never seen the report in the last two months and I cannot lay my hands on it now to account for the work he did up there of which this account is the substance. 40

Q. Mr. Hawthorne was a man who would have known what was going on, was he not? A. He was the works maintenance engineer, yes. 50

Q. And he would have known and been able to tell you the condition of the works, good bad or indifferent? A. Not particularly, although he would be able to tell me the manner

and efficiency with which the dredge was working, or the machinery, and so on.

Q. In other words, how well or badly the job was going? A. I would not say he was competent to say that.

Q. There was no one else there you could regard as more competent? A. Yes. Mr. Gleeson would have been more competent but he was instructed not to speak to me at this time. 10

Q. So the only man who could and would give you information was Mr. Hawthorne? A. That is right. There were others there but if I had gone myself there would have been no good for me to talk to anyone.

Q. Not only Mr. Gleeson but in your belief all the company's officers or employees had been told not to give you information? A. I do not know whether all of them were but I know the secretary was directed to, later. 20

Q. The secretary was directed to what? A. Directed not to give me any information, by letter.

Q. What you did was to arrange for Hume to bribe Hawthorne to give you the information which the company had told him not to? That is simply the position, is it not? A. Not at all. I do not know whether the company said anything to Hawthorne about information he gave. I had more interest, as I said earlier, in keeping Mr. Hawthorne on the job. His information was of little value but had he walked off the job - Landmark - my interests in this project - and the information I could get from Mr. Hawthorne was of much less value to the company than the fact that he maintained the dredges and kept them working. 30

Q. Could not you have paid Mr. Hawthorne openly? A. So far as I know he was paid openly.

Q. By cheque? A. There is nothing underhand about this. 40

Q. Why was it not done by Landmark? A. It was taking Landmark all their time to pay Mr. Hawthorne's wages, so far as I can recall.

Q. Didn't you bring it up or tell Mr. Grant about this? A. I cannot remember specifically.

Q. Was there a board meeting of Landmark at which you were present subsequent to this? A. I would not know. I would not bring up a matter like this before the Board meeting when the other issues were so large at that time. 50

Q. Was it not important to you that a key

man was likely to leave because he was not being paid sufficient? A. Not for me to bring it up at a Board meeting, with the issues we had at that time. I do not think I brought it up at the Board meeting. I might have, but I do not know.

Q. You never did? A. I don't imagine I brought it up at the Board meeting.

Q. Would it not be a matter of fair criticism of the administration of the company and the project, because the project might fail or be imperilled because they would not pay proper wages to a key man? A. I do not see how you could say the whole project would fail or be imperilled. It is making too much out of a small thing here. The man was getting tired of what was going on and he was hearing one thing from Mr. Barton and one thing about me. You know what a small country town is like. I do not know what Mr. Hume said to him about this \$100 but I assume he said "If you stay on there is \$100". That is as I understand it at this time, to the best of my ability. 10 20

Q. This much is perfectly clear: you never paid him money to give you confidential information? A. As far as I know there was nothing confidential to be gained from this man.

Q. The only purpose for which the money was paid was so that the man would continue in his present employment? A. I do not think you can assume anything there. Hume may have got some information. I cannot tell you what Hume said to the man, because I was not there. 30

Q. You paid \$100 out of your company?
A. Yes. I did not give him the \$100.

Q. You sent Hume to use his own discretion?
A. To find out how the project was going on. Yes, I would not deny that at all.

Q. These moneys Hume expended, and for whatever purpose, was all right with you? A. I paid the accounts; it must have been all right. 40

Q. What I am putting to you is that Hume was a person you employed to do your dirty work?
A. There does not seem to be anything dirty about that at all.

Q. It would be dirty in your mind if someone was bribed to give confidential information to you to which you were not entitled? A. Yes. I am not saying he was bribed to give confidential information, and I am not saying I was not entitled to it. 50

Q. To your mind it would be dirty work to bribe an employee to give confidential information? A. I think it would be unusual.

Q. It would be dirty work? A. I do not know that it would be dirty or what it would be. I do not know what the position would be. It is of so little importance - it is a fact of life; he is paid \$100 for some purpose.

Q. It is a fact of your life to bribe people to gain your own ends, is it not. A. I find that question offensive. It is not.

10

Q. I ask you again; will you answer that?
A. It is not - very definitely not.

Q. The very thing you did in this case was to pay this man to give confidential information?
A. No. I paid him to stay on. The main purpose in my mind was for the man to stay on, but what Hume said to him I do not know.

Q. If you paid him to give you confidential information you would regard that as a bribe?
A. But I did not pay him for that --

20

Q. If you did? A. I do not know what happened. I cannot tell you what happened if I was not there.

Q. If the money was paid to this employee to give confidential information you would regard it as a bribe, would you? A. If money was, I suppose I would - an inducement, I suppose, to give confidential information. But there was nothing confidential this man could give.

Q. If that were done, the money was paid for that purpose, you would regard it as a bribe?
A. Yes, I suppose.

30

Q. And it is something you would not do.
A. No, I would not. I paid him money to keep on with the job.

Q. Did you say this about the cheque for \$500 at p. 944: "That was paid for work done, on behalf of investigating what was going on at Paradise Waters in Surfers Paradise?" Then it goes on:

40

"Q. Would you give some more details?
A. You will recollect some time early in November 1966 all documents were out off from my inspection by express order of Mr. Barton and the authority of the Board of Landmark, or the purported authority of the Board of Landmark. Therefore I could get no information as to what was going on in the company. This company owed me on Paradise Waters \$400,000 and I wanted to see how the project was going on. The key men were about to leave the project at that time, because they were not being paid. I

sent Hume up to get confidential information for me, because he was not known to the workers on the project. If I approached the project I would get nothing, because all the workers were instructed to tell me nothing. That is the reason that was paid."

10

Do you still say Hume was not sent to get confidential information? A. You said to get information on the project. I do not think there was anything confidential about it.

Q. The words "confidential information" are your words and not mine, are they not? A. Apparently so, if I said that. I told you what I sent him up there for.

Q. The words "confidential information" are your terminology, are they not? A. Apparently, yes. 20

Q. That is why Hume was sent there? A. One purpose of him going up there - I could not go myself.

Q. That is untrue, is it not. A. No. There is nothing untrue about this. Hume was known to this man Hawthorne because he had been there for some considerable period.

Q. What I suggest to you is an untruth is that you did not go because you did not have time. That is an untrue statement, is it not. A. I do not think so, Mr. Gruzman. 30

Q. Is it not the fact that if you went there you would get nothing because all the workers were instructed to tell you nothing? A. That is what I said in evidence, and I say it, and it is partly true --

Q. Is that true? A. Partly true, I would say. It is a very difficult thing to recall.

Q. Just a moment. I want to take you to this statement and I will quote it: 40

"If I approached the project I would get nothing because all the workers were instructed to tell me nothing."

You have heard that statement read? A. Yes, I have heard that.

Q. Is it true? A. I do not know, because I did not approach the project. That is the statement I read out. I do not know what would have occurred had I done so. I sent Hume to approach the workers in order to get information for me 50

about the project. I have already told you that, Mr. Gruzman.

Q. I will read it again and ask for an answer. The statement you made was this --

HIS HONOUR: I think you should read the preceding sentence also.

MR. GRUZMAN: Q. "I sent Hume up to get confidential information for me because he was not known to the workers on the project. If I approached the project I would get nothing, because all the workers were instructed to tell me nothing." 10

Were those statements true? A. Those are the statements that were true, yes, to that effect.

Q. So it is not true that the reason you did not seek information was because you did not have time, is it? A. It is true, Mr. Gruzman, to the same extent as this: I sent Mr. Hume up there to look around the project and find out what he could. It is not to say he would have done any better than if I had gone myself. The fact is that the workers would be probably more likely to talk to someone like Hume more than they would have been to talk to me but if I did not have the time, that was the reason for the visit. I am not saying they would have talked to me, they may have, and I believed that Hume would have got more out of them than I would. 20 30

Q. You went up there at the end of October?
A. I did not say, but I may have gone up at the end of October. I cannot make out this account, because the date of November 1st seems early to me.

Q. I would like you to, please, for your own protection think of what you are saying. You see, you told us that the statement that you sent Hume up to get confidential information because he was not known to the workers on the project and if you approached the project you would get nothing because all the workers were instructed to tell you nothing is a true statement? A. Yes, I said that is a true statement. 40

Q. If that is a true account, you see, will you not admit that it is untrue to say that the reason you did not seek information was because you did not have time? A. One of the reasons why I did not seek information was I did not have the time. I did not say it was the only reason. 50

Q. The only reason you did not seek information was because you knew you would get none?

A. I said I thought he would get more than I would.

Q. That is not true, is it? A. I have just told you I thought Hume would get more information than I would get if I approached the workers.

Q. Do you know the difference between the truth and a lie? A. Of course I do.

Q. I suggest to you that you live in a world where truth and lies are so merged that you do not know one from the other? A. No, I do not agree with you, Mr. Gruzman. 10

Q. I will ask you again. If you say that you did not approach the project because the workers had been instructed to tell you nothing it cannot be true that the reason you did not approach the project was because you did not have time, can it? (Objected to)

Q. How do you reconcile those as both being truthful statements? How do you reconcile these two statements: 20

- (1) If I approached the project I would get nothing because all the workers were instructed to tell me nothing,

and

- (2) I did not approach the project because I did not have time

A. I would reconcile them in this way: Firstly I would say I assumed I would get nothing if I approached the project and, secondly, I would say I did not have time. So in the face of the fact that I assumed I would not get anything and I did not have time I sent Hume. That is the exact fact of the matter. Those two things to me seem to be quite concurrent. 30

Q. They seem to be quite consistent? A. I assumed I would not get anything from the men and because I assumed I would not, I did not waste my time trying; I sent Hume.

Q. So you say both of those statements are equally truthful? A. Both are. As a matter of fact, what occurred - I could have been wrong because if I had approached the workers I may have got something. But I did not approach them because I assumed they would not tell me anything and I thought it was more likely that if Hume approached them he would get something. It is quite easy to say if Hume had approached them he would have got nothing either. 40

Q. The important fact, you say, is you did not approach them because you did not have time? 50

First-named
Defendant, xx

A. I did not have time and I assumed I would not get any information from them.

Q. Do you think those two statements I put to you are quite reconcilable? A. I think they are common sense and also I assumed I would not get any information.

Q. That is not what you said? A. No, I am sorry. I should have used the word "assumed".

10

Q. The statements you made in your evidence, in your mind, are consistent? A. If you use the word "assumed".

Q. That makes it consistent? A. Yes.

Q. That is the sort of evidence you are quite pleased to have given? A. I think it is common sense evidence.

(Further hearing adjourned until
Wednesday, 28th August, 1968).

BARTON v. ARMSTRONG & ORS.

TWENTY-EIGHTH DAY: WEDNESDAY, 28TH AUGUST, 1968

FIRST-NAMED DEFENDANT

On former oath.

HIS HONOUR: Q. You are still on your former oath, Mr. Armstrong. A. Yes your Honour.

MR. GRUZMAN: Q. Mr. Armstrong, I asked you some questions yesterday about the 1963 elections for for the Legislative Council, and you gave me certain answers, do you remember? A. 1964, I think. I think 1964. 10

Q. I suggest to you the election took place on Thursday, 21st November, 1963? A. Yes. The election took place about five months before the members take their seat. It is actually the 1964 elections. That is the correct term.

Q. I suppose you will agree that the fact that you were elected was a great surprise to everybody? A. No. 20

Q. It was more or less a bombshell that you should be elected, wasn't it? (Objected to; rejected).

Q. (Copy of Sydney Morning Herald dated 22nd November, 1963 shown to witness) I will hand you the Sydney Morning Herald of 23rd November, 1963. (Objected to).

Q. I show you this document, and I indicate an article over there and I ask you to read it slowly to yourself. (Objected to: allowed). 30

Q. Please go ahead with the reading, Mr. Armstrong. A. Yes. I would like to keep this in front of me.

HIS HONOUR: Just a moment, Mr. Armstrong. Don't comment.

WITNESS: May I keep this in front of me while you are asking questions? I find it difficult to answer. It is too complicated.

HIS HONOUR: What is the question you want to ask, Mr. Gruzman? 40

MR. GRUZMAN: Q. Mr. Armstrong, in the Legislative Council at that time there were three recognised parties, were there? A. I would say there were four.

Q. There was the Country Party, the Liberal Party, the Labor Party and a group which were

known as Labor Rebels? A. I reject that remark. These people do not like to be called the Labor Rebels. They called themselves the Independent Labor Party.

Q. You told us yesterday, if I understood you correctly, that there was no ticket laid down by the parties? A. So far as I know there was not. I checked with our Whip yesterday after I spoke to you, and he said there was not. 10

Q. There was not? A. There was not. Mr. Fitzsimons is the Government Whip, and he told me yesterday that to the best of his recollection he issued no ticket.

Q. I suggest to you that the Labor Party and the Liberal and Country Parties issued their members with individual How To Vote tickets? A. I would suggest to you - (Objected to; rejected).

* Q. It was your belief, wasn't it, that your own party issued individual How-To-Vote tickets to each member? A. Now, I will have to explain, your Honour, a very complicated situation here if my answer is to be intelligible. Is it all right if I so do? 20

(Question marked *read by Court Reporter)

MR. STAFF: I object to that question.

HIS HONOUR: I will allow it.

WITNESS: I cannot answer without giving an explanation. 30

MR. GRUZMAN: Q. What is the explanation? A. I would like an adjournment to consult my Counsel and General Stevenson before I answer any question.

HIS HONOUR: No, Mr. Armstrong, I am not the slightest bit affected by views that might be taken elsewhere regarding the rules of evidence.

Now you are asking for an explanation, Mr. Gruzman?

MR. GRUZMAN: The answer I really want is an answer to that question. The witness says it is not a question capable of answer without an explanation. In those circumstances, and for that reason only, I invite the witness to answer the question in his own way. (Argument ensued). 40

HIS HONOUR: Section 17 (2) of the Constitution of the Legislative Council Elections Act provides that voting shall be by secret ballot. As a matter of public policy I shall not permit the manner of the voting at the elections for the Legislative Council held at the end of 1963 to be probed in evidence in this Court. The challenge

to which such evidence is said to relate is one directly relevant to the credit of Mr. Armstrong, but in my view the preponderating public policy is that the secrecy of the ballot should not be impugned, even though this ruling may restrict to a significant degree what might otherwise be a perfectly legitimate challenge to credit. I shall accordingly rule out any question the answer to which would involve infringement of the secrecy of the ballot. This will not preclude the challenge foreshadowed by Mr. Gruzman from being pressed by such other questions as may be legitimate in relation to that challenge. 10

Mr. Armstrong, it encumbers me in ruling on these matters for you to make reference to officers of Parliament. The rules of evidence are not affected by view of officers of Parliament. If you would be good enough to refrain from doing that again? 20

I shall reject the question you have asked, Mr. Gruzman, because I am not satisfied that it will not involve, in the course of the explanation, some disclosure of the manner of voting. But this will not, I reiterate, preclude you from asking such other questions on the topic as you think may be relevant to it.

(Consolidated Press called on subpoena duces tecum by Mr. Gruzman. David Middleton Hawkins, an officer of Consolidated Press Limited, appeared in answer to the subpoena. Mr. Hawkins produced a copy of the subpoena, together with the documents called for within the terms of the subpoena. Mr. Hawkins requested that an opportunity be afforded to replace with a single copy of the newspaper the bound volume which was currently produced. Mr. Gruzman sought leave to inspect the document produced under the subpoena and his Honour made the document available for inspection to all parties.) 30 40

MR. GRUZMAN: Q. Mr. Armstrong, I asked you to read a document, and I indicate the particular part of the document. I ask you to read that document to yourself. A. I have read that.

Q. You have read that? A. Yes.

Q. Mr. Armstrong, were you placed third on the Country Party's ticket? A. I believe so, yes.

Q. In that position you had very little chance of election? A. That would not be correct. 50

Q. Well, in that position you would have expected to get seven primary votes, wouldn't you? (Objected to; allowed.) A. Your Honour, before answering any further questions I would like to make a formal request to consult my counsel.

HIS HONOUR: Mr. Staff, what do you say to this?

MR. STAFF: With respect to -

HIS HONOUR: I don't mean to the question. I mean to your client's request.

MR. STAFF: I am content to take whatever course your Honour is agreeable to.

HIS HONOUR: What do you say, Mr. Gruzman?

MR. GRUZMAN: I am agreeable.

HIS HONOUR: I will accede to the request.

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(Short adjournment)

MR. GRUZMAN: Q. This is the position, Mr. Armstrong, that, being third on the Country Party list, you would have expected to get no more than seven primary votes? A. No, that would not be correct.

Q. Was not that the fact? A. No.

(His Honour deferred until after the luncheon adjournment a ruling on the admissibility of evidence along the lines foreshadowed by Mr. Gruzman in relation to Legislative Council elections.)

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(Mr. Gruzman stated that he had arranged to have a copy of the Daily Telegraph of 22nd November, 1963 procured from the Public Library and that the bound volume produced by Mr. Hawkins was no longer required. Mr. Hawkins excused.)

MR. GRUZMAN: Q. Overnight did you give any further consideration to the name Murray Riley? A. No, Mr. Gruzman.

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Q. You told us you thought that Mr. Ashcroft might have taken him down to Goulburn? A. That is as near as I can go. I don't know the man, and the only thing that brought him back very vaguely to my mind was the reference to sculling that you mentioned.

Q. Did you tell Mr. Lamerton that Mr. Riley was going to Goulburn? A. No.

Q. I beg your pardon? A. No. So far as I know I didn't. I don't recall talking about Mr. Riley to anybody.

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Q. You would not be prepared to deny, would you, that you had a conversation with Mr. Lamerton about Murray Riley going to Goulburn. A. I think that it would be very unlikely. I could not recall it at this time. I could not recall it at all.

Q. Did you arrange for Riley to go to Goulburn in connection with Chester's disappearance? A. I could not recall. I don't recall anything about Riley, Mr. Gruzman.

50

Q. Did you tell Mr. Lamerton that Chester had had a nervous breakdown, and that you wanted him and Riley to go to Goulburn? A. I cannot recall that. I don't think that Chester did have a nervous breakdown. I understand that Mr. Alders may have had a nervous breakdown.

Q. Subsequently was Murray Riley employed in Goulburn in connection with repossession of cars? (Objected to; rejected.) 10

Q. As part of the management of the six finance companies whose names you have given us earlier it was necessary to repossess a number of motor cars, wasn't it? A. Yes.

Q. And Ashcroft was the man who was principally engaged in that business, wasn't he? A. Yes.

Q. And did he have the assistance from time to time to your knowledge of Mr. Murray Riley? A. I don't know. I would not think so. I don't know. 20

Q. You admit the possibility that Ashcroft and Murray Riley went to Goulburn? (Objected to; rejected.)

Q. You admit the possibility that Ashcroft and Murray Riley went to Goulburn on the affairs of the finance companies? (Objected to; allowed.) A. My answer would be I don't admit anything I don't know.

Q. You admit it is a possibility? A. You are really asking me to say something I don't know. I just don't know at all. Anything could be a possibility. I don't know. 30

Q. It is possible the Harbour Bridge might fall down today? A. That is so, yes.

Q. But you don't mean that is the sort of possibility? A. No I don't.

Q. What I am putting to you is that in your mind it is possible that Ashcroft took a serving New South Wales policeman to Goulburn to do work for your finance companies? (Objected to; rejected.)

Q. You see, what you said yesterday is - I asked you "Q. And that man" - meaning Riley - "at your request went to Goulburn, did he not? A. I do not think so. It could have been at Mr. Ashcroft's request or someone else's request. I have very little knowledge and I certainly could not identify Mr. Riley if he was produced in Court. Q. I am not suggesting you could. I am specifically suggesting to you that Riley and Ashcroft went together? A. I do not know. Ashcroft could have taken him with him but I do not know." A. I just don't know, Mr. Gruzman. 40 50

Q. You see, sir, what I am putting to you is this, that in your mind you are prepared to admit

the possibility that Ashcroft went with Riley to Goulburn on the affairs of the finance companies? (Objected to; rejected.)

Q. Now, I want to ask you something about your boat, the 25-foot Bertram. I think I asked you, and you agreed with me, that you are a man who is used to comfortable living? A. I said, I think - correct me if I am wrong - that I don't mind roughing it occasionally, but I like to be comfortable when possible. 10

Q. You have a very valuable home, haven't you? (Objected to; not pressed.)

Q. The boat which you have purchased is worth what? About \$25,000? (Objected to; not pressed.)

Q. On the boat there were two bunks? A. Mr. Gruzman, I would be happy to show you the boat.

Q. Just answer the question. On the boat there were two bunks, weren't there? A. If you give me a piece of paper I will draw you a sketch. 20

Q. We are all familiar with the insides of boats, you can assume. Will you answer the question? A. I would not call them bunks. I would call them spaces in the forecabin.

Q. In the front of your boat there are two bunks, aren't there? A. I would not classify them as bunks myself. They are not bunks in the sense that I classify them. It may help if I draw a sketch of the boat, or allow you to inspect it. 30

Q. Are there two sleeping spaces? A. I would not call them two sleeping spaces as such.

Q. This is a 25' cruiser, isn't it? A. I think I know the boat, and I think I know about the accommodation.

Q. Will you answer the question? A. I am trying to tell you that I will show you the boat. I don't think the boat is a very comfortable one in which to sleep. That is my view. If I had anywhere else to sleep on land I would prefer to sleep on land than on the boat. 40

Q. The boat is a 25' cruiser, isn't it? A. It is a 25' flying bridge Bertram cruiser.

Q. A late American model boat? A. The boat is manufactured, I understand, in Melbourne on patent from America.

Q. For its size of 25 feet would you agree that it is probably the most expensive boat in Australia? (Objected to.) For a 25' boat you probably can't get a more expensive one? A. I just would not know. 50

Q. I would not be far out, would I? A. I think you would, actually. It depends on the type of boat you require. It is a boat that is mainly for outside fishing and for water-skiing. It is not as comfortable as a 25' Halvorsen. Would that help you in your thinking, Mr. Gruzman?

Q. Has it got a nice toilet? A. Yes. It is the toilet which is in the forward cabin which divides the two bunks. That is one of the points I was going to show you, if you allowed me to draw a sketch of it for you. 10

Q. Has it got a galley? A. A very minor galley. A very small galley. It has a very small about 12 x 6 griller.

Q. It has a toilet, a galley and two bunks, is that right? A. I would say that they are not two bunks - not what I would call separate bunks as you have in say a larger cruiser or a Halvorsen cruiser of the same size. 20

Q. And it is clean? A. Yes, of course it is clean. I generally keep my things clean.

Q. And it provides privacy if there are only two people on board? A. Yes, if they are the only ones in the cabin it provides privacy. If there is nobody in the same cabin it provides privacy. That is, if you keep the door shut. If you leave the door open it does not give you any more privacy than anywhere else. 30

Q. You have told us you slept this night in the tin shack of which you have seen photographs? A. Yes. Ski lodge or ski hut - whatever you like to call it. That is where I slept. Whether the boat could have been more comfortable is a matter of opinion. That is where I slept.

Q. And you chose to sleep within inches of Mr. Murray and one of these ladies who were sleeping in a double bed? A. I don't think it is correct to say I chose to sleep within inches. The hut is over-all about 18 feet - about 13 x 12 feet, or something of that nature, and I reject these insinuations that I was sleeping with people, or anything to that extent. I don't - 40

Q. I want to make it clear - and I say it again - there is no attack in this aspect of the cross-examination on your morals as such. We are seeking to find out whether the events occurred as you say, and to test them on the probabilities. Now look, sir, you agreed with me yesterday that where you say you slept that night was in close proximity to a double bed in which were sleeping Mr. Murray and a lady? A. My recollection tells me that. I would not like to swear to that on my oath. My recollection is that these two people were sleeping there. I would not like to swear on my oath that they were 50

sleeping together. There may have been another Lilo. That is what I think occurred. I know I slept on land that night, and I know Mrs. Larkin slept on land that night.

Q. "Who slept in the double bed?" you were asked yesterday, and you answered "Miss Rosewell and Mr. Murray slept in here". A. I believe they did, and believe it was very embarrassing for me to have to answer the question. It was a very embarrassing question for me to have to answer. 10

Q. It was not embarrassing yesterday. A. It was embarrassing at any time. I am trying to tell the truth. I believe they did, but I don't know they did.

Q. What were the toilet arrangements associated with the shack? (Objected to; allowed.)

Q. What are the toilet arrangements for the shack? 20
A. The toilet arrangements as I understand are a toilet which is some distance down about - I don't know how far - your client would know much better about the toilet arrangements, because he was up there last week.

HIS HONOUR: Just answer the questions you are asked, Mr. Armstrong, please?

WITNESS: As far as the toilet arrangements are concerned, it would be about as far as from here, to, I imagine, the Bar chamber here. It consisted of a toilet with dissolvenator or a pit - I am not certain. Quite adequate toilet arrangements. 30

MR. GRUZMAN: Q. You were aware before you gave your evidence yesterday that an inspection had been made of these premises over the weekend, weren't you? A. Of course I was. It was a fact of knowledge up there without any difficulty at all.

Q. And on Thursday you referred to the premises as a cottage, didn't you? A. I think it would be very difficult - I was endeavouring not to embarrass my friends by what has originally come out of this cross-examination. That is the only explanation I can give you of it. 40

Q. By the way, Mr. Armstrong, did you have an arrangement with Hume as to know how much he got paid? A. For what, Mr. Gruzman?

Q. For whatever he did? A. No. He forwarded his accounts.

Q. Is this the position, that you did not know until you got the accounts how much he was going to charge you? A. Exactly how much, yes. 50

Q. You must have known a daily rate or an hourly rate? A. No, I don't think I discussed a daily rate or an hourly rate with him.

Q. Do you know to this day how much per day or per hour Mr. Hume charged you? A. I would imagine it would be the same as many other professional services. It depends on the character of the services rendered.

Q. The quality of the services? A. It is not on purely a time basis.

Q. Can't you tell his Honour now over the number of transactions with Mr. Hume how much per day or per hour he charged you? A. No, I could not tell you. I have only had two transactions with Mr. Hume. 10

Q. One you have told us was Landmark? A. That would be three, counting Landmark.

Q. Three counting Landmark? A. Yes.

Q. And the position is that you are unable to specify in detail what the hourly rate was? A. I am yes. 20

Q. You say there has never been a discussion on that with Hume? A. There could have been a discussion. I don't recall any daily or hourly rate being specifically fixed.

Q. The work which Hume did at Surfer's Paradise for Landmark was in your view work which required special qualities, didn't it? A. I don't think any special qualities. I thought ordinary repossessions of machinery. I would have thought that any competent reposessor could have done it. 30

Q. You thought that Hume was the man ideally suited for the job? A. I would not say ideally suited, no. He was the one that first came to my mind.

Q. You are not serious on that, are you? A. I would say -

Q. You are not serious about that? I don't want to go through it again. You are not serious on that statement that you just told me, that he was the first man that came to your mind? A. I didn't think of anyone else in Brisbane or Surfer's Paradise. That is quite true. I think you will find, unless I am mistaken, that in the evidence I said something to that effect. Perhaps you can refresh my memory. 40

Q. Do you know how much he charged for the work he did at Surfer's Paradise? A. No, I don't recall that.

Q. You mentioned the quality of services, which would you regard as of the higher quality - the work he did at Surfer's Paradise, or the electioneering? A. I could not comment, really. 50

Q. You see, what you told us in your evidence-in-chief, p. 748, was "I stated to Mr. Barton that I

thought Fred would be a useful person to do this work". A. Yes.

Q. And that was this very difficult repossession, wasn't it? A. I would not say it was going to be very difficult. There was nothing difficult about it, as it turned out.

Q. On the electioneering you accompanied Mr. Hume, did you? A. Part of the time, yes. Most of the time he was on his own. 10

Q. You might just tell us, when did you leave Sydney with Mr. Hume? A. I can't recall. I know I went to a meeting at Goulburn with Mr. Hume. Don't hold me to the exact dates. That would be a matter of record, anyhow, from the newspapers as to the dates of these meetings in Goulburn. Don't hold me as to dates. But I think - I believe I went to a meeting at Goulburn at which the Prime Minister was concerned and he addressed at the Lilac Time Hall, Goulburn. The only other time I was present with Hume would be on polling day in Cooma. Those are the only two times I can recollect. 20

Q. I would like you to help on the travelling arrangements. Did you travel with Hume? A. No. I think Hume took his own car nearly all the time. He took his own car all the time, and I took my own car to Goulburn, and he went on.

Q. The position is that you never drove Hume in your car at all? Is that the position? A. Not so far as I know. 30

Q. How did you come to meet him in Goulburn? Was that prearranged? A. Yes. We met at the Country Party headquarters.

Q. And that was prearranged, was it? A. Yes, definitely. He was coming up.

Q. How long prior to your leaving Sydney had Hume left? A. I could not recall exactly when. I would say we arrived - I don't know - within an hour of each other, perhaps. 40

Q. The two cars drove down together? A. No, I would not say that.

Q. Basically together? A. I did say we were meeting at the Country Party headquarters in Auburn Street. If I can say something about yesterday, in the paper it was reported that it was the Liberal Party. Hume's efforts were mainly known to the Country Party, but I do believe also the Liberal Party knew about them. The Liberal Party got the stress in the press, but it was more the Country Party officials than Liberal Party officials that knew about it. I just want to correct that. 50

Q. According to Mr. Hume's account, Exhibit "Y", "Time taken travelling from Sydney-Goulburn-Canberra, 10th November". That would be when you went down to

that meeting, would it? A. Yes, I think so. I don't know for sure. Don't hold me to that. I think it was on the 10th. I can't recall. I think the meeting was on the 10th.

Q. What happened at Canberra? A. I suppose he went through to Canberra. I can't recall.

Q. Didn't he tell you what he was doing? A. I can't tell you what he told me. He was on a blanket instruction to go around this area and talk to who he thought fit and do what he thought fit on this electioneering campaign. There were no detailed instructions to "go and see this person" or "go and see that person". For instance, I would not know who the people were he saw on the Snowy Mountains. They would all be friends of his that he used to work on compensation cases with up there. 10

Q. But didn't you ever ask him "What have you done?"? A. The sort of question I would have asked him, I think - it is two years ago - "Do you think you had any success with your talks in influencing votes?". How do you know in a secret ballot? That is one of the troubles of electioneering - you never know whether you influence them or not. 20

Q. What would he have done in Canberra? A. I really don't know. I think it would be better to ask him. I really can't recall.

Q. You don't know why he went to Canberra? A. He may have seen some of his friends in Canberra. I imagine he would. He would have some friends in the community there. 30

Q. Didn't he make lots of verbal reports to you about what he was doing? A. No, not lots. The thing only occurred from 10th November to the election. It is only 15 days.

Q. Didn't he make a number of verbal reports to you on what he was doing? A. I would say that he spoke to me from time to time about it. Not that I can recall anything specifically. 40

Q. You told us earlier he did make verbal reports? A. He did make verbal reports. I did not say he made a lot of reports. He made reports.

Q. Tell us what he said in these reports? A. I can't recall specifically what he said at this time.

Q. Just tell us one verbal report of Hume's electioneering. One? A. I find it very difficult to recall any specific report. I know he said that he had interviewed some of the men on Island Bend, for example. That is a place he specifically mentioned to me. He told me that he had been to Island Bend and seen some of the men that he knew working on the construction there, and he thought he had done a reasonable job. He left political How-to-Vote cards and that sort of thing around the camps, and 50

these men - the idea was that his friends would distribute them to others of their friends.

Q. What language did Hume speak? A. Yugoslav, I understand.

Q. Yugoslav? A. Yes.

Q. How long have you got to be in Australia before you are naturalised? A. I would not know. Five years, isn't it?

Q. Five years? A. Yes.

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Q. As an experienced politician would not you think by the time someone had been here for five years they would speak English? A. He speaks English all right.

Q. You don't get a vote until you are naturalised, do you? A. Look, I could not comment on that.

Q. Don't you know? A. Of course I know. I know when you get the vote.

Q. Can you vote before you are naturalised?
A. I don't think so, no.

20

Q. So that anyone who can vote has been here for five years? A. Yes.

Q. And you would expect them to speak English? You would expect that they would speak English by then? A. No I would not.

Q. That is one instance you can tell us of that he had seen some people at Island Bend, and left some cards there. Can you give us any other verbal reports? A. I can't recall them now.

Q. You are an experienced politician, aren't you? Is that right? A. Yes. I can't recall any verbal report.

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Q. You are an experienced politician. This was Hume's first effort? A. I don't know. There have been other efforts.

Q. So far as you know this was Hume's first effort at electioneering? A. Yes.

Q. Didn't you give him directions and instructions as to what to do? A. I told him to visit the various camps where he knew men. It was not much use him going in where he did not know anyone. I can't recall any specific reports in the first person that Hume said to me.

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Q. And this cost you \$1,000, didn't it? A. No, not \$1,000. Less \$150, \$70 and \$170.

HIS HONOUR: Q. \$700? A. Less than that. About \$600.

MR. GRUZMAN: Q. \$600, you say? A. Yes.

Q. And that is the most you can tell this Court as to what Hume did for that money? A. I think I have told you what he did very clearly. He went around to these various people. He went to Jindabyne. There is another construction camp at Jindabyne, and he went there. He went to Cooma. He went to Queanbeyan. Queanbeyan was where there were a number of Yugoslav migrants who lived there from Canberra. 10

Q. He apparently went on the 11th - you see, on the 11th he went from Canberra to Sydney? A. Yes. I can't quite follow parts of this account here. This is a bulk thing of what he did going to 14th November.

Q. I want you to explain it, if you can. After all, you paid it? A. I don't recall it clearly.

Q. See if we can work it out. On the 10th he went from Sydney-Goulburn-Canberra. A. That is what he put in his account. I am not sure it is all correct, what he put in his account. 20

Q. You trust him, don't you? A. I don't think this is a great matter of relevance. He was not supposed to give a day-by-day diary description of where he went.

Q. You would accept what he told you to be the truth? A. I think it was. But he was given a blanket authorisation to go through this area, and he charged for it. 30

Q. I suppose you looked through the account before you paid it? A. Yes.

Q. It seemed to you to be right? A. It seemed to me to be fair enough.

Q. Sydney-Goulburn-Canberra. "Time taken travelling from Sydney-Goulburn-Canberra on 10th November."? A. Yes.

Q. You say that is the time you went to the meeting? A. Yes.

Q. That was the meeting in Goulburn? A. Yes. 40

Q. You don't know why he went on to Canberra? A. I would imagine he went on to contact his friends there. I can't recall any specific report he gave me about that. It is years ago. I just can't recall. He did not submit any written reports about it.

Q. But the general idea was that he was electioneering in Canberra? A. Yes, or wherever he went. Any where in the Eden-Monaro electorate. He was allowed to go anywhere in the Eden-Monaro electorate he thought would be of value. 50

Q. Is this the night he spent at Goulburn with

you? A. I would imagine so. I can't recall that, either. I think he spent the night we went to the Prime Minister's meeting - he spent the night at Collector that night. I think that is correct.

Q. He went from Sydney to Goulburn with you?
A. Not with me. In his own car.

Q. You both met in Goulburn, and went to the meeting? A. Yes.

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Q. What time was the meeting? When did the meeting start? A. I think the meeting started about 7.30 or 8 o'clock.

Q. And then he drove off, do I take it, to Canberra? A. No, that is the night I think he stayed with me.

Q. That is the night he stayed with you?
A. Yes.

Q. Where did he go after he left you?
A. Canberra.

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Q. To Canberra? A. Yes.

Q. That doesn't seem to work out, does it. He went Sydney-Goulburn-Canberra on the same day, the 10th? A. It says that. He may not have put in that he stayed at Windradene that night. Perhaps he might have wanted to claim extra travelling expenses. I don't know.

Q. You think he wanted to put it over you?
A. No. He was given a blanket authorisation, and I think his account was reasonable in toto. I am not going to say that each item of it is reasonable or correct. In toto I was quite happy with his account.

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Q. Would not you have expected to see something in the account about what he did? A. No, you don't usually put that sort of thing. There is no necessity to put it down. I was not trying to claim it for taxation purposes.

Q. What you were doing was a perfectly honourable thing, wasn't it? A. Yes, perfectly honourable.

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Q. And something of which, indeed, you would be proud to say, as a Member of Parliament, that you helped the party in the election? A. You don't usually endeavour to get kudos in Parliament for helping a party in the election. I didn't want to show this to anyone in Parliament. I was not trying to do that. These were not Parliamentary funds.

Q. I am only trying to find out was there any possible reason why there should be any concealment as to what Hume had done? A. No.

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Q. None whatsoever? A. No, no concealment at all.

Q. Doesn't it strike you as surprising that he, for example, in respect of three items described exactly what he did - more or less exactly the subject matter of what he did, but in respect of each of these other items we can gain no indication of what he did? A. I have given an indication. I have told you. You would have liked him to put this account to "Time taken in political organisation of this area". I would not have minded if he had. I could have got him to re-head his account to put "Political Organisation" on it. There was no necessity to show it. I was quite content with his account. 10

Q. The point is he has called it travelling time?
A. Well, he was travelling some of the time.

Q. It does not surprise you when in respect of three items in the account the subject matter is shown, and in respect of other matters it is not shown? A. No, it does not surprise me. 20

Q. Can you offer any explanation, if he was down there electioneering, as to why, according to his account, he arrived in Canberra on the 10th and came back from Canberra to Sydney on the 11th?
A. I don't know. He may have spent a day in Canberra and came back that night - came back on the night of the 11th. I would not know.

Q. According to the account he also charged you another \$30 to travel from Sydney to Collector on the 11th - the same day? A. He must be somewhat mixed up there. It looks as though there is some mixup. I can't offer any valid explanation for it. It is the fact that that is what I paid him, and that is what he was doing. 30

Q. You told us that he was to interview in effect migrants around the Snowy River camps? A. Yes. That was more in these later accounts. This earlier one was going to the Prime Minister's meeting - at the Goulburn meeting. He was picking up How to Vote cards and electioneering literature at this time so that he could fill his car up and take them around at a later date. 40

Q. Look at what happened on the 10th, according to this document. He simply went from Sydney-Goulburn-Canberra, and the next day came back from Canberra to Sydney. That seems to be one little trip on its own? A. I think this would be a trip on its own. He was meeting people at the Goulburn office of the Country Party and getting literature and getting briefed by them as to what he should do. 50

Q. Why come back to Sydney? Why did he come back to Sydney? He has got his documents and his brief, and is down there on an electioneering campaign. Why come back to Sydney? A. I can't recall why.

Maybe he had something else to do in Sydney. I don't know.

Q. He came back to Sydney on the 11th; and down to Goulburn again? A. I would only be speculating, Mr. Gruzman.

Q. But you paid the account? A. Certainly I did.

Q. You realise, do you, that in respect of the trip Sydney-Goulburn-Canberra to Collector that it is what? 200 miles from Sydney to Canberra? 10

A. Yes.

Q. Collector is on the way to Canberra? A. Yes.

Q. And that trip, involving two days, cost you perhaps \$170. Let us see if you agree with me.

A. Yes. Look, Mr. Gruzman, I am trying to help you, but I am unable to say that there is any great relevance, except in the whole sum of that account! 20

Q. But look, Mr. Armstrong, you are a man who is used to handling money, aren't you? A. I suppose so, yes.

Q. And you have approved many accounts for many people? A. Yes.

Q. And I suppose that you look over an account to see if it is fair and see it is paid? A. Yes. I thought it was fair in toto.

Q. And if it is not fair? A. I would have asked him about it. 30

Q. And you would be the last man in the world to be prepared to be cheated by an employee? A. I would not like to be, I don't think. I don't enjoy it, to say the least of it.

Q. Did you think that it was fair that when all he had to do was some electioneering - he had to go to Goulburn, pick up some documents, and be briefed, see some friends in Canberra and come back to Collector and stay with you? A. I can only answer that by saying that I thought the total of the accounts was fair. 40

Q. On the first two days he left Sydney and went to Goulburn and picked up some documents and went to Canberra and came back to Collector and spent the night with you? A. He may have spent the whole day in Canberra and came down very late at night. My recollection is that - I don't recall it.

Q. I think you will agree that if in fact that is what he did that it would have been ridiculous to charge you \$170 for it? A. I would not agree, because, as I told you before, I am considering the total amount of the account. 50

Q. Well, tell me, would this perhaps provide an explanation, that Hume wanted \$1,000 and you had agreed to pay him \$1,000 and said "Look, make up an account. You have been down to the Snowy area. Wherever you have been, shove it all in. You give me an account, and I will pay you \$1,000, but make it look good". A. No, that is a factual account as near as he could make it up. 10

Q. That is what you have just said - that all you were concerned with was the total? A. On that very thing, you will see - let us go to another one here. You might say that this one is more reasonable than the other one - travelling from Thredbo to Sydney on the 14th. Petrol, meals and expenses on the 14th \$30. As I told you previously, there may be items in that which he has given to some of these men to distribute literature, for example. I just cannot - I could not ask him to give me a complete quote "Paid to so-and-so" and "Paid to so-and-so". I could not ask him to itemise expenditure in regard to distribution of literature or something like that. It would have been impossible for the man to work out his account unless he kept books with him all the time. I thought that the total amount spent on the electioneering campaign was reasonable. 20

Q. Look, had you been down to the Snowy area for anything else? A. Not before this, no. 30

Q. Never? A. No.

Q. Did Hume go down for a holiday? A. He could have been there for a holiday before. This certainly was not a holiday.

Q. You notice the item "To time taken from Collector to Queanbeyan-Cooma-Jindabyne-Collector". He charged \$77.50 for that? A. Yes.

Q. That was just travelling time? A. I don't know. I am not clear. I keep telling you that I don't know the specific details of what he did. 40

Q. He had already charged you for petrol, meals, accommodation and expenses \$51? A. Expenses may have been the matter I spoke to you of.

Q. Expenses may have been a few dollars here and there? A. Yes.

Q. The usual thing in electioneering? A. Yes.

Q. He charged you \$51 for his out-of-pocket expenses? A. Yes.

Q. And, in addition, \$77.50 for the time taken from Collector to Queanbeyan-Cooma-Jindabyne? A. Yes. 50

Q. All in one day? A. He was taking his own car, you see.

Q. All in one day, 12th November? A. Yes. You try and get a car to take you around and see what it costs you for that time.

Q. Will you agree that in respect of the somewhat more difficult job, I suggest to you, at Surfer's Paradise Hume's fees were a flat rate of \$40 a day? A. I would not know. I never calculated it.

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Q. You never calculated? A. No.

Q. You see, on 2nd August 1966 the account includes this item "To investigations carried out by agent Hume". The time factor included 22nd July to 29th July 1966? A. Look, I have not seen this account. I have not seen it before.

Q. You have never seen it before? A. No. That is the Landmark account, is it?

Q. That is the Landmark account? A. Yes.

Q. "To commercial investigations carried out by agent Hume. Time factor included 22.7.66 to 29.7.66, at a flat rate of \$40 per day." A. That seems to be what the charge is.

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Q. That works out at eight days - \$320? A. Yes. I would not say he was working hard all the time, and also, you see, there were no car expenses in that \$40 a day. There is a Rent-a-Car there.

Q. That was charged for on the account? A. Yes.

Q. That appears on the account, doesn't it?
A. Yes. His living and accommodation expenses were also paid.

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HIS HONOUR: I have directed my comments to Mr. Gruzman, because he is used to being in Court and expected to have in mind the necessity for matters going down on the record. Your voluntary additions are creating a great deal of difficulty in the matter of having an accurate record of proceedings. Just listen to the questions, and answer them. You will find it easier, and it will go down better.

MR. GRUZMAN: Q. What I am putting to you in respect of the different days, on one day he has charged you \$77.50. That is for time, as opposed to expenses. He has charged you \$77.50, \$60 and \$77.50. In other words, the time factor has varied a lot, hasn't it?
A. Yes, but mileages have also varied. He has not got the mileage charges. He has only got petrol, meals and expenses. He has not got the mileage charged for the use of his car so far as I can understand.

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Q. May I take it, then, that the position is this, that you would put it that you looked at this account in a global way? A. Only from there to there.

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HIS HONOUR: Please wait until the question is asked.

MR. GRUZMAN: Q. You looked at this account in a global way, did you, and it appeared to be reasonable. What you want to answer is that from there to there - that is from the second item to the third last item - taken in a global way, it appeared to be reasonable? A. That would be correct.

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Q. But you never checked the individual amounts comprised in these items? A. I did not check the mileages and the car expenses comprised in them. I thought the individual amounts seemed reasonable.

Q. Is there a construction camp at Thredbo?
A. No. I don't know whether there is or not at Thredbo. He was at Island Bend talking to the workers on the ski resort.

Q. There are not many people at Thredbo? A. He may have gone through there. I am not clear on what he did there. There are a lot of workers on the overhead chairlift, and maintenance workers there. He could have been through there to see them - there could have been a road camp there. I don't know the particular reason for Thredbo being mentioned.

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Q. Would you agree from the account that it looks as though he spent a night there? A. He may have thought there was better accommodation at Thredbo.

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Q. He may have been on holiday? A. No, he was not on holiday.

Q. He could have had just some hotel accounts for when he passed through there? A. He did not -

Q. He could have had some hotel accounts for when he was through there, and then these could have formed the basis of this false account? A. It is not a false account.

Q. Do you usually pay accounts of this magnitude without checking them? A. Sometimes. I don't usually check them bit by bit like that. I don't usually check them piece by piece, if I know the person who is rendering the account is reasonable.

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Q. You usually check your restaurant bills before you pay them, don't you? A. Not always, no. Sometimes my secretary does it.

Q. They are checked, aren't they? A. Sometimes. I would not say I check them religiously.

Q. I would like to ask you about another matter. Do you see "To investigations carried out at Double Bay (Mr. Hoffman) on 4th November 1966 and to further inquiries, receiving your instructions and report, \$170". What was that about? A. I think there,

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Mr. Gruzman, the account should have said from before that date. As I recall it, that shop at Double Bay was opened just before I left for overseas in 1956 and I consider - I think I remember this, that in my coat pocket there was \$100. This \$100 disappeared, and Mr. Hume and Mr. Hoffman were concerned about it. They were also concerned that one of the girls in the shop was taking frocks. 10
Now, so far as I know - and most of this was while I was overseas - Mr. Hume was investigating this mainly at Mr. Hoffman's instructions. I don't know much about it. I only know I missed \$100 the night the shop was opened from my coat, which was hung over the back of a chair.

Q. Briefly, then, the subject matter was an investigation by Hume in respect of dishonesty in the shop? A. Dishonesty by employees. No reflection on anyone else. No reflection on Mr. and Mrs. Hoffman in any shape or form. 20

Q. Dishonesty by employees? A. Yes. I think he has probably given the finishing date of that investigation when he should have given the starting and finishing dates.

Q. You have made it quite clear that there is no possible reflection on Mr. or Mrs. Hoffman? A. that would be correct, yes.

Q. In fact, Mr. and Mrs. Hoffman, or Mr. Hoffman gave the original instructions to Hume, on your understanding of it? A. I would not be clear on that. I think I may have mentioned to him to employ Hume, or he met Hume himself. I think Hume may have been there. I could not clear that one up at all as to who gave instructions. I think the instructions might have even been mentioned after I said I had missed this \$100 when I came back. I am not clear. 30

Q. You may have suggested "There is a man Hume who will look into this for us"? A. I may have done that, yes. 40

Q. The shop is owned jointly by your wife and Mrs. Hoffman? A. Was then, yes.

Q. And its expenses - the expense of this inquiry - was a legitimate business expense of the business, wasn't it? A. It would have been, yes.

Q. Well, can you offer any explanation why the business did not pay Mr. Hume? A. Yes I can really, Mr. Gruzman. The fact of the matter was that the shop - they were both just starting off. They had heavy debts on each side, and for this particular case I said "I will pay it". 50

Q. Rather generous, wasn't it? A. It was, really, yes.

Q. A little bit out of character? A. No, I would not think so. My wife and Mrs. Hoffman were both half in it. It was just starting off, and I did not think it was worthwhile to saddle them with this. After all, it was my \$100 he was basically looking for. That was because of my original thought. It could have been wrong it could have been that I was wrong in assuming it had gone out of the shop. As you say, it was a generous act. There were a few other things for that shop which I personally paid for at this time which I made a record of in the balance sheets. 10

HIS HONOUR: Q. I didn't hear that? A. There are a few other items which strictly speaking belong to the shop but which I paid for. I advanced them some money to help them along.

MR. GRUZMAN: Q. I take it there would be no entry in the books of the shop about this? A. I don't think so, no. 20

Q. Is the shop still going? A. Now I understand that my wife has sold out, and Mrs. Hoffman is running it by herself.

Q. At the time of the sale did you remind yourself that you paid \$170, was it? A. No, as a matter of fact I forgot it.

Q. Forgot all about it? A. Yes.

Q. Does it worry you now? A. Not much now. Perhaps I can bring it up. 30

Q. It would have been a taxation deduction for the business if it had been paid by the business, wouldn't it? A. It would be, yes. I presume so, yes.

Q. Anyway, did you ask - what was Mr. Hume's report on that, by the way? What was his report? It says "Receiving your instructions and report". What was his report? A. I think he reported to Mr. Hoffman in this matter. I am not clear what he said to him about it. 40

Q. Is this the position, that you paid Hume this item of \$170 for a matter which should have been paid by someone else, and you don't even know what the result of it is? (Objected to; rejected.)

Q. You paid \$170 to Hume for a matter that should have been paid by the shop? (Objected to; rejected.)

Q. Did you ever ask Mr. Hume what the answer was? A. Yes I have, actually.

Q. You have asked Mr. Hume? A. Yes. 50

Q. Since? A. Not since. At the time I came back. At that period.

Q. You have now remembered that he did tell you, did he? A. Yes, he mentioned some fact to me, that he believed one of the girls was taking frocks from the shop and he had some reason to believe that she had taken them to her room, or somewhere, but he could not prove anything, and the matter was dropped.

Q. Therefore, so far as net benefit to the shop or yourself, it was nil? A. There was no charge, and no conviction. 10

Q. So far we have dealt with the first item, which was an important item, and then with a string of items which I have also dealt with, and that leaves two more items on this account. The second last one is in these terms "To making inquiries and contacting certain real estate agents regarding sale of flats situated in Rozelle". A. That would be correct. 20

Q. How much were you charged for that? A. It is on that item. I don't remember.

Q. What is your recollection? A. \$150, or \$170. Something like that.

Q. \$150? A. Yes.

Q. What did Mr. Hume do to earn that? A. Well at that time these flats were difficult to let or rent, and Mr. Hume went around amongst the Yugoslav community and also amongst some Yugoslav estate agents to see if he could induce purchasers to buy these flats or to lease them, more or less the idea being to have one community in the flats over there in Rozelle. 30

Q. And the idea was to establish a Yugoslav community in this block of flats? A. No, I would not say that. Over in that area there are many Yugoslavs working on the wharves, and if there were a number of them whom he saw they might have said Yes to flats. It might have been possible for him to induce them to buy them. People were not anxious to buy them at that time. the inquiries did not come to anything. 40

Q. Didn't come to anything? A. I should also tell you in connection with that account that there was a good deal - another thing that hasn't been mentioned is that there was a good deal of trouble in that area with cars being broken into, and Mr. Hume also looked at the building and kept an eye on it for a month or two.

Q. Are you quite finished now? A. Yes. 50

Q. Is there anything else Mr. Hume did to earn that \$150? A. No, I think those are the main things that he did.

Q. Your understanding was that he was to contact

individual Yugoslav persons? A. And some Yugoslav estate agents.

Q. Some Yugoslav estate agents? A. Yes.

Q. Of course, he does not say anything in his account about contacting Yugoslav persons, does he?
A. No, not in his account.

Q. A bit of an omission, is it? A. I think so, yes.

10

Q. He was to contact certain real estate agents. Who were they? Who were the estate agents he was to contact? A. I can't think of anyone particularly, but he did contact some. I can't remember the names. I think Szuba might be one, at Balmain. I am not clear about that. But some of that account was security as well, which was not noted down.

Q. That is an omission, too? A. That is an omission, yes.

Q. He contacted Szuba? A. I am not sure. Don't hold me to it. That is a name I remember. But I don't remember particularly who he contacted or what he contacted. That was one of the primary ideas of it. The other one was security, which was an omission from the account.

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Q. How long have these flats been for sale?
A. They are not for sale now. They are all let.

Q. How long had they been for sale as at 1st December 1966? A. Not very long actually. They were only completed, if I remember rightly about 1965 - the end of 1965 - early 1966. I am not quite clear. They were difficult to sell.

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Q. They had been for sale for something like 12 months? A. Yes, something like that.

Q. These were the same block of flats in respect of which you had sought finance - end finance - from Landmark? A. I think - don't hold me to this without my seeing the agreement - there was an agreement with Landmark to provide end finance for these flats.

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Q. That was an agreement negotiated, I think, by Mr. Grant? A. Yes, I think so, yes.

Q. And the board would not approve it subsequently. I don't want to go into that, but the board would not approve it subsequently? A. I really don't recall the details of it.

Q. There was a big problem about them. There was a problem arose about the flats? A. There was no particular problem arose about them. They were difficult to sell.

50

MR. GRUZMAN: Q. And I suppose the flats were in

the hands of all the real estate agents you could find? A. No, not all the real estate agents I could find.

Q. How did you sell them? A. They have not been sold; we failed to sell them.

Q. Was there any problem about you telephoning a Yugoslav estate agent? A. I would say - I would like you to be clear that he was endeavouring to by pass the agent to some extent and see if he could interest some of his Yugoslav friends in buying the flats. 10

Q. He was going to be the agent? A. He was going to be the agent.

Q. Then it would be a complete lie to say that his job was to contact certain real estate agents? A. I told you that account is not a completely specific item. He could have said "Contact real estate agents and any persons regarding the flats". 20

Q. But the whole object of the employment was to by pass real estate agents? A. No, not to by pass real estate agents; to see real estate agents and to see ordinary Yugoslavs.

Q. This item here is just a lie, isn't it?
A. It is not a lie.

Q. It does not represent a true transaction at all? A. It does.

Q. The agent for the flats was our friend Miss Rosewell, wasn't it? A. It could have been by that time, but she was a letting agent, not a selling agent. 30

Q. Her name was on that block of flats? A. Yes, it could have been at that time. It could have been even Yugoslavs who would rent the flats. It was difficult to sell or rent the flats at that time. It was a possibility which we canvassed and which did not work out.

Q. The last item is on 29th November. I will read it to you: "To interviewing employees in Surfers Paradise regarding their progress of Island, including fares on 29th November 1965, \$70." A. Yes. 40

Q. That is pretty cheap, isn't it? A. He must have just gone up there for that.

Q. But that seems very reasonable - \$70? A. He may have had other work there at the time. I think he was there on other business at the time, but I can't recall.

Q. I suggest to you that, in fact, he went to Surfers Paradise on 27th November and came back on 29th November, that he paid his air fares amounting 50

to \$50, and that his total bill was \$70. What do you say to that? A. I don't know. I don't recall it, but he may have been up there on other work at the time.

Q. I suggest to you that that would be reasonable remuneration for Mr. Hume. A. That is what I mean. He may have been working for other people as well. I think he was, but I don't recall.

10

Q. And I put it to you that the whole of the rest of this account is just a fraud? A. Quite incorrect.

Q. And that you knew it? A. No.

Q. And that it was paid in your interests, in order to enable you to pay Hume for his work in relation to Mr. Barton out of the company? A. Quite incorrect.

Q. Did you pay Hume any amounts in cash? A. No.

Q. Never? A. Never.

20

Q. You told us you went to 77 Riley Street - Hume's flat? A. Do you mean on this morning when we were going up the Hawkesbury?

Q. Yes. A. Yes. I don't know whether I went into the flat or whether he met me outside the flat. I can't recall.

Q. You have been there on a number of occasions? A. I think only once or twice. He wasn't in that flat for very long. I think I may have been there once or twice.

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Q. At the time he was there, you went there on a number of occasions? A. No. I think once or twice; that is all I can recall.

Q. And when you were there, did you see other persons there? A. I can't recall the names of anyone there.

Q. I put it to you that to your knowledge that flat was a haunt of criminals? A. No, I would not think so at all.

Q. You visited the flat fairly frequently, didn't you? A. One or two occasions, I believe.

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Q. Do you know the man who runs the flats? A. No.

Q. Messenger - do you know him? A. No.

Q. Do you know Michael Novak? A. I believe I may have seen Michael Novak, but he was at Surfers Paradise, working on the repossession of vehicles at Surfers Paradise.

Q. He is the man known as Momo? A. I knew him as Novak.

Q. You knew from Hume that he had employed Novak over a long period, didn't you? A. No, I did not know that at all.

Q. Tell us the conversation you had with Hume about Novak? A. I can't recall much about Novak at all.

10

Q. See if you can help us? (Objected to; withdrawn.)

Q. Novak was employed by Hume in connection with this work at Surfers Paradise, was he not? A. I understand so, from your account. He seems to be charged on it.

Q. And the work was regarded by you as difficult work? A. No. I told you I did not think it was difficult.

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Q. In your evidence in chief on that point, it was suggested to you that, in respect of Hume, Mr. Barton had said "Mr. Armstrong said, 'I have a man who does all my dirty work I employ permanently'". You denied that that was said? A. That is correct.

Q. It was put to you that Barton then said, "I employ him permanently, and he does all the strong arm work that I may require. He will be able to do this job efficiently". You denied that? A. Yes. I denied that I employed him permanently and that he had done any strong arm work for me.

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Q. You did not deny that you said "Efficiently"? A. I said efficiently, but I did not say it was terribly difficult. I think you said that I said it was difficult, if I remember correctly.

Q. This is what the evidence was: "The passage is as follows: 'Q. Did you give Fred Hume the notice to serve? A. Yes. Q. And did you again meet Fred Hume? A. Yes. Q. When was that? A. I met him on the same day again in Mr. Armstrong's company, and he said that it is difficult to serve the dismissal notice, because he went to Mr. Hopgood's home and his wife said to him that he is not at home and she said if he were at home he might jump out the window and run away. Q. I think you got some legal advice on the matter? A. Yes. Q. Did you again see Mr. Hume during the day? A. I saw Mr. Hume the next day. Q. Was this in Mr. Armstrong's presence? A. It was in Mr. Armstrong's presence in front of the Paradise Towers building on the Pacific Highway'".

In answer to the question whether you denied that, your answer was: "I don't remember the piece about him jumping out the window". (Objected to; argument ensued.)

WITNESS: I thought you were asking me to say

whether it was a difficult job - the repossession.

MR. GRUZMAN: Q. What I am about to read to you is Mr. Barton's evidence, and I put to you that what Mr. Barton has said in this passage I am about to read to you is true.

"The passage is as follows: 'Q. Did you give Fred Hume the notice to serve? A. Yes. Q. And did you again meet Fred Hume? A. Yes. Q. When was that? A. I met him on the same day again in Mr. Armstrong's company, and he said that it is difficult to serve the dismissal notice, because he went to Mr. Hopgood's home and his wife said to him that he is not at home and she said if he were at home he might jump out the window and run away'". 10

Now, those were the facts, weren't they? A. I said those were the facts, but I don't remember him saying anything about jumping out the window. I don't say he didn't say anything about jumping out the window. I said I don't remember. I don't remember anything about jumping out the window, but the other facts are substantially correct. 20

Q. I will read you another passage: "You then turned to Mrs. Armstrong and said 'Give me Fred's number'". Mr. Barton said this and I put to you that what Mr. Barton said is true. I am seeking your agreement that what Mr. Barton said in the next passage is true: "You then turned to Mrs. Armstrong and said 'Give me Fred's number', and Mrs. Armstrong took out a black small notebook from her bag, and while she was looking for the number she said 'I don't think Alexander Barton will agree to the methods what you and Fred use'". That was said, wasn't it? A. No, that was not said. I think I told you that before, if my memory serves me. 30

Q. Nothing like that? A. Nothing like that at all. The part about giving Fred's number is correct and the taking out the book and getting it is all that was said. 40

Q. Is it true that you said, "The company has not got anybody who can do that job as efficiently as Fred can do it"? A. I don't recall that. The fact of the matter is that I probably thought the company had - I think I said before that Mr. Barton and I did not want to be embroiled in a repossession activity.

Q. So it is possible you could have said, "The company has not got anybody who can do that job as efficiently as Fred can do it"? A. I may have said it, but I cannot recollect it.

Q. Did you say, "He (meaning Fred) has done many jobs for me before"? A. Very definitely not, because he did not. That was the first job he had done.

Q. Up to that stage you only had a social arrangement? A. Yes.

Q. You were aware of his activities? A. I was aware that he was a private investigator.

Q. Do you say that you employed him because he had an office at Surfers Paradise? A. At one stage he had an office or a business address at Surfers Paradise. 10

Q. Did you go to that address? A. I don't recall that. I think he was going to establish himself up there and that he had an address or answering service at Surfers Paradise. I don't know whether he had an office there.

Q. Was it your understanding at any time that he had an office there. A. I am not sure whether it was an answering service or an office or where he was going to establish himself there. I think the most accurate description was that I knew he had been doing work at Surfers Paradise - I don't know what type of work - and he was considering establishing an office there. 20

Q. But you never went to the office, did you?
A. As far as I know, not; I can't recall that.

Q. Do you know whether the office was the same address as Novak's address? A. I don't know that at all.

Q. Look, it is fair to say, isn't it, that you regarded the repossessing work being done at Surfers Paradise as work of a difficult nature? A. No, I would not say that. 30

Q. Work which required certain qualities not readily come by? A. No. I would not even go that far. I think any competent reposessor could have done it.

Q. Just take the account that you sent. It includes this item? A. Which account are we talking about?

Q. The account in respect of work done in July. 40
A. For Landmark?

Q. Yes. There is this item: "Winning confidence of workers by entertaining at hotel, \$20". A. Yes.

Q. Didn't you regard that as the sort of work Hume would be specially capable of doing? A. No. I never employed him before, but Mr. Barton and I, in our wisdom, decided that he had the capabilities to do that, and I think he was winning the confidence of the workers. If I could explain this, the confidence of the workers was an important point in the repossession, because these workers were working for Hopgood, the prime contractor. We were going to take over, as well as the machinery, the 50

workers so we did not want all the workers to walk off the job. This was the fine point of the thing. Hume had to act as a go-between between the workers and Mr. Barton and myself, rather than cause any upset. If we had just repossessed the thing in a normal repossession manner, without consulting the workers, we would have had the plant and no workers. Mr. Barton and I got most of Hopgood's men to work for us. 10

Q. But in the beginning you considered Mr. Hopgood would resist violently this attempt to take his machinery? A. No, I did not consider that he would resist violently; he is not that type of man.

Q. Well, that he would resist you? A. No. Mr. Barton and I did not want to put ourselves in the position of saying we would just go down and take the machinery.

Q. What I am putting to you is that you thought that this would come to physical violence to get hold of that machinery? A. I did not think it was very likely, but I did not intend to expose Mr. Barton or myself - it would not be wise for Mr. Barton or myself to be under the slightest possibility of physical violence. I don't think that was part of our duties as directors of the company, and I think Mr. Barton would agree with this. 20

Q. I put it to you that Hume was employed because he was a man who would handle physical violence if it was necessary? A. I wouldn't know that. I don't think he would be any more violent than anyone else. 30

Q. I put it to you that you were told that Novak was a person who could also deal with physical violence if necessary? A. No. All I was told about Novak was that he was a waiter at the Chevron Hotel - that he worked at the Chevron Hotel.

Q. That is all? A. Yes. He was a chap at the Chevron Hotel and he just used him to give him a hand. 40

Q. Did you know that Novak had a conviction? A. A. No (Objected to; allowed).

Q. You say you employed Novak, or were a party to the employment of Novak for this job, believing that he was only a waiter? A. I don't know what he was. Mr. Barton and I simply employed Hume to do the job, and in my view Hume employed Novak.

Q. There were two partners - Hopgood and Vohl? A. No, Volp. 50

Q. Mr. Hopgood may have been fairly mild, but Mr. Volp was a violent man, wasn't he? (Objected to; withdrawn.)

Q. You believed Mr. Volp to be a man of violence? A. No, not at all.

Q. And you believed Mr. Volp would physically resist any attempt to take that machinery, didn't you? A. No.

Q. I would like to ask you again: What did Hume tell you about Novak? A. Very little.

Q. Try and recall the conversation and tell his Honour as best you can.

HIS HONOUR: This is prior to the Surfers Paradise occasion. 10

MR. GRUZMAN: In connection with the employment of Novak on the Surfers Paradise job.

HIS HONOUR: How does that become admissible? (Argument ensued; rejected.)

HIS HONOUR: I do not regard this as admissible evidence of the relationship, if it existed, between Hume and Novak. What Hume may have said to Mr. Armstrong on another occasion cannot be admitted here as evidence of any relationship between Hume and Novak. 20

MR. GRUZMAN: Q. Did you see Novak during the course of this investigation? (Objected to; allowed.)

A. During the course of which?

Q. During the course of the proceedings at Surfers Paradise? A. I would say about once. I think Hume may have pointed him out to me, but I can't recall.

Q. What did Hume say then? (Objected to.)

A. I can't recall (Allowed). 30

Q. Did Hume tell you that he had employed Novak from time to time on different matters? (Objected to; rejected.)

HIS HONOUR: I reject this unless you are going to follow it up. If that is merely an introduction as a preliminary, you may be entitled to get it in, but it is not admitted as being any evidence of itself of anything.

MR. GRUZMAN: It is not preliminary to a further admissible line from this witness, your Honour. 40

HIS HONOUR: Very well; the question is rejected.

MR. GRUZMAN: Q. Would you have a look at exhibit 2. That was suggested, I think you will remember, by your learned counsel as being a photograph taken in July 1966.

MR. STAFF: I don't think that was suggested. I did not put a date.

MR. GRUZMAN: Q. It was put to you that this photograph was taken in 1966? (Objected to; rejected.)

Q. You would not suggest for one moment that this photograph was taken in the middle of 1966, would you? A. I think it has got a date on it, if you want to look at it. I am not suggesting anything. I think this is a fact.

Q. When do you say this was taken? (Exhibit 2 shown to witness.) A. 1964.

Q. On the document itself appears the date 1964? 10
A. Yes.

Q. So you would not suggest at all that this was typical of the relationships between you and Mr. Armstrong in 1966, would you? A. Between myself and myself or between myself and Mr. Barton?

Q. Between yourself and Mr. Barton? A. I would suggest it was quite typical of relations between Mr. Barton and I until October 1966.

Q. You went overseas about that time; didn't you? You went overseas in the early part of 1966, did you not? A. No, Not the early part. 20

Q. When? A. About 1st September, I think, and Mr. Barton saw me off very cordially at the airport.

Q. Have you a happy smiling photograph taken on that date? A. I don't think there was one taken at that time, but he was there - and very pleasant.

Q. Do you remember the suggestion that Mr. Barton made, that you, as chairman of Landmark, had sought to induce Mr. Kratzmann to serve a 222 notice on Landmark - do you remember that? A. Perhaps you could read it to me and refresh my memory. 30

Q. The passage is in these terms: "the only trouble we had with Kratzmann at that time was that Mr. Armstrong rang Mr. Kratzmann and asked him to put a s.222 into the company in connection with the Paradise Towers project, and Mr. Kratzmann rung me and asked me what it is all about - 'your chairman is mad telling me that he is putting s.222 into the company and wants to liquidate it and wants me to do the same thing'. That was in November". Do you remember that evidence? A. I remember Mr. Barton's evidence, yes. 40

Q. It would be quite wrong, would it not, for the chairman of a company to invite a creditor to wind up the company? A. Very definitely.

Q. You would not do such a thing? A. I certainly didn't do anything as suggested in that evidence.

Q. Do you deny that you had a conversation with Mr. Kratzmann at about this time? A. No, I don't.

Q. Do you deny that in the course of that conversation there was a discussion about s.222 notice? A. I don't recall any s.222 notice in the conversation at all. 50

Q. Are you prepared to deny that in the course of the conversation a s.222 notice was mentioned?

A. I don't think it was? it is a long time ago; I don't think it was. I would not absolutely deny it. Mr. Kratzmann might have said, "Do you think I should put a 222 notice in?" I don't know what he said.

Q. And what would you have said? A. I think I would have to tell you the full facts, if I may. 10

Q. Look if Mr. Kratzmann, who was then a creditor to the extent of possibly hundreds of thousands of dollars, had said to you, as the Chairman, "Should I put in a 222 notice?" What would you have said?

A. To be quite honest, I think what I said to Mr. Kratzmann was, to the best of my recollection, but don't hold me to it, "I have been removed from the chairmanship of the company. Don't hold me responsible for what is going on. Take whatever action you think best". 20

Q. I put it to you directly. Did you say to Mr. Kratzmann that Landmark only made \$50,000 and you yourself had not received payment? A. I cannot recall that. I may have, I don't know. He rang me when he could not get Mr. Barton. I happened to be in the office at that time, or he rang me personally - I forget which.

Q. The position is that you may have told Mr. Kratzmann that Landmark owed you \$50,000 and you yourself had not received payment? A. Could you help me with the date of this conversation? 30

Q. I can tell you that it occurred at 9.30 a.m. on 14th November 1966. A. I don't recall it clearly as that date. I thought it would have been a bit later than that. But I had lost all responsible control of the company at that time. I was removed from the chair the next day and I presumed I was going to be removed from the chair.

Q. You knew about it, did you? A. I didn't know about it; I presumed. 40

Q. Haven't you been maintaining for quite a long time that this was done with no notice to you?

A. I didn't say no notice. Mr. Barton had discussed with me many times that I should vacate the chair.

Q. Haven't you written that you were removed from the chair without notice? A. No. I said I took exception to being asked to leave my office without reasonable notice. 50

Q. Anyway, on 14th November you were still chairman of directors of the company? A. I had lost effective control of the company. I may have still been chairman of directors.

Q. You were chairman of directors on 14th November

1966? A. I believe so. I am not admitting that this conversation took place on 14th November, 1966.

HIS HONOUR: Q. You say it was a lengthy conversation? A. Yes. I don't recall really - it could have been the 14th, it could have been the 22nd, it could have been any date. I thought it was after I had been removed from the chair, but I am not clear. 10

Q. Am I correct in my impression that you said it was a lengthy conversation? A. The conversation with Mr. Kratzmann and me would have taken five or six minutes, he was speaking from Brisbane as I recall.

Q. It was a telephone conversation from him to you? A. Yes.

Q. You being in Sydney? A. Yes. I don't recall even where I was when I took the call. 20

MR. GRUZMAN: Q. Weren't you in the office? A. I don't recall whether I was in my office upstairs or in the Landmark office.

Q. You took the call simply because Mr. Barton was not there? A. I think that was quite reasonable - for Mr. Kratzmann to ask for me when he could not get Mr. Barton. He asked for Mr. Barton first, as managing director, and then for me.

Q. You took the call because Barton was not there? A. He asked for Barton first and then for me. That is my recollection. 30

Q. And Mr. Kratzmann was concerned about the money that was owed to him? A. He appeared to be, yes.

Q. And unless he got paid, he was in a position to destroy the company? A. No, I would not say that.

Q. You would not say he was in a position to destroy the company? A. He was not, no.

Q. When you issue a 222 notice and it is not complied with, what happens? A. I have learnt a lot about what happens, in the last 12 months - how long it takes to get action on a 222 notice. 40

Q. The next thing is an attempt to wind-up?
A. You can have an injunction there, can't you?

Q. But publicity from that could destroy the company? A. I would not agree that Mr. Kratzmann had the power to destroy the company at that time.

Q. The obvious thing to do, if you had the interests of the company at heart, was to keep Mr. Kratzmann at bay? A. Another obvious course 50

might have been to pay the man what he was entitled to.

Q. You did make the statement that you don't work for yourself? A. No, I did not make that statement.

Q. You know that that evidence was given here?
A. I did not make the statement.

Q. That evidence was given here? A. I recall something about widows and orphans. 10

Q. Mr. Bovill said that you stated that you don't work for widows and orphans, that you work for yourself. A. That is what he said.

Q. And that is the truth? A. No.

Q. And this is a typical example, is it not?
A. What is this? You are not suggesting that Mr. Kratzmann is a widow or orphan, are you?

Q. No. I suggest to you that you are prepared to sacrifice widows and orphans, if they were shareholders, to serve you own interests. A. I was the largest shareholder and I would have been sacrificing myself. 20

Q. You were the largest creditor of the Company?
A. And shareholder.

Q. And your interests were served, by first of all, your position of power in the company? A. No.

Q. You wanted to attack Mr. Barton, didn't you?
A. I didn't want to attack Mr. Barton. I just wanted to see that the company was run on a proper basis. 30

Q. You wanted to see Mr. Barton out of power and you in the undisputed seat of power, didn't you?
A. No. It would be shown by subsequent events - I was quite prepared to sell my shares in the company and allow control to go to Mr. Barton, if the shareholders had so voted.

Q. You wanted to show to the public that Mr. Barton could not run the company? A. I don't think so. I just wanted to see that it was properly run. I had a difference of opinion with Mr. Barton as to the running of the company, and no one can say who was right. 40

Q. When this phone call came from Mr. Kratzmann, it was a golden opportunity for you to try to get Mr. Kratzmann to destroy the company? A. I did not want Mr. Kratzmann to destroy the company at all.

Q. The interests of the company demanded that Mr. Kratzmann should not take any precipitate action? A. I think I was taking action against the company myself at that time. 50

Q. Were you? While you were chairman? A. I don't know.

Q. Is that what you are saying? A. No, it could not have been while I was chairman. This is a very fine point of time, 14th November.

Q. Would you agree with me that the interests of the company, that is, the shareholders of the company as an entity, demanded that Mr. Kratzmann should not take any legal action against the company for as long as possible? A. What is this one? Will agree about the interests of the shareholders, that Mr. Kratzmann be deceived? Is that it? 10

Q. Not that he be deceived, but that he be satisfied that steps would be taken to pay him?

A. To tell him that steps should be taken to pay him? That I believed it was better to tell him that steps were to be taken to pay him, when they were not going to? 20

Q. No. What you say is that even at 14th November to let Mr. Kratzmann believe that he would have been ultimately paid would have been a lie? A. What are you asking me to say now?

Q. Is this what you are saying: That as at 14th November, if you had given Mr. Kratzmann to understand that his company would be ultimately paid the amounts due to it by Landmark, that would have been a lie? A. No, your statement would not be correct.

Q. But you have said that if you got Mr. Kratzmann to hold his hand on the basis that he would be paid, you would be deceiving him? A. No, that is not what I said. 30

Q. Is that what you say? A. No.

WITNESS: I will tell you what I really mean to convey, Mr. Gruzman. Up to the time I returned from overseas, I was the banker, to use an ordinary term, behind Landmark. I believed that Mr. Kratzmann thought that I was still in that position, and had I told him that he would be paid, he could have morally looked to me for payment. Before 14th November I had three directors disagreeing with my policies and I was not then in a position to say that I would honour and help the company to the extent I had before. All I told Mr. Kratzmann was that I was out of control and the effect of it was that he could not look to me to help him, that he should do what he thought best. He would have said to me, on a personal basis, "Are you sure the company is all right"? I did not say the company was wrong, but I did not say the company was all right. 40 50

MR. GRUZMAN: Q. That is a lie, isn't it? A. No, it is not a lie.

Q. What Mr. Kratzmann told you was that he had

been told that finance had been arranged for Landmark House, which was then being constructed by their company - that is what he told you? A. I don't recall him telling me that at all. All I recall of this conversation was that Mr. Kratzmann was very concerned about payment of his account on Paradise Towers which, according to him, was well overdue. He was concerned about non-payment.

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Q. And you told him, "I am the chairman and I can't get paid myself". A. I don't know what I told him. I would convey the impression to him that I was no longer able to back up Landmark with my own money, as I had been before.

Q. And the effect of that, you gave him to understand, was that Landmark would ultimately fail?

A. The effect of it was I told him not to look to me for support, but to Mr. Barton, who was in charge of the company at that time, and the other directors. But the main thing was that he could not look to me personally to help the company out of trouble any longer.

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Q. But, in your view, unless you helped the company along it had to fail? A. No, I don't think it had to fail unless I helped it. I think other people could have helped it along; other people could have provided the finance I provided.

Q. The likelihood was that if you went out, that would be the end of the company? A. I don't think so. I was not essential; I never regarded myself as essential. I always regarded Mr. Barton as a very capable managing director, up till very late in the piece.

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AT 2 P.M.

HIS HONOUR: I have given some thought to this question of cross-examination on this topic of bribery, and I will hear you and Mr. Staff, Mr. Gruzman. (Argument ensued.)

(For his Honour's judgment see separate transcript)

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MR. GRUZMAN: Q. Mr. Armstrong, being placed third on the Country Party ticket, you could only expect seven primary votes, could not you? (Objected to by Mr. Staff; allowed.) A. That would not be quite the correct amount, no. I would have expected at least seven votes.

Q. In your view if everybody else in the Country Party had voted in accordance with the ticket, you would have got no more than seven votes - (Objected to by Mr. Staff; argument ensued.)

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HIS HONOUR: In the course of cross-examining Mr. Armstrong yesterday Mr. Gruzman showed him a document containing some names and amounts of money and put to him the suggestion

First-named
Defendant, xx

"that you paid money to the first man named on the document if he would arrange for improper payments of money to other persons named on that document to so ensure your election."

The election in question was to the office of a Legislative Councillor at the elections conducted towards the end of 1963.

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The subject of this challenge to Mr. Armstrong's credit was referred to again during the course of further cross-examination this morning. There were two matters relevant to that cross-examination that occasioned me some doubt. The first I dealt with yesterday, and again this morning, and I see no reason to vary my ruling on the matter. This ruling was as follows:

"Section 17(2) of the Constitution (Legislative Council Elections) Act provided that voting shall be by secret ballot. As a matter of public policy I shall not permit the manner of the voting at the elections for the Legislative Council held at the end of 1963 to be probed in evidence in this Court. The challenge to which such evidence is said to relate is one directly relevant to the credit of Mr. Armstrong. But in my view the preponderating public policy is that the secrecy of the ballot should not be violated, even though this ruling may restrict to a significant degree what might otherwise be a perfectly legitimate challenge to credit. I shall accordingly rule out any question the answer to which would involve infringement of the secrecy of the ballot. This will not preclude the challenge foreshadowed by Mr. Gruzman from being pressed by such other questions as may be legitimate in relation to that challenge."

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The second matter is of greater difficulty. The suggestion that a Member of the Legislative Council may have succeeded in achieving election in consequence of some improper payment having been made by him, in short by bribery, appeared to me to raise a question of the privilege of the New South Wales Parliament. It seemed that it might possibly be a matter for the exclusive decision of the New South Wales Parliament when a charge such as this is made in respect of a Legislative Councillor. It is clear from the historical account in May's Parliamentary Practice that at one point of time the House of Commons did assert, and indeed exercise, exclusive jurisdiction to determine as a question of privilege a question of whether an election of one of its Members had been procured through bribery. If the New South Wales Parliament either in joint sitting of its two Houses or in a separate sitting of either or both Houses had exclusive jurisdiction to determine a question of this nature, then it would not be a permissible subject of evidence in this suit.

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1278. First-named
Defendant, xx

The position under the New South Wales law is contained in statutes passed by the New South Wales Parliament. Under S.27 of the Constitution (Legislative Council Elections) Act there is provision made that any dispute or question respecting, inter alia, any election of a member of the Legislative Council may be dealt with in the same manner as a similar question respecting the election of a member of the Legislative Assembly. This manner of dealing with such questions is prescribed by the Parliamentary Electorates and Elections Act. Part VI of that Act constitutes a Court of Disputed Returns and makes provision for the proceedings of the Court. Section 164(1) provides:

"If the Court of Disputed Returns finds that a candidate has committed or has attempted to commit the offence of bribery or treating or undue influence, his election, if he is a successful candidate, shall be declared void".

The significance of these two statutes is that the New South Wales Parliament has so legislated that it is not within the exclusive province of the Legislative Council or the Legislative Assembly to determine whether a successful candidate for election has committed bribery in connection with his election. Parliament has committed that subject to the Court of Disputed Returns, that is to say to a lawfully constituted tribunal external to and independent of Parliament itself. It is not to the point to say that Parliament has in a fashion delegated this subject to the Court of Disputed Returns. In one sense that may be so. But the important element is that Parliament has acquiesced in this matter being passed upon by a tribunal other than Parliament itself. There is accordingly no reason to forbid on the ground cross-examination upon the charge which Mr. Gruzman makes against Mr. Armstrong.

There remains, however, a further matter to which Mr. Staff has drawn attention, namely, that one head of Parliamentary privilege is the protection of Members of Parliament from being attacked in connection with their office as Members of Parliament. Needless to say this is a head of privilege of an extremely delicate nature, in that legitimate and justifiable criticism and discussion of matters of politics and matters of government are an essential aspect of life in a democratic community. However, where criticism of or imputations against a Parliamentarian or the institution of Parliament goes beyond that which is legitimate in the ordinary course of reasonable public disputation, then Parliament has power to commit the offending persons for breach of Parliamentary privilege. The most recent instance of which I am aware in which that power was exercised came ultimately before the High Court and the Privy Council in the case of *Ex parte Fitzpatrick and Browne* (92 C.L.R. 157 and 171).

Mr. Staff has submitted that the challenge being made to Mr. Armstrong's character in connection

with the suggestion that he procured his election by some improper payment falls directly within this head of privilege. I do not consider that I am called upon to decide whether this challenge does or does not constitute a breach of Parliamentary privilege. Unless that privilege is one, the decision upon matters underlying which is exclusively given over to Parliament, then the ordinary processes of the Courts will not be affected by the existence of the privilege. There is no reason why a Member of Parliament who is defamed as such should not proceed in a civil court to recover damages. Conversely there is no reason why he should be immune in a civil court from his credit being attacked on alleged discreditable conduct as a Member of Parliament. The fact that the attack may be one which might ultimately be considered by Parliament to involve a question of privilege does not of itself preclude the attack being made in ordinary court proceedings. 10 20

I am accordingly of the view that it is open to Mr. Gruzman to ask questions in admissible form, the admissibility of which will be governed by the ordinary rules of evidence, directed to the pursuit of this challenge against Mr. Armstrong. This general ruling is, of course, subject to the earlier ruling that I have already given, namely that the manner in which votes were cast will not be permitted to be investigated. 30

MR. GRUZMAN: Q. Mr. Armstrong, being placed third on the Country Party ticket, you could only expect seven primary votes, could not you? (Objected to by Mr. Staff; allowed.) A. That would not be quite the correct amount, no. I would have expected at least seven votes.

Q. In your view if everybody else in the Country Party had voted in accordance with the ticket, you would have got no more than seven votes - (Objected to by Mr. Staff; argument ensued.) 40

HIS HONOUR: During the course of the proceedings this morning it became apparent that the person or persons alleged in connection with this charge of bribery to have participated in the events that are said to discredit Mr. Armstrong is or are members of the State Parliament. The allegation made against Mr. Armstrong is, of course, one of some importance upon his own credit. At the same time, the naming of an individual or individuals said to have participated by receiving bribes, or the more blanket allegation that a member or members of the State Parliament, unidentified by name, have received bribes in connection with Mr. Armstrong's election involve grave imputations against either the persons, if they be named, or against the members of the State Parliament as a whole if they be not named. 50

I have given consideration to whether under s.57 of the Evidence Act I should preclude further cross-examination upon this charge, not in the 60

slightest degree out of any concern for the protection of Mr. Armstrong - he is here able to answer whatever is put to him, and with senior and junior counsel appearing for him. I am gravely concerned, however, in the interests of fairness as regards other persons, the identity of whom is at the moment quite unknown to me, who may be involved in these allegations. For the purpose of my deciding whether I should exercise my power under s.57 to forbid this question or this line of inquiry I intend to invite Mr. Gruzman to make available to me, through my Associate, the material upon which he proposes to pursue this cross-examination. I shall look at that material not as being in any sense evidence to be weighed in the suit itself, but as being relevant to my deciding whether I should forbid the further inquiry within s.57. 10

The charge was put to Mr. Armstrong yesterday and denied by him in firm words, and he has denied it again on each occasion that it has been put to him today. 20

(Short adjournment)

ON RESUMPTION

HIS HONOUR: The material upon which this cross-examination was to proceed was handed to my Associate. I have forborne from reading it myself, nor am I aware of the names of the individual or individuals involved. I have had the nature of the material explained to me, and that was sufficient for me to make up my mind in regard to whether I should forbid this line of questions. I should state directly that I had in mind in particular that if there were some document in Mr. Armstrong's own handwriting such as has been available in respect of other challenges to his credit then I might well have taken a different view on whether I should permit this question. There is, as I understand it, no such document, and I have the impression from the description I have been given of the material that the attack on his head would at best be inconclusive. 30 40

I think it desirable to add that there is no question whatever of any matter of legal professional ethics or legal professional propriety involved in the decision that I have reached. I consider having taken into account the description of this material that has been given to me, that the pursuit of this line of cross-examination being as it is gravely prejudicial of complete strangers to this litigation and involving as it will imputations against them that they cannot answer in this Court, should be forbidden pursuant to s.57 of the Evidence Act. I accordingly will not permit further questions to be asked in connection with this challenge to credit. I reiterate that by forbidding this line of questions I am not to be taken to be indicating any view upon the propriety of counsel's conduct of the case. 50

MR. STAFF: Would your Honour direct that the documents be retained by your Honour's Associate?

HIS HONOUR: I have had the material described only so far as necessary to acquaint myself of two facts: One was that if there had been a document in Mr. Armstrong's handwriting that would have put a different complexion on the position, and secondly, I have had regard to whether the material was of such a nature that the challenge could be seen to be one which would not remain in an inconclusive state, and that is as far as my knowledge of this material goes. I think in those circumstances that any other court considering this will know no more or no less than me. 10

MR. STAFF: It seems that your Honour would have known a little more than your Honour's present description describes from the very nature of the documents being passed backwards and forwards. 20

We were simply concerned that they might in some way be identified for the future - not that they be described here, but that they either be identified or retained in a place where, if the occasion arises, they could be identified then as the documents furnished in answer to your Honour's request. If they were simply put in an envelope and sealed up and retained in the Court's custody that would meet the situation, and, since the line of questioning is now ruled out that cannot hamper that part of counsel's case. 30

HIS HONOUR: No, I am not disposed to have any responsibility for the custody or identification of these documents. I think they should be returned to Mr. Gruzman.

MR. GRUZMAN: Q. Mr. Armstrong, I was asking you about Exhibit 13 prior to this. Prior to the luncheon adjournment I was asking you about Mr. Kratzmann, and your conversations with him. Would you agree that it was the intended effect of your conversation with Mr. Kratzmann that his company would cease working on the project? A. No, I would not. 40

Q. Look, sir, that, of course, would have spelt in your mind the ruination of the company, wouldn't it? A. No, not at all. I would not like to see him cease work. It would not have spelt the ruination of the company.

Q. In your view, once the project stopped public confidence in the company would have dropped alarmingly, wouldn't it? A. I would not have thought it would have mattered very much if he stopped. 50

Q. In your view would not all the creditors have been extremely perturbed if work on the project stopped? A. Really I could not tell you what my view nearly two years ago was about it. I can only tell you the facts.

Q. Do you say now that it is a true statement that you did not think that if work stopped on the project the creditors would be disturbed? A. I don't think I thought about it at the time very much.

Q. Look, sir, you wanted at that stage to destroy the company, didn't you? A. Certainly not. I did not want to destroy the company at any stage.

Q. You wanted to put the company in the position where it was at your mercy, didn't you? A. No. 10

Q. And you wanted thereby to secure control, for what it was worth, at the annual general meeting? A. No.

Q. Look, sir, will you agree that as a direct result of your conversation Mr. Kratzmann instructed his company to cease work? A. I don't know anything about it. I don't know whether they ceased work. So far as I knew they continued work up until about the end - up until about June of 1967. I don't know. I could not tell you what occurred. 20

Q. If you suggested to Mr. Kratzmann that his company should protect its interests with a s.222 notice you would expect him to lose confidence, wouldn't you? A. If I had suggested that, yes.

Q. But you never did it? A. No. I told him, as I told you before, that I was not in the same position as I had previously been with the company.

Q. And you never told him to put a s.222 notice into the company? A. No, not so far as I can recollect. 30

Q. That would be a shocking thing to do, wouldn't it? A. Yes.

Q. I show you a letter contained in Exhibit 13 - a letter dated 14th November, signed by Mr. Kratzmann, and addressed to the managing director of Landmark. Just tell me whether - I will read out a paragraph to you, and you tell me whether the contents are true: "We refer to telephonic conversation with your chairman of directors Mr. Armstrong this morning at approximately 9.30 a.m., and contrary to your statement that the finance has been arranged for Landmark House project currently being constructed by our company at Wickham Terrace, Brisbane, he told me that whilst he was a director of your company he could not assist me in any manner regarding my inquiries re our outstanding progress claims". 40

Q. Is that a true statement? A. Not completely.

Q. Did you have a telephone conversation -
A. That part is true -

HIS HONOUR: Wait until the question is completed, Mr. Armstrong. 50

MR. GRUZMAN: Q. Did you have a telephone conversation with Mr. Kratzmann at about 9.30 a.m. on 14th November? A. I don't know that.

Q. You would not dispute it? A. I would dispute it. I don't know whether it was on the 14th November or not. It probably may have been, but I don't know. I don't know whether it was the 14th November. I would not stake my oath on 14th November. I did have conversation with him round about the middle of November I imagine. I thought it was later, but I may be mistaken. 10

Q. Did he tell you that he understood that finance had been arranged for Landmark House? A. I don't recall that at all.

Q. Would you deny that he said that? A. I don't think he said anything much about finance being arranged for Landmark House. I don't recall it.

Q. Did he ask what was going to happen about his outstanding progress payments? A. Yes, I think he did say something about that. 20

Q. He asked about his progress payments? A. I think he did say something about them.

Q. What did you tell him? A. I told him what is in that note - that I could not assist him any further with his progress payments. Mr. Kratzmann used to look to me to assist the company.

Q. You told him that no longer would you assist the company? A. I did not say no longer would I assist. It is very difficult for me to tell you exactly what I told him, but I said that he should not look to me as the company - it is very difficult, but the sense of it was that there had been a board dispute, and by that time I was 3 to 1 in the company, so I could not tell him what would occur. There was a definite schism in the company's affairs at that time. 30

Q. You told him in effect that you could give him no satisfaction to future payments? A. No. You see, by that time I was not in the cordial relationship with Mr. Barton which I enjoyed up to September 1966. I would have said - if that relationship had been the same I would have said "I will talk to Mr. Barton about it and see what we can do", or something to that effect. I did not intend to mislead Mr. Kratzmann about it that I could do something one way or the other. 40

Q. So that the net result of that part of the conversation was that Mr. Kratzmann did not know if or when he would be paid. That is correct, isn't it? A. No, I would not think that would be correct at all. Mr. Barton by that time was in virtual control of the company. 50

Q. What was that? A. Mr. Barton, Mr. Bovill and

Mr. Cotter by that time were in virtual control of the company, and for all I knew Mr. Kratzmann could have been paid next day.

Q. Did you tell him that? A. I don't know what I told him. I don't know whether I told him that or not. That is all I knew. It would have been quite incorrect for me to tell Mr. Kratzmann that he would not be paid.

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Q. You would have regarded it as deceiving him to tell him he would be paid? A. I didn't know what was the position. You will recall, Mr. Gruzman, that one day after that a memo was issued that no director was to have any knowledge of any matter in the company without the express permission of Mr. Barton. That was issued on 15th November. I have a copy of it. I was getting no information at that time about the company's affairs whatsoever.

Q. You didn't send Hume to Surfer's Paradise to get that information? A. I don't know what you mean by that. That was information in the Landmark office - which I was fully entitled to do, as a director.

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Q. I will read the next paragraph, and I want you to tell me whether to your knowledge it is true: "I am extremely alarmed regarding his further comments, when he volunteered further information regarding his personal affairs with the company. He stated that Landmark owed him \$50,000 and he himself could not receive payment, and was currently taking the necessary steps to protect his interest. He further suggested to me that our company should do likewise". Is that a true statement? A. Not the part about - I don't recall what I told him about the \$50,000. I am not clear on that. I certainly did not suggest to him that he should take any steps at all.

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Q. First of all, you won't dispute that you volunteered to Mr. Kratzmann that Landmark owed you \$50,000 of which you could not receive payment?

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A. I told you I could not recall whether I did or did not say it. I didn't volunteer it at all. I don't even say I said it. I am not prepared to say I denied it (sic).

Q. Did you tell him you were currently taking necessary steps to protect your interest? A. No, I don't think so.

Q. Are you prepared to deny that? A. Yes, I will deny that.

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Q. Did you suggest to Mr. Kratzmann that his company should do likewise? That is to say, take the necessary steps to protect its interests? Did you suggest that to Mr. Kratzmann? A. No, I don't think I suggested that. He may have inferred this from the conversation.

Q. He may have inferred it from the conversation?
A. Yes.

Q. You mean from something you said? A. He may have inferred that as I was out of control of the company he should do what he thought best.

Q. Will you admit that he may have inferred from the conversation that you had to protect your interest and that his company should do likewise? 10
A. I don't know what he inferred. Mr. Kratzmann is well capable of looking after his own interests.

Q. Are you prepared to deny on your oath here that you suggested to Mr. Kratzmann that he should protect his interest? A. No, I did not suggest it to him.

Q. Are you prepared to deny that? Are you prepared to deny that you suggested to Mr. Kratzmann that he should protect his own interests? A. Yes. So far as I can recollect I did not suggest it to him. It is possible from the conversation - I want you to be very clear here - it is possible from the conversation that Mr. Kratzmann might have become concerned about the company. He did not know, as I understand, at that stage anything about the board fight that had been taking place. I am not suggesting that he could not have been concerned at the tone of the conversation. 20

Q. Well, did you set out to give him cause for concern? A. No. I just told him the facts. 30

Q. And the facts were concerning you, weren't they? A. I was concerned at that time about - any divided board causes concern.

Q. And the fact that the board could not pay its debt to you gave you cause for concern? A. Yes.

Q. And you passed that on to Mr. Kratzmann?
A. I don't think I told Mr. Kratzmann that. I said that I could not recall it.

Q. Are you prepared to say Mr. Kratzmann has written untruthfully here that you further suggested that his company should in effect protect its own interests? (Objected to; rejected.) 40

Q. I will read to you the next paragraph, and I want you to tell me whether it is a true statement: "Naturally, after receiving these disturbing comments, I advised Mr. Armstrong that our company would have no alternative but to cease work on the building project..." is that right? A. I don't think he did. Mr. Kratzmann to my knowledge had often said once or twice before this to Mr. Barton and I that if he didn't get paid he would cease work. I thought this was another one of his bluffs about ceasing work, if he said it. If he said it I don't recall it. If he did say it, and I don't recall it, I did not take it seriously. He had 50

told us once or twice before, and perhaps more often than once or twice - I can't recall this.

Q. Did you say to Mr. Kratzmann that everything would be all right? A. I don't know what I said. I didn't advise him on what to do. I didn't want him to cease work. He had been threatening to cease work two or three times before.

Q. As chairman of the company it was your duty to try and prevent him from ceasing work, wasn't it? A. As of the 14th, Mr. Gruzman, I did not consider - I considered I was de facto chairman of the company, and I considered that anything I said would not be binding on the board. 10

Q. You were still a director of the company for some time after that weren't you? A. Until the 18th January, yes.

Q. As a director of the company, if a contractor threatened to cease work - threatened to you to cease work - didn't you regard it as your duty to try and prevent that occurring? A. Not if it involved telling a lot of lies, no. 20

Q. The only lies would have been that he would ultimately get paid? A. Well, he has not ultimately got paid, has he.

Q. You knew then that he would never ultimately get paid? A. I did not know that at all.

Q. That is why you didn't tell him that? A. I didn't know that at all. I didn't know he was not going to get paid. 30

Q. You knew as early as 14th November that the company was worthless - that it was not worth anything? A. It was not worthless until his Honour in his wisdom decided that the scheme should not go ahead.

Q. If you were in doubt about it being worthless on 14th November prior to your conversation with Mr. Kratzmann, you make certain that it was worthless after it, didn't you? A. No. 40

Q. I will read you now the whole of the conversation - the whole of the paragraph of which I read you only part, and you tell me whether this is true: "Naturally, after receiving these disturbing comments, I advised Mr. Armstrong that our company would have no alternative but to cease work on the building project, in fact your Mr. Armstrong suggested that we should protect our interest under the Companies Act, s. 222". A. No, I don't recall saying that at all. In fact, I don't think I said it. 50

Q. That would be absolutely disgraceful, if you had done that? A. I didn't say it. I consider that is an untrue statement.

Q. Mr. Kratzmann has written a deliberate lie here? A. Yes, I would say so. If I may refer you, if I may, to the minutes of the meeting where Mr. Barton reported that he had had this conversation and had assured Mr. Kratzmann that everything was all right and Mr. Kratzmann happily went along with his assurance. You will notice that in the meeting of the board - in the minutes of the board shortly after this. 10

Q. I will read you the fourth paragraph. Is this true: "Mr. Armstrong advised me that a directors' meeting was scheduled for 3 p.m. this afternoon and suggested that a telegram be sent to him personally, also to Mr. Barton, prior to the aforesaid directors' meeting"? A. I may have suggested that he should contact Mr. Barton and I.

Q. Did you suggest that he get a copy of the Australian newspaper? A. Not that I can recall. 20

Q. What possible purpose would that serve?
A. I could not understand why at this stage. I don't know. I don't think I suggested to him. I don't know what purpose it would serve if I had.

Q. The only purpose would be to lessen Mr. Kratzmann's confidence in the company by showing that the dispute was public? A. I don't know. I don't know whether I told him to get a copy. I don't recall telling him anything about getting a copy of the Australian newspaper. 30

Q. You would deny it, would you? A. I would not deny it. I don't recall it at all.

Q. You deny anything you can't recall? A. I won't deny it. I can't recall it.

Q. "On the suggestion of your Mr. Armstrong, I immediately obtained a copy of last Saturday's 'Australian', and could you immediately advise me in writing of your company's position." A. I don't recall telling him to get a copy of the Australian. 40

Q. What would be your object? Can you think of any object for which you would tell him to get a copy of the Australian? A. I don't think I told him to get a copy of the Australian, so I don't think I would know what object I would have had. I don't know what object I could have had in that.

Q. What explanation would you offer to his Honour as to why Mr. Kratzmann wrote that in his letter?
A. I don't know why. He must have read Saturday's Australian. I don't even know what was in Saturday's Australian so I don't know what relevance it has. 50

Q. Mr. Kratzmann was not an enemy of yours, was he? A. I would not have thought so, no.

Q. You got on very well with him? A. Actually

I did not have many dealings with Mr. Kratzmann. He dealt with Mr. Barton more than myself. I did not have many dealings with him.

Q. You had dealt with him, and you had - A. I got on reasonably with him. I thought him a reasonable fellow. He did a reasonable job on Paradise Towers.

Q. There was no reason why he should write a letter like this containing untruths, was there? 10

A. Yes. If you want me to go into it I can perhaps tell you something about that.

HIS HONOUR: Q. Don't go too quickly. A. Your Honour, when, as I have often been accused of trying to involve other people, in the Landmark House contract arranged by Mr. Barton and Mr. Kratzmann there were certain unusual provisions. I think at the time that this had occurred, or very close to this period, I had been making close investigations into this contract, and I don't know whether Mr. Barton had conveyed this fact to Mr. Kratzmann. I don't know whether your Honour, when the scheme was brought before you, saw these unusual provisions in the contract whereby Mr. Kratzmann advanced a sum of money and bought back units. But this unusual provision was not well known to the board or to myself and I think this may be some reason why Mr. Kratzmann would not want me to inquire too closely into his relations with Mr. Barton on this matter. That is the only reason I can think of why he would write some of the assertions contained in the letter. 20 30

MR. GRUZMAN: Q. Are you suggesting that Mr. Kratzmann was engaged in some dishonest course of conduct with Mr. Barton? A. Mr. Gruzman, I did not say "dishonest". I said "unusual".

Q. What do you mean by the term "unusual", used in that context? A. I believe that it is unusual for a builder to advance money on a contract and in effect units in an incompleated building and allow his work - his progress payments - to be used against this. It was an inducement, I feel, for Landmark to give him the contract. 40

Q. Something that you regarded as partially, anyway, dishonest? A. No, I would not say it was dishonest. It was unusual, and it had an unusual effect on the balance sheet. I do not say it was dishonest. I think it was an unusual provision which I didn't fully understand. I don't think I fully understand it to this day. But it was unusual. I won't say it was dishonest. 50

Q. Did I understand you to say it was not fully disclosed to you as a member of the board? A. No, it was not fully disclosed to me as a member of the board at the time it was made. I didn't understand it, and I don't clearly understand the provision to this day.

Q. There is no other label that can be put on what you have said other than to suggest that there was some dishonesty involved? A. No, because - (Answer interrupted).

Q. In making an unusual deal between Barton and Kratzmann, and failing to advise you of the full tenor of that deal? A. I don't say there was any dishonesty. I don't know. There could be, there could not have been. I said it was an unusual deal. It was difficult to record in a balance sheet, and probably in a balance sheet was inclined to make the profit look better than it was. 10

Q. Look, sir, the inference is - you said to his Honour a moment ago that Mr. Kratzmann didn't want this deal investigated too closely. A. I don't think Mr. Kratzmann particularly minded it being investigated, but I don't consider Mr. Barton wanted it particularly investigated at that time. 20

Q. Didn't you raise this deal as constituting a reason why Mr. Kratzmann would write an untruthful letter? That is why you raised it, wasn't it? A. I raised this to give you some explanation that Mr. Kratzmann at that time possibly had been told things about me by Mr. Barton.

Q. Didn't you put forward to his Honour by way of explanation as to why Kratzmann would tell untruths in this letter the facts of this deal? A. This is a possibility. I don't know why, Mr. Gruzman, Mr. Kratzmann would tell certain untruths in that letter. I have no idea why he would do it. I just put it forward as a possibility. 30

Q. The possibility being that you were too closely investigating a dishonest deal between him and Mr. Barton? A. I wish you would not continue to repeat the word "dishonest"; I continually say "unusual". 40

Q. If it was just your lack of legal understanding of accountancy or law you would not put that forward as a reason why Mr. Kratzmann would tell untruths, would you? A. I don't think it was my lack of understanding. It was not properly disclosed to me at the time, and there are certain facets of it which I don't completely understand to this day.

Q. Did you not suggest to his Honour that there was some impropriety in the dealings between Kratzmann and Barton which were the cause of Kratzman writing an untruth? Didn't you suggest there was some impropriety between them which would cause Kratzmann to write an untruth? A. Did I? No, I don't think I suggested impropriety. I said an unusual thing. And I think I said - I cannot quite recall what I said a moment ago on this matter - I think Mr. Barton would not have wanted this disclosed. I don't think Mr. Kratzmann would have worried much about it. 50 60

Q. Look, I suggest to you this is another case where you really don't know what is truth and what is lie? A. I have a very good knowledge of truths and lies, Mr. Gruzman.

Q. You remember that Mr. Barton gave evidence that on 15th January at 8.20 in the morning you telephoned him and said that unless he signed the document he would be killed. You made that statement, didn't you? A. Certainly not. 10

Q. You telephoned him? A. Never.

Q. You were anxious for that document to be signed? A. Not particularly. I would like to add that since these court proceedings I certainly wish it had not been.

Q. By the way, have you been to the C.I.B. at all? A. On no occasion that I can recall in my life. Certainly not within the past two years.

Q. I think I have asked you this before, but, in case I have not, did it ever come to your knowledge specifically that anybody had made an allegation that you were party to having somebody killed? A. What is this? 20

Q. Did it ever come to your knowledge specifically that anybody alleged that you were a party to having Mr. Barton killed? (Objected to; allowed.) A. Who?

Q. Did it? A. At what time would you suggest that occurred? 30

Q. At any time. (Objected to; allowed.) A. I am not clear. Can you frame the question a little more clearly?

Q. Yes. The question is did it ever come to your knowledge specifically that it was alleged that you had been party to an arrangement to have Mr. Barton killed? A. Not until Mr. Barton's affidavit was read.

Q. That is the first time? A. That is the first time. 40

Q. And there is no doubt that you did have a discussion about Vojinovic's allegations with Mr. Hume during the year 1967? A. Not about Vojinovic. Never heard the word "Vojinovic" mentioned until it was read out in Court, or whatever time it was read out. The word "Vojinovic" meant nothing to me.

Q. You did have a discussion with Mr. Hume during 1967 about some general allegations that had been made, did you not? A. I think I told you - I can refer to my previous evidence, I think - I think I said that I had some brief discussion with Mr. Hume at some time before I went overseas in 1967, which I took very lightly - took no notice of. 50

Q. I want to press you, if I may? A. Yes.

Q. To tell us when that was? A. That was one thing I cannot recall. I say that in all sincerity. I can't recall that conversation at all - when it occurred. I took it so lightly when the conversation took place that I didn't think much of it at all. I probably was very stupid in not taking it more seriously, in the light of these proceedings.

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Q. Have you no idea whatever as to when the conversation took place? A. I feel - and please don't hold me to this - I feel it took place some time towards the middle or the end of March. I would not like to pinpoint it at any time; except I know it took place before I left for overseas on 30th April.

Q. Where were you when the conversation took place? A. I don't even know that. I didn't take any notice of the conversation - it was so ridiculous.

20

Q. What was this ridiculous conversation?
A. The only bit that really sticks in my mind was something about Mr. Barton going to the Wentworth Hotel.

Q. You remember that? A. That is the only thing I can think of. Hume -

Q. I am sorry. A. That is the only thing that sticks in my mind.

Q. Were you told this occurred about the time of the agreement being signed? A. I don't know when he had gone to the hotel. This conversation was about five minutes or less. I took it very lightly, and didn't take the slightest notice of it.

30

Q. Were you told there was an allegation that Hume had employed a criminal? A. No, I can't recall that at all. I don't remember anything about Hume employing a criminal.

Q. How did Mr. Barton come to be mixed up in the conversation, according to your recollection?

A. As I told you, Mr. Gruzman, my recollection of this is so faint as to be almost worthless. But I do recall that Mr. Hume said that he had spoken to some policemen about it; they thought there was nothing in it and he thought it was ridiculous. And that is about the way I left it.

40

Q. What was ridiculous? A. I don't know - the allegations were some sort of allegations that someone had threatened Mr. Barton. Didn't even say I had threatened him so far as I can recall. Someone had threatened him.

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Q. You understood some time in March 1967 that Mr. Barton was alleging or had alleged that someone had threatened him? A. Someone had given him information. It is no good trying to put words in

my mouth. I am telling you all the time that my recollection of this conversation is practically worthless.

Q. Let us see if we can go a little further. When you say your understanding is that Mr. Barton complained that he was being threatened, you mean Mr. Barton was complaining that his life had been threatened? A. I don't think so. My understanding of that conversation is so vague that it is no use trying to put words into my mouth, because I can't recall it.

10

Q. Did you make an entry in your diary about it?
A. No, I don't think I even bothered to do that. That could be checked on. It is there.

HIS HONOUR: Having raised with counsel the question of whether I should give express permission under s.59 to print or publish the matters that have transpired earlier today and yesterday and that I ultimately stopped pursuant to s.57, and both counsel being of the same mind that I am, namely, that it is preferable that there be no prohibition, I shall have it noted that I give express permission under s.59 to print or publish everything which has transpired in this Court yesterday and today relevant to the matter that I ruled out under s.57.

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(Further hearing adjourned to 10 a.m. on
Thursday, 29th August, 1968)

BARTON v. ARMSTRONG & ORS.

TWENTY-NINTH DAY: THURSDAY, 29TH AUGUST, 1968

FIRST-NAMED DEFENDANT,
on former oath:

HIS HONOUR: Q. You are still on your former oath,
Mr. Armstrong. A. Yes, your Honour.

HIS HONOUR: There is one matter in the transcript,
before we go ahead. On p.990 I am recorded as hav- 10
ing said "I have directed my comments to Mr. Gruzman,
because he is used to being caught..". That should
be "is used to being in Court..".

On p.979 in the second paragraph in parenthesis
there is a reference to the Sydney Morning Herald
which should be "Daily Telegraph".

MR. GRUZMAN: In view of my friend's statement
yesterday that cross-examination on bribery was a
wild goose chase Mr. Barton has instructed us to
waive his privilege in respect of the documents on 20
which that cross-examination was based, so that my
friend can, if he sees fit, call for all of those
documents. They will be produced, and my friend
will be under an obligation to tender them.

Q. Mr. Armstrong, what I show you now is a photo-
stat of Exhibit 13 - the same as yesterday. A. Yes.

Q. You see Mr. Kratzmann wrote this, didn't he
"On the suggestion of your Mr. Armstrong, I immedi-
ately obtained a copy of last Saturday's 'Australian'".
A. I don't deny that he obtained a copy of it. 30

Q. Mr. Armstrong, Mr. Kratzmann wrote this, did
he not, "On the suggestion of your Mr. Armstrong, I
immediately obtained a copy of last Saturday's
'Australian'". Now, the position is, you say, that
he could have obtained a copy of the Australian,
but, if he did so, it was not at your suggestion?
A. I don't recall suggesting it.

Q. Are you prepared to deny that you made that
suggestion to him? A. I don't recall it. That is
the best I can do. I don't recall it. I don't re- 40
call the copy, anyway.

Q. I show you a photostat of the Australian on
Saturday, November 12th, 1966, under the heading
"The Landmark became too conspicuous". Do you re-
member that? A. I remember that now that I see it.
But I don't recall making a suggestion to Mr.
Kratzmann to get one. I don't recall making a sug-
gestion to Mr. Kratzmann that he get a copy of it.

Q. It certainly contains material adverse to the
company, doesn't it? A. I have not had a good 50
look at it.

Q. Let us take the first paragraph: "The failure of Landmark Corporation Limited, Sydney to send out its balance sheet and announce a date for its annual meeting attracted the official curiosity of the Sydney Stock Exchange yesterday". That is the first paragraph. A. I would say it is one of these articles which gave rise - was written with the idea, I suppose, of calling attention to the sending out of a balance sheet and reporting a time. I don't know whether it is completely adverse. It is really a speculative article - "We will see what happens on Monday". 10

Q. That is the sort of article which would create doubts in anyone's mind as to the stability of Landmark? A. I would not like to comment on the article. I could not tell you what it would create in anyone's mind. I think that would depend on their knowledge of the company and many other factors. 20

Q. In your view it would create suspicion about the company in the mind of anyone who read it, wouldn't it? (Objected to.) A. If I may comment, I don't think I can agree with you there, because it would all depend if you consider Mr. Barton was a good judge of the company - he just said that he refused an offer to buy his holdings at 70¢ a share, and I don't see how that would create a suspicion in the company; if he refused an offer to sell his holding he must have had some faith in the company, and he was the managing director of the company, and I don't think that would create suspicion. I would say it would create some interest in the company rather than suspicion. That would be my own personal view, that it would... 30

HIS HONOUR: Mr. Gruzman, it is your responsibility to control the witness.

MR. GRUZMAN: Q. Please Mr. Armstrong now look, didn't the article say this "However, the Stock market has taken alarm and the company's shares have been pushed down to a low level of 30¢ buyer this week on high turnover"? A. That is what the article contains. 40

Q. That would not, in your mind, inspire confidence in a major creditor, would it? A. I don't know what effect it would have on his mind. I really can't say.

Q. And then Mr. Barton is quoted as saying "I am not a seller; I am a buyer". A. Yes, that is correct. 50

Q. In other words, Mr. Barton is maintaining the company's credit? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. By that time - A. I don't know what you should read into that statement. He might think the shares were a good buy.

Q. It is an effort by the managing director to say the company's shares are good, isn't it?

A. I don't know I don't really feel what I could read into that.

Q. And then the article goes on and mentions that he had refused an offer, and then it says this "He declined to say who the buyer was," and the person who wrote the article then says this, doesn't he, "However, it seems unlikely to be Mr. Armstrong, who on July 29th sold 39,000 shares from his holdings of 354,000"? A. That is what it says.

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Q. That would be alarming, for a creditor to know that the chairman of directors was selling out, wouldn't it? A. No. This is an ill-informed statement.

Q. I am not asking whether it is true or false. I am asking would it not in your view alarm major creditors to know that the chairman was selling his shares? (Objected; rejected.)

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Q. I should ask you this question: Did you employ Mr. Hume to engage people to kill Mr. Barton?

A. Certainly not.

Q. Did you employ Mr. Hume to take any action at all in respect of Mr. Barton at any time?

A. Certainly not.

Q. By the way, on the subject of your diaries, you told us that you were advised by your senior counsel to destroy your diaries. A. If I didn't want them to be used or my personal information and opinion to be brought out in Court. That is what he stated.

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Q. You have given us various dates when that occurred, haven't you? A. I think I told you that it occurred - they were destroyed prior to December 1967.

Q. Now, at the time that these diaries - at the time that you received that advice to destroy those diaries there was then in existence your 1967 diary, wasn't there? A. I decided to keep one diary and the current year.

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Q. Just answer my question, please. At the time of the receiving of the advice and the destruction of your diaries for earlier years there was then in existence your 1967 diary? A. It was being written at that time, because they were destroyed in 1967, yes.

Q. If that advice was given to you towards the end of 1967, the 1967 diary would have been almost full? A. It would have been almost full, yes.

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Q. Well, can you explain to his Honour why you didn't destroy the 1967 diary? A. I am sorry, I tried to mention that beforehand. My policy is

now to keep the current diary and one year behind.

Q. But the purpose of destroying diaries was that they contained information which you did not wish disclosed? A. No, that is not the case at all. Just private information. Nothing to do with this case. It was private information that I didn't wish disclosed - nothing to do with this case.

Q. If you destroyed all diaries except the current one and one year behind it means that your 1966 diary is still in existence? A. No, it is not in existence. I told you I destroyed my 1966 - up to 1966, and I kept the 1967 one. 10

Q. Look, sir, you have just told us the policy was to destroy - to keep only your current diary and one year behind. Isn't that true? A. No. (Objected to; rejected.)

Q. You see, Mr. Armstrong, I put it to you that you never in fact destroyed your diaries? A. That is quite incorrect. Quite incorrect. 20

Q. I put it to you that those were documents that you never would destroy? A. Quite incorrect.

Q. I put it to you that they are still in existence? A. Quite incorrect.

Q. How did you destroy them? How do you say you destroyed them? A. I said I tore them up and placed them over a period of time in the ordinary garbage and got rid of them that way.

Q. A pretty lengthy business, wasn't it? A. Not very, no. About two garbage collections a week. I can't recall. I don't say I put them all in the one garbage collection. They were well torn up and destroyed. 30

Q. Who tore them up? A. I did, personally. I tore them up personally.

Q. Over how long did it take you? A. I can't recall exactly, Mr. Gruzman. I would say they were all destroyed certainly prior - by December 1967. I think before. I think in the October-December period. 40

Q. Between October and December you destroyed them? A. Yes. I can assure you they were all destroyed before I had any inkling of these proceedings.

Q. That is what you say? A. Yes.

Q. It took you what? October-December. That is two months. It took you two to three months to destroy them? A. I would not say it took me two or three months. They were destroyed from time to time during that period. 50

Q. Which one did you start on? A. I think I started on the earliest one.

Q. And worked up? A. I can't recall which one I started on.

Q. So that it would have been probably December when you destroyed the last of them? A. It would be only speculation, Mr. Gruzman.

Q. That is, in December 1967 you would have destroyed your 1966 diary? (Objected to.) 10

Q. Did you in December 1967 destroy your 1966 diary? A. I would not be clear. It could have been the period - I said in the period October-December. I think it was mostly in the October, in that period after I returned home, and I think I may have consulted Mr. Staff again on that matter.

Q. When do you say you may have consulted Mr. Staff on this matter? A. I am not clear on this.

HIS HONOUR: Mr. Gruzman, you may not have heard what Mr. Armstrong said. He said "I think I may have consulted Mr. Staff again...". 20

MR. GRUZMAN: Q. When did you think you may have consulted Mr. Staff the second time on this?

A. I think it was after I returned home.

Q. After you returned home from overseas?

A. I would think it may have been some time in September. I am not sure of that.

Q. You think it was as a result of that second conference that you actually destroyed the documents? 30

A. Yes. Both conferences. I did not destroy them - the thing that first brought them to my notice was when they were called for in the subpoena in, I think, those proceedings before his Honour in March-April 1967, but they were never called for at that time.

Q. Mr. Staff, you say, advised you on two occasions to destroy the diaries? (Objected to; rejected.)

Q. Did Mr. Staff advise you to destroy the diaries on the first occasion? A. No. He said he did not think there was anything wrong with the diaries at all. 40

Q. I am only asking you one question. Did Mr. Staff that first time when you saw him on this subject matter advise you to destroy the diaries?

A. No. He told me the consequences of keeping them.

Q. Told you the consequences of keeping them?

A. Yes. 50

Q. But you still kept them? A. Before I went overseas, yes.

Q. And then you say you saw Mr. Staff again later in the year? A. Yes.

Q. Can you fix the date when you say you saw Mr. Staff about your diaries on the second occasion?

A. No, I could not fix it clearly, Mr. Gruzman.

Q. Well, you say the first occasion this matter was brought to your attention was by a subpoena? 10

A. Yes, that is right.

Q. And you then consulted your leading counsel about the matter? A. Yes.

Q. What brought this subject matter to your attention on the second occasion? A. I don't know particularly what caused it in that case.

Q. I put it to you that what brought it to your attention was the commencement of these proceedings? A. No, that is not correct. They were destroyed before the commencement of these proceedings. I am quite definite about that. 20

Q. You see, it is consistent with what you have told us that your 1966 diary was not destroyed until December 1967, isn't it? A. Really, Mr. Gruzman, I didn't say when I destroyed the 1966 diary. I don't know. I don't know whether I destroyed my 1966 diary first, or my 1962, or my 1964. All I know is that they were destroyed. I did not keep a list of any particular order in which they were destroyed. 30

Q. But the possibility is, on what you have told us here, that your 1966 diary was destroyed in December 1967? A. I did not say anything about what the possibility was. It could have happened; it could not have happened.

Q. It could have happened; it could not have happened? A. Yes.

Q. And these proceedings commenced, I think, on 15th January. 18th January. The proceedings here commenced I think on 9th January. A. If you say so that is probably correct. 40

Q. So that in other words it is possible that this 1966 diary was in existence up till a couple of weeks before the commencement of these proceedings? A. I don't think it is likely. I believe they were all destroyed well prior to Christmas 1967.

Q. What you tell us is that nothing prompted you to obtain advice which led to the destruction of the diaries? A. No. Until I talked to Mr. Staff - I recollected some time about October, but I am not clear on that. 50

Q. But nothing prompted that? A. No.

Q. I put it to you, Mr. Armstrong, that you destroyed these diaries after these proceedings started. A. Quite incorrect.

Q. I put it to you that you destroyed those diaries, particularly the 1966 diary, because they contained evidence incriminating you in these proceedings. A. Not at all.

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Q. And I put it to you also, Mr. Armstrong, that you then destroyed your 1967 diary. A. I certainly didn't.

MR. GRUZMAN: I would seek access to the diary which is in Court. Full access.

(Access to diary was objected to by Mr. Staff and his Honour made the diary available to Mr. Staff and/or his juniors in order that such portions in the diary as were regarded as admissible or objectionable could be indicated, when his Honour would rule on whether access should be granted to Mr. Gruzman.)

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HIS HONOUR: Q. Mr. Armstrong, is there something you want to say about the diary? A. I was hoping to get away after lunch, and I would not mind if the juniors had a look at it, if it was convenient to your Honour to expedite proceedings.

HIS HONOUR: I think I should leave it in Mr. Staff's hands.

MR. GRUZMAN: Q. I just want to ask you a couple of matters on Mr. Hume's electioneering. Is Tony Pfiffer the president of the Eden-Monaro electoral conference for the Liberal Party? A. I would not know who it is now. The name is familiar to me. I think he could have been at that time. I don't know who it is now.

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Q. Would you agree with me that he has never heard of Mr. Hume conducting any activities in this area? A. I think probably he may not have. I have told you before - I said it yesterday - that the Country Party people were the ones that mainly saw Mr. Hume. I would not say that the Liberal Party president would have known about Mr. Hume.

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Q. Peter Doyle is the campaign director for the Eden-Monaro area, isn't he? A. Again I corrected myself yesterday. I said that the Country Party officials - I said that I should have said "Country Party officials" rather than "Liberal Party officials".

Q. Do you agree Peter Doyle knows nothing about it? Knows nothing about Mr. Hume's activities?
A. I would not know what he knows.

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Q. And Mr. Dougall Munro is the Federal member for that area, isn't he? A. Yes.

Q. Would you agree with me that he knows nothing about any electioneering activities of Mr. Hume?

A. I would not really know whether he did, or not.

Q. Where did you say the headquarters were?

A. The Country Party headquarters at the time were in Auburn Street, Goulburn. I don't know whether you know - do you know - 10

Q. It is all right. I don't need details. The Liberal Party headquarters were not in Goulburn at all, were they? A. I think they would have been in Queanbeyan. I am not really clear on that. I think that they would have been.

MR. GRUZMAN: I don't propose to take Mr. Armstrong through all of his evidence for the purpose of obtaining denials. I am content to rely on the trend of the evidence rather than specific denials. There are a couple of matters I propose to ask Mr. Armstrong about. 20

Q. I would like to ask you about a specific allegation made by Mr. Bovill in his evidence at 761 - I am sorry, which you denied at 761. I do not propose to take you through the whole of the matter, but approximately half way down - two-thirds of the way down - after some conversation did you say to Mr. Bovill "I don't like the way you have been prying into my expenses". A. I don't recollect this at all. 30

Q. You would not deny that occurred, would you? A. No, I don't think I said anything about prying into my expenses. I don't think Mr. Bovill had been prying into my expenses very much.

Q. Had he had a discussion with you about it? A. I don't recall this discussion. I would like the whole thing in, if I can have it, to assist me in giving a correct answer. There are two conversations with Mr. Bovill that took place at different times. Which one is this one? 40

Q. This is the one about whether you should have had a trip abroad for yourself and your wife, paid for by the company. Do you remember that conversation? A. I never had a conversation with Bovill about my trip abroad.

Q. Never? A. No, not at any time. Mr. Barton and I discussed it, and Mr. Barton told me that the other two directors were not in favour of it, and he said "We had better let the matter drop", which we did. 50

Q. You say there was never any discussion with your co-director, Mr. Bovill, about a trip abroad for yourself and your wife? A. No, not between Mr. Bovill and I.

Q. Was there ever any discussion about expenses which you had charged up to the company with Mr. Bovill? A. Not that I can recall in any unpleasant way.

Q. Well, in any way? A. I can't recall. Mr. Bovill at a board meeting might have said something about me having too much expense, or something to that effect, but I can't recall any specific conversation where I accused him of prying into my expenses. He may have made some remark about expenses at some time or another. 10

Q. Would you regard it as proper that a director should criticise the expenses of the chairman? A. Yes. I think he has got a perfect right to criticise, if he wants to.

Q. Well, what did you say to him when he raised the subject? A. I could not recall in essence. I think I probably - this is very much a complete paraphrase of what could have been said - much the same as I said in this Court: "I don't apologise for any expenses I have drawn in the company. I think what I did was well worth anything I got from the company, considering the amount of time and effort I put into it". 20

Q. What did Mr. Bovill say to that? A. I don't recall what he said to that. This is just paraphrase. I would say that any conversation about expenses might have occurred at a board meeting. I can't recall exactly when. 30

Q. Would not you have regarded it as prying on the part of Mr. Bovill to have found out that you had charged something to the company? A. No, I think that he had a perfect right to see what was charged to the company. There was no question of prying. I would like to make it quite clear that there was never any concealment of my expenses. They were readily available. All he had to do was to inquire. Any director or anyone who wished to inquire could ask the secretary. 40

Q. It would mean that the director would have to go behind your back to the secretary of the company and say "What expenses has Mr. Armstrong charged up?" wouldn't it? A. Yes. I think he would be quite justified in doing that, especially in the climate that could have been prevailing at that time, when he considered I may not have been acting as he thought (sic). I was quite in accord with him going and looking at anything he liked to - any director. 50

Q. Prying would be a fair description of that? A. No, I don't think prying would be a fair description. He was perfectly justified in doing that if he wanted to know my expenses, or Mr. Barton's. Mr. Barton and I were the main ones who drew expenses. Mr. Cotter and Mr. Bovill did not draw much in the way of expenses.

Q. I put it to you that you regarded that as prying? A. No, I did not take a serious view of him inquiring into my expenses at all.

Q. Mr. Bovill said to you "I don't like having shareholders' pockets picked behind their back, and I don't consider that your expenses were justified that I have discovered". A. I don't recall Mr. Bovill making a remark like that at all.

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Q. But you would not deny it? A. I think I would have remembered pretty clearly if he had accused me of picking pockets. I don't think Mr. Bovill would have made that remark.

Q. You are not prepared to swear on your oath that it was not said? A. I don't recall completely, but I don't think he said that to me.

Q. You are not prepared to say on your oath those words were not said? A. No. I don't recall them being said. I don't say they were not said. I don't think they were said.

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Q. I put it to you that, that remark having been made, you said "If you make a remark like that I will bloody well fix you", and advanced towards him - that you advanced towards Mr. Bovill. A. Well, I say that is absolute fabrication, and I certainly never made that remark to Mr. Bovill or advanced towards him. Mr. Bovill is quite a large gentleman, and I would not like to enter into fisticuffs with Mr. Bovill.

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Q. When you are in a rage you don't know what you are doing? A. I don't think I get into a rage very often. Very seldom.

Q. You say that that is untrue, and that you never made a physical advance towards Mr. Bovill?
A. No, I never threatened him in any shape or form.

Q. You say you never made a physical advance towards Mr. Bovill? A. Definitely not, Mr. Gruzman.

Q. I am referring now to p.762 of the transcript. You remember the incident of the security men?

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A. This is the incident we considered, we think, on 30th November. Would that be correct?

Q. Security men were present, and you objected to their presence? A. There was only one.

Q. One? A. Yes, there was only one.

Q. You objected to his presence? A. I didn't object to his presence, except the fact that he resolutely refused to identify himself and indicate what his business was in that office.

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Q. Did you on that occasion rush into the board room and say "You stink; you stink. I will fix

you."? A. Certainly not. I have never used the words "You stink; you stink", regarding Mr. Barton or anyone else.

Q. Or the words "I will fix you"? A. No, certainly not.

Q. You deny that they were said, or anything like that? You deny that that was said?

A. Certainly I deny it.

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Q. Well then, you were pretty angry about the incident, weren't you? A. No. I was angry about the fact that no one in the place would tell me, including the secretary, who this man was. I had no objection to the man being there, if someone would have told me who he was. I didn't like an unauthorised person who refused to identify himself being on the company's premises. That was all.

Q. You brought the police, didn't you? A. No, I phoned the police and asked them to come down.

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Q. And then you produced your gold pass to show the police who you were? A. I identified myself to the police with my gold pass. That was all.

Q. What was the necessity of showing the gold pass to the police, in your mind? A. I think if you are a Member of Parliament it is as well to identify yourself, especially if you ask someone to come down in this situation.

Q. This was to show your authority and power, wasn't it? A. I have never considered that the holder of a gold pass has any authority or power over the Police Force.

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Q. But you saw fit to produce your gold pass to the policemen so that they would do what you wanted, didn't you? A. No, I didn't. I just identified myself to them as to who was calling them. I could have been anyone calling them. If they had come down there and found someone who would not identify themselves they would wonder why I rang them, for example.

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Q. You could have been just an ordinary citizen? A. I think they would have come just the same.

Q. But you did not feel that as an ordinary citizen you would have got the same action that you wanted? You did not feel as an ordinary citizen you would get the action that you wanted? A. I believe I would have got exactly the same action in the same case. Mr. Coleman actually resolved that.

Q. All in all it was an unpleasant incident, wasn't it? A. I didn't think so. Not particularly. It was an annoying incident. I thought it was a stupid incident, that no one would tell me what the man was doing. That was all I asked.

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The secretary would not tell me, Mr. Barton would not tell me and the directors would not tell me. Mr. Barton eventually told me after some persuasion.

Q. I put it to you that all that occurred that morning, with bodyguards, police, gold passes and so on, all in all constituted an unpleasant incident, didn't it? A. I would not say it was an incident one would want to repeat very often at board meetings. I will go along with you there. 10

Q. You won't go so far as to say it was unpleasant? A. You could call it unpleasant if you like. I didn't like it at all. I didn't like an incident of a security man being there unexplained. I didn't know he was a security man. I did not know who he was. He would not tell me anything. He would not tell me who he was - quite correctly, apparently, from his instructions. 20

Q. And the incident, you would agree, would be unfortunate from the point of view of the company? A. I could not say that. It was entirely known only to the board members and Mr. Coleman and I think perhaps one other outside person there. It certainly didn't get into the papers to my knowledge.

Q. To have such an incident occurring between directors of a company - of a public company - would be unfortunate for the company, wouldn't it? A. I can only answer your question this way: at or about that time in my view there were many unfortunate incidents occurring in the company. That was just one of them. 30

Q. Did you think it would be appropriate for one of the directors to try and smooth over the situation at that time? A. That is another question which I don't agree with you about.

Q. What don't you agree with me about? A. The fact of the smoothing over at that time. 40

Q. You say there was no attempt to smooth over? A. Not at that time.

Q. Won't you agree that Mr. Bovill saw you and said "Let us see what we can do to patch up this breach."? A. No not at that time.

Q. Nothing like that was said? A. Not at that time.

Q. At any time? A. The last time Mr. Bovill made some effort to patch up the dispute was early in November when Mr. Barton, Mr. Bovill and I had a long discussion one afternoon and, as I recall - I don't know what his exact words were - he did say we should get together. That was the time at which I offered to buy Mr. Barton's shares in front of Mr. Bovill. It was after that - and I can fix this very clearly in my mind - after Mr. 50

Barton first of all said that he would buy my shares - that he would sell -

Q. Look, I don't want that. I didn't ask you that. A. That is the only time I can remember Mr. Bovill at any time trying to patch the matter up.

Q. You understand that I have not asked you any questions about your selling shares or him selling shares or anything like that, have I? I have asked you did you have a conversation with Mr. Bovill about patching up the breach? A. The only one I can recall would be very early in November. I would say the 4th or 5th November. Some time at that conference - in that period. That is how I am fixing it in my mind. That is the only reason why I have been saying that. 10

Q. Are you prepared to deny that on or about 30th November, and in connection with the bodyguard incident, Mr. Bovill made an attempt to smooth over the problems between you and Mr. Barton? A. Yes, I would say there was no attempt at that time that I can recall. I categorically deny it. I would go further. 20

Q. You categorically deny it? A. Yes.

Q. You deny that he said to you that you should not regard the bodyguard as an insult aimed at you by the board? A. He did not say that at all.

Q. You say he did not say that? A. He did not say that at all. 30

Q. Or anything like that? A. No.

Q. At any time? A. No, not at any time.

Q. Of course that day you were very angry, weren't you? A. I think we had rather a heated board meeting that day. That is all I can recollect.

Q. And you regarded Mr. Barton as a crook, didn't you? A. I would not say I regarded him as a crook at that time.

Q. Didn't you turn on Mr. Bovill and say "Why do you keep on supporting that crook against me all the time?" A. I did not make the remark - after that board meeting there was no discussion. I certainly avoided having discussion with any of the directors unless there were two or three people present at that time. 40

Q. Look, sir, didn't you say, "I can have that bodyguard removed if I want to. I could have you arrested in Pitt Street"? A. Certainly not. That is utter rot, if you don't mind me saying so. 50

Q. You have felt for years that you can have an innocent citizen arrested? A. I have never felt that.

Q. By bribery and corruption you can achieve that? A. Again I regard that as offensive and I answer "No".

Q. And I put it to you that Mr. Bovill asked you "On what charge, Alec?" and that you pulled out your gold pass and said "This represents the government. I would only have to say to the policeman that you threatened and molested me and he would arrest you". A. Again I must use the words "completely incorrect". I was going to say "utter rot". It is completely incorrect. 10

Q. It was your belief, wasn't it, that if you showed your gold pass to a policeman and said "This man has threatened and molested me" that the policeman would arrest him? A. Certainly not.

Q. Well, why not? A. Policemen don't arrest people just because you tell them to arrest them.

Q. If a man threatened you and molested you would not a policeman be obliged to assist you? A. I think if any citizen was threatened or molested the policeman would take such steps as he thought were necessary. He would do the same if you had a gold pass or not. It would not make any difference. 20

Q. So that it was your belief if you said to a policeman that Mr. Bovill had threatened and molested you the policeman would arrest him? A. I would not think that at all. For one thing, Mr. Bovill would not threaten or molest me, so the question would not arise, and it would not be my belief in the context said in any shape or form. 30

Q. You have already told us, haven't you, that if you told the policeman that Mr. Bovill threatened or molested you he would be duty-bound to arrest him, didn't you? A. I did not say that at all.

Q. Isn't that your belief? A. No, he would not be duty-bound. He would only be duty-bound if the policeman believed the circumstances justified an arrest. 40

Q. And if you showed your gold pass you would expect the policeman to take your word, wouldn't you? A. I would not say that. Depending on the circumstances.

Q. Did Mr. Bovill say to you "I don't believe you can do that without some evidence"? Do you remember that? A. No, he didn't say that, either.

Q. You see, you are able by bribery and corruption to have evidence manufactured or destroyed by the police, aren't you? A. I completely and utterly reject that question. I completely tell you again that I find that most offensive and untrue. 50

Q. You have done it, haven't you? You have had

evidence destroyed? A. I have never had evidence destroyed by the police.

Q. On this occasion - and this, of course, is going back to November 1967 (sic) before this case ever started, did you say to Mr. Bovill -

HIS HONOUR: 1966.

MR. GRUZMAN: Q. In November 1966 did you say this to Mr. Bovill "They would look after the evidence at the police station"? A. Certainly not. I never made this remark to Mr. Bovill at all. I cannot understand Mr. Bovill repeating that - even formulating that. 10

Q. Did he say "What on earth do you mean by that"? A. He did not. That conversation never occurred.

Q. Did you say "They beat people up and get confessions"? A. I didn't.

Q. Did he say "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"? Did he say that? A. No, he never said anything to that effect at all. 20

Q. Did you wave your gold pass again, and say "With this, and with enough money I can get the police to do anything; alter or destroy evidence, or do anything I want"? Did you say that? A. Certainly not. 30

Q. It is your belief? A. It is certainly not my belief.

Q. All of your life you have bribed policemen? A. I have not all my life.

Q. From petty charges - from speeding charges to major matters, haven't you? A. Certainly not.

Q. Did Mr. Bovill say "Look, Alec, this is not Chicago"? And did you say - did he say "you could not do these things with the Police Force in Australia"? A. This conversation, I tell you, did not occur. 40

Q. And did you say "Not Chicago. This city has reached 2,000,000 people, and organised crime moves in. You can have someone killed for £1,000"? A. I did not say any of that matter.

Q. "Or \$2,000"? A. Not for any sum. This conversation did not occur.

Q. It is your belief, isn't it, that in the City of Sydney you can contract to have a man killed for £1,000? A. Certainly not. I would not know anything about it. 50

- Q. Look, sir, Hume would know about it wouldn't he? A. No, I don't think he would know about it, either.
- Q. You are sure of that? A. I am sure he would not.
- Q. This has been the subject matter of discussion between you and Hume? A. No, certainly not.
- Q. It was the subject matter of an arrangement between you, wasn't it? A. Certainly not. 10
- Q. Did Mr. Bovill say "Alec, I don't believe Sydney has come to this state", and did you say "There is going to be gang war break out soon. Reilly and another man are going to end up by 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"? A. None of that conversation.
- Q. Look, sir, you have for years associated with people who are associates of the underworld, haven't you? A. I find that completely offensive and untrue. 20
- Q. You are familiar with the ideas of criminals in Sydney, aren't you? A. I am not.
- Q. Did Mr. Bovill say to you "I don't spend much time in Kings Cross"? A. No.
- Q. Did you say "I would not let my children go to Kings Cross, either"? A. No, I did not say that either. 30
- Q. Did he say "I never let my children go to Kings Cross. They very rarely go through the place", and did you say "They could get hooked on drugs"? A. No, certainly not. I am sure Mr. Bovill's children would certainly never get hooked on drugs to my knowledge of them.
- Q. Did you mean to imply that you could get them hooked on drugs? A. I find this most offensive and quite ridiculous, Mr. Gruzman, both to the children of Mr. Bovill and myself. 40
- Q. Mr. Bovill said that you said this? A. I say that I did not say that.
- Q. Are you suggesting Mr. Bovill has made all this up? A. It appears to me to be very much like that. It does not even sound like language I would use.
- Q. You say it is a complete fabrication? A. The whole of that concoction is a complete fabrication.
- Q. Look, sir, did he say to you "What do you mean by that?" and did you say "Well, they go to The Villa, don't they"? Do you remember that? A. No, I don't remember that at all. 50

Q. You know The Villa don't you? A. I did not know The Villa at that time at all.

Q. You know it now? A. I can tell you how I can fix The Villa, if you want me to.

Q. Yes. Go ahead. A. Towards the end of the year - some time just before the end of the year, the first time I had ever heard of The Villa was when Mr. and Mrs. Cedric Symonds and myself and my wife went with Frederick Hume for a look around the Cross and went to The Villa. That is the only time I have ever been there and have seen it. 10

Q. When was that? A. Towards the end of the year. Mr. Symonds sometimes played tennis with me, and Hume played tennis with us, and that was at the end of 1966, long after this conversation occurred.

Q. The end of 1966? A. Yes.

Q. Is The Villa a place in which you believe drugs are sold? A. I don't know anything about it. I would not think so. We just looked around the Cross that night. 20

Q. Look, sir, is it your belief that The Villa is a place where drugs are sold? A. No, not to my knowledge. I don't know anything about drugs - where they are sold.

Q. But you do know about drugs, don't you?
A. I don't know anything about where drugs are sold.

Q. But isn't it part of your voluntary work to know where drugs are sold? A. I am not policing drugs. I cannot police drugs. 30

Q. Are not you a member of some organisation associated with the drug traffic?

HIS HONOUR: Mr. Gruzman, if I understand you to be putting it in regard to this Community Welfare organisation, I think you ought to make it clear in your question.

MR. GRUZMAN: Q. Are not you a member of the Society for the Prevention of Alcoholism and Drug Dependence? A. I am, yes. 40

Q. And haven't you discussed the drug traffic?
A. In a general way, at meetings of the society. But certainly the society does not lay claims to be a police force to know where drugs are sold.

Q. All I am putting to you is that you have in fact got some knowledge of the drug traffic in Sydney, haven't you? A. Well, I don't know what you call "some knowledge". I know that it is alleged that people take drugs, and they are treated at a hospital conducted by this association. 50

Q. Look, as a legislator you make it your business to know something about these matters, don't you? A. What you see in the paper, and what you hear. I don't know anything about where drugs are sold. I certainly don't know.

Q. I put it to you that you regarded it - I am not saying whether accurately, or not, but I am putting it to you that in your opinion The Villa was a place where drugs were freely obtainable? 10

A. I don't think so. I have no knowledge of it.

Q. And when you made the remark "Well, they go to The Villa, don't they", and Mr. Bovill said "I don't recall them ever having been there", -

A. That did not occur.

Q. I put it to you that you made that remark to Mr. Bovill, and he said "I don't recall them ever having been there", and did you then say "Well, you can take it from me this city has got like that". 20

A. No, none of that was ever said by either Mr. Bovill or me.

Q. Did he say to you "Well, how do you come to know so much about this, Alec?" and did you say "I make it my business to know it"? A. No, I didn't.

Q. Did you say - I am sorry, did he say "Well, you are in the government. It is your duty as a public man to expose this and to bring some action to bear"? A. No, he did not say that.

Q. And did you say "What, and get shot"? A. No, I didn't mention that, either. 30

Q. You see, I put it to you that your knowledge of the underworld is such that you would expect that if you made disclosures about drug traffic you would get shot. A. Quite untrue and ridiculous.

Q. And then did Mr. Bovill say "I still think it is your duty to do something about it"? A. No.

Q. And did you say then "That guard is terrified now. You can see by the look of his face"?

A. No. The guard was not terrified, and I did not say that. 40

Q. And I put it to you that during this conversation you were irrational, waving your gold pass, white in the face, and in a temper? A. No, I would not say that. I was not irrational. I don't know what my face was like - I did not have a mirror at that stage.

Q. What you say is that the whole of that evidence of Mr. Bovill's is a complete and utter fabrication? (Objected to; rejected.) 50

Q. Anyway, you say nothing like that took place?

A. Very definitely.

Q. No conversation took place with Mr. Bovill at about that time in which the things which I have mentioned were said? A. That is right.

Q. In other words, there is simply no truth in it whatsoever? A. As that page is written there is no truth in it whatsoever.

Q. I don't know what you mean by that. I would like to clarify that. When you say "as that page is written", is there any truth in any of the matters which I have read to you as related by Mr. Bovill in that conversation? A. None whatsoever. 10

(A.E. Armstrong Pty. Limited called on subpoena duces tecum by Mr. Gruzman. Mr. Bainton answered the subpoena and stated that the documents called for in the subpoena were at Court yesterday; some of them were here today, and the others could be obtained within a short period.) 20

(George Armstrong & Son Pty. Limited called on subpoena duces tecum by Mr. Gruzman. Mr. Bainton answered the subpoena and advised that, as in the case of the subpoena addressed to A.E. Armstrong Pty. Limited, the documents covered by the subpoena were at Court yesterday; some of them were currently in Court and the others could be obtained within a short period.)

MR. GRUZMAN: Q. Mr. Armstrong, in the course of the cross-examination of Mr. Barton do you remember it was suggested to him by Mr. Staff in a lengthy aspect of his cross-examination that you were removed from the chair because of the Hoggett matter, and that your removal from the chair was conceived after your return from overseas: (Objected to; question withdrawn.) 30

Q. Mr. Armstrong, do you suggest that you were removed as chairman of the board because you complained about the Hoggett matter after your return from overseas? A. I don't know why I was removed as chairman. I have not the faintest idea. 40

Q. Do you suggest that your removal from the board arose - your removal from the chair was occasioned by your complaints about the Hoggett matter? (Objected to; rejected.)

Q. Do you say that your removal from the board was occasioned by your complaints about the Hoggett matter? (Objected to; rejected.)

Q. Why do you say you were removed from the board? A. I really don't know. Many factors. I just don't know. I can't understand why they removed me from the chair before they had available other sources of finance. I could not understand why they removed me. 50

Q. You don't think it was because you complained about the Hoggett matter? A. I told you I don't know why they removed me. I have no idea. I thought it was most unwise to remove me, from the company's point of view.

Q. When do you think the decision was taken to remove you from the chair? A. I also don't know. I was not at all close to any of the directors at that time. 10

Q. Have you ever thought that the decision to remove you from the chair was not taken until you complained about the Hoggett matter on your return from overseas? A. Could I get that a little more clearly? Will you state exactly what you mean there? I am not quite with you on that one. I told you I don't know why I was removed from the chair.

Q. I want to ask you have you ever thought that the decision to remove you from the chair was brought about by your complaints about the Hoggett matter made after you returned from overseas in 1966? A. I don't think I can answer that, because I have already told you I don't know why I was removed from the chair, so I can't connect it with any particular matter. 20

Q. Is this the position, that you believed that it had been decided by the board to remove you from the chair whilst you were overseas? A. No. I don't know when they decided. 30

Q. Have you never had that belief? A. I don't know when they decided to remove me from the chair. I certainly don't know when they decided. I can't feel at any time that I knew when they decided to remove me from the chair. I think it was a process that probably grew in their minds, and I don't think they decided it at any particular time.

Q. Do you say that the plan to remove you from the board was conceived whilst you were overseas, or after your return? A. I don't know. 40

Q. Have you ever believed that the plan was conceived whilst you were overseas? A. I don't know. It could have been conceived while I was overseas. It did not take effect until, I think, November the 17th. I don't know when they conceived the idea of removing me from the chair.

Q. That statement that you don't know when the plan was conceived - is that true? A. It is quite true. I don't know when they decided to remove me from the chair. I don't know the workings of their particular minds. I know that they removed me from the chair. I don't know all the planning steps that led up to that. They would not have naturally told me, I would imagine. 50

Q. That is not a true statement. That is not

true as a statement of your belief, is it? A. I don't know what you mean.

Q. (Approaching witness) I just want you to have a look at this document generally, and identify it as a photostat copy of a circular sent out by you to shareholders, dated 23rd November 1966.

A. That would be before the annual meeting, yes.

Q. Did you say to the shareholders in that document, in para. 3, "It appears, however, that while I was overseas on business between September 1st and October 15th - during which period the managing director, Mr. A. Barton, acted as chairman - he and the other two directors conceived a plan to oust me from the chairmanship of the board"? A. Yes, I wrote that. I don't know when they conceived it. I used the word "appears". I said that it appears that they did - I don't know they did. 10

Q. Was that your belief, at the time you wrote this letter to the shareholders? A. I said it appeared to me that they had. I didn't know. They could have; they could not have. They could have changed their minds at any time until they finally did it. 20

Q. Did you write this in a letter to shareholders, not believing one way or another whether it was true or false? A. No. The word I used - the operative word was "It appeared to me".

Q. What I am asking you is, did it in fact appear to you, as you have there indicated? A. After looking in hindsight, after I was removed I thought the plan could not have happened just on the last week before I came out, but I did not know when it was conceived. I think my correct interpretation of the plan is that it may have been conceived while I was away. I don't know, for example, that Mr. Cotter was terribly anxious to remove me from the chair, but he voted for it. 30

Q. I am only asking you whether you wrote truthfully to the shareholders on 23rd November, and I considered that was a truthful statement of what appeared to me. I didn't say I knew when they conceived the plan. 40

Q. Did you tell his Honour yesterday - before I come to that, you might just tell us what was your opinion of Mr. Armstrong's administration at that time of the company? A. At which time?

Q. This is during November. A. Well, it is very hard to say what my opinion was of his administration during November, because I was not receiving any information. But I think I can safely say that he was engaged in an extensive proxy fight, and I don't think he had a great deal of time left to do much else in November. In November he was engaged in an extensive proxy fight, and did not have much time left for anything else. 50

Q. Would you regard Mr. Barton as a capable and able administrator of the company? A. I would say up until about the time I left for overseas, or perhaps I was beginning to have some doubts some time before that. But let me pinpoint. Let us say I started to have some doubts about Mr. Barton some time around the July period, when our liquidity became extremely tight.

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Q. These were doubts about Mr. Barton's capability of properly running the company? A. Of keeping the company afloat. Not afloat - keeping the company running properly. I think he needed an extra man, as he tried to get one.

Q. The word that slipped out there was the word "keep the company afloat". A. No, it did not slip out.

Q. You intended it? A. No. I meant keep the company's liquidity on a proper basis.

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Q. That is another way of saying keeping the company afloat, isn't it? A. I thought he was having - he was getting himself liquidity problems. That was one of the reasons I was against paying a dividend.

Q. Because you felt the company was likely to fail, didn't you? A. No, I did not feel the company was likely to fail. Why would I make the offer for the shares if I thought the company was likely to fail in November?

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Q. On certain conditions, weren't they? A. On quite reasonable conditions.

Q. You said yesterday, at p.1004, "I always regarded Mr. Barton as a very capable managing director, up till very late in the piece". A. "Very late in the piece" to me would be about the July period, 1966.

Q. July was very late? A. It was getting pretty late in the piece then.

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Q. Three-quarters of the way through the company's life? A. The company had been going for 32 years.

Q. Look, in November 1966 was it your opinion that you had been given misleading information in connection with the company's accounts? A. Yes, I think I would say that the information was misleading at that time.

Q. And was it your opinion that the management of the company was inefficient? A. Yes, by that time that was my opinion.

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Q. Was it your opinion that the Paradise Waters project was well behind schedule? A. It was at that time, yes.

Q. That was the company's largest project, wasn't it? A. Yes.

Q. And was it your opinion that the management of that project had been inefficient and wasteful?

A. I think towards the latter part when Mr. Barton was very much engaged on this proxy fight he didn't have as much time to devote to that management, and if my memory serves me right I think Mr. Barton was considering getting a new supervisor for the project. 10

Q. Was it your opinion that the management of the Paradise Waters project was well behind schedule and had been inefficient and wasteful? A. At that time I would say it had been inefficient. I would not say completely wasteful. This was a letter written to give a broad picture. I think it is pretty correct, though - that statement.

Q. You were telling the truth, were you? 20
A. Yes.

Q. So that it is true to say that your opinion was as at November 1966 that the management of the Paradise Waters project had been inefficient and wasteful? A. Yes, that would be correct.

Q. And did you also have the view that the dismissal of the original contractor would certainly result in expensive litigation? A. I think that was the fact. I think we won the litigation, if I recall correctly. 30

Q. Was it your view that unless something was done quickly the company was not likely to make the profits from this project that Mr. Barton forecast?
A. Yes, I thought remedial action needed to be taken at that time.

Q. Was it your view that a change of management was necessary for the welfare of the company?
A. I felt either a change of management - naturally the letter was written to influence shareholders - or, if the shareholders did not think a change of management was necessary, it was better for me to get out. 40

Q. Do you remember telling us yesterday that on 14th November you knew that you were going to be dismissed as chairman? A. I think I did say I believed or knew I was going to be dismissed as chairman.

Q. Did you say this in the letter to the shareholders: "Small wonder that on November 17th, at a board meeting called at short notice by Messrs. Barton, Bovill and Cotter, these three directors arbitrarily and without the usual notice, voted me out of the chair"? A. Did I say that in this circular? 50

Q. Yes. A. I suppose I did, yes.

Q. You had had notice, hadn't you? A. I would say that I had been the chairman of the company since 1963, and I would have expected to be asked to vacate the chair - I would not have expected to be asked to vacate the chair without at least three months' notice, if conditions had been normal.

Q. Three months' notice? A. Reasonable notice I would have said, yes. That was my view.

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Q. Do you remember telling us that you were unaware that Mr. Barton was the second largest shareholder in that company? A. I did not know the shareholders at that time clearly at all.

Q. You didn't know who the largest shareholder was? A. I knew I was the largest shareholder. I don't think it would be strictly correct, Mr. Gruzman, to say that Mr. Barton was the second largest shareholder. You would have to say that Mr. Barton's companies were the second largest.

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Q. You knew Mr. Barton was? A. I didn't know.

Q. You knew that? A. There was quite a variation in the shareholding. Mr. Cullen and Mr. Anderson were also very large shareholders.

Q. You knew that your company was the largest shareholder? A. I was sure of that, yes.

Q. Did you threaten the shareholders that unless your nominees were elected you would demand repayment of \$400,000? A. I think it would be correct to say I had already demanded long before that meeting. I am not clear on that. I didn't threaten the shareholders. I think at that time it was the fact I offered not to withdraw it if I offered to re-lend it, rather, if my nominees had been elected to the board.

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Q. In your mind you were threatening the shareholders that unless your nominees were elected to the board and you got control you would wreck the company by demanding repayment of \$400,000? A. No, that is not what I said. I think, if I can refer to documentations, which I have not got at my fingertips, I had demanded that payment before the annual meeting. It had been offered to be paid before the annual meeting, I think.

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Q. Did you indicate to the shareholders to put you back into the company, otherwise you would wreck it? A. That is not the way I put it - that I would not re-lend my money. Because I did not re-lend my money did not mean it could not be borrowed elsewhere.

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Q. You have no doubt read in the press that as a result of your removal as chairman - I put it to you that this is what you wrote "You will no doubt have read in the press that as a result of my removal as chairman, a large sum of money which one

of the Armstrong group of companies advanced on second mortgage at a simple interest rate of 8% to a subsidiary of Landmark has become due and payable. To protect the interests of the Armstrong group of companies I have demanded repayment of \$400,000". All of that is true, isn't it? A. Apparently I had demanded it. I said I had demanded it.

Q. "Mr. Barton has said that the company can re- 10
pay this sum, but he has not said where the money
is to come from or what rate of interest the company
will have to pay on money it borrows for this pur-
pose." A. That is right, yes.

Q. You said that? A. Yes.

Q. Did you say "I have grave fears that this
amount can only be borrowed, if at all, on terms ex-
tremely unfavourable to Landmark shareholders"?
A. Yes.

Q. You said that? A. Yes. 20

Q. That was your belief? A. I considered the
difference between 14% and 8% was extremely unfavour-
able to shareholders.

Q. Your actual words were "I have grave fears
that this amount can only be borrowed, if at all,
on terms extremely unfavourable to Landmark share-
holders"? A. Yes.

Q. You had grave doubts as to whether this money
could be borrowed at all, didn't you? A. I didn't
know. Mr. Barton usually borrowed the money. I 30
usually lent it.

Q. Look, sir, you had grave doubts as to whether
Landmark could borrow from anyone else the money
you were calling up, didn't you? A. No I didn't.
Though it was quite possible I could.

Q. But equally possible it could not? A. Quite
so, yes. I didn't know. I thought they were un-
wise to get rid of their good 8% money. I thought
they were mad, to be perfectly candid.

Q. You know there may be some people who may have 40
more interest in life than money? Did you realise
that? A. I don't think that question is relevant.

Q. They might have thought it better to get rid
of you at any cost, for the good of the company.
A. They may have. I don't know what they thought.

Q. Look, sir, if no money could be borrowed to
replace the \$400,000 the company would be wrecked,
wouldn't it? A. I don't want to speculate on what
would happen then, Mr. Gruzman.

Q. I am asking you as the former chairman of the 50
company, and at that time director, wasn't it your
belief that if \$400,000 had to be repaid to you,

and could not be borrowed elsewhere, that would spell the end of the company? A. If the company's borrowing powers were completely cut off it would certainly spell the end of the company, but I did not think it necessarily would because my money was taken out.

Q. What you told the shareholders was that "money can only be borrowed, if at all, on terms extremely unfavourable to Landmark shareholders". 10

A. What I meant to imply there was - and I think it was made very clear at the annual meeting - what I meant to imply from that was that I was lending it on second mortgage at 8% for a period of about four years. To get other finance it would have required them to pay 12 to 14% on first mortgage, which is a very large difference. I consider it very unfavourable terms.

Q. That is not what you said, of course. 20

A. That was made very clear by me at the annual meeting.

Q. You pointed out the possibility that your money would be irreplaceable, didn't you? A. I don't think I pointed it out in as strong terms as that.

Q. Then you said "If those I am recommending to you for election are added to the board I will, in the interests of shareholders, immediately cancel the demand for repayment of the \$400,000". 30

A. Yes. If we had - if I had some control of the board. I could leave my money there without any control of the board whatsoever.

Q. What you wanted was Mr. Beale, Mr. Grant, Oscar Guth, and Mr. Hoggett? A. I think we withdrew Mr. Guth. I think it actually finished up that it was only Mr. Hoggett and Mr. Beale. Mr. Guth and Mr. Grant withdrew.

Q. What you said was "The four nominees I recommend to you for election are W.S. Beale, chartered engineer; R.I. Grant, solicitor; O.A. Guth, senior university officer, and A.P. Hoggett, real estate developer". A. They were recommended. Subsequently Mr. Grant and Mr. Guth withdrew themselves. 40

Q. What you said to the shareholders was that if they were going to save the company they would have to have these four men on the board. A. They could please themselves what they thought was the best thing to do. This was just a circular letter to shareholders. 50

Q. Just a circular letter to shareholders?

A. You will see very unflattering remarks about me in Mr. Barton's letters to shareholders. This was a reasonable situation - he put one side of the picture, and I put mine.

Q. So far as you are concerned this was another

case where only one thing mattered to you, and that was your own personal interests. A. Not at all. I think it was in the interests of the shareholders to have cheaper money.

Q. But with you in control? A. If they wanted cheaper money I would have to have some measure of control in what was to happen to the company. I could not be in a 3 to 1 position, where I did not know what would happen to the accounts. 10

Q. So that you could pick their pockets?
A. No.

Q. Take extravagant expenses? A. No.

Q. Have boats in Sydney and Brisbane? A. I told you I didn't have any of those things before.

Q. You wanted this public company so that you could milk it, didn't you? A. No. 20

Q. That was what Mr. Bovill particularly was opposed to, wasn't it? A. I don't know what he was opposed to.

Q. And Mr. Barton? A. I don't know what Mr. Barton was opposed to. I know what happened.

Q. You wanted to run your private companies with the company's staff? A. Not particularly. That was not a very big item one way or another. I was quite prepared to take my private companies out of the company when they objected, and I did so. 30

Q. You wanted Landmark Corporation to be a creature designed, constructed and run for your own benefit? A. No.

(Circular dated 23rd November 1966 tendered and admitted as Exhibit "Z")

Q. I want to ask you something about this 8%. Are you suggesting you were generous to the company, taking 8% on second mortgage? A. I think it was a reasonably generous amount, yes. 40

Q. Look, sir, hadn't you sold to Landmark for £590,000 land which you had bought for £150,000? (Objected to; rejected.)

Q. Mr. Armstrong, the Surfer's Paradise land had been originally bought by you or your companies, and after spending some money on the land you had actually spent in all £150,000 on that land, had you not? A. I don't recall the exact figures now, Mr. Gruzman.

Q. That would be approximately right? A. No, I would not recall that clearly. I would have to consult my books. There were some involved tax matters in it. 50

Q. That is approximately right? A. I don't think it is. I don't know.

Q. You are not prepared to deny it? A. I am not prepared to admit it or deny it. I don't know.

Q. And the total amount you sold that same land in the same condition to Landmark Pty. Limited for was £590,000? (Objected to; rejected.)

Q. When you sold - the position is that you bought the land and did certain work on it, didn't you? A. Yes. 10

Q. And you have understood that the suggestion is that £150,000 represented the sum total of the cost price of the land and the cost of doing the work which you did on it? A. That is what you are suggesting. I am not admitting you are right or wrong. I don't know.

Q. What I am suggesting to you is that the land, after you had done that work on it, was sold to Landmark, wasn't it? A. Yes. 20

Q. And I am suggesting to you that the price to Landmark for the land was £590,000. (Objected to; rejected.)

Q. Well then, Mr. Armstrong, the figures I quoted to you in pounds I should have quoted to you in dollars A. I was going to suggest that to you.

Q. You would agree with that? A. I would not agree with it. (Objected to.)

Q. I suggest the cost price of the land and the work was \$150,000. (Objected to.) 30

Q. Will you withdraw the suggestion that you were acting generously toward the company in lending \$400,000 on second mortgage at 8%? A. I thought it was a reasonable loan. I did consider the loan itself was reasonable, or generous - whatever you like to call it. It was lower than could have been got from anyone else.

Q. You understand it is a matter of whether we go into the whole question or whether we do not? 40

A. If that is the case I think I would perhaps, with respect, be prepared to withdraw it if it is to save going into the whole transaction, because it will take us at least the day.

MR. GRUZMAN: I would like now to proceed to the diary.

(Mr. Staff addressed his Honour as to parts of the diary which should be excluded from inspection by Mr. Gruzman. His Honour granted a short adjournment to enable Mr. Staff to confer with Mr. Armstrong on matters contained in the diary.) 50

ON RESUMPTION

HIS HONOUR: What is the position, Mr. Staff?

MR. STAFF: I hand to your Honour a handwritten sheet containing the dates of certain entries.

HIS HONOUR: There are quite clearly matters here that there is not the slightest reason to have disclosed, and as to which I can well understand Mr. Armstrong's reluctance.

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I have looked at every date listed - if you would make a note of these, Mr. Gruzman - the whole diary may be inspected, and I give the following specific rulings on those that have been referred to me. 4th January may be seen. 5th January may be seen. 23rd January may be seen, except that which is marked in between red brackets. Mr. Staff may be able to mask, in some way, the parts enclosed by the red brackets. 24th January may be seen. 26th January may be seen. 31st January, except that within the red brackets, may be seen. I should say regarding the two matters between the red brackets they concern a business transaction that I see no reason to have disclosed. 10th February may be seen. 23rd March may be seen, except that within red brackets. 28th March may be seen, except that within red brackets. 5th April may be seen, except that within red brackets. 7th April may be seen. 10th April may be seen, except that within red brackets. 11th April may be seen, except that within red brackets. 14th April may be seen, except that within red brackets. 17th April may be seen, except that within red brackets. 21st April may be seen, except that within red brackets. 28th April may be seen without restriction. 5th May may be seen without restriction. 31st July may be seen, except that within red brackets. 9th August may be seen without any restriction. 14th August may be seen except that within red brackets. There are two sets of red brackets there. Everything within either set is excluded from inspection. 16th August may be seen except that within red brackets. 28th August may be seen except that within red brackets. 5th September may be seen without any restriction. 7th September may be seen except that within red brackets. 25th September may be seen without any restriction. 29th September may be seen except that within red brackets. 19th October may be seen except that within red brackets. 29th October may be seen except that within red brackets. 30th October may be seen without any restriction. 1st November may be seen without any restriction. 4th November may be seen except that within red brackets. 14th November may be seen except that within red brackets. 28th November may be seen except that within red brackets. 6th December may be seen except that within red brackets. 7th December may be seen except that within red brackets. 14th December may be seen except that within red brackets. 15th December may be seen except that within red brackets. 27th December may be seen except that within red brackets.

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That is a ruling on each of the various pages that I have been referred to. I have excluded matters which seem to me to relate to business transactions or transactions that have no relevance, or which I think I should reasonably protect from disclosure. I have excluded matters of such a personal nature that one would reasonably regard them as quite unnecessary to be seen by anybody other than the author. Some personal matters I have allowed to be seen which one would not mind others seeing. I have also excluded matters that could be embarrassing to other persons. 10

(Luncheon adjournment)

(Mr. Staff produced a red-covered diary.)

HIS HONOUR: The diary will be made available to counsel and solicitor for the plaintiff. It should not be inspected by anybody other than counsel or solicitor or the officer from the solicitor's office who is instructing counsel. It is being made available, Mr. Gruzman, so that you may look at it for the purpose of seeing whether you want to probe any of the matters that have already been the subject of evidence. 20

MR. GRUZMAN: Before I see the diary there is some further matter I would like to ask Mr. Armstrong.

Q. Shortly before the luncheon adjournment you said that your only knowledge of The Villa was that you had been there with a Mr. Symonds, a solicitor. 30
A. And Mr. Hume.

Q. At that stage you saw quite a deal of Mr. Symonds socially? A. We played tennis together quite a lot.

Q. On the night in question you had dinner at Mr. Symonds' home? A. I do not recall. It quite easily could have been. I do not think Mr. Hume had dinner at Mr. Symonds' home, but we may have.

Q. You then suggested that the party go for a round of the lower class nightclubs at the Cross? 40
A. I did not suggest it. It was discussed beforehand.

Q. This was arranged? A. Yes. I think Mr. Hume was to come and pick us up after the dinner. I am pretty well certain Mr. Hume was not at dinner.

Q. When someone expressed some doubt whether these were good places to go to, you said not to worry, Mr. Hume had a gun and would protect you? A. No I did not say that at all.

Q. Mr. Hume did have a gun? A. I do not know. 50

Q. Are you serious about that? A. I could not tell you whether he had a gun with him that night or not. I did not see it.

Q. . He normally carries a gun? A. I do not know what he normally carries. If he is a licensed pistol-holder, I take it he is entitled to carry a gun if he wants to.

Q. You did go to The Villa? A. Yes I believe we did. That is what fixed it in my mind. That is the only time I have been in the place.

Q. The Villa is owned by Abe Saffron. A. I do not know who owns it. 10

Q. That is a lie, is not it? A. No.

Q. You know it is owned by Abe Saffron. A. I do not know. It could be. I do not know.

Q. It is a place which is known as a den of iniquity. A. I would not think so.

Q. When you arrived there you saw Mr. Saffron that night. A. Yes I think we did.

Q. And had drinks with him. A. I think we paid for our drinks. 20

Q. You physically had drinks together. A. As far as I know we met Mr. Saffron. I cannot recall whether we had drinks with him.

Q. Mr. Saffron was well known to your wife, Margaret. (Objected to as irrelevant; rejected.)

Q. After going to The Villa you took a party round to a number of other places at the Cross, did you not? A. I would not say I took them. We went to a number of other places around the Cross. There was no question of taking anyone. Mr. Hume probably said where we were going. There was no secret about it. Everyone was willing to go; anxious to go I would say. 30

Q. I suppose everyone likes to see the vice of Kings Cross? A. I did not see any vice.

Q. I suppose it is evil to those who see evil?
A. I would say so.

Q. You never see any evil? A. I did not see any vice that night at all.

Q. You used to frequently have tennis parties at your home? A. I still do have tennis parties. 40

Q. Up till November 1966 Fred Hume was not a frequent visitor to your home, was he? A. I do not recall. I think he visited there at times. I do not know whether he was frequent or not. I do not know when I first met him, but it was some time in 1966 I think.

Q. From November 1966 for a certain period onwards you never moved anywhere without Mr. Hume, did you? A. That would be quite incorrect. 50

Q. When you were invited out on social occasions over that period you asked that Mr. Hume should accompany you, did not you? A. No.

Q. When you were invited out to Mr. Symonds' home did you ask that Hume should accompany you? A. I think Hume played tennis if I remember once or twice.

Q. On each occasion you went you took Hume?

A. No. I went often to Mr. Symonds without him - 10
much more often than I went with him.

Q. Not over the period November 1966 to February 1967. A. I do not recall Hume playing tennis at Mr. Symonds more than once.

Q. I put it to you on each and every occasion that you saw Mr. Symonds over that period of three months or so you were accompanied by Hume. A. No, that would be quite incorrect.

Q. Over that period were you invited to the home of a man called Mr. Sternberg? A. I do not know 20
whether it was in that period. I often play tennis up there.

Q. Over that period did you ask whether Mr. Hume could accompany you? A. No. I think Mr. Sternberg invited him once.

Q. The fact is in that period when you went to Mr. Sternberg's home you were accompanied by Hume.

A. He went on his own. He was not accompanied by me and I was not accompanied by him. He had his own car and went on invitation. 30

Q. Hume was your bodyguard at that time. A. No. I did not need a bodyguard at that time, or any other time.

Q. I put to you from November 1966 to February 1967 you never went anywhere without Mr. Hume?

A. Quite untrue.

Q. When you went out in the boat you had Hume with you? A. Quite untrue. On many occasions I did not have Hume with me.

Q. Normally you had Hume with you? A. No. There 40
was no question of any bodyguard.

Q. Were you teaching him to water-ski over those holidays? A. I would not say I was teaching him.

Q. He was water-skiing with you? A. On occasions.

Q. On each and every occasion you went out in the boat over that period you took Mr. Hume? A. No.

Q. Did not you sometimes go out with yourself and your wife and your daughter Margaret and Mr. Hume?

A. I do not recall any occasions at that time. 50
There could have been some occasions prior to that. I cannot recall those social occasions now.

Q. With Hume being taken as an escort for your daughter? A. No.

Q. You are not prepared to deny it? A. There was no escort for the daughter.

Q. He made the fourth of a party which included your daughter? A. I do not think there was ever any suggestion of any escort situation.

Q. You were out on other social occasions when there was a Mrs. Marshall, who normally lives overseas? A. I recall Mrs. Marshall. I do not recall Mr. Hume with her. He could have been. 10

Q. On those occasions Hume was taken along as an escort with Mrs. Marshall? A. I believe he may have gone out with her once.

Q. I put to you he went out not on his own but in your company? A. I do not recall. He could have.

Q. From November 1966 to February 1967 you were continuously in the company of Mr. Hume? A. No; quite incorrect. 20

Q. In February 1967 it suddenly stopped? A. No.

Q. From February 1967 onwards you were seldom in the company of Mr. Hume, A. Quite a lot of time in February I was at Shoal Bay and then I went overseas. I would not have been in his company while overseas. That accounts for three months of the year. I certainly saw him in the intervening period.

Q. I put to you to a minor extent? A. I was not seeing as much of him at that time. There is nothing significant in that. 30

Q. Prior to November 1966 it was rare for you to be in the company of Hume? A. No.

Q. You had only known him since when? A. I do not recall exactly when I met him.

Q. When? A. I thought it was early 1966, but I would not like to be held to it.

Q. Up to November 1966 you had not seen him more than half a dozen times? A. I could not recall that either. I would say it would be much more than half a dozen times. I saw him at Surfer's at least on half a dozen occasions. 40

Q. Apart from the Surfer's incident you did not see him more than half a dozen times? A. I would say I did. I cannot give you a detailed description of how and when I saw him.

Q. It has always been your custom to have dinner parties at your home? A. Not very frequently.

- Q. Barbecues at your home? A. Sometimes; not very frequently.
- Q. You have a waterfrontage home? A. Yes.
- Q. With barbecue and such appointments? A. Yes.
- Q. Dinner dances at your home? A. No, very seldom.
- Q. Occasionally? A. Yes. 10
- Q. I put to you up to November 1966 there was not any occasion when Hume was present as a guest at any dinner party or barbecue or such occasion?
A. I cannot recall. I do not know.
- Q. But from November 1966 to February 1967 at every dinner party Hume was present? A. No.
- Q. You are not denying that? A. He certainly was not present at every dinner party. I think he might have been present at one party if I remember rightly. I do not recall. There were very few dinner parties in that period. He certainly was not present every time we entertained in that period. 20
- Q. At every barbecue he was present? A. I do not recall the number of barbecues at which he was present or not present.
- Q. You would not dispute in that period of three months you were frequently in Hume's company?
A. I saw him from time to time. I am not denying it.
- Q. Why? A. He was just playing tennis most of the time and, as you say, water-skiing from time to time. Nothing sinister about it. 30
- Q. He became suddenly your bosom pal? A. No, not my bosom pal. It just happened to be that way, just the same as I took young Symonds out and taught him water-skiing.
- Q. Over that period was there any man you saw more frequently than you saw Fred Hume? A. I could not answer that. I would say there were many.
- Q. Who? A. I would say I saw Mr. Symonds more frequently in that period. 40
- Q. Continuously? A. No. I might see Mr. Symonds every fortnight to play tennis or possibly more often than that.
- Q. Over that period you saw Hume more frequently than you saw any other man? A. No, I would not agree with that.
- Q. Prior to that period you saw him infrequently?
A. I doubt if there is very much difference. I

may have seen him a bit more during that period.
There is nothing significant about it.

Q. Do you still deny that he was acting as your
strong-arm man during that period? A. Very de-
finitely. No suggestion of it.

MR. GRUZMAN: I might be permitted to see the
diary at this stage.

MR. STAFF: Mr. Bennett asked that he be permitted 10
to see it also.

MR. BENNETT: Where in any litigation documents
are shown to counsel at the Bar table, counsel for
any of the parties should have access to those docu-
ments. I do not put it higher than that. Some of
the material may be relevant to my client's posi-
tion.

HIS HONOUR: I am not at this stage prepared to
let you see it, Mr. Bennett.

MR. BAINTON: I produce a subpoena and documents. 20

HIS HONOUR: So far as concerns the cash book and
the minute book of Armstrongs Pty. Limited, the
folios which you have indicated would appear to me
to contain entries referable to the subject matter
that the subpoena no doubt flows from.

MR. BAINTON: On the other hand none of them are
conceivably referable to any issue.

HIS HONOUR: Mr. Purvis, these documents produced
by George Armstrong & Son Pty. Limited -

MR. PURVIS: As to relevancy I refer your Honour 30
to p.923 of the transcript.

HIS HONOUR: I will permit you to inspect in the
minute book folios 98 to 119 inclusive. This is
permission to counsel and solicitor or solicitor's
clerk but not to the plaintiff. The inspection
should be confined to the matters which were the
subject of examination. The same observations re-
late to the payments cash book folios 46 to 51 in-
clusive.

MR. BAINTON: Might we have the benefit of an 40
undertaking that the contents be not passed on?

HIS HONOUR: I take it for granted in limiting the
inspection it would be quite clear that the con-
tents would not go beyond those who are looking at
the documents except insofar as this may be the sub-
ject of a question asked of the witness in the wit-
ness box. Do you seek to have the George Armstrong
& Son records retained in Court?

MR. PURVIS: Might they be for a short time.

(Short adjournment to enable Mr. Gruzman to inspect the diary.)

MR. GRUZMAN: Q. Mr. Armstrong, when did you first consult Mr. Grant about your diaries - I am sorry, when did you first consult Mr. Staff about your diaries? A. I can't recall exactly, Mr. Gruzman. I believe it was before I went overseas in 1967.

Q. Somewhere what? March-April? A. I imagine that. I am not clear on it. I don't know whether it is even in the diary. 10

Q. What I am going to put to you, Mr. Armstrong, is that after seeing Mr. Grant on that first occasion -

HIS HONOUR: Mr. Staff.

MR. GRUZMAN: Q. What I am going to put to you is that after seeing Mr. Staff on that first occasion you made up a new 1967 diary, and destroyed or concealed your existing 1967 diary? A. No, that would be incorrect, Mr. Gruzman. 20

Q. I would just like to ask you to look with me at the entries for the first few months in this book. A. Yes.

Q. You see those? A. Yes.

Q. Will you agree with me that they all appear to have been written at the same time? A. No, I would not, because they were not.

Q. They appear to be written with the same pen, don't they? A. I don't know. Sometimes - most times I do write them with the same pen. 30

Q. And they all appear to be fairly short entries, don't they? A. Usually if I am not overseas I don't write long entries in the diary unless there is some particularly important matter.

Q. Well, it is your habit to write voluminously in diaries, isn't it? A. No, not in diaries.

Q. Did you have any other documents that you were keeping at that time? A. No, I had other documents, but nothing bearing on this matter. 40

Q. Did you have any other notes that you kept? A. No, I don't think so. Not particularly. Depending on what matter. I would certainly have other notes on certain business matters.

Q. I am referring now to notes in the nature of diaries similar to the notes you kept in the Eskell and other matters? A. I don't have any other notes like that.

Q. During the whole of the year 1967 did you keep

no other notes of that kind except in your diary?

A. Not that I can recall, Mr. Gruzman.

Q. Are you prepared to swear that no such notes - A. No such notes. Can I go this far? I am prepared to swear that no such notes bearing on anything to do with threats or danger to Mr. Barton at all, because there was no possible conceivable case that could have happened.

Q. Are there any matters? A. No, not that I know of. Nothing bearing on this case.

10

Q. Where are the other notes? A. I said I can't recall any, but there may be business notes of some sort. I can't recall any that would have any bearing on the case, and I don't think there are any notes.

Q. You were served with a subpoena to produce diaries generally to the Court. Are there in existence any documents which constitute your notes or thoughts on events which happened during the year 1967, other than your diary? (Objected to; question withdrawn).

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Q. You remember, Mr. Armstrong, that you were originally served with a subpoena, I think, to produce your diaries or notes. You were subpoenaed in this form, to produce all diaries and/or notes and/or diary notes and/or memoranda? A. I believe they were all handed to Mr. Grant.

Q. What did they consist of? (Objected to; allowed). A. I could not recall what they all consisted of. There were many notes that I handed to Mr. Grant. I just could not recall them all at this time. I can't recall any specific ones. But there are many notes in this case which I am sure are in my handwriting.

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Q. What? Going back to the start of the year 1962? A. I can't recall. I can't recall. I can't recall what is in the mass of notes here, Mr. Gruzman. There may be notes in my handwriting. I just don't know.

Q. Can you give his Honour some idea of the quantity of notes that you handed to Mr. Grant under this subpoena? (Objected to; allowed). A. I don't think I could tell you accurately, Mr. Gruzman.

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Q. A hundred pages? (Objected to; allowed). A. I would not know, Mr. Gruzman.

Q. Anyway, a mass of written material? (Objected to; allowed). A. No. I would not say it was a mass of written material. I just don't know. There was a large amount of material collated by Mr. Grant and myself for this case. I don't know how much. It would be impossible for me to say. Most of it is all here, that I know of.

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Q. Well then, you were present in Court when Mr. Staff successfully objected to the subpoena except insofar as it related to diaries, is that right? A. I don't know actually. There were so many things in Court. I don't recall that accurately.

Q. Well, as far as you know, the other written memoranda that were referred to in the subpoena are still in the possession of Mr. Grant? A. Yes, I would say so, definitely. 10

MR. GRUZMAN: I don't know whether your Honour would consider an application at this time to make a further call on that subpoena duces tecum?

HIS HONOUR: No, I don't think so, Mr. Gruzman. I think you have to proceed through ordinary processes.

MR. GRUZMAN: It would be a matter of convenience if I could conclude this afternoon, as we all wish if there are other documents which fall within the subpoena in the light of further knowledge that your Honour has of the material that we have in mind if that could now be produced to the Court. At the time we could not disclose to your Honour exactly what we had in mind by the form of the subpoena. 20

HIS HONOUR: It is open to you to ask these questions now whilst he is in the witness box, as part of his evidence. 30

MR. GRUZMAN: We cannot get the documents. The documents may be in Court. We have established that there are documents. It is a matter of the machinery to produce them to the Court.

HIS HONOUR: Where was that dealt with in the transcript?

MR. GRUZMAN: On p. 3, on 15th May. The subpoena called for "All diaries and/or notes and/or diary notes and/or memoranda relevant to events which have occurred from 1st January 1962 to the date hereof." 40

HIS HONOUR: It was limited in para. 1 to "All diaries and/or notes and/or diary notes." The second line in particular was excluded. I think if you want to probe what other notes there may have been you will have to do it in the ordinary way, through the witness box.

MR. GRUZMAN: Q. Mr. Armstrong, you did during 1967 make some notes about your thoughts during that year, didn't you? A. No, I don't think so. Very little, if any. 50

Q. But whatever you did make - whatever notes you did make you gave to Mr. Grant? A. I don't know what I gave to him. I don't know that I

gave any notes. I think I can categorically say that there are no notes having relation to any matter of duress, because there was nothing to make any notes about. I will give my categorical word on that matter.

Q. Thank you, but it is not acceptable. On what subject matters did you make notes during 1967? (Objected to; rejected).

Q. Mr. Armstrong, did you make notes about the affairs of Landmark during 1967? A. No, I don't think so. Not to any extent. I can't recall. I don't think so. 10

Q. That was the most important matter you were dealing with during 1967, wasn't it? A. No, Landmark was out of my hands then. Mr. Smith dealt with it after June, and I was away. There was very little about Landmark I could do. There was no use making any more notes about it.

Q. There were negotiations with Mr. Barton, weren't there? A. Not in 1967. Only in the early part. They were completed on 18th January. 20

Q. These negotiations took place during 1967, didn't they, in the early part? A. Yes. I didn't make any particular notes of those. Mr. Smith was handling all these negotiations. He was reporting to me.

Q. There was a series of litigation between yourself or Mr. Barton and the companies during that year, weren't there? A. Only the matter, I think, in the March situation. Then it became a scheme of arrangement. 30

Q. Then the scheme of arrangement occupied a lot of your attention, didn't it? A. Not very much. I was away when it was first mooted, and it went to creditors' meetings, and then to the Court. I think most of these documents would be in the Court, I should imagine, or readily available.

Q. I suppose you made notes about these matters? A. I didn't actually. There was not much to make notes about. The documents were self-explanatory. Mr. Smith makes many notes. 40

Q. Are you prepared to swear on your oath that you did not make any notes of any of the matters to which I have just referred you? A. I would not like to swear on oath that I made no notes. I would say that there would be very few, if any and, if there were any, they have been produced to Mr. Grant. There would be very few, if any. I would refer to the fact that Mr. Smith makes voluminous notes. 50

MR. GRUZMAN: I wonder if I may be permitted to take this course, and ask the witness to obtain from Mr. Grant those notes which fall within the subpoena?

HIS HONOUR: There is a difficulty, Mr. Gruzman.

I quite realise the reasons that underlay the course adopted when you called on the subpoena to start with, but the ruling that I made on 15th May was that I would not enforce the last two lines of para. 1, and on that ruling Mr. Staff then produced the diary.

MR. GRUZMAN: It is a matter, isn't it, for the Court to decide, and not for the parties to decide, whether - 10

HIS HONOUR: You are asking for a direction under the Evidence Act?

MR. GRUZMAN: Yes, I call for them on subpoena duces tecum under the Evidence Act.

HIS HONOUR: Some of them will obviously be privileged, Mr. Gruzman.

MR. GRUZMAN: Isn't it a matter for the Court, and not for the parties or their legal matters to decide what matters fall within the subpoena? 20

HIS HONOUR: These are notes prepared prior to the commencement of these proceedings?

MR. GRUZMAN: Yes.

HIS HONOUR: I would not feel disposed, even if I go so far with you, to contemplate going beyond the commencement of the proceedings.

MR. GRUZMAN: We do not seek that. (Argument ensued).

HIS HONOUR: I think you will have to call for them, Mr. Gruzman. You will have to make a specific call, and we will see what happens. 30

MR. GRUZMAN: The call is addressed to Mr. Grant, and it is pursuant to s. 12 of the Evidence Act as on subpoena, and it is a call for all documents handed by Mr. Armstrong to Mr. Grant in answer to para. 1 of the subpoena duces tecum dated 9th May 1968 in respect of documents which have not already been produced.

MR. STAFF: I do not, with respect, understand the call my friend has made. He has not issued a subpoena for these documents, and secondly, we submit it is not a proper call. The description of the documents we submit does not identify them in a sufficient or certain fashion. We submit the call is far too vague, indefinite and uncertain, and fails to specify any document with the particularity required. 40

HIS HONOUR: Mr. Gruzman, I think you will have to get more specific evidence from Mr. Armstrong and re-frame the call when you get a more precise description of the circumstances. I do not think the evidence at the moment is entirely clear in a way which might characterise the documents for which you are calling. 50

MR. GRUZMAN: Q. Mr. Armstrong, the position was this, wasn't it, that you received this subpoena dated 9th May 1968? A. Yes.

Q. And you gave to Mr. Grant the documents that you felt fell within that subpoena? A. I don't know quite what I did. I know I gave him the diaries. I cannot recall any other specific documents of importance. You see, there was such a mass of documents. Mr. Grant had most of them himself, I think, in the first place. I cannot recall handing him any specific documents. I cannot recall handing him anything specifically except the diaries. 10

Q. Look, what you handed to him were documents that you thought fell within the subpoena? A. No. I would not have known what fell within the subpoena.

Q. But you received the subpoena personally at 9 Coolong Road, Vaucluse, didn't you? A. I would not know even that. 20

Q. You received the subpoena at 9 Coolong Road, Vaucluse? A. I could not recall that. It could have been at Mr. Grant's office or at Coolong Road. I don't recall the circumstances.

Q. This was served at Coolong Road? A. If it was - if you say it was, it very probably was.

Q. You were able to read it, weren't you? A. Yes.

Q. And you understood it? A. Yes.

Q. And it called for all diaries and/or notes and/or diary notes and/or memoranda relating to events which have occurred from 1st July 1962 to the date hereof, which was 9th May 1968. Do you remember receiving that? A. Yes. 30

Q. And reading it? A. Yes.

Q. And understanding it? A. Yes.

Q. And you regarded it as an order from the Court? A. Yes.

Q. Did you then look through your papers and find what documents you thought the subpoena called for? A. I don't recall whether I looked through them completely personally myself, or with Mr. Grant, but I know that any documents - I don't think there were many under that particular thing I can recall except the diary. But there were so many documents I produced and Mr. Grant produced that I would not like to say which were under the subpoena and which were not. I would not be able to clarify that at all. 40

Q. You would not treat with contempt an order of the Court? A. Certainly not. 50

Q. I suppose that, having read and understood

the subpoena, you did your best to comply with it? A. I certainly did, yes.

Q. And did you search for whatever documents you felt fell within the subpoena? A. Yes.

Q. And did you hand these to Mr. Grant? A. Yes. But I can't recollect what they were specifically, except the diary.

Q. You remember the diary? A. Yes.

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Q. And you remember other pieces of paper?
A. No. I don't remember any specific pieces of paper that I handed to Mr. Grant at the time.

Q. I am not asking about specific pieces. You told us before there was a mass of documents? A. Some of these documents fell within some other subpoena. I don't know which fell within this particular subpoena.

Q. That subpoena called only for your diaries and details of correspondence and accounts in regard to Frederick Hume, and books showing money received or paid by you to Hume? A. Well, there were none of those except the ones that were produced from the other companies.

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Q. So that the only matters that you could produce were matters coming within the first paragraph, weren't they? A. Yes. I think it was mainly diaries in that particular subpoena. But altogether I am not clear. I hope you don't think I am trying to be difficult. All of these matters are produced under some subpoena, but I would not know which.

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Q. You told us before that there were a number of documents which you handed to Mr. Grant? A. Yes. I thought that was in connection with the case, Mr. Gruzman, and not specifically with this subpoena. I am sorry.

Q. When you got the subpoena did you search your home? A. Yes. Most of these would be in my office, actually.

Q. In your office? A. Yes.

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Q. That is where you kept your notes, is it?
A. Yes.

Q. And did you go through your documents to find out what fell within the subpoena? A. Yes, I think I did.

Q. How many documents did you find? A. Very few on this particular matter.

Q. About how many? A. I could not recall really. I would say very few, if any. I just can't recall them at this time.

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Q. Whatever you found you handed to Mr. Grant?

A. Yes. Whatever I thought was relevant I certainly handed to Mr. Grant.

Q. Whatever you felt came within that subpoena you gave to Mr. Grant? A. Yes.

MR. GRUZMAN: I repeat the call on Mr. Grant in the terms in which I made it before.

MR. STAFF: Not produced.

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HIS HONOUR: As I think was intended by you, I hold the view that the call is not in fact pursuant to s. 12 unless leave is given for it to be made in those terms. A call from the Bar table is a mere call inter partes on that basis, and I think you are entitled to answer in such manner as is appropriate, but I apprehend that Mr. Gruzman would seek leave to have the call reinforced under s. 12.

MR. GRUZMAN: Yes.

HIS HONOUR: What do you say to that, Mr. Staff?

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MR. STAFF: I simply say this, that there is no document answering that description which Mr. Grant knows to be in Court.

HIS HONOUR: Mr. Gruzman, this section is only a shortcut to avoid the formality of issuing a subpoena, serving it and calling on it. If there is no such document here that seems to be the end of it.

MR. GRUZMAN: That is not what my friend said. If my friend would state that, as counsel I would be prepared to accept it.

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HIS HONOUR: What Mr. Staff has said is that there is no document within the terms of the call in Court.

MR. GRUZMAN: He did not say that. He was careful not to say that. What he said was that there was no document falling within the call which Mr. Grant knows to be in Court. That is an entirely different matter. (Argument ensued).

HIS HONOUR: I do not feel disposed to take the matter beyond the call inter partes which has been answered.

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MR. GRUZMAN: Q. You tell us, do you, that this diary contains the whole of your thoughts over this period?

A. I think so, definitely. yes.

Q. And the matter which I draw to your attention is that, with very few exceptions, each entry up until some date in April is very short? A. Most of them are short, you will see. I think after I came back from my trip they are also short.

Q. Can you tell us what the occasion was that

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caused you to consult Mr. Staff about your diaries?

A. I think I already said that, didn't I?

Q. It was the subpoena? A. No. The early subpoena in March, I think, of 1967.

Q. March 1967? Well, let us see if we can find an entry here. Did you see Mr. Staff then? A. I don't recall if I put it in the diary. I don't know that I would have. Is there any entry about litigation at that time? 10

Q. Didn't you clearly show in your diaries when you went to see your counsel? A. Not always, no.

Q. Did you show in your diaries when you went to see Mr. Smith? A. Not usually, no. He usually writes himself if there is anything important. He is very meticulous himself - Mr. Smith.

Q. You would not write in your diary that you had been somewhere where you would not have seen Mr. Smith when you saw Mr. Smith, would you? A. I don't know what you are getting at. 20

Q. If you saw Mr. Smith in town you would not say you spent the day at home, would you? A. I am not clear. Sometimes when there is nothing that really becomes important to me I might wait a week to write the diary, and if I could not think of it I might say "Spent day at home." It is not a meticulously daily written record.

Q. You say it is quite consistent with this diary that, for example, on 4th January you say you spent the day at home, played tennis, etc.? A. It is quite conceivable that I did or did not. I would not be quite certain about it. I may have written the diary at the end of the week. The thing that apparently impressed me there was that my wife had a headache. 30

Q. So that the fact you say you spent the day at home on Wednesday, 4th January may mean that you spent the day at home or that you didn't spend the day at home? A. I may have telephoned Mr. Smith. I could have telephoned Mr. Smith on that day without actually seeing him. I don't recall particularly the 4th January as any significant date at this stage. 40

Q. I want to see whether your diary assists you or not as to what you actually did. A. I would not say it was absolutely correct.

Q. The answer is that you may or may not have spent the day at home on 4th January? A. That is quite possible, yes.

Q. Just have a look as I turn over the pages. They do look as though they are all written at the same time, don't they? A. I can assure you that they were not. 50

Q. It looks like it, doesn't it? A. No, I would

not agree. They don't look like the same day.
I would think it is the same pen.

Q. The same pen? A. Yes, I usually use the
same pen at home when I write the diary.

Q. Could it have been written two or three
months after the events? A. No, far too detailed
for that.

Q. You may have had another diary to work
from? A. No I didn't.

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Q. You may have written it all up at the same
time? A. That is not correct.

Q. Let us have a look. Here is one where you
have made a mistake, haven't you? A. Where?

Q. Let us look at the entry of 23rd February.
That was a day when you went to the United Dairies
at Parramatta? A. Yes.

Q. And had a discussion with Juskovich and
his board? A. Yes.

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Q. It is not a day you spent at the office?
A. No. I have crossed that out, you see. I
must have written that, and crossed it out later,
and thought it was wrong. I may have started to
write it - as I say, I often write this dairy about
once a week. That is something - I spent some time
in the office. I probably was in the office. Nothing
very important occurred on those days.

Q. What has happened, I suggest to you, is that
you have been copying from another diary, and you
have excluded most of the matter that was in the
other diary? A. No, that would be quite incorrect.

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Q. And you wrote in this diary in respect of
this period just what suited you? A. No, definitely
incorrect.

Q. So that you got in a sort of habit. "20th. Went
to office. Checking up on accounts, etc"? A. Yes.

Q. It does not do anything. It does not help
in any way? A. No, there is nothing of any signifi-
cance at that time.

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Q. It does not help you to know what you did?
A. Not at that particular period. Apparently
there was nothing very much going on.

Q. "21st. Spent some time in office"? A. Yes.
Nothing very much went on at that time.

Q. "22nd. Spent some time in office"? A. Yes

Q. It does not tell you a thing, does it? A. No,
not that particular one.

Q. And the next day you spent the day at the

office, working out something? A. Then I changed that.

Q. Then you changed it? A. Yes.

Q. And the next day you have got "Spent some time at office. Weather was hot and steamy"? A. Yes.

Q. I suggest to you that, going through this diary, you were summarising or putting in brief entries covering voluminous entries in your other diary. A. You can suggest it. It would not be the fact. 10

Q. And you just made a mistake, and went on writing it? A. No. You can suggest if you like. The diary was written as I said it was written, and you can talk about it all day and I would not alter it. I would not alter what I said.

Q. Will you tell his Honour how you came to write "On 23rd February spent day at office" when in fact you went to United Dairies at Parramatta? A. I made a mistake in the first entry. 20

Q. Does that mean your memory was not very good? A. No. It just means what I said, Mr. Gruzman. I made a mistake.

Q. Of course, later on these entries go on much the same, don't they? I will not read the entries, but there are three lines, with big words, and few words? A. Nothing very interesting was occurring at that time.

Q. February 26th, 27th, 28th "Spent morning at office. Afternoon at Parliament." No discussions about what took place in the office or Parliament? A. No. There is something about inspecting water damage at Rozelle. That is something that stuck in my mind. A lot of the times when you are at the office you don't do anything very exciting to write in your diary. 30

Q. Each day's entries are very short? A. There is quite a long entry there (indicating).

Q. On the Sunday. It is just a personal note? A. That is a personal note, yes. 40

Q. It does not say very much about your affairs or your thoughts? A. Sunday is not a great day. It is not usually a business day.

Q. Monday we are back to the routine of "Spent day at office". A. Yes.

Q. And Tuesday "Spent day at office, and Parliament in the afternoon"? A. Yes.

Q. "Wednesday. Spent day at office. Parliament in afternoon. Still wet and miserable etc."? A. Yes.

Q. Short entries, not telling anyone very much? A. There are some quite longer in that area there. 50

Q. There is one here that runs to two-thirds of a page in large - some of which is covered up - in large writing, well spaced. A. I usually write in double space unless I am filling it up, like I do further down on the trip.

Q. Saturday, Sunday and Tuesday - Monday apparently you did nothing. Easter Monday.

A. Something occurred.

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Q. Tuesday, a short entry starting "Spent day in office", and something else? A. Yes. There is a longer entry. There is a two-page entry there.

Q. Then we have longer entries? A. They vary.

Q. See if we can tell when you saw Mr. Staff about this time. You pointed out some longer entries. They were 31st March and 1st April. It looks as though you saw Mr. Staff on 3rd April?

A. I don't know whether -

Q. Just have a look, and tell me whether you deduce from that entry that you saw Mr. Staff on 3rd April? A. That is what I said. I said I thought I saw him somewhere about that period. I certainly saw Bruce Smith and Grant, but I don't know whether I saw Mr. Staff on that date.

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Q. You received the subpoena in the last week of March? A. Really I could not recall that now, when I received the subpoena. I think I told you earlier that I received the subpoena some time before I went overseas, and that is about a month before I went overseas.

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Q. I will not read out the entry, because it relates to Mr. Staff's advice on another matter, but there is no doubt that on 3rd April you had had some discussion with Mr. Staff? A. I would think about that time, yes.

Q. And that would be the time, I suppose, when he gave you this advice about your diaries? A. Somewhere about that period, I imagine.

Q. And the advice was to destroy your diaries? A. No, it would not be completely that. The advice Mr. Staff gave was that my diaries were no longer privileged documents, and I didn't think they could be called, you see, because I had not had experience in these matters. Mr. Staff said "Think about it. Don't hurry." He said "It all depends on actually the Judge - whether he lets the whole document go in, or portions of the document. You can't tell what will occur if your diaries are subpoenaed."

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Q. I thought you told us previously that Mr. Staff advised you to destroy your diaries? A. No, not at that stage. I don't recall Mr. Staff left it to me personally - to make my decision, which I did after I came back from overseas. I mentioned it to him again after I came back. I can't recall when. Some time in September, October.

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Q. Well, the position is that as at 3rd April you knew that your diaries could be called into Court and read by the Judge? A. Yes, but I don't think we thought there was much - the matter didn't go ahead at that time, and I was going overseas, and I did not give it much more consideration until I came back.

Q. At that time you had received the subpoena from the Court to produce your diaries, hadn't you? 10
A. So far as I know, yes. I don't know what I received from the Court to produce the diaries. I did receive a subpoena to produce the diaries.

Q. That was the subject of your concern wasn't it? A. Not very serious concern at that time, no. I discussed it with Mr. Staff. We thought about it.

Q. And as a result of that you came to believe that the Court could enforce production of your diaries if the Court saw fit? A. I think I got in further discussion with Mr. Staff when I returned. I can't recall the exact date. 20

Q. Of course, you tell his Honour that there was no reason which came to your mind why you subsequently saw Mr. Staff and subsequently destroyed your diaries? A. I think it was following on the previous interview, actually.

Q. That was six months ago? A. It was following on that. There was no particular reason which came to my mind except I thought that, taking everything into consideration, it was better to destroy the diaries. 30

Q. Six months later? A. Yes, about five to six months later, of which I was away for three months overseas.

Q. What I want to put to you is that after this date - by the way, you say you didn't write your diary up for a week or so? A. Sometimes. Sometimes I might write it up once every night. Especially overseas I might write it every night, and often I would not write it more than once a week if there was nothing important occurring. Often there are things left out of the diary. 40

Q. There is no doubt that from the 3rd April you realised you had to be careful what you wrote in a diary? A. Not particularly. There are a lot of notes after that that I don't think you would say are particularly careful.

Q. After 3rd April you knew that a Court could examine your diary? A. Yes. I don't think it made a great deal of difference to my style of writing, and I think that is borne out by looking at the book. 50

Q. Most of the diary - although there are some short entries in it, most of it is pretty voluminous, isn't it? A. The travel part only, I think. If you

take the travel part out from the 30th April or thereabouts to the end of July, there are some fairly voluminous bits in September, for instance.

Q. And November? A. Yes. When his Honour cuts the bits out it makes it look a good deal smaller. There is one page with a whole piece cut out.

Q. Down to December we are getting back to practically full pages of writing? A. There must have been more doing. There were drought conditions, and I made entries about that in regard to its property, because that is the only record I kept of that sort of thing. 10

Q. You knew some time in March that Hume had been called to the police? A. I think I told you that I had vague knowledge. I took no notice of it whatsoever. I did not pursue the matter at all.

Q. You have also told us that over that period you were seeing your solicitor and counsel? A. Not very much. Only in connection with this other matter, that is, this Landmark repayment matter. 20

Q. But you never mentioned a word to your solicitor about Hume going to the police? A. I certainly didn't. I can assure of that. I certainly wish I had.

Q. Well, why? A. I didn't take any notice of it. It did not concern me one iota.

Q. Allegations that you had conspired to kill a man didn't mean anything? A. Hume didn't tell me anything to that effect. 30

Q. What I am putting to you is this, that as at March, if not earlier - and I suggest it was much earlier - you were fully aware of what Vojinovic had alleged? A. Completely and utterly incorrect.

Q. And you were aware that it was necessary to make an alibi for Hume for the weekend when all this occurred? A. No, certainly not. I was not aware of this case, and I will swear this in every possible way, until this affidavit was filed in the court - and I have correspondence with Mr. Grant which will bear that out. 40

Q. You were aware from a date, I suggest to you, in January - A. I suggest you are quite wrong.

Q. - that these allegations had been made, and I suggest to you that you conspired with Hume to create an alibi for him? A. Quite wrong.

Q. I suggest to you that you write up this diary so as to accord with the alibi that you proposed for him? A. Certainly not. 50

Q. You have told us that you were seeing Frederick Hume quite frequently over this period? A. Yes I was at that time.

Q. His name only appears in the diary I think on about three occasions, doesn't it? A. I don't know. It certainly appears in the early part of the diary. I didn't see him a great deal in the first half of the year. I was away for three months. I was also away at Shoal Bay.

Q. He appears on 6th January. He appears as going on this weekend, on 7th January, rather. The Saturday. That is correct? A. Mr. Gruzman.-

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Q. That is correct, isn't it? A. All I can tell you is that these are the facts, and can be verified by witnesses.

Q. We have heard who they are, haven't we?
A. Yes, I have told you.

Q. I think his name appears in this diary on very few other occasions? A. Apparently, yes, I didn't write it down. I may have seen him, and not written it down.

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Q. Although you were seeing him frequently?
A. I would not say I was seeing him very frequently from that period on.

(Further hearing adjourned to 10 a.m.
on Tuesday 3rd September, 1968).