

1 PLANNING TRIBUNAL - DAY 311

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3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 23RD OF OCTOBER,

4 2001, AT 10:30 A.M.:

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Morning, Sir.

9 .

10 Just before I start, Sir, we are in receipt of a letter
11 from Messrs. Kennedy McGonagle Ballagh dated the 23rd
12 of October, 2001, which I think you have seen, but
13 essentially it is a request that the names of persons
14 mentioned in the statements of Mr. Turvey, who will be
15 coming to give evidence after Mr. Finnegan, should not
16 be mentioned, and I think it is probably something
17 should not be mentioned, and I think it is probably
18 something that needs to be dealt with now, because I am
19 about to proceed with this witness, with some aspects
20 of Mr. Turvey's evidence, and it is going to arise in
21 the course of that evidence.

22 .

23 I should mention that in fact most, if not all of the
24 names mentioned in Mr. Turvey's statement, have already
25 been mentioned. There is no allegation of any kind
26 against any of the people who are mentioned. It is
27 simply that they are part of Mr. Turvey's testimony,
28 they fit in various parts of his testimony. There is
29 absolutely no implication of any kind whatsoever in
30 relation to the individuals themselves. It is just

1 that they do arise in the course of his evidence, and

2 that is really all I can say about it.

3 .

4 As you are aware, in the course of the inquiry, many
5 names of many people who have nothing to do with the
6 Tribunal, as such, has been mentioned merely because
7 they were actors in the play, as it were, but not on
8 the basis that there were any imputation or allegation
9 against them. It seems to me that if you were to
10 delete those names, in effect you would be in some way
11 restricting the evidence.

12 .

13 I don't know if Mr. Hussey has any instructions or
14 views on the matter?

15 .

16 MR. HUSSEY: Merely, the purpose of the request is
17 basically to respect the privacy of these third
18 parties. Of course they are third parties with whom
19 Mr. Finnegan had dealings. Certainly without their
20 permission or say-so, it was simply a request not to
21 publish anybody's name.

22 .

23 I would hazard to say that no matter how innocent a
24 party is, no matter how it has been clarified that
25 allegations are not made by this Tribunal, and no
26 aspersions are cast by anybody being named at this
27 Tribunal, unfortunately, that is not the way it is
28 perceived by the press and by the general public, as
29 witnessed by the reporting of the questioning in
30 respect of my client, where the Tribunal has, on a

1 number of occasions, clarified that no allegations or
2 no accusations whatsoever have been made against my
3 client. However, that is not the way the public
4 perceive the matter, or indeed how the matter has been
5 relayed by the press.

6 .
7 And by the same token, the identities of parties to be
8 mentioned, even in passing, in this Tribunal, is
9 something which I am sure is not invited by parties who
10 have absolutely nothing to do with the matters under
11 inquiry, or anything to do with the Terms of Reference
12 of the Tribunal. It was really just to protect the
13 privacy of those individuals, of whom, of course, Mr.
14 Finnegan has had dealings; that, and indeed to respect
15 the privacy of those dealings. As I say, nothing
16 whatsoever to do with the Terms of Reference of this
17 Tribunal. It was really a request to hold back on the
18 identity of parties mentioned. We didn't think it was
19 an extravagant request, purely a precautionary request.

20 .
21 If, in the course of questioning, it becomes important,
22 or vital, that persons, individuals' identities be
23 revealed, then, of course, that is not something that
24 we would ever ask the Tribunal to hold back on, but
25 just simply because they are mentioned in passing is no
26 reason to have identities revealed by this Tribunal.

27 Thank you, Sir.

28 .
29 CHAIRMAN: In my view, it is appropriate that the
30 evidence of Mr. Turvey be given in its entirety, and

1 its entirety involves mentioning people with whom he
2 may have had contact in one form or another.

3 .

4 I see nothing wrong in the mention of a person's name
5 in this Tribunal. It does not connote, per se, any
6 impropriety on the part of that person. Accordingly, I
7 would be wrong, I think, in any way to edit the
8 evidence of Mr. Turvey or seek to edit the evidence of
9 Mr. Turvey. On that ground only.

10 .

11 Further, I want to make it quite clear that I have no
12 wish or do not intend in any way to criticise the press
13 for anything they are doing. That is a matter for
14 themselves. The press are the eyes and ears of the
15 public at all times, and they must carry out that
16 function as they consider fit.

17 .

18 If they exceed their jurisdiction, then no doubt
19 somebody else will take them on, but I am not their
20 critic and not their controller.

21 .

22 MR. HANRATTY: The other matter, Sir, is you did
23 mention last week that the matter should be mentioned
24 on the 23rd, which is this morning, of the proposed
25 proceedings in Jersey, and you indicated that you would
26 require to be informed by Mr. Finnegan as to what the
27 up-to-date position was about those proposed
28 proceedings, which we were originally told were going
29 to be before the High Court in Jersey on the 26th.

30 .

1 CHAIRMAN: Yes.

2 .

3 MR. HANRATTY: In addition to that, as you are aware,
4 you have instructed the Solicitor to the Tribunal to
5 brief a firm of lawyers in Guernsey, to take a watching
6 brief in these proceedings, and perhaps Mr. Hussey
7 could, over the break, or depending on how long it
8 takes him, over lunch obtain instructions from his
9 client. I don't want to spring it on his client in the
10 witness-box now, as to whether they would have any
11 objection to that firm of lawyers being treated as a
12 notice party in the proceedings, purely at the
13 Tribunal's cost, obviously, and not to add to any costs
14 in the proceedings, but purely as a notice party, so
15 that they would, in that capacity, be privy to any
16 matter that arises in the proceedings.

17 .

18 Perhaps Mr. Hussey might be in a position to take
19 instructions on that, over the break, and inform you as
20 to whether his client would have any objection to it.

21 .

22 Essentially, what you had anticipated and hoped you
23 would receive would be copies of the Jersey
24 proceedings, including any affidavit sworn in the
25 proceedings or, sorry, the Guernsey proceedings, I
26 presume. I can confirm that the administration in the
27 Tribunal and the Solicitor to the Tribunal have not
28 received any documents, as yet, in connection with any
29 proceedings in Guernsey.

30 .

1 As of now, we do not know what the up-to-date position
2 in Guernsey is.

3 .

4 MR. HUSSEY: I beg your pardon, Sir. I understood that
5 the Tribunal had been informed.

6 .

7 However, the position is that proceedings have been
8 instituted, and they are due for hearing. What our
9 solicitor informs us is that there is an interlocutory
10 hearing on Friday, before the court. And that may well
11 dispose of the matter. However, if Credit Suisse are
12 vigorously contesting the matter, it may be put into a
13 date for a hearing, but they expect that the matter
14 will be dealt with at an interlocutory hearing on
15 Friday the 26th, which was the original date
16 anticipated by my solicitor. Proceedings are issued,
17 and I think there is no difficulty with having the
18 Tribunal --

19 .

20 CHAIRMAN: To brief the Tribunal with the essential
21 documents.

22 .

23 MR. HUSSEY: Of course. As I said, I had thought that
24 the Tribunal were --

25 .

26 CHAIRMAN: Can we ask you, I am not asking you to do it
27 at the moment, can we have your client's consent to the
28 attendance at the interlocutory proceedings of
29 representatives of the Tribunal?

30 .

1 Now, I am not --

2 .

3 MR. HUSSEY: I will take instructions on that.

4 .

5 CHAIRMAN: I am not getting involved in the procedures

6 of the court, as you understand. I simply want a

7 presence there, so that it may be of assistance, if the

8 court requires it, and likewise, to be in a position to

9 monitor what is happening.

10 .

11 MR. HUSSEY: Of course. Of course.

12 .

13 CHAIRMAN: I am in no way asking you to answer that at

14 the moment. You must have an opportunity --

15 .

16 MR. HUSSEY: I will take instructions on that.

17 .

18 CHAIRMAN: If you can do it at the break. It is ten to

19 ten now. We will probably break now somewhere around

20 ten to 11. We can break for lunch at - break a little

21 later. We will break for lunch - we will break for a

22 break at half past 11 and resume to at a quarter or ten

23 to 12, and close down at half past one or there or

24 thereabouts.

25 .

26 .

27 .

28 .

29 .

30 .

1 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND
2 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

3 .

4 1 Q. MR. HANRATTY: Good morning, Mr. Finnegan?

5 A. Morning. Sir.

6 2 Q. Mr. Finnegan, I want to ask you some questions in
7 connection with the testimony which Mr. Turvey is going
8 to give. As you are aware, it was on a file discovered
9 by Mr. Turvey, or kept at least by Mr. Turvey, called
10 the Dungeon files, that these extracts from the bank
11 accounts of Foxtown were found in the recent past.
12 Isn't that right?

13 A. Yes, sir.

14 3 Q. It appears that the handwritten entries on a number of
15 those bank statements are in the hand of Mr. Turvey?

16 A. That's correct, sir.

17 4 Q. And we have been informed that he made these entries
18 contemporaneously, more or less, with the receipt of
19 the bank statements from the bank.

20 .

21 Is that right?

22 A. So I believe, sir.

23 5 Q. Yes. It also appears that in addition to the bank
24 statements contained on that file were other documents,
25 including correspondence, and also reconciliations
26 prepared by Mr. Turvey of various things?

27 A. Yes, sir.

28 6 Q. And what I just want to explore with you is some of the
29 information that comes out of those. Mr. Turvey, as
30 you are aware, has furnished two statements to the

1 Tribunal, copies of which have been furnished to you.

2 Isn't that right?

3 A. Yes, sir.

4 7 Q. So I take it you have read the statements that he has
5 given to the Tribunal, which will form the basis of his
6 testimony?

7 A. Yes, sir.

8 8 Q. Mr. Turvey, as you are aware, was asked to explain a
9 number of the transactions on the bank accounts, and
10 also on the reconciliations which he prepared in his
11 own hand. And he has provided explanations to the
12 Tribunal in respect of those transactions.

13 .

14 Would you agree with me that what emerges from this is
15 that, insofar as your dealings with the Foxtown account
16 were concerned, they were done primarily through him
17 rather than by you directly?

18 A. Yes, sir. Sorry, I was just trying to think - of the
19 dealings, sort of.

20 9 Q. Yes. Is Mr. Turvey an accountant?

21 A. Yes, he is. Yes.

22 10 Q. Was he acting as your accountant?

23 A. He was in my firm, sir, and he was - he is a chartered
24 accountant by profession, sir.

25 11 Q. Yes. And he was engaged, as we understand it, in that
26 capacity by Finnegan Menton?

27 A. Yes, sir.

28 12 Q. And presumably provided services primarily to Finnegan
29 Menton?

30 A. Yes, sir.

1 13 Q. It appears that he was also looking after matters which
2 were attributable to you personally?

3 A. Yes, sir.

4 14 Q. And it also appears that so far as Foxtown is
5 concerned, the principal parties with whom he was
6 dealing was Dudgeons on the one hand, which was the
7 stockbrokers which was dealing in buying and selling
8 the shares of Foxtown, and also Guinness & Mahon in
9 Dublin, which was the Irish branch of Guinness & Mahon,
10 being the bank in Guernsey where the account resided.
11 Isn't that right?

12 A. Yes, sir.

13 15 Q. And also with the trustees?

14 A. Yes, sir.

15 16 Q. The picture which emerges in relation to his dealings
16 is that the decision-making was being done in Dublin.
17 Would you agree with that?

18 A. No, sir. I would say that certain decisions were made
19 in Dublin, but - sorry, could you just --

20 17 Q. Well, I am going to go through a number of the specific
21 documents in due course, just to take a general
22 overview of it. What I would suggest is that these
23 documents appear to establish that the purse strings,
24 as it were, of the account of Foxtown was controlled
25 from Dublin. In other words, for example, there were a
26 number of drawings out of this account, for your own
27 personal purposes, such as, I think it went into an
28 entity, perhaps, called Finnegan Holdings Limited,
29 which he abbreviated as "FH", which had an account in
30 St. Stephen's Green. Those were personal drawings for

1 personal expenditure. And the explanation which Mr.
2 Turvey has given to this Tribunal is that that is what
3 they were, and that the purpose for which they were
4 applied. Is that correct?

5 A. Yes, sir.

6 18 Q. He has had a number of, in the course of the extracts
7 that we have, dealings with Dudgeons, which were the
8 stockbrokers?

9 A. Yes, sir.

10 19 Q. And he was giving instructions to Dudgeons both in
11 regard to the purchase of shares and the sale of
12 shares?

13 A. Yes, sir. I think what he would - there would have
14 been contact between the trustees and himself, then he
15 would have certainly - being on the ground, yes, sir,
16 he would have had.

17 20 Q. But what Mr. Turvey has told the Tribunal, and we
18 understand his evidence will be, is that the
19 instructions that he received in relation to the
20 purchase and the sale of shares came from you, not the
21 trustees?

22 A. I think what - there were certain shares that we would
23 know about, sir, or I would know about, and that I
24 would have had discussions on, with the trustees, but I
25 would also have had discussions with Mr. Turvey, who
26 sometimes implemented some of these.

27 21 Q. Well, in the documents that we have, clearly he was
28 implementing a decision, but what he is going to say to
29 the Tribunal is that the decisions that he was
30 implementing were your decisions, not the trustees'

1 decisions?

2 A. Well, I think that the - on certain shares,
3 particularly Irish based shares, it would have been
4 deemed by the trustees that I would have known, they
5 would have - originated from maybe thoughts that I had,
6 that these were shares that one would have an
7 involvement in.

8 22 Q. Yes. Well, I was going to mention the question of
9 shares, because in a number of cases, in fact, I think
10 in most of the cases certainly referred to in the
11 documentation, although there is reference to foreign
12 shares, by-and-large they are references to Irish
13 shares?

14 A. Mm-hmm.

15 23 Q. I take it that Irish shares would not be something that
16 the trustees had an expertise in?

17 A. No, sir.

18 24 Q. So that any decisions in relation to either purchase or
19 sale of those shares would have been your decision?

20 A. There would have been consultations, sir. It is not
21 that a vast number of them, but it was probably deemed,
22 as I was living here and in business here, that I would
23 know something about trends.

24 25 Q. Yes.

25 A. Yes.

26 26 Q. We know, for example, that on a number of the documents
27 which we are going to look at, the address of Foxtown
28 is given as effectively the address of Guinness & Mahon
29 in Dublin. And we also know, of course, from the
30 documents, that statements on the account in Guernsey

1 of Foxtown were issued on the notepaper of Guinness &
2 Mahon in Dublin?

3 A. Well, all I can say about that, sir, is that
4 Mr. Traynor was very much - had a hands-on, on these
5 accounts. Of course he was here. I think what they
6 did do is, not being an accountant - I think with his
7 influence, one way or another they did issue documents
8 from here for convenience, sir.

9 27 Q. Yes. But in the normal course of events, of course the
10 statements would be issued to the trustees and not to
11 the beneficiary, and insofar as they were issued out of
12 a Dublin branch for convenience, it was for the
13 convenience of the recipient beneficiary?

14 A. I suppose, sir, that there might have been a more -
15 more of an extraordinary situation here, in that
16 Mr. Traynor being here was very much a hands-on person
17 and was very active. So he did sort of put a lot of
18 weight in it, sir.

19 28 Q. Yes. It also appears from the documentation, and
20 indeed from what we understand will be Mr. Turvey's
21 evidence, that you used the Foxtown account for the
22 purchase of shares for other persons from time to time?

23 A. Yes, that sometimes came about, sir.

24 29 Q. And these persons are not persons who were
25 beneficiaries of the Trust themselves?

26 A. No, sir.

27 30 Q. Mr. Maguire was one of them. We had Mr. Maguire last
28 week. You informed us that he was a friend of yours,
29 but he advised you on a personal capacity on various
30 matters. Sorry, I am mixing him up with Mr. Burke.

1 No, Mr. Maguire was a person for whom shares were
2 bought in this account. Is that a person who was a
3 friend of yours?

4 A. Yes, sir.

5 31 Q. Was there some particular reason why these shares were
6 bought? Is this Mr. Maguire of Newtownpark Avenue?

7 A. Yes, sir.

8 32 Q. And did you actually buy shares for this gentleman?

9 A. I think there was some occasion that the - that either
10 he had, he had suggested a share to me, and I would
11 have relied on this, when I was buying them - I would
12 buy some for him. Now, I can't remember which ones
13 they were, sir, but I think that would be --

14 33 Q. Yes. And Mr. Burke, who is the person we did mention
15 last week, he is also a person for whom it would appear
16 that shares were purchased through this account?

17 A. Yes, sir. Yes, sir. I am not quite sure which ones.

18 34 Q. Mr. Forwood is a person who was, I think, a co-director
19 with you in Pembroke Estates?

20 A. Yes, sir.

21 35 Q. And he is also a person for whom it appears shares were
22 purchased through this account?

23 A. Yes, sir.

24 36 Q. How did that arise?

25 A. It is hard to just give you the actual recollection,
26 but by the way --

27 37 Q. Well, perhaps we might deal with it specifically when
28 we come to the actual transaction?

29 A. Okay.

30 38 Q. But another person for whom shares were purchased

1 through this account was Mr. Lipscombe, who we

2 understand was himself a trustee of the Trust?

3 A. Yes, sir.

4 39 Q. Is that right?

5 A. Yeah. Yes, sir.

6 40 Q. Yes. And shares appear to have been purchased for him

7 through this account.

8 .

9 The point of all of this, really, Mr. Finnegan, is that

10 this is Foxtown money, in other words, trust money

11 which is being used, apparently at your decision, to

12 buy shares for various people?

13 A. I think that whilst it did happen, it wasn't a regular

14 - I don't think it was a regular occurrence.

15 41 Q. No, and it is not suggested otherwise. What, again, I

16 suggest to you it does indicate, is that you, in fact,

17 controlled this account, and that you were in a

18 position to make a decision, for example, to buy shares

19 for all or any of these people, without reference to

20 anybody?

21 A. No, sir. I think the situation you might see, if I was

22 told about a particular share, whatever they were - I

23 think in the case of - like if it was Mr. Forwood and -

24 Mr. Forwood now would have been, of course, naturally

25 very close to Mr. Traynor. They worked together.

26 42 Q. Yes. He was in Guinness & Mahon as well?

27 A. He was.

28 43 Q. Yes.

29 A. Yes, sir. I don't know when, actually. I am not quite

30 sure what sort of years we are talking about, but there

1 would have been a chat - there could have been chats
2 amongst ourselves and through Guernsey about that, sir,
3 that there was either - not a tip, but a suggestion
4 that we might go into something, some share.

5 44 Q. I can certainly see that, Mr. Finnegan, and perhaps it
6 was the case that there was, because of the
7 acquaintanceship between yourself and Mr. Traynor, and
8 indeed Mr. Forwood, and the acquaintanceship between
9 both of them, there was a certain informality which
10 might not otherwise exist, in the manner in which
11 transactions were effected. Is that a fair comment?

12 A. Sorry, sir --

13 45 Q. I am simply saying, by reason of the acquaintance
14 between the three of you, that people trusted each
15 other and they entered into these transactions without
16 any great formality?

17 A. Yes, sir.

18 46 Q. Mr. Traynor, undoubtedly, as you put it, appears to
19 have had at some period certainly a hands-on approach
20 to the thing?

21 A. Very much so, sir.

22 47 Q. He was the man who set up this Trust?

23 A. Yes, sir.

24 48 Q. But having established it, he was by no means inactive
25 from that point on; he continued to have an active
26 interest, involvement, whatever, with the Trust ?

27 A. Yes, sir.

28 49 Q. Indeed. To the extent that he put in place
29 arrangements under which withdrawals could be made in
30 Dublin, without having the trouble of going to Guernsey

1 through the Guinness & Mahon branch in Dublin with
2 which he was involved?

3 A. Yes, sir.

4 50 Q. But if somebody were to ask you, what was his role in
5 the Trust after he had established it, what would you
6 say?

7 A. Well, there was a very - one, Mr. Traynor was - he was
8 very close, very close to very good friends of mine.
9 In that way, I suppose, I got to know him very well.
10 And he had a kind of - not that he was really much
11 older than me, he was - he had this fatherly, looking
12 after sort of thing. So he would have taken a great
13 interest in anything that was being done, sir.

14 51 Q. Yes. But we know that when the Trust was put in place,
15 trustees were established?

16 A. Yes, sir.

17 52 Q. And from the point of the Trust, that the Trust was
18 established, Mr. Traynor had no longer any official
19 function, if I may put it that way --

20 A. Yes, sir.

21 53 Q. -- within the four walls of the Trust. But the fact
22 remained that he was a very powerful and influential
23 figure within Guinness & Mahon, and the trustees of the
24 Trust. At the start, certainly it was a subsidiary of
25 Guinness & Mahon?

26 A. Yes, sir.

27 54 Q. So in a sense, it wasn't an arm's length situation, as
28 one might have in other circumstances, isn't that so,
29 because of his hands-on approach?

30 A. It was like the - he was so close to all matters, sir,

1 that he would be in very close contact with the
2 trustees themselves, sir.

3 55 Q. Yes?

4 A. I suppose it would be that situation. Not that
5 everything was discussed with me that was discussed
6 with, necessarily discussed with the Trust, but he was
7 very much au fait. Of course it wouldn't on - the
8 amount of transactions weren't gynomous. He was very,
9 very close and would be relied on then, as well, by the
10 trustees as one of the senior citizens here, and would
11 know what was going on. So if he, in any checking
12 back, that his, his advices would be accepted, sir.

13 56 Q. Yes. Undoubtedly so. But what it all amounts to,
14 Mr. Finnegan, I suggest to you, is that while normally
15 under the terms - nominally under the terms of the
16 Trust the trustees were in control, the real seat of
17 control lay in Dublin, whether it was yourself or
18 Mr. Traynor?

19 A. I wouldn't say so, sir, that - that whilst on various
20 matters relating to stocks and things here, that it
21 would be the Trust's attitude that they would take
22 account of what I would say, sir, in investments, so,
23 therefore, there would be that through flow of contact
24 with me, but it would be all in the loop of the Trust,
25 sir.

26 57 Q. Well, if we just look, for example, at Mr. Turvey's
27 reconciliation. If we could have page 4974. This is
28 not a bank account now, sir. It is Mr. Turvey's
29 document.

30 .

1 Sorry, I think we have agreed that that won't go on
2 screen because the totals are in it, Sir. We will have
3 to deal with it without it being on screen.

4 .

5 Yes. We will give you a copy Mr. Finnegan.

6 (Document handed to witness.)

7 A. Thank you.

8 58 Q. If you see No. 8 on that document. This is Mr.
9 Turvey's handwriting, we are told. No. 8 on the
10 left-hand column is an entry dated the 15th of June
11 1976. It is an abbreviation, Mr. Turvey has told us,
12 for Mount Anville. It is a debit on the account in the
13 sum of ú25,000 - or is it a credit? I am not sure
14 which, because it doesn't actually say it. Sorry, it
15 is a credit. Mr. Turvey says it is a credit.

16 .

17 Do you see that?

18 A. Yes, sir.

19 59 Q. Mr. Turvey's recollection is that was a transaction in
20 respect of a development in Mount Anville, in respect
21 of which you were in receipt of ú25,000.

22 .

23 Can you tell us what that is, please?

24 A. Well, this was - this was a transaction, sir, in Mount
25 Anville, but it had nothing to do with Brennan and
26 McGowan, sir.

27 60 Q. We know, for example, that Mr. Brennan did have a
28 development in Mount Anville around this time?

29 A. Well, Mr. Brennan had?

30 61 Q. Yes. Mr. Tom Brennan?

1 A. Yes. Well, I don't know. I don't think they were
2 anything to do with this one, sir.

3 62 Q. In other words, you are saying this transaction had
4 nothing to do with either Messrs. Brennan and McGowan
5 or Mr. Brennan's development in Mount Anville. Is that
6 what you are saying?

7 A. Yes, sir. That's right, sir. Not that I am aware,
8 sir.

9 63 Q. Yes. Well, can you tell us what does it relate to, if
10 it is not to Mr. Brennan's development in Mount
11 Anville?

12 A. It was - yes, sir. It was in connection with a
13 development that Mr. Gallagher had, sir.

14 64 Q. Well, was that the same one in which Mr. Brennan was
15 involved?

16 A. I didn't think - I didn't know that he was involved in
17 that, sir.

18 65 Q. Yes. Sir, if I might suggest that we explore that a
19 little bit more in private before we take it any
20 further in public, just in case, if only for the
21 purpose of exclusion.

22 .

23 CHAIRMAN: Right.

24 .

25 MR. HUSSEY: I am sorry, Sir, just before you move on
26 from that. I have a copy of Mr. Turvey's narrative in
27 respect of that. He doesn't mention anything about
28 Mr. Brennan in respect of that Mount Anville matter.

29 .

30 MR. HANRATTY: If it isn't actually in his statement,

1 he has certainly told us that in the course of an
2 interview, when he was asked about the particular
3 transaction, and that is the explanation which he gave.

4 And that is - I mean, he will be asked about it. I
5 understand that is what his testimony is going to be.

6 .
7 In any event, the witness appears to confirm that there
8 was a transaction in Mount Anville, but it had nothing
9 to do with Brennan and McGowan. I don't think anything
10 actually turns on it.

11 .
12 MR. HUSSEY: I am just merely making the point that
13 insofar as we are aware, or as we have been told by the
14 Tribunal, Mr. Turvey is not going to be giving evidence
15 to suggest that Mr. Brennan was involved in Mount
16 Anville. However, if the Tribunal know differently, I
17 certainly haven't been told it, or it is not in the
18 narrative. I am just wondering --

19 .
20 CHAIRMAN: So far as the Tribunal is concerned, they
21 have said to you that they would prefer to investigate
22 it in private, lest it is not relevant. Take that as
23 the basis. That is a reasonable approach.

24 .
25 MR. HUSSEY: I have no problem with that whatsoever. I
26 didn't make any objection to that. What I am saying is
27 that there was nothing in the --

28 .
29 CHAIRMAN: We will say that in private. We will accept
30 it in private.

1 .
2 MR. HANRATTY: Just on the wider point - we might deal
3 with it now.

4 .
5 There may be other things that Mr. Turvey has told us
6 in private by way of explanation. He was specifically
7 requested to give as detailed an explanation as
8 possible of all of these transactions, but there may be
9 instances where, having given what he considered to be
10 the most detailed explanation that he could, he may
11 have provided other information in the course of the
12 interview which is not actually contained in his
13 statement. I don't want to be tripped up every time
14 that such a situation arises.

15 .
16 All I am putting is what we understand from what we
17 have been told, either in his statement or interview,
18 is his interpretation of these transactions.

19 .
20 CHAIRMAN: That seems perfectly eminently reasonable.

21 .
22 66 Q. MR. HANRATTY: Mr. Finnegan, if you just look to the
23 one immediately below that. It is No. 9. It is "PE",
24 which Mr. Turvey has told us is Pembroke Estates. And
25 this is a credit of ú70,000, indicating a receipt of
26 that figure from Pembroke Estates.

27 .
28 Now, I should also, perhaps, draw your attention to the
29 fact that, if I am not mistaken, that the previous 70
30 or the previous 25 appear in the Foxtown account. It

1 is not clear what he is actually reconciling. In any
2 event, what he is indicating is that this
3 reconciliation indicates that there was a receipt of
4 ú70,000 on the 15th of June, 1976, from Pembroke
5 Estates.

6 .

7 Can I ask you what that was about?

8 A. Sir, that was in connection with the time that there
9 was a buy-out of - do you remember we talked about,
10 when properties were being transferred? I am not sure
11 whether it was the 76 - when the properties were being
12 transferred into the various companies.

13 67 Q. This was the reorganisation of the Pembroke --

14 A. Yes.

15 68 Q. This was, I think, the year that a number of companies
16 were formed in Jersey by Bedell & Cristin, on behalf of
17 the Pembroke Estate. Herbert Estates Limited and
18 Herbert Properties Limited, I think, were formed at
19 that time?

20 A. This was the time that we had all had various holdings,
21 we had percentages of things, and there was a buy-out.
22 We were paid off before it all went into the company,
23 sir, when it was coming out of the family trust.

24 69 Q. The Herbert Estate, or sorry, the Pembroke Estate
25 bought property off you, is that right?

26 A. No, no. How the Board members held various - had
27 interests in the companies that they were in then
28 before that, sir, whatever the management companies or
29 whatever it was. There was a cleanout --

30 70 Q. Well, there was Merrion Properties Limited and Merrion

1 Estates Limited, which were Irish companies prior to
2 the establishment of these companies?

3 A. Yes.

4 71 Q. And there was also Pembroke Estates Management Limited,
5 which was also an Irish company, and which was a
6 management company, which was the company doing the
7 business through the efforts of Mr. Cassidy?

8 A. Mm-hmm. Yes. Well, at that time there was a -
9 interests were bought out of the - whatever we had, the
10 existing interests we had were then bought out at that
11 particular time, sir.

12 72 Q. What - do you have an interest in the Pembroke Estate?

13 A. All the Board members had small percentages, sir, yes.

14 73 Q. Our understanding previously was that the Pembroke
15 Estate, the property forming what is generically known
16 as the Pembroke Estate, was held on a series of trusts?

17 A. Yes, sir.

18 74 Q. Known broadly as the Lord Pembroke Trust with various
19 years on them?

20 A. That's right.

21 75 Q. Like the Lord Pembroke 1966 Trust, Sir, the Lord
22 Pembroke 1972 Trust, and so on, a series of family
23 settlements on which these various extensive
24 proceedings were settled on family trusts, and which
25 were managed by management companies.

26 .

27 But is it the position, then, that you held some share
28 in these trust properties, or in some other properties?

29 A. I have to get my head around this a little bit. The
30 management companies had - it wouldn't be shares in

1 property - no, I will have to get - anyway, to take it,
2 although we didn't - actually, the individual, any
3 individual properties, but there was an agreement
4 between the Trust and all the board directors. I find
5 it hard to explain it. We had shares. How the shares
6 related back, I just can't --

7 76 Q. Shares in what?

8 A. In either one of the companies. I think the companies
9 that you talked about there, Mount Merrion, yes, Mount
10 Merrion Holdings and all these various properties,
11 companies.

12 77 Q. Did the companies themselves own any properties, or did
13 the Trusts own the properties, the trustees of the
14 Trusts at least?

15 A. The properties were all owned by the Trusts. Then, I
16 think what happened, and I can just try and get more
17 of a grip on this for you, sir, that there were
18 interests given to the - the companies had either - I
19 don't know how the shares just came about. We had an
20 interest, we were bought out - we were bought out of
21 what we had.

22 78 Q. Yes.

23 A. Everyone.

24 79 Q. That is what is represented by that 70,000?

25 A. Yes.

26 80 Q. All right. Now, if you move down the page, No. 11, it
27 is the 1st of October, 1976. Mr. Turvey has told us
28 that this was Firhouse, that this was a receipt of
29 €10,000 in respect of a property transaction,
30 presumably in Firhouse. Can you tell us, what does

1 that refer to? He seemed to recall that it had
2 something to do with Mr. McGowan?

3 A. No, that actually - that is to do with a property
4 holding in Grafton Street, sir. Wait until I just --

5 81 Q. Has it anything to do with Mr. McGowan?

6 A. Not that I am aware, sir, at all.

7 82 Q. Right.

8 A. I am trying to remember the - the name will come to me,
9 sir. It is on the corner. It is in Grafton Street.

10 83 Q. Well, if you are telling the Tribunal it has nothing to
11 do with Mr. McGowan, we will just simply pass over it.

12 .

13 The next item No. 12 is the 1st of October, 1976. It
14 is also a receipt of ú10,000. This time it does appear
15 to be in respect of Mr. McGowan's, because it contains
16 the initials JMcG, which Mr. Turvey believes is Joe
17 McGowan.

18 .

19 Now, it could, of course, refer to Mr. Maguire?

20 A. Yes. I think that - I think that's Mr. Maguire, sir.

21 84 Q. Yes. Well, what would Mr. Maguire be paying you
22 ú10,000 for? He was the vendor, as we know, of the
23 lands in Newtownpark Avenue. Presumably, he would have
24 paid Finnegan Menton their fees in the normal way for
25 the services they provided. But why would Mr. Maguire
26 separately, as it appears, be paying you ú10,000 --

27 A. Now --

28 85 Q. -- in 1976?

29 A. The only thing that I can think of, sir, I am not
30 looking back over the other things, whether it was

1 something to do with our - with the share transactions,

2 sir.

3 86 Q. Well, would he be buying shares off you?

4 A. Well, if he wanted to get involved in some shares, sir,

5 whatever, maybe there were discussions about that.

6 Now, I am just going by broad memory, but it could have

7 been that he was paying me for the amount that we

8 agreed for his share, whatever it might have been that

9 we were going into at the time. I don't know that

10 there is one back there, but what I was talking about

11 was --

12 87 Q. Well, do you recall a share transaction in which you

13 would have been in receipt of ú10,000 from Mr. Maguire,

14 in 1976?

15 A. I can't recollect offhand, sir. I don't know. Did we

16 refer to anything previously? Was there anything

17 there? I can't, I just can't tell you exactly what.

18 88 Q. If you don't know --

19 A. I don't know --

20 89 Q. But you believe that it was in respect of --

21 A. A share.

22 90 Q. Yes. All right.

23 .

24 The transaction immediately below that, No. 13, it is

25 the 2nd of March, 1977. It is "PG Mount Anville". And

26 it is for a receipt for ú13,000. Is this the same

27 Mount Anville transaction as we have previously been

28 speaking about?

29 A. Yes, sir.

30 91 Q. Would "PG" indicate, perhaps, Patrick Gallagher?

1 A. Yes, sir.

2 92 Q. And that is a transaction in respect of which you
3 believe Mr. Brennan did not have an involvement, as far
4 as you were aware?

5 A. That's right, sir.

6 93 Q. If you go down towards the bottom of the page, the
7 second last transaction is dated the 14th of June,
8 1977, "SG", and it is a debit, which we are told by Mr.
9 Turvey is, in fact, on the Foxtown account, in the sum
10 of ú5,000?

11 A. Sorry?

12 94 Q. No. 19, the second last transaction.

13 A. Right.

14 95 Q. It is the 14th of June, 1977. All he has written in
15 there is "SG" in the "details" column. Do you see
16 that?

17 A. Yes.

18 96 Q. It is for ú5,000. It is in monies out, as it were, for
19 ú5,000. What Mr. Turvey has told us is that this was
20 simply a withdrawal of ú5,000 from the Foxtown account,
21 and was put into St. Stephen's Green?

22 A. Oh, I see. Yes.

23 97 Q. Which was a company or which was an account held by a
24 company called Finnegan Holdings or something to that
25 effect, and that was a personal account?

26 A. Yes, sir.

27 98 Q. For personal expenditure, is that right?

28 A. Yes, sir.

29 99 Q. And the one immediately below that, then, is also the
30 14th of June, 1977. This is, again, Pembroke Estates,

1 but in this case it is a debit indicating a payment out
2 by Foxtown to Pembroke Estates. So, here is Foxtown
3 paying money to Pembroke Estates Limited. Can you
4 recall what that is for? "JDT", we have been told,
5 indicates John Desmond Traynor?

6 A. Yes.

7 100 Q. So he was obviously involved in that transaction. But
8 can you recall what of the reason for Foxtown making a
9 payment to Pembroke Estates in the sum of ú6,000.

10 .

11 MR. HUSSEY: I am sorry, Sir. I wonder, is Mr.
12 Hanratty - I don't want to interrupt. As I read Mr.
13 Turvey's note, he has that down as a credit. I think
14 Mr. Hanratty is reading the thing in reverse. Whether
15 rightly or wrongly, or whether Mr. Turvey is right or
16 wrong, what Mr. Hanratty says is more logical than the
17 reverse, but it is not exactly what Mr. Turvey has
18 said. It is a credit rather than the debit. I am just
19 wondering what the correct thing.

20 .

21 MR. HANRATTY: And it does appear that the credits are
22 on the left-hand column and the debits are on the
23 right-hand column.

24 .

25 If you turn to page 4975, you will see that one of the
26 items on it is the payment out of the ú33,333, which we
27 have been told.

28 .

29 MR. HUSSEY: I am merely saying in the written
30 narrative Mr. Turvey has them in as a credit. That

1 seems to be incorrect.

2 .

3 MR. HANRATTY: Yes.

4 .

5 MR. HUSSEY: I am saying that Mr. Hanratty's position

6 is more logical than the reverse. I am just thinking

7 that Mr. Turvey's written narrative seems to be

8 incorrect in that respect. He seems to have got the

9 credits and debits mixed up throughout the written

10 narrative.

11 .

12 MR. HANRATTY: He does appear to have mixed them up. I

13 think it is clear from the transactions that we do

14 definitely know about, that the credits are on the left

15 and the debits are on the right.

16 .

17 And that would appear to be in conformity with the

18 testimony that the witness has given, particularly in

19 relation to the receipt of ú70,000, for example, from

20 the Pembroke Estate, which appears to be in the column

21 which we believe is a credit column.

22 A. Okay.

23 101 Q. And indeed the Mount Anville transactions as well,

24 isn't that right?

25 A. Yes, sir. I don't know - I just can't - I just can't

26 think what --

27 102 Q. -- what the ú6,000 is. All right. If you say you

28 can't remember it, then you can't remember it.

29 A. I can't at the moment.

30 103 Q. Can you conceive of any circumstances in which Foxtown

1 would be indebted or yourself would be indebted to the
2 Pembroke Estate in that sum at that time?

3 .

4 Is it, for example, possible that you sold something on
5 their behalf and that you were paying over the
6 proceeds, as it were?

7 A. I can't --

8 104 Q. Well, as I understand your testimony, you can't recall?

9 A. No.

10 105 Q. All right.

11 A. No. Sorry, sir.

12 106 Q. Moving to the next page, that is 4975. If you look at
13 a transaction under number 25 of the 11th of September,
14 1977. He has written in, his abbreviation there is
15 "JJT", which he says is John, Joe, Tom; John Finnegan,
16 Joe McGowan, Tom Brennan. And that's the one against
17 which he has entered this ú33,333.33, which you have
18 told us is your input into the Monkstown transaction?

19 A. Yes, sir.

20 107 Q. Are you in agreement that JJT is Mr. Turvey's
21 abbreviation for John, Joe, Tom?

22 A. Yes, sir, it appears to be. Yes, sir.

23 108 Q. Yes. On the 16th of November, 1977, immediately below
24 that, you appear to have been in receipt of ú10,000, in
25 connection with a Brennan and McGowan transaction,
26 because it has the same annotation "JJT". So why would
27 you have been in receipt of ú10,000 from, presumably,
28 Brennan and McGowan on the 16th of November, 1977?

29 A. I don't know, sir. I am just wondering whether it was
30 in connection with --

1 109 Q. If I can just refer you to the bank account. Do you
2 have a set of the bank accounts there?

3 A. No, sir.

4 110 Q. We will give you a set of the bank accounts. But in
5 the entry representing this transaction in the bank
6 account itself, Mr. Turvey has written down beside it
7 either "J Tiernan" or "J Kiernan, see letter". Do you
8 know Mr. J Kiernan or Tiernan?

9 A. Yes, I knew a Mr. --

10 111 Q. Do you see the entry I am referring to? It is the
11 second last item on the page. It is the credit column
12 of ú10,000?

13 A. Yeah.

14 112 Q. And you see --

15 A. Paid out?

16 113 Q. No, it is a credit. It is a receipt in the account of
17 ú10,000.

18 .

19 Was Joe Kiernan a solicitor?

20 A. Yes, he was.

21 114 Q. And obviously there was a letter in connection with
22 this, which unfortunately we don't have, but given that
23 we know that there was a receipt of ú10,000, that Mr.
24 Turvey in his reconciliation sheet is putting it in as
25 referring to Brennan and McGowan, JJT, and that Mr.
26 Kiernan was involved, can you not recall from that
27 then, what it was about?

28 A. No --

29 115 Q. Well, what transaction did you have involving Mr.
30 Kiernan as a solicitor?

1 A. I don't know if this is - I don't know about my timing,
2 sir, but I would want to check up. But I did have a
3 transaction, sir, where I bought a property through Mr.
4 Kiernan.

5 116 Q. From?

6 A. From Mr. Kiernan.

7 117 Q. Was it anything to do with Messrs. Brennan and McGowan?

8 A. No, it wasn't, sir.

9 118 Q. Well --

10 A. I don't know why that --

11 119 Q. As you know, from Mr. Turvey's reconciliation, he has
12 JJT against this particular €10,000?

13 A. It just rings - I might just try and see if it is to do
14 with this house transaction, sir. I might see --

15 120 Q. Would you like to leave that over until you can do
16 that?

17 A. Just on the dates. Until I just check my date to see
18 if --

19 121 Q. All right. Looking further down the page, No. 29, the
20 last transaction is again "JJT", and this is €100,000,
21 which Mr. Turvey believes is the Foxtown receipt of
22 €100,000, at least the first €100,000 from the
23 Monkstown lands?

24 A. Mm-hmm.

25 122 Q. Does that seem right to you?

26 A. It does seem right to me, sir, yes.

27 123 Q. We know, in the case of Monkstown, you were in receipt
28 not only of this €100,000, but a separate bank draft
29 for €5,000. And that doesn't appear in the Foxtown
30 account, which would indicate that you took this money

1 directly.

2 .

3 Can you recall, then, in those circumstances, what the
4 ú5,000, the additional ú5,000 which was given to you in
5 the form of a bank draft, was for?

6 A. No, sir. I can't recollect.

7 124 Q. Well, as between yourself and Messrs. Brennan and
8 McGowan, you were obviously entitled to get the same
9 sum as they were getting?

10 A. Yes.

11 125 Q. Which was also ú100,000. And you did, in fact, get the
12 same sum that they were getting in the sum of ú100,000
13 out of the division of the monies that came over from
14 Green Isle Holdings Trust Limited, but there must have
15 been some very specific reason as to why, in addition
16 to that, you were being made an extra payment of
17 ú5,000, which it would appear you did not lodge in the
18 Foxtown account.

19 .

20 There could only, I suggest to you, Mr. Finnegan, be a
21 very limited number of very specific reasons as to why
22 they would make that additional payment, and that it
23 shouldn't be that difficult to recall what it was for?

24 A. Sir, I have a block - of course it is a hell of a long
25 time ago.

26 126 Q. I appreciate that, but nonetheless --

27 A. I can't, you know --

28 127 Q. Nonetheless, given the nature of the transaction and
29 the fact that you were in receipt of such a very
30 substantial sum, even by today's standard, certainly by

1 the standards of the time that you received it, of
2 ú100,000, but that there was a separate provision made
3 for a separate payment, kept separate in the sum of
4 ú5,000. I suggest to you there must have been a very
5 particular reason for that, and I am asking you to tell
6 us what it was?

7 A. Well, sir, really, I was racking my brain. I just
8 don't know, sir. I haven't - I haven't come up with
9 anything, sir.

10 128 Q. Yes. If we just look very briefly at page 193.

11 .
12 This is the division of the ú350,000 that went over to
13 Jersey in connection with this particular transaction.
14 We have seen this document already, but as you can see,
15 at your direction, as we know, the ú100,000 to which
16 you were entitled was sent over to Foxtown, which at
17 the time had, as we know, its account in Guernsey,
18 Guinness & Mahon (Guernsey) Limited. As you can see
19 further down the list, the second last item is ú5,000
20 which was paid directly to you.

21 A. Yes, sir. I can't recollect.

22 129 Q. Just to identify the transaction for the record, could
23 I ask you to look at page 4842 of the bank account?

24 A. 48 --

25 130 Q. -- 42.

26 A. Sorry.

27 131 Q. The second transaction on the page is a credit in the
28 sum of ú100,000, and it is dated the 3rd of December,
29 1977. It might be the 23rd. It must be the 23rd
30 because the value date is the 21st of the 12th.

1 .

2 You see that?

3 A. Yes, sir.

4 132 Q. Would you agree that that appears to be the receipt of

5 the €100,000 that was sent over by Mr. Wheeler on your

6 direction, out of the proceeds of the Monkstown

7 transaction?

8 A. It would appear so, yes, sir.

9 133 Q. Yes. Now, just while we are on that particular page,

10 if you look at the top of the details column, you can

11 see he has written in "AK5"?

12 A. Yes, sir.

13 134 Q. We have seen these "AK" references also on some of the

14 Dublin issued statements. Isn't that so?

15 A. Yes, sir.

16 135 Q. But there appears to have been other accounts bearing

17 AK references. For example, there is one in reference

18 to AK3. Does that mean that there were different

19 accounts numbered or designated AK 1, 2, 3, 4, 5?

20 A. I really don't know, sir.

21 136 Q. Well, were there, in fact, other accounts?

22 A. Not that I'm - not that I am aware of, sir.

23 137 Q. As far as you are aware, is it the position that you

24 believe that there was only one Foxtown account --

25 A. As far as I was aware, sir.

26 138 Q. -- in Guinness & Mahon?

27 A. Yes, sir.

28 139 Q. Can we take it there was - was there any other Foxtown

29 account in any other bank?

30 A. Not that I am aware of, sir.

1 140 Q. And --

2 A. Sorry.

3 141 Q. When you say, "not that I am aware of," it is quite
4 obvious that you were substantially involved in various
5 transactions on this account, and we've already had one
6 of the drawings in the sum of ú5,000 that went to St.
7 Stephen's Green. Did you ever have drawings from any
8 other Foxtown account, either in Guinness & Mahon or in
9 any other branch?

10 A. No, sir, not that - when I say that, I don't know
11 whether, if there was something, I can't think of any
12 other accounts, sir.

13 142 Q. What is this AK5 notation, then, and AK3?

14 A. I really haven't got the faintest idea, sir, and I
15 wouldn't have been familiar with any of these notes,
16 sir.

17 143 Q. Mr. Turvey has said that AK, that his understanding was
18 that AK was the bank reference for Foxtown Investments
19 Limited.

20 A. Oh --

21 144 Q. Well, you remember when we started looking at these
22 accounts last week, Mr. Finnegan, it is quite clear
23 that at one stage, and up to a certain point in time,
24 Foxtown Investments Limited was referred to explicitly
25 as the account holder both on the accounts issued -
26 well, certainly on the accounts issued by the Dublin
27 branch of Guinness & Mahon, but after a certain point
28 it was referred to as "AK" in parenthesis.
29 .
30 We saw that last week. Do you remember? And we

1 identified the point in time beyond which the AK
2 reference started to be used. Is that your
3 understanding, that AK refers to Foxtown?

4 A. Well, I would only be misleading you, sir. If that is
5 what it is, that is it is.

6 145 Q. We have established, for example, that it refers to the
7 same account number, which would strongly suggest that
8 it was the Foxtown account?

9 A. It must be then, sir.

10 146 Q. Can you think of any reason why, at a certain point in
11 time, Guinness & Mahon ceased to refer to the account
12 holder as Foxtown Investments Limited, and started to
13 refer to the account holder as AK?

14 A. No, sir.

15 147 Q. You have no idea?

16 A. No, sir, no idea.

17 148 Q. If we look at the statement which was issued on this
18 account by the Dublin branch, page 4843. You have it
19 there.

20 .

21 It is this call deposit account, we've seen it already.

22 It is "Guinness & Mahon (Guernsey) Limited AK". Do you
23 see that?

24 A. Yes, sir.

25 149 Q. And this is the one, in fact, which contains this
26 €100,000 transaction, as you can see?

27 A. Yes, sir.

28 150 Q. Giving December the 29th, in fact, as the date, with
29 the value date as the 21st of December, 1977?

30 A. Yes, sir.

1 151 Q. So it is quite clearly referring to the same account as
2 the account in Guernsey, to which we have been looking
3 at, but it simply doesn't describe the account holder
4 as Foxtown, but it is clearly the Foxtown account,
5 isn't that right?

6 A. I see what you mean.

7 152 Q. And it is issued, as you can see, on the Guinness &
8 Mahon Limited, College Green notepaper, indicating that
9 it was issued by Guinness & Mahon in Dublin?

10 A. Yes, sir.

11 153 Q. Presumably, the reason being that it was issued to you,
12 and that you were in Dublin. Isn't that right?

13 A. Say that again, sir?

14 154 Q. Presumably, the reason that Guinness & Mahon in Dublin
15 were issuing statements on an account in Guernsey, was
16 because you were in Dublin, and the statements were
17 being issued to you?

18 A. Well, if that is what it is, that is what it is, sir,
19 but I couldn't say "yes", that that is it, because I
20 wouldn't have been involved hands-on in this, sir.

21 155 Q. Well, who else --

22 A. Well --

23 156 Q. Who else would the statements be issued to in Dublin,
24 if it isn't to you?

25 A. It is Dublin, yes. Well, it must be, sir. Sorry about
26 that.

27 157 Q. I mean, it is a fairly straightforward issue. I mean,
28 there is nothing that particularly turns on it. In the
29 absence of any other specific reason, one would have
30 thought that the reason that they issued these

1 statements in Dublin was because you were in Dublin and
2 they were being issued to you. That is all I am
3 saying.

4 A. I don't - I don't know how we or I got them. It could
5 be that they came from Mr. Traynor.

6 158 Q. Well, he was in Guinness & Mahon in Dublin?

7 A. Yes, that's right. Yes.

8 159 Q. So Guinness & Mahon in Dublin were issuing these
9 statements to somebody, and in the absence of any other
10 explanation, I would have assumed they were being
11 issued to you?

12 A. Yes, okay. Or to Traynor, yeah.

13 160 Q. Why would they be issued to Mr. Traynor? He is not the
14 account holder.

15 A. Well, he would have been the person, particularly all
16 around these times, he did virtually everything, so - I
17 am just saying it could very well have been him.

18 161 Q. Well, it is quite clear you were in receipt of them
19 because they were on Mr. Turvey's Dudgeons' file?

20 A. Yes, sir.

21 162 Q. So they were being issued to you?

22 A. Well, wherever he got - it must have been, sir.

23 163 Q. Yes?

24 A. It is just that I couldn't just say very definite when.
25 I don't remember myself. If I did, I would.

26 164 Q. If I could ask you to look at page 4838.

27 .

28 You see the 13th of October, 1977, transaction. It is
29 about more than three-quarters of the way down. The
30 value date is the 13th of October, and there a sum of

1 ú10,000. It is a debit on the account. And it bears
2 the annotation beside it in Mr. Turvey's handwriting,
3 "FH". That is Finnegan Holdings. He has identified
4 that transaction to the Tribunal as essentially a
5 drawing that was put in to, he presumes, the Stephen's
6 Green account for personal use. Is that right?

7 A. I would think so, sir.

8 165 Q. And if we can - yes, we have already had the ú5,000
9 transaction on that page. You see it "FH" further up
10 the column?

11 A. Yes, sir.

12 166 Q. He says that was a similar transaction, just a drawing
13 on this account?

14 A. Yes, sir.

15 167 Q. If you could move down to the 11th of December, 1978.
16 I think it is on page 4844.

17 A. Sorry?

18 168 Q. 4844. It is one of the Guernsey bank statements. And
19 it is a sum of ú13,250, which he says was also a
20 drawing on that account for - I think he said the
21 purchase of a boat or something?

22 A. Sorry --

23 169 Q. ú13,250. Written beside it is "Magnum". Is that what
24 that is?

25 A. Yes.

26 170 Q. That is again simply a drawing on the account?

27 A. Yes, sir.

28 171 Q. And Mr. Turvey has told us that that was simply a
29 purchase of a boat that you made for your family at the
30 time?

1 A. Yes, sir.

2 172 Q. The next item is 4th of July, 1979, in the sum of

3 ú5,200. It is page 4848. It is the second last item

4 on the debit column. Do you see that?

5 A. Sorry. Would you just say that again, sir.

6 173 Q. It is 4848.

7 A. Yes, I have that.

8 174 Q. It is the second last item on that. It is 5,200.

9 A. Yes, I have that.

10 175 Q. That was the total amount of the withdrawal. I seem to

11 recall that was split into two parts.

12 .

13 "Peter Paurrie - ú1,200." Do you see that, that is

14 what he has written in there?

15 A. Yes, sir.

16 176 Q. What does that mean?

17 A. Peter Paurrie was an old friend of mine, sir, who has

18 since died.

19 177 Q. Yes. And the rest, he believes, was in respect of

20 family expenses?

21 A. Yes, sir.

22 178 Q. If you see the annotation on the account, it is "P

23 Paurrie". On the account he has used this "FH -

24 4,000", Finnegan Holdings, and that is why he believes

25 it is in respect of family expenses?

26 A. Yes, sir.

27 179 Q. Then if you go to the 17th of July, 1979, which is on

28 page 4850. There is a debit on that value date, 17th

29 of July, ú14,000. And he says that is the Bank of

30 Ireland. He says that is the bank in St. Stephen's

1 Green that Finnegan Holdings used. Is that right?

2 A. Yes, sir.

3 180 Q. He says that was again in the nature of family

4 disbursements?

5 A. Yes, sir.

6 181 Q. What this appears to indicate, Mr. Finnegan, is you

7 were making these withdrawals from the Foxtown account

8 in all respects, as if it was your account. Mr. Turvey

9 has told us that these withdrawals would have been made

10 on your instructions by him, and that he would simply

11 relay your instructions to Guinness & Mahon in Dublin

12 and the money would be withdrawn and put into St.

13 Stephen's Green.

14 A. Yes. Yes, sir. I would have - I would have cleared

15 these, sir, with the trustees at the time, sir.

16 182 Q. Well, there is no indication on this file of any

17 instructions from the trustees to Mr. Turvey. Mr.

18 Turvey will say that he received all of his

19 instructions from you, and that all he would do was he

20 would phone up Guinness & Mahon in Dublin, not even

21 Guernsey, and say "I want €14,000" or "I want €5,000"

22 or "I want €10,000", and "I want it sent up to St.

23 Stephen's Green" and that is what would be done?

24 A. Well, yes, sir, but I would have - during, at

25 intervals, sir, been talking to Guernsey, sir.

26 183 Q. Well, may I suggest to you that you weren't, in fact,

27 and that all the indications are, certainly from the

28 documentation, such as it is, is that, and taking it

29 together with Mr. Turvey's evidence, is that you simply

30 decided when you wanted to withdraw money and were in a

1 position to do so?

2 A. No, sir, I would - certainly I would have, whilst he
3 carried out, certainly, quite a lot of instructions, I
4 would myself, sir, have been talking to Mr. Traynor
5 and/or the different trustees of the time.

6 184 Q. Mr. Traynor was the person through whom the monies were
7 withdrawn, is that right?

8 A. Yes, sir.

9 185 Q. And Mr. Traynor appeared to be in control in the most
10 general sense, if you know what I mean, in the sense
11 that if you phoned up Mr. Traynor saying you wanted the
12 money, you got it?

13 A. Yes, because I think what I mentioned to you earlier,
14 that he was the one who could do this, sir, and was in
15 liaison for me and some other close friends with the
16 trustees, all of the time, sir.

17 186 Q. Yes. If I could just refer to you page 4976.

18 .

19 That's a letter dated the 9th of August, 1979. It is
20 to Mr. Lipscombe, one of the trustees, isn't that
21 right?

22 A. 49?

23 187 Q. 4976. This is in Mr. Turvey's bundle.

24 .

25 (Document handed to witness.)

26 .

27 MR. HUSSEY: I am sorry. I beg your pardon, Sir. This
28 screen doesn't seem to be operating --

29 .

30 CHAIRMAN: Is it the computer?

1 .

2 MR. HUSSEY: I can operate from the large screen. I

3 don't mind.

4 .

5 188 Q. MR. HANRATTY: It is a letter from Mr. Turvey to one of

6 the trustees. He says - it is the 9th of August, 1979.

7 .

8 "Dear John, I have pleasure" -

9 .

10 That is John Lipscombe.

11 .

12 "I have pleasure to enclose a statement of account from

13 Dudgeons, showing a balance due of 2000" - is it twenty

14 something thousand - 645.78 pence, which I would be

15 obliged if you would kindly settle and charge to

16 Foxtown Investments Limited."

17 .

18 There was an instruction, as it were, from Mr. Turvey

19 to the trustee to settle this account with Dudgeons,

20 presumably for the purchase of shares, isn't that so?

21 A. Yes, sir.

22 189 Q. So, in a sense, Mr. Turvey is telling the trustees what

23 to do with Foxtown money, in respect of a transaction

24 which has already taken place?

25 A. Was this around the time, sir, that I bought some

26 shares for --

27 190 Q. Well, presumably, it was a share transaction, because

28 that is what Dudgeons did?

29 A. Yes.

30 191 Q. And he is asking that this account be settled. He

1 enclosed a statement of account from Dudgeons, showing
2 the transaction, obviously?

3 A. All right.

4 192 Q. But he is now asking him to pay the account. And --

5 A. This is not the one where Mr. Lipscombe bought some
6 shares himself, sir? No?

7 193 Q. Well, I don't know. It might be. Do you think it is?

8 A. No, I am not sure, sir. No.

9 194 Q. No. I think we have the Lipscombe one?

10 A. That is all right. I was just trying to --

11 195 Q. Right. If I could just refer you to the bank

12 statements. If you go to page 4847.

13 .

14 You will see towards the bottom of the page there is a

15 lot of handwriting, but towards the right-hand side -

16 well, there is a debit, or at least in the debit column

17 is written the sum of ú59,367.45. Do you see that?

18 And in brackets, then, is written by Mr. Turvey:

19 "(10,000 of these ú4,561.85 were for J Lipscombe)."

20 So that appears to be the Lipscombe transaction?

21 A. Sorry, just 484 --

22 196 Q. Are you looking at page 4847?

23 A. Sorry, 4847. Sorry.

24 197 Q. If you look towards the bottom of the page, there is an

25 entry in brackets there starting with the figure

26 10,000. Do you see that?

27 A. Oh, yes.

28 198 Q. It says: "10,000 of these ú4,561.85 were for J

29 Lipscombe." Indicating that of a share purchase which

30 is there referred to, ú10,000 of the shares

1 representing, I presume, in value 4,561.85, were for
2 Mr. Lipscombe. Does that seem to be right? That
3 certainly seems to be what Mr. Turvey has told us?

4 A. Yes, sir.

5 199 Q. Why would you be buying shares out of trust money for a
6 trustee of the Trust?

7 A. Well, on a couple of occasions - what would happen on
8 different occasions, that Mr. Lipscombe would - we
9 talked and he talked to me about various shares, in
10 just conversations, and they were looking at
11 such-and-such and looking at such-and-such. I might -
12 what did happen, and I am not sure whether this is the
13 case, that I would ask him to check up on, I don't know
14 - I don't know --

15 200 Q. The name of the shares is there?

16 A. I have it.

17 201 Q. Do you see it?

18 A. Yes, sir.

19 202 Q. Shillers or something?

20 A. Yes, Spillers.

21 203 Q. Spillers?

22 A. Yes.

23 204 Q. And obviously you were buying, in this case, a
24 substantial tranche of these shares?

25 A. Mm-hmm.

26 205 Q. But you were including in the purchase the sum of
27 4,561.85 for Mr. Lipscombe?

28 A. Yes, well --

29 206 Q. And these shares were being bought out of monies
30 belonging to the Trust?

1 A. Yes.

2 207 Q. Held on the account of Foxtown Investments Limited?

3 A. Yes, sir.

4 208 Q. My question is why, given that this was, as you say, a

5 trust fund, a trust account, why was trust money being

6 used to buy shares for a trustee?

7 A. Right. It is coming back to me a little bit here, sir.

8 It is a long time ago.

9 209 Q. Yes?

10 A. We were - Spillers was a share which - it is a UK

11 shareholding.

12 210 Q. Yes?

13 A. And I had heard about it and I asked him, Lipscombe,

14 would he do some checking on it. And he did. And I

15 had heard that they could have a future, through a

16 sailing firm. So I went to him, I went to Lipscombe

17 and said, "Have a good check out on those." He did,

18 and he came back. He said, "I think, from what I hear,

19 this could be a good investment."

20 .

21 Now, by the way, this is just my understanding of

22 whatever - that was along the lines of it. Because

23 this - I have a recollection that he asked me, would I

24 buy some for him, if they were - could he buy some of

25 them.

26 211 Q. Well, I was just going to ask you that. Obviously, you

27 bought ú59,367.45 worth of them, but 4,561.85 were

28 sent, presumably, to Mr. Lipscombe. A certificate for

29 10,000 shares, presumably, was sent to him, represented

30 by that value.

- 1 .
- 2 But there is no indication, is there, of that money
- 3 coming back in where Mr. Lipscombe would pay for the
- 4 shares. Were you making a present to Mr. Lipscombe?
- 5 A. No, definitely not. I wouldn't have.
- 6 212 Q. If you weren't making a present, then you would expect
- 7 to see credit coming in of 4,561.85, wouldn't you?
- 8 A. Just to refresh my memory about that.
- 9 213 Q. What do you say 10,000 was for? 10,000 of these, as I
- 10 read it - you see, it is 130,000 shares being bought,
- 11 and the sum is given there.
- 12 A. Yes, I have that.
- 13 214 Q. And 10,000 of that 130,000 representing in value
- 14 4,561.85 were for Mr. Lipscombe?
- 15 A. Oh, 4,500.
- 16 215 Q. 4,561 in money --
- 17 A. Yes, sir.
- 18 216 Q. -- for Mr. Lipscombe, representing 10,000 shares. If
- 19 that is not a present from you to Mr. Lipscombe - there
- 20 is absolutely nothing wrong with it if it was. If it
- 21 wasn't, you would expect to see Mr. Lipscombe repaying
- 22 Foxtown's account in that sum?
- 23 A. Yes, sir.
- 24 217 Q. Which we don't?
- 25 A. Well, I am sure they were some way, sir.
- 26 218 Q. Well, do you recall it being repaid?
- 27 A. Well, I put it this way, sir: I certainly don't recall
- 28 it not being repaid.
- 29 219 Q. Pardon?
- 30 A. I certainly don't recall it not being repaid. You know

1 what I mean? That it is something that was

2 outstanding.

3 220 Q. If Mr. Lipscombe wanted to buy these shares, if he

4 thought they were a good idea, there is absolutely

5 nothing to stop him either picking up the phone to

6 either his own broker, or either Dudgeons, if he wanted

7 to do it through an Irish or Dublin broker, and buying

8 his own shares.

9 .

10 What I want to understand is why would one be going to

11 this sort of trouble, of you buying all these shares,

12 including a tranche of them to Mr. Lipscombe, if you

13 weren't actually making a present to him of them?

14 A. Well, sir, I certainly don't recollect - I would have

15 if I bought them for him, so unless --

16 221 Q. Why wouldn't he just pick up the phone to any broker in

17 London, or Guernsey, even, and say, "I want to buy

18 10,000 shares in Spillers"?

19 A. It is, again, a long, long time ago, but - there is no

20 question, sir, there is no question of that I - I would

21 remember if I said I was buying them for him.

22 222 Q. All right. All right. Well, going back to the letter

23 that we were just looking at a moment ago, page 4976.

24 As you can see, it is that instruction from Mr. Turvey

25 to Mr. Lipscombe, and I think it is fairly clearly - it

26 is fairly clear. It doesn't refer to the shares

27 purchased on behalf of Mr. Lipscombe.

28 .

29 Do you see that?

30 A. Mmm.

1 223 Q. There is an "M", which is a second digit. I don't know
2 whether that is intended to be a comma or whether it
3 was intended to be a second digit, we just don't know
4 that. Whatever it is, on neither interpretation would
5 it appear to match the figure which would be owed by
6 Mr. Lipscombe for those shares, isn't that so?

7 A. Quite.

8 224 Q. But moving on to the next page, page 4977. If you are
9 looking at the correspondence, Turvey documents. Do
10 you have that page?

11 .

12 I think it might be more convenient if we gave a book
13 to Mr. Finnegan containing these documents in sequence,
14 rather than having him fiddling through individual
15 documents. Perhaps you might raise for five minutes.

16 .

17 CHAIRMAN: Yes, certainly no problem.

18 .

19 MR. HUSSEY: I think these ones are on the screen.

20 There shouldn't be any great difficulty.

21 .

22 MR. HANRATTY: We will perhaps use them on the screen.

23 Then we will leave it a little bit later for the break,

24 if that suits.

25 .

26 CHAIRMAN: We are going to break at half past 11,

27 anyway.

28 .

29 225 Q. MR. HANRATTY: Very good. We will carry on then. Page
30 4977 is on the screen. If it isn't - if we put it on

1 the screen?

2 A. Sorry, the book - when you get a chance, it mightn't be
3 any harm.

4 226 Q. We will do that. We are preparing that now.

5 A. It is all right.

6 227 Q. But in the meantime, if we just look. These are all
7 very short letters. There wouldn't be any difficulty.

8 .

9 4977, it is a letter of the 1st of September 1978,

10 again from Mr. Turvey to Mr. Lipscombe. He says:

11 .

12 "Dear John, I have pleasure to enclose a cheque for

13 ú20,000, which I would be obliged if you would kindly

14 lodge to the above account and oblige."

15 .

16 You see, he has written down there "J Maguire, 28,250

17 and 8,250 to SG," which he says is St. Stephen's Green.

18 That's just a reference to - if we could just find what

19 Mr. Turvey says about the 28,000.

20 .

21 The 8,000 is straightforward. It is in reference to a

22 payment out to St. Stephen's Green in the usual way.

23 Perhaps we'll come back to the 28,250, because we are

24 not clear about that.

25 .

26 Do you see the next letter, 4978. If we could just

27 have that. It is a letter of the 14th of June, 1977.

28 It is to Mr. Ru Leonard in Guinness & Mahon in Dublin.

29 Do you remember Mr. Leonard?

30 A. Yes, sir.

1 228 Q. Mr. Turvey says that he had dealings with Mr. Leonard
2 from time to time, and he was in a position to get
3 things done in Guinness & Mahon by asking Mr. Leonard
4 to do it.

5 .
6 He says:

7 .
8 "Dear Sir, please give bearer draft for ú5,000 in
9 favour of Bank of Ireland and charge as arranged on the
10 telephone."

11 .
12 And he has written on the bottom of that, on the
13 right-hand side, as you can see, "SG", Stephen's Green.

14 A. Mm-hmm.

15 229 Q. That was an instruction from yourself. What was that
16 for? What you are doing is you are saying to Mr.
17 Leonard, "I want ú5,000 out of the account," isn't that
18 right? The Foxtown account?

19 A. I don't recollect it, sir, but it is there.

20 230 Q. I mean, it is nothing more than simply an instruction
21 by you to a person in Guinness & Mahon in Dublin to
22 "Give me out a draft for ú5,000 and make it out to Bank
23 of Ireland." That is all it is?

24 A. Yes. Yes.

25 231 Q. So here is a classic case of you, on your own
26 initiative, and I suggest by your own decision,
27 withdrawing ú5,000 from the Foxtown account, and it is
28 clear from Mr. Turvey's annotation, that that went to
29 the Stephen's Green account.
30 (Documents handed to witness.)

1 A. Yes, I see it, sir. I don't know where --

2 232 Q. In plain English, it is a withdrawal?

3 A. But I don't know - but I don't see where it says

4 "Foxtown", sir. Is it --

5 233 Q. Was there another account in Guinness & Mahon in
6 Dublin?

7 A. Around that time, sir, I think that Pine Securities
8 would have had - I just don't know, sir, just where it
9 has been drawn on, but whether it was Pine Securities
10 --

11 234 Q. Was there any other account anywhere else that you
12 could withdraw money out of Guinness & Mahon in Dublin?

13 A. There might have been a Dublin account, sir.

14 235 Q. Well, if I can just refer you to the - do you see these
15 reconciliation sheets again?

16 A. Oh, yes, sir. Yes.

17 236 Q. The first one, page 47, do you have that?

18 A. Yes, 49 --

19 237 Q. Sorry, 4974. If you look at the entry of the 16th of
20 February, 1973, it says "HT and C/M", "H/T and C/M."
21 Mr. Turvey has told us that is High Seas Trust, 16th of
22 February, 1973, and "CM" refers to Cayman. Was that a
23 Guinness & Mahon trust?

24 A. Yes, sir.

25 238 Q. And was that a trust from which you could make
26 withdrawals in Dublin?

27 A. No, sir. Not that I know, sir. Sorry, can I have a -
28 what number is that, sir?

29 239 Q. It is the second - it is dated the 16th of February,
30 1973. It is on the third line, "H/T and C/M". And it

1 is ú12,000. It is a credit for ú12,000, in other
2 words, it is a receipt of ú12,000 into the Foxtown
3 account. Do you see that?

4 A. Wait now.

5 240 Q. Can you not see the --

6 A. The --

7 241 Q. The third line on the page, 16th of February. Yes,
8 "H/T and C/M"?

9 A. Yes, sir.

10 242 Q. And it is on the credit column of ú12,000. So, that
11 was a receipt by Foxtown of ú12,000 from High Seas
12 Trust in Cayman, isn't that right?

13 A. It seems to - that is what it says, sir.

14 243 Q. Well, as I understood, you have already said that that
15 was a trust, a Guinness & Mahon trust in Cayman?

16 A. In Cayman, yes, sir.

17 244 Q. And what I am asking you is, did that trust have an
18 account in Guinness & Mahon (Cayman), for example, from
19 which you could make withdrawals from Guinness & Mahon
20 in Dublin?

21 A. Not that - I don't know, sir.

22 245 Q. Right. Well, then, you don't know?

23 A. No.

24 246 Q. Were you in a position to make withdrawals from
25 Guinness & Mahon in Dublin from Guinness & Mahon in
26 Cayman, or from a trust in Guinness & Mahon in Cayman?

27 A. I really - I really can't recollect, but that is a hell
28 of a long time ago, sir.

29 247 Q. Well, put it this way: When you wanted to withdraw
30 money from Guinness & Mahon in Dublin, did you have to

1 specify which account or which trust?

2 A. Well, I really can't tell you what that was, sir.

3 248 Q. Well, going back to the letter of the 14th of June from

4 yourself to Mr. Ru Leonard, the letter is dated the

5 14th of June, 1977?

6 A. Oh, right.

7 249 Q. And it says:

8 .

9 "Please give the bearer draft for ú5,000 in favour of

10 Bank of Ireland, and charge as arranged on the

11 telephone."

12 .

13 As you can see it is signed by yourself. And Mr.

14 Turvey has written on it "SG", St. Stephen's Green,

15 which would explain that that is where it went. It

16 went to Bank of Ireland, St. Stephen's Green.

17 Presumably it was lodged in the Finnegan Holdings trust

18 there.

19 .

20 If I can refer you to the bank statement on page 4838.

21 There is a transaction with a value date of the 14th of

22 June, for ú5,000.

23 .

24 Have you found that? It is just below the middle of

25 the page?

26 A. What date again, sir?

27 250 Q. Well, the value date, in the value date column, is the

28 14th of June. It is a sum of ú5,000 there in the debit

29 column.

30 A. Sorry, 4838, is it?

1 251 Q. Yes, 4838.

2 A. Sorry, I was - okay.

3 252 Q. There is a value date of the 14th of June there. It is

4 €5,000. It seems very likely that that is, in fact,

5 the same €5,000 which is the subject of the instruction

6 in this letter we've just been looking at to Mr. Ru

7 Leonard. Isn't that right?

8 A. Yes, sir.

9 253 Q. And as you can see, in the bank statement, Mr. Turvey

10 has written in "FH", which is this Finnegan Holdings

11 company which has this account in St. Stephen's Green.

12 It all seems to tie up?

13 A. Yes, sir.

14 254 Q. I suggest to you on the basis of those entries, that

15 letter - sorry - that entry on the account is, in fact,

16 the €5,000 that you instructed, in this letter, should

17 be withdrawn from the Foxtown account in Guernsey and

18 lodged to the Finnegan Holdings' account in St.

19 Stephen's Green. Isn't that so?

20 A. Yes, sir.

21 255 Q. Do you have any reason to doubt that?

22 A. No, I've no reason to doubt it.

23 256 Q. So here is yourself, under your own hand, making a

24 withdrawal from the Foxtown account held by Guinness &

25 Mahon in Guernsey through Guinness & Mahon in Dublin,

26 by the simple expedient of instructing Mr. Leonard to

27 give you a draft for €5,000, or send it up, or make it

28 out to St. Stephen's Green?

29 A. Yes, sir. It refers to the arrangements on the

30 telephone. It wasn't a letter, yeah.

1 257 Q. Yes.

2 A. Well, yes, but the normal, the normal thing, sir, was
3 if I were making any withdrawals like that, that I
4 would, I would have a word either around the time -
5 that is why - I don't know what I said on the
6 telephone, sir. But there was a telephone
7 conversation, wasn't there, about it?

8 258 Q. Sorry? This is a letter.

9 A. Yes, sir.

10 259 Q. "Charge as arranged on the telephone." And it was
11 charged to Foxtown, as we know.

12 A. That is probably - I had had discussions about that,
13 that is why when I talked to him I did say - well, I
14 didn't, maybe he did, but that is another one, that I
15 could have had clearance from - that I was drawing this
16 down.

17 260 Q. Clearance from whom?

18 A. At that stage, sir, because on quite a few occasions I
19 would have talked to Guernsey --

20 261 Q. Mr. Finnegan, are you trying to say to this Tribunal,
21 that you got clearance for these transactions? We are
22 going to go through some more of them now. I just want
23 to be clear about this.

24 .

25 Are you actually swearing to this Tribunal that, for
26 example, in the case of that letter to Mr. Leonard, you
27 phoned up trustees and got their permission before you
28 did that?

29 A. I would have - in the normal way, sir, what I would
30 have done, I can't - that actual one I can't just say,

1 but in the normal course of events, sir, I would have
2 cleared them. I would have said, "I am drawing down",
3 or "I wish to draw down", or "I am drawing down", "I
4 would like to, if I could."

5 262 Q. You see what I am saying?

6 A. I can't remember that specifically, sir.

7 263 Q. I know you can't remember the particular transaction.

8 What I want to put to you is that it is quite clear
9 from that correspondence that the business was being
10 done in Dublin, the decisions were being made in
11 Dublin, the purse strings were being controlled in
12 Dublin, and the instructions for withdrawals were being
13 made in Dublin, and being complied with in Dublin ?

14 A. Sir, the position is what I explained to you, that
15 whilst they were - but I would have, I had lots of
16 conversations, but on the exact one saying to you - I
17 had lots of conversations with the trustees, and I
18 would say that I wanted to draw down, or "I will be
19 drawing down", maybe - that would be the situation. So
20 the Trust - they would have the ability to let a thing
21 like that go through, sir.

22 264 Q. Well, what I am suggesting to you is that you did, in
23 fact, and that is what this course of correspondence
24 indicates, and indeed, the role of Mr. Traynor
25 indicates, that complete control of this trust resided
26 in Dublin, and that the trustees were puppets that did
27 what they were asked?

28 A. Oh no. No, sir. No.

29 265 Q. They had no role in the decision-making as to the
30 disposition of the monies in the Foxtown account, that

- 1 that was within your complete control through
2 Mr. Traynor during the period when he was present?
- 3 A. Well, Mr. Traynor - I don't know where that came from,
4 but I can tell you that Mr. Traynor acted always, Mr.
5 Traynor managed this account. As I said to you before,
6 sir, we were very close. He was the manager. And I
7 would clear these things - these things would be - he
8 either would be - he was always in touch with the
9 trustees, sir. You know, this was an on-going - I
10 think apart from anything else, I don't know whether
11 they were trustees for himself as well, sir, but there
12 was something more than - that is what I wanted to
13 explain to you, as I did before. There was something
14 more than a normal arms' length, if you like, situation
15 with Traynor, Mr. Traynor. Those who he was looking
16 after, he was very much a hands-on man, and could do,
17 and had power to do - just because he set up - however,
18 it may not have happened in these days now, sir, but it
19 did happen then. He had absolute --
- 20 266 Q. Absolute what?
- 21 A. Power, yes, sir.
- 22 267 Q. To manage the account?
- 23 A. Well, he - yes, because he set it up, sir. I think he
24 did this with quite a few people who he was managing
25 their accounts for.
- 26 268 Q. Indeed. Indeed. You see, the problem with that,
27 Mr. Finnegan, is that he has no, as we have already
28 established this morning, he had no official role
29 whatsoever under the terms of the Trust?
- 30 A. Mmm.

1 269 Q. And the only way he could have control, he could have
2 control is by the trustees effectively complying with
3 his instructions, which it appears that they were
4 doing?

5 A. Yes, sir. I think that they had - whatever way - he
6 had certainly got a lot of goings-on with the trustees.

7 270 Q. Yes. Well, then, in the light of that I don't need to
8 go through most of the remaining correspondence, other
9 than to draw your attention to the fact that it does
10 indicate a similar course of dealings, some of them
11 indicate a course of dealings in which Mr. Turvey - the
12 last one we have had indicates that you, yourself,
13 directly made the withdrawal. In most other cases it
14 was Mr. Turvey that made the withdrawal, isn't that
15 right?

16 A. Yes, sir.

17 271 Q. It was all done under the auspices of Mr., the ever
18 present Mr. Traynor, isn't that right?

19 A. Yes, sir.

20 272 Q. All of the arrangements in Guinness & Mahon (Dublin)
21 were put in place by him?

22 A. Yes, sir. He was, as you say, ever powerful in that,
23 sir.

24 273 Q. Yes. And insofar as Mr. Turvey was the one that was
25 making these withdrawals, it was on your behalf, he
26 wasn't doing it, obviously, on his own behalf. Isn't
27 that right?

28 A. No, he wasn't, sir.

29 274 Q. Yes. Now, in addition to the question of withdrawals
30 from the account, Mr. Finnegan, Mr. Turvey was also

1 communicating with the trustees in connection with
2 various types of share dealings on the account.

3 .

4 If I can refer you to page 4980. If we could put that
5 up.

6 .

7 This is a letter from him dated the 4th of May, 1978,
8 to Mr. Lipscombe of Sovereign Management. He says:

9 .

10 "Dear John, I have pleasure to enclose two stock
11 transfer forms, as under, for completion by Foxtown
12 Investments Limited, and return to me.

13 .

14 With kind regards.

15 .

16 Your sincerely, Desmond Turvey."

17 .

18 He sets out two shareholdings, which had obviously been
19 purchased by you, or by him on your behalf. He was
20 sending over the Stock Transfer Forms to the trustees
21 to get them signed, isn't that right?

22 A. Yes, sir. We would. Yes, well these were, of course
23 they were also trading on the UK Stock Exchange, these,
24 but yes, sir.

25 275 Q. And there is a letter of the 6th of March, 1978, page
26 4981, where he wrote to a Mrs. Cahill in Guinness &
27 Mahon in Dublin, re Foxtown Investments Limited.

28 .

29 He says:

30 .

1 "Dear Mrs. Cahill, I am writing to confirm the
2 instructions given today to accept the cash offer from
3 TMG in respect of the above company's holding of 27,800
4 shares" in the company that is named there. Do you see
5 that?

6 .

7 So he had obviously previously given instructions to
8 Mrs. Cahill in Guinness & Mahon, presumably to be
9 conveyed through them to the trustees, to accept an
10 offer from TMG in respect of a certain shareholding.
11 Isn't that right?

12 A. Well, the only thing I can think of there, sir, is that
13 either the trustees were in touch with Cahill --

14 276 Q. But he is confirming the instructions in this letter,
15 his own instructions. This is a written confirmation
16 of instructions given verbally, I suggest. That is the
17 obvious meaning of that letter?

18 A. I don't know what - yes, I just don't quite understand
19 why Mrs. Cahill --

20 277 Q. She is somebody in Guinness & Mahon. She is an
21 employee, presumably, of Guinness & Mahon. It is - I
22 suggest to you what this letter means is that a
23 decision was made by somebody, I suggest you, to accept
24 a cash offer from TMG in respect of Foxtown's holding
25 in Hammond; that he gave her instructions on the
26 telephone to accept the offer, and that he is now
27 writing to her to confirm those instructions?

28 A. I can't understand that at all, sir, because what would
29 - I am just trying to get my head around what, why
30 would Guinness & Mahon - they wouldn't have bought the

1 shares, sir.

2 278 Q. No. Well, I infer from it that TMG have made an offer
3 to Foxtown for its holding in Hammond, and he told her
4 to accept that offer, and he is now writing to confirm
5 his instructions to her to accept that offer. That is
6 what the letter appears to mean, on its ordinary
7 meaning?

8 A. Well, I would read it another way, sir; that the only
9 thing I can think is that either the trustees were in
10 touch with her. Guinness & Mahon wouldn't have bought
11 any shares from me, sir.

12 279 Q. Guinness & Mahon were the parent company of the trustee
13 company?

14 A. Mmm.

15 280 Q. Mr. Traynor, you have told us, was in complete control
16 of everything, and had power to do everything he wanted
17 to do. Mr. Traynor, we know, was in Guinness & Mahon
18 in Dublin?

19 A. Yes, sir.

20 281 Q. So it is not surprising, I suggest, that he is giving
21 this instruction, or this confirmation of his
22 instruction to Mrs. Cahill, whoever she is in Guinness
23 & Mahon. Who is Mrs. Cahill as a matter of interest?

24 A. I have no idea.

25 282 Q. Was it a secretary or an assistant to Mr. Traynor?

26 A. I am - I can't remember.

27 283 Q. Well, would you agree with me that Foxtown didn't hold
28 any shares in, through Guinness & Mahon in Dublin, and
29 that the only correct interpretation of this letter is
30 that it was an instruction, effectively to Guinness &

1 Mahon, sorry to the trustee company, through Guinness &

2 Mahon in Dublin?

3 A. It sounds a bit strange to me, but that's why I

4 couldn't, I can't quite understand how she would, they

5 --

6 284 Q. Perhaps it was unusual, but can you think of any other

7 conceivable explanation for it, if not that?

8 A. Well, the only thing I can think of is that, if there

9 was an offer - shares were being held by Foxtown and by

10 the trustees, and that there was a communication from

11 them, and we are either responding to them --

12 285 Q. Well, it may be that the trustees made an inquiry

13 through Guinness & Mahon in Dublin, as to "what we

14 should do", but what they are getting here is a

15 decision?

16 A. Well, I think that the trustees would respect any - if

17 there was an offer for something, and that we are all

18 here in Dublin, and what information might have been on

19 the ground in Dublin about whatever this was.

20 286 Q. But this expresses itself, Mr. Finnegan, with respect,

21 as an instruction. He is confirming instructions that

22 were given that day to accept an offer?

23 A. Well, I don't know how that quite came around. That is

24 the only explanation that I can give you, sir, that it

25 might have been that --

26 287 Q. Can I suggest to you that the reason that it came

27 around, as I was putting to you all along, that you

28 were, in fact, making the decisions, the investment

29 decisions in this trust, and that is a classic instance

30 of it, where through your agent, Mr. Turvey, you are

1 giving your instructions to the trustees to accept an
2 offer which somebody had made for these shares?

3 A. Well, that could have been a very definite, that the
4 discussions had taken place between the trustees and
5 ourselves. This is a buy-out situation.

6 288 Q. It is - somebody has made Foxtown an offer for a
7 particular shareholding, somebody relayed an inquiry to
8 Mr. Turvey, or presumably through him to you, as to
9 what we should do. Mr. Turvey telephoned Mrs. Cahill,
10 or perhaps even spoke to her in person, I don't know,
11 and gave her an instruction that the offer should be
12 accepted. He is now, in this letter, confirming his
13 instruction that the offer should be accepted.

14 .
15 I am putting to you that is the plain and ordinary
16 meaning of that letter, and there is no other
17 interpretation of it possible?

18 A. All I can think of is what I said, sir. It is very
19 strange that it is going to Mrs. Cahill; that the word
20 must have come through some way, sir, from Guernsey,
21 and then they have come back asking us what we thought,
22 or I thought of that offer. Because I would have my
23 ears to the ground as to whether that was something
24 that was, that - the trustees would, from time to time,
25 talk about that sort of thing, because I would have,
26 like they would have on UK stock, I would know what is
27 going on here. They would ask my advice and say,
28 "Would you - should we, or do you think we should? Is
29 this the word around?"

30 289 Q. Mr. Finnegan, I don't really want to waste too much

1 time on this letter.

2 A. All right.

3 290 Q. It does say on the heading of the letter, "Re Foxtown
4 Investments Limited"?

5 A. Yes, sir.

6 291 Q. It says that he is confirming an instruction to accept
7 a cash offer for shares, which it is clearly implied in
8 the letter were held by Foxtown Investments Limited?

9 A. Yes. As I say, it is just that --

10 292 Q. It clearly refers to a letter from TMG in respect of
11 these shares?

12 A. Well, sir, not going on this - the only thing I can
13 say, then, is if we got that it must have come in from
14 the, from the trustees, that the offer - because we
15 wouldn't have got it.

16 293 Q. What I suggest came in from the trustees is a request
17 for instructions, and that is what they are getting,
18 instructions?

19 A. I think that when it would come to something special
20 like that, sir, either a take-over or something, there
21 would be a chat.

22 294 Q. Let's be clear about this. Did Guinness & Mahon
23 (Dublin), as such, have any role good, bad or
24 indifferent to do with Foxtown Investments Limited's
25 shares?

26 A. Not that I know of, sir.

27 295 Q. I suggest their only role was a conduit of information
28 between the trustees and the beneficiary?

29 A. Yes, sir.

30 296 Q. And that it is in that capacity, as a conduit, that

1 they are involved in this particular correspondence,
2 and that all that this correspondence shows is that Mr.
3 Turvey was giving your instructions to the trustees
4 about this particular transaction, to Guinness & Mahon
5 (Dublin), by way of confirmation of previous verbal
6 instructions that he had already given. That is quite
7 simply what this letter means?

8 A. I would think, sir, that, as I would see it, that there
9 were discussions, particularly on anything to do with a
10 buy-out of a company, that I had been, or we had been
11 contacted to see would we, what we had to say about it.

12 297 Q. If you agree that Guinness & Mahon were a conduit, to
13 whom were the instructions being conducted, if not the
14 trustees?

15 A. Yes, it is - it is just unusual, actually, that it is
16 coming through Guinness & Mahon.

17 298 Q. It may be unusual, Mr. Finnegan, let's not quibble
18 about that. The fact of the matter is, that Guinness &
19 Mahon are receiving instructions. They have no role
20 themselves in Foxtown's shares, or in share
21 transactions for Foxtown. Isn't that right?

22 A. That's right.

23 299 Q. They are receiving instructions from you, through Mr.
24 Turvey, in connection with a certain share transaction.
25 And I think you agreed with me that they could only
26 have been receiving those instructions as a conduit,
27 because they didn't have any dealings themselves?

28 A. So, what he is saying there, sir, that he is writing to
29 confirm the instructions given today. So there was a
30 chat about it, there was some discussion about it. So

1 he is writing to confirm. So - I don't know, that
2 could have been - there must have been a chat about it,
3 sir, because he is confirming --

4 300 Q. What is he confirming?

5 A. He is confirming instructions.

6 301 Q. Yes. And whose instructions is he confirming?

7 A. Yes, he must be - he would be confirming - I would say
8 that they are my instructions, sir.

9 302 Q. And to whom is he confirming your instructions?

10 A. He is either confirming my instructions back to, it
11 must be back to the trustees, yes.

12 303 Q. Thank you Mr. Finnegan.

13 .

14 CHAIRMAN: Could we just break at that point for twenty
15 minutes.

16 .

17 MR. HANRATTY: Thank you, Sir.

18 .

19 CHAIRMAN: I will say 12 o'clock.

20 .

21 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

22 RESUMED AGAIN AS FOLLOWS:

23 .

24 MR. HUSSEY: I am sorry, Sir, just before you resume.

25 .

26 I can confirm my instructions as - in accordance with
27 what you had requested this morning, that the Tribunal
28 would attend at the Guernsey court on Friday to hold a
29 watching brief.

30 .

1 CHAIRMAN: Would you be kind enough to send us a
2 letter, so we can fax it across?

3 .

4 MR. HUSSEY: Of course.

5 .

6 CHAIRMAN: Or send it across - well, fax it.

7 .

8 Thank you very much.

9 .

10 MR. HANRATTY: Well, what I was actually requesting is
11 that we, perhaps - they are obviously entitled to
12 attend, in the sense that anybody can attend any public
13 sittings in the High Court. The difficulty that arises
14 is that, apparently, in certain proceedings in the
15 Channel Islands they are held in chambers, where only
16 the parties and their lawyers might be present. And
17 apparently, we are told, that in certain circumstances
18 decisions can be made in chambers, unlike here, as you
19 know, where there is a constitutional requirement that
20 the matter be dealt with in public, except in specific
21 instances outlined in legislation.

22 .

23 It was really that, that we had a concern about, that
24 if something occurred in chambers, or in some way, that
25 a person simply attending, being present in court,
26 might be unaware to the extent that something might be
27 done in Chambers. That's why I referred to a Notice
28 Party type of situation, or even simply somebody who
29 would be permitted to be present at all stages of the
30 proceedings, public or private.

1 .
2 MR. HUSSEY: I couldn't see any difficulty with that. I
3 will, obviously, have to check with the Guernsey
4 solicitors.

5 .
6 CHAIRMAN: You will come back to us?

7 .
8 MR. HUSSEY: Of course.

9 .
10 CHAIRMAN: If you come back to us in the afternoon,
11 because we won't be sitting in the afternoon. If your
12 solicitors would be good enough to come back to
13 Ms. Howard.

14 .
15 MR. FINNEGAN CONTINUED TO BE EXAMINED BY MR. HANRATTY
16 AS FOLLOWS:

17 .
18 304 Q. MR. HANRATTY: There is another letter, Mr. Finnegan,
19 and I am not going to go through all of this
20 correspondence, because I don't think it's necessary,
21 but if I could just refer you to another piece of
22 correspondence. It's on page 4984. And this is a
23 letter from Guinness & Mahon Limited in Dublin to
24 Dudgeons, the stockbrokers. And it's in connection
25 with Foxtown Investments Limited. It says:
26 .
27 "Dear Sir, we have received Entitlement and Acceptance
28 Form over 114 Pacific Copper" at a price, "due for
29 payment in Australia on the 21st December, 1977. We
30 shall be glad to receive your early instructions in

1 this connection."

2 .

3 So what appears to be happening here, in this instance,

4 is that Guinness & Mahon Limited need a decision in

5 relation to this particular shareholding, isn't that

6 right? And in this instance they actually write to

7 Dudgeons, which were your stockbrokers, isn't that

8 right?

9 A. This is a letter to Dudgeons?

10 305 Q. Yes. You can see it's addressed to Dudgeons, 25

11 Suffolk Street?

12 A. Yes, sir.

13 306 Q. And Dudgeons reply in the next document, 4983, dated

14 the 25th of November, 1977. It's actually written by

15 Mr. Mungo Park. And it's to Mr. Turvey, where he is

16 relaying the request he has received from Guinness &

17 Mahon to Mr. Turvey. He says, again re Foxtown

18 Investments Limited.

19 .

20 "I enclose a letter from Guinness & Mahon asking

21 whether you should take up the rights to 114 Pacific

22 Copper shares. The market opinion is that the rights

23 should not be taken up, but this is only the opinion of

24 the London market. The current premium is 3 pence,

25 with the shares standing at 36 pence.

26 .

27 I think you were acting on specific information when

28 these shares were purchased, and accordingly you should

29 contact your source.

30 .

1 I will inform Guinness & Mahon, but perhaps you would
2 confirm our instructions not to take up these rights."

3 .

4 So here is Dudgeons, having received a request for
5 instructions from Guinness & Mahon, going back to
6 Mr. Turvey, or to you through Mr. Turvey, seeking
7 instructions on what is to be done, and also giving
8 some advice as to what their particular view on the
9 subject is.

10 .

11 And on the following page, page 4982, Mr. Turvey writes
12 back to Mr. Mungo Park and gives the instruction.

13 .

14 28th November, 1977. Re Foxtown Investments Limited.

15 .

16 "Dear Mungo, thank you for your letter of the 25th
17 November enclosing Guinness & Mahon's letter in
18 connection with the Pacific Copper shares. I confirm
19 that we do not wish to take up these rights. Thank you
20 for your advice."

21 .

22 So this is another instance, I suggest, where
23 Mr. Turvey, on your behalf, is actually giving
24 instructions to the trustees through Guinness & Mahon
25 as to what should be done in relation to this
26 particular issue which has arisen. Isn't that right?

27 A. Yes, sir. They refer back - in this case, it must have
28 been Pacific - what did they say there?

29 307 Q. Pacific Copper?

30 A. Yeah.

1 308 Q. An issue had come up as to whether or not an acceptance
2 should be sent in about an offer from Pacific Copper.
3 And when this request comes in, the trustees, obviously
4 through Guinness & Mahon in Dublin, relay a request for
5 instructions to the, in this case, the broker. The
6 broker goes back to Mr. Turvey, Mr. Turvey writes back
7 saying what his decision or what your decision is. And
8 therefore --

9 A. Yeah, I think it said some of that, that there might
10 have been - I just glanced at it. There might have
11 been "Pacific" instructions on this case, or something
12 of the information.

13 309 Q. No, that's the name of the shares.

14 A. Sorry?

15 310 Q. Pacific Copper.

16 A. Pacific Copper, yes.

17 311 Q. Is that right?

18 A. Yes, sir.

19 312 Q. So the trustees, when a decision has to be made, relay
20 that request for a decision through Guinness & Mahon to
21 the broker. Isn't that right?

22 A. Yes, sir.

23 313 Q. The broker, obviously, not wanting to make the decision
24 themselves, albeit that they have a view which they
25 express in their letter, write to Mr. Turvey seeking
26 his instructions and they get it. So again, Mr.
27 Finnegan, that's clearly an instance of you making the
28 investment decisions, in effect, in relation to
29 Foxtown's shareholding in this particular company,
30 isn't that right?

1 A. All I would say is that the - sir, in connection with -
2 that probably would have been a reasonably - copper
3 shares would have been the sort of things that could go
4 up or down very quickly.

5 .
6 CHAIRMAN: Mr. Finnegan, isn't it a simple matter,
7 that the buck stops with you? Isn't that the result of
8 that correspondence? The responsibility for the
9 decision stands with you.

10 A. They came back looking for my advice on it, yes.

11 .

12 CHAIRMAN: All right. Well, not your advice, your
13 decision.

14 A. Yes, sir.

15 .

16 314 Q. MR. HANRATTY: And if we look at page 4988, a letter of

17 the 17th November, 1977. It's a letter to Martin Keane
18 in Guinness & Mahon from Mr. Turvey and he says:

19 .

20 "Foxtown Investments Limited recently purchased 8,500
21 Independent Newspapers Limited shares. They have now
22 given instructions to Dudgeons to sell at 95p or
23 better, and the first small transaction has been
24 completed. I enclose the stock transfer form over 500
25 shares, which I would be obliged if you would have
26 completed and forward to Dudgeons on our behalf."

27 .

28 So here is Mr. Turvey informing, through Guinness &
29 Mahon (Dublin), informing the trustees of a share
30 purchase which has taken place. Isn't that right?

1 A. Yes, sir.

2 315 Q. And asking them to have the share - the stock transfer
3 form for 500 of those shares completed by the trustees?

4 A. Yes, sir.

5 316 Q. And there are other pieces of correspondence in this
6 Dudgeons' file which indicate a similar course of
7 dealing, where decisions in relation to the purchase
8 and sale of shares are made, and then relayed or
9 conveyed to the trustees, sometimes directly, but more
10 often than not through Guinness & Mahon. Isn't that
11 right? Guinness & Mahon, that is, in Dublin?

12 A. Sir?

13 317 Q. In Dublin. That the information is given to the
14 trustees by writing to Guinness & Mahon in Dublin, who
15 we presume were in contact with the trustees?

16 A. Yes, I'd say that they - that they were - they would
17 have been in touch with the trustees, yes, sir.

18 318 Q. Yes. Well, all of that amounts to, Mr. Finnegan, I
19 suggest, simply is confirmation of the proposition that
20 I put to you before, and in respect of which we had
21 previous, albeit different evidence, namely, that in
22 fact and in reality the seat of control, the seat of
23 decision-making in respect of the Foxtown assets was
24 Dublin, was you, not the trustees?

25 A. No, sir. I think that's going globally - these, sir -
26 naturally, the trustees would have - would acknowledge
27 what I - if I had an opinion, sir, and they could come
28 to me and ask me about certain things, sir.

29 319 Q. But this correspondence isn't asking for opinions,
30 Mr. Finnegan, and doesn't deal with opinions. It deals

1 with instructions.

2 A. Yes.

3 320 Q. And an instruction is, in the ordinary - in all senses
4 of the word, an order, a decision --

5 A. Yes, it's come back through the loop, sir. They have
6 come back to us asking what - for my instructions. I
7 don't know what discussions had taken place, sir, and
8 it's not a very - I don't think it's a very big
9 transaction, sir.

10 321 Q. But the fact that you are giving instructions on
11 investments means that you are making the investment
12 decisions?

13 A. Well, they could always come back - sir, I think the
14 fact is that they could - I wouldn't necessarily make
15 all the decisions, sir. They could - the Trust could
16 be doing the job, sir, and asking me as a person here,
17 what would I feel, sir. Was I in - would I agree with
18 what they are doing, sir.

19 322 Q. But - I don't want to spend, again, too much time on
20 this, but they weren't asking you how did you feel, Mr.
21 Finnegan. They were asking for your instructions.

22 A. Yes, sir.

23 323 Q. It's quite clear from that correspondence, I suggest to
24 you. One can put whatever construction that one likes
25 on it, but the ordinary sense of the term
26 "instructions" means that you are making the decisions
27 and relaying your decisions to the trustees for
28 implementation?

29 A. Well, I was - yes. They got my instructions, and I
30 think that Mr. Turvey probably had various discussions

1 before this, sir.

2 324 Q. Now, going back to what we were discussing last week.

3 We were dealing with the Sandyford land transaction, if

4 you recall?

5 A. Yes, sir.

6 325 Q. I asked you about this question as to whether or not

7 you had any knowledge of the payment of ú35,000 to

8 Mr. Ray Burke by Brennan and McGowan in March of 1984.

9 And you told us that you had not, isn't that right?

10 A. I had not, sir.

11 326 Q. We know that in - at some point in 1984 the question

12 came up of obtaining a loan from Lombard & Ulster?

13 A. Yes, sir.

14 327 Q. How did that first arise, so far as you can recall?

15 A. Well --

16 328 Q. How did it first come up?

17 A. About the loan?

18 329 Q. Yes.

19 A. Well, in or around about that time, sir, things were

20 happening - I am just reflecting - things were

21 happening about which I had concern - it goes back a

22 little bit, sir. That's where I had instructed Barry.

23 We were concerned about the - that there was a charge

24 on the property. We went through at that stage - we

25 had had earlier on the - a long time ago about the

26 contracts for the - what do you call it - the stock

27 relief. But we had particularly, prior to, sir, this

28 time, and this was leading up to, by the way --

29 330 Q. This is this difficulty we had last week, that you had

30 with Messrs. Brennan and McGowan charging the property?

1 A. Yes.

2 331 Q. We can just give you a point of reference. If we look
3 at page 699. This Mr. Barry's note of the meeting,
4 which he sent for approval to Mr. Wheeler. We've been
5 through it in detail, and I don't propose to go through
6 it again.

7 .

8 Essentially Mr. Barry set out what his requirements
9 were in relation to, as it were, regularising matters,
10 and ensuring that no such difficulties might arise
11 again in the future. In particular, requiring that he
12 be put on the Board, isn't that right?

13 A. Yes, sir.

14 332 Q. He was, in fact, put on the Board?

15 A. He was.

16 333 Q. Now, this document is dated the 26th of June of 1984 -
17 sorry, it refers to a meeting that took place on the
18 26th of June, 1984, in Jersey, in the offices of Bedell
19 & Cristin.

20 A. Yes, sir.

21 334 Q. So we can fix the time at which this issue, as between
22 yourself and Messrs. Brennan and McGowan, or this
23 difficulty was resolved, and the manner in which it was
24 resolved, by putting in place procedures, particularly
25 the appointment of Mr. Barry to the Board of the
26 company to protect your interests?

27 A. Yes, sir.

28 335 Q. And it appears that it was at a point in time
29 subsequent to these arrangements having been made, that
30 the question arose about a loan from Lombard & Ulster,

1 or a borrowing from Lombard & Ulster by Canio Limited.

2 Isn't that right?

3 A. Yes, sir.

4 336 Q. Now, can you recall, how did it first arise or how was

5 it first brought to your attention that there was a

6 proposal to make this borrowing?

7 A. First of all, sir, I think you can take it that

8 following - the deeds were shown. Leading up to that,

9 sir, we had lots of anxiety as to what the position was

10 regarding the title.

11 .

12 Now, when it was - I think you can take it that there

13 was a sigh of relief, and that now we are back on

14 reasonable grounds, sir, when we got this - this letter

15 isn't about the deeds --

16 337 Q. Well, it's the minute or the note that Mr. Barry took

17 of the meeting, as you can see. You were at the

18 meeting, Mr. Brennan, Mr. McGowan, Mr. Russell were at

19 it, and Mr. Barry and Mr. Wheeler were there too?

20 A. Mm-hmm.

21 338 Q. And it was an important meeting that involved

22 travelling by yourself, Mr. McGowan and Mr. Brennan

23 from Ireland to Jersey --

24 A. Yes.

25 339 Q. -- to go to it?

26 A. Yes.

27 340 Q. And it arose out of a significant concern you had about

28 things going on behind your back, in effect, in Canio?

29 A. Yes, sir.

30 341 Q. And a worry you had about this particular investment?

1 A. Yes, sir.

2 342 Q. Because in this case it was an investment, it wasn't a
3 case where they were giving you any money for anything.
4 You were a one-third equal partner with them.

5 A. I was, sir.

6 343 Q. Yes. So you did have worry, and you perceived at the
7 time that you had good cause for worry, having heard
8 about contracts to sell the land and charging of the
9 land, and so on?

10 A. Yes, sir.

11 344 Q. So this meeting was had, the arrangements, as set out
12 in that letter were put in place, in the sense that
13 Mr. Barry was, in fact, subsequently appointed to the
14 Board, and, as I understand the position, yourself and
15 Mr. Barry were reasonably content that this was a
16 successful meeting, at which your interests were
17 protected?

18 A. Yes, sir.

19 345 Q. Now, at some point after that, a question arose in
20 relation to a potential borrowing of a very substantial
21 sum of money from Lombard & Ulster?

22 A. Yes, sir.

23 346 Q. And what I am trying to ascertain is when was this
24 first broached to you?

25 A. I think that it was around, sir - it was sometime after
26 the - sometime, I don't know exactly when, but it was
27 after the - we now had established - we were, as I
28 said, very worried leading up to this. Now we had this
29 established, and the deeds are in, the deeds are now in
30 with the lawyers over there. And after that, sir,

1 somewhere along the line, there was a discussion about
2 - that a loan, applying for a loan or getting a loan
3 from Lombard & Ulster.

4 347 Q. Yes.

5 A. And that that would be to refinance - to finance the
6 property, and that went on. And then it came around
7 that - I can't give you the exact date, sir, but it
8 came around, then, that progress was being made and
9 that there was a loan available.

10 348 Q. First of all, who was it that first mentioned it to
11 you?

12 A. I think it was Joe McGowan.

13 349 Q. Yes. And can you say approximately how long after the
14 meeting in Jersey did that happen?

15 A. I don't think it was too long, sir. That's my
16 recollection.

17 350 Q. Did he tell you the amount that they were thinking of
18 borrowing?

19 A. I don't recollect that, sir. No.

20 351 Q. Yes. We know that at this particular point in time
21 Canio didn't have any particular cash requirement, in
22 the sense that, as you've already told us, the property
23 was bought for the long haul, as it were?

24 A. Yes, sir.

25 352 Q. With a view, and in the hope that it would obtain
26 rezoning, as inevitably it would at some point in the
27 future, and that therefore it could be sold as
28 development land or developed?

29 A. Mm-hmm.

30 353 Q. But that wasn't imminent, by any means, at this

1 particular point in time. We are still talking about

2 1984, isn't that so?

3 A. Yes, sir.

4 354 Q. So Canio, as such, had no cash requirement. The lands

5 had been bought and paid for. There was nothing really

6 happening at that time, so far as the land was

7 concerned. Isn't that right?

8 A. That's right, sir.

9 355 Q. So what was the reason that was proposed to you for

10 this borrowing?

11 A. Well, it was proposed that we would - it wouldn't be an

12 abnormal thing to do, would be to seek a loan and get

13 some money out of that which had been invested in it.

14 .

15 Now, at that particular time, sir, I must say that I

16 had been very, very worried about this, up to this

17 point, and still have some concerns. So I was, I

18 suppose, quite receptive to - there was something - I

19 know I mentioned the other day to you, sir, that I

20 think that Mr. McGowan said, "Well, look, apart from

21 anything else, now we have it, the land, and that will

22 keep you quiet," or something like this. That confirms

23 to you, that when you see a loan actually going

24 through, that that is the situation about - you see,

25 there were other things, in the background, years ago,

26 sir, about the contracts - what do you call them?

27 There were various contracts that Kilnarnagh had. And

28 they would have been lingering with me a little bit,

29 sir, but there was nothing further mentioned about

30 them. And I take it that they had lapsed. But it was

1 a very good thing for me to see that there was, now, a
2 borrowing. And I was anxious - a borrowing was
3 proposed, and --

4 356 Q. Was this in the sense that the borrowing would give you
5 some comfort that the lands were, indeed, unencumbered?

6 A. Yes, sir. Well, there were two things. You can take
7 it that leading up to this, I was very concerned. Now,
8 there is a little bit of salvage - now we are getting
9 into a situation where we have a chance of getting
10 something out.

11 357 Q. Yes.

12 A. And it would do what we talked about then, that if - at
13 least, that in getting a loan, that did it, cleared the
14 decks, in my mind, up to that point, and say, "Here, we
15 are starting off again from here." Because you
16 wouldn't get a loan if there was any trouble on the
17 deeds.

18 358 Q. Yes, indeed. So that would be confirmation to you that
19 the lands were, indeed, unfettered by any contracts or
20 anything of that nature?

21 A. Yes, sir.

22 359 Q. Just on the concerns that you had. It seems that
23 Mr. Barry did actually have some level of contact with
24 Mr. Wheeler about your concerns, even before the
25 meeting of the 26th of June. If I can just refer you
26 to page 690.

27 A. Yes, sir.

28 360 Q. This is a letter he wrote to Mr. Wheeler on the 11th of
29 June, 1984. I think we go through it - we've had it
30 before with another witness. I think it's worth just

1 recording it again. It's: "Dear Mr. Wheeler, re Canio
2 Limited Ardcar Limited."

3 .

4 "Thank you for your time on Friday. I am writing to
5 summarise the points we covered at our brief meeting."

6 .

7 That would appear to indicate that, in fact, subsequent
8 to you having expressed your concerns to Mr. Barry, he
9 took the trouble to meet Mr. Wheeler, to discuss the
10 matter. And pursuant to his meeting, he then sets out
11 a number of points:

12 .

13 "1. You confirmed that Canio Limited is a wholly-owned
14 subsidiary of Ardcar Limited, and kindly allowed me to
15 examine Declarations of Trust demonstrating that all 12
16 issued shares of Canio Limited are held by
17 officers/employees of your firm as nominee for Ardcar
18 Limited.

19 .

20 2. You confirmed that the issued share capital of
21 Ardcar Limited, being 12 shares, is owned as follows:

22 .

23 Gasche Investments Limited - four shares.

24 Kalabraki Limited - four shares.

25 Foxtown Investments Limited - four shares.

26 .

27 You allowed me to examine Declarations of Trust
28 evidencing these holdings, and you delivered me four
29 Declarations of Trust and stock transfer forms
30 (executed in blank) in respect of Foxtown's beneficial

1 interest, receipt of which is hereby acknowledged.

2 .

3 3. I have informed you that it is our, i.e. Foxtown's
4 understanding that the assets of Ardcarne Limited and
5 Canio Limited, being principally land in Ireland, are
6 not subject to any mortgage, pledge, bond, or charge,
7 et cetera, and that they should not be so encumbered,
8 nor disposed of without Foxtown's prior written
9 consent. You have accepted this point.

10 .

11 4. You have agreed to supply me with statements of
12 affairs for both Ardcarne Limited and Canio Limited
13 detailing the company's assets and liabilities. You
14 have also agreed to ascertain and confirm that Canio
15 Limited has good, clean title to its assets, via land
16 holdings in Ireland, and that such assets are
17 unencumbered by any mortgage, pledge, bond or charge,
18 et cetera. I would appreciate receiving these
19 confirmations as soon as possible.

20 .

21 5. You have agreed that I shall be appointed as a
22 director of both Ardcarne Limited and Canio Limited as a
23 representative of Foxtown's one-third interest in these
24 two companies. Please confirm in due course that my
25 appointment has been effected.

26 .

27 I look forward to hearing from you.

28 .

29 Yours sincerely, David Barry, Director."

30 .

1 And, as it were, that laid the ground work for the
2 meeting which, in fact, subsequently was arranged. And
3 obviously after that letter it was decided that a
4 meeting would be arranged which would be attended by
5 yourself and Mr. Brennan and Mr. McGowan --

6 A. Yes, sir.

7 361 Q. -- with your respective representatives, in your case,
8 in the case of Mr. Barry. They attended without
9 representative, but Mr. Wheeler was there in his
10 capacity as the representative of Bedell & Cristin.
11 And he had, prior to that meeting, obviously, in
12 accordance with that letter, at a previous meeting that
13 he had personally with Mr. Barry, produced Declarations
14 of Trust indicating that, indeed, four shares in
15 Ardcarn Limited were held in trust for Foxtown
16 Investments Limited.

17 .

18 And all of the points in that letter, I think, were
19 essentially firmed up and acted upon subsequently, and
20 implemented after the meeting of the 26th of June.

21 Isn't that right?

22 A. Yes. Mr. Barry had - it's coming back to me, sir.

23 Mr. Barry had said to me that it was advisable to get -
24 for him to get on the Board, and he would do what - he
25 would do what he could to --

26 362 Q. Yes.

27 A. But he says that he couldn't, naturally, guarantee - it
28 was something about, that that would be a complete
29 control, that he couldn't vouch everything was now in
30 order, because he couldn't.

1 363 Q. Yes. Well, the problem that you had, or the worry that
2 you had was what were Brennan and McGowan up to?

3 A. I didn't know up till then, yes, sir.

4 364 Q. Yes. And what you were concerned they might be up to
5 was the pledging of the land, or the encumbrancing of
6 the land in one way or another, without your knowledge
7 or consent?

8 A. Yes. Yes, sir.

9 365 Q. On the basis that through the corporate structure which
10 had been put in place, you should have been on notice,
11 both in the capacity as shareholder in the form of
12 Foxtown Investments Limited, and from now on, also on
13 the basis that Mr. Barry was going to be a director of
14 the companies?

15 A. Well, he thought that would be a good thing, to be in
16 that position.

17 366 Q. Yes. This problem, would you agree with me, did not
18 involve Mr. Wheeler, in the sense that he was Bedell &
19 Cristin, they were the registered office, and this was
20 the office within which the corporate infrastructure
21 was established?

22 A. Yes, sir.

23 367 Q. There was never any suggestion that, at that point,
24 certainly, that he was involved with Brennan and
25 McGowan in doing anything behind your back?

26 A. No, not that I - no, sir.

27 368 Q. And there was never any suggestion that when he said
28 that the land was unencumbered, he was merely relaying
29 information which had been given to him by Messrs.
30 Brennan and McGowan?

1 A. Mm-hmm.

2 .

3 MR. HAYDEN: Sir, obviously, this is not my witness,

4 but if we are getting into this line of inquiry, I

5 think it would be preferable if the questions weren't

6 quite as leading, and allow Mr. Finnegan to give his

7 own view, rather than a "yes" or "no" to --

8 .

9 369 Q. MR. HANRATTY: Well, when you had concerns about the

10 possibility that the land might have been encumbered

11 perhaps by a pledge or mortgage, or that there were

12 contracts, apparently, involving the company and

13 Brennan and McGowan, did you have any concerns about

14 Mr. Wheeler, as such?

15 A. Well, you can take it, sir, that I would have, at this

16 stage - at the stage I was at leading up to this, I had

17 lost complete confidence in everything. At the time

18 Barry said to me, when I discussed the thing, we talked

19 about the mortgages and the pledges, like this, he

20 says, "Well, look, if they are there, you are certainly

21 now in a spot, if you like. These are there - well, I

22 am afraid even when I am coming in now, that if this -

23 if all of these actions have taken place, that, well, I

24 don't know what I'll be able to do to help you, but we

25 should go ahead now and do the very, very best we can."

26 .

27 Now, I was very concerned, naturally, about everything,

28 so just then I was looking at a pledge of the deeds,

29 possible contacts still in existence for the - so that

30 tax relief, or whatever it was. So it was quite a

1 serious situation, sir.

2 370 Q. Well, one of the concerns, obviously, that Mr. Barry
3 had was, were you even a shareholder of these companies
4 that owned the land, isn't that right?

5 A. Yes, sir.

6 371 Q. And he took the trouble of having Mr. Wheeler satisfy
7 him, that the appropriate arrangements had been made to
8 secure your shareholding?

9 A. Yes, I think he was coming from - I think Mr. Barry
10 just came from scratch, sir.

11 372 Q. Yes. Because up to that point in time it appears that
12 Bedell & Cristin were receiving their instructions from
13 Messrs. Brennan and McGowan?

14 A. Yes, sir.

15 373 Q. And obviously we are not - were not receiving them from
16 Mr. Barry, in the sense that he had not, up to that
17 point, apparently, been shown any Declarations of Trust
18 previously, confirming that the shareholding or the
19 one-third of the shareholding was, in fact, held for
20 Foxtown?

21 A. No.

22 374 Q. So he thought it was prudent that he better get that
23 sorted out?

24 A. Yes, sir.

25 375 Q. In fact, it's the first thing he mentions in both of
26 his letters - sorry, in his letter - the second thing,
27 actually, that he mentions in his letter. The first
28 thing he mentions in his letter, just to sort out what
29 the corporate structure is, that Ardcarn owns Canio.
30 And then, that Ardcarn is a company of which Foxtown

1 is, in fact, a one-third owner, by reason of a

2 Declaration of Trust. Isn't that right?

3 A. I think that - you are absolutely right, sir.

4 376 Q. So that was - once it was confirmed that you were a

5 one-third shareholder, at least he would have had the

6 comfort, and presumably you would have had the comfort,

7 of knowing that no decisions could be taken, which

8 could only be taken by shareholders, without reference

9 to you?

10 A. Yes, sir.

11 377 Q. Bedell & Cristin is a company which we have been told

12 provides trust and administration services on a

13 professional basis to a whole range of clients in the

14 Channel Islands, is that right?

15 A. Yes, sir.

16 378 Q. It's a firm of which you had, perhaps not direct, but

17 certainly limited experience, to the extent that you

18 were aware that it was the firm which was the seat of

19 the two companies formed on behalf of the Pembroke

20 Estate, Herbert Properties Limited, and Herbert Estates

21 Limited, of which you were a director, albeit, without

22 direct dealings, you say at that stage, with Bedell &

23 Cristin. But you would have known the name?

24 A. Well, now, looking back, sir, yes. But it didn't

25 register an awful lot with me. But that's immaterial.

26 379 Q. Yes. You've seen all of the documentary evidence that

27 has been produced in extenso before this Tribunal from

28 the Bedell & Cristin files, and in particular, the

29 various bits of corporate documentation, where

30 Mr. Wheeler duly records the resolutions of all these

1 various companies, and records the Declarations of
2 Trust by various individuals in Bedell & Cristin, on
3 which they hold shareholdings in sister companies on
4 trust for the beneficial owners.

5 .
6 And you've heard also the evidence of Mr. Simon Howard,
7 who gave evidence about these particular matters
8 relating specifically to Canio and Ardcar, but also to
9 Whisper Investments Limited, Victa, Rapallo,
10 Bouganville and Glenree. You've heard that evidence?

11 A. Yes, sir.

12 380 Q. And it appears from the documentation that this firm
13 appears to have conducted its affairs in a
14 business-like and professional manner?

15 A. Yes, sir.

16 381 Q. Would you agree with that?

17 A. Yes, sir.

18 382 Q. Most recently, we've seen it in the case of Keno
19 Investments Limited, where we were looking at the
20 resolutions of Keno Investments Limited, but we also
21 note that they were made by all of the other companies
22 involved in the St. Stephen's Green property, in each
23 one of them had duly convened meetings of the members
24 of the company in the offices of Bedell & Cristin,
25 passed resolutions for the charging of their
26 respective, albeit minimal shareholdings, except in the
27 case of Keno, in the St. Stephen's Green property, with
28 a view to them executing a debenture, which we know was
29 subsequently executed by each one of them. Isn't that
30 right?

1 A. I believe so, sir.

2 383 Q. All the paperwork appears to have been properly
3 attended to, in that all of these secretarial
4 functions, as it were, appear to have been properly
5 done?

6 A. Yes, sir, through Mr. Owens. Yes, sir.

7 384 Q. So that once Mr. Barry was made a director, he would
8 now be comforted in the knowledge that not only would
9 he - would the interests of Foxtown be secured in its
10 capacity as the beneficial owner, but that he would
11 have a seat on the Board, and therefore be entitled to
12 attend at any board meetings where any decisions would
13 have to be taken affecting the affairs of that company,
14 isn't that right? In this case, Ardcarne Investments
15 Limited. Or is it Ardcarne Limited?

16 A. Yes, sir.

17 385 Q. So that after these arrangements were put in place,
18 would it be true to say that yourself and Mr. Barry
19 were reasonably satisfied that everything that could be
20 done at that stage had been done?

21 A. Yes. But I think - yes, everything could be done, had
22 been done. But he did go on to say, that as a - it
23 wouldn't - that he didn't necessarily think that he was
24 100 percent, sir, because whatever - I can't recollect
25 whatever way he put it, but registration would be
26 different here than registration there, and all of that
27 sort of thing. So that's why they couldn't see before,
28 whatever was happening. So, it was a big improvement,
29 sir.

30 386 Q. Well, obviously you had a lingering worry, as you've

1 told us, because, while you can look after the
2 corporate end of things and make sure everything is in
3 apple pie order, there is no guarantee that somebody
4 hasn't done something, perhaps unbeknownst to Bedell &
5 Cristin?

6 A. Yes, sir.

7 387 Q. That was, presumably, the concern that you had?

8 A. Well, I think that, without going into too much, sir,
9 that the concerns that I had, having those that have
10 been reflected, and you've seen the documentation that
11 came up, leading up to now, and anyone --

12 388 Q. Yes?

13 A. I myself would have been --

14 389 Q. The phraseology used by Mr. Barry in his letter, after
15 his private meeting with Mr. Wheeler is - if you just
16 bear with me while I find the actual reference. At
17 paragraph 3:

18 .
19 "I have informed you that it is our, i.e. Foxtown's
20 understanding that the assets of Ardcarne Limited and
21 Canio Limited, being principally land in Ireland, are
22 not subject to any mortgage, pledge, bond, or charge,
23 et cetera."

24 .

25 That was specifically what he was worried about?

26 A. Yes, sir.

27 390 Q. (A), he wanted to sort out and be absolutely clear that
28 your ownership was, in fact, registered and protected,
29 or encapsulated, as it was, in fact, in the Declaration
30 of Trust. But (B), that the assets of the company -

1 once it was established that the corporate end of
2 things were all right, that the assets of the company
3 had not been mortgaged, charged or pledged, or
4 whatever. And he deals with that specifically as well
5 in this letter, isn't that right?

6 A. Yes, sir.

7 391 Q. But as I understand your evidence, that you still had
8 this lingering worry? After all of the corporate stuff
9 was put in order, and after these assurances were
10 given, you still had this lingering worry, to the
11 extent that you found the proposal about a borrowing
12 from Lombard & Ulster, a sort of a comfort. Is that
13 right?

14 A. Yes, sir.

15 392 Q. In that, if they were in a position to borrow a
16 substantial sum of money off a bank, well, that would
17 tend to confirm or corroborate the fact that the
18 property wasn't otherwise charged?

19 A. Absolutely, sir.

20 393 Q. But when Mr. McGowan was coming to you, making the
21 proposal of this borrowing, was that the reason that he
22 was proposing that it should be borrowed, or was there
23 some other reason? Was it a case of just taking some
24 money out at the time?

25 A. There was different - I think there was chat around the
26 place. But I think that the main thing, this is -
27 "Now we have the opportunity of getting a loan, and you
28 are getting this financed. And this would be a good
29 thing." There was some loose chat, but I wasn't
30 interested in it, sir, about talking about maybe there

1 was some - that it could be invested or whatever. But
2 I really was interested in getting a repayment of
3 monies that had been put in --

4 394 Q. Well, we do know that the lands had been purchased in
5 1980 for ú630,000.

6 A. Mm-hmm.

7 395 Q. We know that ultimately the borrowing from Lombard &
8 Ulster was ú525,000.

9 .
10 Now, when were you first told how much it was proposed
11 to borrow from Lombard & Ulster?

12 A. Well, again, the one thing here, sir, that you've been
13 reminded by some paperwork just coming in, for
14 recollections, but I think that it was certainly
15 sometime after the title deeds were brought over. That
16 was the one remembering date to me, that we had now,
17 the deeds were in possession --

18 396 Q. You mean the title deeds of the land brought over for
19 the purpose of the loan?

20 A. No. I think that the title deeds - what happened was
21 this: That the deeds were brought over to show that -
22 when we went over, sir, the deeds were brought over to
23 confirm that there was no charges on them, no charge,
24 that Mr. - what do you call him, the lawyer?

25 397 Q. You are talking about the 26th of June, I presume, when
26 Mr. Russell produced the title deeds?

27 A. The title deeds. That's it, yes, sir.

28 .
29 MR. HAYDEN: Sir, Mr. Finnegan indicated, it's not an
30 objection, honest - Mr. Finnegan indicated that there

1 was some documents that he had just come to that fixed
2 in his mind the time when he became aware of the loan.
3 I may have misheard him. If there is a document, or
4 are documents that he says fix his time, I wonder what
5 they are? Because, obviously, from Messrs. Brennan and
6 McGowan's, the issue as to when the loan was discussed,
7 it may only be weeks, but it certainly is in issue in
8 the context of, if the witness says he didn't know
9 about it until a number of weeks after the application.

10 And Mr. Finnegan did seem to say, in answer to
11 Mr. Hanratty, that it was some documents he had just
12 come to hand --

13 .

14 CHAIRMAN: As of the 11th of June, Mr. Finnegan,
15 through the - or more accurately, Mr. Barry, had been
16 assured that Foxtown's understanding, that the assets
17 are principally land in Ireland, and are not subject to
18 any mortgage. It has agreed to submit the Statement of
19 Affairs showing the details, and agreed to confirm that
20 Canio had good title, good clean title to the assets,
21 mainly land holdings, and they are unencumbered of any
22 holdings.

23 .

24 MR. HAYDEN: Yes. But that's not the question, Sir.

25 .

26 CHAIRMAN: I appreciate that. He now knows, or he
27 believes he knows, or he has been told that they were
28 unencumbered at that point. We go on then to the
29 question of raising a loan, and why.

30 .

1 MR. HAYDEN: And the witness did say, as I understood
2 him, that there is some documentation that he has, or
3 that he referred to some documentation to the effect
4 that this fixed in his mind when he first became aware
5 of the loan application, and it seems to be tied in
6 with his earlier answer that it was after the meeting
7 of the 24th or 26th of June, that the meeting - with
8 Bedell & Cristin.

9 .
10 It's just that --

11 .
12 MR. HANRATTY: That's something that perhaps Mr. Hayden
13 can explore in examination. And if there are other
14 documents, or if Mr. Hayden has reason to believe that
15 Mr. Finnegan may have been referring to other
16 documents, then he can explore that in due course.

17 .
18 MR. HAYDEN: I thought it might --

19 .
20 CHAIRMAN: Let's proceed. We are getting along grand
21 at the moment. We are getting the situation clear, as
22 far as Mr. Finnegan is concerned.

23 .
24 398 Q. MR. HANRATTY: What I would like to know, Mr. Finnegan,
25 as I have put to you, that the property was bought for
26 ú630,000 in 1980, we are now in 1984. There is a
27 proposal for Mr. McGowan to make a substantial
28 borrowing, from which you take some comfort, because
29 you believe it gives some corroboration to you that the
30 lands were, indeed, as Mr. Wheeler or Mr. Russell had

1 said, were unencumbered.

2 .

3 When were you first told - we are now talking about a
4 period, obviously, between June and November, because
5 we know the loan was actually drawn down in November?

6 A. Yes.

7 399 Q. When were you first told of the amount that it was
8 proposed to borrow?

9 A. First of all, sir, if I might just clarify something.
10 When I said that I had - when we had seen some
11 documentation, that was when Mr. Russell actually
12 brought the deeds - he confirmed at the meeting with
13 Mr. Barry.

14 400 Q. Yes. This was on the 26th of June?

15 A. Yes, sir.

16 401 Q. This is the meeting in Jersey --

17 A. And that the comfort was then, sir, that's what I am
18 saying, that now the deeds are over there.

19 402 Q. Yes.

20 A. Yes.

21 403 Q. Did he leave them with Mr. Wheeler?

22 A. As far as I understand, yes, sir.

23 404 Q. I see. Well, they would have been needed, obviously,
24 subsequently for the borrowing from Lombard & Ulster,
25 and presumably he would have sent them back?

26 A. But I think that - to clear it, sir, I know that the
27 anxiety on my mind, the fact that having worried
28 beforehand what was going on, and the fact that
29 Mr. Russell was now going to come and give the deeds.
30 That was a big thing for me.

1 405 Q. A big comfort?

2 A. Yes, sir.

3 406 Q. Yes. Because it would indicate that they weren't

4 legally mortgaged, for a start, and they weren't given

5 to somebody else by way of a deposit?

6 A. Yes, sir.

7 407 Q. But they didn't, as we subsequently found out, and as

8 you, unfortunately, and the banks found out, prevent a

9 solicitor's undertaking having been given, which it

10 turned out had been given?

11 A. Had been given.

12 408 Q. The deeds, just to remind ourselves, are referred to on

13 page 699. This is Mr. Barry's note of the meeting of

14 the 26th of June. And in paragraph 3 he says:

15 .

16 "Mr. Russell confirmed that Canio had good clean title

17 to the land assets in Ireland, and that they were not

18 subject to any mortgage, pledge, bond or charge, et

19 cetera. He agreed to confirm this fact to Mr. Wheeler

20 in writing, so as to enable Mr. Wheeler to give a

21 similar confirmation to Mr. Barry.

22 .

23 Mr. Russell stated that the title deeds had been in the

24 custody of his firm since the land's acquisition by

25 Canio. He listed the deeds, and delivered them to

26 Mr. Wheeler for safekeeping against an acknowledgment

27 of receipt."

28 A. That's it.

29 409 Q. That's what you are referring to?

30 A. Yes, sir.

1 410 Q. And when he was referring to the question of a
2 mortgage, charge or pledge or whatever, he, that's
3 Mr. Russell, agreed to confirm that fact in writing to
4 Mr. Wheeler, so that Mr. Wheeler could, in turn, give
5 that assurance to Mr. Barry. Isn't that right?

6 A. Yes, sir.

7 411 Q. So it's quite clear that any assurance that Mr. Wheeler
8 was going to be giving to anybody, was on the basis of
9 information he had received from Messrs. Brennan and
10 McGowan's solicitor?

11 A. Yes, sir.

12 412 Q. Now, to get back to the point about the amount of the
13 borrowing. When do you first - when were you first
14 told about how much they were proposing to borrow?

15 A. Well, I am just trying to recollect, sir, when, but I
16 think it was that we either - as I heard, that there is
17 a chance that we can get a loan. I think Joe McGowan
18 said there was a chance we could get a loan from
19 Lombard & Ulster.

20 413 Q. Yes. Did he indicate to you at this time that he had
21 already spoken to Lombard & Ulster about it?

22 A. No, sir. Not that I recollect.

23 414 Q. Well, presumably, he must have done, if he thought
24 there was a chance --

25 A. A chance of getting a loan --

26 415 Q. Somebody must have given --

27 A. A chance, yeah, a chance of - I can't tell you exactly
28 what way it came about, but there was - that Lombard &
29 Ulster were mentioned.

30 416 Q. Yes. Would this have been around the same time as this

1 meeting in Jersey in June of 1984?

2 A. It was sometime after. I don't know how long after,
3 sir, but it was sometime after.

4 417 Q. Yes.

5 A. I think it was business well done that day, sir.

6 418 Q. Yes, indeed. We know, for example, if I can just refer
7 you to page 694. This is a Lombard & Ulster document.
8 And, as you can see, it's dated the 15th of June of
9 1984, which is over a week before the meeting that
10 happened in Jersey. It's "re Canio Investments
11 Limited."

12 .

13 Now, it's not been suggested by anybody that you were
14 at this meeting or anything, but it's clearly in
15 relation to this proposed borrowing. In other words,
16 the question of the proposed borrowing appears to have
17 first come up before the meeting took place in Jersey,
18 that you attended. Do you know what I mean?

19 A. Mm-hmm.

20 419 Q. And in that document, if we just go down through it,
21 there is a reference to an application number, which
22 would suggest that there was an actual application that
23 preceded this particular document. And the application
24 number is CFCS/773. It records the date. The business
25 is established as 1979. The current liabilities, this
26 is now in reference to Canio Limited, as you can see,
27 are nil. The guarantee liabilities are nil. The
28 maximum ever sanctioned is nil. "Existing facility now
29 required - ú525,000 Sterling."

30 .

1 And on the left-hand side, at the top of the page, you
2 can see the information given to the bank is "Canio
3 Investments Limited," the Dawson Street branch of the
4 bank. The address is given as P.O. Box 75, Normandy
5 House, St. Helier, Jersey. The directors/partners are
6 recorded as Mr. LA Wheeler, plus three other nominee
7 directors. The occupation is: Investment property
8 company. No bankers. Introduced by Brennan and
9 McGowan. And the date the account opened is not
10 applicable.

11 .

12 And then you see a section which sets out the purpose
13 of the proposed advance, and it says:

14 .

15 "To enable applicant company make a distribution to its
16 beneficial shareholders. In particular, ú180,000
17 Sterling will be utilised to enable two of the
18 beneficial shareholders acquire the interests of the
19 remaining party. (See over for further details.)

20 .

21 Sterling ú105,000 to be placed on deposit account with
22 this bank in partial provision of interest charges."

23 .

24 So certainly at this time, which was at a point in time
25 after Mr. Barry had written the letter setting out your
26 concerns, which was the 11th of June, but before
27 Mr. Barry and all the rest of you had a meeting in
28 Jersey in Mr. Wheeler's office, they had been into
29 Lombard & Ulster at which a loan application was made
30 for ú525,000 Sterling, and the reason given, as to the

1 purpose of the loan, ú105,000 was to be reserved
2 against future interest, but that the remainder,
3 ú420,000, was to enable the company to make a
4 distribution to its beneficial shareholders. And in
5 particular, ú180,000 of it would be used by the - by
6 two to buy out one.

7 .
8 So they obviously had in contemplation, at that stage,
9 the possibility of buying you out.

10 .
11 Had that been discussed with you, perhaps, as one
12 solution to the problem?

13 A. No, sir.

14 420 Q. It had never been discussed at that time?

15 A. No, sir.

16 421 Q. Well, did you know that they were talking to Lombard &
17 Ulster after Mr. Barry had written to them, but before
18 the meeting that took place, which you attended, in
19 Jersey on the 26th of June?

20 A. No, sir.

21 422 Q. Are you satisfied, in your own mind, that it was after
22 that meeting that the question of a loan first came up?

23 A. Yes, sir, because I think - I think that's my
24 recollection. You see, at that particular time -
25 goodness knows, sir, you are talking about a buy-out or
26 something at that stage, sir - I was going through a
27 lot of anxiety at this stage, and I was looking to
28 protect my asset.

29 423 Q. Yes. Well, if we look further down this particular
30 page, we'll see under the heading of "Security Offered"

1 it says:

2 .

3 "1. First legal mortgage over the legal and equitable
4 estates in the title deeds relating to the 86.5 acres
5 of residentially zoned land at Sandyford, Dundrum,
6 Dublin 14," which would imply the land had been zoned
7 at this point in time. And under "Basis of Valuation"
8 they say: "See attached valuation for €1,750,000."

9 .

10 Did you know that somebody had produced a valuation in
11 the sum of €1,750,000?

12 A. No, sir.

13 424 Q. Well, had you produced any valuation?

14 A. No, I hadn't, sir.

15 425 Q. "2. Right of setoff over deposit account in the name
16 of Canio Limited."

17 .

18 What was that deposit account? All right. I think
19 that probably refers to the €105,000?

20 A. Oh.

21 426 Q. "3. Joint and several guarantees of Messrs. Brennan,
22 JB McGowan and Kilnarnagh Estates Limited."

23 .

24 So, they were going to be personal guarantees for
25 Messrs. Brennan and McGowan. And there is no mention
26 of you anywhere in this particular document, isn't that
27 right?

28 A. No, sir.

29 427 Q. And then they go on to deal with connected accounts,
30 and they refer to accounts of Kilnarnagh, Lansdowne

1 and a company called Frank Diggins Builders Limited,
2 and so on.

3 .

4 There is a sanctioned decision record on the bottom of
5 that page, dated the 22nd of June, 1984. I presume
6 that to have been an approval of the loan application.

7 So that if that is right, the loan was approved - the
8 loan of ú525,000 from Lombard & Ulster was approved
9 four days before the meeting which took place in Jersey
10 on the 26th of June, 1984, which you attended with
11 them?

12 A. Well --

13 428 Q. Is it possible that when Mr. McGowan came to you
14 afterwards, what he was telling you was, in fact, that
15 he had reason to believe that they could get a loan of
16 525,000 from the Lombard & Ulster on the security of
17 these lands?

18 A. I think it was, sir. I think, again, that - certainly
19 that the recollections were Lombard & Ulster, and
20 either exploring or could get a loan.

21 429 Q. Is it not likely that he probably told you at that
22 point in time how much they could get a loan for?

23 A. I am hazy on that, sir.

24 430 Q. Your interest, obviously, is to get out a third of it?

25 A. Yes, absolutely.

26 431 Q. So, presumably you would have been interested to know
27 how much it was --

28 A. Yes, I think there was a mention of the - but I am not
29 quite sure about that, sir. I think - I thought there
30 was still a bit of exploratory. I didn't know there

1 was a loan sanctioned.

2 432 Q. If we just scroll up to the middle of this second page

3 for a moment, you'll see in the text there it says,

4 under "General remarks and comments on financial

5 position" it says:

6 .

7 "In 1979 Messrs. TF Brennan, JB McGowan and a Mr. Roger

8 Wreford sold a property known as Smiths of the Green in

9 Dublin, and made a profit therefrom of circa ú700,000.

10 A substantial portion of these monies were utilised to

11 purchase an 86.5 acre site at Sandyford, Dundrum,

12 Dublin 14 ..."

13 .

14 This is obviously a reference to the ú300,000 which

15 came out of Green Trees, isn't that right?

16 A. Mm-hmm.

17 433 Q. "... which lands are to form the security for this

18 proposed lending. Ownership of the lands was acquired

19 in a Jersey registered company called Canio Limited.

20 The registered office of this company is the address of

21 Messrs. Bedell & Cristin, and the

22 directors/shareholders are partners/employees of that

23 firm. These directors/shareholders are trustees for

24 the three parties, namely, Messrs. Wreford, Brennan and

25 McGowan. The latter two now wish to acquire the

26 interest of the former for the sum of ú180,000 Sterling

27 and the balance of the monies now requested, namely,

28 ú240,000, i.e. apart from the monies to be placed on

29 the deposit account, will be utilised by Canio Limited

30 to purchase property in the United Kingdom."

- 1 .
- 2 What do you say about these references to Mr. Wreford?
- 3 A. I don't know what was going on, sir, really.
- 4 434 Q. Well, do you know Mr. Wreford?
- 5 A. I met Mr. Wreford - I met Mr. Wreford with Joe McGowan
- 6 once or maybe twice. And he was a property developer,
- 7 I understand, in the UK, and was a very good friend of
- 8 Joe McGowan's.
- 9 435 Q. Yes.
- 10 A. And I understand, sir, that he either was supposed to
- 11 have - I understand he had some investment in - what do
- 12 you call it - a meat business here.
- 13 436 Q. Yes.
- 14 A. But that's it.
- 15 437 Q. I see. Well, did Mr. McGowan indicate to you that they
- 16 hadn't mentioned your name to the bank when he was
- 17 telling you about the --
- 18 A. No, sir.
- 19 438 Q. He didn't say that?
- 20 A. No, no, sir.
- 21 439 Q. Well, were you not concerned as to whether he did or
- 22 not? If Canio was making this borrowing, a certain
- 23 amount of information would have to be given to the
- 24 bank, as indeed it was. Did you inquire from
- 25 Mr. McGowan what the bank had been told? What security
- 26 the bank had required? What information the bank had
- 27 required for the purpose of this borrowing?
- 28 A. No, sir.
- 29 440 Q. Would you have any views, one way or the other, as to
- 30 whether the bank would have been informed as to your

1 involvement in the company?

2 A. Well, I would imagine so, sir.

3 441 Q. In what sense? Would you have preferred not to - that

4 they weren't told or that --

5 A. No, I would imagine that they would have been - that

6 the bank would have been informed of my interest in it.

7 442 Q. Well, it appears from this document that they weren't.

8 I mean, one can't say for certain, but certainly from

9 the document it appears they were given information

10 about a Mr. Wreford's involvement.

11 A. Which is all absolutely - you know --

12 443 Q. We have a document which has been put in evidence

13 before, page 692. It's dated the 14th of June of 1984,

14 which is actually the day before this document, this

15 bank document that I've been putting to you. And it's

16 from Mr. Owens to Mr. Wheeler of Bedell & Cristin.

17 A. Mm-hmm.

18 444 Q. And it says:

19 .

20 "Borrowing on security of lands owned by Canio is being

21 negotiated with Lombard & Ulster Bank, Dublin (a

22 subsidiary of Natwest) who require the following

23 information:

24 .

25 1. Number of shares issued and names of nominee

26 shareholders." He has written in longhand, "LAW" -

27 Laurence Wheeler; Howard Oke Dart; Ernst Morin; and

28 Marie Rochele Mourant. The initials all appear there.

29 .

30 "Numbers of shares issued in names of nominee

1 shareholders. Names of directors, names of beneficial
2 -" and he gives the initials of the names of the
3 directors, which are, again, personnel in Bedell &
4 Cristin.
5 .
6 And then:
7 "Names of beneficial shareholders: Tom Brennan, Joe
8 McGowan and Roger Wreford. Wreford's name has been
9 substituted for that of Finnegan, because Finnegan
10 wants to remain silent."
11 A. Well, in the loan application?
12 445 Q. Yes. Just generally, I suppose, in relation to the
13 dealings with Lombard & Ulster?
14 A. I don't know. They must have known I had an interest
15 in it, sir.
16 446 Q. Who, the bank?
17 A. Yes.
18 447 Q. How? Why would that be, unless they were told?
19 A. Well, yeah.
20 448 Q. I mean, there is nothing particularly sinister about
21 it. It's not inconceivable that you might have
22 preferred that the bank were unaware of your
23 involvement in it for any amount of reasons, but
24 certainly that seems to be Mr. Owens' belief when he
25 wrote this, or at least somebody told him that?
26 A. Sir, I'll just say to you - remember something, that at
27 around this particular time I was a concerned man about
28 what - how - what I held and what I didn't. And I was
29 very anxious to get everything cleared as much as
30 possible. And we had got Mr. Barry to check everything

1 - put everything down on the table, to clear what you

2 just read out in your letter.

3 449 Q. Yes.

4 A. Well, I can tell you, I would not be trying to deny my

5 interest in the property --

6 450 Q. Yes.

7 A. -- that's for sure.

8 451 Q. Well, it's not really a question of denying your

9 interest, Mr. Finnegan. Your interest in the company,

10 which owns the property, is held through a company

11 called Foxtown Investments Limited?

12 A. Yes, sir.

13 452 Q. Undoubtedly, the company owns land which everybody,

14 including the bank were being told was unencumbered,

15 and which, on the valuation the bank was given, was

16 more than sufficient for the borrowing being sought.

17 So, in a sense, provided it was established that

18 Messrs. Brennan and McGowan had an interest, the third

19 party interest was of some - of no great relevance to

20 the bank, let me put it that way. And if you had a

21 preference, that your involvement were not known to the

22 bank, it could easily have been accommodated without

23 jeopardising the loan application, if you know what I

24 mean?

25 A. Mm-hmm. But surely it would have come out, sir,

26 wouldn't it?

27 453 Q. Well, at that time there didn't appear to be any reason

28 why it should have.

29 A. But, surely, sir, that - well, I would imagine that -

30 what do you call him?

1 454 Q. I think the evidence from Lombard & Ulster was that
2 they didn't find out until the proceedings in the High
3 Court, that you had any involvement. In other words,
4 they didn't know of your involvement up until the time
5 that the loan was given, and beyond it, indeed. The
6 proceedings were in 1985, if you recall, when things
7 became difficult, when both banks discovered that there
8 were two conflicting securities on the property, one in
9 the form of an undertaking, and then there was an
10 outbreak of proceedings. And the bank have said that
11 it was in the course of those proceedings that they
12 actually discovered your involvement in the thing, when
13 Mr. Barry, I think, got in touch with them. Is that
14 right?

15 A. Sir, I lost track a little bit.

16 455 Q. Lombard & Ulster were unaware that you were involved in
17 Canio, or had any interest in Canio, or in the lands,
18 until 1985?

19 A. No one paid out on anything.

20 456 Q. Oh, yes. They had no knowledge of your involvement at
21 all. That was their evidence, anyway.

22 A. Oh.

23 457 Q. I mean, we do know that they were present for the
24 closing of the deal in the offices of Bedell & Cristin.
25 The closing of the loan deal took place in Jersey, as
26 we know.

27 A. Mm-hmm.

28 458 Q. And the monies were handed over there, and, presumably,
29 the title deeds and all the formalities. And
30 subsequently we know that Mr. Wheeler distributed those

1 monies, in accordance with his instructions, and we'll
2 come to that. But that's what the bank said, anyway.

3 .

4 But, I mean, do you have any reason to believe that
5 they did know of your involvement prior to 1985?

6 A. This comes as a surprise to me, sir, that they didn't
7 know. If they didn't --

8 459 Q. Well, certainly there is no indication on the
9 contemporaneous documentation that they knew that you
10 were involved. For example, on that document I've just
11 put to you, page 694, there is no indication on that,
12 that they were told. Quite the contrary, this is an
13 indication on that that they were told about
14 Mr. Wreford as being the third interest?

15 A. Was that the - Oh.

16 460 Q. You see, going back to page 692, which is Mr. Owens'
17 telex to Mr. Wheeler.

18 A. Yes.

19 461 Q. The other thing he seeks, just to finish off that, he
20 wants confirmation that the company has power to borrow
21 and grant a legal mortgage in Ireland.

22 A. That's Mr. Wheeler?

23 462 Q. Yes. Mr. Owens talking to Mr. Wheeler in his telex.

24 A. Right.

25 463 Q. And he says:

26 .

27 "The official in Lombard & Ulster dealing with the
28 application is going on holidays tomorrow and requires
29 this information before going."

30 .

1 You see, what this telex means is that at the time that
2 Mr. Wheeler received the letter of the 11th of June,
3 1984, from Mr. Barry, setting out all of Mr. Barry's
4 concerns, after Mr. Barry's private meeting with
5 Mr. Wheeler, Mr. Wheeler knew that you were, in fact -
6 obviously, he knew that you were interested in Foxtown,
7 but he knew that the bank had sanctioned - sorry, had
8 been applied to for a loan, but that Mr. Wreford's name
9 had been substituted for yours, because you wanted to
10 remain silent.

11 A. Mm-hmm.

12 464 Q. That was, according to this telex, the state of
13 Mr. Wheeler's knowledge. And that was the state of his
14 knowledge when the meeting took place on the 26th of
15 June of 1984.

16 .

17 Now, as you are aware, the minute prepared by Mr. Barry
18 of that meeting, or the notes that he prepared, which
19 he sent to Mr. Wheeler, make no reference to the loan.

20 A. No, sir.

21 465 Q. We do know that the loan had, in fact, been sanctioned
22 by the time that that meeting had taken place, because
23 it's recorded as having been sanctioned on the 22nd of
24 June, 1984, which is four days beforehand. But
25 Mr. Wheeler certainly would have known, at least, that
26 there was an application for a loan in being, in which
27 Mr. Wreford's name had been, so far as the bank were
28 concerned, substituted for yours.

29 .

30 I wonder, can you recall, was there any discussion

1 about this loan, or proposed loan at the meeting on the
2 26th of June?

3 A. No, sir.

4 466 Q. Was that exclusively confined to your concerns in
5 relation to whether the property had been pledged, and
6 contracts, and so on?

7 A. The most important part of that meeting, sir, was the
8 fact that Mr. - the solicitor for Canio who travelled
9 over.

10 467 Q. Mr. Russell?

11 A. Mr. Russell.

12 468 Q. Handed over the title deeds?

13 A. The big - the event, sir, was that now we are getting
14 something cleared up, which was a big worry at that
15 stage, and that was the floor was clear.

16 469 Q. Yes.

17 A. Now, that's what we were there about.

18 470 Q. Yes. I completely understand that, Mr. Finnegan, but
19 just cast your mind back. Here we have a situation
20 where, on the 11th of June, Mr. Barry writes to
21 Mr. Wheeler --

22 A. Yes, sir.

23 471 Q. -- about a meeting which the two of them have just had,
24 at which Mr. Barry is expressing serious concerns and
25 worries in relation to the protection of your
26 interests?

27 A. Yes, sir. Yes, sir.

28 472 Q. And he sets out confirmations of his understanding of
29 information that has been given to him by Mr. Wheeler
30 in that letter.

- 1 .
- 2 Three days later, Mr. Wheeler receives a telex from
- 3 Mr. Owens in Dublin, referring to a loan application to
- 4 Lombard & Ulster Bank, in which he, Mr. Owens says,
- 5 Mr. Roger Wreford's name has been substituted for your
- 6 name, because you wanted to remain silent.
- 7 .
- 8 And a week after, or more than a week after that telex
- 9 is received by Mr. Wheeler, he's actually sitting in
- 10 his office around a table with Mr. Barry, yourself, and
- 11 Messrs. Brennan and McGowan. So I suggest to you, the
- 12 question of the loan must have been discussed or
- 13 referred to, or at least Mr. Wheeler must have told
- 14 Mr. Barry about it?
- 15 A. No, sir.
- 16 473 Q. See, this was all about - this meeting was all about
- 17 protecting your interest.
- 18 A. Yes, sir.
- 19 474 Q. And I suggest to you, it seems highly unlikely that
- 20 Mr. Wheeler would have engaged in the deceit of not
- 21 telling, or not mentioning to Mr. Barry about the loan
- 22 that he undoubtedly knew about at that point in time,
- 23 in which your name was removed and a name of
- 24 Mr. Wreford was substituted?
- 25 A. Well, sir, the - I can't understand where this comes
- 26 from at all, sir. Mr. Barry did write the letter, and
- 27 you would imagine if that was happening, or the fact it
- 28 was - that Mr. Wheeler would have told Mr. Barry. At
- 29 least - was he on the Board then? He was.
- 30 475 Q. No. It was after the meeting of the 26th that he was

1 put on the Board.

2 A. Hum. It's very strange, sir.

3 476 Q. Well, you see, the point really is, look at

4 Mr. Wheeler's position, look at it from his
5 perspective. He is a solicitor in the firm of Bedell &
6 Cristin. He is in the business, as a matter - his
7 professional duties of providing corporate and trust
8 services to his clients. He is in the business of
9 sending out fee notes for those services.

10 A. Yes.

11 477 Q. And he is in the business of keeping himself right,
12 shall we say.

13 .

14 Now, he gets a letter - first of all he gets a call
15 from Mr. Barry, in which Mr. Barry is very worried, on
16 your behalf. He has a meeting with Mr. Barry to
17 reassure him, and he gives certain information to
18 Mr. Barry. Mr. Barry commits it to writing, sends a
19 letter the day after his meeting and says, "This is my
20 understanding of what you've told me."

21 .

22 So Mr. Barry is taking steps, of what appear to be in a
23 fairly urgent nature to protect your interest, to get
24 to understand what is going on, to get confirmation
25 that Declarations of Trust, that your shareholding is
26 in, and so on. All of this is being done by Mr. Barry?

27 A. Yes, sir.

28 478 Q. And after having received that sort of a letter,
29 pursuant to a meeting with Mr. Barry, Mr. Wheeler then
30 gets a telex from Hugh Owens in Dublin saying,

1 "An application has been made to Lombard & Ulster for a
2 loan, but Mr. Finnegan's name is not being used, and
3 Mr. Wreford has been substituted because Mr. Finnegan
4 wants to remain silent."

5 .

6 Now, at the very least, I suggest, Mr. Wheeler would
7 want to do, in those circumstances --

8 A. Pick up the telephone.

9 479 Q. -- to Mr. Barry, saying, "I take it you know about this
10 loan application? Where I am told by Mr. Owens that
11 your client's name is not being used. I just want to
12 make sure we are all absolutely clear about this,
13 because I don't know anything about the loan. I am
14 just being told by Mr. Owens." You know, cards on the
15 table, that sort of thing?

16 A. Absolutely.

17 480 Q. What I am really saying to you is that while it's
18 undoubtedly clear that no reference is made to the loan
19 in the minutes, or indeed - well, in the minute, or a
20 note that Mr. Barry took at the meeting, it seems
21 highly unlikely that Mr. Wheeler didn't tell him about
22 it at some point prior to that meeting?

23 A. Well, I would think the whole thing is very strange,
24 sir.

25 481 Q. I mean, it is fairly clear that the primary purpose of
26 the meeting was to protect your interests, so far as
27 your ownership or one-third ownership of the company in
28 the land is concerned, isn't that right?

29 A. Yes, sir.

30 482 Q. And perhaps that is an explanation, I don't know, but

1 perhaps it's an explanation? It's certainly a possible
2 explanation as to why no reference is made in
3 Mr. Barry's note of any discussion about the loan?

4 A. That would be a major event, sir. And I could tell you
5 that I would say that Barry was a professional, and I
6 would say that if there was anything there, that - it
7 just goes to --

8 483 Q. If there was a discussion about it, you think it's
9 likely he would have recorded it?

10 A. He would have. Of course, sir. Yes, sir.

11 484 Q. Which may indicate there was no discussion about it at
12 the meeting. But even if there was no discussion about
13 it at the meeting, what I would suggest to you is that
14 it's very unlikely that Mr. Wheeler didn't mention to
15 Mr. Barry that he was aware that there was a loan
16 application, but that your name was not being included
17 in it?

18 A. Well, sir, I don't recollect ever hearing anything from
19 Mr. Barry about that.

20 485 Q. Yes. Your, apparently clear recollection, is that the
21 first time anybody mentioned a loan to you was after
22 this meeting on the 26th of June?

23 A. Yes, sir, because I would say, sir, that - coming up to
24 this meeting, I don't know what all of this was about,
25 but coming up to the meeting, we had a situation where
26 there is - the property could have been pledged.

27 486 Q. Well, is it possible that Mr. Wreford's name was, in
28 fact, introduced by Brennan and McGowan, because you
29 had a preference not to be associated with it, in the
30 sense that you just didn't want the bank to know that

1 you were involved in this property?

2 A. I would say, sir, that it's the last thing on earth
3 that I would be inclined to do. I would have been
4 treading here on very delicate ground, that - in the
5 fact that I was now only sometime ago being covered,
6 that the land was clear of charges, which I was deeply
7 concerned about, and the last thing that I would ever
8 think of doing was to say that I wanted to - that would
9 be as much - I am not denying my interest, but unless -
10 I wouldn't say anything to the likes if Wreford had an
11 interest. I hadn't sold my interest or anything --

12 487 Q. Don't get me wrong, Mr. Finnegan. I am not suggesting,
13 and nobody has suggested that Mr. Wreford ever had an
14 interest. It's fairly clear, I think, that he didn't.

15 A. Yeah.

16 488 Q. He is a gentleman who was well-known, apparently, to
17 Messrs. Brennan and McGowan, we've been told, and you
18 were acquainted with him, at least, as well, or at
19 least you knew who he was?

20 A. I knew who he was, yes, sir.

21 489 Q. It's also an irrefutable fact that his name was
22 introduced to the bank as the other one-third
23 shareholder with Messrs. Brennan and McGowan, and
24 perhaps by Mr. McGowan who was dealing with the bank,
25 apparently. That was the bank's evidence, that
26 Mr. Wreford's name was presented to them by
27 Mr. McGowan. In fact, there was evidence from the bank
28 that Mr. Wreford at some stage arrived into the bank,
29 and was introduced.

30 .

1 If I can just refer you to - sorry - on the 7th of
2 June, that Mr. Wreford was introduced to the bank as
3 the third shareholder, as it were.

4 .
5 What I want to know from you, is it possible, and I
6 fully accept the limitations on recollection at this
7 remove in time, but is it possible that Messrs. Brennan
8 and McGowan are actually right, that Mr. Wreford was
9 substituted for you, simply because you had a
10 preference, for whatever reason, that the bank were not
11 aware that you were involved in Foxtown?

12 A. No, sir.

13 490 Q. You don't think it's possible?

14 A. I don't.

15 491 Q. Well, why, then, would Messrs. Brennan and McGowan,
16 when looking for a loan of 525,000, which they were,
17 insert somebody who had no interest in it?

18 A. I don't know, sir, because I don't know. I don't know.

19 492 Q. If not to conceal your own interest?

20 A. Well, this is - why did the bank now want to know -
21 well, I would have thought, again - now you told me
22 they didn't know, but I would have thought that the
23 bank would have known.

24 493 Q. We do know that the loan did proceed, and was, in fact,
25 drawn down in November. And if the bank are correct in
26 their evidence, they did not know, up until the time
27 that the loan was given, and beyond it, that you had
28 any involvement. So it didn't have any effect - you
29 know, the fact that you were not disclosed to the bank
30 did not have any effect on the ability to obtain the

1 loan. And the fact that - I mean, there is no doubt
2 that at some point in time, and we'll try and identify
3 that shortly, but at some point in time everybody, that
4 is the three of you, were in agreement that this loan
5 would be drawn down, and that it would be divided in
6 the way in which it was divided. Isn't that right?

7 A. Yes, sir.

8 494 Q. So there was no issue as between the three of you, and
9 everything was, as it were, up front, in the sense that
10 you knew the loan was being obtained from Lombard &
11 Ulster, that it was 525,000, presumably that 105,000
12 was being retained, and what was left to be divided
13 was, as you then believed, 420,000. It turns out it
14 was a bit less than that, because Binchy's fees were
15 deducted. But as between the three of you, there was
16 no issue about any of that?

17 A. No, sir.

18 495 Q. And it is a fact, objectively speaking, that if the
19 bank are correct, the bank did not know that the third
20 shareholder in the property was, in fact, not Roger
21 Wreford, as they had been told, but was, in fact, John
22 Finnegan, as they had not been told? That would all
23 seem to suggest that, perhaps, it might have been the
24 case that you had a preference that your involvement in
25 the lands would not be disclosed to the bank?

26 A. Well, sir, I can't understand that. All I have to say
27 to you is this, that - I remind you of what we had
28 talked about. I had gone to the trouble of getting
29 Barry to get in there. I don't know what this is
30 about, sir, but I really don't know, because I, at that

1 stage, was very keen on making sure that I could hang
2 on to what I could on the lands, and I can tell you
3 this, I wouldn't be taking any sort of chances about
4 giving this to Roger Wreford or anybody else, or any --

5 496 Q. Mr. Wreford wasn't really getting anything.

6 Mr. Wreford was simply proposed to the bank as the
7 other one-third partner, but he wasn't - he wasn't
8 being required, for example, as you'll have noticed
9 from the loan sanction document - he wasn't being
10 required to give any personal guarantee. The personal
11 guarantees were coming from Messrs. Brennan and
12 McGowan. The security was coming from the land itself.

13 .

14 The only effect of the introduction of Mr. Wreford's
15 name was to disguise the true identity of the third
16 person who actually was involved.

17 A. Mm-hmm.

18 497 Q. It had no other consequence. It had no consequence for
19 Mr. Wreford, because he hadn't - he was not required to
20 sign his name to any document. He was not required to
21 undertake any liability. He was not required to do
22 anything. He was simply presented as the third
23 shareholder, that's all.

24 A. That's very strange. But it was known by, what do you
25 call him, Bedell & Cristin --

26 498 Q. Well, you saw that telex from Mr. Hugh Owens to
27 Mr. Laurence Wheeler on the 14th of June, 1984. That's
28 over a week before the meeting?

29 A. Mm-hmm.

30 499 Q. In which he told Mr. Wheeler that Mr. Wreford - the

1 words he used were, "Wreford's name has been
2 substituted for that of Finnegan, because Finnegan
3 wants to remain silent."

4 A. Well, I would be very upset with Bedell & Cristin, and
5 I think that - I would think now, sir, that they
6 weren't doing their duty by not informing my rep of the
7 situation.

8 500 Q. That's what I am suggesting to you, Mr. Finnegan. It
9 seems highly unlikely that Mr. Wheeler would not have
10 mentioned this to Mr. Barry before the meeting, because
11 the very thing that he was engaging with Mr. Barry
12 about was a row about you being deceived about things,
13 and here he is now in possession of a telex saying
14 somebody has applied for a loan on the security of this
15 land, in which the name of some stranger has been
16 substituted for yours, because you want to remain
17 silent?

18 A. I don't know where all of this is coming from, sir. I
19 think - it's a very, very strange situation altogether.
20 Bedell & Cristin are in there. They are reporting to
21 my man. I have no idea what the hell they were getting
22 up to about bringing in Roger Wreford, who was supposed
23 to be owning the property. And you say to me, sir,
24 that they - and the bank never knew?

25 501 Q. Well, the bank have told us that, that they didn't know
26 until July, approximately July or sometime in the
27 middle of 1985, when the litigation was going on.
28 That's what they said. There is no indication on any
29 of their documentation that they knew it any time
30 before that. And there is no indication on the

1 sanction document that they knew it - the loan was
2 actually sanctioned on the document in which they
3 recorded Mr. Wreford as the third owner, which appears
4 to confirm the evidence that they have given, that they
5 didn't know that you were involved, certainly up to the
6 time that the loan was given.

7 .

8 I don't think anything in particular turns on it, but
9 what I am interested in is whether Mr. Wheeler
10 mentioned it to Mr. Barry.

11 A. Well, I think --

12 502 Q. And I am suggesting to you that it seems, in the
13 particular circumstances, given what was going on,
14 namely, essentially a row about things being done
15 behind your back, it seems highly unlikely that in the
16 middle of all of that he wouldn't have mentioned this
17 telex from Mr. Owens to Mr. Barry?

18 A. This is absolutely strange that he didn't.

19 503 Q. We do know, of course, that Mr. Wheeler was intimately
20 involved with the loan subsequently, and in fact was
21 ultimately the person who was involved in drawing it
22 down and distributing it between the three of you?

23 A. Yes, sir.

24 504 Q. Well, anyway, there is another document which is at
25 page 669.

26 .

27 This is an application that was made by Kilnamanagh
28 Estates Limited to Lombard & Ulster Bank for further
29 facilities in relation to the property, on the 18th of
30 April of 1984.

1 .
2 You can see in the top right-hand side it's dated the
3 18th of April of 1984.
4 .
5 "The existing facility now required is 191,000 and
6 75,000. And the purpose of the proposed advance is to
7 enable the subject company pay a deposit on 87 acres of
8 freehold land at Ballyeogan, Sandyford, County Dublin.
9 The contract price will be ú2 million."
10 .
11 So it's clear from this that Kilnamanagh Estates
12 Limited envisaged the possibility of buying this
13 property, and they were looking for sanction from the
14 bank for a loan to put the deposit on it.
15 .
16 If I can refer you to the second page of that document
17 under the heading, "General remarks, comments and
18 financial position":
19 .
20 "The additional funds now sought are required to place
21 a deposit on approximately 87 acres at Ballyeogan,
22 Sandyford, County Dublin. The contract price will be 2
23 million. These lands have a high zoning for planning
24 permission and were formerly owned by the late Frank
25 Aitken. Brennan and McGowan bought land some five
26 years ago for ú780,000 on a "something "basis into a
27 Jersey registered company (Canio Properties Limited)."
28 On a phased basis, I think it is.
29 .
30 "This is their personal nest egg, or part of it. Hugh

1 Owens of Messrs. Owens Murray, chartered accountants,
2 has been busily reading the Finance Act, and feel that
3 immediate action is called for. He and George Russell,
4 solicitor, are heading off to Jersey, hopefully, with
5 the deposit. The contracts have to be signed fairly
6 quickly, and Kilnamanagh will then seek planning
7 permission for some 900 by 3 bedroom semi-detached
8 residential units. ú925,000 will be payable in
9 approximately six months time, with the second phase
10 payment of ú1 million due within two years of the
11 contract date.

12 .

13 Lengthy discussions have already taken place with
14 Dublin County Council, and involve land exchanges
15 elsewhere, and various compensation claims offset to
16 some extent by works to be completed on other estates,
17 but a net ú1.4 million will accrue to Kilnamanagh.

18 Much of these funds will be utilised to repay
19 substantial borrowings with Bank of Ireland/AIB/NBFC."

20 .

21 Sorry, there is a sentence in the middle: "As things
22 stand now, Canio Properties Limited can
23 repay/repatriate the money subject to only 15 percent
24 tax."

25 .

26 Now, this clearly establishes that in the very same way
27 that we are talking about, June of 1984, Brennan and
28 McGowan envisaged the purchase of this property by
29 Kilnamanagh Estates Limited for a very substantial sum
30 of money, and actually applied to Lombard & Ulster for

1 the money to pay the deposit on it.

2 .

3 Did you know anything about all of that?

4 A. No, sir.

5 505 Q. Well, are you sure about that?

6 A. Yes, sir.

7 506 Q. Obviously, the property couldn't be purchased without

8 your knowledge, if there was to be a purchase?

9 A. No, sir. No, sir. Kilnamanagh - haven't they got a

10 contract on it, sir?

11 507 Q. Kilnamanagh had a contract, as it turns out.

12 A. Mm-hmm.

13 508 Q. But so far as any sale of the property was concerned,

14 it couldn't - it simply couldn't take place without

15 your knowledge or consent?

16 A. No, it couldn't, no.

17 509 Q. Because, apart from anything else, it would be legally

18 void, because it wouldn't have the sanction of the

19 sufficient majority of the shareholders in the company,

20 isn't that right --

21 .

22 MR. HUSSEY: I'm sorry, Sir, that's a very legal

23 question, and, in fact, it's not true. The

24 shareholders don't have to sanction a company's

25 purchasing activity. I don't think that's a fair

26 question to ask. It's a legal question.

27 .

28 510 Q. MR. HANRATTY: I am not going to get into an argument

29 about it.

30 .

1 Just in general terms, and I am simply putting the
2 proposition: The land couldn't actually have been sold
3 without your knowledge, and the consent of Foxtown?

4 A. The only thing is this, sir: I would say that the
5 history of this, so far, sir, is that there was a
6 contract entered into with Kilnamanagh that I didn't
7 know about earlier on.

8 511 Q. Yes.

9 A. So that did happen, and that concerned me at the time.

10 So --

11 512 Q. If we just look forward for a minute. If we go to
12 Document 757. It's a letter dated the 14th of October,
13 1984, from Mr. Wheeler - sorry, 14th November, 1984.
14 This is shortly before the drawdown of the loan, right?

15 A. Mm-hmm.

16 513 Q. And in the second - the first paragraph he says:

17 .

18 "I confirm the following:

19 .

20 I executed a contract for the sale of 43 acres of the
21 land belonging to the company to Kilnamanagh Estates
22 Limited for ú1.5 million, which you confirmed to me on
23 the telephone was approved by Foxtown."

24 .

25 So it does seem that Mr. Barry did have knowledge of
26 this contract?

27 .

28 MR. HUSSEY: I am sorry, Sir, that's - the contract
29 referred to in the loan approval was a contract for 2
30 million. This is a contract for 1.5, which was six

1 months later.

2 .

3 514 Q. MR. HANRATTY: It's quite clear from this entry that

4 Mr. Barry was aware of a contract to sell part of the

5 land to Kilnarnanagh Estates Limited for ú1.5 million?

6 A. Yes. Was that to do with the loan, sir?

7 515 Q. Well, it was a condition of the Lombard & Ulster loan,

8 apart from anything else, but it involved a contract to

9 sell a portion of the land, at least, to Kilnarnanagh

10 Estates Limited?

11 A. Sir, it was portrayed to me that this was like a

12 guarantee, just that Kilnarnanagh would put in this -

13 would take this contract as an underpinner.

14 516 Q. But was it really?

15 A. I didn't think, sir, that what - as far as I was

16 concerned, I didn't think it was real. It was a

17 guarantee, but it wasn't - I didn't think that it was a

18 contract --

19 517 Q. Would you have had any objection to it, if it was real?

20 A. I would.

21 518 Q. 43 acres for 1.4 million?

22 A. Well, the only thing is this, sir, that I would say to

23 you, is that you can - I just don't know where this,

24 even, plot of ground was, in the middle of it, or

25 wherever. But if you sell off something, sir, what -

26 why I was told that it was not real, that selling off a

27 portion of a large chunk of ground, you could leave

28 yourself in a bad position, not knowing what - for the

29 balance of it, sir.

30 519 Q. Right.

1 A. But there was no doubt in my mind that this was purely
2 as a backup for the loan, sir.

3 520 Q. Anyway, there was a loan of ú525,000 approved in June,
4 and I was asking you earlier: When do you think you
5 first heard about it? And you believed that it was
6 after the meeting of the 26th of June?

7 A. Yes, sir.

8 521 Q. But, presumably, when you were eventually told,
9 whenever it was, you were told how much they had - they
10 could get from the bank?

11 A. Yes, sir.

12 522 Q. And that it was ú525,000. And I would also presume
13 that you were told that ú105,000 of that was not
14 available, in the sense the bank were simply retaining
15 it against future interest?

16 A. Yes, sir.

17 523 Q. So that what you would have perceived from it, is that
18 the pot to be divided was ú420,000?

19 A. Yes, sir.

20 524 Q. And was it your perception at the time that the full
21 ú420,000 was to be divided, or did Mr. McGowan tell you
22 that there were going to be some expenses that would
23 have to be paid out of that, before the division?

24 A. No, my recollection, sir, is that - no, that the only
25 thing that was to be paid out, that I knew about, sir,
26 was the retention of interest.

27 525 Q. Yes. That's the 105?

28 A. Yes, sir.

29 526 Q. Well, moving it along a bit. We know that the loan was
30 actually drawn down in November, and distributed on, I

1 think, the 21st of November. But we know that a number
2 of things happened before that, and we know for a
3 start, for example, that Mr. Ray Burke was in Jersey on
4 the 14th, or was it the 15th of November, and that
5 Mr. McGowan was in Jersey on the 14th of November with
6 Mr. Wheeler.

7 .
8 Now, one can speculate as to what Mr. Burke was doing
9 within a matter of days before he received a sum of
10 ú60,000. You know this conversation that we've had and
11 seen already, which was exchanged between, on the one
12 hand, Mr. Barry and Mr. Wheeler, and on the other hand
13 between Mr. Owens and Mr. Wheeler, concerning what has
14 been referred to as, I think, various administration
15 expenses and architects' fees?

16 A. Yes, sir.

17 527 Q. In reference to how much should be deducted.

18 Obviously, it was originally envisaged by Brennan and
19 McGowan, at least, that 20,000 each would be deducted
20 from the loan?

21 A. Yes. Can I say, sir, you said to me there, earlier on
22 about when Mr. Burke was over there. I just want to
23 say, sir, I had no idea what was going on, on any
24 contributions to politicians or otherwise. And I
25 didn't know of anything - I didn't - Mr. Burke was over
26 there - nobody told me, sir, about any of those
27 meetings.

28 528 Q. This is what I want to explore with you, Mr. Finnegan.

29 A. I'm sorry.

30 529 Q. You see, Mr. Brennan has told us that these references

1 to architects' fees were a euphemism for a payment to
2 Mr. Burke and that everybody knew what they were
3 talking about, and that they referred to a deduction
4 for the purpose of making a payment to Mr. Burke.
5 That's what Mr. Brennan's evidence was?

6 A. Well, that's not what - I had no idea at all about
7 that, sir.

8 530 Q. Well, you knew that you were being required to suffer a
9 deduction of ú20,000 equally with the other two?

10 A. Yes, sir.

11 531 Q. Is it your evidence that you actually thought these
12 were in respect of architects' fees?

13 A. Well, sir, I'll tell you, that first of all that was a
14 bolt out of the blue to me, first of all, about a
15 retention. And I said that's why I was kicking too,
16 that it was a retention at all about the - for
17 architects, engineers fees, and whatnot. So at the
18 time - so it wasn't never discussed with me, they never
19 had my agreement that I would have done that before,
20 sir, and that's why I was quite upset even hearing
21 about it. But I did - sorry, at that time, when they -
22 so I wouldn't - my first reaction always would be to
23 say no. And I said no to ú60,000. But it was then
24 afterwards that they - it came about, would I agree to
25 ú30,000.

26 532 Q. 20. Sorry, it was originally 20 each?

27 A. Sorry.

28 533 Q. You mean 30 in total, 10 each?

29 A. Yes.

30 534 Q. Who did you agree that with?

1 A. As far as I remember, Joe McGowan.

2 535 Q. You see, it does seem likely, and obviously ultimately
3 that's a matter for the Sole Member, that Mr. Wheeler
4 knew what the deduction was for, because he had met
5 Mr. McGowan on the 13th of November in Jersey, and he
6 met Mr. Burke the following day - sorry, two days later
7 on the 15th.

8 A. Well --

9 536 Q. And we also know when he received the money. He sat
10 down and wrote out on a piece of paper where the money
11 was coming - going to, namely, ú60,000 to Mr. Burke,
12 and where it was coming from?

13 A. And that's very strange, sir.

14 537 Q. Well, it happened.

15 A. It is, yes.

16 538 Q. What I want to put to you is this proposition,
17 Mr. Finnegan, that if you did not know that this
18 deduction was, in fact, being made for Ray Burke --

19 A. Yes, sir.

20 539 Q. -- then it seems to follow that Mr. Wheeler was
21 engaged in a serious deception of yourself and
22 Mr. Barry?

23 A. Yes, sir. Very definitely. And I think Mr. Wheeler
24 will have to answer for this, as far as I am concerned,
25 because I definitely did not know what was going on.
26 And the least - if there was any question of - any
27 clarification, what he could have done is got in touch
28 with Mr. Barry.

29 540 Q. Why would Mr. Wheeler deceive you in that way?

30 A. Well, I don't know, sir.

1 541 Q. Or Mr. Barry?

2 A. I don't know.

3 542 Q. He had already been through the wars with Mr. Barry
4 over your interests not being properly protected. Why
5 would he deliberately conceal from you the true reason
6 for this deduction?

7 A. Well, I don't know, sir, but looking back, you can see
8 that I have been through - I have been through the wars
9 here, sir, on this land up to now - up to this
10 particular point.

11 543 Q. Yes. And precautions had been taken and protections
12 have been put in place, Mr. Barry had been put on the
13 Board to ensure that your interests would be properly
14 protected.

15 A. Yes, sir. And I am very, very surprised that
16 Mr. Wheeler did do that.

17 544 Q. Well, if your evidence is correct, it seems fairly
18 clear that Mr. Wheeler was engaging in a deliberate and
19 systematic deceit of yourself and Mr. Barry in
20 concealing the true reason for this proposed deduction.

21 A. Yes, sir.

22 545 Q. And the very least that can be said about that is that
23 Mr. Wheeler was himself personally running the risk,
24 that if you subsequently found out what this money was,
25 in fact, used for, that he would be personally liable
26 to you for deceit and fraud?

27 A. Yes, sir, and there is time to run, sir --

28 546 Q. Pardon?

29 A. Yes.

30 547 Q. But the problem with that, Mr. Finnegan, is this: If,

1 as you say, it is believed that this was to be set
2 aside as a fund for architects' fees, Mr. Barry at any
3 stage could have written to Mr. Barry, afterwards, and
4 said, "Right, let's have an account of what was done
5 with those funds that were set out for the architects'
6 fees, let's have receipts from the architects." And
7 Mr. Wheeler was obviously never going to be in a
8 position to provide them, because there were no funds
9 paid to any architects?

10 A. Yes, but remember, sir, that at this stage that - you
11 see, it's in your mind. It wasn't in my mind then,
12 because I didn't know anything was going on.

13 548 Q. What we are really thinking about is what was in
14 Mr. Wheeler's mind. What I am saying to you is in the
15 situation in which he was, if he was engaging in this
16 deceit, in this deliberate and systematic deceit of
17 yourself and Mr. Barry, you could never have thought
18 for a minute that he was going to get away with it,
19 because he would have had to account to Mr. Barry for
20 the expenditure of this ú30,000 or 60 or whatever it
21 was about architect fees?

22 A. Yes, sir.

23 549 Q. And he knew that he could never account for them,
24 because he would never have any receipts from any
25 architects, because he knew the money was going to Ray
26 Burke?

27 A. Well, I don't know what happened and why Mr. Wheeler
28 did do this or how this whole thing came about. But I
29 am as shocked and as surprised as anybody about it,
30 sir. And I did not know.

1 550 Q. We know that Mr. Barry never did subsequently seek any
2 account of what was done with these retained funds.

3 Isn't that right?

4 A. Well, of course, sir, that this was to be - without
5 Brennan and McGowan - of course then there was a stage,
6 sir, that we went through, a stage of - one stage where
7 there was hope there was something under the ground,
8 that we might be selling - there might have been a
9 possibility of disposal at that time --

10 551 Q. Ultimately your shareholding was bought out in 1990,
11 but in the meantime, between 1984 and 1990, there was
12 no account ever sought or rendered in respect of this
13 retained fund for architects' fees?

14 A. Well, I would say, sir, the likelihood is that, you
15 know, it was over quite a long period of time there
16 that the money was paid out to architects and
17 engineers. I haven't got the detail of it, but, you
18 know, there was work going on.

19 552 Q. Well, where is it?

20 A. I don't know, sir.

21 553 Q. Whether it was paid out or not, no evidence was ever
22 furnished to Mr. Barry or to you to that effect?

23 A. I would like to say this to you, sir --

24 554 Q. Might I just complete my question. When you were
25 closing and doing all of your balancings and
26 reconciliations at closing, there was no reference to
27 any reconciliation of this £10,000 of your money that
28 was supposed to have been paid to architects.

29 A. Right. Well, just at the particular time, sir, the
30 circumstances around my disposal were that it was - the

1 case was put to me that I had - there were things
2 happening. One, the mortgage was being sold on to
3 Mr. Noel Smith, and if that happened, that there would
4 be nothing - that that was the end of that. That was
5 one.
6 .
7 Two, that there was a question that also that
8 Mr. McGowan - no, Mr. Brennan, and this you'll hear
9 from them, they said that he was in severe financial
10 position, difficulties. There was one chance of
11 getting out of this, when all the things were going on,
12 and it was that Grange would either, whatever you call
13 that company, the company - their company would buy out
14 my interest. This was kind of from what came over, it
15 was, if you like, like a fire sale, sir. There was no
16 option, as I could see it, at the time but to sell.
17 When it came - and that was the situation that was
18 portrayed.
19 .
20 Now, also, there was the situation where there was the
21 - it was for the - my interest in the company, and I
22 was getting - the only thing I could get was the 500,
23 sir. And then two other sums that were to be secured
24 by way of a promissory note, sir --
25 .
26 MR. HAYDEN: If I might, sir. I am not sure where that
27 came out - there is one point in which Mr. Finnegan did
28 indicate that Mr. Brennan was in financial
29 difficulties, and there has been no evidence at all to
30 that effect, nor do I understand it to be the case in

1 1990, nor was it put to him that that was the reason -
2 that the individual was in financial difficulties.
3 That's why they were buying out Mr. Finnegan's share.
4 .

5 555 Q. MR. HANRATTY: That's something that can be dealt with
6 in examination in due course.

7 .
8 What I wanted to ask you, just finally, Mr. Finnegan,
9 before we just break for the day, is that in all this
10 new regime of openness and transparency that we had
11 with Mr. Barry on the Board, where everything was to be
12 accounted for and everybody was to be accountable, why
13 did Mr. Barry never seek any account of what was done
14 with this retained fund of ú30,000 for architects'
15 fees, if that is truly what it was for?

16 A. Well, sir, I think that Mr. Barry had a role that he
17 was looking after the main affairs in Guernsey. I
18 don't know. I don't think it was his job to look at
19 it. I think --

20 556 Q. He was a director of the company?

21 A. Yes.

22 557 Q. As you are a representative?

23 A. Yes, sir.

24 558 Q. Precisely, to mind your interests?

25 A. Yes, sir.

26 559 Q. And presumably to ensure that if you were asked to make
27 a contribution to a pot in the sum of ú10,000, that
28 that money was applied for the purpose that it was
29 retained for?

30 A. Yes, sir. And I would have thought --

1 560 Q. Particularly when you didn't trust Brennan and McGowan
2 at that stage, as far as you could throw them?

3 A. Yes, sir. Time went on and things actually got worse,
4 because we were locked in and things weren't happening
5 at all. You see, there was - you see, at that
6 particular time as well, sir, that there was a question
7 that there was a possibility of a sale on to the local
8 authority, and I wasn't quite aware - that was actually
9 going through another firm of agents, sir, who were
10 employed by Brennan - I think Brennan and McGowan
11 actually instructed another firm of agents to carry out
12 those negotiations. I wasn't doing it with them.

13 561 Q. Brennan and McGowan themselves have told us that there
14 was no question of architects' fees, that Kilnarnagh
15 would always pay the expenses.

16 A. Why would Kilnarnagh?

17 562 Q. And that they did, in fact, because Kilnarnagh had the
18 contract to buy.

19 A. You see, we are going around and around in circles
20 here, sir.

21 563 Q. I know that, but that's the evidence that they gave.
22 They said this was no architects' fees, basically?

23 A. I would like to say this to you, absolutely from my
24 heart, that there is no doubt about it, that when it
25 comes down to it, I didn't know of any question. And
26 Bedell & Cristin can be asked again about it. I didn't
27 know, never knew that Bedell & Cristin were taking -
28 that, A, that this money was going over, that anything
29 about Bedell & Cristin acting for Mr. Burke or getting
30 involved in it, I didn't know anything about that. So

1 I will have to say that I was very upset. I was very
2 upset to hear this, sir.

3 564 Q. Well, Mr. Finnegan, if you are correct in that --

4 A. Yes, sir.

5 565 Q. -- it means, seems to mean, that Mr. Wheeler of Bedell

6 & Cristin, a solicitor, providing the services he was

7 providing on a professional basis, engaged in a

8 deliberate deceit of yourself and Mr. Barry in

9 circumstances where, A, he had already been in a row

10 about your interests being protected, and B, he could

11 not but have thought that he was going to be found out?

12 A. Absolutely, sir, and I think that - I think it lies

13 with Mr. Wheeler.

14 .

15 CHAIRMAN: All right. On that note, I think we'll

16 conclude for the day.

17 .

18 MR. HANRATTY: Yes, Sir.

19 .

20 CHAIRMAN: Tomorrow morning we will resume at half past

21 ten as usual. Very good.

22

23 THE TRIBUNAL ADJOURNED TO WEDNESDAY, OCTOBER 24, 2001

24 AT 10:30 AM

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