

00001

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 21ST DECEMBER
1999 AT 10.30AM.

.

CHAIRMAN: Good morning everyone.

.

TIM O'KEEFFE WAS EXAMINED AS FOLLOWS BY MR. CALLANAN:

.

1 Q. MR. CALLANAN: Good morning, Mr. O'Keeffe. I appear on
behalf of Mr. James Gogarty. You told Mr. O'Neill you
were admitted to the Institute in December 1988?

A. Correct.

2 Q. And you went more or less straight to work with JMSE and
its associated company as financial controller?

A. Well I was employed with Copsey Murray from 1985 and as
part of my continuing employment with Copsey Murray, I was
seconded to JMSE in April or May 1989.

3 Q. Right. So you had -- had you done any work for the
Murphys or the Murphy companies before April or May 1989?

A. I had been involved, as I said yesterday, in the initial
meetings in relation to the removal of Liam Conroy.

4 Q. And what were you then in April, May of 1989?

A. 25.

5 Q. And can I suggest to you that it would be fairly unusual
for somebody of your age being qualified six months to
become the financial controller of JMSE, of a company of
that size or nature, Mr. O'Keeffe?

A. That may be so.

6 Q. And it would have been a fairly daunting task, is that so?

A. I think I was up for the job.

7 Q. But you would have had to work closely under Mr. Copsey's
direction, is that so?

A. Well together with the management that were in the company.

8 Q. And who were the people with whom you dealt with principally in management, Mr. O'Keeffe?

A. Well, there would be Frank Reynolds, Gay Grehan and there was very experienced bookkeepers and clerks in the company.

9 Q. And can you offer any explanation as to why in your first statement you said that on a day-to-day basis you took your instructions from Mr. Gogarty and Mr. Reynolds?

A. Well, eight years later, when asked who I took instructions from, I said Frank Reynolds and Jim Gogarty. Now I would have taken instructions from Jim Gogarty but I would admit that it wasn't on a day-to-day basis as he wasn't there every day but when he was there, if he requested anything done, I would have done it for him.

10 Q. And the second statement you say, "on a day-to-day basis I took my instructions from Mr. Frank Reynolds and Gay Grehan," that would be a more accurate position, is that so?

A. Yes, it would be an explanation of the first statement.

11 Q. You are aware, I take it, what Mr. Gogarty's evidence has been in relation to the assembling of the monies which were used to pay Mr. Burke?

A. I am.

12 Q. And Mr. Gogarty's evidence is that the sum of £30,000 was assembled in cash by Mr. Reynolds and by Mr. Murphy Jnr and that a cheque was signed for £10,000, you will have read that from the transcript?

A. I have read that, yes.

13 Q. And Mr. Gogarty therefore can't say from his own knowledge how the monies were raised but I would suggest to you that it must have been the case that you raised monies on the direction of Mr. Reynolds with the involvement of Mr. Murphy and the sanction of Mr. Copsy.

A. My evidence is that I raised the money on the request of James Gogarty. Frank Reynolds accompanied me to the bank. Mr. Murphy wasn't present at all and I checked the matter with Mr. Copsey, who informed me that it was OK to do so.

14 Q. Mr. Gogarty has given evidence to the Tribunal that Mr. Murphy Jnr and Mr. Reynolds were partisans of the idea of a joint venture with the Baileys. Were you aware of any division of opinion in the company in relation to that, Mr. O'Keefe?

A. I was unaware of that matter in its entirety.

15 Q. In your evidence to Mr. O'Neill yesterday at page 73, you say that "From memory, you went to the boardroom when you came back from the bank in Talbot Street and gave the two cheques to Mr. Gogarty."

A. That is incorrect.

16 Q. I am sorry -- yes, it may have been before you went to the bank. You say, "I then, from memory, went to the boardroom, gave the two cheques to Mr. Gogarty where he was for signature."

A. Correct.

17 Q. What do you mean by the use of the word "from memory" there?

A. That is my recollection of what happened.

18 Q. You are saying to the Tribunal you have a distinct recollection of that?

A. Yes.

19 Q. Or you think that's what might have happened?

A. No, I have a distinct recollection of that.

20 Q. And you said you are quite definite about that?

A. Yes.

21 Q. And at the same time, you are unable to remember with certainty whether Mr. Reynolds accompanied you to the bank,

isn't that so?

A. As I said yesterday, I am 90 percent certain that it was Mr. Reynolds.

22 Q. Well, you say you encountered Mr. Gogarty twice, Mr. O'Keeffe, before you went to the bank and after you went to the bank?

A. That is correct.

23 Q. How long were you with Mr. Gogarty?

A. I suppose less than a minute on either occasion.

24 Q. And in between, you drove from or were driven from Santry to Talbot Street, you had -- there was a delay in the bank while you got the money and counted the money and you would then have driven back. How long would that have taken?

A. Oh I would say in total, 40 minutes.

25 Q. And if you had gone to the bank with Mr. Reynolds, you would have talked about the payment on the way, the purpose of the payment, the purpose for which you were gathering the money, I suggest to you, on the way to the bank and on the way back from the bank?

A. No, as a professional, I wouldn't discuss client's matters ad-lib and particularly as a newly qualified accountant, I wouldn't be discussing it with a director of the company. If Mr. Reynolds wanted to discuss it with me, so be it, but my memory is he didn't and we didn't discuss it at all.

26 Q. So you now say you are able to remember the drive with Mr. Reynolds from Santry to Talbot Street, Mr. O'Keeffe?

A. What I mean, whoever drove me to the bank, we did not discuss what the cheques were for.

27 Q. And when you got back, Mr. Gogarty was still in the boardroom, isn't that so?

A. Well he may have left in the interim but he was in the boardroom when I came back, yes.

28 Q. What was he doing in the boardroom on the first occasion?

What was he doing there?

A. That I do not recollect.

29 Q. What was he doing in the boardroom the second occasion?

A. He was sitting at the boardroom table. He may have been taking notes, I don't know, I am not a hundred percent sure.

30 Q. Had he documents? What else can you remember about finding

Mr. Gogarty in the boardroom when you came back to Santry, on your evidence, Mr. O'Keeffe?

A. I can't recall if he had documents or not.

31 Q. And you brought back, you say, a sum of £20,000 to Santry?

A. Correct.

32 Q. Now, there's -- what became of the cash, Mr. O'Keeffe?

What became of it?

A. I handed the cash to Mr. Gogarty.

33 Q. And what did Mr. Gogarty do with it?

A. I don't know, I left the room.

34 Q. Well, you are aware there is considerable dispute as to

when the payment was made to Mr. Burke. Do you know anything about that?

A. I am aware that there is confusion on Mr. Gogarty's part on what date he made the payment, yes.

35 Q. And what do you say the correct date is?

A. Well I have no idea what date he made the payment. All I know for certain is that on the 8th June, I handed Mr. Gogarty £20,000 in cash.

36 Q. And you knew nothing about any subsequent expedition to Mr.

Burke to pay over that money and to hand over the cheque?

A. I had no knowledge whatsoever of what the money was intended for. The name Mr. Burke, when I first heard of it was in 1997, so my answer is no.

37 Q. You are saying you are unaware of an important trip that was to be undertaken to pay over these monies, forgetting about --

A. That is what I am saying, yes.

38 Q. Not merely were you not aware that this was a payment destined for Mr. Burke but you are not aware of any expedition out of Santry to effect the payment of the monies to whoever the money was to be paid to.

A. Correct.

39 Q. And how did you become aware then, if that's the case, Mr. O'Keeffe, that the mission, the payment over of the cash, the handing over of the cheque, had been accomplished?

A. I was never aware of that.

40 Q. Now, Mr. O'Keeffe, you are the financial controller, this is an undocumented cash payment and you are telling the Tribunal that as a professional person, you didn't even make an inquiry to satisfy yourself that the payment had actually been effected and the cheque given to whoever its intended recipient was?

A. I am telling the Tribunal that as the financial controller of the company, I had a request from the chairman which was okayed by the financial director that there should be a cash withdrawal made. The books of JMSE are one hundred percent correct in recording the transaction. The description I was given for the money was an intercompany loan and in my professional capacity, I wouldn't do it any different tomorrow.

41 Q. Can you offer any explanation why you would not have at least satisfied yourself that the payment had been effected and the cheque handed over?

A. I was totally unaware what that money was to be used for so when you are saying the payment, I was unaware that such a

payment was to be made.

42 Q. Well you are saying you can't help us as to the date on which the payment was made and the cheque given to Mr. Burke but supposing we take it that it wasn't on the 8th June, it wasn't on the day the monies were gathered by you from AIB in Talbot Street, it's a large sum in cash, it's either £20,000 or £30,000. You say you collected £20,000. That's a large sum, isn't it?

A. Sorry, is that a question?

43 Q. Yes.

A. Correct, £20,000 is a large sum in cash.

44 Q. And who would normally keep such an amount of cash on the premises and who would have the responsibility for --

A. In my brief time in JMSE, there was no large amounts of cash kept on the premises. The only cash on the premises would have been petty cash which from memory would have been £150 to £200 and that's the only cash on the premises.

45 Q. Well, if it was necessary to keep the money in Santry overnight or over a number of nights, where would you say it would have been kept and by whom?

A. I have no idea. You will have to ask Mr. Gogarty. I gave him the cash and that's the last I saw of it and that's the last I actually thought of it.

46 Q. Mr. Gogarty would have had no role whatever in the keeping of cash on behalf of the company, isn't that so?

A. There was nobody had a role in JMSE in relation to keeping of cash that I am aware of.

47 Q. And what you told the Tribunal yesterday, Mr. O'Keefe, was that you contacted -- reference to the cheque stubs, you told Mr. O'Neill at page 71, question 308 or answer 308, you say, "You contacted Roger Copsey, one, to ensure that this was an order to collect and two, to find out what it

was for and I cannot be a hundred percent certain whether in that telephone conversation he told me what it was for or it was a subsequent telephone conversation."

.

That's what you told Mr. O'Neill yesterday.

A. I will accept that.

48 Q. So one of your purposes in contacting Mr. Copsey, whenever you did that, was to find out what the payment was for.

A. That is correct.

49 Q. And on your evidence and that of Mr. Copsey, that question wasn't answered by Mr. Copsey?

A. That question was answered and as I have explained, it was an intercompany loan which has been correctly recorded in the books of the company.

50 Q. Mr. O'Keefe, if you, as financial controller, asked the financial director what is that payment for? That question is not answered by his saying it is to be treated as an intercompany loan. Isn't that childishly obvious, Mr. O'Keefe?

A. It may be childishly obvious to you but as financial controller of JMSE, my duty was to record in the books of JMSE what that payment was, which is an intercompany loan and it has been recorded as such.

51 Q. But it's not an answer to the question what is the money for, is it?

A. It is in the context of JMSE.

52 Q. And Mr. Copsey's evidence to the Tribunal was that he knew that this was a political contribution but that he didn't pass the information on to you.

A. That is correct.

53 Q. Can you think of any reason why he would have withheld that information in response to your inquiry?

A. I am not sure if he withheld it from me. I didn't need to know it at the time. If I had prepared the books of Grafton Construction, I am sure he would have informed me and it would have been recorded as such.

54 Q. Well you were the financial controller of JMSE and you had a role in, I suggest, in relation to the assembling of financial information, the monitoring of financial information on behalf of the entire group.

A. Not at that point in time.

55 Q. When did you acquire that role?

A. Well, on the appointment of John Maher to JMSE, I would have worked in an advisory capacity with Mr. Copsey in relation to either companies. At no point in time was I ever considered or given the title of financial controller of those companies.

56 Q. So you are saying the only company where you had the title financial controller was JMSE?

A. Correct.

57 Q. But inevitably in the preparing of financial documentation, you were going to be involved in the other companies. These are group companies, is that so?

A. Unfortunately we were removed from our position in JMSE prior to those accounts being prepared.

58 Q. And it was following the appointment of Mr. Maher that you came to work from the Copsey Murray offices up to August of 1990, is that correct?

A. Yes, on an on and off basis. I would have been working with other clients as well. When needed I would have been requested to do certain things for the Murphy group of companies.

59 Q. Well when did you cease to attend on effectively a daily basis at the JMSE premises in Santry and return to your

offices?

A. August/September, 1989.

60 Q. And you are saying over the ensuing year then, you were working in an auxiliary capacity to Mr. Maher, is that it?

A. No, I was working as a chartered accountant in a professional firm of accountants and from time to time I would have been asked to work on the Murphy group of companies which I would have done so.

61 Q. And just very briefly, what would that work have entailed, Mr. O'Keeffe?

A. Whatever needed to be done. I mean --

62 Q. What was the role you had in relation to accounts, for example?

A. Well, if we had still had the appointment, I would have prepared the accounts for Grafton in conjunction with the auditor but that didn't happen as the accounts weren't prepared till after that date.

63 Q. But it would have been you rather than Mr. Maher -- had your firm's retainer continued, it would have been you rather than Mr. Maher?

A. Not necessarily. Mr. Maher, if he had time and was up to speed on it, he would have taken that function over. We were there as a backup.

64 Q. What was the purpose of putting in Mr. Maher as you understand it?

A. Well the --

65 Q. There was a change in the system, is that so? Why was that done, Mr. O'Keeffe?

A. Well the company needed a financial controller. I was in there on a temporary basis on a consultancy basis but it was never envisaged that I would be the financial controller of JMSE in the long term.

66 Q. And who made that decision?

A. Well that was obviously a board decision, it wasn't my decision but it was always made clear to me I was there on a temporary basis.

67 Q. You see, what I want to put to you is this, Mr. O'Keeffe.

Putting it at its very best, from your point of view, in relation to what Mr. Copsy said to you on the 8th June, there must at the very least have been something which alerted you not to press further with an inquiry as to what this money was for.

A. That is incorrect.

68 Q. Did you think there was anything suspicious or potentially suspect about the payment?

A. No. As I said yesterday, it was an unusual payment but as the chairman of the company, in my own personal view, he was the boss in Ireland of the Murphy group of companies, no, I didn't think there was anything wrong with it or illegal about it.

69 Q. Had you any concerns at all about the purpose of the payment or the regularity of the payment, Mr. O'Keeffe?

A. No.

70 Q. And while I think you have said repeatedly that it's a highly unusual payment, it's something that you nevertheless forgot about entirely for a period of some six years?

A. Correct.

71 Q. And you were at pains in your evidence to Mr. O'Neill to say that the cashflow document was an internal Copsy Murray document?

A. That is correct.

72 Q. Can I suggest to you that the production of cashflow statements for the Murphy group of companies was something

that was frequently undertaken by Copsey Murray?

A. Now you are confusing a cash balance statement with a cashflow. Cashflows are used in a company to predict when they may run out of money. This statement was merely on one specific event which was the disposal of the lands and it was a record of where the monies had gone and how much money was left.

73 Q. You are describing this as a cash balance statement?

A. Correct, which is how it's headed on the sheet.

74 Q. Did you prepare cashflow statements that dealt with, in any way touched upon the transaction whereby you cashed a cheque for £20,000 and a cheque in Mr. Burke's -- cheque to cash for £10,000 was given to Mr. Burke, did you prepare any cashflow statements which included that transaction?

A. No. As I have explained yesterday, the cashflow statements that we prepared in Murphys were on a monthly basis and one of the reasons why this was a fairly unusual transaction, it was in any of the cashflow projections and that was why I queried it with Mr. Copsey in the first place and I was informed that the money was coming back from Denis McArdle within a week, which it did so, so from a cashflow point of view, it's cash neutral in the books of Joseph Murphy Structural Engineers.

75 Q. And that was information that Mr. Copsey gave you, is that right, Mr. O'Keefe?

A. Yes.

76 Q. Now, we have heard evidence from Mr. Copsey and Mr. Murphy Jnr of a meeting between them on the afternoon of the 1st July, 1997 after Mr. Murphy had met Mr. Dermot Ahern. You are aware of that evidence?

A. I have heard the evidence, yes.

77 Q. And Mr. Copsey has given evidence that he had a discussion

with you after his meeting with Mr. Murphy.

A. Correct.

78 Q. Can you assist us as to whether that was later that same day or the next day?

A. I cannot because to be honest, I don't know when they met.

79 Q. Well now, Mr. Copsey has given very clear evidence about this, that after his meetings in May, July and August, he spoke to you?

A. Oh --

80 Q. He may even have spoken to you after he returned from Moscow in late 1996 or early '97 but he couldn't be absolutely certain about that but he was quite quite certain, Mr. O'Keeffe, that he spoke to you in May, in July and in August.

A. I am one hundred percent sure he did. I was speaking to Mr. Copsey every day. We were in a small office with twenty people.

81 Q. When did you first become aware that Mr. Murphy Jnr had called in to see Mr. Copsey?

A. Oh I can only assume when Mr. Copsey told me. As to what date that was, sorry, I cannot recall that.

82 Q. Well the evidence has been the meeting between Mr. Murphy and Mr. Copsey took place on the 1st July.

A. Well then I would assume it was, if I wasn't out of the office, that it was around that time, 1st July, 2nd July, I do not know.

83 Q. This meeting represented a considerable escalation of the crisis, if I can put it that way, isn't that so?

A. Well I hadn't perceived it to be any crisis but an escalation of events maybe, yes.

84 Q. Well here we have Mr. Murphy hastening to see Mr. Copsey without an appointment after a meeting with a government

minister or prospective minister over lunch, isn't that so?

A. If you say so, I mean I am not aware if Mr. Murphy hastened anywhere.

85 Q. What is even more momentous from the point of view of the Murphy case is that it was at this conversation that Mr. Copsey for the first time told Mr. Murphy that there was something about a political donation --

.
MR. CUSH: That's hardly a question, Sir, with respect.

.
CHAIRMAN: Well the premise on which the other remainder --

.
MR. CUSH: It's a long statement without any interrogatories.

.
86 Q. MR. CALLANAN: I am just saying, Mr. O'Keeffe, that it seems quite extraordinary that you should not have a specific memory of a conversation which you say you had with Mr. Copsey and Mr. Copsey says he had with you immediately following Mr. Copsey's meeting with Mr. Murphy.

A. Sorry, could you repeat that question?

87 Q. Well I'll ask you in this way; can you remember your meeting with Mr. Copsey following the meeting between Mr. Copsey and Mr. Murphy Jnr?

A. I can remember Mr. Copsey and myself having a meeting in relation to this matter, yes, but whether or not it followed the meeting with Joseph Murphy Jnr, I cannot be a hundred percent sure.

88 Q. Well how many discussions with Mr. Copsey up until the end of August 1997 can you recall in relation to the subject?

A. I would only be guessing but I am sure if Mr. Copsey said he spoke to me two, three, four times, that would be accurate.

89 Q. You see we are not back in 1989 now, Mr. O'Keeffe, we are back in 1997.

A. As I have explained, I talked to Roger Copsey every day, sometimes maybe ten times a day. Now if you are asking me to remember in relation to this matter how many times I spoke to him, I am sorry I just cannot help you, I do not have that type of memory.

90 Q. So you are unable to tell us anything about the conversation that you had with Mr. Copsey following his meeting with Mr. Murphy Jnr on the 1st July?

A. Well other than when Mr. Copsey spoke to me, he asked me did I know anything about a bribe, to which I was quite adamant that I didn't and that's my recollection of it.

91 Q. This is where you told Mr. O'Neill yesterday that Mr. Copsey asked you if you had any recollection of such an event and you stated categorically no.

A. That is correct.

92 Q. When do you think you said that to Mr. Copsey?

A. Whenever he asked me.

93 Q. So you said that repeatedly?

A. Yes, if he asked me once or twice, I would have given the same answer because I had no recollection of such an event. That is my evidence.

94 Q. And when did Mr. Copsey first tell you that he could recollect a payment of some kind, a political contribution of some kind being made in June 1989?

A. I can't be sure of the date but it was in the public arena, sometime after that and we would have discussed it.

95 Q. You see, when -- however amnesiac you may be in relation to

your conversations with Mr. Copsey, Mr. O'Keeffe, you will certainly remember when for you yourself the penny dropped, to use Mr. Copsey's immortal phrase.

A. The only time the penny dropped with me was when I saw the two cheque stubs in my handwriting and that was sometime later. That was the first recollection that I had that there was any payment that might have been any way out of the ordinary and as I have said before, in the books of JMSE, which is where this payment is supposedly have come from, it's recorded as an intercompany loan which is exactly right and that's what it was so I had no reason to suspect anything.

96 Q. When did you first see the cheque stubs after 1989?

A. I would -- I can't be a hundred percent sure, I'd say sometime late in 1997.

.

CHAIRMAN: I wonder, Mr. Callanan, may I intervene just to clarify something. How frequently in the course of your life have you counted £20,000 in notes?

A. Once.

.

CHAIRMAN: So it was a unique occasion.

A. Correct.

.

CHAIRMAN: And at the time you had a responsibility, albeit as a delegate, if I may put it that way, of Copsey Murray as financial controller and this was part of that finance, the £20,000.

A. Correct.

.

CHAIRMAN: You also drew a cheque, or not drew a cheque, wrote a cheque for a further £10,000 on the same occasion?

A. Correct.

.

CHAIRMAN: And may I take it you would associate the two as being part of one event?

A. No, I didn't. There was no reason to associate the two of them as one event. At the time, I mean, I was unaware, if there was a 30,000 payment to be made, why didn't we just take £30,000 out of the bank?

.

CHAIRMAN: That's the next question I was going to ask you. You see, if you were paying a bill for £30,000, the easiest way to do it would be to draw a cheque, is that so, or a draft?

A. Correct.

.

CHAIRMAN: If for some reason you required a draft...

A. Correct.

.

CHAIRMAN: So that down the line, albeit some eight, nine years, when you are asked did you know anything about a political payment, did this event, unique event of cashing this amount of cash not come to mind?

A. No, I am afraid it didn't. In hindsight, it would have been much easier for me if it had but my evidence is that it didn't and that's the honest truth.

.

CHAIRMAN: So be it, thank you. I beg your pardon, Mr. Callanan, for interrupting you.

.

97 Q. MR. CALLANAN: If I could just ask you this, Mr. O'Keefe. Mr. Copsy has told the Tribunal that on the 1st July, he told Mr. Murphy for the first time that he

could recollect some form of political donation being made in June of 1989 and indeed he went so far as to suggest to the Tribunal that he said that that was in some way connected with Mr. Gogarty. I am just telling you that's what Mr. Copsey's evidence was and his evidence was also that he discussed the matter with you immediately afterwards, that afternoon or the next day 1st July, after the 1st July meeting with Mr. Murphy Snr so can you assist us as to whether it was on that occasion or on an earlier date that Mr. Copsey told you, Mr. O'Keeffe, that he remembered some form of political donation in 1989 involving Mr. Gogarty?

A. Well clearly it wasn't an earlier date because I think Mr. Copsey's evidence is that it was something that was said at that meeting that triggered something in his mind. So if he did mention it to me, well then it was at that date, yes.

98 Q. And even that, you are saying, Mr. O'Keeffe, didn't trigger your memory?

A. That is correct.

99 Q. So it was effectively six weeks later on seeing the cheque stub that this suddenly flooded back to your memory.

A. I am not sure if it was six weeks but whenever later, yes. Well it flooded back to me that there was a payment of £20,000 in cash and there was a cheque for £10,000 in cash but even at that point in time, I was unaware of what that was used for. I was never told what it was used for and that's my evidence.

100 Q. You say you only remembered when you saw the cheque stubs?

A. I remembered then that there was an unusual payment.

101 Q. When did you see the cheque stubs and in what circumstances? That's something you must remember because

it must have come as a considerable shock to you in the light of the statements you had made to Mr. Copsey that there was categorically not a payment made to Mr. Burke or a political --

A. I haven't got an exact date. As I have explained, it was sometime after this matter had come into the public press I saw the cheque stubs at a meeting with, from memory, Frank Reynolds and Roger Copsey.

102 Q. And when was that, do you know?

A. Sorry, I haven't got a date on that.

103 Q. Well give a month even?

A. Well, whenever this appeared in the national newspapers, I would say in or around that date.

104 Q. From your own memory surely, this is very important in terms of your system. You are saying this is the moment of the sudden realisation or sudden recollection of the payment made in 1989. Surely you can remember where you saw the document.

A. I am afraid I can't.

105 Q. At what stage in the unfolding of events you saw the cheque stubs?

A. As I said it was after this had become public knowledge in the national newspapers.

106 Q. Well, Mr. Copsey also told the Tribunal that he spoke to you following his meeting with Mr. Murphy at which he, Mr. Murphy, presented him with certain documents on the 20th August of 1997 and that he again spoke to you after that meeting. So clearly from what you say about Mr. Reynolds being present, it wasn't even at that stage that you recall this payment?

A. Correct.

107 Q. Does that not strike you as extraordinary, Mr. O'Keefe?

A. Well the mind works in strange ways. I -- as I have said earlier, it would have been a lot easier for me if I had remembered it earlier but my evidence is the truth and that is that I didn't remember it.

108 Q. Well, in relation to that, the meeting following Mr. Copsy's meeting with Mr. Murphy on the 20th August, Mr. Copsy has told the Tribunal that you said two things to him. Can you tell us what either of those two things were, Mr. O'Keeffe?

A. I am afraid I can't, I will have to see what the transcripts say.

109 Q. You see he says at page 32 of Day 121, "At the meeting with Tim, I think that Tim said two things to me. The first one was that he had no idea up until my conversation with him that it was a political donation and that would have accorded with my understanding because I hadn't mentioned it to him as the entries in JMSE didn't require that information. And I think the second thing is that he did recall going down to the bank and getting £20,000 for Jim Gogarty, yes."

.

Isn't that --

A. Well then it's at that same meeting that the cheque stubs were produced.

110 Q. Isn't it all very well to say "well then," Mr. O'Keeffe, it's a total contradiction of what your earlier evidence to the Tribunal as to your state of knowledge?

A. What I said was when this came in the public media, that is when I would have recalled it so there's no contradiction whatsoever there.

111 Q. If I could pass, Mr. O'Keeffe, to Mr. Bates' statement and I want to read out part of that statement to you. He

explains why, when he says he tried to ascertain the nature of the payments. He says that he felt he couldn't contact Mr. Gogarty. Mr. Maher wasn't able to help and he goes on to say, "I believe I also contacted Copsey Murray & Company. I cannot recall to whom I spoke but I feel confident it was not Mr. Copsey. I believe that Copsey Murray & Company had ceased to act for the Lajos Group in 1990 and relations with the Murphy Group were rather sour and I felt my inquiries were not very welcome. I can not recall the person to whom I spoke" - that's in Copsey Murray - suggested that perhaps the sums related for auctioneers or for payments in relation to auctioneers fee or finders fee, "this was purely surmise and I disregarded it."

.
Now firstly I take it you were not the person in Copsey Murray to whom Mr. Bates says he spoke?

A. That is correct.

112 Q. And I take it if somebody rang your firm and wanted to speak to you, you'd be given a message?

A. That is correct.

113 Q. And you never got any such message?

A. No.

114 Q. And who else would have the authority or the knowledge to deal with an inquiry of the kind that Mr. Bates says he raised?

A. An inquiry of that type would have to have been dealt with either by myself or Roger Copsey. No one else in the office would have had the knowledge to deal with it and as I said before, I would have to go to Roger because I wouldn't have the knowledge to deal with it either.

115 Q. So there's nobody really in Copsey Murray other than Mr.

Copsey and yourself who could have dealt with such an inquiry or ventured a suggestion that the monies related to perhaps a finder's fee or auctioneer's fee?

A. I am very surprised someone would volunteer such information over the phone. As a professional practice, if we got such an inquiry, we would put it in writing because it would form part of the auditor's file or his other purposes.

116 Q. Well, it wasn't Mr. Copsey, it wasn't you and nobody else would have the knowledge to field an inquiry of that kind, is that so?

A. That is correct.

117 Q. And in your evidence yesterday to the Tribunal, you were asked about your phone call to Mr. Copsey arising out of the cashflow balance document being put to you. You recollect that, you rang him on your mobile phone over a break or over lunch.

A. I didn't ring anyone, I don't have a mobile phone.

118 Q. Sorry you were rung rather by Mr. Copsey.

A. Correct.

119 Q. And what you told us on Day 92 was that "Mr. Copsey said that he had seen a document that looked as if it recorded the payment as for planning permission but he said what you said was that Mr. Copsey told you that it couldn't be for planning permission because he hadn't known and he hadn't told you and that there was no other way you could have known." Do you recollect --

A. Yes, I believe that is correct, I am not sure it was Day 92 but --

120 Q. It's page 92 of Day 121.

A. Could I have a copy of the transcript?

121 Q. Yes certainly. (Document handed to witness). Mr. O'Neill

asked you about the phone call Mr. Copsy made from the Tribunal to you and your answer was, he "said to me that he had seen a document that looked as if it recorded as for planning permission but he said it couldn't be because he didn't know it was planning permission and he hadn't told me and there was no way I could have known."

A. Correct.

122 Q. Are you seriously suggesting that's what Mr. Copsy said to you when he rang you?

A. Correct. I mightn't have got the grammar one hundred percent right because Roger probably speaks quite differently from me and he is a lot more, how would you put it, elaborate.

123 Q. But that's the content of --

A. That's the content of it, yes.

124 Q. So can you just tell us why you and Mr. Copsy are so eager to establish that you could only have known about the payment from Mr. Copsy?

A. I am not sure we are eager to establish that. I think we are eager to point out the fact that I didn't know anything about this payment and I think Roger is equally eager to point out he knew it was a political donation and nothing else.

125 Q. Why would Mr. Copsy say to you that he hadn't told you and there was no way he could have known?

.

MR. CUSH: With respect, Sir, the witness can't answer that question. The question is why did Mr. Copsy say --

.

CHAIRMAN: That's correct.

.

126 Q. MR. CALLANAN: Well if I put it this way, Mr. O'Keefe.

That question suggests, does it not, that Mr. Copsey was the only possible source of information for you as to what the payment was for?

A. No, I disagree with that. I think you are trying to turn my grammar into something that it's not. What I was saying was I didn't know what it was, Mr. Copsey didn't know what it was.

127 Q. What other basis could Mr. Copsey have said to you that there was no way that you could have known other than his telling you?

A. I think what Mr. Copsey said to me is that in his evidence, when asked about it, he said "It couldn't be planning permission, I didn't know and if I didn't know, there was no way Tim knew." And I think he was relaying what he had said in evidence to me over the phone, which was something quite different from what you are trying to say now.

128 Q. And you see the difficulty with this, Mr. O'Keeffe, among other things, is that presumably there are many other transactions of which you had knowledge through discussions with executives and staff of JMSE and not through Mr. Copsey, isn't that so?

A. As financial controller, there would be a lot of transactions but they wouldn't be all recorded in the books and records of the company.

129 Q. But there was no reason at all why you couldn't have known about the purpose of this payment from executives of JMSE, isn't that so, Mr. O'Keeffe?

A. This payment in the books of JMSE is recorded correctly. It's an intercompany loan as I have explained ad nauseam at this stage.

130 Q. Was Mr. Copsey telling you there was no way he could have known if he hadn't told you or was he asking a question?

A. Mr. Copsey wasn't telling me anything. He was explaining what he had said at the Tribunal.

131 Q. Why was it so urgent for him to do that?

A. I have no idea it was urgent. As I have said previously, I speak to Roger every day, ten times a day.

132 Q. You see, I want to suggest to you that the evidence including your evidence on behalf of the Murphy company is a collective concoction, Mr. O'Keefe, do you accept that?

A. Well I accept that's your job to say that but I would have to disagree with that one hundred percent.

133 Q. And the bit that you were to get out of the deal, Mr. O'Keefe, is that Mr. Copsey would say that he would have told you that it was an intercompany loan, even though he doesn't in fact even recollect telling you that.

A. Sorry, is that a question?

134 Q. It is, yes.

A. Sorry, could you rephrase that, I didn't understand it.

135 Q. I am suggesting to you that the bargain, from your point of view, is that Mr. Copsey would give you cover by saying that he would have told you that it was an intercompany loan on the 8th June 1989, even though Mr. Copsey couldn't even give evidence to the Tribunal that he recollected saying that.

A. That is totally inaccurate.

136 Q. And --

.

MR. CUSH: Sir, if I may observe at this point, I did let the witness answer that question before making this interruption but Mr. Callanan has put quite a dramatic particular proposition to this witness that there was some bargain as part of this collective concoction. There's two sides to any bargain - at least two sides. No other

side has been put. No bargain or rationale or collective concoction was put to Mr. Copsey and that's fundamental.

.
CHAIRMAN: Mr. Callanan, that does not appear to be correct. That wasn't put to Mr. Copsey that it was a collective bargain.

.
MR. CALLANAN: I think I used the word fabrication, not collective fabrication but it seems to have followed --

.
CHAIRMAN: What you actually said, there was some bargain as part of this collective concoction.

.
MR. CALLANAN: Well, I can put it in this way to the witness. Put it this way, Mr. O'Keeffe, that this is -- your evidence is part of a collective concoction to shield the Murphys from responsibility for this payment and to protect your professional reputation and Mr. Copsey's professional reputation.

A. I would have to disagree with that one hundred percent.

137 Q. And you are aware, I take it, that Mr. Copsey couldn't even tell the Tribunal that it was his recollection that he told you this was an intercompany loan in June 1989.

A. Is that a question?

138 Q. Yes.

A. Sorry --

139 Q. Were you aware of that?

A. If you could rephrase the question.

140 Q. Were you aware that Mr. Copsey couldn't even tell the Tribunal that it was his recollection that he had told you that this was an intercompany loan in June 1989, only that he would have told you that?

A. Yes, I am aware of that.

141 Q. And the decision -- this Tribunal raised quite a serious issue from the point of view of Copsey Murray, isn't that so?

A. Has it?

142 Q. Well it does, doesn't it? Clearly there was an involvement or there must have been an involvement on your part and on Mr. Copsey's part in relation to the making of this payment, whatever that involvement was, a serious matter for your firm, isn't it?

A. It's a matter for our firm that we are here dealing with it. We are a professional firm. Roger and myself have nothing to hide here. We have no alternative motive. We have nothing to gain.

143 Q. And it was a significant decision, was it not, Mr. O'Keeffe, as to who represented you in the Tribunal?

A. Well it wasn't very significant on my part, I have never been in a witness-box before, I don't have any legal representatives and when Roger was going to go with Redmond Fitzsimons [sic], I thought it appropriate that I do similarly.

144 Q. And can I suggest to you that it's unusual in a situation like this for a firm of accountants and their clients, where there is a suggestion of wrongdoing, to have common representation?

A. Well the Murphys aren't our clients.

145 Q. Your former clients then, Mr. O'Keeffe.

A. Our former clients. Well, I am not sure if it's unusual. I wouldn't know in these matters.

146 Q. And that's the case, Mr. O'Keeffe, because there's rarely a complete identity of interests between a client and its professional advisors in matters of this kind. Would you

accept that?

A. As I said, I have no opinion on that matter.

147 Q. And if I just put to you that to sustain the collective concoction, it was necessary that you had ready access to the Murphys and the Murphys' story and that an obvious means of achieving this was to have common representation.

A. I just have to disagree with that.

148 Q. Well would you accept the following proposition, Mr. O'Keeffe, that if witnesses were trying to concert and to testify to an identical version of events, it would be helpful, if not essential, for them to retain the same solicitors.

A. I am sure that could be the case but in this instance, I don't think that is what has happening here.

149 Q. Thanks very much, Mr. O'Keeffe.

A. Thank you.

.
CHAIRMAN: Anybody else? Mr. Cush?
.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CUSH:
.

150 Q. MR. CUSH: Mr. O'Keeffe I just want to begin by just raising with you a small issue in relation to your statement and by your statement, I mean your statement of the 16th December. Now, do you know what statement I refer to when I am saying the 16th December?

A. I do.

151 Q. That's the statement that has been circulated to the Tribunal. Now it is the case that at some stage in your evidence yesterday you did indicate that you hadn't signed that statement because there were things in it with which you weren't happy. You did give that evidence yesterday.

A. Correct.

152 Q. I think you may have subsequently given slightly different evidence insofar as you indicated that you didn't have a problem with that statement I think was your expression but you did indicate at one stage that you hadn't signed it because there were things in it with which you weren't happy. Now I just have to put this to you and you may agree or disagree but on my instructions, my instructing solicitor happens to be your solicitor also, that statement was authorised by you over the telephone before submission to the Tribunal.

A. That is correct.

153 Q. You accept that?

A. I accept that.

154 Q. And, Sir, I should indicate if anything turns on that, there's available evidence from my instructing solicitors in that regard.

.

You have been described on a couple of occasions, Mr. O'Keeffe, and I think you may have described yourself, as a financial controller when speaking about the relevant time in 1989, isn't that so?

A. Correct.

155 Q. I just want to put that in its proper context, if I may.

It is the case, is it not, that at this time you were 25 years of age, isn't that so?

A. Correct.

156 Q. And it is the case that you were qualified only a matter of months as a chartered accountant, is that so?

A. Correct.

157 Q. And did that, if I may so describe it, relatively junior status, compared to the relatively senior status of some of

the people with whom you were dealing, for example, Mr. Gogarty, who was the chairman of the company, did that affect the way you dealt with those people?

A. It did in so much that I would have had an enormous amount of respect for them and I would have taken what they were saying and what they were doing as being the right thing for the company.

158 Q. Now, Mr. Callanan has fairly put his client's position to you in that he has said that you are part of a collective concoction. In other words, he is saying to you, Mr. O'Keefe, that you are telling lies under oath. Now, is that the case?

A. That is not the case.

159 Q. Are you lying, Mr. O'Keefe, when you say that it was Mr. Gogarty who requested you to get cash from the bank?

A. I am not.

160 Q. And are you lying when you say that you gave him the cash?

A. I am not.

161 Q. And insofar as a rationale for your lying has been suggested, that there's some bargain whereby it would be acknowledged that you were only told it was an intercompany loan, is there any substance in that, Mr. O'Keefe?

A. None whatsoever.

162 Q. Now, you have given evidence to the effect, Mr. O'Keefe, that you did not know the purpose for this payment but it has been suggested to you by Mr. Callanan that it's possible that other executives in the company, apart from Mr. Copsey -- I shouldn't say other executives, he wasn't an executive but executives in the company, not Mr. Copsey -- may have told you the purpose of this payment. Did they or didn't they, Mr. O'Keefe?

A. They did not.

163 Q. Thank you, Mr. O'Keefe.

.
CHAIRMAN: Thank you. Mr. O'Neill, do you want to --

.
MR. O'NEILL: Yes, sir, one or two matters.

.
THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MR. O'NEILL:

.
164 Q. MR. O'NEILL: Do I understand from your answer to your own counsel, Mr. Cush, who also represents the interests of other parties before the Tribunal generally called the Murphy interests, that you are now saying that the statement of the 16th December 1998 is a statement which you, having considered it, telephoned your solicitor about and discussed it with him, is that so?

A. I am saying that I was happy with that statement.

165 Q. The question is quite simple, Mr. O'Keefe. I am asking you whether or not you are saying that having received this statement, you telephoned your solicitor and spoke with him about its content? Do you understand the question?

A. That is correct.

166 Q. You did so?

A. I did so.

167 Q. And was the subject matter of your ringing him the fact that it was not an accurate statement as far as you were concerned?

A. That it was inaccurate in so far as it said I was a trainee accountant when in reality I was qualified at the time.

168 Q. Yes. That was one inaccuracy. There were other reservations you had about it that you mentioned yesterday, isn't that right?

A. To my knowledge, I sent back the draft statement with a few

amendments which were made.

169 Q. I am asking you about the telephone conversation that you had with your solicitor concerning the content of this statement which was sent to you by post and about which you phoned him on receipt, I am not talking about your subsequent action, I want to know about the telephone call. Was it to express to him the fact that there were inaccuracies in the statement?

A. None other than what I have already said in relation to being a chartered accountant.

170 Q. That was the only error, is that right?

A. Correct.

171 Q. And are you saying that despite the fact that you knew it to be in error even in that situation, you wanted it circulated as your statement in that form?

A. I think we might have missed the correction.

172 Q. You might have missed --

A. Make the correction as we did with Lajos and Grafton. I think the statements were needed in a hurry.

173 Q. So are you saying you rang him not to address these errors or the one error that at the moment you are referring to but rather to have him circulate the statement, is that why you rang him?

A. Yes.

174 Q. And not to correct any of these concerns that you might have had?

A. No, I think I was informed that there would be an expanded statement done at some point in the future, not maybe for submission but maybe as an internal memo.

175 Q. And you were told this in this telephone conversation, is that right?

A. I can't be a hundred percent sure of that but I was happy

with the statement of the 16th.

176 Q. Well could I suggest to you that that isn't the case. It was clear to you that amongst other matters, there was a reference here to your taking instructions on a day-to-day basis from Mr. Jim Gogarty when that was not in fact the case, you knew it not to be the case and you corrected it in the subsequent statement that was circulated, isn't that right?

A. Correct, well at the time of the 16th --

177 Q. Yes.

A. I may not have -- I may not have thought about it enough at that point in time to realise that this was an error.

178 Q. But could I suggest to you that the purpose of your ringing your solicitor on receipt of this document was to indicate to him that you could not sign the statement in its current format because it was not fully accurate and did not reflect the entire of what you had said to him at an earlier stage, isn't that why you rang him?

A. No, I think I rang him to say that I was happy with it.

179 Q. Well did you ever believe that was the reason that you rang him? Did you believe it yesterday when you were giving evidence that that was the reason that you had rang him?

A. I have to apologise. Yesterday I was totally thrown. I got confused.

180 Q. So is it the case that yesterday you believed the purpose of your ringing him was to correct the fact that the statement did not accurately record what you had intended to say but you have now changed your mind, is that the position?

A. It's not that I have changed my mind but I think yesterday I was confused.

181 Q. I see. And you became unconfused since, is that the

position?

A. Correct.

182 Q. I see. Thank you.

.

CHAIRMAN: Mr. O'Keeffe, I am still a little confused and a little not clear. Isn't it a very unusual event, the collection of £20,000 in cash?

A. Correct.

.

CHAIRMAN: It's wholly contrary to any activity that had taken place in the company while you were in the position of controller. It was a very large sum of money and with a sense of responsibility, did you not want to know what was it, what was it going to do? After all, assets of the company, it formed the assets of the company and it was going somewhere.

A. Correct, but in hindsight, if it happened tomorrow, I may well ask but you have to understand the chairman of the company whom I had enormous respect for, Mr. Gogarty, was the man looking for this money and he wasn't a man that someone at the age of 25 could easily query and that may be a failing on my part but that's the honest truth and that's the reality of it.

.

CHAIRMAN: That I can understand, but you were associated with Mr. Copsey. He was, when I use the phrase your master, I mean the tutor as accountant, he was your tutor and here was a very unusual event which I would have thought at least, I won't say cause alarm bells to ring but cause a degree of speculation on your part at minimum.

A. Well, that is the reason that I rang him because it did cause speculation on my part and when I was informed that

this payment was OK to make, I did so.

.

CHAIRMAN: Did you not ask him why it was being made in cash?

A. At the time, no.

.

CHAIRMAN: So be it. Thank you very much.

A. Thank you.

.

CHAIRMAN: Is Mr. Bates in the building? That's all right, I just wanted to know. What I was going to do is take a short break before Mr. Bates starts and that's the reason I wanted to know if he was here. Shall we sit again in about a quarter of an hour?

.

THE WITNESS THEN WITHDREW.

.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

.

MR. O'NEILL: Mr. John Bates please.

.

MR. JOHN BATES, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. O'NEILL:

.

183 Q. MR. O'NEILL: Good afternoon, Mr. Bates. You are an accountant by profession, is that so?

A. Yes.

184 Q. And would you state please your qualifications and the memberships of any institutes that you may be a member of?

A. I am a chartered accountant and a member of the Institute of Chartered Accountants of Ireland.

185 Q. I see. When did you qualify?

A. 1965.

186 Q. I see. You were an auditor to the Murphy companies, is that so?

A. Yes.

187 Q. And was that since 1987 or thereabouts?

A. No, for the structural steel company, since 1979 and for the other companies, 1987.

188 Q. I see. At the request of the Tribunal, you provided a written statement to the Tribunal which is dated the 16th December 1999, and it's signed by you and I'd ask you to just identify that statement. (Document handed to witness.) Your signature will be on the third page of the statement, is that so?

A. That's right.

189 Q. And whilst other statements were provided on the 16th or dated 16th December 1998, it's purely a coincidence but this was actually provided on the 16th December of 1999, isn't that so?

A. I signed it on the 15th.

190 Q. You signed it on the 15th. I see. Perhaps my copy is a little blurred. I will just read from that statement if I may if you wouldn't mind the following the copy that you have.

A. Sure.

191 Q. It's entitled, 'Tribunal of Inquiry into Certain Planning Matters and Payments. Statement of John Bates.'

.

"I have been auditor to JMSE since 1979. I became auditor to the Lajos Group in 1987. I carried out the audits myself in accordance with standard accounting procedure.

.

I carried out the audits on the JMSE premises at Santry where books and records were kept. I would carry out the JMSE audit first. This was the principal trading company. Then I would write up the books of the other companies and carry out the audits of these companies. Apart from the Gaiety, the other companies held lands but were not active trading companies.

.

Up to 1982, I dealt almost exclusively with Mr. Gogarty. I seldom saw Mr. Conroy and I have no recollection of ever seeing him in Santry. I have very occasional contact with Mr. Joseph Murphy Snr and I never attended any official meeting or board meeting at which he was present.

.

After 1982, I dealt with Mr. Sweeney and more so with Mr. Downes. I would have very frequent meetings with Mr. Downes. After 1988, my dealings were with Mr. Copsey and Mr. Tim O'Keeffe and after 1989, also with Mr. John Maher.

.

At all times until he left, my sole contact in anything regarding to the land holding companies was Mr. Gogarty or Copsey Murray in relation to financial matters of the land companies. As far as I was concerned, he had exclusive control of those companies. At the time of completing the 1989 audit, I became aware of a cheque for £30,000 drawn in favour of JMSE and debited to Grafton. To the best of my recollection, this would be in December 1990 or in January 1991. These payments were not vouched. I had to try to ascertain the nature of these payments. The person to whom I normally would have turned was Mr. Gogarty.

Unfortunately, he had ceased to be a director in 1989. I still would probably have contacted him but I was aware that Mr. Gogarty and the Murphys were in dispute at this time regarding ESB money and pension related matters.

I had always had a reasonably good working relationship with Mr. Gogarty but about this time also, relation between us had become strained because Mr. Gogarty had made a very aggressive and threatening telephone call to me claiming that my son had been black mailing his son --

A. Sorry--

192 Q. "Blackguarding", not - I beg your pardon, "blackguarding his son in Sutton. Now in the circumstances, I considered that I could not contact Mr. Gogarty for an explanation regarding these payments. People were simply not talking to Mr. Gogarty at this time. I am certain that I asked Mr. John Maher about these payments. He was the "in-house accountant" and we would meet very regularly, in fact almost daily.

Mr. Maher was unable to help as to the purpose of these payments. I also had spoken to Mr. Frank Reynolds --

A. I may also --

193 Q. Sorry "I may also have spoken to Mr. Frank Reynolds but I cannot be at all certain on this. I am certain that I did not ask Mr. Joseph Murphy Jnr as he was not around at that time.

In any event, no one at JMSE could advise me as to the purpose of these payments. I believe I also contacted Copsy Murray & Company. I cannot recall to whom I spoke but I feel confident that it was not Mr. Copsy. I

believe that Copsey Murray & Co. had ceased to act for the Lajos Group in 1990 and relations with the Murphy Group were rather sour and I felt that my inquiries were not very welcome. I recall that the person to whom I spoke suggested that perhaps the sum was related to payments for auctioneer's fees or a finder's fee. This was purely surmise and I disregarded it. I had to complete the accounts and progress the audit.

.
Grafton was a land holding company but to all intents and purposes was dormant, even though in strict tax law the land was trading stock. JMSE was the only true operating company. In the absence of any other explanation, it seemed to me to be both logical and reasonable that any expenditure by Grafton almost certainly had to relate to the lands, that whatever had been spent, could hardly have been expended otherwise than on bettering the lands. I therefore decided to treat these sums as "enhancement expenditure" .

.
There was a historical precedent for such treatment. A sum of £65,273 had been expended in acquiring lands at Poppintree, which clearly "enhanced" the surrounding company lands.

.
I also recall the payment of about £3,000 to resolve a dispute about access to the lands at Forest Road with an adjoining land owner. I can categorically state it never once occurred to me that this money may have been paid to a politician and certainly no one ever suggested this to me at this time.

.

The payment fitted in with other expenditure in other years which was clearly "enhancement" so basically I entered it as enhancement expenditure.

.

The JMSE accounts and the Lajos consolidated accounts were the most important accounts. Even confined to Grafton's own accounts, the sum of £30,000 was not material to its financial stability. I knew that the financial position of the group and of Grafton itself was strong at the time. My function as auditor was to form an opinion on the accounts of the company and of the group. To my opinion, the accounts of the group and of its constituent companies did give such a true and fair view.

.

After the matter had come into the public domain, I revisited and rechecked the accounts between April and July 1987. In the light of the information then available, I advised directors that the accounts would have to be revised. Because of the way the £30,000 had been treated in the accounts, there was now a tax shortfall of £12,000. This sum was sent to the Revenue Commissioners in September 1997 and accepted by them in full payment.
Signed John Bates."

And it's dated the 15th December 1999. Is that so?

A. That's so.

194 Q. You adopt that statement as being your statement to the Tribunal, Mr. Bates?

A. Yes.

195 Q. Again this is a statement which was furnished through to the Tribunal through the offices of Fitzsimons Redmond, solicitors?

A. That's right.

196 Q. And you went to them, was it for legal advice or as your solicitor or did you go merely as in the knowledge that they were the solicitors acting for your client, the Murphy interests?

A. Well I was obviously aware that they were acting for my client, the Murphy interests and they are acting for me now. I wasn't -- I asked them -- I didn't know if I required legal representation and they advised me that I did and would I accept their advice. I accepted their advice and I would certainly be happy that I did so.

197 Q. Very good. Now if I could just return to the detail of the statement and events that are set out in the statement. You say that you carried out the audits yourself, isn't that right?

A. Yes, that's right, I would have had assistance but I was, you know, I would have been carrying out a lot of the work myself, yes.

198 Q. Well, do you mean that you made all the relevant entries in the working journals yourself or is it some other person who did this?

A. Oh no. Well first of all the books of JMSE would be written up by the staff of JMSE. My working papers would be written up by myself and whoever else, what junior staff were assisting me but they would be written up under my direction so basically I would say and certainly as far as journal adjustments or anything like that, that I would decide on those myself and I would, you know, in my working papers myself.

199 Q. Very good. You would decide on the journal entries yourself and you would complete the working papers yourself?

A. Yes.

200 Q. I am going to hand you now a volume of documentation which has been circulated to the parties some days ago and it contains information relevant to the queries that I will be putting to you. (Document handed to witness.)

A. Sure.

201 Q. At tabs 9 and 10. If you just turn to those, if you would please. If you just go through the documents first in tab number 9.

A. Yes.

202 Q. And then if we move to tab number 10, I just would like you to briefly familiarise yourself with the nature of those documents as you go through the tab in question. Just in general, Mr. Bates, the documents that are at tab 9 are documents which were JMSE records, isn't that so?

A. Well I can see that some of them were, yes.

203 Q. Some of them --

A. Well presumably they are. I haven't necessarily seen these before so, for example, the very first document is obviously, it's a photocopy of a cheque stub.

204 Q. Yes.

A. Right, well, presumably it's a cheque stub for JMSE.

205 Q. That has been the evidence. If you wish, I'll go through them. I had understood that --

A. I am quite prepared to accept that they are but what I am just making clear, this is the first time I have seen that particular cheque stub.

206 Q. I see.

A. And now the others are -- obviously is a bank sheet, fair enough, for JMSE --

207 Q. I think perhaps we should go through, if I may, Mr. Bates, we should go through the documents now individually since I had understood that you would be intimately familiar with

each of these documents.

A. Not necessarily. You can't look at every document.

208 Q. Very good. The first two documents are cheque stubs or photocopies of cheque stubs, the evidence which is agreed by all parties is that these represented the two cheque stubs drawn on the JMSE account of the AIB in Talbot Street on the 8th June of 1989 in the sum of £10,000 and £20,000 respectively?

A. Right.

209 Q. Now they would have formed part of the documentation, I take it, that would have been available to you in the preparation of your audit, is that so?

A. Oh they would, yes, they would have been, yes.

210 Q. You would do a check --

A. I would do a test check, yes.

211 Q. Very good. The next type of document you see is a bank statement and that is one that would have been received by the account holder, Joseph Murphy Structural Engineers Limited and it relates to the status of the account in June 1989 and in particular on the 7th and 8th June, isn't that so?

A. That's right.

212 Q. And that again is documentation which would be available to the auditor because the company would keep that --

A. Exactly, yes.

213 Q. And the probabilities are therefore that you would have considered that document in the course of your audit work?

A. Yes.

214 Q. The next document then is internal bank document and it may not have been circulated to the client, indeed probably wasn't?

A. I don't recall that. I am not saying I don't recall it, I

was trying to figure out what it was so it's --

215 Q. It's an internal bank document and it's present in this booklet of documentation because it gives the number of the cheque, 546, which was the cheque for £20,000, which was unclear on the document which was circulated to JMSE.

A. Right, OK.

216 Q. The next document again is another bank document which would have been sent to the client as is the following document, isn't that right?

A. Right.

217 Q. And again they are matters which presumably would have been considered in the course of the audit, isn't that right?

A. Yes.

218 Q. The next document is an extract from the cheque payments journal and it transpires that the journal itself comprises two A3 sheets rather than one?

A. Right.

219 Q. But apparently these photocopies are only of the first section of the A3 page and that is how they were received by the Tribunal.

A. Yes, well I mean I recognise Jim Mitchell's writing there right away.

220 Q. This is Mr. Mitchell's writing who wrote up the cheque journals at the time?

A. I would say so, yes.

221 Q. Now if we move to the next tab of documentation, that documentation comprises firstly an account prepared by the solicitor, Mr. Denis McArdle, relating to the disbursements of the funds which had come into his account upon the sale of the Forest Road lands, isn't that right?

A. That's right.

222 Q. And to your recollection, is that a document which you

could have considered in your audit?

A. Yes.

223 Q. And the next document then is nominal ledger entry of Grafton Construction created in the JMSE audit or JMSE accounting process, is that right?

A. That's right. It's part of their nominal ledger account.

224 Q. And it records the repayment, both the payment out and the repayment back of the sum of £30,000 to JMSE on the Grafton account, isn't that right?

A. That's right.

225 Q. The payment out is accurately recorded in two sums of 20 and 10 and the repayment back as one payment of 30, isn't that right?

A. That's correct.

226 Q. The next document then is a document which is described as the Grafton year ending 31/5/1990 TB and journal and lead schedules?

A. Yes.

227 Q. That document, if you look at the pagination which is at the bottom of the right-hand corner there starts at page 172.

A. Yes.

228 Q. That document will continue until page 189, if you just want to move to page 189 and confirm that to be the fact.

A. Right.

229 Q. Now, is that a document which was prepared by you personally?

A. That's right.

230 Q. Right. So that every entry we see here is an entry which was entered as a result of your consideration of the accounts of the company for the purpose of drawing up your journals to confirm and check their various payments, is

that right?

A. That's right.

231 Q. Essentially out of this document was going to come the audit report, isn't that right?

A. That's right, well you get the -- these documents are building up a set of accounts and then I give my report on the set of accounts.

232 Q. And if you turn to page 191 of the booklet of documents, there is the auditor's report to the members of the Grafton Construction Company Limited which is dated the 8th February 1991 and it's issued by Bates & Company. Do you see that document?

A. Not yet --

233 Q. It starts at page 191.

A. Right, I have it.

234 Q. You have that and you might just look at that and confirm that that is the audit report which was prepared by yourself dated the 8th February 1991 and relating to the financial year which ended on the 31st May of 1990?

A. That's correct.

235 Q. And that, as we know, because the company's year end was the 31st May 1990, would deal with all the financial transactions of the company that are relevant from an auditing and accounting point of view between the 1st June, is it, of the previous year?

A. Yes, 1st June '88.

236 Q. 1st June '89?

A. Sorry '89.

237 Q. So from the 1st June 1989 to the 31st May 1990.

A. Right.

238 Q. And in particular, it would deal with any transaction which had occurred on the 8th June of 1989 or subsequently in

that month, isn't that so?

A. That's so.

239 Q. And you may be aware that the Tribunal is concerned with particular transactions that took place in that month, isn't that correct?

A. That's correct.

240 Q. Now, in the preparation of the document which is described as the 'Grafton year end, TB and Journals and Lead Schedules'.

A. Right.

241 Q. What documentation would you have considered which allowed you to reduce that information into the format in which we see it here?

A. Well I would have looked at all the records available, company records that were available to me. Basically I would have looked at, gone through the bank statements, gone through, check the bank statements against the cheque payments book, cash receipts book etc. The basis of these were -- didn't have staff or really, you know, other than executive staff -- most of the transactions would have been in the nature of bank transactions.

242 Q. Right.

A. A lot of the other -- other items might have come through JMSE.

243 Q. Now you would have known, I take it, that Copsey Murray had a function in relation to the accounting for that particular year?

A. That's right.

244 Q. And you knew the individuals concerned by name who were dealing with it, Mr. Roger Copsey and Mr. Tim O'Keefe, isn't that so?

A. That's so.

245 Q. Right. And I take it you appreciated their different roles in this in that Mr. Copsey was a director of the companies concerned --

A. Right.

246 Q. And he had the position of financial director of the company?

A. Yes.

247 Q. You were aware of that?

A. Yes.

248 Q. Were you aware also Mr. O'Keefe had the role of financial controller?

A. Well not -- I am aware that Mr. O'Keefe was working on the records and I am aware that Mr. O'Keefe was working quite, you know, substantially for the company. Whether I was aware he had the designation of financial controller, you know, I wouldn't -- not necessarily.

249 Q. You weren't necessarily aware that he had that designation but you knew the function.

A. Yes, I knew the function he was carrying out.

250 Q. And did you know that the functions that he was carrying out were those which you would normally expect to be carried out by somebody of the title of financial controller, whether it was allocated to him or not?

A. Well basically what I would have considered, I knew Roger Copsey was the financial director of the group, he was in charge of the financial affairs of the company. I knew Mr. O'Keefe, as far as I was concerned, was his assistance. That's -- I am sure that's the way I would have regarded it.

251 Q. Did you know him to be, like yourself, a chartered accountant?

A. I am certain -- I am aware now -- I can't say whether I was

aware at that particular time whether he was qualified or not. You know, it wouldn't have been necessarily of interest to me necessarily, you know.

252 Q. I see. Certainly you knew that he had a function --

A. Oh yes, I knew he had a function, yes.

253 Q. And obviously you knew that any documentation that was prepared by them would be relevant material or could be relevant material for your audit purposes, isn't that right?

A. That's correct.

254 Q. Now, there is a file documentation which was provided to the Tribunal which is a file of yours, I understand, and I would ask you to identify that, if it is yours. (Document handed to witness.) Yes, it's the RADO file of Grafton, Reliable and Wexburn and I'd like you to just look at that document please. Firstly, could you identify that as your file.

A. I would say, I mean I have seen this file and I'd say it's really the company's file rather than my file. I wouldn't regard it as my file. I would regard it as the file basically of Grafton Construction, Reliable and Wexburn.

255 Q. Right. Well if we just start with the cover of it for a start and look to the spine of it on the outside there, you will see it's -- the manufacturer of that file is RADO, isn't that right - R-A-D-O?

A. Yes, that's correct.

256 Q. And written underneath that are the descriptions of three companies, Grafton, Reliable and Wexburn, isn't that right?

A. Yes.

257 Q. And we know that they are the, at least three of the land owning companies of the Murphy Group, isn't that so?

A. Well Wexburn wasn't a land owning company.

258 Q. Did you not understand it to be the owner of --

A. Yes, it did own property, yes, it owned the company's Head Office.

259 Q. Put it this way, it was not a trading company?

A. It was not a trading company, yes.

260 Q. Fine. If you look again to the outside of the file cover, is that your writing?

A. No.

261 Q. Is it of your firm or is it somebody in the Murphy company who wrote that, who prepared that file?

A. It's not anyone from our firm.

262 Q. It's nobody from your firm?

A. No. I mean can I hazard a guess.

263 Q. Of course you may, certainly.

A. I think that's Tim O'Keeffe's writing. I am not certain now. I might be wrong there so maybe, you know --

264 Q. This is a document which came to the Tribunal as Bates documentation and I am asking you whether or not it is your documentation or --

A. No, it isn't, although obviously I got possession of it. It's not my file.

265 Q. Did you retain possession of it?

A. I obviously must have. It may have been lying around in Murphys, you know.

.

MR. CUSH: Could I just indicate there's some, I wouldn't say dispute, but there is some difference between the Tribunal's side and our side as to how that file, who it emanated from. Now Mr. Bates has clarified it's not his file and that's as far as it goes there but in relation to what Mr. O'Neill said as to where it came from and I did indicate this on a previous occasion, there is some dispute

on us --

.

MR. O'NEILL: I am hoping this dispute might be assisted by Mr. Cush's client who presumably is the person who provided discovery and knew the discovery and can indicate the source of this documentation because the Tribunal, as far as the Tribunal is aware, that is a documentation of Bates & Company and I want to establish that evidentially through the witness if I can. Obviously --

.

MR. CUSH: I understand Mr. O'Neill has endeavoured to establish that but the witness has not agreed with him, he says it's not his file, it's not his writing.

.

MR. O'NEILL: I am questioning the witness about it and it might establish whose file it is. I am not suggesting Mr. Bates that you have ownership particularly of any individual file but is this a file which was in your possession and which was considered by you in the preparation of the document which we have just referred to called the 'TB Journals and Lead Schedules'.

A. Well I can certainly say that there are documents in this file which were definitely considered by me but I am not sure if I considered every document in it. I would need to go through the file, each document.

.

For example, this trial balance, I have inspected that trial balance all right. The cash receipts, I have inspected that also.

266 Q. In order to perhaps make it a little more intelligible, I have prepared a second copy of that file which is a photocopy of every document that is on it and it has the

Tribunal reference numbers to it and it might be easier to refer to, if you take that document also, Mr. Bates.

(Document handed to witness.) If you look at that document, I will explain to you what it is. It is a photocopy of every document that appears on the original file which is in your possession at present. Do you understand that?

A. Right.

267 Q. And the only additions you will see on it are the stamping in of the document in the Tribunal which appears at page 3, if you -- the pages now are at the top right-hand corner, you will see a reference JMSE 24.15 which relates to the file as a whole. Do you see that - the top right-hand corner?

A. Yes. On the very front first page?

268 Q. On each page a similar --

A. Yes, JMSE 24.15.

269 Q. Exactly. And the only numbers that are going to change throughout this are the numbers after the hyphen so it runs from 1 on, do you see?

A. Right.

270 Q. And it includes then, there are certain dividers which appear through the file and each divider has a page number, only to keep the sequence in order so that if you turn to page number 7, you will see that there is reference to a divider being placed in the original document, do you see that?

A. Yes.

271 Q. And the next document then will be the divider itself.

A. Right.

272 Q. OK. Now, in this file of documentation, you will see that it deals with the affairs of the three companies in order,

Grafton, Reliable and Wexburn?

A. Right.

273 Q. And if we look at the first reference to Grafton, it appears at JMSE 25.15 at page 8. Do you see that?

A. 25 or 24.

274 Q. If we ignore perhaps the JMSE reference and just look to page 8, it might be easier. It --

A. Well my page, is that --

275 Q. It just has Grafton in the top corner.

A. A blank page, yes.

276 Q. That is the divider at which the information relevant to Grafton commences?

A. Right.

277 Q. Do you see the word 'Grafton' there. Can you identify whose writing that is?

A. It's the same handwriting as on the file here.

278 Q. So --

A. I can't identify it, I couldn't be certain whose handwriting that is.

279 Q. It's not your writing?

A. It's not my writing. Exactly. It's not mine.

280 Q. If we move through this document, you will see that insofar as it relates to Grafton, it is in three divisions. The first of those divisions commences at page 17 under the heading 'Receipts'. Have you found page 17?

A. I have, I don't see 'Receipts' on my one.

281 Q. It's the very top --

A. My reference is JMSE 24.15-17.

282 Q. Yes. It's --

A. Oh sorry, I see, yes, it's very faint.

283 Q. Well that is 'Receipts' and you will see that that runs from page 17 until page 55, page 55 is the next divider.

A. Right. Do you wish me to go through each page?

284 Q. Well I will in a moment be asking you about it. I just want to establish that that is the first division in the Grafton file is to divide the receipts and the receipts are those comprised in the file between 17 and 55?

A. Right, OK.

285 Q. And the next description of documentation is 'General'.

A. Right.

286 Q. At folder 56 and that will run to page 96.

A. Right.

287 Q. And the next then are 'Contracts' from 96 to 166 and after that then, there is some Copsey Murray documentation which completes the documentation relating to Grafton?

A. Right.

288 Q. So in the overall in this document, there are pages from 9 to 187 relate to Grafton, divided into three categories which are enumerated as 'Receipts', 'General', 'Contracts' and then an 'Unspecified Schedule of Documents' after that.

A. Right.

289 Q. Now, in relation to the 'Receipts', in preparing your audit of the documents, you would have considered the receipts which were received by the Grafton company, isn't that right?

A. That's right.

290 Q. And these receipts are as set out in that file, isn't that right?

A. Well presumably they are -- I mean --

291 Q. Well this is --

A. Well, OK, I will agree to that.

292 Q. This is a file, Mr. Bates, which has been in your possession, isn't that right?

A. I can't be -- well sorry, yes, it would have been,
presumably I looked at this file back in 1990, yes.

293 Q. I mean it would be extraordinary if you didn't because what
it states on the outside of it is the three companies in
question and the reference to that financial year, isn't
that right?

A. Right.

294 Q. On the first page of it, the page 1, Grafton Construction
Limited, Reliable Construction Limited, Wexburn Limited,
year ending 31/5/1990, isn't that so?

A. Right, that is so.

295 Q. Is that your writing or is that somebody else's writing? I
am talking now about page 1.

A. That is not my writing.

296 Q. That's not your writing, very good. Well if we turn
perhaps to the document at page 26, do you see that
document - 'Cash Receipts, Grafton Construction'?

A. Yes.

297 Q. Is that your writing?

A. No.

298 Q. Or the document on page 27?

A. No.

299 Q. Now the receipts as I say, have been categorised or listed
here and you might just confirm to me that those receipts
include the letting fees which were received by Duffy
Mangan Butler, isn't that right?

A. You are now on page 27?

300 Q. If you were to look by way of example to page 37.

A. Page 37.

301 Q. It says "Letting Balgriffin 88, promissory note due" and
then the sum of £3,300.

A. Yes.

302 Q. And that was the incoming money, coming into the Grafton company, isn't that right?

A. That's right, yes.

303 Q. And then the next document or the next reference that I referred you to was to 'General' and in the documents under 'General' there are a variety of documents which include firstly Mr. Denis McArdle's --

A. What reference are we, sorry?

304 Q. If we move to number 57.

A. 57.

305 Q. Where we talk of 'General' you see where the word 'General' is. 57 is a letter from McArdle & Company, the solicitors.

A. Right.

306 Q. And it's setting out certain financial details including his own fees and certain expenditure incurred, isn't that right?

A. That's correct.

307 Q. And if we move through the documents then, the next four pages relate to outlays, isn't that right, by Mr. McArdle?

A. Yes.

308 Q. And the fifth page at page 62 is the same document as we see in the tabs that I referred you to, which you have before you at tab 10, the first document there is the same document as in tab 10, isn't that right?

A. Yes.

309 Q. That is Denis McArdle's account of what happened to the monies that came in from Forest Road, isn't that right?

A. Right, yeah.

310 Q. Is the essential document presumably in preparing the accounts for the Grafton Construction Company in that year because it had disposed of or had available to it £1.45

million, isn't that right?

A. That's right.

311 Q. And that money had been in an account in the ICC and had to be accounted for, is that right?

A. That's right.

312 Q. And this particular document shows firstly what monies came in and secondly, what monies were earned by that investment in the bank, isn't that right?

A. Yes.

313 Q. So it comes up to February of 1990 where the interest charge is calculated, isn't that right?

A. That's right.

314 Q. On the other hand, it sets out the expenditure and the expenditure runs to the 31st January 1990, isn't that right?

A. That's right.

315 Q. Yes. And on the 5th February, Mr. McArdle, in effect, wrote this document to say what he had done with the money and what money was available to the company, isn't that right?

A. That's right.

316 Q. And that I take it is a crucial document from the audit point of view, because that's telling you what was available at the start, amongst other things, of this particular funding, is that right?

A. Yes.

317 Q. And from an audit point of view, you would have to satisfy yourself or explain or refer the expenditure to other matters that you could establish, isn't that right?

A. Yes.

318 Q. There are a number of references there to JMSE --

A. That's right.

319 Q. Which is, I suppose, the main trading company and it certainly is the company whose accounts you did before you got to the subsidiaries, is that right?

A. That's correct.

320 Q. So you would have to tie in each of the references to JMSE in this document with what you knew of JMSE?

A. That's correct.

321 Q. And in this document there is a reference to £30,000 on June the 13th JMSE, £30,000, is that right?

A. That's right.

322 Q. If you just look at that document at page 62, there's a little tick in front of the £30,000. Would that be your auditor's tick, do you know? Is that the way in which you would go through this or not?

A. Well I mean it could be. I mean I can't say it is my tick, you know, but it could be, I would have certainly have examined this document.

323 Q. You would have?

A. I certainly would have examined that document, yes. And I would have -- yes.

324 Q. Now in this bundle of documents, there is at page 83 --

.

MR. CUSH: Just while the witness is looking for that document, I don't have this file. I know Mr. Bates has the copy Mr. O'Neill gave him and the originals Mr. O'Neill gave him. If I could even see the original, I would have some prospect of following --

.

CHAIRMAN: Following what's going on.

.

MR. O'NEILL: Certainly. I will just ask the witness to identify the original document at this point and if My

Friend wishes a full copy to be made, I will make one.

.

If you look at page 3 firstly and if you look just in your file and identify the original one.

A. Where would this particular document be in the original file?

325 Q. It would be under the heading 'General' and it would be the 57th page in from the beginning of the document.

A. Right.

326 Q. It is an exact replica in the --

A. Right.

327 Q. Do you have that document?

A. Yes.

328 Q. And that is document 190 in the tab which has been circulated already. It's the document headed 'Reliable Construction, Cash Balance'. I just want to confirm that you had the original of that document before you.

A. Yes.

329 Q. Thank you very much. This document again, Mr. Bates, is a document which was one prepared for consideration in the accounts, is that correct?

A. I haven't seen this document before. It's a Copsey Murray document. It may -- it was produced to me or I saw it a few days ago but I hadn't seen it, no, I didn't see it at the time of the audit. I understand that it wasn't prepared for that but I since I didn't prepare the document and to the best of my knowledge, I didn't see the document.

330 Q. You are familiar with the rest of the documentation that I have brought you through to this point, isn't that right?

A. Yes.

331 Q. Right. This, and I am talking now about the original documentation, is documentation which presumably was the

file kept for the year ending 31st May 1990 for the purpose of audit at the end of the year, is that right?

A. Well I can't say that's -- just repeat that question because, you know, I am not sure if I can give the answer to that.

332 Q. This file was prepared firstly recording the financial transactions of the three companies involved during the year ending 31st May 1990.

A. That's right.

333 Q. And the documents to which we have referred to so far have all been original documents on the file, isn't that right?

A. Yes.

334 Q. Whilst you and I have discussed the copies for ease of reference and because of the pagination that has been put on copies and there's no pagination on the originals, it contains all the original documentation, is that right?

A. That's right.

335 Q. And in order for you to prepare the audit for that financial year, you would have to see the originals, is that so?

A. Not necessarily. Like, for example, in the case of Kevin McArdle, I could well have seen photocopies of the originals. I could have got them from different files. There would have been many copies so I didn't necessarily see that particular document but I certainly saw a copy of all McArdle's documentation. Well all the documentation relating to money coming in and money going out.

336 Q. Are you suggesting that there is a second file of documentation?

A. No, I am not --

337 Q. Which contains everything on this file.

A. No, I am not suggesting that at all.

338 Q. Fine. You then saw --

A. I am not suggesting that. I am just saying that in the case of Kevin McArdle's documentation, I could well have seen photocopies rather than originals.

339 Q. But you wouldn't see a large series of loose documents, you would look at the files which had been prepared by the accountant in-house for the purpose of the inevitable audit?

A. That's correct, yes.

340 Q. And would you agree with me in all probability you saw the original of the file that you have seen this morning here?

A. Yes.

341 Q. For the purpose of your audit?

A. In all probability I did, yes.

342 Q. And how did you say you did not see the document that we have last referred to?

A. I can only say that I didn't see it.

343 Q. Why can you say you did not see it?

A. I don't recall seeing it, shall we say, I certainly do not recall seeing that documentation and as I -- that's it.
You know --

344 Q. Well that original documentation is on the file where you would have expected it to be, isn't that right?

A. It's on the file -- I mean -- I am not -- I haven't seen that document before. Now the other point is that generally most documents that I would inspect, I would actually take a copy of and put on my file.

345 Q. Right.

A. There wasn't a copy of that document on my file.

346 Q. Well which file are you referring to now --

A. Well my --

347 Q. -- as your file?

A. Well my audit file, which is basically your copy of
it -- hold on a second, it's not that file --

348 Q. Are you referring to the tabs, Mr. Bates?

A. Wait till I --

349 Q. I may be able to assist you.

A. It's the one where we had the trial balance and the lead
schedules.

350 Q. Page 172 at tab 10 and it runs from 172 to 189.

A. Is tab 10 correct?

351 Q. Certainly it's after tab 10.

A. Sorry, you are right. Now I clearly identify all these,
the trial balance, which is reference JMSE 35.42.

352 Q. Yes.

A. Right up to --

353 Q. That's document 173 because in the smaller circulation,
there's an individual number given at the bottom right-hand
page.

A. OK. Well right up to --

354 Q. It's 172 to 189 is the document that we have already
described.

A. Yes.

355 Q. That is your extract from other documents, your summary and
your analysis which were your working papers.

A. That's right, yes.

356 Q. But that was prepared on the basis of your looking at
original documentation or perhaps copies of original
documentation, which allowed you to refine that information
and allocate the individual items under headings in this
document, isn't that right?

A. Yes.

357 Q. And you did that by considering -- if we look to the
documents both before and after page 83 in your copy there,

there is a letter from Mr. Copsey to Joseph Murphy on the 3rd May of 1989 which is at page 80. It's the document immediately before the document we have referred you to.

A. Right, I have that letter.

358 Q. "Dear Joe..." now, if you look to the next page, you will see that there are breakdowns there of certain financial matters dealing with Reliable, the Gaiety, Grafton, Lajos and others, is that right?

A. Oh yes, I have it here.

359 Q. At page 81 an itemised account of the expenses incurred in overdrafts in respect of those companies?

A. This is number 85.

360 Q. It runs from 80 to 82. It's a letter from Copsey Murray to "Dear Joe..."

A. I have the letter on page 80, yes.

361 Q. Can you turn to 81 and 82, you will see there's a financial breakdown of the liabilities of those particular companies set out there, isn't that right?

A. Yes.

362 Q. Right. Which is a matter that you would have had regard to in preparing the document which is your trial balance and journals, isn't that so? That's what you considered in order to extract the information, isn't that correct?

A. Well, I can't -- presumably so. I can't recall reading that letter. That doesn't mean I didn't do it, right? But -- so I mean if that letter was made available to me, I read it all right. I mean I am talking about -- whether or not I saw a copy of that letter, I can't be quite certain. You know, I just can't remember it, shall we say.

363 Q. Are you distinguishing between a copy and the original?

A. I am just saying I can't remember if I read that letter but

I am -- by saying that, I am just saying I can't remember,
I am not trying to, you know -- that's all I am saying, I
can't remember.

364 Q. In the normal course, Mr. Bates, you would receive
documentation which is the in-house documentation prepared
by the accountants who were preparing or dealing with the
financial affairs of a company on a day-to-day basis, isn't
that right?

A. That is correct, yes.

365 Q. There would be a lot, in trading companies, a huge amount
of documentation?

A. There would be enormous documentation, mostly the books of
accounts so the documentation could be spread over many
things, right? Now we have collected -- all this
documentation has been collected, right? Now you are
asking me did I read that letter? I am under oath.

366 Q. Yes.

A. So, I possibly did read that letter.

367 Q. Fine.

A. But I just want to make quite clear I am not going to say
that I categorically, that -- I mean if I wasn't under oath
I would say yes I read that letter but I am under oath but
I can't be certain I read that letter. I do not recall
reading that letter.

368 Q. Allowing for that reservation, Mr. Bates, can you agree
with me that this document, this documentation is
documentation which you'd be likely to have considered in
order to --

A. Yes.

369 Q. -- in order to prepare your audit.

A. Put it this way, if that document was made available to me
and I have no reason to say it wasn't, I would certainly

consider it.

370 Q. And that applies to each of the documents in this particular file?

A. That applies to each of the documents in this, absolutely.

371 Q. And you would pay reference to the financial information which was contained in these documents?

A. Correct.

372 Q. Irrespective of the original purpose for which they may have been prepared, isn't that correct?

A. Correct.

373 Q. They have an evidential value to an auditor, they are audit evidence of a transaction?

A. Yes.

374 Q. Though they are not necessarily prepared with the prime objective of the audit being prepared?

A. Exactly.

375 Q. Isn't that right?

A. That's correct.

376 Q. So you are not concerned with what Mr. Copsy had to say to Joe Murphy but you look at the financial figures there and if they assist you in allocating the expenditure set out there to a particular heading of expenditure, you will so record it?

A. That is correct.

377 Q. And if we move then to document 85, you will see that's a document, a one page document: 'JMSE, Flow of Cash from Disposal', isn't that right?

A. That is correct.

378 Q. And you consider all of the financial information there and cross check it against any other document you received?

A. That's correct.

379 Q. Now, if you turn to the next page then is 86 and I think we

have already identified that that is not your hand and you don't identify it as anybody else in your firm's hand so it's somebody else's?

A. It's someone in the group wrote that, you know.

380 Q. So does it appear, if we look to the next document then, that's 87, that somebody actually prepared some form of accounts up to certainly the last date there, the 2nd April of 1990.

A. Yes.

381 Q. Right. And all of that information you would have considered also, isn't that right?

A. Yes, I can see my ticks on it.

382 Q. How do you identify your tick on that?

A. Well, this doesn't mean that it necessarily wouldn't be somebody else's tick but you see the Vs?

383 Q. The Vs?

A. I have ticked those against the bank statements and I reckon that's my handwriting, the Vs down the side and that's where I have checked each item against the bank statement.

384 Q. So we know from that then that at page 87, you certainly went through the hard copy of the file to that point and you checked that document?

A. I checked that document, definitely, yes.

385 Q. Right. That document is part of the original file that you saw this morning?

A. Yes, right.

386 Q. It is physically part of the file?

A. Yes.

387 Q. And does it seem to follow you had physical possession of that file at some point in time?

A. I had possession of documents in that file.

388 Q. Yes. Well are you suggesting that that document perhaps has been taken off the original file or otherwise?

A. No, I am not -- no, I am not necessarily suggesting that but I am not quite sure if that document, you know, at what stage that file, as such, was all put together. And no, I am not -- but what I am saying is that I can recognise that I saw that document. And I can also say that it's on that file.

389 Q. Right. So would you agree with me that the probability is that you saw that file, you considered its content and certainly you used that particular document in the operation of --

A. I used that particular document, definitely, and I saw a lot of documents in that. I saw the McArdle documents.

390 Q. I am curious as to why you say you did not see the document which is at page 83 whereas --

A. If we go to page 86.

391 Q. -- you can identify the document in page 86?

A. Well my tick is on the document at page 87.

392 Q. Yes.

A. Right. On page 83, I don't recall seeing that document and the other point, that document -- I did not have a copy of that document on my file so I am assuming, therefore, that I didn't see that document, right?

393 Q. Now, why do you say that you did not have that document on your file?

A. Because I -- because Mr. Herbert collected all my files and as I understand it, that document did not come from my file.

394 Q. And how do you think that document got on to the file that was provided to the Tribunal if it was not on the file originally?

A. That document is not my document.

.

MR. CUSH: He is at cross purposes, Mr. --

.

CHAIRMAN: It's perfectly legitimate in cross-examination.

A. That file is not my file.

.

395 Q. MR. O'NEILL: Right.

A. Now that file -- I mean, you prepare files over a period of time and you can then collate them. Now I could be mistaken but I don't recall seeing that document. That's all I am saying.

396 Q. Well, what other file is there? You may take it, Mr. Bates, that you and other parties were asked to provide your files.

A. I provided copies of my files.

397 Q. They have provided the files, the files that we have that you are referring to include your trial balance book but there is no other duplicate or copy of this particular book which I refer to as the RADO file other than that document which is the original that you identify today. In other words, there is no contemporaneous or copy of that which is less complete than that document?

A. I am -- you have lost me.

398 Q. Sorry. All right. I will start again. This document is apparently the affairs of three companies for the year ending 31st May 1990.

A. That's correct.

399 Q. And it contains, I suggest, all the information that was necessary for the preparation of the accounts of that particular company?

A. Right.

400 Q. They are recorded as the receipts of the company, the expenditure of the company?

A. Right.

401 Q. And the originals are contained within that file. They are the original documents. They are in date sequence and they are divided as between the categories of receipts and expenditure.

A. Right.

402 Q. And they have the appearance of being the accounts of that company for that year.

A. Right.

403 Q. Do you agree with me so?

A. Absolutely.

404 Q. Right. And I am suggesting to you that if you were to do the audit of that company, you would have received that file, would you agree with that?

A. I would agree with that, yes.

405 Q. But you say that whilst you acknowledge that you probably received that file and you acknowledge that you had ticks on some of the documentation, you are satisfied that the document which is now on the file at page 83 was not on the document when you considered the file, is that the position?

A. Yes. I will restate what I said. To be fair to you. What I am saying to you is I do not recall seeing that particular document.

406 Q. Fine.

A. Number 1. Now --

407 Q. Very good, I am not trying to cut you short. Please answer.

A. Now, as I understand it now, my files were taken apart so I

haven't got a complete file but I also understand that that document, a copy of that document was not on my file.

Right? Now, on that -- that kind of supports the fact that I did not see that document.

408 Q. Have you finished, Mr. Bates?

A. Yes.

409 Q. Fine. You keep referring to it not being on your file.

I am putting to you there is no "your file", this is "the file"?

A. Right.

410 Q. Right. So --

A. But if normally I would take copies -- I would -- if that -- if I had seen that document, I am sure I would have taken a copy of it and put it on my audit file.

411 Q. On your audit file?

A. Yes.

412 Q. You have already told us that your audit file is page 172 to 189, isn't that right?

A. Yes.

413 Q. Is that your audit file?

A. That's copies of my audit file, my audit working papers, yes.

414 Q. You would have put this document on that file?

A. If I -- I'd imagine I would have taken a copy of it and put it on that file, yes.

415 Q. Why didn't you take copies of all the other documentation which forms part of the expenditure and not appended to that?

A. Well I took copies of a lot of documents, I am not going to take a copy of a cash receipts sheets, I did have copies of McArdle's statements, right?

416 Q. Well where are they, Mr. Bates, because I am putting to you

that the only documentation which you had is the documentation which is in this file? If you had another file, I'd like to see it because --

A. I don't have another file. The document -- in the first analysis, Mr. Herbert took copies or took from my files all copies of any documentations that were not created by me so everything that was on my file that was company documentation was taken off my file and given to the Tribunal. Now that was done -- I don't know, months ago. Subsequently he has asked for copies of my other working papers which you also got. Now as I understand that, that particular document -- Mr. Herbert -- or a copy of it was not on my file.

417 Q. We may seem to be going around in circles, Mr. Bates, but the fact of the matter is this -- I will put it to you, this document which is before the Tribunal now --

A. Right.

418 Q. The RADO file?

A. Right.

419 Q. Is the original documentation which records the financial transactions of the company in that particular year, isn't that so?

A. Right, that is so.

420 Q. Right. You carried out your audit in the premises of JMSE on the basis of the original files, isn't that so?

A. That is so.

421 Q. That is what you say in your statement?

A. Yes.

422 Q. It accords with the practice, you attended at their office, you took down their files and you prepared your audit on the basis of that documentation?

A. That's right.

423 Q. Right. Now, what copies do you say you took and where did you keep those copies because they have not been provided to the Tribunal?

A. Listen, any copies that I have was provided to the Tribunal.

424 Q. That is a matter of fact.

A. I was in my office and Mr. Herbert went through all my files and took the stuff off it so that is a fact, right.

425 Q. Well I would like you perhaps over the lunchtime to establish exactly what documents were in your file, where that file is and when it was provided to the Tribunal, if it is in any way different to this file which is before the Tribunal. Do you still have the file, for instance?

A. I will have --

426 Q. The file you refer to as "My file" can you tell me where "My File" is?

A. Yes.

427 Q. Where is it?

A. It's in my possession.

428 Q. Well please produce it.

A. Not here -- it's -- I can get my file. It's in -- yes.

429 Q. Fine. If you would produce your file please, this afternoon.

A. Certainly.

430 Q. Thank you.

.

CHAIRMAN: It's now ten past one so we will say half past two. Particularly if you have to go and collect a file.

.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

.

.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.30PM:

.

CONTINUATION OF EXAMINATION OF MR. JOHN BATES BY
MR. O' NEILL:

.

CHAIRMAN: Mr. O' Neill, before I actually commence, I want to make the following public announcement, because certain members of the press may have other commitments.

.

We are about to break for Christmas at the conclusion of today's sessions. The offices of the Tribunal will close as such on the 23rd December, 1999 and will re-open on January 4th in the millennium.

.

Secondly, the public sittings will recommence on the 18th January 2000 to conclude the present module. I had hoped, with the cooperation of the parties, that we would have finished this module by Christmas but unfortunately, due in part to the failure of certain witnesses to furnish statements for circulation and other matters not within the control of anybody, the Tribunal has had to adopt a procedure to deal with this which has delayed matters; however I hope that the present module will conclude in the fortnight commencing the 18th January 2000.

.

Leading counsel to the Tribunal will make a public statement before the end of January 2000 outlining in general terms the work of the Tribunal to date, the lines of inquiry currently being conducted by the Tribunal. It is anticipated that the Tribunal will sit in discrete phases in the future, each of which would be preceded by a detailed opening statement.

.

May I say this, that whatever the future holds in the first fortnight of January, I am determined that if there is any evidence left over in this module, it will be simply slotted in at a convenient point to the Tribunal in the next module. I want to make that absolutely clear that this module is intended to finish now and if there is anything over, it will be slotted in in connection with any future aspect as such.

.

And with these few words, may I can take this opportunity to wish everyone a happy and a very peaceful Christmas and a happy and prosperous millennium.

.

MR. HERBERT: Can I reciprocate your good wishes and I hope you and your staff and your counsel, despite the occasional hard words we have had with each other, also have a very happy and prosperous Christmas and a very happy and prosperous new year. Thank you very much.

.

CHAIRMAN: Thank you very much. I deeply appreciate your courtesy and kindness.

.

MR. O'NEILL: As part of the Tribunal, Sir, I was about to say in the absence of Mr. Gallagher but now that Mr. Gallagher has arrived, might I say, with his blessing, that I endorse the words of Mr. Herbert and I hope that he can also enjoy a very happy and healthy Christmas period.

.

CHAIRMAN: Healthy and relaxed.

.

MR. O'NEILL: And that extends of course to his

colleagues.

Mr. Bates, before lunch we were discussing the question of record keeping and the maintenance of files and your files in distinction to the other files which were present for your perusal and we are concerned in particular with the file which was produced this morning, the RADO file, which seemingly contains the original documents from which copies of certain other documents or from which copies were taken for perhaps other purposes and recorded in other locations, is that so?

A. Yes, that's so.

431 Q. And I was asking you firstly to confirm that you had probably considered the particular file, that is the RADO file, in its entirety when you visited the premises of JMSE which would be your practice in preparing the annual accounts not only for JMSE, but also for the land-holding, and by that I include Wexburn, as a property-owning company, isn't that so?

A. Yes, that's so.

432 Q. And you would have looked at documents, in particular documents prepared by in-house or seconded accountants on an in-house basis which were prepared for the purpose keeping the accounts in order and also for year end accounts, isn't that so?

A. That's so.

433 Q. And this file which -- I wonder if you have retained the copy of it before you --

A. Yes.

434 Q. This file appears to be a file which has as its description year ending 31st May 1995, isn't that right?

A. That's right.

435 Q. So that some person, though not yourself, gave it that particular designation, isn't that right?

A. That's right.

436 Q. And in that file you would expect to have found the original documentation pertaining to the preparation of year end accounts for these three particular companies, isn't that so?

A. That's so.

437 Q. And at the beginning of that file, and if I might find the extracts, from page 11 onward -- that's 11 and 12 in particular --

A. Yes.

438 Q. -- some person has carried out a calculation here of the profit and loss account for the year 31st May 1990, isn't that so?

A. Yes, that's correct.

439 Q. And so far we haven't found any documentation compiled directly by you and I take it this document equally falls into the same category, does it?

A. Yes, it's not prepared by me.

440 Q. So somebody, not you, and not your office had prepared some form of a profit and loss account for the year ended 31st May 1990 before you got the file, perhaps?

A. That's correct.

441 Q. So you had the benefit of the preliminary investigations or calculations which had been carried out by whoever it is prepared this document, is that right?

A. That is correct, yes.

442 Q. Now we had understood, until this point in time, that Copsey Murray themselves did not prepare any accounts for year ending 31st May 1990 because they indicated that their tenure was terminated on the 14th August 1990, at a time

prior to their having compiled the accounts. Are you aware of that yourself?

A. No.

443 Q. But certainly if one takes this document at page 11 at its face, somebody had prepared a form of year end account for the company as at that period of time, isn't that so?

A. That is so, yes.

444 Q. And within that file, if we could turn to the document that I was referring you to this morning at page 83 --

A. Yes.

445 Q. Within that file at page 83 is the document which has been referred to as document 190 which relates to planning permission JMSE £80,250 and beneath that JMSE £30,000, isn't that so?

A. Yes.

446 Q. And on the file in question, that is an original of that document rather than a copy of that document, isn't that right?

A. Yes.

447 Q. And both immediately before that document and immediately after that document, there are also original documents which discuss the financial affairs of the company, in particular the tax on the disposal of the land divided as between Grafton and Reliable on page 84, isn't that right?

A. Yes.

448 Q. And equally the document before that I referred you to before lunch was the document from Mr. Copsey to Mr. Murphy setting out the overdraft position, in other words the liabilities that had been incurred by various companies including Grafton and Reliable?

A. Yes.

449 Q. Isn't that right? So whoever prepared this documentation

and whoever inserted this particular document in this place in the file was relating the content of this document to the surrounding documents in the audit trail, if I might call it that, of dispositions of funds in those companies in the year ending 31st May 1990, isn't that right?

A. Right.

450 Q. And whilst the ultimate or the initial purpose of having prepared this document was as a cash balance at a particular time --

A. Right.

451 Q. -- it was included in these documents for year end audit purposes, isn't that the conclusion you would draw from its presence on the file?

A. Well I can't see why it's actually on the file and that may be right, you know. That's all I can say. Right.

452 Q. Would it surprise you to find it on the file and in its position on the file --

A. No.

453 Q. And in the normal course, as you say, though you cannot remember specifically reading this document no more I am sure than you remember reading the document either before it or after it --

A. That's right.

454 Q. You do believe that you would have considered the content of this file in reaching your own audit journal entries, is that right?

A. Yes, that is correct.

455 Q. In the normal course?

A. In the normal, yes.

456 Q. Now had you considered this particular document, it would have given you, I suggest, an account of the disposition of the Forest Road lands and, in particular, any disposition

of the monies realised on sale which were connected with any JMSE transaction, isn't that right?

A. That is correct, yes.

457 Q. And it would have indicated to you, I suggest, that JMSE had been involved in the payment of monies for planning permission, isn't that right?

A. Yes, that is correct, yes.

458 Q. And could I suggest to you that it would have indicated that there were two items under that heading, one in a larger amount, £80,250 and the other in a lesser amount of £30,000?

A. Well, I have to say that obviously the £80,000 is quite clear. It's the planning permission. The £30,000 depends on how you read it. It's blank. Now, at this point -- I mean, we are now talking about it with me looking at it now in the circumstances we are sitting now.

459 Q. True.

A. So I wouldn't -- so I have to try to throw my mind, what would I have thought back in 1991? Well, I mean, I can't be positive of what my reaction would have been. I would have considered that the possibility -- all I can say is what I think I might have thought, right?

460 Q. Yes.

A. I don't think I would have assumed that the 30,000 was planning permission. I don't think I would have assumed that. I would have thought that it was possible. And I would have asked whoever prepared the document what was the 30,000 for.

461 Q. Right. Now --

A. If they were available to me.

462 Q. Yes, I appreciate that at this point in time and in the

frame of mind that you are in now --

A. Exactly.

463 Q. As far as you are aware, seeing this document for the first time now and knowing of its significance, it would be very, very hard to be entirely objective about how you would have dealt with it as one of very many documents you were going through, isn't that right?

A. That's right.

464 Q. Would it be fair to say that as a matter of probability in going through it, you would have considered it to be related to the planning permission document immediately above it in the column in question, as a probability?

A. Well, I think -- I don't really -- I think I would have asked.

465 Q. You would have asked.

A. You know, I don't think I would have assumed that it was to do with the planning permission.

466 Q. Right. So you see this document here today, you were indicating that you had seen it some days ago.

A. Yes.

467 Q. By that, can I take it that it was after the document was put to Mr. Copsy, in other words, sometime --

A. Yes.

468 Q. Right. And is that the first time that you have a direct recollection of seeing the document for the first time?

A. That's correct, yes, that is correct.

469 Q. Do you believe that you didn't have a copy of this document in your possession until you saw it last week?

A. Well, I understand from Mr. Herbert that I didn't have, right? And -- so -- because he had my files, right? And so I don't think I had a copy of that document.

470 Q. Very good. The Tribunal was seeking for sometime your

working papers, isn't that right, and they were ultimately received by the Tribunal on the 14th October last?

A. No. As soon as I got the request for my working papers, I arranged to give them, so there was no undue delay. I can't remember exactly when the request was made, but it would have been only a matter of weeks at the most, maybe even less than a week, I am not sure. But there was no undue delay in giving them a copy of my working papers. Now, a long time before that, my files were examined and anything that didn't belong to me was taken off them, right, and submitted to the Tribunal as requested by the Tribunal.

471 Q. Right. It had been -- the position had been taken that JMSE's documents could be extracted from your file and furnished to the Tribunal, whereas your own working papers, being your documents, would be retained on your file, isn't that the position?

A. That is correct.

472 Q. But at a point in time, and I suggest that it was on the 8th October of this year, a letter was written to your solicitors requesting specifically your own working papers and I think that they were provided within a period of a week on the 14th October?

A. Right.

473 Q. Now, in that documentation which was provided under the heading of your working papers, this document, document at page 83 and document 190 in the black reference document which has been circulated over the past number of days was included. Were you aware of that?

A. No, I wasn't aware of that, and I mean, if that is a fact, well then and if it came from my files, then I saw it. I was certainly not aware of that and I don't believe that to

be the case but I may be wrong.

474 Q. Fine. I am going to hand you a copy of the file in question which was photocopied as per the document that you have before you by the Tribunal just so that you can see the sequence in which the document appeared and I have, for ease of reference, just marked it with a green tag. (Documents handed to witness.) Firstly you will see in that file, the date the 18th October, isn't that right?

A. 14th --

475 Q. Sorry, the 14th?

A. 14th October 1999.

476 Q. That is the date upon which that file was received by the Tribunal. And you might confirm that what it contains is your audit working paper, isn't that so?

A. That is so.

477 Q. You might, having considered those documents in front of you, Mr. Bates, confirm that included in that file of documentation is the letter or the cash balance document which we have been discussing earlier?

A. Yes, it is, yeah.

478 Q. And if that is the way in which that file came to the Tribunal, you are saying you would agree that the probabilities are that you considered that document in the course of your audit preparation, isn't that right?

A. Yes, yes.

479 Q. Fine. Now, having considered all of the documentation and I am not saying that it is only the documentation that was in that particular file, you prepared the ledger entries that we have seen at tab 10, isn't that right? Running from page 172 to 189, isn't that correct? These are, as I say, the Grafton year ending 31st May --

A. That is correct, yes.

480 Q. And in the body of that documentation, if you turn to page 176 and I am now referring to the page numbers at the bottom right-hand corner.

A. 176, yes.

481 Q. That is a journal entry, isn't that right?

A. That's right.

482 Q. And if we start at the top of the page it says "Client: The Grafton Construction Company Limited" and then heading "Journal" and then "Client's year end is 31st May '90. Audit visit, interim final" is written in.

A. Yes.

483 Q. And is that your writing?

A. Yes.

484 Q. You therefore wrote all the entries on that page, is that so?

A. That is so.

485 Q. And in the body of that page there is a heading for "Disbursements made by McArdle & Co on behalf of the Grafton Construction Company Limited." Isn't that correct?

A. Yes.

486 Q. And in the body of those disbursements, the second item down is a sum of £90,000.

A. Yes.

487 Q. Isn't that so? And that refers to the McArdle document or the McArdle disbursements and may we take it that you prepared that using, as the audit base, the document which had been provided by Mr. McArdle which is at page 170? We have referred to it earlier.

A. Yes, that is correct.

488 Q. And it refers to two items under a JMSE heading of 30,000 and 60,000 and you attributed those to disbursements at that point, isn't that right?

A. That is correct.

489 Q. And we know, I think you will probably agree with me, that £60,000 of that was in respect of Mr. Marcus Sweeney's payment and £30,000 is the sum we are talking about which ultimately ended up with Mr. Burke, isn't that so?

A. Yes.

490 Q. Right. The next document then I'd like to refer to is the next page of that, page 177 and here again is a document immediately in sequence to the last. It's the final audit, isn't that right?

A. That's right.

491 Q. And you might again confirm that you wrote all the entries on that page, isn't that so?

A. Yes, that is so.

492 Q. And there is a category of documentation there as "Expenses etc., paid by JMSE on behalf of Grafton."

A. That's right.

493 Q. Isn't that so? And that was to identify relevant transactions which were carried out, not by Grafton itself, but by others on its behalf for which an accounting entry would have to be made in the Grafton accounts, isn't that right?

A. That's right.

494 Q. And the first two items in that, I think they are immediately under the heading "Audit adjustments" are "Enhancement expenditure: £20,000" and then a blank line with a number of dots on it, "£10,000."

A. That's right.

495 Q. Presumably both of those items being referable to enhancement expenses, isn't that right?

A. That's right.

496 Q. If we can move on then through the document to page 185.

On that page again it has the same heading save that it refers to development property, isn't that so?

A. That's so.

497 Q. It is again a final document and you might confirm it's completed by you?

A. That's so, yes.

498 Q. It then listed the property at the beginning of the financial year. It then goes on to deal with certain matters under the heading of "Enhancement expenditure", isn't that right?

A. Yes.

499 Q. And there are two items under "Enhancement expenditure." One, land at Poppintree and the entry there is £65,293 and then a second item, cash £30,000.

A. That's right.

500 Q. Now, if I can move you on then in the same schedule of documents to page 198 of the booklet.

A. Yes.

501 Q. That is the final page of the audit report that you prepared on the 11th February of 1991, isn't that so?

A. That's the detailed accounts. Now there is a legal distinction. That's the last page of the accounts of Grafton Construction.

502 Q. Right.

A. That is not -- I mean, like, will I continue? I mean it's only --

503 Q. I am not suggesting that it's a working document. I am saying that it is a document which was prepared after you had deliberated upon the working papers --

A. That is correct, yes.

504 Q. Which run from page 172 to 198. You further refined that information and you entered it here, isn't that right?

A. Yes.

505 Q. And under the heading "Sale of land" you record certain land values 1990, 1989 and then you deduct cost of land sold and enhancement expenditure, isn't that right?

A. Yes.

506 Q. And the figure there of £95,273 is the total of the two figures which you specified under enhancement expenditure in the working papers of the account at page 185, namely the cost of the land at Poppintree added to the £30,000 in cash to make £95,000 in toto, isn't that right?

A. Correct.

507 Q. So that it is clear from all of this documentation that the £30,000 involved, in this inquiry we are considering at the moment, is money that was attributed by you as enhancement expenditure in respect of the lands at Poppintree?

A. That is correct.

508 Q. I would ask you now to detail how it is that you attribute particular expenditure to particular matters in the account.

A. Well hopefully I would attribute them from known facts, in this case the people who dealt with it, you know, Mr. Gogarty is no longer there. No one in JMSE knew what this 10,000 was for or the 20. And Copsey Murray were no longer acting either. So I didn't have specific information. I didn't get in touch with Mr. Gogarty because he was, well you know, because of the difficulties involved at that point in time. My recollection is that I got in touch with Copsey Murray. Again I am talking -- my recollection, you know I am pretty sure did I not speak to Mr. Copsey.

509 Q. Mr. Bates, I don't want to interrupt your answer, but I do want to be more specific about what one intends to record

in an audit account. Does one, for example, record anything in an audit account with a particular designation unless one is certain that that is the designation that should be attributed to it? That's the first question I would ask you. In other words --

A. OK. The strict answer to that is your audit report covers the result for the year and the financial position at the end of the year. It doesn't include the detailed accounts. It just -- you really deal with the result of the year and you deal with the financial position. So you don't deal specifically -- it doesn't -- what you are saying is that you are happy that the result for the year is a true and fair view and that the financial position is fairly reflected.

510 Q. You are talking about a bottom line position?

A. Yes, the bottom line position. The bottom line position is correct, before tax. The bottom line position after tax -- because it was a political donation or whatever, which I wasn't aware of at the time, I claimed it as an expense.

511 Q. Your professional colleague, though not your partner in this, Mr. Copsey, in the course of his evidence indicated that it's not a function of an accountant to speculate on matters and he said that boring as it might be, one must record exactly what the position is as one finds it.

Would you disagree with that?

A. No, I wouldn't disagree with that.

512 Q. So that if you go on to make a positive attribution of a particular expense under a particular heading, one should have the backup to do so, isn't that right?

A. Ideally, yes.

513 Q. If it was the case that you had considered a document 190

as a document that referred to planning permission and we are talking now about the document which was prepared by Copsy Murray as the cashflow document and in which there are these two items.

A. Yes.

514 Q. If you had considered that particular document at the time to refer to planning permission, that would properly and legitimately be an enhancement expenditure for the land, isn't that so?

A. Yes, that is so, absolutely.

515 Q. And if you had come to the conclusion that that was what it was for, these accounts would be perfectly accurate insofar as they reflect enhancement expenditure of £30,000, isn't that so?

A. That is so, yes.

516 Q. And equally they would be correct in the manner in which that came to be enhanced in that there were two payments, 20 and 10 which are recorded and they are recorded as a payment by way of cash, isn't that correct?

A. That is so.

517 Q. All of that would be consistent with you having considered that the documentation supported expenditure for planning permission of £30,000, isn't that so?

A. It would be, yes.

518 Q. On the other hand, for it to be entered into the accounts as enhancement expenditure when there was no evidence at all to support that, is an improbable situation, is that the position?

A. Well that is the position. If you read my statement, I did not know what this 10,000 was for. I didn't know what the 20,000 was for.

519 Q. Right.

A. Even if I had -- you know, I wouldn't necessarily have -- also with this other document you are speaking about, that wouldn't have been what I would regard as conclusive evidence that it was planning permission, right? Now, all I can say now is my recollection, right, my recollection was I didn't know what it was. I asked Copsy Murray. The reply I got back was -- whoever I spoke to wasn't sure what it was and said it might be a finder's fee, it might be auctioneer's fee. I could have -- I didn't -- I decided that if it was an auctioneer's fee, you know -- well I can't really say why. Anyway I decided that listen, what does this company do? It deals in land. The only thing it has is land. The probability -- I felt that the probability was that that the expenditure had to do with the land and had to be, you know, presumably therefore an enhancement of the land and that's why I treated it like that.

520 Q. Now, Mr. Bates, I accept that --

A. That's my recollection. And that's it.

521 Q. I accept that you are throwing your mind back to your thought processes sometime between December of 1990 and February of 1991 --

A. Exactly.

522 Q. -- to reach the conclusion that you did and to give the evidence you are now giving. But could I just explore that a little with you?

A. Sure.

523 Q. Your recollection at this point in time is that you had an unaccounted for £30,000 in the accounts, is that right?

A. I had expenditure of £30,000 and I had no information on it.

524 Q. Exactly. And you were making an inquiry within six months

or thereabouts of the date upon which that expenditure had been incurred, isn't that right?

A. No, I think it was quite substantially later. The expenditure would have been incurred in -- I understand the expenditure was incurred in June '89. And I was carrying out the audit -- well like, in JMSE, I can't be certain about this date, but I probably would have started the audit in JMSE around October '90.

525 Q. Very good --

A. So --

526 Q. Something less than eighteen months, I am sorry for being a year out.

A. I wouldn't have gone on to Grafton until sometime after that so Grafton was probably around December '90 to January '91.

527 Q. Fine. But you were considering, in relation to Grafton, a relatively small volume of documentation because of the nature of Grafton and its transactions, isn't that right?

A. That's right, yes.

528 Q. Probably the documentation that is contained within the RADO file under Grafton about --

A. Certainly there wouldn't have been much more because the documentation for the dormant companies wasn't great.

529 Q. It was sufficient to allow you to identify the 30,000 as being connected with the JMSE payment in June and therefore you knew it was two amounts of 10 and 20, isn't that right?

A. Yes. Originally in carrying out JMSE, there would have been no query on the 10,000 or 20,000. They were debited properly to Grafton. That wouldn't -- so -- I mean money between the group companies was taking place on a regular basis. That that would have raised no query at all. When I started to do Grafton, I would have seen the 30,000 paid

back. That again would cause no problem. It's just refunding the 30,000 we got from JMSE. But then I had to find out well, what was the 30,000 from JMSE used for? I couldn't get any information on that. I decided myself that it nearly had to be -- to deal with the lands and therefore --

530 Q. We will deal with that in stages, if we may, Mr. Bates, rather than hearing your statement again. You found yourself in a position where you could identify the transaction, as far as we know it, other than you didn't know what the ultimate source of the money was, isn't that a fair summary of the position? You knew --

A. The ultimate destination of money?

531 Q. Yes.

A. Yes.

532 Q. You knew that it had been paid out by JMSE. You knew that it had been paid out in two amounts or appeared to be --

A. That's correct, in two alternatives.

533 Q. At a particular time in June, isn't that right?

A. Yes, and I certainly didn't know that they were joint.

You know the 10,000 could have been to a Mr. A. The 20,000 could have been to a Mr. Z, you know. You know, I didn't know who they were for.

534 Q. Right. But you could fix your inquiry to a particular transaction or transactions. I am now linking the 10 and the 20, isn't that right?

A. Yes.

535 Q. Probably more likely to be one than two, because there was only one payment by Grafton to JMSE to reimburse it, isn't that so?

A. That doesn't mean anything.

536 Q. Very good. Well in any event, you could date it in time?

A. Oh yes, I could say that there was 10,000 paid out. There was 20,000 paid out and we got -- we were repaid. That's JMSE, I should say, was repaid.

537 Q. The so the inquiry that you would be making of the accounting people in JMSE would be a relatively straightforward query, for what purpose was the £30,000 that I see recorded in the accounts for the 13th June 1989 under the heading JMSE paid for? Isn't that right?

A. That is correct.

538 Q. And it was presumably something that in the normal course an auditor does on a regular basis where he can't find any documentation on the files before him to do, that he would make that inquiry?

A. That is correct, yes.

539 Q. And would that inquiry normally be to the accountant who had prepared the initial documentation?

A. Normally, yes, absolutely, yeah.

540 Q. And would it normally be in writing?

A. No, not normally -- not necessarily.

541 Q. If you made the request orally, you would of course be assuming that the person who is at the other end of the line could answer that question for you without reference to documentation?

A. Well, I was assuming that I'd be asking them on the premises so that, you know, I would be at their premises.

542 Q. In this instance, Copsey Murray you knew had been the accountant. Copsey Murray were the people, through their subrogated or delegated accountant, Mr. O'Keefe, were making the entries, isn't that right?

A. That's right.

543 Q. It was prior to the engagement of Mr. Maher who came on in September?

A. That's right.

544 Q. Right. And you were making inquiry of Copsey Murray who clearly did not have the documentation because they say that all the documentation was sent back in August 1990 and therefore would have been in the premises of JMSE and not in the premises of Copsey Murray, isn't that right?

A. Well, presumably that is correct.

545 Q. And you would be seeing this document in any event because the query came after you had seen the documents?

A. Yes.

546 Q. And it was clear to you amongst the documents you were considering were the Copsey Murray documents, not copies of Copsey Murray documents, isn't that right?

A. Em, yes.

547 Q. So that it's highly unlikely that anybody in Copsey Murray eighteen months after the entry had been made and without the documents available to them could have been available to answer an oral query as to what a particular transaction on a particular day was, isn't that so?

A. No. I would have expected that they may well have been able to give me the answer.

548 Q. And why do you think eighteen months after the event that the accountants should have been able to recollect a particular transaction without the aid of their contemporaneous documentation?

A. Well I wasn't aware that they didn't have copies of their documentation.

549 Q. I see.

A. You know, like, and I certainly wasn't aware when I rang them up that they didn't have copies of what I did have, so...

550 Q. And when did you learn that they in fact had given all

their documentation back to JMSE, or did you ever know that?

A. I have learnt it now.

551 Q. I see. So if you had the documentation in front of you, presumably you could have indicated to the person who is at the other end of the line, "I am looking now at your initial entry of £30,000 on day, whatever. Compare it -- or find that document and tell me what the explanation for it is." Isn't that right?

A. Yes.

552 Q. Could I suggest to you that if the documentation wasn't in Copsey Murray and they say it wasn't in Copsey Murray, they could not have responded to you in the way in which you were responding to them, in that they could not have looked at their file and say I am now looking at the file --

A. Obviously if they hadn't got the file, they couldn't say that, yes.

553 Q. So does it follow that whoever you spoke to couldn't be of any assistance at all to you, because they didn't in fact have any documents with which to assist you, is that fair?

A. I suppose that's reasonable.

554 Q. Now you knew, I think from your dealings with Copsey Murray, that the day-to-day activity, albeit you weren't aware of the title of Mr. O'Keeffe as financial controller, was in fact being carried out by Mr. O'Keeffe, isn't that right?

A. That's right.

555 Q. And it wasn't Mr. Copsey, for example, who made the various entries which were going to give rise to your queries, isn't that right?

A. That is correct, yes.

556 Q. And whilst he may have an overall view, it was unlikely

that he was the person who made the entries, isn't that right?

A. That would be correct, yes.

557 Q. And therefore you would have targeted your inquiry to one specific individual and that is Mr. O'Keeffe, isn't that right?

A. Yes, I think that's reasonable, yes.

558 Q. And is it reason equally to suppose then that the person you would have asked for was Mr. O'Keeffe?

A. That is reasonable.

559 Q. To put this query.

A. Yes.

560 Q. But you seem clear in your statement that you never spoke to Mr. O'Keeffe?

A. No, I did not say that in my statement. I said to the best of my recollection, I feel quite happy I didn't speak to Mr. Copsey, but I spoke to Copsey Murray. And if someone was to ask me, who do you think you spoke to, I would say I think I spoke to Mr. O'Keeffe. Well I can't say that as a fact. I just -- because I can't remember. What I would -- if someone said to me what was the likelihood who did you speak to? What I said, what I would say is what I said in my statement. I got on to Copsey Murray. I think it was Mr. O'Keeffe. I do not think it was Mr. Copsey and, you know, I didn't get -- whoever I spoke to didn't know really what it was for and said, indicated to me it might be finder's fee or it might be auctioneer's fee but they couldn't remember or I can't remember if they used the terms "I can't remember" but what I can say is I didn't get specific answers, definitive specific answers.

561 Q. OK. Do you believe that your conversation was with

Mr. O'Keefe?

A. That is difficult to answer now, because I understand Mr.

O'Keefe said it wasn't with him. So --

562 Q. I am inquiring about your belief, Mr. Bates. What was your belief?

A. My belief is what was in my statement. I spoke to someone in Copsey Murray. I would have thought it was Mr. O'Keefe, but it could have been someone else. You know, I can't -- you know, it certainly could have been someone else.

563 Q. And what possible benefit would there be in speaking to someone else, since you knew that the person who was dealing with these transactions was Mr. O'Keefe?

A. Yeah, OK. Well when I made the phone call, I presumably asked for Mr. O'Keefe. If he was there, I spoke to him. If he wasn't there, it was another chap there who dealt with matters as well. And you know, I didn't -- I only kind of was told about this other chap today, because I had forgotten of his existence. Now he did exist but I don't -- I only remember him now if one mentioned his name to me. If you asked me yesterday who else was there, I would have said I can't remember anyone else but my memory was faulty.

564 Q. If you had been given an answer that was in any way unclear or equivocal and it seems that you were given such an answer, isn't that right?

A. Are that's right, that's right.

565 Q. You would have pursued your inquiry until you spoke with Mr. O'Keefe because you knew that it was Mr. O'Keefe who had made the relevant entries, isn't that so?

A. That is reasonable, yes.

566 Q. I mean you wouldn't have stopped if you spoke to John Smith

and he said "I think it's auctioneer's fees" and you rejected that --

A. On reflection I didn't pursue this as hard as I should.

First of all I felt, after the answer I got, I felt that, which I have in my statement as well, that maybe Copsey Murray were not exactly very anxious to answer my query because they had been removed from office. I think -- you know, my recollection is that there was a little bit of sour feeling over fees. You know, I might be wrong there, but -- and my -- I felt I wasn't going to get anywhere there, right?

567 Q. Is that a feeling that you got as a result of one telephone call to one --

A. No, I would say it was a feeling I had before I even made the telephone call because of the circumstances that existed at that point in time.

568 Q. You were wary of getting in touch with them at all --

A. I was perhaps, yes, I think so, I think that is true.

569 Q. Is there any reason why you didn't write a letter to Copsey Murray "Dear Sir, as you know, I have acted on behalf of this company as auditor for X years and I have a specific query to raise in relation to the payment of £30,000. I'd be grateful to hear you from, etc.." It would have avoided --

A. It would have avoided an awful lot if I had done that, absolutely. I agree completely. All I can say is I did not do that.

570 Q. But then if that is so, Mr. Bates, it left you in the position where you had an unexplained £30,000 to attribute, isn't that right?

A. It did, yes.

571 Q. And presumably in audit or accounting terms, there is a

procedure to deal with that, isn't that so?

A. Yes.

572 Q. If you find, having carried out a diligent examination of the financial records of a company, that you simply cannot account for a particular expenditure, is there a recognised or established way of entering that or recording that fact in the books of the company?

A. Well, strictly speaking the auditor doesn't record in the books of the companies. Strictly he might record in his own working papers. Now the other point is that, also you consider materiality. Now, in an ideal situation, I wouldn't -- you know, I would have had that information. In the event, Grafton Construction was one company of many. In the event I had 30,000 which I knew had gone out, was an expense. The effect on the accounts on the bottom line, you know, would not be material. Now, we are talking about the group turnover -- people have been talking about certain figures which, you know, to my mind are incorrect, because they have been relating it to JMSE in isolation. Now, the 30,000 was not in JMSE's accounts. Everything in JMSE's accounts was correct. The group turnover for that year was well over 6 million. The financial strength of the group was quite strong, was certainly the guts of 5 million. Grafton Construction itself, right, the sales just for that year were over 800,000, the sale of land and the profit was about 100,000. But that doesn't -- the land -- all this was to do with land, parcels of land which had values in excess of £2 million. Initially I wouldn't -- when I first raised the query, I wouldn't have been aware that at the end of the day I would still not have an answer, so we were also running -- you know, it didn't sign off till February. I

was quite happy that the true and fair view would not be affected -- you know, that I wasn't exposed to that extent.

573 Q. I was asking you specifically, Mr. Bates, whether or not there is an accounting method or procedure of recording the fact that one cannot account for a particular expenditure when one is preparing the audit documentation of a company.

A. Yes, you would note that you hadn't -- that it was unvouched, yeah.

574 Q. So you would then have a heading would you, "Unvouched expenditure £30,000"?

A. You would have that in your -- you could have that in your working papers.

575 Q. Right. And is there any reason why there isn't such an entry in your working papers because, as I understand it, in effect, that is what you ended up with, unvouched expenditure of £30,000?

A. That is what I ended up with, yes.

576 Q. Why did you not so record it in the audit?

A. I have it -- listen -- you wouldn't have it in the accounts as unvouched expenditure and in the accounts that is covered by audit report, it wouldn't appear -- what you would have is the statutory accounts which is the profit before tax -- the tax, the profit after tax and the balance sheet. The detailed accounts are not covered by the audit report and if you look -- now, however, that's --

577 Q. Are you saying then that it wasn't necessary for you to make any entry in respect of this £30,000 at all in the event that you couldn't track it down? Is that the position?

A. What I am saying is that the only difference is

labelling. That's -- now --

578 Q. Can we make one assumption for the moment, Mr. Bates?

A. Right.

579 Q. You have gone through the company. You have found that there is expenditure of £30,000. You do not know what it is for. Therefore you conclude from an accountancy point of view, if not from a detective point of view but as an accountant, I have no corresponding record or voucher to establish to my satisfaction how or where this money went. I am left in that conundrum. Now, I have the accounts or the audit to do. I have the option of doing nothing about it and merely ensuring that everything that I do put down is accurate, isn't that right, and make no reference at all to this money? I can do that from what, you say? Can I?

A. I decided that it had to do it -- that it nearly had to do with the lands, as I said in my statement, so that's what I said -- we spent 30,000. What have we done with it? No one appears to know what we have done with it. It must have been spent on the lands. I had, you know --

580 Q. I know what you say you did. What I am asking you is, in the light of having made inquiries as an auditor, having established the facts before you made the decision to enter it as enhancement expenditure, having established that you could not account for it under any heading whatsoever, having conducted a diligent search as far as you are concerned to establish how you should account for it, was there any obligation on you to enter it at all in the audit?

A. It had to be dealt with in the accounts.

581 Q. It had to be dealt with --

A. It had to be dealt with. We had to write it off. The

alternative is that I would carry it in the balance sheet as an asset. Now I would have been -- it wasn't -- you know well -- I mean --

582 Q. You knew it wasn't an asset?

A. Well, well I felt that that would be really -- I mean, I wouldn't be prepared to carry it in the balance sheet as an asset, you know, because it had been expense. You know, unless -- I wouldn't carry something in the balance sheet unless I felt and I had proof that we had actually got an asset, either that someone owed us the money or that we had bought something which was -- now the point is if -- we had sold effectively all our assets so if it was -- you know, if it was spent on the land, the lands were sold anyway and it was part of the cost of the lands that were sold. If it was -- so I wrote it -- it had to be written off.

583 Q. It had to be written off?

A. Yes.

584 Q. So --

A. It had to be charged against the --

585 Q. It had to be recorded in some form?

A. Some form, yes.

586 Q. Is that right? And is there anything wrong with recording it as unvouched expenses?

A. Well, you wouldn't -- you wouldn't record it as unvouched -- you might record it as sundry expenses, right?

.

CHAIRMAN: Mr. O' Neill, we will break there just for five minutes.

.

MR. O'NEILL: Certainly.

.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED
AS FOLLOWS:

587 Q. MR. O'NEILL: Mr. Bates, I take it there is quite a distinction between an entry of sundries which is a non-specific attribution and an entry of enhancement expenditure, which identifies or seeks to attribute a particular, the payment for a particular benefit, isn't that so?

A. Yes.

588 Q. And it really, in accounting terms, I suggest is a quantum leap which goes all the way from not know something to actually stating it positively because if you enter it in the audit, it is a positive statement of a positive attribution of a particular sum for a particular purpose, isn't that right?

A. In this instance, since I didn't know what it was for, but I assumed it was for land, it couldn't be positive, but on balance of probabilities, I decided that £30,000 paid out on behalf of Grafton, you know, merely had to relate to the land and that's why I treated it as that that way. It wasn't a quantum leap or it wasn't anything else. That's how I dealt with it.

589 Q. Could I suggest to you that firstly you didn't have an obligation to enter it as anything and, particularly, you didn't have an obligation to make an entry which was a wrong entry, isn't that right?

A. That's right.

590 Q. And why did you choose to do so rather than to report what was the fact?

A. Why did I choose to do?

591 Q. Choose to make an entry in the audit which you knew to be

wrong?

A. That's not -- well I did not make an entry which I knew to be wrong. I made an entry that I felt on the balance of the situation was probably the most correct position. I did not make an entry that I knew to be wrong.

592 Q. You couldn't --

A. Hold on --

593 Q. You couldn't stand over this enhancement expenditure attribution if you were asked the simple question, please produce the voucher that merited this particular attribution. Your response would to have been, I don't have one, I made an assumption.

A. That's right, yes, I accept that.

594 Q. So it was speculation really, isn't that right?

A. I wouldn't call it speculation, right?

595 Q. Right.

A. First of all, it was an expense. So -- also in relation to the accounts, once the -- if it's an expense, unless you know, OK, the legal requirements have changed a little bit on disclosures, but there is certain disclosure you must have and there is other disclosure, you know, you needn't have. Now basically the starting point on the statutory accounts is gross profit. I think back in 1990, it wasn't even that, the starting point could have been just profit before -- net profit. So the net profit in the accounts is adequately disclosed and properly disclosed. The financial position in my opinion is still true and fair. The only difference is that on a company worth over a million pounds, I think it was 1 million and 20,000, maybe the liabilities are understated by £12,000. As soon as I found that out, I corrected it.

596 Q. Could I suggest that if you don't like the word

speculation, it was surmised, isn't that right, on your part?

A. It was an assessment. It was exactly what I had in my statement. That I, in my opinion, I had to -- I said, this really must be to do with the land. Full stop. Now I couldn't be certain, but that's what I reckoned it nearly had to be.

597 Q. As much as you had received an explanation for it referring to your statement, it was one where some person in Copsey Murray intimated to you it was either for auctioneer's fees or a finder's fee, isn't that right?

A. Yes.

598 Q. That's what they said to you, as far as you can recollect?

A. That is true, but again that would be effectively a cost to sale and if you look at the enhancement expenditure, it is under the heading "Cost of sales" so I dealt with it in cost of sales.

599 Q. You rejected the reference to it being an auctioneer's fee or a finder's fee, isn't that so?

A. I did. If -- I just want to answer this question --

600 Q. Of course you may.

A. If the person I had spoken to had been quite certain that it was auctioneer's fee or a finder's fee, that's how I would have dealt with it, but it's a long time ago now, but it didn't come across. It just came across as very, very vague.

601 Q. You rejected it because you said it was purely surmise, isn't that so?

A. Yes.

602 Q. But what you went on to do was to substitute your surmise for their surmise, isn't that so?

A. OK, you could say that.

603 Q. And insofar as anybody might have had knowledge of this transaction, whatever limited knowledge they had, it was more knowledge than you had, isn't that so?

A. That's true.

604 Q. So on that basis alone, why did you prefer to put it down to something that you didn't know what the basis was rather than to accept, albeit reluctantly, the description which had been given to you by the accountants and over which you could stand by, saying I made my inquiry, I was given this answer, I accepted this answer, albeit it might not be a hundred percent? Why did you not do that as opposed to determining for your own reasons to insert enhancement expenditure as the explanation?

A. Well, I felt that the answer I got was unreliable. And so I decided -- so -- why I did what I did is because I decided that the most probability was that it was to do with the lands. The most probability. It was an expense anyway. It was only a matter -- it was matter of description. Whether I described it as sundry expenses, whether I described it as auctioneer's expenses, whether I described it as finder's fee, the net profit was still the same. I decided because -- since I had no real information, I decided that it was to treat it as enhancement expenditure.

605 Q. As much --

A. Or shall we say, I decided, if you like, enhancement expenditure is a label I decided to put under that label. What I did do -- what did I do? I treated it as expenditure.

606 Q. It was undoubtedly expenditure and there were other items of expenditure by the company.

A. Exactly.

607 Q. There was the expenditure of wages, there was expenditure on travel. There was expenditure on various acquisitions. There were all sorts of expenditures.

A. Yeah.

608 Q. But those expenditures could not be declared to be enhancement expenditures, is that right?

A. Yes. Well first of all, a lot of expenditure was kind of -- since Joseph Murphy Structural Engineers were the, if you like, the operating -- not the operating, they were a trading company. They had staff. They had the offices and the executives of, or the people you know in JMSE would normally, normally -- obviously especially so in Gogarty's time when he was chairman of JMSE, he was also in charge of the land companies. Now therefore -- frequently when there was expenditure to be paid for shall we say repair to a fence or whatever it might be, JMSE actually paid it. Now, most expenditures incurred by JMSE on behalf of Grafton or on behalf of Lajos or Wexburn would be dealing with either repairs to property of some description or other, so normally -- they also sometimes incurred security costs and that was for security for the properties, so most expenditure incurred by JMSE on behalf of the other companies related to the other company's properties. Now, there was an exception in one or two years where, you know, for wages for Jim Gogarty.

609 Q. And you knew that in this particular year, Mr. Gogarty was leaving the company, isn't that right?

A. Yes.

610 Q. And it could well have been an expenditure in relation to his leaving the company, isn't that so, amongst other expenditures, it was a year in which there might well have been such an expenditure?

A. Well you can speculate as much as you like on that point, but if it was to do with Jim Gogarty, we would have had to deal with any PAYE regulations etc. So shall we put it this way, I haven't come across the company making illegal payments, so it would be most unlikely that it was for payroll.

611 Q. But there were a range of options to which you could have attributed this particular expenditure. You elected to attribute it to enhancement expenditure in relation to the lands as opposed to expenditure in the other areas of involvement of the company, isn't that so?

A. No, that is not so. The only --

612 Q. What is incorrect about that?

A. What is correct is whatever it was it would be in relation to land some way or another. It was a finder's fee, it was in relation to the sale of the land. If it was an auctioneer's fee, it was in relation to the sale of the lands. If it was repairing a fence, it was in relation to lands. So generally, practically, you know -- other than -- practically -- obviously there is exception, you can have taxi expenses, travelling expenses but most expense in relation to the land companies, since they really weren't doing anything else except holding land related to the land.

613 Q. You rejected the first of those to auctioneer's fees and finder's fees before you went on to your own conclusion, so we can leave those out of the equation. No?

A. No, but they were still possibilities.

614 Q. You had rejected them though?

A. Yes.

615 Q. There were other matters to which you could have attributed to and you didn't. You elected to put it down to

enhancement expenditure?

A. Yes.

616 Q. Your explanation is that because it's a land company, it must have been to do with the lands and therefore, be enhancement, that's the explanation is it?

A. That's right.

617 Q. If you look even at page 11 of your computation, that is at page 182 under the heading of "Creditors", you see "Creditors" there?

A. Page 182, hold on.

618 Q. Page 182, at the bottom -- tab 8, the black folder that you were dealing with.

A. Oh the black folder.

619 Q. I am sorry, it's at tab 8 -- sorry, tab 10, 182, I beg your pardon if I misled you. It's in the black folder.

A. This folder?

620 Q. Yes, the one with the tabs in it, do you see that? And 182 in the bottom.

A. Yes.

621 Q. In that you will see that there are sundry creditors listed at £16,090, is that right?

A. Yes.

622 Q. So whilst this you say is a land company, you wouldn't expect it to be dealing in any way with matters other than perhaps the repair of fences or what have you. Here you have sundry creditors who are owed £16,000 over and above individual creditors, isn't that right?

A. That's right.

623 Q. So that again on page 174, that's the opening trial balance, do you have that document?

A. Yes.

624 Q. You will see that there are auctioneer's fees down already,

£1,030.50. There are legal fees, there are sundry expenses.

A. Yes.

625 Q. And a settlement to Mr. Lane, who was the former accountant, of £7,000. These were all items of expense of the company. I suggest to you that there were endless areas in which this money could have been expended which was not an enhancement of the lands, isn't that so?

A. Well that was not my assessment.

626 Q. But you had recorded in your assessment of the documentation headings of expenditure which had nothing to do with the enhancement of the lands and then you record two items only which record the enhancement expenditure of the lands and that is the £30,000 and the acquisition of the lands at 65,000. They are the only two enhancement matters, whereas there are endless expenditure matters.

A. Well there is 65,000 as well, isn't there?

627 Q. Was an enhancement expenditure that we see recorded in the documentation at page 185. They are the only two items of enhancement expenditure, the acquisition of the lands and the 30,000. And I am putting to you that there are endless references to expenditure on matters which had nothing to do with enhancement.

A. Well, expenditure on lands would have been -- let's see -- just see what expenses are there.

628 Q. Well, you have already recorded them there at page 174. They are auctioneer's fees, legal fees, sundry expenses, insurance, rates, settlement of Mr. Lane, they are all items of expense, isn't that right?

A. How big are they?

629 Q. Sorry? You seem to be suggesting, Mr. Bates, that the only reason you put it down to enhancement expenditure is

this was a land development company, it didn't have expenses as such and therefore, any expenditure it did have could properly be described as enhancement expenditure and what I am putting to you, that from the records you kept, you recorded quite a number of items of expenditure which were not enhancement, isn't that so?

A. Yes. There are always other expenses but the main -- the main asset of the companies were lands. The main -- now, John Lane's expenses, that was unusual. I can't remember what exactly -- but that was unusual, and I think came from the past. But anyway, irrespective, I assessed that the -- the other expenses obviously I had definite information on. Now, I didn't have definite information, I didn't know what the 10 was. I didn't know what was 20 was and therefore I decided to treat them as enhancement expenditure. Now, that is the facts. That is the fact.

630 Q. That is --

A. If -- we can talk about this till the cows come home. That was the fact. Now, maybe I shouldn't have done it. Whether or not, that is what I did do. Well that's all I can say really.

631 Q. The cheque journal document has been handed to the Tribunal over lunch and it is the document of which extracts on the A3 page have been available for sometime but in fact, the page folds out to -- (Document handed to witness.)

A. Yeah, I have it.

632 Q. You have that document now which is the original document and I'd ask you to turn to the 8th June of 1989.

A. Yes.

633 Q. And to the two recorded payments of 10 and £20,000.

A. Yes.

634 Q. And we know what's on the first of those pages, but if you open it out fully and you bring it across the page, you will see that there is a reference in red biro where an attribution is given to those payments, isn't that right?

A. That's right.

635 Q. And that is a numerate attribution. It's not a description. It's a code of something?

A. It's a code, that's right.

636 Q. And would you just tell us what that is?

A. I presume that is the normal ledger code of Joseph Murphy Structural Engineers because this is a Joseph Murphy Structural book. That code would be Grafton Construction Limited, I think, you know --

637 Q. Whenever there is a Grafton Construction payment on behalf of Grafton Construction, it's given the number 121005, is that right?

A. It would be debited Grafton Construction and I am assuming that this 121 is the code reference to Grafton Construction.

638 Q. There are three zeros, just for completeness?

A. 1210005.

639 Q. And did you make that -- attribute that reference number or is that something --

A. That would have been done by Jim Mitchell in writing up the books.

640 Q. Right. But you are perfectly familiar with this. I think you have gone through this document.

A. Oh yes, I have gone through --

641 Q. You go through that for your audit purposes, isn't that right?

A. Yes.

642 Q. And you can confirm then that the two Grafton payments that

are 10 and the 20 that are referred to as Grafton payments there, were recorded as payments for and on behalf of Grafton?

A. That's right.

643 Q. There is nothing there to indicate that that's an intercompany loan to Grafton or that it's going to be repaid by Grafton, isn't that right?

A. It would be -- what it is, it's either -- it could be a loan or it could be paid in on behalf of Grafton. It doesn't say. It just says Grafton. Now, irrespective of whether it was specifically paying something on behalf of Grafton or whether it was transferring funds to Grafton's bank account makes no difference. Either way, the money of JMSE is being either given to Grafton or else it's being used on their behalf. So in either case, the costs would be debited to Grafton Construction.

644 Q. Would you just look at page 35 of that book there and is there a reference there to an intercompany loan under reference 1370071.

A. 1370071, yes.

645 Q. What does that record?

A. That's a payment out on behalf of Lajos.

646 Q. Does it record it as an intercompany loan?

A. No, it says as travel. So it was travelling expenses which was on behalf of -- on behalf of Lajos.

647 Q. We don't have copies of this unfortunately. Are the words "intercompany loan" appearing there in respect of that?

A. No.

648 Q. They are not?

A. The words "intercompany loan" are not.

649 Q. They are not on that page?

A. They are not on that page.

650 Q. Then I am giving you the wrong reference obviously. Would you expect there to be a reference to an intercompany loan transaction in that book or not? You say there is no difference between whether one -- just a moment -- you say there is no difference in the entry or code as to whether or not a matter is an intercompany loan on the one hand or a payment out on behalf on the other hand, isn't that right?

A. Yes.

651 Q. Having established that as a fact, I just want to inquire from you whether, if that is so, whether there would be any need to enter something in the book as an intercompany loan when that situation arose.

A. The thing that would be necessary is that it would be coded to the company who got the money, if it was an intercompany loan. If they want to say intercompany loan, that's fine. If they say it, that's still fine. It's still going to be debited to that company.

652 Q. Fine. So are you saying the words "intercompany loan" then would be superfluous and unnecessary if they appeared in that book, because it is immaterial whether it's an intercompany loan or not?

A. No. What I am saying is that if -- provided it's coded correctly, if there is -- if it's coded correctly to the right company, then it will be dealt with correctly. Now obviously the more you put in, I suppose the more information a person has, right? So in some instances Jimmy Mitchell, right, put in intercompany loan. In some instances, he might not. But once -- obviously, if he puts -- once it's coded correctly, it will be dealt with correctly.

653 Q. Right. Well of course if the code Grafton -- sorry, if

the code number that we have given for Grafton, 1210005 is merely to identify it as a Grafton Construction --

A. What it's doing there is to say that this amount is to be debited to Grafton nominal ledger.

654 Q. There again that is unnecessary if you have written in manuscript Grafton Construction because it speaks for itself, doesn't it?

A. No, but you still -- when you go to post it, you will have to use the code. When you go to post it to the nominal ledger, you will have to use the code.

655 Q. Why is that?

A. Because you need to know what account -- what's the account code in the nominal ledger for Grafton Construction or whatever the case may be. So you need the code.

656 Q. So you say there should be a code against every single entry in that cheque journal?

A. Well some -- if -- say if there is a column for creditor's cheques, the code can be at the end of the month because they are all going to the creditors ledger control account. If it's in the sundries column and they are all different things, they will all have to have different codes.

657 Q. Can I just -- sorry, I will just take the book back from you for a moment and I am sorry we don't have copies but this was just given to us at lunch time, Sir.

Thank you, Mr. Bates.

.

MR. O'MOORE: Sir, we have a number of questions for Mr. Bates. I don't know whether you want to take them now or to let it stand over until after the break.

.

MR. CUSH: Sir, I am sorry, if I have any input into that,

we'd be very anxious to finish --

.
CHAIRMAN: I am very anxious to finish too. I am very, very anxious to finish. I am pushing to get the whole unit finished, not just this witness. I have been driving throughout the whole of this month to get -- so we will sit on until half past five if necessary. But now, that is not an encouragement to be long-winded.

.
MR. O'MOORE: No, Sir.

.
THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'MOORE:

.
658 Q. Mr. Bates, I want to ask you some questions on behalf of Mr. Gogarty and could I ask you first of all to look for a moment at the overall case made by you and the other people represented by Messrs. Fitzsimons Redmond. You are aware, are you not, that the case made by Mr. Murphy Snr and Mr. Murphy Jnr is that they knew nothing about the payment to Mr. Burke in June of 1989. You know that, don't you, Mr. Bates?

A. Yes.

659 Q. And you are aware that the case that they make is that the payment was made entirely without Mr. -- without the authority of either of the Murphys, isn't that so?

A. Yes.

660 Q. So the payment, as far as they were concerned, is an unauthorised one and to that extent an improper one, isn't that right?

A. That would be so, yes.

661 Q. And isn't the function of you as an auditor and accountant to check that any payments that are made by the

company are payments which can be accounted for?

- A. My function is to report on a true and fair view of the accounts. As a by-product of that, I may come across, say, in that case you'd be talking about defalcations. If I come across it and I am, say, satisfied or feel that there is a defalcation, then I should report that fact. But that is not the prime or purpose of my audit.

662 Q. Let's look at what you knew when you were doing up the accounts of this company in January and February of 1991. First of all, you knew that a payment of £30,000 had been made ultimately out of the funds of Grafton, isn't that so?

- A. That's true.

663 Q. And knew that that payment had been made in cash or against cash?

- A. Well, I don't think I was aware that it was actually made in cash.

664 Q. If you look at the black booklet, Mr. Bates, at page 185 --

- A. Oh, yes, sorry, there is a term cash on it.

665 Q. When you say a term cash, what does it mean?

- A. Well like -- I am talking from memory now, so I may not be right, but the cash payment is, if it came from the cheque payments book, that would be still regarded as a cash payment. There isn't necessarily a distinction between cash and cheques. Like, the cash book -- a book called the cash book can be a cheque payments book in isolation, it can also be a combination of a cheque payments book and a cash receipts book. So the term, basically what it does indicate is that there was -- it didn't come through the purchases system. That this came through the bank system.

666 Q. Now you made the entry, Mr. Bates. What did you mean when you used the word cash against that payment?

- A. Well I would have -- if you look at it, those two payments

went to JMSE's cheque payments book. I would have meant a cheque -- I feel now -- see, I just -- I will be quite specific about this now. I am talking about a long time ago. So I feel I would have been talking about a cheque payment. I may have been aware it was a cash payment. At this point in time, I can't recall if I was aware of that or not.

667 Q. So your evidence is that on balance the word cash means a cheque payment. Is that seriously your evidence, Mr. Bates?

A. It may mean a cheque payment, yeah. I mean cash and cheques are synonymous. I know you are saying if you say cash payment you really mean in cash. You don't necessarily mean that. It's could quite also be by cheque and -- hold on -- I understand in this, am I right in saying that all of this was actually cash?

668 Q. Mr. Bates, we will come to that in just a moment --

A. You have asked me this. I understand that this was not necessarily all cash. Which was it?

669 Q. Well, Mr. Bates, can I just put this to you. You are the man who made the entry. I want you to explain fairly simply, if you recollect, anything about what the meaning of the word cash was in that entry?

A. OK. Those payments came through Joseph Murphy Structural Engineers' cheque payment book. I feel that on balance, I would have regarded that as payments through the bank by cheques or by you know, by -- not over the counter. I wasn't aware of over-the-counter payments, if you like.

670 Q. Yes, so on balance you believe that what that entry means is that it was a cheque -- or that it was a payment made through cheques?

A. Yes, or paid through a bank draft, but it came through

Joseph Murphy Structural Engineers' bank account.

671 Q. We now know that at least £20,000 of the sum paid to Mr. Burke was in cash.

A. Right.

672 Q. And what I am putting to you is as the person who examined the records at the time in early 1991, is that wasn't one of the things you should at least have contemplated, the possibility that what had happened was that £30,000 had been ripped off the company?

A. Possibly, yes.

673 Q. Well here we have a payment which you have recorded as cash and which you just said could have been in the form of, say, a bank draft. You were looking at the books and records of the company. You had no idea and nobody who told you what the payment was about, did it ever occur to you that that, in fact, could be what the Murphys now say it was, a serious defalcation by somebody who had control of the company's accounts?

A. It crossed my mind, I would say.

674 Q. It did cross your mind?

A. I would say I may well have thought of that, yes.

675 Q. Well now, Mr. Bates, it occurred to you in January or February of 1991 that this in fact could have been a defalcation?

A. Well now, I didn't think it was, but --

676 Q. It occurred to you it might be?

A. I mean, a possibility. But --

677 Q. Occurred to you?

A. It could have been occurred to me.

678 Q. What did do you about that very serious possibility, Mr. Bates? The possibility that it could have been a theft from the company?

A. What I did was I informed the directors that there was unvouched expenditure of 30,000.

679 Q. Which directors did you inform?

A. My recollection is that I informed Frank Reynolds, Joe Murphy Jnr and I think John Maher.

680 Q. And when did you inform them of this, when you were doing the accounts?

A. No, not when I was doing them up. At the very end.

681 Q. I am asking you about January and February of 1991, Mr. Bates.

A. It would have been around obviously January or February '91.

682 Q. Yes. You told, at that stage, Mr. Murphy, Mr. Reynolds and who else?

A. John Maher.

683 Q. Mr. Maher. That you felt had that this could in fact be an unauthorised expenditure out of the company?

A. Hold on, my recollection is that I did that.

684 Q. That's what I am asking you for, your recollection, Mr. Bates.

A. Yes.

685 Q. And what was their reaction to this extraordinary possibility that they had had £30,000 robbed off the company?

A. Hold on, I didn't say it was robbed. I just said it was unvouched.

686 Q. And --

A. Hold on. Also, I had spoken about this with John Maher before and I feel I had spoken about it with Frank Reynolds before. I can't remember exactly. I also spoke -- I also mentioned -- you know I was on to Copsey Murray about it. So I mean, so people were aware that we had this.

So I was just -- I just made the statement of fact that that 30,000 was not vouched.

687 Q. Mr. Bates, let's take this in simple stages. You have given sworn evidence in the last ten minutes that it occurred to you that this could have been a defalcation from company funds, is that correct?

A. Yes.

688 Q. And that occurred to you in January or February of 1991, is that correct?

A. Yes.

689 Q. And that you informed the directors of the company of that possibility at that time, is that correct?

A. No -- well I informed them that it was unvouched. To say defalcation is a very emotive word. I thought obviously -- I said well, £30,000 of unvouched expenditure.

690 Q. Well now Mr. Bates --

A. Hold on. So I told -- my recollection is that at the end of the day I said look, there is £30,000 of unvouched expenditure.

691 Q. And what did you mean to convey by that? Did you mean to convey --

A. If they had -- if they were concerned about it, they could take action on it. If. Now, 30,000 was not a huge sum of a figure -- not a huge sum of money. Also this was a time when there was an awful lot of, if you like, changes in the company, there had been an awful lot of aggravation. There had been an awful lot of carry on, about a half a million pounds of money which was -- which Joseph Murphy couldn't get their hands on and also there had been cases against various directors, there had been accusations against various directors, say for example, Marcus Sweeney, Gerry Downes, all which I totally believe

are totally unsubstantiated and also there was the problem with Mr. Gogarty himself and there was the problem before that with Mr. Conroy, was it?

692 Q. So in the light of all that --

A. So --

693 Q. Mr. Bates, you didn't feel that of particular importance that a mere £30,000 had apparently been stolen from the company or could have been stolen from the company, is that so?

A. I didn't think that £30,000 had been stolen from the company.

694 Q. But it's a possibility you considered at the time?

A. If money goes -- everything is a possibility.

695 Q. And you, as auditor, did you inform the directors or not of that possibility?

A. No, I didn't inform anyone of the possibility that there was £30,000 robbed. So --

696 Q. So all that you said was that it was unvouched.

A. Yes, exactly.

697 Q. Did you mean by that to convey that there was a question mark over the money, Mr. Bates?

A. Well, what I meant to convey by that is exactly what I said, that I didn't have supportive documentation for what it was for.

698 Q. And you didn't know what it was for?

A. No, I didn't know what it was for since I didn't have the supporting documentation.

699 Q. So you neither knew what it was for nor did you have any supporting documentation, isn't that right?

A. That has always been the case. That has always been the case.

700 Q. Now, let's move briefly, if you wouldn't mind, to 1997,

when the Murphy interests claim that they discovered that this payment had in fact ended up with Mr. Burke. Were you hauled over the coals at all by the directors about the fact that you had been so slack with your treatment of the accounts in 1991?

A. No.

701 Q. Did they say to you, Mr. Bates, how can this have happened?

A. No.

702 Q. Did they express any surprise about the fact that -- just listen to the question, Mr. Bates, you have a habit of answering questions I have not yet asked. Did they express any surprise at the fact that you, as auditor of the company and continuing auditor of the Murphy companies, had in fact let this £30,000 slip through the system?

A. I hadn't let the £30,000 slip through the system.

703 Q. Well you hadn't discovered what it was for at the time.

A. No, I hadn't discovered what it was for at the time.

704 Q. I am right, am I, Mr. Bates, in taking the view that you are still the auditor of the Murphy companies?

A. Yes, I still am the auditor of the Murphy companies.

705 Q. Yes. And at any stage, did Mr. Murphy Jnr or Mr. Murphy Snr or Mr. Reynolds say to you, look you were a bit slack in the Grafton accounts in 1989, 1990?

A. No.

706 Q. Were you surprised by that yourself, Mr. Bates?

A. No, I don't think so, no.

707 Q. What in fact you had done, not to put a tooth in it, was to draw up accounts for the benefit of the directors and the shareholders which were misleading, isn't that right?

A. No, I don't believe that they were misleading.

708 Q. Now are you seriously saying on oath, Mr. Bates -- Mr.

Bates, again just listen to the question, it will help us move along. Are you seriously saying on oath, Mr. Bates, that the accounts originally signed off in February of 1991 for this company are accurate?

A. The only error in the accounts is that the tax charge was understated by approximately £12,000.

709 Q. Yes, £12,000?

A. Odd, thereabouts. Which in relation to the turnover of the company, in relation to the financial strength of the company, is not a material amount.

710 Q. So there is an error in the accounts, Mr. Bates. Have we established that?

A. I have never said there wasn't an error in the accounts. When in 1997 I withdrew -- I changed my computations. So -- and in 1997 I informed the directors that we'd have to change our computations so on the basis of the new information coming to me, I amended the tax computations of the company. It didn't affect the results of the year.

711 Q. The accounts are misleading --

A. Before tax, sorry.

712 Q. The accounts are misleading, is that so?

A. I don't believe that the accounts are misleading.

713 Q. Well they don't state the true position?

A. They understate the total liabilities by £12,000.

714 Q. And it was on the basis of these accounts that you made returns to the Revenue, isn't that right?

A. That is true.

715 Q. And if there had been a Revenue audit, do you think that the Revenue Inspector would have taken a benign view about the fact that you had simply hazarded a guess at what the £30,000 was for?

A. I can't answer for them.

716 Q. Well isn't it the fact then, Mr. Bates, you can answer this I think, that doing your job as an auditor, you would have -- you should have found out what the £30,000 was for or else you should have notified the directors in clear terms that there was a potential problem with the accounts?

A. I probably should have notified the directors in clearer terms.

717 Q. Now when you say you did notify them that the accounts or that there was an unvouched payments and that you did around February of 1991, where did you do it, for example, or how did you do it with Mr. Reynolds? Did you do it face to face or over the phone or how did you do it?

A. My recollection is it was face to face.

718 Q. Where?

A. In Santry.

719 Q. Did he express any concern about this?

A. No.

720 Q. Did you press on him the fact that if the unvouched expenditure was in the wrong column or tax relief was wrongly claimed in respect of it, there could be a tax liability?

A. I didn't actually consider that it wouldn't be allowed for tax. I assumed -- I just -- it was expenditure, I assumed it would be allowable for tax. At that point in time, I did not consider the tax -- that it wasn't allowable -- it was expenditure money. The other point, if it turned out to be -- I'd have to double check this -- if it had been shall we say a misappropriation, it still would have been an expense.

721 Q. Allowable for tax?

A. Well that's what I'd have to check.

722 Q. Are you serious?

723 Q. Well if you take -- do you think that, shall we say, I mean it's a much more obvious example, but any of the main street stores, their results for the year are affected to unknown amount by a cash, by pilferage.

724 Q. Mr. Bates, can I ask you this --

A. I said I would have to check it out.

725 Q. Are you seriously suggesting as a possibility that if you discovered in February of 1991 what the Murphys now say which is that Mr. Gogarty ran away with the £30,000 and gave to Mr. Burke behind their backs, that that would be allowable against tax, are you serious?

A. I am saying I would have to check it out. If the money had been lost, it is an expense to the company, so it does affect the company's results. Undoubtedly it affects the company's results. At this point in time, I would have to say if a company suffers fraud, is that -- is it allowable or is it not? I would have to have that checked out.

726 Q. Now Mr. Bates, would you tell me something you don't have to check out. Would you tell me the circumstances please in which you talked with Mr. Murphy Jnr about this unvouched expense of £30,000.

A. Well my recollection is that at a meeting which took -- Joe Murphy Jnr, Frank Reynolds and John Maher were present, I informed them that there was £30,000 of unvouched expenditure. Now, we would have been -- this was not a major issue at this time. Now, obviously maybe on reflection it should have been.

727 Q. So you told them all at the same time, is that right?

A. Well I would have spoken -- no, I would have spoken -- I did mention I think at the same time and I think these were the people who were present. Now, but I would have -- it would have been -- I would have spoken to John Maher about

the 30,000 on numerous occasions -- well on a number of occasions, numerous might be wrong. I would have also -- you know I feel I spoke to -- I think I spoke to Frank Reynolds about it as well. I wouldn't have spoken about it to Joe Murphy Jnr because he wasn't around on a day-to-day basis.

728 Q. Now Mr. Bates, stop trying to recollect your statement and give the evidence that you have just given.

A. I am not trying to recollect my statement. You have asked me a question and I answered it.

729 Q. Mr. Bates, I understood your answer to be that at a meeting in Santry, in JMSE offices, you told Mr. Maher, Mr. Murphy Jnr and Mr. Reynolds simultaneously about the fact of this unvouched £30,000. Am I right or wrong in recollecting that?

A. That is my recollection, that is correct.

730 Q. But you didn't ask Mr. Murphy Jnr or Mr. Reynolds about the payment, did you, about what it might actually mean?

A. No, but I had already asked John Maher anyway, but John wouldn't -- John just did not know. He just did not know. I asked him -- but he did not know and I think I also asked Frank Reynolds. But you are talking about -- so I -- no one knew.

731 Q. Now, this is a payment that you had for sometime been trying to chase down and identify what it was, isn't that right?

A. Yes.

732 Q. And here you have the two directors who were about to sign the accounts, Mr. Reynolds and Mr. Murphy Jnr and Mr. Maher, and you are telling them that there is an unvouched expenditure in these accounts, isn't that right?

A. That's my recollection.

733 Q. Well did it not occur to you to say to Mr. Murphy Jnr, "Do you know anything about it?"

A. Well I actually didn't say that.

734 Q. It didn't occur to you at all to make an inquiry of that gentleman?

A. I didn't say that. Joe Murphy was -- he was never around the place.

735 Q. Yes. But he was there to sign the accounts for that year, isn't that so?

A. Well, I am not saying that was at the meeting to sign off the accounts because -- I have a recollection I did have a meeting with them around the time the audit was being completed.

736 Q. Well whether it was at the meeting to sign off the accounts or not, it was a question you had asked a number of people, you had had no answer.

A. That's right.

737 Q. Did it not occur to you to ask Mr. Murphy Jnr what the story was, what he knew about it?

A. I didn't ask him, I just told him. I didn't ask him so it didn't occur to me.

738 Q. Yes. Now, obviously you prepare draft accounts that year before the final accounts were put together, isn't that so?

A. Yes.

739 Q. And do all the draft accounts record the --

A. To the best of my knowledge, there is no change at all in any of them.

740 Q. Is that true?

A. Well, I can't say -- I said to the best of my knowledge, the draft accounts weren't changed.

741 Q. So throughout the period of putting together the accounts, when you got to the stage of putting together draft

accounts, you felt that the you knew that the £30,000 was going under this heading, is that right?

A. Yes.

742 Q. That's completely untrue, Mr. Bates, and will you now have a look at the draft accounts which I think bear your signature. I will just hand up a copy to you. (Document handed to witness.) The reference, Sir, is the JMSE discovery, JMSE.24.24-463. Have you got a copy of that?

A. I have a copy of that, yes.

743 Q. Now whose handwriting does one see on that document?

A. That's my handwriting. I am pretty sure that's my handwriting.

744 Q. Very good. Could you look now at the cost of land sold?

A. Yes.

745 Q. And could you read that figure into the record please?

A. 661063.

746 Q. No, that's not correct.

A. Oh sorry, 595,790.

747 Q. Yes, that's cost of land sold, isn't that right?

A. Yes.

748 Q. That is the figure I think that appears in the audited accounts -- in the signed accounts, isn't that right?

A. Yes.

749 Q. Now what's the figure underneath?

A. 65,273.

750 Q. And what cost is that against?

A. Enhancement expenditure.

751 Q. Yes. And could I remind you that the figure that actually appears in the final accounts as signed by Mr. Reynolds and Mr. Murphy Jnr is £95,273.

A. That's right.

752 Q. So in fact there was a time when you were putting together

draft accounts when the extra £30,000 so to speak didn't feature at all as a cost under that heading, isn't that right?

A. Well I'd like to see a copy of the final accounts so I can see what --

753 Q. Please would you look at the black book you have, tab 10.

Have you got that book?

A. Hold on.

754 Q. It's page 198. Have you got that now, Mr. Bates?

A. Yes, I have.

755 Q. Isn't the sum £95,273 --

A. That's right.

756 Q. Which is I think an undisputed sum of £65,273 plus the £30,000 at the heart of this portion of the Tribunal, isn't that right?

A. Yes.

757 Q. So obviously you had in fact gone to the bother of preparing draft accounts contrary to the evidence you just gave and -- Mr. Bates, please let me finish the questions, it will make life a lot easier --

.

MR. CUSH: That wasn't the question.

.

CHAIRMAN: You must be entitled to finish the question.

You can object to the question when it's finished.

.

MR. CUSH: Very good, I will wait till it's finished.

.

MR. O'MOORE: Now you had in fact prepared draft accounts contrary to the recollection that you have just expressed a few minutes ago and they did in fact omit the £30,000 which found its way to Mr. Burke under the heading enhancement

expenditure, isn't that right?

A. That's right.

.

MR. CUSH: Now, Sir, the only objection that I have to the question is that it contains a statement by way of summary of the previous evidence of the witness which to my recollection is not correct because I recall the witness as saying to the best of his recollection, there was no change from the draft accounts to the final accounts. Now in that he is clearly incorrect. But what's been put to him by Mr. O' Moore now is that his evidence was to the effect that there were no draft accounts and that's not correct.

.

MR. O'MOORE: That's not what I said and it's quite clear --

.

CHAIRMAN: Just a moment. In the course --

.

MR. CUSH: It's a small point.

.

CHAIRMAN: In the course of evidence, I made the following note: He said that he formed the opinion that an entry of £30,000 was a defalcation on company funds and the question I want to ask, I was going to ask it at the end, is why attribute to a tax effective heading? And he went on to say there is a question mark over the entry and I want to know why did he attribute it to a tax effective heading and, secondly, having identified it as a problem area in the accounts, did he actually trace it back to the two cheques involved which seems to me inevitable but I await understanding of that.

.

Now I want to know the answer to those two questions as well as everything else.

.

As the evidence was being given, that's the note I made. It was the query that remained in my mind. Here was a situation where an unvouched situation was found at the end point of the audit. Surely the inquiry was made as to where that unvouched situation arose and therefore if that inquiry was made, it should have gone back to the cheque and it should have been then necessary to inquire what were those cheques used for? The least that's to me, and I have no experience of accounting whatsoever, it seems to me to be the necessary explanation.

.

MR. O'MOORE: Well Sir, perhaps if I just continue the point with Mr. Bates --

.

CHAIRMAN: I want those questions answered in the end of the day. I am going to repeat them.

.

MR. O'MOORE: Yes. Well perhaps it's best, Sir, at the end of my examination, if you put that to the witness --

.

CHAIRMAN: I beg your pardon, I shouldn't have intervened.

.

MR. O'MOORE: Mr. Bates, can you explain to me in relation to the draft accounts, which show enhancement expenditure at a sum of £30,000 less than the final accounts?

A. Well, this draft is just a handwritten draft and the result at the end of day was showing a profit of 179,000 which is incorrect. So I am just -- so I can't -- you know -- I

don't know what stage that was done but they are not even typed, right?

758 Q. But they are typed in fact and figures are written in, isn't that --

A. No, that's just the previous year's figure so that should have been just a blank page so I wouldn't have to rewrite the accounts every time, right? So that would have been -- obviously that was the first draft I did but it didn't deal with the 30. .

759 Q. That's the point I want to ask you about, because I haven't even asked you question. What I want to know is whether in the draft accounts you found room for the £30,000 under another heading. Can you recollect that?

A. No. I obviously haven't because, like, I have the profit and loss is 179 there and the other is 134, there is a difference of about 35,000.

760 Q. Yes, Mr. Bates --

A. 45,000 --

761 Q. What I want to ask you is this, what was it then between the commitment and the definition of enhancement expenditure of £65,273 in the draft account that changed your mind to increase that figure by £30,000 in the final accounts?

A. Because I had to deal with the 30,000.

762 Q. And there was no other factor whatsoever that influenced that decision?

A. No.

763 Q. I see. Now could I ask you --

A. That's --

764 Q. I want to follow through on that now please, Mr. Bates.

A. Sure.

765 Q. Of the people that you could have asked about the £30,000,

you didn't ask Mr. Gogarty because he was at some remove from the company at that time, is that right?

A. That's right.

766 Q. Mr. O' Neill has gone over with you at some length the approaches you made to Copsey Murray?

A. Yes.

767 Q. And if I have understood that correctly, you got some information from an unnamed source in Copsey Murray at some point in time, is that right?

A. Yes.

768 Q. And as it happens, what you say you were told by that source in Copsey Murray broadly accords with the heading you eventually found for the £30,000, isn't that so?

A. It broadly accords with it, yes.

769 Q. If that's so, Mr. Bates, can you tell me, did you make a memorandum of your conversation with that individual at all? Did you make a note saying I have talked to X in Copsey Murray and he or she says this, that or the other?

A. No.

770 Q. Did you consider writing a letter to Copsey Murray saying I am doing up the accounts and in doing so, I am relying or I am putting the money under a heading consistent with what your Mr. X has told me?

A. No.

771 Q. Is there any note or record at all of any discussion you had with anybody in Copsey Murray at all?

A. There is no note, no.

772 Q. Is there any note or record of any discussion you had with Mr. Reynolds?

A. No.

773 Q. Is there any note or memo of any discussion you had with Mr. Maher?

A. No.

774 Q. You never wrote a letter, you say, to the directors notifying them of the fact that this sum on the accounts was a guess or a surmise as you agreed with Mr. O' Neill?

A. It wasn't a guess. The expenditure was real.

775 Q. There was no letter to the directors, particularly the two gentlemen signing the accounts?

A. No.

776 Q. Notifying them that you had to enter a caveat on the accounts, wasn't that right?

A. No.

777 Q. You had, what I am putting to you now, Mr. Bates, in clear terms is that the devotion of £30,000 under this heading was an effort by you and the directors of the company to bury that sum in the accounts so that the bribe to Mr. Burke that they knew about, whatever about yourself, would not be become clear.

A. That is incorrect.

778 Q. And you got no guidance whatsoever, you say, from the directors as to how to treat the amount?

A. That's right and I --

779 Q. Let me ask you a question now. Mr. Reynolds and Mr. Murphy Jnr, who signed these accounts as being true and accurate, did so with only the most casual reference by you to the fact that £30,000 was a completely unvouched and mystery expenditure, is that your evidence?

A. Well that is the truth.

780 Q. I see. I see.

A. Now I mean, you use the term "mystery expenditure" -- well I suppose if you want to use that, but that is the truth.

781 Q. Now, can I ask you about a couple of other matters. First of all, when did you decide to be represented at this

Tribunal at all?

A. I had discussions with Redmond or Fitzsimons Redmond.

782 Q. Mr. Bates, have you forgotten the question?

A. You said when did I decide to be represented.

783 Q. When did you decide to be represented?

A. I can't remember exactly the date I decided to be represented.

784 Q. Well the year maybe?

A. I would say -- I can't remember -- I can't exactly remember whether it was nine months ago or a year ago --

785 Q. Well both dates will get you sometime in late 1998 or early 1999, is that so?

A. I presume so, yeah.

786 Q. And when did you first inform your lawyers of the contents of your statement?

A. Around the -- around December -- what did -- when did I sign it there?

787 Q. You signed it on the 15th December of this year, last week, but what I want to know, I don't want to know any discussions you had with your lawyers, I want to know when you told them about the contents of this statement.

A. The contents of that statement, I discussed the contents of that statement probably around nine months ago.

788 Q. Was it before or during Mr. Gogarty's evidence?

A. It would have been during or maybe after, you know -- probably during his evidence. I mean, I am not quite sure -- it was around, as I said, say, somewhere around nine to twelve months ago, I can't be certain.

789 Q. Because one of the references you make to Mr. Gogarty in the statement is at the bottom of the first page, saying that relations between the two of you had become strained "Because Mr. Gogarty had made a very aggressive and

threatening telephone call to me to claim my son had been blackguarding his son in Sutton."

A. That's right.

790 Q. Among the hundreds of things put to Mr. Gogarty by your counsel, Mr. Cooney, that doesn't appear at all. I am just wondering why that is so.

A. I don't know why that is so.

791 Q. You don't?

A. No.

792 Q. I see. Could I ask you then in relation to the end of the statement where you say that "After the matter had come into the public domain, you revisited and rechecked the accounts between April and July of 1997." Tell me, what prompted that now, Mr. Bates?

A. Because we were trying to find -- well first of all, if I recollect correctly, he was -- Mr. Gogarty was talking about £80,000, was he? We were just trying to find out, you know, about the payments.

793 Q. Now, Mr. Bates, would you just listen to the question please. I asked what prompted this. Now, will you answer the question? What did prompt the revisiting and rechecking of the accounts between April and July of two years ago?

A. The fact that Mr. Gogarty had said he had paid money to Burke, that's what prompted it.

794 Q. Well --

A. I think.

795 Q. The first newspaper article was in March of 1996, Mr. Bates. Do you know that, the 31st March 1996.

A. Right.

796 Q. And Mr. Murphy has given evidence, Mr. Murphy Jnr, that is, that the journalist Mr. Frank Connolly called to the

premises of JMSE in March of that year, that's March of three years ago, do you understand?

A. Yes.

797 Q. So in March of 1996, the matter had hit the public domain, not April of 1997. So what's the magic of the date April 1997? What prompted the inquiry taking place at that time?

A. Well that's -- I can't say what prompted it at that time. That's when presumably we looked at it, you know, I am -- I can't -- I can't really remember what exactly -- what date we went in and what date we looked at it again, but it was as a result of what Mr. Gogarty was saying. Maybe we didn't take him seriously in 1996 now --

798 Q. Mr. Bates, Mr. O' Neill read this statement to you earlier today and you accepted its truth. So you have stated both in a statement now and you have accepted upon oath that this process of revisiting and rechecking on your part began in April of 1997. So you have in fact given it a date, Mr. Bates.

A. Well then, I must have -- OK -- if I gave it a date, I must have checked up my dates.

799 Q. Mr. Bates, can I ask you question please before you make a lengthy address. Would you answer this question -- what prompted it taking place in April of 1997?

A. What prompted it? Well I can't recall.

800 Q. You can't recall --

A. I can't really recall. Like why do you say what prompted it in April '97? Obviously, I just can't recall.

801 Q. All right, Mr. Bates, if you can't recall, let's put a few things in context. 1997 is only two years ago, isn't that so?

A. Yes.

802 Q. And in September of 1997, Mr. Burke made a statement to Dail Eireann in connection with this matter, it was a lead item of news, isn't that so?

A. If you say so.

803 Q. On the 7th August of 1997, a month beforehand, Mr. Burke made a statement, not to the Dail but a public statement about this which got wall to wall coverage, do you remember that?

A. I remember the statements, yes.

804 Q. In July of 1997, we now know Mr. Dermot Ahern, then either a Cabinet minister or about to become one, discussed this matter with Mr. Murphy Jnr and he in turn discussed it with Mr. Copsey. You are aware of that evidence, are you?

A. I am aware of it now, yes.

805 Q. In June of 1997, and this was publicised, Mr. Dermot Ahern, as a leading member of Fianna Fail, flew to London to meet Mr. Murphy Jnr. That was publicised at the time. So let's just take a step two months back to April of 1997. I am putting it to you that this was a momentous year for your company and for yourself, or rather for your client company and for yourself and that it is not too much to ask you to remember your involvement in it. Now, do you accept that, Mr. Bates?

A. I accept that, yes.

806 Q. Will you answer this question then. It's a slightly different question. These inquiries that began in April 1997. Who asked you to begin the inquiries?

A. I presume Joseph Murphy asked me -- I think probably Frank Reynolds asked me to help them look through the books to establish, could we establish these payments.

807 Q. Well, I didn't quite understand that answer. Did you say that Mr. Murphy Jnr --

A. No, sorry, Frank Reynolds really, yeah.

808 Q. Tell me about that inquiry. What did he ask you to do?

A. I went in, we checked through -- I mean it wasn't just myself checking through. I was accompanied by officials as well. We went right through the groups for and we looked for these payments.

809 Q. What payments did you look for, Mr. Bates?

A. Well we were looking for 30,000. I think we were also looking for a 25,000 which we never, never found. So we were looking for the payments that Mr. Gogarty had said he made.

810 Q. So you were looking for payments of 30,000 or 25,000, is that right?

A. I think both, if I remember correctly.

811 Q. Yes, OK. Well let's look at the £30,000 payment. Did it ever occur to you in April 1997, looking for a £30,000 payment made up suspicious circumstances, this was this unvouched expenditure from 1989?

A. Yes, and I am not saying that that happened right then.

812 Q. When did it happen?

A. Well during 1997.

813 Q. Ah, when did it happen in 1997, Mr. Bates? Try to tell the truth, when did it happen?

A. It happened in 1997.

814 Q. When did it happen --

A. If I went down there in April 1997, it happened around that time.

815 Q. Was it in April or May of 1997?

A. I can't say if it was April or May.

816 Q. Was it one or other of those months?

A. It could have been June, but it more than likely was April or May.

817 Q. Right, that's fine. More than likely in April or May of 1997 it occurred to you that the £30,000 payment you were searching for could, in fact, be the payment, the unvouched payment that you had been aware of from --

A. I mean if you had asked me a few minutes ago when did I allocate this unvouched expenditure to what do you call him, the payments made by Jim Gogarty, I would have said sometime about September '97, right? That's what I would have said. Sometime before September '97 because --

818 Q. Mr. Bates, now I am asking you in the light of the discussion we have had over the last few minutes and the statement that you signed only a week ago or within the last week, I am asking you is your evidence that you were looking for a payment of 25 or £30,000? You began with Mr. Reynolds, or on his instructions, to look for it in April of 1997 and around April, May or June of 1997, you recollected the payment in the Grafton accounts which were unvouched, is that so?

A. Yes.

819 Q. And did you share that information with Mr. Reynolds?

A. Yes.

820 Q. And what did he say when you told him this?

A. I just told him that, you know, it must be -- I mean, I can't recollect what he said to me.

821 Q. OK. So you told Mr. Reynolds in April, May or June of 1997 that there was, while you were looking for a £30,000 payment which was that Gogarty -- which involved Mr. Gogarty, you said look, there is an unvouched £30,000 in the Grafton accounts for 1989, is that right?

A. I would have said words to that effect, yes.

822 Q. Or words to that effect?

A. Or words to that effect, yes.

823 Q. So at that time, Mr. Reynolds then would have known by the end of June of 1997 at least that there was a £30,000 payment unvouched in the Grafton accounts for June of 1989, isn't that so?

A. That's so, yes.

824 Q. And what was Mr. Reynolds' reaction to this information?

A. Well --

825 Q. I beg your pardon, Mr. Bates, I have interrupted you --

A. Sorry, I mean, what do you mean by his reaction?

826 Q. Was he surprised?

A. I think -- I can't exactly say whether he was surprised or not but we established the facts, shall we say, so we knew OK that was the payment.

827 Q. So it's possible he wasn't surprised?

A. I mean I can't really answer that question.

828 Q. All right --

A. Because --

829 Q. He didn't say to you "Oh holy God, what is this all about?"

A. No, he didn't say that to me, no.

830 Q. Or words to that effect. Now, did you discuss the matter at that time with Mr. Joseph Murphy Jnr?

A. No, I think I just discussed it with Frank Reynolds.

831 Q. I see. You were dealing directly with Mr. Reynolds?

A. Yeah, I think so, yes. Joseph Murphy Jnr wasn't around a lot, so --

832 Q. Thanks very much, Mr. Bates.

.

MR. WALSH: Mr. Chairman, I have no questions.

.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CUSH:.

.

833 Q. MR. CUSH: Mr. Bates, I just want to begin by going to this

document which was an extract from your draft accounts and Mr. O' Moore handed it up just a moment ago. Do you have that?

A. Yes.

834 Q. Now we have seen that within those draft accounts, there is no reference to the £30,000, isn't that so?

A. That's right.

835 Q. Because I suggest at that stage, you hadn't yet come to deal with it, is that so?

A. That's quite possible.

836 Q. And isn't it the case that you had already, within the draft accounts, the label enhancement expenditure --

A. That's right.

837 Q. So isn't it clear, I suggest to you, Mr. Bates, that the term enhancement expenditure is not a term created by you to deal with the £30,000, isn't that so?

A. That's right.

838 Q. It was a term used by you that was certainly going to be used before you came to deal with the £30,000 at all, isn't that so?

A. That's right.

839 Q. And when you did come to deal with the £30,000, as you had to do before reaching the final accounts, you were going to have to deal with it somewhere in the accounts, isn't that so?

A. That's right.

840 Q. And your evidence, as I understand it, is that you didn't know what that payment related to?

A. That's right.

841 Q. You had made certain inquiries which you have heard about and you hadn't got an answer?

A. That's right.

0000143

842 Q. And you made, I suggest to you, an accounting assumption in relation to the £30,000, isn't that so?

A. That's so.

843 Q. As I understand it, that assumption was based upon your knowledge that this was a land=owning company, isn't that so?

A. That's right.

844 Q. That's one of the things you took into account?

A. That's right.

845 Q. And it was based upon your knowledge, from dealing with the accounts previously, that the bulk, as I understand it from your evidence, the bulk of expenditure related to the lands, isn't that so?

A. Yes, that is so.

846 Q. And it was based on that then that you made the decision to include the £30,000 along with the 65-odd that's already there for enhancement, isn't that so?

A. That's so.

847 Q. Now, it has been suggested to you by Mr. O' Moore that this wasn't your decision or at least that it wasn't your decision on your own, and that instead it was a decision taken by you in conjunction with others to bury something.

A. Yes.

848 Q. Is there any truth in that?

A. There is no truth in that.

849 Q. Are you quite clear --

A. I am quite clear on that. I am quite clear on that.

850 Q. In relation to inquiries that you would have made in relation to the or that you did make in relation to the £30,000, I think you said in your statement that you asked Mr. Maher about the £30,000?

A. Initially I would have asked Mr. Maher, purely because he was available.

851 Q. Yes. He would have been the obvious person to deal with this matter, isn't that so?

A. Well he was available. Now, because he wouldn't have been -- well he was available, shall we say.

852 Q. OK. He wasn't able to help you?

A. No, he wasn't able to help me and I wasn't surprised that he wasn't able to help me because he was only shortly in the company and he dealt practically at that point in time, he dealt, to the best of my knowledge, exclusively with JMSE.

853 Q. Now, from your statement you say "I may also have spoken to Mr. Frank Reynolds but I cannot be at all certain of this." Do I understand from that part of your statement then, Mr. Bates, that you simply aren't sure whether you had spoken to Mr. Reynolds?

A. That's right. But I imagine I would have certainly said to John Maher, "Is there any chance that Frank knows what it's about?" And I would have thought that -- I understand -- Frank at that point in time, in 1991, not in 1989, but in 1991, Frank, I think and I may be wrong here, but at that stage he probably had assumed responsibility for looking after the land company because to the best of my knowledge, there was no one else to do so.

854 Q. OK. In any event, if it is the case from Mr. Maher and we will hear from Mr. Maher in due course, if it is the case that he passed on your query to Mr. Reynolds, he never came back to you with an answer?

A. What I am saying, I can't recollect, but I didn't get an answer.

855 Q. As far as you were concerned, you didn't get an answer to

your query?

A. That's right.

856 Q. Now, in relation then to a later period when you have the accounts done and are coming to be signed off, you said and I think it's correct for me to summarise it by saying you had a recollection of mentioning the question of unvouched expenditure, I think was the way you put it, to three people. You mentioned John Maher, Frank Reynolds and Mr. Murphy Jnr, isn't that right?

A. That's right.

857 Q. And you made reference in that context also to a meeting at which you think they were all present?

A. Yeah, I am -- my recollection is that we were all present.

858 Q. Yes. But you did subsequently say in answer to Mr. O' Moore, you didn't know if it was on that occasion that you mentioned to Mr. Murphy Jnr this question of unvouched expenditure, it may have been some other time?

A. Not to Mr. Murphy Jnr, I mean I only -- if -- I just -- it was my recollection was that I said there was unvouched expenditure at a meeting which I had with Joe Murphy Jnr, Frank Reynolds and John Maher, near the end of the audit, so there was no other time in which I discussed it with Joe Murphy Jnr. The fact, you know, I didn't actually discuss it with Joe Murphy Jnr as such.

859 Q. Well, this question of unvouched expenditure and your mentioning of it, Mr. Bates, you say that this is your recollection that you mentioned it at a time when Mr. Murphy Jnr was present?

A. Yes.

860 Q. Can I just inquire of you if it's possible that you are mistaken in that respect, that there was a meeting which he would have been present and you would have mentioned this

question of unvouched expenditure on a different occasion,
not necessarily at that meeting? Is that possible?

.

MR. O'MOORE: I don't want to interrupt this but this is
Mr. Cush's own client that has given evidence on this, a
specific issue. Mr. Cush is now challenging this
evidence. I don't understand how this can be done.

.

MR. CUSH: Mr. O'Moore knows very well as I come after him,
I am perfectly entitled to ask a question relating to
evidence that he has elicited from a witness --

.

CHAIRMAN: You are entitled to look for be an explanation
as the basis to which the evidence was given. You are a
kind of sweeper, if I may use the phrase with every
courtesy.

.

MR. CUSH: I mean the witness did give his evidence in a
certain way in relation to this --

.

CHAIRMAN: We won't go into this now.

.

MR. CUSH: But what I am putting to you, Mr. Bates, or what
I am asking you is it possible that you did indeed mention
a question of unvouched expenditure on one occasion and
that you did indeed have a meeting at which Mr. Murphy Jnr
may have been present, perhaps for the signing of the
accounts themselves but it wasn't at that meeting that you
mentioned the unvouched expenditure. Is that a
possibility? That's what I want to ask you.

A. Well, it's a possibility. It's a possibility -- yeah -- I
am talking about nine years ago.

861 Q. Because, and I say it to you now to give you the opportunity because Mr. Murphy Jnr -- it's his position that it wasn't mentioned to him at that time.

A. Yes.

862 Q. Now, just another matter I want to ask you -- oh yes. In relation to the period when you were revisiting this issue in 1997, in your statement you refer to the period between April and July of 1997, it's a period of some months?

A. Yeah.

863 Q. And you have then given evidence in answer to Mr. O' Moore that at a certain stage, you recalled this payment in Grafton, isn't that so?

A. That's right.

864 Q. And isn't it the situation that somebody, and I think it's Mr. Reynolds, requested your assistance to go and look through the books to see if there could be any record at all of what was being spoken about in the media, isn't that so?

A. That's right.

865 Q. And isn't it the case that it was in the course of that looking over a period of time that you made the recollection that you have described to Mr. O' Moore?

A. Oh yes, yeah.

866 Q. And in your statement, you have described that as occurring between the months of April and July of 1997, isn't that so?

A. Yes.

867 Q. I want to suggest to you that it's more likely than not that that recollection that you speak of, Mr. Bates, happened at the end of that period, because if it happened at the start, you wouldn't have needed to continue the investigation, isn't that so?

A. Presumably -- I mean, I don't know, but presumably that is possible.

868 Q. You see, I am just putting it to you that of the months that you have mentioned in your statement, the month in which this actually occurred is July of 1997.

A. That could well be so.

869 Q. Thank you, Mr. Bates.

.
THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MR. O'NEILL:
.

870 Q. MR. O'NEILL: Mr. Bates, do I understand from your evidence that when you set about reviewing the figures, of reappraising the situation in 1997, you were looking for two separate payments, one of which is a sum of £30,000 and the other is sum of £25,000?

A. We were certainly looking for more than one payment, right?

871 Q. Yes.

A. We were certainly looking for -- we established the 30. Now, I know we spent -- we established the £30,000. Now I know we were still looking for other payments which Mr. Gogarty had said he made. I can't remember exactly -- the figure that comes to my mind is 25,000. We were looking for -- we have never found this 25,000.

872 Q. Did you understand that to be a payment which apparently was made or alleged to have been made to Mr. Redmond out of the funds of the company?

A. I was just looking for 25,000. I can't -- like -- I was looking for payments. So I think the 25,000 did refer to Mr. Redmond all right. I mean I wasn't exactly --

873 Q. There was a payment to Mr. Burke in the public domain at that time?

A. Yes.

874 Q. There was a payment to a local authority official, is that right? Is that as you understood it or did you know?

A. No, no.

875 Q. Mr. Redmond had not been named at that particular time?

A. Right, yes.

876 Q. So you were looking for a payment of £25,000?

A. I know we were looking for another payment of 25,000. I am pretty sure it was £25,000.

877 Q. You were kept aware, I take it, of Mr. Gogarty's evidence because you met with your solicitors in and around the time when he was either giving his direct evidence or immediately thereafter, isn't that right?

A. Yes. Well the solicitors probably will have accurate information when this took place, I can't remember exactly -- I don't know the date when it took place.

878 Q. Well I am asking you specifically about what your recollection or memory was of the payments which Mr. Gogarty says that he paid to certain individuals.

A. The only payment we could come across was the 30,000.

879 Q. Well I am asking you about what you understood the payments were that were made by him? There was a payment of £30,000, is that correct?

A. Yes.

880 Q. And a payment of 25,000 or some lesser sum, isn't that right?

A. That's right.

881 Q. Do you know that he gave evidence of there being a payment of £15,000 to Mr. Redmond and that that payment had taken place in the Clontarf Castle Hotel in the presence of Mr. Murphy Jnr and Mr. Reynolds? I am not asking you to agree that there was such a payment, I am merely asking you

whether you are aware that that was his evidence?

A. I didn't follow his evidence closely.

882 Q. You didn't follow his evidence?

A. No.

883 Q. The sum total, in any event, of those two amounts is £45,000. You say you were looking for 55 or some lesser figure?

A. Like, the only payment we found was the 30 and all --

884 Q. In the draft accounts that you prepared, Mr. Bates, and I am talking about the document at number 463 that you were handed, JMSE 24.4 at 463, it's a loose document. It might be just -- the draft accounts. Is it possibly the document on the edge there?

A. Yeah.

885 Q. If you just want to check the number there, 463, do you see that?

A. Yes.

886 Q. That figure, at the end of the day, looking at the bottom line position, showed a profit of £179,928, isn't that right?

A. Yes.

887 Q. And in that particular computation, no direct allowance was made for any £30,000 payment, isn't that so?

A. That's right.

888 Q. And then when one comes to the final account, you will see that the bottom line is £134,993, I am now talking about document 198, isn't that so?

A. Yes, that's so.

889 Q. The difference between those two figures being £44,995, isn't that right?

A. Yes.

890 Q. Of which the £30,000 is attributable to the £30,000 payment

about which we have been discussing?

A. Yes.

891 Q. Isn't that right?

A. Yes.

892 Q. Leaving £14,995 as the subtracted figure?

A. Yeah.

893 Q. Isn't that right? It would appear obvious that certainly if one goes through the figures, that one could end up with a figure which explains two payments totalling £45,000 in these accounts, isn't that so?

A. Yes.

894 Q. Could I just make some comparisons between the two figures which are here. In this initial expenditure or draft accounts which you set out, there was, for example, professional fees which you wrote down at £42,119, do you see that?

A. Yes.

895 Q. Under expenditure. And when you prepared the final accounts, those professional fees were now £32,119. So between the preparation of the initial draft figures and the subsequent ultimate figures, there is £10,000 on professional fees that were obviously revised?

A. Revised yeah. Well obviously the accounts have been revised and the first draft is incomplete.

896 Q. At this point in time, can you indicate which professional fees it was that you initially felt amounted to 42,000 but on reflection you entered as 32?

A. I can't -- I'd have to go analyse it. You know I can't give the answer without analysing the accounts. Now I might be able to do that from looking at my working papers.

897 Q. Right, well if they are there, you might be able to give us it.

A. Well I mean it's not clear, you know --

898 Q. Fine. If one looks then to administration costs, you had no figure entered for administration costs in your draft accounts, isn't that right, under expenditure as the fourth heading down?

A. That's right.

899 Q. There is a dot there?

A. Yes, that's right.

900 Q. Which could indicate that at a later stage, you'd enter a figure there or as the case may be?

A. Yes.

901 Q. But if one uses the previous year, for example the administration costs involved, there were £895, isn't that so?

A. Yes, quite small.

902 Q. When you came to finalise your accounts under that heading, you attributed a sum of £12,000 to that expenditure, isn't that right?

A. Yes.

903 Q. Now, in a practical sense, that expenditure is an intercompany matter, isn't that right?

A. That's right.

904 Q. Really it's a matter of dedicating a certain amount of the overall overheads --

A. Yes.

905 Q. As this figure --

A. Yes, OK, did.

906 Q. So to be an extent an arbitrary figure as against one which would be vouched by individual invoices or a design exercise which identified individual amounts?

A. That's right.

907 Q. So there was an area in the preparation of these accounts

which you could carry out a certain amount of balancing to achieve a certain result, isn't that right?

A. Yes.

908 Q. And the other figures are essentially the same, isn't that right? There is an exchange gain loss, for example, which is £4,000 of a variation but that would vary with the rate of exchange for sterling on the day in question?

A. Yes, exactly, yes.

909 Q. And what date you picked to do the particular --

A. Do to the 31st May.

910 Q. The bank interest was a charge, isn't that right, of £19 and that remained the same?

A. Yes.

911 Q. Obviously because they were in credit rather than in debit?

A. The current account obviously went into a small overdraft at some stages, but the bank charges were quite small.

912 Q. Right. Thank you.

.

MR. CUSH: Sorry Mr. Chairman, just arising out of Mr. O'Neill's last questions to the witness, there is one small matter that I just wanted to tidy up, if I may.

.

THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MR. CUSH:.

.

913 Q. MR. CUSH: It relates to the question of professional fees, Mr. Bates, and the figure of -- I just want to -- do you have the cash account -- the Denis McArdle cash account, it's on page 170 of the black book behind tab 10.

A. 170?

914 Q. Yes. The very first document behind tab 10 in the black book.

A. Yes.

915 Q. And do you see there there are professional fees for Copsey Murray and for -- sorry, do you see the second entry on the left-hand side is paid sols, that's presumably Denis McArdle?

A. That presumably is himself.

916 Q. Figure of 264,012. Than further down is Copsey Murray fee?

A. Yes.

917 Q. On a rough calculation, they come to just over £37,000, isn't that so, roughly?

A. Yes.

918 Q. And isn't it the case then that the fees -- just for those two items immediately, the fees have to be over £32,000, don't they?

A. Yes.

919 Q. Thanks.

.
MR. O'NEILL: Just a point of correction on that.

.
THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MR. O'NEILL:
.

920 Q. This covers two different financial years, isn't that so?

A. That's possible. Wait till I just check. That could be --

921 Q. If you just check the date if you would. The 20,000 was a liability incurred in March 1989. The other was incurred on the 13th June of 1989. The financial year ends on the 31st May, so one would never take the 20,000 --

A. No, the 20,000 --

922 Q. Into account in this account, isn't that right?

A. Unless we hadn't -- unless the 20,000 -- provided -- unless the £120,000 hadn't been billed out to us in the previous

year. I will just look -- let's see, hold on a sec -- no, you see the previous year, professional fees 2540, is that the same amount? It's fairly close --

.

MR. O'NEILL: 2560 --

A. The sub costs, so I'd say -- I would say that that -- that's 2640 is probably that 25 -- you know, some other --

923 Q. So you may discount that in the addition.

.

MR. CUSH: I think the mistake was mine, Sir. I apologise.

.

CHAIRMAN: There's just one question outstanding, as far as I am concerned. In what respect had the unaccounted £30,000 the attributes of land enhancement? How did you come to the conclusion, in other words, that they should be put under the heading "land enhancement"?

A. Why I came to that conclusion was because the company was mainly a land-holding company. Now, that's in my statement and that is why I did it at the time.

.

CHAIRMAN: That's the only reason?

A. That is the truth, yes.

.

CHAIRMAN: And you said earlier in your evidence that you had formed the opinion that the entry of £30,000 was a defalcation on company funds. Why did you attribute that to a tax effective heading?

A. No, you misunderstood me. I never -- I never -- that is -- I never formed the opinion that was a defalcation. I never did that.

.
CHAIRMAN: Sorry, unvouched -- that it could amount to a defalcation --

A. Obviously I am saying that it occurred to me that it could. I never once considered that it did.

.
CHAIRMAN: Again, what I am asking you is why did you attribute it to a tax effective heading? I mean I can understand you saying that you had an unaccounted for £30,000, but why attribute it to something which gave the company a benefit of £12,000?

A. Well most expenses are tax effective and I considered -- you know, I figured it was an expense in connection with the lands. That's why.

.
CHAIRMAN: OK --

A. And I mean, it -- it's purely because it is a political donation that all of a sudden it is no longer tax effective. And as soon as I was aware that it was a political donation, I changed my computations.

.
CHAIRMAN: Thank you. Well now, we are adjourned now until the 18th January and may I again wish you all a very happy Christmas and may I thank, in particular, my staff, for a very dedicated year's work and wish them every happiness in the Christmas season and every happiness in the future and the new year. Thank you.

.
THE TRIBUNAL THEN ADJOURNED UNTIL THE 18TH JANUARY 2000.