

1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 19TH JANUARY 1999, AT
2 10AM:

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4 CHAIRMAN: Good morning. Ladies and gentlemen, I intended to
5 give my ruling on the outstanding matters but overnight, I
6 received a copy of a judgement from Mr. Justice Geoghegan which is
7 germane to the matter. That matter was also appealed to the
8 Supreme Court and I now want to get -- I understand the Supreme
9 Court supported Mr. Justice Geoghegan's decision in the matter but
10 I want to get the Supreme decision. Now, I will deal with that
11 matter tomorrow at two o'clock.

12 .

13 MR. COONEY: Mr. Chairman, before Mr. Gogarty is recalled to the
14 witness box, there is a matter I want to refer to and that is a
15 letter which we received either today or yesterday from the
16 Tribunal, last night actually, Mr. Chairman, and it says "Dear
17 Sirs, I refer to previous correspondence regarding the procedure
18 applicable to cross-examination of the witnesses at the above
19 sittings and, in particular, cross-examination by persons who have
20 not furnished a statement of evidence in respect of the issues
21 outlined in the affidavit of Mr. James Gogarty."

22 .

23 And the letter continues "A number of the persons referred to in
24 Mr. Gogarty's affidavit of the 12th October 1988 have furnished
25 written statements to the Tribunal refuting Mr. Gogarty's
26 allegations but have not furnished any statement of the evidence
27 they propose to give on particular issues raised in his
28 affidavit. I am directed by the Sole Member to confirm that such
29 persons who have not furnished statement of their evidence on a
30 particular issue in advance shall not be entitled to cross-examine
31 Mr. Gogarty on that issue until after they have given their own
32 oral evidence on the issue."

1 .

2 Now, I want to inquire Mr. Chairman, are my clients included in
3 the phrase at the commencement of the second paragraph -- "A
4 number of persons" because if they are, Mr. Chairman, I would have
5 some submissions to make.

6 .

7 MR. GALLAGHER: Sir, can I suggest that this matter be left until
8 the evidence be heard of Mr. Gogarty, that it can be left until
9 two o'clock and be dealt with then.

10 .

11 CHAIRMAN: Apart from anything else, it is not germane to the
12 matters at issue at the moment. It can only arise if and when
13 cross-examination is likely to arise, and that doesn't seem to be
14 in the immediate future. Again, I think this is a matter which
15 should be discussed in detail and not just off the cuff. I
16 should look at the statement you made and look at it in the
17 context of whether it -- it's one thing if it's a simple traverse
18 which it may well be, my recollection is that certainly one of
19 them, one of the statements of your client was a traverse, as
20 such, but as to whether it has sufficient, what I might describe
21 as 'substance' in it is another matter. I think it should be
22 discussed in detail. I suggest that be put in for discussion
23 tomorrow afternoon at two o'clock as well.

24 .

25 MR. COONEY: Well, Mr. Chairman, as you know, the time for the
26 cross-examination of Mr. Gogarty is approaching. Not rapidly, I
27 have to say, but we are coming closer and closer to that point and
28 I do wish to know now, Mr. Chairman, if this stricture applies to
29 me because if it does, it restricts my cross-examination --

30 .

31 CHAIRMAN: Well, Mr. Murphy's solicitor was requested for a, I
32 forget the phrase that was used, a narrative account, I think that

1 was the phrase I used, in the original letters, and I certainly
2 have no recollection of receiving what I would describe as a
3 narrative account.

4 .

5 MR. COONEY: From my clients? Well I respectfully disagree with
6 you, Mr. Chairman.

7 .

8 CHAIRMAN: I am not going into it now. It's a matter which
9 should be discussed in detail, and I will not hold up the
10 evidence. If evidence, perchance, gets to the point where it
11 comes to a terminating point and cross-examination is started, I
12 will have to defer it until after tomorrow afternoon's
13 discussion.

14 .

15 MR. COONEY: Very well, Mr. Chairman, but there is an important
16 point of principle at issue here, Mr. Chairman.

17 .

18 CHAIRMAN: I understand there is.

19 .

20 MR. COONEY: It's whether or not all of our evidence or the
21 evidence of any other parties against whom Mr. Gogarty has made
22 these most serious and false allegations have to disclose in
23 advance what their defence to these allegations are. I don't
24 think that's a fair and proper procedure, Mr. Chairman.

25 .

26 CHAIRMAN: I see. We will discuss it tomorrow morning or
27 tomorrow afternoon at two o'clock.

28 .

29 MR. COONEY: Very well. Two o'clock today?

30 .

31 CHAIRMAN: No, I didn't say today. I said tomorrow at two
32 o'clock.

1 .

2 MR. COONEY: Could I respectfully ask you to deal with it at two
3 o'clock?

4 .

5 CHAIRMAN: No, tomorrow at two o'clock.

6 .

7 MR. ALLEN: I am sorry, Chairman, I won't be taking up your
8 time. I did want to make the point to you at this time, Sir,
9 that I share Mr. Cooney's concerns. I accept your ruling of
10 course in relation to dealing with it at two o'clock tomorrow, but
11 I don't have to ask the question of you am I one of those who is
12 subject to this stricture because it has been made clear to me in
13 the correspondence that my right to cross-examine is going to be
14 limited, having regard to an element of dissatisfaction with the
15 contents of the statement which was provided, furnished to the
16 Tribunal by my client. I am not, of course -- having regard to
17 your ruling -- going to go into the legal implications of that
18 restriction. You have indicated that the matter will be dealt
19 with by yourself at two o'clock tomorrow, but I just wanted simply
20 to flag the fact that I have, and indeed I hope you will be aware
21 that we have communicated with you, with your legal team, Sir, in
22 some detail, setting out the grounds of our objection in the form
23 of formal submission as to this point.

24 .

25 CHAIRMAN: Thank you, Mr. Allen.

26 .

27 MR. GALLAGHER: Mr. Gogarty please.

28 .

29 MR. McGONIGAL: Mr. Chairman, we also have received a similar
30 letter to the letter which Mr. Cooney's client and Mr. Allen's
31 client have received and while we are haven't so far been
32 mentioned in the evidence of the Tribunal, it is anticipated that

1 we might be. The principle there are would apply also to us

2 and --

3 .

4 CHAIRMAN: Could I extend tomorrow afternoon's invitation to your

5 good self?

6 .

7 MR. MCGONIGAL: Yes, may it please you, Chairman.

8 .

9 MR. LEONARD: Mr. Chairman, I take it any other interested party

10 can raise similar matters at that time.

11 .

12 CHAIRMAN: Look, it's a general invitation, but I do want to

13 indicate that it's purely for business, not for pleasure.

14 .

15 CONTINUATION OF DIRECT EXAMINATION OF MR. GOGARTY BY

16 MR. GALLAGHER:

17 .

18 MR. GALLAGHER: Good morning, Mr. Gogarty. Mr. Gogarty, you

19 understand that you are still sworn. Yesterday morning, Mr.

20 Gogarty, we dealt with part of the report and valuation which had

21 been furnished by Duffy Mangan and Butler. Unfortunately the

22 report that was furnished to the Tribunal was incomplete and we

23 weren't able to deal with it in its totality and I want to come

24 back to it this morning, if I may please. You have a copy now, a

25 complete copy of that report. I don't propose to go through it

26 in detail, but I want to draw your attention and I want your

27 observations in relation to a number of aspects of it.

28 .

29 If you look at the bottom of the report, you will see that it's

30 paginated, numbers are written in on various pages.

31 A. What page is it?

32 1 Q. If I bring you to page number 5, it's at the bottom of the page.

- 1 This part of the report is dealing with lands described as Scotts
2 Farm, Balgriffin, County Dublin and on page 6, the comments of the
3 auctioneers are to be found, is that right, and in that section,
4 did they recommend that portion of these lands be disposed by
5 public auction or tender based on an agricultural value?
6 A. Page 6, is it?
7 2 Q. On page 6, yes, the comments, the comments on the left-hand side,
8 do you see the paragraph --
9 A. Yes, yes, by public auction.
10 3 Q. "We therefore recommend disposal of this portion of Scotts Farm...
11 Tender based on agricultural value."
12 A. That's right.
13 4 Q. That was for approximately 52 acres. And they continued to
14 "recommend that no decision be taken at this time on the balance
15 of the property, approximately 103 acres located in the Dublin
16 Corporation area." So they were suggesting that part of it be
17 sold by public auction or tender and part of it should not be sold
18 at this time.
19 A. Yes.
20 5 Q. If you can move onto the following pages dealing with the lands at
21 Poppintree and Jamestown Road.
22 A. Sorry, what page are you on?
23 6 Q. It's at page 9. If you see the heading "Lands at Poppintree" and
24 "Lands at Jamestown Road"" on the top of the page. It's
25 immediately after the map.
26 A. Is it page 8 you are talking about?
27 7 Q. Yes, it's page 8. "Lands at Poppintree and lands at Jamestown
28 Road." Now, if you go on to page 9, the following page.
29 A. Yes, tenancies.
30 8 Q. No, under 'comment'.
31 A. Page 9, oh comment.
32 9 Q. "A, the portion of the holding under the Dublin County Council

1 authority, in our opinion, will remain agricultural zoned due to
2 the adverse effect the Dublin ring road development will have
3 traversing the lands. Accordingly we recommend disposal of this
4 portion by tender or public auction."

5 A. Yes.

6 10 Q. And at the bottom of the page, in relation to section B or area
7 known as B in that report, "There are approximately 4 acres house
8 and yard which adjoins this portion of the lands. We understand
9 this property is at present under a different ownership. We
10 would stress that this 4 acres could have an important role to
11 play in any rezoning applications."

12 A. That's right.

13 11 Q. And then the next page, page 10. At the bottom of the first
14 paragraph, they recommend as follows "Accordingly, we feel it
15 would be prudent not to dispose of this property at this time."

16 A. Yes.

17 12 Q. And then in relation to the area known as C --

18 .

19 MR. COONEY: Sorry for interrupting again, what's the point of
20 Mr. Gallagher reading out selected extracts from this report?
21 Surely he -- if he wants to deal with this matter, he should deal
22 with the entire of what's set out in the report. Now, if I may
23 say so, this refers back to something I said earlier in the
24 Tribunal. The history of these lands, including the rezoning or
25 no rezoning of these lands could have been dealt with at the
26 beginning of this Tribunal so that these important facts could
27 have been got out of the way at the beginning. We know, Mr.
28 Chairman, that a very small percentage of these lands has been
29 rezoned following the sale by our clients to Bovale Limited. Why
30 don't we come on and establish that fact?

31 .

32 CHAIRMAN: Mr. Cooney, the Tribunal will take its own course and

1 the Tribunal of course will conduct the matter in the manner they
2 think appropriate to present. You have been given the full text
3 of this report. There is no need to read three pages when you
4 want to make two points out of two simple paragraphs.

5 .

6 MR. COONEY: If you just hear me on this, Mr. Chairman. These
7 reports were opened yesterday.

8 .

9 CHAIRMAN: Mr. Cooney, I have made a ruling that the manner in
10 which this Tribunal is to proceed is to hear this evidence without
11 an opening statement and without proceeding to deal with the
12 matters in paragraphs 1 and 2 of the Terms of Reference. They
13 are not necessary for the purposes of this. That is a ruling and
14 that is how the matter stands.

15 .

16 MR. COONEY: I understand your ruling, Mr. Chairman, but the
17 point here is that the Tribunal team are now adopting a procedure
18 which results in only partial disclosure of the facts relating to
19 the history of these lands. This is misleading to the public
20 generally -- please, Mr. Chairman, let me finish now -- this is
21 misleading to the public generally and is unfair to the people who
22 are most closely involved in this matter, namely my clients and
23 Mr. Bailey. Why, Mr. Chairman?

24 .

25 CHAIRMAN: It is not unfair to your clients. They will
26 have -- the whole matter will be gone into in due course when the
27 matter is opened in detail. There is no need at this moment and
28 that is my decision now.

29 .

30 MR. COONEY: Mr. Chairman, may I complete my submission please?
31 What is the point, Mr. Chairman, of reading out extracts from the
32 report furnished by our auctioneers, particularly when these

1 extracts seem to deal with the potential of these lands, Mr.

2 Chairman? What's the point in reading these out without, at the

3 same time, giving to the Tribunal evidence of what actually

4 happened to these lands in the succeeding months?

5 .

6 CHAIRMAN: That will, in due course, be given.

7 .

8 MR. COONEY: Why not do it now, Mr. Chairman?

9 .

10 CHAIRMAN: The answer is I have decided that it is not going to

11 be done.

12 .

13 MR. COONEY: Well may I finish my submission by saying, Mr.

14 Chairman, that what you are allowing is unfair, because it is

15 designed to create a misleading impression as to the history of

16 these lands.

17 .

18 CHAIRMAN: It is not designed to create a misleading

19 impression.

20 .

21 MR. COONEY: Well then surely to read selected extracts from a

22 report dealing with these lands is by definition misleading.

23 .

24 CHAIRMAN: Mr. Cooney, the report is a report commissioned as to

25 the evaluation of the lands at a particular time. It also

26 indicates how your advisers at that point in time were suggesting

27 the lands be dealt with by way of sale. Now, subsequently, as we

28 will discover, that was of course was not followed.

29 .

30 MR. COONEY: Well that's the first time that that fact has

31 emerged publicly at this Tribunal. And if I may say so --

32 .

1 CHAIRMAN: Don't start telling me you didn't know that, Mr.
2 Cooney.

3 .

4 MR. GALLAGHER: Sir, I should say that Mr. Cooney has interrupted
5 this Tribunal on numerous occasions to make numerous
6 submissions. Mr. Cooney is aware of all the documentation. He
7 knows where this questioning is leading. He knows that the lands
8 were sold subsequently and he knows that the lands were sold
9 within months of this report being received and professional
10 advices being furnished to his client.

11 .

12 He will have an opportunity to cross-examine Mr. Gogarty as to why
13 that happened. He will have an opportunity to call his witnesses
14 or have the Tribunal call witnesses to indicate why that
15 happened. It is relevant and it is in the interests of
16 endeavouring to ensure that we don't spend as long as some people
17 would like us to spend with this witness, that I am cutting
18 through a lot of the chaff that is there for anybody to
19 cross-examine and to assist anybody in their cross-examination in
20 order to deal with this.

21 .

22 MR. COONEY: Mr. Gallagher --

23 .

24 CHAIRMAN: Please, gentlemen, this is now at an end.

25 .

26 MR. COONEY: Just with respect, Mr. Gallagher misinterprets his
27 role. He is not in an adversarial position so far as my client
28 is concerned. He is hear to lead all relevant evidence whether
29 it's for one party or the other and he is not here to carefully
30 select evidence and then say we can rebut it --

31 .

32 CHAIRMAN: Mr. Cooney --

1 .

2 MR. COONEY: It's important that our respective roles be
3 established.

4 .

5 CHAIRMAN: Mr. Cooney, there are more people in this building at
6 the moment in an adversarial stance, including your good self and
7 a very considerable adversarial stance.

8 .

9 MR. COONEY: With respect, all I am asking is this Tribunal says
10 what it's going to do, conduct an inquiry and not a
11 confrontation. Therefore the Tribunal's counsel puts out all of
12 the evidence.

13 .

14 CHAIRMAN: Thank you, Mr. Cooney.

15 .

16 MR. GALLAGHER: The Tribunal's counsel --

17 .

18 CHAIRMAN: Please, Mr. Gallagher, can we get on with the
19 evidence.

20 .

21 MR. GALLAGHER: Mr. Gogarty, in relation to area C on page 10,
22 did Duffy Mangan and Butler recommend to you and to JMSE that you
23 should not dispose of that holding at that time?

24 A. Well that's what they said, "Under these circumstances, we do not
25 recommend disposal of this holding at this time."

26 13 Q. Now, in relation to the lands at Forest Road, which is referred to
27 at page 12, the comment at the bottom of the page, did they
28 recommend the sale of the land due to its location and present
29 zoning, at the bottom of the page?

30 A. This is Forest Road?

31 14 Q. Yes. Can I refer you to the bottom of the page, Mr. Gogarty?

32 A. I beg your pardon?

1 15 Q. Can I refer you to the bottom of the page?

2 A. Yes, but I am just trying to get it into the context that I know

3 of, because Forest Road lands, the main Forest Road lands had been

4 sold twelve months earlier and I think what we are talking about

5 now is amenity lands along the River Valley in Swords, Swords

6 River Valley. I think that's correct.

7 16 Q. That appears to be so.

8 A. And they say that "It lies in an area zoned for residential

9 development and... market value 14,000 and the sale of this

10 property is recommended due to the location and present zoning.

11 It has no development potential and it is highly unlikely this

12 situation will change."

13 17 Q. Now, the next page is page -- following the map, page 14. This

14 relates to the lands at St. Helen's, Portmarnock.

15 A. Yes, yes.

16 18 Q. This is nine acres of land?

17 A. "This property is located at St. Helen's, three miles from

18 Malahide. Of the property of nine acres of agricultural land

19 which is... tillage. The property which formed part of the

20 development plan for the area -- open space amenity." I am trying

21 to fill in and get the train of it. So they said then, "Due to

22 the present zoning, that is amenity, covered with the lack of

23 service available to the site, we feel this particular property

24 has little or no development potential for the foreseeable future;

25 therefore we would recommend disposal of this property based on

26 agricultural/amenity value." That's right, that's right. That's

27 right.

28 19 Q. If we go on to page 16, we are dealing with lands at Rockmount,

29 Finglas.

30 A. Yes.

31 20 Q. And it's holding of approximately 83 acres, which is laid out in

32 tillage and on page 17, the next page --

1 A. Are you skipping this now?

2 21 Q. No, I am not skipping this, I am just going onto the next page

3 where the comment is and the recommendation.

4 A. Yes, sorry, "This property we feel has development potential."

5 This is Finglas Industrial Developments.

6 22 Q. Yes, did the auctioneers recommend holding this property at least

7 until the local authority issues the relevant CPOs for the

8 northern ring road?

9 A. "We therefore recommend holding this property at least until

10 the..." Yes, that's what they say, yes.

11 23 Q. Now, can I take you on two more pages please --

12 .

13 MR. COONEY: Surely the following sentence in that comment --

14 .

15 MR. GALLAGHER: All right. Would you finish that quotation, Mr.

16 Gogarty?

17 A. I beg your pardon?

18 24 Q. Would you finish that quotation please?

19 A. Yes, sorry, sorry. "We therefore recommend holding this property

20 at least until the local authority issues the relevant CPOs for

21 the northern ring road. The amount of compensation may be

22 influenced if based on the original development potential rather

23 than purely agricultural value. Any rezoning must take into

24 account the gas mains which runs through the property."

25 25 Q. Now, can I take you onto the next two pages on, to page 19.

26 Lands at Charlestown, Finglas.

27 A. There is no -- sorry, I have it. Lands at Charlestown. That's

28 all part of McKenna's land.

29 26 Q. Now, would you go onto the comment on page 20 please.

30 A. "This property which adjoins the lands of Rockmount will also be

31 affected by the northern ring road. Again, this area has

32 planning permission for light industrial usage, but the planning

1 renewal applications was lost on a technicality. Due to the
2 general location and circumstances, we again recommend retaining
3 this property at least until the CPOs due have been issued as per
4 the reasons previously stated in relation to the lands at
5 Rockmount." Yes, that's right.

6 27 Q. Would you go on two more pages to deal with the lands at Turvey,
7 Donabate.

8 A. What page?

9 28 Q. Page 22.

10 A. Lands at Turvey Avenue, Donabate. Turvey Estates Limited.

11 29 Q. Yes. Now, would you deal with the comment please, on the
12 following page.

13 A. "This property is located in a predominantly agricultural area.
14 We recommend disposal of same based on this value. We feel that
15 there is very little development potential for the foreseeable
16 future." I think they built a golf course on it or something like
17 that.

18 30 Q. Then the following property, following page, the last page of the
19 report.

20 A. "This property is" -- where are they talking about now? The same
21 property, is it, Turvey Estates?

22 31 Q. We are dealing with Beverton, Turvey Avenue.

23 A. Oh Beverton, that's the adjoining farm. I think this was the
24 property that was owned by Helmdale.

25 32 Q. What is the comment on that?

26 A. "This property is a fine example of a good quality residential
27 farm in a predominantly agricultural area. We feel therefore it
28 would make an ideal gentleman's residence. Accordingly we
29 recommend disposal of same as an agricultural holding."

30 33 Q. Is that report dated the 28th March, 1989?

31 A. That's right.

32 34 Q. And was it forwarded to you by Duffy Mangan Butler under cover of

1 letter of the 28th March, 1989?

2 A. It would have been, yes.

3 35 Q. Can you recall what happened after that report was received, in

4 particular, what happened within the JMSE organisation, what

5 decisions, if any, were taken about it?

6 A. I would have passed it back on to Joe Murphy senior.

7 36 Q. I see. Did you write to Mr. Murphy -- sorry, did you write to

8 Mr. Duffy on the 8th June of 1989?

9 A. Well that was two or three months afterwards. But in the

10 meantime I passed it on to Senior and I had a discussion with him,

11 do you see?

12 37 Q. And following that discussion, what did you do?

13 A. Well you see, prior to that June letter, I had told Fred Duffy,

14 the Lord have mercy on him, do you know, what Mr. Murphy's

15 thinking was on it.

16 38 Q. And what was Mr. Murphy's thinking?

17 A. He was thinking the whole lot, but not go to public auction.

18 39 Q. And did you give those instructions to Mr. Duffy?

19 A. I did verbally, yes.

20 40 Q. Approximately at what time?

21 A. It would be shortly after that.

22 41 Q. When you say shortly after that --

23 A. Sometime in April.

24 42 Q. Sometime in April?

25 A. Yes.

26 43 Q. Now, did you write to Mr. Duffy on the 8th June, 1989?

27 A. Yes, well things took a bit of a change that time you see.

28 44 Q. Just if you stay with me --

29 A. Sorry. I wrote to him on the 8th June confirming Mr.

30 Murphy's -- I haven't a copy of the letter.

31 45 Q. We will get you a copy of the letter. It's to be found in the

32 reference book at page 33. It's also in the --

1 A. Yes, will I read the letter?

2 46 Q. Yes, if you would please.

3 A. It's the 8th June, Lajos Holdings Limited, attention of Fred

4 Duffy. Lands zoned by Grafton Construction company, Finglas

5 Industrial Developments, Barrett developments, Turvey Estates and

6 Helmdale.

7 "Dear Sirs, I have recently discussed in depth with Mr. Murphy

8 your report and valuations of the 28th March, 1989 on the lands as

9 above and I confirm his instructions and agreement to you acting

10 as sole agent in negotiating the sales of these lands at the

11 agreed fee of 2 percent.

12 .

13 Mr. Murphy is anxious to realise an early disposal of these

14 properties and to this end, he accepts that you may deem it

15 necessary to discount some or all of the development potential

16 element you have included in your earlier evaluations. Messrs

17 McArdle & Company, solicitors, (Contact: Mr. Denis McArdle) will

18 act for the vendor company in the transactions and I will continue

19 to liaise with you towards an early and successful outcome.

20 .

21 Yours faithfully, JM Gogarty", and copies to Mr. Murphy, Joe

22 Murphy.

23 47 Q. In your affidavit, you have deposed that early in May or in May or

24 early June 1989, you attended several meetings which included

25 Michael Bailey, Frank Reynolds and yourself.

26 A. Yes.

27 48 Q. Would you deal with those meetings? When they --

28 A. Well Mr. Bailey chased me about those lands, you see, that he was

29 very interested in them.

30 49 Q. Sorry, would you mind speaking closer to that?

31 A. Mr. Bailey chased me about these lands, he was very interested in

32 them, you see, he had bought Forest Road twelve months earlier so

1 there was a rapport between us, you know. And I discussed the
2 matter with him, and told him that they were with Duffy Mangan and
3 Butler for sale by private treaty and I referred him to Fred Duffy
4 who, I believe, gave him a schedule of the lands, it's a famous
5 document, a schedule of the lands and I think I told -- he was
6 very interested, you know, and I wanted to still deal
7 directly -- he didn't want to be going to auctioneers. He wanted
8 to try and keep a line open to Mr. Duffy, that was my
9 understanding at that time. When I tell Joe, he said deal with
10 him, liaise with him, give him anything he wants to know about
11 that, do you see. I did that any time I was asked for it, do you
12 see, Fred Duffy was then handling the matter, trying to interest
13 other parties who might be interested in it and I felt that at the
14 time, that basically what was happening was that Mr. Bailey wanted
15 to keep close to -- without going to the auctioneers, to try and
16 do a deal. Fair enough. So it was in that context that he
17 wrote, I think he wrote, making an offer for the lands.

18 50 Q. Before we come to that, did you have a number of meetings with Mr.
19 Bailey?

20 A. There were several meetings with Mr. Bailey and with different
21 personnel. Frank Reynolds was involved as well too and I believe
22 that some of the meetings I wouldn't be at but Frank would fill me
23 in, you see. But they all happened fairly quickly around about
24 the latter part of May and early June and it was developing that
25 he was the principal, main party that was interested in the lands.

26 51 Q. Where did these meetings take place?

27 A. Well they took place in various places. First of all he'd ring
28 me and we'd talk on the phone over it, then we'd meet in Santry.
29 I wouldn't be at all the meetings, but I kept in touch with Frank
30 Reynolds who was filling me in on some of the meetings and they
31 arrived at a decision -- you see, there was trouble there. As I
32 said earlier, Mr. Murphy wanted to sell all the lands and make an

1 early disposal of them for his own purposes. I had mentioned that
2 before.

3 52 Q. Were you supporting him in that or did you have any view --

4 A. Well, I didn't give a damn. What I wanted was, because you see
5 there was a lot of things happening at that time.

6 53 Q. We will stay on this for the moment.

7 A. I had emphasised this, you see, that the lands were of secondary
8 interest to me. Anyway, that was beside the point. The thing
9 is at the time I was very heavily engaged in pursuing the claims
10 with Moneypoint and the other claims. Secondly, I was very
11 heavily engaged in the accounts, the 1988 accounts, that they were
12 trying to get me to sign and Mr. Copsey was putting it back into
13 my court. They all knew about these accounts being -- to put it
14 mildly -- incorrect. I want to put the context to you, sorry.
15 And they were throwing the book back at me because these accounts
16 were suspect and Joe Murphy knew they were suspect and Roger
17 Copsey knew they were suspect but they were putting it back to me,
18 who they considered was the prime mover. I should come up with
19 more basic information to support our claims that these were
20 incorrect. And I spent considerable time during that week and
21 fortnight there, there is evidence there, trying to get
22 information from the auditors and from the accountants. It's all
23 there. And they broke my heart because documentation was not
24 available to support what they were saying. There is no doubt
25 about that under the sun and there is plenty of documentation that
26 can be turned up now and we will go through it. That was two
27 things.

28 .

29 There was something else too that was pressing me at the time. I
30 had my pension. They were the three things.

31 54 Q. All right.

32 A. Now, as well as that, you see, I was going, according to Senior's

1 instructions and Senior's understanding and feelings you see, but
2 it was evident from Frankie and Junior that they didn't want to
3 sell the lands. They wanted to hold on to them for the long term
4 potential which they felt was valuable and I do believe that they
5 were valuable and had potential in the long term. But that
6 wasn't my interest. I was caught between the two and it was put
7 to me, I was caught between the two sides. It was put to me that
8 I could influence Senior to reconsider his decision.

9 55 Q. Who put that to you?

10 A. Junior and Frank Reynolds. And this came up at meetings then,
11 you see, how they would arrive at that to try and pacify Senior, a
12 compromise. And seemingly they had some meetings with Mr. Bailey
13 because Frank filled me in and the thinking was then, that if, in
14 the long run, that they could hold on to them by some agreement
15 with Mr. Bailey, whereby he could take a very effective control of
16 the lands and pursue the development of them with a company of
17 his, so that that would distance Senior from any relationship with
18 the lands and that was the line that was followed that time.

19 .

20 And they came up with this proposition and then put it to me at a
21 meeting with Mr. Bailey, that there were two proposals then on the
22 table. One was the outright sale of the lands and the other was
23 a shared equity between themselves and Mr. Bailey.

24 56 Q. Did Mr. Bailey write to you on the 8th June of 1989?

25 A. Yes. You see the discussions took place and he said certain
26 things at that meeting and I had to keep Senior informed of that,
27 because he had a question mark over Junior's ability or what would
28 I call it, sagacity, or what you would like to call it, in dealing
29 with matters like that. He was young and he was only coming into
30 the thing but anyway, that was the set-up there, and Mr. Bailey
31 and the discussion was along the lines that the discussions are
32 really summarised in fair detail in a letter he wrote on the 8th

1 June and it was delivered by hand into Santry, you see. That
2 summarises various meetings that he refers to and various
3 recommendations and then it finishes up with the two options, what
4 he could do, but he'd need to be rewarded with a 50 percent
5 interest in all the lands. That was the subject matter of it.

6 57 Q. Now, did you have a -- do you remember a meeting that you have
7 referred to in your affidavit?

8 A. I beg your pardon?

9 58 Q. You referred in paragraph 45 in your affidavit to a meeting in the
10 JMSE offices in Santry.

11 A. Well, seemingly when Frank got that letter, he rang me to come
12 into the office. He read the substance of the letter over the
13 phone to me.

14 59 Q. Before we go onto the letter, I just want to identify, when did
15 this meeting take place where you said that "There was a meeting
16 in early June 1989 attended by Joseph Murphy, Frank Reynolds and
17 myself, and there was a discussion about a specific proposal.
18 This proposal was that Michael Bailey would acquire 50 percent
19 interest in all the Murphy group lands."

20 .

21 CHAIRMAN: Just a minute, please.

22 .

23 MR. COONEY: Mr. Chairman, we are coming to a very important part
24 of Mr. Gogarty's evidence. I suggest he should not be led, to
25 give his evidence of his own recollection and refer to a
26 documentation which is contemporaneous.

27 .

28 CHAIRMAN: So far as practicable.

29 .

30 MR. COONEY: With respect to leading questions.

31 .

32 CHAIRMAN: So far as practicable.

1 .

2 MR. COONEY: It's either practical -- are you saying he could ask
3 leading questions, Mr. Chairman, on this --

4 .

5 CHAIRMAN: He can ask a question -- he can introduce a question
6 by suggesting the questions as he has just done and then get the
7 man to give his evidence on it.

8 .

9 MR. COONEY: Mr. Chairman, you know as well as I do that Mr.
10 Gogarty is coming on to crucial matters.

11 .

12 CHAIRMAN: Yes.

13 .

14 MR. COONEY: Let me finish. That there are critical differences
15 between the accounts of what occurred about that time. Now, in
16 view of that, Mr. Chairman, with respect, I submit that in
17 fairness to my clients, Mr. Gogarty should not now give this
18 evidence in response to leading questions, nor with reference to
19 anything which he said in a document made some other time.

20 .

21 CHAIRMAN: Mr. Gallagher, I think there is a fair basis for that
22 proposition. You should try and deal with it on simple questions
23 please.

24 .

25 MR. ALLEN: Yes, I am sorry, Chairman, if I could just interpose
26 for a moment. This particular letter, for example, which
27 contains the proposal, the writing of that letter, more than
28 anything else, was responsible for the naming of my client in the
29 Terms of Reference. I think it is not unreasonable to assume
30 that had the letter not been written, neither I nor my clients
31 would be here. I do think in those circumstances, Sir, that in
32 relation to the matters which Mr. Gogarty is now about to give

1 evidence, I appreciate the difficulties and I appreciate that it
2 is not the perfection in terms of the applications of the rules of
3 evidence is difficult to achieve, and we have seen plenty of that
4 over the last few days. That's not meant in any critical way,
5 but I do ask that in relation to the matters which are now
6 forthcoming, of course they are important and of vital importance
7 to Mr. Cooney and his clients or to Mr. Cooney's clients. They
8 are at least as much important to my clients and I would ask
9 specifically, as Mr. Cooney has, that there be no leading
10 questions. Mr. Gogarty has shown, and I say this with no
11 disrespect or sarcasm, particular facility for the recollection of
12 facts and detail and a grasp of a very wide range of material.
13 It should be within his competence to give detailed and accurate
14 evidence, now that we have arrived at the first germane point of
15 this particular sitting of this inquiry.

16 .

17 CHAIRMAN: Mr. Gallagher, do try to control the witness and ask
18 him simple questions.

19 .

20 MR. GALLAGHER: Mr. Gogarty, in the course of your discussions
21 with Mr. Bailey and with others, was there any discussion as to
22 how the value of the lands might be maximized or as to how the
23 lands might be developed?

24 A. Well, can I say a few things that I am entitled to say, that you
25 see --

26 .

27 MR. COONEY: I beg your pardon?

28 .

29 CHAIRMAN: You have got to wait for the evidence before you
30 object.

31

32 MR. COONEY: I have been listening to Mr. Gogarty for four days

1 now, Mr. Chairman. We know that it is his custom to go outside
2 the ambits of the question which he is asked and to make a speech,
3 usually an argumentative speech, the point of which also usually
4 is to damage my clients. Now, he is now prefacing an answer by
5 saying he wants to make a number of points.

6 .

7 With respect, Mr. Chairman, in no publicly conducted inquiry or
8 court of law is a witness given that latitude. A witness must
9 answer specific questions put to him in a specific manner. He is
10 not entitled to use the witness box to make speeches or to engage
11 in a propaganda exercise. I respectfully ask, Mr. Chairman, that
12 in this critical part of this inquiry, specific non-leading
13 questions be put to the witness and that he be restricted to
14 answering those questions. That's common fundamental elementary
15 fairness that my clients are entitled to.

16 .

17 CHAIRMAN: Mr. Gallagher, would you please endeavour to keep the
18 questions to simple requests for information and try and keep the
19 witness on point.

20 .

21 MR. GALLAGHER: I am endeavouring to do that.

22 .

23 CHAIRMAN: But it is difficult, but we will do our best.

24 .

25 MR. GALLAGHER: Mr. Gogarty, you have referred to some meetings
26 that took place in 1989 in relation to these lands. Was there
27 any discussion at any of these meetings about how the development
28 potential of these lands might be maximized or how they could be,
29 their zoning might be changed?

30 A. There was of course. Sure I am trying to tell you that.

31 60 Q. Please, if you move forward, if you wouldn't mind, to the

32 microphone and just tell us.

1 A. I am trying to tell you all that but you won't listen to me about
2 the truth.

3 61 Q. Please, Mr. Gogarty. Would you please --

4 A. All I am saying is this, that that letter of the 8th June followed
5 a meeting a couple of days earlier, first of all. First of
6 all. And there was a discussion as to how the value of these
7 lands can be maximized to the mutual benefit of both the Baileys
8 and the Murphys and it would help to distance Junior from the
9 whole thing.

10 62 Q. Now, would you please tell me when, approximately, how many days
11 before that letter approximately --

12 A. I'd say only a couple of days.

13 63 Q. Can you remember --

14 A. It's all happening very quickly.

15 64 Q. Can you tell me where the meeting took place, to the best of your
16 recollection?

17 A. Santry.

18 65 Q. And can you recall who was at the meeting?

19 A. On the 8th June?

20 66 Q. No, the meeting that you have referred to.

21 A. The same people, Frank Reynolds and Junior and Bailey and
22 myself.

23 67 Q. Now, what was said at that meeting and what was said by whom?

24 A. Mainly by Bailey what he could do with these lands and he
25 summarised it in his letter of the 8th June.

26 68 Q. At the meeting, what did he say he could do with the lands?

27 A. He says that he could get them rezoned by procuring a majority in
28 Dublin County Council to get them rezoned.

29 69 Q. And did he say how that could be achieved?

30 A. What?

31 70 Q. Did he say how that could be achieved?

32 A. Through the help of politicians or councillors who could be

1 influenced by Mr. Ray Burke. That's what he told us at that
2 time. The letter summarises everything that was said except the
3 letter doesn't name the people that he named at the meeting a
4 couple of days earlier.

5 71 Q. And at that meeting, did he indicate the method by which this
6 rezoning would be achieved or what, if anything, would have to be
7 done to secure it?

8 A. He went into great detail about how he would go about, that there
9 was five or six councillors that could organise or maximize the
10 votes of Dublin County Council and that he also was in a position
11 to cross the political divide, they are the words he says,
12 political divide, cross the political divide and that he could
13 rely on close liaison with people in the County Council including
14 Mr. Redmond and he mentioned that he had access to information
15 about roads and sewerages and all that type of thing and the
16 projections of them and he also mentioned a planning officer, I
17 think she was a temporary planning officer or something like that,
18 you know.

19 72 Q. Now, what followed -- was there anything else said at that meeting
20 by anybody that you can recall at that meeting?

21 A. Yes. Joe Murphy, young -- Junior was going along with this. He
22 thought it was a good idea because it would help, as he says, to
23 get the father to come in on that proposition rather than the
24 outright sale of the lands and he felt with my help, that I could
25 influence the father. And sure I didn't give a damn one way or
26 the other, if I could get out of the whole bloody lot.

27 73 Q. And was there anything else said that you can remember at that
28 meeting?

29 A. There was now, if I can just get my recollection.

30 74 Q. Try and get your recollection.

31 A. Have you a copy of the letter and it would help me.

32 75 Q. We are dealing with the meeting. Mr. Cooney objects to you

1 seeing the letter at this stage.

2 A. Sure he is objecting all over the bloody place. He is of

3 course. He is objecting to the truth coming out.

4 76 Q. Please, Mr. Gogarty.

5 A. Sorry, I must insist here. He is objecting to the truth coming

6 out. I came in here with warts and all and I told you about an

7 affidavit that would fill you in on the whole bloody thing. He

8 is objecting to that because he knows what's in it is dynamite.

9 77 Q. Please, Mr. Gogarty.

10 A. Please Mr. -- What's your name? Please Mr. --

11 78 Q. My name is Gallagher.

12 A. Give me a break too as well. Mr. Cooney is a great man. They

13 were all great men and his other friend over there, what do you

14 call him, Mr. Allen. They are all great men to discredit me and

15 I will go to my grave before they will get away with it.

16 79 Q. Mr. Gogarty --

17 A. That's all I am saying.

18 80 Q. Mr. Gogarty, just in relation to that meeting, can you remember

19 anything else that was said at that meeting at this stage?

20 A. Yes.

21 81 Q. Just try and remember, if you would please.

22 A. Did I get the letter?

23 82 Q. I will give you a letter in just a moment.

24 A. Am I entitled to the letter?

25 83 Q. Yes, you are.

26 A. Well give us the letter for Christ sake and get on with it. And

27 help me -- help me out to help you people and the Tribunal.

28 That's all I want.

29 84 Q. Sir, can I have ruling as to whether Mr. Gogarty is entitled --

30 .

31 CHAIRMAN: Mr. Gogarty is entitled to the letter.

32 .

1 MR. GALLAGHER: All right, would you hand Mr. Gogarty a copy of
2 the letter.

3 A. When I came to the Tribunal --
4 .

5 CHAIRMAN: Mr. Gogarty, you have been handed a copy of the
6 letter. Please let us proceed on this matter in an orderly
7 fashion, quietly and -- (Document handed to witness.)

8 A. Sorry for all the disturbance.
9 .

10 MR. GALLAGHER: I am going to read the letter now.

11 A. I will read it. It will help me.

12 85 Q. Pardon?

13 A. I will read it, it will help me recapture my thoughts. In case
14 you might be prompting me or something.

15 86 Q. Pardon?

16 A. In case you might be prompting me.

17 87 Q. I'd never be tempted to prompt you. Would you put in the address
18 at the beginning?

19 A. I beg your pardon.

20 88 Q. Would you start at the address at the top?

21 A. The address is:

22 "Killnamona House,
23 The Ward,
24 County Dublin.

25

26 8th June, 1989.

27

28 "Dear Mr. Gogarty,

29

30 PROPOSALS FOR DISCUSSION.

31

32 Re: Your lands at Finglas, Ballymun, Donabate, Balgriffin,

1 Portmarnock, County Dublin.

2

3 I refer to our many discussions" - this is of the meetings, many
4 discussions -- "regarding your following six parcels of lands:

5

6 Lot 1: 100 acres (approximately) at North Road, Finglas,
7 including "Barrett's Land"

8 And that would be Barrett's Land and Finglas Industrial and there
9 is a pencil mark there. Do you want me to read the pencil
10 marks?

11 89 Q. If you just read the letter first and we can come back to the
12 pencil marks.

13 A. Lot 2: 14 acres (approximately) at Jamestown Road, Finglas."

14 That would be Grafton Construction Company.

15 .

16 "Lot 3: 108 acres - crossed out to 83 - (approximately) at
17 Poppintree, Ballymun."

18 That's both the lands striding that lane there, that road there,
19 there are 40 acres in the Corporation area and the balance on the
20 north of it going towards Dublin airport. That's the 83 acres of
21 land there. It's on the map someplace.

22

23 Lot 4: "255 acres (approximately) at Donabate, (Turvey House and
24 Beverton House.)

25 Well that's the -- Turvey Estates and Helmdale they are referring
26 to there. The two lots.

27 90 Q. That's referred to lot 4; is that correct?

28 A. Lot 4, yes.

29 .

30 Lot 5: 250 acres (approximately) at Balgriffin."

31

32 Lot 6: 9 acres (approximately) at Portmarnock.

1 .

2 I submit the following proposals for your consideration.

3 .

4 Proposal No. 1: Purchase Proposal.

5

6 Lots 1, 2 and 3: Purchase price £4,000 per acre.

7 10 percent deposit payable on the signing of

8 the contract.

9 Completion one year from the day of the

10 contract.

11

12

13 Lot 4: Purchase price: £1 million

14 Deposit 10 percent on contract.

15 Completion two years from date of contract.

16 .

17 Lot 5: Purchase price: £750,000.

18 Deposit 10 percent on contract.

19 Completion three years from date of contract.

20

21

22 Lot 6: Option to be granted for nominal consideration

23 (of £100) for a period of two years at a

24 purchase price of £30,000 per acre."

25 £30,000 per acre. Now...

26

27 "Proposal number 2: Participation proposal.

28

29 As an alternative to the outright purchase proposal above, I am

30 prepared to deal with Lots 1 to 5 (inclusive) above on the basis

31 that I would be given a 50 percent share in the ownership of the

32 said lands in exchange for procuring Planning Permission and

1 Building Bye Law Approval. The time span which I would require
2 to be allowed to obtain the permissions and approval and may
3 anticipate a financial expenditure (apart from my own time input)
4 in respect of different lots would be as follows:

5 .
6 Lots 1, 2 and 3.

7
8 A period of two years within which to procure a buildable planning
9 permission and by-laws approval for mixed development including
10 housing, industrial and commercial.

11
12
13 My financial expenditure up to a figure of £150,000 to (include
14 architects fees, consulting engineer's, planning and bye law
15 charges etc..

16
17 Lots 4 and 5:

18
19 Time requirement -- three years.
20 Financial expenditure up to £150,000.

21
22
23 In considering the above proposals, the following points of
24 information shall be borne in mind by all parties:

25
26 1. From the point of view of obtaining planning permission,
27 the entire lands (lots 1 to 6 inclusive) have the
28 following shortcomings:

29 91 Q. Lot 1 to 6 inclusive?

30 A. Inclusive.

31 No zoning for development purposes.

32 No services.

1 No proposal in current draft development plans (city and county)
2 for the zoning of the lands or any part thereof for development
3 purposes.

4
5

6 2. We face a very severe uphill battle to arrange for the
7 availability of services and for the ultimate procurement of
8 planning permission.

9

10 3. The steps to be taken on the way to procuring a buildable
11 planning permission and building bye law approval are
12 notoriously difficult, time consuming and expensive.
13 Material Contravention Orders must be obtained and this
14 involves the procurement of a majority vote at two full
15 Council meetings at which 78 Council members must be present
16 and it also involves satisfactory compliance with extensive
17 requirements and preconditions of the Planning Authority and
18 the inevitable dealing with protracted appeals to An Bord
19 Pleanala.

20

21 4. It is essential that the planning application shall be
22 brought in the name of an active house building company
23 which enjoys good standing and good working relationships
24 with the planners and the Council members and in this
25 regard, I confirm that in event of our reaching agreement
26 regarding the within proposals that all planning
27 applications would be made by one of my companies which
28 meets the said requirements.

29

30 5: In the case of all the lands, the applications will be
31 highly sensitive and controversial and we can realistically
32 expect strenuous opposition from private, political and

1 planning sectors. One of my active companies will have to
2 take the limelight in such applications and withstand the
3 objections and protests which will inevitably confront it.

4 Apart from the anticipated financial expenditure as outlined
5 above, it should be borne in mind that I will personally
6 have to give extensively of my time and efforts over the
7 entire period of the applications including the necessary
8 preliminary negotiations in regard to services and zoning.

9 It must be borne in mind that I would have to abandon other
10 projects which would be open to myself and my companies in
11 order to give proper attention to this project. If I am
12 successful in changing your lands from their present status
13 of agricultural lands with very limited potential, even for
14 agricultural purposes and use, into highly valuable building
15 lands I would have to be rewarded with a minimum 50 percent
16 stake in the ownership of the lands. Our advisers would
17 have to work out the details as to how this can be effected
18 in the most tax efficient manner.

19
20 I look forward to hearing from you in relation to the above
21 proposals. In the case of the first proposals which relates to
22 outright purchase of the lands (excluding lot 6), I would not be
23 adverse to a proposal which would involve the vendor retaining a
24 participation stake of up to 20 percent in the purchasing company
25 if you felt that an ongoing interest in the future development of
26 the lands would be more acceptable to the present owners.

27
28 Yours sincerely,
29 Michael Bailey.

30
31 Jim Gogarty,
32 Clontarf,

1 Dublin 3."

2 .

3 Now, I wasn't living in Clontarf at that time. I was living in

4 Sutton.

5 .

6 CHAIRMAN: I wonder would this be an appropriate time to take a

7 short break. We seem to be just coming to a change of subject.

8 So I will break for a quarter of an hour.

9 .

10 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS

11 FOLLOWS:.

12 .

13 CHAIRMAN: Mr. Gallagher, when you are ready.

14 .

15 92 Q. MR. GALLAGHER: Mr. Gogarty, before the break, you told us you

16 received the letter of the 8th June, 1989 which was signed by Mr.

17 Bailey. It is addressed to you in Clontarf. Where were you

18 residing at that time?

19 A. I was living in Sutton.

20 93 Q. I see.

21 A. Renvyle, Shielmartin Road, Sutton.

22 94 Q. When approximately did you receive that letter and how did you

23 receive it?

24 A. I got a phone call from Frank Reynolds that morning before lunch,

25 you know, and he said he had a letter from Bailey for me and I

26 says to open it, you know, because he was a director and he read

27 me the contents of it and he said he wanted me inside that

28 afternoon, that there was talk about a meeting with Mr. Burke.

29 95 Q. All right. Now, just if you stay with the letter for just a

30 moment, when did you first see the letter?

31 A. When I went into the office in Santry.

32 96 Q. Did you read it on that occasion?

1 A. I had a look at it, yes.

2 97 Q. And can you say what you understood by the contents of that letter

3 and the two different proposals, what was your general

4 understanding?

5 A. Well, that there was going to be --

6 MR. COONEY: With respect, Mr. Chairman, what he understands is

7 not relevant. It's what the letter says and what actually was

8 stated on foot of it.

9 .

10 MR. GALLAGHER: Without knowing what his understanding was, we

11 can't know.

12 .

13 CHAIRMAN: Just one moment, we will take one submission. Mr.

14 Cooney, you say you object to being asked what he understood.

15 .

16 MR. COONEY: What his understanding of the letter was. I mean

17 the letter is there, it's for you, Mr. Chairman, to decide what

18 the letter means ultimately and the witness cannot say what his

19 understanding or opinion is, he gives evidence as to facts.

20 .

21 MR. ALLEN: Chairman, if I might make this point. My

22 recollection, my note of the evidence which Mr. Gogarty gave in

23 reply to Mr. Gallagher as to the provenance of that letter and the

24 circumstances in which it came to be written and the contents

25 thereof was that it represented proposals which had been discussed

26 between the parties and that is the evidence, that is the evidence

27 which Mr. Gogarty has given in response to questions from Mr.

28 Gallagher. Mr. Gallagher now comes back and asked asks him what

29 did he understand by the letter. With the greatest of respect,

30 Sir, in my respectful submission, that isn't a proper question.

31 He has already established from the witness what was meant by the

32 letter, the witness has said so in very clear terms and I just

1 wanted to make that point, Sir, in addition to associating myself,
2 if I may respectfully do so, with Mr. Cooney in his principal
3 objection which is to the admissibility of --

4 .

5 CHAIRMAN: I can actually turn back the record to what was said
6 but may I say my understanding of the letter insofar as it has
7 been used by the witness was, he was using it as an aide memoir to
8 his recollection of the meeting, meeting on themes, the subject
9 matter -- this is what I was recording before we rose and I am
10 reasonably certain I am correct in that. I wonder could you role
11 that -- we have to get, I gather that we can't do it because it
12 has been taken off for printing purposes --

13 .

14 MR. ALLEN: So be it Chairman, in any event --

15 .

16 CHAIRMAN: My understanding of it certainly and I think I am
17 fairly accurate, he was using the letter as an aide memoir and he
18 is then asked what does he understand by the letter and I suppose
19 the answer to that is what I said already represents, that it
20 represents essentially the terms of the discussion.

21 .

22 MR. ALLEN: I have no difficulty with that.

23 .

24 CHAIRMAN: That's as I understand the situation. I don't see
25 any great point in this objection but that's as I understand it.

26 .

27 MR. COONEY: Well, the point of the objection is this, Mr.
28 Chairman, when Mr. Gogarty is asked a broad general question about
29 what is his understanding, he uses it as an opportunity to make a
30 speech.

31 .

32 CHAIRMAN: He is not the only person who is doing that.

1

2 MR. COONEY: Mr. Chairman, are you referring to me by any
3 chance?

4 .

5 CHAIRMAN: I am.

6 .

7 MR. COONEY: Would you give some examples to support that
8 contention?

9 .

10 CHAIRMAN: Mr. Cooney, I have collected your collective works on
11 the transcript and some day I will come back to deal with them.

12 .

13 MR. COONEY: No, Mr. Chairman, you have now made a suggestion
14 here I emphatically reject and if you make a suggestion, Mr.

15 Chairman, you have on obligation to back it up by reference. I

16 will not tolerate that sort of comment being made by you about the

17 manner I represent my clients unless you can stand over it. It's

18 not good enough to say to a barrister who is making an objection

19 on behalf of his clients to inadmissible evidence he has done the

20 same thing. That is not fair, it's not good enough, Mr.

21 Chairman. It's no way to conduct a tribunal, with respect.

22 .

23 MR. GALLAGHER: Sir, the witness asked to be furnished with a
24 copy of his letter to assist him in his recollection of events and

25 having objected to Mr. Gogarty seeing the copy of the letter which

26 was written to him by Mr. Bailey, I asked you for a ruling and you

27 directed that he should be permitted to see that letter. It was

28 addressed to him. Clearly it is relevant to establish what he

29 understood and what he did as a result of that and that is what I

30 am seeking to establish.

31 .

32 CHAIRMAN: Mr. Gallagher, it's fair comment by the other parties

1 to say the letter speaks for itself. What he did as a result of
2 how he reacted to it is undoubtedly within your provenance and
3 within his provenance but what he understood can either be varied
4 or otherwise by the print that's there.

5 .

6 98 Q. MR. GALLAGHER: Mr. Gogarty, having read that letter, did it
7 suggest to you that there was anything different in what had been
8 discussed at the earlier meetings involving yourself and Mr.
9 Bailey, Mr. Murphy and Mr. Reynolds?

10 A. Not materially. When Frank Reynolds said to me, he wanted me to
11 discuss it and to take it from there what was going to happen
12 following it.

13 99 Q. In dealing with the points that were in the letter, were you --
14 did you agree that the lands had the shortcomings that were set
15 out in that letter?

16 A. Oh fully, fully, fully. Well, it was -- well, basically, it was
17 acknowledging the Duffy Mangan and Butler's report on them, you
18 know, about the value of them.

1 100 Q. Now, I want you to come back to the meeting that you talked about
20 earlier. Were those shortcomings discussed at that meeting?

21 A. Oh there was a general discussion about maximising the potential
22 of those lands and the way to do it and not to fall out completely
23 with Senior, to try and bring him along to that way of thinking,
24 that if he could not be too unduly worried if the deal was done
25 with Bailey and that Bailey handled it through his companies, that
26 he would be distancing himself from the Revenue. That was the
27 main thing that was to overcome.

2 101 Q. Was the shortcomings of the lands, because they had no zoning for
29 development purposes, discussed at the meeting?

30 A. In general terms, yes. Bailey was acknowledging that there was
31 no value over and beyond agricultural land and that he could
32 remedy that.

102 Q. And how was that to be done?

2 A. It was to be done by he engaging in an ongoing situation over a
3 number of years by getting rezoning, either by normal applications
4 or by the variation, there's a section there where it can be done
5 politically by the Council. There's a name on it at the moment.

103 Q. Is that Section 4?

7 A. Some section anyway, which takes it out from the planner's' hands
8 to a certain extent and into the political field.

104 Q. And was it --

10 A. And this could be determined then by votes, majority votes at, I
11 think, two meetings of the Council which is again summarized in
12 his letter but he would want to be rewarded with 50 percent of the
13 equity for all that work.

1 105 Q. And was any figure put on the cost of doing all of this?

15 A. Well, he said that he was prepared to spend £2,000 an acre over
16 the years to get that done and to maximize the value of the lands.

1 106 Q. When was that said?

18 A. A couple of days before this meeting. It was all under
19 pressure. Seemingly there was pressure coming from Burke to get
20 money and to get it in cash.

2 107 Q. Who said that?

22 A. Bailey did, pressed by Burke.

2 108 Q. When did he say that?

24 A. At the meeting a couple of days before that and, in fact, what
25 they had actually done when I found at the meeting on the 8th
26 June, they had made a decision to follow that up.

2 109 Q. Who had made the decision?

28 A. Junior and Frank Reynolds and they wanted me, because they felt I
29 was with Senior in his stance to get rid of them fairly quickly.
30 I didn't give a damn but anyway, I had to do what Senior was
31 telling me because he was the man that I was supposed to be
32 subservient to at the time.

110 Q. When you went to, as I understand your evidence, to meet Mr.

2 Reynolds and he had telephoned you on the 8th?

3 A. Yes.

111 Q. Did I understand you to say you went to the office or premises of

5 JMSE that day?

6 A. Yes.

112 Q. Will you tell the Tribunal what happened on that occasion when you

8 went there? Whom you met and what happened?

9 A. Well, they referred to the previous proposals that were discussed

10 with Bailey and that they had agreed to go along with it and they

11 were waiting for a call from Bailey actually to set up the meeting

12 with Burke.

1 113 Q. Well now, what proposals are you referring to?

14 A. Well, they were hoping that they'd go for the section -- the

15 50-50 proposal and they would be very reluctant to leave the first

16 proposal, the outright sale, because they felt they had lost all

17 control of them and they couldn't get any value out of them, only

18 agricultural land and they felt over a number of years and that

19 was Mr. Murphy's strategy, over the years putting blocks of land

20 together in the long-term where quite legitimately changes in

21 structure and environmental respects and roads and sewers, that

22 these lands would sometime come within the ambit of being

23 considered for zoning either by, as I say, a decision on political

24 level or planning level.

2 114 Q. When you say --

26 A. This is how he done it for years, buying agricultural land and

27 prepared to leave them aside, letting for tillage in the hope that

28 by his own methods, that something would materialise over a long

29 long time, which did over the years.

3 115 Q. When you say that they hoped that the 50-50 arrangement would

31 develop, who are you referring to?

32 A. That's Junior and Frank Reynolds. That's the best they could

1 salvage out of the problem that was before them.

116 Q. All right.

3 A. And it was fairly urgent.

117 Q. Now, when you cast your mind back to the occasion when you first
5 saw this letter, the letter we have just read.

6 A. I have the letter here.

118 Q. Now, can you remember who was present when you went to the
8 premises, who you met, who you spoke with and what was said?

9 A. Junior and Frank Reynolds and myself.

1 119 Q. All right.

11 A. And in fact they had it all set up at that time because they had
12 an envelope with money in it.

1 120 Q. What was said and to whom --

14 A. What was said was they were going hopefully to try and get the
15 proposal across me to go over the second proposal and they would
16 follow it up then with Bailey and Burke.

1 121 Q. Is the second proposal the 50/50 proposal?

18 A. The 50/50 proposal, yes.

1 122 Q. Did they say they had, with whom they had that arrangement or why
20 they had such hopes?

21 A. I beg your pardon?

2 123 Q. Did they say they had an arrangement in relation to the 50/50 or
23 were they hoping to arrive at that situation?

24 A. Well, my understanding of it was they had already made a
25 decision. They had already made a decision that they would opt
26 for the second proposal and that was the purpose of the meeting,
27 if -- if they had to submit to Senior's decisions, there would be
28 no necessity for going anywhere because the land would be cleared
29 off and finished with.

3 124 Q. When you say cleared off?

31 A. Sold, according with Senior's wishes or anxieties.

3 125 Q. Can you say what was said to you by Mr. Reynolds and/or by Mr.

1 Murphy at that meeting when you first went into the premises?

2 A. Sorry?

126 Q. When you first went into JMSE on that day when the letter was

4 received, can you remember what they said to you?

5 A. The usual chat, I suppose what happened was, there was an envelope

6 on the table and they said they had arranged for £40,000, their

7 side of it, to give to Burke.

127 Q. Who said that to you?

9 A. Junior and that Frankie had brought back £30,000 cash and that he,

10 Junior, was short £10,000 because the agreement with Bailey was

11 that each of them would give £40,000 towards this proposition and

12 Junior told me or Frankie to get a cheque. Frankie was the

13 managing man there and he went down and got a cheque book and come

14 up and we signed a cheque for £10,000 to cash and that was the

15 £40,000. I checked the envelope, I thought I was taking it, it

16 was bundles of hundred pounds or thousand -- 100 pound notes and

17 50 pound notes and I must say, I am not saying I checked the whole

18 lot of them but I checked through them to give myself reasonable

19 satisfaction that there was £30,000 in cash. I was reasonably

20 satisfied that there was £30,000 in cash and that's what they were

21 going to go along with and they were waiting for contact from

22 Bailey when to go to Burke's house at that meeting and it didn't

23 work out, whatever happened, it didn't work out. The meeting

24 didn't follow that, so I checked the thing, I put the cheque in

25 the envelope and I left it on the table before I came away and I

26 think I closed it, I am not a one hundred percent sure but that

27 was the letter and a couple of days afterwards then, the call came

28 through they had the meeting was set up.

2 128 Q. And who did the call come through from?

30 A. Frank Reynolds.

3 129 Q. What did Mr. Reynolds say?

32 A. That they had a meeting set up with Mr. Burke that afternoon and

1 they wanted me to go along and they mentioned Senior too as well,
2 that they indicated, Junior indicated he spoke to him but that
3 Junior - Senior would like a word with me and I spoke to Senior
4 that night and he says to go along and keep an eye on them.

130 Q. Can you recall whether you spoke to him personally? Whether you
6 met him personally or by telephone?

7 A. On the telephone.

131 Q. And who initiated the call?

9 A. I did, I did.

1 132 Q. And what was the purpose of calling --

11 A. I told him I understood it he might have been aware of what was
12 happening at the meetings and it was different to what his wishes
13 were and he said he knew that but he was pressed by Junior to
14 consider it and he wanted to see that I keep an eye on them when
15 they went to the meeting. Basically what's what it was.

1 133 Q. Well, following the call from Mr. Reynolds, what did you do? He
17 called you at home and told you about the meeting?

18 A. Yes, he wanted me in that afternoon.

1 134 Q. What did you do?

20 A. I said I would go. I went in.

2 135 Q. Where did you go to?

22 A. Into the office again where Junior and Frank Reynolds were.

2 136 Q. Yes.

24 A. General discussion again and --

2 137 Q. What was that general discussion about, can you recall?

26 A. I beg your pardon?

2 138 Q. What was that general discussion about, can you recall?

28 A. About they going to Burke's house.

2 139 Q. Yes.

30 A. And they were waiting for Mr. Bailey to call which he did sometime
31 in the afternoon.

3 140 Q. Yes.

1 A. And we drove then --

141 Q. Were you still there?

3 A. I was still there, I was still there.

142 Q. What happened when Mr. Bailey arrived?

5 A. He said they were going immediately but it was getting a bit late,
6 going immediately to Burke's house and Frank Reynolds was supposed
7 to come along and he excused himself and legitimately so because
8 he can be busy at times in the office, you know, and he just
9 couldn't make it but his intention was to go to the meeting but he
10 didn't so it was only Junior and myself and Mr. Bailey drove us to
11 the meeting out in Swords.

1 143 Q. Yes. And where did you go to when you got to Swords?

13 A. Well, I sat in the back of the car and Junior was in the front of
14 it and I had the envelope in my pocket and we were going along and
15 I don't think there was a whole lot said but I said that, I
16 remember saying that, "Will we get a receipt for this money?" You
17 see, and Bailey said, "Will we, fuck!"

1 144 Q. Can you recall anything else said in the course of that?

19 A. I beg your pardon?

2 145 Q. Can you recall anything else that was said during the course of
21 that trip?

22 A. Not a whole lot because it seemed to me --

2 146 Q. Sorry, speak into the microphone.

24 A. It seemed to me I was only secondary in the situation, you know.

2 147 Q. Now who drove the car to the meeting?

26 A. Mr. Bailey. It was a Mercedes, a dark grey Mercedes.

2 148 Q. And where did Mr. Murphy sit?

28 A. He sat in the front with Mr. Bailey.

2 149 Q. And what happened when you went to Mr. Burke's house?

30 A. Well, we got out of the car and Mr. Bailey -- I had the envelope,
31 my envelope and Mr. Bailey had another envelope, took it out of
32 the dash and we went to the door and Mr. Bailey knocked on the

1 door. Mr. Burke came out and he introduced us and we went in and
2 sat down in a room off to the left of the hall.

150 Q. Did you recognise Mr. Burke or had you ever met him before?

4 A. I never met the man in my life and I don't want to meet him again
5 either.

151 Q. Did you recognise him as --

7 A. I recognised him all right. He was a well known public figure.

152 Q. You are talking about Mr. Raphael Burke; is that correct?

9 A. Is that his name?

1 153 Q. Ray Burke?

11 A. Yes, Ray Burke, yes.

1 154 Q. And he was a well known politician you say?

13 A. He was a minister, I think, at the time.

1 155 Q. Okay. Now, when you arrived at Mr. Burke's house, you say you
15 went to the door and you went in?

16 A. Yes.

1 156 Q. What was said and by whom?

18 A. Well, he introduced the two of us into it.

1 157 Q. Sorry, who did?

20 A. Mr. Bailey.

2 158 Q. What did he say?

22 A. "This is Jim Gogarty, JMSE and this is Junior, Joseph Murphy

23 junior." We went into this room off to the left of the hall, it's

24 a room, there was a table, yes, a kind of a dining room, it wasn't

25 big, you know, but it was a table and chairs and a side board

26 there and I sat down and Junior was on my left and Mr. Bailey was

27 on my right and Mr. Burke was in between the two of them.

2 159 Q. When you say he was in between, you mean he was sitting on the
29 same side of the table?

30 A. The opposite side between Junior and Mr. Bailey.

3 160 Q. He was sitting on the opposite side of the table, is that correct?

32 A. Yes, his back was to the side board. That's my recollection of

1 where he was.

161 Q. What happened after that?

3 A. Well, I put the envelope I had on the table between myself and
4 Junior and Bailey put on envelope on the table as well too and
5 there was some talk, I am not going to say I knew everything that
6 was going on but I was keeping on eye on it and during the course
7 of the thing, I took out a letter that I had that Bailey had
8 written me to and said that did he want to read it and he said he
9 had already seen it, you see, or knew of the contents of it so I
10 put it back in my pocket and I took out a, you know, the schedule
11 of the lands that I think went in there --

1 162 Q. We will come to that in a moment.

13 A. Sorry, the schedule of the lands and I put it over to Mr. Burke
14 and told him what it was and he said he had already got a copy of
15 it so I put that back in my pocket as well too and Bailey put over
16 his envelope and Burke never opened them or touched them as far as
17 I was concerned at that time but I then said that it was a
18 substantial payment, you know, against an open-ended commitment
19 and my anxiety was could I go back to Senior and allay his
20 anxieties about paying out this money and Burke says that Mr.
21 Murphy and Mr. Bailey were well aware of how he had honoured his
22 commitments in the past and immediately Bailey intervened and
23 said, "That's all right, Jim, leave it with me and Ray" and then
24 Junior said, "That's all right too as well, Jim, I'll have a word
25 with my father," so I took that as being I shouldn't be saying
26 much more so I left it at that, and Mr. Burke was looking at his
27 watch several times. He said he had some appointment, an urgent
28 appointment that evening, later that night and my recollection is
29 that he was going to, he was fairly well dressed, you know, to me
30 like formally dressed, that's how I described it, short of being a
31 dress suit but anyway, he was looking at his watch, time was
32 running out because this was sometime after 4 o'clock in the

1 evening and he said then, he got up then and said, we had a quick
2 cup of tea, you know, he says, when he got up, he took the two
3 envelopes and he put them into the, he opened the wall, the
4 dressing table -- or the chest of drawers, you know, what do you
5 -- chest of draws, side board, side board, sorry, and he put it
6 into the, the two envelopes into the top drawer and he went out
7 and he brought in a tray with a few cups on it and a few biscuits
8 on it and we had them fairly quickly and he was rushing, standing
9 up and basically that finished it and we left then and shook hands
10 and wished each other luck.

1 163 Q. Who was present in the room when the envelopes were handed over?

12 A. The four of us, Bailey -- sorry now, Mr. Bailey, Mr. Burke and
13 Murphy junior and myself. At no time did Mr. Bailey leave the
14 room although I believe he says he did. He says he wasn't there
15 at one time -- I don't know --

1 164 Q. And do you say that all four were present at all times?

17 A. At all times, except when Mr. Burke went out for the tea. We
18 were there altogether. There was no one else in the house, we
19 never saw anybody else in the house, saw nobody coming away and I
20 left the schedule on the table and I coming away.

2 165 Q. When you were coming away, is that what you said?

22 A. Yes. Left the schedule on the table, never took it with me.

2 166 Q. Now, so far as you are concerned, did you see what was in the
24 envelopes?

25 A. Which envelope?

2 167 Q. Either of the envelopes?

27 A. Well, you see, I am satisfied that there was £40,000 in the
28 envelope that Junior passed over and that I had passed over. I
29 was a party to it, I was reasonably satisfied that there was the
30 £40,000 in it and the cheque was in it and I assumed that Bailey's
31 envelope contained £40,000 but I am only assuming that because I
32 assumed because it was the logical assumption following the

1 agreement that had been reached. Now, there could be feathers in
2 it for all I know but that's the way I looked at it.

168 Q. Well, was it your belief at that time that there was £40,000 in
4 it?

5 A. Yes, it was my belief but it was an assumed belief following what
6 I believed was a gentleman's agreement or some kind of an
7 agreement, do you know?

169 Q. So far as you were concerned, what was the total amount handed
9 over on that occasion to Mr. Burke?

10 A. I thought between the two, the three of us we had handed over
11 £80,000. £80,000.

1 170 Q. And when you said that the envelope that had been handed over on
13 behalf of JMSE contained £40,000 and a cheque for £10,000?

14 A. £30,000 in cash and a £10,000 cheque to cash.

1 171 Q. Making a total of £40,000?

16 A. £40,000 and my signature and Frank Reynolds' signature, I
17 recollect that that was on it, on our cheque, on Murphy's cheque
18 and I thought it was matched by Mr. Bailey. I believe it was, I
19 thought it was. I don't know.

2 172 Q. Do you recall whether anything else was said at that meeting?

21 A. Well, at the moment now, I think that's the gist of it. The main
22 gist of is, what I said, you know, that Mr. Burke seemingly was
23 aware of what he was expected to do. I felt that's the
24 conclusion I came to, and I shouldn't bother myself asking any
25 more questions and on that basis, on account of what Bailey and
26 Junior said, I took it that I should report that back to Senior.

2 173 Q. So far as you were concerned, what was he expected to do?

28 A. Well, it's a pity having to say these things. What I
29 expected him to do and Bailey expected him to do was that he'd
30 influence Fianna Fail councillors and at that time, according to
31 Mr. Bailey, they had majority in Dublin County Council but in
32 addition to that, according to Mr. Bailey, Burke could control the

1 Fianna Fail vote on the Council and Bailey could cross the
2 political divide for further votes and he named, as I say, at the
3 meeting but not in the letter, he named people that I don't want
4 to be naming either but I am only telling you, it's hearsay on my
5 part, and I am only telling you that's how it happened and that it
6 would take two meetings of the Council to do that and that could
7 be done, not immediately, but over a period of years as he said in
8 his letter and it didn't bother me head afterwards what happened
9 the land at all, I don't know what happened the lands even to this
10 day, I have no interest in them, either vested or otherwise.

1 174 Q. You have said that this meeting took place in the afternoon?

12 A. Oh yes, definitely.

1 175 Q. Are you sure of that?

14 A. I am sure of it, a hundred percent sure of it.

1 176 Q. Now, can you recall what happened after the meeting?

16 A. Oh after the meeting, we just stood up and shook hands at the door
17 and we, Mr. Bailey drove us back to Santry and there wasn't much
18 talk going back to Santry but I know that on the journey back --

1 177 Q. Could you speak into the microphone please?

20 A. He said there was one outstanding matter in the whole episode and
21 that was this question of Redmond, where Redmond was very
22 concerned that he wasn't going to be a consultant to Murphys as
23 agreed with Liam Conroy and with others when he would retire. He
24 was going to take early retirement or something, you know, and he
25 claimed that that consultancy now was not being honoured by
26 Murphys and that it was a pity that it wasn't but that Bailey
27 mentioned that £25,000 would pay him off, would compensate him for
28 the loss of a contract that he had or the agreement that he had
29 and Junior says that Senior wouldn't pay that kind of money at all
30 and he said at the same time he would talk to his father and
31 Bailey would have another chat with Redmond about what would be
32 his lowest common denominator, something to that effect, so we

1 went back to Santry and he dropped us off and I had a couple of
2 words with Junior about my situation again and about any chance
3 that I would get out, get into retirement, that I had been
4 promised and he said that "you are refusing to sign the accounts,
5 where was the money going to come from?" And I said, "Sure I am
6 refusing to sign the accounts because your father and Roger Copsey
7 and the whole lot of them know that the accounts were wrong and
8 incorrect" and that's all I am saying and he says, "Well," he
9 says, "the ball is in your own court. The ball is in your own
10 court." Another threat for me to sign the accounts. "The ball
11 is in your own court."

1 178 Q. Do you recall anything else being said or anything else happening
13 on that occasion?

14 A. Not of any particular significance, no.

1 179 Q. Did you discuss with Mr. Murphy senior any of the events that you
16 have described or did you discuss the contents of the letter with
17 him?

18 A. I beg your pardon?

1 180 Q. Did you discuss the contents of the letter or did you discuss any
20 of the --

21 A. Sure I had done that before the meetings, sorry, before the
22 meeting with Burke. Between the two meetings, I rang him, I told
23 you I rang him and filled him in if he wanted me to go along to
24 the meeting.

2 181 Q. Mr. Gogarty, I would just, before you leave that meeting, I wonder
26 could you identify the schedule that you have referred to? It's
27 in the reference book, reference documents of the 7th January and
28 it's page, number 48. (Document handed to witness.)

29 A. Oh I recognise this all right. This schedule was circulated to,
30 much earlier, you know, that's the schedule that went to Duffy
31 Mangan and Butler way back.

3 182 Q. All right.

1 A. Senior had it and that was the schedule that I left with Mr.

2 Burke.

183 Q. All right. Well would you read that schedule please?

4 A. Read it.

184 Q. Yes. First of all, will you indicate whose handwriting is it in?

6 A. Oh it's my handwriting.

185 Q. And when was that prepared, approximately?

8 A. Oh it was prepared well back before that, well before that, months

9 and months before that, that's my opinion.

1 186 Q. All right.

11 A. In conjunction with giving Duffy Mangan and Butler the retainer to

12 deal with the sales of the lands, you know.

1 187 Q. Yes. Would you read it please?

14 A. Well, it says re: lands of Lajos Holdings Subsidiaries and

15 Helmdale, because Helmdale was outside the Lajos Group, it was an

16 offshore company and it owned Beverton, about 70 odd acres in

17 Beverton and it says here:

18

19 1: Grafton Construction Company lands

20 A: Lands at Balgriffin, comprised of approximately 255 acres

21 i.e. 152 acres 2Rds, 8 parches approximately on County Dublin

22 Folio No. 3212," and that was ticked off, "and located south

23 of Moyne Road and in a Corporation area and shown on Land

24 Registry Plan No." It doesn't give the number but I am sure it

25 --

26

27 B: Balance of lands at Balgriffin comprising approximately 102

28 acres and located north of Moyne Road and in the County

29 Council area. NB: These lands (approximately 102 acres) are

30 unregistered. The others were registered.

31 .

32 2: Land at St. Helen's Portmarnock, approximately 9 acres subject

1 to check and registered with Land Registry on Folio County
2 Dublin No. 175, Plan No. - I didn't get the plan number. I
3 have a note. NB -- sorry, it appears, and this should be
4 checked, that as well as the approximate 9 acres for sale, the
5 open space on the housing development and the site of the
6 church and schools are also included on this map and folio
7 subject to check. It could be that Grafton did not cede the
8 open spaces."

9 Now, I think this must be the County Council. I haven't the
10 bottom line and that is subdivision of the church -- I am missing
11 a bit --

1 188 Q. Sorry, Mr. Gogarty, there's a line missing from the document that
13 was furnished to the Tribunal. In the meantime, perhaps you
14 would go on to the next --

15 A. Sure I wasn't satisfied, I wasn't sure about -- you see, you had
16 the 9 acres of these open space amenity lands we used to let for
17 tillage, mostly market gardening but just outside there was a big
18 railing 6 metres high, a chain link fence outside that, there was
19 a patch of ground like a verge and then there was a road, a bit of
20 a road, you know, a bit of path and there was a church, a
21 temporary church, a tin church and I wasn't fully satisfied that
22 that wasn't included in the folio, that was what I said, subject
23 to check.

2 189 Q. All right.

25 A. You know. Now, "No. 3: Jamestown Road, approximately 13 acres,
26 subject to check" - again now there was a bit of a problem there -
27 "owned by Grafton Construction Company. This approximately 13
28 acres is in three divisions and is shown on Land Registry Plans
29 Nos. 8, 13, and 21. Plan No. 8 is on Folio No. 5426" and I have
30 a question mark. " Plan No. 13 is in Folio No. 6592 and Plan No.
31 21 is on Folio No. 18462," so there was three folios involved in
32 that and the total acreage was a bit doubtful, whether it was 13

1 or 15 acres.

2

3 I said, "Above should be checked by Dennis McArdle," that's the
4 solicitor, Murphy's solicitor. "Total acreage appears to be
5 14.988 acres and I have two Xs after that. Acreage on Folio 6453
6 is approximately 15.4872 acres so there's a question mark whether
7 there's 13 acres, 14.988 acres or 15.4872 acres which is to be
8 checked.

9 .

10 Poppintree:

1 190 Q. Sorry, 4.

12 A. I beg your pardon. "No. 4: Owned by Grafton Construction
13 Company; Poppintree, on County Dublin Folio No. 577 on County
14 Dublin Plan No. 577. This comprises all the lands shown on
15 Messrs. Duffy's map" - Duffy must have had a map there - "bounded
16 in blue and red. Acreage to be checked. Area: 34.455
17 hectares, approximately 82.692 acres.

1 191 Q. There are two sets of figures, what appear to be figures on the
19 left-hand column, can you see?

20 A. 2.471, is it?

2 192 Q. Yes.

22 A. I don't know what that is now at this stage. 2.4 and 2.471. I
23 don't know.

2 193 Q. All right, go ahead and continue.

25 A. In fact, I wouldn't be a hundred percent sure it's in my writing
26 anyway.

27 "No. 6: Messrs. O'Shea & Shanahan Holding now being purchased by
28 Grafton." You see there was a purchase or something, negotiations
29 going on at that point, I think Frank Reynolds will fill you in on
30 that and Dennis McArdle, "shown on County Dublin Folio No. 6262,
31 Plan No. 7. Acreage to be checked." There's a line missing then
32 now there after that I think.

194 Q. Yes.

2 A. A line missing.

3 " 5: Finglas Industrial Developments" and a question mark after
4 it and I think that means -- you see this, there was always a
5 mix-up between what I called two companies, Finglas Industrial
6 Developments and Finglas Industrial Estates and even today I
7 couldn't tell you which of them owned the land but there were two
8 companies in the group. And I couldn't, I can't explain that
9 much more than that because -- and the acreage --

1 195 Q. Sorry, Finglas Industrial Developments question mark.

11 A. Yes, "that was on County Dublin Folio No. 19360 and on LR, Land
12 Registry Plan No. 12. Acreage shown, 33.645 hectares or
13 approximately 80.75 acres.

14

15 Number 6: Barrett Developments Limited on County Dublin Folio No.
16 7462, Plan No. 1. Acreage shown, 15.578 hectares or
17 approximately 37.39 acres.

18

19 7: Beverton/Helmdale on County Dublin Folio 4327, Plan No. 4.
20 Acreage 29.438 hectares or 7.25 acres. NB, reference Duffy's
21 map, small plot and cottage bounded by Turvey Avenue, Donabate and
22 excluded." You see that's not in it.

23 .

24 I think it's the last page.

25 "Turvey Estates Limited, unregistered. Area approximately 155
26 acres.

27

28 No. 9: Abbeycartron, County Longford. Folio No. 8585 County
29 Longford. Acreage, 9 acres. 29 parches. Plan No. 20,
30 Ordnance Sheet 13, equals 9.188 acres" and then it gives a summary
31 of the acreages.

32

- 1 Jamestown Road: Folio No. 5426, 6952 and 18462, 15.487 acres.
- 2 Poppintree: Folio No. 577. 82.69 acres.
- 3 O'Shea and Shanahan: Folio No. 6262, 4 acres.
- 4 Finglas Industrial Developments or Finglas Industrial, it didn't
- 5 say Developments. Folio No. 19360, 30.750 acres.
- 6 Barretts: Folio No. 7462, 37.390 acres.
- 7 Helmdale: Folio No. 175, approximately 70.650 acres.
- 8 Balgriffin: 3212 and unregistered. Approximately 255 acres.
- 9 That's between the registered and unregistered, total 255 acres.
- 10 St. Helen's: Folio No. 175, 9 acres.
- 11 Turvey Estates: Unregistered. 155 acres.
- 12 And it looks as if that comes to a total of 709.969 and then we
- 13 added in Abbeycartron -- a total 719.14 acres but that would
- 14 include the 4 acres of O'Shea and Shanahan which wasn't in the
- 15 ownership of Murphys at the time and it also includes the 9 acres
- 16 in Abbeycartron, County Longford, which wasn't included in Duffy
- 17 Mangan and Butler's retainership to sell. That was done by a
- 18 different man, Joe Senior wanted to me to get in touch with Mr.
- 19 Quinn in Longford who he knew would deal with that, he mentioned a
- 20 local man who might be interested in that land, Geraghty, so
- 21 that's the situation there.
- 2 196 Q. Can you say to whom did you give that memorandum?
- 23 A. I beg your pardon?
- 2 197 Q. Who had possession of that memorandum prior to the meeting that
- 25 you have referred to in Mr. Burke's house?
- 26 A. Well, McArdle would have, I would say, and Duffy Mangan and Butler
- 27 had it and Brendan Devine would have it and it's possible Junior
- 28 would have it or Senior, Senior or Junior and of course I had it
- 29 and Bailey had it.
- 3 198 Q. I see. Did I understand you to say that at the meeting in Mr.
- 31 Burke's house, that you produced a copy of this memorandum?
- 32 A. Yes, I took that out of my pocket and I left it on the table.

1 That's the schedule.

199 Q. The schedule?

3 A. We call it a schedule.

200 Q. Why did you take it out of your pocket?

5 A. Because all the lands that we were talking about that was the

6 subject of the proposed sale or either the, of the proposals

7 included the 700 odd acres of lands that were given to Duffy

8 Mangan and Butler for sale.

201 Q. Did I understand you to say that Mr. Burke said he already had a

10 copy of this schedule?

11 A. Certainly he said that to me.

1 202 Q. And did I understand you to say that on leaving the meeting, that

13 you left a copy?

14 A. I left that, yes, on the table, yes.

1 203 Q. You left it on the table in Mr. Burke's house?

16 A. I am quite satisfied with that, yes.

1 204 Q. Did you ever have any further meetings with Mr. Burke?

18 A. Never in my life and I don't want to meet the man again. I don't

19 want to wish him any harm but...

2 205 Q. Did you or did JMSE, to your knowledge, or Mr. Murphy or Mr.

21 Reynolds ever make a contribution to Mr. Burke on a previous

22 occasion?

23 A. I beg your pardon?

2 206 Q. Was any contribution made to Mr. Burke on any previous occasion by

25 you or by Mr. Murphy or JMSE or Mr. Reynolds?

26 A. Well I can only go on what I was inferring or understood.

2 207 Q. Well, to your knowledge, was any such payment made?

28 A. Not to my knowledge physically, no. No.

2 208 Q. Did you send a copy of the report, sorry, the letter of the 8th

30 June from Mr. Bailey to Mr. Murphy senior?

31 A. Yes, yes.

3 209 Q. When did you send that?

1 A. When I went home that evening, I sent a few letters around.

210 Q. What letter did you send to Mr. Murphy senior?

3 A. I sent a copy of Bailey's letter to him and I sent a copy of it to
4 Copsey.

211 Q. Can I offer to Mr. Gogarty document number -- it's Book 4,
6 Document 30. (Document handed to witness.)

7 A. That's right.

212 Q. Would you read that letter?

9 A. It's written from my home in Renvyle, Shielmartin Road, 8th June
10 1989.

11 "Dear Mr. Murphy,

12 I enclose herewith copy of letter from Michael Bailey in
13 connection with all your lands in County Dublin. He said he has
14 already discussed the contents therein with you and you referred
15 him back to me. He also says he doesn't want to deal directly
16 with DMB as yet. Please let me have your instructions." And I
17 copied that to Roger Copsey.

1 213 Q. Who is DMB referred to there?

19 A. That's Duffy Mangan Butler, the auctioneers who were handling the
20 sale of the lands.

2 214 Q. Yes. And are you certain that that letter was sent to Mr. Murphy
22 and to Mr. Copsey?

23 A. I am as certain as can be possible, I sent the letter to him and I
24 am satisfied he referred to it sometime, you know.

2 215 Q. Can you say where you sent it to him?

26 A. His address in Guernsey.

2 216 Q. And can you say where you sent the letter to Mr. Copsey? Where
28 did you address it to?

29 A. His office, I think, is in Pembroke Court or Pembroke Lane. It
30 was Copsey & Company but he was the boss man of it. He was the
31 financial controller and director of the Murphy group companies.
32 He was acting chief executive on all financial matters.

217 Q. Did you on the same day write a letter to Duffy Mangan and Butler?

2 A. Yes, because I tell you what, you see, Fred Duffy, the Lord have
3 mercy on him, he was handling it, his nephew was more active in
4 the administrative side but all my dealings, would, I'd say 90
5 percent of them were with Fred Duffy and he was aware, I felt I
6 should keep him informed of, well what I call the, whatever I
7 call, what was going on over the lands because you see he had a
8 retainership verbally from me on the instructions of Senior for
9 the sale of the lands with a 2 percent agreed fee and he was
10 anxious about that when I told him what was going on, because he
11 had shown all the lands to Bailey. Bailey didn't make any offer
12 to him because he didn't want to be dealing with the auctioneer,
13 he says at that stage, and Mr. Duffy was very anxious that there
14 was nothing in writing of an agreement that he had the
15 retainership even though he had been with us for 20 years and as a
16 result of that, I thought it only proper to confirm it in writing
17 what Senior's verbal instructions had been to me and which I had
18 given to him verbally away back in April, you know, around
19 April. So, I wrote that letter to him and I think it's typed
20 actually, is that the one that's typed?

2 218 Q. Can we give a copy of the letter of the 8th June? It's number 33
22 in the 7th January folder. (Document handed to witness.)

23 A. That's the letter. Will I read it?

2 219 Q. Would you please?

25 A. Lajos Holdings Limited, 23 Lower Baggot Street, Dublin 2.
26 That's the property we had too as well -- Wexburn owned that
27 property, Wexburn Limited, that's a company Conroy formed way back
28 and it was in the Lajos Group. And it's dated the 8th June, 1989
29 and it's to Duffy Mangan and Butler limited. Auctioneers and
30 Valuers, 34 Frederick Street North, Dublin 1.
31 Attention of Mr. Fred Duffy.
32 "Re: Lands owned by Grafton Construction Company, Finglas

1 Industrial Developments, Barrett Developments, Turvey Estates and
2 Helmdale Limited.

3

4

5 Dear sirs,

6 I have recently discussed in depth with Mr. Murphy your report and
7 valuations of the 28th March, 1989 on the lands as above and I
8 confirm his instructions and agreement to your acting as sole
9 agent in negotiating the sales of these properties at the agreed
10 fee of 2 percent. (Two percent)

11

12 Mr. Murphy is anxious to realise an early disposal of those
13 properties and to this end he accepts you may deem it necessary to
14 discount some or all of the development potential element you have
15 included in your valuations. Messrs. McArdle and Company,
16 solicitors (contact: Mr. Dennis McArdle) will act for the vendor
17 companies in the transactions and I will continue to liaise with
18 you towards an earlier and successful outcome.

19

20 Yours faithfully,

21 Jim Gogarty,

22 Chairman."

23 And copies of that to Joseph Murphy too.

2 220 Q. To the best of your knowledge and belief, was the copy of that

25 sent to Mr. Joseph Murphy senior?

26 A. In Guernsey, yes.

2 221 Q. Did you have any discussions with Mr. Murphy senior following the

28 sending of that letter?

29 A. I had.

3 222 Q. Did you have a discussion with him about the letter?

31 A. About the letter and about what was going on with his son Junior

32 and myself and Frank Reynolds and I was trying to clarify my

1 position in these things because I was between the two of them,
2 you know.

223 Q. What did you say? What discussion took place concerning that
4 letter and concerning these matters with Mr. Murphy senior?

5 A. What his attitude was to the proposal in consideration of his
6 anxieties for an outright sale and from what he said was that
7 while he was still anxious for outright sale, he was being dragged
8 into this proposition by Junior and he wanted me to keep an eye on
9 things.

1 224 Q. And approximately on what date or around what time did this
11 conversation take place?

12 A. It would have been at night, late at night, you know?

1 225 Q. What month did it take place?

14 A. In June.

1 226 Q. And did you have one conversation or more than one conversation?

16 A. I beg your pardon?

1 227 Q. Did you have more than -- just one conversation or more than one
18 conversation with Mr. Murphy?

19 A. Oh there was a few conversations, you know, he would ring me too
20 as well late at night, you know, to keep an eye on things.

2 228 Q. Did you receive a response to your letter of the 8th June, 1989 to
22 Duffy Mangan and Butler? Did they write to you by letter of the
23 15th June of 1989? Page 46 in the reference book. (Document
24 handed to witness.)

25 A. Yes, I recognise this now. This is -- on the left-hand side,
26 auctioneers valuers and livestock salesman -- their reference
27 KPD/MD, that would be Kevin Duffy, managing director and DMB,
28 Duffy Mangan Butler Limited, M.I.A.V.I., 14 North Frederick
29 Street, Dublin 1, 15th June, 1989. Jim Gogarty, Renvyle,
30 Shielmartin Road, Sutton, County Dublin. He was writing to me at
31 my home address because as I say, I was mainly working from home,
32 mainly working from home but it's headed,

1 "Re: Lands owned by Grafton Construction Company, Finglas
2 Industrial Developments Company, Barretts Developments, Turvey
3 Estates and Helmdale.

4 Dear Sir,

5 Further to your letter of the June last re the above lands, we
6 acknowledge with thanks the instructions to act as sole agents
7 with regard to the sale of these properties.

8 .

9 After giving the matter some consideration, we feel that it would
10 be prudent to place an asking price in excess of £3,000 per
11 acre. That is agricultural value on the entire holdings. This,
12 we feel, would enable us to reach a satisfactory conclusion at an
13 early date.

14

15 If you are agreeable to this proposal, we will contact some of our
16 clients who may be interested in purchasing the lands as one
17 holding and we will revert back to you as soon as possible.

18

19 We do hope you find the above in order."

2 229 Q. Mr. Gogarty, we know from the correspondence that was opened
21 yesterday and your answers that there was, at this time,
22 communications between your solicitors, McCann Fitzgerald, and
23 between solicitors in England for Lajos Holdings in connection
24 with your pension, isn't that correct?

25 A. I beg your pardon?

2 230 Q. We know that around this time, there was correspondence being
27 exchanged between your solicitors, McCann Fitzgerald, and
28 solicitors in the UK in connection with your pension?

29 A. Oh there were several letters.

3 231 Q. All right, we won't go into it for the moment.

31 A. This is what I am saying at the time.

3 232 Q. There was a lot of things going on. Now, I think that you had a

1 meeting of the directors of JMSE on the 3rd July?

2 A. That's right. That's right.

233 Q. Do you remember that meeting?

4 A. I do indeed. It was a fateful meeting for me, you know, I do.

5 I think it was questioned about weather -- I understood it was a

6 board meeting because Senior had, in one of his telephone

7 conversations when we were discussing the lands and that, he said

8 that he wanted me to attend a meeting on the 3rd of July, 1989 and

9 he impressed upon me that I should be there.

1 234 Q. All right. Well the minutes are at Document 248 in Book 4.

11 (Document handed to witness.) Can you recall who attended that

12 meeting?

13 A. Yes, Senior was there, Roger Copsey and Gay Grehan, a fellow

14 director, and myself. Frankie Reynolds was on holidays.

1 235 Q. If you just wait a moment --

16 A. I beg your pardon?

1 236 Q. If you just wait a moment while Mr. Cooney locates it. It's all

18 right. You can now go ahead.

19 A. I beg your pardon?

2 237 Q. Go ahead, Mr. Gogarty. Tell us what you recall about that

21 meeting.

22 A. Will I read it?

2 238 Q. Tell us what you recall about it.

24 A. Well, it was a very stormy meeting, do you know, because it was

25 evident that the main point for discussion was the signing of the

26 1988 accounts in which Senior and I had objected a way back in

27 '88, the end of '88 because we were questioning the validity of

28 the 1987 accounts and they all knew they were incorrect, that's

29 Senior, Junior, Copsey, Frankie Reynolds, Gay Grehan, they all --

30 there's evidence in the file, documentary evidence, you know, but

31 he threatened me to sign the accounts.

3 239 Q. Who threatened you?

1 A. Senior, to sign the accounts, if I didn't sign the accounts, there
2 would be no pension for me and I said, "But you are asking me to
3 sign accounts that you and I fought hard for 12 months ago and
4 ousted the Conroy management, who were responsible for the '87
5 accounts and which you took serious exception to and you are
6 asking me to sign them now" and the words he says was, "That's all
7 history now," and I said, "Well it's not history to me."

8 .

9 MR. COONEY: Mr. Chairman, the witness has in his hand the
10 minutes of that meeting which contain a very different account
11 from the one he is now giving from his memory. What I would like
12 to establish if I may, with respect, is Mr. Gogarty being asked to
13 recount from his memory these matters or is he being asked to
14 refer to the minutes of the 3rd July, 1989 which were handed to
15 him some moments ago? It has to be one or the other.

16 .

17 MR. GALLAGHER: He is being asked to remember what will happen at
18 the meeting and he will in due course be asked to refer to the
19 minutes.

20 .

21 MR. COONEY: Well, what was the purpose of handing him the
22 minutes of this meeting if he is not going to be asked to read out
23 the minutes, with respect.

24 .

25 MR. GALLAGHER: He will be asked.

26 .

27 MR. COONEY: Why then should he be giving account at variance to
28 the minutes which have been handed him? What's the point of that,
29 Mr. Chairman, if I can respectfully ask?

30 .

3 240 Q. MR. GALLAGHER: Who prepared those minutes, Mr. Gogarty?

32 A. Copsey.

241 Q. I see. Now what else was said at that meeting, what other topic
2 was discussed at that meeting?

3 A. Well, there were basically two items, that, and my pension, you
4 know.

242 Q. Now, would you like to read the minutes of that meeting?

6 A. Yes. "Present --

243 Q. Would you read from the top?

8 A. It doesn't say it was a board meeting but I understood it was a
9 board meeting, you know.

1 244 Q. Yes. Sorry, would you mind, turn over the microphone towards you
11 please.

12

13 MR. LEONARD: Mr. Chairman, I am very sorry to interrupt, I
14 wonder could the witness please identify not just the document but
15 the place in the bundle of documents that this occurs.

16 .

17 MR. GALLAGHER: I have already done that, it's document 248.

18

19 MR. LEONARD: Sorry, I thought you said 204. .

20 .

21 CHAIRMAN: There also appears to be a document 249 seems to be
22 the same. One seems to be a copy of the other.

23 .

24 MR. GALLAGHER: That seems to be a duplicate, yes.

25

26 MR. LEONARD: Thank you very much, Mr. Chairman.

27 .

28 CHAIRMAN: Now, Mr. Gogarty, thank you for your cooperation.

29 .

30 MR. GALLAGHER: Mr. Gogarty, would you read those minutes please?

31 A. It says, "Notes of minutes of meeting of directors of Joseph

32 Murphy Structural Engineers at Santry on 3rd July 1989.

1 Present: Joseph Murphy senior, James Gogarty, Gay Grehan and Roger
2 Copsey.

3

4 The following matters were set out as the agenda of the meeting:

5 No formal notice of the meeting had been given:

6

7 1: Signing of accounts to 31st May, 1988.

8 2: Costing system.

9 3: Production at Fleetwood.

10 4: Cashflow.

11 5: Pension scheme; J Gogarty.

12

13 Signing of accounts:

14 Mr. Gogarty stated that he was not satisfied with the '87 accounts
15 and had been surprised that these had been signed by other
16 directors of the company. He felt that a meeting of the
17 directors had not been duly convened to sign these accounts and
18 indeed he had been deliberately excluded from the signing
19 thereof.

20

21 He stated that he was not satisfied that the accounts in the
22 company properly reflected stock and other transactions.

23

24 Mr. Gogarty indicated that he was not satisfied with the
25 investigation carried out by Ernst & Whinney in respect of the
26 figures concerned on the basis that they had a conflict of
27 interest.

28

29 Mr. Copsey stated that in view of the uncertainty in respect of
30 his contracts and certain other payments, a provision of £200,000
31 had been made in the accounts for the year ending May, 1988. Mr.
32 Gogarty was not satisfied with this provision and it was agreed

1 that he would meet with the company's auditor John Bates in order
2 to arrive at a figure at a provision which he could recommend to
3 the board.

4

5 Costing system:

6

245 Q. MR. GALLAGHER: Does everybody want it read? Continue, Mr.

8 Gogarty.

9 A. "Mr. Copsey stated that hardware and software for the costing
10 system had been identified. These packages were to be integrated
11 with other accounting packages. The wages package is being
12 tested at present.

13

14 Production at Fleetwood:

15 It was noted that the production at Fleetwood was so low as to --
16 there's something wrong here -- as producing a loss in the
17 company. It was further noted that the problems with Fleetwood
18 would not be solved merely by introducing new machinery and even
19 with the present facilities, production should be 50 tonnes per
20 week on average.

21

22 Cashflow:

23 Mr. Copsey noted that a cashflow was being prepared which showed
24 unsatisfactory trend but that certain vital pieces of information
25 were not available and it was agreed Martin Green and Tim O'Keefe
26 would meet to obtain that information so that a proper report
27 could be made to the board in respect of the cashflow situation.

28

29 Pension scheme:

30 The pension scheme to Mr. Gogarty was discussed but without
31 reference to specific figures. It was noted that to Mr. Copsey's
32 knowledge, all matters had been agreed between the solicitors

1 acting for JMSE and for Mr. Gogarty but that fact would have to be
2 checked. The matter of the availability of cash and profits to
3 meet the pension was raised and Mr. Gogarty stated that even if a
4 group company lent the money to JMSE, the impact of a payment of
5 £300,000 on the results of the company could be damaging. It was
6 agreed that the matter would be reviewed when Mr. Gogarty reported
7 to the board regarding the provisions necessary against any stock
8 adjustments and other adjustments if any" -- you can read what
9 you like into it. Read what you like into it.

1 246 Q. I think, Mr. Gogarty, unless I am mistaken --

11 A. I beg your pardon?

1 247 Q. I think you may have given your own name instead of Mr. Copsey's
13 name in that paragraph. Would you read the sentence, the second
14 sentence under the heading Pension Scheme. The matter of the
15 availability of cash.

16 A. The matter -- sorry, "The matter of the availability of cash and
17 profits that make a pension was raised and Mr. Copsey..."

1 248 Q. "Was raised and Mr. Copsey..."

19 A. "And Mr. Copsey stated even if the group company lent the
20 money..."

2 249 Q. I think you may have inadvertently put in your own name?

22 A. "That Copsey stated even if a group company lent the money to
23 JMSE, the impact of a payment of £300,000 on the results of the
24 company could be damaging. It was agreed that the matter would
25 be reviewed when Mr. Gogarty reported to the board regarding the
26 provisions necessary against any stock adjustments and other
27 adjustments if any." And sure the proper man to do all that was
28 Copsey. He knew all that was going on.

2 250 Q. Now, Mr. Gogarty --

30 A. I had given all the information, I couldn't get the information
31 from people --

32

1 MR. COONEY: He is not being asked a question.

2 A. Sorry?

3

251 Q. MR. GALLAGHER: Mr. Gogarty, did you have any further discussions

5 with Mr. Murphy junior or Mr. Murphy senior about that time in

6 relation to the sale of the lands that you can recall?

7 A. Oh yes, I would have had, yes, with Mr. Murphy senior and his

8 decision was to go ahead with the sale of the lands because of my

9 resistance to giving him the sworn affidavit in response to

10 Conroy's and because I wouldn't sign the accounts so he was caught

11 in that situation.

1 252 Q. When did Mr. Murphy tell you that he had decided to go ahead with

13 the sale of lands rather than the 50/50 split that had been

14 suggested?

15 A. That day, that evening, that day, that evening.

1 253 Q. When you say that evening, do you mean the 3rd July of 1989?

17 A. Yes, yes.

1 254 Q. Can you recall what he said, exactly what he said to you?

19 A. What?

2 255 Q. Can you recall exactly what he said to you?

21 A. It was very rough because he was threatening me to sign the

22 accounts, if I didn't I wouldn't get my pension and I wasn't

23 cooperating with him in the Conroy affair and that he was going to

24 sell the lands and get away from the whole lot.

2 256 Q. And was this said in the presence of anybody else?

26 A. No, I don't think so, no, no, no.

2 257 Q. I see.

28 A. I think I wrote a letter to Copsey about it, about the accounts

29 and the way it was being treated at that time.

3 258 Q. That's the long letter, the Document 264 in Book 4.

31 A. Yes.

32 .

1 CHAIRMAN: Mr. Gallagher, it's just coming up to one o'clock.
2 It's actually past one o'clock, you are going into a long letter
3 now and the witness has been working hard all morning. I suggest
4 we should adjourn until tomorrow morning.

5
6 MR. COONEY: Mr. Chairman, just before this topic is left,
7 there's one very important letter of the 10th July, just a short
8 one to Mr. Gogarty and I wouldn't like this session to end without
9 this letter being put.

10 .

11 CHAIRMAN: First of all, would you be kind enough to give me a
12 page?

13 .

14 MR. COONEY: The reference is 7th January which has been given to
15 us but it's page 66 and I think it's quite a relevant letter and
16 it should be put at this session.

17 .

18 CHAIRMAN: Is that a letter from Mr. Bailey?

19 .

20 MR. COONEY: From Mr. Bailey to Mr. Gogarty.

21 .

22 CHAIRMAN: First of all, Mr. Gallagher, do you wish to deal with
23 it at this stage?

24 .

25 MR. GALLAGHER: Certainly.

26 .

27 CHAIRMAN: It's page 66 in our reference book.

28

29 MR. GALLAGHER: This is another letter of the 10th July, Mr.
30 Cooney asked me to put it to you as a letter that was written by
31 Mr. Bailey. (Document handed to witness).

32 A. Will I read it?

259 Q. If you would please.

2 A. It's again headed Killnamona House, The Ward, County Dublin, 10th

3 July 1989.

4

5 "Dear Mr. Gogarty,

6 Further to our continued discussions re your lands at North Road,

7 Finglas, Jamestown Road, Poppintree - Ballymun, Donabate,

8 Balgriffin, Portmarnock and a house at 23 Lower Baggot Street.

9

10 We would offer you a complete package for a cash purchase for the

11 following properties:

12

13 Lands at North Road including Barrett's land, 39 acres, 71 acres,

14 £270,000.

15 Jamestown Road, 12 acres, £36,000.

16 100 acres at Poppintree £300,000.

17 255 acres at Turvey House/Beverton, £700,000.

18 250 acres Balgriffin, £600,000.

19 9 acres Portmarnock, £100,000.

20 House at Baggot Street, £250,000.

21 Total: £2,256,000.

22

23 We would tender this offer on a cash basis, closing date six

24 months, subject to contract and good title.

25

26 Yours faithfully,

27 Michael Bailey."

2 260 Q. Can you recall whether that letter was sent to you or did you

29 receive it?

30 A. Oh I got that letter but I would get it in Santry but that letter

31 was as a result of his telephoning me to know what the current

32 position was and at that time, I was very distressed and I told

1 him that Murphy was going for an outright sale as distinct from
2 his other proposition and I told him at that time that I had
3 resigned as director but I was only now an executive employee and
4 I was trying to steer him to the auctioneers, you know.

5

6 MR. CALLANAN: The difficulty with Mr. Cooney requiring documents
7 to be put is that that involves to some degree a cascade effect.

8 That letter was, in fact, forwarded by Mr. Gogarty to Mr. Murphy
9 senior by letter of the 10th July, 1989 which appears at Document
10 261 of Book 4 and if that letter is to be put, obviously the
11 further letter should also be put to Mr. Gogarty, it's
12 unsatisfactory for Mr. Cooney to seek documents --

13 .

14 MR. GALLAGHER: I have no difficulty with that, perhaps we can
15 leave it at this letter when it's read.

16 A. I beg your pardon?

1 261 Q. Do you have a copy of the letter dated 10th July, 1989?

18 A. Yes.

1 262 Q. Can you identify that letter and say when it was written?

20 A. The 10th July, 1989.

2 263 Q. In what circumstances was it written?

22 A. It was written because of what Murphy had decided on, an outright
23 sale and also, I think I mentioned, I will read it, that I had
24 resigned as a director and I was no longer a director.

2 264 Q. Would you read the letter please?

26 A. It says, it's from my home Renvyle, Sheilmartin Road, Sutton,
27 County Dublin, 10th July.

28 "Dear Mr. Murphy,

29 Enclosed please find copy of letter received by hand from Mr.

30 Bailey. I explained to him I was no longer a director of the

31 vending companies but am continuing pro tem as an executive

32 employee of JMSE and that I would pass his letter on to you and

1 also DMB and Mr. Copsey." He again asked me to hold on a copy to
2 DMB. "I await your instructions or perhaps you would clarify the
3 position with him direct." Yours faithfully, and copied to
4 Copsey.

265 Q. Is that letter signed by you?

6 A. That letter is signed by me, yes.

266 Q. We will leave it there until tomorrow. Thank you.

8

9 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, WEDNESDAY,

10 20TH JANUARY, 1999 AT 10AM.

11

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