

901.4.6

26, 1963

(i)

# In The Privy Council

No. **12** of **1963**

## ON APPEAL from the Supreme Court of New South Wales in its Equitable Jurisdiction in Application instituted by Summons in Proceedings to Wind Up No. 245 of 1961

In the Matter of

INTERNATIONAL VENDING MACHINES PTY. LIMITED (in Liquidation)  
And in the Matter of the Companies Act 1936 Section 308

Between

LOUIS STEEN and JOSEPH STEEN

- Appellants (Respondents)

and

CHARLES ALLEN LAW the Liquidator of INTERNATIONAL VENDING MACHINES  
PTY. LIMITED - Respondent (Applicant)

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
19 JUN 1964  
25 RUSSELL SQUARE  
LONDON, W.C.1.

74151

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**No. 1****Summons**

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 1.  
Summons  
before  
His Honour  
Mr Justice  
Jacobs.

—  
29th May, 1961.

LET all parties concerned attend before the Honourable Kenneth Sydney Jacobs on the twenty-ninth day of May 1961 at the hour of ten o'clock in the forenoon or so soon thereafter as Counsel can be heard upon the hearing of an application by Charles Allen Law the Liquidator of the abovenamed Company for the following orders.

1. That Louis Steen and Joseph Steen do pay to the Company the sum of two hundred thousand pounds (£200,000) together with interest at such rate as the Court thinks just calculated from the twenty-fifth day of June 1959.

2. Alternatively to 1. that Louis Steen do pay to the Company the sum of ninety thousand pounds (£90,000) together with interest at such rate as the Court thinks just calculated from the twenty-fifth day of June 1959.

3. Alternatively to 1. that Joseph Steen do pay to the Company the sum of ninety thousand pounds (£90,000) together with interest at such rate as the Court thinks just calculated from the twenty-fifth day of June 1959.

4. That the said Louis Steen and Joseph Steen do pay the costs of the applicant of this application.

AND for such further or other order as the nature of the case may require UPON THE FOLLOWING GROUNDS:—

(a) That on 25th June 1959 the said Louis Steen and Joseph Steen who were then the sole Directors of the Company and purporting to act such Directors, advanced out of the funds of the Company a sum of two hundred thousand pounds (£200,000) to I.V.M. Holdings Pty. Limited, then known as A.M. Holdings Pty. Limited to enable such Company to complete the purchase by it from the said Louis Steen and Joseph Steen and one Sydney Steen of their shares in International Vending Machines Pty. Limited for the sum of two hundred thousand pounds (£200,000) and that the said sum so advanced was on the 25th June 1959 used by I.V.M. Holdings Pty. Limited to complete the said purchase by it of the said shares.

(b) That of the said sum the said Louis Steen received ninety thousand pounds (£90,000) as consideration for the sale of his shares in International Vending Machines Pty. Limited, the said Joseph Steen received ninety thousand pounds (£90,000) as consideration for the sale of his shares in International Vending Machines Pty. Limited and the said Sydney Steen received the sum of twenty thousand pounds (£20,000) as consideration for the sale of his shares in International Vending Machines Pty. Limited.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 1.  
Summons  
before  
His Honour  
Mr Justice  
Jacobs,  
(Continued)

—  
29th May, 1961.

- (c) That neither the said Louis Steen nor the said Joseph Steen declared his interest in the said transaction between the Company and I.V.M. Holdings Pty. Limited.
- (d) That the said advance was made in contravention of the provisions of s.148 of the Companies Act 1936 and was therefore illegal and the said debt is irrecoverable by the Company from I.V.M. Holdings Pty. Limited.
- (e) That the said advance of two hundred thousand pounds (£200,000) was ultra vires.
- (f) That the said advance of two hundred thousand pounds 10 (£200,000) was of no benefit to the Company and was made and was intended by the said Louis Steen and Joseph Steen to be made solely for their own benefit and the benefit of the said Sydney Steen.
- (g) That in permitting and procuring the said advance of two hundred thousand pounds (£200,000) the said Louis Steen and Joseph Steen acted negligently towards the Company and in breach of trust and were guilty of misfeasance.

DATED the 17th day of May 1961.

G. Whalan 20  
Chief Clerk in Equity.

It is intended to serve this summons upon Louis Steen and Joseph Steen.

If you, the said Louis Steen and Joseph Steen do not attend either in person or by Solicitor or Counsel at the time and place abovementioned, such proceedings may be taken in your absence as the Judge may think fit.

This summons is taken out by Messrs. Aitken & Pluck of 14 Spring Street Sydney the solicitors for the abovenamed Charles Allen Law. 30

## No. 2

## Points of Claim

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 2.  
Points of  
Claim before  
His Honour  
Mr Justice  
Jacobs.  
(Continued)

—  
29th May, 1961.

1. International Vending Machines Pty. Limited (in Liquidation) (hereinafter called "the Company") was duly incorporated in the State of New South Wales on the twelfth day of June 1958 under the Companies Act 1936. Shortly after it was incorporated the Company commenced and at all material times thereafter carried on the business of selling vending machines and in the course of such business collected large sums of money from purchasers in accordance with agreements entered into between the company and such purchasers. The said business of the company was at all material times conducted by it in conjunction with certain other companies whose function it was to operate on behalf of purchasers, machines so purchased by them from the company.

2. By order of the Supreme Court of New South Wales in its Equitable Jurisdiction made on the eighth day of May 1961 it was ordered that the company be wound up and that Charles Allen Law hereinafter called "the applicant" be appointed Liquidator thereof.

3. From the first day of July 1958 until the twelfth day of August 1959 Louis Steen and Joseph Steen were the sole Directors of the company, and at all material times the said Louis Steen and Joseph Steen were directors of the company.

4. The nominal capital of the company as at the ninth day of June 1959 was £30,000 divided into 30,000 ordinary shares of £1 each. As at that date, 102 of the said shares had been issued fully paid as follows:—

Louis Steen	46 shares
Joseph Steen	46 shares
Sydney Steen	10 shares

5. I.V.M. Holdings Pty. Limited was duly incorporated under the Companies Act 1936 on the twenty ninth day of May 1959 under the name A.M. Holdings Pty. Limited. By special resolution duly passed on or about the eighth day of December 1959 the name of the company was changed to I.V.M. Holdings Pty. Limited.

6. As at the ninth day of June 1959 the nominal capital of I.V.M. Holdings Pty. Limited was £500,000 divided into 500,000 shares of £1 each of which two (2) shares had then been issued fully paid as follows:—

Louis Steen	1 share
Joseph Steen	1 share

7. As at the ninth day of June 1959 and at all material times thereafter, the sole directors of I.V.M. Holdings Pty. Limited were Joseph Steen and Louis Steen.

8. On or about the tenth day of June 1959 it was agreed by and between I.V.M. Holdings Pty. Limited and the said Louis Steen

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 2.  
Points of  
Claim before  
His Honour  
Mr Justice  
Jacobs.  
(Continued)

—  
29th May, 1961.

that the said company I.V.M. Holdings Pty. Limited would purchase from the said Louis Steen and the said Louis Steen would sell to the said Company forty five (45) ordinary shares of £1 each in International Vending Machines Pty. Limited for the sum of ninety thousand pounds (£90,000) and that the said Louis Steen would hold the remaining one ordinary share held by him in International Vending Machines Pty. Limited as nominee for I.V.M. Holdings Pty. Limited.

9. On or about the tenth day of June 1959 it was agreed by and between I.V.M. Holdings Pty. Limited and the said Joseph Steen that the said company I.V.M. Holdings Pty. Limited would purchase 10 from the said Joseph Steen and the said Joseph Steen would sell to the said company forty five (45) ordinary shares of £1 each in International Vending Machines Pty. Limited for the sum of ninety thousand pounds (£90,000) and that the said Joseph Steen would hold the remaining one ordinary share held by him in International Vending Machines Pty. Limited as nominee for I.V.M. Holdings Pty. Limited.

10. On or about the tenth day of June 1959 it was agreed by and between I.V.M. Holdings Pty. Limited and the said Sydney Steen that the said company I.V.M. Holdings Pty. Limited would purchase 20 from the said Sydney Steen and the said Sydney Steen would sell to the said company ten (10) ordinary shares of £1 each in the capital of International Vending Machines Pty. Limited for the sum of twenty thousand pounds (£20,000).

11. On or about the twelfth day of June 1959 the directors of the company that is to say the said Louis Steen and the said Joseph Steen approved transfers of the said shares executed pursuant to the said agreements referred to in paragraphs 8, 9 and 10 above and the said transfers so approved were given effect to and entered in the Register of Members of the company.

12. On the twenty fifth day of June 1959 the company loaned 30 to I.V.M. Holdings Pty. Limited a sum of two hundred and five thousand pounds (£205,000). The said loan was made without interest and without security and at no time was interest received by the Company in respect of the said loan.

13. The said loan of £205,000 was made by the company upon the decision of Louis Steen and Joseph Steen as directors of the company and by a cheque signed by them as such directors.

14. On the twenty fifth day of June 1959 I.V.M. Holdings Pty. Limited made the following payments totalling £200,000 out of the 40 said sum of £205,000:—

Louis Steen	£90,000
Joseph Steen	£90,000
Sydney Steen	£20,000

The said payments were made by I.V.M. Holdings Pty. Limited in full satisfaction of the amount due to the said Louis Steen, Joseph Steen and Sydney Steen in respect of the transfers of shares in the

company referred to in paragraph 11 above.

15. From the date of the incorporation of the Company until the twenty fourth day of June 1959 the following amounts totalling £77,972/7/2 were advanced by the company to Louis Steen, Joseph Steen and Sydney Steen respectively:—

Louis Steen	£38,568/11/3
Joseph Steen	£38,283/15/11
Sydney Steen	£1,120/-/-

The said amounts so advanced were used by the said Louis Steen, 10 Joseph Steen and Sydney Steen for their own private purposes and were not advanced as part of or in connection with or for the purposes of any business of the Company.

16. On the twenty fifth day of June 1959 the said Louis Steen, Joseph Steen and Sydney Steen paid to the company the following moneys, which moneys represented the proceeds of sale of their said shares in the company:—

Louis Steen	£90,000
Joseph Steen	£90,000
Sydney Steen	£20,000

20 The said amounts so paid were credited to their respective accounts with the Company. The credits so established in the names of the said Louis Steen, Joseph Steen and Sydney Steen was from time to time drawn upon by each of them respectively and was used by each of them otherwise than for the benefit of the company.

17. At the time the said loan of £205,000 referred to in paragraph 12 above was made I.V.M. Holdings Pty. Limited had no assets.

18. During the period from the incorporation of the company until the twenty fifth day of June 1959 and in the course of its said 30 business the company entered into agreements with many members of the public for the sale of vending machines under which agreements very substantial sums had been paid to the company by purchasers but in respect of which agreements vending machines had not as at the twenty fifth day of June 1959 been supplied.

19. As to £200,000 thereof the said loan referred to in paragraph 12 above constituted financial assistance given by the company by means of loan for the purpose of and in connection with the purchase by I.V.M. Holdings Pty. Limited of shares in the company being the shares the subject of the transfers referred to in paragraph 11 above.

40 20. Of the said sum of £205,000 so loan by the Company as aforesaid the sum of £200,000 was advanced in contravention of the provisions of s.148 of the Companies Act 1936 and was illegal and unlawful and is therefore not recoverable by the company from I.V.M. Holdings Pty. Limited.

21. The said Louis Steen and Joseph Steen at all material times were well aware that of the sum of £205,000 so loan to I.V.M. Holdings Pty. Limited, an amount of £200,000 was to be used by that company for the purpose of acquiring from them and from Sydney

*In the  
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of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 2.  
Points of  
Claim before  
His Honour  
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Jacobs.  
(Continued)

—  
29th May, 1961.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 2.  
Points of  
Claim before  
His Honour  
Mr Justice  
Jacobs.  
(Continued)

29th. May, 1961.

Steen the shares in the company the subject of the transfers referred to in paragraph 11 above, and the said Louis Steen and Joseph Steen as Directors of the company knowingly and actively procured the said advance for this purpose.

22. As to £200,000, being part of the said loan referred to in paragraph 12 above, the same was loaned solely for the benefit of the said Louis Steen, Joseph Steen and the said Sydney Steen and in the circumstances was not loaned for or as part of or in connection with any business of the company or for any of its purposes and such an advance could not conceivably have been for the benefit of the company. 10

23. As to £200,000 being part of the said advance of £205,000 referred to in paragraph 12 above the said advance was procured by the said Louis Steen and Joseph Steen with the intent of and for the purpose of reducing the indebtedness of themselves and the said Sydney Steen to the company and in order to establish themselves as substantial creditors of the company.

24. I.V.M. Holdings Pty. Limited was at all material times a company brought into existence by the said Louis Steen and Joseph Steen for the purpose (inter alia) of acting and it did in fact act in relation to the said loan of £205,000 so as to cloak the fact that the said Louis Steen and Joseph Steen were at the material times the true principals in the matter and the fact that the said I.V.M. Holdings Pty. Limited was acting not on its own behalf but on behalf of the said Louis Steen and Joseph Steen. 20

25. By reason of the facts and matters set forth in paragraphs 1 to 24 the said Louis Steen and Joseph Steen and each of them have misapplied and have become liable for money belonging to the company and have been guilty of misfeasance negligence and breach of trust in relation to the company. The Applicant therefore claims:—

- (1) An order that Louis Steen and Joseph Steen do pay to the company the sum of £205,000 together with interest at such rate as the Court thinks just calculated from the twenty fifth day of June, 1959. 30
- (2) Alternatively to (1) an order that Louis Steen and Joseph Steen do pay to the company the sum of £200,000 together with interest at such rate as the Court thinks just calculated from the twenty fifth day of June 1959.
- (3) Alternatively to (1) and (2) an order that Louis Steen do pay to the company the sum of £90,000 together with interest at such rate as the court thinks just calculated from the twenty fifth day of June 1959.
- (4) Alternatively to (1) and (2) an order that Joseph Steen do pay to the company the sum of £90,000 together with interest at such rate as the Court thinks just calculated from the twenty fifth day of June 1959. 40
- (5) Alternatively to (1) to (4) an order that Louis Steen and Joseph Steen do contribute such sum or sums to the assets

of the company by way of compensation in respect of the aforesaid misapplication, misfeasance negligence or breach of trust as the Court thinks just.

- (6) An order that Louis Steen and Joseph Steen do pay the applicant's costs of this summons.
- (7) That such further or other order be made as to the Court seems just and proper.

DATED the fifth day of June 1961.

Lindesay S. Aitken  
Solicitor for the Applicant

10

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 2.  
Points of  
Claim before  
His Honour  
Mr Justice  
Jacobs.

—  
29th May, 1961.

NOTE: These Points of Claim are filed by Lindesay Shepherd Aitken of 14 Spring Street Sydney, Solicitor for the Applicant.

## No. 3

## Points of Defence

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 3.  
Points of  
Defence before  
His Honour  
Mr Justice  
Jacobs.

—  
29th May, 1961.

1. The respondents claim that the credits referred to in paragraph 16 of the points of claim were used for the benefit of the Company and further that £50,000 part thereof after being withdrawn was paid to I.V.M. Holdings Pty. Limited for and was in fact used by that Company for subscription for the further capital in International Vending Machines Pty. Limited.

2. The respondents as to paragraph 18 of the points of claim, claim that in respect of Vending Machines unallocated as at the 25th 10 June 1959, the purchasers thereof were protected by the sums necessary to purchase, the sum being set aside by the Company and that failure to allocate a machine immediately on payment by a member of the public was wholly due to delays in supply by the manufacturers and in the obtaining of suitable sites for such machines and that by May 1960 all persons or if not all at least the vast majority of persons who by the 25th June 1959, had purchased a machine had been supplied with one.

3. As to paragraphs 22 and 23 of the points of claim the respondents say that the purpose of such advance was to reduce the liability 20 of the Company, and of the three Steens for income tax and that as far as the Company was concerned the monies constituting the said advance could and otherwise would properly have been distributed to the shareholders by way of dividend and that the purpose was not to establish the Steens as substantial creditors of the Company.

4. The respondents deny that I.V.M. Holdings Pty. Limited was brought into existence for the purpose of acting, and deny that it did in fact act to cloak the fact that the respondents were the true principals in the matter or to cloak the fact that I.V.M. Holdings Pty. Limited was acting not on its own behalf but on behalf of the said respondents, 30 and deny that the respondents were the true principals in the matter and that I.V.M. Holdings Pty. Limited was not acting on its own behalf but on behalf of the respondents.

5. In answer to the whole claim of the applicant the respondents say—

- (a) that at all relevant dates all creditors of the Company had sufficient assets available for payment of their debts and that they were (if at all) no more affected than if the said monies had been paid out by way of dividend.
- (b) That the course adopted was suggested and recommended 40 by highly qualified persons as one which in all the circumstances would achieve the purpose referred to in paragraph 3 without affecting adversely any person to whom a duty was owed by the Company or the respondents.



- (c) That as directors the respondents passed the resolutions and did the acts necessary to implement the said suggestions and recommendations but otherwise the advances were not made on the decision of the respondents as alleged in paragraph 13 of the points of claim and otherwise they did not procure the advances either for the purposes referred to in paragraph 23 of the points of claim or at all.
- (d) No person has suffered any loss as a contemplated or direct result of the acts of the respondents.
- 10 (e) The respondents were never aware until the issue of the summons herein that the acts complained of involved any breach of the Companies Act or that the monies lent to I.V.M. Holdings Pty. Limited were not recoverable if this be so.
6. In all the circumstances it is submitted
- (i) that there was no misapplication, breach of trust, negligence or misfeasance by the respondents or either of them and that neither of them have become liable for any money belonging to the Company.
- 20 (ii) that at least as to £50,000 being moneys forming part of the £200,000 which were by I.V.M. Holdings Pty. Limited subscribed for further capital in the Company, no claim lies against the respondents.
- (iii) that the respondents acted honestly and reasonably and ought fairly to be excused for their negligence, default breach of duty or breach of trust, if any.

DATED the 22nd day of August 1961.

N. C. Langham Dale (Sgd.)  
Solicitor for the Respondents.

NOTE: These Points of Defence are filed by Norman Charles  
30 Langham Dale of 33 Macquarie Place Sydney, Solicitor for the Respondents.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 3.  
Points of  
Defence before  
His Honour  
Mr Justice  
Jacobs.

(Continued)  
—  
29th May, 1961.

## No. 4

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

**Substituted Points of Defence Filed Pursuant to Intimation of His  
Honor Mr Justice Jacobs**

**Given the Sixteenth day of October 1961**

No. 4.  
Substitute  
Points of  
Defence before  
His Honour  
Mr Justice  
Jacobs.

16th Oct., 1961.

1. The Respondents admit the facts set out in Paragraphs 1 to 10 inclusive of the Points of Claim.

2. In answer to Paragraph 11 of the Points of Claim the Respondents subject to production of the relevant Minutes and of the Register of Members and of the said Transfers admit the facts set out in this paragraph.

3. The Respondents admit the facts set forth in Paragraphs 12 and 13 of the Points of Claim, subject as to Paragraphs 13 to 15 (d) below.

4. The Respondents deny that the payments as set out in Paragraph 14 were made on the Twenty-fifth day of June One thousand nine hundred and fifty-nine and say that such payments were made on the Twenty-second day of June One thousand nine hundred and fifty-nine.

5. The Respondents admit the advances referred to in Paragraph 15 of the Points of Claim but do not know and cannot admit that the said amounts were not advanced as part of or in connection with or for the purposes of any business of the said Company.

6. In answer to Paragraph 16 of the Points of Claim the Respondents do not admit that the credits therein referred to as being established were used by any of the said LOUIS STEEN, JOSEPH STEEN and SYDNEY STEEN otherwise than for the benefit of the Company and the Respondents say that at least to the extent of Fifty Thousand Pounds (£50,000) drawn by the said Steens such sum was used for the benefit of the Company.

7. In answer to Paragraph 17 of the Points of Claim the Respondents deny that at the time of the said loan of Two hundred and five Thousand pounds (£205,000) I.V.M. HOLDINGS PTY. LIMITED had no assets.

8. In answer to Paragraph 18 of the Points of Claim the Respondents do not know and cannot admit that with respect to Agreements with many or any members of the public Vending Machines had not as at the twenty-fifth day of June one thousand nine hundred and fifty-nine been supplied.

9. In answer to Paragraph 19 of the Points of Claim the Respondents do not admit that as to Two hundred thousand pounds (£200,000) thereof the said loan referred to in Paragraph 12 of the Points of Claim constituted financial assistance given by the Company by means of loan for the purpose of or in connection with the purchase by I.V.M. HOLDINGS PTY. LIMITED of Shares in the Company.

10. In answer to Paragraph 20 of the Points of Claim the Respon-

dents do not admit that of the said sum of Two hundred and five thousand pounds (£205,000) loaned by the Company the sum of Two hundred thousand pounds (£200,000) was advanced in contravention of the provisions of Section 148 of the Companies Act 1936 or that the same was illegal or unlawful or that the same is therefore or at all not recoverable by the Company from I.V.M. HOLDINGS PTY. LIMITED.

10 11. In answer to Paragraph 21 of the Points of Claim the Respondents do not admit that they or either of them at any material time was well or otherwise aware that of the sum of Two hundred and five thousand pounds (£205,000) lent to I.V.M. HOLDINGS PTY. LIMITED an amount of Two hundred thousand pounds (£200,000) was to be used by that Company for the purpose of acquiring from them and from SYDNEY STEEN the Shares in the Company the subject of the Transfers referred to in Paragraph 11 above and do not know and cannot admit that they or either of them as Directors of the Company knowingly or actively procured the said advance for this purpose.

20 12. In answer to Paragraph 22 of the Points of Claim the Respondents deny that as to Two hundred thousand pounds (£200,000) being part of the said loan the same was loaned solely for the benefit of the said LOUIS STEEN, JOSEPH STEEN and the said SYDNEY STEEN and deny that in the circumstances this sum was not loaned for or as part of or in connection with any business of the Company or for any of its purposes and deny that such an advance could not conceivably have been for the benefit of the Company.

30 13. In answer to Paragraph 23 of the Points of Claim the Respondents deny that as to Two hundred thousand pounds (£200,000) being part of the said advance of Two hundred and five thousand pounds (£205,000) the said advance was procured by the Respondents with the intent of or for the purpose of reducing the indebtedness of themselves and the said SYDNEY STEEN to the Company and in order to establish themselves as substantial creditors of the Company.

40 14. In answer to Paragraph 24 of the Points of Claim the Respondents deny that I.V.M. HOLDINGS PTY. LIMITED was brought into existence for the purpose of acting and deny that it did in fact act to cloak the fact that the Respondents were the true principals in the matter or to cloak the fact that I.V.M. HOLDINGS PTY. LIMITED was not acting on its own behalf but on behalf of the Respondents and deny that the Respondents were the true principals in the matter and that I.V.M. HOLDINGS PTY. LIMITED was not acting on its own behalf but on behalf of the Respondents.

15. In answer to the whole of the Applicant's Claim the Respondents say—

(a) That the purpose of the advance referred to was to reduce the overdrawn of the cash funds of I.V.M. HOLDINGS PTY. LIMITED and to reduce the liability of the Company and of

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Mr Justice  
Jacobs.  
(Continued)

—  
16th Oct., 1961.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 4.  
Substitute  
Points of  
Defence before  
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Mr Justice  
Jacobs.  
(Continued)

—  
16th Oct., 1961.

the three Steens for Income Tax, and that so far as the Company was concerned the monies constituting the said advance could and otherwise would properly have been distributed to the shareholders by way of dividend and that the purpose was not to establish the Steens as substantial creditors of the Company.

- (b) That at all relevant dates all Creditors of the Company had sufficient assets available for payment of their debts and that they were if at all no more affected than if the said monies had been paid out by way of dividend. 10
- (c) That the course adopted was suggested and recommended by highly qualified persons as one which in all the circumstances would achieve the purpose referred to in Clause (a) without affecting adversely any person to whom a duty was owed by the Company or the Respondents.
- (d) That as Directors the Respondents passed the Resolutions and did the acts necessary to implement the said suggestions and recommendations but otherwise the advance was not made on the decision of the Respondents as alleged in Paragraph 13 of the Points of Claim and otherwise they did not procure 20 the advances either for the purposes referred to in Paragraph 23 of the Points of Claim or at all.
- (e) No person has suffered any loss as a contemplated or direct result of the acts of the Respondents.
- (f) That any failure to supply machines by the twenty-fifth day of June one thousand nine hundred and fifty nine was in relation to a small proportion of the total number of machines in respect of which Agreements had then been entered into and any such failure to supply such proportion was due to delays in supply by manufacturers of machines and the obtain- 30 ing of suitable sites and on the twenty-fifth day of June One thousand nine hundred and fifty-nine any Purchasers of machines who had not been supplied with machines were protected by the sums necessary to purchase the same having been set aside by the Company and subsequently all or if not all, at least the vast majority of such persons who had purchased machines were supplied.
- (g) The Respondents were never aware until the issue of the Summons herein that the acts complained of involved, which is not admitted, any breach of the Companies Act or that the 40 monies lent to I.V.M. HOLDINGS PTY. LIMITED were not recoverable if this be so.
16. In all the circumstances indicated above it is submitted—
- (i) That there was no misapplication, breach of trust, negligence or misfeasance by the Respondents or either of them and that neither of them have become liable for any money belonging to the Company.

- (ii) That at least as to Fifty thousand pounds (£50,000), being monies forming part of the Two hundred thousand pounds (£200,000) which were by I.V.M. HOLDINGS PTY. LIMITED subscribed for further capital in the Company no claim lies against the Respondents.
- (iii) That the Respondents acted honestly and reasonably and ought fairly to be excused for their negligence, default, breach of duty or breach of trust, if any.

*In the  
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of New South  
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Substitute  
Points of  
Defence before  
His Honour  
Mr Justice  
Jacobs.  
(Continued)

DATED the Eighth day of November, 1961.

10

N. C. LANGHAM DALE (Sgd.)  
Solicitor for the Respondents

16th Oct., 1961.

NOTE: These Substituted Points of Defence are filed by Norman Charles Langham Dale of 33 Macquarie Place Sydney, Solicitor for the Respondents.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 5.  
Proceedings  
before  
His Honour  
Mr Justice  
Jacobs.  
—  
27th Nov., 1961.

**Proceedings before His Honor Mr Justice Jacobs**

**Monday, 27th November, 1961**

**International Vending Machines Pty. Limited and The Companies Act**

MR. BOWEN, Q.C., with him MR ELLICOTT, appeared for the applicant.

MR MOFFITT, Q.C., with him MR OFFICER, appeared for the respondents Louis Steen and Joseph Steen.

MR BOWEN: With regard to the points of claim paragraphs (1) to (10) are admitted.

MR MOFFITT: The admissions, are, of course, in the light of the particulars, Your Honor. 10

MR BOWEN: As far as paragraph 11 is concerned it is admitted subject to the production of the minutes, and I shall be tendering the relevant minutes. 12 is admitted subject to paragraphs 13 and 15(d) of the points of defence, which really raise a qualification on it. 13 does not deny that the sum was procured, but denies the purpose alleged. With regard to 14 the date is asserted to be the 22nd June 1959 instead of the date we allege, the 25th June 1959; otherwise it is admitted. 20

Paragraph 15 is admitted, subject to this, that in respect of the last two lines, it is stated it is not known and cannot be admitted that it was advanced. The first half of that sentence appears to be admitted, that is to say, that the amounts were advanced or so advanced were used for their own private purposes. As to 16 it is admitted down to and excluding the last sentence, and so far as that is concerned, what is not admitted is that these credits established were used otherwise than for the benefit of the company. The establishment of the credits is not denied. 17 is not denied. In 18 an issue is raised on the allegation that machines had not been supplied. It is admitted 30 that substantial sums have been paid by purchasers of machines, but they do not know and cannot admit the allegation about non-supply.

19, 20 and 21 are not admitted. 22, 23 and 24 are denied.

Then there is the answer affirmatively in the statement of points of defence which is set forth in paragraph 15.

(Request for particulars dated 14th June 1961 and reply of 28th June 1961, tendered and marked Exhibit A.)

(Copy Memorandum and Articles of Association of I.V.M. Holdings Pty. Limited, together with copy Special Resolutions dated 20th and 22nd June 1959 tendered and marked Exhibit B.) 40

MR BOWEN: I think it is not in dispute between us, Your Honor,

that this company was incorporated on 29th May 1959 and changed its name on 8th December 1959 to I.V.M. Holdings Pty. Limited.

(Minute book of I.V.M. Pty. Limited, tendered and marked Exhibit C on the basis that such of the minutes as will be included in the evidence and are from time to time referred to and allowed constitute the exhibit.)

(Folios, 1, 2 and 3 of the minute book to be included in Exhibit C, by direction of His Honor.)

10 (Minute book of I.V.M. Holdings Pty. Limited, tendered and marked Exhibit D, on the basis that such of the folios as will be included in the evidence and as are from time to time referred to and allowed will constitute the exhibit, and at this stage His Honor included within the exhibit folios 1, 2 and 3.)

MR BOWEN: I also tender folios, 14, 15 and 16 referring to a meeting of directors of the 21st June 1959, a notice of extraordinary meeting for the issue of redeemable preference shares and the minutes of an extraordinary general meeting on 22nd June 1959 when 25 people were each issued with 50 redeemable preference shares respectively.

HIS HONOR: I shall include in Exhibit D, folios 14, 15 and 16.

20 MR BOWEN: I now tender folio 30 of the minute book of I.V.M. (Exhibit C) being minutes of a meeting of directors of the company held on 12th June, 1959.

(Folio 30, included without objection, in Exhibit C.)

(Photostat copy of entry in transfer journal of I.V.M. Pty. Limited, Canberra register, tendered and without objection marked Exhibit E.)

30 (Photostat copies of transfer from Louis Steen to I.V.M. Holdings, dated 23rd June 1959 of 45 shares, similar by Joseph Steen and similar by Sydney Steen relating to 10 shares, tendered and marked Exhibit F.)

(Thomas Baxter, an officer of the Companies Branch of the Registrar General's Department produced a file of documents relating to I.V.M. Pty. Limited in response to a subpoena duces tecum.)

(Memorandum and Articles of Association of I.V.M. Pty. Limited, including two special resolutions dated 15th May 1959, and 12th June 1959, tendered and marked Exhibit G.)

40 (Cheque for £205,000 dated 22nd June 1959 drawn by I.V.M. Pty. Limited in favour of A.M. Holdings Pty. Ltd. together with deposit slip of payment into I.V.M. Holdings Pty. Limited of £205,000 dated 25th June 1959, tendered and marked Exhibit H.)

(Cheque drawn by I.V.M. Holdings Pty. Limited in favour of Louis Steen, dated 22nd June 1959 for £90,000, together with deposit slip relating thereto for payment to the credit of Louis Steen in the A.N.Z. Bank, dated 25th June 1959 tendered and marked Exhibit J.)

*In the  
Supreme Court  
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—  
No. 5.  
Proceedings  
before  
His Honour  
Mr Justice  
Jacobs.  
(Continued)

—  
27th Nov., 1961.

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(Cheque drawn by I.V.M. Holdings in favour of Joseph Steen, dated 22nd June 1959 for £90,000 in payment for the shares and the corresponding deposit slip to Joseph Steen's account with the A.N.Z. Bank dated 25th June 1959, tendered and marked Exhibit K.)

(Cheque of I.V.M. Holdings in favour of Sydney Steen, dated 22nd June 1959 for £20,000 in payment for shares and corresponding deposit slip to the account of Sydney Steen with the A.N.Z. Bank dated 25th June 1959, tendered and marked Exhibit L.)

(Cheque drawn by Louis Steen in favour of I.V.M. Pty. Limited, dated 24th June for £90,000; cheque drawn by Joseph Steen, dated 24th June 1959, in favour of I.V.M. Pty. Limited for £90,000; cheque drawn by Sydney Steen in favour of I.V.M. Pty. Limited dated 24th June 1959, for £20,000 and one deposit slip to the credit of I.V.M. Pty. Limited for £200,000 dated 25th June 1959, being the deposit slip corresponding with the cheques listed on the back of the slip, tendered and marked Exhibit M.)

(I.V.M. Pty. Limited private ledger, account No. 5, being the loan account of J. Steen, account No. 6, being the loan account of S. Steen, account No. 7, being the loan account of L. Steen, and joint loan account of L. & J. Steen, No. 8, excluding entries after May 1960—together with typewritten copies of these accounts—tendered and marked Exhibit N.)

MR MOFFITT: Certain requests have been made from my learned friend's clients for the production of various documents and in that regard we should like to have the ledgers of debtors and creditors of I.V.M. from the inception of the company to the 27th August 1960. Also, we have sought to get all original and copy correspondence between North, Ash and Mann who are the auditors of I.V.M. between the 1st January 1959 and 30th June 1959, but we have indicated there is a particular letter between February and the middle of 1959 that we wish to see.

We have also asked for correspondence between Marrickville Holdings and/or Eta Products and I.V.M. from the period of the formation of the company up to August 1960. In addition to Marrickville Holdings and/or Eta Products there was also Liquid Specialties and then Ainsworth.

MR BOWEN: The ledger is in Court and there should be no trouble about that. I now find in response to the request concerning correspondence that was lastly mentioned, to Liquid Specialties, that a search has been made and it cannot be found. It is believed that that was destroyed after Mr Ball took over the company. With regard to North, Ash and Mann, we have not been able to find that either, but I shall make further enquiries myself to see what can be done.

(Short adjournment.)

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30

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(Minutes of directors' meetings in I.V.M. Pty. Limited appearing in the minute book on folios 5, 6, 8, 9, 10, 11, 14, 19 and 27, tendered; folios 5, 6, 10 and 27 not objected to, but folios 8, 9, 11, 14 and 19 objected to as irrelevant. All folios admitted as part of Exhibit C.)

(Deed of 25th November 1958 between I.V.M. Pty. Limited and Automatic Merchandising (N.S.W.) Pty. Limited tendered, objected to, allowed and marked Exhibit O.)

PETER ROBERT BEVERIDGE FARRELL

Sworn, examined, deposed:

10 TO MR BOWEN: My full name is Peter Robert Beveridge Farrell. I am a chartered accountant, and I reside at 3 New Street, Lidcombe. I am a partner in the firm of R. E. Cox, Wilson & Co., Chartered Accountants.

Q. You carry on your practice as a partner in that firm at 26 Bridge Street, Sydney? A. Yes.

Q. Your firm was appointed auditors of International Vending Machines Pty. Limited in October 1960? A. Yes.

20 Q. And immediately prior to that, or rather the immediately preceding auditors had been North, Ash and Mann, Accountants of 15 Young Street, Sydney? (Objected to; not pressed.)

Q. North, Ash and Mann were the preceding auditors, were they? A. As far as I am aware.

Q. You were the partner of R. E. Cox, Wilson & Company who had the responsibility of auditing the accounts of I.V.M. Pty. Limited, were you? A. Yes.

Q. I think you went back in their accounts to 1st July 1960, and then forward and audited their accounts up to 30th June 1960? A. The 1st July 1959 to the 30th June 1960.

30 Q. In addition you have examined the credit notes relating to — MR MOFFITT: I ask my friend not to lead on this matter, Your Honor. MR BOWEN: I will not press it.

Q. You have also for the purposes of this case been through the books of account of I.V.M. Pty. Limited in respect of the period prior to 1st July 1959, have you not? A. Yes.

Q. I want you to direct your attention to the position at the 25th June 1959 and tell us if you will what was shown by the books as the sales of machines during that current year up to the 25th June 1959? (Objected to; withdrawn.)

40 Q. (Private ledger of I.V.M. handed to witness.) That is the private ledger of I.V.M. Pty. Limited; is that right? A. It is.

Q. And it relates, amongst other things, to the period from the commencement of the company's operations up to 30th June 1959, does it not? A. It does.

Q. Could you direct our attention to the entries in that book relating to the sales of machines? What account does it appear in?

*In the  
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—  
No. 5.  
Proceedings  
before  
His Honour  
Mr Justice  
Jacobs.  
(Continued)

—  
27th Nov., 1961.

—  
Applicant's  
Evidence.  
Peter Robert  
Beveridge  
Farrell.  
Examination.

*In the  
Supreme Court  
of New South  
Wales in its  
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Jurisdiction.*

—  
Applicant's  
Evidence.  
Peter Robert  
Beveridge  
Farrell.  
Examination.  
(Continued)

A. There are several accounts.

Q. Will you tell us what they are? A. Sales of Victor machines, sales of Perfumatic machines and Sales Sundry.

Q. Speaking as an accountant, can you tell us what is shown in those accounts as the sales up to the 25th June, 1959? (Objected to, pressed, rejected.)

Q. Could you direct us to the entries in these books that reflect those sales? Are they included in the accounts you have mentioned?

A. All sales for the period to the 30th June 1959 are included in those three accounts. There is one extraneous entry in the sales and it is a debit to the sales of Victor machines of £54,068, and referring to the journal of the company. (Objected to.)

MR BOWEN: I will not ask you to explain that at the moment. I will tender those accounts.

HIS HONOR: Q. What are the numbers of those accounts, Mr Farrell?

A. They are numbers, 6, 7 and 9, and they are within a separate section of the ledger, Your Honor.

Q. What is the separate section? A. Sales.

(Accounts numbers 6, 7 and 9 of the sales section of the private ledger of I.V.M. Pty. Limited tendered and without objection marked Exhibit P.)

MR BOWEN: Q. (Exhibit P handed to witness.) Mr Farrell that discloses a figure of total sales as at 30th June 1959 of what? You need to give it in three figures, do you? A. Victor, £56,494/0/1—that is the figure that is taken into the financial accounts.

WITNESS: Perfumatic machines, £47,145/15/-; Sundry Sales, £528,714/6/4, a total of £632,354/1/5, but I must point out at this stage— (Objected to.)

Q. MR BOWEN: You have made a dissection of the figures to see how many sales there were up to 25th June 1959? A. I have made a dissection of the sales subsequent to the 25th June to the 30th June.

Q. And then taken them off, have you? A. Exactly.

Q. Will you tell us what the figures are? (Objected to.)

HIS HONOR: I think it will be necessary before we proceed further to have it clear in regard to the books of this company up to the 30th June 1959 what material contained in them you propose to object to. Do you propose to object on the grounds that the books are not proof of the facts stated?

MR MOFFITT: No, Your Honor.

HIS HONOR: Because I do not think I shall allow some books in, and allow objections in regard to others. In other words, I shall not allow you not to object to the ones you do not mind.

MR MOFFITT: No, Your Honor. Where there is a book, or a series of credit notes, I am not objecting to the production of those documents, but I am objecting to somebody putting an interpretation on them.

HIS HONOR: You do not propose as various books of the company

come forward, if they do come forward, up to whatever be the relevant date, to object that the books are no proof of what they state?

MR MOFFITT: My intention is not to take that objection, Your Honor.

MR BOWEN: Q. Are you able to give us a dissection of the sales up to 20th June 1959 from those accounts, or do you need other material in order to make that dissection? I am sorry: you have told us you made the dissection for the latter period from 25th June to the 30th June and subtracted it, is that right? A. Yes.

Q. Now, can you tell us whether you can do that from those  
10 accounts, or do you need other material? A. The only place where the actual information could be abstracted from the books which would agree with the information I have here will be the sales journal, and that could not be done straight away because it would be a matter of taking the sales journal and getting a total for each of the types of machines.

Q. Can you tell us how you arrive at that figure? I do not want you to tell us what the figure is at this stage, but will you tell us how you arrive at the figure for the period after 25th June up to the 30th June? A. All that was required was a matter of adding the  
20 June sales journal at the 25th June for each of the types of the machines and for each of the States and taking that total off the total for the month.

Q. That sales journal is in Court? A. It is.

Q. (Sales journal handed to witness.) Could you direct us to the pages of the sales journal which would contain that information? A. In the Sydney sales journal it would be folios 24, 25 and 26. The Melbourne sales journal would be folios 14 and 15. The Queensland sales journal would be folios 6, 7 and 8. The South Australian sales journal would be folios 9, 10, 11, 12 and 13. The Tasmanian sales  
30 journal would be folios 2 and 3.

Q. Do they contain the entries covering the period from 25th June to 30th June 1959? A. They do in each State.

(Folios of the sales journal referred to by the witness above tendered and marked Exhibit Q.)

Q. (Exhibit Q handed to witness.) Referring to those entries I think you have prepared some figures? A. I have.

Q. For sales for the 25th June to the 30th June? A. I have indicated the 26th to the 30th.

Q. Yes. Would you tell us what they come to, the figures? A.  
40 In total they indicate sales of £173,937/10/-.

Q. Can you break that up for us into Sydney, Melbourne, Queensland, South Australia and Tasmania? A. Yes. New South Wales £30,687/10/-; Queensland £43,215; South Australia £67,788/15/-; Tasmania £6,258/15/- and Victoria £25,987/10/-.

Q. You then worked out from the figures you have given us the sales for the period up to and including the 25th June, which is the difference? A. I have.

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HIS HONOR: Q. What is the total difference? A. The sales then to 25th June would appear as £458,416/11/5.

MR BOWEN: Q. I think you also considered the question of amounts paid under what are called guaranteed by I.V.M. Pty. Limited. Would you look at this journal I have mentioned? Are you able to identify any entries relating to amounts paid under guarantees? A. There is a journal entry which is dated 30th June 1959.

Q. Tell us what it refers to? A. It records a debit against sales— (Objected to.)

Q. First of all, that is the journal of I.V.M. Pty. Limited, is that 10 right? A. It is.

Q. You are looking at folio 27? A. Yes.

Q. And what does the entry there relate to at the top? (Question objected to on the basis that the entry speaks for itself.)

(Journal folio 27 tendered and marked Exhibit R.)

Q. That is an entry in the journal as at the 30th June relating to amounts paid under guarantee to merchandising companies? A. Yes.

Q. And you have been through the books. Was there any other entry relating to payment of guarantees to merchandising companies 20 in that year? A. I did not see one.

Q. You could not find any others. Now, I want to ask you some questions about the figure shown for sales at the 30th June 1959. which you stated was £632,354/1/5. From your audit of the books of account for the succeeding accounting period, are you able to tell us whether or not in respect of those sales vending machines had yet been supplied to the customer? (Objected to; allowed.)

Q. Is it possible for you to express a view, Mr Farrell, with reference to the information in the books of account of the company as to whether or not in respect of those sales machines had been 30 supplied to the customer or not? A. I am afraid, Your Honor, I cannot answer with a straight yes or no. I would have to make an explanation.

Q. Let me ask you this question: in the succeeding year certain credits were put through which reversed the sales entries, did they not? (Objected to, rejected.)

Q. I want you to go to either the ledger or the journal of the books of account, as may be necessary, and tell us whether any reversing entry was made in the following year in respect of the figure of £632,354/1/5? A. There is one entry on journal 54 for 40 £37,500.

Q. (Journal handed to witness.) You mean folio 54? A. It is dated 30th June 1960, and it is a debit to sales Victor, sales Debonaire and a credit for Sundry Debtors of £37,500, and it says: "Invoices passed in error 30/6/59". There are other entries, Your Honor. (Entry inspected by Mr Moffitt who objected and the answer was directed to be struck out.)

Q. Speaking of entries affecting the figure for sales of £632,354/1/5 are you able to point to any entries in the books of account during the year ended 30th June 1960, stopping at May 1960, which would bear on that matter, or which would represent a part reversal of that figure or otherwise could deal with that figure?  
 A. Yes. If I had the sales journal I could probably point to a couple of hundred. (Sales journal handed to witness.) There are, of course, some for each State.

Q. You had better start at the earliest one and take New South  
 10 Wales first? A. On 27th October 1959 there is a credit note for £1,800. (Objected to.)

HIS HONOR: Q. Mr Farrell, it would be best if you identified the entry without giving its contents? A. Yes.

MR BOWEN: Q. First of all, what book is it? A. The sales journal.

Q. And what is the name of it? A. It is named here "Sydney, Sales Journal", and "folio 30".

HIS HONOR: Q. What is the first word of the entry? A. A credit of £1,800.

HIS HONOR: That is one entry out of hundreds, is it?

20 MR BOWEN: Q. There are two entries there, are there, Mr Farrell, one after the other? A. Yes.

Q. I think you mentioned the first one, £1,800? A. That is right.

Q. They are in red ink as distinct from the others which are in dark ink? A. That is right.

(Sales journal, Sydney Section, folio 30, tendered and marked Exhibit S.)

WITNESS: In this book they use the capital cities instead of the States.

MR BOWEN: The entry to which you refer appears in red ink as distinct from the dark ink, or rather as distinct from other entries  
 30 on that page? A. Yes.

Q. What is the significance of that? Is there any? A. On my investigations during the audit they indicated to me that they were a credit relating to goods that were invoiced on the 25th June 1959—  
 (Objected to.)

HIS HONOR: I shall not allow the witness to proceed further with that answer, Mr Bowen.

MR BOWEN: Q. I want you to indicate to us, or rather tell us, as a physical fact, Mr Farrell, whether in the sales journal in the Sydney and other sections for the year ended 30th June 1960, there is a  
 40 number of such entries in red as distinct from other dark entries?  
 A. Yes.

Q. You are able to tell us, are you, if you are asked what the total of these entries in red amounts to? A. Yes.

Q. As auditor of the company and from your familiarity with the books of this company in relation to that period, are you able to tell us or not, what those figures represent? (Objected to.)

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HIS HONOR: I shall allow the question whether he is able to say in his capacity of auditor.

MR BOWEN: Q. Are you able to say, having been auditor for the company and considered these figures in your capacity as auditor, what the figures in red I have mentioned represent? Are you able to tell us what they represent? A. Yes.

Q. Now I ask you to tell us what they do represent? (Objected to.)

HIS HONOR: First of all, I feel that if you are going to rely on these entries, the whole book should be tendered, Mr Bowen. Have you any objection to that, Mr Moffitt? 10

MR MOFFITT: I would have to consider that, over the luncheon adjournment, Your Honor.

(Luncheon adjournment.)

MR MOFFITT: Before my friend proceeds, there is another matter which we have also requested which I did not specify this morning, and we would like it to be produced before we commence our case, Your Honor. That is the copy taxation returns and taxation assessments and correspondence with the Commissioner, and the adjustment sheets.

HIS HONOR: What is the position about those things, Mr Bowen? 20

MR BOWEN: We have custody of whatever the company has as documents, Your Honor. If my learned friend indicates what company—

MR MOFFITT: I meant I.V.M. There is a return for 1959 and for 1960, and then there is correspondence and certain other assessments in respect of this company, all of which we wish to see, and all of which are quite relevant, as Your Honor will see.

I do not know whether my learned friend could indicate unequivocally at some stage whether the other document has been destroyed, or whether a sufficient search has not been made. That is the letter from North, Ash & Mann. 30

HIS HONOR: This is the February to April letter?

MR MOFFITT: Yes.

HIS HONOR: I think you indicated that that was not obtainable, Mr Bowen.

MR BOWEN: That is so. A search has been made and it cannot be found.

MR MOFFITT: We have made a request to North, Ash & Mann, but it has not been able to be found there. There is a great deal of material I would anticipate in this, and we are most anxious to get it. I should like some assurance that some special search is made for 40 it, because it is a very important document.

HIS HONOR: Can that be done?

MR BOWEN: Yes. I know it has been looked for and it has not been found. There is a great bulk of documents and I will endeavour to see what can be done or whatever can be done in relation to search will be done. There should be no difficulty about income tax returns,

but I did not understand my friend's reference to correspondence.

MR MOFFITT: It is in respect of each of the three lots of assessments, 1959, 1960 and the other one. I would like to see them before I commence my case.

MR BOWEN: We will endeavour to make them available after the Court adjourns.

Q. (Sales journal handed to witness.) Will you look again at the entries for the period ended 30th June 1960 for Sydney, Melbourne and the other States where sales were taking place? I had directed  
10 your mind to some entries in red as distinct from the dark coloured ink of the rest of the entries? A. Yes.

Q. I think in relation to these red entries there is a mark which you made when you audited the accounts before any of this case occurred? A. That is correct.

Q. Those marks are of three types? A. That is right.

Q. Will you tell us what they are, describing physically what is on the book? A. I have in the sales journal for New South Wales a pencil letter "S" a pencil letter "P" and a pencil dash for my own information.

20 Q. Those notations were made after you had looked at vouchers relating to the particular entries, were they? A. Yes.

Q. You might tell us if you will, without indicating what the "S" means, what is the total of the figures against which you have marked an "S"? (Objected to; withdrawn.)

MR BOWEN: I formally tender the entries up to 30th May 1960 in the sales journal in relation to those years. (Tender objected to by Mr Moffitt.)

30 HIS HONOR: Not only is it formally objectionable and, therefore, my hands are, as it were, tied, but nevertheless, as I have said, I am not going to allow Mr Moffitt to reserve that right; I shall determine it, and I think it is a fair request especially in the light of the authorities that documents that support the ultimate book should be produced, if they are available, as part of the tender; that is to say, the vouchers. I do not know about the card index system, but as far as vouchers from which the book is made up are available, they should be produced, and they must exist as Mr Farrell has referred to them.

MR BOWEN: Yes.

40 Q. I want you now to look at the sales journal, being the same book which you have before you, and to look at the entries in respect of sales up to 30th June 1959. I want you to look at Sydney folios 24 to 26. That covers the period from the 26th June to the 30th June 1959 inclusive, does it not? A. It includes the period of the 26th to the 30th.

Q. Does it extend beyond that? A. The commencement of folio 24 is dated 25th June, but only portion of that folio.

MR BOWEN: I tender the entries in the sales journal in relation

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respectively to Sydney, Melbourne, Brisbane, South Australia and Tasmania, for the period from the commencement of the company to the 30th June 1959. At the moment Exhibit Q includes certain folios and I just want to extend it back to the commencement of the particular accounting entries. I take it there is no dispute as to those entries being made during the period when my learned friend's clients were in charge of the books.

MR MOFFITT: I have not objected, as I have indicated to my learned friend. I did not object to these before.

HIS HONOR: This is for completeness? All the entries from the 10 commencement of the company's affairs up to 30th June 1959?

MR MOFFITT: Do I understand that my friend is going back?

MR BOWEN: Q. I would like you, Mr Farrell, to give us the commencing folio for Sydney, if you would? A. Folio No. 1.

Q. And it goes on and finishes at 26, does it? A. At the 30th June 1959, 26.

Q. And Melbourne? A. It commences folio 1 also.

Q. Up to 15? A. That is correct.

Q. Queensland 1 to 8? A. Yes.

Q. South Australia 1 to 13? A. Yes.

Q. And Tasmania 1 to 3? A. Yes.

MR BOWEN: Perhaps Exhibit Q could be amended to incorporate those additional folios?

HIS HONOR: Yes.

MR MOFFITT: These will be the accounts which will cover that period of £632,000?

MR BOWEN: Yes.

HIS HONOR: £632,000 up to 30th June.

MR MOFFITT: There is no objection to that, Your Honor.

HIS HONOR: Very well. Exhibit Q will now be enlarged so that 30 in the Sydney sales journal folios 1 to 26, in the Melbourne sales journal folios 1 to 15, Queensland 1 to 8, South Australia 1 to 13 and Tasmania 1 to 3, inclusive in each case, will all be part of Exhibit Q.

MR BOWEN: Q. Appearing in Exhibit Q is a pencil notation "NA" which is not part of the exhibit at the moment. Do you see some pencil notations "NA" or I think in some instance "Allotted"? A. Yes.

MR BOWEN: I now tender those notations as part of the book.

HIS HONOR: I expect they are there. They have been admitted.

MR BOWEN: There was a suggestion that they were excluded before.

MR MOFFITT: Yes, there was a note in respect of the pencil marks. 40

HIS HONOR: You now ask that they be regarded as forming part of the document admitted, Mr Bowen?

MR BOWEN: Yes.

MR MOFFITT: I object to those, Your Honor.

HIS HONOR: . . . At present I do not see how it could be evidence of anything.



MR BOWEN: I want to ask the witness what they total, as a matter of calculation, although he is not the witness to identify them.

MR MOFFITT: If I can object to it now, Your Honor, I do not mind it being given, and Your Honor could reserve the question until later on.

MR BOWEN: Q. I think you have totalled those entries against which there appears a notation "NA"? A. That is right.

Q. That is during the period up to 30th June 1959 in Exhibit Q?

MR MOFFITT: I formally object to that, but I suggest Your Honor reserve the question until a later stage.

10 HIS HONOR: I shall admit it, subject to it being relevant.

MR BOWEN: Q. What is that total? A. £153,120.

HIS HONOR: That is with "NA"?

MR BOWEN: Yes, Your Honor. I might indicate that I propose to call some evidence to show that that indicates machines subject to agreements not yet allocated.

#### CROSS-EXAMINATION.

MR MOFFITT: Q. Mr Farrell, your firm became auditors of I.V.M. on what date? A. The exact date I could not say. It was in October of 1960.

20 Q. You then continued as auditors until what date? A. Until the company was placed in liquidation.

Q. You were then appointed as an auditor when the directors included Mr Ball, is that right? A. That is correct.

Q. Was Mr Ball someone you had known? A. I had not seen Mr Ball until he came to see me about taking it over.

Q. You, I take it, knew that at some former time the firm of North, Ash & Mann had been the auditors of the company? A. Yes.

30 Q. And at the time that you took over I understand that the accounts had not been made up to the end of June 1960? A. I would not know what the company did, but we did not audit anything up to that stage: the company may have had accounts.

Q. Did you keep the books of the company? A. No.

Q. You merely did the audit? A. The audit only.

Q. Did you personally work on the audit when it commenced? A. Only for the initial work to see what was involved, so that we could evolve a programme, and then the finalisation.

Q. You did not do any of what you might call the routine work of the audit, but your staff did; is that the position? A. Not entirely.

40 Q. What do you mean? Do you mean that you did more than leave the routine work to your staff? A. When I say not entirely, I mean that I did the routine work in investigating the credit notes that were written back.

Q. But speaking of the audit, you had other members of your staff work on that, did you? A. Yes.

Q. In your firm did you have anything to do with the preparation

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of the income tax accounts and returns for the year ended 30th June, 1960? A. No.

Q. Who prepared those? A. I understand it was Mr Nicholson.

Q. Who was Mr Nicholson? A. He was, I understand, the secretary of the company.

Q. That is the secretary of the company? A. I.V.M. Pty. Limited.

Q. He was the secretary of the company, who became the secretary when Mr Ball and his co-directors took over control of the company? A. That would be correct. 10

Q. I take it then that you did not have any part in the making up of the books to the end of June 1960—your firm? A. No.

Q. But as far as you know Mr Nicholson's firm, or Mr Nicholson did? A. As far as I understand it, the company's own staff did the complete writing up of the books of account.

Q. Including Mr Nicholson? A. No, I do not think Mr Nicholson did any of the writing up of the books.

(Further hearing adjourned until 10.00 a.m. Tuesday, 28th November, 1961.)

28th Nov., 1961.

**Second Day: Tuesday, 28th November, 1961**

20

(Peter P. Turner, an officer of the Rural Bank of New South Wales, produced documents on subpoena duces tecum.)  
MR MOFFITT: Before I proceed, Your Honor, Your Honor will recall that I asked my friend to produce certain books, returns and documents. I have been handed very fragmentary documents in respect of 1959—merely a back sheet part for the 1959 one, and the 1960 one, although it has some material with it, is obviously incomplete. There is an assessment in respect of the 1960 period but none in respect of the 1959 period. It is a critical document, and I understand it was produced at the liquidation. . . . 30

**PETER ROBERT BEVERIDGE FARRELL**

Cross-examined, on former oath:

MR MOFFITT: Q. You gave evidence yesterday as to the total arithmetically of a series of entries which had NA opposite them in pencil; do you remember that? A. That is correct.

Q. And without evidence being given at this stage as to what the NA is, you gave us the totals? A. Yes.

Q. That was, as I understand it, the total of such NA's as appear in this sales journal up to the 30th June 1959? A. Yes.

Q. The journal is separated out under headings—Sydney, Melbourne, Brisbane, Adelaide, Hobart and Newcastle? A. Yes. 40

Q. Taking firstly the Adelaide one; that is Adelaide, is it? A. Yes.

Q. The first of any of these NA's that appear is on the 27th June? A. Yes.

Q. And there is virtually—excluding some entries on the 30th June which have not NA—quite a number of them—there is NA opposite each of the entries for the 27th June and there is no entry for the 28th? A. No.

Q. And then for the 29th June and then two of the entries for the 30th June, there being substantially more than two other entries without NA there? A. Yes.

10 Q. But all of the NA's are before the 25th June in respect to Adelaide? A. Before or subsequent do you mean?

Q. Subsequent? A. That is right.

Q. The same thing—I will put it specifically—in respect of Brisbane The first entry of an NA for Brisbane occurs on the 29th June? A. I would not like to say that unless I saw prior to it. There are some States where there are.

Q. At the moment I am asking you about Brisbane. You make any check you want to. So far as Brisbane is concerned what do you say? A. There are none prior to the 25th.

20 Q. And the first is on the 29th? A. That is correct.

Q. And there are nine on the 29th; there are some without NA and there is only one on the 30th? A. That is right.

Q. There is quite a number without NA apposite to them? A. Yes.

Q. Now, with regard to Melbourne you might check, but I suggest the first entry there appears on the 23rd June? A. That is right.

Q. And there are entries there on the 23rd, some without NA and quite a large number with NA; is that right? A. Yes.

30 out? Q. The 24th the same position—some with NA and some without? A. Yes.

Q. Then there are no other NA's from the 25th to the 29th inclusive? A. That is right.

Q. And there are some NA's on the 30th and some without NA? A. Yes.

Q. The Sydney position—would you just make quite sure about this for me—it is correct that the first NA entry would be the 23rd June? A. The 23rd June.

Q. There are on that date quite a lot of NA's and there are quite a lot without NA? A. Yes.

40 Q. The 24th and 25th June there are NA's? They are all NA's, 24th and 25th June? A. Yes.

Q. There are further NA's on the 26th and 27th June and a large number on the 30th June without any NA at all, and there is just a small number of NA's? A. Yes.

Q. I think the only other position is perhaps Newcastle? A.

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There is nothing in Newcastle at all. It does not start until November 1959.

(Witness retired.)

(Robert Brian Hall, an officer of the Bank of New South Wales produced documents on subpoena duces tecum.)

ADA MURIEL BENNETT

Sworn, examined, deposed:

MR BOWEN: Q. Your full names are Ada Muriel Bennett? A. Yes.

Q. And your address is 13 Spofforth Street, Cremorne, is that right? A. That is correct. 10

Q. You formerly were employed with International Vending Machines Pty. Ltd. in what capacity? A. Accountant.

Q. I think you were employed from September 1958 till October 1959, Miss Bennett, is that right? A. That is correct.

Q. I think you had done the Commonwealth Institute exams but had not completed them; you were not a qualified accountant, is that right? A. Yes.

Q. During the period you were with IVM you were in charge of the books of account, were you? A. That is correct.

Q. And you had some accountant clerks under your supervision making actual entries, but you were responsible for supervising them, is that right? A. That is correct. 20

Q. I want you to take Exhibit "Q" which is the sales journal of IVM and if you would look at the entries for Sydney for the period June 1959? A. Yes.

Q. You recognise the book, do you? A. Yes, it is the sales journal.

Q. In whose handwriting is it written up? A. It appears to be in Miss Delaney's handwriting.

Q. Who was Miss Delaney? A. A clerk employed at IVM. 30

Q. She was an accounts clerk under your supervision, was she? A. That is correct.

Q. In the case of machines where a purchaser had entered into a contract for the purchase of a machine, what procedure was followed in entering in the books of account the invoice price of the machine? A. Would you repeat that question please?

Q. Yes. You see the sales journal there; there are various entries in June. Do they represent machines agreed to be sold or machines invoiced and delivered to purchasers? What do they represent? A. On this page? 40

Q. You are looking at what page? A. Folio 25.

MR MOFFITT: What period is that?

WITNESS: It is all dated the 30th June 1959 and they appear to be for invoices numbered N562 to N596.

MR BOWEN: Q. I want to ask you first of all without reference to that particular page what was the procedure followed in entering invoices in that sales journal. Where did they come from? A. Invoices would come from branches into the accounts office and they would be posted into this sales journal.

Q. When you say the accounts office, that was head office, was it? You were at head office in the accounts section, were you? A. There is a little distinction there, that whilst we were there there was a head office in Caltex House and Sydney branch office in Jamieson  
10 Street. We moved from the city out to Rosebery and then the Jamieson Street people, which was then the Sydney office, and head office were then under the one roof. The selling division still retained their identity as the Sydney branch although they were in the same building.

Q. You were not in the Sydney branch but in the head office section, were you? A. Yes.

Q. At both locations? A. Yes.

Q. The invoices you said came from branches. Where were the branches apart from the Sydney one you have told us of? A. At the time?

20 Q. June 1959? A. There were branches, from memory, opened in Brisbane, Melbourne, Adelaide, Hobart and I am not sure whether Newcastle was opened in June or shortly afterwards.

Q. Invoices would come from Brisbane, Melbourne and so on, would they? A. That is right, yes.

Q. And they would be in respect of what machines? What would the invoices represent? A. They would represent machines which had been placed on sites.

Q. Placed on the site? A. Yes.

30 Q. Having been the subject of an agreement at some earlier point of time, is that right? A. Yes. Orders were taken, contracts signed with money paid and then the machines would be allocated on to sites to dispense merchandise.

Q. At the stage when they were allocated to the site, the invoice would come from the branch to head office, is that right? A. Yes.

Q. And be entered in that book? A. Yes.

40 Q. Was there any distinguishing letter in the invoices of the different branches? A. Yes, there is a prefix on all branches. Sydney Branch have N in front of the invoice, and Victoria had V; Q for Queensland, probably T for Tasmania—I do not recall but it would probably be T for Tasmania, but they all had distinguishing prefixes.

Q. And S for South Australia? You would find it in the book, would you, in relation to the invoices? A. Yes.

Q. Would you now look at the entries for June 30th 1959 in Sydney. Do you have those entries there? A. Yes, I have the same folio.

Q. You have told us the page number. What was it? A. 25.

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MR BOWEN: I withdraw that question, Your Honor. May I show the witness Victoria, June 30th 1959?

WITNESS: Here are some.

MR BOWEN: Q. Journal entries, June 30th 1959 for Victoria. You are looking at June 12th onwards on folio 12, is that right? A. That is correct.

Q. And are numbers given for the invoices? A. Yes, V105 starts the sequence on this page.

Q. And goes to V140 on that page 12. Page 13 goes from V141 to V175, is that right? A. That is correct.

Q. Page 14 starts off with V175 to V204? A. From V176.

Q. Yes, V176 to V204, and then on June 30th there is a series of entries at the bottom of page 14—N615 to N620, do you see that? A. Yes.

Q. On page 15 there is June 30th, again N numbers, N621 down to N647, and then some entries in red, is that right? A. Yes.

Q. Now can you tell us anything, looking at page 14, in relation to these entries for the 30th June that have an N number against them, for Victoria? (Objected to; not pressed.)

Q. I take you to another matter, Miss Bennett. On page 14 relating to Victoria there are entries here that have pencilled against them NA. Do you see that? A. Yes.

Q. Are you able to tell us whose handwriting that is in? A. It appears to be in Miss Delaney's handwriting.

Q. You see that is against a large number of these. Can you tell us how that came to be put on? (Objected to; rejected.)

Q. Miss Delaney was keeping those accounts under your supervision. was she? (Objected to.)

HIS HONOR: This is a very serious case and there is a lot of money involved. Has there been discovery in this case? I assume not. Is that the position?

MR MOFFITT: No, there has not been discovery.

HIS HONOR: If the respondents wish discovery, then I think there ought to be discovery. I do not mean discovery on oath, but a production of all the records of the company, and I presume, Mr Bowen, that all those records are available so far as the liquidator has them?

MR BOWEN: Everything in the liquidator's possession that has been asked for has been made available and their accountant has been free to go through them.

HIS HONOR: Mr Moffitt, what more is wanted? I do not want this case to continue with any suggestion that documents are not available or that they are not made available if they are in fact within the control of the applicant.

MR BOWEN: What is suggested that we have got that we have not produced?

MR MOFFITT: We have asked, for instance, for these taxation returns.

MR BOWEN: You have been given what we have.

MR MOFFITT: My friend says he has given us what he has, but all I can say if Your Honor would look at the documents is that it is somewhat surprising that that is all there is.

HIS HONOR: That may be, Mr Moffitt, but the alternative is that there must be some place where the records, books and papers of this company are. In the liquidator's office, Mr Bowen?

MR BOWEN: Partly in the liquidator's office and partly at the company. For instance, there are large steel cabinets containing documents out there.

10 MR MOFFITT: We were not given access to what we wanted. If we want something it had to be referred to someone, and I was told that the accountant who was looking had many times to ring and did not get rings back, and there was the greatest difficulty in getting documents that he asked for, and some of them became the subject of requests in writing. That difficulty has persisted until this time. What happened was that it became, as it were, an informal matter which was mentioned before Your Honor in relation to certain documents, and perhaps that is where we were at fault.

20 HIS HONOR: Of course, that was at a very late stage. I wish it to be clear that I can see no reason myself why all the company documents asked for if they exist should not be made available, or why there should be any question about them. They are the factual situation, and I think Mr Bowen will agree with that.

MR BOWEN: I agree with that.

HIS HONOR: But it is a different thing to expect the applicant to go through the mass of documents in order to satisfy a particular request. It may be necessary for the respondents to make a search.

30 MR MOFFITT: If we had been given that permission. We had to say what the document was and then it went through someone, and there it was. And there was some limitation placed on documents up to a particular date, and that meant we were not given free access to look at anything, only up to the stage where we ceased to have connection with the company, and that meant somebody else had to make a decision as to what the document was.

HIS HONOR: What is to be done?

40 MR BOWEN: Your Honor, we wish to give every facility in this case to them to have the documents that we have. It is no good my learned friend expressing surprise that we have not got a document; we may be equally surprised that we have not got it. That gets us nowhere. If my friend wants even an adjournment now to make further demands for documents on us, and Your Honor thinks it fair that he should have that opportunity, perhaps he could have it and do it, because it is no good proceeding on the suggestion that he is lacking in documents. I find it difficult to know precisely what it is my friend says he has not got that we have got.

HIS HONOR: And what about the income tax assessments as a simple starting point? They were in my recollection produced on the

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winding-up petition, or at least some of the recent ones were produced from the company.

MR. BOWEN: These have been produced.

MR. MOFFITT: No, they have not.

MR BOWEN: If you look in the document you will find the 1960 assessment there.

MR MOFFITT: Yes, but there is a 1959 one.

MR BOWEN: The 1959 one is not produced and we do not have it.

HIS HONOR: It was not produced to the Court?

MR BOWEN: No, it was not produced.

10

HIS HONOR: I remember an undistributed profit tax assessment being produced and that would be in respect of a non-distribution by April 1960.

MR MOFFITT: We have asked for the correspondence with the Commissioner, and in fact there is a letter—

HIS HONOR: No, I was wrong about that. That was a different matter. I realise that.

MR MOFFITT: Just as an example, we have asked for the correspondence and we have been told that is all there is, yet in an affidavit in the liquidation proceedings there is a reference made to a letter sent by the Commissioner to International Vending Machines. It is a letter attached to one of the affidavits and it is referred to as being a copy.

20

MR BOWEN: You have that letter, Mr Moffitt, if you agree it is copied.

HIS HONOR: Apparently I was wrong in regard to the undistributed profits tax.

MR BOWEN: There was the Australian Telephonic and Electric Services Co. and there would have been an assessment in respect of that.

HIS HONOR: Was there a winding-up petition in relation to that?

It was just an incidental in the case, was it?

30

MR BOWEN: The suggestion was that there was to be one. It came in as an issue. I am going on what I am told because I was not in that matter myself.

HIS HONOR: That may be it: these assessments came forward against some other company associated with the group.

MR MOFFITT: What I had in mind was this. My friend said it was not produced and Your Honor has asked me as an example—in the affidavit of Mr Ball of 27th March 1961 he says in paragraph 4—(Read.) It states a copy is annexed, Your Honor. It in fact refers to the assessment in 1959 and makes some comment about it in respect of the period to the 30th June 1959. It is one thing for my friend to say "We have not got it," but I cannot understand why it is not produced and it is not in their possession.

40

MR BOWEN: Why is it in our possession?

MR MOFFITT: It is a letter from the Commissioner to you.

HIS HONOR: Of course, different hands, Mr Moffitt.

MR MOFFITT: Your Honor will see a reference there about a return



and an amended return, and nothing is produced about those matters, and they are under the power and control of the liquidator.

HIS HONOR: That may appear so, Mr Moffitt, but of course the alternative is a discovery on oath. I do not know that it is necessary. There are so many other hypotheses as to where a letter of that kind or the copy of it could be. It could be with the accountants or with the other company, Independent Holdings Pty. Ltd.

MR BOWEN: That was the purchaser company.

MR MOFFITT: All I am putting is that obviously amended returns  
10 have been put in. I got this yesterday afternoon, and having seen it, I still say it surprises me that these are all the documents in their possession and control, and I am using that purely as one illustration.

HIS HONOR: What is the letter Mr Bowen said you have already?

MR MOFFITT: He was wrong in that, with respect. I said "There is a letter attached to an affidavit," and he said "You already have it."

MR BOWEN: You have a letter from the Income Tax Commissioner, but you were referring to one in 1959, were you?

HIS HONOR: Using that particular letter to which you refer as an  
20 illustration, there are many other things that I can see could have happened to it. This was virtually while the winding-up proceedings were current, and that letter was copied. It could be with the solicitors who were acting for the company at that stage.

MR MOFFITT: It refers to the fact that there is an amended return in respect of 1959.

HIS HONOR: I have not seen it in fact, but one can hypothesise that that was with some firm of accountants, or it could be anywhere, but when the company said as on discovery that it was not within their control—

MR MOFFITT: If it is under their control or with their accountants,  
30 it is their duty to produce it and it is impossible for us to trace it. There is no chance at all. Our error probably was in doing this as on the basis of discovery. I am reminded by Mr Officer that our letter did seek those documents as if on subpoena.

MR BOWEN: We have been confronted with fairly late requests for some of these things. We have searched and we have supplied what we had. I do not want this kind of request to go on. I think it ought to be clarified by my friend one way or another. He makes his final admissions and decides whether he is satisfied or not, even if he wants time to do it.

40 MR MOFFITT: Would my friend permit our clients to go out in respect of the documents and under supervision search for such documents as they think are relevant? That does not go, I think, to this particular question which is important in principle, but I do not wish to delay these proceedings and it is a matter I would try to fit in while the matter is proceeding.

HIS HONOR: On the other hand, Mr Moffitt, I am very anxious that

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there should not be through any failure to have a formal discovery any suggestion that material is not available. Are there many documents of the company in Mr Law's office? Can they all be brought, for instance.

MR BOWEN: That can be done. I think most of them are in Court one way or another.

HIS HONOR: If one could be sure that everything was in Court, then it would leave the other documents, apart from any with accountants or previous legal advisers of the company which are under the company's control and which should be handed over, subject to any liens— 10  
That would leave the documents at the company's offices, wherever they are. Now, what about Mr Moffitt's suggestion that they be gone through quickly? . . .

MR BOWEN: I should mention one document, Your Honor. We said yesterday we would make a further search, and I understand, although it is not very clear on my instructions, that there is one further file on its way in which should give the North, Ash & Mann correspondence. I think that has been finally found at the company's place of business. I am hopeful that that will be available this morning. So there is a group of documents out there— 20

HIS HONOR: Which ought to be gone through, which would be discoverable.

MR MOFFITT: This last matter illustrates completely what I have been putting. My friend said yesterday that this document was not available. This document only came to light because of a call made during the adjournment, because we ascertained from someone who knew where the documents were all the time and he had never been asked to make any inquiry or search in respect of them, and as a result of that call this document has apparently come to light.

MR BOWEN: I do not think the circumstances are quite as you put 30  
them.

HIS HONOR: But, Mr Bowen, the thing is, what is going to be done? Is it possible for representatives of both sides to go out to the company's offices and conduct an inspection? Because it would appear that all the records of the company would be discoverable from the time of its inception, judging by the width of the matters raised—in the points of claim there would not be anything which would be irrelevant.

MR BOWEN: Except possibly the period after they ceased to be 40  
directors.

HIS HONOR: That may be so, but even there that is so irrelevant it could be more conveniently put aside out there than by attempting an initial separation. It is not as though there would be anything confidential in that time in the affairs of this company.

MR BOWEN: It might be a means of dealing with it, Your Honor. if one representative from either side, say the liquidator could go out

with Mr Steen or whoever they want to send out to go through these documents.

HIS HONOR: After all, they are both respondents, and they each have their separate liabilities.

MR BOWEN: Yes. If they went out with Mr Law and went through them, perhaps my learned friend would have whatever he felt was available to him.

HIS HONOR: That would remain to be seen, Mr Bowen, but I am disturbed because I do not wish this continued suggestion that the  
10 respondents are not in a position fully to present their case, and that is why I think this must be done in order to cure any such position. So, to summarise then all documents in the liquidator's office will be brought to Court.

MR BOWEN: Yes.

HIS HONOR: If there are any held which are not here, and the other records of the company in the possession of the liquidator will be made available for inspection by the respondents in the presence of the liquidator or his representative.

MR BOWEN: Yes, Your Honor. That is what we offer.

20 HIS HONOR: The only other thing that might arise would be the possibility of documents still being with former legal advisers of the company. They would be under control subject to lien but, Mr Moffitt, that could be dealt with by subpoena. If you want documents from those people, they may claim a lien and they may not have to hand them over.

MR MOFFITT: Some would not be subject to lien, such as taxation, one would think.

HIS HONOR: I think it is everything they get.

MR BOWEN: My friend has not appreciated some of our difficulties.  
30 If a solicitor or accountant had a copy on his own file of something and we have no copy, that is a document of his, it is not ours. It is his file copy, not ours. It can be subpoenaed.

HIS HONOR: I should not like to determine that now, but if I may say so, there seems to be a lot of substance in that as a view of possessory rights. The matter can best be met by subpoena. I think Perry, Bartier & Purcell were the former solicitors at the time of the winding-up proceedings.

MR BOWEN: I think that is right.

40 HIS HONOR: Is there any other firm of solicitors known between the time when the Messrs. Steen ceased to be directors and the time when the winding-up proceedings were commenced?

MR BOWEN: I do not know of any other solicitor.

HIS HONOR: Then all the accountants of the company up to May 1960 would be known to the respondents, so they would know where to subpoena them. Who are the accountants after that date?

MR BOWEN: Actually North, Ash & Mann went on for a period

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after that. I think they went out on the 10th June. In October 1960 R. E. Cox & Wilson—Mr Farrell's firm—were auditors.

HIS HONOR: And continued until the winding up?

MR BOWEN: No, continued until Mr Ball took over the company. At the stage where Mr Ball took over, Mr Nicholson who is an accountant and also secretary of the company did the accounts.

HIS HONOR: Did that continue until the winding up so far as is known?

MR BOWEN: So far as is known it did.

HIS HONOR: Mr Moffitt, can you think of any other repository of documents you wish to explore? 10

MR MOFFITT: Possibly Mr Ball, Your Honor.

HIS HONOR: It is a matter for you, but any other type of which wish the liquidator to state to the best of his knowledge a possible repository?

MR MOFFITT: No, Your Honor, unless there is any other person than Ball associated with the company. It may well be that some documents strictly in the control of the liquidator are now held by Mr Ball. I do not know.

HIS HONOR: I feel in that regard that you know who it is and you would have to take such steps as you can, because I think that reaches 20 the limit of any duty on the liquidator.

MR MOFFITT: With regard to the inspection, I presume that could be done either with my clients or any other persons they authorise to go out. It may involve the accountant we have employed.

HIS HONOR: I should imagine the inspection at the premises out there would be first of all with the idea of bringing what was wanted into the city.

MR BOWEN: I think it would be necessary to eliminate some material.

HIS HONOR: That is what I mean. It would be a process of elimination 30 out there and not a matter of reaching conclusions or taking copies out there, but rather bringing in this material so that it is more readily available. . . . Would not that best be done by the legal adviser of the respondents?

MR MOFFITT: I am not sure whether that would be comprehensive until I got full instructions. I rather had in mind that there might be some particular documents the location of which may not be known to my clients but perhaps to some former employees of the company. . . .

HIS HONOR: Do you agree, Mr Bowen, that the respondents and/or— 40 with a limit on number—their legal advisers or accountants should attend on the sifting process?

MR BOWEN: All I want is for them to be satisfied as to what is there and then whatever is necessary to that end we agree to, but what I do not want is a number of people going out there who are not strictly under control in the inspection of these documents. There are already omissions from them. My friend is complaining that there

are omissions, and there are omissions as to which we would complain. We would seek some restriction on number.

HIS HONOR: How many? Three?

MR BOWEN: I think three, Your Honor.

HIS HONOR: Do you agree to three, Mr Moffitt?

MR MOFFITT: Yes. . . . A lot of the matters we have been concerned with may go to some of the matters that Mr Bowen has given particulars about, and that would not arise for just a little time because in any event Your Honor may have to make a determination of what, in all  
10 the circumstances is involved in appreciating the relevant section. It may considerably enlarge the field if Your Honor took one view, or restrict it if Your Honor took a different view. We rather feel that this matter does not go to this particular series of questions being asked of this witness because I will take the same objection even if we had access to all the documents we wish to see.

HIS HONOR: How far can I proceed now having got the arrangements for this inspection of the documents and their sifting? Can the matter proceed?

MR BOWEN: May I say that we are treating this in effect as a  
20 discovery now, and then I think my learned friend should himself produce on discovery what is relevant that is in his possession relating to the issues before Your Honor.

HIS HONOR: Yes. What do you call for?

MR BOWEN: I think on discovery it is a matter for the person discovering to determine what is relevant.

HIS HONOR: Do you mean that there should now be a full discovery? It should be mutual, I think. Mr Moffitt, that must be so—a full discovery which is best done by production probably in Court, and then I shall consider whether inspection should be allowed; although  
30 presumably I would allow it, let the discovery be by production to the Court. That can be done tomorrow morning.

MR MOFFITT: That is a matter on which I will have to confer with my clients, because we are in a somewhat different position to the liquidator.

HIS HONOR: Yes. I go back then to the position that Mr Moffitt objects to the meaning of NA without production of the vouchers.

MR MOFFITT: I am putting it a little more than that, Your Honor. Also on the basis that this is some pencilled entry which is not part of the ordinary bookkeeping.

40 MR BOWEN: That is not a correct assumption. Perhaps I could continue with my questioning?

HIS HONOR: Yes. I will not allow that question.

MR BOWEN: Q. Miss Bennett, you have told us of the procedure for making entries in the sales journal of invoices received from branches; is that right? A. Yes.

Q. Also you have told us that N in front of the invoice means

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Sydney or New South Wales invoice book; is that correct? A. That is right.

Q. Now can you tell us whether in June 1959 there occurred a change in the practice before the 30th June? A. At the end of June which was the balancing period there was a change. We were instructed to invoice machines—the orders or contracts that were in hand would be invoiced as at the 30th June.

Q. That is whether they had been allocated—

MR MOFFITT: Do not lead, please.

MR BOWEN: Q. Do you say machines in respect of which orders 10 had been placed? A. Contracts.

Q. You mean by that the contracts, do you? A. Yes, the moneys received on contracts.

Q. And the change in procedure was to enter them whether they had been delivered or allocated or not, is that what you said? A. That is correct, yes.

Q. How was that done in the books? A. Invoices were actually typed out which was the practice—invoices were typed.

Q. Typed where? A. In head office in Sydney.

Q. And what States would it apply to? A. All the invoicing 20 was done in Sydney for all States.

Q. Would an invoice book of New South Wales, an N series number, appear in those entries or would S or V be used, or what procedure was followed at head office? A. I would think the N prefix would have been used on all States. I think so.

Q. You have told us that the books were kept by Miss Delaney making the actual entries but under your supervision? A. Yes.

Q. Will you tell us who gave you the instructions to make that change? A. I think the instruction would come from Mr. Joseph Steen. 30

Q. Joseph Steen? A. I think so.

Q. Did Miss Delaney alter the procedure and make entries accordingly, or what happened? A. It would not be necessary actually for her to alter the procedure, because the procedure was that invoices went to her and she would receive an invoice in the same way.

Q. But it would be one written out in head office? A. Yes. She would have a different serial number, a different pad of invoices with a different serial number to those that she was using in the other States. 40

Q. You notice there is an entry in pencil No. 5 opposite some of those entries? A. I can see one on this page.

Q. You are looking at page 14 for New South Wales? A. That is right, for Melbourne. Page 14 for Melbourne.

Q. Whose handwriting is that? A. It appears to be Miss Delaney's.

Q. Can you tell us what that No. 5 refers to? (Objected to; pressed.)

HIS HONOR: I have given some thought to this question and I can see that my ruling on evidence will become impossible. I cannot rule on a hypothesis and, therefore, I shall have to rule strictly. Therefore, it ought to be left open to Mr Moffitt to take what objection he wishes because, as I see it, the whole of the evidence is inadmissible and I will simply have to rely on the objections. I have been trying to think of a way to work out the difficulty that has arisen in regard to trying  
 10 to rule on a hypothetical—that is not quite the word for it—on a hypothetical basis of admissibility. I do not think I can.

MR BOWEN: I know what Your Honor means by the hypothetical nature; it is put on a certain basis—

HIS HONOR: Yes. In other words, we depart from the rules of evidence by allowing a book or a certain document in and Mr Moffitt has stated that he will not take certain objections, and then I get to the stage of trying to interpret his concession, and it is an impossible task.

MR BOWEN: Although no doubt he would be seeking to rely on  
 20 these books and figures to some extent himself. However, may I say that as far as the company is concerned, we are concerned with the way it kept and presented its accounts at this point of time on the figures and it is material in the case to see what entries were made and what was done, whether or not it can be supported; that is to say, the company's books of account were prepared on a certain basis, and I submit that is what the company does as a fact by its servant who is called to say what did happen. What interpretation may then be placed on it is another matter, but whether it is right or wrong, that is what it did by its servants.

30 HIS HONOR: Who made the entry to begin with?

MR BOWEN: Miss Delaney made that.

MR MOFFITT: As I understand it, although my friend asked some questions about it, there is no suggestion that these entries were made under the control of this witness or that Miss Delaney had left the company before this lady had. There is no evidence of that. These might have been made six months after the lady left the company.

HIS HONOR: Mr Bowen, assuming a document to be admissible, to explain a particular sign is permissible, I think, but by the person  
 40 who gave it the meaning or where it has a common meaning by that person.

MR BOWEN: Unless I can link it up with her supervision?

HIS HONOR: Yes.

MR BOWEN: May I ask the witness some further questions on that?

HIS HONOR: Yes.

MR BOWEN: Q. Miss Bennett, you have told us that Miss Delaney was making the entries generally in the sales journal under your

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supervision as the accountant of the company. That is right? A. That is right, yes.

Q. Now, these particular entries—take folio 14 of the Victorian section of the journal—were made, were they, under your supervision in June 1959—the ink ones for a start? She was under your supervision at the time? (Objected to as leading; rejected.)

Q. In June 1959 what was the position with regard to making entries by Miss Delaney and as to whose supervision she was under?

A. She was under my supervision.

Q. Now, can you tell us what entries on folio 14 of the Victorian 10 section would be made by her under your supervision? (Objected to; rejected.)

Q. Can you tell us whether you can recall having seen the pencil and ink entries in the sales journal for June 1959 when you were with the company? A. I cannot recall at this stage.

Q. You cannot recall at this stage with reference to any particular entry? A. No.

HIS HONOR: Mr Bowen, to what issue does this matter go?

MR BOWEN: We are endeavouring to establish the position on the accounts at the 25th June 1959.

HIS HONOR: Yes, but under what part of the points of claim does 20 that come?

MR BOWEN: Paragraph 18. Having looked at the defence subsequently, it is almost a matter of reply.

HIS HONOR: I was thinking that as a statement it does not seem to follow on any of the allegations; it is not alleged that the company was unable to pay its debts at the time or that this was a payment out of capital or anything of that sort. I cannot see where it links up with any allegation of misfeasance or breach of trust. I am not saying it does not, but all I am saying is that I cannot see on the 30 points of claim how it does.

MR BOWEN: There is one alternative point of claim on which it would, and that is 5.

HIS HONOR: But that is of the prayers, as it were. I was thinking rather that assuming you could prove in respect of a number of these agreements that vending machines had not been supplied, what then? That is what I really meant. . . .

MR BOWEN: If one finds a company in a certain situation at the 25th June and one is considering whether it could conceivably be regarded by a person, acting reasonably and so on, that they could 40 have lent £200,000 free of interest and without security in the situation in which the company found itself it might be material to know what was the situation regarding the agreements which had produced the money; that is to say, whether the machines had in fact been supplied in respect of them or not.

HIS HONOR: Yes, that may be so. . . . I agree it might be one facet of benefit.



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MR MOFFITT: Q. You were asked about a change which occurred in the system of entering up sales in the book that Mr Bowen showed you, and I think what you have told us is that just before the end of June, do I take it, you entered up invoices in cases where money had been received in respect of contracts irrespective of whether machines had been sited? Do you understand my question? A. I would like you to ask again if you would not mind.

10 Q. Yes. You said that there was some change so far as the system of invoicing was concerned which applied to the period just before the end of June 1959. Do you remember you said that to Mr Bowen? A. I qualified that before as at the 30th June, if you would not mind.

Q. Were those entries made actually before the end of June or after the end of June? A. I could not say.

Q. You cannot remember? A. No, I cannot remember.

Q. But in any event, in each of those cases that appear in that book there are much of them cases where the money had in fact been received by the company before the end of June? A. Yes.

20 Q. The auditors of the company during the time that you were there were North Ash & Mann, is that right? A. That is correct.

Q. And taking the period before the end of June 1959 at times did persons, representatives of North Ash & Mann attend at the offices of the company? A. Yes.

Q. In connection with their audit? A. Yes.

Q. And was there any particular person who was the principal person from North Ash & Mann who used principally to conduct the audit? A. Yes.

Q. Who was that? A. Mr Brian Purcell.

30 Q. When this changeover occurred to which you referred, did you have some discussion with Mr Purcell about the actual method by which it would be done? A. I cannot recall—I would have discussed with Mr Purcell. It would not be, I would not think, the method by which it would be done because the method would have been decided, but I would have spoken to Mr Purcell that we were now invoicing contrary to our usual practice.

Q. With regard, for instance, to the use as Mr Bowen showed you in respect of other States where you have, say, the prefix N— A. That is so.

40 Q. Is that something that was suggested by Mr Purcell, to use that method of invoicing, to use N although it has come from another State? Do you remember that? A. No, I do not remember.

Q. Mr Purcell at some stage having been employed with North Ash & Mann in fact later became an employee of the company during your time. Do you know that or do you remember that? A. About the time I was leaving, Mr Purcell was—

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—

Q. First of all, did you know that at some stage? A. Yes.

Q. At some point of time before you in fact left? A. Yes.

Q. After that were there other different persons from North Ash & Mann come out? Did other people come out from the auditors to the company's officers before you left, do you remember that? A. Mr Purcell mostly attended audits, but there were other clerks who always came full-time.

Q. Right through the piece that any audit was conducted, Mr Purcell was the main one but there were other clerks? A. There were other clerks from the office North Ash & Mann, yes. 10

Q. And I suppose the carrying out of the duties of auditors went back long before the 30th June 1959? A. All during the period I was there it was subject to audit, periodic audit.

Q. There was a continual audit? A. Yes.

Q. In any event, in respect to this changeover that occurred, did Mr Purcell or any representative of North Ash & Mann at any time raise any objection to you about this changed method of keeping the books? A. Not to me. (Question objected to as irrelevant and not going to the witness' credit.)

HIS HONOR: One of the circumstances alleged, Mr Bowen, is that 20 there was an acting on legal advice, on qualified advice. I do not know whether it goes to that.

MR BOWEN: What Mr Purcell said to this witness would not bear on that, I submit.

HIS HONOR: It would be some evidence of no demur.

MR MOFFITT: As I understand my friend in respect of the matters, he has led this change in respect of the conduct of the company. He uses that firstly in his case as some evidence going to some issue: as Your Honor has appreciated, there is some little difficulty about where it fits in, but in respect of the company's doings he says that is some- 30 thing "which I use in evidence in the general set-up against the two respondents." In respect to that I submit I am entitled at that point to say that this is something which was done and passed and approved with no demur raised by the auditors of the company. But I also put it on a second basis, on the matters that we raise, that is, insofar as this matter Mr Bowen has raised is a relevant matter the fact that what was done was done on advice and without objection is one piece of evidence I am entitled to get, and there will be other pieces. I submit it is relevant on that basis.

HIS HONOR: Mr Bowen, I think it comes under that basis, that it 40 is part of the circumstances surrounding the matter which you raised in regard to the change in accountancy procedures.

MR BOWEN: Your Honor appreciates I was not relying on why they did it in my case in chief. My learned friend may seek to place some reliance on that, but the fact as to what was done and what flowed as to the position of the company in the accounts—

HIS HONOR: The objective fact, yes. You did lead a conversation as to which "Mr Joseph Steen would have given this instruction" was the answer. I will allow the question.

MR MOFFITT: Q. The other matter of the changeover—I take it on that you have assumed it must have come from Mr Steen, is that the position? A. Assume? Of course, I do not remember. I presume that Mr Joseph Steen would give me the direction because he handled all these matters always.

10 Q. But you do not in fact at this point of time remember whether in fact he did so, is that the fair position? A. Whether in fact he did?

Q. Yes? A. I would say that he did. I could not say exactly when or how.

Q. But a moment ago were you not uncertain whether he in fact did say that? Did you not a moment ago commence to say, "I can't remember" or words to that effect? A. I do not think so. I think I said the direction to alter the procedure came from Mr Joseph Steen.

Q. You think it came from him, and you would not agree that Mr Purcell himself had, I suggest, at the outside discussions with you, given you directions regarding the carrying out of this alteration?

20 A. I would not say that Mr Purcell gave me the initial directions.

Q. But he gave you directions about the implementation of this scheme, as to how you were to do it? A. When it was being done the system of invoicing was laid out and the system was not departed from except that the goods were being invoiced without the goods being delivered.

Q. But what I put to you is would you agree with me that Mr Purcell at the time that this was introduced discussed with you this new method of invoicing? A. I would not say it was at the time it was being introduced. It was during the time it was being processed.

30 Q. Did it all happen in the matter of a few days? A. It would take time to put through a great number of invoices, to have them typed and the procedure—it would take some time.

Q. This other lady was, of course, still employed by the company when you ceased to be employed by the company? A. Yes.

#### RE-EXAMINATION.

Re-examination.

MR BOWEN: Q. You were asked something as to when Mr Purcell became an employee, whether it was while you were there, Miss Bennett, and you said it was, is that right? A. Yes.

40 Q. Do you recall when it was that he became an employee? A. I cannot recall exactly.

Q. You have said in answer to Mr Moffitt that Mr Purcell did not complain to you. Were you present when Mr Purcell discussed this matter with either Mr Louis or Mr Joseph Steen? A. I was not, no.

(Witness retired.)

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JOAN LUCY DELANEY.

Sworn, examined deposed:

MR BOWEN: Q. Is your full name Joan Lucy Delaney? A. Yes.

Q. You reside at 20 Kenthurst Road, St. Ives? A. That is correct.

Q. You were a clerk employed in the Accounts Section of International Vending Machines Pty. Ltd. in June 1959? A. That is correct.

Q. I think you went there about May 1959 and remained employed there in the Accounts Section until you left in about September, 1960? A. That would be right, yes. 10

Q. During the period you were there in June 1959 you were working as an accounts clerk under the supervision of Miss Bennett who was the accountant at that time? A. That would be correct.

MR MOFFITT: I will ask my friend not to lead from now on.

MR BOWEN: Might the witness see Exhibit "Q"?

HIS HONOR: Yes.

MR BOWEN: Q. Have a look at the Sales Journal, Exhibit "Q" and have a look at the New South Wales section of the sales of June 1959 Have you got that? A. Yes.

Q. There are various entries on that page. What folio is it? 20  
A. Page 25.

Q. In whose handwriting are the entries? A. It is my handwriting.

Q. I am speaking of the ink entries at the moment? A. Yes, that is my writing.

Q. Would you just look through. You recognise the book, do you? A. Yes.

Q. The entries of the sections relating to Victoria, Queensland, Tasmania and South Australia; could you tell us in whose handwriting the entries are—relating it to June 1959. Just have a look? A. 30  
Yes, in sections for each State it is my handwriting.

Q. There are sections for each State in your handwriting? A. Yes—in June.

Q. This book was entered up from some invoices which you received, was it? A. Yes, it was entered up from invoices received from the various branches.

Q. From various branches—that is, various State Branches, is it? A. That is correct.

Q. What about New South Wales? A. In New South Wales at that time there was a branch—at all times there was a branch 40  
office and Head Office and they were separate, more or less separate, entities.

Q. You kept the New South Wales branch invoices sent to Head Office and you would enter them in the book? A. That is right.

Q. In the procedure which you followed—rather, you will notice

that in the New South Wales Section there are invoices with an N number and in the Victorian Section some invoices commencing with V and so on—South Australia—S? A. Yes.

Q. What was the system followed in relation to the use of those letters? A. Well, each branch had a distinguishing symbol or letter as a symbol so that T stood for Tasmania and Vi for Victoria—Melbourne branch, and so forth.

Q. You entered the number which appeared as indicating the distinguishing letter from the particular branch—State? A. That was  
10 an entry for the Sales Journal, yes.

Q. There are some other notations there: there is one in ink which appears from time to time—“N.C.” would you have a look and see if it is in your handwriting? A. This one I am looking at is, yes.

Q. What page are you looking at now? A. This is in Melbourne—page 14.

Q. From what would you put that down? What would lead you to put that in the book? A. Well, if I remember correctly it was for merchandise that was sold to operators and no invoice was made out but it was made no charge but the sale actually went through the  
20 Automatic Merchandise Company.

Q. But there was actually no charge? A. Yes, that is what the “N.C.” is for. It actually records the invoice being used but there is no amount. It is the same as with cancelled invoices. The number would be written in and it would be written “cancelled” beside it.

Q. Where ever that occurred in relation to invoices, that there was no charge, you made that entry as a matter of practice in the book, did you? A. Yes.

Q. Have a look at the invoice for the 30th June. This is for Victoria—you are looking at. You see there some entries in pencil  
30 “N.A.”? A. Yes.

Q. In whose handwriting is that? A. I would say that is mine.

Q. When would you have made that entry? When did you? (Objected to in that form.)

Q. When was the entry “N.A.” made by you? A. I would think it would be made at the time of entering the invoice.

Q. At the time of entering the invoice. What would lead you to make that entry in the books? (Objected to; withdrawn.)

Q. What practice did you follow in making the entries in the books in relation to that?—

40 MR MOFFITT: I object to that question completely, Your Honor.

HIS HONOR: The witness said it was done at the time of putting in the invoice.

MR BOWEN: She said she made it at the time.

MR MOFFITT: I think she said “I think I made it then”, Your Honor.

HIS HONOR: As the material is in evidence I must have knowledge of what it means.

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MR MOFFITT: The pencilled portion has been excluded.

HIS HONOR: Where was it excluded?

MR MOFFITT: I took objection to the tender so far as that was concerned.

HIS HONOR: Yes, I think that is so, but I think there is a separate tender of the pencilled notes.

MR MOFFITT: Page 14, Your Honor.

HIS HONOR: I was still of the view that had been admitted even then. I did exclude that.

MR MOFFITT: I think it runs over to page 15. I should also direct 10  
Your Honor to the terms of that.

HIS HONOR: I admitted the total subject to there being any relevance in that total and that was purely so Mr Farrell would not have to be called back again. Earlier you had tendered the notations as part of the book and I said I thought they were in and then I was told by both counsel they were excluded before. I said I did not see how it could be evidence of anything. So, it is not admissible on the ground of explaining part of the Exhibit.

MR BOWEN: I tender it again Your Honor in view of the fact that it appears what has happened is the entry in the book has been made 20  
in fact partly in ink and partly in pencil. It is an incomplete document if it is excluded.

HIS HONOR: I start with the fact that on the evidence before me the book is admissible.

MR BOWEN: It may be a matter as to what interpretation should be placed on it—as with any other entry it is part of the page, as it were. We have even shown the person who made the entry.

HIS HONOR: The book only went in because there was an agreement for it to go in without those pages. Only that Mr Moffitt did not object I would not have admitted the book. He said “I do not 30  
object to the book provided pencil entries are not regarded as part of it”. It was on that basis.

MR BOWEN: If I have to prove every single invoice I suppose that can be done and we can start by going to the original document. I have sent for them, Your Honor and I understand they are being brought in. However, that is the long way round.

HIS HONOR: It is the only way, as I see it.

MR BOWEN: That we just go through each invoice and deal with the original document, this being only an entry from it. (Discussion 40  
ensued.)

MR BOWEN: There are some other things I wish to ask the witness. The situation is this: At the adjournment a clerk was sent out in a taxi to get these invoices and would be just about due back any time now but I am afraid he is not here yet.

HIS HONOR: If you wish it I will adjourn now. (Discussion ensued.)

MR BOWEN: There is one other aspect I wish to cover, Your Honor.

Could the witness have the book again.

Q. (Book handed to witness.) Will you look at Adelaide or South Australia, as it is—folio 12. (Counsel approached witness.) There are two folios 12 continuing right across the page. Is that right?  
A. Yes.

Q. There appear entries in ink. In whose handwriting are they?  
A. That is my writing.

Q. Also there appears the initials “N.A.” opposite the number of invoices. In whose writing is that? A. That is in mine also.

10 Q. Also there is opposite an entry in June the 30th—“Altman” is the name in pencil—“No. 5” in whose writing is that? A. That is mine too.

Q. Then there are blanks below—no entry in pencil against the succeeding ink entries. When you made entry No. 5 in pencil would it be applicable only to the Altman entry or to the other invoices as well? A. No, I would say that “No. 5” is applicable to the rest of the column.

20 Q. The ones that follow it with no entry. At the top of the right hand side of folio 12 there are some pencilled figures that look like totals of figures. In whose handwriting are they? A. I would say they are mine.

Q. At the top of the page there are some calculations, a number of “N.A.” and a number of “Not N.A.” totals—whose figures are those? A. Well, they are mine.

Q. There is one above “Debonair”—you see that? A. Yes.

Q. They are yours? A. Yes.

Q. One above “Ball Gum”—one set of figures in pencil? A. Yes.

30 Q. One above “Perfumatic”—one above “Vanity”. Are those all your pencilled figures? A. Yes.

Q. Do not answer this next question for a moment after I ask it: When you put “No. 5” in pencil opposite entries, the ones I have just been referring to, what did you indicate at the time? On what basis or what practice did you follow in putting that? (Objected to.)

MR BOWEN: I take it Your Honor does not allow that on the same basis as the other one?

HIS HONOR: No, I cannot allow it.

MR BOWEN: I am asking what her practice was.

40 HIS HONOR: I realise that, but it involves the pencilled entries which are not part of the Exhibit, therefore, I will have to restrict it.

MR BOWEN: Q. At the 30th June, if you look at South Australia or Adelaide, you will notice that there are some invoices with a “N” prefix. You see that? A. Yes.

Q. In making the ink entries what practice did you follow in putting that number down as a prefix to it and then some figures? (No answer.)

Q. Where did you get that from? (No answer.)

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MR MOFFITT: Could I have the question again?

WITNESS: I would like it again.

MR BOWEN: Q. When you made entries in the book and you put down "N" followed by some figures in ink where would you get that from? A. That was the invoice number. It was the printed number on the invoice.

Q. Could you tell us how come there is an "N" invoice in the Adelaide folio? A. Well, I would think— (Objected to.)

HIS HONOR: Does she know, first, Mr Bowen? Otherwise, I do not allow it. She must be able to say what it is—not surmise. 10

MR BOWEN: Q. You have told us that Victoria had "V", Tasmania "T", New South Wales "N" and some of the invoices came from the branch offices? A. Yes.

Q. Here we have entries for Adelaide with an "N" in front of them. You recall that happening at the time, don't you? Or do you? A. Yes, I can recall it. I do not recall all the details though.

Q. Tell us what you remember in relation to that, will you? (Objected to; allowed.)

HIS HONOR: I will consider the answer within the scope of what I have allowed. 20

Q. What do you remember? A. That—getting back to the pencilled "No. 5" beside it there is— (Objected to.)

HIS HONOR: I am not allowing anything in relation to the pencil.

MR BOWEN: Q. We have got to keep away from the pencil for the moment. On looking and finding an "N" number in Adelaide—June 30th 1959—that does not accord with the system as you have told us? A. No, that is correct.

Q. Would you now tell us what the change is or what you recall of that circumstance? A. Well, in June of that year there was a special offer to investors and those—(interrupted). 30

Q. I do not want you to relate to the "No. 5". Do you appreciate that? Will you have a look at it?—

HIS HONOR: Do you want to ask why there was a New South Wales invoice used instead of a South Australian?

MR BOWEN: That is not quite it—I think that probably covers it, Your Honor.

HIS HONOR: How often did this happen?

MR BOWEN: There are a whole series of "N" numbers for June 30th.

Q. Is that right? A. That is correct.

Q. Some for Victoria—a whole lot of "N" numbers for June 30th entered for Victoria. Would you have a look at Victoria? A. Yes, that is correct. 40

Q. It is the same for Tasmania. You will find a lot of "N" numbers at June 30th? A. That is right.

Q. You have told us that was not the usual practice to have "N" invoices for the other States. This block of invoices with an



“N” number for the other States was entered by you. Can you tell us what you recall of how that came to be done? A. Well, those “N” invoices were done in the Sydney office—or, the Head Office.

Q. Made out? A. Were typed in the Head Office.

Q. And then put before you to enter? A. Yes, well, you see they would have had—(interrupted).

MR MOFFITT: I am objecting if she goes beyond that.

HIS HONOR: I will not allow it beyond that.

MR BOWEN: That is as far as I can take it at this stage.

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10 CROSS-EXAMINATION.

Cross-  
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—

MR MOFFITT: Q. You were employed by International Vending Machines up till, you say, September 1960? A. Round about that date, yes. I am not sure of the exact date.

Q. Could it have been a bit later than September 1960? A. Oh, no.

Q. You were then working—or when you were there, Mr Nicholson was a Director? A. Yes, that is correct.

Q. Were you there at the time the accounts for the year ending 30th June 1960 were made up for the purpose of getting out the annual returns and, later, the Taxation Returns. Were you there then?  
20 A. Well, I am not conscious of the final accounts for June 1960 being made while I was there. They may have. As I say, I am not conscious of them having been completed.

Q. Before you left you came under the direction then of Mr Nicholson who was a Director? A. It would be through Mr Andrews who was accountant.

Q. Mr Andrews was accountant over you? A. Yes.

Q. Then Mr Nicholson—he was of the firm of auditors, was he? Do you know the name of the auditors? A. No, I don't recall  
30 the name of the auditors.

Q. I withdraw that. I mislead you, I am sorry. Through Mr Nicholson—you knew he was an accountant, did you? A. Yes.

Q. Did he come into the office from time to time and give you directions regarding the keeping of accounts? A. No, I would say I did not ever have any direct . . .

Q. I take it that any instructions would be given to the accountant and the accountant would then pass them on to you—would that be the position as far as you understood it? A. Yes.

Q. Would it be right that after Mr Nicholson came there, without going into the details of it, in fact there was a different system with regard to the entry of invoices to what there had been earlier when Mr and Mrs Steen had been Directors of the Company?  
40 (Objected; question not pressed.)

Q. What I am putting to you is that you were asked after the stage that the Steens had left this company to go back over the accounts

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including accounts prior to the 30th June 1959—just try and throw your mind back if you can remember that for me, would you? A. On what particular aspect?

Q. What I am suggesting to you is that it was as a result of instructions you received after the Steens left that you made these pencilled entries? A. No.

HIS HONOR: What pencilled entries?

MR MOFFITT: The ones Mr Bowen asked the date on which they were made.

Q. Do you remember Mr Bowen asking you? A. He asked a 10 question—when.

Q. As to what date? A. Yes, and I said when the invoices were entered.

Q. You thought that was when you did it—that is what you said? A. Yes.

Q. What I am putting to you now is did you at some later date—were you given instructions to go back and look through or go through the accounts that you had earlier entered up—up to the 30th June 1959? A. That is after?

Q. After the Steens had gone and Mr Nicholson came? A. I 20 have no recollection of being asked to do that.

Q. Would you deny it? A. Well, I don't have any recollection.  
MR BOWEN: No questions.

(Witness retired.)

MR BOWEN: That is the close of the evidence for the applicant.

MR MOFFITT: Subject to Your Honor's concurrence I propose shortly to open this matter.

(Mr Moffitt opened to His Honor.)

(Luncheon adjournment.)

MR MOFFITT: I will call Mr N. E. Challoner. 30

MR BOWEN: As my friend is calling Mr Challoner before he is calling any other evidence, if he proposes to call Mr Louis and Mr Joseph Steen I would ask him to consider whether they should remain in Court during this evidence because it may be, if something is being conveyed to them that I will want to ask questions about it.

MR MOFFITT: The evidence of this witness does not at any place involve any occasion in which Mr Challoner or either of my two clients were present and in fact I think the situation is that up to this moment I do not think either Messrs. Steen knows Mr Challoner.

HIS HONOR: No, but I think from what you have told me in opening 40 that you propose to first call a witness who had given some advice.

MR MOFFITT: Yes, Your Honor.

HIS HONOR: And you would then show that that advice was passed on.

MR MOFFITT: Not to the conclusion—some of it.

HIS HONOR: There is that degree of overlapping.

MR MOFFITT: Except this, Your Honor. The defendants of course

have not had any detailed information concerning these occurrences and I am not in a position to ask them specifically whether this matter and that matter which they will now hear in evidence was conveyed to them.

HIS HONOR: Why not?

MR MOFFITT: I submit that unless they are in a position of hearing the evidence then they are not in the same position.

HIS HONOR: I think that is what Mr Bowen's point is. If they are going to give evidence Mr Bowen says they should be asked what they  
10 were told.

MR MOFFITT: That does not affect what happened behind their backs, with respect, no more than if they were shown a written opinion of counsel. Until this evidence is given and in the particular way it is given I would submit it is almost impossible to put the precise matter. I can ask them what was said to them.

HIS HONOR: The theory would be that what they say they were told might be affected by what this witness said he told the intermediary. That would be the theory of it.

MR MOFFITT: That might be a valid objection if I were calling the  
20 witness who was the intermediate person. I submit it does not apply in respect of this matter.

HIS HONOR: I did not mean that. I meant theoretically what they say they were told by the intermediary may be affected by what they hear this witness say he told to the intermediary so although they were not present at the same event there is the unfortunate nexus there which is the background of the rule that witnesses should leave. I myself think it would be best.

MR MOFFITT: Despite the fact that I feel some difficulty about it  
30 in view of what Your Honor has put I will take the course of asking them to leave the Court.

NEVILLE ELDRED CHALLONER

Sworn, examined, deposed.

MR MOFFITT: Q. What is your full name? A. Neville Eldred  
Challoner.

Q. Where do you carry on practice? A. 39 Martin Place,  
Sydney.

Q. What is your profession? A. Chartered Accountant.

40 Q. Are you a partner—in what firm of Chartered Accountants?  
A. I am a partner of the firm called Greenwood, Challoner & Co.

Q. As an accountant have you specialised in some field? A.  
Yes. I have specialised in the Taxation field.

Q. Are you an LL.B. at the University of Sydney? A. Yes, I am.

Q. You have been admitted to the Bar but you are on the roll  
of non-practising Barristers? A. That is so.

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Q. You say you have specialised in the Taxation field: Are you also the author of certain works? A. I am a co-author, yes.

Q. What was that? A. I am a co-author, yes.

Q. Of what works are those? A. There is "Income Tax Law and Practice" and "Land Tax Law and Practice in New South Wales."

Q. So far as your participation in the first book was concerned, when was that first published? A. First published in 1952, I think it was.

Q. There have, of course, been a number of supplements keeping it up to date with the ever increasing number of decisions going out? 10  
A. That is so. I am engaged on another edition at the moment.

Q. I think perhaps I can lead you on this. I do not want to embarrass you but the position is the work you have done is one of perhaps the two leading text books on Taxation in Australia? A. Yes, I should think that would be so.

Q. Used throughout Australia? A. I should think so—I hope so.

Q. Used by both lawyers and accountants too? A. That is true, yes.

Q. Are you the editor of some Taxation publication? A. I am the editor of the Taxation Section in the Chartered Accountants' 20 Journal.

Q. I think for some years before you came into practice you had been an officer of the Taxation Department? A. I was 15 years in the Taxation Department.

Q. With regard to your firm, speaking of accountants—I am speaking of practising accountants in Sydney in particular—in this City in particular—is there some specialisation amongst accountants in various fields? A. There is quite a considerable degree of specialisation in the accountancy profession just as there is in a number of other professions. Some accountants may specialise in Taxation, 30 some may specialise in auditing work, some may specialise in investigation—company promotion—some may also be professional Directors.

Q. So far as your firm is concerned and, in particular, yourself—Mr Greenwood is there as your partner—do you specialise? A. Yes, we specialise in Taxation.

Q. Amongst accountants is it quite a usual practice for one firm of accountants to go to another firm who specialise with the problem of a client which is within the specialty of the other firm of accountants? A. It is quite a common practice for other accountants to come to us, at any rate, in respect of Taxation problems which they may have. 40

Q. Does that field include other accountants coming to your firm for advice both in relation to companies and to private individuals as to how they may order their affairs so as not to attract Taxation? A. It may cover that—it may cover anything. It may cover any type of problem, Taxation problem that arises. It may be a dispute with the Department—some aspect of Departmental investigation or an

objection against an assessment or some sort of rearrangement or it could be a number of other things.

Q. All of those things are within the field? A. That is so.

Q. Are there a limited number of accountancy practices in this State which specialise in that field? A. Yes, I suppose they would be limited. I would not be able to say how many. It would not be a great number.

Q. In respect of such matters is it usual or otherwise to have an accountant to go to an accountant who specialises say, in a Taxation  
10 matter, which involves some complexity, for the accountant himself to go without bringing his client or his Director as the case may be?  
A. That is quite common. Sometimes the accountant will be accompanied by a Secretary or the Managing Director of the Company. Sometimes he will come on his own. It probably depends on the nature of the problem.

Q. Whether it is highly technical or not? A. Yes, whether it is highly technical or whether the factual explanations of the Secretary or the Director are relevant.

Q. Have you ever met Mr Joseph or Mr Louis Steen, former  
20 Directors of International Vending Machines? Have you ever met them personally? A. No.

Q. They left the Court a few minutes ago. Did you actually know them by sight? A. I did not know them until they got up and walked out.

Q. In the year 1959 were you approached by the firm of accountants, North Ash and Mann? A. Yes.

Q. On behalf of International Vending Machines Pty. Limited? A. Yes.

HIS HONOR: What date was that?

30 MR MOFFITT: What was the first that you had any interview or any information in connection with that matter? A. Well, first of all Mr Purcell of Messrs. North Ash & Mann telephoned me and asked whether he could see me in connection with an Income Tax problem which he had and he and Mr Mann of that firm then came along to see me and my note is that it was on the 20th April 1959.

Q. I think you are pretty busy and make appointments somewhat ahead, do you? A. That is so.

Q. Because of the pressure of these advices? A. Yes.

40 Q. The actual telephone appointment or the ring on the telephone would be some date earlier than 20th April? A. That would be so.

Q. Would you know how much earlier? A. No, I wouldn't know—probably about a week.

Q. At the conference that was held, could you tell the Court who was present at that first conference on the 20th April 1959?

A. Mr Purcell and Mr Mann both of the firm of North Ash & Mann.

Q. And yourself? Just the three of you? A. That is so.

Q. After that conference had taken place in accordance with

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your usual practice did you do something about dictating to your secretary some notes of that conference? A. Well, yes, I did because they asked me to consider—(objected to).

Q. If you can just keep for the moment—you did dictate some notes for that conference? A. Yes, I did.

Q. To your secretary—did you? A. Yes.

Q. Does she take it down in shorthand? A. Yes.

Q. What happened after that in respect of the notes of this first meeting? A. I had to consider them at a later date in preparation for a further meeting.

Q. I want to get the sequence. Your secretary took them down?

A. She transcribed them.

Q. After she transcribed them did they come back into your possession? A. She gave them back to me.

Q. What did you do with them? A. I read them and initialled them.

Q. I think then you had a subsequent—on a later day—perhaps you may give me the date of it—a subsequent conference? Did you not? A. My notes show it was the fourth—(interrupted).

Q. Could you tell me the date of the later conference having refreshed your mind from your notes? A. 4th June.

Q. 4th May 1959?—

HIS HONOR: May or June?

WITNESS: 4th May 1959. I am sorry, Your Honor.

MR MOFFITT: Q. Would you produce please the notes you made in respect to the first meeting of the 20th April 1959 and which you say contained your initials? (Produced.) The notes to which you refer consist of these two pages at the end of which these little initials you refer to are—"N.E.C." they are the initials you put on in that fashion; is that right? A. Yes.

(Notes tendered; objected to.)

HIS HONOR: The witness has not said he had given this document to anybody.

MR MOFFITT: No, Your Honor.

HIS HONOR: How do you get them in?

MR MOFFITT: Under Section 41B of the Evidence Act.

HIS HONOR: What are the facts you rely on?

MR MOFFITT: It is evidence of the fact of what was said at the interview, Your Honor.

(Argument ensued.)

HIS HONOR: I think there is sufficient there—it is only so far as the questions of matters of fact are stated in that statement.

MR MOFFITT: I would think it would in fact go to the whole statement because it sets out firstly the history and then it sets out what was said or suggested, what was said on one side and what was said on the other. The Section is quite clear although the first part does not say that Mr Mann and Mr Purcell told him these were the facts

about the matter, it is perfectly obvious as a matter of inference that that is what he was told by North, Ash and Mann and the relevant section of the Evidence Act makes it quite clear that the Court can draw reasonable inferences from the document itself. It does not have to be literally put, Your Honor.

MR BOWEN: On that aspect of it there are some difficulties in the nature of this particular document. There are a number of questions which arise under Section 14B. And one is to whether this is a statement in the relevant sense, being just a private memorandum. Your  
10 Honor may think it covers the situation unilaterally, as it were. One would normally read the statement as something stated to another. The next thing is that under Section 14B(i) to make a statement evidentiary there is a condition that the maker of the statement either had personal knowledge of the matters dealt with by the statement or it formed part of a continuous record. There is no suggestion this forms part of a continuous record.

HIS HONOR: The only matter that really troubles me is whether or not this preliminary stage is admissible or, as it were, only the second stage of a communication between North Ash & Mann and the  
20 accountants. I am inclined to think that both stages are admissible and I will admit the documents under Section 14B of the Evidence Act.  
(Notes admitted and marked Exhibit "1".)

MR MOFFITT: Q. You have told us you had a subsequent conference on the 4/5/1959? A. That is so.

Q. I do not want the details but did you, between the two dates, give some consideration to the problem involved—between those two dates? A. Yes, I was requested to do that. The first was a preliminary conference.

Q. The first conference was a preliminary one to consider the  
30 problem and then you have a further conference on the 4/5/1959? A. That is so.

Q. After that, was that the last you knew of the matter? A. That was the last I heard of the matter except that Mr Dale the solicitor—(interrupted).

Q. Except recently this year, is it? A. No, afterwards Mr Dale, the solicitor, referred several draft Articles of Association to me but apart from that that was the end of the matter.

Q. That was in relation to the Canberra company; is that correct? A. Yes.

40 HIS HONOR: Q. Was that in your capacity as an accountant or as a Barrister? A. In my capacity as an accountant. This particular article involved concerned Keighery's which was a Taxation case. It was to bring the company into line with that case.

Q. Was it concerned with the drafting of that—the form? A. No, he referred to his draft—about three or four articles—to me, to see if I thought that was along or in accordance with Keighery's case. It was purely a Tax question.

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MR MOFFITT: Q. Who was present at the conference on the 4/5/1959? A. Mr Purcell and Mr North Ash of Messrs. North Ash & Mann and Mr Dale, solicitor, and myself.

Q. After that conference, did you shortly after dictate notes of the particulars as to what had occurred at that conference? A. I did.

Q. To your secretary? A. Yes.

Q. Did she subsequently transcribe those? A. Yes.

Q. However, in the case of those were your initials put on in the way that happened in respect of the earlier conference? A. No.

Q. Subsequently, after this case commenced, were you requested 10 to look for your notes? A. I was.

Q. And you found those particular notes, did you? A. I did.

Q. Are you able to tell me whether to the best of your knowledge that is a correct transcript of the notes you dictated to your secretary? A. To the best of my knowledge it is.

Q. Subsequently, through my request conveyed to you by Mr Dale did you, having made that check then place a notation on the bottom of that document? A. I did.

Q. On the document in the margin are there any pencilled notes there? A. There is one pencilled note. 20

Q. When was that pencilled note put there? Before or after this case commenced? A. Afterwards. It would be about a couple of months ago.

Q. But after this particular proceeding before His Honor had commenced; is that right? A. Oh, yes.

Q. That was no part then of anything you dictated to your secretary—the pencilled note? A. At the time—no.

Q. And the reference at the bottom which has been written on recently and initialled by you, does that refer merely to the typed portion and not the pencilled note which had to be put on later? 30 A. That is so.

MR MOFFITT: I tender it without the pencilled note which is an extraneous note. It was on it and I did not think it should be interfered with.

MR BOWEN: I make the same objections, Your Honor, but I think I can say nothing further.

HIS HONOR: I did not quite appreciate it. Is that the original document?

MR MOFFITT: As I understand, Your Honor.

Q. This is the original document? A. Yes. 40

MR MOFFITT: What he said was that he dictated it shortly after and then it was transcribed by his stenographer but he did not, at the time, as he did with the other, put his initials on it. Your Honor may have to see the document to see what has taken place.

MR BOWEN: I think under Sub-section 4 this one is not written by him or made or produced to his own hand—it is not signed or initialled by him—not in the sense used in the Section—not at the time, or



otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(Argument ensued.)

(His Honor ruled on the admissibility of two documents, and His Honor's reasons are contained in a separate transcript.)

(Document initialled by witness on 20/4/59 marked Exhibit 1.)

MR MOFFITT: Q. Mr Challoner, Exhibit 1 comprises the notes of the first meeting. Is that to the best of your recollection a correct  
10 record in a summary way of what occurred at the conference on the 20th April 1959? A. Yes.

Q. Unless you refer to the detail of that document can you remember independently, without looking at the document, the exact detail of all that was said at that conference? A. I can remember quite a lot of it, Mr Moffitt.

Q. How about the detail? Can you remember all the detail without looking at the document? A. Largely, yes.

HIS HONOR: I think it better for the witness to look at the document because it will save time. Is there any real objection, Mr Bowen?

20 MR BOWEN: No.

MR MOFFITT: Q. Looking at the document, if you would, and supplementing it where you can with your extra recollection, Mr Challoner, will you tell me, apart from the telephone appointment, was this the first time you knew any details yourself about the operations of the IVM Company? A. Yes.

Q. When this conference started, try and give me as best you can, looking at the document and so forth, what was said, what was told you first by Mr Mann or Mr Purcell concerning IVM? A. Yes.

I was told that they had a very serious and a very urgent tax problem  
30 which was concerning them—

MR BOWEN: Why are they?

MR MOFFITT: Q. Will you try and put it in the way that they said it? A. Mr Mann and Mr Purcell said that they had two client companies which were confronted with a very serious tax problem. They then said that the names of these companies were International Vending Machines and, a second company, Automatic Merchandising (N.S.W.) Pty. Ltd. They said to me that International Vending Machines was a company which advertised for purchasers of vending machines which sold various articles. They said that the company  
40 had received very many applicants or very many applications from purchasers, and it had been found difficult to cope with them all, and that it had been decided to limit the number of machines which would be sold to each person. They said that the function of the second company, that is Automatic Merchandising (N.S.W.) Pty. Ltd., was to enter into an agreement with the purchaser whereunder the second company was to service the machine and to place it in any location which that company thought fit, and it covenanted with the

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purchaser of the machine to pay that purchaser a specified amount or percentage per annum on the cost of the machine.

Q. Was that percentage mentioned? A. Yes, from my notes it is shown that that percentage was originally 20% and later reduced to 15%. I have no recollection of that apart from my notes.

Q. But having seen your notes, you are satisfied that that was said? A. Yes, that is so. They then said to me that the operations of International Vending Machines were such that it was thought that the profit for the year which was the first year—the company had only been incorporated a short time with a small capital—and 10 they said that they anticipated—

Q. When you say “they anticipated”, whom do you mean? A. That was Messrs Purcell & Mann anticipated that the profit of International Vending Machines for the year ended 30th June 1959 would be in the vicinity of £200,000 and that they, that is Messrs. Purcell & Mann, had been informed by the Messrs. Steen that they anticipated this rate of profit would continue and even increase, and Mr Purcell or Mr Mann said that the Messrs Steen had based this on an investigation and inquiries made in respect of the sale of vending machines—the vending machine business in the United States. They then said 20 that if this rate of profit continued it was proposed to incorporate a public company and float it on the Sydney Stock Exchange, but before they did this they thought there should be a longer history of the company. They then said that they were looking for a solution to the immediate tax problem which would confront them.

Q. Which would confront whom? A. Which would confront the companies in respect of the profits for the year ended 30th June 1959. Messrs Purcell & Mann pointed out that if the company distributed the profits to the only shareholders, the Messrs Steen, the incidence of tax and provisional tax on the high amount of dividends 30 that would be received would leave very little. Alternatively, they said, that if distributions of profit were not made, the company, that is International Vending Machines, would be liable for primary company tax and also tax on undistributed profits under Division 7 of Part III of the Act. They then said that some sort of family arrangement to spread the dividends amongst members of their families would not be satisfactory in this case because of the high amounts involved. They then suggested that it might be possible to constitute a non-private company for tax purposes.

Q. When you say they suggested? A. That is what Mr Mann 40 and Mr Purcell said.

Q. What they suggested to you? A. They suggested that to me. Along the lines of the procedure adopted in the Sydney Williams' case or the Keighery case, both of which had been decided by the High Court. Mr Purcell then put forward the proposition that Automatic Merchandising (N.S.W.) Pty. Ltd. should be set up as a non-private company for tax purposes and that that company should buy

from the Messrs Steen the shares which they held in International Vending Machines Pty. Ltd. Mr Purcell then suggested that International Vending Machines Pty. Ltd. could declare a dividend out of its profits for the 1959 year which would be largely used to pay—it would then be paid to Automatic Merchandising (N.S.W.) Pty. Ltd. as the new owner of the shares, and that company would use that dividend to pay the Messrs. Steen for the shares purchased from them, or partly pay for them. Mr Purcell then asked whether I thought that section 260 of the Income Tax & Social Services Contribution

10 Assessment Act would apply to such a transaction or arrangement.

Q. Was Newton's case decided at the Privy Council mentioned in that regard? A. Yes, it was.

Q. Just pausing there, was anything said in the proposals concerning the amount for which the shares should be bought? A. Yes, it was suggested that the price for the shares should be—(interrupted).

Q. Who suggested that? A. Mr Mann or Mr Purcell. I am not sure which.

Q. What did he say about that? A. I have no recollection of what I said about that because I would have no knowledge of the

20 value of the shares.

Q. No; what did they say? A. One of them said that the purchase price could be, say, £200,000 or £250,000.

Q. I am sorry, I interrupted you, Mr Challoner. Was anything further said about what the suggestion of Mr Purcell and Mr Mann was before you said anything? A. They suggested that this might provide a solution for a period. I mentioned that following the Court decisions on the Keighery and Williams' cases it was quite likely that the Commissioner of Taxation would seek an amendment to the taxation law nullifying the effect of those decisions, and pointed out then

30 that the proposal at best might be only a short-term solution. Mr Mann or Mr Purcell again at that stage mentioned the possibility of a public flotation. Then I was asked to give consideration to the problem and by way of preliminary discussion I suggested that the problem to avoid so far as section 260 was concerned was the declaration of the dividend which would eventually find its way to the Messrs Steen in the form of a capital payment for shares, and in looking for an alternative procedure for that I suggested, in a tentative sort of way, that maybe a loan could be made instead of declaring the dividend.

40 Q. A loan from whom? A. By International Vending Machines to Automatic Merchandising (N.S.W.). I also suggested that in order to avoid the necessity to declare the dividend Automatic Merchandising (N.S.W.) should be made a non-private company for tax purposes prior to the end of June so that it need not make a distribution. But the first discussion as to section 260 at that interview was rather tentative and it was understood at the time—

Q. Just say what was said. A. Yes. I said that I would like to

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have a further time to consider the problem and Mr Mann and Mr Purcell asked me whether we could arrange that I could see them again for a further conference after having considered the matter. I said I could see them on the 4th May. They also asked at that interview that I should give them a subsequent letter in writing containing any suggestions which I had to make.

Q. You have indicated that it had been suggested by Mr Purcell or Mr Mann there should be a dividend declared and after that there had been a discussion about an alternative which you mentioned involving a loan. Was there any discussion as to the different effect of section 260 on the matter that Mr Mann and Mr Purcell had mentioned as against the other suggestion? Do you follow what I am putting? A. Yes. Well, I am not sure whether that occurred at this or the subsequent one. It did occur, but I am not sure at which interview.

Q. Would you look at your notes of the 20/4/59, at the second last paragraph where you commence section 108. Do you see that?

A. Yes, that would be so.

Q. Can you tell me, having looked at that and having used that to refresh your memory, what was said about the two different alternatives that were mentioned in that conference so far as section 260 was concerned? A. I said that so far as section 260 was concerned, if a dividend were declared and paid and that dividend or moneys representing that dividend found their way to the Messrs. Steen in the form of a capital payment for the shares, there must be in view of Newton's case a very grave danger of the application of section 260.

I further said that the obvious way to avoid section 260 was to avoid the declaration of any dividend which would so find its way to the Messrs Steen. I explained—I said that section 260 was merely destructive and not constructive, and that I did not think that the Commissioner could apply the section if a dividend were not declared.

HIS HONOR: Q. Not even if the money was received by the shareholders? A. Yes, Your Honor. The point was—

MR MOFFITT: Q. That was because of Bell's case? A. Bell's and Newton's cases.

Q. Did you mention Bell's case at that conference, do you remember? A. I think I did.

Q. Is there anything further you can recollect that you want to tell us as to what happened in that first interview? A. I do not think so.

HIS HONOR: Q. Was it made clear that the purpose was to release moneys, Mr Challoner? I do not quite follow, and unless counsel agree I will not pursue it. Was it part of the advice that was sought that one of the purposes was to release the money—

WITNESS: The matter of the release of moneys was not put to me at all, Your Honor. It was posed to me purely as a tax problem of avoiding this liability that was about to fall on the company as a result

of the very high profits that would be made in 1959. To the best of my knowledge and believe—(objected to).

MR MOFFITT: Q. In that conference you made a reference to a suggestion that you made tentatively at that time concerning a loan. You have said that that suggestion was made by you. Was any such suggestion made by Mr Mann or Mr Purcell at any time before you raised that matter? A. I have no recollection of it.

Q. In that conference was anything said one way or the other as to whether any of the matters discussed would be in breach of the Companies Act? A. I have no recollection of it, Mr Moffitt. The discussion was very brief on the Section 260 side of it.

Q. So far as you can recall, was any reference made in that conference to section 148 of the Companies Act? A. I cannot recollect it.

(Statement dated 4th May 1959 m.f.i. "1".)

Q. (M.f.i. "1" handed to witness.) Using the same procedure as you had before by refreshing your memory from the note of the meeting of the 4/5/59, plus any other independent memory you have, will you tell me now at this meeting—you have told me the persons who were present—what happened at the commencement of the interview? A. Yes. I said I have given further consideration to the questions that had been asked at the previous interview, and that having given the matter further consideration I said I was more convinced than ever that the original proposal as suggested by Mr Purcell at the previous interview would be very likely to be attacked under section 260.

Q. That is the suggestion made by Mr Purcell at the original conference? A. Declaring the dividend and it finding its way to the Messrs Steen. I again pointed out that section 260 was only annihilating provision, as the Courts have put it, and I did not think by virtue of the section the Commissioner would be able to deem a dividend to be paid which was not paid in fact, and even if the Commissioner could wipe away any arrangement that had been made, it would not leave exposed any circumstances which would leave a liability to income tax insofar as the Messrs Steen were concerned, because no dividend had been declared and paid, and even if they got money or received the money there would be nothing then to indicate that that money was income in their hands. But I then, in considering the matter prior to the conference—

Q. At the moment if you can, Mr Challoner, try and keep it to what was said at the conference? A. I said however that if International Vending Machines made a loan to Automatic Merchandising (N.S.W.) Pty. Ltd. for the purchase of the shares of the former company, there would be a breach of section 148 of the Companies Act and I said that I thought that this would not affect the validity of the arrangement so far as section 260 was concerned. I then suggested another alternative and that was to leave the consideration for the

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purchase of the shares outstanding, to be paid off over a period out of future profits, and that I did not think that section 260 would apply where there was a purchase of shares and the purchaser paid the purchase money out of future dividends received paid out of profits made subsequent to the purchase. Alternatively, I mentioned that if the company was floated, then there might be moneys available which would enable the debt to be liquidated. Mr Mann or Mr North Ash pointed out or stated that there were merchandising companies in each State, and I then suggested that instead of Automatic Merchandising (N.S.W.) Pty. Ltd. being converted to a non-private 10 company, it might be better to incorporate a new holding company in Canberra which would be constituted right from the beginning as a non-private company for tax purposes along the lines of the Keighery or Sydney Williams' case. Mr North Ash or Mr Purcell then asked what section 148 said and I took out a copy of the Act and read the section. It was not discussed—I did not discuss it in any detail.

Q. Do you remember what was said about it, looking at your notes? A. I said that the section provided for a monetary penalty—a penalty by way of a monetary sum, but I said that this did not seem to affect the position so far as section 260 was concerned. I then 20 summed up the position by saying that the alternatives seemed to be to adopt the original suggestion by Mr Purcell, which I thought left the situation open to the application of section 260; if International Vending Machines made a loan to the merchandising company or to the new holding company, it seemed that there would be a breach of section 148 of the Companies Act, but that if some means could be found for leaving the consideration for the purchase of the shares outstanding, to be satisfied out of future profits or from the proceeds of a flotation, it seemed that section 260 would be taken care of and also there would then not appear to be any breach of section 148. 30 Finally I suggested it might be some advantage if there could be set up behind the non-private company one or more family companies so that in the event of some amendment to the law the incidence of tax might not be so heavy as it would be if the company were left a private company.

Q. Was anything said with regard to this Canberra company and its relation to a public flotation? Was anything said about that before you departed? A. I cannot recollect anything being said.

Q. I thought you might look at your third last paragraph? A. Yes, I have read that paragraph. I cannot recollect much in amplifica- 40 tion of that.

Q. Firstly, can you tell me was something said at the end about a public company? A. Yes.

Q. Can you give me the best of your recollection, looking at this note? If you cannot amplify it, tell me the best you can? A. I cannot remember whether it was Mr North Ash or Mr Purcell or whether it was I myself who mentioned again the flotation of the

company on the Sydney Stock Exchange, but I did say that the set-up of a non-private company along the lines of the Keighery Company would probably not last for very long.

Q. That is from the point of view of legislation? A. Because of possible amendments to the tax laws, and I cannot remember whether it was Mr North Ash or Mr Purcell who said that in regard to the public flotation the time when it would take place might well depend upon any amendment to the taxation laws.

Q. You know or you have had occasion to know of the firm of  
10 North Ash & Mann, accountants, of this city? A. Yes.

Q. Have they been established for some period of years? (Objected to.)

HIS HONOR: It is very hard to state the limits on this discretionary section, and I do not think I should state them narrowly. After all, if you have a well-established firm of accountants and act on their advice, and that was a relevant factor, and I do not think it could be said that it was a wholly irrelevant factor—I cannot very well decide what is relevant and what is irrelevant under that section on every question, as it were. It would mean investigating the whole  
20 scope of it, but I think this type of thing I should allow in.

WITNESS: I do not know, Mr Moffitt, how long the firm has been established. I know they have been established for some years or they had at that time been established for some few years because they had been to us on other occasions.

MR MOFFITT: Q. Are you able to say whether they are a firm of good repute or otherwise? (Objected to; rejected.)

Q. From your experience as an accountant, and I am speaking now of the period of, say, the middle of 1958 up to the present time—I am not asking you for your view on the law, do you understand me,  
30 I am not concerned with that here—in cases where in the running of a company you have a series of transactions where money is received in respect of a contract within the particular tax year and the performance or part-performance does not occur in that year but occurs in, say, the later year, will you tell me from your experience what the practice of the Taxation Commissioner is with regard to the method of accounting, namely whether or not the receipt is brought in in the year in which it is in fact received, or whether it is postponed to a subsequent year? (Objected to; rejected.)

HIS HONOR: I am not allowing this question, but I indicate that I  
40 think Mr Moffitt is entitled to ask questions on the subject matter and from this witness as an expert on accounts.

MR MOFFITT: I am putting it on a basis at the moment of what the Taxation Commissioner's practice has been in this witness' experience.

MR BOWEN: My objection does not extend to the witness expressing a view of what is proper business or accountancy practice.

MR MOFFITT: Q. Firstly, do not say what the Commissioner's

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practice is, in fact, Mr Challoner, but have you in fact in a number of cases which have come under your control in your firm of Greenwood & Challoner in fact have experience as to the practice of the Commissioner with regard to the returns of the type I have just mentioned in the last question? (Objected to; rejected.)

MR MOFFITT: Q. Have you had experience as to the practice of the Commissioner with regard to returns by companies in the type of case which I have just indicated? (Objected to; rejected.)

Q. Have there been cases of the type that I have mentioned—I do not want to go through them again? (Objected to; rejected.) 10

(Further hearing adjourned until 10 a.m. Wednesday, 29th November 1961.)

29th Nov., 1961.

**Third Day: Wednesday, 29th November, 1961**

**NEVILLE ELDRED CHALLONER**

Further examined:

MR MOFFITT: Q. Have you yourself personally in respect to clients of your firm where accounts have been prepared by your firm and taxation has been assessed, in cases where you have moneys received in a year of tax and the contract in respect of which the money was received has not been carried out by the tax payer when the 30th June came—it was still incomplete—have you had assessments from the Commissioner on behalf of such clients whereby the assessment was on the basis of including the receipt of those moneys in the year in which they were received? (Objected to.) 20

HIS HONOR: As it is not objected to as a leading question I will allow it on the basis that it is merely a preliminary question to the giving of instances which may establish some practice, but not as a statement of any substance that there have been such instances. I mean it is merely leading up to giving the instances which may establish the practice. 30

MR MOFFITT: Mr Officer has very properly drawn my attention to a matter. I do not want to be taken to give any undertaking so far as the next questions are concerned, if Your Honor's ruling mean that I am undertaking to give details of returns in respect of particular clients.

HIS HONOR: It is not an undertaking given; it is merely that I will give no weight to a general statement. . . .

MR MOFFITT: Q. Have there been a number of such occasions? (Objected to, rejected.) 40

Q. After the end of the tax period of the 30th June 1958 have you ever known of any assessments to have been issued on any other basis? (Objected to, allowed.) A. In the case of incomplete contracts where the amount in respect—

MR BOWEN: Could the witness answer the question, Your Honor?

WITNESS: I can only answer it with some qualification.



HIS HONOR: Q. Do you understand the basis? A. Yes. I can answer it.

MR MOFFITT: Q. Do not answer this question for the moment, Mr Challoner. In addition to the cases where you have actually prepared or your firm has prepared the actual accounts, have you been consulted in other cases where the accounts have been prepared not on the basis of the amount being received in that particular year, not brought into that particular year, those contracts not having been completed, and the Commissioner has issued an assessment with an  
10 adjustment sheet on the basis of assessment which brings those amounts into the tax period in respect to which they have been received? (Objected to.)

HIS HONOR: I will allow that question on the same basis. I do not feel I am assisted unless I know how many cases.

WITNESS: Yes.

MR MOFFITT: Q. The answer is yes? A. Yes.

Q. Can you tell me how many of such instances—the approximate number—you are aware of since the end of June 1958? (Objected to.) That is where other people have prepared them and another  
20 accountant has come to you with such an assessment where such an adjustment sheet has been put before you. Do not answer the question for the moment, Mr Challoner.

HIS HONOR: I will allow the exact number provided he is in a position to state it if he is asked.

WITNESS: I would not know.

MR MOFFITT: Q. Can you give me the approximate number? To the best of your ability what is the number? (Objected to; allowed.)

A. I can only give a very rough estimate. It could be anything between say a dozen or 20.

30 HIS HONOR: Q. That is where an adjustment has been made by the Commissioner? A. Where the accounts have been prepared on the basis of the earnings, of the amount having been earned, in the sense of the contract having been completed, but the Commissioner has not accepted that basis and has brought in the amounts actually received in that particular accounting period as income. I can give illustrations of the type of case, if that is any help.

MR BOWEN: And these are matters on which he has been consulted?

WITNESS: Yes.

40 MR MOFFITT: Q. Have you been consulted in relation to appealing to the Board of Review on this, or what is the position? A. With regard to objecting against the assessments, and in some cases they have been to the Board of Review.

Q. Would you tell me in respect of the accounts prepared in your office—that group of cases now—where accounts have been prepared on the basis of not including the amounts received where the contract has not been completed, have there been any cases such as that where the Commissioner has then issued an adjustment sheet and then made

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an assessment on the basis of receipts of the amount in the year it has been received? Do you follow that, Mr Challoner? (Objected to, allowed.)

Q. Between the end of June 1958 and the present time? (Objected to, rejected.)

MR MOFFITT: Q. Have you in respect of the tax period the year ending 30th June 1959 had any cases of clients where your firm has made up the tax—kept the books of account and it has been made up on the basis of not including amounts which had been in fact received in the year of tax on the basis that the contract had not been completed and the Commissioner then issued an adjustment sheet bringing in for the purpose of tax those amounts which had in fact been received although the contract had not been fulfilled? Have there been any of those cases of which you are personally aware in your office in respect of that period, the 30th June 1959? (Objected to, allowed.) A. Without making inquiry I could not answer that question, Mr Moffitt. I cannot relate in my mind at the moment to that particular period. I could not answer the question. I think there probably have but I could not answer it yes or no without examination. Q. In respect of the period from the 30th June 1958 up to the present time have there been any such instances? Do not answer that question for a moment, Mr Challoner. (Objected, pressed, allowed.)

HIS HONOR: It is really related to the period 1959 to 1961?

MR MOFFITT: Yes.

Q. The income years of 1959, 1960 or 1961? A. I have seen many such cases, but my difficulty is that I am not sure whether the accounts were prepared in our office.

#### CROSS-EXAMINATION:

Cross-  
Examination.

MR BOWEN: Q. Mr Challoner, you have told us that there was a first interview on the 20th April 1959 attended by Mr Mann and Mr Purcell, and that they said to you that they were speaking in respect of I.V.M. Pty. Ltd. and Automatic Merchandising (N.S.W.) Pty. Ltd. and that these two companies had a tax problem, is that right? A. That is so.

Q. Is this the position, that you did not have actual accounts of those companies before you when you discussed this matter with them? A. That is so. I have never seen the accounts.

Q. You have never seen the accounts; you had no knowledge of any of the figures which might be involved beyond the general statements that you told us yesterday? That is so.

Q. That they told you by word of mouth? A. I relied purely on the verbal information that was given me.

Q. Is this the position, that no suggestion came from you at the first conference that the company would have to pay moneys out in order to save its tax position—to pay out any particular sum? No

30

suggestion came from you that the company would have to pay out £200,000 in order to solve its tax problem? A. No.

Q. In fact I think the first suggestion was that the companies—the two in question at the time—in relation to I.V.M. it might be turned into a non-private company before the 30th June, is that right?

A. The first suggestion was that the merchandising company should be turned into a non-private company but probably after the 30th June.

Q. That was the first suggestion. I think it was a matter discussed, was it not, also, whether it would not be appropriate in the light of the Sydeney Williams' and the Keighery case to which you referred yesterday to turn either of the companies into a non-private company so that it would not be subject to the provisions of Division 7 of the Income Tax and Social Services Contribution Assessment Act, is that right? A. That is right.

Q. If that were done there would be no need to make a distribution by way of dividend, would there? A. No.

Q. I think that in the second conference on the 4th May again it was quite clear in the discussion, was it not, that so far as the company's taxation problem was concerned, that is I.V.M., if it were a public company itself or a subsidiary of a public company at the 30th June it need not make a distribution because Division 7 would not apply to it, is that right? A. That is right.

Q. The suggestion that there might be a substantial sum distributed to the shareholders amounting to £200,000 or £250,000 was a suggestion which raised a taxation problem for the shareholders, not for the company, did it not? They would be the ones who would face the taxation problem if a distribution of £200,000 or £250,000 were made? (Objected to, rejected.)

Q. In the course of both conferences you gave certain advice about the application of s.260, did you not? A. That is so.

Q. And you pointed out that that could only become material if money went into the hands of the Steens? A. Yes, that would be so, or was applied by them.

Q. If they got the money or the benefit of the money? A. Yes.

Q. And it was only in those circumstances that the problem you discussed at this conference of s.260 arose? (Objected to, withdrawn.)

Q. You then proceeded to discuss with them the situation which would arise in relation to the application of s.260 if they did pay moneys over according to the way in which those moneys were characterised when they were received into the hands of the Steens?

MR MOFFITT: This is what the witness said?

MR BOWEN: What he proceeded to discuss.

HIS HONOR: Yes, he proceeded to discuss. Put the question again, Mr Bowen.

MR BOWEN: Q. You have told us that you did not suggest that a payment must be made by way of dividends of £200,000 or any other sum? A. Quite the contrary. I suggested that the dividend should

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not be declared; that that was a means of avoiding the application of s.260.

Q. But what you did say was that if any money were to be paid out or come to the hands of the Steens there was a risk of the application of s.260 even if it was paid in some other form? A. If there was a dividend declared, yes. If it came in the form of capital but really represented moneys coming from a dividend declared by I.V.M. HIS HONOR: Q. Is this what you said, Mr Challoner? A. Yes.

MR BOWEN: Q. You agree in that regard you were discussing the tax problem of the Steens? (Objected to, allowed.) A. In that particular matter, in that aspect, but that was not the whole. 10

Q. No, but in that particular respect you were discussing their tax problem; that is right, is it not? You were doing so on the basis that had been suggested to you that moneys be paid out to them by way of dividend, and then you advised as to what the consequences might be? (Objected to, rejected.)

MR MOFFITT: Is there any objection if the notes of the second conference which have been m.f.i. "1" are handed back to the witness? They have come into my possession.

MR BOWEN: I have no objection. 20

(M.f.i. "1" handed to witness.)

Q. At the second conference you told Mr North Ash, Mr Purcell and Mr Dale that you had given further consideration to the question whether s.260 would apply if a dividend were paid to a company which bought from the Steens their shares in I.V.M., is that right? A. That is so.

Q. And that you had formed the view that it would apply? A. If that money so received by that company were used to satisfy the purchase price of the shares.

Q. The recommendation you made was that if their shares were to be bought then if they were bought and the purchase money left outstanding this problem would not arise? A. I do not think I recommended anything—I just said— 30

Q. You suggested that? I suggested what would be the position if they did certain things.

Q. The suggestion there was that a company be formed which would be a non-private company so far as the Income Tax Assessment Act is concerned and it could purchase the shares from Steens, leaving the purchase money outstanding, is that right? A. Or payable over a period—not to be satisfied by a dividend declared by I.V.M. 40

HIS HONOR: Q. Not? A. Not to be satisfied, yes.

MR BOWEN: Q. Not be satisfied by a dividend declared by I.V.M. to the purchaser company and then applied by them in the purchase of the shares? A. Yes.

HIS HONOR: Q. Because of s.260? A. Yes.

MR BOWEN: Q. And it was your suggestion also that the moneys be left outstanding without even a loan being made from I.V.M. to

the purchasing company at the stage of purchase? A. I made two—

Q. That is right, is it not? It was your suggestion also that the moneys be left outstanding without even a loan being made from I.V.M. to the purchasing company at the stage of purchase? A. That was one of the suggestions I made.

Q. So you said “Do not pay a dividend and let the purchasing company apply it in discharge of the purchase of the shares because that would bring s.260 into operation”, is that right? A. That is right.

10 Q. You told them, “Do not make a loan from I.V.M. to the purchasing company and let them apply that money in paying the shares because that would be a breach of the Companies Act”, is that right? A. I said, “If you do that”. I did not tell them what to do or not to do. I said, “If you do that”.

Q. “If you do that you would be in breach”, and this led to your suggestion that one way of meeting the matter would be to pay no moneys to I.V.M. but to let the purchasing company buy, leaving the purchase money outstanding or payable on terms? A. Payable on terms, yes.

20 Q. The fact that in each of those suggestions the purchasing company was to be a non-private company for tax, holding at the material time all the shares in I.V.M., meant that the tax problem of I.V.M. would be solved? A. Yes, because being a non-private company it would not have to distribute its profits and would not be subject to undistributed profits tax.

Q. And furthermore I.V.M. would be a subsidiary of the public company? That is so, and therefore it is a public company.

Q. It was at an earlier stage that there had been discussion about making either Automatic Merchandising (N.S.W.) Pty. Ltd. or I.V.M. Pty. Ltd. itself a non-private company by the issue of shares?

30 A. That is so. It was an earlier stage and it was the merchandising company which it was suggested should be the non-private company.

Q. And was it to buy the shares in I.V.M. or did you not say that was a way of making either of those companies a non-private company at the first conference? A. Yes, I think either could have been made a non-private company.

Q. And that was suggested, was it not?

HIS HONOR: Either, that is to say, I.V.M. or Automatic Merchandising?

MR BOWEN: Yes, Your Honor. I will withdraw that question.

40 Q. At the first conference I put it to you it was suggested that I.V.M. Pty. Ltd. itself might be constituted as a non-private company for tax purposes? A. The suggestion put to me was that the merchandising company should become the non-private company. There

may have been some discussion as to whether I.V.M. should become a non-private company. I.V.M. would have become a non-private company if the merchandising company had bought its shares from the Steens.

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Q. That is not what I am speaking of. What I am putting to you is that at the first conference what was suggested was that I.V.M. Pty. Ltd. itself, leaving Automatic Merchandising to one side, would be made a non-private company. Do you not recall that at the moment?  
A. No, I do not.

Q. (Exhibit "1" handed to witness.) Would you read the third paragraph of Exhibit "1"? A. Yes, it was suggested—

Q. Having looked at that third paragraph is it correct in stating what it does? A. Yes, it must have been a preliminary suggestion.

Q. Well, it is correct as it is stated? A. Yes. 10

Q. Having refreshed your mind with that, do you now recall that the suggestion was that I.V.M. Pty. Ltd. should be made a non-private company for tax purposes? A. I have no personal recollection of that.

Q. But you are satisfied that that would correctly set it forth?  
A. I have no reason to doubt it.

Q. I want to take you for the moment to the second conference on the 4th May 1959 (at the bottom of p.61 and the top of p.62 of the transcript). You have told us that you called their attention to s.148 of the Companies Act, is that right? A. Yes, that is so. 20

Q. That was when it was suggested that I.V.M. might make a loan of a substantial amount to a company newly formed which would then apply it in buying from the Steens their shares in I.V.M.? A. That is so.

Q. I think you expressed the view at the conference to them (this is the middle of p.61) that there would be a breach of s.148 of the Companies Act if that were done? A. That is so.

Q. I think later in the same conference they wished to discuss the terms of s.148 with you and you got it down and read it. Did you read out the section? A. My recollection is that I did. 30

Q. You read it out. Then you said to them, is this correct, that the section prescribes a monetary penalty for its breach? A. That is so.

Q. And it was after that that you suggested I.V.M. do not pay out moneys in relation to this transaction for the purchase of the shares of the Steens? A. Yes, it was because of s.148.

Q. Now I want to ask you in relation to the manner in which receipts are dealt with in accounts where the person receiving them has received them under a contract under which he will be obliged in the future to supply goods or services. Do you understand what I am referring to? A. Yes. 40

Q. I suppose you would agree if such a person brought those receipts into his accounts in compiling his profit before he had supplied the goods or the services and distributed that profit by way of dividend he would be in a position where if he was unable to supply the goods or the services and had to return the money in the contract he would

not be able to do so, or he might not be able to do so? (Objected, rejected.)

Q. Where moneys are received in pursuance of contract under which the person receiving the money is obliged to supply goods or services in the future and at the end of the accounting period it is still in that position, not having supplied the goods or the services, what is the proper accountancy or commercial method of treating that receipt in the accounts of the company? (Objected to, withdrawn.)

10 Q. I suppose you are familiar with the works of accountants in Australia and in America which deal with this particular problem?

A. I have not read them recently, Mr Bowen.

Q. Well, you would have not less than 20 in your office who deal with this subject, would you not? A. Yes, but those 20 cases came within—

Q. I am speaking of 20 books, not clients, do you understand? Text-books or articles dealing with this topic? A. In our office?

Q. Yes. A. There would be some accounting textbooks in the office dealing with that problem. I would not know how many.

20 Q. And the modern accountancy view on the proper method of treating receipts of the character I have described is to treat them as unearned receipts, is it not? (Objected to, allowed.) A. It would be improper to bring in a receipt of that kind without making some provision for the expense to be incurred. It may vary in different circumstances. It is difficult to speak in the abstract as to a particular method that would be applicable or would be appropriate in all cases. It may depend on how much of the contract had been performed. If it had not been performed at all—

Q. Do you mean there might be some apportionment on a time basis if it is a services contract? A. That is so.

30 Q. Of if it is delivery by instalments of goods? A. Yes.

Q. But all that would be geared to whether or not performance in whole or in part had taken place, would it not? A. Yes, that sort of apportionment would be.

Q. And it would be generally agreed amongst accountants in the commercial world, would it not, that in respect of the portion for which the goods or services have not been supplied it would be wrong simply to bring it to account as income? A. To bring it to account as profit, yes, but you could make a provision for the unearned part.

40 Q. One way of dealing with it you suggest would be to bring it in but to make a provision, is that right? A. That is so.

Q. Another way of dealing with it would be to defer it and not to bring it in? A. That is so.

Q. And it is the latter method which is recommended by the authorities, is it not? I mean accountancy and commercial writers? A. I think it is, but I have not looked at them just recently.

Q. You did mention you had known of some cases where accounts had been put in not bringing those receipts in where the Commissioner

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of Taxation had issued an adjustment sheet with an assessment bringing them in and subjecting them to tax? A. That is so.

Q. And you knew of instances where objections had been lodged to those assessments and the matters had been referred to the Board of Review? A. That is so.

Q. Are those matters still the subject of litigation without a decision having been given by the Board? A. Yes. There is one case which has been heard by the Board and no decision given and there are other cases in which requests for reference to the Board of Review have been made, but they have not yet been heard—some not 10 yet referred to the Board.

Q. I take it that you or your firm advised that the objections should be lodged in those cases, is that right? A. That is so.

Q. Is that because it is your desire that the Commissioner in assessing on that basis is wrong? (Objected to, rejected.)

(Short adjournment.)

MR. BOWEN: Q. I suppose one type of tax payer who would be faced with the problem of unearned receipts would be an insurance company, would it not? A. That is so.

Q. Because they would receive premiums in respect of risks 20 insured, and at the 30th June in any year, one might expect that there would be unexpired risks on a current policy? A. That is correct.

Q. What is the policy of the Commission in regard to taxing those receipts? A. He allows 40% of the premiums.

Q. To be deferred? A. To be deferred.

Q. So, his practice in the case of premium receipts is to defer the unearned portion? A. To defer 40%.

Q. 40% being a conventional figure in respect of unearned receipts? A. Yes, it is an unexpired risk. He does not make any allowance for risks which are for a two- or three-year period. 30

Q. That was his practice in 1958, 1959 and 1960 in relation to insurance companies? A. That is right.

Q. And it still is? A. So far as I am aware, yes.

Q. Would you have a look at these two documents? (Shown.) Is the top document addressed to R. E. North Ash Mann & Co.? You might give me the date? A. The 25th. (Question objected to; question withdrawn.)

Q. Is that a document which is issued from your firm to R. E. North Ash Mann & Co.? A. Yes.

Q. It is, is it? A. Yes. 40

Q. And it is attached to another document. Is that a document again issued by your firm, Greenwood & Challoner & Co. Ltd.? A. Yes.

(Document from Greenwood & Challoner to North Ash Mann & Co. m.f.i. "2".)

(Receipt marked for identification "3".)

(Discussion ensued.)



## RE-EXAMINATION:

MR MOFFITT: Q. Would you tell me what has been your experience, in the period after the 30th June 1958, of the Commissioner's practice with regard to including, or otherwise, the receipts in a particular year in respect of contracts which have not been fulfilled in that year?

A. In my experience the Commissioner's practice in respect of ordinary business contracts, with the exception Mr Bowen mentioned in the case of General Insurance Co., and which his officers have said to me—(interrupted).

10 Q. With that exception what has been the practice? A. To assess amounts received in the year of receipts.

(Witness retired.)

(Argument ensued regarding particulars.)

## RESPONDENT:

Sworn, examined, as under:

TO MR MOFFITT: My full name is Joseph Steen and I am one of the respondents in this case.

Q. You were a former director of International Vending Machines Pty. Ltd. and I think you reside at 21 Hunter Street, Dover Heights; 20 you are a company director by occupation? A. That is correct.

Q. I think you were born in Glasgow, Scotland, in 1931? A. That is right.

Q. I think you first came to Australia to live early in 1958? A. Yes.

Q. You had, I think, been here with the Merchant Navy during the war? A. No, not during the war; 1949.

Q. And then prior to coming to Australia—I don't want the full detail—had you been in business with your father in respect of manufacturing and retailing clothing in Glasgow and London? A. 30 That is so.

Q. Had you spent some 14 months in America with the Phillip Morris Cigarette Co.? A. Not the entire 14 months but I spent some seven months there.

Q. For seven months of the period you were in America you spent it with the Phillip Morris Cigarette Co.? A. Yes.

Q. Had you also been employed with the Warwick Westwood Manufacturing Co. in England? A. Yes.

Q. In both those companies did you have some experience in both England and America of this automatic merchandising? A. 40 Yes, that is so.

Q. And you say you came to Australia early in 1958, and your father had been there I think the previous year? A. Yes.

Q. We have already been told of the incorporation of the company, that occurred in June 1958? A. Yes.

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Q. And you and your father were appointed directors and the three shareholders were yourself, your father and your younger brother, Sidney Steen? A. That is correct.

Q. Although Sidney Steen was not a director of the company, did he in fact take some part in the work of the company at some later stage when the company was in operation? A. Yes, he was paid by the company right from its inception.

Q. In what capacity was he employed? A. He was employed as New South Wales Assistant Merchandising Manager.

Q. I don't want to go into the details of the operation of the Com- 10  
pany, but when you first started the operation of the Company the first machines that were produced were those operated by the Company, or were they operated by the persons to whom you sold the machines? A. They were operated by the persons to whom we sold the machines.

Q. What part did the company play in that transaction in the initial stages of the company? A. They sold the machines to an individual and they also provided, or helped to provide, the locations where those machines should be placed. (Discussion ensued.)

Q. Was there a written agreement? A. Yes.

Q. Would those written agreements still be with the company? 20  
A. They would still be with the company.

Q. You would be able to identify one of the original types of agreements which was first used? A. Yes, I would.

Q. Leaving out the agreement, what in fact happened with regard to these initial sales, the company sold the machines and received the purchase price? A. That is correct.

Q. So far as the manufacture of the first machines was concerned, what happened about those? (No answer.)

Q. Just have a look at that document. (Shown.) Was there an earlier form of agreement than that? A. Yes, there was an earlier 30  
one than this.

MR BOWEN: Subject to that being produced I do not mind the evidence continuing.

MR MOFFITT: Q. Under the first form of contract that you used the Vending Co. sold the machines to a purchaser? A. Yes.

Q. What happened then? A. The purchaser was responsible for the running and maintenance of these machines by means of regular collections to restock merchandise and collect the funds from it. The owner of those machines would repurchase fresh merchandise from my Company. 40

Q. You helped in the siting but the owner did his collecting? A. He carried out the rest of the business himself.

Q. I don't want to go into any detail. I want to come quickly to the position of the takings of the Company. Was there some feature about that which occurred and which made it unsatisfactory? A. That is so. That made it unsatisfactory. We found that the people who owned those machines, whom we called operators, were not per-

forming their duties as required, and as necessary, as such that the machines were being neglected and because of this neglect and because of lack of experience on their part, and lack of knowledge on their part, the returns from the machines were being steadily affected and it was not being proved to be as profitable to them as it should have been.

HIS HONOR: Q. To them? A. To them.

MR MOFFITT: Q. In the initial arrangement was there any guarantee of return? A. No, there was no guarantee of return.

10 Q. Whatever was received was received by the people who operated the machines? A. And who owned them, yes.

Q. After that was there then a different procedure on the sale of the machines? A. Yes.

Q. Then after subsequent sales who operated the machines then when the change occurred?

MR BOWEN: I object to the evidence relating to this agreement if it relates to the document.

MR MOFFITT: I am not asking about the contents of it; I am asking whether there was a different procedure. (Question allowed.)

20 WITNESS: Yes. (Discussion ensued.)

MR MOFFITT: Q. Approximately when was that? A. Approximately August or September.

Q. Of 1958? A. Of 1958.

Q. I am not asking you to refer to the contents of the contract but after the new procedure had been adopted who did the looking after the machines after the August/September date you referred to?

A. The merchandising company.

Q. So, there was also a merchandising company which was known by what name at that time? A. Automatic Merchandising N.S.W. Pty. Limited.

30 Q. Were you and your father directors of that Company? A. We were.

Q. And it then looked after the merchandising side and the vending company sold the machines? A. That is correct.

Q. Without going into any numbers or amounts, was the volume of business on the sale of machines after August/September 1958 small or did it increase? A. It increased considerably.

Q. And after December 1958, and taking the beginning of 1959, what was the position about sales of vending machines as against what 40 it had been at the end of 1958? A. Considerably more.

MR MOFFITT: I call for a letter from North Ash & Mann dated 18th March, 1959. It is in the file (produced).

(Letter dated 18th March, 1959, from North Ash & Mann to directors of International Vending Machine Pty. Ltd. tendered; objected to as irrelevant; allowed; marked Exhibit 2.)

Q. Did you receive that letter at about the time of its receipt

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—  
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—

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—

by the Company? (Witness shown Exhibit 2.) You might read it through. A. Yes. I have seen this letter.

Q. After this Company had started to operate, and whether after August/September 1958, had you had any visits from members or employees of the firm of North Ash & Mann, the company's auditors, from time to time? A. Yes, we had.

Q. So far as you observed what were they doing there from time to time? A. They were there, amongst other things, auditing the guarantee funds to determine contracts—monies that had been received which in fact had been covered by the guarantee. 10

Q. How often were they there? Were they doing something of a periodical nature? A. Yes. It had to be done at least every month. They had to issue a certificate.

Q. They would be there looking at the books? A. That is correct.

Q. Was there any particular person from that firm who used usually to come to do that work? A. Yes, there was a Mr Brian Purcell.

Q. Any members of the firm itself, either Mr North Ash or Mr Mann? A. Yes, they would appear too.

Q. Prior to that letter which you have just seen had you yourself raised any of those matters that are contained in the letter with North Ash & Mann? A. No. 20

Q. Had your father in your presence ever raised any of those matters with North Ash & Mann? A. No, not in my presence.

Q. In particular, the part of the letter which refers to the statement that they were "at present preparing a plan for extensive tax saving which we expect will incorporate suggestions to this effect". Prior to the receipt of that letter had you ever made any request of them to prepare any plan to give any tax savings? A. Not prior to that letter. 30

Q. Had you had any discussion at all on the matter of tax savings with North Ash & Mann, or any employee of that firm? A. Not prior to that letter.

(Luncheon adjournment.)

### **On Resumption.**

Q. I had asked you before the adjournment about the letter from North Ash & Mann of 18th March, 1959, and as to whether, as indicated, these matters had not been discussed before? A. Not before that letter.

(Donald William Gray, officer of the Australian & New Zealand Bank produced documents on subpoena duces tecum. He indicated that all documents called for had not been produced but would be produced after further search.) 40

Q. Following that letter were you present at a meeting which was held and in which certain representatives of North Ash & Mann were present? A. Yes I was.

Q. Are you able to give us any idea what the date of that meeting

was with reference to the date of that letter, 18th March? A. Yes, it was there about the end of March or the beginning of April—the end of March.

Q. How did that meeting actually come about? A. My father told me that he had received a telephone call from Frank Mann.

Q. He told you he had received a telephone call and then this meeting was arranged? A. This appointment was made.

Q. Where was it held? A. In our offices in Caltex House.

Q. Who was present? There was my father, Frank Mann,  
10 Brian Purcell and myself.

Q. Frank Mann being a partner in the firm of North Ash & Mann? A. That is correct.

Q. And Brian Purcell being an employee of North Ash & Mann at that time? A. That is correct.

Q. And being the same person whom you told us came on a number of occasions to your premises in connection with doing certain duties for North Ash & Mann? A. That is correct.

Q. Will you tell me as best you can at this point of time what was said at the outset, firstly, about the conference? A. Yes. Frank  
20 Mann told my father and myself that he had been giving consideration to the affairs of International Vending Machines, and as such, there were a few things he wanted to discuss with us, concerning them. He was concerned primarily with the fact—(interrupted).

Q. This is what he said? A. Yes, this is what he was telling me, and my father being there of course. He was concerned with the volume of business that we had been doing, and were doing, and that we were going to face quite a heavy tax assessment and tax situation at the end of the financial year, and as such, he felt we should, with him, consider the method by which this could be faced and by which  
30 this could be provided for.

He said that there were methods, or ways, by setting the company accounts out whereby there could be a possible saving in the tax assessment. I enquired of him as to what these ways would be and he went on to explain that one of the alternatives—one of the methods—that could possibly be adopted would be the formation of a company which would have the status of being a public company, and thereby, gaining benefits that a public company would gain in tax assessments. When he explained this to myself and my father we found it very interesting, of course, and we instructed him that he should go further  
40 into his investigation concerning this and seek the best advice in the tax field he could obtain to ascertain the correctness of this proposition. He then left to do this—to carry out these instructions.

Q. When he mentioned at the outset about tax can you give me more accurately what words he used in relation to tax. It was tax he referred to? A. Yes.

Q. What did he say? A. The purpose of his visits was his concern—(objected to).

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—  
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Q. You are not permitted to refer to what his purposes were. I am asking you what in fact was said. I am asking you what Mr Mann said in the words he used. Can you give me a little more detail about what words he was using in connection with tax? A. He said he was concerned about the volume of business that was being done by I.V.M., and the amount of profit that would be accrued at the end of the financial year for I.V.M., and as such, this profit would attract a very large sum in taxation. It was this taxation on the Company that he was concerned about.

Q. Is that what he said? A. That is what he said to me. 10

Q. Did he give you any estimate as to amounts of profits or amounts of tax for which the Company would be liable? A. Yes.

Q. Tell me what he said in that connection A. He said he had assessed from his investigations up till that date, and his understanding from what he had seen in our books, that we could be facing a tax liability of something close to £200,000. I am sorry, not a tax liability but a profit of £200,000.

Q. That the Company would be facing a profit of £200,000? That is in the current year? A. That is for that current year.

Q. What did he say in relation to that? Try and capture his 20 exact words. What did he say in relation to that as far as tax was concerned? A. This £200,000 he assessed as profit and would be taxed on the basis of the company as it was at that time, and the whole £200,000 would be taxed in the same form. If no dividends were declared then it would be taxed on undistributed profits. If dividends were declared, of course, it would be taxed on those dividends.

Q. Did he work out any amount as to the total tax of the company which it would pay on this profit of £200,000? A. It was well over £100,000. I cannot remember the exact figure he said.

Q. You said he mentioned about the public company and there 30 was a discussion about getting expert advice. Will you tell me more about that? What was said about this matter of the expert advice, by you or by anybody else who was there—your father? A. When this proposal had been put by Mr Frank Mann to me—

Q. It was being put to both of you? A. Yes, both myself and my father and we were both present. He was asked to investigate this feature and to seek proper advice concerning it. We asked him if he could recommend a company we could talk to for this advice and he suggested two or three various companies whom we could seek such advice and Greenwood and Challoner was one of them and I don't 40 recall the names of the others.

Q. Was there any discussion about Greenwood and Challoner? A. Yes.

Q. What was said about Greenwood and Challoner? A. When he proposed the name of Greenwood and Challoner he explained to us that Greenwood and Challoner was probably the most expert in this field. He even said Greenwood and Challoner had written a book

on tax law and this book was now considered to be an authority, and on learning that both my father and I agreed he probably would be the best person to consult concerning this tax problem.

Q. At this conference you said was Mr Frank Mann and Mr Brian Purcell? They were both present. To what extent did Mr Mann and Mr Purcell respectively take part in this discussion? Can you give some idea as to the different parts the people played? A. Yes. Frank Mann was the person who outlined the original intention and the discussion which was to discuss this tax problem, and in discussing  
10 the tax problem he was bringing to mind certain figures and a certain situation that existed in the company as at that time. Brian Purcell was there and he was able to furnish details of these figures because he was the man who was actually working more frequently in the place on these figures.

Q. At that discussion was there any reference or any discussion as to exactly how this public company, for tax purposes, was to be formed? Were there any details gone into in respect of that? A. No, I don't believe so.

Q. Was there any discussion at that time of any loan being made  
20 by I.V.M. to the public company to be formed? A. No, not at that time.

Q. Had you, up till that time, ever had any thought at all in respect of any loan to any public company to be formed? (Objected to, allowed.) A. No, I had no thoughts.

Q. On that occasion, or on any other occasion, was there any discussion with Mr Mann referring to Purcell's part in this working for North Ash & Mann? A. Yes. There had been occasion—  
(interrupted).

Q. Was that during that conference or before this conference, or  
30 after? A. He had spoken to us before this conference and he spoke again after this conference.

Q. On the occasion before was it an occasion when you were present? A. I was present, yes.

Q. Who else was present on that occasion? A. My father and Frank Mann.

Q. What was said on the subject matter of Purcell? A. Frank Mann assured—(interrupted).

Q. Will you try and recollect how it was that it came up and what Frank Mann said? A. Yes. I believe we asked Frank Mann  
40 why Purcell was being sent more frequently to attend to the auditing of the accounts than he himself was coming in the past. We felt that Frank Mann himself—(interrupted).

Q. You cannot express your feelings here. What did you say?  
A. We said to him we had preferred that he do the auditing himself rather than send what we thought was a clerk. He assured my father and I that in fact Purcell was not a clerk and he had every faith in

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sending Purcell to do this work for him as Purcell was one of his cleverest men and associates in his company.

Q. That is in his firm? A. Yes, in his firm, and that we should not feel we were having sort of second-best by having Purcell do this.

Q. After this first meeting was there some other discussion with Mr Mann about Purcell? A. Yes.

Q. Would you tell me who was present at that? A. Once again, it was my father, Frank Mann and myself.

Q. What was said on that occasion? A. On that occasion Frank Mann told my father and myself that Purcell was going to be more 10 or less carrying out this investigation alone with him and that Purcell would be taking a very active part in this investigation as to the tax position and that we should be assured that he was once again a very capable person and that our interests were being well looked after.

Q. Was anything said about similar transactions in relation to Purcell? A. Only that he said that when Purcell was connected— (interrupted).

Q. This is on the second occasion? A. Yes, the second occasion. When Purcell acted in the capacity of North Ash & Mann we should accept it as such because he had Frank Mann's confidence and his, 20 more or less, permission to do so.

Q. Was there then a further conference held after this last discussion that you had with Mann, with Purcell? A. Yes, there was.

Q. Are you able to tell me the date of that? A. Not the date. It was at the latter part of March.

Q. At the first conference you said that was at the end of March, you thought? A. That is correct.

Q. Then there was some gap in between that conference and this next meeting? A. Yes, there was.

Q. Before this conference was held was there any appointment 30 made or what happened? A. Yes, I was told by my father he had received a telephone call that such an appointment had been made.

Q. Do you remember whether you had the conference the same day or a later day or not? A. No. I think it possibly would have been the following day.

Q. On that occasion who was present? A. There was my father and Brian Purcell and myself.

Q. Was that once again at Caltex House? A. Yes.

Q. On this occasion can you tell me what was said? A. Brian Purcell said to both my father and myself that he had consulted with 40 Greenwood and Challoner and had presented the facts of our position in relation to this tax problem, and as such, he had received recommendations from Challoner as to how we should treat this matter and how we should proceed. He went on to indicate what these recommendations were that he had received.

Q. I still want you to say what he said. He saw Greenwood and Challoner and some suggestion was made? A. Yes.



Q. Will you tell me what he, Purcell, then went on to say to you and your father? A. Yes. The recommendations that he stated were—(objected to).

Q. What did he say? A. He said a company was to be formed in Canberra and this company was to have 21 or 25—I am not sure of the number—21 or 25 shareholders, and would have the status, or would be considered, a public company. This company was to buy the shares that were held by my father—purchase the shares that were held by my father, my younger brother and myself—and thereby  
10 become the owner of I.V.M. I.V.M. would be its subsidiary company. A consideration of the price had to be placed on the value of our shares and the amount that we would agree on to be loaned.

Q. I want you to use his words. A. He stated that we should settle a price on what the value of our shares should be by the purchase of the Canberra company, and he said a loan should be made from I.V.M. to the Canberra company in order that the Canberra company could purchase our shares.

He then explained that the money that we would receive for our shares from the Canberra company would then be repaid back to  
20 I.V.M.—International Vending Machines. In so doing, he said, this would create the situation of the Canberra company owning all the shares in I.V.M., and as such, that I.V.M. would be a subsidiary of a public company and that the profits that would accrue in I.V.M. would not be subject to undistributed profit tax. The money which I.V.M. loaned to the Canberra company was to be repaid by means of possible future dividends being declared in I.V.M.

Q. Was anything said concerning the amount of the purchase price of the shares? A. Yes. He said that the amount that we decided as the purchase price for these shares would have to be a  
30 realistic one. It would not be sufficient to just put a nominal figure on it. He said we would have to determine what a realistic value of these shares would be and we there and then discussed the value of our shareholding in I.V.M., and decided and agreed upon a figure.

Q. Once again, you are coming to conclusions. I want you to try and recapture it. He said you had to put a realistic value on it. Try and say what you and your father said and what Mr Purcell said in arriving at some figure. The figure of £200,000 was eventually arrived at? A. That is correct.

Q. Try and give me the discussion. I am still confining it to  
40 this conversation you had with Purcell. Do you understand that? A. Yes.

Q. At some stage in that conversation was the sum of £200,000, the purchase price, mentioned? A. Yes.

Q. You have told me that Purcell said you had to put a realistic price on the shares? A. Yes.

Q. Had that amount of £200,000 been mentioned at all as the

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Respondent's  
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—

price for the shares before Purcell said you had to put a realistic value on the shares? A. No.

Q. After he said you had to put a realistic value on the shares will you endeavour to tell me what was said by you and your father and Purcell prior to you eventually arriving at the figure of £200,000?

A. Purcell was asked by my father what a realistic figure would be for the assets of this company. He was asked, with his handling of the company affairs and his knowledge of the amount of profits that had been made to date, what he considered would be a realistic value. He replied by stating the assets and the profit position of the company 10 was well in excess of £200,000, and I believe my father asked if in that case would the figure of £200,000 for the shares be a realistic figure and Purcell replied, yes, that would be a realistic figure.

Q. You mentioned that Purcell had said something to you about the profits of the company being in excess of £200,000. Was any reference made to any detail as to why he said that? I want you to try and tell me anything else that was said at all concerning the profit position of the company at that conference? A. Purcell said that the figures that he had received from our company, and in that company at that time, indicated quite clearly that there would be a 20 profit by the end of the year in excess of £200,000. In fact, it was substantially greater than that at the end of that period.

Q. Was any mention made in connection with profits about the balance sheet or the profit and loss account for the period ending December, 1958? A. Once again, he said he was basing his estimate of the profit—he had taken out a balance sheet in December, 1959.

Q. December, 1958? A. 1958, and the results shown in that balance sheet, plus his knowledge of what had been done since then, had clearly indicated to him that this figure of £200,000, or in excess of £200,000 was based on realism and not just a figure that he had 30 thought of.

Q. So far as you can recollect, is that the total of all that was said at that conference? A. I believe so.

Q. Having said those things, and put this proposal, what was said about whether or not it would be implemented or not implemented?

A. Brian Purcell, having told us these things, and my father and I having decided—

Q. Having said it to you, you or your father said something to him? A. We said to Purcell to proceed and make the necessities to implement this formation of a new company and to carry out the 40 advice as he explained to us at that meeting.

Q. Was anything said in that discussion, and in that statement of Purcell's, as to when this ought to be done by? A. Yes. Purcell told myself and my father this would have to be carried out by 30th June and that there was not very much time left and he would have to proceed immediately.

Q. Do you remember at this meeting he told you he had seen

Greenwood and Challoner? At that meeting did he tell you how many times he had seen Challoner? A. Yes, he had seen them twice, he told us.

Q. You have told us that he told you what was to be done about the promotion of the Canberra company and about the sale of your shares and about the loan from I.V.M. At any time at that meeting did he tell you, firstly, that the making of such a loan would be a breach of the provisions of the Companies Act? A. No, never.

10 Q. Did he at any stage make any mention of section 148 of the Companies Act? A. No, I never heard of it.

Q. Did he at any time say to you that this loan, or any part of it, would be a breach of the Companies Act or a breach of duty by the directors? A. Certainly not.

Q. Did he at any time tell you that Greenwood and Challoner had mentioned section 148 of the Companies Act? A. No.

Q. Or that anything had been said by Greenwood and Challoner on the matter of whether this was a breach of duty by the directors? (Objected to as to form; rejected.)

20 Q. Was any mention made, or any advice given, by Mr Challoner as to whether or not this might be in breach of the Companies Act or that the transaction might be illegal, or anything of that description? A. He never mentioned anything like that at all.

Q. Did he ever put to you as another alternative that your shares might be sold to the Canberra company and the consideration left outstanding? A. No.

Q. Did he ever make any mention to you of Mr Challoner having mentioned such a matter? A. No, no mention at all.

30 Q. Did he put any suggestion to you of the International Vending Machines, that is the Sydney company itself, becoming a public company? A. No.

Q. When telling you what was to be done did he discuss with you the pros and cons of forming the company in that way? A. What would you mean?

Q. You have told me that when he came he said he had seen Greenwood and Challoner and after that he then outlined what the proposal was? A. Yes.

Q. At this conference did he ever go into the reasons as to why you might or might not adopt that proposal? A. No.

40 Q. On that occasion, and on any other occasions up until the time you received the summons in these proceedings, did you have any idea at all that this transaction might have been an infringement of the provisions of the Companies Act? A. None whatsoever.

Q. Or that it could be alleged that it might be in breach of your duties as a director? A. None whatsoever.

Q. Did you in fact rely upon the advice that had been given you, as a director of this company, by North Ash & Mann? A. Yes.

MR MOFFITT: Q. That is a carbon copy of the audited balance sheet

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—  
Respondent's  
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—

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but it in fact contains the signature of Mr Mann. Do you know his signature? A. Yes.

Q. And that is then the carbon copy of the balance sheet of I.V.M. as at 31st December 1958 including of course the profit and loss account? A. Yes.

(Copy balance sheet as at 31st December 1958 tendered and marked Exhibit "3".)

(Balance sheet and accompanying accounts as at 30th June 1959 and letter of 22nd October 1959, tendered and marked Exhibit "4".)

Q. At the time that this report was given and you had this conference with Purcell, was he then still an employee of North Ash & Mann? A. Yes.

Q. At some later stage did he become the Secretary of International Vending Machines? A. Yes, that is so.

Q. And also Secretary of I.V.M. Holdings or A.M. Holdings? A. That is so.

Q. After you had had this discussion with Purcell did you have any discussion with your younger brother, that is the third shareholder, concerning this matter? A. Yes, there were discussions held between my father, myself and younger brother.

Q. Did you tell him about the proposal? A. Yes.

Q. Subsequent to that—I think it has already been given in evidence—the various cheques which have been tendered in evidence were then signed by you and your father and then banked, is that the position? A. That is correct.

Q. At that time, the time that that happened, what was the position with regard to Purcell? Had he come into your employ at that time? A. Yes, he probably had.

Q. Who actually had the administrative details of drawing up the cheques and banking the cheques and things of that description? A. Brian Purcell.

Q. Following upon the payment of these cheques which have been referred to did you make a payment of a sum of money before the 30th June to the Canberra Company—you and your father and your brother? A. Before the 30th June a sum of money?

Q. A total of £50,000? A. To the Canberra company?

HIS HONOR: . . . I thought at some stage there was a suggestion that this amount could have been dealt with by way of dividend distribution, that is the amount which was concerning the accountants, £200,000.

MR MOFFITT: There are two stages. There is a discussion that took place as to what would be the position in certain conditions, and that took place in May.

HIS HONOR: Just before the end of the financial year?

MR MOFFITT: Yes, and then of course when the accounts are brought

out in October in the light of the then events, of course the accounts are in this form.

HIS HONOR: That is what I say. It seems extraordinary to me, but there may be some explanation of it.

MR MOFFITT: I am not following Your Honor on this matter.

HIS HONOR: Apparently by October it was determined that the only amount distributable for the year ended 30th June 1959 was a maximum of £13,780; yet not in the accounts but at some stage the suggestion has been made that there could have been a dividend distribu-

10 tion of something approaching £200,000. Was that in your address?

MR MOFFITT: I suggested what could have been done in the alternative, but instead of this happening—that there could have been a dividend declared—if this matter had not gone this way—in respect of what would have been the profit.

HIS HONOR: Apparently by October it had been determined that the only distributable profit was £13,000.

MR MOFFITT: Yes, Your Honor, but I am putting what could have been done—what the directors would have been entitled to do, as I understand it.

20 HIS HONOR: I do not know about entitled. They would not have been commercially entitled if these accounts are correct.

MR MOFFITT: But the question of a transfer of a particular sum is a matter of determination of the directors; that is not a matter that the auditors say is necessary in respect of some future reserve.

HIS HONOR: It is in the points of defence. It says, “So far as the company is concerned the moneys constituting the said advance . . . by way of dividend.”

MR MOFFITT: That is put on the basis—assume that this transaction had never taken place, that the directors had the power in their  
30 hands if they thought fit, still acting as directors and still entitled to do it, to declare a dividend based upon this as a profit.

HIS HONOR: But they could not have declared the dividend until they got the accounts—not safely—and when they got the accounts they saw that the accountants’ view was that there was a profit of £13,000 safely distributable.

MR MOFFITT: With respect, the account’s view would depend on the decision of the directors on this aspect as to what sum they would wish to set aside in respect of a reserve.

40 HIS HONOR: Well, at least they thought at the time, rightly or wrongly, that they needed a reserve of £150,000 to meet the security on the guarantees.

MR MOFFITT: I do not know whether it is thought that they needed, but it was in fact a reserve set aside in the then events because of the decision not to distribute. Your Honor will see it is a question of where you start on these matters.

HIS HONOR: However, we need not go into these matters now.

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—  
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MR MOFFITT: In view of Your Honor's comment I will certainly deal with it at a later stage.

I tender the minutes of A.M. Holdings Pty. Ltd. and folios 17 and 18 of exhibit "D".

HIS HONOR: I will add folios 17 and 18 to Exhibit "D".

MR MOFFITT: Of Exhibit "C" I tender folios 28, 29, 31 and 32.

HIS HONOR: I will add those to Exhibit "C".

MR MOFFITT: Q. I show you firstly the minute book of A. M. Holdings in respect of the meeting of 29th June 1959 referring to the application to that company for fully paid convertible preference 10 shares, 22,500 Louis Steen, 22,500 Joseph Steen and 5,000 Sydney Steen, and then subsequently a meeting of the 29th June 1959 in I.V.M. minute book, an application by A.M. Holdings for 50,000 £1 shares in I.V.M. Pty. Ltd. Do you recall that now? A. Yes.

Q. Out of the moneys that were received by you and your father and your brother from the sale of the shares in I.V.M. for the total of £200,000, was a total of £50,000 paid? A. That is correct.

Q. If you had not received that £200,000 would you have had the money to have advanced that £50,000 to I.V.M. Pty. Ltd.? (Objected to.)

20

Q. If you had not received the £200,000, that is, you, your father and your brother, from the sale of these shares, would you have been in a position to have subscribed this £50,000 to A.M. Holdings? A. No.

HIS HONOR: He is answering on behalf of all of them, is he?

MR MOFFITT: Q. So far as you were concerned, is that the position? A. That is the position.

Q. And so far as you know was that the position with your father and your brother? A. As far as I know, yes.

Q. Prior to the matter of the formation of a company having 30 been raised in the manner that you have already given in evidence—do you remember your evidence about that, first the letter in March and then the discussions and so forth—prior to that time had there been any discussion between your father and yourself concerning any withdrawals of money from I.V.M. to yourselves by way of loan? A. Yes.

Q. Did you and your father as directors come to some decision on that matter? (Objected to, allowed.)

Q. Can you tell me yes or no—did you reach some decision? A. Yes.

40

Q. I am still speaking about prior to these questions of this tax having arisen with North Ash & Mann—can you tell me did you have any discussion on the same subject matter of drawings, yourself, your father and your brother? Had you had any discussion with your brother Sidney Steen? A. Yes.

Q. And only yes or no, but had you come to any agreement with him about that matter? A. Yes.

Q. I will go firstly to any discussions between your father and yourself. I do not want, Mr Steen, to go into any question where there were discussions except where they relate to some decision that you made. Do you understand that? Will you tell me what discussion took place between your father and yourself relating to the drawings of yourself, your father and Sidney Steen? A. Yes. In the discussion with my father I informed him that I required certain moneys and I would like to make or take a loan from I.V.M. and this loan would be repaid from any future dividends that would be coming to me as a shareholder, and as such I was asking him if it was all right to do so, and he agreed it would be in order for me to do so. And the same applied in the same conversation that he too would require funds and that he too would repay those funds out of any future dividends that would be declared and due to him as a shareholder.

Q. In respect of any particular drawings by way of loan that were made, was that a matter that was done without consulting the other, or was there discussion between the two of you? Tell me what was the practice? A. It was always a discussion. It was never done by one person without having prior discussion with the other.

20 Q. Will you tell me whether at any stage there was any general discussion as to what you proposed to do generally? This is before this question of the taxation discussion was raised. Had there been any discussion between yourself and your father in regard to the matter generally as applying up to the end of June 1959? A. Yes.

Q. Any discussions say prior to March 1959 on that subject matter? A. Yes.

Q. Firstly can you tell me when approximately there was some general discussion about that subject matter? Was it once or more than once? A. I think it was only on one occasion because it was 30 agreed upon and settled on that occasion.

Q. Can you tell me when that was? A. I could not recall just exactly when that was.

Q. Can you tell me what on that general matter was said between you and your father? A. Yes, that these loans that were being made to myself or to my father or my younger brother, that by the end of the financial year a balancing would take place, and that at the end of the year we would declare a dividend which would be sufficient to equalise those loans that had been made to myself or to my father, and by so doing to be able to repay to I.V.M. the moneys we had 40 borrowed.

Q. You used the word "equalise". But were the drawings as you went along—did you draw the same amount as your father or were there differences in the amount? A. There were differences in the amount.

Q. In this discussion that you had was there anything said between you and your father about the disparity that might exist in the drawings between yourself and your father? Was anything said

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about that? A. Yes, that if either one of us had a larger loan account than the other the difference would be made up at the end of the financial year.

Q. When the sum of £200,000 was received—that is between the three of you—from the sale of shares at that time, I think it is common ground and evidence has been led that you and your father and your brother Sidney Steen owed money that you had borrowed from I.V.M. at that time. Now, was anything done at that time, that is before the end of June so far as equalising between your father and yourself and Sidney Steen? A. Yes. 10

Q. With regard to the cheque or cheques for £200,000 that you, your father and your brother Sidney Steen received, I think we already have evidence that that was paid back into I.V.M. The cheques have been tendered? A. That is correct.

Q. Then was there some drawn out by, I think, yourself and Sidney Steen to equalise according to your shareholding the amount that your father had drawn? A. Yes, I believe so.

Q. Approximately that position? A. Yes.

Q. Then in addition there was the sum of £50,000 drawn out pro rata, your father, yourself and Sidney Steen, which was then used 20 for the taking up of share capital in A.M. Holdings which in turn took up share capital in I.V.M.? A. That is correct.

Q. Then the balance as at the 30th June 1959 was left with I.V.M.? A. That is correct.

Q. The position so far as the actual liquid funds of I.V.M. are concerned would be that after these transactions had all been finished they would remain the same with the exception of the equalising amount that was drawn out? A. That was so.

Q. Would you look at these balance sheets? (Exhibits "3" and "4" handed to witness.) There is an item there in Schedule 2? A. 30 1959?

Q. Do you see under an item in the balance sheet, sundry creditors, £29,948? A. Yes.

Q. Then you turn over to Schedule 2. Do you see those? A. Yes.

Q. Will you tell me whether or not before you and your father left the company, left control of the company, all of those amounts had been paid? A. Yes, they had all been paid.

Q. Do you see in the balance sheet on one side fixed assets? A. Yes. 40

Q. There are some motor vehicles there? A. I beg your pardon?

Q. On the assets side you see amongst other things motor vehicles there? A. Yes.

Q. And on the secured liabilities do you see various sums which total £18,304/3/11 if you turn over the page? Do you see that?

A. Yes.

Q. In respect to those, were those secured on various of your



motor vehicles and office equipment and things of that description at that time? A. At that time, yes.

Q. And subsequently in the following year did you have many liquid funds? A. Yes, we had considerable.

Q. In the running of I.V.M. You had considerable. When you had those what did the company do so far as these secured liabilities were concerned? A. We cleared those off. We paid them out.

MR BOWEN: I object to this. These are specific transactions and I want specific transactions proved.

10 HIS HONOR: Then I reject the last question and the answer.

MR MOFFITT: Q. Did you, or your father in your presence, have any discussion at any time concerning the method of the keeping of accounts and the return of profits for taxation purposes so far as the receipt of money from vending machines where you had received the money and the machine had not been installed by the end of June? Firstly, did you have any discussion with some accountant or some person such as that? A. Yes.

Q. With whom was that discussion had? A. With Frank Mann and Brian Purcell.

20 Q. And when was that? A. About April, May. I think May.

Q. Who raised the matter? A. Purcell or Mann.

Q. That is of 1959? A. 1959, yes.

Q. Will you tell me when Mann or Purcell raised it what was said in that regard? A. Yes. I was told in the presence of my father by Mann or by Purcell—I just do not recollect which one—that goods which had been sold by means of sale of vending machines with a contract were considered a sale so far as—

MR BOWEN: Could we have the words?

MR MOFFITT: Q. You understand, Mr Steen, to use your best  
30 endeavour to try and pick the actual words. Would you do that for me?

HIS HONOR: What were you told?

MR MOFFITT: Q. What were you told? A. I was told by Purcell or Mann that contracts which had been sold by I.V.M. were a completed sale and as such they had to be treated as such in the book-keeping system of the company—they were not to be considered as incomplete and therefore held in suspense until the machines were located or sited, but upon the payment of the contract that was a sale and as such had to be entered through the account of the company, and I was advised by Mann & Purcell that I should see that these  
40 sales and contracts were put through the company's accounts in order that they could at the appropriate time make a proper audit and draw up proper balance sheets. Having been told that I proceeded and carried out those instructions.

Q. Did you see Mann or Purcell? Did they take any step in your presence concerning that matter about the method of bringing it into your books? A. No.

Q. I want you to tell me firstly was there any step taken by

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Mann or Purcell in your presence and if so give me the details of it?  
A. The only step they took was to instruct me as to how this should be carried out.

Q. That is what I want to get. Tell me what detail they gave you, if any, about carrying it out? A. I was instructed by them—

Q. You say you were instructed. Did Mr Mann or Mr Purcell say "Do this" or "Do that"—can you put it that way? A. I am sorry. Mr Mann or Mr Purcell instructed me—I do not know which one but it was in the presence of both of them—I was instructed by either Mr Mann or Mr Purcell that those sales which had been completed and cash received for them had to be carried into the accounts by means of making invoices out for them and therefore entering them into the books of the company. 10

Q. Before that alteration was implemented what had been the practice so far as the invoices were concerned? Who made out the invoices in respect of sales? A. Invoices were made out by the individual branch which the sale of those machines applied to and were made out by the branch at the time of the machine having been allocated.

Q. At the time they were put on the site? A. Put on allocation. 20

Q. Take the case of a Victorian vending machine when it was sited—where would the invoice be made out? An invoice would be made out in the Melbourne Branch, the Victorian Branch.

Q. And then sent to the Sydney registry? A. And copies sent to Sydney head office.

Q. What was the position about the volume of contracts coming into the company just before the end of June or just before the end of the financial year, June 1959—say May and June? A. In May and June the contracts were coming in exceedingly fast and progressively larger as each month was going past. 30

Q. And so far as the manufacture of the machines was concerned, what arrangement did you have with regard to their manufacture? A. We had standing—

Q. I am not asking for the details of any contract, but what was the setup? A. Their set up was to supply as many as had been ordered.

Q. Who is that? A. I am sorry. This was prior to 1959?

Q. Yes, that is in May and June 1959 A. Yes. The suppliers were Ainsworth & Co. and G. E. Tidbury & Co. and both these companies were supplying the vending machines to us as quickly as they were being manufactured. We were issuing instructions each month increasing our orders and increasing our demand for our supply. 40

Q. Was it in the ordinary course of business? Were there any delays between getting a contract for a machine and siting the machine? A. Yes, there would be a normal delay.

Q. In fact was there some time lag between the contract and the machine in May and June of 1959? A. Yes, there was.

Q. Was the lag the same in each of the States or did it differ?  
 A. No, the lag would be relatively the same in each of the States.

Q. And did you have one type of machine or more than one type of machine that you were selling? A. We had more than one type of machine.

Q. Did purchasers purchase any machine or did they purchase a particular type of machine? A. The purchaser would nominate and purchase a particular type of machine.

Q. As well as getting the machine, before you sited it did you  
 10 also have to get a site? A. We had to obtain a location for it.

Q. Did you then have to make some arrangement with regard to its siting? A. Yes.

(Further hearing adjourned until 10 a.m., Thursday, 30th November, 1961.)

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 —

JOSEPH STEEN

Further examined:

MR MOFFITT: Q. Did you at any time when you were a director see the notice of assessment of tax in respect of International Vending  
 20 Machines Pty. Limited in respect to the period for the 30th June 1959?  
 A. No.

Q. Did you ever see or have any knowledge of any letter from North Ash & Mann enclosing any such assessment or copy of such assessment? A. No.

Q. I think you ceased to be a director of International Vending Machines, that is so far as the minutes are concerned, on 3rd June 1960? A. That is so.

(Taxation assessment for the year ended 30th June 1959 tendered and marked Exhibit 5.)  
 30 MR MOFFITT: I call for any letter from North Ash & Mann purporting to enclose such an assessment or any copy of any such letter. If my friend will agree that in the North Ash & Mann file there is no such letter—

MR BOWEN: It is not produced Your Honor.

MR MOFFITT: I also tender copy of a letter from the Deputy Commissioner of Taxation dated 23rd March 1961 to Messrs. Ian Mackinnon Nicolson & Company which is annexure B to an affidavit of 27th March 1961 of Thomas Peter Ball, already in the Court file.

HIS HONOR: This is an assessment for company tax?

40 MR MOFFITT: Yes.

(Copy letter dated 23rd March 1961, marked Exhibit 6.)

(Copy income tax return for the year ended 30th June 1959 tendered and marked Exhibit 7.)

MR MOFFITT: Q. Prior to this matter of tax having been raised by

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North Ash & Mann in the manner you have given evidence about yesterday, following on their letter in March, will you tell me what your intentions were in regard to taking out or leaving in money—I should say profits earned by the company up to 30th June 1959? (Objected to, allowed.) A. It was my intention outside of drawing limited salaries to leave whatever profits had accumulated in the company—to leave that in the company and to allow that to grow for the benefit of the company.

Q. Had you had any discussion or any decision in general policy with regard to this matter with your father prior to the matter of the 10 tax having been raised? A. Yes.

Q. Will you tell me what was the discussion, what was said and what was decided on that matter? Try and use the words, Mr Steen? A. In the discussion with my father my father and I agreed that we should just take out limited funds in the form of salaries etc. and the profits which were accumulating in the company we were to leave in the company.

Q. I am coming now up to the time of the transaction which has been attacked, that is in relation to the formation of the company in Canberra, up to the time that transaction was carried out had you 20 done anything in the running of the company with regard to the expansion of the activities of the company? A. Yes.

Q. Would you tell me what had been done, firstly with regard to any machines from the point of view of expansion of the company? A. Yes. We had contacted our manufacturer, Ainsworth, and given him instructions to proceed to develop a prototype for a cigarette machine.

Q. Just pausing there, what type of machines were they that you started off with in the company? A. The Victor machine—it was a ball gum dispenser. 30

Q. That is what you started with, a type of lolly that would be used by children, is that correct? A. Yes.

Q. On the American approach? A. Yes.

Q. That was known as what? The Victor, was it? A. Yes.

Q. I want you only to speak up to the time of this transaction; I do not want you to go beyond it. What other type of machine had you had in the initial stages? A. In the initial stages we had a hand lotion machine, a Brilcream dispenser and a perfume dispenser.

Q. Had you yourself caused any survey to be taken out in respect of these machines and the margin of profit to be gained, say, in respect 40 of a thing like Brilcream? A. Not a market survey.

Q. No, but can you tell me what there a margin of profit on the sale? A. Yes.

Q. A small or a large one? A. A very large one.

Q. About what percentage? A. On the Brilcream dispenser—(objected to).

MR MOFFITT: I am merely putting this in a general way as to the

general financial type of business of the company up to the time this transaction took place. I submit I can ask him as a director in respect of this what they paid for Brilcream and what price was charged. That is all I am asking him.

HIS HONOR: The price paid and price charged?

MR MOFFITT: Yes. What was the mark-up on Brilcream.

MR BOWEN: I would not object to that.

MR MOFFITT: Q. I am not asking you anything just beyond this question. Take in respect of merchandise like Brilcream, as an  
10 example, from the cost of the merchandise, that is what it cost, as against what it was sold for, what was the difference in terms of percentage? (Objected to; rejected.)

Q. Are you able to give me at the early stages—I do not know whether the prices were the same right through—but at the early stages what per unit it cost you for a unit of Brilcream and what you sold it for? A. Not in the case of Brilcream. There is a reason why I could not give you that at this moment.

Q. Are you able to give it to me in the terms of a percentage difference? A. Not in the case of Brilcream.

20 Q. In the case of ball gum or hand lotion? A. In the case of ball gum, yes.

Q. What was the position about ball gum? What did the unit cost, and what was the selling price? A. The unit cost per unit of ball gum was in the region, I think, of point six of a penny and the return was a penny.

Q. You cannot at this stage give me the exact figures in respect to the other two, the Brilcream and the hand lotion? A. No, I could not from memory.

Q. You started off with those machines, and did you have any  
30 other machines in operation up until May-June 1959 than the Brilcream, hand lotion and the bubble gum? A. I am sorry.

Q. Did you have any other machines in operation up till May-June 1959? A. There were two prototypes out.

Q. When you say prototypes, these were machines that you had—what? A. Had on test.

Q. What were the prototypes? What type of machines were they you had on test? A. A soft drink dispenser and we had a juke box on test.

Q. Those two types of machines, had you seen those—I do not  
40 say the design, but had you seen machines carrying out a function with that merchandise in America? A. Yes.

Q. You said you had taken some initial steps in respect to cigarette machines? A. That is correct.

Q. How far had you got—I am only speaking up to May-June 1959—with that project? A. We had issued instructions to the manufacturer to build a machine to our specifications.

Q. With regard to this machine, was it any different in size and

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in function from the way you had discussed it up till May-June 1959 as against the earlier machines you had got out? A. Yes.

Q. In what way? A. It was much larger, much more versatile in what it mechanically did and much more expensive.

Q. When you say more versatile in what it did, did it have a number of columns of cigarettes? A. It had a number of columns and it performed three or four functions.

Q. Was it one that would give you change? A. It would give you change.

Q. As at May-June 1959 what were your intentions so far as the future of the company was concerned, as to whether you intended to continue on a narrow line or to expand? A. It was my intention that the company would and should expand very largely. 10

Q. Had there been any discussions between yourself and your father on those matters? A. Yes.

Q. In what you had seen in America on automatic merchandising, what had you seen there as to the extent to which it was used? A. Automatic merchandising in America was so developed that I doubt if there was a day went past when an individual American would not at some time have to turn or would turn to a mechanical dispenser for his everyday needs. 20

Q. It covered a number of fields? A. Practically every field.

Q. Had you and your father had any discussion prior to the matter of tax ever being raised concerning the question of enlarging the company? A. Yes.

Q. What was the discussion about enlarging it, in what respect? A. In bringing out and introducing new and varied types of machines and selling various new types of merchandise through machines.

Q. Had you in fact gone to Melbourne at some time prior to this matter of the tax being raised and seen some stockbrokers in Melbourne? A. I had. 30

Q. Whom did you see down there? A. A partner in J. B. Weir in Melbourne.

Q. Who are J. B. Weir? A. A prominent stockbroker in Melbourne.

Q. Who is concerned with assisting in the flotation of public companies on the stock exchange, is that right? A. Yes.

Q. Can you tell me approximately when that was in reference to this matter of tax being raised in March? A. It would have been the early part of the year—January-February. 40

HIS HONOR: What does this go to Mr Moffitt?

MR MOFFITT: It is quite relevant to a fact in issue, that what was being done with this company was that it was a company where the money, or the bulk of the profits would have been left in for the expansion of the company, and that when this matter was raised, this transaction, the purpose of it viewed in the light of the approach of the company was that it was something that had been done for the benefit

of the company. That is the basis on which I put it.

HIS HONOR: I realise broadly how you are putting that, but I do not quite see at the moment how it goes to that. It would have been left in but it was not—is not what would have been done all hypothetical?

MR MOFFITT: There was no money declared as a dividend at any time, but the position is that the money in fact apart from the drawings did go around and came back into the company, and after the transaction was finished the bank account in I.V.M. would be  
 10 the identical amount to what it was immediately before the transaction, and that what happened thereafter was that of course some of that went back as share capital and apart from the balancing out of the loans as at 30th June, the balance in fact remained in the company. I think it may go to whether or not, as I take it from the questions my friend has asked—he suggests the advice was advice given not to the company but to the directors because of their personal desire or because they wished to get the money out as dividends. We say that is not the position, but it was raised because this company was progressing and otherwise it would have paid undistributed profits tax.

20 HIS HONOR: If the money is still in the company then you have a very strong argument have you not, but it is not, is it? Was it not all taken out again afterwards?

MR MOFFITT: What is Your Honor referring to?

HIS HONOR: If the final repository of these moneys is in this company then of course it has a big effect.

MR MOFFITT: That is the position as at 30th June, but by the end of the year the position for other reasons had changed because of the expansion and instead of declaring a dividend at the 30th June 1959, which might have been declared for a very large sum, these  
 30 moneys were used at a later stage. A different situation may well have existed in 1959 to 1960.

Q. Would you tell me what happened? You had a discussion there? A. Yes.

Q. What was said? A. I asked the partner of J. B. Weir for his advice concerning our position, the company's position, that is, with a view to going public and making a public float.

Q. Can you tell me who the person was? A. I am afraid I cannot recall his name.

Q. You have endeavoured to recall his name since then? A.  
 40 Yes. As I said, I was asking him his advice concerning the possibility of International Vending Machines going to a public float, and I explained to him the activities of the company up to that particular time. I outlined to him the fact that we wished to go into a public float and the reasons for it, the expansion of the company and the introduction of new types of machines which were going to cost very large sums of money. He replied to me—his advice was that it was too early in the history of the company to consider this; that one

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would require at least two years' trading figures which at that time I was not able to give him and he suggested that if the company continued to trade successfully and expand, as I have outlined, that we should reconsider it in two years' time.

Q. And you also had some discussions with somebody else, or you and your father had discussions with somebody else on the matter of a public flotation of this company in the future? A. Yes.

Q. Firstly, when was that in reference to seeing somebody to Weir's? A. I think it was prior to Weir's, and also subsequent.

Q. Who was that that you saw? A. A Mr Dolphin, bank 10 manager of the A.N.Z. bank.

Q. What was the discussion with him? A. We also asked his advice as to what he thought about placing our company International Vending Machines—making it into a public company and having a public float and having listing on the Stock Exchange. His advice also was from the bank that the company did not have a long enough history to make a float of this type successfully.

Q. Would you tell me when money was received—I am speaking now of prior to 30th June 1959—in respect to a sale of a machine, the purchase price was received, we have already seen that under 20 certain agreements you had to make certain payments to the merchandising company—when the money was received into the company, that is International Vending Machines, what was the procedure with regard to that payment as to when it was made, that is the ten per cent payment? A. It was made at the time of the sale.

Q. That is at the time the money was received? A. Yes.

Q. Did you wait until the machine had been sited or would it be paid? A. No, it would be paid before.

Q. Did the auditors from time to time issue certain certificates? (Objected to, withdrawn.) 30

(Mr Moffitt stated that he tendered from the file produced by the liquidator a series of certificates of North Ash & Mann; the tender was objected to and argued.)

MR MOFFITT: I propose to put in a contract which might clarify it, Your Honor, and I will reserve the tender for the moment.

HIS HONOR: Yes.

MR MOFFITT: Q. Do not say anything for the moment, Mr Steen, but I want you to have a look here and see if you can pick out which was the form of agreement which was being used immediately prior to May and June of 1959. See if I have it there, will you? A. Yes. 40

MR BOWEN: That is between I.V.M. and the machine owner, is it?

MR MOFFITT: There could be one or two. I am not sure.

Q. It is not there? A. No.

Q. Have you got one yourself in your case, and if you have will you produce it for the moment Mr Steen? A. Yes. (Witness produced a printed document.)



Q. Have you got the one between I.V.M. and the machine owner for that period? (Witness produced another document.)

Q. Just before I take you to the specific agreements, I want to get the practice. At the time of a sale would there be two agreements entered into by the proposed machine owner? (Objected to unless related to a specific time.)

Q. If I can speak of 1959, but prior to May 1959, do you understand that? A. Yes.

Q. At that time was the practice for the proposed purchaser of a machine to enter into two agreements, one with the vending company and one then with the operating company? A. Yes.

Q. In the case of a New South Wales machine it would be Automatic Merchandising (N.S.W.) Pty. Limited? A. That is so.

Q. Are these two (documents shown to witness) the form that was being used in that period? A. Yes.

Q. The particular ones of course have actual persons mentioned? A. Yes.

HIS HONOR: Q. And was that during the whole of that period that those forms were used? A. Yes, Your Honor.

20 (Two pro forma agreements tendered and without objection marked Exhibit 8.)

MR MOFFITT: Q. Would you look at this document? Before the end of June had there been some variation of the form of agreement with the operating company? A. Before the end of June, yes.

Q. (Exhibit 8 shown to witness.) When that change occurred in the operating agreement, that is the one I have shown you, did the agreement with the vending company remain the same, or was there some variation in it? (Objected to.)

HIS HONOR: Which change?

30 MR MOFFITT: When the change occurred in the operating agreement to which we have just referred, Your Honor. I will tender the changed form.

(Altered operating agreement tendered and marked Exhibit 9.)

Q. Are you able to tell me whether or not there was any change in the vending agreement when there was the change in the operating agreement? A. No change.

Q. Are you able to tell me then whether this form of vending agreement which is part of Exhibit 8—was that still in operation to the end of June? A. Yes.

HIS HONOR: Mr Moffitt, there is no guarantee by I.V.M., is that so?

MR MOFFITT: There is a guarantee on the machine, but not a guarantee in respect of the return.

HIS HONOR: What was the contingency?

MR MOFFITT: The contingency was only if there was some future contingency. There was no legal contingency. That is what I am endeavouring to put before Your Honor—when that refers to a con-

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tingency it means that if some future contingency arises.

Q. Apart from this document—that is the International Vending Machines shown in Exhibit 8—was any other agreement entered into with machine-owners before the end of June, other than this agreement?

A. No, none.

Q. I mean there was no other form of guarantee given in some separate document, or something of that description prior to June 1959? A. None at all.

Q. Apart from any agreement of the type Mr Bowen has referred to as paying to the operating company the ten per cent, that has been done, was there any other agreement to pay any sum to the operating company in operation prior to the end of June 1959? A. No.

Q. You said that prior to the end of June you had had some advice from your accountants regarding the machines that had not been sited so far as the accounts were concerned. With regard to the machines which had not been sited before the end of June, will you tell me what the reason for their not being sited was? A. There were two reasons why those machines had not been sited. The first reason was the difficulties we were experiencing in getting adequate supplies from our manufacturers and the second reason was the fact that in May and June of that 1959 year there was a tremendous inflow of business at a much greater rate than we had previously and such that it was not possible to catch up in that short period of time.

Q. So far as the manufacturer is concerned had you been doing anything with regard to expediting the manufacture? (Objected to, allowed.) A. Yes, we had sent numerous or various letters urging them—(objected to, rejected).

Q. So far as the actual things that you were doing apart from actual correspondence would you tell us? A. Yes, we had meetings with them where we—(objected to, withdrawn).

Q. Were there any meetings at which you were present? A. Yes, I was present at several meetings.

Q. Were there any meetings at which you were personally present? A. Yes.

Q. One or a number of them? A. Several.

Q. Would you tell me what happened at those meetings? (Objected to; rejected.)

Q. Can you tell me what was said at those meetings between you, or persons of behalf of International Vending Machines, and the manufacturer? A. Yes. I urged the manufacturers to speed up deliveries and inquired as to why the deliveries were so tardy and on discovering various reasons I even went so far as to advance some money to assist in speeding up the delivery of machines prior to June 1959.

(Mr Moffitt retendered certificates from North Ash & Mann.

The tender was objected to and argued.)

HIS HONOR: I will not allow the documents. I do not think that

the circular or the other signed documents are any proof of the accuracy of the contents of the documents or in any way an alternative to proving the state of the funds referred to in the documents, and even assuming that the material is relevant, I do not think that the documents have any probative force.

(Certificates of guarantee fund m.f.i. 4.)

MR MOFFITT: Q. Do you see these documents which are marked for identification 4? Would you look through them? Did you see those, or any of those, from time to time at I.V.M. after they had  
10 been issued? A. I did.

Q. When did you see them in relation to their dates as far as you can now recollect? A. Possibly a day or two days after the date.

Q. Did you believe those to be accurate? A. Yes.

(Certificates of guarantee tendered and marked Exhibit 10.)

HIS HONOR: I will allow them, not as any proof of the correctness of the contents, but only as evidence that they were seen by the witness and he believed their contents to be true.

MR MOFFITT: Q. Did you at any time have any knowledge of any requirement that might have existed to make any formal declarations  
20 to the board of directors or to have any note made in the minutes concerning any interest that you or your father may have had in respect of the transaction involving the loan from International Vending Machines to A.M. Holdings? A. No.

Q. From a physical point of view who was the person who at that period of time, at the time of the formation of the company, framed the actual minutes and the notices and things of that description in relation to that transaction and carrying it into effect? A. Brian Purcell.

Q. So far as Mr Dale is concerned what happened so far as his  
30 doing anything in relation to the Canberra company? Did you personally give him instructions about that, or what was the position? A. I did not personally give him instructions.

Q. Any instructions came from Mr Purcell, is that the position? A. That is correct.

Q. And as far as you know at any time what did he do in relation—

MR BOWEN: I take it my friend is not relying on privilege?

MR MOFFITT: This does not touch it one way or the other. I am simply asking him what he did, that is all.

40 Q. In relation to the Canberra company and so forth, what did Mr Dale do so far as you know? A. He was responsible for the formation of the Canberra company.

Q. Apart from that did he take any other part in respect to this transaction? A. No.

Q. Did you have at any time any conversation or discussion with him about any part of this matter? A. None at all.

HIS HONOR: Q. Mr Steen, where was it intended that the merchandis-

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ing company should get the initial twenty per cent of the capital cost of the machine to pay into the trust account? A. From International Vending Machines.

Q. The whole lot of it? A. That part which they would require in the beginning, at the inception, of the company, they would require all of it, but at some subsequent date through the accumulation of profits from their own earnings they would require less and less.

Q. But what if they did not accumulate profits? A. Well, whatever they required we would borrow from I.V.M. for the first year.

(Short adjournment.)

10

MR MOFFITT: The witness came to me at the adjournment and mentioned that he would like to correct something, Your Honor.

Q. Is there something you want to correct on some part of your evidence? A. Yes.

Q. What is that? A. When you asked me the price relationship between the cost of ball gum and the selling price of ball gum I stated point six of a penny; I recall the figures more exactly—the cost of the ball gum was 3/4d. per pound and there were 110 pieces of ball gum on an average per pound which sold at 1d.

Q. What does all that add up to? A. It comes to 9/2d. return 20 for a cost of 3/4d.

Q. You pay 3/4d. and you get 9/2d.? A. Yes.

Q. You told us about the changes in the operating agreement with the merchandising company, that the machine owner entered into, in that contract, and I think one of the forms shows twenty per cent. Did it remain twenty per cent right through up until 30th June 1959, or did it become some other percentage at some stage? A. I believed it remained twenty per cent to June 30th 1959.

Q. Are you sure of that? (Objected to.)

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#### CROSS-EXAMINATION.

30

MR BOWEN: Q. Will you have a look at that pro forma agreement between I.V.M. and the merchandising company and the machine owner? Is that a form which I.V.M. commenced to use during 1959? A. At any time during 1959?

Q. Yes? A. This pro forma here—

Q. Can you answer the question? A. Not as it is here.

Q. Did it not commence to use that form in September 1959?

A. Can I read through?

Q. Yes? A. Now, could I have the question again?

Q. Yes, did the company use that form from September 1959? 40

A. Not this exact form.

Q. When did it use that form? A. This form was prepared after the sale of the companies—after the sale of IVM to Independent Holdings. It is so printed on the top here.

Q. That would be after May 1960, would it? A. May 1960, yes.

Q. That form was not used you say before then? A. Not this particular one.

(Sale form m.f.i. 5.)

Q. Will you have a look at this form I now show you. Can you tell us whether that one was used by IVM, that is the one I now show you? A. Never as far as I know.

Q. Never? A. Never.

(Abovementioned sale form m.f.i. 6.)

10 Q. I show you another document, a pro forma contract pasted in a large book—International Vending Machines Pty. Limited, Automatic Merchandising (N.S.W.) Pty. Limited and the owner, a tripartite agreement pro forma. Would you have a look at that? Have you read it? A. Yes.

Q. I suggest to you that that form was used by IVM from September, 1959. What do you say? A. I would believe that.

Q. You would agree with that would you? A. I believe so.

Q. Do you say that this document m.f.i. 5 is a later form than the one I have last shown you which is pasted in the book? A. Yes, it would appear to be later.

20 Q. A later form? A. Yes.

(Sales form at page 18 of book tendered and marked Exhibit

T.)

Q. Who were Maurice Kay Advertising Pty. Limited? A. They were our advertising agents.

Q. Your advertising agents? A. International Vending Machines' advertising agents.

Q. Did they handle the whole of your advertising during 1959? A. Yes, I believe so.

30 Q. That would include advertising in newspapers, would it? A. Yes, that is so.

Q. Both Metropolitan newspapers and interstate newspapers—and country newspapers? A. Yes, I believe that would be so.

Q. And also it would cover television advertising, would it? Did they prepare or assist in arranging that? A. Yes, that would be so.

Q. I think in Exhibit 4 the accounts for the period ended 30th June 1959, the amount expended on advertising is shown as £41,051/14/3 and that would relate to advertising which they had arranged for you and include payment to them, would it? A. I believe so.

40 Q. I want to show you a book of cuttings of advertisements at this stage, Mr Steen, and I will get you to go through it if you will in a general way and indicate whether any of the advertisements in it were not advertisements put forth by IVM. Would you do that for me? A. Yes.

Q. As you go through if you find a stage which you think would be later—that an advertisement would not have been published before

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the end of June 1959, would you indicate that or bear it in mind?

A. These here are only pull-offs.

Q. This? A. Well, even the early ones.

Q. Would you continue on and bear that in mind and I will ask you a question about it? A. I think I have only come across one which I can honestly say as it says here, these being pull-offs—these would be the first or second proofs of an advertisement that was being prepared. There may have been necessarily alterations made to certain passages of it before publication and I would not know from these whether these were the exact ads or not.

Q. Perhaps you could finish looking at it and see if there are any that were not put forth by the company apart from what you have just said about them being pulls and not advertisements. You have come to 1960. Would you agree that prior to the page marked 1960 the pulls relate to advertisements with which the company was concerned up to the end of 1959? (Objected to.)

Q. Advertisements or proposed advertisements, is that right?

A. Yes, I would say so.

Q. Can you draw a line as to any which are before the end of June, 1959? Would you take that one relating to Offer No. 5. That would be before the end of June, 1959, would it not? A. I really could not say because there is nothing there to indicate whether it was or was not. Relying on memory I could not.

Q. You do not recall? A. I would not be able to say definitely that it was before that particular date.

Q. Or this one, Offer No. 5, 20 percent? A. I could not say with certainty that it was before or after.

Q. I am showing you "Cornucopia"? A. Yes.

Q. Who made the actual arrangements for settling the form of these advertisements for the company, Mr Steen? A. Both my father and myself would see our final proofs and correct them. Excuse me, there was perhaps the odd exception where this would not be possible through perhaps a rush and it was left to our advertising manager.

Q. I want you to have a look now at this one I hand up to you. That was published in the press in that form, was it not, on behalf of IVM? A. There again I do not know whether this is a pull or a final proof.

Q. That is not what I am asking you. It is a representation of an advertisement which in fact appeared in that precise form in the metropolitan newspapers in Sydney, I put to you? A. It did appear in this exact form?

HIS HONOR: Q. That is what you were asked? A. I could not say with certainty because as I say this is not a newspaper cutting. This could be a pull-off which was subsequently altered, and the exact detail I cannot say.

MR BOWEN: Q. You are not able to say whether that advertisement was published or not, looking at it? A. An advertisement of this

nature of layout, yes. Of what exact detail I could not say at this moment.

Q. You could not say unless you saw the newspaper? A. Because as I say there were very frequent alterations made to its content. (Form of advertisement m.f.i. 7.)

Q. I want you now to look at this one which is being handed to you. That is a newspaper cutting. Are you prepared to agree that an advertisement was published in the metropolitan press, in Sydney, by IVM in that form? A. I am very sorry, this is not a newspaper cutting, this once again is a pull-off which could have been altered, this one you have sent up here to me. That has been done by the newspaper company but it is still a pull-off.

Q. But a newspaper pull-off? A. It is one that is done by the newspaper itself but at which stage alterations can still be made to it. It does not necessarily have to be the finished advert.

Q. Did you have any part in the preparation of this particular advertisement? A. Yes.

Q. You did? A. This form of layout, yes.

Q. Did you draw up this advertisement yourself? A. No, not myself.

Q. Who did? A. Maurice Kay.

Q. And he submitted it to you? A. Yes.

Q. And you approved it, did you? A. We approved the final presentation, but there may have been alterations in between.

Q. You used an advertisement of this general form headed Offer No. 5 in an advertising campaign in June, 1959, I put to you. Do you agree? A. I do not know about the date, but I agree we used this form of advertisement, Offer No. 5.

Q. And it was very extensively advertised in this general form in the metropolitan press in Sydney? A. Yes.

Q. You agree with that, don't you? A. Yes.

Q. Can you see anything, looking at this pro forma, which you suggest may have been changed in the form in which it appeared in the press? A. You say this was brought out in June?

Q. I suggest it was issued in June 1959? A. Because —

Q. Can you suggest, looking at it—you have read it carefully now—any change in the advertisement as it finally appeared in the metropolitan press in Sydney? (Objected to, allowed.) A. As to the form, no, but there is possibly a correction here because there was an occasion—

MR. BOWEN: The witness points to the first paragraph underneath the black type at the top.

WITNESS: Yes. There were certain restrictions by newspapers as to the method of wording this, as it were—the use of the word “Investment”, for instance, by, I think it was, the Sydney Morning Herald, was not allowed.

Q. “Invest in”. A. “Invest”. We would not use that form in

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this advertisement in the Sydney Morning Herald.

Q. But in other metropolitan newspapers you would, is that it?

A. No, I think once we made it, it was the same right throughout—I believe. The thing I questioned about as to whether this was done is the fact that there are branches listed here which I do not recall as being opened in June.

Q. Which ones? A. Newcastle I am sure was not open in June, 1959. Hobart was not.

(Form of advertisement abovementioned tendered as an Exhibit, rejected and m.f.i. 8.)

Q. Now I suggest to you that this offer No. 5 which is referred to in the form I showed you was in fact put forward in June 1959 by the company by various methods of advertising. Do you agree with that? A. I could not agree or disagree. I could not recall when Offer No. 5 —

Q. Let me assist you. This was the first occasion when the company had increased the rate of return from 15 percent to 20 percent in its offer, is that right? (Objected to, allowed.) A. I still do not recollect the time.

Q. Will you answer the question whether it was the first occasion, Offer No. 5, when the rate of return offered to the members of the public was increased from 15 to 20 percent? A. I could not recollect if it was the first time.

Q. You think there may have been an earlier offer when it was increased to 20 percent, do you? A. There could have been.

Q. Do you recall that this increase from the usual rate offered in the early history of the company from 15 percent to 20 percent—whether it was offer No. 5 or some other offer—was offered in June, 1959? (Objected to; rejected on the basis that there is no evidence as to the usual rate.)

Q. Was this the position, that when the company first started it advertised a return or offered a return of 15 percent on the amount of money paid in for a machine? A. That is not correct.

Q. What was the return first offered? A. 20 percent.

Q. When was that first offered? At the very inception, was it? A. Yes, from the inception.

Q. You would say, would you, that it was later reduced to 15 percent? A. Yes, that is so.

Q. You have told us that Maurice Kay arranged your television advertising. Amongst other things, they arranged for a television programme called "Medic", did they not, for you? A. That is correct.

Q. This was a half-hour television show in a series, is that right? A. That is correct.

Q. And it appeared in Sydney on ATN Channel 7? A. That is correct.

Q. I suggest that this half hour television show was put on ATN



Channel 7 on the 3rd May 1959, would that be right? A. It would be a matter of record.

Q. That would accord with your recollection as far as you remember, would it? A. I could not recollect exactly when it was put on, but I would accept it.

Q. You would accept May 1959, would you? A. If it were a matter of record. I mean I do not remember the exact date myself.

Q. Would you look at those documents I am now showing you? A. Yes.

10 (Short adjournment.)

Q. Having looked at those records or those papers, Mr Steen, can you agree that the "Medic" programme started on 3rd May 1959?

A. Yes, so it would appear from these papers.

Q. And that would accord with your recollection, would it? A. Well, I had no recollection before, but I agree with this.

Q. And there was another "Medic" programme on 1st June 1959, the 7th June 1959, 14th June 1959, 21st June 1959, 5th July 1959 and the 19th July 1959. A. From these papers, yes.

Q. Do you recall these programmes yourself, do you not? A. I recall the programmes taking place, but not the exact programme.

Q. You were particularly interested in having these programmes produced, were you not? A. Yes.

Q. And Mr Charles Cousens at the time that they commenced was an employee of ATN Channel 7, was he not? A. That is so.

Q. Was there not a suggestion that he was not going to be further appearing in these programmes at one stage during the course of your contract? A. That is so.

Q. And at that stage he left the employ of ATN Channel 7 and became employed in your company, IVM, is that right? A. That is correct.

Q. You made him Development Manager for IVM, is that correct? A. That is correct.

Q. And he continued then to appear in the advertising spots on this programme "Medic", on ATN Channel 7? A. That is correct.

Q. And you paid him of course a salary at that stage when he came into your employ? (Objected to, allowed.)

Q. Did you yourself see any of these programmes? A. Yes.

Q. You did, and I suppose you discussed with Maurice Kay the wording of some of the spot advertisements that appeared in the course of the programme? A. Yes.

Q. Did you discuss the wording of these programmes also with Mr Charles Cousens? A. Yes.

Q. And these spot advertisements occurred at three places in each half hour programme, at the opening, the centre and the closing spot, is that right? A. That is so, yes.

Q. The company IVM of course paid for this advertisement that

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I have referred to? It was at the expense of IVM, is that right?

A. That is correct.

Q. Have you had a chance to look through those documents I have shown you—that have been handed up to you? You have looked through them during the break? A. Just briefly, yes.

Q. Would you agree that they constitute a record of the script of the advertising spots I have been referring to? A. They certainly appear to be scripts of a proposed advert, but whether they were the final ones again I cannot say.

Q. Have you any doubt about it? A. There could be because 10 the final ones would have ink corrections on them. Only some of these have.

Q. On 3rd May 1959 you see there in the opening spot Mr Cousens states "In every one of" —

MR MOFFITT: Is my friend asking was this said? I object to him cross-examining on a document.

HIS HONOR: Yes.

MR BOWEN: Can you tell us whether the advertisement as put on television in the opening spot in the "Medic" half-hour on 3rd May would have included a statement that "In every one of" certain cities 20 which were mentioned "there is a complete IVM organisation including a fleet of the most modern motor vehicles operating and servicing each machine". A. It could well be. I cannot remember from personal experience whether these words were actually said, but it could well have been.

Q. Then in the centre spot I suggest it was stated "When IVM say a 15 percent guaranteed return they mean just that—guaranteed. You can accept that statement with absolute confidence." Do you recall that? (Objected to, allowed.) A. Would you repeat those words?

Q. "When IVM say a 15 percent guaranteed return they mean 30 just that—guaranteed. You can accept that statement with absolute confidence". Do you recall that being said or settled to be published on your behalf? (Objected to.)

Q. Do you recall that being said on the programme? A. I do not recall it myself from memory.

Q. You have told us you were to some extent concerned with this advertisement or this advertising programme. Are you able to tell us whether or not that was said on 3rd May 1959 in the centre spot? A. I could not say from memory.

Q. Do you think it was not said? A. I could not say. I mean 40 I cannot remember it being said. I really cannot remember whether it was said or was not said.

HIS HONOR: Q. Do your best, Mr Steen. Are the words quite unfamiliar to you? A. No, the words are not unfamiliar to me but, Your Honor, I was asked if it was on 3rd May. I cannot recall whether it was on 3rd May or in some subsequent programme that such a thing was said.

MR BOWEN: Q. You recall the words but you have difficulty identifying the particular occasion, is that right? A. The particular occasion I would have no recollection of.

Q. But the words you do? A. The words I am familiar with.

Q. I suggest to you also that these words were stated in the closing spot on 3rd May 1959 "IVM offer you 15 percent with absolute security for your capital". Are those words familiar? A. I do not even see it on this script here.

Q. Are they familiar to you, "IVM offer you 15 percent with absolute security for your capital"? A. They are familiar, but I do not know how exact they are.

Q. And are you able to tell us whether they were said on any occasion during this series on the "Medic" programme? A. I could not recollect, I am sorry.

Q. I want to put another statement to you. I suggest that on the 1st June 1959 in the centre spot, as it is called, on the "Medic" programme it was stated "15 percent guaranteed return on an investment with IVM so a guaranteed 15 percent return on investment—you can accept that statement with absolute confidence." First of all, are those familiar words as the advertisement of IVM for television at that time? A. Yes, they sound familiar.

Q. They were the words that you had settled with Maurice Kay and Mr Charles Cousens to be used, were they not? A. I would not like to say that they were the exact words because I could not recollect.

Q. Do you think there might have been any variation from that? A. I really could not say, I am sorry.

Q. I want to put to you that in the centre spot on the 14th June, 1959 it was stated "Investment with my sponsors IVM is a safe sure way to a guaranteed 15 percent return on your money". Do you recall that being said on the centre spot on 14th June, 1959? (Objected to.)

HIS HONOR: I will allow the question on the ground that Mr Bowen has lastly stated, namely that these are questions leading to cross-examination on a change of the rate of return suggested.

Q. I want to put to you that in the centre spot on 14th June, 1959, it was stated "Investment with my sponsors IVM is a safe sure way to a guaranteed 15 percent return on your money". Do you recall that being said on the centre spot on the 14th June 1959?

MR BOWEN: Q. What do you say, Mr Steen? A. Once again, I do not recall it from my own memory. I don't even see it here.

HIS HONOR: Q. Will you agree that the rate in the advertisements in this period in June 1959 was 15 percent? A. Yes, Your Honor.

MR BOWEN: Q. Now I want to put to you on the 21st June 1959, on the opening spot that it was stated by Mr Charles Cousens "I bring you a message from the company that is extremely important." (Objected to.)

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Q. The fact is, is it not, that on 21st June 1959 a special offer was made on the "Medic" series "For a limited period only IVM offer a completely guaranteed return of 20 percent on your investment," is that right? A. I do not recall from my own personal memory the exact dates. It would appear so from these scripts.

Q. Looking at that to assist you and recalling that you had dealings with Mr Charles Cousens and Maurice Kay in relation to this programme, are you able to tell us that you think it would have been said on the programme at that time? (Objected to, rejected on form.)

Q. You recall, do you not, that a special offer for a limited period only of 20 percent was made during the "Medic" series? (Objected to, allowed.) A. Yes, that was so.

Q. And that Mr Charles Cousens announced that offer as an important matter in the course of the series, do you recall that? (Objected to, allowed.) A. I believe so.

Q. When do you say that that announcement was made? When would you say? A. I am sorry, I could not recollect anything which would give me a guide as to the date or the period.

Q. Have you any matter that raises doubt in your mind that it was in June 1959, having read that? (Objected to, rejected.)

Q. I put it to you it was said in June 1959, on 21st June, and it repeated an offer of an increased rate of interest, an additional five percent to what had been put before, and that this was for the purpose of getting money in quickly and in particular before the end of the financial year? (Objected to, allowed.) A. Firstly it would be a method adopted to increase business quickly. I am sorry, there were other parts of the question—

Q. It was a method adopted to increase business quickly and I put it to you that it was adopted for the purpose of bringing in business quickly before 30th June, before the close of the financial year? A. No, I would not agree it was specifically for that purpose. It was specifically designed to increase business.

Q. I put it to you that the offer was made after it had been decided to put in the accounts amounts which had been received but in respect of which machines had not been allocated? (Objected to, allowed.) A. I do not believe so.

Q. You do not think it followed later than the decision to make an entry in the books of all moneys received in respect of machines even though they had not been allocated? A. I am sorry, could I have that question again? I am trying to relate it with other things.

Q. I think you agreed with Mr Moffitt yesterday that at one stage it was determined after discussion with Mr Purcell to bring into the accounts for the year ended 30th June, 1959, amounts received in respect of machines which were sold even though the machines had not yet been allocated, is that right? A. That is correct.

Q. What I am putting to you is that after that decision had been

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made in point of time this increased offer of 20 percent was made. (Objected to, allowed.) A. Yes. It would have been made after— after we had been instructed to invoice these sales out.

Q. So that any moneys which came in in response to this special offer for a limited period only of 20 percent if received before 30th June would have to be brought into your accounts, is that right? A. That is correct.

Q. I want to show you a form of circular letter here which I point out to you and a printed pro forma of an application for a  
10 reserve No. 5 offer. Would you just have a look at that printed circular letter and the application form? Have you seen that? A. Yes, I have seen that.

Q. Will you agree that that circular printed letter dated 11th June 1959 was sent out by the company to all persons who were machine owners at that time? A. Yes, that is correct.

Q. And it was sent out together with the pro forma entitled “Application for reserve No. 5 offer of 20 percent guaranteed return”. (Objected to except insofar as the question is introductory.)

Q. I put it to you that the letter went out together with an  
20 application form such as I have shown you, a printed form, is that right? A. That is correct.

(Circular letter of 11th June 1959 and application form appearing on pages 10 and 11 of Proof Book tendered, objected to, admitted and marked Exhibit U.)

Q. In this circular letter which you have told us was sent to machine operators, you addressed the operator as “Dear Investor”, is that right? A. I believe so.

HIS HONOR: Q. It is or it is not, Mr Steen? A. Yes. I did not bother reading it.

30 MR BOWEN: Q. It was on the letter and it was the way you always addressed them when you dealt with them? A. No, not always.

Q. Well, at most times? A. No, not even most times. We preferred dealing with them privately to address them by name, Dear Mr So-and-so.

Q. Whenever you had a circular or wrote a round letter to them in Vending News or anything of that kind, you addressed them as Investors? A. Yes.

Q. And you described them as investors in IVM? A. I would not say we described them as investors in IVM. We said “Dear  
40 Investor”.

Q. You meant by that investor in the company? A. I suppose that could be taken from it.

Q. In this offer, Exhibit U, of 11th June, 1959, you make a special offer not only of a guaranteed 20 percent to the machine owner, but in addition a discount of five percent on the capital cost of the machine, do you recall that? A. Yes.

Q. And they have to put their applications in response to the

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letter of 11th June in by the 22nd June, is that right? According to the letter? A. According to the letter, yes.

Q. I put it to you that the reason for that was to get in as much money as you could before 30th June? Do you agree? A. No, that is not so.

Q. I put it to you that in response to this advertising of the 20 percent offer you got in before the 30th June £64,781/15/-. Would that strike you as the probable figure?

MR MOFFITT: Is my friend putting that as a result of the letter?

MR BOWEN: As a result of the advertising and this letter and the 10 No. 5 offer.

Q. Would that accord with your recollection? A. I could not say whether that was correct or not because I could not recall the figure.

Q. The figure seems about right to you, does it not? A. It sounds a very accurate figure.

Q. And in fact all that money would be brought into the accounts although machines would not have been supplied, is that right? A. If sold before the 30th June, yes.

Q. And in addition you brought into the accounts by writing in 20 the accounts during June over £150,000 of machines not allocated or marked with an NA against them, is that right? (Objected to.)

HIS HONOR: You said first of all in addition.

MR BOWEN: In addition to the £64,000.

MR MOFFITT: I am objecting to the form of the question.

MR BOWEN: Q. I put to you also that when you changed the practice of bringing in only machines which had been invoiced because they had been allotted to the practice of bringing in amounts received whether or not the machines had been allotted, the necessary entries in the books of account up to 30th June resulted in additional amounts 30 which otherwise would not have been shown as receipts being shown to the extent of over £150,000. Would you agree? A. I could not agree with the figure.

Q. You know the practice was changed, do you not? A. Yes.

Q. And you have a general idea of the effect of introducing that change in relation to June 1959, have you not? A. Yes.

Q. Would it be of that order—the effect on the accounts? A. It would have the effect—

HIS HONOR: Q. No, would it be about that amount? A. I could 40 not say.

Q. You have no idea at all? A. Yes, I would have the idea of round about £100,000 but not £150,000.

MR BOWEN: Q. In relation to the change of procedure? A. Yes.

(Further hearing adjourned until 10 a.m. Tuesday, 5th December, 1961.)

**Fifth Day: Tuesday, 5th December 1961**

MR MOFFITT: Before my friend proceeds with his cross-examination, in respect of the examination of the books we sent our representatives out on Thursday in the manner arranged and we have given an indication of the documents that we wanted brought here. We have had an accountant who has been endeavouring to make some calculations. Through no fault of my friend he has had some difficulty because a lot of these things were in the chambers of junior counsel and senior counsel, and yesterday he would start and then he would  
 10 have to leave one chambers for another and he was continually interrupted.

MR BOWEN: Your accountant was allowed to take them away.

MR MOFFITT: Yes. In any event, he had to spend some time and that was the difficulty. There are two sets of books I would like permission at a time convenient to the Court for the accountant to have access to. He is Mr Beck of Beck and Whelan. Firstly there is the sales journal which has already been tendered, and secondly the Tidsbury & Ainsworth files have been located—they were there—  
 20 and we would want those with some invoices and statements. We would like access to them so that certain machine work can be done in respect of them.

HIS HONOR: I will deal with those in the custody of the court either as an exhibit or a subpoena, and the sales journal is one of those. Mr Bowen, you have no objection to the accountant seeing that?

MR BOWEN: I have no objection to it being in the custody of my learned friend or Mr Whelan, the accountant, at some convenient time.

MR MOFFITT: The other documents are filed and it is only that I asked Your Honor because Your Honor had directed that they be brought in.

30 MR BOWEN: We would deal with those in the same way; that is to say I would have no objection to my learned friend or Mr Whelan, the accountant, having custody at some convenient time.

MR MOFFITT: We have also asked for the contracts to be brought in. I understand that has not yet been done. It is a somewhat difficult problem, but it may be we can overcome it by some kind of admission and I am endeavouring with my friend to arrive at some kind of admission.

(Hartley Hansworth, an officer from the Public Library of N.S.W. produced books of newspapers on subpoena duces tecum.)

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**JOSEPH STEEN**

Further cross-examined:

MR BOWEN: Q. You told Mr Moffitt that before you made certain drawings from the company you had a discussion with your father—

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(I am referring to page 90 of the transcript)—do you remember that?

A. Yes.

Q. I think that in the discussion you told your father that you required certain moneys and would like to make or take a loan from I.V.M. and the loan would be repaid from any future dividends that would be coming to you as a shareholder; is that right? A. That is correct.

Q. And you were asking his approval and agreement as a director with you to do that; is that right? A. That is correct.

Q. I take it that was some particular requirement which you put to him—I am not asking you what it was, but some particular requirement of yours which you put to him on the basis that you needed a loan from the company, and you got his agreement—is that right? A. I believe so.

Q. Can you recall when that was? A. No, I do not think I could recollect the date.

Q. What is that? A. I could not recollect the time of date.

Q. This was the first occasion when you drew some money, I take it, by way of loan that you put it to him. Does that help you? Was it in May or June 1959 or earlier than that? A. It would be earlier than May 1959.

Q. Can you tell us whether it was 1959 or 1958? A. I think it might be 1958.

Q. The company was formed near the middle of 1958. Was it soon after its formation or towards the end of 1958? A. I could not recollect. I would not say it would be soon after.

Q. Not soon after the company was formed? A. No.

Q. Can you remember now the particular requirement that you put to your father? A. No.

Q. I think you subsequently had a discussion—rather, at that same time your father too said that he would require some funds, is that right? Is that the same discussion? A. It would have been the same discussion but I do not know if it was a fact that he too would require some funds. I think it was more that he would probably in the future be requiring funds on the same basis that I was.

Q. Would it be correct that he said to you that he too would require some funds, or is that not your recollection of it? A. Not exactly as you have put it.

Q. You tell us your recollection? A. That he too would probably require funds which meant not necessarily at that particular moment—but he too would be in the same position as myself in requiring a loan from the company.

Q. I think then you told us that you did take other drawings by way of loan. You took that particular loan, first of all, that you discussed with him? A. Yes.

Q. And you subsequently drew moneys by way of loan, but on



each occasion there was a discussion between the two of you. Is that right? A. That is correct.

Q. That was a discussion in relation to some particular drawing?  
A. Yes. Well, I could not recall the exact discussions, but there would be mention to him about it because I would not do it without his knowledge.

Q. And when he drew he discussed with you the particular occasion as the other director, did he? A. That is correct.

10 Q. You said that it was part of the discussion that it would later be repaid, is that right? A. That is correct.

Q. There was no doubt that that particular drawing would be for your own private purposes, is that right? A. That is so.

Q. And that was the basis of the discussion between you, that it was a private drawing for your own purposes and therefore you were getting his assent to it? A. That is correct.

Q. In the same way for his part he was referring to funds that he would probably require? He was referring to those he would require for his own private purposes and subsequently repay, is that right? A. As far as I can recall.

20 Q. Can you recollect at all? Can you recollect anything about it, Mr Steen? A. I am sorry, about it specifically?

Q. About this discussion—do you recollect it? A. Oh, yes, they did take place.

Q. They did take place? A. Oh, yes.

Q. And that was the effect of it? A. That is correct.

Q. Any drawings that you and your father made up to the 30th June 1959 would have been following on discussions of that type would they? A. Yes, of that type.

30 Q. Indeed, after 30th June 1959 any drawings that took place would be under the same discussion between yourself and your father pursuant to that arrangement, would they? A. After June, 1959?

Q. Yes, after 30th June 1959? A. Yes, I believe that would be so.

Q. You believe it would be so, Mr Steen. Have you any doubt about it? A. I am just trying to recollect if there was any need for any further discussions after June 30th.

Q. Did you not still follow the same practice of discussing the particular drawing if you made one? A. Yes.

Q. After the 30th June 1959? A. Yes.

40 Q. So if you made a drawing after the 30th June 1959 is it correct that it is your recollection that there would have been a discussion between yourself and your co-director about it? A. Yes.

Q. In the same way if your father drew after the 30th June 1959 again he discussed it with you as his co-director? A. That is correct.

Q. I think you have told us in answer to some questions of Mr Moffitt that after the company had received a letter dated 18th March 1959 from North Ash & Mann referring to a question of taxation you

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had a conference at which were present your father, Frank Mann, Brian Purcell and yourself, is that right? A. That is correct.

Q. I think you told us that took place towards the end of March, you thought, or early April—is that right? A. Yes, about the end of March, I think.

Q. Do you have a good recollection of that conference? A. Yes, quite a good recollection.

Q. And what was said at it? A. Yes.

Q. Is this right, that Mr Mann said the company might face quite a heavy tax assessment and tax situation at the end of the 10 financial year and he felt you should consider a method by which it should be faced and provided for? A. That is correct.

Q. He said there were methods or ways of setting the company's accounts out whereby there could be a possible saving in the tax assessment; is that right? A. That is correct.

Q. And at this conference you proceeded to discuss methods and ways of meeting the situation, is that right? A. Yes, in a very confined way.

Q. But it was made quite clear to you was it that one method would be to prevent undistributed profits tax from being attracted by 20 having a public company. Is that right? A. Yes, that was mentioned.

Q. And I think that the steps you afterwards took—I think you have told us—were in order to save the undistributed profits tax which otherwise would have been imposed upon the company? A. I am sorry, would you repeat that?

Q. The steps you took following the discussion and advice you say you got were in order to save the company this undistributed profits tax; is that right? A. That is correct.

Q. And you consider you saved the company an amount of about £80,000 by what you did in saving them undistributed profits 30 tax? A. That is correct.

Q. You did not save the company primary tax or seek to do so? A. We sought to relieve the tax situation as best we could.

Q. But you set aside a provision for the ordinary primary tax payable by the company, did you not? A. That was subsequent to these arrangements.

Q. It was put to you at this conference towards the end of March, was it not, that if the company were turned into a public company by issuing shares to other people it would not have to make a distri- 40 bution and it would save undistributed profits tax. Is that one sugges- tion? A. It was put to me as a public company undistributed profits would not be taxable.

Q. Was it explained to you that in view of some High Court decisions it was possible to introduce additional shareholders into the company and make it a public company for income tax purposes? A. Not at this conference.

Q. Not at this conference? A. Not as far as I remember.

Q. You do not remember that being referred to? A. No.

Q. Was it put to you that to make the company a public company you would need to issue shares to a wider spread of shareholders? Was that put to you at this conference? A. Not at that conference.

Q. Well, what did you understand by a public company at this conference? A. Well, it was explained to me that there was such a thing as a public company which was known as such for tax purposes.

Q. And what was explained as to what it was? A. It was basically a proprietary company in which we would still have the same  
10 shareholding as we had previously, but the method of setting it up was such that the undistributed profits would not be taxable, and on learning this we instructed Frank Mann to go ahead, but prior to going ahead on that to go to expert advice in order to ascertain what he was outlining was both possible and probable.

Q. If you were to have the same shareholding what did you imagine gave it a public company character? A. Well, I was certainly informed by being a public company the shares would not be distributed as a public company does through the Stock Exchange and many shareholders.

20 Q. You were told it was not that—it did not have to be a Stock Exchange company. Now, what were you told it was? A. It was a company which was formed within the requirements of the tax law or tax office and as such had the status of a public company.

Q. And how was that to be done?

MR MOFFITT: Is this what he was told?

MR BOWEN: Yes, at this discussion.

WITNESS: At this discussion I do not believe the exact mechanics of it were propounded at all.

30 Q. I am not asking you the exact mechanics. What was your understanding in having a public as distinct from a private company for tax purposes? A. Well, now I know, but I am trying to refer to this particular conference.

Q. Did you understand that any other shareholders would have to come in? A. I understand now, but I do not recollect that I understood it at that particular conference. I do so now.

Q. And it is possible that Mr Mann and Mr Purcell explained it to you but you cannot recall now whether or not they did, is that the fair way of putting it? A. Yes, that would be quite, I suppose, fair. It is possible it was mentioned, but I do not recollect if it was  
40 mentioned at that particular moment.

Q. Was it also suggested at this conference with Mr Mann and Mr Purcell that you could have a company formed in Canberra and exchange your shares in I.V.M. for shares in that company and issue further shares in that Canberra company to other people, spreading them, to make it a public company? A. No, not at that conference.

Q. You say that was not mentioned? A. No.

Q. There was a second conference (I am referring to pages 85

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and 86 of the transcript) when Mr Purcell was present with your father and yourself and told you something of his conference with Mr Challoner. Is that right? A. That is correct.

Q. He gave you, I take it, some account of his two conferences with Mr Challoner and what recommendations had been made? A. Yes, he told us what the recommendations had been made by Mr Challoner.

Q. Did he give you a fairly full account of the advice? A. No, he simply—basically he simply outlined what Challoner's advice was or had been.

Q. He then said if a separate company was formed in Canberra and had new shareholders in it, 21 or 25 of them, that would be a public company, did he? A. I would not say that he said that because it had 21 or 25 shareholders that would be a public company, but that was one of the requirements to make it a public company.

Q. Did he say whether these people would have to hold very many shares in it? A. Yes, he said that they did not have to hold many shares.

Q. And did he say that you could maintain control of it if you transferred your shares to it in exchange for the allotment of a sufficiently substantial parcel of shares in the Canberra company. A. Yes, he stated that the result of the new company, the Canberra company, taking over I.V.M. would have the effect of the control still being in the original shareholders.

Q. You would still have control of I.V.M. provided you had sufficient shares in the Canberra company? A. We would still have control of the company.

Q. Of the Canberra company? A. The Canberra company.

Q. I put it to you specifically did he not say to you that you could get these shares in the Canberra company by transferring to it your shares in I.V.M. in exchange for the issue in the Canberra company of these shares to you? I put that to you? A. No.

Q. You do not recall that? A. I never heard that.

Q. He discussed with you that you could transfer the shares to the Canberra company for a sale price, did he? A. Yes, he said that we were to sell shares of I.V.M. to the new Canberra company.

Q. And you then discussed the price, did you? A. Yes.

Q. And the price I think you mentioned in your evidence was £200,000 for the shares; is that right? A. That is correct.

Q. And it was suggested that that might come by way of a loan from the company to the Canberra company to enable them to buy? A. That is correct.

Q. Did not Mr Purcell tell you that one objection to that to which Mr Challoner had drawn attention was that it would be an infringement of Section 148 of the Companies Act? A. Certainly not, not at any date.

Q. You are quite sure of that? A. Quite positive.

Q. Did he put it to you that it was not necessary for money to pass out of the company at any stage if you transferred in exchange for the allotment of shares in the Canberra company? Did he not put that to you? A. I am sorry, would you repeat that.

Q. Did he not at any stage in the conference suggest to you that it would be possible to transfer the shares in I.V.M. to the Canberra company in exchange for a substantial shareholding issued by that company to you? A. No.

Q. Without money passing? A. No.

10 Q. Is it your view that Mr Purcell was telling you at this conference that you had to pay out from I.V.M. £200,000 to the Canberra company in order to carry out this tax saving at all? A. That was the view that was given to me, that this was a scheme as it had been discussed with Mr Challoner and at various discussions we had concerning it—this was a cut and dried method that one had to follow.

Q. Then is this the position you are putting to us, that it was only because of this advice that you and your father as directors of I.V.M. paid away this large sum to the Canberra company in the way you did? A. Yes.

20 Q. If it had not been for that tax advice you would have left the moneys in the company would you? A. If this scheme had not gone ahead the bulk of the money would have been left in with the exception possibly of the clearing off of the loan accounts by means of, say, a dividend.

Q. So there might have been some dividend of a limited amount but otherwise you would have left the money there if it had not been for the tax advice? A. Yes.

Q. There is no doubt that the company needed the money at that time? A. The company did not require the money at that time.

30 Q. I thought there were these plans for expansion and so on? A. Yes, but there was no need for the money to be there. I mean, how can one say—there was no specific reason for a given sum of money to be available.

Q. Did you not tell us that you put the money back because the company needed it, Mr Steen? A. The company, when I say it needed it in—

HIS HONOR: Q. No, you are asked did you say that. Did you say you put the money back because the money needed it? A. I do not believe so; not for a specific purpose.

40 MR BOWEN: I am going to page 97 of the transcript, and let me put this to you: apart from this tax advice it was the intention of yourself and your father to leave the moneys in the company to let the profits accumulate; is that right? A. That is correct.

Q. Except for drawing limited salaries, is that right? A. Or drawing perhaps a dividend to clear off our loan account, to equalise our loan account.

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Q. What was your salary for the year ended 30th June 1959?

A. I believe £80 a week.

Q. Would £6,150 be the annual sum? A. I would not be sure about that.

Q. This was for the year ended 30th June 1959? A. I would not be too sure about it.

Q. Do you say it is not so? A. I am not saying it is not so. You may well be right. The figure I am thinking of may be a net figure after tax.

Q. The gross figure of £6,150 looks reasonably accurate to you? 10  
A. I could not recall. I could not say.

Q. Do you seriously tell me you do not recall what your salary was in one of the two years you were operating the company? A. That is true.

Q. You do not remember? A. No.

Q. And it might be £6,000 or it might be £3,000? A. I know it would not be £3,000, but it could well be £6,000.

Q. What do you think it was? A. Yes, it could well be £6,000.

Q. So when you said apart from drawing limited salaries your intention was to leave the moneys in the company, apart from dividends 20 to clear your loan account, was it your intention that these moneys should be used in expanding the business? A. If required.

Q. And in May and June of 1959 you had plans for expansion on foot, did you not? A. That is so.

Q. In particular you had given instructions to Ainsworths to proceed to develop a prototype cigarette machine which would be much more expensive, is that right? A. That is correct.

Q. I put it to you that in May and June 1959 (I am referring to page 99) your intention was that the company would and should expand very largely? A. That is so. 30

Q. That is correct, is it not? A. That is correct.

Q. And to do this it needed to have moneys left in it as far as possible? A. It required to have moneys left in it although not necessarily great amounts.

Q. But except for the limited drawings you have referred to and dividends to clear your loan accounts, it was your intention to let the rest of the profits accumulate in order to carry out this expansion which you intended to make, is that right? A. That is true.

Q. You have told us that the first procedure adopted when the company was formed was to sell the machine to the machine owner 40 and to allow the machine owner to operate it, is that right? A. That is correct.

Q. But that this proved unsuccessful I think due in part to neglect on the part of the machine owner? A. In part.

Q. And perhaps in part to a lack of knowledge in the machine owner or something of that kind? A. That is correct.

Q. But you agree, would you not, that in the case of some of

these machine owners in that period they were not neglectful and were good business men attempting to run these machines at a profit who bought them under that system? A. Yes, there were certainly some purchasers who were good business men.

Q. And I put it to you that the experience of certain of these men to your knowledge would have been that they made no more than the cost of petrol for running their vehicles to service the machine would that be right? Would some of them have told you that? A. It is quite possible that some had such an experience.

10 Q. And if your procedure had continued with the unsuccessful running of the machines by the machine owners you would not have continued to sell the machines, would you, Mr Steen, if that unsuccessful procedure had continued? A. I am sorry, would you repeat that again?

Q. If the lack of success of machine owner operators became generally known you would have had difficulty in selling machines in the future, would you not? A. Yes, that would be so.

Q. So the second procedure you adopted was to form a merchandising company in each of the various States where you operated—  
20 for I.V.M. to sell the machine and for the merchandising company to enter into a contract with the owner to operate or service the machine, is that right? A. Yes, that is correct.

Q. And I put it to you that the merchandising companies who were operating machines were not operating at a profit, will you agree with that? A. No, that is not so.

Q. This is a matter upon which the Metropolitan newspapers in articles on a number of occasions sought information from your company, is it not, whether or not the merchandising companies were operating at a profit? (Objected to; argued and the question was  
30 withdrawn or postponed.)

Q. (Exhibit 4 shown to witness.) Will you look at the liabilities side of the balance sheet, part of Exhibit 4, Mr Steen? You gave some evidence in reply to a question of Mr Moffitt on the secured liabilities. Do you see those? A. Yes.

Q. You mentioned they were liabilities which were secured; is that right? You said under secured liabilities these were liabilities secured on property of the company? A. Yes.

Q. In fact, just looking first of all at those under the heading Australian Guarantee Corporation Limited, there are six of them—  
40 do you see that? A. Yes.

Q. Those represent amounts which have been put in the accounts as due to Australian Guarantee Corporation in respect of motor vehicles of the company which were under hire purchase, were they not? A. That is correct.

Q. Those are the vans which the company used for the merchandising companies, charging the merchandising companies with the

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expense in order to service the machines, is that right? A. Would you repeat the question again, please?

Q. I will change it. Those amounts opposite Australian Guarantee Corporation on Exhibit 4 are in respect of motor vehicles which were used in servicing the machines? A. As far as I can recollect.

Q. You know very well, Mr Steen, don't you? A. I know very well. I am sorry.

Q. That your hire purchase agreements with Australian Guarantee Corporation for the amounts shown were the amounts due in respect of your vans? A. Not necessarily, because there could have been 10 private cars there.

Q. Private cars appear lower down, don't they? Would you have a look under the National Acceptance Corporation Limited? There are eight items said to be secured liabilities opposite National Acceptance Corporation Limited—do you see that? A. Yes.

Q. Take the first one, £2,490/16/-. That is the balance due under a hire purchase agreement on a Packard sedan, is it not? A. Yes.

Q. That would be the private car, you say? A. That would be a private car. 20

Q. The next is £2,202/13/4 balance due on a Rambler sedan. That was another private car? A. That is another private car.

Q. The next is £1,491/12/-, another Rambler sedan, I suggest to you, which would be a private car? A. Yes, a private car, too.

Q. Then there are five with amounts between £700 and £800 which again I suggest to you represent company vans. Does that assist you? A. Yes.

Q. You agree with that, don't you? A. Yes.

Q. The others opposite Australian Guarantee Corporation are company vans? A. They appear so, yes. 30

Q. And the company's office equipment was also on hire purchase was it not? A. Certain items of it.

Q. As, for example, the one opposite Gestener Pty. Ltd.? A. Yes.

Q. In the case of all these items there would be a flat rate of interest charged not less than 10 percent, I suggest to you, to the company? A. Not less than 10 percent?

Q. Yes? A. There was interest charged less than 10 percent.

Q. These were hire purchase agreements, were they not? A. Yes.

Q. And you are not unfamiliar with business in that regard, are 40 you? A. Not unfamiliar.

Q. I mean you had quite a substantial amount of hire purchase business in the company? A. Yes.

Q. What do you say the rate of interest would be on motor vehicles and vans charged under hire purchase? A. Motor vehicles I think were 7 percent.

Q. 7 percent flat over a period, was it? A. Yes, I believe so.



Q. I want to take you for a moment to the question of drawings again. I suggest to you on the 26th August 1958 you withdrew a sum of £1,000 and paid it to your current account in the Australia and New Zealand Bank, Haymarket Branch. Would you be able to recall that? A. No.

Q. Would that be the occasion that you would have consulted, you think, with your father about drawing it? A. If that were the first drawing that would probably be the first occasion I would consult my father.

10 Q. I think the first one was the 1st July 1958, £335. That would be the one where you consulted your father? A. If that were the first one.

HIS HONOR: I have what purports to be a copy of the loan accounts but that starts with December 31st 1958. I do not know whether the copy is defective.

MR BOWEN: That is a ledger account Your Honor. The December entry is a cumulative figure, and there are certain other cumulative figures. There is a cash payment book and a cash receipts book separately kept and the cash payments book would have the details  
20 indicating the period in this case from July to December 1958 which made up the figure entered in that loan account on the 31st December.

Q. Is that the cash payments book of I.V.M. commencing on July 1958 when the company was formed and continuing on from there? A. Yes.

Q. If you look at folio 1 do you see there in the middle of the folio an entry on the 1st July 1958 for £335—J. Steen Loan Account? A. Yes.

Q. Would that be the first drawing that you made on the loan account? A. It would appear so.

30 Q. Do you think that would be the one that you had the discussion with your father about? A. Assuming this is the first one, yes.

Q. I will not take you through the whole account, Mr Steen, but keep the book before you. I want to refer you to some entries in it. Would you go to folio 7? Do you see there an entry on the 26th August 1958, £1,000, Joseph Steen current account, A.N.Z. Bank, Haymarket? A. No. The 25th.

Q. The 26th? A. No, the 25th.

Q. Is that cheque No. 454? A. There is no way of knowing here. (Mr Bowen and Mr Moffitt then inspected the book.)

40 Q. That is an amount which you would have received on the 25th August 1958, is it? A. Yes.

Q. Has it got any notation, going over towards the right, as to what it is for? A. Yes.

Q. What is that? A. Directors' fees.

Q. Directors' fees £1,000. Is that right? A. Yes.

Q. Is this the position, that that item was not a loan: it was a

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payment of directors' fees? A. It would appear so according to the book here.

Q. Would that be right? A. I should imagine so. It would be right.

Q. Would that represent directors' fees for the year or just for the seven or eight weeks the company had been operating? A. I would not be able to say.

Q. You do not recall? A. No.

Q. Would you mind going to folio 9 and looking at an entry on the 6th September 1958. Do you see there a sum of £2,500, yourself 10 and Louis Steen? A. Which date?

Q. The 6th September 1958? A. £2,500?

Q. Yes? A. Yes, September 5th.

Q. That is on the 5th, not the 6th? A. Yes.

Q. Is this correct, that that was paid to a joint account of yourself and your father in the A.N.Z. Bank at the Haymarket? A. I could not recollect.

Q. I suggest that it was and debited as to half, £1,250, to your loan account. Would that accord with your general recollection? A. It could have happened, but I could not recollect whether it did or not. 20

Q. Do you remember any particular discussion about that? It was paid to a joint bank account, I suggest? A. If it was paid into our joint bank account then we would have decided together to do that.

Q. To pay it to a joint account and debit it to a loan account? A. To our individual loan accounts.

Q. Would you look at folio 11 of 15th September 1958? Do you see there an item, a loan of £1,000, that is ten days after the other £1,000 to you? Do you see that one? A. Yes.

Q. I suggest to you that that was paid into a savings bank account which you opened in the Bank of New South Wales in Caltex 30 House in your name, Account No. 412. Would that be correct? A. Which account did you say?

Q. No. 412 with the Bank of New South Wales? A. A savings bank account?

Q. Yes? A. I could not recollect.

Q. You do not recollect? A. I recollect the Bank of New South Wales, Caltex House, but not a savings bank account.

Q. You do not recall a savings bank account there? A. No, only a current account.

Q. I suggest that you opened a savings bank account in the Bank 40 of New South Wales, Caltex House, on 28th June 1958 some time before? A. I recollect opening an account, but I do not recollect the specific date, but I would accept that.

Q. You do recollect now opening an account in the Savings Bank of N.S.W. in Caltex House? A. I recollect opening an account in the Bank of N.S. Wales in Caltex House but I do not recollect it being a savings account. I thought it was a current account.

Q. I want you to have a look at this statement which I show you. Do you see that? A. Yes.

Q. Having seen that are you now able to tell us whether or not you opened a savings bank account in the Bank of New South Wales, Caltex House, on 28th June 1958? A. Yes.

Q. And are you able to tell us whether a thousand pounds which you drew by way of loan from I.V.M. was paid into that savings bank account on 18th September 1958? A. Yes.

Q. That is right is it not? A. It is indicated there.

10 Q. I want you to look five days later, on 20th September 1958, on Folio 11, the same folio, a further loan of £1,000 to you. Do you see that? A. Yes.

Q. I suggest to you that was paid into a savings bank account with the Australia and New Zealand Bank, Joseph Steen in trust for K. Steen. Do you remember that? A. I do not remember it but I—

Q. Well, do you think that would be right? A. It could well be right, yes.

Q. I suggest to you it was Savings Bank Account No. 1141. Does that help you? A. No, but I could accept it.

20 Q. How many savings bank accounts did you open and transfer money to, do you recall, up to 30th June 1959? A. I do not recollect the number. There were a few.

Q. Can you give it within limits? Would it be ten or would it be 30. What do you think? A. Ten perhaps or 12.

Q. No more? A. There would not be much more, I don't think.

Q. Will you turn to folio 27 and look at an entry of 28th January 1959? You see there a transfer of £3,000 loan to the joint account of Joseph and Louis Steen at the Haymarket? A. No, not on folio 27.

30 Q. I want you to look at folio 38 and it is January the 27th. Do you see that? A. Yes.

Q. A loan of £3,000 to Joseph and Louis Steen, is that right? A. Yes.

Q. And would you agree that that was paid to a joint account with the A.N.Z. Bank at the Haymarket in your two names? A. I cannot recollect.

Q. That was the procedure followed with these joint loans was it not? A. Yes, I do not think there was any variation in that. That would be the procedure.

40 Q. And in fact as the moneys went into that account in the A.N.Z. Bank at the Haymarket you and your father purchased shares on the Stock Exchange did you not? A. Yes, through that L. & J. account, yes.

Q. Would you go to another item on the same folio immediately below the one of £3,000? There is a further loan of £1,000 to you on the same day, is that right? A. Yes.

Q. I suggest to you that that went to a savings bank account

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No. 1142 at the A.N.Z. Bank, Joseph Steen in trust for Donald Steen. Would that be right? A. It could be. I could not recollect.

Q. You would not be able to identify the particular item from the cash payments book, is that right, in that instance? A. No.

Q. Look at the next one if you would of 9th February 1959 on folio 41. Do you see a loan of £8,500 to Joseph Steen? A. Yes.

Q. £8,500 transferred, I suggest, to your current account in the A.N.Z. Bank at the Haymarket. Would that accord with your recollection? A. I could not recollect it but—

Q. I show you a statement here; just have a look at it and see 10 if you have any doubt about it, will you?

MR MOFFITT: What is the question my friend is asking, Your Honor.

MR BOWEN: I want him to have a look at the document first.

Q. Having looked at that document, will you agree with me now that that sum of £8,500 was paid to your own private account with the A.N.Z. Bank on the 9th February 1959. A. I would agree, assuming that these are the A.N.Z.—

Q. I do not want you to assume anything. I just want you to tell us whether that is so or not if you know? A. I do not recollect. I mean I am only going by these documents. 20

Q. Would you deny that the sum of £8,500 was paid into your A.N.Z. bank account on the 9th February 1959? A. No, I would not deny it in the same way as I could not affirm it. I could not recollect it.

Q. You do not recollect it? A. No.

Q. But, Mr Steen, it was a rather special transaction, was it not, this one? You do not recall it? A. I do not think so.

Q. Just look next at the 24th March.

HIS HONOR: Mr Bowen, what does this go to?

MR BOWEN: This goes to the use of these moneys. I propose to 30 show that there was a course followed over the relevant period from which I will ask Your Honor to infer the purpose for which these things were done—the purpose in making the payment of £200,000 and so on. (This matter was further discussed.)

Q. I was asking you about a sum of £8,500. Can you now tell us whether or not you recall that going to your private account on the 9th February 1959? A. I do not recall it.

Q. But you do not deny that it went there? A. I do not deny it.

Q. Would you mind having a look at folio 49 of the 5th March? Do you see there a loan to you recorded of £2,000? A. Yes. 40

Q. I put it to you that that was transferred to savings bank account No. 1142 at the A.N.Z. Bank, Haymarket? (Objected to; rejected.) (Short adjournment.)

Q. I want you to go to folio 50 of the cash payments book. Do you see an entry there on 6th March 1959? Would you agree that a payment out to you by way of loan was made on that date of £2,000? A. Yes.

Q. Would you go now to folio 56. Do you see there a payment on the 24th March 1959 of £10,080/1/3? A. Yes.

Q. Was that paid out to you by way of loan? A. It is made out to the A.N.Z. Bank here and it indicates J. Steen on the other side.

Q. Would you agree that was paid out by way of advance to you at that time? You would, would you not? A. Yes.

Q. Will you go to folio 80 and look at an entry on 1st June of £1,000? A. Yes.

Q. Do you agree that that was paid out by way of loan to you?  
10 A. Yes.

Q. Will you go to folio 82, 5th June 1959. Do you see there an item of £2,000, Louis and Joseph Steen? A. Yes.

Q. And that was paid out by way of loan to you and your father jointly, was it? A. Yes.

Q. Then if you go to folio 88 on the 24th June you see there a sum of £1,000 do you? A. Yes.

Q. And that was paid to you by the company by way of loan, is that right? A. Yes.

Q. I think at the 25th June 1959 it has been agreed in the  
20 pleadings that the total amounts owing by yourself and your father and also Sydney Steen were £77,972/7/2. You agree with that, do you not, that on the 25th June 1959 the total indebtedness of the three of you was £77,972/7/2? A. Yes.

HIS HONOR: That is admitted on the pleadings.

MR BOWEN: Q. Part of that amounting to £1,120 were loans to Sydney Steen, do you recall that? A. Yes.

Q. What was his age at that time? A. This is 1959?

Q. 1959, June? A. 20 or 21. I would have to calculate.

Q. Do you know when he became of age? A. No, I would  
30 have to work it out.

Q. I suggest to you that he was a minor at that time? A. Yes.

Q. He was? A. Yes.

Q. The transaction that has been discussed here took place on the 25th June 1959 when £200,000 was paid to A.M. Holdings Pty. Ltd. and £200,000 was paid to you and your father for the purchase of your shares in I.V.M. Is that correct? A. That is correct.

MR BOWEN: Q. I want you to just think of the £200,000 which was paid to A.M. Holdings Pty. Limited on 25th June. That is correct?  
A. That is correct.

Q. Then I think £90,000 was paid to you, £90,000 to your  
40 father and £20,000 to Sydney Steen in respect of shares in I.V.M. Holdings? A. That is correct.

Q. I think you three vendors of shares redeposited that with I.V.M.? A. That is correct.

Q. And that had the effect of placing you with a credit of £51,716/4/1? A. Yes.

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Q. Would you have a look at Ex. 4. You see under "Current Liabilities", "Loan Accounts"? A. Yes.

Q. "Louis Steen £28,931/8/9; Joseph Steen £29,216/4/1; Sydney Steen £13,880"? A. Yes.

Q. That showed you as creditors at 30th June 1959 for that amount? A. That is correct.

Q. Which I suggest to you is a total of £72,027/12/10. Between the 25th June and the 30th June 1959 you had drawn £22,500 in order to take up some shares in A.M. Holdings. Is that right? A. Between the 25th? 10

Q. Between the 25th June and the 30th June? A. Yes.

Q. And A.M. Holdings in turn took up shares in a similar amount in I.V.M.? A. Yes, I think that is correct.

Q. And Louis Steen, your father, did the same between the 25th and 30th June; he took £22,500, took up shares in A.M. Holdings Pty. Limited, which took up shares in I.V.M. for a similar amount? A. That is correct.

Q. So that your credit, before that amount was drawn from the 25th June 1959 was actually £22,500 in each case in excess of the figures shown at the 30th June 1959? A. That is correct. 20

Q. I put it to you that one reason for the transaction of paying out the £200,000 for the purchase of the shares, the redeposit of it, and then the withdrawal of the two lots of £22,500, and the taking up of shares with that, was done in that way so as to have shown in the balance sheet as at the 30th June 1959, yourself, your father and your brother, as creditors of the company. Do you agree with that? A. No, that was not so.

Q. You do appreciate that if at the 30th June, 1959 the three of you had been shown as being debtors of the company for some thousands of pounds, that if this balance sheet was presented to 30 members of the public it would not look a good balance sheet? (Objected to.)

MR MOFFITT: The objection is that that is not a situation of affairs which any evidence or question has suggested; having regard to the fact the intention otherwise was to declare dividends sufficient to wipe out the loan account. (Argument ensued.)

HIS HONOR: I will allow the question. The matter may be re-opened on argument on the scope of s.308. I will allow it to be re-opened on the question of whether or not s.308 looks to acts which affect creditors, but at this stage I do not think I will allow the question. 40

MR BOWEN: Q. After the 30th June 1959 I suggest that during the months of July and August you drew from the company amounts which were debited to your loan account, amounting to £30,000? Do you recall that? A. I do not recall the exact amount, but I do recall drawing against that account.

Q. Look at the cash payments book, folio 99. Do you see an item on the 9th July, 1959, £5,000? A. Yes.

- Q. That was loaned to you by the company, was it? A. Yes.
- Q. Then on the same page—
- MR MOFFITT: I think there was an error by my friend.
- MR BOWEN: Q. What I meant was it was a debit to your loan account, but actually you could say that loan account was in credit at that time? A. Yes, that is correct.
- Q. So that it would be better to describe it as a drawing. On the same page, on the 24th July, 1959, there was a further drawing of £5,000. Is that right? A. Not on the same page.
- 10 Q. Go to folio 103. Do you see an entry there for the 24th July 1959? A. Yes.
- Q. Is that a further drawing debited to your loan account, of £5,000? A. Yes.
- Q. Would you go down to folio 107, 6th August 1959, a sum of £5,000. Is that also a drawing debited to your loan account? A. Yes.
- Q. Would you go to folio 111, 14th August 1959, a sum of £5,000 drawn and debited to your loan account. Is that right? A. That is the 12th August.
- 20 Q. The sum if £5,000, is it? A. Yes.
- Q. Would you go to folio 116. Do you see an item for the 24th August 1959, £5,000? A. 21st it is here.
- Q. 21st August, £5,000? A. Yes.
- Q. Is that a further drawing debited to your loan account? A. Yes.
- Q. Would you go to folio 117. Do you see an item of £5,000 on 28th August, 1959? A. Yes.
- Q. That is another drawing against your loan account and debited to that account? A. Yes.
- 30 Q. At that stage were those amounts you had drawn £30,000, which was an amount in excess of the credit showing in the accounts for the 30th June? A. I believe so.
- Q. The amount shown in the account was £29,216? A. Yes.
- Q. Would you go to folio 125, on the 11th September 1959? A. Yes.
- Q. A further amount of £5,000 debited to your loan account? A. Yes.
- Q. Then the 14th September 1959, folio 125, £3,000? A. That is the 11th September.
- 40 Q. That was a sum of £3,000 on the 11th September, 1959, drawn by you and debited to your loan account? A. Yes.
- Q. Take folio 161, 30th November 1959, and you see there a payment of £6,000 transferred to the joint account of Louis Steen and yourself? A. Yes.
- Q. Half of it debited to your loan account, and then if you go to folio 180 you see there an entry on the 4th January 1960, an amount of £15,000? A. Yes.

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Q. That was to Louis and Joseph Steen's joint account? A. Yes.

Q. And half was debited to your account? A. It does not say so here.

Q. You would agree that on the 4th January the company advanced an amount of £15,000 to yourself and Louis Steen? A. Yes.

Q. And I suggest to you that was debited to your loan account. Do you have any doubt about that? A. No.

Q. Half of it was debited to your loan account? A. I would not doubt that.

Q. Do you recall that on the 31st December 1959 you paid into 10 the company £25,000 which was credited to your loan account?

A. No, I do not recall.

Q. Is this the I.V.M. cash receipt book? (Shown witness.) A. Yes.

Q. I show you folio "C.S.30". Do you see an entry there, 29th December 1959 "J. Steen Loan Account, £25,000"? A. Yes.

Q. That would represent a payment in by you, a credit to your loan account, would it not? A. Yes.

Q. Also "Louis Steen Loan Account, £25,000". That would be credited to his loan account, would it not? A. Yes. 20

Q. A total of £50,000 credited to your two loan accounts? I suggest to you that you and your father, Louis Steen, on a cheque drawn on the 29th December 1959 paid in on the 31st December 1959, had a credit placed to your accounts totalling a sum of £50,000, and then drew it out on the next banking day following the close of the year. Would that be right? A. I do not recollect that.

Q. Why would you do that? (Objected to—question allowed on credit.)

Q. Why would you do that? A. I do not recall.

Q. You do not recall why you did it? A. I do not recall it 30 being done.

Q. I suggest to you that you signed a cheque, withdrawing this sum of £50,000, dated 4th January 1960? A. If there was a cheque drawn of that amount I would have been countersigning it.

Q. It was a fairly large sum? A. Correct.

Q. Have you no recollection of it at all? A. None whatsoever.

Q. Have a look at this document I show you. That is an annual report for the year ended 30th June 1959 of International Vending Machines Pty. Limited and Automatic Merchandising Company Pty. Limited? A. Yes. 40

Q. And it includes the Chairman's report over the signature of Louis Steen? A. Yes.

Q. And a balance sheet, a profit and loss account and a profit and loss appropriation account for I.V.M. and for each one of the Automatic Merchandising Companies? A. That is correct.

Q. I suggest that this document was printed for the company and at the expense of the company? A. That is correct.



Q. You had 1,000 of them printed, is that correct? A. I cannot recollect the number that was printed.

Q. I suggest 1,000 were printed in October 1959? A. It could be, I cannot recollect.

Q. And you then sent one to each machine owner— (Objected to—argument ensued.)

MR BOWEN: I was not putting it on credit. (Question read back.) I will not put the question on credit. (Question allowed on credit.)

Q. You sent one to each machine owner? A. That is correct.

10 Q. And in it you had a statement, "Audited financial statements of associated companies"? A. Yes.

Q. I put it to you in fact those were not audited and financial statements.

MR MOFFITT: I take it this is all on credit?

HIS HONOR: Yes, I am allowing them on credit.

MR BOWEN: Q. Would you now answer the question? A. They were audited.

Q. These statements appearing in this document were not audited statements were they? A. These are extracts from the audited  
20 balance sheets.

Q. They are extracts made within the company from some audited balance sheets are they? A. These are figures which are taken exactly from the balance sheets which were audited accounts.

Q. The fact is your auditors never saw this document until it was issued? A. No, they saw it.

Q. They saw it, you say, before it was issued? A. Before it was issued.

Q. I put it to you they had not seen them before it was issued. You say that is wrong? A. That is wrong.

30 Q. Didn't they call attention to the error in stating their name? A. No.

Q. Did your solicitors see it before it was issued? A. I don't think so.

Q. They would not have had an opportunity of calling attention to the misspelling of their name, would they? A. No, if they had not seen it they would not have.

Q. If you think the auditors saw it could you tell me who saw it? A. I could not be specific; it would be either Russell North Ash or Mr Mann. I am inclined to think it might have been North  
40 Ash. It could have been both of them.

Q. Did you personally attend to this matter of getting them to see it or have a look at it? A. No, not personally; I think it was there when these things were being discussed.

Q. Who was present? A. There was my father—no, I think it was North Ash who was there.

Q. Can you recall when it was? A. Only vaguely after June 30th and before when was it they were printed? October?

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Q. I suggest it was October 1959? A. I could not be specific about the date or the time.

Q. In what form was it put to Mr North Ash? Would he have seen galley proofs of it or in what form would he have seen this form of accounting? A. I think it was in typewritten form.

Q. There is no certificate in this, is there? A. No.

Q. Did he refuse to allow one to be printed at this discussion you suggest took place? A. No.

Q. Did you ask him? A. No, we did not.

Q. At that particular point of time the financial editor of the 10 Sydney Morning Herald had published a number of articles about I.V.M. in the Sydney Morning Herald—

MR MOFFITT: This is still on credit?

MR BOWEN: Yes.

WITNESS: Yes, articles had been published by the Sydney Morning Herald.

Q. And they had been asking for audited accounts, had they not? A. Audited accounts had been mentioned but I do not remember whether they were asking for them.

Q. Well they suggested in the articles they should be provided 20 by this particular company? A. Yes, in one of the articles that had been said.

Q. And you sent them a copy of this printed Annual Report you have in front of you? A. Yes, I believe so.

Q. They then wrote an articles as to the fact it did not bear any auditor's certificate? A. That is correct.

Q. When you were having it prepared didn't you think it should have an auditor's certificate on it? A. At the time this was being prepared it was not being prepared as a balance sheet as you are describing; this was a set of figures. 30

Q. What was it for? A. This was just a consolidated group of figures taken from the balance sheet; this was not an exact copy of the balance sheet as it was given.

Q. What was it prepared for? A. It was prepared to gather this book in this form in order to let our purchasers of machines and people who had an interest in the machines see the state of the company.

Q. And who prepared it? A. As a booklet?

Q. Yes, who prepared these extracts? A. As a booklet we had an employee whose job it was to make out these lay-outs, John— 40 his second name has just slipped my memory.

Q. One of your employees on your advertising side? A. In our own company.

Q. On your advertising staff was it? A. Our own advertising staff, yes.

(I.V.M. Brochure m.f.i. 9.)

(Folios of cash payment book as put to witness tendered—)

MR MOFFITT: I object to the individual entries going in. My friend

I think will concede that there are other entries for different and smaller amounts in between. I would like an opportunity to have a look at it and if all the entries can go in subject to me having a look, I would not object.

MR BOWEN: I would not mind all the entries going in.

HIS HONOR I will defer that matter.

(Luncheon adjournment.)

AT 2 P.M.

MR MOFFITT: With regard to the tender I have had an opportunity  
10 during the adjournment to have a limited look at this book. I would not have any objection to the tender of the entries my friend has sought to tender relating to this witness, provided that all of the entries, that is all of the advances to him as shown in the book, up to the last one in May 1960, went in. That could be done at a convenient stage.

MR BOWEN: That is satisfactory to me.

HIS HONOR: Perhaps a list could be made out.

(Cash payments book entries in respect of payments on J. Steen account tendered and marked Ex. V.)

MR MOFFITT: After the 31st May, or at some later stage, there  
20 has been some entry put at the bottom in respect of some balance. I do not want it to be taken that that goes in; it is an entry with which we do not agree.

(Cash receipt book entry re J. Steen on Folio C.S. 30 tendered and marked Ex. W.)

MR MOFFITT: I take it that would be on the same basis.

HIS HONOR: What basis?

MR MOFFITT: All the entries.

HIS HONOR: I do not know about that. At this stage I will limit  
30 it to those two entries, that is in relation to Folio C.S. 30 and the account of L. Steen and J. Steen.

MR MOFFITT: The only matter to which I draw attention is there are in fact quite a number of smaller sums of irregular type of amount which are spread over the whole.

MR BOWEN: Q. I show you the I.V.M. cash payments book at Folio  
180. The first entry is on 4th January, 1960, "L. & J. Steen, £50,000" and then under "Drawings" £50,000 with a notation "L. & J. Steen." Is that correct? That represents the drawing on the 4th January by Louis Steen and yourself of that sum of £50,000? A. Yes, I believe  
40 that is so—yes.

Q. If you look at the next item under 4th January 1960, it is Valor Finance, £23,000. (Objected to.)

MR MOFFITT: I object to this on the basis it does not go to any issue. (Question allowed.)

MR BOWEN: My friend is not objecting to me referring to the book as showing the fact?

HIS HONOR: He is not taking objection as to the contents of the

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book; Mr Moffitt is taking the point it is not relevant to any issue.

MR BOWEN: Q. The Valor Finance referred to there is the Valor Finance Pty. Co. Limited is it not? A. That is correct.

Q. Who hold the shares in that company? A. My father and myself.

MR BOWEN: I want to leave credit and tender the next question on an issue. It is under "C" of the Particulars alone, to Valor Finance Co. Pty. Limited. I would also tender it on credit if it be rejected on that basis, as Your Honor will see it is 4th January 1960, and although it is particularised Your Honor may feel it falls under the 10 previous ruling.

MR MOFFITT: I object to it on the full ground.

HIS HONOR: This goes only then to particulars of matters under s.361 and the date of the loan is 4th January 1960?

MR BOWEN: Yes.

HIS HONOR: It is not in dealing with the moneys or repayments of the moneys?

MR BOWEN: It is not the same transaction; it shows the character of the transaction.

HIS HONOR: I do not propose to allow that.

20

MR BOWEN: Then I seek to put it on credit.

HIS HONOR: I do not see how it goes to his credit; I can understand the earlier questions in regard to the events at the end of the year but here what is asked is "Didn't the company lend so much money?"

MR BOWEN: That is the first question. I propose to ask two further questions in relation to it.

HIS HONOR: Then I will allow it on credit.

MR BOWEN: I propose to show the use to which the money was put, the company being interposed.

HIS HONOR: I will allow it in this instance.

30

MR MOFFITT: I am in this difficulty: This is a special matter which my friend has made as one of his specific grounds to be raised as a relevant issue. First of all Your Honor gave some consideration to my friend's submission as to it affecting the character of the transaction; he did not then seek to put it as coming under s.361, in respect to which he has given particulars. Previously he asked some of those things which fitted into a pattern. I do not want to be put in a position that once it has gone in I should not, not having called any evidence, at a later stage have it argued that it would become an issue.

40

MR BOWEN: Q. Would you have a look at those two cheques and that deposit slip (shown).

MR MOFFITT: I am not objecting to each of these two matters on credit until such time as my friend indicates he is putting them in issue.

MR BOWEN: Q. Can you tell us whether this is the position, whether I.V.M. on the 4th January 1960 lent to Valor Finance Co. Pty. Limited £23,000, free of interest and without security? A. Yes.

Q. And that Valor Finance Co. Pty. Limited then, for the sum of £23,000 purchased a yacht with the moneys? A. Yes.

Q. By a cheque drawn in favour of Hunt Marshall Pty. Limited? That is correct, is it not? A. That is correct.

Q. And that Valor Finance Pty. Limited had no other business at that time? A. I do not recollect that that particular time.

Q. You do not recall them having any other particular business at that time? A. I do not recollect that that was the only business it had at that time.

10 Q. In addition to being shareholders, you and your father, Louis Steen, were also the Directors of Valor Finance Pty. Limited at that time? A. That is correct.

MR MOFFITT: Q. In regard to the question my friend has just asked, my friend has said that he was asking these matters on credit. He has apparently gone to another subject matter and I would submit that on the matter of credit, the fact that any loans are made to this person or is to be used for any particular purpose, without any question as to whether the money was paid cannot go as to credit and I ask that the question and answer be struck out.

20 HIS HONOR: I appreciate what you put, Mr Moffitt, but I will not have it struck out.

MR BOWEN: This is not solely restricted as to credit.

Q. I want to take you to May 1960 when you and your father Louis, and your brother Sydney, sold the shares which you held in I.V.M. Holdings. Do you recall that? A. Yes.

Q. I think you sold them to a company called Independent Holdings Limited? (Objected to.)

MR BOWEN: The Minutes of A.M. Holdings, as the company then was, are in evidence, and on folio 14 there were the initial shares, 30 called Convertible Preference Shares, which the three Steens held.

HIS HONOR: I will allow questions relating to the sale of the 45,000 Convertible Preference Shares and the additional 5,000 to Sydney Steen, and if they are inseparable, to other questions in relation to the shareholding, then I will allow those questions.

MR BOWEN: Q. In May 1960 you and Louis Steen and your brother Sydney Steen sold your total shareholdings in I.V.M. Holdings to Independent Holdings Limited? A. That is correct.

Q. And that included the ordinary shares which you have taken up in June 1959 when the company was called A.M. Holdings, and 40 also the Convertible Preference Shares you have taken up in June 1959? A. I believe so, yes.

Q. Is this the position, that under the arrangements you received from the 21st May 1960, the three of you, a deposit of £200,000? A. That is correct.

Q. And that left a balance to be paid of £185,000. I am speaking of 21st May 1960? A. The balance was an indeterminate figure, because it was based on the investigations between one side and their

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accountants and the other, and it was an unknown quantity.

Q. After some adjustment is this the position, that the adjusted figure, apart from the £200,000 was fixed at £110,880, but that you made an allowance off that of £50,000 because of some objection raised by the purchaser? A. No, it did not work out the way you have outlined.

Q. The balance, after adjustment, was found to be £110,880, and in August 1960, in response to a request made by the purchaser, you or your father and your brother repaid in cash to the purchaser a sum of £50,000? (Objected to firstly as to form—question allowed.) 10

Q. We have got to the position where on the 21st May 1960 you received a deposit of £200,000? A. That is correct.

HIS HONOR: Q. That was for all the shares? A. That was the deposit.

MR BOWEN: Q. Would you have a look at this statement, two pages, and is that a statement of the joint account of yourself and Louis Steen with the Australian New Zealand Bank Limited, Haymarket, covering the period from May 2nd 1960 to June 30th 1960? A. Yes, that is right.

Q. And this account shows that there was a deposit of a sum 20 in that account of £200,000 on the 23rd May 1960. Is that right? A. That is correct.

Q. That would be the amount which was payable as a deposit to you on the 21st May, was it? A. That is right.

Q. Then you proceeded to make a number of payments out of that account? A. Yes. (Objected to.)

HIS HONOR: Q. You have a deposit of £200,000? A. Yes.

Q. And that was paid to you, your father and your brother? A. That is correct.

Q. How much more did you get net? A. We did not get any 30 more money, but we purchased back from the company certain assets and we had to return certain moneys of the deposit to Independent Holdings, so that we originally received £200,000 in cash and it ended up by returning £50,000. We received £150,000 plus certain assets which were not part of the sale.

MR BOWEN: Q. Having received the sum of £200,000 which is shown deposited in the joint account, you then proceeded to make a number of payments to purchases of assets. That is what you are telling us is it not? (Objected to on the ground that the question is being put as part of the matters in issue and not as to credit.) 40

HIS HONOR: It could be relevant to know the net sale price of the shares of the three Directors in I.V.M. Holdings. I will allow the question.

MR BOWEN: Q. We got to the point where there has been paid into your joint bank account which you had with Louis Steen, your father, a sum of £200,000, on the 23rd May, 1960. That is clear? A. That is correct.

Q. Then you proceeded, you and your father, to draw a number of cheques to make those adjustments you have referred to. Is that right? A. I do not recollect that there was a number of cheques; I know there was one particular one, but how many I do not know.

Q. Would you have a look at these cheques (shown). Will you put on one side one cheque for £13,750 in favour of International Vending Machines Holdings. The others are in favour of International Vending Machines Pty. Limited, is that right? A. Yes.

Q. I suggest there is one in discharge of your loan account for 10 £7,476/12/1? A. There is a cheque for £7,476.

Q. I suggest to you that is in discharge of a debit balance in your loan account at this stage? A. It could well be.

Q. Do you recall that? Or you would agree with that? A. Yes.

Q. There is another in discharge of L. Steen's loan account for £22,435/0/10? A. Yes.

Q. Another in discharge of S. Steen's loan account for £2,120? A. Yes.

Q. Another in discharge of the loan account of Valor Finance Company Pty. Limited of £23,242/13/6? A. Yes.

20 Q. That would be right? A. Yes.

Q. Another in discharge of loan account of Vending Industries Pty. Limited for £11,940/8/3? A. Yes.

Q. Another in discharge of loan account of Scottish Industries Limited for £17,000 and another in discharge of International Appliances Pty. Limited loan account, £1,141/14/10? A. Yes.

Q. Those totalling £79,606/9/6. I think you will find an addition there. You will agree with that? A. I haven't checked it.

Q. There is an additional cheque for £9,555, or a number of cheques totalling £9,555? A. There is no signature.

30 Q. There are some additional cheques to those I have put to you? A. Yes.

Q. One for £2,610? A. Yes.

Q. That represented a purchase price of the Packard, did it not? In this transaction you had to discharge loan accounts and take over certain assets? A. Yes.

Q. £3,770, which represented the purchase of a Mercedes? A. Yes.

Q. £1,500 representing the purchase of the Rambler? A. Yes.

40 Q. £1,230 representing the purchase of a Zodiac? A. Yes.

Q. And £440 representing the purchase of a Morris Minor? A. Yes.

Q. Those later cheques in respect of cars totalling £9,550. You can take that from me, subject to having an opportunity of checking the addition and the grand total, that is payments to I.V.M., being £79,606/9/6. Would you agree with that, subject to checking the additions? A. Yes, subject to checking.

Q. I put it to you those cheques you drew and those things you

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paid for as part of the adjustments you have told us of in connection with this sale of your shares? A. Yes.

Q. There were two other adjustments you had to make. You have a cheque before you in favour of International Vending Machines Holdings Pty. Ltd. for £13,750? A. Yes.

Q. Being for the purchase of 13,750 £1 Ordinary Shares fully paid in Vending Industries Shares? A. Yes.

Q. That was another asset you were taking over pursuant to this sale of your shares? A. That is correct.

Q. I put it to you that in addition you paid a sum of £17,523/16/- 10 to International Vending Machine Holdings Pty. Limited for the purchase of a Brunswick property? A. That is correct.

Q. Which was I think on the basis of a purchase price of £36,000 less a mortgage? A. Yes.

Q. And this again was one of the adjusting items that you were paying in connection with the sale of shares? A. That is correct.

Q. You were paying this money and you were taking the Brunswick property in that particular instance? A. That is correct.

Q. I put it to you £79,606/9/6; £13,750; and the £17,523/16/- amounted in all to £110,880/5/6. Is that right? A. I assume so, yes. 20

Q. I suggest that the next thing that occurred when you had made those payments, and on the same day, was that you received and paid into this same joint bank account of yours and Louis Steen the sum of £110,880/5/6 from Independent Holdings. Is that right? A. Yes, that would be correct.

Q. I show you the accounts, and you see on it the drawing of these individual cheques I have referred to and then the deposit of the £110,880 I have mentioned. That is right, isn't it? A. Yes.

Q. It was subsequently in August that you made a payment 30 back of £50,000? A. That is correct.

Q. You will agree it was part of the arrangement that the amount of £79,606/9/6, for which you drew cheques in favour of I.V.M. Holdings, should be paid by I.V.M. to Independent Holdings Limited. (Objected to.)

HIS HONOR: I appreciate how you put it, Mr Bowen, but it would not be admissible on the grounds on which I am admitting this evidence, namely to establish the sale price of the shares, so I will not allow it.

MR. BOWEN: Q. You will agree, will you not, that if one takes off 40 the sum of £50,000 which you paid back in August the net amount received by yourself, your father and Sydney Steen upon the sale of your shares in Independent Holdings was £260,880? A. I am sorry, could you repeat that question again?

HIS HONOR: Whether he admits it or not, Mr Bowen, will not make any difference with me because I can see that that is what it is. I do not wish to stop you on that, but there is no suggestion of any



MR BOWEN: Q. Mr Steen, will you look at this advertisement and further adjustment.

tell me whether that is an advertisement described as Offer No. 5 which was published by I.V.M. in the Sun-Herald on June 28th 1959?

A. Yes.

(Advertisement in Sun-Herald of 28th June 1959 tendered and without objection marked Exhibit X.)

Q. It is the fact, is it not, that the company during June published similar advertisements in the other metropolitan newspapers?

10 A. There may have been other ads. in the latter part of June. There may have been other advertisements in the metropolitan area at the end of June. I do not think at the beginning of June but the latter part of June.

Q. I think you said there may have been at the latter part of June? A. There may be. I do not recall.

Q. It would be the best of your recollection that there would have been other advertisements in the latter part of June? A. Yes.

(Joint bank account of Louis and Joseph Steen tendered as an exhibit, objected to and rejected.)

20 Q. Now I want to take you back to the time when you were discussing your tax in March 1959. I asked you some questions earlier about that. You told us of the letter you had on the 18th March and then a conversation in which you and your father arranged that they get advice from Mr Challoner and then a subsequent conversation I asked you about when Mr Purcell gave you the effect of the advice, is that right? A. That is correct, yes.

Q. Is this correct, that they mentioned at both or either of those conferences that you ought not to pay a dividend? A. It was decided that we would not pay a dividend.

30 Q. And section 260 of the Income Tax (Social Services Contribution Assessment) Act was mentioned as a reason why that was so, was it not? A. I have never heard of Section 260.

Q. Did Mr Purcell not say that Mr Challoner had suggested that Section 260 might apply? A. I never heard of Section 260. Mr Purcell certainly did not mention it to me. I don't think anyone has.

40 Q. Was this a question that if a dividend were paid and the company did not retain the profits and no action was taken to form a company you and your father would be subject to a fairly large liability for tax? A. What was said was that if this scheme we were discussing was not put into effect the company would face a large taxation due to the fact that undistributed profits would be taxable.

Q. Unless it distributed to you, and then of course you would face a large tax liability? A. If it were distributed then there would be an even greater taxation.

Q. On the individual? A. For the company. The company would pay greater taxation.

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Q. Mr Steen, was not this the dilemma, if I can put it this way, that either the company if it did not distribute would have to pay undistributed profits tax? A. That is so.

Q. Or if it distributed to you and your father, the individual shareholders, you would have to pay tax on the dividends? A. That is correct.

Q. And this proposal that was put forward to form a public company and re-arrange matters for tax purposes was to prevent either of those things happening? A. That is correct.

Q. Will you agree therefore that one of the purposes of what 10 was done was to avoid attracting tax to yourself and your father on a distribution? A. One of the purposes. Whichever alternative we turned to we would have been attracting tax either in the form of undistributed profits or if they were distributed on tax in the distribution.

Q. So you sought to avoid either of these things by the action that was taken? A. Yes. The least of the two would have been undistributed profits tax.

Q. That would have been the smaller? A. The smaller of the 20 two, yes.

Q. I asked you this morning about the conversation with your father at which you said you required to draw some money out—you required some money on loan from the company, do you remember that? A. Yes.

Q. Since then I have drawn your attention to a number of drawings which you made, is that right? A. Yes.

Q. Do you still say that you drew only for specific purposes and discussed the purpose with your father before drawing on each occasion? A. On every occasion when moneys were drawn such as you have described I have discussed it with my father—on every 30 single occasion.

Q. What I put to you, Mr Steen, is that you drew fairly regularly, maybe once a fortnight or some time like that, good round sums, do you follow? A. Yes.

Q. And I put it to you that you drew those not for any particular requirement of yours but because it was cash which you did not want to see lying idle in the company, is that so? A. No.

Q. Did the original arrangement with your father extend to doing just what is shown on the accounts I have put before you? A. The original arrangement that we were describing just now was one 40 where we agreed that any moneys that were taken out in the form of loans by either of us—there would be a sort of reconciliation at the end of the financial year where if I had taken out more or less that would be adjusted by the possible declaring of dividends from profits.

Q. But did you arrange with your father from the inception that you would draw £1,000 a fortnight or £5,000 a fortnight or anything like that? A. No, nothing like that.

Q. Did you arrange with him that you would draw moneys out on loan whenever there were free moneys available? A. No, as I would require it or we needed it.

Q. You say just as and when you required it for some specific purpose? A. As I required it or as you say for some specific purpose.

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#### RE-EXAMINATION.

MR MOFFITT: Q. With regard to the moneys you received from the sale of your shares you mentioned there was a deposit of £200,000 and Mr Bowen asked you about certain other payments and you said of that £200,000 subsequently in August there was £50,000 paid  
10 back. You told Mr Bowen that in fixing the sum the exact final figure was not fixed because it depended on certain investigations. Now, will you tell me what investigations you referred to in respect of that sale? A. The sum of £200,000 was purely a deposit.

Q. I am asking you what the investigation was. An investigation by whom? A. Independent Holdings were to send in their accountant to examine the books of I.V.M. along with whatever matters they wished to determine the net assets of the company they were considering buying.

20 Q. And in fact can you tell me who it was that made the investigation? A. Mr Nicholson.

Q. He is an accountant, is he? A. Yes.

Q. Did he become a director of the company after you left the company? A. He did.

Q. When you left the company did your father remain on as a director for a period of time and then he resigned, is that the position? A. That is correct.

30 Q. In the period between the time that the deposit was paid and the adjustment was made, are you able to tell us whether there was in fact an investigation by Mr Nicholson? A. During the—

Q. Up to the time? (Objected to; rejected as not being in reply.)

Q. You were asked about the number 5 offer and in particular in reference just prior to the end of June 1959. Had there been other offers other than what has been referred to as the No. 5 offer? A. Certainly.

Q. What other offers had there been? A. There had been offers 1, 2, 3 and 4, and subsequent offers of 6 and 7, I believe.

Q. What was meant by offer? (Objected to; allowed; withdrawn.)

40 Q. What part did these offers play in the running of I.V.M.? (Objected to; allowed.) I am speaking of offers 1 to 7, a series of offers? A. They were sales programmes which either introduced a new machine or a change in the selling procedure of the previous offer.

Q. So far as offer No. 5 is concerned, was there anything that it introduced? A. Yes.

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Q. What did offer No. 5 introduce? A. Offer No. 5 introduced the Valor machine which was the Eta Peanut Dispenser.

Q. Prior to offer No. 5 that was the Eta peanuts, what had been the machines that you had? A. There was a Victor machine which was a ball gum dispenser or confectionery dispenser; there was the Debonair which was a hair lotion machine; there was a Vanity which was a hand cream dispenser and there was the Perfumatic which was a perfume dispenser.

Q. With regard to offer No. 5 can you tell me whether or not that offer was offered to the public only in June or was it offered in any other period of time? A. It was offered right up until November. 10

Q. And when did offer No. 6 commence? Was there a gap? A. No. It followed exactly on the day following the closing of No. 5—it started off on No. 6.

Q. And before offer No. 5? A. The same would apply. The day of closing No. 4, the following day would be offer No. 5.

Q. In offer No. 5 was the offer the same to the previous investors as it was to the public? A. No.

Q. Does that appear in the two documents that have already been tendered; that is the newspaper cutting of the 28th June and the circular letter to the investors? A. Yes, the differences would appear. 20

Q. The differences appear in these two? A. Yes.

Q. What is the difference, you might tell me? A. The existing client was given the benefit of the cash bonus allowance of 5 percent whereas the new investor would not get this benefit.

Q. Are you able to tell me whether or not—I am taking offer No. 5—whether or not this concession to the existing investor, whether there had been any advertisements before that circular letter went out, that is advertisements to the public in offer No. 5? A. I do not think so. 30

Q. Take offer No. 6. This book is what? A. It is copy memos. of branch memos. which were sent from head office to the branches.

Q. What are these various initials? A. They are invariably the initials of the individual who is sending such a memo.

Q. They have the name of the person in that case, Mr Andrews, or the initials as the case may be? A. Yes.

Q. Some of these are from your managers? A. Yes.

Q. There was one from Mr Hook. He was a director? A. Yes. 40

Q. Another one from Mr Cohen? A. He was also a director.

Q. Where you refer to bonus offer No. 2, what does that refer to? What was bonus offer No.1? A. Bonus offer No. 1 was the 5 percent bonus given in offer No. 5.

Q. That is in the letter already referred to that refers to the 5 percent? A. Yes.

Q. And in that one there was a limit of time put on in respect to that bonus offer No. 1? A. That is correct.

Q. And this document here which says bonus offer No. 2, dated 11th February 1960, was that also sent out to existing investors? A. That is correct.

Q. With an application form? A. That is correct.

(Bonus offer No. 2 and accompanying application form tendered; objected to; allowed and marked Exhibit 10.)

HIS HONOR: . . . The only reason I allowed the other matter is  
10 was on the basis that it was evidence which would be relied on to show that offer No. 5 was made in order to get money in for the purpose of disbursement in the impugned transaction. I think that the respondents are entitled to show that it was the sort of thing they did the whole time.

Q. In respect to this bonus offer No. 2 and the offer No. 6, which are part and parcel of the same thing, did you have any newspaper advertising in respect of offer No. 6? A. Yes.

Q. Did it extend over a period of time or was it only one advertisement? A. It was several advertisements over a given period of time.

20 Q. With regard to offer No. 5 in Exhibit U, in the first paragraph you say "The results over the past month plus the introduction of the Eta nut machine have indicated to us that we are now able to offer a higher return than previously". Can you tell me in reference to this letter of the 11th June 1959 what the position was with regard to the Eta nut machine? A. We had already put out several nut machines on to the field and we had had some results back from them. The Eta nut machine was in the course of full production with the manufacturers and a delivery date was being promised very close of quantities.

30 Q. With regard to the Eta nut machine you had had prototypes put out? A. Yes.

Q. When you put the prototypes out you put them on some sites did you? A. That is correct, on test locations.

Q. To test them in what way? A. For two reasons—to test the mechanical ability of the machine and the second to test the potential sales of its merchandise.

Q. Had you had any discussions with the Eta people who made the Eta nuts? A. Yes.

40 Q. What arrangements had been made with them at about this time? A. We had placed rather substantial orders with them for the supply and delivery of their products in packets for these machines.

Q. With regard to this offer No. 5 and this circular letter of the 11th June 1959, did that have any relation to the transaction which has been attacked in this court, namely the formation of the Canberra company and the payment of the £200,000 for your shares in I.V.M.? A. There was absolutely no relationship whatsoever between the two transactions.

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of New South  
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Jurisdiction.*

—  
Respondent's  
Evidence.  
Joseph Steen.  
Re-examined.  
(Continued)  
—

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Supreme Court  
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Respondent's  
Evidence.  
Joseph Steen.  
Re-examined.  
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—

Q. Which is the machine which dispensed Eta nuts? A. The Valor.

Q. Is that a copy of an inter-office memo, which was sent? That is your father's signature is it? A. That is my father's signature. Yes.

Q. To all branch managers—that is, Sydney, Melbourne, Brisbane, Adelaide and Hobart. That is the 12th May 1959 and is in respect of the siting of Valors. A. That is correct.

Q. I do not want you to mention the contents at the moment but you might just have a look at the third last paragraph of that copy 10 letter. Having seen that and that date, can you tell me at what point of time it was that you had the Valors available or they were anticipated as being available for branches and also for Sydney? (Objected to.)

(Inter-office memo. of 12th May 1959 tendered; objected to and admitted.)

HIS HONOR: . . . It does not prove anything in it, but together with the other ones that Mr Moffitt proposes to tender, he seeks to rebut what you indicated, namely that there was a campaign for a particular purpose. I think I must have the surrounding circumstances to that. I would be concerned with the form of it, but I gather your objection 20 does not go to form?

HIS HONOR: This particular witness is not the author of it, but I gather that my learned friend will be calling Mr Steen senior.

MR MOFFITT: I will be calling Mr Steen.

HIS HONOR: I think the subject matter is relevant on the aspect to which I have referred.

MR MOFFITT: There are some others I wish to tender also and perhaps I could tender them all together and I will get them out during the adjournment.

HIS HONOR: Yes.

Q. Mr Steen, so far as you know was there a loan account I.V.M. to I.V.M. Holdings in the ledger? A. I.V.M. to I.V.M. Holdings in the ledger? I could not say.

MR OFFICER: There is one, Your Honor.

MR MOFFITT: Q. Just looking at that memo. that is the 7th May, will you tell us when it was that you stopped your selling of Debonairs?

A. 7th May.

MR BOWEN: Does he know?

MR MOFFITT: In regard to Exhibit 11— (Objected to, rejected as in effect leading.)

Q. Can you tell me firstly with regard to Valors, what were the steps that took place? You say at one point of time you ceased the Debonairs. Then what is the progress at that point of time so far as the Valor is concerned? A. Its construction would be sent out from Head Office directing sales representatives throughout the branches to cease selling the Debonair machine and to commence selling as of a particular date the Valor. In this case we stopped selling Debonairs

on the 7th May and from then onwards any contracts coming in would be sold on the basis of it being Valor machines.

Q. Do you remember so far as you had the prototypes of the Valors—before you actually got the Valors in had you commenced anything towards your selling programme of the Valors in anticipation? A. Not the selling programme.

Q. What was done? The Valor is not just suddenly manufactured out of the air. Tell me what in fact happened, working up to your final selling of them? A. About four months prior to that we  
10 had initial discussions with Ainsworth who were the manufacturers and who were given instructions to produce a machine which was capable of doing a certain job, namely to receive certain denominations of money and to issue a packet of a certain size.

Q. There were discussions about the manufacture and design of the machine? A. Of the particular machine.

Q. Then you get a prototype? A. Then he would work on it to bring out a prototype and once the prototype was correct he would do a run of them.

Q. In the meantime while this was happening, what other  
20 machines would you have running? A. While the Valor or prototype was being produced we were selling the Debonair and Vanity and also some Victors.

Q. Then you had the Valor prototype out on test on site? A. Yes.

Q. Then what happened? Did you get some indication of their performance? A. Yes, by having them on location and selling the product of them, we would determine from that what sales response we were going to get.

Q. You would measure the actual moneys received? A. We  
30 would measure the actual moneys received every time the machines were placed.

Q. Anything besides money received? A. At the same time the machines by being exposed to public use would soon show up any mechanical faults.

Q. Was the prototype successful or otherwise? A. The prototype was very successful.

Q. What was the next step after that? A. The next step after the prototype was the factory to be in full production making these particular machines. Our siting or merchandising department would  
40 then commence finding locations for the Valor and a sales programme would be introduced through our sales representatives to sell the Valor.

Q. Before you get to the stage of either advertising this new machine, the Eta, in the press or circular to your investors, how far did you go in getting the machine ready before you took that step? A. We have already had the prototypes on the locations and we had already had returns from these machines which would tend to indicate what to expect from them in the future, and we had to be able to

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Respondent's  
Evidence.

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Re-examined.  
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—

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Respondent's  
Evidence.  
Joseph Steen.  
Re-examined.  
(Continued)  
—

satisfy ourselves that the mechanical bugs were attended to as well.

Q. The various branches had been given instructions through inter-office memos. (Objected to; rejected.)

Q. What happened so far as the branches were concerned?

A. Most of these developments would take place in head office, and once we were satisfied with head office procedure the branches would be notified, in some cases by inter-branch memos. which in this particular instance we called all-branch memos., one that applied to all branches—and that would be a copy of such memos.

Q. With regard to this offer No. 6, you have told us that it 10  
continued after the 30th June? A. Offer No. 5.

Q. Offer No. 5, after the 30th June, in what way did it continue, by what means? A. It was continued by press advertisements. Press advertisements carried on right through, I believe, till October-November.

Q. Taking where you had the Debonair. At the time you introduced the Valor what happened about further sales of the previous machine, this Debonair? Did you continue to sell it or what happened?

A. We stopped selling Debonair completely and then went directly on the Valor.

Q. What happened about Victor? A. The same thing. We 20  
stopped selling Victor and went on to the Valor.

(Loan account I.V.M. Pty. Ltd. to I.V.M. Holdings Pty. Ltd. in the I.V.M. private ledger tendered.)

(Further hearing adjourned until 10 a.m. Wednesday, 6th December, 1961.)

6th Dec., 1961.  
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### **Sixth Day: Wednesday, 6th December 1961**

(Ronald Eric Jellingsworth, an officer of the A.N.Z. Bank and residing at 37 Grosvenor Crescent, Summer Hill, produced documents on subpoena duces tecum.) 30

(I.V.M. Holdings loan account in the I.V.M. private ledger tendered and marked Exhibit Y.)

(Inter-office memos tendered and marked Exhibit 12.)

JOSEPH STEEN.

Further re-examined:

MR MOFFITT: Q. With regard to this No. 5 offer prior to launching the campaign to sell the machines, had anything been done with regard to Eta Nuts that had to be put into the machines? A. Yes.

Q. What had been done prior to the launching of the campaign?

A. Numerous consultations had taken place with the managers and 40  
the various departments in Eta concerning the quantity, the type of packaging that had been prepared, the materials that were being used, the weight and flexibility of the cartons and various—



Q. Without going into detail there had been discussions on numerous different heads about the Eta product in relation to the machine, were there? A. Many discussions.

Q. Before the matter was actually launched before the public, that is the sale of the machines, over what period of time had these discussions and negotiations with Eta been going on? A. For two months or may be even three months.

Q. In the prototypes did you test out the actual Eta nuts in the machines? A. Yes.

10 Q. When you tested the sale of the nuts? A. Yes.

Q. When you were selling machines in June was any attention being paid by the company to arrange the matter of siting the machines? A. Certainly.

Q. What attention was being paid to that in June? A. There was a particular drive going on in June and prior to June with an all-out endeavour to obtain sites and locations for the Valor and other machines.

Q. I am speaking of that period of May, June, July, during that period of time—with regard to the people for whom you got the 20 sites what kind of places would they be? A. Hotels, cafes, milk bars. Mostly hotels.

Q. But arrangements would have to be made with a private individual? A. An individual who owned such a place.

Q. So far as the individual was concerned was he paid anything to allow you to site the machine or did he get something from the produce of the machine? A. He got a percentage of the takings from the machine.

Q. So far as the company was concerned, that is I.V.M. itself, take the Valor, what was their sale price in June 1959? A. £125.

30 Q. Did it at some later or different stage have a different price? A. Yes, it became £100.

Q. What was the cost to I.V.M. of purchasing the machines? (Objected to, allowed.) A. Approximately £27, £28.

Q. And with regard to the Victor, what was the selling price? A. With regard to the Valor?

Q. Yes, that is the Valor, but with regard to the Victor? A. £75.

Q. And the cost to I.V.M.? A. About £12 or £14.

40 Q. You have already told us in your earlier evidence that moneys had been paid from I.V.M. to the Merchandising Company on receipt of the money, that is this 10 percent, but so far as the putting on the site is concerned which company did that? A. What—

Q. Putting a machine on the site, actually physically getting it and putting it in the location—which company did that? A. Mostly Automatic Merchandising.

Q. In the audited accounts in respect to the year ending 30th June 1959 what was your belief at the time that those accounts were

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Respondent's  
Evidence.  
Joseph Steen.  
Re-examined.  
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—  
Respondent's  
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—

prepared and completed as to whether or not those accounts included provision to cover the cost to I.V.M. of such machines as had not been allocated? (Objected to, argued and the objection was then withdrawn.) A. It was my belief that such provision had been made in the accounts to provide for the purchase of whatever machines were still unallocated at that particular date.

HIS HONOR: Q. In what way in the accounts did you believe that that provision had been made? A. An amount of moneys had been appropriated in the accounts representing the total amount of money required to purchase these machines. 10

MR MOFFITT: Q. With regard to the people who were manufacturing machines what were their names at that time? A. Ainsworth Consolidated and G. E. Tidbury.

Q. What had been your usual practice about paying their accounts, that is, prior to the end of June? A. In every case it was paid within a 7 day delivery; they were paid on a Friday or a Saturday and in fact in many cases we paid in advance.

Q. You gave an estimate (this is at pp. 119 and 120) about the number of machines for which money had been received and they had not been sited and you said "I would have the idea of round 20 about £100,000 but not £150,000". Would you tell me whether or not that figure that you gave in that way would include all machines which were unsited, whether they came from offer No. 5 or not or whether there was some other figure in addition to that estimate you gave? A. The estimate I gave included everything regardless of No. 5 or any other offer.

Q. You were asked about the advertising and about the Medic programme and my friend put certain dates concerning the Medic programme to you, but can you tell me did the Medic programme only go on the dates my friend put to you or did it extend to other 30 times as well? A. The Medic programme ran for approximately a period of one year, every week.

Q. On what station? A. That was in the Sydney area—New South Wales.

Q. When approximately did it run till? A. About March, April—round about that time—in 1960.

Q. As well as Sydney did you have a Medic programme in Brisbane? A. Yes, we had a Medic in Brisbane.

Q. How long did that run for? A. From the commencement—I don't recollect the date of commencement, but it would also run to 40 approximately the same time, April 1960.

Q. Did you also have programmes in Melbourne and Adelaide, that is Bronco, Cheyenne and 77 Sunset Strip? A. Bronco and Cheyenne were in Melbourne and 77 Sunset Strip in Adelaide.

Q. When did they run till? A. Till the same period.

Q. Into 1960, did they? A. Yes.

Q. I refer to page 128 near the bottom, the second last question.

You were asked as to what would have been the position if the tax advice had not been given to you. The question was "If it had not been for that tax advice you would have left the moneys in the company, would you" and your answer was "If this scheme had not gone ahead the bulk of the money would have been left in with the exception possibly of the clearing off of the loan accounts by means of, say, a dividend". Will you tell me if this tax advice had not been given what would have been the position after the 30th June 1959? A. We would have carried on just the same way as we had carried on 10 prior to June 1959—on such occasions as I would require a loan after discussing it with my father and subject of course to the company's position being quite fluid such loan would be made to me. It would be in a similar position after that particular date as it was prior to it.

Q. What would have happened so far as dividends were concerned if this tax advice had not been given, that is after 30th June 1959? A. Well, a dividend would probably be declared to cover whatever loans had been taken during that period.

Q. So far as you can say if this tax advice had not been given you would have drawn amounts similar to what you in fact drew 20 earlier, after the 30th June 1959? A. Yes, I believe that would be so because after June 30th 1959 the company was prospering at even greater rates. In the course of the six months following June 30th to December 30th we completed sales in excess of the sales that were done in the entire year previous.

Q. That is for the six months to the end of the second half of 1959? A. The second half of 1959 was in excess of the total period of 1958-1959.

Q. So it would be in excess of £600,000 odd, would it? A. Yes.

Q. At the time you had these discussions on the matter of tax, 30 when you had the first talk to North Ash & Mann and the second one was the position any different then to what it was in July and August of that year? (Objected to, withdrawn.)

Q. From the point of leaving moneys in the company or drawing them out was the position any different in July and August to what it was at the time that you had the discussions with the company's accountants on the two occasions you gave evidence in chief? (Objected to, allowed.) A. Yes. There was a distinct difference between the two occasions. When we were first discussing the position with the accountants we had just launched the Eta nut machine on the 40 No. 5 offer, and we were just contemplating launching it at that particular time and we had received results from the machines on the field, and we were just launching the sale of them, but by July and August we had already had some two months at least of results of the sales of these which were quite astounding and certainly exceeding anything we anticipated and as such by July and August our position was completely different.

Q. The total of £77,000 odd which was the total of the drawings

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Respondent's  
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(Continued)

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—

up to the time of the transaction which has been attacked had there just before that had happened—you have mentioned there had been an equalisation between yourself, your father and your brother—had that equalisation taken place before this figure of £77,000 was arrived at? A. I do not think so.

Q. That is a matter that will appear in the accounts in any event one way or the other? A. Oh, yes.

Q. With regard to the 1960 sale at that time can you tell me whether the loan to Valor Finance by I.V.M. about which Mr Bowen asked you was paid off? A. Yes. 10

Q. It was paid off? A. Yes.

Q. Was any balance sheet put out or profit and loss account prepared either in draft or otherwise so far as you are aware of I.V.M. for the period ended 31st December 1959? A. No.

Q. And so far as you are aware was there any discussion or intention to put out a balance sheet at that time? A. No.

(Witness retired.)

Respondent's  
Evidence.  
Louise Steen.  
Examined.  
—

LOUIS STEEN

Sworn, examined, deposed: 20

MR MOFFITT: Q. What is your full name, please? A. Louis Steen.

Q. Where do you live, Mr Steen? A. 88 Military Road, Dover Heights.

Q. You are a company director and you are one of the respondents in this case and you are a former director of International Vending Machines Pty. Ltd., is that right? A. Yes.

Q. Where were you born? Where did you come from? A. From England.

Q. Did you carry on some kind of a business in England before 30 you came to Australia? A. I did.

Q. What kind of business was that? A. Clothing manufacture.

Q. Ready made clothes? A. Yes.

Q. What year did you come to Australia? A. 1957.

Q. What part of 1957? A. The early part of 1957.

Q. I want to go to the early part of 1959. (Exhibit 2 handed to witness.) At about the time that was received by the company did you see that letter, Mr Steen? A. Yes, I did.

Q. Subsequently to that did you have some conference with North Ash & Mann? A. Yes. 40

Q. This letter is dated 18th March. Can you give me any idea when you think that conference was in reference to the date of this letter? A. Within two or three days.

Q. Who was present at the conference? A. Mr Mann and Mr Purcell, myself and my son Joe.

Q. Whereabouts was it held? A. In our office in Caltex House.

Q. Will you tell me what was said at that conference and as

far as you possibly can, Mr Steen, I want you to try and recapture the words that were said by the people concerned. Do you understand that? A. Yes.

Q. When the conference started who opened up the subject matter of the conference? A. Mr Mann.

Q. What was said at first in opening up the conference? A. He said that there were certain matters relating to the company with reference to this letter which he wanted to discuss with us and we went over the matters in the letter and one of the particular matters  
 10 was that he said that the company according to the accounts that he had prepared to date and knowing what had taken place in the couple of months since then, indicated very very clearly that the company was going to make a very very large profit for the year and consequently the company would be faced with very very heavy liability for taxation. He then said that there were ways in which this problem could be met. Firstly if we distributed these profits as dividends they would be liable to particularly heavy taxation because of the personal tax involved and the provisional tax involved, and he then said that  
 20 possibly be the answer to the problem and that was by forming a public company—a company which would be classified as a public company for taxation purposes.

Q. Did he tell you anything more about that, do you remember? A. He did not go in to much detail about it. He really said that this was one way of doing it, by forming a public company, and I was particularly interested in this aspect of it and asked him and Mr Purcell to proceed further in this matter to get expert advice in regard to putting such a plan into formulation, to find out if it was a correct  
 30 thing to do and if it could be done on a basis that would meet this situation.

Q. What was said about the advice or anything else that was said about where the advice should come from? A. I asked Mr Mann or Mr Purcell if they knew of such experts who could give us the advice that I was looking for. They did mention one or two names. Among them was Mr Challoner. They said that Mr Challoner was an authority on tax problems and that in their opinion he would be the proper man to approach for this advice.

Q. Then what was said about that after Mr Challoner's name was mentioned? A. I agreed that Mr Challoner should be approached,  
 40 that they should consult him and find out how this public company that they had mentioned could possibly be brought into formation.

Q. Did you have any other conference then at some later stage on the same subject matter? A. No, there was no conference took place.

Q. Well, did you have some meeting with some representative of North Ash & Mann? A. Yes.

Q. Can you tell me when this meeting was? Firstly, can you

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 Respondent's  
 Evidence.  
 Louise Steen.  
 Examined.  
 (Continued)

*In the  
Supreme Court  
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—  
Respondent's  
Evidence.  
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Examined.  
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—

tell me approximately when it was, do you think? A. The first meeting was the end of March. The second one would be either at the end of April or the beginning of May.

Q. On that occasion do you remember how that appointment was made—on the second occasion? A. Yes, I got a telephone call from North Ash & Mann telling me that they had—

Q. To whom did you speak? A. Mr Mann. He said that he had had a final interview with Mr Challoner and could put to us the advice given by Mr Challoner. I arranged an appointment with him, for him to come to our office and discuss this matter with us. 10

Q. Do you remember what date it was that they came to see you or he came to see you, or whoever it was came to see you? A. It was not he who came. It was Mr Purcell.

Q. Was it the same day you spoke to Mr Mann or a different date? A. I think it would be the following day probably.

Q. Have you ever had any conversation or been present at any conversation in which there had been any discussion with Mr Mann or Mr North Ash at any time concerning Mr Purcell in the handling of matters for North Ash & Mann? A. Yes.

Q. Had there been one discussion or more than one discussion so far as you are concerned? A. There had actually been more than one discussion. At various times, well, at very frequent times, Mr Purcell used to come up to our office and do everything necessary for the bookkeeping and accounting and auditing. At various times Mr Mann also used to come up, probably to see that everything was going all right. On one or two occasions he spoke to me and spoke very highly of Mr Purcell.

Q. Can you tell me what he said so far as Mr Purcell was concerned? A. Yes. He said that Mr Purcell was a very very efficient person, that he knew everything connected with our affairs and would be virtually in charge of all our affairs. 30

Q. After this appointment had been made you say Mr Purcell then came up? A. Yes.

Q. And who was present when he came? A. Myself, my son Joe and Mr Purcell.

Q. Whereabouts did that occur? A. In Caltex House in our office.

Q. Will you tell me once again, trying as far as possible to recapture the words that were used, what was said firstly by Mr Purcell when he came? A. Mr Purcell said that he had an inter-40 view or interviews—I am not sure which—with Mr Challoner and had discussed this question of the public company with him and Mr Challoner had given him advice concerning it which he was now giving to me, and the advice was, he said, that what was necessary was to form a public company which would be recognised as such and which would purchase the shares of I.V.M. and thereby I.V.M. would become a subsidiary to this public company and entitled to

taxation benefits that a public company would be able to claim. He went into some details concerning it. He mentioned, for example, that over 20 subscribers would be needed to make this a public company. He emphasised the fact that these subscribers would have to put their own money into it, we could not assist them in that regard, and it had to be done on the correct basis and these people had to be outside people with no interest in the company who would subscribe in an ordinary way. By these means the company would become a public company.

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Evidence.  
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(Continued)

10 Q. This is what he told you? A. This is what he told us; he said this to me. This would be necessary in order to make this a public company. I told him that if that was the position and he was satisfied that that was the position—he also said that Mr Challoner had said to him that the way this company was being formed was something that was being done normally, it had been done with other companies and Mr Challoner felt that the Commissioner of Taxation would not challenge such a company being formed. I then told him to as soon as he possibly could go ahead and form such a company because speed was necessary because he said to me that this company  
20 had to be formed before the end of June, otherwise we could not be entitled to the benefits for that particular year.

Q. Was there anything else? Did he tell you the method in which the shares were to be bought? Did he go into that? A. Yes.

Q. Tell me what he said about that? A. He said this new company that would be formed would buy the shares of I.V.M., but in order for them to buy the shares of I.V.M. the moneys would be loaned by I.V.M. to this Canberra company to purchase the shares and thus we would be able to put this into operation.

30 Q. Was anything else said on that subject matter that you can recall? A. Yes, this was to be regarded as a loan by I.V.M. to the Canberra company and would be repaid at some future date on the declaring of dividends.

Q. Anything else? A. I cannot recollect.

Q. Was there any discussion about the price of the shares? A. Yes.

40 Q. Tell me what discussion there was and what was said about the price of the shares? A. When we spoke about the value of our shares Mr Purcell said that the one thing that had to be done here was that these shares had to be bought by the Canberra company at a realistic figure; it would not be sufficient to just put them in at their figure because it would be ridiculous and probably would not be acceptable by the Taxation Commissioner. We then discussed how we could arrive at the value of these shares.

Q. What was said about that as far as you can remember, Mr Steen? I know it is a long time ago? A. I said to Mr Purcell that obviously one of the factors that had to be taken into consideration was the trading and the profit that had been made for the previous

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six months. In addition to that the probable profits that could be earned by the company in the way it was going—it was going by leaps and bounds successfully and even—

Q. This is what you said? A. This is what I said to Purcell and Purcell himself said that this would be a correct basis on which to evaluate our shares. In view of this, in view of these figures of I.V.M., the profit that we had made in the previous year, the possibility of the profits we would make, the position of the company which was very solid at that particular time—it had very very strong assets—and I personally then when this figure of round about £200,000 10 was suggested by Mr Purcell thought it was a very conservative figure. I personally would have expected to get more.

Q. Is that what you said at the time? A. Yes, I did say that at the time.

Q. You said after this had been put to you you gave him some instructions to go ahead? A. Yes, I told him to go ahead.

Q. What did you actually tell him what to do? Did you say “Go ahead”? A. Yes, I told him to go ahead and arrange about the formation of this company.

Q. Up to the receipt of the letter and the conference that you 20 had following on the letter did you have any idea of forming a public company for tax purposes or of forming a company such as was formed and advancing money from I.V.M. to the new public company for the purpose of shares being purchased? Did you have any thoughts or ideas on that subject at all? A. No idea at all.

HIS HONOR: What is that you refer to?

MR MOFFITT: That is the letter of the 18th March. It only mentions a problem of tax.

HIS HONOR: This is not the written report Mr Challoner said he 30 was going to make?

MR MOFFITT: No.

Q. Did you ever receive any written report from Mr Challoner? A. No.

Q. Or ever told that any written report by Mr Challoner was made? A. No.

Q. Or that he was going to make a written report? A. No.

Q. This matter of tax that you first discussed, that is, that was discussed with you following this letter, did you take any part in raising or suggesting that conference? A. No.

Q. And did you give any thought to the position about undis- 40 tributed profits tax of the company up to that moment? A. Never. Until I received that letter it never entered my thoughts.

Q. At the meeting with Purcell was anything said at that meeting as to whether or not there was anything illegal or improper in any part of the transaction that was proposed? A. No.

Q. Was there any mention made as to whether or not there



would be any breach of the Companies Act or anything of that description? A. No.

Q. Was any discussion had as to whether it was right or not right for the I.V.M. Company to lend to another company to assist in enabling its own shares to be bought? Was there any discussion on whether that was right or wrong? A. None whatever.

Q. And until you received the summons in this proceeding had you ever heard of Section 148 of the Companies Act? A. Never in my life.

10 Q. And had you ever heard or known that there was any provision in the Companies Act to the effect that a company could not lend money for the purpose of or in association with the purchase of its own shares? A. I did not.

Q. And until you received the summons did you have any idea that there was anything wrong with the transaction in relation to the formation of the Canberra company or the advance of money from I.V.M. to I.V.M. Holdings? A. Absolutely not.

Q. With regard to the subsequent steps, that is after you had this conference with Purcell, who did the actual machinery of carrying  
20 out this scheme, that is drawing up all the cheques? A. Mr Purcell.

Q. And so far as the minutes are concerned, drafting the minutes that might be necessary? A. Mr Purcell.

Q. Did you prior to and after this transaction which is attacked have loans and advances made to you by the I.V.M. Company? A. Yes.

Q. Will you tell me prior to the matter of this tax problem being raised and this suggestion made regarding forming the public company what had been your intention so far as what might happen up to the 30th June 1959, so far as any advances to you were concerned and  
30 so far as the declaration of any dividend was concerned? A. It was our intention to declare a dividend at the end of June to at least an amount which would wipe out our loan accounts with the company.

Q. When you say at least was the intention at that time to take all of the money out by way of dividend? A. No.

Q. Will you tell me what the intention was? A. The intention was that a dividend would have been declared which would have cancelled out the loan accounts and whatever money remained would be left in the company.

Q. And so far as the future periods were concerned after June,  
40 what had been your intention? A. My intention was that the same procedure would carry on after that time, that drawings would be made and a dividend declared which would cover the drawings.

HIS HONOR: Q. Mr Steen, you have been told, I assume, that if there was a misapplication of the funds the Court has power to relieve you from liability; you are aware of that, are you? A. I am not quite clear on that.

Q. If there has been a misfeasance or a misapplication of these

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funds the Court has power to relieve you from liability for it? A.  
Yes, Your Honor.

Q. And you ask that that be done? A. Yes.

Q. But there are no special terms? You do not offer any terms  
of restitution of any of the moneys at all? A. No, Your Honor.

#### CROSS-EXAMINATION

MR BOWEN: Q. You told us you were born in England, Mr Steen?

A. That is correct.

Q. That was at Salford, Manchester, was it? A. Yes.

Q. You have not always used the name Steen, have you? A. 10  
No.

Q. What was your name before that? A. Finkelstein.

Q. Have you used another name as well when you were in  
England? Have you used your wife's name? A. No.

Q. I think you came out to Australia you have told us towards  
the end of 1957? A. Yes—

Q. At the beginning? A. The beginning of 1957.

Q. The early part of 1957, is that right? A. Yes.

Q. And shortly after you came to Australia you formed a com-  
pany known as Scottish Industries Pty. Ltd., did you not? A. Yes. 20

Q. And I think that another man named Barnett Hylander formed  
that with you; you were the two subscribers, is that right? A. Yes.

Q. And I think you two, you and Barnett Hylander, were the  
sole directors and shareholders in that company? A. That is correct.

Q. I think the company proceeded to arrange for the sale of a  
paper which could be interposed between an iron and a cloth or  
clothing when it was being ironed, is that right? A. That is correct.

Q. And the company used a name for this paper "Dri-Press",  
is that right? A. That is correct.

Q. This paper being a kind of greaseproof paper, is that right? 30  
A. A particular type of paper, yes.

Q. And after you had formed the company you sought distribu-  
tors in the various States of Australia, is that right? A. Yes.

Q. And I think that you entered into arrangements with a Mr  
and Mrs Thornton to be distributors of the company in Queensland,  
is that right? A. That is correct.

Q. And a Mr Churnside to be distributor in N.S.W.? A. That  
is correct.

Q. And a Mr Reinher to be distributor in Victoria, is that right?  
A. Yes. 40

MR MOFFITT: At this stage I object unless my friend gives Your  
Honor some assurance that it is on credit . . .

MR BOWEN: This is only credit, Your Honor.

HIS HONOR: It is to the credit of this witness and not to similar  
acts or anything of that kind?

MR BOWEN: It is one of the circumstances immediately preceding the formation and conduct of this company that I would seek to rely on although I do not put it on the basis of similar acts. I think it would be too much to say it is entirely on credit.

MR MOFFITT: It is only mentioned under C(3) of the particulars.

HIS HONOR: I do not think I ought to allow it on anything except credit in view of no particulars having been given of it.

MR BOWEN: Q. You made arrangements for Mr Rizzolo to be distributor of Scottish Industries Pty. Ltd. for Tasmania, is that right?

10 A. Yes.

Q. You made arrangements with each of those distributors for them to pay an initial sum either in cash or by promissory notes against the supply of this paper "Dri-Press" which they would distribute? A. That is not quite correct.

Q. Did each of these distributors in fact pay to Scottish Industries Pty. Ltd. a sum in cash or give promissory notes to the company following your making arrangements with them? A. Yes.

Q. That is correct, is it? A. That is correct, yes.

20 Q. I think to take one, Mr Rizzolo paid you £6,000 in cash to the company, is that right? A. Yes.

Q. And the Thorntons gave promissory notes for £10,000, is that right? A. Yes.

Q. Is this the position, Mr Steen, that each one of these distributors has brought a suit for fraud against the company joining you and Mr Barnett Hylander as defendants? (Objected to, rejected and directed to be struck out.)

(Short adjournment.)

30 MR BOWEN: Q. When you were in the United Kingdom and before you came out to Australia had you ever been sentenced to a term of imprisonment for fraud? A. Yes.

Q. And what was the term of imprisonment? A. Two months.

Q. When was that? A. Thirty years ago.

Q. You would say it was thirty years ago? A. Thirty years ago, yes. (Objected to and asked to be struck out; pressed; argument ensued.)

(At the direction of His Honor the following questions and answers were read from the shorthand notes:—

40 "Q. When you were in the United Kingdom and before you came out to Australia had you ever been sentenced to a term of imprisonment for fraud? A. Yes.

Q. And what was the term of imprisonment? A. Two months.

Q. When was that? A. Thirty years ago.

Q. You would say it was thirty years ago? A. Thirty years ago, yes.")

MR MOFFITT: I would ask that all of those questions and answers be struck out. (Objected to; argument ensued.)

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HIS HONOR: I do not think I will strike them out. If Mr Bowen wishes to allege that it was a shorter period than that I am not going to stop him from doing so. Mr Bowen wants to foreshadow a further question he may write it out and let me see it. What is the period suggested?

MR MOFFITT: I ask that that not be said in open Court.

HIS HONOR: Mr Bowen will write it down.

MR MOFFITT: I do not mind that course being followed.

(At this stage Mr Bowen wrote on a piece of paper, which was then handed to Mr Moffitt and His Honor.)

HIS HONOR: I think it falls into the same category. Now, on this question of striking out, what do you wish to say, Mr Moffitt? 10

MR MOFFITT: First of all could I have the paper that has been handed up marked for identification?

HIS HONOR: I will not have it marked for identification. How can I really have the question struck out?

(Argument ensued on the question of striking out the questions and answers read from the shorthand notes.)

HIS HONOR: I do not think I ought to strike the questions and answers out, particularly as I would not be doing it for the purposes 20 of this case, but so far as anything else is concerned I think that it is necessary to rely on discretion as to whether or not it gets the publicity that Mr Moffitt is concerned with. However, I am not concerned with that.

MR BOWEN: Q. When you were in the United Kingdom, before you came out to Australia, did you have any experience as director of a company? A. Any particular company?

Q. Any company? A. Yes, I did.

Q. What company was that? A. A clothing company.

Q. What was its name? A. Delmonte Rainwear. 30

Q. Delmonte Rainwear Ltd. Any other company of which you were a director? A. No.

Q. How long were you a director of that? A. Ten years.

Q. And you were then a director of Scottish Industries Pty. Ltd. after you came out here, were you? A. Yes.

Q. And then International Vending Machines Pty. Ltd.? A. Yes.

Q. Prior to the formation of the I.V.M. Company had you been a director of any other companies besides those two others that have been mentioned? A. I do not think so. 40

Q. As a company director were you not aware that a company could not provide financial assistance for the purchase of its own shares? A. No, I was not.

Q. You were not aware of that? A. No.

Q. You have mentioned that you had a meeting with Mr Purcell and Mr Joseph Steen when some advice that Mr Challoner had given was passed on to you? Do you recall that evidence? A. Yes.

Q. I think you have said "The end of April or the beginning of May?" A. Yes.

Q. In the course of that discussion there was talk of a price being put on the shares—£200,000—is that right? A. Yes.

Q. Had any question of putting a price on the shares been discussed before that? A. No.

Q. You are quite sure of that, are you? A. Quite sure.

Q. There had not been any earlier discussions with Mr Purcell—before this formal conference? A. No.

10 Q. Any discussions with Mr Mann about it? A. No.

Q. Or with Mr Northash? A. No.

Q. Is this the position, that if they put any price in their discussion with Mr Challoner it would have been without reference to you? A. Yes.

Q. I want to take you to the question of your loan account as it stood at the time of the payment of the £205,000 on the 25th June 1959.

MR BOWEN: Could the witness have the cash payments book before him?

20 HIS HONOR: Yes.

(Book handed to witness.)

MR BOWEN: Q. I think it is agreed that the balance on the loan account showing at that time was £38,568/11/3d.?

MR MOFFITT: That is just the instant before it happened?

MR BOWEN: At the time that it happened.

Q. And this was made up by drawings during the period from the formation of the company until that point of time, by you, which are shown in the Cash Payments Book? Would you agree with that? A. Yes, I would agree with that.

30 Q. In the Cash Payments Book commencing July 1958, there are amounts recorded as being debited to you? It starts off at folio 1 and goes on. (Witness perused book.) Perhaps one could take an example. Would you look at the 26th August 1958—the sum of £1,000. A. 25th August, yes.

Q. 25th August. That would be a drawing which you made which was debited to your loan account, would it not? A. It is marked here, "Director's fees".

Q. That is director's fees. A. Yes.

Q. And that is what it would be for—in August 1958? A. Yes.

40 Q. Would you have earned any director's fees at that point of time—by then? A. Yes.

Q. And that is the amount which you had earned for director's fees in August 1958? A. I am sorry—I missed that question.

Q. That was the amount which you had earned for director's fees up to the 26th August 1958? A. Not necessarily earned it at that particular time, but it was a drawing against director's fees.

Q. A drawing against director's fees? A. Yes.

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Q. Well, I had better take another example. The 15th September 1958—the sum of £1,000? A. Yes.

Q. That would be a drawing which you made which was debited to your loan account with the company? A. Yes.

Q. Before making that drawing would you have any discussion with your co-director, your son? A. At all times.

Q. You say “on each occasion”? A. On each occasion.

Q. There are a number of these in which your name appears up to the 25th June 1959; without going through each individual one would you agree that where it is shown in the cash payments book that an amount has been paid out by the company, and that you are the person to be debited with the amount, it would represent a drawing by you? A. Yes; that would be right. 10

Q. And you would also agree that so far as the actual drawing is concerned you would then have used the money for your own private cases? A. Yes.

Q. In the case of many of these drawings, including the one I have just drawn your attention to, you would have paid them into a savings bank account either in your own name or your wife's name? A. In some instances. 20

Q. And you would have received interest on that amount? A. Yes.

Q. In the cases where there were joint drawings by yourself and J. Steen shown, they would have gone to a joint account in the Haymarket and they would have, in many instances, been used for purchases on the Stock Exchange—is that right? A. Yes.

Q. After you received the purchase price for the shares, which in your case was £90,000, you paid that back to I.V.M., did you not, and got a credit in your account at that stage.

Q. The credit in your case of £51,431/8/9d.? A. I could not say as to the amount but— 30

Q. If that is shown in the books it is right? A. Yes.

Q. And you drew out twenty-two and a half thousand pounds and applied that in taking up shares in I.V.M. Holdings Pty. Ltd.? A. That is correct.

Q. So that at the 30th June 1959 I suggest that your balance as shown in the balance sheet was £28,931/8/6? A. Yes.

HIS HONOR: Q. Keep your voice up because the reporter has to take it down? A. Yes; that could be correct.

MR BOWEN: Q. If you look at folio 99—9th July 1959? A. Yes. 40

Q. You see there a drawing of £5,000? A. Yes.

Q. Against your name? A. Yes.

Q. That is a drawing against your creditors or was at that time—is that right? A. Yes.

Q. And then you proceeded—is this correct—to draw, at intervals, sums of £5,000 against this credit until it was exhausted by the

end of July—would that be right? A. It could be. I could not say without—

Q. You have drawn several amounts? A. There were several drawings.

Q. In individual amounts of £5,000, you had drawn, I suggest, £30,000 by the end of July—I am sorry, August—July/August? (Objected to.)

Q. July to the end of August—two months? A. It could be.

Q. That could be so? A. Yes.

10 Q. And I think that where these drawings of £5,000 are shown against your name in the cash payments book they would represent the occasions when you made those drawings? A. They would, yes.

Q. In September 1959 you made a further drawing of £5,000 on the 11th September shown on folio 125—would that be right? A. Yes.

Q. There are three other items I wanted to put to you. Will you go to folio 161 of the 27th November 1959—a sum is shown there of £3,000? Do you see that? A. What date is that?

20 Q. 27th November, 1959, folio 161. There is a sum of £6,000 to joint account—L. & J. Steen? A. Folio 161?

Q. 161? A. Oh, yes, I have it. £6,000 to L. & J. Steen.

Q. To L. & J. Steen? A. Yes.

Q. And £3,000, I suggest, of that would have been your share of the drawing? A. Yes.

Q. Another item is at folio 168—12th December 1959. Do you see an item there of £3,000 credited—I suggested another drawing of yours of the same character? A. Yes.

Q. And then, at folio 180—of the 4th January 1960—a sum of £25,000 or £50,000? Is that right? A. Yes.

30 Q. Which is it? A. £50,000 L. & J. Steen.

Q. L. & J. Steen? A. Yes.

Q. And your part of that drawing debited to your account would have been £25,000—is that right? A. Yes.

Q. There was a separate set of drawings, was there not—Louis and Joseph Steen joint account—would that be right? A. That is some of those that you have mentioned—L. & J. Steen.

Q. No; other than those mentioned. Let me direct your attention firstly to folio 117—28th August 1959—the sum of £1,000 drawn on joint loan account, is that right? A. On L. & J. Steen account?

40 Q. On L. & J. Steen account? A. Yes, that is correct.

Q. Perhaps we can take it one lot. At one stage you had a procedure for having a joint loan account, did you not, in addition to your individual loan account? A. Yes.

Q. And at a certain point of time, there having been various drawings which were debited to that account, after it was transferred as a debit to your private loan account and debited to the private loan account of Joseph Steen? A. I am not quite clear on that.

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HIS HONOR: Are not those figures taken into account in the figure of £77,000?

MR BOWEN: They are yes. In the ultimate, no—no. These are—

HIS HONOR: Subsequent drawings?

MR BOWEN: Yes.

HIS HONOR: Well then, haven't I got the material before me to show that everything was paid off virtually? I cannot see what this has established.

MR BOWEN: Your Honor will see in this form—in Exhibit N, the loan account—in November 30th 1959, there was a journal entry 10 made transferring to the individual loan account, and Your Honor sees it there?

HIS HONOR: Yes, I feel that I have all that. There is no dispute about the correctness of this?

MR BOWEN: No. I want to identify how those moneys were treated. Perhaps it is sufficiently clear.

HIS HONOR: The purpose for which they were used does not seem to be relevant because it is admitted they were used for private purposes.

MR BOWEN: Yes.

I think probably it is getting towards the fringe of the matter, 20 but the volume and manner and time of these things also I am placing some reliance on. I think the accounts will speak for themselves.

HIS HONOR: Yes; they can.

MR MOFFITT: Could I inspect the book that the witness is looking at?

HIS HONOR: Yes. (Book handed to Mr Moffitt.)

MR BOWEN: Q. I show you a printed annual report for the year ended 30th June 1959 (document handed to witness). It is marked for identification number 9. It contains a chairman's report and facsimile signature on the front sheet of it. Is that a facsimile of your signature? A. Yes. 30

Q. And you authorised the publication of this report, did you?

A. I did.

Q. This report I put to you—you had a thousand copies of it printed? A. I do not know how many.

Q. I suggest that you got Studio Press to print a large number of copies which I suggest was a thousand? What would your recollection be? A. I could not tell you how many. It would be sufficient to cover the number of machine owners that we had on the books.

Q. On the books at that time? A. Yes.

Q. And I suppose some over? A. Yes, there would be some over. 40

Q. Did you send it to the press? A. Did we what?

Q. Send it to the newspapers? A. Yes.

Q. I suggest to you that this contains in it on the second page a heading, "audited financial statements of associated companies"? Do you see that? A. Yes.

Q. The fact was that these accounts of associated companies



were not audited accounts—is that right? A. No, that is not right; they were audited.

Q. I suggest to you that the auditor refused to certify accounts in this form?

MR MOFFITT: What do you mean in this form?

MR BOWEN: In the form set out in this printed document—is not that right? A. It is not right. How could he refuse when he issued a certificate auditing these accounts?

Q. I suggest that you take Automatic Merchandising (New South  
10 Wales) Pty. Ltd.? A. Yes.

Q. And do you see the item £6,159? A. Yes.

Q. And I suggest to you that he refused to audit that as one item in the account? A. How could he refuse when he issued an auditor's certificate in this particular brochure? He actually issued it.

HIS HONOR: Q. A certificate for these accounts or as to the account for the guarantee fund? A. When this particular brochure was put out the newspapers criticised the fact that it had no auditor's certificate. I contacted the auditors and they issued a certificate in regard to this particular brochure.

20 MR BOWEN: Q. I suggest to you that what happened was that the auditor certificate some particular audited accounts, but he never put a certificate on or made one in relation to the printed document? A. Yes, he did.

Q. Do you agree with that? A. No, I do not agree with that. He did.

Q. Let us go to Automatic Merchandising (Victoria) Pty. Ltd. A. Yes.

Q. Just have a look at this document (handed to witness). I suggest to you that that is the form of accounts that the auditor was  
30 prepared to certify in relation to Automatic Merchandising (Victoria) Pty. Ltd.? A. How could he do that—?

HIS HONOR: Will you answer the question?

MR BOWEN: Do you agree with that? A. I do not agree with that.

Q. Will you read what is there (indicating) and then answer it? (Objected to.)

HIS HONOR: The witness can be asked to read what is there.

MR MOFFITT: I do not know what the document is—

HIS HONOR: Not "read out".

MR MOFFITT: I am sorry; I misunderstood the question.

40 MR BOWEN: Do you see the date of it? A. Yes.

Q. And the contents of it? A. Yes.

Q. And having seen that, do you now recall that the auditors gave a certificate in that form in relation to the merchandising company? A. Yes.

Q. That is correct is it not? A. Yes, that is correct.

Q. And that is the only certificate that they were prepared to

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give in relation to the merchandising company is that right? A. No, that is not right at all.

Q. That is not right? A. No.

Q. You say that they gave another certificate? A. They gave another certificate in regard to this annual report; when the question was raised as to whether these were audited accounts they then gave a certificate which certified that these were audited accounts—the accounts in this annual report.

Q. They gave that certificate when some criticism was raised of the accounts? A. Yes. 10

HIS HONOR: Is it proposed to tender this document?

MR BOWEN: Yes, I tender the printed report. (Objected to.) There are a number of copies available. Perhaps it would be convenient to leave that with the witness and tender another.

HIS HONOR: Yes. I will leave it for the moment.

MR BOWEN: Q. Just looking at the other document that I put before you—? A. This one (indicating)?

Q. Yes. I think you agreed that that was what I understood on earlier certificate of the accounts of Automatic Merchandising (Victoria) Pty. Ltd., given by the auditor? A. Yes. 20

Q. Would you look at the accounts attached to it—would you agree that they were the audited accounts of the merchandising company? A. Those are the accounts and this is the attached certificate (indicating).

HIS HONOR: Q. You were asked whether those were the audited accounts of the merchandising company? A. Yes.

MR BOWEN: Q. You will agree that those accounts differ in the way in which they show the receipts of the merchandising company, from the printed accounts I put before you? A. They differ in several respects. 30

Q. In several respects? A. Yes, because this is a consolidation—it is extracts from the balance sheet.

Q. Take the profit and loss account of Automatic Merchandising (Victoria) Pty. Ltd. It has one entry on the income side and three on the expenditure side—in the printed accounts? A. In the printed accounts?

Q. Is that right—? A. Yes, that is correct.

Q. It states it in a summary form, is that so? A. Yes.

Q. On the income side it states an income of £20,566? A. Yes.

Q. Whereas in the audited accounts that is split up between the sales on the one hand and payments from I.V.M. on the other—is that correct? A. Yes. 40

Q. I put it to you that the auditors told you it would be wrong to publish accounts with those two figures, that have been separated in the audited accounts, under the one heading? A. No.

Q. You deny that do you? A. Yes, I deny that.

HIS HONOR: Q. Speak up so that everybody can hear? A. That is not correct.

MR BOWEN: Q. I suggest to you that you presented accounts, typed, with the figures lumped together in the first instance under the total on the income side, sundry sales, and before they would give a certificate they insisted on that being split up into (1) sundry sales and (2) amounts received from International Vending Machines Pty. Ltd. for operating machines—is that right? A. No, that is not correct. (Objected to.)

10 Q. And I suggest that you agreed to have the accounts retyped, and they were retyped with the figures split up into two? A. No; the figures are not split into two.

Q. In the audited accounts? A. In these audited accounts?

Q. Yes, in the audited accounts? A. I have no recollection of that at all.

Q. Will you have a look at Exhibit 4 under the heading of the Asset side of the Balance Sheet, of "Loan Accounts" where the amounts debited against merchandising companies are shown in detail? Do you see that? A. Yes.

20 Q. Is this the position, that at the period of time up to the 30th June 1949 I.V.M. was making payments first of all for merchandise and then making a debit against the merchandising company? A. That is not so. That is not true.

Q. Well now, I put this to you, that I.V.M. was paying the 20 percent for which the Merchandising Company was liable to the machine owner, into a fund and charging the Merchandising Company with its proportion in its accounts? A. No.

Q. Is not that right? A. No; that is not correct.

30 Exhibit "4"—that Automatic Merchandising (Victoria) Pty. Ltd. is shown at the 30th June 1959, as owing £15,395/17/10d.? Do you see that, the loan account? A. Yes.

Q. £15,000? A. Yes.

Q. What do you say that that is a debit for? A. That debit was for a loan made by I.V.M. to the Merchandising Company to cover the amount, 20 percent of the guarantee fund.

40 Q. So that you say, that, instead of, as I put, that money being paid to the fund and charged against the Merchandising Company, they paid the money to the Merchandising Company by way of a loan and the Merchandising Company then paid it into the fund? A. I think your previous question asked whether a portion of that was paid by I.V.M. I am saying that all of it was paid by I.V.M.—

Q. And all of it as a loan to the merchandising company? A. That is correct.

Q. That really would represent the interest payable to owners for the year—that figure of £15,395, would it? (Objected to; pressed; argument ensued; admitted.)

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Q. I take it—that one figure in the loan account is an example relating to Victoria—that what you have stated would apply to the figures in the loan accounts shown in Exhibit 4 in relation to the other automatic merchandising companies? A. That is correct. It is a payment of a loan of 20 percent to the company to pay for the year in advance of this guarantee fund.

Q. And it having been lent to the merchandising company, the merchandising company would have disbursed it to a trust fund—is that correct? A. Yes.

Q. But is this the position, that that would have been shown as an expense in the accounts of the merchandising companies when you published their accounts? A. No, it would not have been.

Q. If it had been taken into account, the merchandising companies would each have shown a loss? A. No.

Q. You say not? A. No.

HIS HONOR: Q. Do I understand you to say that the payments into the trust fund were not taken into account as an expense of the operating company? A. Yes; they are shown here.

MR BOWEN: Perhaps I had better ask him again?

HIS HONOR: Yes.

MR BOWEN: Where are they shown—take Victoria—interest paid to owners—that item £4,276? A. At that particular time, yes.

Q. Up to the 30th June 1959? A. Yes, that would be correct, yes.

Q. So that only £4,276 was charged in the profit and loss account as expenditure in respect of disbursements of interest payments? A. The portion that had fallen due at that particular time, yes.

Q. In other words, in relation to expenditure, you brought it in on actual or cash basis—not on an accrued basis? A. This actually had been expended at that particular time.

Q. Yes, but a very much larger sum had in fact been expended at that time by the merchandising companies, by payment to the trust accounts—is that correct? A. Yes, that is correct.

Q. A much larger sum? A. Yes.

Q. But the only portion that was brought to the account as expenditure, in the profit and loss account? A. Yes.

Q. Has some figure which I take it would have been ascertained by working out what disbursements had been made? Is that correct? A. Yes.

Q. So that it was actual disbursements to owners? A. Yes, it was.

Q. May I suggest to you that half the amount loaned by I.V.M. to the merchandising company was brought in on the income side of the account?

HIS HONOR: Would you repeat that question.

MR BOWEN: Q. Half the sum loaned to the merchandising company was brought in as income in the merchandising company's account—under the description of “subsidy” in the detailed accounts—subsidy

from I.V.M.—is that right? I think you can see what I am saying if you look at the audited accounts from Victoria where there is a break up of the profit and loss account? A. In this year (indicating)?

Q. No; the other one—would you look at the income side of the account.

HIS HONOR: No; would you look at the Automatic Merchandising (Victoria)?

MR BOWEN: Q. Yes, would you look at the Automatic Merchandising (Victoria)?

10 HIS HONOR: I do not know where it gets us to.

MR BOWEN: Q. Do you see on the income side? Do you have the profit and loss account? A. Yes.

Q. Do you see an item there “subsidy from International Vending Machines Pty. Ltd.”? How much is that? A. No, I do not see that.

Q. I see that it appears as “amounts received from International Vending Co. Pty. Ltd. for operating machines”. I suggest to you that that is half the 20 percent—would you agree?

MR MOFFITT: Which 20 percent do you refer to?

20 MR BOWEN: Q. Twenty percent which has been paid by I.V.M. to the merchandising company up to the 30th June 1959 by way of loan.

HIS HONOR: If that is a question I do not think it can be quite clear. Are you asking, is half the amount paid in that particular year treated as a loan and the other half treated as moneys paid other than by way of loan—of the total paid from I.V.M. to a merchandising company?

MR BOWEN: It was not the way I put it.

HIS HONOR: It was your ending of the whole of it “by way of loan” which confused me.

30 MR BOWEN: Q. I will rephrase it. This amount of £10,154/12/6 represents 10 percent of the machines sold, does it? A. Yes, of the machines sold.

Q. And what I am putting to you is that insofar as I.V.M. paid that amount to the Automatic Merchandising Company, it was treated as income? A. That is right, yes.

Q. And the merchandising company then got what—an additional 10 percent on loan? A. An additional 20 percent on loan.

A. An additional 20 percent on loan? A. Yes.

Q. And it then paid away to the trust fund 20 percent? A. Yes.

40 Q. But is this correct that the 10 per cent, or £10,000, was brought in as income, but the 20 percent paid to the trust fund was paid—? A. It was a payment made by International Vending Machines to the Automatic Merchandising Company.

Q. And then the Automatic Merchandising Company paid 20 percent to the trust fund? A. The additional 20 percent that they got from I.V.M., yes.

Q. But when you came to make up the accounts you brought

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in as income the 10 percent that they received in respect of sales—is that correct? A. That is correct.

Q. But you did not debit the amounts which they had paid to the trust fund in respect of those sales? A. Yes, I am sure I did.

Q. The 20 percent in the case of Victoria was what—twice the 10 percent—a figure of about £20,000? A. The £16,000 in the A.N.Z. Bank—guaranteed payment. There was a sum of £20,000 paid into it of which £4,000 had been expended.

Q. That is what I put to you before. The only thing that Automatic Merchandising (Victoria) Pty. Ltd. brought in as an expenditure on its own account was the proportion which the trustees of the fund had actually paid out as interest to owners? A. That is correct—could not bring the rest in. 10

Q. You could not bring the rest in? A. No.

HIS HONOR: Q. Do you recall in the letter written by Northash, Mann & Company to the directors, a reference to obtaining legal advice of any liability of I.V.M. under any guarantee? A. Yes, I do recall that, yes.

Q. Legal advice obtained on that? A. Legal advice was obtained on that, yes. 20

Q. In writing? A. Legal advice was sought from Mr Moffitt. (Luncheon adjournment.)

AT 2 P.M.

MR BOWEN: I tender the printed annual report, and I submit that it contains in it a chairman's report which this witness has indicated that he authorised and a statement of the accounts on which examination has been conducted as to the position as at the 30th June 1959. I submit that it would be explanatory of that examination or cross examination. Your Honor will appreciate that Exhibit 4 is already in—being an audited account—but that certain questions have been 30 directed to the particular form of these accounts.

MR MOFFITT: I have some doubts about the matter, but I do not think I will oppose it. It is almost possible for Your Honor to follow the matter unless Your Honor has the accounts in. I do not, however, concede that they are relevant.

(Annual report for year ended 30th June 1959 admitted and marked Exhibit Z.)

MR BOWEN: Q. The company did have a balance sheet and accounts prepared for the period ending 31st December 1958, did it not? A. Yes. 40

Q. Will you have a look at this copy—?

MR MOFFITT: I think they are an Exhibit.

MR BOWEN: Q. Yes, Exhibit 3. Will you look at Exhibit 3. (Document handed to witness.)

HIS HONOR: What is the page of the exhibit?

MR BOWEN: I think the pages are 11 and 12.

Q. Do you see the trading and profit and loss account for the

six months ending 31st December 1958, and the profit and loss appropriation account of the 31st December 1958? Have you got that? A. Yes.

Q. That shows a profit for the six months ending 31st December 1958, of £53,803/15/5—is that right? A. That is correct.

Q. I take it that you had this half yearly balance sheet at the time of the March conference, did you? A. I did not have it.

Q. You did not? A. No.

Q. But you would have known the figures by then for the six 10 months ending 31st December 1958? A. Yes, that is right.

Q. Do you say that this balance sheet was prepared afterwards—after March 1959? A. After December.

Q. It was after December 1958 that it was prepared? A. Yes. I would have seen it at the beginning of March—at the beginning of 1960.

Q. At the beginning of 1959? A. At the beginning of 1959, that is correct.

Q. At the beginning of March 1959 you would have seen it? A. I do not know about March, but at the beginning of March 1959.

20 Q. At the beginning of 1959 you would have seen it? A. Yes.

Q. So that you would have known how you would have been progressing as shown in this balance sheet for the six months ending 31st December 1958? A. That is correct.

Q. And you would have known that at the time when you had this conference about the taxation position which was developing as a result of the profits you were making—is that right? A. That is correct.

Q. And is this the position, that the profit for the six months was shown in these accounts for the period ending 31st December as 30 £53,803/15/5d.? A. That is correct.

Q. But is this the position, that at the time of the conference in March you thought that the figures which had been shown in the account were an improvement on the first six months—is that right? A. Yes.

Q. So you thought that by June 1959 the profit was more than likely to be more than twice that £50,000 odd? A. I was told that it would be very much more than twice.

Q. That is what you thought? A. That is what I was told.

Q. The accounts for the six months ended 31st December 1958 40 would also have been known by the co-director early in 1959, I take it? A. Yes.

Q. And is this the position, that the profit and loss account was made up of a basis of not bringing to account sales which had been paid where machines had not been allocated? A. I do not understand that question.

Q. I suggest to you that these accounts for the six months ended 31st December 1958 excluded contracts in respect of which machines

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had not been allocated—do you know whether that was so? A. I do not know.

Q. You do not know? A. No.

Q. Have you any personal knowledge of the change in procedure in May or June 1959 when you began to enter into the accounts contracts as they were written instead of amounts as the machines were involved? A. Yes.

Q. When do you think that that change in procedure occurred? A. Round about June 1959.

Q. And at that point of time a large number of entries were made to take up all the contracts that were made on that basis? A. Yes.

Q. But that was not the procedure followed in the period up to 31st December 1958, was it? A. No.

Q. That was before the change? A. Yes.

Q. Before seeing the accounts for the period ending 31st December 1958 did you yourself make any account about May or June 1959 as to what effect it would have on the accounts for the year if you did write in all these entries? A. No.

Q. Did you ask anyone to see what effect it would have on the accounts? A. No.

Q. I suppose you appreciated that it would have a substantial effect? A. I did not appreciate anything. I did not know anything about that.

Q. But you knew it was being done? A. I knew it was being done, yes.

Q. Have a look at this document (handed to witness). Have you seen that document before? A. No.

Q. Do you say "no"? A. No, I have not seen it before.

Q. Do you know Miss Joan Delaney? A. Yes.

Q. And are you able to tell us whether those are her figures or not on it? Would you know her handwriting or figures? A. I would not know it.

Q. Her name is written on top of it—? A. Yes.

Q. Do you know whether that is her handwriting? A. I do not know that either.

Q. Did you ask to have prepared an analysis of the machines which had been allocated, machines not allocated and machines which were the subject of the number 5 offer, and for each type of machine for each state? A. I did not personally.

Q. You did not? A. No.

Q. Did you know whether Mr Joseph Steen was having such an analysis prepared? A. I do not know. It is perfectly possible, but I do not know.

Q. It is possible? A. Yes.

Q. Would you mind just having a look at that—the numbers of the machines stated and the amounts? Would that appear to you to



be a reasonably correct analysis of the position up to the 30th June 1959, as regards machines allocated, not allocated and those which were the subject of a No. 5 offer? A. I could not even offer an opinion on that.

Q. You do not think you could offer an opinion? A. No.

Q. Take the Valour machine—that was a new cigarette machine, was it? A. No, a nut machine.

Q. I am sorry—it is a nut machine? A. An Eta nut machine.

Q. You see there that for Sydney—(objected to; rejected).

10 Q. Would you tell us what would be the significance of the letters “S.A.”—? (Objected to.)

Q. When used in the company’s records at that time? (Objection withdrawn.)

Q. In company records at that time—the letters “S.A.”? A. No, I cannot recollect.

Q. I suggest to you that that represents “South Australia”? A. It could do.

Q. Would that assist you? A. It could do.

20 Q. And the position in South Australia was that there were so many orders that you could not satisfy them with machines supplied to sites in South Australia—is that right? Was the position in June 1959 that there were so many orders that you could not satisfy them with machines supplied to sites in South Australia? A. I do not agree with that position at all.

Q. You do not agree? A. No.

Q. I suggest to you that a number of your customers were not only given sites in South Australia but other States as well? A. Would you put that question again?

30 Q. I suggest to you that in respect of customers in South Australia—? A. Yes.

Q. Due to the shortage of sites you allocated some machines to sites in other States for them? A. No.

Q. You do not recall that? A. No, I do not recall that. Might I say that “S.A.” to my recollection would not be “South Australia”.

Q. You do not think that that would be right? A. I do not think so. It was always referred to as “Adelaide”.

Q. “Adelaide”? A. I am positive. I cannot recollect it ever having been called “South Australia”.

40 MR. MOFFITT: 1959.

MR BOWEN: Q. June 1959, when you received the consideration for your shares in I.V.M. for £90,000, you told us that you put that back into I.V.M. and you had a credit there at that time? A. Yes.

Q. You then withdrew twenty-two and a half thousand pounds and applied that in taking up shares in I.V.M. Holdings? A. Yes, that is correct.

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Q. Twenty two and a half thousand shares at £1 each—is that right? A. Yes.

Q. Is this the fact, that subsequently you sold those shares to Independent Holdings Ltd. at the same time as your sons Joseph Steen and Sydney Steen sold the like holdings that they had? A. Yes.

Q. This was May 1960 when you sold the shares as part of a general transaction in which you received £200,000 deposit for the three of you and certain adjusting payments of £110,880, subsequently reduced by a repayment of £50,000? A. That is correct.

Q. There is one other matter. When the offer number 5 was made in June 1959, your signature appeared on a letter of the 11th June 1959 which went to all machine owners? Do you recall that? A. My signature would appear to a letter to our machine owners. I could not say the exact date.

Q. I suggest to you that a letter of the 11th June went over your signature to machine owners? A. If that is the date on it, it would be correct.

Q. Exhibit U—and that in this letter you offered 20 percent guaranteed terms and in addition a discount of 5 percent which would be allowed as a cash bonus? Do you recall that offer? A. Yes, I recall that.

Q. You also said “this offer is open until the 22nd June, and your completed application with cheque must be returned to this office by that date”—do you remember that? A. Yes.

Q. And accompanying the letter was a form of application—do you recall that? A. Yes.

Q. Was that the first time that you had sent such a letter nominating a limiting time within which they had to put in the application? A. I believe so.

HIS HONOR: Q. What was the answer to that? A. I believe so. 30

MR BOWEN: Q. So that the date the 22nd June was nominated by you so that these would be received before the 30th June? A. Yes.

Q. Why was it nominated? A. It was nominated—this was being confined to people who had purchased machines formerly from us. I was setting out in regard to number 5 offer—

Q. I put to you that this was sent to machine owners—? (Objected to.)

HIS HONOR: Q. Why was it put in?

MR BOWEN: Q. Why was the date the 22nd June put in? A. It was put in to confine this particular company's offer to the people who had purchased machines from us previously because we were initiating an advertising campaign in connection with the number 5 offer with which this bonus would not be offered. 40

Q. I understand what you say in relation to it being restricted to machine owners? A. Yes.

Q. But why, in relation to restricting the offer to machine owners, did you require their applications to be in by the 22nd June? A.

We were giving them a prior opportunity of participating in this No. 5 offer.

Q. But this letter is dated 11th June and the offer is open to the 22nd June—a very short period? A. Yes.

Q. Was there any reason for having such a short period for machine owners?

HIS HONOR: He said it, I think. He said that until the 22nd it was a special offer to existing owners, and then everybody after that would have the opportunity of participating.

10 WITNESS: That is correct.

MR BOWEN: I do not think he said that.

Q. Is that right? A. Yes.

Q. Well, that is not the fact, is it? A. It is the fact.

Q. I suggest to you that the 5 percent discount was never a feature of the number 5 offer? A. Of course it was.

Q. I suggest to you that the 20 percent, being an increase on the immediately preceding 15 percent, was the feature of the number 5 offer which was made to the public generally? A. That is right, yes.

Q. That is right, yes.

20 Q. But that you offered the machine owners only an additional inducement consisting of a discount on the capital of 5 percent? A. That is right, yes.

Q. And that that particular offer which was made to machine owners, of 5 percent discount was never made to anyone else? A. That is true.

Q. That is true, is it not? A. That is true, yes.

Q. And I suggest to you further that the number 5 offer consisting of the 20 percent was made and was open to other members of the public, before the 22nd June? A. No.

30 Q. Do you say that it was not advertised on television or in the press before the 22nd June? A. The first advertisement that I have knowledge of was that an advertisement that went in round about the end of June.

Q. Taking the press, would you say that it was not advertised in the press round about the end of June—after the 22nd June? A. Round about that period, yes; not prior to that, no.

Q. What about television—would it have been advertised on television before the 22nd? A. No; this offer was made exclusively and sent by mail to what we termed “investors”.

40 Q. Do you realise that I am speaking now of the 20 percent without the 5 percent discount? A. The number 5 offer—?

Q. The number 5 offer? A. That is correct, yes.

Q. I put it to you that it was put on television at any rate before the 22nd June—would you agree with that? A. I could not agree or otherwise that it was put on television. It was not put on television to the public before this was sent out to our ordinary investors.

Q. Not put out before the 11th June? A. No.

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Q. I put it to you that it was put out to ordinary investors before the 22nd June? Are you able to say whether that is correct? A. No; I am unable to say whether that is correct.

HIS HONOR: Q. Well, then why limit the date to the 22nd? A. Because we were sending this as a special part of the number 5 offer, to give existing investors a chance to participate in this and get the special concession that the ordinary public were not getting.

Q. Well why could not they have had that for a longer period? A. Because we actually at that particular time did not want everybody to participate in this. It was just a concession to be given to these 10 people. We limited this because if we had left this open there would have been a fantastic amount of money coming in from this.

Q. In fact there were no Valour machines available before the end of June 1959, were there? A. Machines out on site—actually in production?

Q. I put it to you that so far as Valour machines were concerned—I am putting aside any prototype on test—not one machine was supplied to you by the suppliers before the 30th June? What do you say to that? A. I could not say as to that. I would have to see correspondence. My recollection is that it would have been supplied. 20  
MR BOWEN: Could I have the Ainsworth file?

MR MOFFITT: I think that that is the file that Mr Whalen has.

MR BOWEN: Q. I think you were asked about half-yearly accounts for the period up to the 31st December 1959? A. I missed that question.

Q. Did you bring out any half-yearly accounts to the 31st December 1959? A. 1959?

Q. Yes. A. No; I did not bring half-yearly accounts out.

Q. You did not? A. No.

Q. You did, in fact, state, in 1959, to one or more metropolitan 30 newspapers, that you would supply half-yearly accounts? A. I cannot recollect that.

Q. You would not deny it, would you? A. I would not deny it, no.

Q. On the 29th December 1959 do you recall that an amount of £50,000 was paid in—£50,000 was paid in—£25,000 being credited to your loan account and £25,000 being credited to Mr Joseph Steen? A. I saw it in the accounts, yes.

Q. You agree with that? A. Yes.

Q. And you also agree that £50,000 was drawn out in January 40 1960, of which £25,000 was credited to your account and £25,000 was credited to Mr Joseph Steen's account? A. Yes.

Q. Why was that transaction entered into? A. I cannot recollect.

Q. Can you offer any explanation of it? A. I can put forward a possible explanation, but it may not be correct at all. I can only imagine that at that particular time the money was required for the

specific purpose which it may not have been used for, and therefore returned.

Q. Now if I suggest to you that the bank account shows that the cheques both ways were cleared the same day, that would not be the explanation, would it? A. No; hardly.

Q. Well, can you think of any other explanation? A. No.

HIS HONOR: Q. In the chairman's report in Exhibit Z—which I think you said bore the facsimile of your signature? A. That is correct.

10 Q. You said that the transfer of £150,000 out of profits to a general reserve was considered advisable by the directors? A. Yes.

Q. Was that your view? A. Yes.

Q. It proceeds—"by the directors in an effort to cover any possible contingencies that could arise in this new industry, and further to provide increased security for machine owners by supporting International Vending Machines Ltd.'s guarantee of contracts entered into with the merchandising companies"? A. That is right.

20 Q. Was it your view that International Vending Machines Pty. Ltd. had guaranteed contracts entered into with the merchandising companies?

MR MOFFITT: Unless Your Honor puts it as to a particular time, I would object to it.

HIS HONOR: Q. At the time covered by this report? A. International Vending Machines had—?

Q. Was it your view that up to the date when this report was published, International Vending Machines Pty. Ltd. had guaranteed contracts entered into with the merchandising companies? A. They had guaranteed—they were backing them with all their assets.

30 Q. By way of guarantee? A. By way of—they, too, were a signatory to the agreement made with the client on the operating agreement with the merchandising company. They were a party to it—they were a party to this agreement.

Q. From what date did that commence? A. I think it was late in 1959. It would be late in 1959, because at the time of this particular thing—this particular report—I.V.M. was not a signatory nor a guarantor to the operating agreement.

Q. At the time of this report? A. Yes.

40 Q. So at that time it was not your understanding that I.V.M. had guaranteed the contracts entered into with the merchandising companies? A. No, Your Honor, no.

Q. Well then what was meant by saying that this money was put aside "to provide increased security for machine owners by supporting I.V.M.'s guarantee of contracts entered into with the merchandising companies?" A. Well, I.V.M. were going to back all agreements that had been made with the merchandising companies, and they did subsequently back these agreements by being a party

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to the operating agreement, in the carrying out of that operating agreement.

Q. So that this was looking to the future? A. Looking to the future, yes.

Q. Well, then, do you recall that in the circular letter of the 11th June 1959 you wrote "in appreciation we have allocated to you a further sum equal to your present investment, on which we will pay 20 percent guaranteed return?" A. Yes.

Q. Do I understand from your previous answer to me that it was not your understanding, prior to sometime late in 1959, that I.V.M. was guaranteeing that return? A. Well, there is a point here that I think I should explain. When we are referring to I.V.M. we are referring to the I.V.M. group of companies including the merchandising companies. The I.V.M. became synonymous with vending machines, and we used I.V.M. at times when it might have been the merchandising company itself which was the one to have been the originator of this particular thing and—

Q. And did you expect these persons to understand that too? A. Yes; I think it was perfectly understood.

Q. So that when you sent out with that circular a form of application addressed to International Vending Machines Pty. Ltd., "I hereby request that so many pounds be allocated to us in the reserved number 5 offer of investment in vending machines on a guaranteed return of 20 percent with a further acceptance of that offer—" "acknowledgment" I should say—"a further acknowledgment of that offer"—no—with a further annexure of an application for unreserved number 5 offer in which it was stated that there was a guaranteed return of 20 percent, did you expect a person filling in that form to understand that International Vending Machines Pty. Ltd. was not guaranteeing the return of 20 percent? A. Yes, because of this. These were sent to people who had previously been machine owners—who were investors. They knew that the arrangements were that they purchase machines from I.V.M., and the merchandising companies were the ones that were operating and guaranteeing the payment to them. These people were aware of that. No person could invest in our company who was not aware of that because at the time of the signing of the agreement two agreements were signed, one for the machine and one for the operating of the machine, with the merchandising company. The two were signed at the same time, and on no occasion was a machine owner presented with a machine and no operating contract. They were made aware of it. They could not fail to be aware of it.

Q. So that you say because of that awareness any person receiving this circular would understand by the words "We will pay 20 percent guaranteed return," that some other company would pay that guaranteed return? A. Yes, absolutely.

## RE-EXAMINATION:

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
Respondent's  
Evidence.  
Louise Steen.  
Re-examined.  
—

MR MOFFITT: Q. In fact—if I might follow on what His Honor was asking—in fact, after this circular to which His Honor has been referring, was sent out, taking the cases of people who bought machines in answer to that letter, before that new contract came in where I.V.M. entered into the guarantee, in those cases would they enter into, as you have indicated, the same kind of two contracts as they had formerly? A. Yes, always.

10 Q. Will you look at Exhibit T (document handed to witness). Will you look at Clause 14 in particular. Is that the agreement and the guarantee provision of International Vending Machines, to which you were referring as to having been entered into subsequently, in answer to His Honor's questions?

HIS HONOR: Q. What date?

MR MOFFITT: It is not dated, I do not think.

HIS HONOR: Q. At what date? A. It would be late in 1959. I could not give the exact date without referring to records. There would be records of it, but it would be late in 1959.

20 MR MOFFITT: Q. With regard to the position with regard to the trust fund about which Mr Bowen asked you, using Victoria as an example when a machine was sold—I am speaking now of before the end of June 1959—when a machine was sold by I.V.M. Pty. Ltd. and if it was a case where there was a 20 percent guarantee by the Merchandising Company what happened at that time? What actually happened in respect to that sale so far as I.V.M. was concerned? A. As far as I recollect I.V.M. would pay to the Merchandising Company for lodgment in the guarantee fund 20 percent of the sale price of the machine.

30 Q. So if it was 20 percent it would be as you have said—it went by loan to the Merchandising Company and the Merchandising Company then put it into a guarantee fund? A. Yes.

Q. With regard to the guarantee fund that would then be a fund which would cover that particular machine for 20 percent of whatever its purchase price was for the 12 months, I take it, from the time that that contract was entered into? A. That is correct.

40 Q. So if another contract was entered into say a month later, another sale a month later, and take the Victorian Company again, the same thing would happen again, would that be right? A. A full year's payment was lodged.

Q. Then the amount in the guarantee fund in respect of that of course would cover the 12 months from the time that that sale occurred? A. That is correct.

Q. So if you looked at the guarantee fund, we will say, at the 30th June 1959 the amount of the then balance of this guarantee fund would, I take it, include guaranteed funds in respect of different

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—

machines, some of which had longer periods than others to run? A. That is true.

Q. Then the amount that was brought in to the payments outside would be the actual amounts which had been paid out pursuant to the guarantee? A. That is correct.

Q. And any profits which had been brought in from the merchandising of course would be brought into the profits? A. That is correct.

Q. In addition to that we have already had tendered agreements in respect to what has been referred to as the 10 percent. I just 10 withdraw that for the moment. If in fact the guarantee was not 20 percent but the period when it was 15 percent, say, what happened then? Would the amounts lent by the I.V.M. to the Merchandising Company be— A. 15 percent.

Q. It would be 15 percent? A. Yes.

Q. With regard to the other sum of money about which you have been asked we have had an agreement in respect of one of the merchandising companies tendered; that was where there was an agreement to pay 10 percent in respect of the sale? A. That is 20 correct.

Q. In return for that 10 percent what did the Merchandising Company do so far as I.V.M. was concerned? A. For that 10 percent they relieved I.V.M. of any obligation in regard to the machine from that point onwards. They sent out representatives to secure sites for these machines; they physically put these machines on sites; they arranged for the filling of these machines with the initial fill of merchandise and they arranged for the collection from these machines at various times.

Q. That 10 percent that went in became the permanent property of the Merchandising Company? A. For that service, yes. 30

Q. What was the practice as to when that would be paid? A. That was paid immediately on the sale of a machine.

Q. You were asked about the circular letter to investors, so referred to, of the 11th June by Mr Bowen and you indicated that was the first occasion in which there had been any time limit put on such an offer? A. Yes.

Q. Had there prior to that been any bonus offer to existing investors? A. No, that was the first one.

Q. Was that known by some particular name? A. It was 40 known as the No. 1 Bonus Offer.

Q. But forming part of No. 5 offer? A. Yes.

Q. Then I think we have already got in evidence No. 6 offer. It also contained within it a similar bonus offer but it was known as No. 2 Bonus Offer? A. Yes.

Q. You were asked by His Honor in reference to North Ash & Mann's letter of March where you had received a suggestion that



you might get legal advice on certain matters, and you told His Honor that you did in fact get legal advice? A. Yes.

Q. Did you have a conference with counsel? A. Yes.

Q. In respect of those matters? A. Yes.

Q. And was there subsequently given, and I show you now what I suggest are copies, advice confirming the conference? Just have a look at those copies. (Document handed to witness.) What do you say? A. Yes.

10 Q. Is the subject matter of the written advice—does that cover all the matters dealt with in such conference that you had? A. It does.

Q. And is that the only matter which is contained in that confirmation of that conference, is that the only matter on which you sought advice in respect to the letter from North Ash & Mann? A. Yes.

Q. Is this the only advice you obtained from any barrister or solicitor on the subject matters which were contained in the North Ash & Mann letter? A. Yes.

(Copies of counsel's advice tendered, objected to, admitted and marked Exhibit 13.)

20 Q. You were asked some questions about the drawings of yourself in particular and also your co-director by way of loan from I.V.M. before the 30th June 1959 and about your drawings then subsequently to the 30th June 1959, first as against the amount at your credit and later by way of loan. Do you remember being asked those questions? A. Yes.

Q. So far as you were concerned was there any difference in the position of the company comparing the position as at the time you got advice from North Ash & Mann in May and the time of this transaction in June, as against the position later on in July and August and later 30 in 1959? A. Yes, there was a big difference.

Q. Was there any difference so far as related to the position of withdrawing moneys from the company? A. Well, the company was very much more able at a later date after June 1959 than before it for such drawings to be made, even more so.

Q. Did you from time to time see certificates under the hand of North Ash & Mann setting out at intervals the certificates in respect of the guarantee fund which referred to the total amount received in respect of contracts? A. Yes.

Q. How often did those come in? A. Every month.

40 Q. You see here this one which is part of Exhibit 12, of the 22nd January 1960, a certificate which goes up till the 31st December 1959 showing that the total—

MR BOWEN: Is that in evidence, Mr Moffitt?

MR MOFFITT: Yes, it is in evidence.

Q. Showing that the total amount for the first year and second year up to 31st December 1959 was £1,374,923/2/1d. Had you seen that certificate? A. Yes.

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—  
Respondent's  
Evidence.  
Louise Steen.  
Re-examined.  
(Continued)

*In the  
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Respondent's  
Evidence.  
Louise Steen.  
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(Continued)  
—

Q. Had you seen certificates in between that and those certificates which are already in evidence up to the 30th June 1959? A. Yes.

Q. You were asked a question by my friend concerning the change of your name from Finkelstein to Steen. When did that occur? A. 1947.

Q. What was the reason for it? A. I thought it more politic at that time to use the name which for business purposes would be more anglicised than my own name.

Q. Did it have any relation to endeavouring in any way to mislead anybody as to who you were? A. No. 10

Q. Was it a time when you had been trading in London both before and after that date? A. In Glasgow, all my life, I traded in Glasgow until I came to this country.

Q. In regard to the sale of Independent Holdings after the sale had been concluded, if I could just get what the position was then, after that was concluded, A.M. Holdings still then owned shares or the shares that you had—still owned the shares it had previously in I.V.M., is that the position? A. Yes, that is the position.

Q. Then it had two shares that had been in your name as trustee for A.M. Holdings. Were they transferred to the new people 20 who took over? A. That is correct.

Q. Did A.M. Holdings then—you have said that there were certain assets which were in effect excluded from the sale—which companies were they? A. Vending Industries and Valor Finance and Scottish Industries.

Q. Then certain assets and the payment off of certain loans that you have mentioned? A. Yes.

Q. Then A.M. Holdings still owned the shares, subsidiaries in the group of merchandising companies, as it had previously? A. Just the same as previously. 30

Q. But the various loans that have been referred to by my friend, loans to you and your two sons and the different companies which you then took over, they were all liquidated, was that the position? A. Yes.

HIS HONOR: Q. Mr Steen, in the letter of North Ash & Mann of 18th March 1959 it was written "We suggest that legal advice be obtained as to whether in the event of failure by Automatic Merchandising Pty. Ltd. to meet its guaranteed commitments any claim could be made on International Vending Machines Pty. Ltd.?" A. Yes, Your Honor. 40

Q. Am I to understand that such advice was or was not obtained? A. It was not obtained.

Q. It was not obtained? A. No, because it was always our intention that I.V.M. should support such a guarantee, even if it was not legally embodied in a contract, it was always recognised that these companies were a group of companies, each and everyone dependent on the other.

Q. Did you have that in mind as an obligation, morally or legally, of I.V.M. over the first half of 1959? A. Well, I had not given it consideration at that point until this letter was raised. When this letter came then we considered this aspect and, as Your Honor will have known, we took steps to ensure that we were legally responsible, not just morally.

Q. You mean by the agreement later in the year? A. By the agreement later, yes, Your Honor.

10 Q. But at that stage am I to understand that your view was that it did not matter whether you were legally responsible because you were morally responsible, is that so? A. To a certain degree, yes, Your Honor.

Q. Am I to understand that from your previous answer or not? A. It is rather difficult to say that to Your Honor because I had given no consideration to that aspect at all. It was only subsequently when we got this letter from North Ash & Mann that our attention was drawn to it.

20 Q. Take the period from the 18th March 1959, until the end of June 1959—you did have it in mind after receipt of this letter, did you? A. Again, Your Honor, I had not gone into the detail of this particular thing. These things came to me. We took advice on what to us were important aspects, firstly, the agreement itself, the points that had been mentioned by North Ash & Mann in relation to the agreement and the matter of taxation. These were the matters which we concentrated on and worked on and after that we then—I recollect very very clearly my son and myself having a discussion in regard to this other matter of the agreement being such that it would bind International Vending Machines as a guarantor to Automatic Merchandising. It was sometime later, Your Honor.

30 Q. The discussion? A. The discussion.

Q. But when you received this letter this directed your attention to this question, did it not? A. Yes, Your Honor, it did.

Q. And you determined not to do anything about it? A. At that particular juncture that is correct, Your Honor. We were concentrating on this other matter which had to be done very very quickly if it was to be done at all in regard to the formation of this public company for tax purposes.

40 Q. But were you concerned at that stage, on receipt of the letter, with whether or not International Vending Machines was liable under any guarantee? A. No, I was not concerned, Your Honor.

Q. Why not? A. Well, as I say, I regarded the entire group as virtually one company. I had never at all at that particular time even in my mind separated these as being separate companies; they were legally separate but I had never given any thought to the possibility or aspect raised in the letter of North Ash & Mann.

Q. But when that was raised did you give any thought to it then? A. At that particular time no.

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—  
Respondent's  
Evidence.  
Louise Steen.  
Re-examined.  
(Continued)

—

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Supreme Court  
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Evidence.  
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Re-examined.  
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—

Q. Because you regarded them all as one? A. Because I regarded them all as one company at that time and I had no thought concerning it.

Q. Do you mean that the obligation of one would have been the obligation of the other? A. I did not even give thought to that, Your Honor. I mean when this letter came which mentioned the possibility of a legal obligation then I realised at some juncture we had to go into this matter to determine what our attitude was to it if that was in fact the case, but at that particular time I honestly did not give any thought to it and did not proceed any further with it until 10 at a later date we had a discussion about it and then decided, as Your Honor knows, to put I.V.M. and all the assets behind the merchandising companies, a thing which we did not have to do, Your Honor.

Q. But when the circular letter of 11th June was sent out with its use of these words, Mr. Steen, "Investment on which we will pay 20 percent guaranteed return"? A. Yes, Your Honor.

Q. Did you turn your mind at all to the query which had been raised by North Ash & Mann in their letter of March? A. No, Your Honor, because at all times we used that expression in relation to the guarantee fund of the payment to investors, a guaranteed return. 20 That word has been used right throughout our advertising from its inception, Your Honor.

Q. And did you understand it to be a guarantee by I.V.M.? A. By the group of companies?

Q. By I.V.M. at this time? A. It is a difficult thing to say, Your Honor, because I had not given any thought to such a thing as cropped up in the North Ash & Mann letter.

Q. But after the North Ash & Mann letter did you give any thought to it, particularly when you wrote those words in the circular of the 11th June? A. No, Your Honor, I had not given any thought 30 at all to it from the aspect mentioned in North Ash & Mann's letter, none at all. This was a routine letter which was sent out and which would have been sent out if such a letter had not been received.

Q. Then when did you determine to transfer £150,000 to general reserve? A. That was done when the balance sheet was being brought out. Just prior to the balance sheet being brought out.

Q. That is October? A. No, that would be before June, Your Honor.

Q. Before June? A. Before June.

Q. Before the end of June? A. Before the end of June, yes. 40

Q. How long before, can you say? A. I could not say exactly because it would be in discussion with our accountants when they were preparing this balance sheet.

Q. Was it your view then that that was advisable? A. Oh yes, Your Honor, for the expansion of the company, yes.

Q. You gave another reason in your brochure, in these published

printed accounts? A. For any possible future contingency, yes, Your Honor.

Q. "And to provide increased security for machine owners by supporting International Vending Machines guarantee of contractors entered into"? A. Yes.

Q. And you say there that it was considered desirable by the directors? A. That is correct, yes.

Q. Now, was that your view at the date when it was determined to put those moneys into reserve? A. Yes, Your Honor, yes.

10 MR MOFFITT: Q. Do you know what date this balance sheet was prepared? A. In October.

Q. Are you able to tell us when it was that you came to this conclusion about this £150,000 reserve? A. It would be when the balance sheet was being prepared — when this balance sheet was being prepared which would be obviously sometime after the end of June 1959.

(Witness retired.)

BRIAN GERALD PURCELL

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Sworn, examined, deposed:

MR MOFFITT: Q. Your name is Brian Gerald Purcell? A. Yes.

Q. Where do you live? A. Yuruga Avenue, Caringbah.

Q. What is your present occupation? A. Company Director.

Q. Were you employed by North Ash & Mann, public accountants, during a certain period of time which included part of 1959? A. Up to the middle of May 1959.

Q. Will you tell me what year approximately you went there to be employed? A. I was there for nearly 9 years.

30 Q. During that time did you take part in accountancy matters? A. Yes, I acted as a senior clerk.

Q. Did you do an accountancy course? A. Yes.

Q. Did you actually complete it? A. No, I did not do the last two subjects.

Q. What class of work did you do with North Ash & Mann? A. Well, in the latest years . . .

Q. I am leaving out for the moment I.V.M. A. In the later years I did auditing accounts and particularly taxation and company work for them.

40 Q. In that field, taxation and company work, what in particular did that involve, without mentioning the names of any clients of course? A. It simply means that rather than going out on audits for professional accountants you spend most of your time in the office doing a restricted amount of work outside, but mainly concentrating on taxation returns and company returns.

Q. Did it concern dealing with company matters and giving taxation advice and that sort of thing? A. Yes.

*In the  
Supreme Court  
of New South  
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Equitable  
Jurisdiction.*

—  
Respondent's  
Evidence.  
Louise Steen.  
Re-examined.  
(Continued)  
—

Respondent's  
Evidence.  
Brian Gerald  
Purcell.  
Examined.  
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Evidence.  
Brian Gerald  
Purcell.  
Examined.  
(Continued)

Q. Including the formation of companies, public companies?  
A. Proprietary companies mainly.

Q. Were you yourself familiar with some of the tax law?

A. Yes, I was fully qualified as far as the tax and company work was concerned.

Q. Did you do something concerning a study of the actual effect of a case like Keighery's case? A. Yes, it was part of my job to keep up with current events.

Q. You knew about Keighery's case? A. That was part of my job.

Q. And cases such as Newton's case and Bell's case and so forth?

A. Yes.

Q. Will you tell me so far as International Vending Machines Pty. Ltd and its associated companies, the Merchandising companies, were concerned, did you have anything to do with them in 1958 and early 1959 so far as North Ash & Mann were concerned? A. Yes. North Ash & Mann were given the post of accountants and auditors for International Vending Machines when they first started and I think it was July of 1958, and I was the clerk on the job in association with Mr. Frank Mann. My job in the first instance was mainly as basic accountant because the company did not have an accountant there and we used to perform all functions until later on when the company did in fact or we actually arranged the employment of accountancy staff.

Q. That is in the earlier stages? A. Yes.

Q. Who was the accountant who came there? A. I think it was a Miss Bennett.

Q. Miss Bennett? A. It was.

Q. Then you were doing auditing work as well? A. Yes, it is quite common in the case of proprietary companies to do accountancy work and audit work at the same time.

Q. So far as you personally were concerned to what extent were you engaged in those duties in, say, late 1958 and the beginning of 1959? A. I was in charge of the jobs.

Q. And so as compared with the partners, Mr Mann or Mr. North Ash you would do the work mainly, or what was the position? A. I did it mainly. Mr Mann I would consult on what job was being done and I used to take North Ash & Mann's staff up there. Mr. Mann was virtually the senior partner, the partner in charge of the job.

Q. Will you have a look at Exhibit 2 which is a letter of 18th March 1959? A. Yes.

Q. Do you remember that letter being sent? A. Yes, this letter was sent after we had prepared a balance sheet for the company up to December of the previous year.

Q. Prior to that being sent had you had any discussion with any of the members of the firm of North Ash & Mann on the subject

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matter of the tax position of the company? A. Yes, when we completed the balance sheet up to December, I do not remember the exact figures, but it showed a substantial profit for the first six months of operation of the company — I think it was about £50,000 — I do not know whether it mentions it here — and in the light of that it was quite obvious that we as their accountant had to look pretty seriously at it because the incidence of taxation was going to be particularly heavy if things or if the company carried on the same profit success as it had in the first six months—I think it was. I could not quite say  
 10 when it was, but it was sometime into the New Year before we had figures finished up to December, and by then it was quite evident that the figures were going to be even better than the first six months' figures. We actually had sales to hand and it was actually the balance sheet and the current figures that prompted this letter.

Q. Did you so far as you were concerned, even apart from the figures up to the end of December, that is before that letter was sent — would you see the figures from the point of view of the moneys received from the sale of machines say in January and February in connection with anything you were doing in the company? A. Yes  
 20 — we were in constant contact — actually we wrote up the books at that stage — and we were in constant contact with the figures.

Q. Would you just follow me for the moment, Mr. Purcell. All I am asking you is in January and February so far as you were concerned did you see or have an opportunity of seeing the figures being received in respect of the trade in January and February?  
 A. Yes.

Q. And without going into the amounts what was their position in relation to trading say before Christmas? A. Very much better.

Q. Did you have before that letter was sent some discussion in  
 30 North Ash & Mann's office between Mr Mann and yourself? A. Yes.

Q. On the subject matter of the tax position of I.V.M.? A. Yes.

Q. Following the sending of that letter what happened after that? Did you have some conference? A. Yes, Mr Mann and myself then — I do not know exactly when, but after this went to see the directors of I.V.M.

Q. You are now referring to the Messrs Steen, is that correct, the directors of the company? A. Yes.

Q. Whereabouts did that conference take place? A. In their offices at Caltex House.

40 Q. Would you have any idea how long it was after this letter was sent? A. I am not sure just how long after; it would not have been very long after.

Q. Besides the two Messrs Steen who else was present?  
 A. Mr. Mann and myself.

Q. Four people were present. Now, up to this stage had any request been made by either of the Messrs Steen either to you or so far as you know for you to investigate the tax position of the company?

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 Supreme Court  
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 —  
 Respondent's  
 Evidence.  
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 Purcell,  
 Examined.  
 (Continued)

*In the  
Supreme Court  
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—  
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—

A. No, they virtually left everything in our hands.

Q. You went down to this conference and will you tell me as best you can what was said at this conference? In so far as you can say who said it, will you tell us that, please — try and put it in the words that the people used, if that is possible? A. It is a long while ago and it is pretty hard, but basically I had the balance sheet for December with me and I also prepared some current figures sales-wise and expenses-wise as at the date roughly about the time we had the meeting. I pointed out to the Steens that there there were their figures for December, which they knew because we had given 10 them, and told them from what I could see they were going to make very much more in the second six months of the year. I pointed out to them . . .

Q. Try and put it like "I said"? A. I told them that if things continued to go along those lines, and in fact with what we had there and the fact that they were a proprietary company the incidence of tax was going to be tremendous after the 30th June of that year. I think I gave them some estimate — well, I did. I prepared some figures for this meeting and included in it were estimates of things like what the original company tax would be and what the anticipated 20 sales were at that time and what the dividend would be in the following year — the dividend that would be necessary to distribute, and so forth, and if they did not distribute it that they would have to pay retention tax on it anyhow. And generally I went over the thing from top to bottom with them to show them just where they stood because as I said they virtually left everything in the hands of their accountants. And I suggested that we look into the matter of forming this public company, at least for taxation purposes, but I had already discussed this with Mr Mann and we suggested . . .

Q. You say you discussed this with Mr Mann before you came 30 to the meeting? A. Yes, and we had decided that we should seek advice from other people.

Q. This is before the meeting you made up your mind? A. We decided we should do it, and at the meeting we asked the directors whether we could in fact proceed on that and they said after having had a look at it, and it was pretty obvious what the position was going to be — I gave them full particulars — they said, "Who is it you are going to see", and I told them as far as the tax side of it was concerned we should see a gentlemen called Mr Challoner, of Greenwood Challoner & Company. North Ash & Mann had had his 40 advice . . .

Q. This is what was said? A. Yes. I told them we had just finished a few things we had done for other clients and we had acted on the advice of Greenwood and Challoner then and I told the directors we had worked with these people before and that we wanted to go to them again on this matter and they said, "Yes, all right, will you do that?"



Q. What happened then? I am still dealing with this meeting?  
 A. They told us that they understood what we had put before them and we should take whatever steps we thought were necessary in the light of the figures that were to hand. They told us to go and see Mr Challoner or to get any other advice that we felt desirable and they then virtually left it in our hands.

Q. Coming back to a few more details, in the figures that you discussed can you remember did you work on any particular anticipated profit figure of the company? A. From what I can  
 10 remember, and I do not know whether the papers are still in existence, I think we anticipated a profit of somewhere round about £200,000. I am trying to remember back and I cannot remember the exact figure we were talking about, but I think it was the same figure that we finally decided would be probably the year's profits. I think it was one and the same figure — I am not sure.

Q. Will you try, coming back to this conference, when it started, to recapture for me what it was that was said with regard to taxation? You see, you have put it in general terms; this is in the first conference with Mr Mann. What was said in that conference? A. We had the  
 20 position where we knew that as a proprietary company we set out one thing — (objected to).

HIS HONOR: Mr. Purcell, you are asked now, having given the general nature of it, to go back to the beginning of the conference and give so far as you can the exact words that were used without any reason why they were used, such as he said to me this and I said to him that.

MR MOFFITT: Q. Do you follow, Mr. Purcell? A. Yes.

Q. I do not want your reasons but what tax was spoken of, you see? A. The taxes spoken of were Company tax, undistributed  
 30 Profits Tax and a third tax which was what we thought may be a deemed distribution tax.

Q. I only want to know what you said? A. It is virtually a tax that the Commissioner can levy on a shareholder in a proprietary company if he feels the shareholder has taken certain profits out but has not declared a dividend. We felt there were three probabilities of tax so far as a proprietary company was concerned.

Q. I am asking you when you first came into the conference can you recapture what was said to introduce this subject matter?  
 A. Naturally Mr Mann referred to his letter, his original letter, and  
 40 he briefly reiterated what was in the letter and what we felt. He then suggested that I take it from there because I knew the figures better than he.

Q. Now can you go back and try and recapture for me what it was that he said, trying as far as possible to use the words that he said? A. I do not quite know that I can, Mr Moffitt. It is a long while ago.

Q. All right. Can you give me at the moment any better

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description of what was said than you have given so far, or any other detail? A. Well, as with these conferences, such as this—(objected to and directed to be struck out).

HIS HONOR: Q. Can you give anything else that happened at the conference? A. At this first conference I do not think so; I think I have covered it.

MR MOFFITT: Q. Was any suggestion made at that conference of money being paid to the public company to be formed by way of loan for the purpose of requiring shares? (objected to). Was there any discussion on that subject matter? (objected to, allowed.) A. Oh 10 no.

Q. Following upon that conference did you do something pursuant to that? A. Yes.

Q. What did you do? A. I rang Mr Challoner and made an appointment to see him.

Q. Do you remember whether you got an appointment straight-away? A. No, I am afraid it is normally pretty difficult to get in to see Mr Challoner, and I think we had to wait 2 or 3 weeks.

Q. In any event a conference was appointed and did you then attend that conference? A. Yes. 20

Q. Would you know of your own knowledge the date of that conference? A. No, I could not remember the exact date.

Q. Would it be somewhere in the vicinity of 20th April 1959? A. It would be in April.

Q. Who attended that conference? A. Mr Mann, myself, Mr Dale and Mr Challoner.

Q. Was Mr Dale present at that conference? A. I am just trying to think whether he was at that one or only at the second one. We did have two conferences.

Q. Do you remember whether he was present at one or two or 30 what? A. I am afraid I would not be sure as to whether he was at both of them. I know he was at the second one and I think he was at the first one.

Q. At the second conference apart from yourself and Mr Dale who was present? A. At the second conference the other partner in the firm, Mr North Ash, was present.

Q. The second conference — would you know when that would be approximately? A. I think that was early May.

Q. And would it be about 4th May? A. Yes.

Q. Were those the only two conferences you had with Mr 40 Challoner on this subject matter? A. On this subject matter, yes.

Q. Did you have any conference or discussion with the Messrs Steen or either of them on the subject matter of this conference in between the two conferences? A. Only to the extent of telling them that we were on the job and doing something about it.

Q. Subsequent to the second conference, that is the one in early

May, did you have a further conference then with the Steens?  
A. Yes, immediately after the second conference.

Q. Do you remember when it was in reference to that second conference? A. Yes, it was the same day; it was late in the afternoon.

Q. How do you remember it was the same day? A. I remember that because Mr Mann was not available and I cannot quite remember why he was not at the second conference, but he was not at the second conference and he was the partner in charge basically —  
10 that is why I remember, Sir, because he was not there and after the conference I discussed the matter immediately with Mr North Ash and he said "Well, you go up".

Q. You had it then immediately following that conference?  
A. Yes.

Q. At that conference then — this is after the second conference with Mr Challoner — you had a conference with whom? A. Mr North Ash.

Q. You had a talk with Mr North Ash first and then did you see the two Steens? A. I went then to see the two Steens.

20 Q. On that occasion who was present? A. On that occasion there were only the two Mr Steens and myself.

Q. I will come back if I may to the first conference with Mr Challoner. Did you make any notes by the way of either of these conferences that you now have? A. I would have made notes, but I have not got them now.

Q. So so far as these conferences are concerned are you relying on your own memory, on throwing your memory back to these occasions? A. That is why I can't remember.

Q. Can you tell me at the first conference with Mr Challoner —  
30 will you try and do what I asked you to do before — try and recapture what was said rather than the reasons for saying things.

HIS HONOR: Before going on with that, Mr Bowen, do you challenge Mr Challoner's evidence of what happened at that conference?

MR BOWEN: Not his account.

HIS HONOR: Mr Moffitt, surely that is the best we can do. There is only one aspect in the second conference, but I do not think it arises on the conference itself. I think those two conferences can be left on Mr Challoner's account.

40 MR BOWEN: I have no objection, Your Honor.

MR MOFFITT: Yes, Your Honor.

Q. I will leave those two matters for the moment, and then come immediately following those two conferences? A. Yes.

Q. Before you went down to see the Steens you say that you had a discussion with Mr North Ash? A. Yes.

Q. Will you tell me what was said between you and Mr North Ash? A. If I could make one small correction — immediately

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after the conference, on walking back to the offices of North Ash & Mann, Mr Dale was with us and we had a general discussion there and then we had a further talk about it in the office.

Q. That is with? A. With Mr North Ash.

Q. When you got back into the office you had a discussion with Mr North Ash? A. Yes.

Q. And in that discussion you told me before that he told you then to see the Steens? A. Yes.

Q. What did he say to you in that regard? A. In that regard only? 10

Q. Firstly, in regard to you seeing the Steens? A. Mr Mann was not available. Mr North Ash said that he did not know very much about the job and that I should go up and advise the Steens as to what action we felt they should take.

Q. Before you went up did you have any discussion with Mr North Ash concerning what should be put to the directors of I.V.M.? A. Yes.

Q. Will you tell me what was said on that matter? A. I broached the subject. If I have to digress back to the meeting, is that all right? We discussed what had been said in Mr Challoner's office. 20  
We discussed the ways of doing this—(objected to, rejected).

Q. When you went down to see the Steens following this conference will you tell me what was said when you went down, what you said when you first went down, and try once again to use the exact words if you can? A. Well, I saw both the Mr Steens in their offices and I told them that I had just come that afternoon from a conference with Mr Challoner, Mr Dale and Mr North Ash and that we felt that we had solved . . .

MR BOWEN: This is what he said?

WITNESS: That is what I said. That we had solved the taxation 30  
problems that the company had, and I told them — I outlined to them the arrangement.

HIS HONOR: No, give the conversation.

WITNESS: I told them that we were going to form this company in Canberra with the necessary shareholders, with the 25 shareholders, and explained to them why—(objected to).

MR MOFFITT: Q. Will you tell me what you said in explanation? A. I told them that if we formed this company and if we got these extra shareholders that it would have the effect of making the company a public company for tax purposes. I told them — I said that being 40  
so the company would be taxed as a public company and that no longer would it be subject to Division 7 tax.

Q. Did you use the words Division 7 tax? A. Well, I told them that from there on — I pointed out to them that they did not have to distribute a dividend, that if we did these things — formed this company — the profits that were made at the 30th June of that year would not be subject — we would not be forced to declare a

dividend. I pointed out to them that seeing that they were — I told them they were going to sell their shares to the Canberra Company and as a result of the sale of the shares then they would be in receipt of the purchase price personally. I explained to them how we would do this would be for International Vending Machines to make a loan to . . .

HIS HONOR: Mr Purcell, stop your evidence there. Mr Moffitt, it appears from that brochure that Mr Purcell at some stage was secretary of this company. I do not know whether he was secretary

10 at the date of these transactions.

MR MOFFITT: No, he was not, Your Honor. That has never been challenged.

HIS HONOR: It is just a question whether I should give him a warning, that is all. I mean if you can assure me quite definitely that he was not the secretary of the company — what date did Mr Purcell become secretary?

MR MOFFITT: Q. What date did you leave North Ash & Mann?  
A. I did not leave North Ash & Mann until, I think it was, the 8th or 9th . . .

20 HIS HONOR: Perhaps this is in the minute book.

MR MOFFITT: It is not in the minute book of I.V.M., but in the minute book of I.V.M. Holdings.

HIS HONOR: As being appointed secretary of that company?

MR MOFFITT: Yes.

HIS HONOR: But I am thinking of his becoming secretary of this company.

MR MOFFITT: I do not think it is actually reported in the minutes at any stage, Your Honor. The first document which shows that he is the secretary in those minutes is some date after the 8th May.

30 HIS HONOR: He signed a document under seal on the 29th May. June is the relevant date, as I see it.

MR MOFFITT: This conversation of course is on the 4th May.

HIS HONOR: . . . it is a question of knowledge, of wilfully acting, under section 355 of the Act, if he was secretary at the time the transaction went through, and the document at which I have just looked would be some indication; it is a question if he had knowledge which had not been communicated to them on the evidence of the two respondents. There he has countersigned a document under seal. I do not want there to be any suggestion that so far as he is concerned

40 a warning has not been given.

MR MOFFITT: It is a matter exclusively in Your Honor's province.

HIS HONOR: Mr Purcell, you had better look at that document there that is at folio 20 or 21. Perhaps you had better look at it first, Mr Moffitt. I was proposing to ask if that is his signature.

MR MOFFITT: I have no objection to that, Your Honor.

HIS HONOR: Q. Mr Purcell, will you have a look at that book? Is that your signature appearing at folio 20? A. Yes.

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Q. Will you have a look at the date of that notice? A. Yes.

Q. Were you secretary at that date? A. No.

Q. When did you become secretary, Mr Purcell? A. A fortnight after I left North Ash & Mann.

Q. And when was that? A. I do not think the company had a secretary at this stage, or it was one of those things — there was no official secretary, I think.

HIS HONOR: In case there is any doubt about whether you were warned, Mr Purcell, I should warn you that you may decline to answer questions if the effect of the answers would be to incriminate you in regard to any offence under section 148 of the Companies Act. That would of course apply if you were an officer of the company, which would include the position of secretary, at the time when the transaction was carried through and if at that date you were an officer in default, that is, one who knowingly and wilfully authorises or permits the contravention of the Act. Now, it is for you to determine whether in the light of your knowledge whether you were or were not the secretary or other officer of the company, in the light of what happened and that you are now giving evidence, the answer is likely to incriminate you in regard to any prosecution under that section, and I merely point out that you have a right to decline to answer the question.

(Further hearing adjourned until 10 a.m., Thursday, 7th December, 1961.)

7th Dec., 1961.

**Seventh Day: Thursday, 7th December 1961**

MR MOFFITT: Could I read on to the notes a mutual admission which my friend and I have made?

HIS HONOR: Yes.

MR MOFFITT: That prior to 30th June 1959, and following upon the payment to the three Steens of the purchase money by A.M. Holdings for their shares in I.V.M. cheques were drawn by I.V.M. in favour of the Steens as follows: L. Steen £22,500, J. Steen £22,500 and S. Steen £5,000; that such moneys were immediately paid by the three Steens respectively to A.M. Holdings in conjunction with an application by each of the said Steens for further shares in A.M. Holdings and that A.M. Holdings paid a cheque to I.V.M. for £50,000 in conjunction with an application by A.M. Holdings for 50,000 one pound shares fully paid in I.V.M. and that such applications were accepted and the shares were duly allotted.

It might be added, Your Honor, that the shares in A.M. Holdings were the shares which have been referred to in the minutes which have been tendered.

HIS HONOR: That is admitted?

MR BOWEN: That is admitted.

## BRIAN GERALD PURCELL

Further examined:

HIS HONOR: You are on your former oath.

MR MOFFITT: Q. Mr Purcell, I had been asking you about the occasion when you meet the Steens immediately following upon the second interview with Mr Challoner. Do you remember that? A. Yes.

Q. And you had just commenced giving evidence about going to the office of the Steens and about telling them about the formation  
10 of the company in Canberra and then about the shareholders and being for tax purposes, and then the last question I had asked you was as follows, "Did you use the words Division 7 tax" and your answer was, "Well, I told them that from there on — I pointed out to them that they did not have to distribute a dividend, that if we did these things — formed this company — the profits that were made at the 30th June of that year would not be subject — we would not be forced to declare a dividend. I pointed out to them that seeing that they were — I told them they were going to sell their shares to the Canberra company and as a result of the sale of the shares then they  
20 would be in receipt of the purchase price personally. I explained to them how we would do this would be for International Vending Machines to make a loan to", and then His Honor interrupted. If I could now ask you, would you continue with what happened at that interview? A. To take the words up, Sir, International Vending Machines would make a loan to the new company, the holding company. The holding company would pay all or part of that money over to the Steens as purchase price.

Q. Over to you, I suppose you said? A. Yes, over to them as purchase price for the shares and that they would in turn deposit  
30 that sum of money back into International Vending Machines. I told them that we would open bank accounts in Canberra so that this crossing of cheques or the several cheques that were drawn could all be done in the one spot and be clear from any other transactions that may be in the various bank accounts.

Q. Do you remember what else was said? A. I think then I had to explain the transaction a little bit because they were not quite sure.

Q. What did they say about not being sure? A. They asked me to clarify just exactly what was happening and I told them that  
40 it was a simple matter — they were in fact losing the title of the shares in International Vending Machines and the holding company would gain the title of International Vending Machines; they would in turn have shares in the holding company. We then discussed the purchase price. I then said to Mr Steen, "Well, the purchase price that we put on these shares is open to discussion because it is very difficult to assess what the purchase price should be". We did not even

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have a complete year's figures at the time although we knew reasonably well what they would be, and I said to him that under normal practice in the sale of shares consideration was given to the profits of the Company for a number of years prior to the sale; as we did not have the company in operation for a number of years prior to this sale, then we would have to try and hit on what would be a realistic figure. I told him that it would seem that a realistic figure would be at least a year's profits of the company and that I felt that the establishment of the figure was quite as open as that — that it could be that or it could be more and anyhow Mr Louis Steen, I think it was, said "Well, 10 that seems a reasonable thing; we are going to continue to own the company anyhow or continue to have an interest in the company by virtue of having an interest in the holding company; do it on that basis, do it on the basis of £200,000", and that is in fact what we did.

Q. Is there anything else that you can recall happening at that meeting or being said? A. I do not think so.

Q. Was anything said with regard to the merchandising companies, as to whether or not they would be in any way concerned? A. Yes. After we had discussed the International Vending Machines 20 Company I told him that seeing that we were going to all this trouble of getting this company floated in Canberra, now would be a good time to bring all the strings together — we had quite a number of companies at this stage — and to get them all under the same heading, under the same ownership, and it would make the operations of the company possibly more easier and would at the same time make it a lot cleaner if they ever did in fact go on with what had already been discussed at earlier meetings — a public company flotation. And I pointed out to him that all that had to be done in this case was seeing that there were only two shares, I think in each case, issued in the 30 proprietary companies that we would simply have to take up a large parcel of shares that would virtually make these companies wholly owned subsidiaries of the parent company and it would in fact give them all the benefits that would obtain to the International Vending Machines Company just as well — each of the subsidiaries, I pointed out to him, would then be so far as tax purposes were concerned considered as public companies also.

Q. Was there any discussion as to the machinery, as to how they were to be brought into the picture so far as the shares were concerned, you see? A. They suggested that seeing — I am not too 40 sure whether they suggested or I suggested it as a matter of fact, but it was suggested that part of this sale price, this £200,000 which we had by then decided, should be used to take up additional shares in firstly the holding company which would then enable it to take up a greater parcel of shares in the International Vending Machines Company.

Q. Jumping ahead a little for a moment, at a later stage on the



transaction carried out the amount actually paid to A.M. Holdings was in excess of £200,000, was it? A. Yes, the amount actually paid was £205,000 to enable A.M. Holdings to take up a thousand shares in each of the merchandising companies.

Q. And that was done at the same time? A. I think so. I am pretty sure it was done by the 30th June anyhow. I am almost certain it was.

Q. Coming back to the conference again with the two Steens, 10 was any other alternative put to the Steens other than the one you have just described to us at that meeting? A. No.

Q. Any other alternative than the way you have put it now? A. No.

Q. Was any alternative put to them as to any other method of carrying this out which would not involve advancing moneys by way of loan from I.V.M. to A.M. Holdings? A. No.

Q. Mr Purcell, at this meeting did you say anything to the Steens or either of them about section 148 of the Companies Act? A. No.

Q. Did you say anything about section 260 of the Taxation Act? 20 A. No.

Q. Did you explain the effect—you didn't mention section 148, did you, and explain the effect of such a section to them? A. No.

Q. And did you at any time say anything to them as to the company not being able to lend money in connection with the purchase of its own shares? A. No.

Q. Did you at any time prior to the commencement of these proceedings ever have any conversation with them either about section 148 of the Companies Act—either about it directly or indirectly? A. No.

30 Q. (Exhibit 4 shown to witness.) Did you play some part in the preparation of that document, Mr Purcell? A. Yes.

Q. I think it is common ground that the preparation of the accounts, the profit and loss account—that there was brought in to this profit and loss account the amounts which had been received from the sale of machines including the sale of machines which had not in fact been allocated at the 30th June 1959. Now, will you tell me whether you played any part in the decision that the accounts should be drawn in that way? A. Yes, I did.

Q. In what way, will you tell me, Mr Purcell? A. During the 40 close of the year, the 30th June 1959, it became quite obvious that some of the contracts entered into for the sale of machines would not in fact have machines supplied to the persons as at the 30th June. The question arose as to whether the sums received by the company were in fact taxable.

MR BOWEN: Is this something that was said?

MR MOFFITT: Q. Is this something that you considered yourself?

A. In the first instance I raised the question.

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Q. You raised the question with whom? A. With North Ash & Mann, with the auditors.

Q. At this time you were secretary of the company? A. At this time I was secretary of the company, yes.

HIS HONOR: Q. What date was this? A. This would be nearing the end of June, Your Honor. I discussed the question with both Mr Mann and the senior clerk, Mr Thompson, of North Ash & Mann and we were all agreed—I am sorry, I discussed the question with them to the extent of asking them for their opinion as to whether they thought this income received would or would not be taxable by the 10 Commissioner as income in this particular year. They did agree with me that it would be taxable and, further, they said that—I think it was Mr Mann said—they would have to include it as income when preparing the company's tax return. We then discussed the question if then we included that as income what should we do as regards the expenses obtaining to that income, in particular the cost of purchasing the machines which had been contracted for. I suggested that while I could not estimate the siting expenses of these machines I could factually arrive at the purchase price of the machines and they agreed with me also that I should bring that in, the cost of purchasing those 20 machines, as an expense of the company.

Q. Did you in fact in preparing those accounts make some calculation in respect to the cost of purchasing—if it would be paid under the contract—in respect of machines which had not been sited up to the end of June? A. I made a calculation on the basis of machines not purchased up to the 30th June. We had at most times a delay depending on the machine of possibly a week or a couple of weeks or whatever it was between the time of the machine being purchased and arriving in store and being sited. I in fact calculated quite simply—we used to have an unallocated contracts file— 30

Q. You are talking about the purchase by I.V.M. at the moment? A. Yes. We had a file called the Unallocated Contracts File and in that file every contract which had been completed was put until the machines had been purchased for them and in fact sited.

Q. When you say into that file, you mean the actual contract, was it? A. Yes. Simply by calculating the number of machines required to fulfil the contracts in that file, taking into account the number of machines we had on stock but not sited and taking into account other trade arrangements between International Vending Machines and the supplier—I think we used to pay them for tooling 40 up and then they would give us a deduction as they sent the invoice in.

Q. In other words, you were advancing money to them before you received machines? A. Yes. Then I arrived in association with Miss Bennett who was the accountant there and I think Miss Delaney also worked on it—quite a lot of calculations were gone into—I arrived at a figure which it would cost to purchase the balance of the machines that had been contracted for up to the 30th June and we

in fact brought them in to sundry creditors and accruals.

Q. That is the net balance after you had taken all those different matters, is that the position? A. Yes.

Q. Plus the amount you had advanced, plus the amount in stock and the amount you still had to pay, is that the position? A. It is shown on a schedule attached to this Exhibit, Your Honor. On Schedule 2 it is shown under the name of Ainsworth, down the bottom, £11,683/-/6d. and G. E. Tidbury £5,829/2/7d.

MR BOWEN: That is part of Exhibit 4, is it?

10 MR MOFFITT: Yes.

Q. As at that time, that is when you had the two files, you had the unallocated contracts, it was possible at that time to see the number of machines that had not been allocated by looking at these files? A. Yes.

Q. Would it be possible now at this point of time looking back to determine the number of machines, that is, by merely looking at the files, the number of machines that were not in fact allocated at any particular date and in particular at the 30th June 1959? A. I do not know that it is possible. It may be possible but I do not know  
20 that it could be done very quickly. I don't even know whether that is possible. I do not know the state of the records.

Q. Will you find the sundry creditors in the ledger—this is the private ledger—and show me where they are? A. Yes.

Q. That is in folio 2, sundry creditors as at 30th June 1959 and there is an entry of £17,512/3/1d. Is that actually your writing, do you know? A. Yes.

Q. And there is a cross reference to the journal 30? A. Yes.

Q. Then when you go to journal 30 that shows the break up of that £17,000 odd into Tidbury and Ainsworth, is that right? A.  
30 Yes.

Q. Will you just have a look at this entry? I showed you the sundry creditors page 2 and now I show you this other entry here? A. Yes.

Q. There is a further entry in relation to that? A. Why that entry comes in?

Q. Yes. A. That is simply a reversal of the position in order to open the books up as at the 1st July; when you journalise sundry creditors and accruals as at the 30th June it is common practice to reverse the entry in July.

40 Q. Anyhow, that does not affect what you have told me today, is that the position? A. No.

(Sundry creditors folio of the private ledger tendered and marked Exhibit 14.)

(Private journal folios 30 and 37 tendered and marked Exhibit 15.)

MR MOFFITT: May I indicate that in the reversing entry of 1st

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July it gives a cross reference to journal 36. In fact this entry is over the page and on 37.

Q. From an accountancy point of view can you tell me what from your knowledge is the practice as to whether or not, in the case of private companies where the Commissioner requires accounts in a particular way, you keep two sets of accounts? (Objected to.)

HIS HONOR: I will allow the question, "Is it your experience in the keeping of accounts in respect of private companies that when there is a taxation requirement that accounts be kept in a certain way a second set of accounts is kept in any other way?"

10

MR MOFFITT: I would adopt Your Honor's question.

Q. Can you answer that question? A. Yes. With private companies in my experience it has been the normal thing to simply prepare one balance sheet and set of accounts, and that is prepared by accountants with the basis of assessment by the Commissioner in mind. It goes to many things like depreciation, as to whether a piece of plant would normally depreciate—in the opinion of, say, an officer of the company it has a life of only 5 years, but it can well be that the Commissioner in his table gives it a life of 10 years. In my experience you only prepare private company returns on the basis of 20 the Commissioner's allowance of 10 years. It is not in my experience normal to prepare one set of accounts for the client and another set of accounts for the Commissioner.

Q. Have you the balance sheet still before you? A. Yes.

Q. Do you see the item under secured liabilities? A. Yes.

Q. Before the Steens ceased to be directors can you tell me whether or not those secured liabilities had been paid out? (Objected to, allowed.) Were those secured liabilities shown there totalling £18,304/3/11d. in fact paid before the Steens left the company?

A. My recollection is that they were paid off in or about the end of 30 1959, if not all of them, most of them.

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Examined.  
—

#### CROSS-EXAMINATION:

MR BOWEN: Q. Mr Purcell, I think you have told us you left the employ of North Ash & Mann and became employed by I.V.M. about 15th May 1959? A. Yes.

Q. Is that right? A. Approximately.

Q. And when you were employed by North Ash & Mann you were in receipt of a salary of £25 per week, were you? A. Yes. 40

Q. When you went over to the employ of I.V.M. you received a salary of £3,000 per annum? A. Yes.

Q. And I think you said you are now a company director, is that right? A. Yes.

Q. Of what company? A. Media Art Studios.

Q. You are also the secretary at present of Valor Finance Pty. Ltd.? A. That is right.

Q. That being a company of which the shareholders and directors are L. & J. Steen, is that right? A. Yes.

Q. Are you an officer of any other company in which the Steens are shareholders and directors at present besides Valor Finance? A. Brunswick Engineering—I am the secretary.

Q. What is your position? A. Secretary.

Q. Is that the only other one? A. I think so. I think there are a couple of companies in existence which have never actually—which are not active.

10 Q. These would be the only two that would be active? A. I think one of those would be International Appliances, but that has not been active for years. I do not quite remember whether I am secretary of that or not.

Q. Is this the position, that when L. & J. Steen sold their shares in I.V.M. Holdings in May 1960 to Independent Holdings Pty. Ltd., L. & J. Steen on 21st June 1960 paid you the sum of £5,000? A. Yes.

20 Q. Now, I want to ask you about the conference which you told us you had following the letter from North Ash & Mann of 18th March 1958. Do you remember that? You told us that you had a discussion at which Mr Mann and yourself were present and L. and J. Steen were present, following that letter.

Q. You said yesterday that after Mr Mann had introduced the subject generally you discussed the detail of the matter, you having figures. You have told us that tax was discussed in three respects, company tax, undistributed profits tax and what you call deemed distribution tax, is that right? A. Yes.

30 Q. Were those the only taxes discussed? A. The last mentioned tax, the deemed distribution tax, was discussed in association—what I meant by that was that the Commissioner might assess shareholders as being taxable on the loans that they had withdrawn and therefore when that was discussed that was discussed as tax of the shareholders, which means that one had to be taken—

Q. That is a tax on a shareholder, not on an actual dividend, but under section 108 of the Income Tax & Social Services Contribution Assessment Act? A. Yes.

Q. Where the Commissioner treats a loan income as an anticipated dividend, is that right? A. Yes.

40 Q. But what I am putting to you is this, was not any other possible tax liability discussed? A. There would not have been other than the company taxes and the Steens and this deemed distribution. Other than those there would not have been any that would have been pertinent to the conference, I do not think.

Q. You brought certain figures to this meeting, did you not? A. Yes.

Q. Which showed that if the company did not distribute you thought a substantial tax liability would fall upon the company under Division 7, is that right? A. Yes.

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Q. I suggest to you you must have discussed also the substantial tax liability that would fall on the shareholders if a distribution were made? A. Yes.

Q. I am not referring, you understand, to loans already taken which might be assessed under section 108; put that to one side, do you understand? A. Yes.

Q. Is not this the position, that you discussed whether the company might be taxed on undistributed profits at the rate of 10/- in the pound, is that right, or if these profits were distributed to the individual shareholders they might be taxed at 13/4d. or some other 10 figure in the pound, is that right? A. Yes, and that that would result in the company—seeing that in the first year there would be both tax and provisional tax the company would then have had to rather than credit the dividend—in many proprietary companies you credit the dividend, but here you would simply have had to pay it to them in cash.

Q. So that the shareholder could pay his tax? A. Yes.

Q. That was the problem you were really faced with? A. No, that was part of the overall thing.

Q. Is not this the position, you told them that the company 20 could be made into a public company and that would solve the undistributed profits tax problem of the company? A. Yes.

Q. But the one problem that would remain would be—well, there would be no problem remaining if that were done and the company did not have to distribute, is that right? A. That is so.

Q. But if the company did distribute moneys then a higher rate of tax would be attracted and in addition provisional tax. Did you not explain that? A. I explained all facets of it.

Q. So that would really be the greater liability of the two, would it not, if a distribution of the profits were made to the shareholders 30 to avoid undistributed profits tax? A. Yes, it would physically cost more.

Q. So I put it to you that that really was the major item in point of amount which was under discussion, the tax on the individual rate and the provisional tax? A. The major item under discussion was should we proceed: without doing any of these suggested things the company would never be in a position to build up any reserves because it would have to continue to pay out large sums to shareholders, because of the very fact you have mentioned, there would be a large tax liability. 40

Q. So you did discuss the personal tax of the Steens at this conference, did you, quite apart from the loan account taxation? A. One had to be discussed in association with the other, yes.

Q. Did you put to them at this conference that if the company were made into a public company for taxation purposes it would not have to distribute? Did you put that to them? A. Yes.

Q. Mr Purcell, it is clear that as far as the company is con-

cerned if it were formed into a public company before the 30th June there would have been no tax problem for the company? A. It would have been lessened, yes.

Q. It would have had no undistributed profits tax? A. Yes.

Q. So the only problem that would have remained would have been the personal tax problem for the three Steens in respect of the amounts owing on their loan accounts, is that right? A. That could have been a problem had the Commissioner decided to tax them.

HIS HONOR: But that would only be on the basis if it were a private  
10 company, would it not?

MR BOWEN: I think Your Honor is correct there.

Q. His Honor has reminded us if it had become a public company by the 30th June section 108 would not have been available?

A. It could not apply; I have never heard of it being applied in a public company.

Q. Is this the position, that there would have been no need if the company had become a public company to make any distribution?

A. There would have been no need?

Q. No need to make any distribution in order to meet the tax  
20 problem? A. No, had it become a public company.

Q. And did you in discussing it at this conference with the Steens—this is the first conference—point that out to them or was that made clear to them? A. No.

Q. Was that because it was clear when you went to that conference that they would require moneys to be distributed? A. No.

Q. Why was that not pointed out to them? A. I do not know.

Q. What I suggest to you was that it was a major problem discussed at that conference of how tax could be saved in relation to the individual shareholders. Do you agree with that? A. It was possibly  
30 mentioned but I do not think it was the major point.

Q. Still at this same conference was there any discussion to the effect that in any event it would be necessary to clear off debits on the loan accounts by the 30th June? A. Whether it would be necessary to clear them off? I would say that we would have discussed the fact that large sums had been withdrawn. I am not terribly sure as to whether we actually said “You are going to have to clear them off”. I am not terribly clear on it.

Q. You think some reference has been made to clearing them off by the 30th June, but you are not quite sure what was said? A.  
40 I am not quite sure what was said.

Q. When you went to your first conference with Mr Challoner you went with Mr Mann, is that right? A. Yes.

Q. Do you recall that at that conference with Mr Challoner it was suggested that I.V.M. Pty. Ltd. might be constituted a non-private company for the time being along the lines of the Sydney Williams and Keighery cases? A. Yes.

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Q. Who suggested that? A. In the original instance I think it was me.

Q. That is something that you had put to the Steens at the conference before you went to see Mr Challoner, I suppose, is it?

A. You are talking about the conference after the letter, with the Steens?

Q. Yes? A. I do not think we actually discussed—I think we only discussed that we were going to take steps to overcome the problem. To my recollection we never ever discussed how we were going to do it.

Q. You did not discuss the formation of the company or converting I.V.M. into a public company at that conference with the Steens after the letter of the 18th March? A. I think all we discussed at that first conference were the facts as they stood and that we should take steps to help the matter.

Q. But surely, Mr Purcell, you suggested that it was possible to meet the tax problem by constituting I.V.M. as a public company and that that is what you would have to get advice about? A. Well, I do not remember having discussed it at that conference. I do not remember having discussed anything other than the actual position as it was then.

Q. Let me put this to you—you said there were methods by which this situation could be met. You told the Steens that, did you not? A. I think we told the Steens that we would, through seeking advice and so forth, try and overcome the position and find a method. It is a long while ago and I am not quite sure whether the thought of the public company status was in existence then, but I do not remember it ever being mentioned at that conference.

Q. Are you fairly clear it was not mentioned at the first conference with the Steens? A. I do not think it was.

Q. You had had personal experience of some other cases, had you not, before you saw the Steens at that conference? A. Some other cases?

Q. Where public company formation had been adopted? A. Our firm had never done that.

Q. At that time had you ever known of it being done? A. Yes.

Q. But you still say you do not think you suggested it as a possible way of meeting the problem, to give it public company status for tax purposes—that is, to the Steens at the first conference? A. I cannot remember having done so.

Q. So that you went along to Mr Challoner having really instructions from your client to explore the position—is that a fair way to put it? A. No, that is not quite right because after the conference with the Steens Mr Mann and I then discussed the question quite a bit.

We arranged to see Mr Challoner and I raised the question of whether we could in fact take advantage of this method of a public company.

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Q. You raised it after the conference with the Steens? A. I think it was after the conference.

Q. With Mr Mann? A. With Mr Mann, and we discussed it in our office and then we were not terribly sure as to whether we could. Our method was somewhat different to the one finally accepted, the one we originally proposed, and when we went to Mr Challoner rather than going for advice generally we put it to him as to whether what we had in our minds at the time then was a possibility or not.

Q. I suggest to you, Mr Purcell, that you at the discussion with  
10 the Steens following the letter of the 18th March went into ways and means of forming companies in great detail. Do you disagree with that? A. I cannot remember going into any great detail of ways and means of forming a company, but I must admit, Sir, I am not terribly sure.

Q. I put it to you that when you went to see Mr Challoner you not only suggested, as you have told us, that I.V.M. might be constituted a non-private company for the time being along the lines of the Sydney Williams and Keighery cases, but you also suggested that the Steens had considered the matter and would be satisfied if they could make a pretty substantial profit by a sale of their shares in  
20 I.V.M. Pty. Limited?

HIS HONOR: I think it ought to be clear if you are reading from the document, Mr Bowen, but my recollection of it is that you are not purporting to do so—in case the witness misunderstands the situation.

MR BOWEN: I am reading the wording from it, Your Honor. The question was put “It was also suggested”.

HIS HONOR: Was that last part the wording from the document?

MR BOWEN: Yes.

Q. (Read.) I put it to you that when you went to see Mr Chal-  
30 loner you not only suggested, as you have told us, that I.V.M. might be constituted a non-private company for the time being along the lines of the Sydney Williams and Keighery cases, but you also suggested that the Steens had considered the matter and would be satisfied if they could make a pretty substantial profit by a sale of their shares in I.V.M. Pty. Ltd. What is your answer to that? A. I still cannot remember ever having discussed this scheme in detail with the Steens. We did not have it in detail—

HIS HONOR: Mr Purcell, what you are asked is this: you are asked to take your mind to the conference with Mr Challoner; then you  
40 are asked not only whether you suggested to him the possibility of turning I.V.M. into a public company but you also said that the Steens would be satisfied if they could make a substantial profit by the sale of their shares in I.V.M. to another company. That is what is being put, not what you said to the Steens, but what you said to Mr Challoner.

MR BOWEN: Q. Do you recall saying that to Mr Challoner? A. No.

Q. Did someone else say it to Mr Challoner? A. The only

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thing I can suggest is that may be in discussion somebody—I may have said, if it was me who said it, if this works then they will get a substantial price for their shares and they will probably all be satisfied with it, but I cannot imagine having put it in the text that you put it to me.

Q. Do you recall anyone else making that suggestion to Mr Challoner—Mr Mann may be? A. No, I do not recall anyone making that suggestion, not in that text. I do not recall it.

Q. You said if this works they would make a substantial profit. You think you might have said something like that? A. I could 10 well have said that.

Q. If what works? A. If the scheme, if an arrangement of this company that we were putting to Mr Challoner for his advice on—you see, it was somewhat different from what has now been done, because we proposed a dividend to be declared after the sale of the shares and in that way—the sale of the shares—there would have been an immediate saving there, we would have solved our tax problem, and when I say if it worked I was putting the scheme as such as the one we put to Mr Challoner.

Q. Now, if that worked how would they get a pretty substantial 20 profit by the sale of their shares in I.V.M. if what you were putting was a declaration of dividend? A. They could still do it just the same as they have done it. They did it the other way. They would still have sold the shares.

Q. To whom? A. To the holding company.

Q. To whom would the dividend go? A. The dividend in the first place would go to the holding company.

Q. Then the holding company— A. Would not have to distribute it any further but—

Q. And would pay them an amount for their shares which would 30 give them a pretty substantial profit? A. Yes, that is right.

Q. Is that the suggestion that was put by you or Mr Mann to Mr Challoner? A. We put the principle to Mr Challoner.

Q. Did you? A. Yes, and I do not know whether I personally did. I think I did personally.

Q. You think you put that. Now, did you put that to Mr Challoner without any reference of that to the Steens and without any authority from them other than the general authority to get advice? A. I think so. I think it was something that we had discussed we were not sure about and we went to see Mr Challoner. I 40 do not think we would have put it to the Steens first because if we had been wrong it would have made us look as if we did not know our business.

Q. At the time you went to see Mr Challoner on this first occasion would you or would you not have known whether the Steens would be satisfied with a pretty substantial profit if they sold their shares in I.V.M.? A. I do not think so.

Q. You do not think you would have known one way or the other? A. No.

Q. Do you say you never discussed it with them at the time you went to see Mr Challoner? A. I do not remember having discussed it.

Q. Would Mr Mann from anything he said to you have discussed it independently with them? A. He could have. I would not be able to answer for him.

Q. Had the Steens at any time before you went to see Mr Challoner indicated to you that they wanted to get money out by way of a pretty substantial profit on the sale of their shares in I.V.M.?  
10 A. Had they asked me?

Q. Yes. A. No, I do not think so.

Q. Is it fair to say that the discussion which followed with Mr Challoner at this first conference was largely directed to the problem whether if a substantial profit was arranged on the sale of I.V.M. shares by the Steens they might be liable for tax under section 260 of the Income Tax Assessment Act? A. Oh, I think it was mentioned. I think that was one of the things we were not sure about, yet.

Q. That if they sold the shares and took a profit on the shares  
20 the Commissioner might seek to tax that under section 260? A. Yes, that was one of the things we went to see him about.

Q. That was one matter about which you were doubtful and about which you sought advice? A. That was one of the matters, yes.

Q. It was a matter that concerned you before you went to see Mr Challoner? A. Yes.

Q. Is this right, that Mr Challoner expressed concern that if the purchasing company was given financial ability to pay for those shares by way of a dividend coming from I.V.M. section 260 might be applied to tax the profits? A. Yes.

30 (Short adjournment.)

MR BOWEN: Q. I wanted to ask you some questions about the second conference which you had with Mr Challoner. On this occasion you went to see him with Mr North Ash, is that right? A. Yes.

Q. Mr Mann was away and Mr North Ash had not been particularly dealing with the matter, is that right? A. That is correct.

Q. So I take it you took the principal part at the conference with Mr Challoner, did you? A. Yes.

Q. At this conference did Mr Challoner tell you that he had considered the suggestion which you had made at the previous interview  
40 and it would be very likely to be attacked under section 260? A. That is correct.

Q. That previous suggestion had been for a purchase of the shares held by the Steens for a money sum which would be placed in the hands of the purchasing company by the declaration of a dividend, is that right? A. That is right.

Q. I think one suggestion of yours at the earlier conference had been that one of the merchandising companies might have been used

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as that purchasing company? A. I think one of the merchandising companies was mentioned earlier in the piece, yes.

Q. I think that he then put to you at this conference that if I.V.M. made a loan to the merchandising company, treating that as the purchaser for the purchase of the shares and it paid the money over, there would be a breach of section 148 of the Companies Act?

A. Yes, he did tell me that.

Q. He told you that; but that he thought that section 260 if it were done that way would have no application? A. Yes.

Q. In the light of that is this right, he then suggested another 10 alternative, that was to leave the consideration for the purchase of the shares outstanding and be paid off over a period out of future profits? Was that suggestion made? (Objected to, withdrawn.)

Q. He told you (I am referring to the middle of page 61) that if it were done by loan for the purchase of the shares there would be a breach of section 148? A. He told us, yes.

Q. But that section 260 would not apply. I put it to you that Mr Challoner then suggested another alternative—that was to leave the consideration for the purchase of the shares outstanding to be paid off over a long period out of future profits, is that right? A. 20 He did make that suggestion.

Q. Did he then express the view that if that were done section 260 would not apply? A. Yes.

Q. Do you recall any discussion on that alternative suggestion yourself? A. It was specifically mentioned, I do not recall to just what extent we discussed it or how much we discussed it. I do not think we discussed it very much.

Q. Did it strike you as likely to be unacceptable to the Steens if the purchase money were left in that way outstanding? A. Well, to be perfectly honest it struck me that we were still in a similar 30 position to what we were earlier, to the extent we had only half completed the transaction, and in order to complete it at some later stage there would still necessarily have to be dividends paid over in order to enable the holding company to in fact pay its debt to the Steens. Do you see what I mean? It struck me it was an untidy way of doing it. I think we actually sort of discussed that. That was the extent that we did discuss his second suggestion.

Q. If it had been left outstanding for some time that would not have been a real difficulty, would it? If it had been left outstanding for some substantial period of time and paid off later that would not 40 have been a real difficulty? A. A period of years, do you mean? Something like that?

Q. If it were a period of years it would be quite safe? A. I imagine it would be quite safe.

Q. Was it rejected because it would need to be paid off quicker than that and therefore would produce the same difficulty—rejected by the conference? A. It was rejected, as I recollect, as not being

as good as the other possibility. The only—

Q. Was one factor in that, as you knew the position, that there would not be time to leave the purchase money outstanding until such time as it would be safe? Is that a factor in it? A. I do not think that is a factor.

Q. Did you or Mr North Ash ask that section 148 be read out? A. It was read out.

Q. Do you recollect who asked for that? A. I am not sure. I remember when it was mentioned it was read out.

10 Q. And the fact that it provided a penalty by way of a monetary sum was mentioned? A. Yes, the penalty for breach of section 148—the only reference that I remember at the conference was that I think Mr Challoner said it would cost them £100 penalty, but it would not necessarily make the transaction invalid. I do not think any other repercussions were mentioned. I do not remember any.

Q. Was it then after the section was read stated by Mr Challoner by way of summing up the position that the alternatives seemed to be to adopt the original suggestion by yourself which he thought left open the application of section 260, or if I.V.M. made a loan to the  
20 merchandising company or to a new holding company it would seem there would be a breach of section 148 of the Companies Act, but if some means could be found for leaving the consideration for the purchase of the shares outstanding, to be satisfied out of future profits or from the proceeds of a flotation, it seemed that section 260 would be taken care of and there would not be a breach of section 148. Do you recall a summing up in those words or to that general effect by Mr Challoner? A. I do not remember the words, specifically, but he did sum up on the basis that here are the alternatives and you make up your own minds virtually.

30 Q. To the effect of the words I put to you? That would be accurate? A. Broadly speaking, yes.

Q. In your recollection? A. Yes.

Q. You have told us that you came and immediately had a conference with the Steens on the same day? A. Yes.

Q. Did you pass on to them the advice that Mr Challoner had given you when he summed up the position? A. No. I passed on to him what had been decided back at the offices of North Ash & Mann.

40 Q. Did you when you went back and had this conference with the Steens tell them that it would be possible to have the purchase but to leave the purchase money outstanding and so solve the tax problems? A. Yes, I presented them with what we suggested that they do. I did not go into alternatives.

Q. You appreciate on what Mr Challoner said this is what he recommended, that it be left outstanding in that way? A. I do not say Mr Challoner necessarily recommended that. Mr Challoner did not specifically recommend that at all.

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Q. Well, it was one alternative that he put forward? A. It was one of the alternatives.

Q. Do you say that you did not put that to the Steens at this conference? A. Yes.

Q. Was that because you knew it would not accord with their wishes? A. No.

Q. If they did not get the money into their hands for the purchase of the shares? A. No.

Q. Is that not the position? A. No, the position was that I had discussed it with Mr North Ash on returning from the conference 10 and it appeared that the second suggestion of Mr Challoner was an untidy one and that it did not solve all the problems because we still had amounts on loan accounts and we decided in our office, North Ash & Mann office, that we should take the third alternative.

Q. Do I understand you to say that one reason you did that was that the alternative of leaving the purchase money outstanding would not place moneys in the hands of the Steens and so would not enable the discharge of their loan account, is that right? A. The alternative would have left, as we thought at the time, wrongly, apparently, it still open to the possibility of tax on their loan accounts. 20

Q. That cannot be so, Mr Purcell? A. I realise that is now wrong, but at the time, and I am going back three years, at the time of the discussion with Mr North Ash we felt that that was one of the reasons.

Q. That there might be tax on the loan accounts? A. Yes.

Q. Do you deny that it was a reason that it would not give money in their hands to pay off their loan accounts? A. No, what I am saying is that because of what we thought at the time which was wrong, nevertheless what we thought, we felt that the payment over of the money would in fact avert this position of the loan accounts. 30

Q. At the conference with the Steens was there any discussion on how this amount of £200,000 would be found by I.V.M.? A. Yes, to this extent, that it was clearly discussed with them that it did not have to be found at all because the money was to remain where it came from.

Q. But it had to be found as a matter of the company's accounts, did it not, and the proper keeping of the accounts? A. Yes.

Q. Did you have a profit position before you at this conference up to that date? A. No—well, this conference was prior to the end of the year—we had not taken out a complete balance sheet since 40 December but we had figures to the extent of the December balance sheet plus current figures available.

Q. It was following this conference that you became secretary and undertook to implement the way in which finally it was done, is that right? A. Yes.

Q. In the course of implementing it in May and June did you then prepare accounts showing roughly a balance sheet position and

the profit and loss position before the end of June? A. No.

Q. Did you have any estimates of what the profit was likely to be made up in relation to the implementation of this proposal? A. When you say estimates do you mean just estimates based on sales figures or do you mean factually having prepared draft accounts? We had estimates but not draft accounts.

Q. How were your estimates prepared? A. Well, at that stage we had our sales figures, we knew our margin on the sales, the accounts, the records, were pretty well up to date—I would not  
10 remember exactly just how well up to date but pretty well up to date—and we could not estimate it accurately but we could estimate it reasonably.

Q. Would those estimates be written estimates? A. They probably were in the form of notations at the time.

Q. Notes which you made and you would have shown them to the Steens? A. Yes.

Q. When you got these estimates in implementing the proposals did it not become apparent to you that if the accounts were prepared on the same basis as had been used up to then this sum would after  
20 all be out of proportion—too large—in relation to the profit which would be shown? A. No.

Q. You don't agree with that? A. We felt that—

Q. Did you discuss that particular matter with either Louis Steen or Joseph Steen? A. As to what the profit would be?

Q. In relation to the amount of £200,000, when you were implementing the proposal? A. When we were implementing it?

Q. When you became secretary and were preparing the documents and implementing the proposals you told us you had estimates of the profit? A. Yes.

30 Q. Now, did you discuss the amount of that profit with either of the Steens and compare it with the amount of £200,000? A. I do not remember specifically, but I could well have.

MR BOWEN: Q. And did it not become apparent to you that the profit, if the accounts continued to be made up in the way they had been, would be less than £200,000 a year? A. I do not remember it becoming apparent.

Q. Looking back at the accounts now, you are in a position to see that if there had been no change in the method of keeping them, the profit would have been less than £200,000? A. What do you  
40 mean by the change in the method of keeping them? I do not understand that. There was not any change in the method of keeping them.

Q. The practice of keeping accounts for the company up to May 1959, was it not, was for each branch office, when a machine had been invoiced, to send a copy of the invoice to head office, and it was entered in the sales journal? A. Yes.

Q. And the practice also involved the Sydney office which was separate from the head office in the operations—under which the

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Sydney office also sent its invoices in relation to machines allotted, is that right? A. Yes.

Q. And it was only as machines were allotted that these invoices coming in from branches were entered in the sales records at head office—is that so? A. Yes.

Q. And I suggest to you that in June of 1959 there was a change in that procedure and the staff were instructed to prepare invoices in respect of machines the subject of contracts whether they had been allotted or not? Do you agree with that? A. Yes.

Q. And that thereupon head office, which previously had not 10 been making out invoices, made out invoices in respect of those machines, and they were thereupon entered in the sales figures? A. Yes.

Q. That is the change I was referring to? A. I am sorry, Sir; I did not appreciate that.

Q. The effect of that change of procedure—leaving the reasons aside for the moment—? A. Yes.

Q. The effect of that change in procedure is to bring into sales a greater number of machines sold than otherwise would be brought into sales, is it not? A. The effect of it was to bring all completed 20 contract into sales.

Q. Into sales? A. Yes.

Q. If they had not been brought in the figure for sales would have been less, would it not? A. Yes.

Q. And to bring them in caused the figure for sales to increase very very substantially? A. Yes.

Q. Is that right? A. Yes.

Q. Will you agree that no corresponding liability or charge was brought into account—in the profit and loss account—as expenditure in respect of those entries? A. No; I cannot agree with that. 30

Q. You have told us in your evidence in chief that they were brought into sundry creditors in the balance sheet? A. Yes.

Q. You know, of course, that I am not talking about the balance sheet? A. That is so; they were brought into sundry creditors in the balance sheet but they appear in the accounts—

Q. They appear in the trading section? A. Yes, as a deduction against sales.

Q. The actual cost was put in? A. Yes. The actual cost  $\frac{2}{3}$  the cost to procure the machines.

Q. The actual sale price to I.V.M. of the machines? A. Yes. 40

Q. And since there would be a counter-entry, that would be relatively small? A. Yes.

Q. In the proportion of £12 to £74—that kind of proportion? A. Yes.

Q. The effect would still be to bring in, as compared with the previous system, a very substantial increase in the amount of profit, would it not? A. Yes.



Q. What I am putting to you is this, before that change took place it would be apparent on your estimated figures on the old basis, that there would not be at least £200,000 profit for the year? A. I never considered it that way because we were considering sales we considered contracts as sales rather than the physical invoicing of the machines because that was in fact what we deemed to be our income—from contracts—not as they were supplied. That is how we kept track of them.

10 Q. Do you say that that was always so—that you considered contracts written in as income? A. Well, it was only a method of accounting—

Q. Can you answer the question, first. Did you always consider the accounting of sales as income earned throughout your association with the company from the beginning? A. I think that when we took out figures we would take out the actual sales from the sales journal, but bearing in mind all the time that we had “X” amount of sales that we were accountable for that had not yet gone through the sales journal.

20 Q. But you would have had another one, would you not—a memorandum account—of the sales? A. No. All money received on contracts was posted straight away, and then as the machines were invoiced so that account was debited with the invoices. Now we could easily get both our sales figure and our income figure—the sales figure referring to the machines side and our income figure referring to the income from contracts.

Q. You did not have to go to the register of unallocated contracts that you told us about? A. We used that so that they could keep track of those contracts not allocated. Some of the contracts might be for a different sort of machine, and we went to that to get the  
30 number of machines purchased.

Q. Now these moneys received under the contracts— A. Yes.

Q. Was that in the cash receipts? A. No; I think it was called sundry debtors.

Q. Sundry debtors—? A. Yes.

Q. Moneys owing? A. Yes. It was not a clear account. It was not like any ordinary business where you invoice first and get your money later.

40 Q. What I am putting to you is it was a memorandum account? A. Well, it could not be a memorandum account when it forms an integral part of your actual dealings because that is the only place where you can establish the turn-over, contract-wise.

Q. But you did not bring it in—take the profit and loss account for the period ended 31st December 1958—I suggest to you that the sales there are on the basis of the sales shown in your books of account? A. That is right.

Q. So you did not bring them into the half-yearly accounts? A.

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It could well be; we only brought them in at the finish to line them up with the taxation returns.

Q. I heard you say that, but—

HIS HONOR: If it does not appear in the trading section, would it not have to appear in the ledger section, because if the moneys were received into the bank account there would have to be a reconciliation?

MR BOWEN: I am speaking of trading and profit and loss.

HIS HONOR: Yes; but I think the witness is speaking of a ledger account.

MR BOWEN: From which he can ascertain certain information. 10

HIS HONOR: Then you said it was a memorandum account and he denied that. That does not relate it to the profit and loss account, but to the balance sheet.

MR BOWEN: We may have been at cross-purposes.

WITNESS: Yes.

MR. BOWEN: Q. It would have been reflected in the balance sheet?

A. Yes.

Q. But in the December accounts it would not be reflected in the trading and profit and loss account—? A. That is so.

Q. Where you include sales? A. Yes. 20

Q. What I am putting to you is that the company started off with a procedure under which, when it was ascertaining its profits, in its trading and profit and loss account—it brought in sales where the goods had been invoiced only? Do you follow? A. Yes.

Q. And what I am suggesting to you is that whether or not at any given point of time you could look at this other account and see the machines that were the subject of contract—at all events you knew what your profit would be on the basis of sales made up in accordance with this procedure you have followed from the beginning—is that right? A. Yes; there were two distinct things. 30

Q. And what I am putting to you is that it must have been apparent to you, as a man experienced in accounts, in May 1959, that if you continued on the basis of bringing in actual sales on the basis of machines invoiced the profit would have been less than £200,000 per year? A. That did not become apparent to me at all, because I myself was never under any illusion but that the moneys received on contract would have to be taxable and they would have to be brought in.

Q. Did you think that the December accounts really did not properly state the company's profit position from the company's own point of view? A. I would not know offhand as to how they were in relation to unallocated machines in December. Generally speaking, I would not think that there would be a great deal of unallocated machines. I would not be sure of that. 40

Q. Can you recall when it was that this change of method of recording unallocated machines was directed to be done by the staff?

A. I think that I discussed the matter with Mr Mann. I am not sure. I think that it was in June some time.

Q. June 1959? A. I think so.

Q. And then they were all done before the 30th June—invoices written and entries made? A. I do not know that physically they were all completed by the 30th June, because that was rather a big job, but they were all put through as at 30th June, yes.

Q. And I think that it was Miss Delaney who made the actual entry? A. I think that Miss Delaney was with the company at the  
10 time.

Q. Miss Bennett was supervising and Miss Delaney was entering the sales journal? A. That may well be.

Q. And did you give Miss Delaney the instructions to do that? A. It is quite possible—

Q. And Miss Bennett too? A. I know that it resulted from my discussions with Mr Mann.

Q. When these branches sent invoices, in general it was possible to identify the branch from which the invoice came by the prefix letter—"N" for N.S.W., "V" for Victoria and "T" for Tasmania. A.  
20 Possibly so. I do not know what they had.

Q. I show you the sales journal, part of the folios constituting Exhibit Q., and in particular N.S.W.—Sydney, first of all, Folio 19. There are certain entries there—"N.C."—That is just "No Charge"? A. Yes.

Q. This handwriting is Miss Delaney's, and the figures are hers? A. I do not know.

Q. Would you not know that? A. No.

Q. Here we come to Folio 20, June 23, and we see some "N" numbers; Rankin, N.180, and written against it "N.A.". Is that it?  
30 A. Yes.

Q. And an entry, £300? A. Yes.

Q. And some similar entries on that page? A. Yes.

Q. And then some N.C.'s? A. Yes.

Q. What would you say the N.A. means? (Objected to—pressed—argument ensued.)

HIS HONOR: I think the position has not basically altered since I dealt with the position earlier and I think I ought to disallow that.

MR BOWEN: Q. I now want to show you Exhibit Q. again—the Folios relating to Melbourne. (Book shown to witness.) I show you  
40 Folio 14, June 1959. Do you see that? A. Yes.

Q. Do you notice that there are some numbers opposite the persons' names; starting at the top, opposite the first name, "V.176" in ink? A. Yes.

Q. Would that be the invoice—the indication of the invoice? A. I imagine so.

Q. Because the invoice is the basic document on which these entries are made? A. The sales book?

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Q. Yes; that must be so, must it not? A. Yes.

Q. You just go down there until you reach June 30, about five lines from the bottom, and then starts a series of N. numbers? A. Yes.

Q. Ending on June 30? A. Yes.

Q. You start with N.615-6-7? A. Yes.

Q. And would you say that that indicates a change at that point in the Victorian invoices, to the invoices cleared in N.S.W.? A. Yes.

Q. Looking at that, are you able to assist us as to whether they are for machines allocated or not allocated or what they were? A. Looking at that—

Q. It would not assist you in any way? A. I would not be able to say.

Q. What could you say about it? What explanation could you give with your knowledge of the accounts? A. They could be the invoices put through pertaining to unallocated machines.

Q. Is there anything else they could be? A. Yes. I cannot say—I cannot remember precisely, but that is the only answer I could possibly think that they might be.

Q. You started off to say "I cannot say" and I think you meant to say, "I cannot say that they mean anything else"? A. Yes. They could well be that.

Q. They could well be that, and you cannot suggest any other explanation of that change? A. I know that the unallocated invoices were put through at the 30th June, and I cannot see them anywhere else.

Q. It might help you to look at, say, Adelaide. A. No; I was just looking at one particular State.

Q. Let us have a look at Brisbane—it is Folio 8? A. Yes.

Q. And on the 30th June they start off with some N. numbers—N.606, and go through. A. Yes.

Q. A whole number of entries at the 30th June? A. Yes.

Q. Would the same apply to those? A. Yes. Once again it is the only explanation I can offer. I would imagine that it would be the right one.

Q. The right explanation? A. Yes.

Q. Will you have a look at the whole account and see whether there is anything else there that would assist your recollection—the whole account, including any notations on it? (Objected to; question withdrawn.)

Q. Now will you have a look at Adelaide, 1959—June? Look at folio 8 which has a prefix "S"—probably "South Australia", is it not? A. Probably that.

Q. Do you know? A. I do not know whether they had a prefix, but I suppose that is probably what it is there for.

Q. You do see a change there on the 30th June? A. Yes.

Q. And a whole lot of entries put in at the 30th June, commencing with "N" numbers? A. Yes.

Q. Would you give the same explanation for those? A. Yes; I could give no other.

Q. You can give no other? A. No.

Q. And where that feature is present—I need not take you through the whole book—you give the same explanation? A. Yes.

Q. I want to show you again Exhibit “Q”, the sales journal, the portion relating to Sydney or New South Wales—folio 25, or might I go to folio 24? You see here, at the top of folio 24, June 25th, the prefix “N” and then “314”, and then, at the 30th June, a series  
10 of entries on that day extending over folios 25 and 26 with an “N” prefix, but a different series of numbers starting? Do you see that?  
A. Yes.

Q. What would the explanation of that be? Would it be the same to your mind—on the 30th June—for Sydney? A. May I just look at this? (Witness peruses book.) It would possibly be the same answer, I would say. I say that there is a change in number which seems to indicate that they did not follow on from the others; so therefore they may be the unallocated contracts.

Q. So that would this be the position, that the change of  
20 procedure in making out a series of invoices at head office was followed not only in the other States besides New South Wales, but also in relation to New South Wales, in respect of machines not allocated?  
A. I would not say, “also New South Wales”. In relation to New South Wales I would not say that, because New South Wales and Head Office were all on the same floor. I would not know which girl actually did it or whether she did it in the Head Office Section or in the New South Wales Section.

Q. I did not ask you that. When this change was brought in in regard to machines not allocated, this change was not only in respect  
30 of other States but also in respect of New South Wales—is that right?  
A. Yes; it was brought in, no matter what the State.

Q. And if that is so, you would give the same explanation in regard to folio 24, 30th June, as you gave in regard to Melbourne and Brisbane? A. Yes.

HIS HONOR: Q. Do I understand you to say that all unallocated machine entries were put as at the 30th June? A. Yes; all monies received on contracts were brought in as income. So that we had to bring them in through the sales journal.

Q. But I was merely asking you to repeat—did I understand you  
40 to say before that the entries were made as at the 30th June? A. Yes.

MR BOWEN: Q. When this entry of non-allocated machines was being carried out, I suppose one matter that you had to consider was how the accounts were to be kept in the following financial year when invoices began to come in from branches, in regard to machines which had been invoiced at Head Office—is that right? A. Yes.

Q. And that presented a problem, I suppose? A. Yes.

Q. And because of the existence of this problem, and other

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reasons, you had various information got out for you by the staff in respect of unallocated machines? A. Because of this problem—?

Q. Yes. Did you not get some figures compiled for you in respect of unallocated machines? A. Yes; I got that to establish the cost.

Q. That was for a different purpose—you put it because you wanted to bring it in as a deduction against purchases—rather as a deduction from sales or as an increase in the purchases? A. Yes.

Q. Which way did you bring it in? A. I brought it in as the increase in the purchases.

Q. And the only way you could bring it in was to have the 10 figures made up in that regard? A. Well, as I remember it there was a running file kept of unallocated machines—that is as I remember it.

Q. Would you have a look at this document and tell me whether that would be a break-up of unallocated machines in regard to States and types of machines—? A. Yes. I do not remember this particular document, but—

HIS HONOR: You will have to keep your voice up: it has to be taken down.

WITNESS: I cannot specifically remember this particular piece of 20 paper, but it looks as if it was prepared for reconciliation of machines that had been invoiced—

MR BOWEN: Q. But not allocated? A. Yes.

Q. And the figures appear to you, to your recollection, to be the figures at that time, 30th June 1959? A. I did not think the figure was that high. This figure is— (Objected to.)

Q. You had better not say that. A. I did not think the figure was that high.

Q. The total that appears there? A. This figure here (indicating).

Q. But the individual figures—do you see anything that strikes 30 you as wrong? (Objected to—pressed—argument ensued.)

(At the direction of His Honor the following questions and answers were read from the shorthand notes:

“Q. And the figures appear to you, to your recollection, to be the figures at that time, 30th June 1959? A. I did not think the figure was that high. This figure is— (Objected to.)

Q. You had better not say that. A. I did not think the figure was that high.

Q. The total that appears there? A. This figure here (indicating). 40

Q. But the individual figures—do you see anything that strikes you as wrong?”)

MR BOWEN: I withdraw my question, and perhaps I might approach the matter in another way?

HIS HONOR: Yes.

MR BOWEN: Q. I tell you that this document comes from the company's records. (Objected to.)

HIS HONOR: You cannot say that; I won't allow that.

MR BOWEN: Q. You have had an opportunity of considering this document while there has been this discussion—is that right? A. Yes.

Q. Looking at it and realising your position as secretary with accountancy training, in June 1959 with this company—? A. Yes.

Q. Have you any doubt that it is a statement prepared for the purpose of showing machines invoiced but not allocated as at the 30th June 1959, at that time? (Objected to—rejected.)

MR BOWEN: From what the witness said in his earlier answers, I  
10 now tender the document. He said that he had prepared at that time summaries for the purposes of determining those machines which had not been allocated.

(Document objected to; pressed; argument ensued.)

(At the direction of His Honor the questions and answers from and including the fourth question on p.247 of the transcript, to this stage of the proceedings, were read from the shorthand notes.)

(Luncheon adjournment.)

AT 2 P.M.:

20 (On resumption, argument ensued on the objection to the tender made before the luncheon adjournment; after hearing argument His Honor rejected the tender.)

MR BOWEN: Q. I will approach it in another way. Will you tell us in respect of New South Wales, Victoria and Queensland, whether there was trading both before and after December 1959—December 1958? A. What States were they?

Q. New South Wales— A. New South Wales, yes.

Q. There was trading both before and after December 1958, is that right? A. New South Wales, yes.

30 Q. And Victoria also—that was an early one? A. I think Victoria also.

Q. And Queensland also—both before and after? A. I do not know about Queensland.

Q. Queensland you are not sure? A. I am not sure.

Q. But in respect of South Australia and Tasmania there was no trading before the 1st January 1959? Not trading in the earlier half of that financial year—is that correct? A. That is true.

40 Q. And in respect of particular classes of machines, namely the Perfumatic and the Victor machines—there was trading in those machines both before and after December 1958? A. Yes.

Q. But in respect of the Valour machine, the first trading with the public occurred in June 1959—is that right? A. I am not sure of the month, but it was about that time.

Q. At periods subsequent, at any rate, to the 1st January 1959? A. Yes.

Q. And I also put it to you that in the case of the Debonair

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machine, trading commenced after the 1st January 1959? A. I did not know that, I thought that that had gone back.

Q. And I also put it to you, with regard to the Vanity machine, that trading commenced after the 1st January 1959? A. I do not think so. I thought that Debonair and Vanity were out before then, but I would not be sure.

Q. Have you the sales journal with you there? A. No.

Q. Will you have a look at this document? (Document handed to witness.) Is that your handwriting and your figures? A. Yes.

Q. Just have a look at this document with a view to answering 10 the questions I put to you that the Vanity and Debonair machines were only sold after the 1st January 1959? A. It appears from this—(indicating)—that that is correct.

Q. Having looked at that document would you say now that Valour, Vanity and Debonair machines were only sold after the 1st January 1959? A. Yes.

Q. But the Victor and Perfumatic before that? A. Yes.

Q. You also have agreed with me that in South Australia and Tasmania there were no sales before the 31st December 1958? A. South Australia, I do not think so. 20

Q. But you were doubtful about Queensland? A. I was doubtful about Queensland and Victoria. Victoria, yes, but I am not sure about Queensland.

Q. Have a look at this same document again. A. Yes.

Q. Will you now agree there were sales in Queensland and Victoria before the 31st December 1958? A. Yes.

Q. I show you another document (document handed to witness). Will you have a look at that? Can you tell us first of all whose handwriting the name is written on it in? A. I would not be able to identify it by the handwriting. 30

Q. And the figures? A. No.

Q. Do you know whose figures they are? A. I could not identify them.

Q. Having a look at the typing, are you able to say anything in regard to that—to identify it? A. I cannot understand what you mean. HIS HONOR: Just keep your voice up; it has got to be taken down. WITNESS: I am sorry. I do not understand the question sufficiently to lead me to answer the question.

MR BOWEN: Q. It is an extremely unusual typewriting, is it not? A. Yes. 40

Q. Extremely unusual? A. Yes—perforation.

Q. Perforation type, I think? A. Yes.

Q. Do you recognise that document? A. I do not recognise the typewriter.

Q. Do you recognise the document? A. I do not remember the document as a document.

Q. You do not recognise that as a document prepared giving



an analysis that you asked for? Have you any recollection of that?  
A. I do not remember.

Q. It could be, do you think? A. I do not remember. It could have been for anybody.

Q. No, but would you deny that it was—are you clear in your recollection that it was? A. I could not deny it.

Q. Now will you have a look at the detail on it and in particular the figures? A. Yes.

Q. Will you agree those figures are correct for what they represent  
10 themselves to be on the document? A. I could not agree or otherwise. I just do not know.

Q. Not by looking at them? A. No.

Q. I will leave that for the moment. Now will you have a look at this document? (Document handed to witness.) Is that in your handwriting? A. Yes.

Q. I want you to compare these figures. Let us take these figures at the back (indicating). A. Yes.

Q. The figures on the back in your handwriting compared with the figures in the document I showed you previously, as to hand-  
20 writing—will you compare them? First of all I want you to compare the figures in respect of Valour machines? A. I am just trying to compare them.

HIS HONOR: Well just compare them silently to yourself.

MR BOWEN: Q. You have compared all references as to the Valor machine? A. Yes.

Q. Will you now compare all references as to the Debonair? A. Yes; I have compared them.

Q. Now all references as to Vanity? A. Yes.

MR MOFFITT: My friend is only asking the witness to look at them  
30 at the moment?

HIS HONOR: Yes.

MR BOWEN: Q. Have you done that? A. Yes.

Q. Have you compared the Vanities? A. Yes.

Q. In respect of the Victoria, would you compare them as to Tasmania and South Australia only? A. Yes.

Q. Now the Perfumatic—Tasmania and South Australia only? A. Yes.

Q. Having looked at those two documents, I now ask you in relation to the document which bears the handwritten name on it  
40 whether, in your view, that is a correct analysis of the machines invoiced from the 1st July 1958 to the 30th June 1959, in respect of those allocated, those unallocated and those on No. 5 offer—would you agree? A. Not altogether, because this (indicating) is an analysis from the 1st January to the 30th June 1959, and this (indicating) is an analysis from the 1st July 1958 to the 30th June 1959, and I did not notice any variations.

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Q. There was one variation, was there not? (Objected to—question withdrawn.)

Q. Insofar as these two documents cover the same field, you have considered them—is that it? A. Yes.

Q. And I know what you wanted to say in that regard, but bearing all that in mind and looking at this document and having in mind your experience as secretary in the company at that time, are you not able to assist us by telling us whether or not that is an analysis of the figures for machines of I.V.M., as it purports to be—correctly setting out the figures? (Objected to—pressed—admitted.) 10

Q. Does the analysis correctly set out the figures at that time? It is an analysis correctly setting out the figures at that time? A. I agree that it purports to be an analysis, but as to whether it is a correct one, I could not say.

Q. Having seen it can you give us any further information as to any use that may have been made of it, if any, in the company, when you were in the company? A. Well, we were having these sorts of analyses all the time on machines—machines invoiced, machines in stock, machines contracted for. It could have been for one of a dozen various uses. It may not necessarily have been for me; it may have 20 been for the sales department; it may have been for the merchandising department—it may have been for any other reasons.

Q. Was one such analysis prepared for the period from the 1st July 1958 to the 30th June 1959? (Objected to—pressed—rejected.)

Q. Referring you back to the document in your own handwriting, apart from an error in addition which we need not trouble about, does that correctly set out the analysis—rather, does it correctly set out the figure of machines sold from 1st January 1959 to the 30th June 1959? A. Yes, I would say so, but whether it was before or after we brought in the additional sales I do not know. I would have to 30 check.

HIS HONOR: I did not hear what the witness said after he said, “but whether it was before or after we brought in the additional sales, I do not know”.

WITNESS: I would have to check.

HIS HONOR: Q. With what? A. With the sales journal.

MR BOWEN: Q. This is the sales journal. (Handed to witness.) Will you check it for us? A. Will I check all the documents?

HIS HONOR: Yes.

MR BOWEN: Q. Whatever you need. A. I would say now that it 40 is, because on checking the N.S.W. sales journal I see that it does include all figures up to and including the end of June.

Q. When you say “all figures in New South Wales”, you mean whether allocated or not allocated or whether No. 5 offer or any other sale? A. I mean all sales brought into account as at the 30th June. It only runs from January.

HIS HONOR: Q. And I think you said that without going beyond

N.S.W. you could say what the document referred to? A. Yes. I could have prepared it at the middle of June, but all this sales journal would have been completed on or about the same time, so obviously this (indicating) was some later time.

MR BOWEN: I tender the document.

MR MOFFITT: I do not object to my friend tendering the document in my case now.

HIS HONOR: You would not have objected later?

MR MOFFITT: No; I would not have objected later. I do not mind  
10 it, for convenience, coming in now.

(Sales Journal Analysis in the handwriting of the witness Purcell admitted and marked Exhibit AA.)

MR BOWEN: Q. Looking at this document I show you, with the handwritten name on it, what further record would you need, if any, to be able to tell us whether that correctly sets out figures—in more detail? A. I do not know that I would be able to check this non-allocated figure at all. I do not know that it would be possible. I do not know that I would be able to check the No. 5 offer—I do not know. I do not know that it would be possible for me to check that  
20 at all.

Q. Can you suggest to us how it was compiled or how it was checked originally? (Objected to—rejected.)

Q. Would it have been possible, in June 1959, to have compiled a statement distinguishing between those sales which were of machines allocated, those non-allocated and those which were in the No. 5 reserve offer, by reference to the file of contracts which was being maintained? A. Yes, it would have been possible.

Q. Then? A. Yes.

Q. Because that would have been a constantly changing file with  
30 contract being taken out from time to time, and now you say you could not get back to the position of completely checking it—is that so? A. Yes; that is correct.

Q. I asked you about some entries in the sales journal which were put in on the 30th June? A. Yes.

Q. The change-over from putting in sales when they were invoiced to putting them in according to the entry for the contract of sales, whether they were invoiced or not, took place before the end of June? A. The change-over took place?

Q. Yes; the change-over in procedure? A. Yes, I believe so.

40 Q. So that the position is that in some of the entries before June that system was already in operation—would you agree? A. The new or the old system?

Q. The new system was already in operation? A. Before the end of June?

Q. Yes. A. It could well have been. I cannot remember the exact date, but I am pretty sure that it started before the end of June.

Q. So that I have asked you specifically about a block of entries

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for each State on the 30th June—do you understand that? A. Yes.

Q. There would be the cases of contracts entered into—sales—where the machines were not allocated, which would have been entered in the book for sales prior to the 30th June? A. That would have been entered in the book on the 30th June?

Q. No; would have been entered in the book on dates prior to the 30th June? A. I am sorry. I do not believe that I quite follow your question. There would have been invoices handled prior to the 30th June—

Q. For machines not allocated—sales of machines not allocated? 10  
A. I do not know whether any of those would or would not have been prior to the 30th June because we did not know which were allocated before the 30th June because we had machines coming in all the time and machines going out all the time. I cannot quite picture—

Q. I put it to you that you made a decision, before the end of June, to change the procedure? A. Yes.

Q. And I put it to you that you put that change of procedure into force prior to the end of June, and entries were made in accordance with that change throughout the period to the end of June and before 20 the 30th June—is that so? A. I am not sure on the dates—

Q. But Mr Purcell— A. I cannot quite see—I cannot remember whether we decided to do it and then waited until the 30th June to do it or whether the invoicing was started prior to the 30th June. It could well have been either way. We had made the decision earlier than the 30th June, yes.

Q. Would you be able to tell whether those are Valours in that book before you for the month of June—if you look at the sales journal for the month of June? A. Yes.

Q. You can see in relation to Valours that they were being 30 invoiced on dates earlier than the 30th June, can you not? A. The first invoice is on the 25th—

Q. The 25th June? A. Yes.

Q. And there were quite a substantial number of them? A. There were 44 on 25th June.

Q. 44 on the 25th June? A. Yes.

Q. Would you agree that no Valours were allocated before the 30th June? A. I do not know when the Valours went out—

Q. You actually had figures prepared prior to the 30th June in relation to Valours, in order to arrive at the cost, because the manu- 40  
facturer had been able to supply none before the 30th June—do you recall that? A. I do not recall specifically, but I did do that, Sir, yes.

Q. You did do it? A. Yes.

Q. Surely you are able to say that there are no Valours—I withdraw that question. You are aware, are you not, that no Valours at all were supplied by Ainsworths by the 30th June 1959? You know that, do you not? A. As a matter of memory, no, but I would

accept it because I do not think that the Valours went out until after June, but I had nothing to do with the ordering of machines or what machines went out to States or anything like that.

Q. Well, if the first sales took place on the—I think you have given us a date the 25th June—there was always some delay, first of all, between the contract and the supply? A. Yes.

Q. And a further delay between the supply to I.V.M. and siting? A. Yes.

Q. And the invoice went out at the time of siting? A. Yes.

10 Q. So that it is manifestly clear, is it not, that those Valours were not allocated by the 30th June—would you agree? A. Yes.

Q. Do you seriously suggest that the 44 Valours ordered on the 25th June were allocated and invoiced and put on site by the 30th June? A. I do not suggest it at all. I am quite prepared to accept—it is quite probable that they were not out by the 30th June.

Q. Are you able to say, in respect of the various States, that there are entries prior to the 30th June in respect of machines not allocated? You had better have a look at that. (Witness peruses book.) A. There are entries here on the 25th June for N.S.W. They

20 start on the 30th June in Victoria.

HIS HONOR: Q. What does? A. The Valour sales.

MR BOWEN: Q. Have you got Victoria? A. Yes (indicating).

Q. Would you agree, in respect of other machines in Victoria, not being Valours, that there were some brought in prior to the 30th June, which were not allocated? A. It could well be, I do not know.

Q. Would you have a look at the other States? A. In respect of Brisbane it is the 29th June; Adelaide, it is the 29th June; Hobart, it is the 30th June.

Q. In relation to Valours? A. Yes.

30 Q. Is that the lot? A. Yes.

Q. Now in relation to Valours you told us you brought into the accounts, as a debit, a figure of £11,683/6/-? A. Yes.

Q. I am sorry—£11,683/-/6d.—is that right? A. Yes.

Q. Will you have a look at this? (Document shown to witness.) A. Yes.

Q. Will you also look at this? (Indicating.) And could you total those invoices? Perhaps you could look at this list—at the pages going forward now from the one I showed you. A. Yes.

40 Q. Now with regard to the documents I have shown you, do they consist of a letter from Ainsworth to the company—? A. Yes.

Q. And eight invoices in respect of Valour machines which the company received? A. Yes.

Q. Do those documents relate to that figure of £11,683/-/6, which you entered in the accounts—assuming that that is the total, as I tell you that it is, of those figures that appear here?—

MR MOFFITT: That appears from itself.

(Letter of the 1st July 1959 from Ainsworth to I.V.M.,

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together with invoices dated 1st July 1959, 8th July 1959 (two), 23rd July 1959, 24th July 1959, 29th July 1959, 31st July 1959 and 4th August 1959, tendered and marked Exhibit AB.)

MR BOWEN: Perhaps I should read out the numbers of the invoices—  
They are: 3740, 3800, 3899, 3900, 3928, 4046, 4047 and 4048.

MR MOFFITT: I will be asking for the receipts to be tendered with them, but as to when that would be convenient, that is a matter for Your Honor.

HIS HONOR: Do you tender the receipts?

MR BOWEN: I was not tendering them, but I do not mind if they 10  
are made part of the Exhibit.

HIS HONOR: Very well.

How many receipts are there?

MR MOFFITT: I am not sure. I know that they are with the earlier invoices, but I have not studied them.

(Receipts admitted and marked part of Exhibit AB.)

MR BOWEN: May I have marked for identification the two documents which I showed the witness. The first is an analysis which, it is suggested, contained figures written by Miss Delaney, and the second one which I identified as having a name written on it in hand- 20  
writing—a second analysis.

(Document m.f.i. 10.)

(Document m.f.i. 11.)

MR BOWEN: Q. You said that in your experience, in the case of private companies, it was not customary to keep a separate set of accounts for income tax and for other purposes? A. Yes.

Q. Would you agree, however, that it is customary to keep a set of accounts for the company's purposes and to include these in the income tax returns together with adjusting figures? A. Yes, quite often. 30

Q. That is commonly done? A. Yes.

Q. And in those cases the adjusting figures are the figures necessary to bring the accounts into line with the requirements of the taxation law? A. In many cases on the annual tax return itself, on the front, it requires you to take depreciation, as charged in the accounts, out, but then you add it back on again on the front of the document. That is in case you have taken more depreciation than the Commissioner will allow. It follows the same procedure if you include as a deduction in your accounts, say, a payment for something that the Commissioner does not allow as an expense. 40

Q. Yes; for example, if there is some donation which you take into your profit and loss account and it is not an allowable deduction under the income tax law, you make an adjustment in your income tax return accordingly? A. Yes.

Q. But you do not keep your accounts on the basis that those donations do not appear at all in those accounts? A. I beg your pardon?

Q. You do not keep the company's accounts in such a form as they do not show an expenditure of the type I have mentioned—for its own purposes? A. No.

Q. You make the necessary adjustment in the taxation return to bring it into line with the taxation laws—is that right? A. Yes.

MR BOWEN: Q. You appreciate that I have taken that as an example? A. Yes.

Q. But I suggest to you it is this practice of making adjustments in the taxation return when you include the company accounts which is followed generally by proprietary companies, is that correct? A. Quite often, yes.

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#### RE-EXAMINATION:

MR MOFFITT: Q. In cases other than depreciation, in the case where you have a different kind of difference than a mere depreciation schedule such as Mr Bowen has mentioned, a case closer to the present where you have items that are brought in in the course of tax into the particular financial year and you make a provision as in this case, is it the same position as has been put by Mr Bowen? A. They are pretty stereotyped, the number of things you make adjustments for on your taxation return. They generally include depreciation, donations if necessary, provisions for bad debts, which are not applicable, and that just about covers it.

Q. But in cases where the variation is not of that type which is mentioned in the case of private companies, is it usual just to have two sets of accounts or an adjusting figure or to have just one set of accounts? A. To have one set of accounts.

HIS HONOR: Q. That means it is quite arbitrary, is that so? A. Yes.

Q. Quite arbitrary? A. Yes.

Q. You pick certain items which you adjust and other items which you do not? A. Your Honor, there are certain items which are generally items that are always recurring every year and you have these adjustments to make.

Q. Because they are proper? A. They are things that could often happen during the year. It is a normal sort of thing in a company, but as against this company it was an abnormal thing because the contract is the sale before the goods are ever purchased or delivered and it was out of the ordinary. What I was speaking of was adjustments on the tax returns which are the ordinary normal adjustments which you make. Even if your depreciation allowed in the accounts is correct when you are submitting your tax return you also submit a depreciation schedule and it is common practice to take the depreciation and add it on to the profits on the tax return and then show depreciation claimed as per schedule even if it is the same amount. We just do it.

Q. Because it is normal? A. It is normal because the tax

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agent submitting the tax return must always show his depreciation not as a figure appearing in the accounts but "As per the schedule attached hereto".

MR MOFFITT: Q. In Exhibit AB, the last entry, the last invoice which is one dated 4/8/59, there appears a total of invoices of £2,063/17/-d. Do you see that? A. Yes.

Q. And written underneath is less £500 and a total of £1,563/17/-d.? A. Yes.

Q. Then receipts attached—there is one receipt attached for £163/17/-d. and a further receipt for £500. Do you recall what that 10 £500 is for? A. I think the £500—

MR BOWEN: Does he know?

HIS HONOR: If you know you can say so.

MR MOFFITT: Q. I show you another document then before you answer that question. Without saying what it is, you see that document from the same file dated earlier? A. Yes.

Q. Do you know what that is in respect of? A. Yes, that is a payment to Ainsworth Consolidated Industries for tooling up on the new machine. We always had to do that.

Q. That is an advance payment, is it? A. Yes. 20

Q. Now, coming over to this £500 are you able to say what that is? A. That is when you pay the tooling up fee as he invoices you he gives you a credit for part of it.

Q. Taking into account what has been advanced before? A. Yes.

Q. I show you a later invoice than the one tendered—there is £500 taken off in the same way? A. I would expect that is the same thing.

(Receipt dated 13/4/59; invoice No. 2726 of 26/3/59; receipt covering same item dated 26/3/59; receipt dated 13/4/59; invoice number 2801 dated 14/4/59 and receipt dated 17/4/59; 30 and invoices Nos. 4189, 4199 and 4200 dated 11/8/59, 11/8/59 and 5/8/59 tendered and marked Exhibit 16.)

Q. In respect of Exhibit Q, that is the sales journal, where you have told Mr Bowen that entries were made apparently in respect of another State, they were invoices which were made in Sydney in respect of machines in the other State in respect of which you received no invoice? A. Yes.

Q. I am taking June 1959 in particular. What was the procedure, that is until you put these invoices in towards the end of June, what had been the procedure so far as invoices coming from the other States 40 were concerned? When would the invoice be sent from the other State? A. After having sited the machine.

Q. The machine would be sited, the invoice would come and then be entered into books in Sydney, is that right? A. That is correct.

Q. As when these other invoices were put, were they put in where you did not have an invoice, or how did you decide? What



was decided before you put in an invoice in N.S.W. Do you follow what I am putting to you? A. Yes.

HIS HONOR: I do not understand you.

MR MOFFITT: Q. When you put an invoice in N.S.W. before the 30th June—

HIS HONOR: Head office?

MR MOFFITT: A head office invoice.

MR BOWEN: That is on a wrong assumption.

MR MOFFITT: Q. When an invoice was raised in N.S.W.—

10 MR BOWEN: Under the old procedure?

MR MOFFITT: No.

Q. Under the new procedure in respect to a Victorian contract that would of course firstly be done when you did not receive an invoice from Victoria? A. Yes.

Q. But how would you know that there had been a contract entered into in Victoria? A. We had a record of all contracts entered into in head office.

Q. They would send word when they would be entered into? A. Actually they sent contracts through to Sydney to head office.

20 Q. Taking June 30th and take the case, and we will assume it to have happened, of say a machine for which a contract had been entered into earlier than the 30th June, and in fact assume that that machine happened to be sited say on 30th June, how would that particular machine appear so far as the head office registry was concerned? Would there be a N.S.W. invoice or would there not? A. There could be, yes. This is a N.S.W. contract, is it?

Q. If you had a machine in fact sited in Victoria on 30th June 1959? A. Yes.

30 Q. I presume you would at some earlier date have received the contract in N.S.W.? A. Yes.

Q. But would you have received if it was only sited on the 30th June in N.S.W. any invoice in respect to that siting by the 30th June?

A. No, it would probably take—it has to go through the branch accounts first and it could be days or a week or something.

40 Q. What would happen in respect to that machine so far as your entries in head office in Exhibit Q? A. The branch should nominate on the invoice when it is sited and then when it came through the head office they should pick the copy of the invoice up as having been sited on that day and they would then treat it if it was the completion of a contract sale—say somebody had bought ten machines and ten were sited at that time—on that invoice then they would record it and take that particular contract out of the unallocated file.

Q. But firstly would there be any entry in such a case under an N number in your sales journal?

MR BOWEN: Under the old or the new?

HIS HONOR: Mr Moffitt, under the old or the new? You said the 30th June.

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MR MOFFITT: Q. Under the new procedure which was in operation on the 30th June I want you to take as an example what would happen—we will come to the sales journal in Victoria, taking that as an example, take the 30th June where you have an N number. Do you see that? A. Yes.

Q. Assuming you have a machine for which a contract had been entered into in Victoria prior to the 30th June, we will say, and you had not received an invoice in N.S.W. in respect of any site by the 30th June would that machine be entered up under the procedure that was used under an N number on the 30th June? A. On the 10 30th June it would have been treated as an unallocated contract.

Q. If in fact that machine had been sited on the 30th June would it still have been entered up in an N number in that sales journal? A. If they had not got the invoice through to head office on that basis that would have been treated as an unallocated contract. Now, as far as my memory serves me this unallocated contract was always very carefully attended to. I think it was in charge of Miss Bennett and if she did not get an invoice through but in fact a machine had been sited she would still have to treat it as an unallocated contract.

Q. Instead of taking the 30th June assume in fact a contract had 20 been entered into earlier in June and you had received it and in fact it had been sited in June, on the 29th June, would you in the ordinary course of the way these things were done have received an invoice from Victoria by the 30th June in respect of the siting? A. It is a pretty hard question to answer because it would depend on how up to date they were in their work down there.

Q. You were asked questions by Mr Bowen as to the point of view you looked at various things. So far as you were concerned in advising the directors of I.V.M., to what extent if any did the fact that if this company did not become a public company for tax pur- 30 poses, to what extent if any the fact that a dividend was declared to shareholders and they would have to pay a tax have any relevance to the position of the company? Do you follow what I mean? A. Yes. That to us was one of the major points of the whole thing. We told the Steens—

Q. No, at the moment I am asking you from your point of view in giving advice to what extent did that if any have importance from the point of view of the company? (Objected to, allowed.) A. Had the company declared dividends to the shareholders as they then stood it would in fact have had to declare them in the form of cash 40 to enable them to pay their tax. Once having elected to take that course it would keep recurring every year and we told them that if they kept declaring full dividends every year they were not going to create any reserve, and at that time one of their thoughts was to create a history of profits for a public flotation.

Q. Another matter I wanted to ask you is in respect to the sum of £5,000 which you were asked about that you received from the

Steens at the time of the 1960 sale. Will you tell me in respect of the matter you received that £5,000? A. Not in respect of any specific thing. During the course of my dealings with them, with the Steens, and when discussions took place on a public company they had suggested that if that so happened then I would receive a favourable allocation of shares in the company and of course all that happened really was that they sold out and they just decided to make me a gift. It was not for work done or anything else really.

10 Q. Besides yourself to your knowledge did anybody else receive any similar treatment at that time? A. Yes.

Q. Without mentioning the names, were they substantial sums? A. Yes.

Q. To co-directors? A. Do you want me to say the sums?

Q. Not unless you are asked, but— A. Two substantial sums.

Q. To persons besides yourself? A. Yes.

MR BOWEN: They were directors, were they?

WITNESS: Yes.

(Witness retired.)

20

JACK EDWARD WAYLAND

Sworn, examined, deposed:

TO MR MOFFITT: My name is Jack Edward Wayland.

Q. You are one of the senior partners in C. O. Beck & Wayland, is that right? A. Yes.

Q. They are chartered accountants who carry on their profession at 33 Macquarie Place, Sydney? A. Yes.

Q. Do I understand, Mr Wayland, that you have no connection with I.V.M.? A. None whatever.

30 Q. No connection with the Steens? A. None whatever.

Q. Or Mr Purcell? A. No.

Q. And you have only come into this matter since this summons was issued and you had no prior direct knowledge about this company, is that right? A. That is so.

Q. You are a chartered accountant? A. Yes.

40 Q. Tell me how long you have been and what your qualifications are as an accountant? A. I am a Fellow of the Institute of Chartered Accountants and I have been in partnership in my present firm for 16 years, and before that of course I was fully employed as a clerk or partner or chartered accountant since 1927.

Q. What particular field of accountancy does your experience extend to? Does it include company and taxation work? A. General accounting practice, taxation, company, audit and secretarial practice.

Q. I think within some limitations you have seen a considerable number of the books and records of the I.V.M. Company, have you? A. Yes. I was asked by Mr Dale to look into certain aspects of the company's books and I looked at quite a few of them with the reserva-

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tion that on occasions I was available when the records were not and vice versa.

Q. Firstly would you look at the balance sheet of the company of the merchandising companies as at 30th June 1959? Have you got a set yourself? A. Yes.

Q. In respect of which merchandising companies? For each State, have you? A. Yes.

(Balance sheets, etc., of merchandising companies tendered and marked Exhibit 17.)

Q. Did you repair in respect of the actual assets a consolidated balance sheet as at that period of time? A. I prepared a consolidated statement from the printed accounts that I just saw and I had not the balance sheet of A.M. Holdings so I reconstructed that on the information I had; it was principally a share holding and a loan account.

Q. But when you say from the printed accounts, that is from the exhibit? A. From the thing in front of Mr Bowen.

MR BOWEN: That is Exhibit Z.

(Consolidated balance sheet of I.V.M. group tendered and marked Exhibit 18.)

Q. Did you—I think this is partly covered by evidence—make a summary of drawings accounts of the Steen family up to the 30th June 1959? A. Yes, I did.

Q. In that I do not think you went through the cash payments book but you got the net drawings up to 31st March 1959 and then where did you get the figure after that, that is where you have June 1959? A. That is the total of the postings in the private ledger between April and June 1959.

Q. So the figure here shown, June 1959, you cannot tell the way this was originally prepared, whether these drawings or how much of them were between April, May and June, is that right? A. Yes.

HIS HONOR: Q. In this consolidated balance sheet, Mr Wayland, is there anywhere where there would be reflected a notional or allowed figure for the cost of the machines not yet supplied? A. Yes, it would be in the Creditors.

Q. It would be under Creditors and Accrued Expenses, would it? A. Yes.

(Summary of loan accounts of Steen family tendered and marked Exhibit 19.)

Q. Are salaries put against this? A. No, no salaries or expenses. It is their loan account.

MR MOFFITT: Q. Did you also endeavour to arrive at the valuation of the shareholding in I.V.M. as at the 25th June or perhaps the 30th June 1959, that is immediately prior to this transaction? A. Yes. I made a calculation. It was a method of valuing the shares.

Q. Firstly you made a calculation but the purpose of this calculation was to give you some assistance in arriving at their value? A. Yes.

Q. And for that purpose did you use the figures in the balance sheet and profit and loss account as at the 30th June 1959 of I.V.M.?  
A. Yes.

Q. But then you made some adjustments on the assumption that this transaction forming the Canberra company and so forth, have been agreed, is that what you did? A. Yes.

Q. And the purpose you did that was to use it as a means of forming an opinion about value? A. That is true.

Q. That is a document which you have marked C, is it? A. Yes.  
10 Q. Would you just explain without mentioning the figures for the moment the basis on which this was calculated? A. I took the consolidated balance sheet at the 30th June 1959 and then restored the loan accounts to the debit balances which existed before the transaction with the Canberra company, and out of the creditors I took the credit balance that had been raised on the loan accounts.

Q. That is on the assumption as though they had been paid back? A. Yes.

(Adjusted balance sheet of I.V.M. at 30/6/59 tendered and marked Exhibit 20.)

20 HIS HONOR: Q. To the assets you added the amount owing by the Steen family because of your hypothesis that that would still be owing to the company? A. That is right.

Q. That increases then the current assets. Now, loan accounts, the £105,000 is separate from those altogether, is it? Those are loans to other companies? A. Yes, to associated companies and other companies.

MR MOFIFTT: Q. Have you had in your capacity and profession as an accountant experience in the valuing of shares in private companies? A. Yes.

30 Q. And in particular valuing shares from the point of view of the Stamp Commissioner? A. Yes, I have.

Q. And also valuing for purposes other than that? A. Yes.

40 Q. We know that a price was paid in respect of these shares of £200,000. Would you give me your opinion as to that figure of £200,000 as a value in respect of these shares, and explain your reasons, perhaps, Mr Wayland? A. It would have been extremely difficult, I think, at that time to have valued these shares or to have reached a harmonious agreement with the Stamp Commissioner on the value of these shares. In the first place, the shareholders' funds of the company as shown by that statement called Exhibit 20 showed a surplus of £163,833 and normally the excess of assets over liabilities is taken as a first measure of the value of the shares, and then the extent to which those assets are earning is weighed in value. This company had shown in its audited statements £163,781 as its audited net profit after tax for the year 30th June 1959. There are various methods of arriving at a reasonable valuation of the shares or an acceptable valuation where they are not negotiated at arm's length,

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and one is to capitalise the profit and that £163,781 capitalised at, say, the high rate of 20 percent gives a capitalisation figure of something over £800,000 for the value of the shares. Normally that method of valuation is rejected in such cases—it is possible to reject it particularly in the case where it is a new company that has no history to support the continuation of this private earning and then a year or 18 months or two years purchase and the net profit may be resorted to as a means of valuing the shares. I chose as a measure to take two years purchase of the net profits which came to £327,562 and gave a total valuation of the I.V.M. business of £491,445 at that date. 10  
To my mind it still seems a high figure.

HIS HONOR: Q. But that is three years' profits virtually, is it not?

A. It is the net assets of the business.

Q. Plus two years' profits? A. It is not an income basis.

Q. But if the whole of the assets represent the current or the immediate past year's profits then do you still work on two years plus? A. If you liquidated the business and sold the assets after paying the tax you would have the value of the assets to derive, and those assets when not liquidated are earning at a certain rate. Then comes a goodwill calculation superimposed on top of that. In this 20 particular case it is a rather awkward one to arrive at a theoretical valuation in, and I just observed in looking through this that that basis of measure of course is an agreed and negotiated figure and having hind knowledge I found from my readings that they were subsequently sold—these shares—for £260,000. I think personally that had this thing been submitted to the Stamp Commissioner, which it was not, it would have been somewhere between £200,000 and £400,000—that would have been the best negotiation you would have got on the value of the shares for stamp purposes.

MR MOFFITT: Q. Put it this way, without speculating as to what 30 its actual official value might have been, are you able to form an opinion as to whether the sum of £200,000 would be a reasonable or unreasonable value for the shares as at June 1959? A. My opinion is that £200,000 was a reasonable figure for the shares at that time.

Q. In carrying out the transaction—you understand what happened in this transaction? A. Yes.

Q. But in carrying out such a transaction, I do not necessarily mean in carrying it out in the identical way it was, but carrying out that class of transaction what is the practice, to give a real or an artificial value, or a nominal value, to the sale of shares in that type 40 of transaction? (Objected to.)

HIS HONOR: You have to say what sort of transaction.

MR MOFFITT: Q. Will you tell me in a class of transaction where you have a sale of shares of shareholders in a private company, where they are selling those shares to a company which is to be formed, say, as a public company of the type in this case, is the practice to give it a nominal value or a realistic value? (Objected to, rejected.)

Q. Is there any practice on the matter of giving shares a nominal value or a realistic value in cases of a private company where shares are being sold by all of the shareholders to a company of the type involved in this case—to become a public company for the purpose of taxation? Is there a practice? A. Let me answer it by saying in such transactions there is a practice.

Q. Will you tell me what that practice is? A. Well, I have not finished. In such transactions there is a practice which I observe.

HIS HONOR: It would not be right, Mr Moffitt, in case the witness  
10 does not understand—

Q. You are not being asked about your practice of itself but you are asked about a general practice amongst those in the same profession as yourself who deal with these matters. Can you speak as an expert on the question of practice? A. There is a general practice although I would not say it is the only practice in a transaction such as this, and that is to obtain an independent valuation of the shares for the purpose of the transfer to the holding company, particularly where the consideration for the purchase is cash, not the issue  
20 shares in the subsidiary company, rightly or wrongly the inference being that there may be an element of gift.

(Further hearing adjourned until 10 a.m. Monday, 11th December 1961.)

**Eighth Day—Monday, 11th December 1961**

11th Dec., 1961.

**JACK EDWARD WAYLAND**

Further examined:

30 MR MOFFITT: Q. I understand you have made an investigation of certain records of the company with a view to determining what machines were still unallocated at the date of liquidation which had been machines in respect of which there were contracts entered into prior to 30th June 1959, is that correct? A. Yes.

Q. I understand firstly that you had before you a document which had been prepared by the liquidator's instructions which set out as at the date of liquidation the names, addresses and other particulars of machine owners of I.V.M. and indicated which of those machines were unallocated as at the date of liquidation? A. Yes.

40 Q. That was a long list covering each of the States separately, is that so? A. Yes.

MR MOFFITT: I understand my friend is prepared to concede for the purpose of this witness' evidence that that information contained in that list does indicate the machines which were unallocated as at the time of the liquidation.

HIS HONOR: Is that so?

MR BOWEN: Could the list be identified?

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MR MOFFITT: Q. Have you got that list with you? (Witness produces documents.)

MR MOFFITT: There is one for New South Wales, one for Tasmania, one for Queensland, one for Victoria and one for South Australia. Those lists show the names of the persons concerned, the type and number of each machine, the contract number in respect of each of those and where the machine has been supplied it shows the machine again and where it has not been allocated as at the date of liquidation has the words "N.A." and then it has the amount, that is the purchase price, in respect of each entry. I will have those marked for 10 identification.

MR BOWEN: These are not at the date of liquidation. These are at 31st March 1961. The date of liquidation was 8th May 1961.

MR MOFFITT: You are quite right.

MR BOWEN: I do not assert that that is not a correct list as at 31st March.

MR MOFFITT: It is conceded that the liquidation was the 8th May 1961.

Q. But this is the list that you worked on which would be a period prior to the liquidation? A. It is not the actual list. I have 20 the original list which had been prepared in the company's office and which I inspected at its office at Rosebery, and I understand that these typewritten copies were made by the company's solicitor, and there is a photostat copy here. But that is the type of list I worked from.

Q. Like that photostat list there? A. Yes.

Q. That is in respect of South Australia? A. Yes.

Q. And these other ones I have shown are merely typed copies, but even the photostat one is, I think, for the 31st March 1961, is that right, so the calculation you have would be those machines which had not been allocated by the 31st March 1961? A. That is true, yes. 30

Q. If it happened there were any allocated between 31st March 1961 and the liquidation your list would not show those? A. That is right.

(Lists of machines unallocated at 31st March 1961 m.f.i. 12.)

Q. To get the list of those contracts made on or before 30th June 1959 which had not been allocated as at 31st March 1961—would you tell me how you went about that process? A. Yes. There was a book kept at the company's office which up to about the end of May 1959 listed all contracts entered into in order of contract number—serial number: they commenced at 1,001 I think, and they 40 went through to the last entry in June which was contract No. 2123. I did not check from any contracts to that register; I accepted that register.

Q. What is the name of that register? A. It was referred to as the contract register although it had another name branded on the cover of it.

Q. Anyhow, you can identify it if it is required? A. Yes.



Q. There was some word "guarantee" or something like that?  
A. Yes. It is labelled "Guarantee Fund First Year". That is printed on the cover.

Q. You say that showed the serial number of these contracts which had been entered into up till the 30th June 1959 in that book, did it? A. Yes. It was not quite regular in this respect, that there were certain contracts dated July—there were seven contracts dated July that were entered in this contract register as June, and there were 17 contracts dated June which were entered in the register in July.

10 Q. Subject to that the serial numbers in this register ran up to the end of June, did they? A. Yes.

Q. In respect of those which were, as it were, out of place, that is the seven and 17 you have mentioned, you made an adjustment in respect of those? A. Yes.

Q. Will you go on and tell me what you then did? A. The actual method I employed is this, that I went through the list of the last exhibit—

Q. That is m.f.i. 12? A. Yes, and any contract which bore a number 2123 or before and also had the symbol "N.A." against it  
20 was listed as a contract in respect of which no machine had been allocated at 30th June 1959.

Q. In respect of which there was a contract made before 30th June 1959 and no machine was allocated by the 31st March 1961? (Objected to.)

HIS HONOR: I can see on one view of it a possible relevance, in that it may be, in order to base an argument, that if any obligation of the company to certain persons at the date the 25th June which was then outstanding had been satisfied by the time of liquidation, then the interest represented by those persons can no longer be heard—  
30 there can no longer be a complaint in respect of that. I do not know whether that is right or not, but I propose to allow the question subject to objection.

MR MOFFITT: Q. That is then the method by which you prepared this list? A. Yes; with these exceptions. I then had to allow for a few other factors. First of all, there were some missing numbers in June which were entered in July, so broadly speaking any contract that was dated June was brought to account in arriving at, first of all, the machines which should have been allocated. Then that was checked with the list to see those which bore the symbol "N.A."

40 Q. So you took firstly this contract number which was the contract number which ran up to the end of June? A. Yes.

Q. But you did not stop there; you also said you checked the 17 in July which should have been June; is that the position? A. Yes.

Q. You checked which of those were not allocated and if any of those were not allocated you included them in the list? A. Yes, and also any entered in July that should have been entered in June should have been included.

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Q. If they had a June date you would bring them into account in your list? A. Yes, and I eliminated any dated July. There is another thing, if I may mention it, and that is that there were a number of these contracts which I had listed which appeared to be not allocated, but I was informed by the company's accountant that they were— (objected to).

Q. Firstly, on the information you have got did you make some further check as well, without saying what it was—in addition to what you have just told us? A. Yes.

Q. Apart from that check, just looking at the records you have, 10 did you arrive at this list which you are now going to put before the Court? A. Yes.

Q. Now, will you produce that list? A. Yes.

Q. This list then shows according to the check you have made against m.f.i. "12", as against this record of contracts book which you have referred to, making the adjustments in the manner you have just told us, this sets out the machines in respect of which there was a contract dated in date up to the 30th June 1959 which had not been allocated on 31st March 1961, and it also shows the names of the machine owners, it shows the contract number, it shows the amount— 20 that means the purchase price—and then it shows the type of machine involved in each case and the number of the machine? A. Yes.

(List of machines not allocated by 31st March 1961 tendered, admitted subject to the same objection as made earlier by Mr Bowen and marked Exhibit 21.)

Q. Did you also prepare from your investigation the list of machines on hand—I do not know whether it was the 31st March or the date of liquidation? A. Yes.

Q. Is that a list of machines on hand? From what source did you get that? A. I had a clerk prepare that in conjunction with 30 the company's accountant.

Q. From what source? Did that come from the company's records? A. Yes.

Q. Are you able to tell me whether that was at the date of liquidation or the 31st March 1961? A. I am not sure.

Q. It would be one or the other, would it? A. Yes.

Q. Would you produce that list? A. Yes.

Q. That list shows the type of machine in stock, the serial number of the machine and the branch at which it was held. Is that correct? A. Yes. 40

(List of machines on hand at date of liquidation tendered; objected to as irrelevant; admitted subject to the same objection and marked Exhibit 22.)

Q. I show you part of Exhibit 16 which is a receipt unaccompanied by any invoice for £5,000 from I.V.M. to Ainsworth Consolidated Industries. Did you look through such records as you could get including invoices and the like and did you find any invoice or invoices

in respect of the period up to 30th June 1959 covering this £5,000?  
A. No.

Q. And other than certain credits for amounts of £500 after 30th June 1959, could you find any document or record that appeared to relate to this £5,000? A. Not up till the end of September 1959.

Q. Other than this £500—do you mean you did not go beyond September? A. No.

Q. Did you find various of these £500 sums? A. I found there were deductions from payments which should have been made  
10 on invoices; I found four deductions of £500.

Q. Up to the place where you searched, is that the position up to September 1959? A. Yes.

Q. You have seen some of the records of the company and I think you understand, do you not, that there was brought into account in the records of the company moneys received in respect to various machines which were sold prior to the 30th June 1959, and that in the case of some moneys brought into account the machine had not in fact been allocated. Now, I want you also to take that in respect  
20 of those machines the position was that a sum of money, 10 percent, was paid under a contract to a merchandising company for certain things that they did in regard to the machines and that those sums were paid at the time that the consideration for the machine was received from the purchaser, and that in the accounts there was brought into account firstly certain advance payments made, that there were some machines in stock and that there was also brought into account an estimate of the cost of the further machines that would be required to be paid for to enable the machines to be sited having regard to the advance payment and machines in stock. Now, will you  
30 tell me what in your experience you say as an accountant as to whether or not to draw accounts in that fashion is or is not in accordance with accepted accounting principles. (Objected to; argued; withdrawn.)

Q. I want to speak for the moment entirely on general principles, Mr Wayland, do you understand? I want to ask you in respect of the class of case where you have in respect of an accounting period, on sales in particular, incomplete contracts as at the end of the accounting period of the type that you have moneys received in respect of the contracts by the company concerned and the company has incurred some expense in respect of it and the company has not  
40 completed that contract but already made arrangements—ordered goods and taken some steps towards the fulfilment, such as matters of part payment in advance and things of that description—in that class of case will you tell me what are the accepted accountancy principles as a method of keeping those accounts? A. The difficulty of course is in deciding what is the normal practice, in this respect, that that is a broadly outlined theoretical question which can have a whole lot of subdivisions connected with the extent of the transactions, and the

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quantum of expenses which has been incurred in connection with the completion of the sales up to the date of the balance sheet. I would say that if these was a great quantity of sales and the expenses in connection with those sales or the purchase—the goods required to supply those sales and the expenses incurred with the making of those sales—were ascertainable, it would be just as wrong to leave them entirely out of the accounts or it would be wrong to leave them out of the accounts, that is to say, to use a simple illustration, if there were one item sold for £1,000, the cost price of which was £500, and the expenses in connection with the sale were £250, and the net profit £250 in respect of the transaction, then simply to leave out the £500 purchase and the £1,000 sale is wrong without reserving or setting aside the expenses in connection with the sale; so, therefore, I suggest in that particular instance the amount at issue is the net profit relating to the sale. On the other hand, if the whole of the sales are brought to account, then, as in the classical concept, the actual delivery of the item has not taken place, there could be objection taken to their inclusion.

A third qualifying factor is this—there is a conception grown up surrounding certain decided cases to the effect that income is earned when the cash is received; it is a practice which has gained very great weight with the Taxation Department, for example, and normal practice in accounting is affected by Taxation Department practice. In short, a set of accounts, particularly of a proprietary company, is, as nearly as possible, framed—although there is a bit of resistance in the beginning—the practice grows of framing the accounts pretty much to accord with the Taxation Department's concept of profit. Such things as depreciation, for example, generally speaking, are framed on the Taxation Department's schedules rather than on any estimate made by the management. It is not necessarily so, but in the general run of proprietary companies it is so; so that your net profits and undistributed profits can fall as nearly as possible into the income tax return. My difficulty is in defining normal accounting methods. Speaking as a bookkeeper I would be as prepared to bring them to account—those sales of which you spoke—as not to bring them to account. Speaking as an auditor I would be interested in the type of company and the amount involved, and the history of the company, and whether the accounts were being prepared consistently with the accounts of other years; and I feel that as an auditor I would invite attention to the bringing in of these profits either in my report to the shareholders or by having the profit and loss account of the company framed in such a way as to show the profit relating to sales in respect of which deliveries had been made and sales in respect of which deliveries had not been made.

Q. I asked you a very broad question, Mr Wayland. If I can, I would still ask you a theoretical question but confined to limits. Take as a theoretical case the position where you have a contract unfulfilled

at the end of the accounting period, and take that you have that proportion of contracts as, say, a substantial sum, a substantial part of the business for the year, but it would be something less than, say, 25 percent— A. Twenty-five percent incompleting?

Q. Yes, something less than 25 percent; and then take that in respect to these particular contracts that moneys had in fact been paid out as well as money received; that in respect to them there is an office organisation with advertising and various other overheads that have gone on; that the only remaining thing to be done is to complete  
 10 the purchase of the machine and hand it over to another company whose responsibility is to site it and which has already been paid its share for whatever has to be done; and then take that the company concerned has in fact entered into arrangements for the completion of their part of the bargain—in fact paid some moneys, and then makes an estimate of the balance to be performed so that the only thing to be done in the transaction is the receipt of the goods and delivery of the goods and the payment over of the estimated amounts, now will you tell me whether or not if accounts are drawn by the company which bring into account the amounts received, and also  
 20 bring into account the amounts that have of course been already paid out, and bring into account an estimate in respect to the amount required to fulfil the contract, and assuming that also—I had this further—that some of those contracts will not require the purchase of goods to be completed but can be got from stock—that they have not for business reasons yet formally been delivered—now, in that situation will you tell me whether or not there would be anything improper from accepted accountancy principles to bring all those into account in the manner as I have suggested? (Objected to.)

HIS HONOR: Q. Do you understand the question? A. Yes. I could  
 30 merely reply by saying that subject to the qualifications I have already stated, I can see no objection to bringing to account the profit.

MR MOFFITT: Q. What is, as far as your own knowledge as a taxing accountant, the practice of the Taxation Commissioner concerning whether or not these sums received should be brought to account in that accounting period for the purpose of tax? (Objected to; withdrawn.)

Q. Will you tell me what has been your experience in the period after 30th June 1958 of the practice of the Commissioner of Taxation with regard to including or otherwise the receipts in the particular year in respect of contracts which have not been fulfilled in that year?  
 40 A. It is difficult for me to answer in respect of an exact time, 1958 onwards—the exact time after 1958 this started; but there was a growing tendency which has now become a fixed practice of causing taxpayers to include in their taxable income income as received. I can cite illustrations such as, premiums received in respect of leasehold properties which were not even erected in the year of income have been brought to account as assessable income. Substantial deposits on motor vehicles not yet delivered at the balance date are brought to

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account as assessable income without the allowance of a purchase content, without any charge being made for the cost contained in that amount received. They are a couple of illustrations of the practice.

Q. If I can come back to the question, that is, what has been the practice of the Commissioner as to whether or not receipts in respect of a particular year received in respect of contracts which have not been fulfilled as at 30th June 1959, what is the practice of the Commissioner? A. The practice is to bring it to account as income in the year of receipt.

Q. You have examined the various books of this company at 10 various times since this proceeding commenced, I understand, and do I understand you also went out to the premises at Rosebery the other day and asked for various records to be brought in? Is that correct? And you have since examined certain records—I think you examined some in Mr Ellicott's chambers, and later on because Mr Ellicott was engaged, you were asked to go down and look at them in Mr Bowen's chambers; is that right? A. I used a desk in Mr Bowen's chambers when he was out, yes.

Q. You were asked to go down there; you were sent from Mr Ellicott's chambers? A. That is next door. That is right, yes. 20

Q. While you were there did the solicitor for the applicant come in with someone that you knew—into Mr Bowen's chambers? A. No, he came past Mr Bowen's chambers into Mr Ellicott's chambers.

Q. Did he have somebody with him whom you knew by sight? A. Two people. He had his clerk, Mr Hastings, and he had Mr Frank Mann who was a partner in North Ash and Mann.

#### CROSS-EXAMINATION

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MR BOWEN: Q. You mentioned these motor car companies receiving deposits in respect of cars to be supplied and you said the Commissioner required an amount to be brought in as income, although there 30 was no purchase price content allowed as a deduction; is that right? A. That is what has happened so far.

Q. That would be the present practice, would it, in relation to motor car deposits? A. That is the current one on the assessment I have before me.

Q. From the company's point of view in those instances, would it be proper to regard the amount of those deposits as income to be taken into account in ascertaining the distributable profit? A. Well, I would not consider it as an accountant to be a proper thing to do without providing for the purchase content at least. In other words 40 to distribute those as dividends—I would not consider that to be proper without making provision, unless it were a consistent basis of accounting, unless it were going on from year to year.

Q. Take the case where these deposits are made and then perhaps the goods never become available so that the contract goes off. I

suppose the company would then be in the position of having to return the deposit, is that right? A. That is right, yes.

Q. And this might happen unless the goods have actually been obtained? It might always happen; is that right? A. Yes.

Q. Having regard to that fact, would you regard it as a sound principle to bring in the deposit in the profit & loss account, setting off against it only an estimate of the cost of obtaining the goods? A. It depends on the purpose. That is what I said in my theoretical—

10 Q. You cannot answer it categorically as to whether it would be right or wrong? A. No. There are factors affecting it, I suggest. As I said, the consistency with which the accounts are prepared is one; the extent to which the profits of the company are absorbed into distributable dividends is another.

Q. The profits are absorbing? A. Are absorbed.

Q. Into distributable income? A. The quantum is another.

HIS HONOR: Q. Absorbed into? A. Distributed profits. For example, if it is an infinitesimal part of the whole of the profit of the company, for instance if the company were absorbing £10,000 out of £100,000 profit and this deposit money was £1,000, I do not think  
20 it would affect the overall situation.

MR BOWEN: Q. I think you said another matter was the quantum or proportion did you mean? A. Yes.

Q. Of those goods not yet supplied—the receipt compared with total receipts. Is that the proportion you had in mind? A. Yes. In this case it is the total net income if there is no purchase.

Q. I am speaking, you understand, of this hypothetical motor firm which you took and as to which you have expressed the income tax practice. Now if that is but a small proportion, the deposit to the total income, then you say it would be a factor in deciding to  
30 bring it in, is that right? A. It would be one of the factors.

Q. If, for example, those deposit receipts with goods to be supplied, the goods not being obtained, brought into the net profit represented, say, 50 per cent. of the net profit, would that be too high a proportion to justify your treating it in that way? A. There are other factors. Is it going on? Is it calculated to deceive or mislead or is it properly stated in the accounts? If it is a large proportion and it is calculated to give the impression that that profit will ensue in every year without deviation, as I mentioned in the hypothetical answer to the hypothetical question, the part which relates to the  
40 undelivered contracts might well be stated separately from the part which relates to the completed contracts.

Q. Would you go so far as to say it should be treated separately? A. In certain circumstances I would insist that it was stated separately.

Q. Were there any other qualifications or factors which you had in mind, because I think I interrupted you on quantum, and there may have been another one you want to state? A. I do not remember.

Q. When you say the length of time the accounts have been

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kept in that way, do you have in mind that you might consider it proper in relation to an established business in a particular field where there was a general knowledge of the way in which the business was conducted and the accounts carried on—is that the type of thing you have in mind? A. No, you are concerned with whether accounts are prepared inconsistently; for example, in the paper on Sunday there was a quotation of a finance company which had resorted to another method of calculating its unearned income, and they had made that apparent.

Q. In their accounts? A. And to the Press. Well, you are 10 concerned to see that the accounts are prepared consistently from year to year, that there is no different method of stocktaking or an alarming difference in bringing in income or anything like that. I do not think I answered the question fully. So, had it been the practice to bring in prepaid subscriptions and that sort of thing from year to year and assuming they were going to continue on, as the history showed they would, there would be no great objection to a change or to continuing it.

Q. I think you said it had become a practice for the Income Tax Commissioner to bring in any unearned income? A. Income as 20 received.

Q. Even though the goods or services have to be supplied at some future accounting period. Is that right? A. Yes.

Q. Accountants would regard this particular income as unearned income, would they not? A. In most instances they have been inclined so to regard it.

Q. That is the orthodox view, is it not, of accountants that you should relate the income to the year in which it is earned—not tie it simply as money to the moment of receipt, is that not so? A. There are deviations—I mean in a lengthy contract you can bring in so 30 much as is earned.

Q. You can make certain estimates in relation to working progress; is that right? A. Yes.

Q. But where the goods are to be supplied or the services performed in a particular accounting period, the orthodox view is that the income should be related to that period is it not? A. As I say, it is a bit difficult to define orthodox and normal accounting practice.

Q. If you agree it is the normal or orthodox but there are qualifications of it, can you answer the question? If you do not think it is the orthodox or normal, will you answer it in that way? A. The 40 normal transaction of sale is to obtain some goods, deliver them, invoice them and then get the money in.

Q. I am putting of course the case where you are paid in advance? A. That is right.

Q. In those circumstances the normal or orthodox procedure, I suggest to you, is to relate the income as a matter of income to the accounting period in which it is earned? A. Yes, with one qualifica-



tion I can think of, that were there extraordinarily high expenses incurred in the obtaining of that income then that is adversely affecting the incomes as incorrectly as the reverse.

Q. If you had a case where the net profit was shown of the order of £260,000—have you got Exhibit Z, the printed accounts in the present case before you? A. Yes.

Q. If you look at the accounts printed, International Vending Machines Pty. Limited, you see £263,281. Do you see that? A. Yes.

Q. No distinction is drawn between income which relates to con-  
10 tracts which have been fulfilled or contracts which have not been fulfilled. If the content of receipts was as high as £150,000—contracts not fulfilled—and in respect of which the goods were not yet purchased, would you agree that such a figure would unduly inflate the profit for the year ended, as it is there, 30th June 1959? (Objected to; allowed.) Mr Wayland, I refer you to Exhibit Z merely to assist you in understanding the question I am putting: but the question is whether the company makes a net profit of, say, £260,000 and it has included contracts which have been written in June 1959 to the extent of £150,000 in respect of which goods have not yet been obtained by  
20 the company, would you not regard the bringing in of the amounts received on the signing of those contracts as a factor that would inflate the profit unduly so that it should not be shown that way? A. You could not say that without also putting into your hypothesis the total of the sales. The sales may have been £9,000,000 in which case £150,000 of sales—the profit content of £150,000 of sales—would not necessarily unduly inflate it.

Q. Assume you compared it with the total sales of £630,000 odd would you then agree it would unduly inflate the profit? A. It would represent, in other words, about a quarter of the profit?

30 Q. No, I do not think you need assume that; but assuming it did, first, what would you say then? A. I would say just what I have said before, that it should be shown—it should be separately referred to in this particular set of accounts.

Q. If you had this £150,000 brought in—receipts in June, un-allocated contracts—and the only charge made against it was by a deduction from your sales of, say, a sum of £11,600 odd and £5,800 odd, so that the net profit brought in on these sales less that adjusting figure was of the order of £133,000, would you then say it was unduly inflating the factor of profit? (Objected to; allowed.)

40 HIS HONOR: These are all hypothetical questions and I will treat them as such.

WITNESS (in reply to the last question on page 280): I cannot concede that that would be so.

MR BOWEN: You mean that the fact would be so? A. That the only charge made against these sales would be £11,000 and £5,000.

Q. I see, you would challenge the hypothesis? A. Yes.

Q. You feel you cannot answer it on that hypothesis, do you?

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A. Yes. A sale takes a long time to make. It is not just made in the week-end of the 29th June.

Q. I was putting to you the hypothesis that £150,000 was in fact signed in the last week of June? A. The sale would not be made commercially; it would be made in two or three months; there would be a lot of calls and a lot of advertising to get that customer to that point. There are very few such contracts in my experience where a person walks in off the street and says "Give me a form and here is my money." It involves a lot of calls and home calls.

Q. If you feel you cannot answer on that hypothesis, I will not 10  
press you but that is the hypothesis I put to you, and I put it to you as being an exceptional type of business. If you feel you cannot answer it I will not press it. (No answer.)

(Short adjournment.)

Q. I want to take you now to the value which might be placed on the shares in I.V.M. at the 25th June 1959. You gave some evidence about that? A. Yes.

Q. I think you would agree, would you not, that a way to arrive at that value would be to take a willing but not anxious purchaser and a willing but not anxious vendor and see what in friendly negotia- 20  
tion they would arrive at as a figure; is that right? A. That is the best value you can find.

Q. I take it that if a purchaser were looking at it from the revenue point of view or yield point of view he would want to see, would he not, what the net maintainable revenue of the business was? A. Yes.

Q. And if he could arrive at that then he might consider what return might be expected in that type of business and he would capitalise accordingly; is that right? A. Yes.

Q. I think you indicated that you had been through that process, 30  
is that right, and rejected it for this case, did you not, as a method of valuing? A. Yes. I did not really set out to make a valuation of these shares; I did not do that. I simply set out to satisfy myself that their value was no less than the figure at which they were disposed of to the holding company, but I did not set out to make a detailed hypothetical or theoretical valuation of the shares.

Q. So you formed no view as to what their value was at the 25th June beyond the fact that you formed the view it was in excess of £200,000? A. No, I went further than that. Referring, as I understand there is judicial support for such reference, to a subsequent 40  
sale of the shares, I rapidly came to the opinion that they were worth no less than £200,000 at that date. I emphasized on Thursday, I think, that it is the sort of case that a share valuer does not relish—a new industry and an unknown industry and a large profit in its first year and asked to value in the first year it is not an easy task.

Q. I thought you had used what you called hind-sight because this subsequent sale was available? A. Yes.

Q. And that was the thing that mainly governed your arriving at the conclusion that the shares the year earlier were worth not less than £200,000? A. Plus the fact that the net tangible assets of the company at that balance date, at the 30th June which was the nearest balance date, were something over £160,000 and that no matter how willing the vendor might have been he would not have sold them any goodwill figure as he appeared by advertising and promotion to establish what then at that moment of time appeared to be a very lucrative business.

10 Q. But you did not go through the process of bringing the purchaser and vendor together in a notional or hypothetical negotiation at all; is that right? A. No.

Q. I suggest to you that had you done that there would have been factors in this particular situation in June 1959 which would have led a purchaser to reduce his offer very considerably on the figure you have mentioned. Have you considered any possible factor? I am asking you whether you considered them at the time you arrived at your figure? A. I considered the fact that on information I had there had been a negotiated figure a year later and that a chartered  
20 accountant had been in the business for some three months investigating it fully, I assume, and having full control of its financial affairs, and had reduced the original negotiated figure by a certain sum but not below, I think, £260,000.

Q. It was because of the subsequent sale that you disregarded consideration of these factors which affect the purchaser if you look at him in isolation in 1950; is that right? A. I did not think it necessary to go any further.

Q. To go into it? A. Yes.

Q. If you had been informed that the company had gone into  
30 liquidation unable to pay its debts in May 1961, would that, if you were using hind-sight be a factor that might enter into your calculations? A. That is removed beyond another year. I think it is removed another year beyond an actual exchange of shares at a figure.

Q. That would not affect your notion that the value in June 1959 was of the order of £200,000? A. No.

Q. If you had been told that it had gone into liquidation in May 1961, and I want you to assume this, that the statement of affairs under the Companies Act showed a deficiency of £155,000, would that affect the position? A. You are trying to put yourself back—

40 Q. To June 1959, are you not? A. June 1959, yes.

MR MOFFITT: I object to the question unless something further is put which my friend undertakes to make relevant. Your Honor sees that this company changed hands at a later stage . . .

HIS HONOR: I will allow the question. I think that these are matters which can be dealt with in re-examination.

MR BOWEN: Q. If you were using hind-sight and did not stop short at the next sale, but saw the next year, the company in liquidation

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and a deficiency of £165,000 in its statement of affairs, would not that be a factor to be taken into account in making this calculation? A. As I said before, you are trying to put yourself back to the position which existed in 1959 and the use of hind-sight is qualified.

Q. Then you would not use it, is that right? A. No.

Q. Supposing you were told that the company had gone into liquidation in May 1961 and that the actual deficiency proved to be over £600,000, would that cause you to question whether your calculation was wholly reliable for a person looking at it in June 1959 as a purchaser? A. No, it would not cause me to question it unless I 10 found—well, no, no qualification.

Q. No qualification? A. No.

Q. Would it not suggest to you that there was something unsound in the business or in the nature of the business if that occurred? A. No, I do not think you are entitled to assume that.

Q. Would it not at least put you on guard that you ought to look at the figures as between a willing and not anxious vendor and purchaser in June 1959 in case what I am putting to you was apparent on the figures if you went into them in detail? A. It could put you on guard as to whether there were some inherent defects. 20

Q. Did you not consider the matter from that point of view in saying a figure of £200,000 would be something less than the value of the shares? A. No, I took the view that the defect, if any, was not necessarily inherent and was not apparent until after the subsequent sale of the shares.

Q. You did not look to see if there was a defect, did you? A. I relied on the fact that Mr Nicholson had had three months to look.

Q. So you did not look yourself? A. No.

Q. And the accounts you relied on were the printed accounts, Exhibit Z? A. Yes. 30

Q. Did it not occur to you that this defect might not be apparent on Exhibit Z, that if you really looked at the figures the value might not be there if you went further into the figures? Did that not occur to you in light of the liquidation? A. No.

Q. It did not? A. No, I am afraid I was pretty largely swayed by the subsequent sale of the shares by parties at arm's length.

Q. I am not questioning your approach; I want to get clear what it was, you see? A. Quite.

Q. Now, would you agree that looking at this company with a willing but not anxious purchaser in June 1959 and seeing that it was 40 of a type where the sale price was got in for a contract, and then a percentage return in the first year was promised by the I.V.M. Company to certain merchandising companies—would you not consider having regard to that characteristic of the business that it was important to look at the merchandising companies to see if they could operate profitably? A. I believe it had a responsibility. I understood that it had a responsibility.

Q. For what? A. To the merchandising companies.

Q. That is right, well, you understood that? A. But that that had been taken into account in the preparation of these figures.

Q. What I am putting to you is this—if a man was going to invest his money in this concern and looking at the merchandising companies he could see it would not last, it could not go on—supposing he could see that for the sake of the hypothesis, I put to you that he would not put his money into it, is that right? A. Quite right.

10 Q. Therefore, in seeing whether he would put his money in or how much he would put in, it would be necessary for him to look at the merchandising companies since the whole operation of this company was dependent on their being able to operate profitably; is that not right? A. Yes, he would have to look at the merchandising companies.

Q. Mr Wayland, you spoke of two years' purchase profits, I think, as one method you applied? A. I said it is customary to look to 1, 2 or 3 years' purchase net profits in orderly companies.

Q. But this was an extraordinary profit that was being produced, was it not, in I.V.M.? A. Quite.

20 Q. But it would not continue to be produced unless the merchandising companies could continue to operate profitably? A. Quite right.

Q. That must have been apparent to any well-informed purchaser in June 1959, would you not agree? A. Yes, but the position was that there was £163,000 of tangible assets and presumably £37,000 of super profit or goodwill or what-have-you which was—let me see—about— (not completed).

MR BOWEN: That is the profit less tax . . .

30 Q. As I understand the position—is this correct—the figure you took as profit, which you mentioned as being £163,000 odd—is after the primary tax? A. Yes, profit after primary tax, which is the same figure almost as the net tangible assets.

This £37,000 represents approximately less than three months' net profit. The figure for goodwill represents less than three months' net profit, and it was not conceivable at that stage that the results of the merchandising companies would have jeopardised the vending company, and it was not apparent what extent they would jeopardise—they appeared to be, on the face of the accounts, not to be a great strain on the vending company, which was making very substantial  
40 profits indeed.

Q. You appreciate what I am putting is not so much that they are a drain, but if they cannot go on then the profit-making machine of I.V.M. itself comes to a stop. You appreciate that? A. Presumably so, yes.

Q. You have got a general idea of the way in which merchandising companies operate? A. Not detailed.

Q. They site the machine; supply them with merchandise, main-

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tain and service them and account for proceeds by paying 20 percent to the machine owner. Do you follow that? A. Yes.

Q. This 20 percent in the first year was to be put into—assume it was put into a trust fund straight away. Take the Automatic Merchandising Company. Take, say, Victoria as an example. You can perhaps have a look at it in Exhibit Z. Can you see trading and administrative expenses £15,000? Can you see “interest paid to owners £4,275? A. Yes.

Q. I want you to assume that the £4,275 represents the interest paid to owners out of the fund. Do you follow? In other words, 20 10 percent has been paid. It might be, for the sake of argument, £20,000 or £30,000 paid in, but the actual amount paid out up to the 30th June to owners in cash may be only part of the year—say, £4,275, do you see? A. Yes.

Q. Is it your view that as responsibility for half—being 10 percent of the first year—had been undertaken by I.V.M., there should be either as a receipt or as a deduction from that interest paid the half which I.V.M. had to bear. Would that be correct? A. Yes. This £4,000 was not wholly payable by the merchandising company.

Q. It had to put in 20 percent, but it was entitled to get half 20 and did get half from I.V.M. under its contract with I.V.M.? A. Yes. In other words, I.V.M. should have paid its half of £2,000 odd into this company.

Q. You can assume it did—(objected to.)

Q. I am putting it to you that the Merchandising Company (Victoria) operates in this way, that when it signs a contract with the machine owner it puts the first year's interest—take 15 percent; sometimes 15 percent, or 20 percent—puts 20 percent into a guarantee fund. You understand that? A. Yes.

Q. Will you also take it that it has an agreement with I.V.M. 30 under which I.V.M. promises that it will in fact pay half of Automatic Merchandising (Victoria) Pty. Limited's first-year guarantee under this operating contract. Have you got that? A. Yes.

Q. And I.V.M. pays—assuming 20 percent was the interest, it pays 10 percent straight away to Merchandising (Victoria). You understand that hypothesis I am putting to you? A. Yes.

Q. If you were bringing to account as an expense the interest paid to owners out of the guarantee fund as if it were the expense of the Victorian company, and in the period ended 30th June 1959 it was £4,276, what would be the proper way to offset or bring in 40 the amount corresponding to those contracts received from I.V.M.? A. Merchandising Company made this payment of £4,000 out of—

Q. That is made out of the guarantee fund, held by trustees. In the first place, is that the proper way to keep the accounts—not to put in the disbursement of the Victorian company at the higher figure of 20 percent for the first full year, but to put in only disbursements of the guarantee fund? A. This £4,000 was paid by the Merchandis-

ing Company out of the guarantee fund?

Q. No. Paid by the trustees out of the guarantee fund. A. I see. This is shown as an expenditure here? The full outlay is shown as an expenditure—or was the full outlay £8,000?

Q. The full outlay would be of the order of £20,000 in the guarantee fund.

HIS HONOR: Q. If the Merchandising Company undertakes by agreement with the machine owners to constitute a guarantee fund equal to 20 percent of the cost price of the machines and to pay off that 10 guarantee fund over a period of one year by regular payments, and if it had not paid out all those moneys at the time of the accounting period, should it regard the whole of those moneys as outgoings of the accounting period, or only that proportion which had in fact been paid out of the guarantee fund at the end of the accounting period? A. My opinion is that a proper accrument should have been made for the interest due but unpaid, or the proportion of interest due but unpaid at the balance date.

Q. Does that mean that the whole amount in the guarantee fund would be offset against the accounting period in which it was received? 20 A. No.

Q. Or only that proportion which had in fact been paid out or due to be paid out in respect of that accounting period? A. Only the proportion which was due to be paid out in respect of that accounting period, I would think.

MR BOWEN: Q. You have got contracts being written, do you follow? A. Yes.

Q. You have got the I.V.M. company bringing in the full amount received in the actual year of receipt? A. Yes.

Q. Then you have the Merchandising Company at the same time 30 entering into a contract with the machine owners? A. Yes.

Q. And immediately paying 20 percent or the appropriate percentage to the guarantee fund. Is it your view that it would not be proper to bring in as an expense the expenditure actually disbursed to the guarantee fund? A. No, I would not consider that to be the proper expenditure—just the proportion incurred up to the balance date.

Q. What about the contra items? That is, receipt of the moneys from I.V.M., being a part of the amount payable to the guarantee fund. If this had been received by the Merchandising Company and 40 it had paid its 20 percent in full should it bring in to this profit and loss account the full proportion of the 20 percent—that is half that was received from I.V.M., or only such portion as was referable to the same period as the interest to owners? A. I consider only such portion as was referable to the period, and the balance paid into the hands of trustees was simply pre-payment in advance—pre-payment of interest.

Q. If the procedure was followed of not taking 20 percent as

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paid into the trust fund as expenses, but only the portion of interest actually paid, but, on the other hand, the full amount of the 10 percent received from I.V.M. was brought to account as income in the profit and loss account that would give a wrong result in the profit and loss account, wouldn't it? A. The group profit or loss would be wrong.

Q. You see in Exhibit Z you have got Automatic Merchandising (Victoria) Pty. Limited. You see the item, income, £20,566. I want you to look at Automatic Merchandising (Victoria). You see here an item "guarantee fund, June 30th, 1959, £10,154.12.6" referred to in the journal? A. Yes. 10

Q. The sundry income being the amount received from I.V.M. Pty. Limited as per agreement, paid direct into the fund? A. Yes.

Q. Do you see the sum of £20,154? A. Yes.

Q. I want to ask you something about that sum. You see the second journal entry relating to its deposit in the fund? That is, deposit of like amount made to the guarantee fund on 30th June by the Merchandising Company (Victoria), is that right? The next entry? A. "Received from I.V.M. as per agreement. Paid into fund. Balance of amount paid into fund by I.V.M. Pty. Limited". That must be the total of the fund. 20

Q. You see two journal entries in the books. Can you tell us, from the accounting point of view, what they would convey to you? (Objected to.)

Q. In relation to the guarantee fund. (Objected to; disallowed.)

Q. I want you to look at this document, which has been marked for identification. It is the detailed accounts of Victorian Merchandising. I want you to look at the income side of the profit and loss account. A. Yes.

Q. Will you compare that with the printed account? You see the figures? A. Yes. 30

Q. I want you to look particularly at the break-up of the income. Would you agree that if the item in respect of the payment by I.V.M. to the Merchandising Company were brought in only to the extent of interest paid away to owners the accounts of the company would have shown a loss in excess of £8,000? A. Yes, I agree. This item is entitled "Amounts received for operating machines". This is the subject we are talking about?

Q. That is right. A. It was not wholly for interest. It was for interest and operating, or solely for interest? 40

Q. Look at Exhibit 17—the trading profit and loss account up to 30th June, 1959 of Victorian Merchandising Company. I call your attention to the break-up of income. You see it has sales of £10,411; amounts received from International Vending Machines Pty. Limited for operating machines £10,154. Do you see that? A. Yes.

Q. Liability to pay by International Vending Machines to the purchasing company for operating was half of the amount payable to



the guarantee fund. Do you follow that? That was the obligation, and that is the figure. (Objected to.)

MR MOFFITT: I do not object to the entry being read onto the notes (argument ensued).

HIS HONOR: I will allow the entry, because it is an entry from which the accounts which are part of Exhibit O, and which have been tendered by the respondent, have obviously been prepared.

(Journal entry of Automatic Merchandising (Victoria) Pty. Limited tendered and marked Exhibit AC.)

10 MR BOWEN: Q. You have seen the journal entry? A. Yes.

Q. And also the profit and loss account, which is audited. You agree with me that in relation to Automatic Merchandising (Victoria) Pty. Limited, if the amount received under the agreement from I.V.M. was restricted on the same basis as the interest paid away to owners, to the portion actually paid out of the guarantee fund, it would result in a loss of the order that you mentioned to me. (Objected to.)

Q. Will you look at the New South Wales, South Australia, Tasmania and Queensland ones, and, comparing the items in respect of the amount received from I.V.M. on the income side with the  
20 interest paid to owners on the expenditure side, tell us whether or not in your view there would have been a loss in the case of each of the merchandising companies? (Objected to.)

Q. Have you had time to do that? A. Yes. If these contributions from I.V.M. Pty. Limited were not brought to account in these printed accounts—whatever the nature of the contribution may be—it would show a loss.

Q. And likewise, if there were only a proportion brought to account corresponding to half of the interest—there would also be a loss?

30 HIS HONOR: There must be.

MR BOWEN: Q. Did you notice that as you went through? A. Yes.

Q. If I may come back to the value of the shares again, and just ask you a question on that? If a willing but not anxious purchaser had taken that view of the merchandising accounts would you agree that he might consider that the income reducing quality of I.V.M. was limited in point of time? A. He may have taken that point of view. He would not necessarily take that point of view, because presumably the appropriate charges were made in the I.V.M. accounts for these contributions to the operations of the merchandising  
40 companies and, in view of the very substantial profits reflected, he may have taken the view that subsidy, as I have read somewhere, is desirable and necessary in the establishment period of the merchandising companies, and would not necessarily be a continuing item. In other words, you are excused for taking the group view in these things.

Q. If he took that view then he might still pay the large sum you mentioned for the shares in I.V.M.? A. Yes. I do not think they paid such a large sum for other than tangible assets.

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Q. If he took the view on an income-producing basis he would not have paid much beyond net tangible assets—if he took the view that it would stop very shortly? A. Yes, I think he would have. I think there is evidence to show that someone would have.

Q. Well now, on these assets basis you said that the net tangible assets I think were £163,883. In arriving at this figure you brought in the general reserve of £150,000? A. Yes.

Q. Did you read what was said in the Chairman's report in Exhibit Z in arriving at the view that that should be brought in as shareholders' fund? A. I don't know when this was produced. I understood that the liabilities to which the Chairman referred—

Q. Perhaps you can answer the question first. Did you have in mind what is in the Chairman's report in Exhibit Z, which you used when considering the value of the shares? A. I was informed that any liability under the guarantee did not exist at the end of June.

Q. At the end of June? A. June, 1959. I took the view that the continuing profits would have provided for the continuing liabilities or the liabilities arising.

Q. Did you take this view, that the general reserve was really no more permitted for any contingent liability than if it had been a credit standing to the credit of the profit and loss appropriation account? A. That is the view I took.

Q. Do you think a purchaser, if he looked at Exhibit Z, and the Chairman's report in that regard, would have taken the same view? He might not have felt that the net assets position perhaps was not as high as £163,000? A. He would have.

HIS HONOR: Q. I understood you to say that you never considered the position of a purchaser in the valuation. Is not that so? A. Not a fictitious purchaser. I considered—

Q. You considered this actual purchaser? A. Actual purchaser. I did not set out to make a valuation. I simply said that I considered that the exchange of shares would have taken place at no less than £200,000 with all the facts existing as they were at the 30th June, 1959.

Q. But not on the basis of their true value to a purchaser—or was it on that basis? A. Yes.

Q. I cannot quite follow that. If you say that was the proper price for the shares—I am not quite clear how you have arrived at your conclusion. A. I applied a few tests to see—I applied a few normal tests. I did not physically prepare a valuation. I referred to the subsequent prices at which shares were sold a year later, and I applied a few of the normal tests to see if the figure could have been arrived at.

Q. Accepting all the figures in the balance sheet? A. Accepting all the figures in here, and with the qualification that I was informed that no actual liability existed under the guarantee until sometime in October or November, 1959, so that at the date of the balance

sheet this was simply an appropriation of profits into a general reserve account.

(Luncheon adjournment.)

AT 2 P.M.

MR BOWEN: Q. You told us of the procedure you went through in regard to contracts not allocated at the 30th March, 1960 or 1961—the procedure of working back to the 30th June, 1959. A. Yes.

Q. You mentioned figures that you used. I think that 2123 was the contract highest in number that you took as being referable to the 10 period before June, 1959, is that right? A. Yes, with adjustments.

Q. There were some adjustments? A. Yes.

Q. Is that the position, that there are contracts referable to June with higher numbers than that, which appear later in the book? A. Yes.

Q. One, for example, in July—2338. Do you recall that kind of number being put on a June contract appearing in July? A. I may. I have got the actual numbers here. 2338.

Q. Yes. You have made an adjustment in respect of that? A. Yes. I treated that as June contract for the purpose of non-allocation.

20

#### RE-EXAMINATION

MR MOFFITT: Q. That means that 2338 is in the list you prepared, and which has been tendered? A. It is not in the list for the good reason that it had four victor machines allocated to it, but if it had been a non-allocated one it would have been in the list.

Q. Taking that particular example, it did have four machines allocated to it by the 31st March? A. Yes.

Q. In respect of the adjustments you said there was a relatively small number—were there in fact any of those which fell into the 30 group which were unallocated at the 31st March 1961? A. I took no notice of the July ones, which were incorrectly included in June, but all the June included in July had been allocated.

Q. So that the ones that were strictly July—they became immaterial in any event, because they had all been allocated on the 31st March, 1961? A. I did not even look at those. I am sorry, yes. Any of the June that were included in July. Yes, that is right.

Q. In any event, they had been allocated by then? A. Yes.

Q. You were asked some matters by Mr Bowen concerning the Merchandising Company and various entries, and so forth. Was there 40 anything that was put to you by Mr Bowen concerning the merchandising companies and the accounts in relation to them which in any way alters your view expressed in the way that you did in your evidence-in-chief with regard to the price of £200,000 for the shares in June 1959? A. I took the printed accounts on the basis of forming my opinion and I assumed that the charges for expenses which were transferred across to merchandising companies were duly made

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in the accounts of the I.V.M. company, but generally speaking there is nothing in the questions that Mr Bowen asked me that altered my opinion that I had already expressed with regard to the sum of £200,000.

Q. You told us that you had before you the annual report, which is Exhibit Z. You have got it in front of you? A. Yes.

Q. Also before you gave evidence did you see the audited accounts? That is, the actual audited accounts in respect of International Vending Machines Pty. Limited and the merchandising companies? A. Yes, I have seen those.

Q. I had them and I handed them over to you and you had them in your possession for some days? A. Yes.

Q. Now, Mr Bowen asked you with regard to this sum in the balance sheet of International Vending Machines Pty. Limited which appears in Exhibit Z—£150,000, which is shown as “transferred to general reserve”. I show you Exhibit 4, where it is referred to as “general reserve for contingencies on guarantee”. On the basis that no legal guarantee existed by I.V.M. to machine owners at the 30th June, 1959, will you tell me whether, from an accountant’s point of view, at any time before I.V.M. in fact commenced to enter into legal binding guarantees with machine owners there was any reason why, from an accountant’s point of view, that reserve should not be transferred back to the shareholder’s fund, and available for distribution if the directors passed a resolution to that effect? (Objected to; disallowed.)

Q. I will put the further question: In the same set of circumstances to which I have just adverted, if the directors in that set of circumstances passed a resolution transferring it back to the shareholders’ fund for the purpose of declaring a dividend, is there any reason why, from an auditor’s point of view, it should not be so transferred and certified by the auditor? (Objected to; allowed.) A. There would be no valid objection by an auditor in that set of circumstances. (Witness retired.)

MR MOFFITT: I understand it can be conceded on both sides that at no time was any dividend declared by I.V.M.

HIS HONOR: That can be noted.

(Affidavit of Clifford Charles Green, Deputy Commissioner of Taxation, of 24th February, 1961, tendered. Objected to; tender withheld.)

(I.V.M. income tax assessment for year ended 30th June, 40 1960 tendered and marked Exhibit 23.)

MR BOWEN: I admit that the indebtedness of the company to the Commissioner as at date of presentation of the petition is as set out in paragraph 5.

HIS HONOR: That admission can be noted.

(Paragraph 5 of petition tendered and marked Exhibit 24.)  
(Case for the respondent closed.)

## CASE IN REPLY

HIS HONOR: It may be noted that the loan creditors of the company stated in the statement of affairs, List A, were creditors to whom debts were incurred in respect of which the respondents have no responsibility.

CHARLES ALLEN LAW  
Sworn, Examined, Deposed

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TO MR BOWEN: I am an official liquidator, practising at 133 Pitt Street, Sydney.

10 Q. You are the liquidator of I.V.M., appointed by order of the Court on 8th May, 1961? A. Yes.

Q. You have a copy of the statement of affairs supplied to you pursuant to section 222 of the Companies Act, haven't you? A. Yes.

Q. It is made up as at 15th May, 1961? A. I think signed on the 15th May, 1961, but made up as at the date of liquidation.

Q. I want you to go to List H—the list of assets. There is one summary form, and then a more detailed form? A. Yes.

Q. Do you see that list? A. Yes.

20 Q. Now, I think you yourself prepared the list in a summary form of your actual realisations? A. Anticipated realisations.

Q. Can you tell us in relation to cash at bank and cash on hand what the position is, as stated in Exhibit H? A. Yes. Stated as £611—anticipated to realise £611.

MR MOFFITT: I do propose to object to questions of what the anticipated realisation is in respect of various assets, on the basis of irrelevancy.

MR BOWEN: Q. You have made a very careful assessment of all the assets you have in the liquidation, is that right? A. Yes.

30 Q. What is the extent of the deficiency that you have arrived at as a result of your investigations? (Objected to; disallowed.)

Q. Looking at the assets—List H—can you inform us as to what you will obtain in the liquidation in respect of machinery, trade fixtures, fittings and utensils. (Objected to; disallowed.)

Q. I want to take you to one item on List H. You see “stock in trade—Vending Machines stock spare parts”? A. Yes.

Q. Will you tell us physically what those machines are—what sort of character they have? A. They consist principally of obsolete and out-moded machines and some home-unit vending machines for which at present there is no market.

40

## CROSS-EXAMINATION

MR MOFFITT: Q. I show you Exhibit 22. Would that be the list of machines or are there others? A. I could not say. I just cannot identify it with the original list.

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Q. When you are saying the outmoded ones, do you mean the early ones which apparently were first put out by I.V.M. in the first part of their career? A. No, a special type of machine, apparently, and apparently they were badly designed and not marketed.

Q. Were there Vanities and Debonairs? Do you know what a Vanity or a Debonair is? A. No, I could not identify them under those names.

Q. I see; you do not know their classifications? A. No.

HIS HONOR: Mr Moffitt, it is not inconceivable that some reference to the type of goods vended rather than the particular machine that 10 at all times vended them is a possibility.

MR MOFFITT: I show you Exhibit AD. Have you got Exhibit AD in front of you? A. Yes.

Q. Would you go to G? There is one item there of £4,695/12/4. That is an item, is it not, that was put into the books after the Steens left by the accountant who was then the accountant—by his putting in certain debits or credits and arriving at that figure? Do you know that? A. It could be so. It has been treated as a suspense account in the statement of affairs.

Q. That is an item do you know that is disputed? A. It may 20 be disputed.

(Witness retired.)

MR BOWEN: I want to tender a further advertisement in the Sun-Herald of May 24th, 1959 at page 88.

MR MOFFITT: I have no objection as to form, but I object on relevance. It may well be covered by Your Honor's existing ruling. HIS HONOR: I will admit that advertisement.

(Advertisement in Sun-Herald, 24th May 1959 marked Exhibit AE.)

MR BOWEN: That closes the applicant's case in reply, Your Honor. 30 HIS HONOR: Have you anything in reply on the matters which have been raised?

MR MOFFITT: No, Your Honor, there is no other evidence.

HIS HONOR: Subject to what counsel may say, I think the best approach would be to hear you first, Mr Bowen, on primary liabilities and then to hear Mr Moffitt on that and the matters arising under Section 361; then to hear you in reply including your dealing with Section 361, Mr Bowen, and then I would give Mr Moffitt the opportunity in respect of any particular thing—very limited—that you raised on Section 361; otherwise the issues, I feel, may merge. 40

MR BOWEN: If Your Honor pleases.

(Counsel addressed.)

(Further hearing adjourned until 10 a.m. Tuesday, 12th December 1961.)

### Judgment

HIS HONOR: This is an application, pursuant to s.308 of the Companies Act 1936, in which the applicant, the liquidator of International Vending Machines Pty. Limited, seeks to recover the sum of £200,000 from the respondents in circumstances which I shall relate. Before doing so, I note that this matter has proceeded as an application under s.308 by consent of the parties even though there are disputed questions of fact involved. This procedure was adopted for convenience,  
 10 but I required that points of claim and points of defence be filed on the basis that they would be treated as the pleadings upon which the issues would be determined.

International Vending Machines Pty. Limited, which I shall call the company, was incorporated in New South Wales as a proprietary company in June 1958. Up to the time of the events with which these proceedings are primarily concerned, the issued capital of the company was £102, divided into 102 shares of £1 each. There were three shareholders: Louis Steen who held 46 shares, Joseph Steen who also held 46 shares and Sydney Steen who held 10 shares. The respondents,  
 20 Louis Steen and Joseph Steen, were at all relevant times the only directors of the company.

The company commenced the business of selling automatic merchandising machines into which members of the public might place coins and in return receive a piece of the merchandise with which the machines were stocked. At first the machines were sold outright to persons who would own and operate them, the company providing or helping to provide the sites where the machines might be located. In August or September 1958 a new procedure was adopted. Thereafter the company continued to sell machines to members of the public but,  
 30 through merchandising companies associated with the company, the stocking and operating of the machines was carried out on behalf of those members of the public who purchased them. Agreements were made between the company and the various merchandising companies, formed to operate in different States of the Commonwealth, whereby the latter companies undertook to service and operate the machines sold by the company, and the company agreed to pay to the respective merchandising companies 10 percent of the sale price of all vending machines sold by the vendor. It was a term of the agreement between the company and the merchandising companies that the latter should  
 40 pay to the owners of the vending machines 20 percent each year interest on the purchase price of the vending machines and that such interest should be paid to the owners by equal monthly instalments. The company was concerned with the selling of machines and it adopted this arrangement whereby the purchasers would be guaranteed certain minimum returns per annum. At first the return was 15 percent and later it was increased to 20 percent. At all times which are directly material in this application the guarantee was contained

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in the operating agreement made between the machine owner and the merchandising company. Under this new arrangement sales of the vending machines by the company increased greatly over the last months of 1958 and the early months of 1959. The accounts for the six months ended 31st December 1958 showed a net profit of over £53,000.

The company's accountants and auditors were Messrs. North Ash & Mann. On 18th March 1959 a letter was written by that firm, signed by Mr Mann, to the directors of the company and of Automatic Merchandising (N.S.W.) Pty. Limited. This letter set out various matters which North Ash & Mann thought required consideration. Reference was made to the possibility that the merchandising company would be unable out of its operations to provide the money necessary to meet the guaranteed annual return. It was suggested that legal advice be obtained as to whether in the event of failure by the merchandising company to meet its guaranteed commitments any claim could be made on the company. The letter concluded as follows:

“We also question the advisability of the formation of separate companies in each State and are at present preparing a plan for extensive tax saving which we expect will incorporate suggestions in this respect.”

Large loans to directors appear in the books of the company at this date which would normally be offset by dividends. This matter is also under consideration.

In view of the large net profits being made in International Vending Machines Pty. Limited for the year ended 30th June 1959, we recommend that a further legal opinion be obtained on the relationship of the companies and the liabilities to the owners of machines.”

At the end of March, following this letter, there was a conference between the two respondents and Mr Mann and Mr Purcell who was at that time in the employ of North Ash & Mann. Mr Mann told the respondents that he had been giving consideration to the affairs of the company and that there were a few things he wanted to discuss. He said he was concerned with the volume of business that the company had been doing and was doing, and that it was going to face quite a heavy tax assessment and tax situation at the end of the financial year. He said that there were methods of setting out the company's accounts whereby there could be a possible saving in tax. He stated that one course would be the formation of a company which would have the status of a public company for tax purposes. The respondents instructed Mr Mann to go further in his investigation and seek advice. At that conference Mr Mann estimated a profit in the company of approximately £200,000 for the year ended 30th June 1959. He told the respondents that if no dividends were declared then the company would be taxed on undistributed profits, but it seems that he also told



them that if dividends were declared they would be taxed on those dividends.

Before proceeding further with the chronology of events I would refer to some aspects of the conduct of the business and the keeping of the accounts. When a member of the public would purchase a machine he would execute the agreement for purchase and would pay the price before the delivery and siting of the machine. At the same time he would execute the operating agreement which contained the guarantee of annual returns. The company would then transfer to  
 10 the merchandising company the 10 percent of the purchase price agreed to be paid to it under the agreement to which I have earlier referred. By the terms of the operating agreement between the merchandising company and the machine owner the merchandising company undertook to pay to the owner 20 percent per annum return with the provision that any other profits or proceeds from the operation of the machines should be the absolute property of the merchandising company. The agreement stated that provision for the guarantee, as it was called, had been secured in the following manner:

20 "A sum equal to the annual return to be paid to the owner will be deposited in a guarantee fund which will be under the complete control of D. G. Thomson, & Co., Solicitors, Trust Building, 155 King Street, Sydney, and North Ash & Mann, Auditors, 17 Young Street, Sydney, who will act as trustees of this guarantee fund. An irrevocable bankers authority for payment of returns will be issued to the owner by the trustees which on presentation to the operator's bank will have the effect of these payments being automatically paid each month when due into the owner's account."

30 The amount of the guaranteed return was more than the amount received by the merchandising company from the company and it appears to have been the practice for the company to lend to the operating company either the whole or part of the amounts required to be paid into the so-called "Trust Account".

The directors received salaries as executives of the company and in addition by agreement between themselves borrowed money from the company. Likewise, loans were made to the third shareholder, Sydney Steen. These payments were entered in the respective loan accounts in the private ledger. At the time of the challenged transaction, that is to say, towards the end of June 1959, the following  
 40 amounts totalling £77,972/7/2 were owing by the respondents and Sydney Steen respectively to the company—Louis Steen £38,568/11/3, Joseph Steen £38,283/15/11 and Sydney Steen £1,120.

As I have said, it was agreed that Mr Mann and Mr Purcell should consult Mr Challoner about the tax problems which the respondents had been advised were looming. There followed two conferences with Mr Challoner at which various procedures were discussed. These procedures with one exception which was mentioned but not further

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pursued involved the disbursement by the company of moneys to the shareholders, but it is not altogether clear whether and how this was assumed to be a necessary part of any scheme adopted. The estimate of the net profit was £200,000 and the question was how the incidence of income tax in respect of this profit could be alleviated. The figure was selected as a result of the estimate made by Mr Mann and Mr Purcell, but it is not clear what relationship that tentative figure bore to the ultimate price of £200,000 which was selected as the sale price of the company's shares. The actual profit ultimately disclosed in the company's accounts was approximately £250,000, but at least £100,000 10 out of that figure arose from transactions in June after the conferences and when as a result of a special advertising campaign a large number of contracts were signed and purchase sums received from purchasers in respect of machines not delivered by 30th June, 1959. There is evidence that the figure of £200,000 as the sale price of the shares was ultimately chosen after the course to be taken had been decided. I find it difficult not to infer that this figure was selected at the early stage before the conferences with Mr Challoner and remained the figure which it had been determined would be received by the respondents and the third shareholder. 20

One scheme discussed was condemned by Mr Challoner on the ground that it would probably bring into operation s.260 of the Income Tax and Social Services Contribution Act. Another suggestion mentioned but not pursued was that the company be converted into a public company for tax purposes so that profits could remain undistributed without incurring undistributed profits tax. A third suggestion was the formation of a company which would be so constituted that it would be a public company for tax purposes and the sale to that company of all the issued shares in the company. Involved in such a procedure would be a loan by the company to the new company 30 of moneys in order to enable the new company to purchase all the shares of the company from the respondents and the third shareholder, Sydney Steen. When this scheme was suggested to Mr Challoner he examined s.148 of the Companies Act and informed those present at that second conference with him, namely Mr Purcell, Mr North Ash and Mr Dale, that the section provided for a monetary penalty but that this did not seem to affect the position so far as s.260 was concerned. Mr Purcell has given evidence that after that conference he had a conversation with Mr North Ash, and, it appears, as a result of that conversation, he did not inform the directors at his next 40 meeting with them of any other course than the one which involved a loan by the company to the new company intended to be formed. Mr Purcell says that he saw both directors in their offices and told them that he had just come that afternoon from a conference with Mr Challoner, Mr Dale and Mr North Ash. He said that he felt that they had solved the taxation problems that the company had and then outlined to them the arrangement:

"I told them that we were going to form this company in Canberra with the necessary shareholders, with the 25 shareholders. . . . I told them that if we formed this company and if we got these extra shareholders it would have the effect of making the company a public company for tax purposes. I said that being so the company would be taxed as a public company and that no longer would it be subject to Division 7 tax. . . .

10 I pointed out to them that they did not have to distribute a dividend, that if we did these things—formed this company—the profits that were made at the 30th June of that year would not be subject—we would not be forced to declare a dividend. I pointed out to them that seeing that they were—I told them they were going to sell their shares to the Canberra company and as a result of the sale of the shares then they would be in receipt of the purchase price personally. I explained to them how we would do this would be for International Vending Machines to make a loan to the new company, the holding company. The holding company would pay all or part of that money over to the Steens as purchase price for the shares and  
20 that they would in turn deposit that sum of money back into International Vending Machines. I told them that we would open bank accounts in Canberra so that this crossing of cheques or the several cheques that were drawn could all be done in the one spot and be clear from any other transactions that may be in the various bank accounts."

It was at that stage, according to Mr Purcell, that it was decided that the purchase price to be nominated in the arrangement should be £200,000.

30 This account given by Mr Purcell is substantially followed by the respondents in their evidence. There is no evidence to the contrary. The three witnesses all say that no mention was made of s.148 of the Companies Act or of the effect or the illegality of a loan by a company for the purpose of facilitating the purchase of its own shares. The respondents say that they had no idea that any breach of the Companies Act could be involved. Whether or not I should accept this evidence is a matter which I shall consider hereafter.

40 This conversation occurred early in June and between then and the final carrying out of the transaction between 22nd and 29th June a new company, A.M. Holdings Pty. Limited, was incorporated in the Australian Capital Territory. The subscribers to the memorandum were the respondents and they appointed themselves as the first directors of the new company. On 10th June the respondents as directors of the new company resolved that that company purchase 100 of the 102 ordinary shares held in the company by Louis Steen, Joseph Steen and Sydney Steen for the sum of £200,000, to be borne as follows—to Louis Steen in consideration of his sale to the new company of 45 ordinary shares in the company the sum of £90,000,

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the same in respect of Joseph Steen and to Sydney Steen in consideration of his sale to the new company of 10 ordinary shares in the company the sum of £20,000. The respondents were to hold the other two shares, one in the name of each of them respectively, as nominees for the new company.

On 21st June the new company allotted to each of the respondents 567 convertible preference shares and 224 ordinary shares and to Sydney Steen 126 convertible preference shares and 50 ordinary shares. The following day the new company in general meeting resolved to issue at par 1,250 redeemable preference shares of £1 each, and on the same day at an extraordinary general meeting the Secretary was instructed to issue 50 redeemable preference shares each to 25 named persons or companies. These steps appear from the minutes of A.M. Holdings Pty. Limited. The first record in the minutes of the company in respect of the carrying out of the transaction is in a minute of a directors' meeting held on 29th June 1959, but prior to that various steps had been taken. By a cheque drawn on an account of the company opened with the Australia and New Zealand Bank Limited, Canberra, and signed by the respondents the company paid £205,000 to A.M. Holdings Pty. Limited. This cheque was deposited in the account of A.M. Holdings Pty. Limited on 25th June. By cheques drawn on the same day, 22nd June 1959, and signed by the respondents, A.M. Holdings Pty. Limited paid to each of the respondents £90,000 and to Sydney Steen £20,000. These cheques were deposited in the respective accounts of the Steens on 25th June 1959. By cheques drawn on 24th June 1959 Louis Steen and Joseph Steen each paid to the company the sum of £90,000 and Sydney Steen paid to the company the sum of £20,000. These amounts were banked to the credit of the company on 25th June 1959. On 29th June the respondents applied for the issue to each of them of 22,500 convertible preference shares in A.M. Holdings Pty. Limited and Sydney Steen applied for the issue to him of 5,000 convertible preference shares. The moneys for these subscriptions were paid out of the loan accounts of the three Steens in the company. On the same day A.M. Holdings Pty. Limited applied for the issue to it of 50,000 ordinary shares of £1 each in the company, that application being accepted and the shares paid for.

The effect of these transactions was that the loan accounts with the company of the respondents and of the third shareholder were by the 30th June 1959 converted into credits which appear in the accounts of the company as at that date—Louis Steen £28,931/8/9, Joseph Steen £29,216/4/1 and Sydney Steen £13,880. It would appear that at or about the same time as these transactions were carried through the relationship between the various merchandising companies was re-organised. After the 30th June 1959 the respondents and the third shareholder continued to operate on their loan accounts with the result that by the end of the year 1959 they had

withdrawn from the company the whole of the credit balances which appeared in their loan accounts at 20th June 1959; in other words, they had each received from the company the balance of the moneys which had been paid to them by A.M. Holdings Pty. Limited and which had in turn been paid by them to the company. The respondents continued as directors of the company until May 1960 when they sold their shares in A.M. Holdings Pty. Limited to other interests for approximately £250,000.

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- The profit disclosed by the company for the year ended 30th June 1959 was £263,280/16/11. This profit with some minor adjustment was charged to company tax and the amount thereof was £98,958/2/-. The company tax on the company's profits for the following year ended 30th June 1960 was £139,726. In each year the profits assessed to tax included all amounts received by the company under contracts written by the end of the financial year in respect of which the purchase price had been received but in respect of which no machines had been delivered. From this purchase price was deducted the estimated outgoings which would be incurred in the earnings of these moneys.
- 20 The transaction which is challenged in these proceedings and in respect of which it is sought to make the respondents liable is the loan by the company to A.M. Holdings Pty. Limited of the sum of £200,000 which was used by A.M. Holdings Pty. Limited to purchase from the respondents and from Sydney Steen their respective shares in the company. The applicant alleges that this sum constituted financial assistance given by the company by means of loan for the purpose of and in connection with the purchase by A.M. Holdings Pty. Limited of shares in the company, namely the shares purchased by A.M. Holdings Pty. Limited from the respondents and Sydney
- 30 Steen. It is also alleged that that sum was advanced in contravention of the provisions of s.148 of the Companies Act 1936 and was illegal and is not recoverable by the company from A.M. Holdings Pty. Limited (whose name was changed in December 1959 to I.V.M. Holdings Pty. Limited). It is further alleged in the points of claim that the respondents were well aware that the sum of £200,000 was to be used by A.M. Holdings Pty. Limited for the purpose of acquiring from them and from Sydney Steen the said shares in the company and that the respondents as directors of the company knowingly and actively procured the said advance for this purpose. It is further
- 40 alleged that the sum of £200,000 was loaned solely for the benefit of the respondents and the said Sydney Steen and in the circumstances was not loaned for or as part of or in connection with any business of the company or for any of its purposes, and that such a loan could not have been for the benefit of the company, that it was procured by the respondents with the intent and for the purpose of reducing the indebtedness of themselves and the said Sydney Steen to the company and in order to establish themselves as substantial

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creditors of the company. It is lastly alleged that A.M. Holdings Pty. Limited was at all material times a company brought into existence by the respondents for the purpose (inter alia) of acting and that it did act in relation to the loan so as to cloak the fact that the respondents were at the material times the true principals in the matter and the fact that the said A.M. Holdings Pty. Limited was acting not on its own behalf but on behalf of the respondents.

These allegations are all denied and it is convenient for me to state that the last allegation is one which I do not think is supported by the evidence. I think that the transactions were real transactions 10 by the various parties and I do not think that I need consider this allegation further. As I have said, the respondents deny all the allegations. They say that there was no breach of s.148 of the Companies Act and that even if there was such a breach the respondents are not liable in respect thereof because their liability as directors is not an absolute one but only comes into existence if the directors have acted mala fide or with negligence. They say that no case of mala fides has been made out and no allegation of negligence has been made. It is submitted that the purpose of the arrangement was to benefit the company by allowing it to retain its profits for use in the business 20 without the penalty of additional tax and that thereby more money was available for the expansion of the company. They say that a further purpose was to co-ordinate under one control the group of merchandising companies whose operations were most important to the company and to put the company into a more convenient position to expand through the holding company into a fully public one quoted on the Stock Exchanges. It is also submitted that the transaction as a whole enabled the loan accounts to be paid off and relieved the problem of the company declaring a dividend which it would otherwise have had to do. It is further said that by the transaction which 30 must be looked at as a whole in all its phases the company was enabled to obtain a further subscription of £50,000 to its capital, that the transaction as a whole resulted in no change in the liquid position of the company at the time that it was carried out and that it was of benefit to the shareholders as such and as a group by freeing them from a liability to tax on distributed dividends without affecting the liquid position of the company at the time when the transaction was carried out.

It is next submitted on behalf of the respondents that even if there was a misfeasance or breach of trust within the language of 40 s.308 it is not one for which the respondents should be held liable and that there is a discretion under s.308 and that that discretion should be exercised in the respondents' favour. It is also submitted that the company suffered no loss or that if it did suffer loss the amount thereof is limited, first by deduction of the £50,000 contributed by the respondents and Sydney Steen through A.M. Holdings Pty. Limited to the capital of the company and next by the saving

of tax in the sum of £101,073/5/6, and further by the indeterminate amount of benefit to the company which flowed from the re-organisation of its affairs. It is lastly submitted on behalf of the respondents that if there is a misfeasance for breach of trust it is one in respect of which the respondents acted honestly and reasonably and that having regard to all the circumstances of the case they ought fairly to be excused pursuant to s.361 of the Companies Act.

From the above outline of the facts and from the summary of the various submissions which have been made I proceed to a consideration of the matters which have been argued and I shall refer to any further facts in the context in which it may be necessary to consider them.

**(1) Is there revealed any breach of s.148 of the Companies Act?**

It has been submitted to me on behalf of the respondents that there has been no breach of s.148 because the circumstances of this case fall within the proviso of paragraph (a) of sub-section (1) of that section. This proviso reads as follows:

“Provided that nothing in this section shall be taken to prohibit—(e) where the lending of money is part of the ordinary business of the company, the lending by a company of money in the ordinary course of its business; . . .”

The argument proceeds thus: (1) This company as part of its ordinary business was accustomed to lend money to associated merchandising companies in order to facilitate its own sales of vending machines and it was also accustomed to lend money to its shareholders. (2) This was a loan and was made in the course inter alia of facilitating a re-organisation of the relationship between the various associated companies. (3) Therefore, although it was not a loan in the ordinary course of its main business of selling vending machines, nevertheless it was a payment in the ordinary course of its business because it was an act in the course of its business to seek and carry out the re-organisation. Reliance is placed on the powers contained in paragraphs (k) (ss) (aaa) and (bbb) of the Objects Clause of the company’s memorandum of association.

In answer to the question, “But was it a loan in the ordinary course of its business”, Mr Moffitt for the respondents would rely upon the decision of Cozens-Hardy J. (as he then was) in re **H. H. Vivian and Co. Ltd.** (1900) 2 Ch. 654, to show that even a sale of part of a business may be in the ordinary course of the business as a whole, provided it is a sale within a power contained in the memorandum of association and that, if that be so, a loan in the course of its business may properly be described as one in the ordinary course of its business. I think that the decision relied upon is distinguishable. It may be that the sale of a branch of a business is the carrying on of the business as a whole in a proper and efficient manner, as the company in that case had covenanted to do by the covenant the alleged breach of which it was sought to restrain. That is far dif-

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ferent from saying that the sale of a part of the business is an act in the ordinary course of the business. It is true that Cozens-Hardy J. (at p.658) said that the company was at liberty so long as the undertaking was continued to deal with all assets not specifically charged in the ordinary and proper course of its business. However, I do not think that he intended by these words to go beyond the words of the covenant in that case and beyond holding that the sale of part of a business was consistent with conducting the business as a whole in a proper and efficient manner.

The words "in the ordinary course of its business" make it necessary initially to consider what is meant by "its business". Mr Moffitt has submitted that this does not mean "the ordinary business of the company" as used in the preceding clause, but means in effect any business which the company may pursuant to its objects from time to time perform. The latter would, of course, include the lending of money.

I do not agree that this is the true construction of s.148. I think that what is meant by the words "its business" is that business lastly referred to, namely "the ordinary business of the company". In this case the ordinary business of the company is the selling of vending machines. In the ordinary course of that business loans to merchandising companies would be made and therefore a loan of this kind would be made in the course of the company's business. Further, a loan without interest and without security to a company which at that stage was not associated with the lending company does not appear to me to be in the ordinary course of its business. Even if Mr Moffitt is correct in his submission that it would be in the course of the business of this company to lend money for the purposes of a re-organisation of the associated group, I do not think that such a loan could be regarded as one made in the ordinary course of the ordinary business of the company.

It is next submitted that before there can be a breach of s.148 by the company the company through its directors must have knowledge of the wrongfulness of the act which is done and that there is no evidence of such knowledge in the present case. To some extent this is bound up with the next matter which I propose to consider, but it appears to me that there is no scope for such a view in the words of s.148(1) and I do not think that this is altered by the fact that the company is guilty of an offence by sub-section (3). It follows therefore that in my view there has been a breach of s.148 and I proceed to consider the consequences:

**(2) Is the directors' liability in the circumstances of this case an absolute one?**

It has been submitted that the applicant has failed to prove that the respondents knew that the loan by the company to A.M. Holdings Pty. Limited was contrary to the provisions of s.148 and, further, that the respondents acted without negligence on competent



advice. I have already referred to the evidence of the respondents and of Mr Purcell in regard to the conversations which took place between them in which they all say there was no mention to the respondents of the view expressed by Mr Challoner that there would be an infringement of s.148. If the submission that this further element must be proved is a correct one and the onus of proving it lay upon the applicant I should hold that there is no evidence that the respondents knew that the loan would be in breach of s.148. On the other hand, if the true position were that the respondents

10 would be guilty of a misfeasance if they carried out the loan transaction unless they could show that they acted on competent advice and without knowledge of the provisions of s.148, then I would not be satisfied despite their evidence and that of Mr Purcell that they did not have this knowledge. I would not be prepared to accept their evidence or that of Mr Purcell who by the time of the transaction had entered the employment of the company and who has remained closely associated with them ever since.

I was not impressed with any of these witnesses. I do not think that the respondents showed frankness in their answering of questions in cross-examination. I was most unimpressed with some of the actions about which they were cross-examined as to credit, particularly the action of paying £50,000 into the company's accounts at the end of December 1959 so that it was there on 31st December, and then withdrawing it a few days later so that the whole transaction became a matter of book entries. I was most unimpressed with the sworn explanation given that it was probable that the company required the money and then found that it was not required. I have attempted to bear in mind throughout the hearing that this is not in any way a general inquiry into the way the business of the company

30 and the associated companies was conducted, but is a specific inquiry into one transaction or set of transactions. I have therefore attempted not to take into account in reaching my conclusion as to the credit to be given to the respondents' evidence any features of the general conduct of the business which have arisen incidentally in the course of the hearing but which if they had been issues in the proceedings might have been capable of further elaboration and explanation. Particularly have I attempted not to draw any inference in regard to these matters because of the view which I adopted when it was sought to cross-examine on the general conduct of the business that

40 this was not a subject matter relevant to the particular issues raised.

I have thought it correct to express my view on the credibility of these witnesses but on the view of the legal consequences which I accept it makes no difference whether or not the respondents actually knew that such a loan was contrary to s.148. This view depends upon a determination of the extent of the duties and liabilities to a company of its directors.

On the one hand Mr Bowen on behalf of the applicant has sub-

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mitted that directors are in the position of trustees and he has referred to a number of cases in which directors have been described as trustees—**Flitcroft's Case**, 21 Ch. D. 519; In Re **Anglo-French Co-operative Society Ex Parte Kelly**, 21 Ch. D. 492, and **Cullern v. London & Suburban General Permanent Building Society**, 25 Q.B.D. 485. Mr Bowen then submits that a payment by a trustee which is contrary to law will result in the trustee being liable for the amount so paid and that it is of no account that he acted bona fide and on proper legal advice. On the other hand, Mr Moffitt submits that it is misleading to refer to directors as being in the position of trustees. 10 He says that the statements in the cases upon which Mr Bowen has relied are a consequence of a failure to take account of the changed position of directors of companies after the passing of the early Companies Clauses Acts from 1862 onwards. On this approach a director is no longer liable, if he ever was liable, simply because he takes part in an act which is outside the power of the company; in each case the circumstances must be examined in order to see whether in the part he has taken the director has been guilty of some lack of good faith or some negligence for which he should be held responsible. 20

It seems to me that it serves no useful purpose to debate whether or not a director is in the position of a trustee. The number of occasions in which he has been so described in the authorities may be matched, I think, by an equal number of occasions when the Courts have gone to some pains to point out that he is not truly a trustee. Except to the extent to which any property of the company is vested in him he is not on the usual definition of a trustee properly described as one. However, that still leaves open the question whether his duties and obligations either wholly or in part are the same as those of a trustee. It seems to me that the duties of directors in 30 many instances differ from the duties of trustees; particularly is this difference noticeable in regard to the type of careful conduct which may be expected of a director compared with a trustee. A trustee in the ordinary way is obliged primarily to keep the trust property safe. However, a director of a company is a commercial man and any duty of his in regard to dealings with the property of the company on its behalf must be looked at in the light of his position in commerce. Therefore, I think it is true to say that the tests of prudence which have been applied by the Courts in the case of trustees are not the same tests as must be applied in the case of 40 directors of a company.

However, the question still remains whether any of the duties of a director and of a trustee are alike and more particularly in this case it falls to be determined whether a director of a company who disposes of property of the company in an ultra vires manner is liable in the same way as a trustee would be liable for disposing of trust property in a manner beyond the powers conferred on him by

the trust instrument. More particularly still, the question is this, does a director of a company who lends money of the company to another for the purpose of it being used in the purchase of the shares of the company, commit an act of misfeasance even though he was unaware of the provisions of s.148 of the Companies Act? In my view he does. The act is wrongful; the director knows the wrongful circumstances and the director in this regard is in the same position as a trustee who disposes of trust property in breach of the law or of the terms of the trust instrument. Although in each case  
 10 the obtaining of competent although incorrect advice may be a matter to be taken into account in excusing the trustee or director pursuant to s.85 of the Trustee Act or s.361 of the Companies Act, as the case may be, it does not affect the primary liability of the director or trustee who does an act with knowledge of the circumstances but in ignorance of the law.

It is true that in many matters directors are entitled to rely for advice and information on the officers of the company and on expert advisers. They are so entitled to rely in respect of many matters of fact. This is exemplified in the cases of **Dovey v. Corey**, 1901 A.C.  
 20 477, and in **Re Denham**, 25 Ch. D. 752. In both of those cases the question arose whether a director was liable to repay to the company moneys which had been paid out by way of dividends but which had in fact been paid out of capital. In neither of those cases did the director know that the challenged payments were being made out of capital; in other words, he did not know, and, it was held, could not reasonably have been expected to know the true facts which would reveal the transaction as an illegal one. In other cases where the position of directors has been considered, cases relied on by Mr Moffitt, particularly **Lagunas Nitrate Co. v. Lagunas Syndicate**,  
 30 (1899) 2 Ch. 392, there was no suggestion that the challenged act was one ultra vires the company—S.6. at pp.418-422. I do not think that it is safe to rely on passages from cases dealing with the bona fides or the negligence of directors without any suggestion of ultra vires in a case where the challenged transaction is an illegal one.

It seems to me that the position is very different if the director is aware of the facts but does not know the legal consequences of those facts. Can he then say—I am guilty of no misfeasance because I relied on expert advisers to advise me on the law? I do not think that he can. The distinction appears from a comparison of the cases  
 40 upon which Mr Moffitt has relied, particularly in relation to the payment of dividends out of capital, with cases where directors have been held responsible for acts beyond power even though they acted bona fide. The comparison is a close one in those cases where the challenged act was itself the payment of dividends out of capital and where the directors knowing that the payments were out of capital nevertheless thought that they had power to make those payments. A good example is in **re Sharpe** (1892) 1 Ch. 154. See also the

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unqualified statement of the liability of directors for an ultra vires act in **Tongkha Compound N/L. v. Meagher**, 83 C.L.R. 489 at 504 per Fullagar J. A particularly clear example of the distinction is provided, in my view, by the case of **Hirsche v. Sims**, 1894 A.C. 654. That was a case concerned with the issue of shares at a discount. It was argued on behalf of the directors that the evidence showed that the contract entered into between the directors and one Oates was entered into in good faith and it was held by the Judicial Committee that the directors bona fide agreed to the issue of the shares at a discount; nevertheless, it was held that the directors were answerable 10 to the company for the discount allowed—see p.665. It seems to me that this is a clear and binding authority that good faith will not excuse a director who has acted ultra vires the company. See also in re **Faure Electric Accumulator Company**, 40 Ch.D. 141, a case of an ultra vires act where the directors acted in good faith and on competent legal advice; and **Young v. Naval Military & Civil Service Cooperative Society of South Africa**, (1905) 1 K.B. 687.

**(3) Is this liability of the directors to repay affected by the terms of s.308?**

Reliance has been placed upon the language of s.308 in support 20 of the submission that an order will not be made under that section simply on a finding of misfeasance, but that there is a discretion which quite apart from s. 361 should be exercised to excuse a director from misfeasance where the circumstances warrant it. It has further been submitted that the circumstances of this case warrant such an exercise of discretion. That there is a discretion under s.308 appears to be established, at least in regard to the amount which may be ordered to be repaid, by the decision of Maugham J. (as he then was) in re **Home & Colonial Insurance Co. Limited** (1930) 1 Ch. 102 at 131. The words of the section itself once it is assumed, as has now been 30 established, that it was not intended to extend any liability of directors beyond their liability under the general law, would seem to support such a conclusion. The Court is given power to examine into the conduct of the director and may compel him to repay or restore the money or property “or any part thereof”.

I am therefore invited by Mr Moffitt to take into account those various factors which I have earlier set out as showing that the directors acted bona fide and without negligence and that in the circumstances they should not be made liable or at any rate should not be made wholly liable because they acted on mistaken advice as to the law. 40 I do not think that in the circumstances of this case, assuming I have a direction, I should exercise it in their favour. I take this view for two main reasons. First, it would seem to me that if the directors ask that a discretion be exercised in their favour to displace a primary legal obligation, then they must justify by proof of their conduct in the matter. A contrary view would throw an intolerable burden on an applicant liquidator who would be required to prove not merely a

that the directors in the particular case ought, in addition to their legal right to recover but some indeterminate facts which would show legal liability, to be held liable under the section. It must be borne in mind that these proceedings might, and in the ordinary case would, if it had not been for the agreement that I deal with this dispute under s.308, have been conducted in the course of an ordinary equity suit. In that event s.308 would be irrelevant. It is therefore my view that the directors are obliged to show some reason why as a result of the inquiry into their conduct pursuant to the section they should  
10 be relieved of the legal liability.

A considerable body of evidence has been produced in regard to the circumstances of this transaction and the alleged benefit of it as a whole to the company. I have referred to the salient features of it in my review of the facts. However, it seems to me that in this connection I must bear in mind the fact that there is no evidence from the directors that they considered prior to the disbursement of these moneys whether they could with safety be disbursed either as dividends or as loans from the company to another company which had no substantial assets. Particularly is this so when the directors had  
20 been advised to obtain legal advice on any possible liability of the company in respect of guaranteed returns to "investors". The company, as appears from the invitation to existing machine owners made on 11th June 1959, on the face of it, offered a guarantee to purchasers of an annual return of 20 percent. They were advised by their auditors to seek legal advice in regard to the situation which had arisen even prior to this June offer. They did not do so and the reasons why they did not do so was that the directors regarded both the merchandising company and the company itself as one group and saw no need to take legal advice. This may be accepted, but when it is coupled with  
30 the fact that the directors took no steps to set aside any fund to meet such a liability, whether it was a legal liability or not, and when the directors disbursed without security to a company which had no separate assets a very large sum of money, a sum which exceeded by some £50,000 the amount of profit which would have been distributable after company tax, it does not seem to me that an examination of their conduct pursuant to the language of s.308 assists them.

My second reason is that the directors themselves have in this case obtained the benefit of the moneys which were disbursed. They have obtained that benefit because the moneys were paid to them  
40 (and to the third shareholder in a small amount) on the purchase of their shares in the company. If the transaction is merely an ultra vires transaction then the company can seek to recover the moneys from the directors as persons who have received moneys of the company on an ultra vires transaction otherwise than as purchasers in good faith and without notice. In other words, the company could trace the moneys into the hands of these respondents—**Sinclair v. Brougham**, 1914 A.C. 398. The only reason why the company may not be able

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to trace the moneys in this manner is because the loan was illegal under s.148 and therefore no action will lie for recovery of it, nor would the tracing of the money in equity be permitted—see **Dressy Frocks Pty. Limited v. Bock**, 51 S.R. 390. It would be extraordinary if the illegal act of the directors in disbursing these moneys could itself create their immunity from liability.

I should mention at this stage that Mr Moffitt has submitted that the question whether or not the directors should have retained moneys to meet possible calls under the guarantees is not properly raised in these proceedings. I agree that it is not raised as a specific head of misfeasance. However, I think it has to be taken into account when inquiring into the conduct of the directors. It would seem to me that the first step in seeking a way in which they might be relieved of liability under s.308 or, indeed, for that matter, under s.361, would be a proof that the moneys might not only have been legally distributed as dividends but might also have been properly distributed in a business sense. The fact is that when account is taken of company tax the moneys could not have been wholly distributed in law, and on the question whether it was prudent to distribute them it would seem that the directors gave no attention whatsoever to this aspect which was their special concern. 10

#### (4) **Lack of Bona Fides.**

In view of the conclusions which I have reached in relation to s.148 it is not necessary for me to consider whether the act of the directors in lending this money was an act wholly in their own interests and not in the interests of the company as a whole. I do not think that I should embark on a detailed examination of the matters which have been relied upon by the respondents to justify the course taken.

There is much to be said for the view that the directors were entitled to look to the interests of shareholders as a body and so to arrange the affairs of the company as to reduce the liability of the company and of its shareholders to tax. Then, if it was in the interests of shareholders as a body the validity of the transaction would not be affected by the fact that the principal shareholders were the directors themselves. However, it seems to me that an inquiry into the conduct of these directors in this transaction upon the assumption that there has been no breach of s.148 is a profitless inquiry, and I cannot separate in my mind in considering the transaction the primary fact that the company lent £200,000 without security to another company whose only asset in effect would be the shares in the company itself. In other words, the case is a classic illustration of the mischief which s.148 seeks to prevent. It is not to the point to say that the moneys might have been distributed as dividends. I am not satisfied that they could have been so distributed on the evidence before me; but that is not the primary issue. Whether or not the directors ought to have adopted the course which they did adopt is one which in my opinion has to be considered in the light of the 40

mischief which s.148 aims to prevent, and that being so I think that it is proper not to make any finding separate from the main ground which I have found against the respondents.

Before proceeding to the question of the amount of loss I should mention one further argument which has been presented on behalf of the applicant, namely that the act of the directors was void because they voted in respect of a matter in which they were interested. It seems to me that this of itself could not give the liquidator the right to recover the moneys the subject of the vote, at any rate, unless it were established that the company was not solvent at the time. This is an act which could have been ratified by the company in general meeting and it would be unreal not to take regard of the fact that the great preponderance of shares in the company were owned by the directors themselves.

**(5) What is the extent of the loss?**

It appears to me that the extent of the loss in this case is £150,000. Mr Bowen has submitted that the loss is the whole sum of £200,000, but I think that although this was the amount of the loan for the purpose of purchase by A.M. Holdings Pty. Limited of shares in the company, nevertheless the transactions accompanying that loan must be regarded, and upon this approach it is found that £50,000 of that money came back into the company by way of subscription for shares in the company by A.M. Holdings Pty. Limited. Admittedly the respondents and the third shareholder subscribed for and obtained 50,000 £1 shares in A.M. Holdings Pty. Limited, but in considering the loss to the company I do not think that this is a significant fact. It is also true that the liability of the company was increased by £50,000 in that it had a shareholder to whom it would ultimately be liable for repayment of capital in that amount. However, this company is quite insolvent and it makes no difference so far as the return of capital to shareholders is concerned whether the capital is £102 or £50,102. The £50,000 has remained in the company for such benefit to creditors as might be obtainable from it. Therefore I do not think that it ought to be included in the amount of the loss.

Mr Moffitt has submitted, as I have already indicated, that the company has suffered no loss or that its loss is limited to approximately £48,000. This is based on a claim that the amounts of tax saved by the transaction ought to be deducted because if the money had remained undistributed in a private company undistributed profits tax would have been incurred. It is therefore claimed that the difference between the tax as of a public company and the tax as of a private company with profits undistributed should be deducted in computing the loss, and it is claimed that this should be done in respect of the tax for the year ended 30th June 1960 as well as for the year ended 30th June 1959. I can see no reason whatsoever why tax saving in respect of the year ended 30th June 1960 should be taken into account merely because the respondents remained directors of the company

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over that year. I can appreciate the argument why tax saving for the year ended 30th June 1959 should be taken into account, but I am unable to accept that argument. It presupposes that there were only two courses open to the company, namely to make the illegal loan or to pay the additional taxation. That is not so. There were other courses open which would have resulted in the company being entitled to the status of a public company for tax purposes without any illegal loan being made. Thus, the company itself could have had its shareholding widened so that its shareholding was on the same basis as the shareholding in the newly formed company. It is not sufficient in my 10 view to say in answer to this that the directors were not aware of the other courses which were open. On this question of loss the objective chain of events and the relationship between the various acts of the company and of the parties must be considered. There is no such relationship between the illegal loan and a possible saving of tax thereby that it can be said that the result of the illegal loan was a saving of tax.

(6) **Whether the respondents are entitled to any relief under s.361.**

In my view the respondents are not entitled to any such relief. Admittedly it has been said that the section should not be applied 20 narrowly—in *re Alsop* (1914) 1 Ch. 1 at 11-12—and I hope that in the view which I express I do not apply it narrowly. However, it seems to me that although the Court may have jurisdiction to relieve directors from liability where they have received a personal benefit (and I think that Mr Moffitt is correct in his submission that **Montgomerie's Brewery Company v. Blythe** 37 V.L.R. 175 cannot properly be regarded as an authority to the contrary), nevertheless the fact that the benefit from the transaction has to the extent of the loss gone to the guilty directors is a circumstance which makes it very difficult indeed to exercise any discretion in their favour. See **Barry v. Staines** 30 **Lioneleum Co.** 1924 Ch. 227, where the view was expressed that the Court will in general decline to relieve a director from liability to repay moneys where he himself has received the benefit of them in the absence of evidence as to the wishes of the creditors. It seems to me that this is a principle which is in accordance with common sense. I have already in another connection pointed out that if the transaction is not an illegal one then the directors could be made liable not as directors but merely as recipients of the money which can be traced into their hands. This only becomes impossible if the illegality prevents tracing, and I do not see how directors could be relieved from liability 40 under s.361 when it is their own illegal act which prevents the company from recovering the money from them in their capacity as mere recipients thereof into whose hands the moneys can be traced.

My conclusion, therefore, is that the respondents are jointly and severally liable to repay to the company the money the subject of the loan to the extent of the company's loss, namely £150,000, with interest from 25th June 1959 to date of payment at the rate of 5



percent per annum. I order the respondents to pay the applicant's costs of this application.

I certify that this and the thirty five preceding pages are a true copy of the reasons for judgment herein of His Honor, Mr Justice Jacobs.

P. F. Trevorah, Associate.

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**Order of His Honour Mr. Justice Jacobs.**

Wednesday the twentieth day of December One Thousand nine hundred and sixty-one.

Order of  
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Mr Justice  
Jacobs.  
20th Dec., 1961.

UPON APPLICATION made the twenty-seventh, twenty-eighth, twenty-ninth and thirtieth days of November and the fifth, sixth, seventh, eleventh, twelfth, thirteenth and fourteenth days of December One thousand nine hundred and sixty-one by Counsel on behalf of Charles Allen Law the liquidator of the abovenamed company in pursuance of Summons filed herein on the Seventeenth day of May One thousand nine hundred and sixty-one WHEREUPON AND UPON HEARING READ the Points of Claim dated the fifth day of June 10 last filed on behalf of the Applicant and the Points of Defense dated the eighth day of November last and filed on behalf of the Respondents Louis Steen and Joseph Steen AND UPON HEARING the oral evidence of Peter Robert Beveridge Farrell, Ada Muriel Bennett, Joan Lucy Delaney and of the Applicant called on behalf of the Applicant and of Neville Edward Challoner, Joseph Steen, Louis Steen, Brian Gerald Purcell and Jack Edward Whaland called on behalf of the Respondents AND UPON READING AND EXAMINING the exhibits put in evidence on behalf of the Applicant and marked with the letters "A" to "Z" inclusive and "AA" to "AE" inclusive and the 20 exhibits put in evidence on behalf of the Respondents and marked with the figures 1 to 22 inclusive AND UPON HEARING what was alleged by Mr. Bowen of Queen's Counsel with whom was Mr. Ellicott of Counsel for the Applicant and by Mr. Moffitt of Queen's Counsel with whom was Mr. Officer of Counsel for the Respondents I DID ORDER that this application should stand for judgment AND the same standing in the paper this day for Judgment accordingly I DO ORDER AND DECLARE that the said JOSEPH STEEN and LOUIS STEEN are jointly and severally liable to repay to the abovenamed Company the sum of One hundred and fifty thousand pounds 30 (£150,000) with interest from the twenty-fifth day of June, One thousand nine hundred and fifty nine to the date of payment AND I DO FURTHER ORDER that it be referred to the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of the Applicant of this application and that such costs when so taxed and certified as aforesaid be paid by the Respondents to the Applicant or his Solicitors within fourteen (14) days after service upon the Respondents or their Solicitor of an office copy of the certificate of such taxation AND I DO FURTHER ORDER that the parties are to be at liberty 40 to apply as they may be advised.

(sgd) K. S. Jacobs  
JUDGE.

**Order of His Honour Mr. Justice Jacobs Granting Final Leave to  
Appeal to Her Majesty in Counsel.**

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

THURSDAY the Eighteenth day of October One thousand nine hundred and sixty-two.

—  
Order of  
His Honour  
Mr. Justice  
Jacobs.

18th Oct., 1962.

UPON MOTION this day made before the Honourable Kenneth Sydney Jacobs a Judge of the Supreme Court sitting in Equity by Counsel on behalf of the Respondents Louis Steen and Joseph Steen in pursuance of Notice of Motion filed herein the twenty-ninth day of August last WHEREUPON AND UPON HEARING READ the  
10 said Notice of Motion and the Certificate of the Deputy Registrar in Equity of due compliance with the Order made herein the eighteenth day of April last filed herein AND UPON HEARING what was alleged by Mr. Officer of Counsel for the Respondents and by Mr. Ellicott of Counsel for the Applicant THIS COURT DOTH GRANT to the Respondents final leave to appeal to Her Majesty in Her Majesty's Privy Council from the Order made herein the twentieth day of December last AND THIS COURT DOTH ORDER that the sum of  
20 Twenty-five pounds (£25) deposited in Court by the Respondents pursuant to the said Order of the eighteenth day of April last as security for and towards the costs of the preparation of the Transcript Record on appeal be paid out of Court to the Respondents AND all parties are to be at liberty to apply as they may be advised.

PASSED this twenty-first day of February, 1963.

C.D.I.  
ENTERED same day  
A.N.

(Sgd.) C. D. Irwin

DEPUTY REGISTRAR IN EQUITY.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

**No. 9**

**Certificate of Master in Equity of the Supreme Court of New South  
Wales Verifying the Transcript Record.**

No. 9  
Certificate of  
Master in Equity  
Verifying  
Transcript  
May, 1963

I, EDWARD NAASSON DAWES of the City of Sydney in the State of New South Wales Commonwealth of Australia Master in Equity of the Supreme Court of the said State do hereby certify that the numbered sheets hereunto annexed and contained in pages numbered one to three hundred and eighty-one inclusive contain a true copy of all the documents relevant to the Appeal by the Appellants Louis Steen and Joseph Steen to Her Majesty in Her Majesty's Privy Council 10 from the Order made in proceedings instituted by Summons No. 245 of 1961 by the said Supreme Court in its Equitable Jurisdiction on the Twentieth day of December One thousand nine hundred and sixty-one so far as the same have relation to the matters of the said Appeal together with the reasons for the said Order given by The Honourable Kenneth Sydney Jacobs a Judge of the said Supreme Court sitting in Equity and that the sheets hereunto annexed and contained in pages to contain an Index of all the papers documents and exhibits in the said suit included in the annexed Transcript Record and of all the papers documents and exhibits in the said suit not repro- 20 duced in the annexed Transcript Record which true copy and Index are remitted to the Privy Council pursuant to the Order of His Majesty in Council of the Second day of May in the year of our Lord one thousand nine hundred and twenty-five.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court in its Equitable Jurisdiction to be affixed this day of May in the year of our Lord One thousand nine hundred and sixty-three. 30

E. N. DAWES (L.S.)  
Master in Equity of the Supreme Court  
of New South Wales

**No. 10**

**Certificate of Chief Justice**

I the Honourable Leslie James Herron Chief Justice of the Supreme Court of New South Wales do HEREBY CERTIFY that Edward Naasson Dawes who has signed the Certificate above written is the Master in Equity of the said Supreme Court and that he has the custody of the records of the said Supreme Court in its Equitable Jurisdiction.

*In the  
Supreme Court  
of New South  
Wales in its  
Equitable  
Jurisdiction.*

—  
No. 10  
Certificate of  
Chief Justice  
—

10

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court to be affixed this day of  
in the year of our Lord One thousand nine hundred and sixty-three.

Chief Justice of the Supreme  
Court of New South Wales

Exhibit A.

—  
 Letter from  
 Respondent's  
 Solicitor  
 to Applicant's  
 Solicitors.

14th June, 1961.

## EXHIBIT A

**Letter from Respondents' Solicitor to Applicant's Solicitors**

14th June, 1961.

Messrs. Aitken &amp; Pluck,

Solicitors,  
 14 Spring Street,  
 SYDNEY

Dear Sirs,

**Re: International Vending Machines Pty. Limited  
 (In Liquidation)**

10

After the Summons in this matter dated the 17th May was served and before it came before the Court on the 29th May there was some indication that the Points of Claim might be ready by the 25th of May. On the 25th it was intimated that they should be ready by the 29th, on which date Wednesday the 31st was said to be the expected date.

Although on the 29th on behalf of my clients it was agreed that we would co-operate in having an early hearing, in fact the Points of Claim were not received until the 5th instant.

We also sought your co-operation in access being procured to the 20 records as to the Liquidation matter from the Commonwealth Crown Solicitor. The latter has promised to consider our request, but so far we have not heard his decision, and hope your client would use any influence he has to procure early access for us to such documents.

The Points of Claim have now been examined by Counsel, who have advised that they do not, with respect, advance the matter much beyond the Summons and do not put my clients in a position where the real preparation of their case can be undertaken.

I therefore request that with regard to the numbered paragraphs of Points of Claim the following matters receive your early attention 30 and advice to me:—

1. (a) What are the other Companies referred to.
- (b) What are the facts and circumstances from which it is alleged that the business of the Company was carried on in conjunction with such other Companies.
3. What times other than during the period from 1st July 1958 to 12th August 1959 are said to be material.
7. What are the times after the 9th of June 1959 said to be material.
8. (a) Is it alleged the Agreement referred to was written or 40 oral, or partly one and partly the other.
- (b) If written or partly written, identify the documents and where may they be inspected.
- (c) If wholly or partly oral, where, when and between what persons is it alleged such Agreement or partial Agreement was reached.

9. (a) Is it alleged the Agreement referred to was written or oral, or partly one and partly the other.  
 (b) If written or partly written, identify the documents, and where may they be inspected.  
 (c) If wholly or partly oral, where, when and between what persons is it alleged such Agreement or partial Agreement was reached.
10. (a) Is it alleged the Agreement referred to was written or oral, or partly one and partly the other.  
 (b) If written or partly written, identify the documents, and where may they be inspected.  
 (c) If wholly or partly oral, where, when and between what persons is it alleged such Agreement or partial Agreement was reached.
11. (a) Was the approval alleged recorded in the Minutes. If so, identify the Minute, and where may it be inspected.  
 (b) If such approval was not recorded in the Minutes what are the facts and circumstances from which it is alleged the said Directors did approve, and did so on or about the 12th of June 1959.
12. (a) Is the said payment recorded as a loan in the Minutes. If so, identify the Minute and where may it be inspected.  
 (b) What are the facts and circumstances from which it is alleged that the loan was without interest and without security.
13. Is the decision therein referred to recorded in the Minutes. If so, identify the Minute, and where may it be inspected.
14. (a) Were the payments therein referred to made by cheque or in cash. If by cheque, identify the cheques.  
 (b) What are the facts and circumstances from which it is alleged that the payments were made in full satisfaction of the amounts due to the persons named in respect of the share transfers.
15. (a) Is it alleged that the matters set forth in this paragraph were ultra vires the Company, and if so, in what respect.  
 (b) Is it alleged that the matters set forth in this paragraph were in any, and if so what respect wrongful on the part of any, and if so what persons, and what are the facts and circumstances making such matters wrongful.
16. What are the facts and circumstances from it is alleged the credits were used otherwise than for the benefit of the Company, and state the dates and amounts of withdrawals by each respectively of the three persons named.
18. (a) As at the 25th of June 1959 what persons had paid or partly paid for machines but had not been supplied with machines. How much had been so paid by each

Exhibit A.  
 (Continued)

—  
 Letter from  
 Respondent's  
 Solicitor  
 to Applicant's  
 Solicitors.

—  
 14th June, 1961.

Exhibit A.  
(Continued)

—  
Letter from  
Respondent's  
Solicitor  
to Applicant's  
Solicitors.  
—

14th June, 1961.

such person, and specify which, if any, of such persons had or thereafter completed payments but were never supplied with machines.

- (b) Give particulars of the Agreements referred to, and if in writing identify such documents, and where may they be inspected.
21. In respect of the awareness and the knowingly and actively procuring referred to, are there any facts and circumstances relied upon other than those specified in the Points of Claim, and if so, what are such other facts and 10 circumstances.
  22. When reference is made to "circumstances", are there any circumstances relied on other than those specified in the Points of Claim; and if so, what are they.
  23. In respect of the procuring with intent and for purposes alleged in this paragraph are there any facts and circumstances relied upon other than those specified in the Points of Claim; and if so, what are they.
  24. It appears that this paragraph may contain a serious allegation in general and somewhat non legal language. It is 20 not clear what is alleged and it is suggested that this paragraph be reframed as unless clarified my clients would certainly seek a direction from the Judge.
  25. It is requested that this be reframed so as to specify precise charges as to —
    - (a) Misapplications of the Company property
    - (b) Misfeasance as to the Company's affairs.
    - (c) Negligence as to the Company's affairs.
    - (d) Breaches of trust indicating the Trust property.
 and to indicate as to each class of alleged wrongdoing 30 what precise losses are alleged to have flowed and in what manner from such alleged wrongdoing, and what persons are alleged to have been affected, and to what extent by each act of alleged wrongdoing.

I feel sure you will appreciate that with regard to such a claim as your client is making it is necessary before detailed preparation on our side can commence that my clients be informed with precision, clarity and detail of the facts alleged and the charges levelled against them.

40

Yours faithfully,

N. C. LANGHAM DALE.



**Letter from Applicant's Solicitors to Respondents' Solicitor**

AITKEN &amp; PLUCK

Yorkshire House  
14 Spring Street  
SYDNEY  
28th June 1961

N. C. Langham Dale Esq.  
Solicitor  
33 Macquarie Place  
SYDNEY

Exhibit A  
(Continued)  
—  
Letter from  
Applicant's  
Solicitor  
to Respondent's  
Solicitor  
—  
28th June, 1961

10 Dear Sir, **Re: International Vending Machines Pty.  
Limited (In Liquidation) v. Steens & anor**

We refer to your letter of 14th instant requesting particulars in this matter.

Our client does not agree that you are entitled to these particulars at this stage, but in order that the matter may be expedited is prepared to give them. The answers are given to the best of the Liquidator's knowledge at this stage and he reserves the right, as he must, to add to or amend the same at a later stage.

Our client's answers are as follows:—

- 20 1. (a) Automatic Merchandising (N.S.W.) Pty. Limited  
Automatic Merchandising (Q'ld.) Pty. Limited  
Automatic Merchandising (Vic.) Pty. Limited  
Automatic Merchandising (Tas.) Pty. Limited  
International Automatic Merchandising (S.Aust.) Pty.  
Limited
- (b) The manner in which the businesses of the Company and these other Companies were conducted including (inter alia) the fact that a substantial part of the expenditure of the other Companies was borne by the Company and the
- 30 fact that persons who purchased machines from the Company simultaneously entered into operating agreements with one or other of these other Companies.
3. Up till 3rd June 1960.  
7. Up till 3rd June 1960.  
8. 9 & 10 The Agreements are evidenced by a minute of a meeting of Directors of I.V.M. Holdings Pty. Limited held on 10th June 1959 and this minute can be inspected by arrangement. Transfers of the shares were, it is understood, also signed but these at present are located in Canberra.
- 40 11. (a) Yes, the minute may be inspected by arrangement at this office.  
(b) Doesn't arise.
12. (a) No.  
(b) No security was ever given to the Company and no interest was ever received by the Company and there is no record in the Company's books of any arrangement to pay interest or give security.
13. No.

Exhibit A.  
 (Continued)  
 —  
 Letter from  
 Applicant's  
 Solicitor  
 to Respondent's  
 Solicitor.  
 —  
 28th June, 1961.

14. (a) By cheques drawn on the account of I.V.M. Holdings Pty. Limited on its account with Australian and New Zealand Bank Limited at its Canberra Branch.
- (b) The cheques drawn were the exact amount of the consideration payable for the shares in International Vending Machines Pty. Limited and there was no other transaction to which the said consideration could relate. If the amounts were not so paid it would mean that Louis Steen, Joseph Steen and Sydney Steen owe I.V.M. Holdings Pty. Limited £200,000 in respect of these payments and this is not at present alleged. 10
15. (a) This may be alleged that the answer is dependent in part on the form of the Memorandum of Association of the Company but a copy thereof is not at present available to the Liquidator. It may be inspected at the Registrar General's Office.
- (b) Yes on the part of the Directors, Louis Steen and Joseph Steen. The loans were made to themselves for their own private purposes and to themselves and Sydney Steen without interest and without security, and not in connection with or for the purposes of any business of the 20 Company.

16. The accounts of Louis Steen, Joseph Steen and Sydney Steen with the company are available for inspection by arrangement and the manner in which the amounts withdrawn were utilized is well within your client's own knowledge and should be ascertainable from records in your client's possession or under their control.

18. (a) and (b) The Liquidator regards this request as oppressive. However, to assist your clients in their enquiries you are referred to the affidavit of Peter Robert Beveridge Farrell sworn on 24th March 1961 and tendered in the winding up proceedings. Your clients may also inspect by arrangement, the records of the Company from which the information given in that affidavit is taken and any other records of the Company relevant to the matter. 30

21. 22. 23. The Liquidator has endeavoured to set out in the Points of Claim the material allegations of fact upon which he relies. It will of course be understood that he does not set out the evidentiary facts on which he will rely to establish these material allegations of fact. These are matters of evidence.

24. We do not agree with your comments. The allegation is that the Company I.V.M. Holdings Pty. Limited was the agent of Louis Steen and Joseph Steen in the transactions. The principle which the Liquidator seeks to have applied is that discussed in (inter alia) **Sun Newspapers v. Federal Commissioner of Taxation** 61 C.L.R. 337 and 344-5. In order to support this allegation reliance will be placed on the matters alleged in paragraphs 1 to 23 of the Points of Claim and the general circumstances surrounding the formation of the Company I.V.M. Holdings Pty. Limited the reasons for its formation by your 40

clients and the business operations which it was intended to and did in fact carry on prior to 30th June 1959.

25. The Liquidator alleges that by reason of the matters alleged in paragraphs 1 to 24 or alternatively 1 to 23 the respondents have been guilty of each of the matters (a) to (d) in the particulars. It is the Liquidator's view that this gives your clients sufficient particulars of his claims. However, but without limiting himself in any way as to the precise nature of the alleged misapplication, misfeasance, negligence and breach of trust, the Liquidator is prepared to state at this stage that he will allege that the respondents were guilty of each by reason of each of the following matters:—

- (i) the loan was made in contravention of s.148 of the Companies Act and is irrecoverable.
- (ii) the loan was made in contravention of s.148 of the Companies Act.
- (iii) the loan was one which was not and could not conceivably have been for the benefit of the Company.
- (iv) the loan was one which was ultra vires the Company.
- (v) the loan was one which was made solely for the benefit of the respondents and Sydney Steen and not for the benefit of the Company.
- (vi) the loan was made to I.V.M. Holdings Pty. Limited as agents for the respondents and was in fact and in law made to them personally.

It is alleged that on any one of the grounds (i) to (vi) above, having regard to the part played by the respondents in the making of the loan and the transfer of the shares and the receipt of moneys as set forth in paragraphs 1 to 24 of the Points of Claim, the Court would be justified in holding the respondents guilty of misapplication, misfeasance, negligence or breach of trust or any one of them.

It is further alleged that the wrongful acts have caused a loss of £200,000 to the Company and that this amount should be repaid by the respondents to the Company.

We also wish to confirm that you may inspect such books and records of the Company covering the period from the date of its incorporation to 3rd June 1960 as you may nominate. These books and records will be made available at times which are mutually convenient preferably at this office, but, if this is not possible due to the size and number of the documents, at the Company's premises.

We suggest that you inform us as soon as possible what records within this period mentioned you wish to examine and we will take immediate steps to make them available.

Now that the particulars have been given, we assume that your clients will file and serve their Points of Defence without further delay so that the issues between the parties may be clarified before the matter comes on for further mention on 31st July next.

Yours faithfully,  
**AITKEN & PLUCK**  
 Per: L. S. Aitken

Exhibit A  
 (Continued)

—  
 Letter from  
 Applicant's  
 Solicitor  
 to Respondent's  
 Solicitor

—  
 28th June, 1961

Exhibit C.  
—  
Extracts from  
Minute Book of  
International  
Vending  
Machines  
Pty. Limited.  
—

**EXHIBIT C**

**Extracts from Minute Book of International Vending Machines Pty. Limited**

**International Vending Machines Co. Pty. Ltd.**

**Minutes of First Meeting of Directors held at the Registered Office of the Company, Room 504, 5th Floor, Caltex House, 167-187 Kent Street, Sydney, on 1st July 1958 at 11 a.m.**

Present — Louis Steen Joseph Steen

**INCORPORATION**—The Chairman reported that the Company was duly incorporated on 12th day of June 1958, the Certificate 10 of Incorporation being numbered 717298.

**REGISTERED OFFICE**—Resolved that the registered office of the Company be at Room 504, 5th Floor, Caltex House, 167-187 Kent Street, Sydney.

**SECRETARY**—Resolved that Kay Steen be appointed Secretary of the Company.

**PUBLIC OFFICER**—Resolved that Joseph Steen be appointed Public Officer of the Company for the purpose of the Income Tax Acts and such other purposes as require appointment of a Public Officer.

**AUDITORS**—Resolved that Messrs. North Ash & Mann of 15-17 Young Street, Sydney, be appointed Auditors of the Company until the first Annual Meeting at a remuneration to be agreed upon between themselves and the Directors.

**SOLICITORS**—Resolved that Messrs. D. G. Thomson & Co. of 155 King Street, Sydney, be appointed Solicitors of the Company.

**BANK**—Resolved that an account be opened with the Australia and New Zealand Bank Ltd., 242 William Street, Sydney, in the name of the Company, and that cheques, bills etc. be signed separately by all directors and be endorsed separately by all directors.

**COMMON SEAL**—Resolved that the Common Seal now produced, an imprint of which is placed in the margin of these minutes, be hereby adopted as the Common Seal of the Company.

**QUORUM OF MEETING**—Resolved that for the purpose of Directors' Meetings the Quorum be two directors qualified to act.

**APPOINTMENT OF DIRECTORS**—The Secretary produced a statement dated this day signed by subscribers to the Memorandum appointing the following persons as Directors of the Company:

Louis Steen Joseph Steen

**APPLICATION FOR SHARES**—The following applications for shares 40 were received:

Louis Steen 45 Ordinary Shares of £1 each  
Joseph Steen 45 Ordinary Shares of £1 each  
Sydney Steen 10 Ordinary Shares of £1 each

It was resolved that the above applications be received and that the following fully paid £1 ordinary shares be issued:

Louis Steen 45 Ordinary Shares of £1 each  
Joseph Steen 45 Ordinary Shares of £1 each  
Sydney Steen 10 Ordinary Shares of £1 each

Exhibit C.  
(Continued)  
—  
Extracts from  
Minute Book of  
International  
Vending  
Machines  
Pty. Limited.  
—

The Secretary was instructed to issue the necessary share script under the seal of the Company, make the necessary entries in the share register and lodge details with the Registrar General.

Confirmed  
Louis Steen  
CHAIRMAN

10 Date..... 2

-----  
We, Louis Steen and Joseph Steen, the subscribers to the Memorandum of Association of International Vending Machine Co. Pty. Ltd. which said company was incorporated on the 12th day of June 1958, hereby appoint Louis Steen and Joseph Steen as directors of International Vending Machine Co. Pty. Ltd.  
Dated this first day of July 1958.

20 Louis Steen  
Joseph Steen 4

-----  
**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held at Caltex House,**  
**167 Kent Street, Sydney, on the Nineteenth day of June, 1958, at**  
**10.00 a.m.**

PRESENT: Louis Steen, Joseph Steen.

**AGREEMENT WITH LIQUID SPECIALTIES PTY. LIMITED:**

30 The Secretary table an Agreement between the Company and Liquid Specialties Pty. Limited the contents of which were noted and discussed. Resolved that the Common Seal of the Company be affixed to the document in accordance with the requirements of the Articles of Association of the Company.

There being no further business the meeting terminated at 10.30 a.m.

Louis Steen  
Chairman

Date..... 5

40 **International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held at Caltex House,**  
**167 Kent Street, Sydney, on the First Day of July, 1958, at 10.00 a.m.**  
PRESENT: Louis Steen, Joseph Steen.

BANK: Resolved that an account be opened with the A.N.Z. Bank Ltd. in the name of International Vending Machines Pty. Limited. Resolved that the Bank be instructed that the account may be operated by any two Directors of the Company for the time being.

Exhibit C.  
(Continued)  
—  
Extracts from  
Minute Book of  
International  
Vending  
Machines  
Pty. Limited.  
—

The signatories are to be Mr. Louis Steen and Mr. Joseph Steen. Any variation of this will be notified to the Bank in due course. There being no further business the meeting terminated at 10.30 a.m.

Louis Steen  
Chairman.

Date.....

6

**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held at Caltex House, 10**  
**167 Kent Street, Sydney, on the Fifth day of July, 1958, at 10.00 a.m.**

PRESENT: Louis Steen, Joseph Steen.

REGISTRATION AS A FOREIGN COMPANY IN OTHER STATES: Resolved that authority be given for the necessary steps to be taken to register the Company as a foreign company in all other States (i.e. Victoria, Queensland, South Australia, Tasmania and Western Australia).

Resolved that this be done as and when required and that the Company's Solicitor be informed of this resolution so that he may use it as an authority when effecting the registrations with 20 the various State Registrars.

There being no further business the meeting terminated at 10.30 a.m.

Louis Steen  
Chairman.

Date.....

8

**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held on the Twenty- 30**  
**Fifth Day of November, 1958, at Caltex House, 167 Kent Street,**  
**Sydney, at 2.00 p.m.**

PRESENT: Louis Steen, Joseph Steen.

AGREEMENT: An Agreement between International Vending Machines Pty. Limited and Automatic Merchandising (N.S.W.) Pty. Limited was tabled at the meeting which was drawn up to assist in the sale of machines to the public where in consideration of Automatic Merchandising (N.S.W.) Pty. Limited agreeing to operate and perform other duties in relation to these machines, International Vending Machines Pty. Limited would in fact pay 40 half of Automatic Merchandising (N.S.W.) Pty. Limited's first year's guarantee under the Operating Contracts.

Resolved that this Agreement be accepted and authority was given for the Company's Common Seal to be endorsed thereon.

Date.....

L. Steen  
Chairman

**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held on the Fifteenth**  
**Day of December, 1958, at Caltex House, 167 Kent Street, Sydney,**  
**at 2.00 p.m.**

PRESENT: Louis Steen, Joseph Steen.

10 AGREEMENT: An Agreement between International Vending  
Machines Pty. Limited and Automatic Merchandising (Victoria)  
Pty. Limited was tabled at the meeting which was drawn up  
to assist in the sale of machines to the public where in considera-  
tion of Automatic Merchandising (Victoria) Pty. Limited agree-  
ing to operate and perform other duties in relation to these  
machines, International Vending Machines Pty. Limited would  
in fact pay half of Automatic Merchandising (Victoria) Pty.  
Limited's first year's guarantee under the Operating Contracts.  
Resolved that this Agreement be accepted and authority was  
given for the Company's Common Seal to be endorsed thereon  
L. Steen  
Chairman.

20 Date.....

10

**International Vending Machines Pty. Limited**  
**Minutes of First Annual General Meeting of the Company held at**  
**Caltex House, 167 Kent Street, Sydney, on the Sixteenth Day of**  
**December, 1958, at 10.00 a.m.**

PRESENT: Louis Steen, Joseph Steen, Sydney Steen.

ACCOUNTS: The Secretary advised that as the Company did not  
commence to trade until the first day of July, 1958, there are  
no accounts available for presentation to the meeting.

30 DIRECTORS: Resolved that Mr. Louis Steen and Mr. Joseph Steen  
be appointed Directors for the ensuing year.

AUDITORS: Resolved that North Ash & Mann be appointed Auditors  
for the ensuing year.  
There being no further business the meeting terminated at 10.30  
a.m.

Louis Steen  
Chairman

Date.....

11

40 **International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held on the Eighth**  
**Day of January, 1959, at Caltex House, 167 Kent Street, Sydney, at**  
**2.00 p.m.**

PRESENT: Louis Steen, Joseph Steen.

AGREEMENT: An Agreement between International Vending  
Machines Pty. Limited and Automatic Merchandising (Queens-  
land) Pty. Limited was tabled at the Meeting which was drawn

Exhibit C.  
(Continued)  
—  
Extracts from  
Minute Book of  
International  
Vending  
Machines  
Pty. Limited.  
—

up to assist in the sale of machines to the public where in consideration of Automatic Merchandising (Queensland) Pty. Limited agreeing to operate and perform other duties in relation to these machines International Vending Machines Pty. Limited would in fact pay half of Automatic Merchandising (Queensland) Pty. Limited's first year's guarantee under the Operating Contracts. Resolved that this Agreement be accepted and authority was given for the Company's Common Seal to be endorsed thereon.

L. Steen  
Chairman. 10

Date.....

14

**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held on the Twelfth Day of March, 1959, at Caltex House, 167 Kent Street, Sydney, at 2 p.m.**

PRESENT: Louis Steen, Joseph Steen.

AGREEMENT: An Agreement between International Vending Machines Pty. Limited and International Automatic Merchandising (S. Aust.) Proprietary Limited was tabled at the meeting which was drawn up in order to assist in the sale of machines to the public wherein in consideration of International Automatic Merchandising (S. Aust.) Proprietary Limited agreeing to operate and perform other duties in relation to these machines International Vending Machines Pty. Limited would in fact pay half of International Automatic Merchandising (S. Aust.) Proprietary Limited's first year's guarantee under the Operating Contracts. Resolved that this agreement be accepted and authority was given for the Company's Common Seal to be endorsed thereon. 20 30

L. Steen  
Chairman.

Date.....

19

**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held on the Sixth Day of May, 1959, at Caltex House, 167 Kent Street, Sydney, at 2 p.m.**

PRESENT: Louis Steen, Joseph Steen.

AGREEMENT: An Agreement between International Vending Machines Pty. Limited and Automatic Merchandising (Tas.) Pty. Limited was tabled at the meeting which was drawn up in order to assist in the sale of machines to the public wherein in consideration of Automatic Merchandising (Tas.) Pty. Limited agreeing to operate and perform other duties in relation to these machines International Vending Machines Pty. Limited would 40



in fact pay half of Automatic Merchandising (Tas.) Pty. Limited's first year's guarantee under the Operating Contracts. Resolved that this Agreement be accepted and authority was given for the Company's Common Seal to be endorsed thereon.

L. Steen  
Chairman

Exhibit C.  
(Continued)  
—  
Extracts from  
Minute Book of  
International  
Vending  
Machines  
Pty. Limited.  
—

Date.....

27

**International Vending Machines Pty. Limited**

10 **Minutes of Meeting of Directors of the Company held at the Registered Office of the Company, Caltex House, 167 Kent Street, Sydney, on the Ninth Day of June, 1959.**

PRESENT: Louis Steen, Joseph Steen.

IN ATTENDANCE: Brian Purcell.

TRANSFERS TO BRANCH REGISTER: The Secretary reported that a letter had been received from Mr. Louis Steen requesting that his shareholding be transferred to the Canberra Register of Members.

20 The Secretary reported that a letter had been received from Mr. Joseph Steen requesting that his shareholding be transferred to the Canberra Register of Members.

The Secretary reported that a letter had been received from Mr. Sydney Steen requesting that his shareholding be transferred to the Canberra Register of Members.

RESOLVED: That all applications for transfer to the Canberra Register be approved and the Secretary was instructed to advise the Company's Agent in Canberra to record the transfers.

Louis Steen  
Chairman

30 Date.....

Exhibit C.  
(Continued)  
—  
Extracts from  
Minute Book of  
International  
Vending  
Examined.  
Pty. Limited.  
—

30

**International Vending Machines Pty. Limited**  
**Minutes of Meeting of Directors of the Company held at Caltex**  
**House, 167 Kent Street, Sydney, on the Twelfth Day of June, 1959,**  
**at 10.00 a.m.**

**PRESENT:** Louis Steen, Joseph Steen.

**IN ATTENDANCE:** Brian Purcell.

**TRANSFER OF SHARES:** The Secretary reported that three applications had been received for the transfer of shares listed on the 10 Canberra Register as indicated herein.

Transferor	Transferee	Number of Shares
Louis Steen	A.M. Holdings Pty. Limited	45
Joseph Steen	"	45
Sydney Steen	"	10

Resolved that these applications for transfers be accepted by the Company and the Secretary was instructed to effect the necessary entries on the Canberra Register. 20  
There being no further business the meeting terminated at 10.30 a.m.

Louis Steen  
Chairman

Date.....



Exhibit D.  
(Continued)  
—  
Extracts from  
Minute Book of  
I.V.M. Holdings  
Pty. Limited.  
—

**A.M. Holdings Pty. Limited  
Memorandum of Appointment**

We, the undersigned, being the subscribers to the Memorandum and Articles of Association of A.M. Holdings Pty. Limited hereby appoint Louis Steen, 280 Carrington Road, Coogee, Sydney, in the State of New South Wales, and Joseph Steen, 21 Hunter Street, Dover Heights, Sydney, in the State of New South Wales, as the first Directors of the Company.

Louis Steen.  
Joseph Steen. 10

Date .....

3

**A.M. Holdings Pty. Limited  
Minutes of Meeting of Directors of the Company held at Caltex House,  
167 Kent Street, Sydney, on Wednesday the Tenth Day of June, 1959,  
at 10.00 a.m.**

PRESENT: Louis Steen, Joseph Steen. 20  
PURCHASE OF SHARES: Resolved that the Company purchase

One hundred (100) of the One hundred and two (102) ordinary shares held in International Vending Machines Pty. Limited by Louis Steen, Joseph Steen and Sydney Steen for the sum of Two hundred thousand pounds (£200,000) to be apportioned as follows:

To Louis Steen in consideration of his sale to this Company of Forty-five (45) ordinary shares of One pound (£1) each fully paid the sum of Ninety thousand pounds (£90,000).

To Joseph Steen in consideration of his sale to this Company of Forty-five (45) ordinary shares of One pound (£1) each fully paid the sum of Ninety thousand pounds (£90,000). 30

To Sydney Steen in consideration of his sale to this Company of Ten (10) ordinary shares of One pound (£1) each fully paid the sum of Twenty thousand pounds (£20,000).

This purchase will in effect convert International Vending Machines Pty. Limited into a wholly owned subsidiary of this Company.

Resolved that the Company's Seal be affixed to two documents between the Company and Mr. Louis Steen and Mr. Joseph Steen in which the latter persons agree to hold the balance of Two (2) ordinary shares of One pound (£1) each fully paid in International Vending Machines Pty. Limited as nominees for A.M. Holdings Pty. Limited. 40

Louis Steen  
Chairman.

Date.....



Exhibit D.  
(Continued)  
—  
Extracts from  
Minute Book of  
I.V.M. Holdings  
Pty. Limited.  
—

time prior to that date by repaying to the holder or holders thereof for the time being the amount of capital paid up thereon.

.....  
Secretary.

Date .....

We, the undersigned, being all the members entitled to attend and vote, hereby assent to the above Resolutions being passed at a Meeting of which less than twenty-one (21) days' notice has been given.

Louis Steen.

Joseph Steen. 10

16

**A.M. Holdings Pty. Limited**

**Minutes of an Extraordinary General Meeting of the Company held at Room 1116, 11th Floor, Caltex House, 167 Kent Street, Sydney, at 10.00 a.m. on Monday the Twenty-second Day of June, 1959.**

**PRESENT:** Louis Steen (in the Chair), Joseph Steen.

**SPECIAL RESOLUTIONS:** The Chairman read the notice convening the meeting and briefly explained the purpose thereof. All the shareholders entitled to attend and vote having signed the endorsement on the foot of the notice agreeing to the meeting being 20 held in pursuance of the provisions of sub-clause 2 of S.97 of the Companies Ordinance 1954 it was then moved seconded and carried unanimously:—

1. That the Company resolve hereby to issue at par 1250 Redeemable Preference Shares of One Pound (£1) each payable as to One Pound (£1) on application.
2. That these shares be issued subject to Article 13(ii) of the Articles of Association of the Company.
3. That subject to S.149 of the Companies Ordinance 1954 the said Redeemable Preference Shares shall be liable to be 30 redeemed on the thirtieth day of June 1984 provided that all or any of such shares may at the option of the Company be redeemed at any time prior to that date by repaying to the holder or holders thereof for the time being the amount of capital paid up thereon.

**ALLOTMENT:** The Secretary was instructed to issue 50 Redeemable Preference Shares each to the following persons in accordance with their applications:

Norman Charles Langham Dale  
Colin Larnach  
Royce Jeffrey  
Biltmore Holdings Pty. Limited  
Jeffrey & Associates Pty. Limited

40

Hurst & Associates Pty. Limited  
Studio Press Pty. Limited  
Marie Robertson  
John Milton Dolphin  
Maurice Kay  
David Graeme Thomson  
Joseph Cohen  
John Hook  
Ada Muriel Bennett  
10 Bruce Hugh Cook  
Vera Jane Cassidy  
Graeme McKinn  
Peter Eric Gauld  
Graham Powell Lewis  
Hugh Price Berry  
Terrance Joseph Caplice  
Bruce Cuttle  
Russell North Ash  
20 Sidney Thompson  
Frank Selwyn Mann

Exhibit D.  
(Continued)  
—  
Extracts from  
Minute Book of  
I.V.M. Holdings  
Pty. Limited.  
—

Louis Steen  
Chairman.

Date.....

Exhibit G.  
 —  
 Extracts from  
 Memorandum  
 of Association  
 of International  
 Vending  
 Machines  
 Pty. Limited.  
 —

**EXHIBIT G**  
**Extracts from Memorandum of Association of International Vending  
 Machines Pty. Limited**  
**International Vending Machines Pty. Limited**  
**Memorandum of Association**  
**Objects Clause required to be included in the Appeal Book by the  
 Appellants.**

3. The objects for which the Company is established are all or any of the following it being intended that the objects or all or any of the objects specified in each paragraph of this clause shall 10 except and unless where otherwise expressed in such paragraphs be in no way limited or restricted by reference or inference from the terms of any other paragraph or group of paragraphs of the name of the Company and shall be capable of being pursued as an independent object and either alone or in conjunction with all or any other paragraph or group of paragraphs and the discontinuance or abandoning of all or any of the business or objects hereinafter referred to shall not prevent the Company from carrying on any other business authorised to be carried out by the Company and IT IS HEREBY EXPRESSLY DECLARED that in the interpretation of this clause 20 the meaning of any of the Company's objects shall not be restricted by reference to any other object or by the juxtaposition of two or more objects and that in the event of ambiguity this clause shall be construed in such a way as to widen and not to restrict the powers of the Company.

(j) To carry on the business of money lender and for this purpose to obtain all necessary licenses and to loan money and negotiate loans to draw accept endorse and discount bills of exchange promissory notes or other securities.

(k) To establish Companies and Associations for the prosecution 30 or execution of undertakings works projects or enterprises of any description whether of a private or public character in the Commonwealth of Australia or elsewhere and to acquire and dispose of shares and interests in such Companies or Associations or in any other Companies or Associations or in the undertakings thereof.

(ss) To invest and deal with the monies of the Company in such manner as may from time to time be determined and loan money to any person or Company corporation or public body with or without security and on such terms as may seem expedient.

(aaa) To carry out all or any of the foregoing objects as prin- 40 cipals or as Agents for or any partnership or in conjunction with any person public authority or Company and in any part of the world and to aid or subsidise any other person public authority or Company in carrying out any of such objects.

(bbb) To do all such acts matters and things as the Company may think incidental or conducive to the attainment of the above objects or any of them.



Extracts from  
Private Ledger  
of International  
Vending  
Machines  
Pty. Limited.

EXTRACT N

Extracts from Private Ledger of International Vending Machines Pty. Limited

Account No.  
5 #

Sheet No.

LOAN ACCOUNT - J. STEEN.

Account No.

Sheet No.



Year	Month	Day	Description	Debit	Credit	Balance	Notes
1958	Dec	31	bal			285	
				5624 19			
	SEP	18	A. Rao	360 18 10		39	12 6
				5485 17 10			
	DEC	31		539 12 6		54	15
				122 3 9		369	7 6
				201 17 6			
				454 15 -			
				1474 16 1			
				8774 2 8			
1959	MAR	31	bal			1000	
				582566 11 4			
	JUN	30	P.K.				
				10 10			
				15			
				5651 19 -			
				4014 8			
				20000			
				62645 3			
				62658 8 5			
				62683 3 3			
				27216 4 1			
				91869 4 6			
						41869	4 6
1957	JULY	31	bank				
				10000			
	Aug	31		20135 7 2			
	Sept	30		8402 8 9			
				38540 15 11			
	Oct	31		1144 10			
	Nov	30		795			
				3000			
				10125 1 -			
				54205 6 11			
				4021 9			
				58236 15 11			
				58236 15 11			
						84874	11 11

CORAM: JACOBS, J.  
International Vending  
Marked 10 for identification  
Associate

J. Steen  
bank

Fwd





NAM

Account No.  
672  
Sheet No.

LOAN ACCOUNT - S. STEEN.

Account No.  
672  
Sheet No.

Date	Description	CA	1958	1959	1959	1959
1958 DEC 31	bal	✓ CA	400	✓ 1959 JUNE 30	13,550.00	20,000.00
1959 MAR 31	bank	✓	620			
JUNE 30	"	✓	100			
	"	✓	1120			
	"	✓	1120			
	"	✓	1120			
	Balance	qtd	13880			
			20,000			20,000
1959 Aug 31	bank	✓	6000	1959 July 1	Balance	13880
Sept 30	"	✓	2000	May 31	bank	2120
Nov 30	"	✓	5000			16000
Dec 31	"	✓	3000			16000
			16000			16000

CORAM: JACOBS. J.  
 International Vending Machines Co.  
 Marked II for identification  
 Associate







Exhibit N.  
(Continued)

Extracts from  
Private Ledger  
of International  
Vending  
Machines  
Pty. Limited.

Account No.		Sheet No.		Account No.		Sheet No.	
1959		8		1959		8	
Aug 31	Cash	ED118	✓ 1000	Nov 30	L. Steen Loan	✓ 10125	1
Sept 30		ED135	✓ 19250			✓ 10125	1
			✓ 20250			✓ 20250	2
			✓ 20250			✓ 20250	2

Loan Account - L & J Steen.

## EXHIBIT O

**Deed between International Vending Machines Pty. Limited and  
Automatic Merchandising (N.S.W.) Pty. Limited**

THIS DEED made the 25th day of November 1958 BETWEEN INTERNATIONAL VENDING MACHINES PTY. LIMITED a Company duly incorporated in the State of New South Wales (hereinafter called "the Vendor") of the one part AND AUTOMATIC MERCHANDISING (N.S.W.) PTY. LIMITED a Company duly incorporated in the said State (hereinafter called "the Operator") of  
 10 the other part WHEREAS the Vendor is engaged in the sale of coin operated vending machines (hereinafter referred to as "the vending machines") to the public in the State of New South Wales AND WHEREAS the Vendor has requested the Operator to operate all vending machines on behalf of the purchasers of such machines (hereinafter called "the Owners") upon the terms and conditions hereinafter appearing AND WHEREAS the Operator has agreed to operate the vending machines upon such terms and conditions in consideration of the Vendor paying to the Operator ten per cent (10%) of the total sale price of the vending machines.

20 NOW THIS DEED WITNESSETH as follows:—

1. On the completion of all sales of vending machines by the Vendor such vending machines shall upon the direction of the Owners thereof be delivered to the Operator.
2. The Operator shall operate such vending machines on behalf of the Owners thereof on sites selected by the Operator and the Operator shall supply and replenish repair maintain and replace such vending machines as the Operator thinks fit.
3. The Operator shall pay to the Owners of the vending machines twenty per cent (20%) each year interest on the purchase price of the vending machines and such interest shall be paid to the  
 30 Owners by equal monthly instalments.
4. The Operator shall operate the vending machines for the term of one year and each year thereafter until the Owners of such machines terminate the operation of the machines by one calendar month's prior notice in writing to the Operator.
5. In the case of death of an Owner or a sufficient financial emergency occurring to an Owner of the vending machines the Operator shall purchase the machines for the nett amount calculated in accordance with a table to be agreed upon between the Vendor and the Operator.
6. The Operator shall insure the vending machines against all  
 40 insurable risks and shall pay all insurance premiums thereon for a period of twelve (12) months.

Exhibit O.  
 —  
 Deed between  
 International  
 Vending  
 Machines  
 Pty. Limited  
 and Automatic  
 Merchandising  
 (N.S.W.)  
 Pty. Limited.  
 —  
 25th Nov., 1958.

Exhibit O.  
(Continued)

Deed between  
International  
Vending  
Machines  
Pty. Limited  
and Automatic  
Merchandising  
(N.S.W.)  
Pty. Limited.

25th Nov., 1958.

7. In consideration of covenants and agreements by the Operator hereinbefore contained the Vendor shall pay to the Operator ten per cent (10%) of the sale price of all vending machines sold by the Vendor.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of INTERNATIONAL VENDING MACHINES PTY. LIMITED was hereunto affixed by order of the Board and in the presence of:  
(Sgd.) B. J. Purcell

(Sgd.)  
Louis Steen  
(Sgd.)  
Joseph Steen 10

THE COMMON SEAL of AUTOMATIC MERCHANDISING (N.S.W.) PTY. LIMITED was hereunto affixed by order of the Board and in the presence of:  
(Sgd.) B. J. Purcell

(Sgd.)  
Louis Steer.  
(Sgd.)  
Joseph Steen





Exhibit P.  
(Continued)

Extracts from  
Private Ledger  
of International  
Vending  
Machines  
Pty. Limited.

Account No.		Sales - Vector Machines										Account No.	
												6	
Sheet No.												Sheet No.	
1959	July 31	Sales Jan 5019	f36	155	16	8	1959	July 31	S. Drs.	S 3	7237	10	-
		" " 5115	f37	1253	3	5			"	B 11	2345	-	-
				1409	-	1			"	M 14	3879	-	-
				1762	10	.			"	M 4	1184	10	-
				10787	10	.			"	M 22	5500	-	-
				4750	.	.			"	M 14	95	-	-
				14	16	3			"	S 5	75	-	-
				3625	.	.			"	M 15	20329	-	-
				33	.	.			"	M 15	1698	15	-
				22381	16	4			"	M 29	20329	15	-
				800	4	3			"		1698	15	-
				10671	14	2			"		1698	15	-
				18487	10	.			"		1698	15	-
				975	.	.			"		1698	15	-
				53316	4	9			"		1698	15	-
				206	.	.			"		1698	15	-
				53521	4	4			"		1698	15	-
				11775	.	.			"		1698	15	-
				65296	4	9			"		1698	15	-
				2743	.	.			"		1698	15	-
				337	10	.			"		1698	15	-
				300	.	.			"		1698	15	-
				88676	14	9			"		1698	15	-
				540	.	.			"		1698	15	-
				69216	14	9			"		1698	15	-
				29850	.	.			"		1698	15	-
				99066	14	9			"		1698	15	-
				99066	14	9			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	15	-
				25	.	.			"		1698	15	-
				6959	14	-			"		1698	15	-
				480	.	.			"		1698	15	-
				2019	2	9			"		1698	15	-
				1115	16	3			"		1698	15	-
				3220	.	.			"		1698	1	



1960	Aug 31	Sunday Pms.	554	6659 19 -	1961	Feb 25	Sunday Pms.	Found	14039 15 1
		"	A36	3024 4	Feb 25	"	"	ST57	150 -
	July 31	"	656	780	Apr 30	"	"	A39	75 -
	Sept 30	"	858	8175	"	"	"	DJ20	1 5 -
	Nov 30	"	556	13250	"	"	"	S62	44866 - 1
		"	M45	32289 3 -					
		"	M45	3562					
		"	M45	1224 10					
		"	H18	360					
1961	Jan 31	"	665	38035 13					
	Apr 30	"	M46	825					
		"	M46	608 15					
		"	A40	301 5					
		"	DJ20	5 17					
		"	S60	137					
		"	831	49503 10					
		"		475					
		"		43976 10					

CORAM: JACOBS, J.  
 Re Introduction of Vending Machines  
 EXHIBIT  
 ASSOCIATE

SALES - PERFMATIC MACHINES.

Exhibit P.  
 (Continued)  
 Extracts from  
 Private Ledger  
 of International  
 Vending  
 Machines  
 Pty. Limited.

Year	Month	Day	Particulars	Debit	Credit	Balance	Day	Particulars	Debit	Credit	Balance
1959	June	30	Trading Ac	47145	15			Sales			1657 10
											2129 5
											10816 5
											1946 10
											455
											2740
											12536 15
											8746 10
											4693
											1425
											47145 15
											47145 15
1959	Dec	31	Secondary Drs	3645	16			Secondary Drs			170
1960	Apr	30	"	510				"			1425
				4155	16			Secondary Apr			1595
											3560 16
											4155 16
1960	July	31	Secondary Drs	760				Secondary Drs			238 13 4
				152				"			300
				1425				"			338 13 4
				2337				"			605 10
				1199	10			"			269 3 4
								"			1817 16 8
				988				"			3231 3 4
				4524	10			"			180
								"			3411 3 4

**CORAM: JACOBS**  
 Re International Vending Machines Plc  
 EXHIBIT  
 Associate





Exhibit P.  
(Continued)

Extracts from  
Private Ledger  
of International  
Vending  
Machines  
Pty. Limited.

Account No.	Sheet No.	Account No.	Sheet No.
1960	6	1961	7
June 30	13	Nov 30	6
July 31	13	Dec 31	8
Aug 31	13	Jan 31	10
Sept 30	13	Feb 29	10
Oct 31	13	Mar 31	10
Nov 30	13	Apr 30	11
Dec 31	13	May 31	11
	13		12
	13		13
	13		14
	13		15
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	13		98
	13		99
	13		100





Exhibit U.  
 —  
 Circular Letter  
 from  
 International  
 Vending  
 Machines  
 Pty. Limited  
 to Investors.  
 —  
 11th June, 1959.

**EXHIBIT U**  
**Circular Letter from International Vending Machines Pty. Limited to Investors**

**INTERNATIONAL VENDING MACHINES PTY. LTD.**

HEAD OFFICE, CALTEX HOUSE, 167 KENT STREET, SYDNEY  
 TELEPHONE: BU 6891. TELEGRAMS: "INTERVEND"

**INTERSTATE DIVISIONS:**

**SYDNEY**  
 Victor House  
 22 Jamison Street  
 BU 6357

**MELBOURNE**  
 Merino House  
 540 Little Collins Street  
 MB 4774

**BRISBANE**  
 Reid House  
 144-148 Edward Street  
 2-9436, 2-9497

**S.A. Insurance Bldg.**  
 28a Currie Street  
 51-3537, 51-3538

**HOBART**  
 Victor House  
 82 Harrington Street  
 2-7606, 2-7607

11th June, 1959

Dear Investor,

Thank you for the use of your Vending Machines, which have been responsible for the rapid and successful expansion of this Company. (See Public Accountants' Audit Report herewith.) The results over the past several months, plus the introduction of the "ETA" Nut Machine, have indicated to us that we are now able to offer a higher return than previously.

In appreciation, we have allocated to you a further sum equal to your present investment on which we will pay 20% guaranteed return and, in addition, a **DISCOUNT OF 5% WILL BE ALLOWED AS A CASH BONUS**, which is an immediate Capital Appreciation.

This offer is open until 22nd June and your completed application, with your cheque, must be returned to this office by that date. Should you not be able to avail yourself of this offer, please return the application form in order that clients wishing to invest more than their allocation may be given the opportunity to do so.

We thank you for your support in the past, and look forward to the occasion when we will be able once again to offer you further bonuses due to the continued prosperity of the Company.

Yours faithfully,  
 pp. International Vending Machines Pty. Ltd.  
 L. Steen,  
 Chairman of the Board

10

30



**Application Form**  
**International Vending Machine Pty. Ltd.**  
**APPLICATION FOR RESERVED No. 5 OFFER OF 20%**  
**GUARANTEED RETURN**

No. 102

To International Vending Machines Pty. Ltd.  
Caltex House, 167 Kent Street,  
Sydney, N.S.W.

**AMOUNT ALLOCATED**

£	:	:
---	---	---

10

I/WE.....

.....  
(Name(s) and address(es))

hereby request that £..... be allocated to ME/US in the  
**RESERVED No. 5 OFFER** of investment in vending machines on  
a guaranteed return of 20%.

After deduction of the 5% cash bonus allowance the amount due  
is £..... and the cheque for this amount is enclosed.\*\*

Please arrange for the monthly payments to be made on MY/OUR

20 behalf to the..... of the.....  
(Branch) (Name of Bank) (Town)

(Signed).....

(Date).....

**\*\*25% deposit will secure allocation, provided balance paid by 22nd  
June**

**APPLICATION FOR UNRESERVED OFFER No. 5**

No. 102

30 I/WE hereby make allocation for a further allocation in addition to  
the above application for a sum of £..... on the same terms—  
20% guaranteed return and a cash bonus allowance of 5%. On  
notification by the Company of their formal acceptance of this further  
application I/WE will forward the amount allocated within 7 days  
of such notification.

I/WE agree that the Company is under no obligation to accept all  
or part of the sum applied for in respect of this further application.

40 (Date).....

(Signed).....

**DO NOT enclose cheque with THIS Unreserved Application**



**EXHIBIT V**  
**Extract from Cash Payment Book of International Vending Machines**  
**Pty. Limited**

Exhibit V.  
 Extract from  
 Cash Payment  
 Book of  
 International  
 Vending  
 Machines  
 Pty. Limited.

95	Teligmore	512	17	X	Stony Reef	14489	X
	Standy Machine	4518	16	X	Accounting	3586	X
	D of Thompson - Victoria	142		X	Acct Receipts	100	X
	Bookkeeping	67	6	X	OSBORNE STEEL	28219	X
	Office Expenses	168	16	X	ROUS STEEL	28206	X
	Advertising	14	1	X	THOMPSONS	100	X
	Guarantee Bonds	1897	11	X	NO 3 OFFICE	2000	X
	THOMPSON	688	6	X	N.W. CAMPBELL	10	X
	N.S.W.	688	5	X	A.M. HOLDINGS CANBERRA	10	X
	Vic.	1898	17	X	Bank Charges	60	X
	Qld	1520	19	X	Office Exp.	210	X
	S Post	1694	16	X	Accts to Accountancy	308	X
	Finance	362	2	X	R.D. ASH - VIC	470	X
	Staff Administration	226	9	X	SPENCER & CO	430	X
	Expenses return	10	10	X	MOORE & CO		X
	Advertising	410		X	HEBERT & CO		X
	Subscriptions			X	M. O. PEAR - A.M. Machine		X
	Subtotal of 10/10/10			X	Consolidated Post - Progress		X
	Printer of 10/10			X	THEART in Victoria		X
	Operations			X	Spencer's Machine, Sydney - S. Post		X
	M. O. PEAR & CO			X	THE ARTS - Vancouver	16	X
	Other Post			X	Spencer's Machine, Sydney, Victoria		X
	General Post			X	REBASE - Hobart	20	X
	Stamps Post			X			X
	Standard (Vic)			X			X
	Flight & Return			X			X
	Subscriptions			X			X
	M. O. PEAR & CO			X			X

36567 D 10

5444 9 7



**EXHIBIT X**

**See Pages 318-319**



Exhibit X.  
—  
Advertisement  
in  
Sun-Herald  
—  
28th June, 1959.

EXHIBIT X  
Advertisement in Sun-Herald

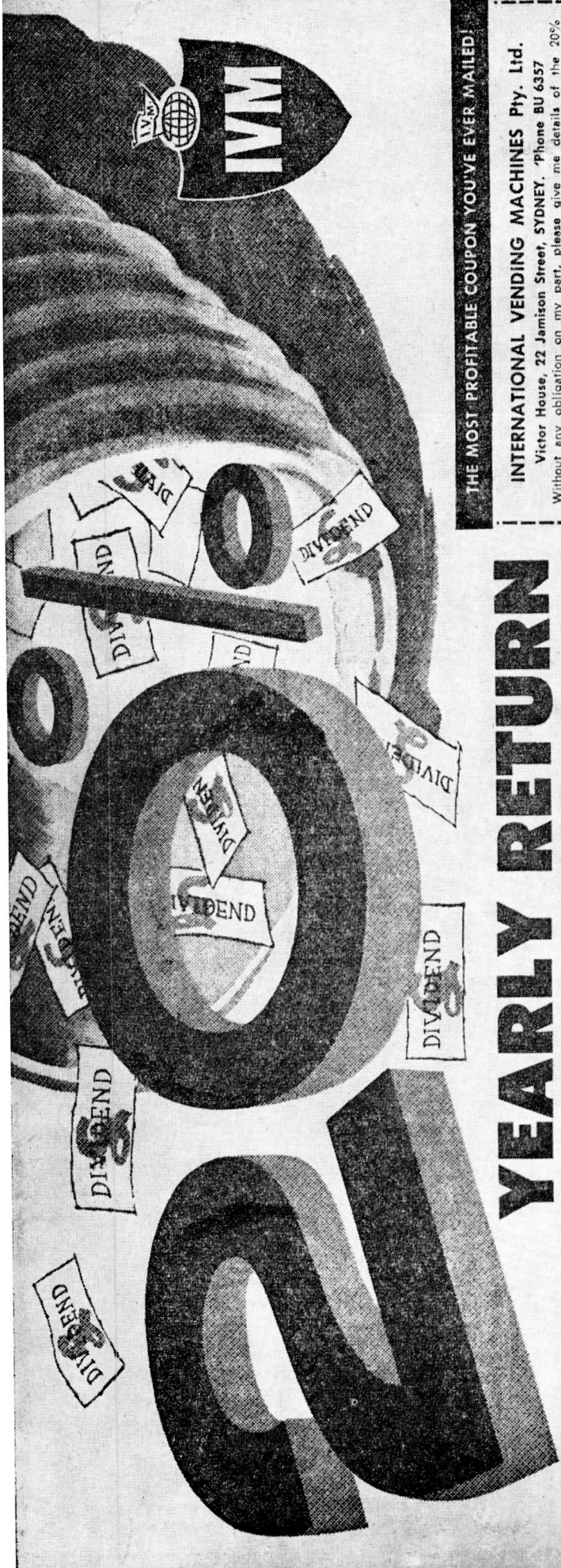
**OFFER NO. 5**

Invest in

**Australia's Prosperity**

Here is an amazing investment opportunity!  
For a limited period International Vending  
Machines offer to investors a **20% YEARLY  
RETURN** on money invested and a **regular  
monthly income** every year for as many  
years as money is left invested with IVM.  
A vastly increased number of vending  
machines have been installed during the  
past three months with corresponding  
reduction in overall operating costs. **THIS  
HAS BEEN PASSED DIRECTLY ON TO THE  
INVESTOR!**

DIVIDEND  
DIVER  
DIVER



THE MOST PROFITABLE COUPON YOU'VE EVER MAILED!

**INTERNATIONAL VENDING MACHINES Pty. Ltd.**  
 Victor House, 22 Jamison Street, SYDNEY. Phone BU 6357  
 Without any obligation on my part, please give me details of the 20%  
 RETURN on investment in Vending Machines and full details of depreciation  
 plan and return of capital.

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 Priority No. (leave blank) \_\_\_\_\_ I.V.M.SHO18

# YEARLY RETURN

Already the Australian public has overwhelmingly accepted the comparatively new retailing medium of Vending Machines. I.V.M., symbol of leadership in this field, are able to pass on to investors a **5% INCREASE IN RETURNS** providing a **20% yearly return** which, even after deduction of maintenance and insurance charges, leaves a **NETT YIELD OF OVER 18%**, with a **regular monthly income** for as long as the investment is left with International Vending Machines Pty. Ltd.

**INTERNATIONAL VENDING MACHINES Pty. Ltd. • Sydney • Melbourne • Adelaide • Brisbane • Hobart**

**STOP PRESS! IVM now have the exclusive right to sell "ETA" NUTS through their machines!**



Extract from Private Ledger of International Vending Machines Pty. Limited.

**EXHIBIT Y**  
**Extract from Private Ledger of International Vending Machines Pty. Limited**

Account No.	Sheet No.	Account No.	Sheet No.
4. U. M.	5	4. U. M.	5
Loan Account - <del>1966</del> Holdings Pty Ltd.			
1959		1959	
June 30		June 30	
Balance		Balance	
205,741		205,741	
1960		1960	
Feb 29		Feb 29	
Balance		Balance	
237,103 14		237,103 14	
1960		1960	
July		July	
Balance		Balance	
205,741		205,741	
1960		1960	
Sept 30		Sept 30	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Nov 30		Nov 30	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Dec 31		Dec 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Jan 31		Jan 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Feb 29		Feb 29	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Mar 31		Mar 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Apr 30		Apr 30	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
May 31		May 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
June 30		June 30	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
July 31		July 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Aug 31		Aug 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Sept 30		Sept 30	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Oct 31		Oct 31	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Nov 30		Nov 30	
Balance		Balance	
238,103 14		238,103 14	
1960		1960	
Dec 31		Dec 31	
Balance		Balance	
238,103 14		238,103 14	

CORAM: JACOBS. J.

International Vending Machines Pty  
 Marked C for identification

Associate

Bank

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EXHIBIT Z

**Extract from Annual Report of International Vending Machines Pty.  
Limited**

Exhibit Z.  
—  
Extract from  
Annual Report  
of International  
Vending  
Machines  
Pty. Limited.  
—  
30th June, 1959.

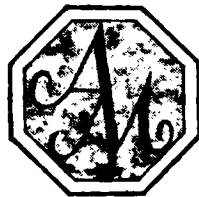
# ANNUAL REPORT

for the year ended

30th JUNE 1959



**INTERNATIONAL VENDING MACHINES PTY. LIMITED**



**AUTOMATIC MERCHANDISING COMPANIES**

Exhibit Z.  
(Continued)

### Chairman Report

Extract from  
Annual Report  
of International  
Vending  
Machines  
Pty. Limited.

30th June, 1959.

The trading results of International Vending Machines Pty. Ltd. for the Financial Year ended 30th June, 1959, have, as you will see, exceeded all expectations. Nevertheless, on figures to hand, this current year will show a 50% increase.

The operation of the Merchandising Companies proved very satisfactory indeed, especially in view of the fact that the oldest of these Companies, Automatic Merchandising (N.S.W.) Pty. Ltd., had been trading for a period of only seven months. It was expected that due to initial expenditure which had to be incurred in setting up, these Companies could be hard pressed, but even the youngest, Automatic Merchandising (Tas.) Pty. Ltd., was able to show a small surplus for the period of trading. The only conclusion which can be drawn is that merchandising through vending machines is a highly profitable method of selling and this is due to a large extent to the careful selection of brand products dispersed through vending machines and the planning of an efficient and economical operating organisation.

The stock on hand of the Companies at the 30th June was particularly small. In the case of International Vending Machines Pty. Ltd. considerable difficulty was experienced in maintaining sufficiently high production of machines to cater for public demand. The Directors have since taken steps to overcome this and production has now been considerably increased. The stocks of the Merchandising Companies must, of necessity, be kept very low to ensure the dispensing of fresh products at all times.

The transfer of £150,000 out of profits to a General Reserve was considered advisable by the Directors in an effort to cover any possible contingencies that could arise in this new industry and further, to provide increased security for machine Owners by supporting International Vending Machines Pty. Ltd.'s Guarantee of Contracts entered into with the Merchandising Companies.

In an effort to conserve finances and promote the anticipated rapid development of automatic merchandising, the Directors have decided that no dividends will be paid during the current 1959-60 financial year.

With the accompanying figures in mind, it can confidently be expected that the Merchandising Companies will earn considerable profits during the ensuing year, particularly in view of the recent highly successful introduction of the first series of our newer types of machines which forms part of our expansion programme during this current year.

It is apparent that the public's confidence in International Vending Machines Pty. Ltd. and Associated Companies has been fully justified, and that in itself is one of the more satisfying features of a most successful first year's trading. When it is borne in mind that many non-recurrent expenses are included in these Balance Sheets, it augurs well for the continued successful expansion planned by the Directors.

Exhibit Z.  
(Continued)  
—  
Extract from  
Annual Report  
of International  
Vending  
Machines  
Pty. Limited.  
—  
30th June, 1959.

L. Steen,

Chairman of the Board.

Exhibit Z.  
(Continued)

—  
Extract from  
Annual Report  
of International  
Vending  
Machines  
Pty. Limited.  
—

30th June, 1959.

**DIRECTORS**

LOUIS STEEN (Chairman)  
JOSEPH STEEN (Managing Director)  
JOHN HOOK  
JOSEPH COHEN

**SECRETARY**

BRIAN PURCELL

**AUDITORS**

NORTH, ASH & MANN

**SOLICITORS**

10

DAWSON, WALDRON, EDWARDS & NICHOLLS

D. G. THOMSON & CO.

**BANKERS**

AUSTRALIA & NEW ZEALAND BANK LIMITED

**INTERNATIONAL VENDING MACHINES PTY. LIMITED**  
Balance Sheet as at 30th June, 1959

<b>AUTHORISED CAPITAL:</b>				
75,000 Ordinary Shares of £1 each	£75,000			£217
<b>SHAREHOLDERS' FUNDS</b>				47,346
Issued Capital—				33,971
50,102 Ordinary Shares of £1 each—				2,400
Fully Paid	£50,102			30
General Reserve	150,000			
Profit and Loss Appropriation Account	13,781			
<b>TOTAL SHAREHOLDERS' FUNDS</b>	213,883			£83,964
<b>PROVISIONS:</b>				
Company Taxation	99,500			37,042
<b>TOTAL PROVISIONS</b>	99,500			6,666
<b>CURRENT LIABILITIES:</b>				
Sundry Creditors and Accruals	101,976			8,312
<b>TOTAL CURRENT LIABILITIES</b>	101,976			15,396
<b>SECURED LIABILITIES:</b>				
Amounts owing on Hire Purchase of Vehicles	18,304			2,690
<b>TOTAL SECURED LIABILITIES</b>	18,304			34,241
				205,741
				20,155
				17,675
				75
				1,143
				305,428
				563
				£433,663
				£433,663
<b>Profit and Loss Account for the Year Ended 30th June, 1959</b>				
Trading and Administration Expenses	£363,614			£631,592
Provision for Depreciation	4,697			
Nett Profit for the Year carried to Profit and Loss Appropriation Account	263,281			
	£631,592			£631,592
<b>Profit and Loss Appropriation Account as at 30th June, 1959</b>				
Provision for Company Taxation	£99,500			£263,281
Transfer to General Reserve	150,000			
Balance carried forward	13,781			
	£263,281			£263,281

Exhibit Z.  
(Continued)

Extract from  
Annual Report  
of International  
Vending  
Machines  
Pty. Limited.  
—  
30th June, 1959.

**AUTOMATIC MERCHANDISING (N.S.W.) PTY. LTD.**  
**Balance Sheet as at 30th June, 1959**

<b>AUTHORISED CAPITAL:</b>				
30,000 Ordinary Shares of £1 each	£30,000			
<b>SHAREHOLDERS' FUNDS:</b>				
Issued Capital—				
1,002 Ordinary Shares of £1 each—Fully Paid	£1,002			£8,951
Profit and Loss Appropriation Account	4,099			1,639
				37,688
<b>TOTAL SHAREHOLDERS' FUNDS</b>		5,101		
<b>PROVISIONS:</b>				
Company Taxation	2,060			
<b>TOTAL PROVISIONS</b>		2,060		
<b>CURRENT LIABILITIES:</b>				
Sundry Creditors	7,041			
International Vending Machines Pty. Ltd.—				
Current Account	34,241			
<b>TOTAL CURRENT LIABILITIES</b>		41,282		
				£48,443
				£48,443
<b>Profit and Loss Account for the Period Ended 30th June, 1959</b>				
Trading and Administration Expenses	£21,587			
Interest paid to Owners	9,877			
Nett Profit for period carried to Profit and Loss Appropriation Account	6,159			
				£37,623
				£37,623
<b>Profit and Loss Appropriation Account as at 30th June, 1959</b>				
Provision for Taxation	£2,060			
Balance	4,099			
				£6,159
				£6,159
				£48,278
				165

**INTERNATIONAL VENDING MACHINES PTY. LTD.**

Exhibit Z.  
(Continued)

—  
Extract from  
Annual Report  
of International  
Vending  
Machines  
Pty. Limited.

—  
30th June, 1959.

**SYDNEY:**

VICTOR HOUSE,  
128 ROTHSCHILD AVENUE,  
ROSEBERY.

**MELBOURNE:**

MERINO HOUSE,  
540 LITTLE COLLINS STREET.

**BRISBANE:**

10

REID HOUSE,  
144-148 EDWARD STREET.

**ADELAIDE:**

S.A. INSURANCE BUILDING,  
28A CURRIE STREET.

**HOBART:**

VICTOR HOUSE,  
82 HARRINGTON STREET.

**NEWCASTLE:**

20

VICTOR HOUSE,  
27 CHINCHEN STREET,  
ISLINGTON.

Exhibit AA.  
—  
Analysis of  
Sales Journal  
by  
B. G. Purcell.  
—

EXHIBIT AA  
Analysis of Sales Journal by B. G. Purcell

Sales Journal, 1.1.59 - 30.6.59

		<u>Victors</u>	<u>Valors</u>	<u>Vanity</u>	<u>Debonair</u>	<u>Perfumatic</u>	
	1959						
Sydney	Jan.	115	—	—	—	41	
	Feb.	172	—	—	—	—	
	Mar.	212	—	56	—	29	
	Apl.	203	—	160	—	1 Cr	
	May	161	—	—	100	1	10
	June	1213	83	—	180	1	
			<u>2076</u>	<u>83</u>	<u>216</u>	<u>280</u>	<u>71</u>
	1959						
Brisbane	Jan.	104	—	—	—	7	
	Feb.	59	—	—	—	36	
	Mar.	57	—	—	—	29	
	Apl.	—	—	—	—	—	
	May	—	—	—	—	—	
	June	301	33	85	51	70	20
			<u>521</u>	<u>33</u>	<u>85</u>	<u>51</u>	<u>142</u>
	1959						
Melbourne	Jan.	—	—	—	—	—	
	Feb.	75	—	—	—	20	
	Mar.	127	—	10	—	10	
	Apl.	85	—	20	—	25	
	May	159	—	19	—	—	30
	June	465	53	51	44	—	
			<u>911</u>	<u>53</u>	<u>100</u>	<u>44</u>	<u>55</u>
	1959						
Adelaide	Jan.	—	—	—	—	—	
	Feb.	30	—	—	—	—	
	Mar.	184	—	29	—	48	
	Apl.	179	—	14	—	15	
	May	100	—	4	35	11	40
	June	804	32	99	92	59	
			<u>1297</u>	<u>32</u>	<u>146</u>	<u>127</u>	<u>93</u>
	1959						
Hobart	Jan.	—	—	—	—	—	
	Feb.	—	—	—	—	—	
	Mar.	—	—	—	—	—	
	April	—	—	—	—	—	
	May	26	—	—	—	—	50
	June	159	7	39	31	33	
			<u>185</u>	<u>7</u>	<u>39</u>	<u>31</u>	<u>33</u>



**EXHIBIT AD**  
**Affidavit of John Hook and Annexures**

**IN THE SUPREME COURT**  
**OF NEW SOUTH WALES**  
**IN EQUITY**

No.

Exhibit AD.  
—  
Affidavit of  
John Hook  
and Annexures.  
—  
2nd June, 1961.

**In the Matter of The Companies Act 1936**

**and**

**In the Matter of International Vending  
Machines Pty. Ltd. (In Liquidation)**

10

I, John Hook of 14 Calvert Avenue, Killara, N.S.W. being duly sworn, make oath and say that the foregoing statement and several eight lists hereunto annexed marked "A" are, to the best of my knowledge and belief, a full, true and complete statement of the affairs of the above company on the 16th day of May 1961, the date of the winding up order.

SWORN by the Deponent on the  
2nd day of June, 1961 at Sydney  
before me:

} John Hook

George Saywell, J.P.

20

A Justice of the Peace.

"A"

Exhibit AD.  
(Continued)Affidavit of  
John Hook  
and Annexures.

2nd June, 1961.

**In the Matter of  
and  
In the Matter of  
Statement of Affairs**

ASSETS	Estimated to Cost
(a) Property as per List "H"	
(a) Cash at Bankers	10
(b) Cash in hand	
(c) Stock in trade	
(d) Machinery	
(e) Trade fixture, fittings and utensils	
(f) Investments in shares, etc.	
(g) Loans on mortgage	
(h) Other property. ———	£ 100278
(b) Book debts as per List "I"	
Good	20
Doubtful	450559
Bad	
Estimated to produce	£
(c) Bills of exchange or other similar securities on hand as per List "J"	
Estimated to produce	£
(d) Surplus from securities in hands of creditors fully secured (per Contra (b))	£ 3484 30
(e) Unpaid calls as per List "K"	£
Estimated total assets	£554321
Deduct amount due to pref- erential creditors (as per Contra (G))	£215209
	£339112 40
Deduct amount due to debenture holders as per Contra (g))	£
Estimated amount available to meet unsecured creditors subject to cost of liquidation realisation of assets	339112
Estimated deficiency of assets to meet liabilities of the Company subject to cost of liquidation	165344 50
	£504456

This and the succeeding eight sheets is the annexure marked "  
sworn before me this 2nd day of June, 1961.

Exhibit AD.  
(Continued)

Affidavit of  
John Hook  
and Annexures.  
2nd June, 1961.

**The Companies Act**

**International Vending Machines Pty. Ltd.  
(In Liquidation)  
as at 15th May, 1961**

**LIABILITIES**

		Expected to Rank	
10	(a) Unsecured Creditors as per List "A"	£504456	
	(b) Creditors fully secured (not including debenture holders) as per List "B"	£ 5550	
	Estimated value of Securities cost	£ 9034	
	Estimated surplus carried to List "C" (or surplus to Contra)	<u>£ 3484</u>	
20	(c) Creditors partly secured as per List "C"	£	
	Less estimated value of Securities	<u>£</u>	
	Estimated to rank for dividend	<u>£504456</u>	
30	(d) Liabilities on bills discounted other than Company's own acceptances for value as per List "D" of which it is expected will rank for dividend	£	
	(e) Other liabilities as per List "E" of which it is expected will rank for dividend	£	
	(f) Preferential Creditors for rates, taxes, wages, etc. as per List "F" deducted as per Contra	£215209	
40	(g) Loans on Debentures as per List "G" deducted as per Contra	£	£
	Estimated surplus (if any) after meeting liabilities of Company subject to cost of liquidation		<u>504456</u>
50			<u>£504456</u>

A" referred to in the Affidavit of

**GEORGE SAYWELL**  
A Justice of the Peace.

**Statement of Affairs**  
**(as regards Contributories)**

	£	s.	d.	£	s.	d.
Capital issued and allotted, viz:—						
Founders' shares of £ per share ( shareholders)						
(a) Issued as fully paid Amount called up at £ per share as per List "L"						
Ordinary shares of £1 per share ( shareholders)						
(a) Issued as fully paid Amount called up at £1 per share as per List "M"	50102	0	0			
Preference shares of £ per share ( shareholders)						
(a) Issued as fully paid Amount called up at £ per share as per List "N"						
(b) Amount, if any, paid in advance of call						
Less unpaid calls estimated to be irrecoverable	50102	0	0	50102	0	0
Add deficiency to meet liabilities as above				165344	0	0
				£215446	0	0
				215446	0	0
				£215446	0	0

NOTES: (a) Where capital is issued as partly paid up, the form should be altered accordingly  
 (b) Add particulars of any other capital

## List "A"

Affidavit of  
John Hook  
and Annexures.

2nd June, 1961.

**In the Matter of The Companies Act  
and  
In the Matter of International Vending Machines Pty. Ltd.  
(In Liquidation)  
Unsecured Creditors**

NO.	NAME	ADDRESS	AMOUNT
10	1 Trade Creditors		£11165 18 7
	2 Loan Creditors		
	Australian Telephonic Electric Pty. Ltd.	£207063 6 3	
	Hygienic Products Automatic Pty. Ltd.	1946 14 9	
	Independent Holdings Ltd.	2533 1 2	
	I. M. Nicolson	700 0 0	212243 2 2
	Sundry Creditors—unallocated Contracts.		
	New South Wales	101643 0 0	
	Queensland	6535 0 0	
	Victoria	110741 5 0	
20	South Australia	54287 10 0	
	Tasmania	440 0 0	
	Western Australia	7,400 0 0	281046 15 0
			£504455 15 9

## List "A"

Exhibit AD.  
(Continued)Affidavit of  
John Hook  
and Annexures.**International Vending Machines Pty. Ltd. In Liquidation**  
**List of Trade Creditors**

	Name	Address	Amount
2nd June, 1961.	William Adams & Co. Ltd.	Derwent Park. TAS. (Hobart)	33 9 6
	Adelaide Air Conditioning	Gover Place, North Adelaide. S.A.	383 3 9
	Adelaide Car Service	231 Flinders Street, Adelaide. S.A.	7 9 8 10
	Ainsworth Consolidated Industries Ltd.,	22-30 Birmingham Street, Alexandria. N.S.W.	4 0 5
	Alpha Office Supplies Co.	15 Avon Street, Moorabin. VIC.	1 5 5
	Ambassador Hotel	107 King William Street, Adelaide, S.A.	13 1 4
	Ansett A.N.A. Pty. Ltd.	289 William Street, Melbourne. VIC. (Hobart)	13 15 0
	Ansett Freight Express Pty. Ltd.	New Footscray Road, West Melbourne. VIC. (Brisbane)	1 1 6 20
	Ansett Freight Express Pty. Ltd.	New Footscray Road, West Melbourne. VIC. (Adelaide)	11 19 0
	Atlantic Union Oil Co. Pty. Ltd.	66 Pitt Street, Sydney. N.S.W. (Brisbane)	330 5 6
	Atlantic Union Oil Co. Pty. Ltd.	Box 1820Q, G.P.O., Melbourne. VIC.	501 14 9
	Atlantic Union Oil Co. Pty. Ltd.	66 Pitt Street, Sydney. N.S.W. (Newcastle)	403 1 1
	Atlantic Union Oil Co. Pty. Ltd.	Box 1280Q, G.P.O., Melbourne. VIC. (Albury)	361 9 4 30
	Australian Press Cutting Agency	443 Little Collins Street, Melbourne. VIC.	6 17 1
	Auto Smash Repairs	22 Sorrell Street, Parramatta. N.S.W.	5 10 0
	Bennett & Wood Pty. Ltd.	Cnr. Pitt & Bathurst Streets, Sydney. N.S.W.	15 5
	The Border Morning Mail Pty. Ltd.	Dean Street, Albury. N.S.W.	2 4 0
	Bryce Limited	National House, 157-163 Ann Street, Brisbane. Q'LD.	7 1 40
	Business Equipment Pty. Ltd.	M.L.C. Building, Civic Centre, Hunter Street, Newcastle.	11 14 0
	Business Equipment Pty. Ltd.	187-191 Queen Street, Brisbane. Q'LD.	4 0 0
	Business Equipment Pty. Ltd.	233-235 Castlereagh Street, Sydney. N.S.W.	50 0 0

	Name	Address	Amount	Exhibit AD. (Continued)
	Business Equipment Pty. Ltd.	38-40 Hurtle Square, Adelaide. S.A.	1 11 6	— Affidavit of John Hook and Annexures.
	Business Equipment Pty. Ltd.	180-186 Murray Street, Hobart. TAS.	17 6	— 2nd June, 1961.
	John Church Pty. Ltd.	Cnr. Beaumont & Denison Streets, Hamilton. N.S.W.	1 5 0	
	Claude Neon Ltd.	1 Anzac Highway, Keswick. S.A.	3 10 0	
10	Commercial Motor Vehicles Ltd.	217 Franklin Street, Adelaide. S.A.	189 18 5	
	Consolidated Neon Ltd.	Cnr. Victoria & Tennyson Roads, Gladesville. N.S.W.	237 0 0	
	A. Cowburn	15 Chinchin Street, Islington. N.S.W.	3 15 6	
	Craig Interiors Pty. Ltd.	118 Canterbury Road, Can- terbury. N.S.W.	17 3 11	
	Cremorne Motors	248 Unley Road, Unley. S.A.	37 12 6	
	Dalley Typesetting Service Pty. Ltd.	9 Dalley Street, Sydney. N.S.W.	5 0	
20	Dawson, Waldron, Edwards & Nicholls, M.L.C. Build- ing, 44 Martin Place, Sydney. N.S.W.		63 0 0	
	DeLuxe & Red Cabs	108 Darlinghurst Road, Kings Cross. N.S.W.	23 8 7	
	Diner's Club Pty. Ltd.	82 Elizabeth Street, Sydney	34 1 6	
	Stewart G. East	M.L.C. Building, London Circuit, Canberra. A.C.T.	53 8 6	
	Eddies Service Station	746 Botany Road, Mascot.	5 9 10	
	The Electricity Trust of S.A.	Box 412C, G.P.O., Adelaide. S.A.	4 3 3	
30	Empire Typewriting Supplies	361-363 Sussex Street, Sydney. N.S.W.	13 6 8	
	F. R. Foxcroft Sign Co. Pty. Ltd.	80-84 Hope Street, South Brisbane. Q'LD.	50 0 0	
	D. Goldring & Co.	14 Perkin Street, Newcastle. N.S.W.	26 1 11	
	J. Hoy	41 Orlando Road, Lambton. N.S.W.	6 19 6	
	International Harvester Co.	278-294 Roma Street, Brisbane. Q'LD.	4 8 9	
	Islington Joinery Works	12 May Street, Islington. N.S.W.	11 11 5	
40	S. A. Kennedy	484 Townsend Street, Albury. N.S.W.	5 0 0	
	Lewis Brothers Pty. Ltd.	178 Oxford Street, Padding- ton. N.S.W.	1 7 0	
	Liverpool Squash Centre	Memorial Avenue, Liver- pool. N.S.W.	11 5 0	
	Melbourne Wire Works	85-89 Cremorne Street, Rich- mond. VIC.	27 8 10	

Exhibit AD. (Continued)	Name	Address	Amount
Affidavit of John Hook and Annexures. 2nd June, 1961.	Morris Kay Advertising Pty. Ltd.	Caltex House, Kent Street, Sydney. N.S.W.	330 13 0
	Motor Traders Pty. Ltd.	70-72 Commonwealth Street, Sydney. N.S.W.	32 12 0
	Motor Tyre Service	320 Elizabeth Street, Hobart. TAS.	19 14 11
	McDonald Motors Ltd.	66 Currie Street, Adelaide. S.A.	68 14 10
	MacDougalls Pty. Ltd.	58-56 Clarence Street, Sydney.	6 0 10
	McPherson's Limited	102-130 Watmouth Street, Adelaide. S.A.	34 10 3
	Thomas McPherson & Son (Newcastle) Pty. Ltd.	896-902 Hunter Street, Newcastle West. N.S.W.	7 1 1
	Neon Signs (A'sia) Ltd.	11 Hargrave Street, Sydney.	625 8 6
	Newcastle Automobile Exchange Pty. Ltd.	183-185 King Street, Newcastle. N.S.W.	8 1 9
	Newcastle Electrical Rewinds Pty. Ltd.	Chinchen Street, Islington. N.S.W.	3 11 0
	Newstead Service Station	Edmondstone Road, Newstead. Q'LD.	1 17 0
	H. T. O'Briens	470 Dean Street, Albury.	12 6 6
	The Outdoor Shop	154 Elizabeth Street, Hobart. TAS.	7 15 0
	Patons Brake Replacements Pty. Ltd.	788 Swanston Street, Carlton. VIC.	5 13 0
	Thos. Perrot & Sons Pty. Ltd.	337 George Street, Brisbane. Q'LD.	3 3 0
	Peter Indoor Garden Service	20 Elbury Street, Mitchelton, Q'LD.	5 2 6 <sup>30</sup>
	Postal Department	G.P.O., Adelaide. S.A.	61 9 5
	Presson Products	33-35 Pitt Street, Sydney.	447 5 1
	F. Pryles	4 Burne Court, Kew. VIC.	19 1 0
	Quickstryp Distributors Pty. Ltd.	48 Belmont Street, Alexandria.	8 15 6
	Real Radiator Motors	282 Oxford Street, Paddington. N.S.W.	16 1 11
	Redvers Mould	Fleming Street, Albury. N.S.W.	11 18 6
	Remington Rand Chatres	169 Liverpool Street, Sydney. N.S.W.	18 10 0 <sup>40</sup>
	Reno Plastics	67 Hudson Road, Albion, Brisbane. Q'LD.	409 0 0
	Rodair Pty. Ltd.	368 David Street, Albury. N.S.W. (Melbourne)	2 19 0
	G. J. Sanderson	38 Surry Street, Nundah. Q'LD.	22 0 0
	John Sands Pty. Ltd.	41 Druitt Street, Sydney. N.S.W.	9 9



	Name	Address	Amount	Exhibit AD. (Continued)
	Sands & McDougall Pty. Ltd.	64 King William Street, Adelaide. S.A.	3 16 0	— Affidavit of John Hook and Annexures.
	L. A. Scarr & Associates	428 George Street, Sydney. N.S.W.	31 14 5	— 2nd June, 1961.
	Scotts Detergents (A/sia) Pty. Ltd.	Sir Joseph Banks Street, Botany. N.S.W.	5 1 3	
	Seaborn Printing Co. Pty. Ltd.	33 Collins Street, Alexandria. N.S.W.	327 13 0	
10	P. J. Smith Pty. Ltd.	1022 Rocky Pt. Road, Kogarah. N.S.W.	65 16 3	
	Smith Sons & Rees	30-32 Wentworth Avenue, Sydney. N.S.W.	8 18 11	
	Spot Welding Specialists	334 Victoria Street, Bruns- wick. VIC.	23 2 3	
	Stationery Enterprises Pty. Ltd.	425 Pitt Street, Syd- ney, N.S.W.	5 0	
	W. J. Stead & Sons	3 Dalley Street, Sydney. N.S.W.	17 3	
20	Stiff & Gannon	Box 146, Wodonga. VIC.	20 15 0	
	Stradbroke Motors Pty. Ltd.	374-386 Wickham Street, Valley, Brisbane. Q'LD.	13 10	
	Supreme Wire, Fence & Gate Co.	603 Sydney Road, Coburg. VIC.	13 0 0	
	Swain & Co. Pty. Ltd.	119-123 Pitt Street, Sydney, N.S.W.	19 15 9	
	Thatcher & Oberg Pty. Ltd.	Gardiner's Road, Mascot, N.S.W.	2 14 3	
	Turner Bros.	Cnr. Princes H'way., & Rocky Pt. Road, Kogarah. N.S.W.	41 2 10	
30	Vending Industries Pty. Ltd.	287-289 Victoria Road, Brunswick. VIC.	114 1 8	
	Victoria Street Motors	25 Victoria Street, West Bruns- wick. VIC.	69 18 6	
	Wedderburn & Sons Pty. Ltd.	73 Liverpool Street, Sydney, N.S.W.	99 10 0	
	Colton, Palmer & Preston	53 Currie Street, Adelaide, S.A.	47 17 3	
	Engineering Supply Co.	Edward & Charlotte Streets, Brisbane. Q'LD.	19 15 7	
40	R. Ferguson	10 Lambton Road, Broadmeadow, N.S.W.	167 1 6	
	Fish Steam Laundry	Ann Street, Valley, Brisbane. Q'LD.	41 6 11	
	G. P. Fitzgerald	83-99 Collins Street, Hobart. TAS.	8 4 6	
	General Advertising Service	114 Castlereagh Street, Sydney. N.S.W.	624 18 8	

Exhibit AD. (Continued)	Name	Address	Amount
Affidavit of John Hook and Annexures.	General Brake Service	425-427 Elizabeth Street, Sydney	3 16 1
2nd June, 1961.	Gestetner Pty. Ltd.	92-96 Barcum Avenue, Rush- cutters Bay. N.S.W.	50 5 8
	Goodfellows Dry Cleaning	Cameron Street, Rockdale. N.S.W.	30 0 0
	Grant & Walker	7a Norton Street, Leichhardt. N.S.W.	45 7 0
	A. G. Healing	200-218 Goulburn Street, Sydney.	10 13 9
	Horsfield & Vaughan	49 Flinders Street, Darlinghurst.	3 7 1 10
	Hunter Gate & Fence	50-54 Maitland Road, Islington, N.S.W.	9 6
	Harris Scarfe Ltd.	Grenfell Street, Adelaide, S.A.	12 11
	H. C. Heathorn	71 Bathurst Street, Hobart. TAS.	6 2 0
	Hiller Motors	40 Rooke Street, Debonport. TAS.	8 14 0
	Hollis Motors	York & St. John Streets, Launceston. TAS.	38 19 8
	Illawarra Stationary Supply	86 Regent Street, Kogarah, N.S.W.	404 14 10
	Islington Service Station	144 Maitland Road, Isling- ton. N.S.W.	2 19 8
	I.B.M. (Aust.)	150 Palmer Street, Sydney. N.S.W.	25 11 6
	Johnsons Overalls Pty. Ltd.	233-235 George Street, Sydney. N.S.W.	52 8 7
	Joseph Lucas (Aust.) Pty. Ltd.	138 Joynton Avenue, Zetland. N.S.W.	10 6 1
	Joes Service Station	Melbourne Road, Wodonga. VIC. (Albury)	9 12 6
	Charles B. Jackson Pty. Ltd.	35 Watt Street, New- castle. N.S.W.	1 5 7 30
	Ansett A.N.A. Pty. Ltd.	289 William Street, Mel- bourne. VIC. (Sydney)	177 14 9
	Advertiser Newspapers Ltd.	121 King William Street, Adelaide. S.A.	15 19 6
	Ausfield Ltd.	3-11 Australia Street, Camperdown. N.S.W.	3 3 6
	Atlantic Union Oil Co. Pty. Ltd.	66 Pitt Street, Sydney, N.S.W.	1004 14 2
	Atlantic Union Oil Co. Pty. Ltd.	4 Wainhouse Street, Torrensville. S.A.	185 2 3 40
	Ansett Freight Express Pty. Ltd.	New Footscray Road, West Melbourne. VIC. (Sydney)	392 1 2
	Ansett Freight Express Pty. Ltd.	New Footscray Road, West Melbourne, VIC. (Melbourne)	10 18 0
	Airco	Rose & Raglan Streets, Darlington. N.S.W.	17 14 3

	Name	Address	Amount	Exhibit AD. (Continued)
	A. W. Birchall & Sons Pty. Ltd.	118-120 Brisbane Street, Launceston. TAS.	17 5 5	Affidavit of John Hook and Annexures.
	Blakes Pty. Ltd.	517 Dean Street, Albury. N.S.W.	6 6 6	2nd June, 1961.
	A. A. Bockman & Co.	511-513 David Street, Albury, N.S.W.	13 1 3	
	Brown & Broad Ltd.	Breakfast Creek Road, Newstead. Q'LD.	3 8	
10	Beaurepairs Tyre Service	Dean & Young Streets, Albury. N.S.W.	44 18 11	
	H. Butt & Sons	390 Rau Sreet, Albury. N.S.W.	34 16 3	
	Central Garage	Cutter Street, Queenstown & Rosebery. TAS.	1 19 3	
	Centacom Pty. Ltd.	304 Pitt Street, Sydney. N.S.W.	10 10 0	
	Coombes Tyres Pty. Ltd.	Lord & Botany Roads, Mascot, N.S.W.	92 2 10	
	Capitol Auto Electrical Service	399 Townsend Street, Albury. N.S.W.	10 6 4	
20	H. Cornwell & Son	460 Sydney Road, Brunswick. VIC.	8 15 3	
	Cox Kay Pty. Ltd.	160-166 Collins Street, Hobart. TAS.	19 7 10	
	Classic Dry Cleaners	102 Maitland Road, Islington, N.S.W.	2 13 3	
	Kellow-Falkner Pty. Ltd.	206-218 Russell Street, Melbourne. VIC.	15 10 4	
	Kalamazoo (Aust.) Ltd.	254 George Street, Sydney. N.S.W.	56 13 1	
	Lamson Engineering	Rookwood Road, Bankstown	6 11 3	
30	George Luhrs	448 Jamieson Street, Albury. N.S.W.	16 9 10	
	Lusteroid Pty. Ltd.	14 Primrose Avenue, Rosebery, N.S.W.	5 9 9	
	Mascot General Hardware	375 Gardiners Road, Rosebery. N.S.W.	9 11 11	
	McPhersons Ltd.	51-65 Bathurst Street, Sydney. N.S.W.	5 4	
	McPhersons Ltd.	546-566 Collins Street, Melbourne, VIC.	96 14 8	
	Mates Ltd.	Dean Street, Albury, N.S.W.	12 0 2	
40	Mayne Nickless Ltd.	572-574 King Street, Newtown, N.S.W.	53 5 3	
	Metropolitan Night Patrol	309 South Terrace, Adelaide. S.A.	17 14 4	
	Modern Steam Laundry Pty. Ltd.	Elmore Street, North Albury, N.S.W.	5 5	

Exhibit AD. (Continued)	Name	Address	Amount
Affidavit of John Hook and Annexures. — 2nd June, 1961.	National Tyre Service Pty. Ltd.	96 Brisbane Street, Hobart. TAS.	34 2 2
	National Tyre Service Pty. Ltd.	Main North Road & Nottage Terrace, Medindie Gardens. S.A.	35 4 8
	Neal's Motors Pty. Ltd.	222 Exhibition Street, Mel- bourne. VIC.	102 15 10
	Olivetti (Aust.) Pty. Ltd.	53-57 Queen Street, Mel- bourne. VIC. (Sydney)	10 10 0
	Organization Pty. Ltd.	King & Perkins Street, New- castle. N.S.W.	6 18 8 <sup>10</sup>
	W. C. Penfold & Co. Pty. Ltd.	84-88 Pitt Street, Sydney, N.S.W.	85 15 0
	George A. Perroux	286 Queen Street, Brisbane. Q'LD.	33 5 11
	Pye Pty. Ltd.	295 Parramatta Road, Glebe. N.S.W.	5 5 0
	Postal Department	G.P.O., Sydney. N.S.W.	379 8 9
	C. Reynolds	C/o I.V.M., 28a Currie Street, Adelaide. S.A.	19 10 0
	Rodair Pty. Ltd.	386 David Street, Albury. N.S.W.	1 7 9
	Robertson & Mullins	621 Dean Street, Albury. N.S.W.	1 12 8 <sup>20</sup>
	A. H. Rowe	10 Eliza Street, Adelaide. S.A.	6 9 5
	Scrymgour & Sons Ltd.	115 King William Street, Adelaide. S.A.	36 18 5
	W. E. Smith Limited	Webb & Boundary Streets, Croydon. N.S.W.	1 11 9
	N. Solomons Pty. Ltd.	11-13 Barlow Street, Sydney. N.S.W.	10 18 4
	Sorbys Ltd.	285 Hunter Street, Newcastle. N.S.W.	11 16 1
	Stephney Laundry	21 Magill Road, Stepney. S.A.	4 5 0
	Southern Service Station	31-33 Bathurst Street, Hobart. TAS.	40 0 10 <sup>30</sup>
	Thatcher & Oberg	Gardiners Road, Mascot. N.S.W.	2 14 1
	Thomas National Transport	Cowper Street, Carring- ton. N.S.W.	21 6 8
	V.W. Motors	132 Breakfast Creek Road, Newstead. Q'LD.	18 9 0
	Westcott Hazell & Co.	225 Castlereagh Street, Syd- ney. N.S.W.	13 0 8
	George Winter Service Station	5 Hope Street, Bruns- wick. VIC.	23 11 0 <sup>40</sup>
	Waste Merchandise Pty. Ltd.	Gibbes Street, Chats- wood. N.S.W.	43 12 0
	W. C. Auto Engineers	7 Merivale Street, Brisbane. Q'LD.	51 12 10
	A.G. Healing Ltd.	200-218 Goulburn Street, Sydney. N.S.W.	7 8

Name	Address	Amount	Exhibit AD. (Continued)
Beaurepaire Tyre Service Pty. Ltd.	81 Hunter Street, Newcastle. N.S.W.	62 2 7	— Affidavit of John Hook and Annexures.
Beaurepaire Tyre Service Pty. Ltd.	Box 1279L, G.P.O., Melbourne. VIC.	16 4 2	— 2nd June, 1961.
Beaurepaire Tyre Service Pty. Ltd.	7 Evelyn Street, Newstead. Q'LD.	95 5 10	
Enrichsen Motors Pty. Ltd.	515 Stanley Street, South Brisbane. Q'LD.	18 9	
10		<u>£11165 18 7</u>	

List "B"  
**Fully Secured Creditors (Not Including Debenture Holders)**

NO.	NAME	ADDRESS	NATURE OF SECURITY	SHORT PARTICULARS OF SECURITY	AMOUNT OWING	VALUE OF SECURITY
1	Australian Guarantee Corporation Limited	142-144 Phillip St., Sydney	Hire Purchase Contracts	2 International Trucks Reg. No. CFD019 " " CFD089	£2675. 4s.	£4520. 5s.2d.
2	Associated Securities Limited	P.O. Box 13, North Quay, Brisbane.	"	2 International Trucks Reg. No. NLH571 " " NLK470	£2874.14s.	£4513.10s.4d.
					£5549.18s.	£9033.15s.6d.

List "C"  
**Partly Secured Creditors**  
 (State whether also contributories of the Co.)

NO.	NAME	ADDRESS	NATURE OF SECURITY	SHORT PARTICULARS OF SECURITY	ESTIMATED VALUE OF SECURITY	BALANCE OF DEBT UNSECURED
						NIL

List "D"  
Liabilities of Company on Bills Discounted other than the  
Company's Own Acceptances For Value

NO.	NAME	ADDRESS	WHETHER LIABLE AS DRAWER OR ENDORSER	DATE WHEN DUE	AMOUNT	HOLDER'S NAME AND ADDRESS	AMOUNT EXPECTED TO RANK FOR DIVIDEND
NIL							

List "E"  
Other Liabilities

NO.	NAME OF CREDITOR	ADDRESS	AMOUNT
NIL			

List "F"  
Preferential Creditors

NO.	NAME	ADDRESS	CONSIDERATION	DATES BETWEEN WHICH DEBT ACCRUED DUE	AMOUNT
AS PER LIST ATTACHED					
					215209 1 6.

Exhibit AD.  
 (Continued)  
 —  
 Affidavit of  
 John Hook  
 and Annexures.  
 —  
 2nd June, 1961.

Exhibit AD.  
 (Continued)  
 —  
 Affidavit of  
 John Hook  
 and Annexures.  
 —  
 2nd June, 1961.

List "F"

Preferential Creditors

Deputy Commissioner of Taxation, Sydney	Group Tax	July 1960	187 12 0
"	"	Dec. 1960	873 8 9
"	"	Jan. 1961	367 16 0
"	"	Dec. 1960	157 5 11
"	"	Jan. 1961	50 7 0
"	Pay Roll Tax	Dec. 1960	336 12 10
"	"	Jan. 1961	30 12 7
"	Income Tax y.e.	30/6/1959	73057 2 1
"	"	30/6/1960	139726 0 0

SALES COMMISSIONS:

L. Devereaux	60 15 3
B. Bluestone	69 3 3
C. Jones	32 19 3
K. Brown	83 15 6
R. Keen	34 12 4
A. Dams	71 10 3
T. Fitzgerald	29 6 0
E. J. Binns	3 2 0
F. C. Court	24 0 9
P. Duggan	12 19 9
	<u>£215209 1 6</u>



List "G"

Debenture Holders

NO.	NAME	ADDRESS	CONSIDERATION	DATE OF SECURITY	DATE REGISTERED	AMOUNT
NIL						

List "H"

Property

FULL STATEMENT AND NATURE OF PROPERTY	ESTIMATED COST	ESTIMATED TO PRODUCE
(a) Cash at Bankers	1 6 6	
(b) Cash in hand	610 0 0	
(c) Stock in trade	18137 0 0	
(d) Machinery	66063 12 8	
(e) Trade Fixtures fittings and Investments in shares etc.	15395 11 9	
(g) Loans on mortgage	70 0 0	
(h) Other property		
	£100277 10 11	

List attached

Exhibit AD.  
(Continued)  
Affidavit of  
John Hook  
and Annexures.  
2nd June, 1961.

Exhibit AD.  
(Continued)

## List "H"

Affidavit of  
John Hook  
and Annexures.

## Property

2nd June, 1961.

		ESTIMATED COST		
a) Cash at Bank			1	6 6
b) Cash on Hand—Petty Cash Floats			610	0 0
c) Stock in Trade—Vending Machines			15137	0 0
Spare Parts			3000	0 0 10
d) Machinery—Motor Vehicles	58258	11	8	
Store Equipment	3826	1	1	
Two Way Radio	3978	19	11	66063 12 8
e) Trade Fixtures, Fittings & Utensils—				
Office Furniture	6984	7	8	
Office Equipment	6420	16	3	
Floor Covering	702	7	6	
Office Partitions	1288	0	4	15395 11 9
				20
f) Investments in Shares, Etc.—			NIL	
g) Loans on Mortgage—			NIL	
h) Other Property—Deposits				70 0 0
				<u>£100277 10 11</u>

List "I"

Book Debts

NO.	NAME	ADDRESS	CONSIDERATION	AMOUNT
	L & J. Steen			
	Automatic Merchandising (NSW) Pty. Ltd.,	Sydney	Adjustments claimed on sale of business	4695 12 4
	Automatic Merchandising (Q'land) Pty. Ltd.	Brisbane	Loan	86611 10 7
	Automatic Merchandising (Vic.) Pty. Ltd.	Melbourne	"	20928 16 3
	Automatic Merchandising (Tas.) Pty. Ltd.	Hobart	"	32862 4 9
	International Automatic Merchandising (S. Aust.) Pty. Ltd.	Adelaide	"	10691 0 7
	International Vending Machine Holdings Pty. Ltd.,	Sydney	"	41750 5 2
	Consolidated Discounters Pty. Ltd.	Sydney	"	235681 11 6
	Sundry Debtors as per list attached	Sydney	"	17322 18 9
				15 9 4
				<u>450559 9 3</u>

Exhibit AD.  
(Continued)  
—  
Affidavit of  
John Hook  
and Annexures.  
—  
2nd June, 1961.

Exhibit AD.  
(Continued)

Affidavit of  
John Hook  
and Annexures.  
—  
2nd June, 1961.

## List "I"

## Sundry Debtors

Charles Davies Ltd. 60 Elizabeth Street, Hobart. TAS	8	18	9
Risby Bros. Limited 175 Collins Street, Hobart. TAS.		8	7
C.C. Wakefield & Co. Miller St. & Bulwarra Rd., Pymont. N.S.W.		12	6
Chas. B. Jackson 35 Watt Sreet, Newcastle. N.S.W.	1	5	7
	4	3	11

---

£15 9 4 10

---

List "J"

**Bills of Exchange, Promissory Notes and C. on Hand Available as Assets**

NAME OF ACCEPTOR OF BILL OR NOTE	ADDRESS	AMOUNT OF BILL OR NOTE	DATE WHEN DUE	ESTIMATED TO PRODUCE	PARTICULARS OF ANY PROPERTY HELD AS SECURITY FOR PAYMENT OF BILL OR NOTE
NIL					

List "K"

**Unpaid Calls**

CONSEC. NO.	NO. IN SHARE REGISTER	NAME OF SHAREHOLDER	ADDRESS AND OCCUPATION	NO. OF SHARES HELD	AMOUNT OF CALL PER SHARE UNPAID	TOTAL AMOUNT DUE	ESTIMATED TO REALISE
NIL							

Exhibit AD.  
 (Continued)  
 Affidavit of  
 John Hook  
 and Annexures.  
 2nd June, 1961.

List "L"  
List of Founders' Shares

CONSEC. NO.	REGISTER NO.	NAME OF SHAREHOLDER	ADDRESS	NOMINAL AMOUNT OF SHARE	NO. OF SHARES HELD	AMOUNT PER SHARE CALLED UP	TOTAL AMOUNT CALLED UP
NIL							

List "M"  
List of Ordinary Shares

CONSEC. NO.	REGISTER NO.	NAME OF SHAREHOLDER	ADDRESS	NOMINAL AMOUNT OF SHARE	NO. OF SHARES HELD	AMOUNT PER SHARE CALLED UP	TOTAL AMOUNT CALLED UP
1	6	International Vending Machines Holdings Pty. Limited C/- S. G. East, M.L.C. Bldg. Canberra A.C.T.		£1	50100	£1	£50100
2	7	John Frederick Martin 28 Kidman Street, Coogee		£1	1	£1	£1
3	8	Thomas Peter Ball, 13 King Avenue, Balgowlah		£1	1	£1	£1
					<u>50102</u>		<u>£50102</u>

List "N"

List of Preference Shares

CONSEC. NO.	REGISTER NO.	NAME OF SHAREHOLDER	ADDRESS	NOMINAL AMOUNT OF SHARE	NO. OF SHARES HELD	AMOUNT PER SHARE CALLED UP	TOTAL AMOUNT CALLED UP
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NIL

Exhibit AD.  
(Continued)

—  
Affidavit of  
John Hook  
and Annexures.  
—  
2nd June, 1961.

Exhibit AE.  
—  
Advertisement  
in Sun-Herald.  
—  
24th May, 1959.

EXHIBIT AE  
Advertisement in Sun-Herald

**15%<sup>01</sup>  
0** **YEARLY  
RETURN**

**Guaranteed**

From this outstanding  
new investment offer!

**International Vending Machines**

Pty. Limited

This completely new business investment in Automatic Vending Machines offers to investors a guaranteed 15% Yearly Return which is payable by guaranteed monthly payments.

***The 15% yearly return is guaranteed  
for every year of the investment***

On a minimum investment of £300 the investor receives a guaranteed return of £45 per annum.

International Vending Machines Pty. Limited, leaders in this completely new business field in Australia, have over 6,000 vending machines sited throughout the Eastern States on

behalf of investors. The investor becomes the absolute owner of the machines which are sited, operated and serviced by the Company.

**Complete details regarding this investment may be obtained by contacting your State Branch.**

**International Vending Machines**

Pty. Limited

HEAD OFFICE: CALTEX HOUSE, 167 KENT STREET, SYDNEY

**SYDNEY: Victor House, 22 Jamison Street. BU 6357**

**MELBOURNE: Merino House, 540 Little Collins Street. 62-4774**

**BRISBANE: Reid House, 144-148 Edward Street. 2-9436**

**ADELAIDE: S.A. Insurance Bldg., 28a Currie Street. 51-3537/8**

**HOBART: Victor House, 82 Harrington Street. 2-7606, 2-7607**

NAME.....

ADDRESS.....

S.H. 24/5

Priority No. (Leave Blank)..... Without any obligation on my part, please give me details of 15% return guaranteed on investment in Vending Machines.

IVMS439



EXHIBIT 1  
Document Initialled by N. E. Challoner

**Memo—North Ash & Mann  
re International Vending Machines Pty. Ltd.**

Exhibit 1.  
—  
Document  
initialled by  
N. E. Challoner.  
—  
20th April, 1959.

Mr. Mann and Mr. Purcell attended for conference in connection with the abovenamed company. This company commenced operations at the beginning of the present year of income with a capital of £100 contributed in the ratio of 45:45:10 by three persons named Stein. This company advertises for purchasers of certain machines to sell bubble gum, etc. A second company known as  
10 Automatic Merchandising (N.S.W.) Pty. Ltd. enters into an agreement with the purchaser whereby it will guarantee the purchaser a return of 20% (now 15%) per annum on his investment and has the right to put the machine on location wheresoever it thinks fit. This company services the machine and clears it, etc. It also advertises for sites paying £2 for a suitable site and offers shop-keepers 15% or 20% of the proceeds for allowing the machines to be stationed at the shop entrance.

The merchandising company retains the balance of the profits, i.e. after paying the percentage of gross proceeds to the shop-keeper  
20 and the percentage of the cost of the machine to the purchaser thereof. It now appears that I.V.M. Pty. Ltd. has been flooded with purchasers for the machines and has limited every purchaser to an amount of £300. It is also anticipated that the net profit of this company for the year ended 30 June, 1959 will be something like £200,000 and an urgent problem arises in regard to the taxation position. In view of the large amount of profit, it seems that a family set up would not suffice in this instance and the only solution seems to be a public company set up. In this instance if the profits continue satisfactorily for two or three years a public flotation will be made.

30 It was suggested that I.V.M. Pty. Ltd. might be constituted a non-private company for the time being along the lines of the Sidney Williams and Keighery cases. It was also suggested that the Messrs. Stein would be satisfied if they could make a pretty substantial profit by a sale of their shares in I.V.M. Pty. Ltd. Based on experience in America they are quite satisfied that Automatic Merchandising (N.S.W.) Pty. Ltd. will be successful and that the vending of machines on the basis adopted will continue profitably for many years.

In these circumstances Mr. Purcell suggested that a possible solution might be to constitute Automatic Merchandising (N.S.W.)  
40 Pty. Ltd. as a non-private company along the lines of the Sidney Williams or Keighery cases and for this company to buy the shares in I.V.M. Pty. Ltd. for a substantial sum, say, £200,000 or £250,000. I.V.M. Pty. Ltd. would then declare dividends out of its profits and Automatic Merchandising (N.S.W.) Pty. Ltd. would use those dividends to pay the Messrs. Stein for their shares. Our advice is sought as to

Exhibit 1.  
(Continued)

Document  
initialled by  
N. E. Chaloner.  
—  
20th April, 1959.

whether, in view of Newton's case, s.260 could apply to such an arrangement.

I suggested that it might be safer if the shares in I.V.M. Pty. Ltd. were sold to Automatic Merchandising (N.S.W.) Pty. Ltd. prior to 30 June, 1959 so that as at that date I.V.M. Pty. Ltd. became a non-private company. In this event, instead of declaring a dividend which would find its way to the Messrs. Stein in satisfaction of the sale price for their shares Automatic Merchandising (N.S.W.) Pty. Ltd. could borrow this sum from I.V.M. Pty. Ltd. as an interest-bearing loan. Section 108 could not apply provided that the non-10 private company status is maintained and s.260 could not help the Commissioner because the annihilation of the sale, etc. would not leave exposed any circumstances which would attract liability to tax, e.g. a dividend declared which found its way to the Messrs. Stein. Admittedly I.V.M. Pty. Ltd. would then pay tax at the higher rate applicable to non-private companies but this might be a worth while price to pay for the additional safeguard.

Mr. Mann left with us the draft agreements and we are to further consider the position in regard to s.260 and make any other suggestions which we might think of. Mr. Mann and Mr. Purcell will attend 20 for a further conference on Monday 4 May and subsequent to that would like our views in writing.

N.E.C.  
20/4/59.



Exhibit 4.  
(Continued)  
Balance Sheets  
and Accounts.  
22nd Oct., 1959.

**International Vending  
Balance Sheet**

**AUTHORISED CAPITAL**

75,000 Ordinary Shares of £1 each	£75,000 0 0
-----------------------------------	-------------

**SHAREHOLDERS' FUNDS**

Issued Capital			
50,102 Ordinary Shares of £1 each Fully Paid	50,102 0 0		10
Profit and Loss 1959 Appropriation Account	13,780 16 11		
<b>TOTAL SHAREHOLDERS' FUNDS</b>		<b>63,882 16 11</b>	

**CURRENT LIABILITIES**

Sundry Creditors and Accruals — Schedule 2	29,948 8 11		
Loan Accounts			
Louis Steen	28,931 8 9		
Joseph Steen	29,216 4 1		20
Sydney Steen	13,880 0 0		
<b>TOTAL CURRENT LIABILITIES</b>		<b>101,976 1 9</b>	

**SECURED LIABILITIES**

Australian Guarantee Corp. Ltd.	778 19 0		
"    "    "    "	769 16 8		
"    "    "    "	870 7 3		
"    "    "    "	840 7 0		
"    "    "    "	966 16 3		
"    "    "    "	966 16 3		30
Business Equipment Pty. Ltd.	499 4 1		
Customs Credit Corp. Ltd.	768 0 0		
"    "    "    "	724 0 0		
Gestetner Pty. Ltd.	150 7 10		
H.P. Investment Pty. Ltd.	58 13 0		
Industrial Acceptance Corp. Ltd.	816 0 0		

**Machines Pty. Limited**  
**as at 30th June, 1959**

Exhibit 4.  
 (Continued)  
 —  
 Balance Sheets  
 and Accounts.  
 —  
 22nd Oct., 1959.

Statement 1.

CURRENT ASSETS						
	Cash on Hand		217	10	0	
	Australia and New Zealand Bank Ltd.		47,345	18	1	
	Sundry Debtors — Schedule 1		33,970	13	0	
10	Stock on Hand at Directors Valuation		2,400	0	0	
	Deposits		30	0	0	
	<b>TOTAL CURRENT ASSETS</b>					<b>83,964 1 1</b>
FIXED ASSETS						
	Motor Vehicles	40,394	16	3		
	Less Depreciation Provision	3,352	14	6	37,042	1 9
20	Office Furniture	3,138	2	0		
	Less Depreciation Provisions	235	7	0	2,902	15 0
	Office Equipment	2,284	14	2		
	Less Depreciation Provision	342	14	0	1,942	0 2
	Office Floor Coverings	400	4	0		
30	Less Depreciation Provision	54	7	6	345	16 6
	Office Partitions	1,594	19	3		
	Less Depreciation Provision	119	12	6	1,475	6 9
	<b>TOTAL FIXED ASSETS</b>					<b>43,708 0 2</b>
LOAN ACCOUNT—PARENT COMPANY						
	A.M. Holdings Pty. Ltd.		205,741	0	0	
	<b>TOTAL LOAN ACCOUNT—PARENT COMPANY</b>					<b>205,741 0 0</b>
40	LOAN ACCOUNTS					
	Automatic Merchandising (N.S.W.) Pty. Ltd.		34,240	11	9	
	Automatic Merchandising (Queensland) Pty. Ltd.		8,312	9	8	
	Forward —		42,553	1	5	333,413 1 3

Exhibit 4.  
(Continued)  
Balance Sheets  
and Accounts.  
22nd Oct., 1959.

**International Vending Machines**  
**Balance Sheet**

	Forward —					
	8,209	7	4	165,858	18	8
<b>SECURED LIABILITIES (Continued)</b>						
National Acceptance Corp. Ltd.	2,490	16	0			
"          "          "          "	2,202	13	4			
"          "          "          "	1,491	12	0			
"          "          "          "	776	0	0			
"          "          "          "	784	19	9			10
"          "          "          "	778	16	0			
"          "          "          "	784	19	9			
"          "          "          "	784	19	9			
<b>TOTAL SECURED LIABILITIES</b>				18,304	3	11
<b>PROVISIONS</b>						
Company Taxation Provision	99,500	0	0			
<b>TOTAL PROVISIONS</b>				99,500	0	0
<b>RESERVES</b>						
General Reserve for Contingency on Guarantee	150,000	0	0			20
<b>TOTAL RESERVES</b>				150,000	0	0
				<u>£433,663</u>	<u>2</u>	<u>7</u>
.....						
.....						
						} Directors

**Pty. Limited**  
**as at 30th June, 1959**

Exhibit 4.  
*(Continued)*  
 —  
 Balance Sheets  
 and Accounts.  
 —  
 22nd Oct., 1959.

		<u>Statement 1 (Continued)</u>					
		Forward —					
		42,553	1	5	333,413	1	3
<b>LOAN ACCOUNTS Continued</b>							
	Automatic Merchandising (Victoria) Pty. Ltd.	15,395	17	10			
10	Automatic Merchandising (Tas.) Pty. Ltd.	2,690	12	6			
	Consolidated Discounters Pty. Ltd.	20,155	6	3			
	International Automatic Merchandising (S. Aust.) Pty. Ltd.	17,675	9	0			
	International Automatic Merchandising (W.A.) Pty. Ltd.	75	0	0			
	The International Appliance Co. Pty. Ltd.	1,141	14	10			
	<b>TOTAL LOAN ACCOUNTS</b>				99,687	1	10
20	<b>FORMATION EXPENSES</b>				562	19	6

£433,663    2    7

Exhibit 4.  
(Continued)  
—  
Balance Sheets  
and Accounts.  
—  
22nd Oct., 1959.

**International Vending Machines**  
**Trading and Profit and Loss Account**

Purchases	208,154	6	2				
Less Stock on Hand 30th June 1959	2,400	0	0	205,754	6	2	
Gross Profit—carried down				425,837	17	4	
				£631,592			3
				6			6
							10
Accountancy	1,063	12	1				
Advertising	41,051	14	3				
Amenities — Staff	352	9	6				
Bank Charges	558	7	1				
Cartage & Freight	1,311	18	6				
Cleaning	159	13	9				
Commission	46,730	2	6				
Depreciation — Schedule 3							
Motor Vehicle	3,944	13	2				
Office Furniture	235	7	0				20
Office Equipment	342	14	0				
Carpets	15	0	0				
Lino	39	7	6				
Office Partitions	119	12	6	4,696	14	2	
Donations	60	9	0				
Entertainment	1,369	19	7				
Hire Purchase Charges	3,681	3	9				
Hire Purchase fees	2,029	19	0				
Insurance	1,577	1	1				30
Legal Expenses	1,967	19	0				
Light and Power	252	6	9				
Motor Vehicle Allowances	796	17	4				
Motor Vehicle Registration & Insurance	381	17	0				
Motor Vehicle Repairs	233	19	6				
Motor Vehicle Running	1,612	10	0				
Office Expenses	317	12	9				
Patent Fees	25	0	0				
Payroll Tax	1,678	7	9				40
Postages	411	10	5				
Printing and Stationery	2,222	12	11				
Rates and Taxes	64	11	1				
Rent	4,401	9	5				
Repairs and Maintenance	1,573	11	2				
Secretarial Fees	160	0	0				
Subscriptions	15	0	0				
Staff Superannuation	1,694	16	1				
Stamp Duty	92	13	11				
Forward —	122,545	19	4				50



**Pty. Limited**  
**for the Year Ended 30th June, 1959**

Exhibit 4.  
*(Continued)*

Balance Sheets  
 and Accounts.

22nd Oct., 1959.

	Statement 2.
Sundry Income — nett	631,592 3 6
	<u>£631,592 3 6</u>
Gross Profit — brought down	425,837 17 4

Exhibit 4.  
 (Continued)  
 —  
 Balance Sheets  
 and Accounts.  
 —  
 22nd Oct., 1959.

**International Vending Machines**  
**Trading and Profit and Loss Account**

	Forward —	122,545	19	4				
Sundries		173	13	6				
Telephone and Telegrams		1,518	8	3				
Travelling Expenses		6,649	6	10				
Uniforms		203	19	4				
Watchman		7	6	6				
Wages		31,458	6	8	162,557	0	5	10
NET PROFIT — carried forward to								
Profit and Loss 1959								
Appropriation Account —								
Statement 3					263,280	16	11	
					<u>£425,837</u>	<u>17</u>	<u>4</u>	

**Pty. Limited**  
**for the Year Ended 30th June, 1959**

Statement 2 (Continued)

Exhibit 4.  
(Continued)

Balance Sheets  
and Accounts.

22nd Oct., 1959.

Forward —

425,837 17 4

£425,837 17 4

Exhibit 4.  
(Continued)  
—  
Balance Sheets  
and Accounts.  
—  
22nd Oct., 1959.

**International Vending Machines**  
**Profit & Loss**

1959				
June 30	Provision for Company Taxation	99,500	0	0
	Transfer to General Reserve for Contingency on Guarantee	150,000	0	0
	Balance carried to Balance Sheet — Statement 1	13,780	16	11
		<u>£263,280</u>	<u>16</u>	<u>11</u>

10

**Pty. Limited**  
**1959 Appropriation Account**

Statement 3.

Exhibit 4.  
*(Continued)*

Balance Sheets  
 and Accounts.

22nd Oct., 1959.

1959		
June 30	Net Profit for year	263,280 16 11

£263,280 16 11

Exhibit 4.  
(Continued)  
Balance Sheets  
and Accounts.  
—  
22nd Oct., 1959.

**International Vending Machines Pty. Limited**  
**Depreciation Schedule for Year Ended 30th June, 1959**

Note: Reducing Balance Method.

**MOTOR VEHICLES**

Date Purchased	Description	Cost	Rate	Depreciation
11/7/58	Austin A/152 Omnivan—BOY 525	1,120 9 7	22½%	231 2 0
30/8/58	Packard Sedan BPV 726	3,831 2 6	22½%	718 6 6
9/9/58	Morris J2 Messenger Van	1,066 10 11	22½%	179 19 6
23/9/58	Austin A/152 Omnivan—BRE 081	1,120 9 7	22½%	189 2 0
29/9/58	Austin A/55 Panel Van—BRH 531	1,025 0 0	22½%	172 19 6
24/10/58	Morris Minor Sedan—BHU 484	650 0 0	22½%	97 10 0
28/11/58	Austin A/152 Omnivan—BSO 210	1,120 9 7	22½%	147 1 6
28/11/58	Austin A/152 Omnivan—BSO 213	1,120 9 7	22½%	147 1 6
2/12/58	Austin A/152 Panel Van—BLV 218	1,020 0 0	22½%	114 15 0
6/2/59	Austin Panel Van—BTT 538	1,197 16 9	22½%	89 16 9
6/2/59	Austin Panel Van—BTT 537	1,197 16 9	22½%	89 16 9
27/2/59	Rambler Sedan—BTL 476	2,070 0 0	22½%	155 5 0
27/2/59	Commer Panel Van—BUE 350	959 0 0	22½%	71 18 6
6/3/59	Commer Panel Van—BOD 911	959 0 0	22½%	53 19 0
10/3/59	Commer Panel Van—GXY 878	959 0 0	22½%	53 19 0
13/3/59	Commer Panel Van—BUF 173	959 0 0	22½%	53 19 0
14/3/59	Commer Panel Van—BOF 172	959 0 0	22½%	53 19 0
13/4/59	Hillman Estate Van—GZA 535	1,024 16 0	22½%	42 12 0
13/4/59	Hillman Estate Van—GZA 467	1,024 16 0	22½%	42 12 0
13/4/59	Hillman Estate Van—GZA 276	1,024 16 0	22½%	42 12 0
22/4/59	Hillman Estate Van—BUY 337	1,024 16 0	22½%	42 12 0
22/4/59	Hillman Estate Van—WJK 736	1,024 16 0	22½%	42 12 0
22/4/59	Hillman Estate Van—BUY 451	1,024 16 0	22½%	42 12 0
28/4/59	Hillman Estate Van—BUC 524	1,024 16 0	22½%	42 12 0
28/4/59	Hillman Estate Van—WJK 853	1,024 16 0	22½%	42 12 0
28/4/59	Hillman Estate Van—WJK 855	1,024 16 0	22½%	42 12 0
5/5/59	Hillman Estate Van—BVC 994	1,024 16 0	22½%	21 6 0
5/5/59	Hillman Estate Van—SA 182825	1,024 16 0	22½%	21 6 0
5/5/59	Hillman Estate Van—SA 182824	1,024 16 0	22½%	21 6 0
5/5/59	Hillman Estate Van—SA 182822	1,024 16 0	22½%	21 6 0
		<u>34,657 13 3</u>		<u>3,089 2 6</u>

**International Vending Machines Pty. Limited**

**Depreciation Schedule for Year Ended 30th June, 1959**

Schedule 3 Cont'd.

Note: Reducing Balance Method.

Date Purchased	Forward	Cost	Rate	Depreciation
5/5/59	Hillman Estate Van—NHS 718	34,657 13 3		3,089 2 6
5/5/59	Hillman Estate Van—NHS 953	1,024 16 0	22½%	21 6 0
5/5/59	Hillman Estate Van—NHS 954	1,024 16 0	22½%	21 6 0
14/2/59	Rambler Sedan—BTV 160	2,662 15 0	22½%	199 14 0
		<u>40,394 16 3</u>		<u>3,352 14 6</u>
<b>VEHICLES SOLD</b>				
Vauxhall Velox Sedan—Cost 3/8/58		1,573 10 9		
Sold for		1,271 15 6		301 15 3
Vauxhall Victor Sedan—Cost 9/10/58		1,190 3 5		
Sold for		900 0 0		290 3 5
		<u>£3,944 13 2</u>		<u>235 7 0</u>
<b>OFFICE FURNITURE</b>				
At Cost		3,138 2 0	7½%	
<b>OFFICE EQUIPMENT</b>				
At Cost		2,284 14 2	15%	342 14 0
<b>CARPETS</b>				
At Cost		50 0 0	30%	15 0 0
<b>LINO</b>				
At Cost		50 0 0	11¼%	39 7 6
<b>OFFICE PARTITIONS</b>				
At Cost		1,594 19 3	7½%	119 12 6

Exhibit 4.  
(Continued)

**International Vending Machines Pty. Limited**  
**Sundry Debtors as at 30th June, 1959**

Balance Sheets  
and Accounts.  
22nd Oct., 1959.

					Schedule 1.		
A	5	Anderson J. A. & Cora P.					
		Anderson	1,016	12	6		
	11	Aldridge G. G. L. (Mrs.)	14	6	7		
	23	Austin M. J. (Mrs.)	1,112	10	0		
	24	Austin C. G.	1,112	10	0		
B	6	Byrnes J. T. S.				3	0
	13	Badman Gwendoline & W. O.				16	16
	23	Boon J.				13	16
	25	Brooks E. B. (Miss)	11	10	2		
	29	Burford M. H.				4	5
	41	Binns E.C. (Mrs.)				3	4
	60	Brosnaham R.				600	0
	66	Blair E. M.				125	0
C	2	Crane W. L.	8	13	5		
	10	Chatterton L. (Miss)				211	5
	11	Cosburn J. M. (Mrs.)				617	10
	17	Cook (Mrs.) R. M. & (Miss) G. H.	4	15	0		
	20	Clinch D. R.	86	11	6		
	23	Cowden, R. D.	100	8	8		
	27	Clements, W. J. W.	37	13	9		
	32	Cooper R. J.	164	7	3		
	39	Cudmore M. M.				285	0
	54	Chapman T. R.		16	0		
D	7	Dubuc L.				100	0
	11	Dyer T. & Doris O.	2,943	4	4		
	19	Debrincat, J.				200	0
	20	Duffy L. K.				285	0
	24	Davenport F. A. R.	1,710	18	10		
E	2	Edgemont Pty. Ltd.				151	11
	3	Edwards E. C.	1,458	6	8		
F	2	Flack V. M. (Mrs.)				34	15
	3	Flack M. W.	99	7	6		
	10	Fisher O. (Mrs.)	51	11	4		
	21	Ford G. L. and E. E.				362	10
G	11	Goldsack R. W.				285	0
H	12	Harvey R. W. & Leonie M.				26	0
	14	Harper I. (Mrs.)				59	8
	23	Hamilton A. P. R.				285	0
	33	Hayes G.				7	14
	44	Hopkins J. T.	552	10	0		
	45	Henning L. & A. J.				284	8
J	7	Johnson D.		10	0		
	9	Johns Lydia W1				28	0
	13	Jarrett H. (Mrs.)	70	13	3		
	16	Jack J. E.	42	9	4		
Forward—			10,600	6	1	3,986	9



		Schedule 1 (Continued)				Exhibit 4. (Continued)		
Forward		10,600	6	1	3,986	9	0	
	17	Jack T. R. (Mrs.)				14	17	0
	18	Jack J. E. & Thelma R.				2	7	3
	19	Jantke F. W.	3	7	3			
	21	Jackson A. K. & Judith S.				285	0	0
K	19	King W. S. & B. D.	3	6	0			
L	1	Lord A. L.	353	5	6			
	2	Lee G. S. L.				303	2	0
10	2	Lord E. R. (Mrs.)	641	10	7			
	4	Lavicka F.				50	0	0
	4	Lopiz F. (Mr. & Mrs.)				18	5	0
	6	Lush E. C.					10	6
	8	Leslie R.				25	0	0
	8	Ladd M. J. (Miss)	2	5	6			
	10	Lord A. G. & (Mrs.) M.					13	0
	16	Luscombe D. (Mrs.)				285	0	0
	25	Lewis E. A. (Mr. & Mrs.)	300	0	0			
	26	Lewis E. (Mrs.)	50	0	0			
20	31	Lacey J. E. (Miss)	312	10	0			
M	6	Menz J. I. (Mrs.)				4	13	6
	40	Mazur M. (Mrs.)	312	10	0			
Mc	1	McDonald N. E.	441	5	0			
	20	McLeod F. H.	1,254	14	3			
N	8	Norris F.	13	9	3			
	13	Nicholls D. R.				190	0	0
O	1	O'Leary M. E. (Mrs.)				1	14	8
	4	Overell J. C.	1,276	13	4			
	13	Outhred A. G. L.				19	13	9
30	P 25	Price J. A. H.				237	10	0
Q	2	Quinn F.7				50	0	0
R	2	Roulston R.	16	8	0			
	6	Robinson W. G. & Ada K.	20	15	0			
	7	Rowlands O. I. (Mrs.)	29	5	0			
O	2	Olive J.	19	7	6			
R	39	Rumble H. E.	463	15	0			
S	4	Smith H. W.	7	9	0			
	6	Sahade Rev. A. J.	11	17	6			
	7	Snare I. E.	405	0	0			
40	14	Sell J. H. & Edith B.				356	5	0
	16	Seebee Vending Enterprises				50	0	0
	16	Schenk T. M. (Mrs.)				285	0	0
	26	Simmons L. E. & Bethany J.	2	14	6			
	31	Selwood H.	730	6	3			
	33	Statham E. I. G. (Mrs.)	3	1	0			
Forward—		17,275	1	6	6,166	0	8	

Balance Sheets  
and Accounts.  
—  
22nd Oct., 1959.

Exhibit 4. (Continued)		Schedule 1 (Continued)							
Balance Sheets and Accounts.		Forward—	17,275	1	6	6,166	0	8	
22nd Oct., 1959.	T	43 Smith A. A. (Mr. & Mrs.)				1,140	0	0	
	W	8 Turner H. H.	15	0	0				
		8 White J.				5	18	0	
		11 Willard G. L. (Mrs.)	484	0	2				
		13 Wallace A. (Mr. & Mrs.)	475	0	0				
		11 Wakeham V. B.	492	10	0				
		56 Wakeham M. J. (Mrs.)	400	0	0				
		Automatic Merchandising (N.S.W.)	7,041	2	2			10	
		Automatic Merchandising (Vic.)	6,432	8	0				
		Automatic Merchandising (Q'ld)	4,360	13	9				
		Automatic Merchandising (S. Aust.)	3,442	18	3				
		Automatic Merchandising (Tas.)	863	17	10				
									20
			<u>£41,282</u>	<u>11</u>	<u>8</u>	<u>£7,311</u>	<u>18</u>	<u>8</u>	
		DEBIT BALANCE	£33,970	13	0				

**International Vending Machines Pty. Limited**  
**Sundry Creditors and Accruals as at 30th June, 1959**

Exhibit 4.  
(Continued)

—  
Balance Sheets  
and Accounts.  
—  
22nd Oct., 1959.

	Schedule 2.		
Maurice Kay Advertising	5,400	4	1
Sixteen Millimeter	9	9	0
R. Lynch & Sons	11	0	0
Ansett-A.N.A.		6	2
Quay Customs	51	3	4
10 Glove Electrical	21	6	8
North Ash and Mann	413	18	1
Atlas Assurance	863	13	2
Commercial Motor Vehicles	4	19	6
McDonald Motors	63	6	3
Neals Motors	1	7	1
City Motors	53	0	8
Pearce Motors	67	19	1
Touzeau Motors	12	15	8
Harris Scarfe	6	3	7
20 Purcell B. C.	80	0	0
Intercolonial Boring	1	9	5
McPhersons Ltd.	8	10	1
McPhersons Ltd.	8	2	8
Norlin Products	16	1	9
Presson Products	1	15	9
John Sands	11	2	6
Seaborn Printing	303	16	10
Commissions Earned	4,500	0	0
Business Equipment	12	3	0
30 P.M.G.	500	0	0
Commercial Machines	2	17	6
G. E. Tidbury Pty. Ltd.	5,829	2	7
Albert Smith	4	12	3
Ainsworth Consolidated Ind. Ltd.	11,683	0	6
Modern Office Equipment	3	5	9
Ensign Dry Cleaners	1	16	0
	£29,948	8	11

Exhibit 5.  
Taxation  
Assessment  
for International  
Vending  
Machines  
Pty. Limited.  
30th June, 1959.

**EXHIBIT 5**  
**Taxation Assessment for International Vending Machines Pty. Limited**

372



C



N.S.W. 1959

In accordance with the provisions of the *Income Tax and Social Services Contribution Assessment Act 1936-1958*, I have assessed the amount of Income Tax and Social Services Contribution payable by you in respect of your income for the year ended 30th June, 1959, as under:—

COMMONWEALTH OF AUSTRALIA  
**NOTICE OF ASSESSMENT**

**INCOME TAX AND SOCIAL SERVICES CONTRIBUTION**

BASED ON INCOME DERIVED DURING YEAR ENDED 30TH JUNE, 1959  
or the accounting period, if any, adopted under the Act in lieu thereof

(COPY)

File No.

A34276

Assessment No.

101301

INTERNATIONAL VENDING MACHINES  
PTY LTD

C/- NORTH ASH & MANN

15/17 YOUNG ST. SYDNEY

15JUN60

DATE DUE & PAYABLE

**LATE PAYMENT PENALTY**—An additional amount for late payment becomes due and payable at the rate of 10% per annum on the amount unpaid by the due date.

**HOURS FOR PAYMENT:** 9 a.m. to 4.30 p.m. Monday to Friday inclusive.

**OBJECTION** may be lodged against this assessment within sixty days after service by post of this notice but notwithstanding any objection the full amount payable must be paid by the due date.

Taxable Income (1)	Rate Shillings in £ (2)	Gross Tax & Contribution (3)	Deduct Rebates (4)	Net Tax and Contribution (5)	Additional Tax, Late Return or Omitted Income (6)	Total Tax and Contribution Payable (7)	ARREARS (8)
£		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5000	6/6	1625 0 0		98958 2 0		98958 2 0	
259555	7/6	97333 2 0					
<b>TOTAL AMOUNT PAYABLE—</b>							

I, Clifford Charles Green, certify that this is a true copy of the Notice of Assessment for the year ended 30th. June, 1959, which issued to the above-named taxpayer at the above address

OFFICIAL RECEIPT

Tax on the assessment notified in column 7 is due on the date shown. Other amounts included are due as previously notified.

21 ELIZABETH STREET, SYDNEY

C. C. GREEN  
Deputy Commissioner of Taxation

PLEASE PRODUCE THIS NOTICE INTACT WHEN MAKING PAYMENT

*(Signature)*  
(C. C. GREEN.)

**EXHIBIT 17**  
**Balance Sheet of Automatic Merchandising (NSW) Pty. Limited**

**NORTH ASH & MANN**  
 Public Accountants

R. E. North Ash, F.C.A. (Aust.)	Telephones	London Assurance Building
F. S. Mann, F.A.S.A.	BU 2162, BU 2163	15-17 Young Street Sydney

Exhibit 17.  
 —  
 Balance Sheet  
 of Automatic  
 Merchandising  
 (N.S.W.)  
 Pty. Limited.  
 —  
 30th June, 1959.

15th October, 1959.

We would report that we have audited the books and accounts  
 10 of Automatic Merchandising (N.S.W.) Pty. Limited for the period  
 : from the 18th November, 1958, to 30th June, 1959. We have obtained  
 all the information and explanations required by us.

In our opinion the following Balance Sheet is properly drawn  
 up so as to exhibit a true and correct view of the state of the  
 Company's affairs according to the best of our information and the  
 explanations given to us, and as shown by the books of the Company.

We further report that the Register of Members and other  
 records which the Company is required to keep by the Companies'  
 Act 1936, or by its Articles, have been properly kept.

20

R. North Ash

.....  
**NORTH ASH and MANN**  
 Public Accountants

Registered under the Public Accountants' Registration  
 Act, 1945, as amended.

Exhibit 17.  
(Continued)

Balance Sheet  
of Automatic  
Merchandising  
(N.S.W.)  
Pty. Limited.

30th June, 1959.

**Automatic Merchandising  
Balance Sheet**

**AUTHORISED CAPITAL**

30,000 Ordinary Shares of £1 each	£30,000 0 0
-----------------------------------	-------------

**SHAREHOLDERS' FUNDS**

Issued Capital			
1,002 Ordinary Shares of £1 each fully paid	1,002	0	0
Profit & Loss 1959 Appropriation Account	4,098	16	5
			10

<b>TOTAL SHAREHOLDERS' ACCOUNT</b>	5,100	16	5
------------------------------------	-------	----	---

**PROVISIONS**

Company Tax Provision	2,060	0	0
<b>TOTAL PROVISIONS</b>			2,060 0 0

**CURRENT LIABILITIES**

Sundry Creditors	7,041	2	2
International Vending Machines Pty. Ltd.—Current Account	34,240	11	9
<b>TOTAL CURRENT LIABILITIES</b>			41,281 13 11

	£48,442	10	4
--	---------	----	---

..... }  
..... } Directors

**(N.S.W.) Pty. Limited**  
**as at 30th June, 1959**

**Statement 1.**

Exhibit 17.  
 —  
 Balance Sheet  
 of Automatic  
 Merchandising  
 (N.S.W.)  
 Pty. Limited.  
 (Continued)  
 —  
 30th June, 1959.

CURRENT ASSETS				
	Australia & New Zealand Bank Ltd. Trading Account	8,951	6	1
	Stock on Hand at Directors Valuation	1,638	7	9
10	Australia & New Zealand Bank Ltd. Guarantee Fund—Interest Deposited in Advance	37,688	1	11
	<b>TOTAL CURRENT ASSETS</b>		<b>48,277</b>	<b>15 9</b>
	<b>FORMATION EXPENSES</b>		<b>164</b>	<b>14 7</b>

£48,442 10 4

Exhibit 17.  
(Continued)

Balance Sheet  
of Automatic  
Merchandising  
(N.S.W.)  
Pty. Limited.

30th June, 1959.

**Automatic Merchandising**

**Trading and Profit and Loss Account from 18th November, 1958**

	8,984	8	3				
Purchases							
Less Stock on Hand 30th June 1959	1,638	7	9	7,346	0	6	
Wages				9,400	0	0	
Gross Profit carried down				16,746	0	6	
				20,876	12	9	10
				£37,622	13	3	
Accountancy	120	0	0				
Bank Charges	10	17	5				
Cartage and Freight	600	0	0				
Cleaning	60	0	0				
Insurance	710	0	0				
Light and Power	60	0	0				
Motor Vehicle Expenses	720	0	0				
Office Expenses	60	0	0				20
Payroll Tax	230	0	0				
Postages	40	0	0				
Printing and Stationery	480	0	0				
Rent	500	0	0				
Repairs and Maintenance	230	0	0				
Stamp Duty	60	0	0				
Telephone and Telegrams	100	0	0				
Travelling Expenses	800	0	0				
Uniforms	60	0	0	4,840	17	5	
Interest to Owners				9,876	18	11	30
				14,717	16	4	
Net Profit carried to Profit and Loss Appropriation Account— Statement 3				6,158	16	5	
				£20,876	12	9	



**(N.S.W.) Pty. Limited**  
**to 30th June, 1959**

## Statement 2.

Exhibit 17.  
 (Continued)  
 —  
 Balance Sheet  
 of Automatic  
 Merchandising  
 (N.S.W.)  
 Pty. Limited.  
 —  
 30th June, 1959.

	<hr/>					
	<hr/>					
	Sundry Income					
	Sales	13,840	2	10		
	Amounts received from International Vending Machines Pty. Ltd. for operating machines	23,782	10	5	37,622	13 3
10		<hr/>				
	Gross Profit brought down				£37,622	13 3
					20,876	12 9

£20,876 12 9

Exhibit 17.  
(Continued)

**Automatic Merchandising (N.S.W.)**

**Profit & Loss**

Balance Sheet  
of Automatic  
Merchandising  
(N.S.W.)

Pty. Limited.  
—  
30th June, 1959.

1959

June 30

Net Profit for period brought forward  
from Statement 2

6,158 16 5

£6,158 16 5

**Pty. Limited****1959 Appropriation Account**

Statement 3.

Exhibit 17.  
(Continued)Balance Sheet  
of Automatic  
Merchandising  
(N.S.W.)  
Pty. Limited.

1959				
June 30	Provision for Company Taxation	2,060	0	0
	Balance—carried forward to Balance Sheet—Statement 1	4,098	16	5
		<b>£6,158</b>	<b>16</b>	<b>5</b>

30th June, 1959.

**Memo—North Ash & Mann****Re: International Vending Machines Pty. Ltd.**

Mr. Dale, Mr. Purcell and Mr. North Ash attended for a further conference in connection with the proposals discussed at the previous conference on 20 April. I confirmed what I had previously said in regard to the application of s.260 and pointed out that if the vending company was a non-private company as at 30 June, 1959 either as a subsidiary of a non-private company or by reason of its own set-up and did not make a distribution of its profits, s.260 would not be of any assistance to the Commissioner as it was merely an annihilating provision and could not deem a dividend to be paid which had not, in fact, been paid. In substance, in Newton's case and Bell's case a dividend which had actually been declared and paid found its way to the vendors of shares, but if no dividend is paid the position is obviously quite different. 10

If, on the other hand, the vending company makes a loan to the merchandising company to enable it to purchase the shares of the former company, there may be a breach of the Companies Act but the penalty for this is merely a monetary sum and the validity of the transactions are unaffected. Moreover, even a loan seems unnecessary for the consideration could be largely left outstanding to be paid off over a period partly if not wholly out of future profits derived by the merchandising company. 20

It appears that there is a merchandising company in each State and after discussion it appeared that the best set-up might be for a new holding company to be incorporated along the lines of the set-up in the Keighery case and that this company should, prior to 30 June, 1959, acquire the shares of I.V.M. Pty. Ltd. It would also acquire the shares of the merchandising companies in the various States. I suggested that it would be prudent that the new company should follow as closely as possible the procedure in the Keighery case and that if this procedure was not departed from in any material particular I did not think that the company's status as a non-private company would be disputed by the Commissioner. 30

The possibility of floating the new company as a stock Exchange company in a year or two's time was also discussed and a lot will depend upon when and how the law is amended.

The question of family companies taking shares in the new non-private holding company instead of the Messrs. Stein was also discussed. There could be some advantage in having a family set-up behind the non-private company, e.g. in the event/of amendments to the law or even to take any subsequent profit resulting from a further 40

sale to a stock exchange company. However, Mr. Purcell will look into this matter in some detail.

If any further questions arise upon which our advice is desired, Mr. Purcell or Mr. Dale will get in touch with us.

N.E.C.  
4/5/59.

The above is a true transcription of my summary of the interview of 4th May, 1959 dictated by me to my secretary shortly thereafter.

N. E. Challoner  
27 November, 1961

10

CORAM: JACOBS, J.  
I.V.M. PTY. LTD.  
Marked 1 for identification.  
P. Trevorah  
Associate