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O N A P P E A L

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N :

THE MONTAGUE PARK RACING ASSOCIATION Appellants
LIMITED (Plaintiffs)

- and -

THE HONOURABLE DR. RAYMOND WILSON Respondent
SAWYER (Defendant)

(and Cross-Appeal Consolidated)

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

BULCRAIG & DAVIS,
Amberley House,
Norfolk Street,
Strand,
London, W.C.2.

Solicitors for Montague Park
Racing Association.

LOVELL, WHITE & KING,
1 Serjeant's Inn,
Fleet Street,
London, E.C.4.

Solicitors for The
Honourable Dr. Raymond
Wilson Sawyer.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

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BUT NOT REPRODUCED

Description of Document	Date
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Closing Address for Defendant	
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List of Documents possessed by Defendant	28th January 1964
List of Documents in possession or Control of Plaintiff	11th March 1964
Supplemental List of Documents possessed by Defendant	12th March 1964
Documents incorporated in the minutes of the Meetings but not forming part of the Minutes are excluded in particular letters of resignation, letter to Banks stating names of Directors for the time being proxies, further copy of Articles and other miscellaneous correspondence.	

ON APPEAL

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

BETWEEN :

THE MONTAGU PARK RACING ASSOCIATION LIMITED Appellants
(Plaintiffs)

- and -

THE HONOURABLE DR. RAYMOND WILSON SAWYER Respondent
(Defendant)

A RECORD OF PROCEEDINGS

No. 1

REPLY AND DEFENCE TO COUNTERCLAIM

In the Supreme Court of the Bahama Islands Common Law Side

BAHAMA ISLANDS 1959
IN THE SUPREME COURT No. 122
Common Law Side (Stamp)

No. 1
Reply and Defence to Counterclaim,
26th June, 1959.

B BETWEEN :

THE MONTAGU PARK RACING ASSOCIATION LIMITED Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND WILSON SAWYER Defendant

REPLY AND DEFENCE TO COUNTERCLAIM

REPLY

C 1. The Plaintiffs join issue with the Defendant on his Defence save in so far as the same consists of admissions.

In the Supreme
Court of the
Bahama Islands
Common Law Side

DEFENCE TO COUNTERCLAIM

2. As to the Counterclaim, the Plaintiffs say that the Defendant is not entitled to the set-off claimed in Paragraph 5 of his Defence and in the Counterclaim or to the set-off of any other amount.

No. 1

Reply and
Defence to
Counterclaim,
26th June,
1959.

3. The Plaintiffs deny each and every allegation of fact in the Counterclaim as if the same were set forth herein seriatim and specifically traversed.

A

(Contd.)

Delivered this 26th day of June A.D. 1959 by Higgs & Kelly of and whose address for service is their Chambers at 324 Bay Street in the City of Nassau, Attorneys for the Plaintiffs.

No. 2

SPECIALLY INDORSED WRIT OF SUMMONS

In the Supreme
Court of the
Bahama Islands
Common Law Side

IN THE SUPREME COURT

No. 122

COMMON LAW SIDE

(Stamp)

No. 2
Specially
Indorsed Writ
of Summons,
5th February,
1964.

B E T W E E N :

A

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
WILSON SAWYER

Defendant

ELIZABETH The Second, by the Grace of God, of the
United Kingdom of Great Britain and
Northern Ireland and of Our other realms
and territories Queen, Head of the
Commonwealth, Defender of the Faith.

B

TO The Honourable Dr. Raymond Wilson Sawyer of the
City of Nassau, in the Island of New Providence:

WE COMMAND YOU, that within fourteen days after the
service of this writ on you, inclusive of the day
of such service, you do cause an appearance to be
entered for you in an action at the suit of The
Montagu Park Racing Association Limited.

And take notice that in default of your so doing
the Plaintiff may proceed therein, and judgment may
be given in your absence.

C

WITNESS, the Honourable Sir Ralph A. Campbell Our
Chief Justice of Our Bahama Islands, the 5th day
of February in the year of Our Lord One Thousand
Nine Hundred and Sixty-four.

(Sig. illegible)

Registrar.

N.B. This Writ is to be served within six calendar
months from the date thereof, or, if renewed,

In the Supreme Court of the Bahama Islands within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.
Common Law Side

No. 2
 Specially
 Indorsed Writ
 of Summons,
 5th February,
 1964.

(Contd.)

The defendant may appear hereto by entering an appearance either personally or by Attorney at the Registry of the Supreme Court in the City of Nassau New Providence, Bahama Islands.

A

AMENDED STATEMENT OF CLAIM

The Plaintiffs' claim is for money for which the Defendant is indebted to the Plaintiffs in respect of shareholders' withdrawals by the Defendant being money lent by the Plaintiffs to the Defendant and/or money payable by the Defendant to the Plaintiffs for money received by the Defendant to the use of the Plaintiffs, whereby an action has accrued to the Plaintiffs:

B

PARTICULARS:

To 30th April 1954	£12,394. 8. 9.
30th April 1955	7,789.13. 1.
30th April 1956	5,933.18. 9.
30th April 1957	6,743.16. 9.
1st May 1957	1,629. 9. 1.

£34,491. 6. 5.

LESS:

By Accounts repaid in May 1955	10,000. 0. 0.
--------------------------------	---------------

£24,491. 6. 5.

To personal accounts of Defendant

5,481.10. 2.

£29,972.16. 7.

LESS:

By Accounts due the Defendant in respect of salary

1st July, 1957	£1,000. 0. 0.
----------------	---------------

1st Sept., 1957	1,000. 0. 0.
-----------------	--------------

1st Dec., 1957	1,000. 0. 0.
----------------	--------------

£ 3,000. 0. 0.

£26,972.16. 7.

C

The Plaintiffs claim the sum of £26,972. 16. 7.

P.L. Adderley

Attorney for the Plaintiffs

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 2

Specially
Indorsed Writ
of Summons,
5th February,
1964.

(Contd.)

A

And the sum of £60. 9. 0. for costs. If the amount claimed is paid to the Plaintiffs or their Attorney within fourteen days after the filing of this Writ inclusive of the day of such filing, further proceedings will be stayed.

This writ was issued by P.L. Adderley of and whose address for service is No. 41 Frederick Street, Nassau, Bahamas, attorney for the said plaintiffs, who carry on business at their Registered Office No. 324 Bay Street, Nassau, Bahamas.

B

—————
This writ was served by me at Nassau, Bahamas on the defendant The Hon. Dr. Raymond Wilson Sawyer, on Thursday the 6th day of February, 1964 at 11.25 a.m.

Indorsed the Sixth day of February, 1964.

(Signed) Arthur K. Paris

Deputy Provost Marshal.

(Address) Supreme Court,
Nassau,
Bahamas.

—————

In the Supreme Court of the Bahama Islands Common Law Side

No. 3

PARTICULARS OF AMENDED DEFENCE

No. 3
Particulars of Amended Defence,
6th February, 1964.

BAHAMA ISLANDS
IN THE SUPREME COURT
Common Law Side

1959 No. 122

B E T W E E N :

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
WILSON SAWYER

Defendant

PARTICULARS OF THE AMENDED DEFENCE
DELIVERED PURSUANT TO REQUEST DATED
THE 28th DAY OF JANUARY, 1964

The following are the particulars:

Under Paragraph 3

The new provisions for dividing the revenue and property and assets are contained in Clauses 2, 8, 9 and 12 of the said Agreement dated the 29th February, 1956.

Under Paragraph 5

(i) The knowledge and acquiescence of the said Nihon are evidenced by the following facts and matters:

(a) by the provisions of the said Agreement dated the 29th February 1956, and in particular clause 17 thereof;

(b) by his knowledge and acceptance of the Plaintiffs' balance sheets and accounts for the years 1954, 1955 and 1956 and 1957;

(c) by his joining in the approval of the Plaintiffs' balance sheets and accounts for

A

B

C

the years 1954, 1955 and 1956, at Annual General Meetings of the Plaintiffs, and joining in the confirmation of such balance sheets and accounts at Annual General Meetings of the Plaintiffs in the years 1955, 1956 and 1959 respectively;

In the Supreme Court of the Bahama Islands
Common Law Side

No. 3

Particulars of Amended Defence, 6th February, 1964.

(Contd.)

A

(d) by his agreeing to a resolution of the shareholders at Annual General Meetings in 1954, 1955 and 1956, by which all of the acts, transactions and proceedings of the Directors and Officers of the Company (including the Defendant) were sanctioned, approved, ratified and confirmed;

B

(e) by his accepting a portion of the gross pari-mutuel receipts pursuant to the said Agreements dated the 6th May, 1953 and the 29th February, 1956 respectively, which portion was his agreed portion of the Plaintiffs' income;

(f) by orally agreeing at a meeting of the Directors at the registered office of the Company on the 24th January, 1957 that it would be in order for the Defendant to continue to make withdrawals from the Plaintiffs' funds to repay the Defendant's indebtedness to the said Nihon;

C

(g) by discussing with the Defendant and referring to the said withdrawals in an approving manner on various occasions, at times and places which the Defendant cannot now identify;

(h) the said Nihon was sufficiently aware of the Defendant's financial position to realise that the Defendant would not be able to repay the said indebtedness without making withdrawals as aforesaid

D

(ii) Such approval was the approval of all the Directors, namely Mr. Alexis Nihon, Mrs. Alice Nihon, the Defendant, Mrs. Ivarene Sawyer, and Mr. Roderick Newton Higgs (up to the 12th May, 1956) and Mr. Godfrey K. Kelly (on and after the 12th May, 1956). Mr. Alexis Nihon and Mrs. Ivarene Sawyer were at all material times President and Vice-President respectively of the Plaintiffs.

In the Supreme
Court of the
Bahama Islands
Common Law Side

The said six persons were also shareholders and as such orally approved the Plaintiffs' Balance Sheets and Accounts at Annual General Meetings as aforesaid, and confirmed the same at subsequent meetings. Such approval and confirmation are shown in the relevant minutes.

No. 3
Particulars of
Amended
Defence,
6th February,
1964.

At a Directors' meeting on the 12th May, 1956 the said Godfrey K. Kelly, who was then a Director and shareholder and also the Plaintiffs' attorney, orally assured the Defendant that the withdrawals were in order, and that all the Plaintiffs' net profits belonged to the Defendant. The said Nihon questioned this statement, but the Defendant and the said Ivarene Sawyer agreed with Mr. Kelly.

A

(Contd.)

The said six persons also orally agreed to the said resolution of the shareholders, whereby each and all of the acts, transactions and proceedings of the Directors and Officers of the Plaintiffs to the date of each such resolution were sanctioned, approved, ratified and confirmed.

B

Moreover, no complaint as to the said withdrawals was made by the Plaintiffs until an appreciable lapse of time thereafter, despite the knowledge thereof by all the Directors, Officers and shareholders, and in Action 1957 No. 207 in the Supreme Court the Plaintiffs counterclaimed for £5,481. 10. 2., being a part only of the total sum claimed in the present Action.

DELIVERED the Sixth day of February, 1964.

C

Leonard J. Knowles

Attorney for the Defendant

To: P.L. Adderley, Esq.,
Attorney for the Plaintiffs.

No. 4

PARTICULARS OF AMENDED STATEMENT OF CLAIM AND
 AMENDED PARTICULARS OF PLAINTIFFS
CLAIM

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

A BAHAMA ISLANDS 1959
 IN THE SUPREME COURT No. 122
 Common Law Side (Stamp)
 B E T W E E N :

No. 4
 Particulars of
 Amended State-
 ment of Claim
 and Amended
 Particulars of
 Plaintiffs
 Claim,
 11th March,
 1964.

THE MONTAGU PARK RACING
 ASSOCIATION LIMITED Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
 WILSON SAWYER Defendant

B PARTICULARS OF THE AMENDED STATEMENT OF
 CLAIM Delivered Pursuant to a Request
 dated the 21st February 1964, and
AMENDED PARTICULARS OF THE PLAINTIFFS'
 CLAIM

Particulars of Claim

The Plaintiffs' claim is in respect of sums with-
 drawn from the account of the Plaintiff or debited
 to the account of the Plaintiff by the Defendant an
 Officer of the Plaintiff for his own personal use.

C Particulars of the monies received by the Defendant
 which are repayable by the Defendant to the
 Plaintiff are as follows:-

- | | | |
|-----|---|----------------|
| (a) | To net sum repayable by the
Defendant to the Plaintiff to
the 30th April 1954 | £12,394. 8. 9. |
| (b) | To net sum repayable by the
Defendant to the Plaintiff to
the 30th April 1955 | 7,789.13. 1. |
| | carried forward | 20,184.1 . 10. |

In the Supreme Court of the Bahama Islands	brought forward	£20,184. 1.10.	
<u>Common Law Side</u>	(c) To net sum repayable by the Defendant to the Plaintiff to the 30th April 1956	9,307.13. 3.	
<u>No. 4</u>			
Particulars of Amended Statement of Claim and Amended Particulars of Plaintiffs Claim,	(d) To net sum repayable by the Defendant to the Plaintiff to the 30th April 1957	8,851.12. 5.	A
11th March, 1964.	(e) To amount payable by the Defendant to the Plaintiff to the 1st May 1957	1,629. 9. 1.	
(Contd.)	Total	£39,972.16. 7.	
	LESS		
	(a) Amount repaid by the Defendant to the Plaintiff on the 31st May 1954	£10,000. 0. 0.	B
	(b) By amount due in respect of salary payable 1st July 1957, 1st September 1957 and 1st December 1957	3,000. 0. 0.	
		£13,000. 0. 0.	C
	Net Account	£26,972.16. 7.	

Particulars of the net sums withdrawn by the Defendant in respect of the years 1954, 1955, 1956 and 1957 ending on the 30th April in each year are attached hereto.

Delivered the 11th day of March A.D. 1964.

P.L. Adderley

Attorney for the Plaintiffs

TO: The Honourable Dr. Raymond Wilson Sawyer
or
The Honourable Leonard J. Knowles, his Attorney,
Chambers,
58 Shirley Street,
Nassau, Bahamas.

D

STATEMENT OF WITHDRAWALS BY THE DEFENDANT
FROM THE ACCOUNT OF THE PLAINTIFFS DURING
THE PERIOD MAY 29th 1953 TO APRIL 30th
1954 SHOWING CREDITS FOR THE DEFENDANT
DURING THAT SAME PERIOD

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 4

Particulars of
Amended State-
ment of Claim
and Amended
Particulars of
Plaintiffs
Claim,
11th March,
1964.
(Contd.)

A	1. 7th July 1953	To cash payment to A.S. Russell	£ 1. 9. 0.
	2. 22nd December 1953	To cheque payable to Cash	120. 0. 0.
	3. 13th January 1954	To cheque to The Montagu Park Racing Association, Ltd.	50. 0. 0.
	4. 15th January 1954	To cheque to Montagu Park Racing Associa- tion, Ltd.	50. 0. 0.
B	5. 15th January 1954	To Debit Memo. Account Montagu Park Racing Association Ltd. at The Royal Bank of Canada	300. 0. 0.
	6. 22nd January 1954	To cheque Montagu Park Racing Associa- tion, Limited	50. 0. 0.
	7. 1st February 1954	To cheque Raymond W. Sawyer	1,479. 9. 0.
C	8. 1st February 1954	To cheque Raymond W. Sawyer	1,000. 0. 0.
	9. 2nd February 1954	To cheque Montagu Park Racing Asso- ciation, Ltd.	50. 0. 0.
	10. 12th February 1954	To cheque Montagu Park Racing Asso- ciation Limited	50. 0. 0.
D	11. 16th February 1954	To Debit Memo. Account Montagu Park Racing Asso- ciation at The Royal Bank of Canada	1,700. 0. 0.
<hr/>			
Carried Forward			£ 4,850.18. 0.

In the Supreme Court of the Bahama Islands <u>Common Law Side</u>		Brought Forward	£ 4,850.18. 0.	
	12.	19th February 1954	To cheque Montagu Park Racing Association, Ltd.	100. 0. 0.
<u>No. 4</u>				
Particulars of Amended Statement of Claim and Amended	13.	26th February 1954	To cheque Montagu Park Racing Association, Ltd.	105. 0. 0.
Particulars of Plaintiffs Claim,	14.	March 1st 1954	To cheque Raymond W. Sawyer	1,155. 1. 4.
11th March, 1964.	15.	5th March 1954	To cheque The Montagu Park Racing Association, Ltd.	50. 0. 0.
(Contd.)				
	16.	8th March 1954	To cheque Montagu Park Racing Association, Ltd.	50. 0. 0.
	17.	12th March 1954	To cheque Montagu Park Racing Association, Limited.	50. 0. 0.
	18.	16th March 1954	To cheque Montagu Park Racing Association, Limited	50. 0. 0.
	19.	23rd March 1954	To cheque Montagu Park Racing Association, Limited	50. 0. 0.
	20.	23rd March 1954	To cheque Montagu Park Racing Association Limited	30. 0. 0.
	21.	24th March 1954	To cheque Raymond W. Sawyer	500. 0. 0.
	22.	26th March 1954	To cheque Montagu Park Racing Association, Limited	100. 0. 0.
	23.	29th March 1954	To cheque Raymond W. Sawyer	300. 0. 0.
			Carried forward	<u>£ 7,390.19. 4.</u>

A

B

C

		Brought Forward	£7,390.19.	4.	In the Supreme Court of the Bahama Islands <u>Common Law Side</u>
	24.	30th March 1954	To cheque Montague Park Racing Association, Limited	50. 0. 0.	
	25.	30th March 1954	To cheque Montagu Park Racing Association, Limited	20. 0. 0.	<u>No. 4</u> Particulars of Amended Statement of Claim and Amended
A	26.	1st April 1954	To cheque Raymond W. Sawyer	3,000. 0. 0.	Particulars of Plaintiffs Claim,
	27.	1st April 1954	To cheque Raymond W. Sawyer	161. 7. 5.	11th March, 1964. (Contd.)
	28.	2nd April 1954	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
B	29.	6th April 1954	To cheque Montagu Park Racing Association, Limited	100. 0. 0.	
	30.	9th April 1954	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	31.	13th April 1954	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
C	32.	15th April 1954	To Debit Memo. Account Montagu Park Racing Association Ltd. at The Royal Bank of Canada	3,000. 0. 0.	
			LESS		
			BY		
	1.	29th May 1953	Defendant's personal cheque deposited to the Plaintiffs' account	£500. 0. 0.	
D			Carried Forward	£500. 0. 0.	£13,872.6.9.

In the Supreme
Court of the
Bahama Islands
Common Law Side

		<u>Credits</u>	<u>Debits</u>	
	Brought Forward	£500. 0. 0.	£13,872. 6. 9.	
<u>No. 4</u>	30th April 1954			
Particulars of Amended Statement of Claim and Amended Particulars of Plaintiffs Claim, 11th March, 1964. (Contd.)	Credit Truck-claimed at this time to have been purchased by the Defendant from Kelly Motor Company	950. 0. 0.		A
	3. 30th April 1954			
	Credit Pay-roll paid by the Defendant out of personal account	27.18. 0.		B
		<u>£1,477.18. 0.</u>	<u>£ 1,477.18. 0.</u>	
			<u><u>£12,394. 8. 9.</u></u>	

NOTE: - The Plaintiffs will prove that the cheques made payable to the Plaintiffs and signed by the Defendant on the Account of the Plaintiffs were in respect of cash withdrawals made by the Defendant from the funds of the Plaintiffs for his own personal use.

STATEMENT OF WITHDRAWALS BY THE DEFENDANT
FROM THE ACCOUNT OF THE PLAINTIFFS DURING
THE PERIOD MAY 27th 1954 TO APRIL 30th
1955 SHOWING CREDIT FOR THE DEFENDANT
DURING THAT SAME PERIOD

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 4

	1.	27th May 1954	To cheque Godfrey Kelly	£500. 0. 0.	0.	Particulars of Amended Statement of Claim
A	2.	12th June 1954	To cheque Raymond W. Sawyer	500. 0. 0.	0.	and Amended Particulars of Plaintiffs Claim,
	3.	12th June 1954	To credit Account British Colonial Hotel	10.17. 5.	5.	11th March, 1964. (Contd.)
	4.	26th August 1954	To Debit Memo. Account Montagu Park Racing Association Ltd. at the Royal Bank of Canada	900. 0. 3.	3.	
B						
	5.	3rd January 1955	To cheque Raymond W. Sawyer	1,000. 0. 0.	0.	
	6.	14th January 1955	To cheque Montagu Park Racing Association, Limited	100. 0. 0.	0.	
	7.	21st January 1955	To cheque Montagu Park Racing Association, Limited	25. 0. 0.	0.	
C	8.	28th January 1955	To cheque Montagu Park Racing Association, Limited	25. 0. 0.	0.	
	9.	1st February 1955	To cheque Raymond W. Sawyer	4,467. 2. 6.	6.	
	10.	4th February 1955	To cheque Montagu Park Racing Association, Limited	25. 0. 0.	0.	
	11.	7th February 1955	To cheque Raymond W. Sawyer	1,000. 0. 0.	0.	
D			Carried Forward	£8,553. 0. 2.	2.	

In the Supreme Court of the Bahama Islands <u>Common Law Side</u>		Brought Forward	£8,553. 0. 2.	
	12. 11th February 1955	To cheque Montagu Park Racing Association, Limited	45. 0. 0.	
<u>No. 4</u>				
Particulars of Amended Statement of Claim and Amended Plaintiffs Claim, 11th March, 1964. (Contd.)	13. 18th February 1955	To cheque Montagu Park Racing Association, Limited	25. 0. 0.	
	14. 22nd February 1955	To cheque Montagu Park Racing Association, Limited	25. 0. 0.	A
	15. 25th February 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	16. 1st March 1955	To cheque Raymond W. Sawyer	1,122.14.10.	
	17. 4th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	B
	18. 8th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	19. 10th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	20. 15th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	C
	21. 18th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	22. 22nd March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	23. 25th March 1955	To cheque Montagu Park Racing Association, Limited	100. 0. 0.	D
		Carried forward	<u>£10,220.15.0.</u>	

		Brought forward	£10,220.15.0.	In the Supreme Court of the Bahama Islands <u>Common Law Side</u>
	24. 29th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	
	25. 29th March 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	<u>No. 4</u> Particulars of Amended Statement of Claim and Amended
A	26. 1st April 1955	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	Particulars of Plaintiffs Claim, 11th March, 1964.
	27. 1st April 1955	To cheque Raymond W. Sawyer	1,118.18. 1.	(Contd.)
	28. 5th April 1955	To cheque Montagu Park Racing Association, Ltd.	50. 0. 0.	
B	29. 11th April 1955	To cheque Montagu Park Racing Association, Limited	100. 0. 0.	
	30. 14th April 1955	To cheque Montagu Park Racing Association, Limited	200. 0. 0.	
	31. 13th May 1955	To cheque The Royal Bank of Canada re payment to Kelly Motor Company for Truck previously claimed to have been paid for by the Defendant	950. 0. 0.	
C				
			<hr/>	
			£12,789.13. 1.	
		LESS		
	<u>Credit</u>			
	1. Amount due in respect of salary	£5,000. 0. 0.	5,000. 0. 0.	
			<hr/>	
			£ 7,789.13. 1.	
D	<u>NOTE:</u>	The Plaintiffs will prove that the cheques made payable to the Plaintiffs and signed by the Defendant on the account of the Plaintiffs were in respect of cash withdrawals made by the Defendant from the funds of the Plaintiffs for his own personal use.		

In the Supreme
Court of the
Bahama Islands
Common Law Side

STATEMENT OF WITHDRAWALS BY THE DEFENDANT
FROM THE ACCOUNT OF THE PLAINTIFFS DURING
THE PERIOD 13th MAY 1955 TO 30TH APRIL
1956 SHOWING CREDIT FOR THE DEFENDANT
DURING THAT SAME PERIOD

<u>No. 4</u>				
Particulars of Amended State- ment of Claim and Amended Particulars of Plaintiffs Claim, 11th March, 1964. (Contd.)	1.	13th May 1955	To cheque Raymond W. Sawyer	£ 12.14.10.
	2.	13th May 1955	To cheque Raymond W. Sawyer	780. 0. 0. A
	3.	13th May 1955	To cheque Raymond W. Sawyer	500. 0. 0.
	4.	13th May 1955	To cheque Raymond W. Sawyer	1,500. 0. 0.
	5.	5th July 1955	To cheque Raymond W. Sawyer	1,000. 0. 0.
	6.	31st December 1955	To part cheque Public Treasury (Customs Duty) £12. 1. 3. To part cheque Ralph Roberts (Freight) £1. 5. 4.	13. 6. 7. B
	7.	27th January 1956	To cheque Raymond W. Sawyer	50. 0. 0.
	8.	31st January 1956	To cheque Raymond W. Sawyer	100. 0. 0.
	9.	3rd February 1956	To cheque Raymond W. Sawyer	50. 0. 0. C
	10.	4th February 1956	To cheque Raymond W. Sawyer	1,257.10. 8.
	11.	11th February 1956	Debit Memo. Account Montagu Park Racing Assoc. Ltd. at The Royal Bank of Canada	4,000. 0. 0.
	12.	15th February 1956	To cheque Raymond W. Sawyer	750. 0. 0.
		Carried Forward	<u>£10,013.12. 1. D</u>	

			Brought Forward	£10,013.12.	1.	In the Supreme Court of the Bahama Islands <u>Common Law Side</u>
13.	19th February 1956	To cheque Raymond W. Sawyer		50. 0. 0.	0.	
14.	1st March, 1956	To cheque Raymond W. Sawyer		2,000. 0. 0.	0.	<u>No. 4</u> Particulars of Amended Statement of Claim and Amended Particulars of
15.	1st March 1956	To cheque Raymond W. Sawyer		381.10. 3.	3.	Plaintiffs Claim, 11th March, 1964.
A	16.	1st March 1956	To cheque Raymond W. Sawyer	118.17. 1.	1.	(Contd.)
	17.	27th March 1956	To cheque Montagu Park Racing Association, Limited	50. 0. 0.	0.	
	18.	3rd April 1956	To cheque Raymond W. Sawyer	1,662. 5.11.		
B	19.	30th April 1956	To cheque Verdant Gardens = £9.13.7. and To credit Verdant Gardens = £13.10.0.	23. 3. 7.		
	20.	30th April 1956	To part cheque Columbus Pharmacy	7. 4. 4.		
				<hr/>		
				£14,307.13. 3.		
			LESS			
		<u>Credit</u>				
C	1.	Amount due in respect of salary	£5,000. 0. 0.	£ 5,000. 0. 0.		
				<hr/>		
				£ 9,307.13. 3.		
				<hr/>		

NOTE: The Plaintiffs will prove that the cheques made payable to the Plaintiffs and signed by the Defendant on the Account of the Plaintiffs were in respect of cash withdrawals made by the Defendant from the funds of the Plaintiffs for his own personal use.

In the Supreme
Court of the
Bahama Islands
Common Law Side

STATEMENT OF WITHDRAWALS BY THE DEFENDANT
FROM THE ACCOUNT OF THE PLAINTIFFS DURING
THE PERIOD 1st MAY 1956 TO 30th APRIL
1957 SHOWING CREDIT FOR THE DEFENDANT
DURING THAT SAME PERIOD

No. 4

Particulars of
Amended State-
ment of Claim
and Amended
Particulars of
Plaintiffs
Claim,
11th March,
1964.
(Contd.)

1.	1st May 1956	To cheque Raymond W. Sawyer	£1,650. 0.0.	
2.	22nd May 1956	To cheque Provost Marshal	100. 0.0.	A
3.	28th May 1956	To cheque Raymond W. Sawyer	1,500. 0.0.	
4.	20th June 1956	Debit Memo. Account Montagu Park Racing Association Ltd. at The Royal Bank of Canada	1,507.15.8.	
5.	25th July 1956	To cheque Raymond W. Sawyer	1,000. 0.0.	B
6.	1st September 1956	To cheque Raymond W. Sawyer	1,000. 0.0.	
7.	29th December 1956	To cheque Raymond W. Sawyer	2,000. 0.0.	
8.	1st February 1957	To cheque Raymond W. Sawyer	2,323. 5.9.	
9.	1st March 1957	To cheque Raymond W. Sawyer	1,130. 8.3.	
10.	1st April 1957	To cheque Raymond W. Sawyer	1,640. 2.9.	C
			<hr/>	
			£13,851.12.5.	

LESS

Credit

1.	Amount due in respect of salary	£5,000. 0. 0.	£ 5,000. 0. 0.
			<hr/>
			£ 8,851.12.5.

WITHDRAWAL BY THE DEFENDANT FROM
THE ACCOUNT OF THE PLAINTIFFS
AFTER THE 30th APRIL 1957

1.	1st May 1957	To cheque Raymond W. Sawyer	£ 1,629. 9. 1.	D
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No. 5

PARTICULARS OF THIRD AMENDED DEFENCE

In the Supreme
Court of the
Bahama Islands
Common Law Side

BAHAMA ISLANDS (Stamp) 1959 No. 122
IN THE SUPREME COURT
Common Law Side

No. 5
Particulars of
Third Amended
Defence,
11th March,
1964.

A

B E T W E E N :

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND WILSON
SAWYER Defendant

AMENDED DEFENCE

B

1. ~~Save that~~ The Defendant does not admits having received the sums debited against him in the Amended Statement of Claim and the Defendant denies every allegation therein contained. Further, if the Plaintiffs have the rights of action alleged in the Amended Statement of Claim (which is denied) then the Defendant says that they did not accrue, if at all, within six years next before the amendment of the Writ and Statement of Claim in which such rights of action were first alleged, and were barred by The Limitation of Actions Act, laches and acquiescence on the part of the Plaintiffs.

C

~~2. ---The said sums represented the proportion~~ attributable to the Defendant of the revenue from the racecourse at Montagu Park and property and assets manages in conjunction therewith which was shares between the Defendant and one Alexis Nihon (who between them have at all material times owned all the issued share capital of the Plaintiffs) pursuant to an agreement in writing dated the 29th day of February 1956 and made between the Defendant and the said Nihon. The Plaintiffs have not and never have had any interest in the revenue thus shared which on the true construction of the said ~~agreement falls to be deducted as an expense of the~~

D

In the Supreme Court of the Bahama Islands
Common Law Side

No. 5
Particulars of Third Amended Defence,
11th March, 1964.
(Contd.)

~~business of the Plaintiffs before its profits are ascertained.~~

2. Prior to the Agreement next hereinafter mentioned all the shares in the capital of the Plaintiffs were beneficially held by one Alexis Nihon. By an Agreement dated the 6th May, 1953 the said Nihon agreed to sell to the Defendant all the shares of the Plaintiffs save two (which two shares would be held by Mr. and Mrs. Nihon as Directors' qualifying shares), and such Agreement provided inter alia for the division amongst the Defendant and the said Nihon of the revenue from the Racecourse at Hobby Horse Hall, and property and assets managed in conjunction therewith. At the hearing, the Defendant will, if necessary, refer to the said Agreement for its full intention, terms and effect.

A

3. The said Agreement was replaced by a new agreement on the 29th February 1956, under which new provisions were made for dividing between the Defendant and the said Nihon the revenue from the racecourse and property and assets as aforesaid. At the hearing, the Defendant will, if necessary, refer to the said Agreement for its full intention, terms and effect.

B

4. If, which is denied, the Defendant did receive the sums claimed by the Plaintiff in the Amended Statement of Claim, the Defendant says that they represent the sums payable to the Defendant pursuant to the said agreements. The Plaintiffs have not and never have had any interest in the said revenue, thus shared, which on the true construction of the said agreements, falls to be deducted as an expense of the business of the Plaintiffs before its profits are ascertained.

C

3. 5. Alternatively, if, which is denied, the said sums were withdrawn by the Defendant, the Defendant says that the said sums were withdrawn by the Defendant from the profits of the Plaintiffs available for distribution amongst its members on account of his share of the dividends payable by the Plaintiffs pursuant to the said agreements and with the knowledge and acquiescence of the said Nihon as the only other person interested in such profits and with the approval of a majority of the Directors of the Plaintiffs.

D

4. 6. The Defendant will say that in any event the sums alleged by the Plaintiffs to have been withdrawn by the Defendant in respect of the years ended 30th April, 1954, 1955 and 1956 (such withdrawal not being admitted) were shown as having been so withdrawn in the audited accounts for the said respective years which have been approved by resolution of the shareholders of the Plaintiffs in general meeting. Such accounts which show that the Plaintiffs have no interest in the said sums are binding upon the Plaintiffs. Further, by resolutions of the Company in general meeting in the year 1954 and in November, 1955 and May, 1956, all previous acts, transactions and proceedings of the Directors and Officers of the Plaintiffs were sanctioned, approved, ratified and confirmed, and accordingly the acquiescence of the Company in the said Agreements, and the payments (if any) to the Defendant thereunder, have been duly authorised.

B By reason of the facts in this paragraph hereinbefore set forth the Defendant will contend that the Plaintiffs are estopped from denying that the said payments, if made, were duly authorised.

In the Supreme Court of the Bahama Islands Common Law Side

No. 5
Particulars of Third Amended Defence,
11th March, 1964.
(Contd.)

5. 7. The Defendant will further say that if (which is denied) the Plaintiffs are entitled to claim against the Defendant the sums of £6,743.16. 9. and £1,629. 9. 1. specified in the Statement of Claim as withdrawn by the Defendant on 30th April 1957 and 1st May 1957 respectively the Defendant is entitled to set off against such claim an equal amount to the sum of £10,000 ~~£5,481.10.2.~~ and the three sums of £1,000 on account of salary respectively due to the Defendant on 1st July and 1st September and 1st December 1957 for which credit is given to the Defendant in the Statement of Claim.

COUNTERCLAIM

6. 8. The Defendant repeats the statements in paragraph 5 7 of his Defence and counterclaims ~~for the excess of the sum of £5,481.10.2. £10,000 and the three sums of £1,000 therein mentioned over the said sums of £5,743.16.9. and £1,629.9.1. viz. £38.4.4.~~

LEONARD J. KNOWLES

In the Supreme Court of the Bahama Islands Common Law Side Delivered this Twenty-eight day of May, 1959 by Leonard J. Knowles of and whose address for service is The Bayparl Building, Parliament Street in the City of Nassau, Attorney for the Defendant.

No. 5

LEONARD J. KNOWLES

Particulars of
Third Amended
Defence,
11th March,
1964.

Amended and Re-delivered this Nineteenth day of December 1963 by the Honourable Leonard J. Knowles of and whose address for service is The Harris Building, 58 Shirley Street in the City of Nassau, Attorney for the Defendant.

A

(Contd.)

LEONARD J. KNOWLES

Amended and Re-delivered this Eleventh day of March, 1964 by the Honourable Leonard J. Knowles of and whose address for service is The Harris Building, 58 Shirley Street in the City of Nassau, Attorney for the Defendant.

No. 6

AMENDED PARTICULARS OF AMENDED DEFENCE

In the Supreme
Court of the
Bahama Islands
Common Law Side

BAHAMA ISLANDS

1959 No. 122

No. 6

IN THE SUPREME COURT

(Stamp)

Amended Partic-
ulars of
Amended Defence,
11th March,
1964.

Common Law Side

A

B E T W E E N :

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
WILSON SAWYER

Defendant

AMENDED PARTICULARS OF THE AMENDED
DEFENCE DELIVERED PURSUANT TO REQUEST
DATED THE 28th DAY OF JANUARY, 1964

B Under Paragraph 5

Delete paragraph (i) (a) of the Particulars delivered on the 6th February 1964 and substitute therefor:

(a) by the provisions of the said Agreements dated the 6th May, 1953 and the 29th February, 1956 respectively.

Delivered the Eleventh day of March, 1964.

Leonard J. Knowles

Attorney for the Defendant

C To: P.L. Adderley, Esq.
Attorney for the Plaintiffs.

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7

JUDGMENT

6.5.64: JUDGMENT:-

No. 7
Judgment,
6th May, 1964.

In this suit, which was filed in 1959, the plaintiff company claims the sum of £26,972.16. 7. from the Defendant, as money wrongly withdrawn by him from its funds. The defendant counterclaims for £10,000 which he says he lent to the plaintiff company and which has not been repaid, and also £3,000 for arrears of salary as managing director. The plaintiff company admits this latter sum to be owing and in its claim has given the defendant credit therefor. With regard to the sum of £10,000 it says that this arises in another way than as a loan and has likewise given the defendant credit for it.

A

The facts of the case are as follows. The company owned the lease till 1959 of a race course in Nassau known as Hobby Horse Hall together with the grand stands, stables and other buildings. It also held an annual licence from Government to operate and to run a totalisator. The Company had been taken over by Mr. Alexis Nihon in 1950. He acquired all the shares, though there was one share belonging to "The estate of Mr. Robert Murphy" which he did not specifically acquire. This is a topic with which I will deal later.

B

Mr. Nihon operated the company for 3 seasons but on the 6th May, 1953, entered into an agreement with Dr. Sawyer for the sale of 297 out of the total of 300 shares. He retained one share for himself and one for his wife as his nominee to enable them to qualify as directors. It was agreed that these 2 shares should not give any right to participate in the profits of the company. The price of the shares was £60,000 to be paid by instalments spread over 5 years and to carry interest.

C

D

Clause 8 of the agreement reads as follows:-

"The purchaser agrees to pay to the Vendor Three (3) per cent of the gross sums

paid into the pari-mutuel pool as defined in the Racecourse Betting Act, 1952 on each and every race day and to pay such sum over to the Vendor on the third day following each meet during the racing season. For example, if the pari-mutuel pool totals Twenty Thousand Pounds (£20,000) on any given race day then and in such event the Purchaser shall receive the sum of Two Thousand Pounds (£2,000) or ten per cent. thereof and the Vendor Six Hundred Pounds (£600) or three per cent. thereof. In the event the figure of Thirteen percent to the licensee of the Montagu Park Racing Association Limited is reduced or increased by the Legislature of the Bahamas then and in such event the said figure of Ten percent and Three percent shall be reduced or increased proportionately."

A

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

There were other clauses in the agreement providing security for the Vendor to be paid his price. The purchaser undertook to mortgage his house in favour of the Vendor until the shares were paid for. By Clause 16 it was agreed that the purchaser would not allow the company to become indebted for more than £10,000. By Clause 19 the purchaser agreed to set aside £5,000 annually for depreciation on the company's property.

B

Dr. Sawyer operated the company and considerable profits were made. Mr. Nihon was paid his 3% of the gross sum paid into the pari-mutuel pool. No formal dividend was declared at the directors' meetings but Dr. Sawyer drew large sums from the company. These sums he says he used for paying Mr. Nihon for the shares. He ran into financial difficulties, however, and in May 1954 Mr. Nihon loaned him £10,000. This sum will have to be discussed in greater detail later. By February, 1956 Dr. Sawyer had defaulted to the extent of £30,000 in his instalment payments for the shares to Mr. Nihon and the latter took possession of them since it had been agreed that they should be held in escrow by Barclays Bank against this eventuality.

C

D

Dr. Sawyer and Mr. Nihon then entered into a second agreement dated the 29th February, 1956 and the 1953 agreement was cancelled. Clause 2 of this agreement is as follows:-

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

"Subject to the approval of the Exchange Control Board having been obtained for the transfer of the shares Nihon will sell and Sawyer will buy One Hundred and Forty-Nine and One Half ($149\frac{1}{2}$) shares out of a total of Three Hundred (300) shares being the capital stock of Montagu Park Racing Association Limited (a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony).

A

"Out of the remaining One Hundred and Fifty and One Half ($150\frac{1}{2}$) shares of the capital stock of the Montagu Park Racing Association Limited One Hundred and Forty-Nine and One Half ($149\frac{1}{2}$) shares will only participate in the profits made by the Company as provided in Clause 8 thereof specifically the Three percent on the pari-mutuel pool or one half of the net profits of the Montagu Park Racing Association Limited, whichever sum is the greater."

B

The following clauses are also material:-

Clause 8:-

"Nihon shall receive Three (3) percent of the gross sum paid into the pari-mutuel pool as defined in the Race-course Betting Act, 1952 on each and every race day on the third day following each meet during the racing season, or one half of the net profits of the Montagu Park Racing Association Limited, whichever sum is greater. For example, if the pari-mutuel pool totals Twenty Thousand Pounds (£20,000) on any given race day then and in such event Nihon shall receive the sum of Six Hundred Pounds (£600) or three percent thereof. In the event the figure of Thirteen percent to the Licensee of the Montagu Park Racing Association Limited is reduced or increased by the Legislature of the Bahamas then and in such event the said figures of Ten percent and Three percent shall be reduced or increased proportionately."

C

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Clause 9:-

"Sawyer agrees that the minute of the meeting of the Directors of the Montagu Park

Racing Association Limited held on the Sixth of May, 1953 reading as follows:-

In the Supreme Court of the Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

A

"As a consideration for the excellent services rendered this company by the President, Alexis Nihon be it resolved that, in the event of the purchase of the assets of Montagu Park Racing Association Limited by the Purchaser he retain Three percent of the Thirteen percent granted to the Licensee on the pari-mutuel pool and one half of the gross proceeds by the Montagu Park Racing Association Limited as their percentage for promoting and organising any sweepstake lottery or drawing in connection with racing of any kind held at Hobby Horse Hall should be amended to read as follows:-

B

"As a consideration for the excellent services rendered this company by Alexis Nihon, be it resolved that Alexis Nihon his executor, administrator or assigns, retain Three percent of the Thirteen percent granted to the Licensee on the pari-mutuel pool and Sawyer agrees that it becomes a part of this agreement. Further, it is hereby agreed that the contractual obligations on Clause Eight of this agreement will be marked on the shares."

C

Clause 10:-

"That upon the completion of this agreement Nihon shall have the right to be represented by Three Directors on the Board of Montagu Park Racing Association Limited. The total number of Directors shall be five and a quorum shall be three."

Lastly, the following two clauses should be noted:-

Clause 16:-

D

"Sawyer hereby further declares that the Montagu Park Racing Association Limited is not indebted to him personally or to his wife, Ivarene Sawyer."

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

Clause 17:-

"Sawyer hereby also declares that since the Sixth day of May A.D. 1953 he has not withdrawn any money out of any accounts of the Montagu Park Racing Association Limited for his personal use except Five Thousand Pounds (£5,000) as Managing Director, and the sums which he paid to Nihon under the said recited agreement dated the Sixth day of May A.D. 1953."

A

The Company continued to operate though control had passed to Mr. Nihon. Mr. Nihon drew his 3% and Dr. Sawyer withdrew considerable sums for his own use. Only one meeting was, however, held in 1958 and no accounts or balance sheet were published. The lease of the race course was not renewed. The company's buildings were burnt and nothing was paid by the insurance company in this respect as they denied liability on the ground that the company had no insurable interest. They did, however, pay out £6,000 in respect of loss of equipment. Dr. Sawyer was voted out of his position as managing director. A petition to wind up the company was made in February, 1958 but was refused as the company had no assets. It is now said to have liabilities of about £16,000 with Mr. Nihon as the only creditor. It is he who is in effect the Plaintiff in this suit and alone can benefit if it is successful.

B

C

Mr. Nihon's contention is that the withdrawals by Dr. Sawyer amount to no more than unauthorised advances to him by the company which he must now repay. It is contended that they were paid out of capital. It is said that the withdrawals were thus ultra vires the company and ultra vires the directors to make or confirm. It is conceded that if in fact they were payments out of capital in the strict sense this would be so: as being contrary to the provisions of the Companies Act as well as Article 72 of the Articles of Association of the Company which states that no dividend shall be payable "except out of the profits arising from the business of the Company".

D

The amount of the withdrawals (save as regards a sum of £10,000 which is claimed by the defendant

to be a loan by him to the company and by the plaintiffs to be the repayment of a withdrawal) is not, I think, in dispute. The difficulty in the case is to draw the correct inference from the accounts. These were kept in a way not to draw the attention of the Racing Commission, to whom they had to be submitted, to the fact that Mr. Nihon still had a very large interest in the fortunes of the company. Another difficulty which arises in the case is that there is practically no correspondence wherein the parties might have recorded their intentions at the time. As regards the witnesses' recollections it is not surprising that this varies when they speak of incidents all of which occurred many years ago. On the other hand I have been much assisted by the ability and industry of counsel in putting forward arguments supported by so many authorities.

A

Were the withdrawals from forbidden capital?
 B Mr. Deal was the company's accountant and gave evidence on its behalf. As I understood his evidence he would not go so far as to say that the sums withdrawn were capital in the strict sense. The paid up capital of the company was £3,000 which had presumably, though there is no evidence to this effect, been expended many years previously on buildings, equipment and so forth. He did not say that this capital had been wiped out by the withdrawals but admitted that there was always a surplus in the balance sheet after a proper amount for depreciation had been set aside. He did not go further than say that at various times to enable these withdrawals to take place it would have been necessary to borrow money.

C

D

The defendant called Mr. Cookson, a chartered accountant with 32 years experience, as an expert witness. His evidence was to the effect that he had examined the account books of the company together with the annual profit and loss accounts and balance sheets prepared by Mr. Deal. In addition he said that he had considered the effect of the 1953 and 1956 agreements. The conclusion at which he arrived was that the sums withdrawn by the defendant always left the capital of the company intact. He said that there was always a surplus in the accounts to justify the

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

No. 7
 Judgment,
 6th May, 1964.
 (Contd.)

In the Supreme Court of the Bahama Islands Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

withdrawals after ample amounts had been set aside to offset depreciation of buildings and equipment. He said it was a very usual practice to borrow in order to pay a dividend, as long as there was surplus in the balance sheet to cover the amount of the loan. It is certainly not unlawful to do so. In re Mercantile Trading Company 1868 Chancery Appeals Page 475, Mr. Adderley, on behalf of the plaintiffs, urged that it is not sufficient merely to look at the balance sheet and accept the figure given in the previous year's balance sheet as the surplus of assets over liabilities; it was necessary for the figure to be checked and proved to be realistic. He cites Leeds Estate Building and Investment Co. v. Shepherd Ch. 36 page 187 where the directors of a company were held liable for their negligence in failing to check the accounts of a fraudulent accountant employed by them and then paying dividends out of forbidden capital.

A

The figure given in the 1954 balance sheet as the surplus on the 6th May, 1953 is £39,949. 3.10. It is argued that this is a quite unreal figure which cannot be justified. I am asked to take into account the known value of the buildings and the fact that all the company possessed besides was equipment, a lease which terminated in four years time and a licence to run a totalisator. It is impossible for me to speculate on the contents of previous year's balance sheets though I confess to a curiosity about the matter. If the accounts of the company prior to 1953 had been produced they might or might not have shown that the figure of £39,949. 3.10 was an impossible one. But as the matter stands, with no accounts produced until 1953, I cannot speculate how the figure was arrived at.

B

C

Lacking evidence I cannot beg the question, about which there was no dispute in Leeds Estate Building and Investment Co., v. Shepherd, that the figure of £39,949.3.10. is a misleading one. Mr. Nihon, who would have had knowledge and control of all the company's assets for the previous 3 years appears to have been quite happy about the figure when he sold the company to Dr. Sawyer in 1953 although the cash balance handed over was only £1. There is no evidence whatever as to the value of the equipment in 1953. All we know is that the insurance company paid £6,000 for it in 1958. A

D

revaluation of assets may have been discussed but it was never put into effect.

In the Supreme Court of the Bahama Islands
Common Law Side

I think I should accept Mr. Cookson's evidence that withdrawals were made save out of an available surplus. The connotation of divisible profits, or profits in the legal sense, is much wider than profits in the business sense. It was pointed out by Lindley, L.J. in Verner v. General and Commercial Investment Trust 1897 2 Chancery Page 239:-

No. 7
Judgment,
6th May, 1964.
(Contd.)

A

"Moreover, when it is said, and said truly, that dividends are not to be paid out of capital, the word 'capital', means the money subscribed pursuant to the memorandum of association, or what is represented by that money. Accretions to that capital may be realised and turned into money, which may be divided amongst the shareholders, as was decided in Lubbock v. British Bank of South America 1892 2 Ch. 198."

B

In re Spanish Prospecting Company 1911 1 Ch. Fletcher Moulton, L.J. said at page 98:-

" 'Profits' implies a comparison between the state of a business at two specific dates usually separated by an interval of a year. The fundamental meaning is the amount of gain made by the business during the year. This can only be ascertained by a comparison of the assets of the business at the two dates."

C

I find that the sums withdrawn have been from the legally divisible profits of the Company.

D

The second allegation by the plaintiffs against the defendant's withdrawals is that they were made in a manner which was ultra vires the company and the directors. I say "in a manner" for it is clear that since the defendant controlled the board of directors he could have obtained these very sums by formally declaring and voting a dividend. At first it therefore seemed surprising that this action should have been brought. In his evidence, however, Mr. Nihon declared that too much money had been extracted too quickly from the company which had brought it to ruin. He said that this had been done deliberately to drive it into bankruptcy and thus deprive him of his 3% of the gross takings of the totalisator. It

In the Supreme Court of the Bahama Islands Common Law Side is unnecessary to make any findings upon such an issue since fraud is not pleaded. It must be remembered that it is the company and not Mr. Nihon which is the plaintiff. In re George Newman and Company, 1895 1 Ch. 674 Lindley, L.J. says:

No. 7
Judgment,
6th May, 1964.
(Contd.)

"It is true that this company was a small one, and that is called a private company; but its corporate capacity must not be ignored. Those who form such companies obtain great advantages, but accompanied by some disadvantages. An incorporated company's assets are its property and not the property of the shareholders for the time being; and, if the directors misapply those assets by applying them to purposes for which they cannot lawfully be applied by the company itself, the company can make them liable for such misapplication as soon as anyone properly sets the company in motion."

A

The plaintiff's contention is that the sums withdrawn amount to no more than sums of money lent to Dr. Sawyer and which must now be replaced. The method of payment of dividend is set out in Article 71 of the Articles of the Association which is as follows:-

B

"The company in general meeting, or the directors may declare a dividend to be paid to the members according to their rights and interests in the profits, and may fix the time for payment."

C

It is complained that the directors were never asked to sanction these payments prospectively and that they did not and could not do so retrospectively.

The defendant claims that he was entitled to pay himself the company's profits in this very informal manner and may not retain them on two grounds.

Firstly, he says that the 1953 and 1956 agreements between him and Mr. Nihon envisaged this method of payment and, being contracts between persons representing all the shareholders, had a binding effect on the company and were adopted by the company. It is pleaded (in paragraph 4 of the

D

Defence) that "the plaintiffs have not and never have had any interest in the said revenue, which, on the true construction of the said agreements, falls to be deducted as an expense of the business of the plaintiffs before its profits are ascertained".

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

A In Clause 8 of the 1953 agreement, it is agreed that Mr. Nihon shall receive his 3% of the gross sums paid into the pari-mutuel pool and be paid on the third day following each race meeting. It goes on to give an example by saying that if the pari-mutuel pool totals £20,000 then "the Purchaser (Dr. Sawyer) shall receive the sum of £2,000 or ten percent thereof and the Vendor (Mr. Nihon) £600 or three percent thereof".

B There was a directors' meeting of the company held on the 6th May, 1953, presumably immediately prior to the purchase of the shares, and a resolution was passed which stated that in consideration of the excellent services to the company of Mr. Nihon he should be allowed to retain, inter alia, 3% of the pari-mutuel pool in the event of Dr. Sawyer purchasing "the assets of Montagu Park Racing Association Limited". Clause 10 of the 1953 agreement provides that this minute becomes a part of the agreement. The parties seem to have been not clear whether the signing of the agreement or the meeting came first.

C In the 1956 agreement there is a slight variation in the position. Clause 9 states that "Sawyer agrees" that this resolution of the directors of the 6th May, 1953, should be amended to read as follows:-

D "As a consideration for the excellent services rendered this company by Mr. Alexis Nihon, be it resolved that Alexis Nihon, his executor, administrator or assigns, retain three percent of the thirteen percent granted to the licensee on the pari-mutuel pool."

The defendant contends that in paragraph 8 of 1953 agreement, the words, "The Purchaser shall receive the sum of £2,000" gave him the right to take 10% of the pari-mutuel proceeds without any

In the Supreme Court of the Bahama Islands Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

formalities. It is contended that since Dr. Sawyer and Mr. Nihon represented all the shareholders in the company they could agree that the monies paid to the company could be paid out in a certain way and without regard to the Articles of Association. I do not agree with this argument. In my view, Clause 8 of the 1953 agreement deals with the method of payment by Dr. Sawyer to Mr. Nihon of his 3%. It is only by way of example that it is mentioned that after Mr. Nihon has had his 3% the purchaser (Dr. Sawyer) will "receive" 10%. There is nothing to support the view that the purchaser should receive the 10% otherwise than as a shareholder. Nothing is said about his right to take this money immediately as in the case of Mr. Nihon. Dr. Sawyer does not seem to have thought at the time that this money would come to him otherwise than as a profit of the company. If he had done so it does not seem that he would have permitted it to be entered in the books of the company in 1954 and 1955 as "shareholders withdrawals". It would have been entered as an expense of the company or as a fee or royalty or under some more descriptive heading.

A

B

Finding, as I do, that the agreements did not empower the defendant to withdraw the money in the way he did, it is unnecessary to discuss the validity of the directors' resolutions which were designed to translate the terms of the agreements into rules of the company.

The defendant advances a second argument. He says that everything he did in this connection was ratified by the shareholders when they passed the accounts at the Annual General Meetings in 1954, 1955 and 1956 and also when they passed resolutions that "each and all of the acts, transactions and proceedings of the Directors and Officers of the company to this date be and they are hereby sanctioned, approved, ratified and confirmed". It is conceded that if what was done was ultra vires the company no ratification by all the shareholders would have any effect. For any act to be ratified it must be intra vires the company and it must be honest. Parker and Cooper Limited v. Reading 1926, A.E.R. Reprint 323.

C

D

I do not think that these payments were ultra vires the company in the circumstances of

- this case. It is plain that the sums withdrawn could have been called "dividends" and could have gone into no other than the defendant's pocket. If a general meeting or a directors' meeting had been called once a week each payment could have been called an interim dividend and handed to the defendant. What was done was that all the payments were added together and called "shareholders' withdrawals" in the annual accounts and the shareholders passed this method of accounting. On the evidence it is clear that they knew exactly what had been done. Mr. and Mrs. Nihon, though sent notices, did not attend the 1954 and 1955 meetings or send proxies. This cannot affect the validity of such a meeting: a shareholder cannot abstain and then complain about what has been resolved at a meeting. If one of the shareholders had objected to the balance sheet and accounts the money would have had to been repaid and then paid back again to the defendant in the form of a formally declared dividend. Article 71 of the Articles of Association was not violated. It allowed payments of dividend. What the shareholders did was to confirm the payment of dividends which had been paid out too soon and without sanction at the time and without using the word "dividend". They sanctioned the payments being given the name "shareholders' withdrawals" instead of "dividend".
- The plaintiffs refer to Flitcroft's case 86 L.T. p. 86 where the directors of a company paid dividends to shareholders after having dishonestly made the balance sheet show a profit by retaining among the assets certain debts which they knew to be bad. The dividend was sanctioned by a general meeting of the company. It was held that the directors were liable to repay the amounts paid out. In his judgment at page 88 he says:-
- "If therefore the shareholders had all been present at the meetings and had all known the facts, and had all concurred in declaring the dividends, the payments of the dividends would not be effectually sanctioned. One reason is this: there is a statement that the capital shall be applied for the purposes of the business, and on the faith of that statement, which is sometimes said to be an implied contract with creditors, people dealing with the company give it credit."
- In the Supreme Court of the Bahama Islands
Common Law Side
 No. 7
 Judgment,
 6th May, 1964.
 (Contd.)
- A
- B
- C
- D

In the Supreme Court of the Bahama Islands Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

But this is different to the present case. There is here no dishonesty or breach of trust. The position of the actual or potential creditors of the Company remained the same in whatever manner the profits of the company were handed to the only person entitled to receive them. Whether the payments were wise is a matter of opinion.

I have been referred to London Gigantic Wheel Co., Limited 24 T.L.R. 618. Here the directors were voted remuneration at the first general meeting of the company as from the date of the resolution. They nevertheless remunerated themselves as from a prior date and the accounts in which this remuneration appeared were confirmed at a subsequent meeting. It was held that they must repay what they had taken: Coxens-Hardy, M.R., saying:-

A

"But it was impossible for directors to maintain a payment which was improper simply because they included in a balance sheet, without calling the attention of the shareholders to the terms of the resolution and without any indication that the shareholders were asked to justify that payment."

B

But this is different from the present case. There the shareholders were being asked to ratify a payment which had been made contrary to a previous resolution and to which they were not entitled. It was put down in the accounts as "directors" remuneration" and not as a bonus to the directors. The transaction was different and the shareholders knew what was being done and they confirmed that money which had been withdrawn without sanction at the time could be treated as dividend and retained by the only shareholder entitled to a dividend.

C

The point is also taken that the ratification of the shareholders is not complete as the "Murphy share" was excluded. It appears that on the 23rd November, 1933, there was a share registered in the name of R.E. Murphy who is now dead. He did not pay for the share and it is not profit-participating but it has never been formally declared to be forfeited. It is registered in the name of "the estate of R.E. Murphy". No address was known to which to send a notice of meeting. Moreover, the share is wrongly registered since only a "person"

D

can hold a share and an estate is not a person. I do not think it was required or possible to send out a notice in respect of the Murphy share as there was no valid holder or address on the register. The personal representative of R.E. Murphy deceased should have applied to be put on the share register. Until that is done the rights of the holder of the share are in suspense. It is impossible to hold that failure to notify the owner of the Murphy share rendered all the shareholders' meetings useless and made their resolutions invalid. Its existence can be disregarded.

A

There were however withdrawals by Dr. Sawyer after those sanctioned by the general meeting dated 12th May, 1956. A meeting was held in 1957 but no resolution passing the accounts was agreed to. By this time the parties were at loggerheads and Mr. Kelly, the then secretary of the company, was unable to get the minutes agreed by the directors and shareholders. The unsanctioned withdrawals amount to a figure upon which I desire further argument. They were never sanctioned or confirmed in any way and no dividend was agreed to. The sum must therefore be repaid to the plaintiff company.

B

There is a dispute concerning a transaction with the company in 1954 and amounting to £10,000. At that time the defendant was pressed for money. He borrowed £10,000 from Mr. Nihon on 25th May, 1954, and paid it into the plaintiff company's account. After he had done this he executed a promissory note dated the 27th May, 1954, on behalf of the company for £10,000 payable to him on demand. The promissory note was not presented for payment and he now counterclaims to be paid £10,000. Mr. Nihon's version of the transaction is that the sum was loaned to Dr. Sawyer to pay back sums he had, in his opinion, unlawfully and unwisely withdrawn from the company as "shareholder's withdrawals". In the statement of claim credit is given to the defendant for £10,000 to reduce the claim by this amount. Either version might be true but there is a letter dated 25th May, from Dr. Sawyer to Mr. Nihon which both parties say is in their favour. It is as follows:-

C

D

In the Supreme Court of the Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

"Nassau, Bahamas.
25th May, 1954.

Mr. Alexis Nihon,
East Bay Street,
Nassau.

Dear Mr. Nihon,

I agree to place to the account of the
Montagu Park Racing Association Limited the
sum of Ten thousand pounds (£10,000) which you
are loaning to me by way of a second mortgage
on the security of my home in Montagu Heights
Sub-division and by way of a first mortgage on
the furniture goods chattels and effects
belonging to the buildings on the said property.

A

Of this sum, approximately £7,000 will
represent moneys which I realize I should not
have withdrawn from the Bank account of the
Montagu Park Racing Association Limited.

B

I hereby agree not to make any more with-
drawals of this nature in future from the said
Company's Bank account.

I further agree that this money will be
used to pay all the outstanding accounts to
date.

Yours faithfully,

Raymond W. Sawyer"

Dr. Sawyer says that the words "which I realise I
should not have withdrawn" mean that although he
was in principle entitled to withdraw money in
anticipation of a dividend he had drawn out too
much and allowed the company to be indebted. As
regards the phrase "withdrawals of this nature" he
meant that he would not in future draw out
excessive amounts which would imperil the finan-
cial position of the company. Mr. Nihon says that
the letter is an admission that he should never
have drawn out any sums of money at all. The
letter is equivocal but for the purposes of this
case it would seem that the second paragraph is of
most importance. This reads, "of this sum
approximately £7,000 will represent moneys which I

C

D

realise I should not have withdrawn from the Bank account of the Montagu Park Racing Association Limited". I can see no reason for this sentence save that Dr. Sawyer was intending to replace this money. The fact that he subsequently made out a promissory note payable to himself cannot affect the matter since it is the intention of the parties at the time of the grant and reception of the loan which is important. One can get little help in solving this question by examining the evidence of the two main witnesses, their subsequent conduct and the surrounding circumstances. What deduction can be made from Mr. Nihon's complaints about the withdrawals about which he failed to take any effective action and actually confirmed when present and voting for the adoption of the accounts at the 1956 meeting? What can one find was the state of mind of the parties when they signed an agreement in 1956 wherein it is stated in Clause 16 that the company is not indebted to Dr. Sawyer personally and in Clause 17 that he has withdrawn no money from the company for his personal use save to pay Mr. Nihon his 3%. Dr. Sawyer knew that the first clause and both knew that the second clause was inaccurate. I think that the only safe guide is the letter. I have come to the conclusion that seven of the ten thousand pounds must be credited to Dr. Sawyer as repayment of withdrawals. I am satisfied that he accepted the money for this purpose, though perhaps unwillingly, and paid it into the company accordingly. I think that the making of the promissory note was an after-thought and has no effect. The balance of three thousand pounds I find he paid into the company in the form of a loan and he must be credited with this sum.

I would like to hear argument as to the exact amount of the sums withdrawn and not sanctioned by the passing of the 1956 accounts. If they are not agreed it may be necessary for an enquiry by an accountant to be ordered. In addition I wish to hear argument as to set-off at and also on the question of costs.

R.A. Campbell

Chief Justice.

6/5/64

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 7
Judgment,
6th May, 1964.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 8
JUDGE'S NOTES

No. 8
Judge's Notes,
13th May, 1964.

13.5.64 Adderley
Knowles

£13,851.12. 5.
£ 1,629. 9. 1.: £15,481. 1. 6.

but £500 will have to be deducted for salary as the plaintiffs agreed to this. £7,000 plus £3,000 must be credited to Dr. Sawyer. Also £3,000 for salary.

A

I ask for the amounts to be set off and, or balance, judgment to be given for £2,518.18. 6.

As regards set off:-

Flitcrofts case 42 L.T. page 86. Distinguishable. In Flitcroft there was a breach of trust. Liquidated was the plaintiff. Application was under 165 of the English Companies Act. This equals 166 of Bahamas Act.

B

Kelly's case 47 L.T. page 638. This is a case of mutual demand.

Section 101.

Right of set off is a statutory right not a common law right. Right of set off is given in the Supreme Court Act. Breach of Trust not alleged.

See page 346 of judgment
See page 350 of judgment

Section 38 of Supreme Court Act deals with set off and counterclaim. Submit that we are entitled to

C

ADDERLEY: I agree the figure of what judgment says were unsanctioned amounts is £15,481. 1. 6.

Sawyer has already been given credit for the £10,000 when the accounts were approved.

The actual figure of withdrawals in 1954-1955 was £18,184. 9. 2. but credit was given for £10,000

43.

and the figure of £8,184. 9. 2. was put in the balance sheet.

See

Submit that the Court cannot now "set off" an amount which has already been "set off" when the accounts were paid.

R.A. Campbell.

Chief Justice.

13/5/64

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 8

Judge's Notes,
13th May, 1964.
(Contd.)

A

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 9

FINAL JUDGMENT

No. 9 21/5/64 (Final Judgment)
Final Judgment,
21st May, 1964.

I have now heard argument upon the form of the degree and the question of costs.

I am satisfied that there is no reason to disallow the ordinary right of set-off. In Flitcroft Case 48 L.T. 85 and Re Anglo-French Co-operative Society Ltd., 47 L.T. page 638 set-off was not allowed to directors who had been found to have unlawfully abstracted money from their companies but in turn were owed money by the companies. But these cases differ from the present case in two ways. In the first place they were cases where misappropriation and breaches of trust were found to have occurred. There has been no finding here to that effect and the plaintiffs' case was not so put in the pleadings. Secondly they were both cases where the company was in liquidation and the liquidators were the plaintiffs. Here the plaintiff company, though said to owe money, is not in liquidation: it is still alive. The principle that a liquidated company can collect its debts in full and will only pay unpreferred debtors in proportion to its assets is not applicable here.

Can the defendant set off the whole of the sum of £10,000 which he borrowed from Mr. Nihon and paid into the company on 25th May, 1954? I have found that the defendant's withdrawals entered in the accounts up till 30th April, 1956, were sanctioned retrospectively. I have also found that the withdrawals up till 25th May, 1954, were replaced to the extent of £7,000. As it now transpires he was not legally bound to do so but he chose to do so. I cannot see how he can say that the company now owes him this sum. He would have had the benefit of the repayment if it had been found that all his withdrawals were illegal but that is the only way in which he could benefit. The plaintiffs in their pleadings credited him with £10,000 on the basis that all his withdrawals were illegal: they were bound to do this. But this does not mean that they are compelled to pay him the £10,000 in any

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event. The £3,000 of the £10,000 which the defendant loaned the company he is however entitled to be repaid.

In the Supreme
Court of the
Bahama Islands
Common Law Side

A I find that the defendant made withdrawals between 1st May, 1956 and 1st May, 1957 amounting to £15,481. 1. 6. Of this sum £5,000 he was entitled to withdraw but £10,481. 1. 6. was unauthorised and unlawful. The defendant is entitled to be paid by the plaintiffs and set-off £3,000 which he loaned to the company on 25th May, 1954 and £3,000 as salary for July, September and December, 1957.

No. 9
Final Judgment,
21st May, 1964.
(Contd.)

In the result there will be judgment for the plaintiffs for £4,481. 1. 6. The costs of the suit will be the plaintiffs'. I make no order as to costs on the counterclaim.

R.A. Campbell.

Chief Justice.
21/5/64.

B

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 10

FINAL LEAVE TO APPEAL GRANTED TO
PLAINTIFFS AND DEFENDANTS

No. 10

Final leave to BAHAMA ISLANDS
Appeal granted IN THE SUPREME COURT
to Plaintiffs and to
Defendants, Common Law Side
27th May, 1964.

1959 No. 122
(Stamp)

A

B E T W E E N :

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
WILSON SAWYER

Defendant

Upon reading the Notice of Motion on behalf of
the above-named Plaintiffs dated the 22nd May, 1964
and the Notice of Motion on behalf of the above-
named Defendant dated the 22nd May, 1964

B

And upon hearing Mr. P.L. Adderley of Counsel
for the Plaintiffs and the Honourable Leonard J.
Knowles of Counsel for the Defendant

IT IS ORDERED as follows:

1. Final leave to appeal to Her Majesty's Privy
Council against the Judgments and Orders of this
Honourable Court given on the 6th May 1964 and the
21st May 1964 in respect of the Amended Statement
of Claim, the Amended Defence and the Amended
Counterclaim is granted to the Plaintiffs.

C

2. Final leave to appeal to Her Majesty's Privy
Council against the Judgments and Orders of this
Honourable Court given on the 6th May 1964 and the
21st May 1964 in respect of the Amended Statement
of Claim, the Amended Defence and the Amended
Counterclaim is granted to the Defendant.

3. Neither appellant need provide security for
the due prosecution of the appeal or the payment
of costs.

D

4. Both appellants shall take the necessary steps for the purpose of procuring the preparation of the Record and the dispatch thereof to England within Four (4) months from the date of this Order.

In the Supreme Court of the Bahama Islands
Common Law Side

5. The appeals of the Plaintiffs and the Defendant shall be consolidated in accordance with Rule 13 of the Privy Council Appeal Rules 1912.

No. 10
Final leave to Appeal granted to Plaintiffs and to Defendants,
27th May, 1964.
(Contd.)

6. Each party shall have liberty to apply.

7. The costs of this application shall be costs in the appeal.

DATED this Twenty-seventh day of May, 1964.

BY ORDER OF THE COURT

N.C. Robens

REGISTRAR

A

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 11

EXTENSION OF LEAVE TO APPEAL UNTIL
30th OCTOBER 1965

No. 11

COPY

Extension of
Leave to
Appeal until
30th October,
1965,
12th August,
1965.

BAHAMA ISLANDS
IN THE SUPREME COURT
Common Law Side
B E T W E E N :

1959 No. 122

A

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
WILSON SAWYER

Defendant

Upon application made by the Hon. Leonard J.
Knowles, of counsel for the Defendant, in accordance
with Paragraph 6 of the Order of this Court dated
the 27th day of May A.D. 1964

B

IT IS ORDERED THAT:

1. The time for the preparation and despatch of
the record to England under Paragraph 4 of the said
Order of this Court dated the 27th day of May A.D.
1964 be extended to the 30th day of October 1965;
2. The costs in this Application shall be costs in
the Appeal.

Dated the Twelfth day of August A.D. 1965.

BY ORDER OF THE COURT

C

(signed) J. BROWNLEES

REGISTRAR

No. 12

EXTENSION FOR LEAVE TO APPEAL FOR
UNLIMITED TIME

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 12

1959 Extension for
leave to

No. 122 Appeal for
unlimited time,
22nd December,
1965.

BAHAMA ISLANDS

IN THE SUPREME COURT

A Common Law Side

B E T W E E N :

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

Plaintiffs

- and -

THE HONOURABLE DR. RAYMOND
WILSON SAWYER

Defendant

ORDER

B Upon Hearing the Honourable Leonard J. Knowles
of Counsel for the Defendant and P.L. Adderley of
Counsel for the Plaintiff

IT IS ORDERED THAT the record be sent to the
Privy Council and it is hereby Ordered that the
time for Appeal be extended to enable this to be
done.

Dated the Twenty-second day of December A.D.
1965.

BY ORDER OF THE COURT

(Signed) J.K. BROWNLEES

REGISTRAR

C

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 13

EVIDENCE OF MR. ALEXIS NIHON

MR. ALEXIS NIHON S/S:

Plaintiffs
Evidence

Examined by Mr. Adderley:

No. 13

Mr. Alexis
Nihon.
Examination.

Q. What is your full name Mr. Nihon?

A. Alexis Nihon.

Q. And you live in Nassau and also Montreal?

A. Yes.

Q. Presently you are living in Nassau?

A. That is correct.

Q. You usually live in Nassau from November or
December until the middle of May?

A. Generally from December until about the Middle
of May.

Q. In this action for the plaintiffs purposes, Mr.
Nihon we are referring to the period after
which the defendant, Dr. Sawyer became a share-
holder in the plaintiff company and I believe
he became a shareholder in 1953 which was when
he purchased shares of the company from you.
It was also at that time you were the bene-
ficiary owner of 299 of the shares in the
plaintiff company?

A. That is right.

Q. And you agreed to sell 297 of those shares to
Dr. Sawyer?

A. That is right.

Q. And those shares were actually transferred
from you to him?

A. Yes.

Court: What proportion of the shares did he get?

Mr. Adderley: 297 out of 299. There is still a
further share that is accounted for.

Court: So he got the whole company?

Mr. Adderley: Minus two shares.

Court: He sold him the whole company?

Mr. Adderley: That is not so because he did not
sell two of the shares of the company. These
two shares were held one share by Mr. Nihon
and one share by Mrs. Nihon.

Q. Now under your agreement which was between
yourself and Dr. Sawyer the company did not
apply to that agreement?

A. No, the company was not.

Q. The company did not apply to the agreement, it
was between you and Dr. Sawyer?

A

B

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D

- | | | |
|----|---|---|
| A. | The agreement was between myself and Dr. Sawyer. | In the Supreme Court of the Bahama Islands <u>Common Law Side</u> |
| Q. | And you agreed to sell your shares to him for £60,000? | |
| A. | That is right. | |
| Q. | And under that agreement he agreed to pay you £6,000 by the conveyance of certain property to you known as "Ridgeway"? | Plaintiffs Evidence. |
| A. | That is right. | <u>No. 13</u> |
| A | Q. After the transfer of the shares to Dr. Sawyer, did you take any part in the management or the control of the company? | Mr. Alexis Nihon. Examination (Contd.) |
| A. | None at all, no part whatsoever. | |
| Q. | The company had, I think in that same year, 1953 Mr. Nihon, passed a Resolution under which it agreed to pay you 3% of the gross Pari-Mutuel pool of the race track, is not that so? | |
| B | A. Yes it was in appreciation of the excellent services that I was supposed to have done for the Company. I was invited to have 3% of the gross proceeds also. | |
| Q. | That was agreed by a Resolution of the Company? | |
| A. | It was. And as I recall Dr. Sawyer was in the chair when the resolution was passed. | |
| Q. | I am referring to the minutes of the Directors Meeting of the 6th of May 1953. In these minutes it says that the Directors present were Alexis Nihon, Raymond Sawyer, Alice Nihon, Roderick Newton Higgs and Iverene Gladys Sawyer:- | |
| C | | |
| | "On motion duly made and seconded the following Resolution was approved:- | |
| D | As a consideration for the excellent service rendered this Company by the President, Alexis Nihon, be it resolved that, in the event of the purchase of the assets of Montagu Park Racing Association Limited by the Purchaser he retained Three Percent of the Thirteen Percent granted to the Licensee on the Pari-Mutuel pool and one half of the gross proceeds by The Montagu Park Racing Association Limited as their Percentage for promoting and organizing any sweepstake lottery or | |

In the Supreme
Court of the
Bahama Islands
Common Law Side

Plaintiffs
Evidence.

No. 13

Mr. Alexis
Nihon.
Examination
(Contd.)

drawing in connection with racing of any
kind held at Hobby Horse Hall."

That was read from the Minutes of the Directors
Meeting of 6th May, 1953. That was a Resolu-
tion of the Company Mr. Nihon but I also
believe that that Resolution, was it not, also
incorporated in the Agreement between you and
Dr. Sawyer?

- A. It was. A
- Q. During the 1953-54 Racing Season were you paid
the Three Percent which you were entitled under
that Resolution?
- A. I was.
- Q. And you were paid that by the Montagu Park
Racing Association?
- A. Yes, that is correct.
- Q. During the 1953-54 Racing Season, did you have
anything to do with the accounts of the Asso-
ciation, Mr. Nihon? Did you know how the B
accounts were being kept or did you have any
access to the accounts in order to find out
what was the financial position of the Company?
- A. No.
- Q. You were only paid the 3%
- A. I was.
- Q. Now at the end of the 1953-54 Racing Season,
did you have any conversation with Dr. Sawyer
with regard to the financial position of the C
Company?
- A. I do not recall.
- Q. Some time after the 1954 Racing Season?
- A. Yes. Dr. Sawyer came to my house and he said
that there was not sufficient money to pay off
the accounts of the Company.
- Court: When was that?
- A. Sometime during the Summer of 1954.
- Q. Sometime during the Summer of 1954? Mr. Nihon
it would be helpful if you can remember the D
actual month.
- A. I do recall that I did loan the money to Dr.
Sawyer then, and I requested a letter from him
where he admitted that he had made unautho-
rized withdrawals from the Company and that in
future he would not do it any more.
- Q. Let us summarise that more slowly, Mr. Nihon.
You said that Dr. Sawyer came to you to discuss
the financial position of the Company?
- A. Yes.

- Q. What was the purpose of his coming to you?
 A. The purpose was to get some money so that the creditors of the company might be paid.
 Q. He wanted to get some money from you so that the creditors of the Company might be paid?
 A. Yes, he wanted to borrow some money.
 Q. Did you know at that time that there were outstanding accounts payable by the Company?
 A. I did not know at that time until he came.
 A. You did not know until you actually saw him?
 A. That is right.
 Q. That was the position?
 A. That is right.
 Q. And what did he tell you was the reason for his having to borrow this sum of money?
 A. He admitted that he had made some withdrawals of approximately £7,000 that he was not entitled to and he urged me to loan him some money on the guarantee by mortgage of his house, which I did. But before the Racing Season was over I requested from him, in writing, his own admission of taking these sums.
 Q. And did you in fact loan him the £10,000?
 A. I did.
 Court: On the mortgage?
 A. Yes, on the mortgage of his house.
 Court: Does that come into this case?
 Mr. Adderley: Yes, sir. That £10,000 was the exact amount which was loan to him to be paid into the Company. And that amount of money was deposited by him into the Company.
 Court: But Dr. Sawyer was the Company at that time.
 Mr. Adderley: He was the beneficiary owner of the majority of the shares.
 Court: Whether he would gain or lose depend on the shares he had in the Company.
 Mr. Adderley: No sir.
 Court: But he held all the shares of the Company.
 Mr. Adderley: No sir he did not.
 Court: All except two.
 Mr. Adderley: Yes sir, but in fact he did not own them.
 Court: But substantially.
 Mr. Adderley: It is a fact that that amount of money which was loaned to him was deposited into the Company.

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 Nilon.
 Examination
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- Q. Now you said, Mr. Nihon, that at the time you loan this sum of money to Dr. Sawyer he told you that he needed it because the Company did not have any money with which to pay its expenses?
- A. That is correct.
- Mr. Adderley: There are two items that I need to refer you to at the moment for our purpose. Under current assets is included an amount deposited in the Royal Bank of Canada, £1,363. 0. 2d. and under Liabilities accounts payable £14,496.14. 1. (Ex.C5)
- Court: There we have £13,000 was paid.
- Mr. Adderley: That was the cash, the actual cash, which was at that time.
- Q. Now at that time, Mr. Nihon, I believe you said that you got a letter from Dr. Sawyer with regard to this position. That letter was dated the 25th of May 1954?
- A. That is right.
- Q. That was in May of 1954, Mr. Nihon, when you loan Dr. Sawyer this money and he gave you this letter. Now after this 1954 situation had arisen, did you have any occasion to take any part in the management or conduct of the affairs of the Company?
- A. No.
- Q. During the 1954-55 Racing Season did you have anything to do with the conduct of the affairs of the Company?
- A. The same thing apply. I was more or less left out.
- Q. And the defendant was more or less conducting the business of the Company himself?
- A. That is right.
- Q. During the 1954-55 Racing Season you received the accounts of the 3% from the Company?
- A. I did.
- Q. Did you not during that time know what the financial position of the Company was?
- A. No.
- Q. Did you in the 1954-55 Season know whether the Defendant had made any withdrawals of the same nature as those made in the 1953-54 Season?
- A. No, I did not know then but I found out later. I would like to add that all those Directors meetings, were always held during my absence from the Colony.
- Court: Did this Company have a very big cash balance from which these withdrawals were made?

A

B

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E

Mr. Adderley: I imagine it fluctuated, but we can show you from the balance sheets what the position was at the end of each racing season and you can gather from the withdrawals what the position was like but these are matters that we have to prove sir. The plaintiffs have to prove what amount was actually withdrawn.

A Court: What he is saying is that money came in and the money was paid out in the form of bills.

Mr. Adderley: That is the general impression, but what really happened is that at the end of the second year, accounts payable were substantially less. It was only at the end of the first that there was a substantial account payable to that amount. At the end of the 1955 season the accounts payable were slightly over £5,000 and after that it was considerably less each year.

B Q. You said that at the time during the 1954-55 racing season you did not know what withdrawals were being made by him but you found out later?

A. Yes.

Q. During the 1955-56 season, I think it was actually in February of 1956 you re-took possession of the shares which the defendant were purchasing from you?

C A. Dr. Sawyer forfeited his payments and the shares were delegated to the Barclay's Bank in escrow for deductions and he turned without any further deductions and he would not fulfil to meet his payments on them so all I had to do was to walk over to Barclay's Bank and since he had not meet his payments, to take over all the shares again.

Q. He had defaulted in his payments under his agreement with you?

D A. Yes he did.

Court: There were held in escrow at the Barclay's Bank?

A. Well, they were mine again and then I was in possession of all the shares of the Montagu Park Racing Association until I negotiated another agreement with Dr. Sawyer so in fact for a period of about 15 days I was again the sole shareholder.

Q. And on 29th February 1956 you entered into a

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second agreement between you and Dr. Sawyer to sell to him 149½ shares?

A. Yes.

Q. Out of 300 shares?

A. Yes.

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Q. And you retained 149½ shares?

A. I did and I still have.

Q. That is still the present shares of the share-holding certificates?

A. That is true. A

Q. I also believe that after you made the February 1956 Agreement you held the majority of the Board of Directors of the Company?

A. Yes.

Q. But the management and effective control of the operation of the race track was still under control of Dr. Sawyer?

A. Yes.

Q. And also you at this time was being paid a salary of £5,000 per annum as manager-director? B

A. That is right.

Q. Did you also take any part yourself in the management or control of the race track?

A. No.

Q. Now it was in 1956 when you sold shares to him again and during the 1955-56 racing season the accounts of the Company and the management of the company, did you play any part in the conduct of management of them?

A. No, I have never had anything to do with them. I did not have anything to do with the operation of the races or the management of the race track after I entered into the agreement with Dr. Sawyer. C

Q. Now the 1956-57 season which is the sort of last racing season of the races, was the Company still under the control of Dr. Sawyer?

A. Yes.

Q. Now sometime, I believe in early 1957, the Company had agreed to change the signatures for issuing cheques at the Bank? D

A. Yes.

Q. Now after the signatures at the Bank were changed -- there were two signatures, I think, required on the account of the Company?

A. That is right.

Q. And there were cheques that were made payable to Dr. Sawyer which were signed by both you and Dr. Sawyer at the end of the 1957 season?

- A. I believe so, yes.
- Q. Now the amounts which you paid to Dr. Sawyer -- will you tell the court Mr. Nihon, why these amounts were being paid to Dr. Sawyer and what the arrangements were with regard to the payments, whether these amounts were being paid to him as loans or as dividends?
- A. All the money which was paid to Dr. Sawyer was regarded as a loan.
- A Q. The company never, in fact, declared dividends?
- A. No.
- Q. In any of the years, 1954, 1955, 1956 or 1957?
- A. No, it never did.
- Q. Was it your understanding that these amounts were to be paid by him to the Company?
- A. Yes.
- Q. At the end of the 1957-58 season the question of the amount which was loan to Dr. Sawyer was being raised at that time, was this in the Directors meetings?
- B A. Yes, it was.
- Q. I believe at that time Dr. Sawyer denied that he obligated to repay the money to the Company?
- A. I only know that we discussed it.
- Q. It was discussed. The minutes of the meeting of the Directors on 18th of March 1958. All the Directors were present. "The Chairman informed the meeting that Dr. Sawyer had from time to time borrowed certain moneys from the company and that he felt that Dr. Sawyer should now pay the sum of £26,972.16. 7. to the Company as shown on the attached Memorandum prepared by Mr. Herbert Deal at the request of Mr. Nihon. Dr. Sawyer denied that he owes this sum to the Company".
- C A. Oh yes, that was a Directors Meeting.
- Q. Yes. It was at that meeting that the Company agreed to borrow £10,000 from you for the purpose of discharging its obligations to you?
- D A. Yes.
- Q. The minutes of the Annual General Meeting, Mr. Nihon, for the 6th of September 1954 at which those present were, Raymond Sawyer, Iverene Gladys Sawyer and Roderick Newton Higgs.

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"The Secretary informed the meeting that notices of this meeting had been mailed

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to Alexis Nihon and Alice Nihon on the
20th August, 1954."

That was the minutes of the Annual General Meeting of the shareholders of The Montague Park Racing Association Limited held on the 6th day of September, 1954, and in it the Secretary informed the meeting that notices of the meeting had been mailed to Alexis Nihon and Alice Nihon on the 20th of August 1954.

Do you recall having received any notices for that meeting?

A. I do not recall having received any notices of that meeting.

Q. And the minutes of the Annual General Meeting of the 21st of November 1955 states that Dr. Sawyer, Iverene Gladys Sawyer and Mr. Roderick Newton Higgs were present and the minutes also state that "Mr. Alexis Nihon and Mrs. Alice Nihon, the other shareholders of the Company, were absent from the Colony and therefore unable to attend the meeting." Do you recall having received a notice of that meeting?

A. I do not recall having received a notice.

Q. Now the Annual General Meeting held on the 6th of May, 1956 state that the following shareholders were present:- Mr. and Mrs. Nihon, Dr. and Mrs. Sawyer and Mr. Newton Higgs. Do you recall this meeting, Mr. Nihon, when the accounts and balance sheets of the Company as at the 30th of April, 1956 showing a net profit of £15,545.10. 2. were approved and a motion was moved and seconded to this effect to

"RESOLVED that each and all of the acts, transactions and proceedings of the Directors and Officers of the Company to this date be and they are hereby sanctioned, approved, ratified and confirmed."

Now, firstly, do you remember attending that Meeting?

A. I do recall that very clearly. It was about the same date as we did sign the agreement. I requested a balance sheet.

Q. This request was made in May of 1956?

A. Yes May of 1956.

Q. The Agreement was in February?

A. February of 1956. In May of 1956 I requested

the balance sheet and it was presented to me in a pencil form by Mr. Deal and I said that I could not accept it for confirmation because it was not in the proper form and I did not decide to confirm it and I requested that regular copies be dealt to me as soon as possible which was done at a later date.

Q. Will you repeat that for us Mr. Nihon.

A. It was in pencil form.

A Q. The balance sheet was written in pencil?

A. Yes, it was not typed. It was not a very lovely sheet. I was leaving for Canada in the next two or three days later, and I could not approve (Illegible) naturally such a balance sheet and I requested another copy, a regular copy should be mailed to me and I said that that should be as soon as possible.

Q. You said that a regular copy should be mailed to you and the acceptance had been postponed?

B A. That is right.

Q. At that time you said that the balance sheet was not the regular sheet. It was a pencil draft?

A. Yes, a pencil draft.

Court: What date was that?

Mr. Adderley: It was the 12th of May, 1956.

Q. You said that you were about to leave the Colony the following day or within the next two or three days?

C A. That is right.

Q. At the end of the 1958 Season, I see that the Company had outstanding accounts?

A. It always had.

Q. At the end of the 1958 Season, when I say the end, the season was terminated because the buildings were destroyed by fire. At that time the Company had outstanding accounts and the Company did not have any money in the Bank with which to pay them?

D A. That is true.

Q. I am referring to the Directors Meeting of the 18th of March 1958 where the Directors Mr. & Mrs. Nihon, Dr. and Mrs. Sawyer and Mr. Godfrey Kelly were present and at which a Resolution was agreed and passed to borrow some £10,000 from Mr. Nihon. "Dr. and Mrs. Sawyer abstained from voting on the foregoing Resolution as they felt that instead of borrowing the sum of £10,000 from Mr. Nihon the insurance moneys,

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when received should be used to pay off the creditors." Now was that money in fact loaned by you to the Company?

A. Yes, it was loaned by me to the Company.

Q. And the minute notes here that Dr. & Mrs. Sawyer abstained from voting because they felt that instead of borrowing the £10,000 from Mr. Nihon the insurance moneys, when received, should be used to pay off the creditors. Now I believe that certain insurance moneys were received sometime after this?

A. Yes, the insurance on the equipment.

Court: When was the insurance moneys received?

Mr. Adderley: I believe the date was sometime in 1958 sir, the amount was something like £6,000 I believe. That was received by the Company. At the time of this Resolution that was not the only insurance money which the Company had prospects of receiving, I believe the substantial insurance money paid was related to the insurance on the business.

A. Yes, I even noticed not so long ago that it was posted in one of the statements as an (Illegible) the sum of some £30,000 as an asset.

Q. £30,000 was the amount of the insurance?

A. But it was posted as an asset.

Q. £33,000 was the actual amount of the insurance, but the Company never actually collect it?

A. But it was posted as an asset and it was not even agreed by the insurance.

Q. But the Company never collected?

A. That is so.

Q. So the only insurance which was actually collected by the Company was the amount of £6,000 which was collected on the equipment and personal effects in the building?

A. That is right.

Q. Now after the insurance money had been paid, I think that the Company repaid the sum of £4,000 to you?

A. Yes.

Q. I believe the Company also repaid an amount to the Royal Bank in respect of an overdraft.

A. I reloaned another time the £4,000 to the Company and the Company is still indebted to be paid the sum of £10,000 plus the interest, and that was to pay off the overdraft at the Royal Bank of Canada.

A

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C

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Q. I am referring to the minutes of the Directors Meeting of the 18th of April, 1959 which was attended by Mr. & Mrs. Nihon, and Mr. Godfrey Kelly. Incorporated in these minutes is a letter from Dr. Sawyer indicating that he had received a notice of the meeting but he also sets out the reasons why he will not be attending. But the purpose of the reference is the minutes records that

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A

"On motion duly made and seconded it was resolved that a writ be issued immediately by the legal firm of Messrs. Higgs & Kelly for the said sum of £26,972.16.7. plus interest at 5% from each date of withdrawal until repayment."

This was a resolution passed by the Company, sir, to agree to take legal action against the defendant. Then it also records with reference to Para. 3 of the notice and the notice refers to the withdrawals made by Dr. Sawyer. (Illegible)

B

"With reference to Paragraph 3 of the said Notice, The Chairman pointed out that in the minutes of a meeting of the Directors of the Company held on the 18th March 1958, according to the statements and the memorandum prepared by Mr. Herbert Deal, the Company's Accountant, Dr. Sawyer is indebted to the Company in the sum of £26,972.16.7.

C

"Mr. Kelly stated that it was his understanding that the said sum of £26,972.16.7. drawn by Dr. Sawyer was done so in anticipation of dividends.

"On motion duly made and seconded it was resolved that a writ be issued immediately by the legal firm of Messrs. Higgs & Kelly for the said sum of £26,972.16. 7. plus interest at 5% from each date of withdrawal until repayment."

D

Q. Did you personally or the Company at any time agreed that Dr. Sawyer, the defendant might

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retain the sums which were withdrawn from the
Company by him as a loan or as his own
personal property?

- A. As a loan.
Q. After he wrote that letter to you in 1954, that
is the letter of the 25th of May, 1954, which
says

"I realize I should not have with-
drawn from the Bank account of the Montagu
Park Racing Association Limited.

A

"I hereby agree not to make any more
withdrawals of this nature in future from
the said Company's Bank account."

That was in May 1954. Did you know when you
found out after that that he was still making
withdrawals from the Company?

- A. It is hard to remember as to date, but I think
it was around 1956, when I took the shares
back.
Q. So between 1954 and the beginning of 1956 you
were unaware that what had happened during the
1954 Season was still going on?
A. (Indecipherable)
Q. Did you ever agree with Dr. Sawyer with regard
to this loan or withdrawals from the Company?
A. (Indecipherable)

B

Cross-Examined by Mr. Knowles:

Cross-
Examination by
Mr. Knowles

- Q. Mr. Nihon, (Indecipherable) would like to
say that while Mr. Newton Higgs was a Director
of the Company that is on 6th of May 1953, to
the 29th of February 1956, that he advised you
from time to time that these withdrawals by
Dr. Sawyer were in order.
A. He never did.
Q. Did Mr. Godfrey Kelly during the period of his
Directorship give you that same advice?
A. I do not recall.
Q. You do not recall it, Mr. Nihon?
A. He might have, but I do not recall.
Q. Am I not right in saying that Mr. Kelly ex-
pressed his opinion at the very meeting of the
Directors at which it was decided to institute
these legal proceedings?
A. Will I be permitted to read these minutes?

C

D

- Q. Yes.
- Q. Which minutes are they?
- A. The Minutes of the 18th April, 1959.
- Q. "With reference to Paragraph 3 of the said Notice, The Chairman pointed out (and I presume that you were the Chairman) that in the minutes of a meeting of the Directors of the Company held on the 18th March, 1958, according to the statements and the memorandum prepared by Mr. Herbert Deal, the Company's Accountant, Dr. Sawyer is indebted to the Company in the sum of £26,972.16. 7." Now this is the part to which I must direct your attention Mr. Nihon.
- "Mr. Kelly stated that it was his understanding that the said sum of £26.972.16. 7. drawn by Dr. Sawyer was done so in anticipation of dividends."
- B A. Do you remember that being said?
- A. Yes, after all "in anticipation" is something that may never come. Then after that on a further Resolution Mr. Godfrey Kelly was present when we passed the Directors Resolution to sue Dr. Sawyer, and he agreed.
- Q. Now I am putting it to you that Mr. Kelly did not agree to that.
- A. I beg your pardon, Mr. Kelly did agree to that.
- Q. Do I understand you to say that Mr. Kelly never expressed the opinion that Dr. Sawyer was entitled to keep this money? Is that what you are saying?
- C A. He never expressed an opinion that he was entitled to keep it. The way that it reads there, it says "in anticipation of dividends" and dividends were never voted. You cannot distribute a dividend unless you voted.
- Q. No doubt Mr. Kelly said that Dr. Sawyer would be entitled to these moneys and dividends and therefore he was entitled to keep them in the circumstances.
- D A. Mr. Kelly, as I said, we had a Board of Directors Meeting, and he figured that Dr. Sawyer had taken these moneys in anticipation of a dividend. But again I say that there was no money available for that dividend to start with and second it was not voted. The Board of Directors has to vote.

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Q. In fact did not Mr. Kelly express the same opinion at a meeting which was held in 1956 when for the first time the accounts showed some of the withdrawals and a debit against Dr. Sawyer?

A. I cannot recall those minutes but if you will show them to me I will gladly read them and tell you anything I know about them.

Q. No, this is not contained in the minutes, Mr. Nihon, so we have to rely upon your recollection.

A. I do not recall that, because at the last meeting we had there Mr. Godfrey Kelly and all of us decided to sue Dr. Sawyer for that sum and he signed the Resolution and it was confirmed. So he may have changed his mind of what he thought was right or may have been right, but in fact he agreed to sue Dr. Sawyer for these moneys.

Q. Was it not a fact that the majority of the Directors agreed on this course of action, namely, yourself and Mrs. Nihon?

A. Well, and Mr. Kelly.

Q. Very well then Mr. Nihon. Can you tell me anything about the late Mr. Robert Emmet Murphy?

A. Oh yes. I bought the share from Mr. Tomothy Macauley and I paid for it and I owned the share because that share of Mr. Murphy was his as an employee in that he was supposed to re-endorse it to his "boss", if I could use the expression, as an employer and it was, maybe, overlooked and furthermore he never did pay for it. Now, I have correspondence on that, and I happened to have it here in Nassau, from Mr. Stafford Sands, where he advised us not to worry about that share, that should something come up that Mr. Tomothy Macauley is in fact the real owner of the share.

Q. But you bought the share from Mr. Macauley?

A. Yes.

Q. You owned it?

A. Yes.

Q. Can you remember how much you paid for it?

A. Well Mr. Macauley at the time did not have all the money to purchase the share, from Mr. Murphy and what I paid I do not know exactly.

Q. I think you bought 100 shares from Mr. & Mrs. Macauley, including the Robert Emmett Murphy share?

A. That is right.

A

B

C

D

- Court: What did you pay for the shares?
- A. I do not know exactly.
- Q. Was it \$60,000?
- A. No.
- Q. Well, we will leave that point Mr. Nihon.
- A. I do not think it was that much. I thought you meant Pounds. It could very well be \$60,000.
- A Q. And I think you purchased these shares from Mr. and Mrs. Macauley on the 23rd of October 1950? Does that sound right?
- A. It sounds right, yes.
- Q. Do you know where the share certificate is Mr. Nihon, the one relating to the Robert Emmett Murphy share?
- A. I may have it in my safe, I may have it lodged with my lawyers, it may be somewhere, but personally I may not be able to answer you now.
- B Q. Would it be so to say that under the 1953 Agreement, speaking in general non-technical terms, the entire Company was being sold to Dr. Sawyer?
- A. No.
- Q. Well Mr. Nihon, I am very sorry to have to tell you, but we are of course aware that you kept two shares, one for yourself and one for Mrs. Nihon in order to qualify you as a Director. That is right so far is it not?
- C A. According to the Agreement, if you want to refer to it, as to making Dr. Sawyer the sole owner I must disagree with you because the Agreement has a lot of other Clauses to be respected, and in fact it appears that Dr. Sawyer was the owner of the shares but in fact he was not because they were endorsed in blank at the Bank in escrow with instructions to hand them back over to me should he fail in his payments, as he did, and I got them back.
- D Q. Oh yes, I understand that Mr. Nihon and I am afraid, I did mislead you. What I meant to say was that subject to the provision which was designed to protect you, the Company in its entirety was being sold to Dr. Sawyer?
- A. It was in a way up to a certain extent but I still have two shares and I have not been paid for the shares yet, your lordship, and you cannot normally buy shares in a Company which is on promise so I have to be careful with

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- this agreement there as would be expected, so
Clauses like "The Purchaser agrees that the
sum of £5,000 will be set aside each year to be
used for depreciation on the Company's property
until payment in full has been made to the
Vendor" were inserted, but this was never
carried out.
- Q. There again Mr. Nihon, they were inserted to
safeguard your interest but subject to that,
the beneficial ownership of the shares of the
Company was being transferred to Dr. Sawyer, is
that not right? A
- A. Subject to the Agreement.
- Q. And in fact, does not the Agreement specifically
provide that the two Directors shares should
not participate in the profits?
- A. Yes.
- Q. So that the only participating shares would be
the shares of Dr. Sawyer?
- A. Yes. E.
- Q. Subject to the Agreement?
- A. Quite, providing that some money be put aside
so that the Company could not go 'broke'.
- Q. Well we should come to that presently, Mr.
Nihon, just to refresh your memory, will you
look at this photostatic copy of the document
which I have. This is a receipt from you for
the Robert Emmett Murphy share certificate. Do
you identify that as your signature?
- A. Yes, it is. C
- Q. Now you told us that after the transfer of
those shares in 1953 you took no part in the
management or control of the Company?
- A. What do you mean by management?
- Q. I am only quoting words that you have used Mr.
Nihon. But that cannot be right in view of
the fact that you and Mrs. Nihon remain on the
Board of Directors?
- A. Oh yes. But we have never had any privilege
of having anything to say because the meetings
were always held when we were away. D
- Q. But surely you could have attended if you
wanted to?
- A. That is if I had received notices.
- Q. But surely, if you wanted to attend a meeting
and if you knew that you were going to be
away at the relevant time you could of
informed the Company's Attorney, Messrs. Higgs
and Kelly, of this fact and a suitable time

- could have been arranged when you could have been present?
- A. There were occasions when this could have been done, for instant once a meeting was held in November and I reached home in December, and this meeting could have easily been delayed. There was no hurry for these meetings.
- Q. Well did you make any complaints about it?
- A. Yes, I did, to Dr. Sawyer, or whoever it was in the chair at the time. I said that these meetings could be held when I am in the Colony because it is not so urgent and to hold them in the Summer.
- Q. Did you inform Mr. Higgs or Mr. Kelly of your desire to attend these meetings?
- A. I may have.
- Q. You said that you are still a Director, and as a Director you have certain responsibilities in the Company, have you not?
- A. Yes.
- Q. And a function of a Director is to assist in the direction of the affairs of the Company?
- A. Yes, that is right.
- Q. You were aware of this?
- A. Yes, and it is also a duty of a Director to decide when a dividend is to be paid.
- Q. We will be coming to the matter of the dividends presently Mr. Nihon. You told us that the three percent payments were made by the Company to you?
- A. That is the way it was supposed to be.
- Q. That is the way it was done in fact?
- A. At first Dr. Sawyer attempted to, for some of his personal reasons I suppose, to pay them to his account, and I objected to that. I told him that it was a contractual obligation of the Company, and it had nothing to do with any agreement between us.
- Q. And yet it was embodied in the Agreement, was it not?
- A. It was embodied in the Agreement so that he will know what should be expected.
- Q. Should it not be necessary to include it in the agreement for that purpose, surely?
- A. You can always ask you know.
- Q. But you did tell us that Dr. Sawyer was actually in charge when the 1953 Resolution was passed so he would not need a reminder would he?
- A. I know but sometimes people forget quickly.

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.

No. 13

Mr. Alexis Nihon.

Cross-Examination

(Contd.)

- In the Supreme Court of the Bahama Islands
Common Law Side
- Plaintiffs Evidence.
No. 13
Mr. Alexis Nihon.
Cross-Examination
(Contd.)
- Q. In fact were not all of the three percent payments, if I may so term them, paid first to Dr. Sawyer who then paid them over to you?
- A. At first, yes.
- Q. No, at all times?
- A. Oh no.
- Q. And I suggest that the books of the Company reflects it?
- A. The books of the Company show a lot of discrepancies all the way and you are going to find out when you come to examine the books.
- Court: How were the three percent paid to you?
- A. A cheque was paid to Dr. Sawyer and he endorsed it to me, which had no sense and should not have existed.
- Court: Why do you think that it should not have existed?
- A. It should not have existed because he was not responsible to me for that sum, it was the Company that was actually paying me that sum.
- Q. You think that it should have been paid direct?
- A. That is right, it was a contractual obligation of the Company.
- Q. Mr. Nihon, you referred to a contractual obligation, was it ever embodied in an agreement between you and the Company.
- A. It is written in the minutes.
- Q. So it is referred to only in the minutes. And this privilege for a first privilege was it not?
- A. Yes.
- Q. In fact over this whole period which we are investigating did you retain something in excess of £45,000?
- A. Just about.
- Q. By way of your three percent paid?
- A. Just about.
- Q. And you retained £60,000 from Dr. Sawyer for the shares?
- A. That is right.
- Q. So over this whole period you have in fact received over £105,000 from the sources which we have just mentioned?
- A. Yes, £60,000 from Dr. Sawyer and £45,000 from the Company.
- Q. In respect of your interest in the Company?
- A. Yes.
- Q. Now is it right that the Resolution referred to part services of yourself?

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- A. Yes, it was a sort of a payment for appreciation of the services rendered and it was to be paid for my life time.
- Q. It was to be paid for your life time?
- A. Yes.
- Q. That was an enormous privilege then was it not?
- A. Yes, it was.
- Q. In fact it averaged over £10,000 a year did it not?
- A. Just about.
- Q. What are the excellent services which you had rendered for this tremendous consideration?
- A. Well, when I went into the Royal Bank of Canada at the time they told me that it was not very intelligent to buy because Mr. Ptter said that they were losing money all the time and I answered him, "they were", and he thought that I would not be able to 'change a cent', but I did, and I made a success of the race track. And instead of having losses I turned it into profits, because I have the reputation of being an administrator, an executive.
- Q. But the consideration that the Company received then was a past consideration, your past services?
- A. It had been as I said.
- Q. Are you aware that that is not a valid consideration in law?
- A. I will leave that to the court.
- Q. You told us that until sometime in 1956 you had nothing to do with the accounts of the Company, do you remember saying that?
- A. I do.
- Q. Did you not receive a 1954 and 1955 balance sheet and profit and loss account from Mr. Deal?
- A. The 1954 I got at the time just prior to the visit of Dr. Sawyer when he came to me about that loan of £10,000.
- Q. That was in 1954?
- A. That is right.
- Q. Did you notice that the 1954 account showed a deduction from surplus designated as shareholders withdrawals of the sum of £24,527.17. 9.?
- A. That is right, and I objected to that.
- Q. I suppose you did realise then the significance of that did you not?

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No. 13
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Cross-
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(Contd.)

In the Supreme A.
Court of the
Bahama Islands
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Plaintiffs
Evidence.

No. 13

Mr. Alexis
Nihon.

Cross-
Examination
(Contd.)

A. Well the significance of that was that there was no reason to have a shareholders withdrawal to start with the money that was paid to me, the three percent, should not have been a shareholders withdrawal and as I said it was a contractual obligation the Company had with me. And the rest was a shareholders withdrawal then at that time, Dr. Sawyer when I saw him and discussed it with him he admitted that he had had no business to do so.

Q. Well, we are coming to that in a moment. Now about these shareholders withdrawals. Was this sum divided more or less evenly between you and Dr. Sawyer?

A. No, I never had a penny there except the three percent.

Q. Well, that is what I am saying. Does not one half of this amount represent your three percent payment?

A. No. It is something close to that but it is not exactly half. I think the three percent was in the neighbourhood of £31,000 and in his letter Dr. Sawyer admitted that he had made withdrawals that he should not have made and that he will not do so in the future and that is on paper in that letter that I had loaned him the money hoping that he will never do it again.

Q. I am just dealing with the accounts at the moment. I am coming back to the points which you made. In that year 1954 is it right that Dr. Sawyer had not received any salary?

A. Oh yes, he received a salary.

Q. It is not down in the accounts?

A. Oh yes, he did receive a salary. He did not want it to be shown. It was hidden. He used to be the Chairman of the Racing Commission, Mr. Deal will testify to that, better than I because he is the one that told me so. He did not want to show the Racing Commission, he wanted the salary charged to the Parimutuel Buildings Upkeep in this and that. It was divided.

Q. Very well, I will take that up with Mr. Deal. But is it not wrong to say that you had nothing to do with the accounts when in fact in 1954 you received a copy of Mr. Deal's audited accounts?

A. It was very simple, there was nobody to pay the creditors and Dr. Sawyer after he came down to

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the house, I did not see him for a whole year, he did not even look at me. He ignored me and when he finally came to the house and begged to have the money to save the Company from going into bankruptcy.

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Q. Yes, now from your knowledge of the accounts during this period you just told me that you did in fact receive the 1954 accounts. It was during the time that Dr. Sawyer came to you so it must have been in the month of May?

Plaintiffs Evidence.

No. 13

Mr. Alexis Nihon.

Cross-Examination
(Contd.)

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A. This was about a month later.

Q. So it was in the month of May 1954 when you saw then that withdrawals by Dr. Sawyer were being charged in that fashion, deducted from the surplus and not debited against Dr. Sawyer, what did you do about it?

A. That is the object of that letter. That is why that letter came up. I told him that he had no right to do so, and then he gave me the letter and promised not to do it again.

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Q. I should be coming to the letter presently. We come to 1955 now. Did you receive the 1955 accounts they are dated the 7th of July 1955?

A. No.

Q. You never received them at all?

A. No.

Q. Did you not ask for a copy?

A. No.

Q. Why not?

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A. Because I was not in a talking mood with Dr. Sawyer at the time, and even though you do not agree, the meeting having been held in my absence and whatever happens, it was not too late, and I was holding until the next meeting. I objected that the meeting should be held when I was not in the Colony.

Q. But Mr. Nihon, you could have asked the Company's accountant and the auditor, Mr. Deal, for a copy of the accounts?

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A. I could have.

Q. Why did you not?

A. I overlooked it. I am the President of a lot of other companies and I a lot of facts to remember.

Q. Even for you this was a large amount of money which was not paid. Over £10,000 a year.

A. £10,000 on what?

Q. Your three percent payment.

A. Quite a lot to you Mr. Knowles.

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Plaintiffs
Evidence.

No. 13

Mr. Alexis
Nihon.
Cross-
Examination
(Contd.)

Q. How were you to know whether or not you were receiving the right amount of money if you did not see the auditor's accounts year by year?
A. I took it for granted. And I also took it so much for granted that I figured it to be about that amount from the previous racing days that we had.

Court: You calculated that you were getting about the right amount.

A. Yes.

Q. You present at the meeting of the shareholders when they held the Annual General Meeting, when the expense accounts were presented?

A. I think so. Could I have a look at the accounts.

Q. Certainly. Would you like to look at the others to which we refer?

A. No, I do not think so.

Q. Did you find these acceptable?

A. Was I present?

Q. I would prefer to rely upon your recollection in the first place.

A. You know that this has been so many years ago for me to remember where I was on a Friday afternoon.

Q. Well, the minutes do show that you were present.

A. I was there?

Q. The minutes say so.

A. Well let me see them. Did I accept them?

Q. Yes.

A. Well if I say so then it is so.

Q. "The Treasurer then presented the accounts and balance sheet of the Company as at 30th April, 1956, showing a net profit of £15,545. 10.2. and on motion the said accounts and balance sheet were approved."

A. I approved it?

Q. That is the inference, Mr. Nihon.

A. Do you mean this one?

Q. Yes.

A. I never approved that.

Q. You did not approve?

A. No.

Court: Which one is that?

Mr. Knowles: The 1956 one my lord.

Court: It is signed in 1958, the 23rd of January 1958. I agree it is of the meeting of the 12th of May 1956 at 8.30 but the chairman confirms the minutes two later.

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Mr. Knowles: That is because there were not
meeting held in 1957.

Court: Anyhow if you remember doing it all you
have to say is yes or not.

A. I did not sign them. I did not confirm them.

Court: But you were the Chairman were you not?

A. Yes, I was not present at that meeting.

Court: Dr. Sawyer took the chair.

A. I requested some changes in the statement
that the contractual obligation should be
contained in there, the three percent of the
contractual obligation, I also requested that
the money which was withdrawn by Dr. Sawyer
should be as a loan.

Court: Was a profit shown?

A. A profit was shown but it was not shown right.

Court: Anyhow you do not recollect doing so.

A. No.

Court: You were present?

A. I was present.

Q. Do you say then that you did not accept and
approve those accounts?

A. No. I did not endorse those statements there
for the reason that they were improperly
drawn.

Q. What did you say about the accounts at the
meeting Mr. Nihon?

A. I have been objecting to those statements
when I have had a chance to see them. The
same thing applies here again. They were
always prepared the wrong way. The three
percent was not shown, which should have
been, that the withdrawals of Dr. Sawyer
should not have been shown as a loan and
under the circumstances instead of showing
a profit, it would have shown a loss. But
somebody was only interested in showing a
profit, which in fact it did not.

Q. Mr. Nihon were you not the Treasurer of the
Company at that meeting?

A. I was the Secretary-Treasurer of the
Company.

Q. And the minutes say that the Treasurer
presented the accounts. Am I wrong?

A. Yes.

Q. (Indecipherable)

A. But this time it was.

Q. Mr. Nihon I want to put it to you that you
never objected to these accounts never in
your life until -

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Plaintiffs
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No. 13
Mr. Alexis
Nihon.
Cross-
Examination.
(Contd.)

In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 13 Mr. Alexis Nihon. Cross-Examination (Contd.)

A. Mr. Knowles were you there?
Q. No, but my client was there most of the times.
A. Your client?
Q. Yes, and Mr. Kelly was there.
A. Mr. Kelly was there?
Q. Yes. If was not at that meeting he was at other meetings.
A. We are talking about this one.
Q. Very well.
A. He was not there. You said that he was there. A
Mr. Kelly was not there.
Q. Now read on Mr. Nihon. We are talking about the meeting on the 12th of May 1956.
A. "Messrs. Godfrey and Mr. Herbert Deal were also present at the meeting".
Q. Right.
A. He was there, but he was not acting as Secretary.
Q. I said that you were acting as Treasurer and that you presented these accounts. B
A. I did not present the accounts, they came on the table.
Q. If you are made your objections, Mr. Kelly and Mr. Deal would be aware of them would they not?
A. They should.
Q. In fact these accounts, like the others, showed your three percent payment and a shareholders withdrawals?
A. Yes.
Q. Just like Dr. Sawyer's. C
A. Yes, because they all checked themselves (Indecipherable)
Q. And you are in the same boat with Dr. Sawyer are you not?
A. I do not want to be.
Q. I am sure you do not want to be, I am sure of that. I want to ask you this, if the Company is suing Dr. Sawyer for his withdrawals, why is the Company not suing you for your withdrawals?
A. That is for the Court to decide. D
Q. Do you remember seeing those draft accounts for 1957?
A. It is marked here at the bottom "Account draft, seen by Dr. Sawyer not seen by Nihon".
Q. Are you relying on that then?
A. I will be relying on that because I have not seen it.
Q. So you say that you did not see them?
A. I have not seen them.

- Q. Will you look at this letter from yourself dated the 26th of September, 1957 to Dr. Raymond Sawyer? The fourth paragraph reads as follows:
- A. I would like to point out with regard to my statement regarding the 1957 draft account, I have not received the draft but I have seen my wife's copy.
- Q. Just let me read the 4th paragraph please:-
 "As to the financial statements, they have not been approved by the Directors and would have to be so approved before they are passed on by the shareholders. I am satisfied that the Racing Commission would accept the unapproved statements prepared by Mr. Deal. I enclose letter to them signed by me as Secretary-Treasurer and I suggest that you enclose the financial statement and mail it to them."
- A. For the purpose of the Racing Commission.
- Q. But you would not want to deceive the Racing Commission by presenting untrue accounts?
- A. The way the Racing Commission has been treating us in the past by taking the licence away from us and giving it to somebody else.
- Q. But that happened subsequently?
- A. Yes, but I knew that it was up to him to decide to mail them or not to the Racing Commission.
- Q. Are you saying that at this time you were quite prepared to present to the Racing Commission accounts which you believe to be untrue?
- A. I had no chance to check it.
- Q. You know now that you did see them do you not?
- A. I see them now, yes.
- Q. You have seen them before?
- A. I have seen them but I did not examine them. But now that I have them in my hands I can see them closer.
- Q. Are you satisfied now that at least by the time this letter was written on the 26th of September 1957, you had seen a copy of the draft 1957 accounts?
- A. Yes.
- Q. You are satisfied now.
- A. Yes.
- In the Supreme Court of the Bahama Islands
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 Mr. Alexis Nihon.
 Cross-Examination
 (Contd.)

- In the Supreme Court of the Bahama Islands
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Cross-
Examination
(Contd.)
- Q. On the left hand side of the assets (Illegible) do you see a figure of £5,481.10. 2d. against the name of Dr. Sawyer?
- A. Yes.
- Q. So previously it was £3,300 and something now it has increased to £5,481.10. 2. right?
- A. Yes.
- Q. But over on the right hand side, on the liability side, the shareholders withdrawals continued to appear?
- A. Yes, it was wrong again.
- Q. Wrong again?
- A. Yes, all the time.
- Q. As a matter of fact would that first figure of £11,301.19. 7. apply to your three percent payment?
- A. Yes.
- Q. And the £6,000 to Dr. Sawyer?
- A. Yes.
- Q. You always got the lion's share did you not?
- A. It all depends upon on what street you are sitting. I was entitled to have my three percent.
- Q. And Dr. Sawyer was entitled to the balance was he not?
- A. No dividends have been declared yet, it never was possible.
- Q. We shall come to dividends presently Mr. Nihon, now will you look at the final account for 1957?
- Court: The three percent as a shareholders withdrawal. Was it ever called anything else in the previous accounts of 1956, 55, 54, 53. Was it always called shareholders withdrawal?
- A. It has always been like that. I have always told them that it should not have been. There was nothing I could do. I kept telling them that it could not be.
- Court: You do not know why it had been put down as shareholders withdrawal.
- A. For one purpose -- showing profit. If you were showing it as a contractual obligation of the Company you would have been showing a loss.
- Q. My lord I will show in due course that the Company capital shows the three percent payment debited against Dr. Sawyer in the first place and I suppose that is why it is called a shareholders withdrawal. if shown as

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- Court: You said that if it was shown as a withdrawal from In the Supreme capital, it would have shown a loss on the revenue. Court of the Bahama Islands Common Law Side
- A. Yes. The three percent, Dr. Sawyer, from what I hear of him, informed the Accountant about the conditions which were existing among ourselves, informed him about the contractual obligation and the intention was to show a profit at any cost. Plaintiffs Evidence. No. 13
- A Q. That is a copy of the 1957 final accounts. Do you have your copy open Mr. Nihon? On the left hand side of the assets is there a figure of £5,481.10. 2. charged to Dr. Sawyer's personal account? Mr. Alexis Nihon. Cross-Examination. (Contd.)
- A. Yes.
- Q. And a sum of £6,743.16. 9. charged to Dr. Sawyer again and designated Principle and Interest payments to Mr. Alexis Nihon?
- A. It was a loan to him and he was paying me.
- B Q. In fact were not most of these withdrawals used to pay you under the two agreements?
- A. I do not know.
- Q. You do not know today or you never have known.
- A. I do not know, he may have taken some, he may not have. I did not know his financial situation, he was to pay me £30,000.
- Q. Continuing with our perusal of the 1957 final accounts. Do we have shareholders withdrawals again for the same purpose?
- C A. Which was wrong again.
- Q. £11,301.19. 2?
- A. Yes. That was the three percent which was misrepresented.
- Q. So a change has been made between the draft accounts and the final accounts.
- A. Yes, I see now that finally, that whatever sums of money that Dr. Sawyer was finally appearing as it should and all the previous payments should have been drawn in the same way.
- Q. Mr. Nihon, I must consider that statement which you just made that whatever money Dr. Sawyer took is now appearing in the correct form. That is what you said did you not?
- D A. I said that the money was not in the correct fashion but it proved that Dr. Sawyer had it in some way somehow.
- Q. So see these sums debited against Dr. Sawyer's name under the Assets amount to some £12,000. Yet today Dr. Sawyer is being sued for over £26,000.

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Plaintiffs
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Mr. Alexis
Nihon.
Cross-
Examination
(Contd.)

- A. Yes, because the previous statements were not done correctly. This one was done more or less correctly, because it says here principle and interest payments to Alexis Nihon is actually in reference to him, and is charged to him where in a way it should have been charged to Dr. Sawyer's personal account. That is the way it should have appeared. Both sums should have been included in one lump sum. The shareholders of the Montagu Park Racing Association were not in anyway shown in detail, anyway the accountant decided to do it otherwise.
- Q. And you instructed the Accountant to move over to the left hand side this sum of £6,743.16. 9. which in fact had appeared on the right hand side in the draft account?
- A. I had to decide all the time the way the accounting in the book was kept, and I again spoke to Dr. Sawyer when we negotiated the new agreement that I would not stand for that any longer and it had to be corrected.
- Q. Mr. Nihon, I think, that at this period you had the control of the Company in as much as you had three votes on the Board of Directors, that is right is it not?
- A. Yes, that is right.
- Q. That also applied to the greater part of 1956.
- A. From the 29th of February 1956.
- Q. From the 29th of February 1956, thereafter you had the control of the Company?
- A. Yes.
- Q. So did you instruct Mr. Deal then to move this figure of £6,743.16. 9. which appeared on the right hand side and to put it on the left hand side?
- A. I did not tell Mr. Deal anything of the kind.
- Q. Did you tell Mr. Deal to make that change?
- A. Well, Mr. Deal after the 1956 Agreement, I think that he was aware of the Clauses and he was also aware of the contractual obligation, it maybe that he realised then that it had to be done that way.
- Q. Mr. Nihon, I am going to put it to you bluntly that you did give those instructions and in fact you gave them after the winding up of the position in 1958.
- A. I never gave any instructions to Mr. Deal. You may ask him.
- Q. But what about these shareholders withdrawals

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- that appear here, £11,301.19. 7. were they all your three percent payment?
- A. Yes.
- Q. And still designated "Shareholders with-drawals"?
- A. Yes, that is a mistake, it is wrong. Even in the minutes it is stated that it has been passed by the Board of Directors as a contractual obligation. It is either right or it is wrong, if it is right it should never have been stated in these statements.
- A Q. Mr. Nihon I am not sure that I have not heard what your evidence is on the question of your knowledge of these accounts which were prepared by Mr. Deal. May we go over that again please. You told us that the 1954 accounts were in your hands when you saw Dr. Sawyer in May of that year.
- A. That is right.
- B Q. Now what about the 1955 accounts?
- A. I do not think that I have seen them.
- Q. You did not see them at all?
- A. I do not know.
- Q. Well, do you not think that you would have asked for a copy if it had not been supplied to you?
- A. If you want me to be frank, I was dealing with Dr. Sawyer, then I had the greatest confidence in Dr. Sawyer otherwise I would have never entered into an agreement with him, and I went along with Dr. Sawyer.
- C Q. What about the 1956 accounts?
- A. Do you mean the statements?
- Q. The accounts prepared by Mr. Deal, and which were considered at the meeting of the shareholders in their Annual General Meeting. Do I take it that you had received no copy of those accounts?
- A. The 1956 accounts. Do you mean to say after we entered into the new agreement?
- D Q. Yes.
- A. No, the 1956 accounts as I said to you, there was a pencil draft submitted to me and I refused to even discuss it until it was in a better form and in typing.
- Q. But the records say that the Treasurer presented these accounts, and I think you told us that you were the Treasurer.
- A. Mr. Knowles I do not write the minutes. You

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- know that the minutes are written by somebody else, and what they write have to be confirmed.
- Q. Well, were they confirmed? I think they were confirmed. I am talking about the Annual General Meeting in 1956, the 12th of May, 1956.
- A. They were confirmed in 1958 according to them.
- Q. Were you the Treasurer at that time?
- A. I would like to know if I were or not, if notices were sent and if I was present and if the minutes were confirmed. Do you have any minutes to that effect? A
- Q. We have the minutes there Mr. Nihon, that is all we have. This is your something we are talking about you know I have nothing to do with the running of it.
- A. All I have in my hands here is the documents signed by Mr. Higgs as Secretary and it says "confirmed" and it is marked 23rd of January 1958. Generally there should be a minute to that effect, well then is that minute? B
- Q. I do not know Mr. Nihon, your own counsel produced those and I accept them.
- A. This is kind of new to me, I still say that I would like to see the other minutes because I still say that I have not confirmed this.
- Q. Were you not President or Chairman of meetings in 1958?
- A. Yes.
- Q. So it may be taken that it was you who actually carried out the confirmation of those minutes? C
- A. I would like to repeat myself once more that I never confirmed those minutes and if they have been confirmed I will like to see the copy of the minutes where I did sign for the confirmation of it and where they are put.
- Q. May I see the minutes please? (Handed minutes). Did you join in the resolution ratifying "each and all of the acts transactions and proceedings of the Directors, and Officers of the Company to this date" on the 12th of May, 1956. D
- A. Has it occurred to you that these minutes may have been written but they were never confirmed.
- Q. I am asking you if you joined in this resolution on the 12th of May, 1956?
- A. No, I was not going to because the statements were not prepared the way they should have been.
- Q. So the minutes to that effect are wrong then?

- A. I would not say that they are wrong, but I do not agree with them.
- Q. If you did not join in the resolution then they must be wrong? Did you see the balance sheet dated the 30th of May 1959 prepared by Herbert Deal and Company?
- A. May I have a look at them please?
- Q. Did you see that Mr. Nihon? Was this presented to you by Mr. Deal?
- A. It could have been, I do not recall. I notice here an item to my personal account less mortgage interest due. I never had a chance to verify or know if that is true or not.
- Q. You will notice that it shows against Dr. Sawyer a balance of £5,481.10. 2. and then it continues "Dr. Raymond W. Sawyer - Principal and Interest payments to Mr. Alexis Nihon Balance - 30th April 1957 £6,743.16. 9. and payment 1st May 1957 £1,629. 9. 1." Now this is a total of some £13,000 is it not?
- A. Yes, which seems to be an Asset.
- Q. That is the point to which I was coming to. Even in March 1959 the company was claiming against some £13,000 whereas today they are claiming over £26,000.
- A. I agree with you, there is something there which is wrong in the statement. I also see here as an Asset, "Fire Insurance Claim in full £33,300", which is ridiculous because we have never collected a cent of insurance to start with and it is false to show it as an Asset of £33,300.
- Q. At the time it was not ridiculous was it? What else could Mr. Deal do.
- A. Well, I have been managing President of a few companies in my life and we would never post a claim against an insurance company for a fixed amount unless the insurance company have agreed to pay that amount. So again I repeat that in this statement here, the idea is to show a profit. These are fixed figures.
- Q. But at least the accounts do show that even at this stage some months before the issue of the writ the most the Company was claiming against Dr. Sawyer was some £13,000.
- A. You mean it was the interpretation of the Accountant shall we say?
- Court: It is a simple question, before the

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- issue of the writ you are now claiming £13,000 why are you now claiming £28,000?
- A. I do not know your honour, what was the question?
- Q. How is it that at this late date the company balance sheet shows against Dr. Sawyer a claim for only £13,000 odd and a few months later a writ was issued for over £26,000. Can you explain that?
- A. I was never the Accountant. A
- Q. But you were the President of the Company, and a Director. You were in charge of the direction of the affairs of the Company, Mr. Nihon.
- A. I agree to that, but may I ask you whether this balance sheet was approved by the Board of Directors?
- Q. No you cannot ask me any questions.
- A. I am placed in a position that I must answer you, because you just put here a paper that I cannot discuss. I am not aware whether the Board of Directors have accepted this balance sheet or not, or if it was merely an interim one. B
- Court: Mr. Nihon, you mean that you should have been claiming more than £13,000?
- A. Yes.
- Court: Well, that is your answer.
- Q. When did Dr. Sawyer make the last payment to you in respect of his £60,000 indebtedness to you for the shares? C
- A. You do not expect for me to remember that off-hand just like that do you?
- Q. Let me see if I can help you. Was it in February 1959?
- A. It could be.
- Q. And I am suggesting to you very definitely Mr. Nihon, that it was only when you realise that Dr. Sawyer was getting out of your clutches that you started the persecution of this suit.
- A. No, I do not like your statement "out of your clutches". D
- Q. Now let us come to this letter of May 1954. You told us that at the time the Company owed a large number of debts. That is right, is it not?
- A. Yes.
- Q. And was that because Dr. Sawyer when he took over the Racing Track found it in a very bad state of repair?

- A. I was holding the Race Track all the time and I had no complaint.
- Q. When you passed it over to Dr. Sawyer, was it in a bad state of repair?
- A. It is a matter of opinion.
- Q. What is your opinion?
- A. My opinion is that it was in good order.
- Q. I will oblige you with some of the details. Was it necessary for the clubhouse to be almost completely re-roofed?
- A. I do not know.
- Q. You do not know and you were running the track?
- A. Yes, can I give you an answer on that?
- Q. You certainly can.
- A. Thank you very much. Well you must remember that Dr. Sawyer was the Chairman of the Racing Commission and he was embarrassing me all the time, and he was putting every effort in trying to get the track for himself, and his successor in the same party, in the same political affair, was still coming out with the same requisition -- to try to get me to leave the track to one other.
- Q. Mr. Nihon, I was hoping that we could keep politics out of this case. I was wondering though how far it did enter into it as far as you are concerned.
- A. As you know Mr. Knowles, politics in these islands is one of the major eye-testers, the chief thing in the right pot.
- Q. Are you pursuing this case as a matter of political persecution against Dr. Sawyer?
- A. Me?
- Q. Yes, you.
- A. I have no persecution against anybody.
- Q. Well, then let us go on with the questions. Was it necessary for the deck or the dining area to be refloored?
- A. O course. I could hardly question anything. They could have demanded anything.
- Q. Was the structural repairs necessary?
- A. They could have anything they wanted.
- Q. Repairing the bathrooms?
- A. Sure, anything.
- Q. Repairs to the roof?
- A. Anything.
- Q. Mr. Nihon please understand my questions.
- A. Now you know perfectly well that you understand

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it just like me, and you know perfectly well that politics

Q. Mr. Nihon, please try to understand my question, I am asking you if these things were necessary when you sold the track to Dr. Sawyer?

A. Not as far as I am concerned. Who authorized these repairs?

Court: You only have to answer yes or not or I do not know.

A. All right then, I do not know. A

Q. Repairs to the roof of the bandstand?

A. I do not know.

Q. Repairs to the seating of the bandstand?

A. I do not know.

Q. A considerable amount of shoring up to make it safe?

A. I do not know.

Q. Repairs to the bathrooms of the bandstand?

A. I do not know.

Q. Repairs to the roof of the pari-mutuel because it leaked badly? B

A. I do not know.

Q. Repairs to the flooring of the pari-mutuel?

A. I do not know.

Q. Repairs to the windows of the pari-mutual?

A. I do not know.

Q. Was the installation of the machines operations carried out by Dr. Sawyer to improve the efficiency of the track?

A. That, I made the necessary steps to have him sole and it did not cost nothing. C

Q. It costs a great deal, Mr. Nihon.

A. Of course I do not know what he told you, but it was a bit of a worry.

Q. Was it necessary to buy a new truck because the old one fell to pieces?

A. I do not know.

Q. Was it necessary to buy a few mowing machines, machines for mowing the grass?

A. I do not know. D

Q. Are you aware that when Dr. Sawyer took it over he regraded and smoothed the track itself?

A. I do not know.

Q. That he put new rails around the track?

A. I do not know.

Q. That considerable repairs to all the stables were carried out by Dr. Sawyer?

A. I do not know.

Q. That is not this why, Mr. Nihon, there was a

debt owing in 1954 because these things had to be carried out?
(Illegible)

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A. Well, according to discussions regarding conditions it may have been necessary to do so, but I don't know.

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Q. Now, I would like you to look at the 1953 agreement, clause 16:

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A

"The Purchaser undertakes not to cause the Montagu Park Racing Association Limited to become indebted to any person or persons corporation or corporations in excess of Ten thousand pounds (£10,000) nor knowingly to do or permit to be done anything whereby the existing lease with the Bahamas Government may become cancelled or revoked."

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B

Now, I am referring to the first part not the last 2 lines. Is not that the reason why Dr. Sawyer was willing to write this letter on the 25th May, 1954, and it says there:

"I hereby agree not to make any more withdrawals of this nature"

A. Those withdrawals had nothing to do with this, they were for Mr. Sawyer's own personal use.

Q. When you signed the 1956 agreement were you unaware that he had made any withdrawals.

C

Before we go to that question may I refer you to the 1954 accounts. Do they show that at this time which is the time when the letter was written or very shortly afterwards, the accounts payable amounted to £14,496.14. 1. Is that what the letter means Mr. Nihon, not that he would not make any withdrawals at all but that he would not make any withdrawals where the debt exceeded the £10,000 mentioned in this agreement.

D

A. The £10,000 deposited in the agreement was for the purpose of Company business and owing money to different categories which may now be supplied but it was not intended for a man to take the money and use it for his own purpose.

Q. When did you first become aware that Dr. Sawyer was making withdrawals?

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- A. When he signed the letter and he promised not to do it anymore. He admitted that he was not authorised to make with withdrawals.
- Q. When did he admit that?
- A. In the letter.
- Q. And your reply on that admission?
- A. It is not what I replied on, he admitted and he put in writing.
- Q. Mr. Nihon, again I repeat that what Dr. Sawyer was referring to was the £10,000 in the contents. A
- A. What else can I say.
- Q. Were you not aware all along that Dr. Sawyer was making these withdrawals in order to pay you what he owed you under the 1953 agreement and the 1956 agreement.
- A. Not the 1954.
- Q. You were not aware of it? When did you first become aware of it?
- A. I don't recall. Mr. Knowles you are pestering me with the 1954 agreement, 1955, 1956, 1957. B
You keep on from one year into another, I am only a human being.
- Q. Well, Mr. Nihon this is your action if you want to call it off I would be quite happy. Mr. Nihon, the amount claimed spreads over a number of years?
- A. Yes.
- Q. So it can't keep
- A. Yes.
- Q. So I am asking you now when you became aware C
that the withdrawals which Dr. Sawyer was making were to a large extent not entirely but to a large extent being used to pay you under the agreement.
- A. When the 1956 agreement was signed and in this way I put it in my own mind that Dr. Sawyer declared that since the 6th May 1956 he had not drawn any money other than that for his personal use except the sum which he paid to Nihon. D
- Mr. Knowles: My Lord I would like to draw Your Lordship's attention to --
- Court: You asked him whether any money Sawyer withdrew was to pay him his 3% or to pay some other specified sum?
- Mr. Knowles: In addition to the 3%, My Lord, they were used to pay him the purchase price of the shares. My Lord, we shall show that the vast majority of these monies which were actually

withdrawn by Dr. Sawyer and about which the Plaintiff made in his case actually found a resting place in Mr. Nihon's account.

Court: That matter would be relevant to this?

Mr. Knowles: Yes, My Lord, I think it would be.

My Lord, he said that he did know at one time but he didn't tell me when he did. He said he can't remember when he found out that the payments were being used in this way.

A

Isn't that right Mr. Nihon.

Mr. Nihon: I did get to know it at some time for sure but in 1954 I was dealing with the Honourable Sawyer, and a man to be a reputable man in the colony, and I figured that his action would be according to his ownership and when he said that he had not withdrawn any money I took it for granted.

Q. When did he say that he had not withdrawn any money?

B

A. He said it here that he had not withdrawn any money. In 1954 he took the money out and repaid it.

Q. So you say that all the money which Dr. Sawyer received you regarded it as a loan from the company to Dr. Sawyer?

A. I cannot tell you what he received because he didn't get it from me. He decided to take it himself.

C

Q. Well, whatever word you use there I am asking you whether you regarded these sums as loans?

A. Naturally.

Q. Who arranged the loan?

A. Dr. Sawyer.

Q. What were the terms of the loan?

A. I don't know.

Q. You no doubt have negotiated many loans in your lifetime, Mr. Nihon?

A. I am a business man. Well, yes, I am in the loan business, I to that.

D

Q. And there are terms on the loans?

A. Yes.

Q. What were the terms of this?

A. The terms of this loan has no interpretation because he signed the cheques to himself.

Q. Isn't this a figment of your imagination?

A. It is a fact. How did the cheques come in?

Q. Between the 6th May, 1953 and 29th February, 1956 - that is when the first agreement was in operation was there anything to prevent

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Dr. Sawyer and his Nominees passing dividend authorising the payment of the withdrawals which he had made.

- A. I don't know, but it wasn't done.
- Q. Was there anything to prevent it? You know about company practice?
- A. Well, if then I ---
- Q. I am asking you, do you know of anything which would have connected Dr. Sawyer and his Nominees simply sitting down together and saying we now declare a dividend in respect of these withdrawals? A
- A. Yes.
- Q. What?
- A. The company was far from reverse. At the end of the season we have £7,500 Pari-mutual betting so it means to say that sometime in January the company would have to get £7,500 for the pari-mutual. The company or some companies always keep some reverse and I don't think there was any reverse to the extent to declare a dividend. B
- Q. Mr. Nihon are you not aware that dividends are payable out of the surplus?
- A. There was in fact no surplus.
- Q. Mr. Nihon are you suggesting that the accounts showed quite clearly that there was substantial surplus at all times when these withdrawals were made?
- A. I must admit I was not aware of the fact and I also confess that the statements were wrong. I could not see any surplus there. If a surplus was there it did not exist, why I don't know. C
- Q. Mr. Nihon, you have really not answered my question you know. What was there so far as you are aware to prevent Dr. Sawyer and his Nominees sitting down and authorising these withdrawals officially and normally as dividends?
- Court: Do you mean actual cash?
- A. Cash. D
- Mr. Knowles: My Lord, even that is not an answer. What prevents them from sitting down physically and speaking such words, there was nothing wrong, sir.
- Q. Mr. Nihon didn't Dr. Sawyer substantially own the company during this period from 1953 to 1956.
- A. Substantially, yes.
- Q. Could not he have passed a resolution authorising these dividends? E

- A. If the statements had been prepared the way they should have been they could not have declared a dividend because there were no profits. The way they have been prepared to show a profit when in fact there were no profits.
- Q. Well, rightly or wrongly, let me put it that way, was there anything to stop him from authorising these withdrawals formerly?
- A. Yes, but there was no money.
- Q. But he did own the majority of the shares at the time?
- A. Yes.
- Q. Well, is that what you are complaining about in this case then that there was no small declaration of dividends?
- A. No. I am complaining that no declaration was made and in fact there was no dividends to be declared.
- B Court: How does it work out Mr. Murphy's shares, Mrs. Sawyer's share, Dr. Sawyer's share?
- Mr. Knowles: Nothing in the world to stop it.
- Court: Dr. Sawyer's shares were in the majority.
- Mr. Knowles: Yes, my Lord.
- Q. You do agree then that there was nothing to prevent Dr. Sawyer and his nominees from declaring a dividend in respect of these controls?
- A. I have already said provided there were some profits.
- Q. When you opened the company did you always pass resolutions authorising the withdrawals in the form of dividends?
- A. I think so, I think I see one. There was one Mr. Stafford Sands, one to for £6,000 of dividends.
- Q. Is it a fact when you were turning over the company to Dr. Sawyer there was a substantial surplus in the account of some £23,000?
- D A. No.
- Q. Well, Mr. Nihon I can prove the contents but I have to put it forward that there was a sum of £23,802. 2. 6. in the company and you withdrew this amount for your own purposes without a declaration of dividend.
- A. Are you talking about surplus?
- Q. Mr. Nihon I am talking about the sum of £23,802. 2. 6. which you withdrew at the time you were handing the company over to Dr. Sawyer and no declaration of dividend?
- E

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- A. I did not get no £23,000. What you are talking about is the surplus that does not exist but it still appears here.
- Q. Mr. Nihon, perhaps I can help you by reminding you you got £10,000 in cash and you got £13,802. 2. 6. which were credited against various accounts on your behalf, the current account, the Shamrock account?
- A. The agreement with Dr. Sawyer was, he didn't want to buy the current account, he didn't want to buy this, he didn't want to buy that, that all the money would be clear and leave £1 in the bank, and that he will be responsible for accounts payable. A
- Q. Mr. Nihon I am sure you realise that is not dealing with my point. Is it not true to say that you received the sum of £23,802. 2. 6. and the distribution of profits without the declaration of dividend?
- A. When was that: Do you have the date? B
- Q. The 6th May, 1953, the day on which you signed the agreement with Dr. Sawyer.
- A. Did I issue a cheque to myself?
- Q. Who signed the cheque I don't know.
- A. I did not sign the cheque. Was a cheque issued to me for that sum?
- Q. The cheque was issued to you presumably for £10,000 and the balance of £23,802. 2. 6. was credited to your various accounts, the Shamrock account, etc. Now do you remember? C
- A. No, I don't remember.
- Q. I suppose that sum is too insignificant to stick in your memory?
- A. It is not the question of such it is a question of fact.
- Q. Mr. Nihon, in about July, 1952, did you receive a further sum of £9,000 surplus from the company which again was not authorised by dividend?
- A. No, I don't know. It could be, because you must remember at the time I was the sole owner of the company with all the shares and I must eventually have had some dividend. D
- Q. Mr. Nihon do we really have to go into that? Because between May, 1953 and February, 1956 was not Dr. Sawyer virtually in exactly the same position?
- A. No. I have to tell you why. Mr. Sawyer and myself in a fixed agreement and as a matter of

fact in February, 1956 I was the sole owner of all the shares again for a period of 15 days until I negotiated another agreement with Dr. Sawyer. But after 15 days again I was the sole owner.

Q. Mr. Nihon I want you to look at the letter you wrote to Dr. Sawyer on the 9th December, 1953. Now do you remember that letter?

A. It was sent to Dr. Sawyer.

A Q. Now let us look at the last paragraph:

"This is the most vicious gossip"

the gossip that you retained an interest in the track,

"that could be spread out but you have been living long enough in Nassau to know how they can spread false rumors; in Canada they speak often about the track and I have been telling everybody who wants to hear it that I have sold the track to you. When I will reach Nassau I will have it published and if necessary I will give a sworn affidavit to the effect that you are the sole owner of the track. (Minus the two shares which is only a formality.)"

Now, Mr. Nihon do you still say Dr. Sawyer was virtually in the same position as you were before you sold the track to him, or have you now changed your mind?

A. No, I am waiting to answer you.

Q. I am waiting for an answer.

A. Dr. Sawyer insisted that since he was the chairman of the Racing Commission and since he forced me out of the Race Track there was the old gossip even the Government and everybody said Dr. Sawyer having been the Chairman of the Racing Commission would become the president or the owner of the track and he asked me to help, to write him a letter to that effect. I don't know how it came by you but he was to have a letter from me to show people that in fact he was the owner of the track.

Court: Did you do this?

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A. Which I did.
Court: Was it true?
A. It was true. In face he was the owner of the track.
Q. Now you told us that you loaned the company the sum of £4,000 to pay the Royal Bank of Canada?
A. Yes.
Q. Was that ever authorised by the directors?
A. I was requested to loan this money in escrow, to return it ---
Q. Mr. Nihon, was the loan from you to the company ever authorised by the company.
A. Yes.
Q. When?
A. When, I don't know.
Q. Will you look at the minutes. When did this loan take place?
A. In the year? - I wonder if I loan them money to start with?
Q. Well, Mr. Nihon, it is your evidence. Look at the minutes for the 18th April, 1959, perhaps there is something there. Is that a loan of £10,000?
A. Yes.
Q. You spoke of a loan of £4,000?
A. They wanted a loan of £10,000 and I deposited the money in the account at Barclay's Bank and subsequently they collected some money and paid me back £4,000. But we discussed and we said £4,000 should be made up, a revote in case the Royal Bank of Canada would not be successful in collecting this amount from Dr. Sawyer and whether you want to believe it or not that happened.
Q. Was it not the other way around, Dr. Sawyer guaranteed the amount to the Bank. (Illegible)
A. He did guarantee but -----
Q. It was the company's debt but Dr. Sawyer guaranteed the debt and it was only right that the company should pay it.
A. Also it was being paid.
Q. So you made a loan to the company knowing full well that at that time the company's assets were very low.
A. I agree. There was a reason for that.
Q. I could suggest the reason for that, Mr. Nihon, to prevent the company from being wound up so that you could continue your prosecution of Dr. Sawyer.

A

B

C

D

E

- A. You mean to
 Q. Mr. Nihon, this company is completely defunct isn't it?
 A. No.
 Q. Is it doing any business?
 A. Not now for the time being, until we have recovered some money.
 Q. Has it done any business since the track burned down in January, 1958?
 A. Are you sure of the date? You can ask Mr. Sawyer, I think you have the wrong date there.
 Q. Well, when do you think it was?
 A. I think it was in February.
 Q. Well, we won't quarrel over a month. Since February, 1958 the track has been doing any business, the company has not been doing any business, except privately?
 A. The Board of Directors requested Dr. Sawyer to go on usually but he chose differently in giving you this for himself.
 Q. And in fact no annual general meeting has been held since 1959, right isn't it?
 A. Could be.
 Q. And I think it was explained to you that according to the minutes of one of the meeting that a large penalty is payable to the Government if an annual general had not been held in May?
 A. Can I show there were annual general meetings every year.
 Q. Every year?
 A. Yes.
 Q. In spite of the fact that no meeting was held?
 A. Yes, sir. How it was done I don't know. You ask Mr. Kelly.
 Mr. Knowles: The return, my Lord, according to law is required to be made so many days after the first ordinary meeting of the Company.
 Court: Quite a few do so.
 Mr. Knowles: That is so, my Lord, the defunct ones don't hold meetings.
 Q. Did you get Mr. Deal in 1958 to prepare a list of Dr. Sawyer's withdrawals?
 A. All of the items were requested.
 Q. Will you look at this date. Is that the statement which Mr. Deal prepared?
 A. I don't know.
 Q. Come Mr. Nihon.
 A. I don't know. It is up to Mr. Deal. Ask him

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- if he prepared them. I am not the accountant and I cannot tell you.
- Q. Have you never seen it before?
A. Yes, I have seen it before. I don't know what you are referring to in the case. Yes, I did see it before.
- Q. Is it signed by Mr. Deal on the front page?
A. Yes.
- Q. Do you recognise the signature?
A. You showed it to me with the last thing. That is what I see here now. I have it. A
- Q. Do you recognise it now?
A. Yes, I see that.
- Mr. K. Well I tender it as an exhibit, my Lord, statement of withdrawals. Now we will look at the second page, Mr. Nihon, entitled "summary of withdrawals by Dr. Raymond Sawyer" showing repayment and salary for the period 7th May, 1953 to 30th April, 1957. My Lord, I should point out that this statement does not cover one of the withdrawals mentioned on the statement of claim. It covers all the withdrawals except the last one of the 1st May, 1957, £1,629. 9. 1. The bottom one on the second page is the one to which I am referring. B
- Q. Mr. Nihon does that show that the salary paid to Dr. Sawyer for the period for £15,000, for Dr. Sawyer's personal account £2,160.18.10. for triplicate payment to you £18,500, for interest payable to you £7,682 and the only amount of withdrawals kept by Dr. Sawyer, prepared by your accountant, was £2,160.18.10. Is that not right? C
- A. I see here cash £120, 50, £60, £350, £50, £100, £105, £1,700, £150, £50 every sheet is cash, cash, cash.
- Q. Yes.
A. Big sums it has to be in cash for sure.
- Q. No, but Mr. Nihon don't you understand what your accountant is saying, that most of these sums found their way into your pocket. D
- A. Oh, I see he cashed them and put them back into his bank account must be?
- Q. No, he paid you.
A. No, he paid by cheque by lump sum.
Q. Well, this is what your accountant is saying.
A. Yes, I know, not my accountant the company's accountant.
Q. Very well.

- A. If you should read here you will see there are sheets and sheets of £500, £100, £300, £50, £50, £105, £300 cash, cash, cash and where did all this come from?
- Q. Well, Mr. Nihon, we will take up the matter with Mr. Deal. Well, you agree with me that in addition to these sums you received from the pari-mutual approximately £45,000 during the period
- A. £45,000 I got from the pari-mutual was from the company for the purchase of the shares which were supposed to be paid by Dr. Sawyer.
- Q. The most of the pari-mutual was paid to Dr. Sawyer first and then he paid you.
- A. Yes, at the beginning, but it didn't appear in the book as such, mind you.
- Q. Did you not receive the pari-mutual payment and your share of the company's income according to the agreement with Dr. Sawyer?
- B A. No, according to the contractual agreement of the Company.
- Q. Do you remember the Directors' meeting on the 24th January, 1957?
- A. If you let me see it here.
- Q. Don't you have the minutes?
- A. Yes.
- Q. Do you remember a meeting on that date?
- A. Yes.
- Q. Do you remember that Mr. Foster Clarke attended that meeting?
- C A. Yes.
- Q. And that Mr. Newton Higgs was also present?
- A. Yes.
- Q. As well as Dr. Sawyer, Mrs. Sawyer, Mrs. Nihon, yourself and Mr. Trevor Kelly?
- A. Yes.
- Q. Now I want to read to you from the draft minutes of that meeting. Unfortunately we don't have the draft minutes here today they have been apparently mislaid between Mr. Kelly's office and Mr. Adderley's office. I have a photostatic copy of them and I did see them in Mr. Kelly's office last week but Mr. Adderley is not in position to produce them. Mr. Nihon, what I am suggesting to you is this matter about which I wish to read to you now happened at the meeting and was agreed to, so will you follow me as I read from the draft minutes of the meeting.
- D

In the Supreme Court of the Bahama Islands
Common Law Side

Plaintiffs
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Cross-
Examination
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In the Supreme
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Plaintiffs
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No. 13

Mr. Alexis
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Cross-
Examination
(Contd.)

They did not find their way into the final minutes. "Mr. Clarke refers to the agreement dated 29th February, 1956 between Mr. Nihon and Dr. Sawyer whereby Dr. Sawyer was obliged to make certain payments to Mr. Nihon from time to time in accordance with the terms and conditions therein set out. Mr. Clarke stated that Dr. Sawyer was relying on his profits from the company to meet these payments to Mr. Nihon.

"On motion duly made and seconded it was agreed that, provided funds are available from the profits of the company due Dr. Sawyer, payments should be made from the company's bank account or bank accounts in favour of Mr. Nihon for the account of Dr. Sawyer in accordance with the terms and conditions of the said agreement of the 29th February, 1956" Do you remember that meeting?

A. Yes. I would like to know why it is not in the minutes.

Q. I will tell you Mr. Nihon because you objected to them going in, you apparently changed your mind.

A. I must have objected because it was not inserted in the official minutes. Maybe Mr. Clarke suggested that but I did not agree could it?

Q. No, Mr. Nihon.

A. You mean I could not have disagreed with Mr. Clarke.

Q. Well, I will carry on:

"The Chairman presented to the meeting a letter from him (Dr. Sawyer) addressed to the Company authorising the Company to make these payments to Mr. Nihon from time to time from his share of the profits of the Company. A copy of this letter is hereto attached.

"On motion duly made and seconded the following Resolution was agreed to:"

Unfortunately a line on this photostatic copy is missing but it is continued:

"the net profits of the M.P.R.A., that is the company, after having paid to Mr. Nihon Three percent of the gross sum paid into the pari-mutuel pool as

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defined in the Race Court Beeting Act 1952 on each and every race day on the Third day following each meet during the Racing Season PROVIDED that if the total amount received by Mr. Nihon as a result of the said payments to him of Three per cent of the gross sum paid into the said pari-mutuel pool is less than one-half of the net proceeds of the company for any one Racing Season, then Mr. Nihon shall be paid an additional sum representing the difference between the amounts received by him on the said Three per cent of the gross sum paid into the said pari-mutuel pool and the said one half of the net profits of the Company for the said Racing Season."

In the Supreme
Court of the
Bahama Islands
Common Law Side

Plaintiffs
Evidence.
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Mr. Alexis
Nihon.
Cross-
Examination
(Contd.)

A

Do you remember these matters being agreed to?

A. Only one question I would like to ask.

B

Q. No, Mr. Nihon, you can't ask a question.

A. I didn't sign these minutes here. The official minutes I didn't sign. They were signed by Mr. Kelly in his office. What does it have to do there apart and why is it the draft of the real minutes? Maybe it was discussed if it is not the official minutes.

Q. No, Mr. Nihon.

A. It can't be.

C

Q. I will be bringing evidence to show that the draft minutes were drawn as I have said and when they were presented to after the meeting for your approval you scratched out these parts which I refer to Mr. Foster Clark's propo after the matter had already been dealt with in the meeting.

A. Mr. Clarke was actually there representing Dr. Sawyer. I objected to Mr. Clarke right there sitting at the meeting because in Canada it is against the law to do so. But Mr. Kelly insisted that we should let Mr. Clarke sit in and the discussion followed, but I have never agreed personally to this or these parts that you are reading there and the only official minutes in the books in the company are the ones you are showing me now and the ones that they have here.

D

Q. Well, do you say that this matter did not come up at all?

- In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 13 Mr. Alexis Nihon. Cross-Examination (Contd.)
- A. Oh yes, of course, he suggested a lot of things for his client.
- Q. And you agree to them.
- A. No.
- Q. Well, why would it get into the draft minutes?
- A. Well, I don't know, it was never official and it never became official.
- Q. You have never seen the letter which is referred to, the draft letter, which he was proposing to give to the Company? Will you look at this too. I put it to you that this is the copy of it.
- A. I have never seen this before.
- Q. You have never seen this before?
- A. No, sir.
- Q. Alright, thank you. I will produce it in due course. My Lord, I cannot produce it at the moment. Mr. Clarke will produce it when he gives evidence.
- Q. Mr. Nihon do you remember the action started in 1957 by Dr. Sawyer when Dr. Sawyer was suing for arrears of salary?
- A. Yes.
- Q. And do you remember that at that time the company made a counterclaim against Dr. Sawyer in respect of his withdrawals?
- A. Well, my lawyer handled that, I don't know whether I put it there.
- Q. But presumably you gave him the instruction Mr. Nihon to counterclaim for £5,481.10. 2. That is all the company was counterclaiming and yet today it has swollen to over £26,000. I am sure you are an official business man, aren't you?
- A. I leave it to you to judge.
- Q. Well, I am sure you are. Can you explain this increase.
- A. Well, everybody thinks the same. Maybe they should have turned in a different amount and made a mistake.
- Court: What happened in the dispute or withdrawal? Did you get judgment?
- Mr. Knowles: No, my Lord, it is still unsettled. As a matter of fact these matters are covered in one way or another in the present action.
- Court: I see.
- Mr. Knowles: It is still pending though.
- Court: Yes.
- Q. Mr. Nihon, I put it to you that from the

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beginning you knew that Dr. Sawyer was making these withdrawals to pay you sums of money which he had agreed to pay you for the shares. What do you say to that?

A. No, none of those times.

Q. I see. You remember the winding up petition in 1958?

A. I surely do.

A Q. And again the company alleged that Dr. Sawyer owed £5,481.10. 2. in 1958. Was that another mistake?

A. The same figures that the lawyers used in the suit there, there was the same mistake.

Q. In fact, Mr. Nihon, is it not right that you joined in signing the cheques for some of these payments about which the company is now making complaint?

A. The last 2 cheques.

Q. The last 3?

B A. The last 3.

Q. Yes.

A. Well, you know, Dr. Sawyer gave to me again the usual half reputation for getting me caught and I was mistaken again. I made him a loan as he requested

Q. Now, Mr. Nihon, do you honestly expect us to believe that?

A. What do you mean, because (Illegible) the cheque?

C Q. I mean this sort of story.

A. Naturally it was a loan to him

Q. Oh, was it?

A. Yes.

Q. What was he to get out of this company, anything?

A. Well, he had £5,000.

Q. He had to work for that. What did he get for his shares?

D A. He was supposed to get for his shares what he produced.

Q. And he did produce and he made his withdrawals accordingly.

A. Seeing that he did not produce much -

Q. So you mean you signed this cheque with Dr. Sawyer to say further loans?

A. And it is marked on it too.

Q. Is it?

A. Yes.

Court: Did he endorse on the back?

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Plaintiffs Evidence.

No. 13
Mr. Alexis Nihon.

Cross-Examination.
(Contd.)

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.

No. 13

Mr. Alexis Nihon.

Cross-Examination (Contd.)

Mr. Knowles: No, my Lord. At this time the company had two signing officers which was required in order to draw money from the account and which were Dr. Sawyer and Mr. Nihon. In fact that came into force I think on the 24th January, 1957. Is that not right, Mr. Nihon?

A. I have not got your paper, Mr. Knowles, I am sorry. I cannot recall this date.

Q. Did you say that the fact that these were loans were noted on the cheque?

A

A. Well, I know it was supposed to be marked. It was the understanding.

Q. Now, Mr. Nihon, you are wriggling a bit aren't you? You know I looked at the cheque. What was noted on the cheque?

A. I don't know, I have not seen them.

Q. But you signed them?

A. That was so long ago Mr. Knowles.

Q. Yes, but we don't want you to give your evidence after you have looked at that and other things. We want you to rely on your recollection.

B

A. That is what you would like.

Court: You say that some of the cheques by which Dr. Sawyer withdrew money from the company were also signed by Mr. Nihon?

Mr. Knowles: This was at a time, my Lord, when two officers' signatures were necessary. Prior to that Dr. Sawyer's only was necessary.

C

Court: If the withdrawals were unauthorised would it matter if Mr. Nihon helped him it would be claimed by the company different from Mr. Nihon, would not it?

Mr. Knowles: Yes, my Lord, but, my Lord, I shall --

Court: Your client can take advantage of that.

Mr. Knowles: My Lord, I shall submit authority to show that if all of the rperate of the company can agree to a course of action subject to certain limitations then it is in order.

D

Court: It won't affect Dr. Sawyer's one share.

Mr. Knowles: Yes, My Lord, Mr. Nihon says he claims that share. This where the 3 cheques - Your Lordship might like to look at them.

Court: Are they written down somewhere?

Mr. Knowles: Yes, my Lord, they are written down on the statement of claim.

Court: Well, let me have a look at them. They are shown as documents here.

Mr. Knowles: My Lord, I should like to add that in addition to the agreement of all the incorporators we are relying upon the principle of estoppel and other matters which are pleaded in the defence.

Court: Where are these written down?

A Mr. Knowles: In the statement of claim. My Lord, the signing authority was changed on the 24th January, 1957 so that Mr. Nihon must have signed cheques for all amounts which were drawn after that time.

Court: Which are they?

Mr. Knowles: That is to say the last two amounts £6,743 and £1,629. If he denies that you can take it up with Mr. Deal when he gives evidence.

B Court to Mr. Adderley: It is the last cheque that you complained of?

Mr. Adderley: The last cheque of the 1st May, 1957, £1,629. 9. 1. and the previous 3 cheques. Actually it will have to be 4 not 3. £1,64 . 2. 9., £1,130. 8. 3., £2,323. 5. 9. three cheques signed by Mr. Nihon and Dr. Sawyer.

Q. Mr. Nihon, have you got a copy of the 1953 agreement there (6th May, 1953)?

A. No. (Copy given).

C Q. Will you look at clause 1, halfway down. It begins:

"and this will give the Purchaser the right to manage exclusively and operate the said race track and in his sole discretion shall manage and direct the affairs of the Montagu Park Racing Association Limited as he shall see fit except with respect to the conditions as provided in this agreement."

D Does not that mean that you as the only other shareholder interested in the matter was handing over the Race Track and the Company entirely to Dr. Sawyer to do whatever he thought fit so long as you were protected? Doesn't it mean that?

A. Yes, but he was obligated.

Q. To you, yes.

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.

No. 12

Mr. Alexis Nihon.

Cross-Examination (Contd.)

In the Supreme A. Yes.

Court of the Q. Which was set out in this agreement?

Bahama Islands A. Yes.

Common Law Side Court: This leads up to what Dr. Sawyer was allowed to do under the first agreement and what he was allowed to do under the second agreement.

Plaintiffs Evidence.

No. 13

Mr. Alexis

Nihon.

Cross-

Examination

(Contd.)

Mr. Knowles: Yes, my Lord, it is interesting to compare the two agreements.

Court: A lot of complications is in this.

Q. Clause 2 provides for the payment to you £60,000 for the shares or your shares (Illegible)

A. Right.

Q. So you got £60,000?

A. Excuse me. At the first I did not.

Q. Well, you did in due course.

A. At first I did not. He failed and I took the shares back and the agreement was cancelled and became null and void.

Q. Yes. Mr. Nihon, we are just looking at the provisions of the agreement, what it says on the 6th May, 1953. Dr. Sawyer was to pay you £60,000. Now, what right do you consider he was to enjoy after he had bought your shares in the company?

A. If he would have paid me he would have left all the shares which were 2 after he had fulfilled his agreement, but he did not.

Q. Yes. But Mr. Nihon, taking you back again to the 6th May, 1953, I know that Dr. Sawyer would get certain pieces of paper but what right in your opinion did they confer upon Dr. Sawyer as regards the profits of the company?

A. They would only confer by the fulfillment of the agreement. As soon as he fulfilled the agreement he would be entitled to do what he did, but he did not fulfill the agreement.

Q. Well, now we are getting somewhere. Did I understand you to say that provided you were paid he would be entitled to make withdrawals which he had been making.

A. After he would have paid the debt he would have the necessary reserves.

Q. No, Mr. Nihon, you are adding a few things now, you are not really complaining about the fact that Dr. Sawyer and Mrs. Sawyer and somebody else did not really sit down around a table and say, "We hereby declare dividends". You are not really complaining about that, are you?

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- A. I am only complaining about the fact where I would have had the responsibility after my wife had died and my wife would have had responsibility after I died.
- Q. Well, now let us look at clause 5:
- "All accounts receivable by Montagu Park Racing"
- A. That is debts owing to Montagu Park Racing Association
- "up to the date of the completion of this purchase are to be paid to the Vendor"
- to you?
- A. Yes.
- Q. Not to the company?
- A. Yes, because I owned the bulk and had to pay all the debts of the company down to the receivables.
- B. Q. Well, why was not the company allowed to pay all those debts and accept its own receivables?
- A. Oh, it started from the time that you can buy receivables from the company for certain prices which had been done on many occasions.
- Q. Well, let us go on:
- "and the Purchaser hereby covenants with the Vendor to endorse in favour of the Vendor any cheques made payable to Montagu Park Racing Association Limited and to turn over any money or other security received by them in respect of accounts payable to this company prior to the date of completion of this purchase."
- C. A. Yes.
- Q. You regarded the company as your own property didn't you?
- A. Yes. If in fact I purchased the receivables and consequently should take care of the payables?
- D. Q. No, Mr. Nihon, you are not suggesting that are you?
- A. I am.
- Q. Where is this purchase agreement that you are talking about? This is between you and Dr. Sawyer, not between you and the company.
- In the Supreme Court of the Bahama Islands
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Plaintiffs Evidence.
No. 13
Mr. Alexis Nihon.
Cross-Examination
(Contd.)

In the Supreme A.
Court of the Q.
Bahama Islands
Common Law Side

Plaintiffs
Evidence.

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Cross-
Examination
(Contd.)

Well.
Then it continues:

"The Vendor will have the right to hire any attorney of his own choice to prosecute or defend on behalf of Montagu Park Racing Association Limited any action or claim made against them or on their behalf in respect of any account or claim prior to the date of completion of this agreement." A

Q. You were taking over this responsibility entirely from the company in order that the money would be paid into your pocket?

A. I explained to you that in consideration of the payables, the idea was that most of the sums were due by horse owners.

Q. But what about all your expenses or declaration of dividends, were not there going to be any declaration of dividends?

A. They might have been reached but the company purchased the receivables for the sum of and the consideration was consideration of the payable under the redeemable. B

Q. Very well. Clause 8:

"The Purchaser agrees"

and this one is very important, Mr. Nihon

"to pay to the Vendor Three (3) percent of the gross sums paid into the pari-mutuel pool as defined in the Racecourse Betting Act 1952 on each and every race day and to pay such sum over to the Vendor on the third day following each meet during the racing season." C

Q. So it was then the purchaser, Dr. Sawyer who had to make these pari-mutuel payments to you, these Three percent payments?

A. May I say that when the agreement was made that I could have collected from both because I did not. I collected from the company because the company was the contractual obligation. They were also under an agreement that was misleading that I could have collected from him also, but I never did. D

Court: You say that as the company, Dr. Sawyer

would have to pay the 3% by making the company hand over to him or take some steps to have the company collect?

Mr. Knowles: Yes, my Lord.

Court to Mr. Nihon: That is so isn't it?

A. It is obligated. It means to say that the company do the contractual obligation.

Court: You took over the responsibilities but you mean the company would pay?

A. That is right.

Mr. Knowles: And then it continues Mr. Nihon:

"For example, if the pari-mutuel pool totals Twenty thousand pounds (£20,000)"

That is 10% and you will observe that it says the purchaser not the company.

Court: So there is a separate agreement with the company, do you agree with that?

A. Yes.

B Q. He is referring to the - No doubt he can tell your Lordship what he is referring to. Tell his Lordship what you are referring to.

A. This company should have the use.

Q. Mr. Nihon, are you referring to the resolution?

A. Yes.

Q. There was no other agreement, was there?

A. No.

C Court: When was this resolution? Was it before he sold the company?

Mr. Knowles: On the same day, my Lord, the 6th May, 1953. But the resolution is actually adopted in this agreement. I submit it is quite clear that Mr. Nihon was looking to Dr. Sawyer.

Court: And regarding him as the company entirely?

D Mr. Knowles: Yes, my Lord. Now Mr. Nihon did, for example, take £20,000 of the pari-mutuel take. Then in the event the purchaser, that is Dr. Sawyer, should receive the sum of £2,000 which is 10% and the Vendor which is Mr. Nihon £6,000 or 3% and that accounts for the total intake by the company. The company was to receive 13 p.c. and the balance to go elsewhere. This agreement was that Dr. Sawyer was to

In the Supreme Court of the Bahama Islands Common Law Side

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Re. 12

Mr. Alexis Nihon.

Cross-Examination (Contd.)

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Plaintiffs
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Nihon.

Cross-
Examination
(Contd.)

- receive 10% and you 3%, that is right isn't it?
- A. Yes, if it is £20,000.
- Q. Now, Mr. Nihon, you know better it is 10% and 3%, whatever the intake is. That is only an example.
- A. That agreement never in fact altered the consideration and it was the contractual obligation of the company that we went by. We never meant for this.
- Q. Now, you did, Mr. Nihon.
- Court: It exists. They may want to regard it.
- Mr. Knowles: We certainly are relying on it, my Lord, because this accounts for the withdrawals which Dr. Sawyer made.
- Court: I don't know.
- Q. So then, Mr. Nihon, if you in fact have received £45,000 as your 3% is not Dr. Sawyer entitled to the corresponding figure of 10% which is in fact £150,000? Do you follow that?
- A. I cannot follow it up.
- Q. Well, I can show it to you very clearly. If 3% is equal to £45,000, 1% is equal to £15,000 and 10% would be equal to £150,000.
- Court: Do you agree with that method, Mr. Nihon?
- A. What clause?
- Q. Clause 8.
- A. I have it. But he would have to pay the people.
- Q. But you got yours free?
- A. That is right.
- Q. Yes, you got yours free, but he had certain responsibilities?
- A. But no, it was the contractual agreement of the company, we never collected any money from Dr. Sawyer.
- Q. But, Mr. Nihon, do you agree that under this clause if you receive £45,000 Dr. Sawyer was entitled to receive £150,000. Of course he would have to pay out certain monies from it, yes?
- A. I would like to read a little bit lower:

"In the event the figure of Thirteen percent to the licensee of the Montagu Park Racing Association Limited is reduced or increased by the Legislature"

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- the same was going to the Montagu Park Racing Association not to him.
- Q. I think the language is quite clear, Mr. Nihon.
- A. I hope mine is too.
- Court: I have not got it in my hand. I am not following it. The 3% I can understand it. The 10% comes in which para.?
- Mr. Knowles: That comes in paragraph 8, my Lord.
- A Court: The Vendor will receive 3% of the pari-mutuel. Then that will be 1½ of which is the greater - then gives example.
- Mr. Knowles: Yes, my Lord, it is in the example.
- Court: Mr. Nihon 3% of £20,000.
- Mr. Knowles: Yes, my Lord.
- Court: Where does Dr. Sawyer get 10%?
- Mr. Knowles: In that sentence Dr. Sawyer is the Purchaser. Does your Lordship have the 1953 agreement? Clause 8, my Lord.
- B A. It would go to the pari-mutuel which is the licensee as stated in this clause.
- Mr. Knowles: My Lord, I would respectfully point out at this stage we have an agreement between the only 2 persons concerned with this company. I shall quote the authority to show your Lordship in due course.
- Court: Identification of one or the other. It is one and the same.
- Mr. Knowles: These 2 people are the company.
- C Court: On Thursday following each meet Dr. Sawyer got his 10% as and when he could.
- Mr. Knowles: Yes, my Lord, after he could. Of course he never got anything of this kind. Now, I should like to go on to clause 9:

D "If the said sums representing Three percent of the pari-mutuel are not paid to the Vendor within a period of Thirty days after the same have become due and payable as provided in Clause 8 hereof then such default shall create a forfeiture and all sums due and payable under this agreement shall immediately become ipso facto payable by the Purchaser to the Vendor."

- Q. Now, Mr. Nihon in view of that do you still say that it was the responsibility of the company to pay you the 3%?

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Mr. Alexis Nihon.
Cross-Examination
(Contd.)

In the Supreme A. Yes.
 Court of the Q. You do?
 Bahama Islands A. I still do because we never used it at all.
Common Law Side Q. This 3% was Dr. Sawyer's liability?
 Plaintiffs A. No. This one but I never used it. That was
 Evidence. the contractual obligation of the company for
No. 13 services rendered that were supposed to be
 Mr. Alexis Q. Well, if that was the responsibility of the
 Nihon. company why then, Mr. Nihon, will you tell us A
 Cross- Dr. Sawyer was to lose his share or have to pay
 Examination the balance of the payments due if any default
 (Contd.) was made in the payment of this 3% of the pari-
 mutuel?
 A. Let us say we never went for this article, and
 we never requested payment from him, and we
 never did use it at all because it was the
 duplicate. I could have collected from both
 and I could explain to the court that I could
 have collected from both but I didn't. I said B
 to myself it was the contractual obligation of
 the company.
 Q. Well, Mr. Nihon, would it surprise you to know
 that the payment of the 3% to you is charged
 to Dr. Sawyer throughout the period in the
 company's books?
 A. I would not be surprised at all because of
 these statement from the beginning to the end
 have not reflected the true financial position.
 Q. Why did you keep Mr. Deal? C
 A. I don't know.
 Q. If he was a hopeless accountant?
 A. He was not working for me, he was working for
 Dr. Sawyer.
 Q. You got an agreement coming from Dr. Sawyer to
 keep him for a certain period where you thought
 so much of him.
 A. In 1953?
 Q. Yes.
 Court: In your information this agreement is D
 really for 1950. Does that fix the resolution
 of the company?
 Mr. Knowles: My Lord, in my submission the reso-
 lution of the company is completely invalid.
 Court: Because it was done by laymen. First of
 all this was made by resolution which said
 that the 3% should be paid to Dr. Sawyer by
 the company and then we get another which is
 the one which counts.

Mr. Knowles: Yes, my Lord.

Court: They are inconsistent?

Mr. Knowles: They are inconsistent.

Court: If one is invalid there is inconsistency but if it is not there is conflict, ambiguity.

Mr. Knowles: Yes, My lord. In fact, my Lord.

Mr. Knowles: Next paragraph. We have the adoption of the resolution. Your Lordship will see half way down Clause 10:

A

"As a consideration for the excellent services rendered this company by the President, Alexis Nihon, be resolved that"

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiff's Evidence.

No. 13

Mr. Alexis Nihon.

Cross-Examination (Contd.)

Court: Yes. Is this a part of it?

Mr. Knowles: It becomes a part of the agreement.

Court: Well, then there is a condictory, a conflicting paragraph?

B

Mr. Knowles: Yes, my Lord, but my Lord, it does, I submit, and perhaps I could put it to Mr. Nihon.

Q. You were regarding the company and Dr. Sawyer as one and the same person?

A. In what way: Under what circumstances?

Q. Because you identified the two.

A. No. It was just to have an agreement there to say that Dr. Sawyer was the Chairman and he passed the resolution to pay me 3% for the excellent services. It was just a reminder here under the contract.

C

Q. Well, just let us look at clause 11 now.

"Upon the completion of this purchase the Vendor will deliver all insurance policies in respect of the assets of the Montagu Park Racing Association Limited to Barclay's Bank, Nassau in favour of the Vendor to be held by them" (the bank) "in escrow until the payment of the balance of Forty thousand pounds (£40,000) has been made."

D

In other words the company's assets is taken as a pledge for Dr. Sawyer's liability, is that what happened?

A. What happened is that the company is not obliged to insure it is up to to insure it or not but as far as I am concerned I want to point out Dr. Sawyer that it could be insured.

In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 13 Mr. Alexis Nihon. Cross-Examination (Contd.)

Q. At this time did Dr. Sawyer have the right to elect 3 Directors to Board?
 A. Yes.
 Q. And you 2?
 A. Yes.
 Q. He had complete control of the company, he had the shares, he had dog shares, bob dog the shares and he had the control of the directors?
 A. In fact he had the shares, yes.
 Q. And the renewal of the racing concession was placed upon the purchaser, namely Dr. Sawyer, not the company. That is in clause 14:

"The Purchaser undertakes to renew the existing concession"

That is complete identification, Mr. Nihon, between the two.
 A. For you that Dr. Sawyer has the power here, amazing in fixing up these figures here that he would be the best man to handle it as it was supposed to be.
 Q. Then look at clause 15:

"The Purchaser undertakes to insure against fire and hurricane and keep insured"

And the subsequent clause is very revealing:

"Until the balance of Forty thousand (£40,000) and interest are paid to the Vendor the assets of Montagu Park Racing Association Limited in an amount of not less than Fifty thousand pounds (£50,000)"

So you placed upon Dr. Sawyer the responsibility and liability to insure the assets of the company until you are paid and after you are paid you don't care what happens. And you have been paid haven't you?
 A. (No answer).
 Q. Have not you been paid in full?
 A. (No answer).
 Court: You mean to say that he could not profit from the batch of the shares?
 Mr. Knowles: No, my Lord. Now I would like to ask him specifically, I have been wanting to ask this question.

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Q. Now, Mr. Nihon, supposing that Dr. Sawyer had repaid this money into the company, could your share have benefited from the repayment?

A. Are you referring to the first agreement?

Q. Any agreement.

A. I am sorry the 1956 is different. By the 1956 agreement if Dr. Sawyer had repaid me back I am still holding part of the shares that I am entitled to and I am entitled to benefit because after the payment the agreement becomes so important.

Q. Well, we have come to the 1956 agreement.

Court: If the money was paid into the company's account then the company may have paid dividends?

Mr. Knowles: Mr. Nihon would not profit from that because he has undertaken not to participate in the profits of the Company under the 1953 and 1956 agreement.

Court: In this case you are wasting our time.

Mr. Adderley: No, my Lord, he has put a proposition to you which does not affect the agreement at all. The agreement is that he going into it at this stage, but the agreement is between himself and Dr. Sawyer that he will take 3% or 50% out of the net profits because he owns 50% of the shares. It is his choice that he gets 50% of the parimutuel or 50% on any payable dividend under that agreement whichever is the greater, but that does not alter the fact that if the net profit which may declare a dividend if that is more than the 3% then he gets the difference.

Court: So he may benefit?

Mr. Adderley: He may.

Mr. Knowles: Well, my Lord, I will agree with that. My Lord, I am not sure that I should agree with that because I think Mr. Nihon made his election.

Court: The debts are now too great, which usually happens, that they can go into decline that sums which are damages by Mr. Nihon are sewn up?

Mr. Knowles: My Lord, I think Mr. Nihon is sole creditor of the company.

Q. Are you not in that position?

A. Oh, yes, up to now.

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No. 13

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Cross-Examination
(Contd.)

A

B

C

D

In the Supreme Court: If he gets judgment in this case against Court of the Bahama Islands Dr. Sawyer it would be solvent?

Common Law Side Mr. Knowles: Yes, my Lord, it would be solvent, my Lord, I don't know (Illegible) what the present position is now. Perhaps

Plaintiffs Mr. Deal will tell us (Illegible)
Evidence. Mr. Knowles: We then have clause 16 which we have already looked at. Clause 18:

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Mr. Alexis
Nihon.
Cross-
Examination
(Contd.)

"The Purchaser agrees that the Vendor will retain his present box free of charge for himself and his heirs and assigns." A

That he should have some part. This is course the right of the company nominal but you are taking this obligation from Dr. Sawyer? And I suggest that you did that because you identified to do exactly. Is not that right Mr. Nihon?

A. You want me to answer that? B

Q. Yes.
A. Oh, I see. Reference was made but when you have it in writing it is always mandatory and if you won't put it down sometimes people say it was not there, so it was agreed with Dr. Sawyer that I should have the deposit since he was the President of the company then, he would have no authority to do so.

Mr. Knowles: And in clause 19 we have a provision to this effect:

"The Purchaser agrees that the sum of Five thousand pounds (£5,000) will be set aside each year to be used for depreciation on the Company's property until payment in full has been made to the Vendor." C

Q. Again, Mr. Nihon, I suggest that you are interested in this company only in so far as your investment of £50,000 is concerned, after that you are not concerned about what happens. D

A. I do not agree with that because I have to take those shares with no dividend in the bank. I have to proceed further with money. I have to pay £20,000.

Court: You have been paid your £50,000?

A. He has paid £20,000.

Q. Mr. Nihon, you have now been paid in full? In 1959 you were paid the final instalment?

A. Through the courts too. I had to sue to get paid.

Q. Yes, but you were paid?

A. Yes.

Court: Through the 1956 agreement?

Mr. Knowles: Yes, my Lord. And then in clause 23:

A

"The services of Mr. Herbert Deal as Accountant shall be retained until the end of December 1953 and the Vendor agrees to pay the balance of his salary until that date namely One hundred and Fifty pounds."

Q. Now, did Mr. Deal prove a satisfactory accountant at this time?

A. I should say I have complained.

B Court: Are there any other correspondence that will be helpful?

Mr. Knowles: These are all the correspondence, my Lord.

Mr. Adderley: There is no additional correspondence, my Lord.

Adjourned.

Q. Mr. Nihon, I would like you to look at the 1956 agreement, that is the agreement between yourself and Dr. Sawyer, made on the 29th February, 1956. On the 1956 agreement:

C

"Subject to the approval of the Exchange Control Board having been obtained for the transfer of the shares Nihon will sell and Sawyer will buy One hundred and Forty-nine and One half (149½) shares out of a total of Three hundred (300) shares being the capital stock of Montagu Park Racing Association Limited (a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony). Out of the remaining One hundred and Fifty and One half (150½) shares of the capital stock"

D

and they would be the shares which you retained, Mr. Nihon

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Plaintiffs Evidence.

No. 13

Mr. Alexis Nihon.

Cross-Examination (Contd.)

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Court of the
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Common Law Side

Plaintiffs
Evidence.

No. 13

Mr. Alexis
Nihon.

Cross-
Examination
(Contd.)

"One hundred and Forty-nine and One half (149½) shares will only participate in the profits made by the Company as provided in Clause 8 hereof specifically the Three percent on the pari-mutuel pool or one half of the net profits of the Montagu Park Racing Association Limited, whichever sum is the greater."

In other words this clause is saying that the shares which you retained will participate in the profits of the company only as provided by that subsequent clause. And this subsequent clause provides that they will participate only if you elect to take one half of the net profit instead of 3% of the pari-mutuel pool?

A. Whichever was the greater.

Q. Whichever was the greater, but you were to make your election. Now, in fact did you not elect each time to take the 3% of the pari-mutuel?

A. This action is based on the contractual obligation of the company to me and not by agreement.

Q. But, Mr. Nihon, I am just asking you a question which I think admits to an easy answer. Did you elect to take 3% of the pari-mutuel pool?

A. According to the agreement, no.

Q. Well, I am not saying according to anything.
Court: What in actual fact did you do? Did you take 3% or not?

A. I did.

Mr. Knowles: Yes, my Lord.

Court: Did you take ½% or 3%?

A. I got 3% from the company.

Court: That turned out to be the greater?

Mr. Knowles: I think so, my Lord. But according to Mr. Nihon he was not doing well.

Court: Anyhow he was paid over his 3%

A. By the company, yes.

Mr. Knowles: Clause 3 merely sets out the mode in which the shares were to be paid, my Lord.
Clause 8:

"Nihon shall receive Three (3) percent of the gross sum paid into the pari-mutuel pool as defined in the Race-course Betting Act 1952 on each and every race day on the third day follow-

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D

ing each meet during the racing season, or one half of the net profits of the Montagu Park Racing Association Limited whichever sum is the greater. For example, if the pari-mutuel pool totals Twenty thousand pounds (£20,000) on any given race day then and in such event Nihon shall receive the sum of six hundred pounds (£600) or three percent thereof. In the event the figure of Thirteen percent to the Licensee of the Montagu Park Racing Association Limited is reduced or increased by the Legislature of the Bahamas then and in such event the said figures of Ten percent and Three percent shall be reduced or increased proportionately."

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(Contd.)

A

Q. Now am I right in saying that the Legislature decreased the 13%?

B

A. It did decrease it in one way and it increased it in another because it provided for the payment for purses and we were not no more depending on the company to pay.

Q. What I am in fact getting at is that the Legislature decreased the 13% to 7%?

A. As I said before.

Q. I am talking about the percentage to which the licensee was entitled and I think you said it was decreased from 13% to 7%?

C

A. Suppose the licensee was entitled to receive 13 percent then they were to pay the purses. But the Bahamas Government changed the regulation and changed it that the licensee would receive 7% but that they would pay the persons their purses.

Q. But, Mr. Nihon, your 3% was tied to the percentage to which the licensee was entitled?

A. Well, the licensee was getting more.

D

Q. But your 3% was to be decreased if in fact the Legislature ever decreased the 13%?

A. In fact, yes.

Q. And despite the decrease you did on one occasion insist on being paid the full 3%?

A. I was always paid the 3%

Court: You would go down to 1 1/2%?

A. The case doesn't change because the 7% is net for him and when they were receiving 13% they were taking care of the purses.

- In the Supreme Court of the Bahama Islands
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 Plaintiffs Evidence.
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 Mr. Alexis Nihon.
 Cross-Examination
 (Contd.)
- Q. When the Legislature decreased the 13% to the licensee did your percentage become 1.615%?
- A. No.
- Q. And I am putting to you, Mr. Nihon, that in spite of the fact of this decrease you insist that the full 3% be paid to you and you made out a cheque for this amount?
- A. I have a paper that I would like to produce if I may. That will clarify the whole situation.
- Court: That will come in in your re-examination if you can't give the answer. A
- Q. I have to put it to you, Mr. Nihon, that according to the provision of this clause the intention was between you and Dr. Sawyer as parties to this agreement that when you have been paid your 3% subject to the payments of the debts then existing Dr. Sawyer was entitled to the balance of the pari-mutuel pool.
- A. Not necessarily, there was the reserve and depreciation to be set aside. B
- Q. Where is the reference to reserves and depreciation, I have not seen any?
- A. Well, there is a reference in that clause.
- Q. Where is there any reference to reserves and depreciation?
- A. There is no reference to reserve in the contract but the normal way of the company operating is always to keep a reserve and also to put necessary money away and also for making the necessary depreciation if the lease was to expire in three years and the capital had to take care of everything. C
- Q. Was not that 3% in fact greater than 50% of the net profits?
- A. I don't know.
- Q. Well, Mr. Nihon, did you not elect at each time to take the 3%?
- A. I am basing mine on the contractual obligation that was arranged by the company that they pay me 3% at all times for the rest of my life. D
- Q. Now, the resolution to which you referred evidently in your contract is contained in Clause 9. Why does this go in this agreement?
- A. Perhaps it was a mistake.
- Q. Another mistake?
- A. Perhaps it was, I don't know, I don't say it was.
- Q. It seems that many mistakes were made in the history of this company.

- A. I am relying on the contractual obligation of the company to me.
- Q. Was this drawn by your attorney?
- A. It was drawn, I guess, by Higgs and Kelly, by Newton Higgs probably.
- Q. By Mr. Newton Higgs?
- A. Yes.
- Q. Your attorney, not Dr. Sawyer's.
- A. I think he was acting for both.
- A Q. Was not this agreement presented to Dr. Sawyer on a take it or leave it basis
- A. Any contractual agreement is on a take it or leave basis. Everybody has the right to sign it or refuse it.
- Q. Clause 10. Under this clause you are given the right to be represented by 3 Directors of the Board, the total number of Directors being 5. So from this point onwards, from the 29th February, 1956, is it not right to say that you had the control of the company?
- B A. What clause are you referring to please?
- Q. Clause 10.
- A. Yes.
- Q. Clause 11:
- "Sawyer undertakes to insure against fire and hurricane and keep insured until the balance of Forty thousand pounds (£40,000) and interest are paid to Nihon."
- C Again, Mr. Nihon, the company's assets are being used to secure this debt which was due to you.
- A. The company is not obliged to insure itself therefore the clause becomes Sawyer was to insure the articles of the Montagu Park Association and pay the premiums personally which he didn't.
- Q. Was this because you regarded the balance of the assets after you had been paid as belonging to Dr. Sawyer and in fact you were asking for this security in respect of the payment of your debts for the shares.
- D A. I wanted to make sure that the Montagu Park would be insured and not overlooked and if Dr. Sawyer was to overlook he would be held responsible.
- Q. Now I want to go to Clause 17, at the end:

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Plaintiffs
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Nihon.

Cross-
Examination
(Contd.)

"Sawyer hereby also declares that since the Sixth day of May, 1953 he has not withdrawn any money out of any accounts of the Montagu Park Racing Association Limited for his personal use except Five thousand pounds (£5,000) as Managing Director, and the sums which he paid to Nihon under the said recited agreement dated the 6th day of May, A.D. 1953.

- A
- Now, I want you to direct your attention to those concluding words, "the sums which he paid to Nihon under the said recited agreement", Are you not saying here that the withdrawal for the purpose are all in order?
- A. Well, as I said in 1954 when he came and gave me a declaration that he had taken money out of the company and that he would not do it again.
- Q. But this is February, 1956.
- A. I am coming to that. So in 1954 I figured that he would not do it again.
- Q. Did you inquire whether he had done it again?
- A. No.
- A. Come, Mr. Nihon, do you ask us to believe that you, an outstanding business man, as you have represented yourself to be and which we have every reason to believe you are, that you made no attempt whatsoever to verify the scope of this statement?
- C
- A. I told you I was dealing with the Honourable Sawyer and that I know that his reputation on explanation was good enough to be accepted by me, and I never expected that that situation would take place.
- Q. Can you account for the fact that this clause makes no reference to these sums withdrawn in this manner as loans?
- A. Well, these sums that were withdrawn should be taken in as loans if they don't belong to a party or person.
- D
- Q. But this was the place to say that, wasn't it?
- A. You cannot write everything you want in one contract.
- Q. That could have been very easy, Mr. Nihon, simply designating these withdrawals as loans.
- A. Well, how else could it be when a man takes money out of a company and he is not authorised by the company to do so?

- Q. Yes. But he was authorised that is what I am putting to you if you knew that he had withdrawn all these sums which you back up to this point that he had withdrawn with your approval.
- A. I did not approve them.
- Q. Now, you keep referring to an agreement, a contract with the company. Where do we find this contract?
- A. I have it right here.
- Q. You have it there?
- A. I have it right here on the paper.
- Q. In what form?
- A. A resolution.
- Q. Is that a contract?
- A. By the company, Dr. Sawyer was in the chair, he was the President when the resolution was passed and he O.K'ed it and he accepted it.
- Q. Mr. Nihon, as an experienced business man you know very well what a contract is. This is a contract, made between two parties.
- A. I would rather have that one.
- Q. Signed, sealed and delivered by two parties. That is the resolution of a company.
- A. Yes. It is accepted by Dr. Sawyer when he was in the chair.
- Q. As a member of the company, a part of the company. That is a one-sided document isn't it?
- A. It is a two sided document. He was there. I were there, everybody were there, and if you have the chance to read it you will find out that what I say is true and that is the way it is.
- Q. So that is all that you rely upon for your contract. That is your contract?
- A. That is all I need as far as I am concerned.
- Q. And this contract is to go on forever?
- A. It says so?
- Q. To go on forever?
- A. Not forever I said.
- Q. Why not forever?
- A. I cannot recall the right wording.
- Q. Well, perhaps we can take it from the agreement which is more easily available:

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"As a consideration for the excellent services rendered this Company by the President, Alexis Nihon be it resolved

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Nihon.
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(Contd.)

that in the event of the purchase of the assets of the Montagu Park Racing Association Limited by the Purchaser he retains 3% of the 13% granted to the Licensee on the pari-mutuel pool and one-half of the gross proceeds of the Montagu Park Racing Association Limited as their percentage for promoting and organising any sweepstake lottery or drawing in connection with racing of any kind held at Hobby Horse Hall."

- Q. By the way, am I correct in saying there was never any sweepstake or lottery?
A. That is right.
Q. "In connection with racing of any kind held at Hobby Horse Hall". Now, that is the resolution. So it was to go on forever wasn't it?
A. What clause is that that you are reading now?
Q. It is set out in clause 10 of the 1956 agreement.
A. In clause 10 it doesn't say here.
Q. Are you looking at the 1956 agreement. Mr. Nihon, I put it to you that this resolution was completely invalid and therefore your drawing were on exactly the same basis as Dr. Sawyer's?
A. I don't agree with that.
Q. And that is why your accountant describes your withdrawals as shareholders' withdrawals, treating them exactly the same.
A. You are going to have your conference later on and you can ask him why he did it, I don't know.
Q. Very well. Now let us to the manner of your loan to Dr. Sawyer of the £10,000 in May, 1954. I have to put it to you that -
Court: The purchase price of anything?
Mr. Knowles: No, my Lord. Mr. Nihon lent Dr. Sawyer £10,000 in connection with the letter of May, 1954 mentioned in the evidence. It was the company that needed money to pay some debts and this amount was lent to Dr. Sawyer.
Court: Anything on which there is reference to this document?
Mr. Knowles: 'On 25th May, 1954 a letter in connection with this was written to Dr. Sawyer.
Q. Now, the purpose of this loan was to provide

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Dr. Sawyer with money with which to pay some pressing debts.

A. Not exactly. It was a loan to Dr. Sawyer so that he could re-imburse the company for the sums which he happened to take out and which he should not have and he admitted that in the letter.

Q. Mr. Nihon, the whole purpose of this loan is set forth in the last paragraph of this letter. "I further agree that this money will be used to pay all the outstanding accounts to date".

A. Yes.

Q. That was the purpose of the loan wasn't it?

A. Yes, because he had taken money out and he could not pay the creditors. He had already taken money out and he should not have, that is why he was not able to pay the creditors.

Court: You cannot call the debt of the company - the sum which was taken from the company the outstanding account? Is that what you say it is?

A. Yes, your Honour. He took the money out and so there was no money there to pay the creditors.

Q. And again, Mr. Nihon, there is nothing said in this letter - perhaps I should put this question first. Was this letter prepared by you?

A. No.

Q. Well, on instruction that is what I have to put to you. The letter was prepared and worded by you and Dr. Sawyer was obliged to sign it if he was to get the money from you.

A. I never did prepare that letter.

Q. Who did?

A. I don't know. Dr. Sawyer came with it.

Q. Mr. Nihon, you told Dr. Sawyer that if he did not sign the letter he would not get the money?

A. I told Dr. Sawyer before I loan him the money, I would have to get an acknowledgement from him that he took the money and he should not have.

Q. Of course, again, there is nothing said in this letter about Dr. Sawyer's withdrawals being loans.

A. Well, he admit that he should not have done it, take any money out.

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Cross-Examination
(Contd.)

- Q. I have already put it to you, Mr. Nihon, what Dr. Sawyer said about that and I have it again in clause 16 of the 1953 agreement which says "the indebtedness should not be allowed to exceed £10,000". But the word loan is not used, is it?
- A. But it was on reply that he admitted it so what else can I say.
- Q. And I have to put it to you that this payment to the company of the same sum was in fact a loan to Dr. Sawyer. A
- A. When a man takes money out of a company and he reimburses the company would you call it a loan to the Company?
- Q. Well, Mr. Nihon, I have to remind you again that you cannot ask me questions. I am the only one that can ask questions.
- A. I am sorry.
- Q. Am I right in thinking that there is no question whatsoever the company is liable to Dr. Sawyer for £3,000 in respect of unpaid salaries? B
- A. If I recall we have deducted that sum in another claim from the £29,000 and we have reduced to £26,000
- Court: You said that is credited to Dr. Sawyer?
- A. Yes, Your Lordship.
- Q. You mentioned yesterday that the sums of money covered by the cheques which you signed with Dr. Sawyer towards the end of this period in fact amounted to further loans to Dr. Sawyer. Did you get from him any memorandum or receipt concerning this loan? C
- A. No.
- Q. No I.O.U.?
- A. No, only some cheques were marked loans, or the accountant was instructed to do so.
- Q. Mr. Nihon, I have these cheques here. Would you look at them?
- A. No, none of these cheques. D
- Q. So in fact you made no notation at any time evidencing the loan?
- A. Well, I know I see a cheque right there which is marked loan on the back. I saw it in the files and it was marked "loan".
- Q. May we see that then?
- A. Yes.
- Q. I do see one cheque dated 1st May, 1957 for £1,629 which has been marked in ink with the word "loan" in very fresh looking ink? E

- A. Oh, please.
- Q. Well, I don't blame you for resenting it. I would like the court to see this.
- Court: Was it this one only?
- Mr. Knowles: No, my Lord, these are not loans. These were withdrawals by Dr. Sawyer on amounts which were due to him. And in fact that amount was paid over to Mr. Nihon.
- Court: They were in fact loans to the company not Dr. Sawyer?
- Mr. Knowles: That is what is now purports to be, my Lord.
- Court: Otherwise you are talking about personal loans made to Dr. Sawyer by Mr. Nihon?
- Mr. Knowles: £10,000 my Lord, but now we are back to the withdrawals set out in the statement of claim.
- Court: He took no I.O.U. or any memorandum regarding these loans?
- Mr. Knowles: No, my Lord, he took no receipt and he did not ask Dr. Sawyer for any memorandum acknowledging the loan.
- Q. Is it not rather odd, Mr. Nihon, - let me ask you this question first. Where did this cheque come from?
- A. Among my papers.
- Q. Which papers?
- A. Among my files and papers.
- Q. I don't understand that because I inspected Mr. Adderley's office last week.
- A. Mr. Adderley told you there were some cheques missing and that is the cheque I was looking for because it was missing.
- Q. Yes. I don't blame Mr. Adderley for having it, I am just trying to find out where it has been. So now we know it has been in your possession?
- A. Yes, and no fresh ink.
- Q. Mr. Nihon, I have no hesitation in putting it to you quite blankly that you have just recently written that word on that cheque?
- A. That is a verbal insult.
- Q. Never mind the insult. You are trying to ruin another man.
- Court to Mr. Adderley: These cheques are going to be put in?
- Mr. Adderley: Yes, my Lord, all of them.
- Q. Did you bring these to your attorney's notice when he was waiting for certain particulars of myself of the loans?

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Mr. Alexis
Nihon.

Cross-
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(Contd.)

- A. What has happened is that Mr. Adderley told me there was some cheques missing and I went through the files, my files Higgs and Kelly and Dr. Sawyer and I found these cheques and I thought I should bring them in.
- Q. When did you first find these cheques?
- A. This morning.
- Q. Can you account for the fact that the word "loan" was not typed in with the other particulars apart from the signatures? A
- A. Mr. Knowles, I only brought what I found.
- Q. But, Mr. Nihon, you signed the cheques?
- A. With Dr. Sawyer.
- Q. Well, Dr. Sawyer will say that then when he signed the cheque the word "loan" was not on it.
- A. I would be surprised.
- Q. Very well. Did you write the word in at the time of the signing of the cheque.
- A. No sir, that is not my handwriting.
- Q. Was it on the cheque when the cheque was signed? B
- A. Yes, I think it was. I requested it on many occasions that Mr. Deal put on these cheques loan and post in the book loan and it was never done.
- Court: Do you think Mr. Deal wrote the word loan on the cheque?
- A. I believe so, your Lordship.
- Q. So you gave instructions that in the case of all these cheques relating to Dr. Sawyer the word loan should appear on the cheques, right? C
- A. Not all of them, some of them.
- Q. Well, why not in 1956?
- A. Because I never expected Dr. Sawyer to make any further unauthorised withdrawals after he signed the letter in 1954, and he undertook not to do so anymore, and he admitted it was not right for him to do so and I did not expect him to do it.
- Q. When did you give these instructions to Mr. Deal? D
- A. I kept telling him not writing on the cheques, I told him he should post it in the book as a loan.
- Q. Would you be surprised to know it was not done?
- A. I am.
- Q. Why the sum £1,629. 9. 1. when you make a loan to somebody, you usually give a round sum?
- A. I don't know, my Lord.
- Mr. Knowles: Yes, my Lord. I would like to follow up your Lordship's question. E

Q. Mr. Nihon, you know full well that is a very odd figure?

A. Well, I take it for granted it was to pay to me some interest due me or something like that.

Q. Yes. Well, why did you tell his Lordship that?

Mr. Knowles: It was to pay to Mr. Nihon the principle and interest which was due to him under the agreement.

A. I was not asked for that.

Q. You were asked why it was such an odd figure. You are not very anxious to help in this matter, Mr. Nihon, are you?

A. Oh, yes, very much so. His Lordship asked me why ---

Court: It was to pay sums which he owed you?

A. Yes.

Q. Mr. Nihon, if between the 6th May, 1953 and 29th February, 1956, Dr. Sawyer and his nominees had in fact sat down and declared a dividend in respect of the withdrawals which had been made up to that date. If that had happened do you agree that today the company could not have any recourse against Dr. Sawyer in respect of this amount?

A. If the statements of the company had been properly prepared it would not have shown any dividend.

Q. No, Mr. Nihon, that is not the question. Supposed that they did sit down and declare a dividend would the company today be in a position to make any complaint about these withdrawals.

A. You are talking about the 1953 agreement?

Q. Yes.

A. The 1953 agreement was forfeited. He never carried ---

Q. No, Mr. Nihon, the question admits of a no or yes answer.

A. Well, in fact he was not the owner of the shares in 1953.

Q. He was the owner on the register of members?

A. Yes. but in fact he was not the owner.

Q. Legally he was the owner, so if he and Mrs. Sawyer and his nominees, I suppose three members all together, if they had sat down and declared a dividend in respect of these withdrawals would the company today be in a

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(Contd.)

position to have any recourse against Dr.
Sawyer in respect of withdrawals?

A. If there was any money available, there would
be the necessary reserves.

Q. Yes, or no?

A. Yes, according to what I suggested there should
be the necessary reserves to put forward and
the depreciation put forth?

Q. So the company could have a recourse against
Dr. Sawyer today?

Court: Is there anything about reserves?

A. There would be reserves for depreciation in the
contract.

Mr. Knowles: Not a word about it.

A. In the 1956 contract there is the word, a
reserve of £5,000.

Court: That would stop a dividend being declared
would it?

A. Under the contractual obligation it should have
been charged as expenses and they would have no
odds.

Q. Mr. Nihon, I would like you to look at the
minutes of the extraordinary meeting held on
the 29th February, 1956. Were you present?

A. I was there.

Q. And at that meeting were the minutes of the
only general meeting held on the 21st November,
1955 read and confirmed?

A. I don't recall that they were.

Q. But doesn't the minutes say so?

A. Yes, they say so.

Q. Turn to the minutes of the meeting of the 21st
November, 1955. At that meeting which was not
attended by you was the balance sheet presented?

A. I don't know what you mean.

Q. Does it say that:

"The Treasurer then presented the accounts
and balance sheet of the Company as at
30th April, 1955, showing a net profit of
£12,175.10. 7. and on motion the said
accounts and balance sheet were approved"?

A. I was not present at the time.

Q. No, but you were present at the subsequent
meeting when these minutes were read and con-
firmed that is what I am putting to you?

A. I see that Mr. Newton Higgs was absent, the
Treasurer, and he was replaced by Mr. Kelly.

A

B

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I don't recall having received or heard these minutes read.

Q. But, Mr. Nihon, you can't question this at this late date what is recorded in the minutes can you?

A. I guess not.

Q. And at that time on the 21st November, 1955 was a resolution passed:

A "That each all of the acts, transactions and proceedings of the Directors and Officers of the Company to this date be and they are hereby sanctioned, approved, ratified and confirmed".

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A. Yes, but I cannot remember in the way of speaking what was done when I was not present.

Q. Was Mr. Deal an officer of the company?

A. I don't think so. I don't know.

Q. Now, Mr. Nihon, I have one final question for you. Have you not been very half-hearted in prosecuting this case?

A. It is a very unusual question to put forward.

Q. This is a very unusual case, but I am putting it forward.

A. It is a very unusual way.

Court: You have not been dilatory in prosecuting this case.

A. I don't know the word because I am a Frenchman.

Mr. Knowles: I said half-hearted.

C A. I have not got the reputation of being half-hearted.

Q. That is why I am wondering in this particular case you have been half-hearted?

A. I don't think I have.

Q. Well, let us look at it Mr. Nihon. You knew in 1956 on your own confession that certain withdrawals had been made which were not in order, nothing was done about them at that time. In 1958 we have it on record in your counterclaim in an action which Dr. Sawyer started and which I think was completed in 1957. Again you knew on your confession that withdrawals which according to you were not in order had been made, and again nothing was done about it at that stage. In fact it was not until 1959, I don't have the date, I think it was in May, my Lord, when the writ

D

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was issued. It was not until the 6th May, 1959, that steps were taken by the company to recover what it then regarded as unlawful withdrawals by Mr. Sawyer. That just begins to show your half-heartedness; the case does not come up for trial until nearly 5 years later and in fact the whole period of 2 or 3 or more years passed by without a single step being taken and all the time you were president of the company. Can you explain this by one who has no reputation for half-heartedness.

A. I will give you the facts. You must remember that my attorneys were Higgs and Kelly and they are very excellent friends of Dr. Sawyer. I also tried to push the proceedings but they were only delaying it and I guess you mean what is the reason. My family had requested to go to Canada and that is how the case got moved because of this obstacle, condition and stipulation.

Q. But, Mr. Nihon, I suggest to you that the reason that Higgs and Kelly were not anxious to press the case was that they had advised you you had no case. Is that not a fact?

A. That was not the idea behind the scene the idea was that point that some reflection being put on some political man or another.

Court: Don't give me any politics. This referring to the Racecourse, the shares.

Mr. Knowles: I don't know, my Lord, why the witness wants to bring in politics.

Court: Because of the fact that 5 years have gone by?

A. I had to get a lawyer.

Court: The lawyer didn't help you?

Mr. Knowles: Wasn't it transferred to Mr. Adderley some 2½ years ago?

A. I would say about 2 years ago, yes.

Q. And it took you 3 years to transfer it to Mr. Adderley?

A. Well, I saw I could have success because it seemed that no other lawyer was very much interested in taking the case.

Q. Mr. Nihon, I am putting it to you that the reason why this half-heartedness was shown is because the company is not entitled to get this money from Dr. Sawyer.

A. You would find, Mr. Knowles, that I would not be here.

A

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Q. But it took you 5 years to get here at any rate?

A. I could not go any faster.

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Re-examined by Mr. Adderley:

Mr. Adderley: Well, much has been said about counsel, that Mr. Nihon gave this case to me about 2 $\frac{1}{2}$ years ago.

A A. I don't remember exactly, it was about that.

Q. Do you remember speaking to me a number of times about getting this case on for trial?

A. Yes.

Mr. Adderley:

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Mr. Knowles: I have not said a word about Mr. Adderley, my Lord, not a word.

Q. Mr. Nihon, when you received your 3% cheque from the pari-mutuel from whom did you actually receive the cheque?

B A. It was delivered to me by Mr. Deal.

Q. And I believe for some part of the 4 year period there were some cheques made payable to Dr. Sawyer and endorsed to you?

A. Yes, but I pointed out to Mr. Deal that it should not have been done in the way which he did it. It should have been issued by the company direct to me.

Q. You objected?

A. Yes.

C Court: You say that sometimes cheques were delivered by Mr. Deal and then they delivered the rest?

Mr. Adderley: He said Mr. Deal delivered cheques made payable to Dr. Sawyer and endorsed by Dr. Sawyer always.

Court: At the beginning and later they were sent to him?

Mr. Adderley: No, it was not the way in which it was delivered it was the change in the person to whom the cheque was made payable.

D Court: Well, anyway he got it through. It doesn't matter how it was done.

Mr. Adderley: Yes sir, I think it does matter because it was put to him that the payment which were being made to him were being made by Dr. Sawyer. What I am asking now is: Is it not a fact that at some period of the transaction that was so and he says,

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- "Yes, I complained about that and afterwards cheques were made payable to me instead of Dr. Sawyer and then endorsed to me and delivered to me".
- Q. After Dr. Sawyer bought shares from you the 3% which was being paid to you was that not being paid to Dr. Sawyer and endorsed by him at the beginning?
- A. Yes.
- Q. And the cheques were being delivered to you by Mr. Deal? A
- A. Yes, by hand.
- Q. Did he come to your house or found you and delivered them to you?
- A. He came to the house and delivered them to me.
- Q. Did you say anything to him about this method of payment?
- A. Oh, yes.
- Q. What did you tell him?
- A. I kept telling him it should not be and he kept telling me that he was not aware of any agreement and I told him to talk with Dr. Sawyer about this agreement. B
- Q. At some later stage I am not quite sure that the cheques were made payable to you?
- A. From the company to me after I complained, yes.
- Q. Nowhere in the balance sheet of the company in the years 1954, 1955, 1956 and 1957 is it shown that Dr. Sawyer ever received a salary of £5,000 a year. Was he not paid a salary during that period? C
- A. According to the records, yes.
- Q. But nowhere in the balance sheet does this salary show.
- Court: I notice here in the balance sheet wages of pari-mutuel - wages outside £2,000, following it £1,000 but there is no £5,000?
- A. It never did show.
- Mr. Adderley: It is in those figures but it doesn't show as an item, is that not right? D
- A. Yes. I want to get the fact that the salary was paid and it shows from the balance sheet which doesn't appear here in that sum although ---
- Court: Two? I think only one, but you say in another one too?
- Mr. Adderley: It does not appear in any other.
- Court: Did it go through the books?
- Mr. Adderley: It appears in some of these various

items, some that you were just referring to.

Court: It is hidden in some of the large ones?

Mr. Adderley: In some of the bigger ones admitted as expenses or salary or that kind of amount. That is where it is hidden, sir. I am asking this because it may lead to something in due course in connection with shareholders' withdrawals.

Court: Why was that put down as expenses?

A A. To show profits, my Lord.

Mr. Adderley: But the amount that actually benefitted the company, the fact that it did not show that Dr. Sawyer received a salary of £5,000 that would not be profits in any way because of the fact that the amounts are in the account they merely happen to be in the accounts?

A. If they are in the accounts? Yes.

B Q. Did you know of any other reason why they did not appear in the accounts?

A. I don't know. I never agreed with any of the balance sheets.

Q. You were asked yesterday, Mr. Nihon, that in fact when you owned the majority of the shares in 1953 would you own the shares of the company and if you weren't in the same position as Dr. Sawyer when he purchased the shares from you?

A. Yes. I said no.

C Q. What I am asking is that when you owned the shares of the company did you owe anybody for them or did you owe any balance on the shares?

A. No all the shareholders know they were all my shares.

Q. They were all paid for?

A. Yes.

Q. There were no outstanding shares in the way of speaking?

A. They were all mine.

D Q. And did you have any shares deposited on account of any loans or anything of that kind?

A. No.

Q. You were shown a draft letter yesterday afternoon which I think you also have in your file addressed to the Montagu Park Racing Association dated 24th January, 1957. Do you remember it was put to you yesterday?

A. Yes.

Q. Did you ever see that?

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- A. No, I never saw that.
- Q. And so far as you know it never affected the company?
- A. No.
- Q. You were asked about reduction in the gross proceeds which the Montagu Park Racing Association received from the pari-mutuel pool. As a matter of fact the amount of 7% do you remember what happened?
- A. No, I do not. A
- Q. It was reduced to 7%?
- Court: Does it join this dispute up to 1957?
- Mr. Adderley: I am not quite sure, my Lord, when it was.
- A. I think it was 1957.
- Court: But it doesn't affect this case, even as regards the 3%. Instead of 3% it should have been 1½%?
- Mr. Adderley: Well, that is the suggestion, sir.
- Q. Do you remember if that was sometime in 1957? B
- A. It might have been at that time, yes.
- Q. When you tried to explain what the position was in regards to that I think you got as far as saying that in fact the Montagu Park Racing Association profited because the purses were not being paid out of the expenditure and so on. Will you explain that because I am not quite clear on it.
- A. When the wording was changed that Montagu Park Racing Association would not pay purses they paid out about 6 or 7% leaving them with 7. In previous occasions Montagu Park Racing Association received 13% but they had to pay purses which amounted to about 6 or 7% so that they were left with about a net of 7% and later on the Government changed it and made a second clause that they will only retain 7% net, clear and horse owners would be entitled to 7%, so in fact 13% was decreased. It means to say the company got more money out when it was changed. It was simply awarding a change but in fact Montagu Park Racing Association collected more money so in fact there was no decrease. In fact it benefit. C
- Court: But the agreement said that if the 13% was decreased your percentage should be decreased also. D
- A. Your Lordship, I am basing my claim on the contractual obligation of the company, I am

not basing my claim on the agreement. The agreement I ignore, I never collected from the agreement. I never did collect a penny from the agreement, I always collected from the contractual obligation of the company, the agreement I never collected for. I could have collected twice from the agreement and the contractual obligation of the company. I did not collect from the agreement because it was not up and I limited myself to the contractual obligation for a lifetime.

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(Contd.)

A

Court: The 2 were bound together weren't they, the resolution of the company not the agreement.

A. It was reflected.

Mr. Adderley: So far as you were concerned, Mr. Nihon, you could say that the company was obligated to pay you 3% of the gross parimutuel?

B

A. That is correct.

Q. And the resolution was ineffective in any way?

A. No. As a matter of fact I think Dr. Sawyer failed to pay for the shares and naturally he forfeited his agreement in 1953 and I became the sole share owner again until 1956. Those did not have

Q. Did you know that Dr. Sawyer has from the company a signed demand promissory note to him for £10,000 dated 27th May, 1954?

C

A. No, I just know that two or three days ago in the document.

Q. Did you happen to see the original promissory note at that time?

A. You showed it to me two or three days ago.

Q. When I showed it to you?

A. That is right.

Q. Is that the first time you saw the promissory note?

A. Yes.

D

Court: Sawyer made out the promissory notes to himself?

Q. When did you discover that he had it?

A. When you showed it to me three days ago.

Q. Did you ever hear about the company giving him a promissory note before?

A. I still can't figure it out.

Court: Subsequent to the event of the £10,000?

Mr. Adderley: This is supposed to be £10,000 which Mr. Nihon lent to Dr. Sawyer and Dr.

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Sawyer paid into the account of the Montagu Park Racing Association and then the company gave him a note for £10,000.

Q. Mr. Nihon, you have seen the balance sheet of the company. Have you seen anywhere in the balance sheet where the company is liable to pay to Dr. Sawyer the sum of £10,000?

A. No.

Q. This promissory note is dated 27th May, 1954 and nowhere in the balance of the company does it appear that the company is indebted to Dr. Sawyer in the sum of £10,000.

A. No.

Q. Anywhere in the liabilities of the company is this £10,000 shown?

A. I do not see it.

Q. But in the agreement of February, 1956, paragraph 15:

"Sawyer hereby further declares that the Montagu Park Racing Association Limited is not indebted to him personally or to his wife Ivarene Sawyer".

Court: You say that is not correct?

Mr. Adderley: So far as he knew at the time it was correct.

A. That is what was stated.

Mr. Adderley: That the Montagu Park Racing Association was not indebted to him for any amount of money.

Q. At that time you knew of no indebtedness of the company to him?

A. No.

Q. At the same time you also did not know that the company had given him a promissory note for £10,000?

A. I was not aware of that. There was no reason to do this.

Q. So far as you are concerned the company had no reason for him to make this out from the company?

A. No.

Court: After this agreement you had complete control? Could you in fact appoint directors?

A. I appointed three directors.

Court: So nothing then could be done without your sanction?

A. If I was present. If I only was present.

- Court: Well, the new resolution was passed relieving the so anything done after you had control of the company?
- Mr. Adderley: My lord, will you put that again, I don't think he quite fully understood that.
- Court: After taking control of the company you had the right to appoint three directors, in that case the majority, and after that anything can be done in the company without your wishes?
- A. Provided they were present.
- Court: What you are saying is that meetings were held when you were not present?
- A. I think they were.
- Court: But of which you received notice. There would be a quorum of two or three.
- A. I think there was a quorum of two or three, I don't recall.
- B Court: Well, if you have three you only need two.
- A. Mr. Higgs was there.
- Court: He is your nominee?
- A. Yes.
- Court: You referred to salary. He was made managing director in 1955 by a resolution of the company?
- A. That he was.
- Court: That does not appear in the balance sheet as itself you said it is seen under another item. What item can it be in?
- C A. I don't know, your Lordship. I think Mr. Deal would be in a better position to answer that.
- Court: There are two items at the moment £5,000 and £4,000, wages of pari-mutuel and £8,000. Anyhow we will find somebody else who can tell us about it.
- Court: If this company wished to show a profit how would that be presented?
- D A. It would not be able to show profit because since he had two shares and in a way he was not a shareholder and according to part of the agreement he would say that he was entitled to the profits.
- Court: On the other hand it would become bigger than your 3% that you were entitled to?
- A. Yes. In the second agreement he had most of the shares, second agreement 1956, the first agreement 1953, he had most of the shares

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and the intention was to show a large profit
so that he could claim that he was entitled
to it.

Court: You say that the profits did not exist?

A. The object in this particular case the con-
tractual obligation to me was it was fixed
expense of the company and should not have
appeared as shareholders' withdrawals as a
profit, it should have appeared as a fixed
charge. If that would happen here then it
would eliminate the profit and show a loss.

A

No. 14EVIDENCE OF HERBERT A. DEAL

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Herbert A. Deal (sworn) states:

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- A Q. Your name is Herbert Archibald Deal?
A. Yes, sir.
Q. Where do you live?
A. On East Bay Street.
Q. What is your occupation?
A. Accountant.
Q. Were you employed in that capacity by the Montagu Park Racing Association, Limited?
A. Yes.
Q. When did you first become associated with the Montagu Park Racing Association?
A. Before the war in the days of Mr. George Murphy.
- B Q. Before the second World's War?
A. Before the second World's War.
Q. Were you employed by the company?
A. Yes, but not during the time of the ownership of the Bethels.
Q. Were you employed by the company in 1953?
A. Yes.
Q. Were you employed by the company when Dr. Sawyer became a shareholder of the company?
A. Yes.
- C Q. That was in 1953?
A. Yes.
Q. And that is when Dr. Sawyer took over the management of the race track.
A. That is correct.
Q. Have you got books of account of the company from that time?
A. Ever since.
Q. The annual balance sheet of the company you have on your left there, are they all prepared by you, that is 54, 55, 56, 57 and sometime in 1959?
A. These are all my preparation.
- D Mr. Adderley: Before we actually come to the balance sheet of the company in detail, my Lord, we have to prove the total amount of withdrawals made by Dr. Sawyer for that total. What I propose to do is to deal with each cheque made payable to him on the

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Montagu Park Racing Association or debited to
the account against his name, sir.

Court: There is no admission of fact and there is
a long list. Each one is to be proved?

Mr. Adderley: Yes, sir, because the defendant
admits none of them.

Court: Well, he doesn't admit the description of
them, perhaps, but he will admit the fact of
withdrawing won't he?

Mr. Adderley: No. He has not done so yet, sir. A
He has not admitted it in his pleadings that
he received this amount of money, sir.

Court: Well, pleadings are very often varied as
the case goes on, but certain admissions can
be made. We have about 31 cheques.

Mr. Knowles: My Lord, I would be satisfied if my
learned friend merely put the list to the
witness.

Mr. Adderley: It is entirely up to him, sir,
because they have denied the receipts and if B
that would satisfy him then of course that
would mean of the receipts sir, but
up to now I have assumed that I had to prove
the accuracy because he has not admitted it.
Perhaps if we look at the particulars for the
first year and then we could deal with the
rest generally so that we can see how he
actually went about them. If we look at the
particulars of claim which I believe you have
before you. C

If you look at the 30th May, statement of
withdrawals by the defendant, which is Dr.
Sawyer, during the period 29th May, 1953 to
29th April, 1954.

Court: Thirty-two items.

Mr. Adderley: That is so. I believe you have
one of the cheques which was put to Mr. Nihon
in cross-examination. Perhaps I can put that
in at the same time.

Court: You are putting in these cheques? D

Mr. Adderley: I would like to exhibit the cheque
in relation to each year. The first one is
the cheque which relates to the 1953-54 year.
Some of the items are not checked, these are
the ones which I would need an explanation on.
I would need an explanation on at least one
cheque made payable to Montagu Park Racing
Association Limited. The first item on the
list of debits against Dr. Sawyer.

- Q. Mr. Deal, the item dated 7th July, 1953, to cash payment to A.S. Russell £1. 9. 0. Did you write out a cheque for that amount of money?
- A. No.
- Q. By looking through the general ledger of the cash book I think you can identify the debit the debit in the personal account of Dr. Sawyer?
- A. I can do that, yes.
That is an entry in the cash book at page 285, part of a cheque paid to A.S. Russell that was a part cash.
- Q. It was part of that cheque payable to A.S. Russell?
- A. Yes. The total of the cheque was £10.
- Q. Do you also have a separate account of the withdrawals which were made by Dr. Sawyer that is a separate account of the cheque which was made payable to Dr. Sawyer for the amount credited to his account?
- A. A separate account in the general ledger.
- Q. Have you got that?
- A. Yes. That is a charge debited to Dr. Sawyer under these words stroke personal that is the name of the account and the Folio is B12.
- Q. And you kept a separate ledger account of the personal account of Dr. Sawyer?
- A. Of personal items, yes.
- Q. In that account of Dr. Sawyer personally withdrawals are there included in that 3% payment which was made to Mr. Nihon?
- A. No. That was a debit to another account in the general ledger names Dr. Raymond W. Sawyer Race Day. That was the general indication in the general ledger.
- Q. And this amount which you found there relates to the 3% made payable to Mr. Nihon?
- A. That is correct.
- Q. But it was not debited to his personal account in the general ledger?
- A. No, no.
- Q. The first cheque which you have dated 22nd December, 1953 and made payable to cash, made payable originally to Dr. Raymond Sawyer, I believe that is struck out and then made payable to cash?
- A. That is correct.
- Q. Can you explain that?

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- A. Well, I can only explain the first of it. I may not have seen this cheque until a day or two after its preparation.
- Q. Well, that is the cheque which is debited to Dr. Sawyer's personal account?
- A. There is no indication on the cheque.
- Court: Endorsed by Dr. Sawyer, signed by him?
- A. Signed by Dr. Sawyer, amended by Dr. Sawyer and endorsed by Dr. Sawyer.
- Q. That is dated 22nd December, that would have been before the Racing Season. A
- A. Dated December 22nd, 1953 before the racing season.
- Q. The second one is a cheque dated 30th January, 1954 made payable to the Montagu Park Racing Association Limited.
- A. That is correct.
- Q. And there were a number of cheques in that year under the Montagu Park Racing Association Limited. B
- A. Yes.
- Q. Are all these cheques charged to Dr. Sawyer's personal account?
- A. They are charged to Dr. Sawyer's personal account.
- Q. Now, will you explain to the Court why that was done in that way. You issued cheques made payable to the Montagu Park Racing Association Limited.
- A. Well, I cannot explain the reason, but it was my doing. C
- Q. You cannot explain why it was done. Well, what happened, how were these cheques handled?
- A. Well, it is indicated to be charged to Dr. Sawyer personally.
- Q. Yes, but how was the cheque handled. Let us take this one cheque dated 30th January, 1954, the cheque made payable to the Montagu Park Racing Association Limited for £50 signed by Dr. Sawyer. What I want to know is how was the cheque actually handed down to you in so far as the money and the account of the company was concerned? D
- A. This cheque was a part of the pari-mutuel on race day.
- Q. What I want to know is how did the money get to Dr. Sawyer?
- A. In exchange for the cash and handed by myself to Dr. Sawyer as accountant.

- Q. The cheque would be exchanged for cash in the pari-mutuel? In the Supreme Court of the Bahama Islands Common Law Side
- A. At the track that day.
- Court: You need not answer all that of whoever is to blame. He said that the 3% --
- Mr. Adderley: No, my Lord, he did not. That has nothing to do with the 3% Plaintiffs Evidence.
- Court: You did mention about the 3% pari-mutuel payment? No. 14
- A Mr. Adderley: No sir. I asked him originally if in the 3% payment which were made to Mr. Nihon were included in the personal withdrawal to Dr. Sawyer. Herbert A. Deal. Examination (Contd.)
- Court: And he said no?
- Mr. Adderley: He said no, and now I am asking him to explain the cheque for £50 and the explanation in regard to all and exactly how they were handled. Will you show his Lordship one of those cheques which you have there. That is a cheque made payable to the Montague Park Racing Association Limited.
- B Court: Owned by the Montagu Park Racing Association and drawn by the Montagu Park Racing Association, made to itself and drawn too.
- Mr. Adderley: And paid into the account.
- Court: Never cashed?
- Mr. Adderley: That is what I want explained now. Is that marked Dr. Sawyer or personal account.
- A. That is marked Dr. Sawyer/Personal.
- C Q. I want you to explain to the Court what does this cheque represent, how the money is debited. Was the cheque actually cashed?
- A. The cheque was paid into the Montagu Park Racing Association banking account from the pari-mutuel that night.
- Q. Well, the actual £50.
- A. It was taken out of the pari-mutuel.
- Q. The actual cash?
- A. It was taken out of the float at the track during that day.
- D Q. And replaced by that cheque?
- A. Exactly.
- Court: Drawn by Dr. Sawyer on behalf of the company?
- A. On behalf of himself.
- Court: Dr. Sawyer personally.
- A. It is indicated to be charged to him personally.
- E Court: Then what happened to this £50, was it taken out of the float?

In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 14 Herbert A. Deal. Examination (Contd.)

A. That is what happened, sir.

Court: And this cheque put in its place?

A. That is so, sir.

Court: The position is that the cheque is cashed. When the cheque is cashed what happens? Is it put through the account of the track? Is it debited with £50?

A. Yes, but it is part of the deposits which will have to go in to satisfy the deposits that race day. A

Mr. Adderley: The cheque is deposited and takes the place of the £50 cash.

Court: Wouldn't have to be endorsed by Dr. Sawyer?

A. No, the bank would accept that cheque on the face of it you can see where it was paid by the Royal Bank of Canada. It would be debited to the Montagu Park Racing Association bank account.

Q. It would appear on the face of that that it is a cheque payable to Montagu Park Racing Association and it appears as though it is paid to Montagu Park Racing Association? B

A. The Montagu Park pays itself? That is not possible.

Q. That is exactly possible. What happens to the actual cash?

A. The cash is expected.

Q. And what happened to the actual cash?

A. It was given to Dr. Sawyer.

Q. Was there any reason why the cheque was not made payable to Dr. Sawyer? C

A. Well, I was never informed of any reason why they were done this way. I never prepared these cheques.

Q. You merely dealt with them as the accountant?

A. As they were given to me.

Q. There are a number of cheques in 1954 made payable to the Montagu Park Racing Association for amounts of £50, £50, £300, £15, £50 and so on. Were all these cheques dealt with in the same way? Do they represent amounts of cash which were withdrawn and given to Dr. Sawyer? D

A. They are all handled the same way.

Court: All are dealt with in the same way?

A. Yes.

Q. All those cash amounts which were withdrawn by Dr. Sawyer were they all withdrawn on race days? Well, I am sure it was not in

- 1953 but after that, it was during the racing season?
- A. The practice was that it was done on race days. I think they correspond with race days.
- Q. On Fridays and Tuesdays and one or two possibly on Wednesdays and Saturdays?
- A. Possibly.
- Q. There is an item debited M.O. account, Montagu Park Racing Assn. R.B.C., which is a Royal Bank of Canada cheque which is also charged to Dr. Sawyer personally January, 1954.
- A. Yes.
- Court: May I have that one.
- Q. How would know how to debit that in the accounts?
- A. Well, I have the wording that would explain the charge account, but it would have been referred to Dr. Sawyer.
- B Q. For you to know how to debit it?
- A. Yes.
- Q. The rest of the cheques in this year made payable to Dr. Sawyer himself, will you run through that lot, Mr. Deal, I think you will find them correct either to the Montagu Park Racing Association or to Dr. Raymond Sawyer?
- A. Yes.
- Q. The cheques made payable to Raymond W. Sawyer do you know whether any of these are in respect of any cash withdrawals from the Montagu Park Racing Association on race days?
- C A. I would say not.
- Q. Well, I have this cheque here dated March 1st, 1954. There is a number before that, the first one actually is 1st February made payable to Dr. Raymond and it is to his credit in the Royal Bank of Canada. How is it endorsed on the back?
- A. Deposit to Raymond W. Sawyer, Royal Bank of Canada, Nassau, Bahamas.
- D Q. Look at the one for February 1st.
- Mr. Adderley to Court: Two cheques, my Lord, the plaintiff has not got, sir, dated February, 1st.
- Court: There were three types of cheques made out.
- A. Yes.
- Q. These are the cheques of February 1st, 1954.
- A. Yes.

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Plaintiffs Evidence.
No. 14
Herbert A. Deal.
Examination
(Contd.)

- In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 14 Herbert A. Deal. Examination (Contd.)
- Q. They are made payable to Dr. Sawyer and endorsed by him.
- A. Both endorsed by him.
- Q. And both deposited in the Royal Bank of Canada?
- A. Well, I cannot say for certain that they are, but I can indicate that they were.
- Q. The Royal Bank of Canada stamp is on the face of it?
- A. It is, but the endorsement of that kind can be cash taken out of the bank, I cannot say. A
- Q. Now, we can put them together. Now, that first year we also have credit which has been given to Dr. Sawyer. One is 29th May, 1953, a personal cheque deposited to the plaintiff's account, an entry of £5,000 which I believe was a cheque that Dr. Sawyer deposited to the company's account.
- A. That is correct.
- Mr. Adderley: That is shown, my Lord, as a credit to him at the beginning of the period when he took over the management of the track. B
- Q. At that time I believe there was no money in the bank?
- A. No, there was one pound left in the bank.
- Q. And Dr. Sawyer deposited £5,000?
- A. Yes, personal cheques which he deposited into the account and was given credit for it.
- Q. And we also have a credit here 1953-54 for a truck which was purchased from Kelly Motor Company for £950. Can you explain that at this stage and then you will have to explain it again the following year? C
- A. That was the purchase price of a new truck from Kelly Motor Company.
- Q. Why is it shown in 1953-54 and 1954 is a credit for Dr. Sawyer.
- A. In finalising the account for 1954 the intention was to give Dr. Sawyer credit for the truck he had personally purchased and put in the name of the Montagu Park Racing Association. D
- Q. That was your instructions at the time that he had purchased the truck from Kelly Motor Company?
- A. That is right.
- Q. And he was given credit for the amount for the truck at the end of that year?
- A. That is right.
- Q. Well, we go back to it again in the following

year. There is also the amount of £27.18. 0. credit overpaid by the defendant on the purchase account I think. That is a part which he overpaid and you gave him credit.

A. Yes, I know of it. I think this was the first and second payroll of its kind when he came into it in May 6th, 1954, he paid payroll at the track the first year.

Court: When the truck comes in again next year, you found that he had not bought the truck actually.

A. Well, yes, it means that. Could I explain now?

Court: Yes.

A. At the end of 1954 Dr. Sawyer was credited with the truck that was in the name of the Montagu Park Racing Association but in the following year Dr. Sawyer said he had a note at the Royal Bank of Canada that was due in respect of that truck so the Montagu Park Racing Association gave him a cheque for £950 to pay the note. That of course cancels the credit at the end of 1954.

Court: The first one was an error?

A. No, not at all. That means that Dr. Sawyer had in fact paid for the truck at Kelly Motor Company, the first entry.

Court: When had he done so?

A. The following year the track paid it.

Mr. Adderley to Court: Kelly Motor Company was in fact paid by Dr. Sawyer.

A. That is the case, yes.

Q. Although at the end of the 1954 season you thought that that was the case when he had in fact paid?

A. Yes.

Q. You were told by him that that was so?

A. I knew that the company had a new truck. No record of the payment or charge.

Q. So that the company had to pay for it?

A. Yes.

Q. And it was credited to Dr. Sawyer?

A. That is correct.

Q. Now the following year the note at the Royal Bank of Canada had not been paid by Dr. Sawyer?

A. No.

Q. And the company paid off the note?

A. Yes, that is right.

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Plaintiffs Evidence.

No. 14

Herbert A. Deal.

Examination (Contd.)

- In the Supreme Court of the Bahama Islands Common Law Side
- Plaintiffs Evidence. No. 14
Herbert A. Deal.
Examination (Contd.)
- Q. That is why it appears in the 1955 statement as a cheque to the Royal Bank of Canada?
- A. Yes.
- Q. Look at the cheque for the following year 1954-55 beginning with the cheque dated 27th May, 1954 to Godfrey Kelly £500. Do you know why that was charged to his personal account?
- A. Because I was instructed it was a personal item.
- Q. Although made to Godfrey Kelly it was something personal. Now a cheque made to Raymond W. Sawyer we do not have to admit. That one credited account of Br. Colonial Hotel, £10.17. 5. What do you have to say about that one? Can you explain that item?
- A. From memory, yes I can. That is an amount which Dr. Sawyer owed to the Br. Colonial Hotel.
- Q. At that time the Br. Colonial Hotel and the Montagu Park Racing Association had some connection?
- A. Yes. They had concession at the bar and restaurant at the Club House on race nights.
- Q. And this was shown as a credit on their account?
- A. They were given credit for it.
- Q. This shows as a deposit on his personal account.
- A. No actual cash or cheque involved.
- Q. The rest of those were cheques made to a member on the bank or made payable to Dr. Sawyer, to the Montagu Park Racing Association. And that the same applies to the cheques made payable to the Montagu Park Racing Association in this year as in subsequent years in respect of cash withdrawals from the racing funds that day.
- A. The same procedure in each case and indicated to Dr. Sawyer personally.
- Mr. Adderley: The following year 1955-56, my Lord, a cheque made payable to Dr. Sawyer and one cheque only made payable to Montagu Park Racing Association dated 31st December, 1955.
- Q. I think we need an explanation for that part cheque to Public Treasury for Custom's duty £12. 1. 3; part cheque Ralph Roberts £1. 5. 4. can you explain those two items?
- A. They were charged in respect of custom and freight duty for something for Dr. Sawyer. Personally paid for by the Montagu Park Racing

Association part cheque made payable to Mr. Ralph Roberts was paid to Mr. Roberts.
 Mr. Adderley: Right at the back, My Lord, are two cheques payable to Verdant Gardens £9.13. 7. and credited Verdant Gardens £13.10. 0. total £23. 3. 7.

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Q. What is £9. 13. 7. in respect of?

Plaintiffs Evidence.

A. I cannot tell as it is part of a cheque. Credit is given Verdant Gardens account.

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A Q. A cheque paid to Verdant Gardens for his personal account?

Herbert A. Deal.

A. Yes.

Examination
 (Contd.)

A Q. And then you credited Verdant Gardens with £13.10. 0.

A. Yes, that was credit given to the Verdant Gardens account at that point over to the Montagu Park Racing Association.

Q. They owed Montagu Park Racing Association?

A. Yes.

B Q. And then you were given credit on their account and this was debited to his personal account?

A. For the benefit of Dr. Sawyer.

Q. Part 100 and 10-4-4?

A. Yes, the same thing applies.

Q. That is part of the cheque made payable to Columbus Pharmacy and part of which was debited to Dr. Sawyer's personal account.

A. That is correct.

C Q. In the last year 1956-57 first admit cheque Dr. Raymond Sawyer but item on the cheque the Provost Marshal, can you explain that or say whether it was charged to Dr. Sawyer's personal account?

A. It was and charged for Dr. Sawyer's personal use, a cheque given through Dr. Sawyer for Dr. Sawyer.

Q. The cheque given to Dr. Sawyer.

D A. Dr. Sawyer had it prepared and paid to the Provost Marshal.

Q. It was a payment made on his behalf?

A. Made on his behalf, yes, and charged to his account.

Q. He directed the cheque made payable to him.

A. Yes.

Q. In respect of the years 1954, 1955, 1956 and 1957, Dr. Sawyer was given credit for £5,000 due to him in respect of salary?

A. Yes, that is right.

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Deal.

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(Contd.)

Q. Will you look at the balance sheet for the year ending 30th April, 1955, that is the first year the debit is given for £5,000 salary. In the balance sheet for the 1955 there is no account which shows salary is paid to Dr. Sawyer.

A. Not in the balance sheet. That is not the balance sheet either.

Q. Where would you expect to find it?

A. In the statement of profit.

Q. Can you look at them and tell us? There is no item for the amount of £5,000 or charge against the company for salary for Dr. Sawyer.

A. There is no single item.

Q. Can you explain why that is so shown in the accounts?

A. Well, to commence with the profits are prepared in two parts one for the summer and one for the winter. His salary is spread over two periods.

Q. Now, where do we find the salary in the accounts?

A. It would be in the race pari-mutuel during that meet. Dr. Sawyer was given credit to his account for £5,000 in respect of salary. It does not appear as one item in any of the statements but was put down in the form of something else. It is indicated as closed season salary £1,000, wages pari-mutuel £2,400, administrative salary £800, outside wages £800. The description in respect of the entries is salary for the year which Dr. Sawyer has authorised to be credited to Dr. Sawyer's personal account.

Q. Now, can you tell us where those items appear in the profit and loss statement?

A. They are in the accounts.

Q. What do you call these on your accounts?

A. Salaries: closed season salaries, wages pari-mutual, administrative salaries and outside wages.

Q. Is that the way it was done in the years 1955, 1956 and 1957?

A. There are other items there.

Q. Can you tell me the reason why it was done this way?

A. It is no speculation on my part.

Q. When you say no speculation did you decide to do it this way or were you told to do it this way?

A

B

C

D

E

A. No, it was done on Dr. Sawyer's instructions.

Q. You didn't decide how it should be done?

A. No, it was done on his instructions. If it were left to me I would have done it as one item.

Q. But this was done on Dr. Sawyer's instructions?

A. Yes, very definite.

A

Q. Will you look at the balance sheet for the first year 1954, date of preparation. I have been asking you about 1954, 1955, 1956 and 1957. Now I will go on from 1954 the first year. Were these accounts prepared by you in the way you wanted them prepared or were they prepared by you on instructions through anybody?

A. No, I don't think so. I have been preparing the balance sheets and this was a customary matter in checking the accounts and Dr. Sawyer left it to me on the point that before it is finalised Dr. Sawyer and I had a conference.

B

Q. I am talking about the details of salaries in respect of the years, 1954, 1955 and 1956.

A. Yes.

Q. What about other items in the accounts, were they also done on his instructions?

A. Well, they would naturally fall into their own accounts, salaries into salaries, pari-mutuel into pari-mutuel, etc.

C

Q. Alright. Will you look at the 1954 accounts shown on your right hand side - liabilities side, shareholders' withdrawals which amounts to £24,000. What is included in that item?

A. That amount included two items, first of all the 3% paid to Mr. Nihon by Dr. Sawyer and a total of Dr. Sawyer's withdrawals.

Q. The amounts shown is Dr. Sawyer's personal account in your ledger?

D

A. That is right.

Court: The balance sheets for 1954, 1955, 1956 and 1957?

Mr. Adderley: They are the same in 1954 and 1955. They change in 1956, 57.

Q. The total that is shown on the balance sheet is deducted from the profits.

A. That is shown as accumulated profits.

Q. Yes. The position as regards the 3% that

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Deal.
Examination
(Contd.)

- was paid to Mr. Nihon, can you explain that?
- A. In the year 1954 a cheque drawn in the amount equivalent to 3% on the intake of the gross pari-mutuel at the race track.
- Q. Whom was the cheque drawn in favour of that year?
- A. The cheque was drawn in favour of Dr. Sawyer that year.
- Q. And then what happened to the cheque?
- A. It was endorsed over to Mr. Nihon. A
- Q. What happened to the cheque after it was endorsed over to Mr. Nihon?
- A. It was delivered to Mr. Nihon.
- Q. When you say delivered to him do you mean that it had to be kept and delivered to him by you?
- A. It was delivered generally by myself.
- Q. You gave Mr. Nihon a cheque made payable to Dr. Sawyer and endorsed by Dr. Sawyer?
- A. Yes.
- Q. And those amounts were debited to the account of Dr. Sawyer race day, not to his personal account? B
- A. Yes, not his personal account.
- Q. Did you know why the amount of 3% was being made to Mr. Nihon?
- A. Yes, I know very well indeed. It was 3%.
- Q. Did you know why he got 3%?
- A. No, I did not know.
- Q. Did you know whether that was paid in respect of anticipated dividends or profits or any obligation which he had to Dr. Sawyer? C
- A. In the first several months of this racing season I had no knowledge what the 3% was based on, whether it was a contract between them, or something for the company itself. All I did was prepared the cheque and delivered to Mr. Nihon.
- Q. But you did not know under the circumstances?
- A. Not immediately or officially either.
- Q. When did you find out more about this 3%? D
- A. It is very difficult to say because this went on for 2 years, cheques being made payable to Dr. Sawyer and endorsed to Mr. Nihon.
- Q. That went on for 2 years?
- A. Well, for a length of time and through conversation I suppose I got to know. During the course of that time Mr. Nihon told me that he was entitled to receive it under some agreement or from Montagu Park, E
or something of that nature.

- Q. Did he ever say anything to you about the method by which these amounts were paid to him?
- A. At that time?
- Q. At any time?
- A. Later on I think he said he wanted the way in which it was being paid changed.
- Q. It was in fact changed?
- A. It was in fact changed.
- A And the cheque was made payable to him from the Montagu Park Racing Association?
- A. Directly, yes.
- Q. Do you know why that was done?
- A. No, I cannot honestly say why.
- Q. Now, so far as you are concerned from your balance sheet there, would it not be important for you to know the nature of the payment to arrive at a proper and accurate balance sheet accounting for the end of the year?
- B Q. Most certainly.
- A. In the 1954 season you did not know the reason why these payments were being made to Mr. Nihon. Let us assume for the purpose of argument that you knew that these amounts were an obligation which the company had to Mr. Nihon. If these amounts were an obligation to Mr. Nihon for expenses or whatever you want to call it, would you show that the same way in your balance sheet?
- C A. Well, I don't think - I would say, in other words, if you ask me it would be a direct charge to profits.
- Q. Not a direct charge it would be an operating expense of the company. If it were charged as operating expense of the company would you show it in this form on your balance sheet?
- A. If I was told it was an expense to the company I would present it on the profit and loss statement.
- D Q. And it would appear as net profit at the end of the year?
- A. Most certainly.
- Q. The net profits would be that much less than it actually appears?
- A. Yes.
- Court: Why doesn't it go on a balance sheet as withdrawal of capital. I don't know much

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Herbert A.
Deal.

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(Contd.)

about companies accounting. The activities of the company doesn't appear on a balance sheet it should be a profit and loss account.

A. An accountant has more than one thing to do, the Racing Commission gets a copy of this statement and I think it is of interest to the Commission and is prepared for that purpose.

Q. I do not quite follow the Racing Commission side of it. A

A. The Racing Commission gets a copy of the financial statement for the year.

Q. Does the Racing Commission ever see a copy of the balance sheet?

A. They get a copy with the application for a licence for the following year.

Q. Did anybody tell you this or was it your own conclusion?

A. I invited Dr. Sawyer to discuss how it should appear in the accounts. B

Q. And you and Dr. Sawyer discussed how the 3% payment to Mr. Nihon should appear in the accounts?

A. Most certainly this was finalised in his presence and for his benefit.

Q. When you say it was discussed with him did he decide how it should appear in the accounts or you decided how it should appear?

A. My feeling about how it was presented to me was a different matter. C

Q. This was the result of his decision how it appeared in the accounts in this way?

A. Yes.

Q. When you say you think it had nothing to do with the Racing Commission you mean you did not want to show or he did not want to show in the balance sheet that these payments were being made to Mr. Nihon.

A. The intention was that the profit and loss was to remain almost (Indecipherable) for the purposes of the Racing Commission. This was a new amount and the only place for it to go was in the accumulative profit. D

Q. But if in fact it was not a charge of the accumulative profits but in fact it was an operating charge against the company then of course it is not correctly shown in the balance sheet?

A. I still insist it doesn't make any difference from my point of view. E

Q. It may not. I am only putting it to you now because it may in fact be the case but as far as you are concerned you were doing it as Dr. Sawyer instructed you to, but his Lordship asked you a moment ago if it should not appear in your profit and loss statement, on your right hand side.

A. Well, speaking, now I know more about the item itself, I would say it would more probably be on the profit and loss and not under the additional balance sheet.

Q. Would you say it was more probable belonging on the profit and loss?

A. And the charge.

Court: The 3%. What about the other item.

A. I can only deal with that one at the time.

Adjourned.

Q. Mr. Deal, will you open your 1954 balance sheet. That shows here on your right hand side, liabilities, accounts payable £14,496.14. 1?

A. Yes, £14,496.14. 1.

Q. And cash on the left hand side, assets, the Royal Bank of Canada?

A. £1,363. 0. 2.

Q. If the 3% payment to Mr. Nihon was shown in your profit and loss statement your net profit would be reduced to £5,000?

A. Certainly.

Q. The net profit for that was his £5,000.

A. The £15,000 and £18,000.

Q. Can you refer in your ledger to the 3% payment up to the end of that year?

A. £12,133. 9. 0.

Q. If that 3% is shown in your profit and loss statement your net profit would be £15,000 less £12,000 roughly?

A. Yes.

Q. Your net profit would only be about £3,000?

A. That is right.

Q. But it doesn't appear in your statement?

A. No.

Q. The amount shown in the shareholders' withdrawals we know that that includes 3% payments to Mr. Nihon as well as Dr. Sawyer's withdrawals?

A. Yes.

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.

Ex. 1/1
Herbert A. Deal.

Examination
(Contd.)

A

B

C

D

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 Plaintiffs
 Evidence.
No. 14
 Herbert A. Deal.
 Examination
 (Contd.)
- Q. Did you know what the shareholding position of the company was?
 A. I was told that Dr. Sawyer was the sole owner of the race track.
 Q. The withdrawals which he made were included in that figure was that your decision to include them and show them on the balance sheet in that form?
 A. I think it was ultimately Dr. Sawyer's to have it shown that way. A
 Q. You think it was Dr. Sawyer who wanted it that way?
 A. Yes, it was.
 Q. If the withdrawals were in fact loans to him they would be shown in a different form altogether would not they?
 A. Most certainly.
 Q. They would appear in your accounts receivable here on your left hand side?
 A. Yes. B
 Q. That would not reduce your net profit?
 A. It would not affect the net profit at all.
 Q. Look at the following year, 1955. That is in respect of the period 1st May, 1954 to the 30th April, 1955. I believe the sum of £10,000 was paid into the company's account on the 31st May, 1954?
 A. The entry is the 27th May, 1954.
 Q. And that is shown as a deposit to the Montagu Park Racing Association Limited? C
 A. The Montagu Park Racing Association bank account.
 Q. Is that also shown on the credit of Dr. Sawyer's personal account?
 A. Finally, yes.
 Q. When you say finally you mean it was not done at that time?
 A. At that time it was entered to Dr. Sawyer's credit, it was not posted then.
 Q. Will you find out for us when exactly it was entered as a credit? D
 A. It was entered at that time, May 27th, 1954.
 Q. May 27th it was also entered as a credit in his personal account?
 A. Indicated to me to go to his credit in the cash book.
 Q. Yes, but now I am talking about the personal account in your ledger as it is shown there?
 A. Oh, yes.

- Q. When was that actually shown there?
 A. That same day.
 Q. What date?
 A. The same date as the cash book, 27th May 1954.
 Q. Now, that doesn't appear in your balance sheet for the year ending 30th April, 1955.
 A. Not as a single entry, no.
 Q. But it doesn't appear at all does it?
 A. Well, it does not appear on its own, no. I cannot show you the item here for the £10,000 for Dr. Sawyer.
 Q. Well, it doesn't appear in any form in the profit or loss or in the balance sheet?
 A. It is in the figure shown as shareholders' withdrawals during the year, the same way withdrawals were shown the previous year.
 Q. Now, when you say the figure in that year was £8,000?
 A. It is the effect the figure has on that total.
 B Q. You mean that that would be shown as £10,000 less in that year but it doesn't appear in any form of an item in the balance sheet?
 A. No, it is not there.
 Q. Did you know that the company had signed a promissory note for Dr. Sawyer for £10,000.
 A. No, I did not know that. I know now.
 Q. When did you find it out?
 A. Sunday of this week.
 C Q. If in fact there was a loan from Dr. Sawyer to the Company how would that be shown in your balance sheet?
 A. That would be shown as a liability. I would certainly have to have a regard for it.
 Q. It would merely show as an account payable?
 A. Yes, an account payable or note payable.
 Q. It was a note from the company to Dr. Sawyer?
 A. No, I don't know.
 Q. You merely wrote of £10,000 in Dr. Sawyer's personal account?
 D A. Well, I credited Dr. Sawyer's personal account.
 Q. Will you look at the 1956 balance sheet? In the 1955 statement the withdrawals are all shown in the same figure, 3% paid to Mr. Nihon or withdrawn by Dr. Sawyer.
 A. No that figure is roughly £8,000, it is the 3% Dr. Sawyer's withdrawals added to it and £10,000 taken away from it that is the net combination of the three in 1955.
 E Q. That is a combination of three figures included the £10,000.

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Examination
 (Contd.)

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- A. Exactly.
- Q. It doesn't exactly show as such because the figure is £10,000 less than the total amount?
- A. (No answer).
- Q. Do you see what I mean?
- A. I am afraid I don't.
- Q. The shareholders withdrawals in that year we call that the statement of revenue of the 3% paid to Mr. Nihon together with Dr. Sawyer's withdrawals really amount to £18,000 plus. A
- A. £18,000 would be the figure.
- Q. £18,000 or whatever it is there. But in fact what you have down here is subtracted the £10,000 paid into the company by Dr. Sawyer?
- A. That is right.
- Q. So that it only shows £8,000.
- Q. Can you explain why it is that £10,000 is not shown in the profit or loss or balance sheet? First of all did you discuss this with Dr. Sawyer? B
- A. Oh, yes. It was discussed at the time of the deposit.
- Q. Did he give you any instructions as to how that should be shown?
- A. Yes. He might have said as simply as place this to my credit, my account.
- Q. Did you discuss with him the appearance of it in the balance sheet at the end of that year not at that time but at the preparation of the balance sheet? C
- A. Exactly as before.
- Q. Now, let us look at the 1956 accounts. You have got shareholders' withdrawals but it is as a liability not two figures?
- A. Yes.
- Q. And over here assets, you have got the personal account of Dr. Sawyer?
- A. That is correct.
- Q. Now that is a departure from your 1954-55 practice? D
- A. That is correct.
- Q. Can you tell us why that is so?
- A. Well, as I said these accounts were finalised with Dr. Sawyer on instructions.
- Mr. Adderley: My lord, it is here on your right, liabilities, is shareholders' withdrawals. Here on the left, assets, Dr. Sawyer's personal account.
- Court: Yes.

- Q. Now do you know why the form of accounting was altered in that way in 1956?
- A. Well, I think Mr. Nihon had additional ownership due to a change and after my copies had been drafted with Dr. Sawyer I was told that
In 1956 accounts Mr. Nihon's ownership existed and the accounts were finalised so
- A Q. Do you know whether the 1956 accounts were done on Dr. Sawyer's instructions or Mr. Nihon's?
- A. Certainly Dr. Sawyer's because when it was finalised I handed it to him and from there on it was his.
- Q. Now were the instructions regarding the change before the accounts were actually shown?
- A. Well, I cannot exactly remember but after one meeting with the other one finally decided to show these two figures, that is 3% and Dr. Sawyer's withdrawals in this way. Let us take the top figure the 3%
- Q. The £11,000 plus the 3% payment to Mr. Nihon.
- A. And the other figure would be what Dr. Sawyer withdrew that year.
- Q. The bottom figure that is not the 3% payment?
- A. No.
- Q. They are Dr. Sawyer's personal account?
- A. Correct.
- C Q. And over on your left hand side your personal account is shown there?
- A. Yes.
- Q. It is really only a part of the amount shown on Dr. Sawyer's personal account, is that not right?
- Q. Now look at your accounts for 1957.
- A. That is the departure.
- Q. Now that one over on your side does not include shareholders' withdrawals, it merely in fact shows the 3% payment to Mr. Nihon?
- D A. For that year.
- Q. For the year ending 30th April, 1957?
- A. Yes.
- Q. And on your left hand side, your assets, the personal account of Dr. Sawyer, the total withdrawals made by him for that year?
- A. In two accounts.
- Q. Again do you remember on whose instructions the balance sheet was prepared, Dr. Sawyer's or Mr. Nihon's?
- E

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(Contd.)

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- A. Well, there again the original draft was prepared with Dr. Sawyer and myself and then it was referred back by Mr. Nihon on Dr. Sawyer's instructions and then a change came about and it was finally prepared and given to Dr. Sawyer himself.
- Q. The figures over there are in respect of the years 1956-57 in the 1957 balance sheet, Dr. Raymond W. Sawyer £5,481.10. 2.?
- A. That is carried forward. A
- Q. Some of it is carried forward. How is that carried forward.
- A. £3,373.14. 6. from the previous year 1956?
- Q. Again can you explain why the form was changed in this year?
- A. After conference with Dr. Sawyer and a conference with Mr. Nihon I went back to Dr. Sawyer.
- Q. Was that all at the same time?
- A. Yes. It was finalised in Dr. Sawyer's presence. B
- Q. The appearance in the statement of the 3% payment to Mr. Nihon is shareholder's withdrawals. Did Mr. Nihon say anything to you about the form in which they appear on the balance sheet?
- A. I cannot recall. I know he explained about the way it was paid to him at one point. I think he said it should be shown in the profits. C
- Q. It should have been shown in the
- A. Profit and loss statement
- Q. Sometime during the period?
- A. Yes.
- Q. You don't remember when?
- A. No.
- Q. But he discussed with you how it should appear in the present circumstances?
- A. Yes.
- Q. And he suggested to you that it should appear in the profit and loss statement? D
- A. That is quite possible. At this point it was not followed through.
- Q. Is there any reason why?
- A. Well, if I may say it came through to Dr. Sawyer and if he gave me the O.K. for the accounts they were typed up and handed back to him and they were identical in practice. I think it was Dr. Sawyer in 1954 who did

- not want it to appear before the eyes of the Racing Commission if there is anything at all I think it was Dr. Sawyer's thinking.
- Q. When you say he did not want it to appear before the eyes of the Racing Commission you mean the figure or to whom the money was made, the way in which it was done?
- A. Both I think.
- Q. Both?
- A. Because they got a copy of the financial statement with each application for licence.
- Q. These statements in 1956, 57 were they prepared on Dr. Sawyer's instructions as well?
- A. All the way through.
- Q. Look at the 1955 statement for me. That is the one which shows sundries account payable. These were in fact paid the following year?
- A. The following month, January, 1956.
- Q. Does the payment of this account appear in the profit and loss statement?
- A. The credit is set up so that they appear in these figures because they are expenses and everything else that were all set up at that time.
- Q. They appear in the 1954-55 figures?
- A. No, not 1955, 1953-54.
- Q. They appear in April, 1954?
- A. Yes, they have nothing to do with the year 1955.
- Q. What I am after, Dr. Deal, is purely accounting purposes. You need to explain this for me and that is at the end of 1954 your accounts payable were to the extent of £14,000 and your cash on hand somewhere, say £1,000.
- A. Yes.
- Q. Now these figures are carried forward into 1954-55?
- A. Mr. Adderley, in each one of these individual credit accounts the amounts are owing to them but they are carried forward in a sense that they are paid for in 1955 cash book, but they do not affect in any way the profit or loss in the following year if they are set up in 1954 they can be paid six years hence. The effect on the profit and loss had already been had.
- Q. Does it affect your surplus in any way?
- A. No, it does not affect the surplus. In a

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- very rare instance if one account had to be adjusted a discrepancy of an amount would affect. So long the amount remains the same it would not affect the surplus.
- Q. The figures there actually show there in that year, 1955, surplus of £30 plus. That is only concerned with the assets of the company in the actual cash in the bank?
- A. No.
- Q. I want to find out how we can arrive at a realistic appraisal of the company's position in determining whether there was any profits available for distribution at the end of 1954. I want to know how to extract that from those figures? A
- A. From the standpoint of the bank balance?
- Q. No, from the standpoint of the company, if the company wanted to declare a dividend on the 30th April, 1954, I want to know how we can look at this balance sheet and say whether the company can declare a dividend or not? B
- A. Well, I showed a profit of £15,000 from the profit and loss statement. Now we are talking about taking 3% from that which would be £12,000.
- Q. If the 3% is deducted from that then the net balance would be
- A. Roughly £3,000.
- Q. £2,885. 8. 9. would be the actual cash?
- A. Applying 3%.
- Q. Yes the 3% is applied to the other expenses and the net profit would be £2,885. 8. 9.? C
- A. Yes.
- Q. And the same thing would apply after you look at the 1957 accounts. It shows a profit of £10,377.10. 5. but in fact if the 3% payment to Mr. Nihon was shown as operating expense it would show a loss of just under £1,000? D
- A. Yes, that is right.
- Q. Now did you know what were the accounts payable to the company at the end of 1958 when the Montagu Park Racing Association stopped operating the race track?
- A. They were ---
- Q. Are these accounts payable to your general ledger or your cash book?
- A. Cash book.
- Q. Do you remember the amount was something like £15,000?

- A. Including the overdraft at the Royal Bank of Canada.
- Q. At the termination of the operation season, 1958?
- A. Yes.
- Q. I believe you know that the company borrowed £10,000 from Mr. Nihon?
- A. I do have knowledge of that.
- A **Q.** And that was paid into the bank account of the Company?
- A. Barclays Bank.
- Q.** And in addition to that the sum of £6,000 was paid into that account from the insurance company?
- A. £6,300 and a small sum of £300 from another insurance company.
- Q.** Just under 17,000
- A. Yes.
- Q.** And that money was used by the company to pay outstanding accounts which it had?
- B A.** To pay off all creditors including the Royal Bank of Canada.

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Cross-examined by Mr. Leonard Knowles:

Cross-examination by Mr. Leonard Knowles.

- Q.** Mr. Deal, was your firm acting as professional auditors?
- A. Not auditors, certainly not. I was doing the accounts, I could not audit my own accounts.
- C Q.** I see you have on your letter head "Herbert A. Deal, Accountants and Auditors".
- A. Well, I do one thing as well, yes. But Mr. Knowles I don't think it is the practice for an accountant to audit his own work, it is one or the other.
- Q.** Do you believe that the accounts which you presented were true?
- A. Most certainly as far as the totals used.
- D Q.** Not as far as everything was concerned not just the totals?
- A. Oh, yes.
- Q.** In other words did you present a true account?
- A. Oh, Mr. Knowles, most certainly I did.
- Q.** That is why I am surprised you hesitated.
- A. Because I was trying to think in what particular way you mean.
- Q.** I am not trying to trap you, Mr. Deal, in any way, just answer candidly.

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- A. Thank you.
Q. And this was your own opinion?
A. Let us start from the beginning. These accounts on my note paper as they are here were finalised in Dr. Sawyer's presence.
Q. No, Mr. Deal, please answer the question. Was this your own opinion that the accounts were true?
A. Yes.
Q. And that they showed the true position as at the date that they were presented?
A. That is the intention of the accounts.
Q. Yes or no, please.
A. Yes.
Q. In fact ---
Court: You are asking for his opinion?
A. In my opinion they were intended to be so in any event. They were explained to me.
Q. And in fact you embodied that in the certificate which you gave each time which reads as follows: "These statements have been prepared from the books and records of your company," and this addressed to the Directors, "and in our opinion shows the true position as at the 30th April, 1954?"
A. Mr. Knowles, I said that then and I say so now.
Q. So that you were not looking to Dr. Sawyer to tell you how to prepare the accounts were you? You were exercising your professional ability and discretion were you not?
A. Mr. Knowles, these accounts were drawn prior to Mr. Nihon --
Q. No, Mr. Deal, I asked a direct question and I expect a direct answer.
A. I cannot answer.
Court: You will be able to explain later. Just answer the question.
Q. The question was, in preparing the accounts you were exercising your discretion and ability and not acting on the instructions of Dr. Sawyer?
A. I had to be guided by Dr. Sawyer's wishes. He was President, Treasurer, Managing Director and everything else and I gave preference to his ---
Q. And you an accountant, a qualified man?
A. I am a qualified accountant.
- A
B
C
D

- Q. Do you believe that what Dr. Sawyer said to you was right and proper?
- A. I had no reason to disbelieve that it was right and proper.
- Q. In fact you would not have done it this way if you had believed it was wrong?
- A. No, I certainly would not have done it.
- Q. So then we may think these accounts, as indeed you said in your certificate, expressed your opinion and your views may we not?
- A. That is threatening, Mr. Knowles.
- Q. Well, now how far do you want to stop from threatening. How would you put it, Mr. Deal?
- A. Well, I am not dodging from the fact that these accounts were prepared from year to year in my opinion, on the basis of what happened it is immaterial to me, it was with the wishes of the person concerned.
- Q. What I am trying to find out is whether they expressed your own personal opinion?
- A. Well, Mr. Knowles, probably I know now of the agreement for the arrangements for special payments to take place, I may have made certain queries but if I had reason to believe it was otherwise then I had no reason to present it otherwise.
- Q. Had you no knowledge of these agreements?
- A. I had no knowledge.
- Q. None whatsoever?
- A. I don't think I have seen the first agreement ever. I happened to see the second agreement after the whole thing was signed.
- Q. Well, you see, Mr. Deal, Mr. Nihon told us this morning that in the early years when you used to come to him with his 3% cheque which had been paid to Dr. Sawyer, he objected to this procedure and wanted to know why he could not be paid directly from the company. And he told us that your excuse always was, you had read the agreement and you were following the agreement.
- A. I have not seen any agreement.
- Mr. Adderley: I don't recall Mr. Nihon saying that.
- Mr. Knowles: My lord, I have a note on it and so has my clerk.
- Mr. Adderley: I don't think we should rely on that, my Lord.

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- Mr. Deal, you would have to know something about the payments to be satisfied whether it was right and proper to put them in your accounts or not.
(The record was played. Mr. Nihon did not say Mr. Deal saw agreement).
- A. After 1953, 1954, 1955, Dr. Sawyer told me that he had to pay Mr. Nihon 3% by something special between themselves. I did not question it. I based the cheque on the amount of money staked at the race track and the cheque was made payable to Dr. Sawyer and endorsed over to Mr. Nihon. A
- Q. Was this procedure at any time objected to by Mr. Nihon?
- A. Yes, at a later stage.
- Q. About when?
- A. It is difficult to say. I would not say it was the first year.
- Q. Would you say at least by 1956? B
- A. Yes.
- Q. Did Mr. Nihon give you any information about his 3% payments.
- A. He just said the cheques should be made payable directly to him and I referred this to Dr. Sawyer.
- Q. Did you continue to set them up in your book in exactly the same way?
- A. No.
- Q. Did you change? C
- A. It went from Dr. Sawyer's account to Mr. Nihon's.
- Q. Did the change take place in January, 1957.
- A. If I refer to the cash book I would be able to tell you. That change took place the first race day, 1957.
- Q. And did you continue to show Mr. Nihon's 3% as shareholders' withdrawals
- A.
- Q. Are they so shown on the balance sheet as of 30th April, 1957? D
- A.
- Q. And Mr. Nihon was quite happy about the 3% being shown that way?
- A. Well, I think they both agreed to it.
- Q. I am talking about Mr. Nihon now.
- A. I suppose he was. Mr. Nihon saw a pencilled copy of the account.
- Q. Is there anything wrong with showing Mr.

- Nihon's 3% in this manner now that you have knowledge of the agreement?
- A. Frankly I don't think so, but since I have seen the agreements I would know where to charge them all probably it would be considered a direct charge against the operation of each particular year.
- Q. Why?
- A. I feel that it is an expense to the company. It could be a matter of choice, in my opinion I don't think it makes any difference.
- A. When you speak of the agreement which agreement do you mean?
- A. The second agreement.
- Q. The 1956 agreement between Dr. Sawyer and Mr. Nihon?
- A. Yes.
- Q. In the years 1953 and 1954 were considerable capital expenditure carried out?
- A. Yes.
- B. Q. The cheques which were put into the float and cash taken out, was there anything unusual about this.
- A. Well, so long as the bank accepted I suppose it is alright I imagine. I did not prepare the cheques and I did not know about them until next day.
- Q. Were the cheques prepared by your order?
- A. Not by instructions.
- Q. Well, anyway was there anything improper or unusual about it?
- C. A. Why do you say unusual.
- Q. Well, let me ask this question. Had it happened previously, before Dr. Sawyer came into the company?
- A. I would say no.
- Q. Well, was there anything improper about it?
- A. I cannot be the one to judge whether it was improper. After all Dr. Sawyer was the President, shareholder and managing director and if he chose to do it that way why should I query it.
- D. Q. Could not these payments be in respect of his salary?
- A. It would be in an extraordinary form.
- Q. Were these cheques put into the float in 1955?
- A. Yes.
- Q. Well, could not these payments be in respect of his salary?

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- A. It would be an extraordinary way of getting your salary.
- Q. The salary was charged to the same account wasn't it?
- A. Yes, that is because the salary was so irregularly drawn, the account it was credited and charged with all its and he was given credit for £5,000.
- Q. As regards the way in which Dr. Sawyer's salary was dealt with wasn't it normal accountancy practice? Was there anything improper about it, the way in which his salary was charged?
- A. No, there was nothing wrong with it.
- Q. I just wondered why you went into such details?
- A. No, because nobody seemed to realise it in the statement. That is what it was charged to his salary account, stationery or telegrams.
- Q. I have to put it to you, Mr. Deal, that Dr. Sawyer never instructed you as to how the accounts should be prepared, that was your job?
- A. That is not the case.
- Q. Will you look in your journal entry in PJ 110. April 30th loan payable A1 £10,000 to Dr. Sawyer personal B12 £10,000 transfer amount in loan account of Dr. Sawyer personal account being replacement of portion of withdrawals. Does not that deal with the £10,000 as a loan?
- A. Yes, but it was changed.
- Q. Why was it changed that way?
- A. I think it was in May, 1954 Dr. Sawyer told me it was to be placed to his credit, to his account. I did not know until sometime later in the year when the statement was prepared, I think Dr. Sawyer came to me and if I remember rightly it was in May, 1954 and told me it was to be placed to his credit in his account. I did not know until sometime later in the year and I believe there was a conflict with the Royal Bank of Canada that Dr. Sawyer had information showing Montagu Park Racing Association owed him £10,000, a loan, and I spoke to Dr. Sawyer and he told me yes so I adjusted it accordingly. But when it came to finalise the accounts it was his opinion to change it round again and give credit in his withdrawals account so it appeared in the general ledger.
- Q. Mr. Deal, I must put it to you that Dr. Sawyer never represented this amount in any way but as a loan by him to the company?

A

B

C

D

E

- A. No, he did not.
- Q. And did you set it up that way on April 30th, 1955, DJ98?
- A. Yes.
- Q. To Dr. Sawyer personal loan payable to credit Dr. Sawyer with loan made to company, May, 1954, £10,000.
- A. Yes.
- Q. And when was that entry made 30th April, 1955?
- A. It was entered then and perceivably dealt with later.
- Q. When did you say it was changed, a year ago?
- A. The same year, the end of the year April, 1956.
- Q. Dr. Sawyer informed you of the promissory note?
- A. I knew nothing about the promissory note, I never saw it I was only informed on Saturday of it.
- Q. Are you aware it was kept with the records of the company?
- A. That is surprising to me because I think that should be Dr. Sawyer's personally. It is a complete surprise to me that it exists.
- Q. Look at the 1956 accounts please. I understood you to say that Dr. Sawyer instructed you to show in the assets of the balance sheet £3,373.14. 6. against his name?
- A. Yes.
- Q. Were you present at the meeting of the shareholders at which this balance sheet was discussed?
- A. I recall being at one of the meetings whether it was a general meeting ---
- Q. On the 12th May, 1956 the minutes recall that you were present.
- A. Possibly.
- Q. Mr. Nihon was present at the meeting as well as other members of the company?
- A. I recall that he was present at one meeting I don't know which one.
- Q. And at that meeting do you recall that Dr. Sawyer objected to this item appearing in this position on the balance sheet?
- A. That is possible I suppose, but I don't remember. It possibly came into dispute.
- Q. Well, you see Mr. Deal, you are telling us that he asked you to put it there?
- A. On instructions in every year the balance sheet was the same and in the first two years

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Dr. Sawyer had a view of the accounts and this year they both had seen it and agreed favourably that that was the way the accounts should be presented, whether at a later time he objected I don't remember.

- Q. But, Mr. Deal, they weren't prepared each year the same way?
- A. They varied.
- Q. In 1954-55 the information of Dr. Sawyer's withdrawals were shown in this matter. This was the first time. A
- A. I explained not necessarily in the same form but in the same way in 1956-57.
- Q. I am not quite sure I understand what you are saying. Are you saying that all the balance sheets from 1954 to 1959 were prepared with the approval of both Dr. Sawyer and Mr. Nihon?
- A. 1956, 1957 in consultation with both.
- Q. What you are saying is the 1957 accounts were prepared in consultation with Dr. Sawyer and Mr. Nihon? B
- A. Yes.
- Q. Was Mr. Nihon satisfied with the 1956 and 1957 accounts?
- A. It was the product of the satisfaction of both.
- Q. You say that Mr. Nihon saw that and he was satisfied?
- A. Yes.
- Q. Would it surprise you to know that he says that he had nothing to do with the preparation of the accounts? C
- A. Well, Mr. Nihon may have said that, but I anticipated Mr. Nihon saw the draft figures the same way that Dr. Sawyer saw the draft figures.
- Q. Are you saying that Dr. Sawyer saw the final 1957 accounts?
- A. When they were finalised they were given to Dr. Sawyer in each case.
- Q. Mr. Deal are you not confusing the final 1957 accounts with the draft 1957 accounts? D
- A. No.
- Q. I have to put it to you that Dr. Sawyer never saw the 1957 final accounts?
- A. Well, I am certain it has always been the practice to carry this out.
- Q. You told us that the 1956 accounts were prepared on Dr. Sawyer's instructions. I suppose what you are now saying is that you prepared them on the instructions of both?

- A. I don't know what you are getting at, but 1956 I became aware that the shares were divided and Mr. Nihon had an interest in the track and when the figures were drafted Dr. Sawyer suggested that they be shown to Mr. Nihon which they were. When that came back the changes were noted and they were typed up and given to Dr. Sawyer.
- Q. Is it right that the 1957 accounts were never presented to the shareholders or directors at a meeting?
- A. They were put forward, but whether they were presented or not I don't know.
- Q. With regard to the 1954 accounts I would like to ask you about the surplus of this account. When you were being examined by my learned friend you concentrated on the figure £15,018.17. 9. but a balance as at 6th May, 1953 £39,949. 3.10 is also shown, would that not also be available for distribution among shareholders?
- A. If it is put on buildings.
- Q. Are you not aware that you can borrow?
- A. On leased property?
- Q. Yes.
- A. With the lease almost terminating?
- Q. I am talking about 1954?
- A. I suppose it is possible.
- Q. Yes. So that the figures available for distribution among shareholders was in fact £54,968? That is the total amount.
- A. Yes, if you take off £24,000.
- Q. Yes, but before we get to that. The total amount available to shareholders if £54,968 and the whole of the surplus belongs to the shareholders?
- A. Yes.
- Q. The only separate item is the authorised capital of £3,000. And would not the same argument apply to the other surplus figure to which my learned friend drew your attention?
- A. In theory yes, but in fact, no.
- Q. how were shareholders' withdrawals shown in your accounts prior to 1954?
- A. There was a dividend on one occasion.
- Q. That was the £6,000 dividend I think?
- A. Yes.
- Q. How were the others dealt with? Look at your

In the Supreme
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Common Law Side

Plaintiffs
Evidence.

Re: MIA
Herbert A.
Deal.

Cross-
Examination
(Contd.)

In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 14 Herbert A. Deal. Cross-Examination (Contd.)

general journal page 75. 31st December, 1952 (Illegible)

A. £9,000.

Q. £9,000. What does that show Mr. Deal?

A. Dividend.

Q. But in fact no dividend was formerly declared?

A. It was in the minutes of the company, but it was never shown to me.

Q. Who told you so.

A. The owners of the track?

Q. And who was that? A

A. Mr. Nihon.

Q. And this sum of £9,000 was charged to surplus account like the shareholders' withdrawals by Dr. Sawyer, is that right?

A. Yes.

Q. Treated exactly the same way?

A. Yes, the same way.

Q. And at that point the lease had six years to run?

A. Yes. B

Q. In 1953 there was another withdrawal of £23,802. 2. 6.?

A. Yes.

Q. And again is that charged to surplus against dividends?

A. Yes.

Q. And paid over to Mr. Nihon, presumably?

A. Yes.

Q. Was that proper procedure?

A. Mr. Nihon was the complete shareholder and on instructions I gave it to him. C

Q. Even though there was no formal declaration of dividends?

A. No, it was told to me that it was a dividend and I took it to be.

Q. Am I right in saying that you treated Dr. Sawyer's in exactly the same way?

A. Yes.

Q. And there is no way of distinguishing them, is there? D

A. No.

Q. You remember swearing an affidavit in the winding up proceedings in 1958.

A. I signed some affidavit.

Q. And do you remember that you stated there that the sum of £5,481.10. 2. was due from Dr. Sawyer?

A. That was in the ledger, yes, and it was so shown. E

- Q. Can you explain how that sum has now increased to over £26,000?
 Court: Due to Dr. Sawyer?
 Mr. Knowles: Due from Dr. Sawyer.
 A. No, I did not prepare the writ.
 Q. But I think you prepared the ammunition for the writ?
 A. I gave the information.
 Q. Well, how does the sum increase from just over £5,000 to over £26,000?
 A. I was asked to give a complete list of the withdrawals that Dr. Sawyer had made and that is it. I didn't prepare the writ.
 Q. Well, when you swore your affidavit in 1958 did you regard this sum of £5,481.10. 2. as due from Dr. Sawyer?
 A. Well, it stood so in the balance sheet.
 Q. No, Mr. Deal. Did you, Mr. Deal? I take it that you did.
 A. Well, it has to be.
 Q. Did you regard this as the only amount which was due from Dr. Sawyer?
 A. At that time I have to say yes.
 Q. You don't have to, you are quite free. Mr. Deal, may we ask what you regard as the proper sum which Dr. Sawyer should pay to the company?
 A. That is not my
 It is presumably on the interpretation of the accounts?
 Q. And who is better qualified than you to give us an opinion of the interpretation?
 A. Well, the last accounts were prepared in 1957, surely it would be £5,481. Is that not the figure? I have not got the accounts here.
 Q. Mr. Deal, I wonder if you are talking about the draft in 1957 because there was a difference between the draft and the final accounts?
 A. No.
 Q. Oh, yes. Well, I will come to that in due course but I think you should answer his Lordship's question.
 A. What is that?
 Court:
 A. Well, as an accountant and the instructions which I received and what has been put in our machinery one must accept the figure

In the Supreme
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Plaintiff's
 Evidence.
Ex. 14
 Herbert A.
 Deal.
 Cross-
 Examination
 (Contd.)

In the Supreme
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Common Law Side Q.

Plaintiffs
Evidence.

No. 14

Herbert A.
Deal.

Cross-
Examination
(Contd.)

- £5,481. If the shareholders are saying now there were two accounts owing to the company by Dr. Sawyer, £5,481, and £6,743.
- Q. You see the trouble is that these sums on the left hand side kept increasing, there was no consistency about them.
- A. That is the addition in the year £3,373 to £5,481.10. 2.
- Q. Am I right in saying - I don't want to put words in your mouth, that this is the amount which is due today to Dr. Sawyer? A
- A. At the time this last statement was drafted and the balance sheet presented on the instructions of both owners of the company and I have to say the 1957 figures, I cannot say otherwise.
- Q. Can you distinguish between these amounts and the other withdrawals of Dr. Sawyer?
- A. They are shown in the accounts.
- Q. Well, how did they differ in their nature? B
- A. In this year 1957 there were two items shown as being due to Dr. Sawyer on the list of items, one was personal account £5,481.10. 2. which was withdrawals of salary and not payment to Mr. Nihon.
- Q. Well, is that the ground on which you distinguish them then Mr. Deal?
- A. These are the instructions of the presentation given.
- Q. Whatever withdrawals were made for payment to Mr. Nihon were treated as a proper deduction from surplus? C
- A. The year before, yes, but not in the year 1956.
- Q. I am trying to ascertain whether there was any principles upon which Dr. Sawyer's withdrawals could be distinguished from the others. What were the principles?
- A. I knew definitely what his salary was and later in the whole period he had named dates for his salary. I knew that on certain days, 1st January, 1st February, 1st March, 1st April, 1st May a cheque was drawn for £1,000 with interest added to it. They were paid to Dr. Sawyer and they in turn were paid to Mr. Nihon. I kept the two withdrawals separate and that was the request so that they could see how these figures were made up. D
- Q. Did you not prepare certain draft accounts for 1957? E

- A. I drew draft accounts for 1957.
- Q. They are the final accounts aren't they?
- A. They are the same.
- Q. They are not exactly the same. Look at the left hand side.
- A. Where does it differ?
- Q. You see on the draft accounts the shareholders' withdrawals of £6,743.16. 9. That sum appears as shareholders' withdrawals on the draft accounts. In the final account for that year that figure has been taken over to the other side and treated as an assets of the company. Was that done on Mr. Nihon's instructions?
- A. I would say yes, but thereafter it was returned to Dr. Sawyer.
- Q. Well, I am putting it to you that Dr. Sawyer never saw these final accounts?
- A. Court:
- A. These particular payments came into dispute between the two parties sometime just before this and I prepared my draft accounts and this looks like it. And if I prepared this it was done exactly as it was before.
- Q. I am wondering why this figure is transferred from one side to the other £6,743.18. 9.?
- A. I would say that if Mr. Nihon had seen this it was his instructions to show it as accounts recoverable and before it was finalised it was shown to Dr. Sawyer.
- Q. When was this prepared? When was the final statement prepared?
- A. July, 1957.
- Q. Well, I have to put it to you, Mr. Deal, that they were not prepared then? Mr. Deal, do you remember the affidavit that you swore in the winding up of the company in 1958?
- A. I would like to see it.
- Q. Well, I don't have the original here. What I want to ask you is this. What were the accounts that you produced in those proceedings?
- A. I did not produce any account.
- Q. Well, I have a photostatic copy here and it shows shareholders' withdrawals, Dr. R.W. Sawyer £5,933. And accounts receivable Dr. R.W. Sawyer £3,373.

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Court of the
Bahama Islands
Common Law Side

Plaintiff's
Evidence.
No. 11
Herbert A.
Deal.
Cross-
Examination
(Contd.)

- In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence No. 14 Herbert A. Deal. Cross-Examination (Contd.)
- A. That is 1956.
- Q. This was in 1958 Mr. Deal.
- A. That is the balance sheet for 1956.
- Q. Well, just look at this affidavit. Can you recognise the figures shown there with the figures in the 1957 final accounts?
- A. To me those figures are the same, I can't see any difference. They were for the year ended 30th April, 1956.
- Q. Don't you infer from that that you had not at that stage prepared the 1957 accounts. A
- A. I was asked about one thing particularly and I stated it.
- Q. Well, Mr. Deal, you would not use 1956 figures if later figures were available would you? You see what I am suggesting to you is that at that time, 1958 the date of the winding up of the proceedings at that time the policy of the company was to claim only that figure from Dr. Sawyer, £3,373, whatever is shown there. That is not right is it? That is the amount that the company was claiming from Dr. Sawyer at that time? B
- A. 1956.
- Q. No, 1958. You come as the company accountant, you come to speak at to the accounts and you say that Dr. Sawyer owes the company £3,373 in 1958.
- A. That was that particular year.
- Q. The affidavit shows both shareholders' withdrawals as such and such a figure and accounts payable by Dr. Sawyer. Mr. Deal the purpose of your affidavit was to show that there was in fact no surplus in the company at the time? C
- A. I cannot recall it because that was 8 years ago.
- Q. Well, I sympathise with you Mr. Deal. Now I want to come to the salary of withdrawals which you prepared and submitted. On whose instructions was this summary made. You know what I am talking about? D
- A. What summary?
- Q. I beg your pardon. First of all was this prepared on the instructions of Mr. Nihon?
- A. Honestly, this is very difficult for me to remember but it must have been on somebody's instructions.
- Q. Look at the bottom line. That shows the total of salaries as £15,000, personal account £2,160.18.10, principal payments to Mr. Nihon

- £18,500, interest payments to Mr. Nihon £7,682.1.10. Am I right in thinking that the total of the last two figures, the £18,500 and £7,682, a total of some £26,000 represent withdrawals which Dr. Sawyer made and which were in fact paid over to Mr. Nihon; and these are some of the withdrawals complained of in this action, is that right?
- A. £18,500.
- A Q. And the £2,160.18.10 that also is a withdrawal?
- A.
- A Q. So up this period ending 30th April, 1957, the only amount of the withdrawals which Dr. Sawyer actually retained was £2,160.18.10?
- A. I have to try and recall why (pauses) (Illegible)
- A Q. Mr. Deal, I think a further sum will have to be added to this, £1,629 which took place the following day. Mr. Deal, referring to your summary you will find that the sum of £2,160, I will leave out the shillings and pence, £18,500 and £7,682 if you will add those up they correspond to the items shown on the statement of claim less £1,629, less the £10,000 and of course the £3,000 in salary. Do you agree?
- A. Yes.
- A Q. So is it not correct then that the total amount which Dr. Sawyer's withdrawals which he actually retained for his own use, or however one wishes to describe it would be £2,160.18.10.
- A. No, just a minute, Mr. Knowles.
- A Q. Mr. Deal, why are you hesitating, these are your own figures and they show ---
- A. This statement was prepared, Mr. Knowles, to show how the £5,481 was made up on the balance sheet. This was made up from separate accounts and the cheques were
- D
- A Q. dishd up with the documents and handed to Dr. Sawyer. This shows how £5,481 was arrived at.
- A Q. Yes. But does it also show Mr. Deal that the only amount which Dr. Sawyer retained for his personal account was out of the shareholders' withdrawals £2,160.18.10.
- A. This is misleading because I was not arriving at what Dr. Sawyer took personally. I tried

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Plaintiffs
Evidence.
No. 14
Herbert A.
Deal.
Cross-
Examination
(Contd.)

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Plaintiffs
Evidence.
No. 14
Herbert A.
Deal.
Cross-
Examination
(Contd.)

- Q. to draw an account descriptive of every pound that Dr. Sawyer drew from the account and in what direction it went.
- Q. Well, can you tell us what portion of the withdrawals was paid over to Mr. Nihon?
- A. £25,000.
- Q. Well, I was not sure you were going to accept that but you do.
- A. Eighteen and a half thousand and sixteen thousand.
- Q. Well, what was the total amount of the withdrawals by Dr. Sawyer?
- A. £43,000.
- Q. You are not taking the credits into account?
- A. That amount less the £10,000. £43,000 is the figure, the total withdraw
- Q. That includes his salary?
- A. Yes.
- Q. Well, I am sorry I am not talking about that.
- A. I apologise, it would make quite a difference in salary.
- Q. Look at your first page, Mr. Deal. I think that is now in his Lordship's hand. Now look at your first page. The same figures appear there again £43,343. And again we have this figure cash drawn after credits of repayment carried to personal withdrawals £2,160.18.10. What that is is the total amount withdrawn by Dr. Sawyer as shareholder's withdrawals?
- A. That is £43,000 less the salary.
- Q. Less the salary. So that the vast majority of the withdrawals were actually paid over to Mr. Nihon apart from the salary.
- A. £25,000. This came into the picture so that they both could know exactly what withdrawals were made from the company.
- Q. Are you satisfied in your own mind that Mr. Nihon knew all along that the money which he was receiving Dr. Sawyer was in fact coming out of the Company?
- A. You ask me to say what I think. Yes, I believe he knew that it came out of the company, yes.

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Re-examination Re-examined by Mr. Adderley:
by Mr.
Adderley.

- Q. Looking at your balance sheet, Mr. Deal, as at 31st March, 1959 the last payment to Dr. Sawyer was £1,629. 9. 1.?

- A. £1,629. 9. 1.
 Q. That is not in the statement?
 A. No.
 Q. Why do you say that this statement was prepared with regard to the taking of this action?
 A. Mr. Adderley, it is difficult to say, but this whole business of withdrawals of moneys came into dispute and I was requested to prepare a statement of all moneys that Dr. Sawyer received from the race track and this was what came up. I tried to make known for what purpose it was drawn.
 Q. You say that you believe that Mr. Nihon knew that this money was coming out of the company to pay him.
 A. I said that, yes.
 Q. You said you believe. Can you be exact?
 A. Well, one of the cheques Mr. Nihon signed at a later stage for the company. This was along with Dr. Sawyer.
 Q. That was in 1957 what about 1954, 55 and 56 cheques were only signed by Dr. Sawyer?
 A. I would say Mr. Nihon must have thought that Dr. Sawyer would be going into the company.
 Q. You are saying what you thought?
 A. That is what I was asked.
 Q. You never discussed that with Mr. Nihon?
 A. No. I would have thought so myself.
 Q. The 1957 accounts which you prepared dated 12th July, 1957, you say they were seen by both Dr. Sawyer and Mr. Nihon?
 A. In every case it was my practice. I perceived something and I was in a very delicate position.
 Q. You were in a very delicate position?
 A. Yes.
 Q. When you signed the actual balance sheet itself you were satisfied that both had seen it?
 A. Most certainly.
 Q. Are you also saying that when you actually signed them both agreed with the form in which it was put out?
 A. The final agreement was given.
 Q. The final agreement to the balance sheet would be left to the company?
 A. Well, I am not speaking about that. I am not concerned with that.

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 Court of the
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 Evidence.
No. 14
 Herbert A.
 Deal.
 Re-Examination
 (Contd.)

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- In the Supreme Court of the Bahama Islands Common Law Side Plaintiffs Evidence. No. 14 Herbert A. Deal. Re-Examination (Contd.)
- Q. You were always employed by the Montagu Park Racing Association?
- A. By the Montagu Park Racing Association.
- Q. You were not the employee of Dr. Sawyer or Mr. Nihon?
- A. No.
- Q. And you never acted for Dr. Sawyer or Mr. Nihon?
- A. No.
- Q. You only acted for the company?
- A. Yes. A
- Q. So far as the company accounts were concerned you were only accountant for the payment by the company to Dr. Sawyer or payment by the company to Mr. Nihon.
- A. Correct.
- Q. What payment Dr. Sawyer gave to Mr. Nihon was no concern of yours?
- A. I was not Dr. Sawyer's personal accountant.
- Q. So far as the company is concerned you are not concerned about the amount paid to Dr. Sawyer by the company and the amount paid to Mr. Nihon by the company? B
- A. Exactly.
- Q. The actual form in which the balance sheet 1944-45 was prepared they do not distinguish between the 3% payment to Mr. Nihon or the withdrawal to Dr. Sawyer?
- A. No they were presented in one figure.
- Q. The presentation in that form you say was done on the instructions of Dr. Sawyer? C
- A. Yes.
- Q. You were not at all concerned with what view the company may take of it?
- A. No. As far as I knew Dr. Sawyer was the company.
- Q. When you made the 3% payment to Mr. Nihon twice or three times a week did you show any total figure of the gross pari-mutuel that week or certified the 3% or did you just give him a cheque for the amount? D
- A. No. Each cheque was accompanied by a certified copy of the money staked at the race track by the Racing Commission Auditors.
- Q. A cheque along with a certified copy of the gross proceeds of the pari-mutuel pool of that day?
- A. Yes, to support the 3% calculation of that day.
- Q. And it is on the basis of the gross amount paid in at Hobby Horse Hall that that 3% was paid? E

- A. Exactly.
- Q. And you showed him a statement of the 13%?
- A. The whole total was shown.
- Q. And then the 13% of the whole total and the 3% of the 13%?
- A. No the 13% does not come into it. The total deduction is 20% and that was shown. The only amount that was concerned was the total wage that day.
- A Q. Well you had to show him what the gross pari-mutuel pool and the 3% for that day?
- A. Yes, that was the way that was handled.
- Court: The 3% would appear as profit and loss? I don't see how it can go into the balance sheet.
- A. It is shown as a deduction.
- Court: With regard to shareholders' withdrawals I think that would appear on the balance sheet.
- B A. My Lord, it has to be shown somewhere and the only think was to charge it against accumulated profits of the company. It was not recoverable to my knowledge.

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.
No. 14
 Herbert A. Deal.
 Re-Examination
 (Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 15

EVIDENCE OF SIR STAFFORD LOFTHOUSE SANDS

Plaintiffs
Evidence.

No. 15
Sir Stafford
Lofthouse
Sands.
Examination

Sir Stafford Lofthouse Sands sworn states:

- Q. Are you Sir Stafford Lofthouse Sands, K.C.,
C.B.E.?
- A. Yes sir.
- Q. Do you live on East Bay Street? A
- A. I do.
- Q. Are you an Attorney-at-Law, Member of the House
of Assembly and member of the Cabinet?
- A. I am, sir.
- Q. Are you Minister for Finance and Tourism?
- A. I am.
- Q. Did you act for the Hon. C.W.F. Bethelland his
brother in the year 1946 when they were
purchasing shares in the Montagu Park Racing
Association? B
- A. Yes, I did. It was Mr. Bethelland his
brother. These negotiations were with the Hon.
Mr. George Murphy which commenced at the end
of 1945 and the purchase was completed in
April, 1946.
- Q. Did you consider the position of a share in the
name of Robert Emmet Murphy or the estate of
Robert Emmet Murphy?
- A. At that time I believe the share was registered
in the name of Robert Emmet Murphy. He was a C
nominee of George Murphy and in fact when I
wrote the Exchange Control for permission to
transfer the shares from Mr. George Murphy and
the four other single shareholders in the
company, I treated the Robert Emmet Murphy
share as belonging to George Murphy. I applied
to transfer 196 shares from George Murphy and
one share each from the four nominees to the
Bethells.
- Q. Were the other four shares owned beneficially D
by Mr. Murphy.
- A. They were. I know that because at one time
one was registered in my father's name and he
was merely a nominee for Mr. Murphy.
- Q. Did you form any conclusion as to whether or
not Robert Emmet Murphy or his personal
representative or transferee for that matter
could make any claim against the profits of
the company in respect of that share?

A. I was of the opinion that Robert Emmet Murphy or his personal representative had no interest in the share whatsoever. There was no record of the share having been paid for on allotment and in my opinion and I so advised the Bethell brothers at that time that the share could have been forfeited if they wished to.

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.

Court: The one Murphy share (Illegible)

No. 15
Sir Stafford Lofthouse Sands.

A

A. Yes. 195 Registered in the name of George Murphy, one in Robert Emmet Murphy and four other shareholders one of whom I remember is Newell Kelly.

Examination (Contd.)

Q. Did you act for the Bethell brothers when they sold their shares to the nominees of Mr. & Mrs. T.A. McCauley?

A. Yes.

Q. And what happened to the Robert Emmet Murphy's share in that transaction?

B

A. It was delivered with the other shares at the time of the completion.

Q. Did you form any opinion as to whether or not the beneficial ownership was passing?

A. In my opinion the beneficial ownership passed when the shares were sold to the nominees of the McCauleys.

Cross-examined by Mr. Paul Adderley:

Cross-examination by Mr. Adderley.

C

Q. Sir Stafford, the legal ownership would of course not have passed unless it was forfeited by the Directors of the company or transferred by the Directors of the company. So long as it remains a share in the company in that name it is in so far as the company is concerned the share of that person. Is that not correct?

A. That is correct. But the beneficial ownership in my opinion was always vested in George Murphy from the time he sold to the Bethells.

D

Q. Yes, the beneficial ownership so far as you can consider all the shares of the company as owners of the company, but so far as the company is concerned is it not correct that the person in whose name the share appears in the register is for the purposes of the company seems to be the shareholder?

A. He seems to be the shareholder.

Q. Yes. So for the purposes of this particular company until his share is forfeited for the

In the Supreme Court of the Bahama Islands Common Law Side

Plaintiffs Evidence.

No. 15
Sir Stafford Lofthouse Sands.
Cross-Examination
(Contd.)

- purposes of the company that share is deemed to be his share?
- A. If he is a mere trustee in so far as between the company and the shareholder he is a registered shareholder, but so far as a shareholder he can be a mere trustee for someone else.
- Q. Even if he is only a mere trustee does that not qualify him to be a Director if for instance the Articles of Association require him to hold any one as a Director? A
- A. That would not qualify him.
- Q. That would qualify him to be a Director, but in other words for the purposes of the company although he may be a trustee, although he may only be holding a share for somebody as between himself and the company, he is a shareholder of that company?
- A. I was not present, my Lord, when the original proposition which learned counsel refers was proposed. B
- Q. Well, the original proposition is that so long as that person remains on the register of the company, so far as the company is concerned that share is entered in his name, he is one of the company and himself the owner of that share.
- A. Well, I don't think I am an expert on Company Law.
- Q. I am talking about this particular share and its legal position. C
- A. In my opinion when George Murphy sold the shares to the Montagu Park Racing Association to the Bethells he sold the ownership of the shares registered in the name of Robert Emmet Murphy.
- Q. But that share was never forfeited by the company so long as the company was in your office?
- A. While it was in my office it was never forfeited, after that I don't know what happened to it. D
- Q. I know that you are only talking about when it was in your office and so long as the share was not forfeited as between him and the company he is the owner of that share.
- A. He is the shareholder.

Re-examination Re-examined by Mr. Knowles:

by Mr. Knowles.

- Q. That is provided it is registered in his name?

A. That is correct.
Q. In fact, Sr Stafford, if it is registered in the estate of Robert Emmet Murphy?

A. I have not examined the register and I don't know how it was registered. I knew Robert Emmet Murphy. I remember him and whether it is registered in the estate or his name I am not aware.

A Court: If the share is registered in his estate it would be difficult to obtain.

Mr. Knowles: My Lord, I would submit not. I would submit to Your Lordship that it is not properly registered because an estate cannot be a member of a company. But this is another matter and I will take it up with you, my Lord.

Mr. Adderley: Perhaps somebody is going to prove that he is dead, I don't know.

B Mr. Knowles: I am merely going on the register, my Lord, the register is evidence.
(Illegible)

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In the Supreme Court of the Bahama Islands Common Law Side

Plaintiff's Evidence.

No. 15
Sir Stafford Lofthouse Sands.
Re-Examination
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 16

EVIDENCE OF THE DEFENDANT
DR. RAYMOND W. SAWYER

Defendants

Evidence.

No. 16

Dr. Raymond W. Sawyer:

Dr. Raymonds
Sawyer.

Examination.

- Q. Are you Dr. Raymond Wilson Sawyer?
A. Yes.
Q. You live in Montagu Heights, Nassau?
A. I do.
Q. Are you Dental Practitioner?
A. I am.
Q. Are you a member of the House of Assembly?
A. I have been for 20 years.
Q. And have you served on various public boards?
A. I have served on most of the public boards in the Colony and I have been chairman of many of them. I have also been a member of Her Majesty's Executive Council for 5 years.
Q. Dr. Sawyer, I am going to ask you at this stage to produce certain documents. Will you look at these. Do you produce those five letters as copies of correspondence passing between yourself and the Company?
A. Yes.
Q. Mr. Foster Clarke was your Attorney?
A. Yes.
Q. And Higgs & Kelly for Mr. Nihon and yourself?
A. Either of us.
Q. Dr. Sawyer, will you look at the draft accounts for 1957. Do you recognise those accounts?
A. I do.
Q. From whom did you receive it?
A. I received this draft from Mr. Herbert Deal.
Q. In what year?
A. Before the 30th April, 1957.
Q. Was that draft used for any purpose?
A. It was never presented to the shareholders at the night of a meeting. It was submitted to me and Mr. Deal knew of the financial of the Company up to that time.
Q. Did anybody else or any other body in that year?
A. These accounts by a letter that was produced just before were submitted to the Racing Commission. The Licencee of the Racecourse is required by an Act to submit a copy of the

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balance sheet of the Company before the licence is granted for the forthcoming season. I asked Mr. Nihon if these accounts had not been sent into the Racing Commission and he agreed that this draft account was a true reflection of the Company at that time and should be submitted to the Racing Commission which in fact I did and the Racing Commission now have their copy. No other copy of any second draft of the accounts never got into the hands of the Racing Commission.

A

Q. Will you look at the letter from Mr. Nihon to yourself dated 26th September, 1957.

Court: The previous accounts had been agreed to?

A. The 1954, 1955, 1956 have all been approved by the shareholders.

Q. Now look at the paragraph 4 of that letter:

B

"As to the financial statements they have not been approved by the Directors and would have to be so approved before they are passed on by the shareholders. I am satisfied that the Racing Commission would accept the unapproved statements prepared by Mr. Deal. I enclose letter to them signed by me as Secretary-Treasurer and I suggest that you enclose the financial statement and mail it to them."

C

Now which are the financial statements to which Mr. Nihon is referring here?

A. The first draft of the 1957 accounts of which the Racing Commission has its copy and it can very easily be verified.

Q. So was this done?

A. It was done.

Q. Did you ever receive any subsequent account from Mr. Deal?

D

A. I did not receive any subsequent account from Mr. Deal.

Mr. Knowles: My Lord, I would like Dr. Sawyer to produce The Montagu Park Racing Association Summary Account of Dr. Raymond W. Sawyer, Company General Ledger. The two agreements between Dr. Sawyer and Mr. Nihon have been put in and I would also like to exhibit the

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affidavit of Mr. Deal, the Action 1958 No. 19. I have a copy of the original here, my Lord, signed by Mr. Deal but I have not been able to get it certified in the Registry. They say they cannot find the file, but I have no doubt that my learned friend will accept this copy. I would also like to produce an exhibit, a Certificate of Shares in the Company in the name of Dr. Sawyer for 148½ shares. There is a notation on this that would be of interest, my Lord. And another share certificate for one share in the name of Ivarene Gladys Sawyer, Dr. Sawyer's wife.

Q. Dr. Sawyer, what is the position in regard to the Montagu Park Racing Association today? Is it a company or a defunct company?

A. It is certainly not an active company today. It has not done any business since January, 1958. That was the last race meet under those operating. It held no meetings since 1959.

Q. That was a meeting of the shareholders?

A. Yes.

Court:

A. The Legislature granted a new lease to a new company.

Q. Did the company cease to do business in 1958 then?

A. It certainly ceased to do business which was horse racing.

Q. We heard something about a fire. Can you tell us briefly about that?

A. That occurred sometime in February, 1958.

Q. What did it involve?

A. The buildings, the grand stand, club house, pari-mutuel were all destroyed by fire.

Q. Under the 1953 Agreement did you purchase all the shares of the Company or only some?

A. The understanding was that in 1953 I purchased all the shares of the Company from Mr. Nihon for £50,000. Two shares were retained, one to himself and one to his wife provided they became Directors under the Agreement; one share remaining in the name of Robert Emmet Murphy who was the original nominee of Mr. George Murphy beneficially passed to me.

Q. Was this Agreement made on the 6th May, 1953?

A. Yes, 6th May, 1953.

Q. During the whole period of your association with the Company was any notice of meetings

A

B

C

D

- sent to Robert Emmet Murphy or any representative of his?
- A. I went through the minutes of the meetings and I have found no record of Robert Emmet Murphy having attended a meeting and also any business of the Company ever transacted. And shares were sold without any reference to Robert Emmet Murphy at all. I don't believe any notices were sent as far as I can remember.
- A Q. Were you shown on the register of the company as the legal owner of the 297 shares which Mr. Nihon sold to you in 1953?
- A. Yes.
- Q. In fact I think the share certificates were deposited with Barclays Bank and the security for the payments or the monies which you owed to Mr. Nihon under the agreement?
- A. That is correct. The security for the money ---
- B Mr. Knowles: My Lord, one of the shares of Dr. Sawyer was registered in the name of Mr. Newton Higgs, his nominee.
- Q. Under the 1953 Agreement were you obliged to make instalment payments to Mr. Nihon in respect of the shares?
- A. That is right, and he was also to receive 3% of the gross pari-mutuel.
- C Q. At this time did Mr. Nihon regard you as being the sole owner of the track?
- A. Never.
- Q. Did he express his opinion in a letter?
- A. Yes, this letter that I have before me marked H1.
- Q. Is that the letter dated the 9th December, 1953?
- A. Yes. In it he said I am the sole owner of the track minus the two shares which is only a formality.
- D Q. Under the 1953 Agreement was Mr. Nihon to receive 3% of the pari-mutuel gross proceeds or 50% of the profits whichever was the greater?
- A. That was under the 1956 Agreement.
- Q. Yes. What was the provision in regard to the 1953 Agreement?
- A. That he was to receive 3% of the gross pari-mutuel.
- Q. Did he receive that money while the agreement was in force?
- E

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A. He received every penny of it.

Q. That is up to the 29th February, 1956.

A. Yes.

Q. Was a new agreement entered into on that date?

A. A new agreement was entered into on the 29th February, 1956, because I was unable to make payments under the first agreement.

Q. Will you wait until we deal with some other matters before we deal with the 1956 Agreement. You said that you examined all the minutes of the meeting from 1933, the time of its incorporation?

A. I have.

Q. Was the company formerly owned by the late Mr. Ralph Collins and late Mr. George Murphy?

A. The company was originally owned by the late Mr. Ralph Collins and the late Mr. George Murphy in 1933. In 1938 I think it was Mr. Collins sold his share to Mr. George Murphy and at that point Mr. George Murphy owned all the shares in the company, and in 1946 Mr. George Murphy sold his shares to Mr. C.W.F. Bethell and his brother. In 1948 the Bethells sold to T.A. McCauley and in 1950 I think McCauley nominees sold to Mr. Nihon and in 1953 Mr. Nihon sold to me.

Q. Did the minutes of the Company show any declaration of dividends with regard to any sum of money for the year 1953?

A. No. The only declaration of dividends I can find throughout the period of the company was in 1951.

Q. Would it be right to say then that Mr. Nihon withdrew the sum of £23,000 odd from the Company's account on the 6th May, 1953 and that he did so without any declaration of dividends.

A. He did it without any declaration of dividends.

Q. Dr. Sawyer, how much do you think you were entitled to after Mr. Nihon had been paid his 3% of the pari-mutuel pool?

A. I consider I was entitled to all profits of the company, but not necessarily to pay the company debts.

Q. What were the actions of the other members of the company?

A. Mrs. Sawyer was in full agreement, so was Mr. Higgs and Mrs. Nihon.

Q. Did Mr. Nihon express his opinion to the contrary?

A
B
C
D
E

- A. He did not.
- Q. Why was no dividend declared in respect of the sums that you had withdrawn at this time?
- A. I didn't think the dividends were necessary in regards to the Agreement of 6th May, 1953 and the Agreement of the 29th February, 1956, certainly I was the Company, I owned the Company. I could have very simply and very easily call my Directors together and had a formal dividend declared, but I didn't think it was necessary.
- A
- Q. Dr. Sawyer, do you admit having received the sums of monies which are set out in the Statement of Claim as having been withdrawn by you?
- A. I admit receiving sums set out in the Statement of Claim and I feel that I was entitled to, and it is so shown I was entitled to them as shareholder's dividend and it is so shown on the Statement of the Company's account as shareholders' withdrawals. As a matter of fact or interest both of these were in fact turned over to Mr. Nihon and I am confident, my Lord, that Mr. Nihon was perfectly well aware that these sums were to come out of the Company's account.
- B
- Court:
- A. Profits were available at all times during the period for shareholders.
- Q. Did the Company always show a surplus at the time you made the withdrawals?
- C
- A. Always.
- Q. Had these accounts allowed for depreciation of the capital assets of the Company?
- A. In each and every year, at least £5,000 to £7,000 per year.
- Q. There was a reserve out of the profits?
- A. Yes.
- Mr. Knowles: Will your Lordship look at the 1954 accounts. I would like to point out to your Lordship that this is the profit and loss statement headed 7th May, 1953 to 31st December, 1953, which is the Summer period or what we call the off season, is that right, Dr. Sawyer?
- D
- A. Yes, the close season.
- Mr. Knowles: Your Lordship will see that figure under Expenses for Depreciation £4,737.11.10.
- Q. Now that was set aside for depreciation showing the close of the season?

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A. Yes.
 Mr. Knowles: The Winter season figures, my Lord, would be the Company's active period and is dealt with on Exhibit B. This is a much shorter period, my Lord, 5 months instead of 7 months and the depreciation there is £2,992.11.11. And the total for the year is £7,730. My Lord, may we look at the 1955 accounts. Exhibit C shows depreciation as £6,527. 9. 8. 1st May, 1954 to 31st December, 1954 and during the season 1st January 1955 to 30th April, 1955, £2,781.18. 1. or a total of £9,300 depreciation in that year.

Q. Was that because the lease was coming to an end?

A. The lease was to come to an end in November, 1958.

Q. And in 1956 on Exhibit C the depreciation allowed was £5,519. 9. 9. for the Summer period and £3,145. 4. 9. for the Winter period a total depreciation of £8,600 approximately?

A. Yes.

Q. And in 1957 when of course, Dr. Sawyer was not in control the depreciation for the Summer period was £5,122 plus £2,561, 7. 3. or a total of £7,700 approximately?

A. Yes.

Q. Were you satisfied with those depreciation figures Dr. Sawyer?

A. I certainly was.

Q. I think you told us that the minute book of the Company showed only one declaration of dividend?

A. That was in 1951.

Q. And what was the amount?

A. £6,000.

Q. Did you receive any salary in 1953 or 1954?

A. I did not.

Q. Was a salary of £5,000 a year agreed upon in 1955?

A. It was.

Q. Did you always receive it?

A. Up until 1957 when the banking system had been changed. Mr. Nihon refused to sign the cheque for £3,000 which was the balance of my salary for 1957.

Q. How much is owing to you as salary now?

A. £3,000.

Mr. Adderley: That has been off set in the Statement of Claim.

A

B

C

D

E

- Q. During the early part of this period under investigation were the 3% cheques drawn in your favour, signed by you and then endorsed over to Mr. Nihon?
- A. In 1954 and 1955.
- Q. Was there a change in procedure then?
- A. I believe there was. I have not seen any of those cheques for a long time. I don't remember exactly what change took place.
- A Q. Do you know why there was a change.
- A. There can only be one reason and that is that Mr. Nihon told Mr. Deal he wanted it done that way. I certainly didn't tell Mr. Deal to do it that way.
- Q. Did you give Mr. Deal any instructions as to how these accounts should be prepared?
- A. I never told Mr. Deal how he should prepare the accounts at any time. I did as he said sit down with him after he had made a draft account before the final typing, and as I recall, I never on any one occasion ever change any of his draft accounts and the final typing was as he had prepared them. I never instruct him as to how he should prepare the accounts at all. He was the accountant.
- Q. He has said that you gave instructions for the figure of £3,373 to be charged against in the 1956 accounts?
- C A. That would be a very foolish thing for me to do.
- Q. £3,373.14. 6. is the exact amount. Did you do it?
- A. Of course I didn't. That is just the opposite. I objected to it.
- Q. Why did you object to it?
- A. I objected to it formerly at the meeting of the 12th May, 1956.
- Q. Was Mr. Deal present at that meeting?
- D A.
- Q. Was there any difference between this sum of money and the other withdrawals that you had been making over the various periods?
- A. I have been making the withdrawals in the same category, but if you want me to separate them starting from 1956 it appears as though Mr. Deal thought it was something which I paid over to Mr. Nihon as shareholders' withdrawals and anything else to charge it

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- under the assets side of the balance sheet as a charge that I owe the Company.
- Q. Did you object to it?
- A. I objected to it.
- Q. Did you tell him that?
- A. I told him and I also told the Directors at that meeting.
- Q. How did you make the instalment payments under the agreement to Mr. Nihon?
- A. Cheques were issued to me out of the Company's funds. I deposited the cheques to my personal account and issued my personal cheque to Mr. Nihon. A
- Q. Dr. Sawyer, do you remember signing a letter dated 25th May, 1954?

"Dear Mr. Nihon,

I agree to place to the account of the Montagu Park Racing Association Limited the sum of Ten thousand pounds (£10,000) which you are loaning me by way of a second mortgage. B

I hereby agree not to make any more withdrawals of this nature in future from the said Company's Bank account."

- A. I recall.
- Q. Will you state the circumstances under which that letter was signed?
- A. That letter of the 25th May, 1954, was signed by me on the insistence of Mr. Nihon, and I had to borrow £10,000 in order to loan the Company at that time. The withdrawals under clause 16 of the 1953 Agreement it was an obligation on me to see that the Company was never indebted in excess of £10,000. The reason why the Company --- C
- Q. At this particular time, May, 1954 did the Company in fact receive £10,000?
- A. It was really £14,000.
- Q. You admit that it was _____ for you to make withdrawals which you did make at the time? D
- A. The only thing that I can say is that I was the owner of Montagu Park shares and operator of the track. In 1953 the buildings and vehicles and race course were in a disgraceful state of disrepair. They were

actually unsafe for public use, I had to make large capital improvement; had to practically re-roof both the stands and refloor them; I had to buy two vehicles; I had to bring the track up to some standard of useability; I had to shore all the buildings because they were examined by a qualified architect on behalf of the Racing Commission who said the buildings were unsafe; that year we had to instal the American totaliser machine operation which was quite costly, not only capital-wise but also maintenance-wise, running charges. There were heavy maintenance charges that year because we had to replant, replenish, we did almost everything down there to make the place presentable for the 1954 season. I did not want anything to do with the operation that was not going to be a credit to this Company. I suppose for those reasons I did spend more than I had anticipated otherwise we would not have been able to open for the season. So then I was faced with the problem of borrowing the £10,000 which I did promise Mr. Nihon a second mortgage on my home in Montagu Heights. That is the security that was mentioned. I then loan the Company the £10,000 because the debts had to be paid.

A Q. Did you take any security for the loan?
 A. A Promissory Note from the Company to me.
 Q. Was it ever paid?
 A. No.
 Q. So that the Company now owes you this £10,000.
 A. The company owes me £10,000 in 1954.
 Q. Did you give a second mortgage on your home to Mr. Nihon for £10,000 which you borrowed from him?
 A. I did. The first mortgage was discharged and that is how I could repeat it.

B Q. Will you explain exactly what this letter means: the fourth para.

"I hereby agree not to make any more withdrawals of this nature in future from the said Company's Bank account."

What 'withdrawals of this nature' were you referring to?

A. I will tell you what it meant to me and what

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- it still means to me is withdrawals to allow the Company to be in debt to the extent of £10,000. In other words those words are to be construed 'that the Company should not become indebted in excess of £10,000'. This in fact never happened again. That was purely and simply under clause 16.
- Q. Is the wording of this letter your wording?
A. I never drafted that.
- Q. Where did the letter come from? A
- A. It was presented to me by, I believe, Mr. Newton Higgs.
- Q. Did you think you would get the money from Mr. Nihon without signing the letter?
A. It would have been utterly impossible. Mr. Nihon insisted that the letter be signed before he loaned the money, but I did not attach any real importance to signing the letter, I knew I was offering it under clause 16 of the agreement. B
- Q. Did you know how much money you had withdrawn from the Company's account at this time, May, 1954?
A. I think the balance sheet shows £
Q. Had any part of that sum been paid to Mr. Nihon?
A. £5,000.
- Q. Did you find that you were unable to keep up with the agreed payment under the 1953 Agreement?
A. That is exactly what occurred.
- Q. And a new Agreement was entered on the 29th February, 1956? C
- A. Yes.
- Q. After this Mr. Nihon sold to you 149½ shares?
A. Yes.
- Q. The certificate, were those shares produced this morning?
A. That is true.
- Q. The Agreement provided that he was to receive 3% of the gross pari-mutuel of one half of the net profits of the Company whichever sum was the greater? D
- A. That is true.
- Q. Which did he in fact receive?
A. He elected to receive the 3%
- Q. Was provision made for the reduction of the 3% in certain circumstances?
A. That is true.
- Q. Did that in fact happen?
A. No. In 1957 the Legislature said the licensee

would receive only 7%. The purses were then awarded by the Legislature to the Racing Commission for distribution. It never found its way into the operator's hand at all. I accordingly issued a cheque under the Montagu Park Racing Association for a reduced amount of 1.615 I think it worked out. Mr. Nihon refused to accept the cheque and he had Mr. Deal make him up a cheque for the 3% and took it as far as I know.

A

Court: Anyway he got his full 3%

Mr. Knowles: I have the early cheques for the period 1954-55. These are cheques which were made out to Dr. Sawyer in the first instance which he then endorsed over to Mr. Nihon and I would like to exhibit these cheques.

Court: I have not registered anything for them along the way, the 3% was paid first of all to Dr. Sawyer and endorsed over to Mr. Nihon. I don't know if there is any point about it.

B

Mr. Adderley: As it was coming from the Company, the Montagu Park Racing Association it should have been made directly to Mr. Nihon.

Mr. Knowles: My Lord, all the cheques were issued under the agreement.

Q. In 1957 did you institute legal proceedings for unpaid salary?

A. Yes.

Q. Was there a counterclaim for monies said to be due from you to the Company?

C

A. Yes.

Q. What was the amount that they were alleging there?

A. £5,431, approximately.

Court: What year was that?

A. 1958.

Q. In 1958 in the winding up proceedings did the Company make the same allegation using the same figure?

D

A. Yes.

Q. Dr. Sawyer, do the Company's accounts 1954, 1955 show that you owe the Company any money?

A. No.

Q. Do they show your withdrawals and from surplus?

A. They do.

Q. In 1956 was there a slight change in policy in preparing the accounts?

A. There appeared to be although in my opinion

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- the withdrawals were all in the same category the amount of £3,373 I believe were placed on the assets side of the balance sheet as money owed to the Company by me. I objected at all times to that figure being shown in that way.
- Q. The accounts for 1956 also show withdrawals by you of £5,933.18. 9.?
- A. That was charged to shareholders' withdrawals.
- Q. Will you look at the 1956 accounts then. The second figure under shareholders' withdrawals £5,933.18. 9. and the figure above it £11,565.13.10. does that correspond to the 3% payment to Mr. Nihon? A
- A. That represents 3% payment to Mr. Nihon.
- Q. Will you look at the balance sheet for 1957. You will see in the assets against your name the sum of £5,481.10. 2.?
- A. Yes.
- Q. Did you give any authority for that to be entered there. B
- A. No.
- Q. Looking at that balance sheet the first draft there are two categories of shareholders' withdrawals £11,301.19. 7. Does that represent the 3% payments to Mr. Nihon?
- A. Yes.
- Q. And the other figure £6,743.16. 9. represents your withdrawal?
- A. My withdrawal in respect to the money that was paid over to Mr. Nihon on account of the shares. C
- Q. Was there any change in the final account for 1957?
- A. Speaking from memory, I don't have the second draft in front of me, Mr. Nihon must have had Mr. Deal remove this figure of £6,743.16. 9. from the liability side of the balance over to the assets side, showing it as money owing to the Company by me. It is rather extraordinary.
- Q. Did you have anything to do with that removal?
- A. Nothing whatsoever. D
- Q. When did you first see the final accounts for 1957?
- A. I never did see the final accounts for 1957. I don't believe they were prepared, but I can't swear, until 1958.
- Q. Did you see them before this period began?
- A. I think I saw them a week or so in your office.
- Q. Were the 1954, 1955, 1956 accounts accepted by the annual general meeting? E

- A. These accounts were read and confirmed.
- Q. So far as the 1956 accounts are concerned I think you told us you raised an objection to the charge of £3,373 against yourself?
- A. I raised an objection to that sum on the 12th May, 1956, and Mr. Nihon and Mr. Godfrey were present at that meeting.
- Q. Was it over-ruled?
- A. It was over-ruled because Mr. Nihon became so objectionable that the question was never put.
- Q. Were the accounts confirmed in a subsequent annual general meeting?
- A. As I recall they were in 1955, 1956 and 1959.
- Q. In 1954, 1955 and 1956 did the Company in annual general meeting resolve that all the acts, transactions and the proceedings of the Directors and Officers were approved?
- A. That is quite correct.
- B Court: Do you rely on that?
- Mr. Knowles: Yes, my Lord, we are relying on that.
- Court: They would have to be corrected?
- Mr. Knowles: No, my Lord, we are relying on the principal of the document.
- Q. You remember the Director's meeting on the 12th May, 1956?
- A. Yes, I do.
- Q. Was Mr. Godfrey Kelly a Director at that time?
- A. I believe he was made a Director at that meeting or immediately after that meeting.
- Q. Were the accounts discussed at that meeting?
- A. They were with particular reference to the £3,373.
- Q. You told them of your objection.
- A. Yes.
- Q. Did Mr. Kelly express any opinion?
- A. He agreed with me and told Mr. Nihon that it should be shown as shareholders' withdrawals as the other monies.
- D Q. Do you remember a meeting of the Directors on the 24th January, 1957.
- A. Yes.
- Q. Did Mr. Foster Clarke attend that meeting?
- A. Mr. Foster Clarke attended that meeting on my behalf.
- Court: The minutes are aren't they?
- Mr. Knowles: No, my Lord, these are draft minutes. There are certain of them that are relevant. but they have not yet been produced. They will be put in, my Lord.
- E

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Did your attorney, Mr. Foster Clarke, make any suggestions at this meeting?

Yes, he did he presented a letter to the meeting where he asked for the Company, Mr. Nihon and I to join in and agree to these sums being paid to Mr. Nihon in respect of the purchase price of the shares out of Company funds. I would say that Mr. Nihon agreed to that at the meeting regardless to what he may say later on.

A

Q. Did you see the draft minutes?

A. I have seen the draft minutes.

Q. Will you look at these please.

Mr. Knowles: My Lord, these minutes are produced and exhibited by agreement.

Court: The draft minutes of what meeting?

Mr. Knowles: The meeting of the 24th January, 1957.

Q. Dr. Sawyer, will you read those minutes and see whether they set out definitely what happened at the meeting?

B

A. They do represent exactly what was agreed on at that meeting.

Q. Dr. Sawyer, when you made your last withdrawal on 1st May, 1957, did you have any news as to whether or not the lease from the Government would be renewed when it expired in 1958?

A. I recall that there was every expectation at that time that the lease would be renewed.

Q. A cheque has been exhibited here relating to one of the latest withdrawals which was signed by yourself and Mr. Nihon and has the word 'loan' on it?

C

A. The last one I think you are speaking of.

Q. Yes.

A. Yes, I saw that one, think it was yesterday or day before. I have no recollection of that word 'loan' being inked-in any of those cheques. When Mr. Deal issued cheques he always typed in the letters so that they would come out on his

D

Underneath I see the word in ink 'loan' they were not there at the time I deposited that money to my account in the Royal Bank of Canada.

Q. Would you have accepted the cheque if that word had been on the face of the cheque when you received it?

A. Of course not.

Court: Was it a loan?

A. It was not.

Mr. Knowles: The plaintiffs say it was a loan.

Court: Well, we will find out. Where did it come from?

Mr. Knowles: It was a part of the shareholders' withdrawals. It was one of the cheques made payable to Dr. Sawyer as part of his withdrawals from the Company in respect of his share.

A

Court: If it were shareholders' withdrawals it would not be a loan to the Company.

Mr. Knowles: That is the significance, my Lord, if that the word was on the cheques when Dr. Sawyer received it, and he was aware of that fact.

Cross-examined by Mr. Adderley:

Q. Dr. Sawyer, you bought Mr. Nihon's shares in May, 1953?

B

A. Yes,

Q. When did you first enter into negotiation with Mr. Nihon for the purchase of his shares from the company?

A. I don't recall the exact date, but I think it was the early part of 1953.

Q. When were you last Chairman of the Racing Commission?

A. I was Chairman of the Racing Commission up to the time (Illegible)

C

Q. Up the time you purchased the shares?

A. Then I resigned my post.

Q. You resigned after you purchased the shares from Mr. Nihon?

A. Well, shortly before.

Q. You had been Chairman of the Racing Commission for the year ending 195 ?

A. That is correct.

Q. What about 1951?

A. No. I think the Race Course Betting Act was made in 1952.

D

Q. You were appointed Chairman of the Racing Commission in 1952 to December, 1953?

A. That is correct.

Q. You were the first Chairman of the Racing Commission? (Illegible)

A. Yes.

Q. When did you first become Chairman of the Racing Commission during the off season?

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No. 16
Dr. Raymond W. Sawyer.
Examination
(Contd.)

Cross-examination by Mr. Adderley.

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A. In October, 1952, during the off season.
 Q. And that was during the off season and the 1953 season?
 A. Yes, January to April, 1952 by Legislation.
 Q. During that period Mr. Nihon was the majority shareholder of M.P. Racing Association?
 A. The 1953 period.
 Q. And he was responsible for the management of the race track during that period?
 A. Yes. A
 Q. Dr. Sawyer, how would you describe your relationship as Chairman of the Racing Commission with Mr. Nihon.
 A. I don't know what you are getting at, but I believe I sense what you are getting at.
 Q. I read the newspapers, but you would know better than I.
 A. Nevertheless, I did not know Mr. Nihon in those days. He was practically at my door steps trying to get business for himself under the Racecourse Betting Act. As a matter of fact he remembers too but the Racing Commission --- B
 Court: How did you find it, Dr. Sawyer, use an adjective and let us get on with this.
 A. I knew Mr. Nihon during that period.
 Q. Well, choose your adjective.
 A. As I remember we had a fairly petty relationship.
 Q. In your position as Chairman of the Racing Commission what would you say your relationship was with the Montagu Park Racing Association Ltd. during that period? C
 A. I would say about the operation of the track but not Mr. Nihon himself.
 Q. I am not talking about Mr. Nihon personally. It is not between you and Mr. Nihon, it is between you and the Montagu Park Racing Association Limited. You thought you were a good Chairman and that they were not operating the track properly? D
 A. They were not, they were operating the track disgracefully.
 Q. You felt that they should not be operating the race track?
 A. They were not operating it properly.
 Q. You thought they were not operating it properly and at time Mr. Nihon was operating the race track?
 A. He owned the shares, but Watt was operating the track. E

- Q. Mr. Watt was operating and Mr. Nihon was controlling shareholder of the race track during that period?
- A. Yes.
- Q. Are you prepared to agree that during the period that you were Chairman Mr. Nihon owned the majority of the shares in the Montagu Park Racing Association Limited, but the operation of the track at that period you thought was bad?
- A. In my opinion it was.
- Q. You purchased Mr. Nihon's shares in May, 1953?
- A. 6th May, 1953.
- Q. Dr. Sawyer, this agreement was made between you and Mr. Nihon?
- A. Yes.
- Q. The Montagu Park Racing Association is not a party to this agreement?
- A. Not as far as I know.
- Mr. Adderley: My Lord, may I refer you to the 1953 Agreement.
- Q. Now, this agreement is between you and Mr. Nihon?
- A. Right.
- Q. It is a fact that it is intended to be an agreement between you and Mr. Nihon?
- A. Between myself and Mr. Nihon.
- Q. Exactly. Under this agreement, paragraph 1

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- C "Subject to the approval of the Exchange Control Board having been obtained for the transfer of the shares the Vendor will sell and the Purchaser will buy Two hundred and Ninety-seven (297) shares out of a total of Three hundred (300) shares being the capital stock of Montagu Park Racing Association Limited (a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony) and this will give the Purchaser the right to manage exclusively and operate the said race track and in his sole discretion shall manage and direct the affairs of the Montagu Park Racing Association Limited."
- D

After this agreement was made you regarded

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- yourself as being the owner of the Montagu Park Racing Association?
A. I did.
Q. You felt that you were entitled to all the net profits of the Company?
A. I did.
Q. You felt that you were entitled to the net proceeds and Mr. Nihon was the holder of one share and Mrs. Nihon was the holder of one share. It was agreed by you and Mr. Nihon that the two shares held by himself and Mrs. Nihon would not participate in any of the profits of the Company? A
- A. That is correct.
Mr. Adderley: My Lord, I would like to refer the witness to the balance sheet for the year ending 30th April, 1954.
Q. In the balance sheet for that year 1954 is shown on the right hand side, shareholders' withdrawal £24,527.17. 9.? B
- A. Yes.
Q. In fact that is not correct, is it not?
A. Why do you say that?
Q. That amount £24,527.17. 9. does that not include the 3% payment to Mr. Nihon?
A. All the payments are under the same category.
Q. Dr. Sawyer, let me put the facts to you and you can comment on them after. That amount of £24,527.17. 9. includes the 3% which the Montagu Park Racing Association had to pay to Mr. Nihon. C
- A. Yes.
Q. But Mr. Nihon was not a shareholder to that extent was he?
A. Mr. Nihon was not a shareholder?
Q. No, he was not so far as you are concerned, he was not a shareholder to participate in the shareholders' withdrawals.
A. The agreement says that as a shareholder he did not participate in the profits. D
- Court: It is a misdescription, but say that a man who is entitled to his royalty on the returns, when he gets his money to say that he is a shareholder withdrawing, it is not really correct.
Mr. Adderley: It is not correct.
Court: I would say it is a misdescription at the moment.
A. I don't think so, my Lord.

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- Q. You don't think so. Well, you cannot have it both ways, Dr. Sawyer. You say that you are the owner of the track. You were agreeing to purchase 297 of the 300 shares in the Montagu Park Racing Association and this amount is described as shareholders' withdrawals. You also say that you are entitled to all the net profits of the Company. But is it not wrong to say that the 3% Mr. Nihon was getting is shareholders' withdrawals.
- A. As I said, I think the agreement says that his shares will not participate in the profits of the company so far as the 3% was concerned.
- Q. Well, then you say that two shares will be entitled to £11,000?
- A. The 3% was under the agreement.
- Q. The 3%, was that no 3% of shareholders' withdrawals?
- A. The agreement said the 3% should participate in profits.
- Q. The 3% should participate in the profits of the Montagu Park Racing Association Limited who were obliged to pay 3% to Mr. Nihon. Is that correct?
- A.
- Q. You said the Montagu Park Racing Association agreed to pay 3% to Mr. Nihon?
- A. I don't think that is in any way valid.
- Q. A resolution was passed.
- A. There was no such thing passed.
- Q. At the Annual General Meeting? Look at the minutes of the 6th May 1953 over which you presided. It was a Directors' Meeting?
- A. Yes.
- Q. "The Montagu Park Racing Association agreed to pay to Mr. Nihon 3% of the 13% granted the licensee on the pari-mutuel pool." Is that not correct?
- A. You are thinking of the resolution?
- Q. Yes.
- A. I recall that I was in the chair.
- Q. Do you recall that the Company agreed to that resolution?
- A. As I recall it was embodied in the agreement.
- Q. I am not talking about it being embodied in the agreement. I am talking about a resolution that was agreed to by the Montagu Park Racing Association?
- A. That is so, yes.

A

B

C

D

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- Q. You say you did recall it was in the agreement. Was it in the resolution?
- A. I actually don't remember the terms of the resolution, that was 13 years ago. I am reading from the minutes. I must have agreed to them, yes.
- Q. You read it, so you must have agreed to it? In fact in 1956 you moved the resolution yourself to pay to Mr. Nihon 3%?
- A. You show me the minutes and I will be able to say. A
- Q. You have it right before you, 29th February, 1956. Will you read the motion for me.
- A. "On motion of Dr. Raymond W. Sawyer and seconded by Mrs. Ivarene G. Sawyer (Mr. Nihon being interested, refrained from voting) the following Resolution was agreed to:-
- "RESOLVED that the Resolution in respect of the excellent services rendered this Company by Alexis Nihon which was passed at a meeting of the Directors of the Company held on the 6th May, A.D. 1953, be and the same is hereby amended as follows:- B
- "As a consideration of the excellent services rendered this Company by Alexis Nihon be it resolved that Alexis Nihon, his executors, administrators or assigns retain Three percent of the Thirteen percent granted to the licensee on the pari-mutuel pool." C
- He was to get 3% of the 13% of the pari-mutuel pool.
- Q. Now do you remember moving that resolution yourself?
- A. I don't remember doing it, but I must have agreed to it.
- Q. Now, let us go back to 1953, 1954. We have a resolution that was agreed to by the Company on the 6th May, 1953 to pay to Mr. Nihon 3%. Do you still disagree that it is wrong to call the payments made to Mr. Nihon shareholders' withdrawals? D
- A. I have to answer that the same way, Mr. Adderley. My understanding was that the

agreement said that these two shares would not participate in the profits in itself in so far as the 3% was concerned. That is the 3% would be paid from the profits.

Q. Do you mean that £12,133. 9. 0. which he received represents as 3% represented 2 shares in the Company?

A. No. It represented 3%

Q. It did not represent dividend on 2 shares?

A. It represented 3% in the agreement.

Q. Dr. Sawyer, are you saying it represents dividends on two shares?

A. I am not saying that at all.

Q. Well, so long you are saying it does not represent dividends on two shares, I am satisfied. It represents the 3% payable to Mr. Nihon?

A. Yes.

Q. You don't agree that it is shareholder's withdrawals?

A. No, I don't.

Q. He was entitled to 3% of the gross pari-mutuel pool?

A. 3% of the pari-mutuel pool.

Q. You do not think that you were entitled to 10% do you?

A. Under the agreement I was.

Q. Not under your agreement with Mr. Nihon. I am talking about your interest in the Montagu Park Racing Association. That is all that we are concerned with not Mr. Nihon. As far as the Montagu Park Racing Association is concerned you say that you were entitled to 10% of the gross pari-mutuel pool.

A. That is a legal point, I will leave that for my counsel to answer.

Q. That is not a legal point, Dr. Sawyer, you are perfectly aware of the terms of the resolution?

A. In fact, what happened was the expenses of the operation came out of my % but the agreement does not say so.

Q. I am not talking about the agreement, Dr. Sawyer, I am talking about the resolution of the company and the resolution of the company says Mr. Nihon is entitled to 3% of that 13%. You are saying that you are entitled to the balance of 10% from the Company.

A. There is no mention of the 10% of the in the minutes of the company.

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Q. Well, by implication that if the 3% is drawn by Mr. Nihon a simple deduction of 3 from 13 leaves 10 doesn't it? Now do you say that you are entitled from the Montagu Park Racing Association 10% from the pari-mutuel pool?

Court: The budget of the company is entitled to it, not Dr. Sawyer?

Mr. Adderley: Yes. I do not know what he says, that is what I am trying to find out now.

A. Mr. Adderley is talking about the resolution, I am talking about the agreement. I felt that under the agreement I was entitled to the 10% the resolution does not say so.

A

Q. You said that you were entitled to 10% Do you still feel that way?

A. Yes, I said under the agreement.

Q. Under the agreement you felt that you were entitled to the 10%, but you did not think that you were entitled to the 10% from the company?

A. Not according to the resolutions of the minutes of the meeting.

B

Q. Because you would be entitled to the net profits of that 10% would you not?

A. Not just the net profits, you are confusing net profits with availability to the shareholders. I felt that I was entitled to what was available to the shareholders by way of surplus.

Q. We would come to what was available to shareholders in due course. Under your agreement with Mr. Nihon you agreed to deposit your shares with Barclay's Bank?

C

A. That is right.

Q. They were not deposited with Barclays as securities?

A. They were deposited in securing in the money.

Q. Will you refer to paragraph 6 of the agreement of 6th May 1953 -- "6. On the signing of this agreement the said Two hundred and Ninety-seven (297) shares of Montagu Park Racing Association Limited will be transferred by the Vendor to the Purchaser and endorsed in blank by the Purchaser and deposited with Barclay's Bank, Nassau in escrow until the cash balance of Forty thousand pounds (£40,000) has been paid at which time they will be delivered to the Purchaser." You regarded that as a deposit of security?

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- A. I did.
- Q. You do not regard that as a deposit in Barclay's in escrow which cannot possibly be a deposit of security?
- A. It says until the cash balance of £40,000 has been paid.
- Q. I know it says that but do you understand what "deposit in escrow means"?
- A. No. It is a legal term.
- A Q. But you do understand that you were depositing in Barclay's Bank as security for your loan to Mr. Nihon?
- A. That was my understanding.
- Q. You did not understand that you were depositing it to Mr. Nihon.
- A. No, I did not think that I was depositing it to Mr. Nihon.
- Q. How did you think that you were depositing it. As security?
- B A. The deposit was being held by Barclay's Bank.
- Q. You felt that Barclay's was holding them on behalf of Mr. Nihon?
- A. That is what I felt.
- Q. My Lord, would you refer Dr. Sawyer to the correspondence while I refer him to the same letter. The letter of the 7th of May 1953. That is a copy of a letter, Dr. Sawyer, which you wrote to the Manager of Barclay's Bank on the 7th of May 1953. I will read the relevant portion. It is addressed to the Manager, Barclay's Bank (Dominion, Colonial Overseas) Nassau. "Dear Sir, I enclose herewith the following Share Certificates in The Montagu Park Racing Association, Limited in my name and endorsed by me in blank:" (and then you refer to various Share Certificates in your name). "I am also enclosing herewith a copy of an agreement entered into today between me and Mr. Alexis Nihon relative to the purchase of these shares." (Now this is the relevant paragraph). "You will note that in Clause 2 of this agreement I am obligated to make certain payments to Mr. Nihon through your Bank on certain specific dates, and that in the event of default in payment of any of these sums Clause 20 of this agreement provides that all amounts due under this agreement shall immediately become due and payable to Mr. Nihon and you are hereby instructed in such event to

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deliver the above-mentioned shares to Mr. Nihon without any further instructions from me." Are you not there, Dr. Sawyer, telling Barclay's Bank to hold these shares on your behalf subject to your fulfilment of your agreement with Mr. Nihon?

- A. That was not my understanding.
- Q. Let us look at the relevant lines in paragraph 3 of the letter - "you are hereby instructed in such event to deliver the above-mentioned shares to Mr. Nihon without any further instructions from me." You say that the Manager of Barclay's was not holding them on your behalf subject to your instructions? A
- A. I would say that they were holding them firstly on behalf of Mr. Nihon, but I instructed him in case of default they could deliver them to Mr. Nihon.
- Q. In spite of the letter you now say that they were holding them on Mr. Nihon's behalf? B
- A. That was my understanding.
- Q. If they were holding them on Mr. Nihon's behalf they would not need any instructions from you to deliver them to him would they?
- A. My only understanding of the shares was that they were deposited there and held as security until the balance was paid and if the balance of the payments were not made on the due dates then the shares were to be delivered up to Mr. Nihon. C
- Q. That will amount to a mortgage of these shares. Will you agree with that?
- A. My understanding was that the shares were mine.
- Q. And as you say, you were depositing them with Barclay's Bank on Mr. Nihon's behalf.
- Court: The letter says "hold them for me if I do not pay then hand them over to him". It does not matter whether Dr. Sawyer agrees or not.
- Q. If you consider it that the shares were deposited in Barclay's Bank as a security for the mortgage on them, do you still feel as though that you were still entitled to all dividends on those shares? D
- A. Of course I would be.
- Q. And you feel as though you would be entitled to withdraw from the company any amount of money that you regard as dividends on those shares?
- A. Any amount of money which was available to the

shareholders for distribution, not only out of profits.

Q. Do you also say that irrespective of the fact that you had not paid Mr. Nihon for those shares?

A. Of course.

Q. As far as you were concerned you were entitled to anything which might be available for distribution, whether you had paid him for the shares or not?

A. I was the shareholder of records.

Q. In spite of the fact that you had not paid Mr. Nihon for them?

A. That is true.

Q. Now look at paragraph 10 of the 1953 agreement. "The Vendor covenants that there are no outstanding contracts of the Montagu Park Racing Association Limited of any other kind other than the two contractual obligations hereinbefore mentioned in Clause 7 and 8" and Clause 8 refer to the 3% payment to Mr. Nihon, is that not correct?

A. "The Purchaser agrees to pay"

Q. Clause 8 refers to the 3% payment which Mr. Nihon was entitled to under the resolution of the Montagu Park Racing Association Limited, is that not correct?

A. I am saying that I felt that under this agreement the Purchaser agreed to pay the Vendor 3% of the gross sums. I felt that I was obligated. I signed this agreement and I felt that I was obligated to pay the Vendor 3% of the pari-mutuel pool.

Q. Independent of the Montagu Park Racing Association?

A. No.

Q. Although the agreement in Clause 8 says "the Purchaser agrees to pay the Vendor 3%" is it not correct to say that both you and the Montagu Park Racing Association were obligated to Mr. Nihon?

A. I was obligated to see that he got the payments, from the Montagu Park Racing Association.

Q. So in Clause 10, where the covenants confers to the two contractual obligations, it is referring to, is it not, to the contractual obligations of the Montagu Park Racing Association. I refer you to Clause 10 again,

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- and then your covenants suggest that there are no outstanding contracts of the Montagu Park Racing Association Limited of any other kind other than the two contractual obligations hereinbefore mentioned in Clauses 7 and 8. Quite clearly it is not the case, Dr. Sawyer, that this Clause reiterating the fact that the payments to Mr. Nihon is a contractual obligation of the Montagu Park Racing Association Limited. Do you agree with that? A
- A. I would not think that it says that.
- Q. "And the purchaser agrees that the contractual obligation with reference to the three percent shall be endorsed on the shares". And was that not the case that in fact the share was so endorsed?
- A. I believe so, I cannot recall.
- Q. A further confirmation of the contractual obligation the Montagu Park Racing Association to Mr. Nihon, is that not correct? B
- A. That was endorsed on the shares.
- Q. It was also endorsed on the shares, but what I am suggesting is that further confirmation of the contractual obligation of the Montagu Park Racing Association between the Company and Mr. Nihon.
- A. It was endorsed on the shares to obligate the Company.
- Q. No, this is in the agreement, I am talking about the words - "Further the purchaser agrees that the contractual obligation be endorsed on the shares" and so on. And what you both are referring to there is the contractual obligation between the Company and Mr. Nihon. C
- A. Yes, it is.
- Q. That is the purpose of the reference to the contractual obligation of Montagu Park Racing Association to Mr. Nihon, is that not correct?
- A. Yes, I agree that the contractual obligation replaces the shares. D
- Q. No, that is not quite what I am saying.
- A. But you did say that.
- Q. No, that is the second part. I am referring to the first part. "Further the purchaser agrees that the contractual obligation in reference to the Three percent of the pari-mutuel pool as in Clause 8 of this agreement" be endorsed on the shares. What I am suggesting is that a further confirmation as E

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- between you and Mr. Nihon that the contractual obligation is between The Montagu Park Racing Association and him.
- A. The only I will say is that I agreed that it be marked on the shares.
- Q. The reference to the contractual obligation is between him and The Montagu Park Racing Association.
- A. It probably was done so.
- A Q. And again I am only pointing this out to you Dr. Sawyer because of the fact that paragraph 8 is followed by the procedure in paragraph 8 does not really mean what it says. "The Purchaser agrees to pay to the Vendor Three (3) percent" Did you agree to pay?
- A. That is what it says. It was my understanding that I was to be responsible for the payments.
- Q. It does not mean that you were to pay Mr. Nihon? It does not mean that you were obligated to pay Mr. Nihon personally?
- B A. No, in fact the funds came out of the Montagu Park Racing Association accounts.
- Q. That is what I want to hear. The Montagu Park Racing Association was obliged to pay you as the Managing Director and controlling shareholder and so on.
- A. No.
- Q. Exactly. Now look at paragraph 19. "The Purchaser agrees that the sum of Five Thousand pounds (£5,000) will be set aside each year to be used for depreciation on the Company's property until payment in full has been made to the Vendor." What do you understand by that?
- C A. My understanding of that was, as you normally do in every company's activities, especially an activity of this kind, that something should be set aside from the accounts of the Company depreciation on buildings for any given years of operation.
- D Q. Do you consider this as an agreement between you and Mr. Nihon that the Company would write off a certain amount of depreciation on its Assets every year, is that right?
- A. No.
- Q. Let us look at this paragraph again then. "The Purchaser agrees that the sum of Five thousand pounds (£5,000) will be set aside each year" Again you do not regard that as an agreement on your part, this is really intended to give
- E A. That is right.

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- Q. The Company really was to set aside £5,000 per year?
- A. Yes.
- Q. Why could it not in the normal course of the operation of this Company, Dr. Sawyer, why was it necessary for that to be written in the agreement if it means what you say it means?
- A. I think that Mr. Nihon was just trying to make sure that depreciation would be charged.
- Q. Does this not mean, Dr. Sawyer, exactly what it says that the sum of £5,000 will be set aside, not that the assets of the property will be depreciated on paper, although it is only paper value. A
- A. It is not only paper value, Mr. Adderley, you do not understand the balance sheet if you say that.
- Q. It is not paper value?
- A. No.
- Q. Well, where is this £31,000 for depreciation is to be set aside? B
- A. It is not paper value. When you depreciate it comes out of probates and it comes out of available surplus.
- Q. Dr. Sawyer, you have told us that this Company had depreciated to the extent of £31,000, where is it then if it is not paper value?
- A. Because each year that much less is available to shareholders out of surplus.
- Q. So you set aside a certain amount each year? C
- A. That is not correct accounting procedure, I will let my accountant answer that, I am not an accountant.
- Q. I know you are not an accountant, Dr. Sawyer, we are not talking about paper value now, we are talking about money. So see that is the difference between having it appear on paper and how it really is in fact. Because what I am putting is that what appears here as a surplus is not really surplus available for distribution at all. These figures are entirely misleading. D
- A. I am putting it to you, Mr. Adderley, that you are wrong. It is an interpretation of the Three percent, it does determine the profits and it does the surplus.
- Q. So then the Company should have available for it those surplus assets since those are the amounts available for distribution? Where are they? E

- A. You know where they are, Mr. Adderley, they burnt down.
- Q. Exactly, they do not exist.
- A. They did exist at this time.
- Q. Yes, they only existed on paper.
- A. They existed, Mr. Adderley.
- Q. Dr. Sawyer, you do not agree that they existed on paper?
- A. But it is not just a paper existence.
- A Q. You may not agree with that Dr. Sawyer, but I am afraid that in actual fact they only existed on paper, that they never existed.

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- Q. Dr. Sawyer, do you the balance for the year ending the 30th of April 1954, I just to refer to the item in connection with this depreciation?
- A. No, I do not.
- B Q. I refer, Dr. Sawyer, to paragraph 19 of the agreement between you and Mr. Nihon of the 6th of May, 1953. Now, in that balance sheet of the 30th of April 1954 there is shown on that under Liabilities and Capital, surplus balance - 6th of May 1953 £39,949. 3.10, do you see that figure?
- A. Yes.
- Q. When you purchased the shares from Mr. Nihon, did you not realise that that was an estimated figure based on the fixed assets of the Company?
- C A. I would regard that as the figure which was probably carried forward from time to time during the operation of Hobby Horse Hall.
- Q. I am quite sure that was the case, but you were buying the majority of the shares in the Company and I am quite sure that before you did that you would want to know what the worth of the Company was.
- A. Yes.
- D Q. And do you not agree that that figure which is shown there must at that stage have been based on an estimate of the assets of the value of the company?
- A. I would think that it was a continuing figure from former years.
- Q. Yes. I agree with that, I am sure that that is so, that that is a figure that was brought

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- forward from year to year. But if you were looking at this balance sheet on the 30th of April 1954 instead of 1953, if you were looking at this balance of this company, could you realise that that is what that surplus represents --- the estimates of the value of the Company?
- A. The value of the assets of the Company.
- Q. Yes, the value of the fixed assets of the Company. Estimated value. A
- A. I will not say fixed assets, I will say that it is a continuing figure from year to year.
- Q. Continuing figure, but not the same figure.
- A. When your depreciation is charged, the figure comes down, or goes up.
- Q. What I want to know is, but I am not quite sure you understand, I want to know if you understand by that figure, that surplus Balance --- 6th May 1953 that that is the value of the assets of the Company which in this case amounted to the fixed assets of the Company at the time? B
- A. Yes.
- Q. And those assets, the value would have to be based upon an estimate of their value, do you agree with that also?
- A. Originally they would have to be based on an estimate but not necessarily this year.
- Q. This is your agreement as provided in paragraph 22 --- "The Vendor agrees to leave the sum of One Pound (£1) only to the credit of Montagu Park Racing Association Limited" C
- So you see you had no existing capital, is that not correct?
- A. No cash in the bank.
- Q. And the assets of the company were at that time the fixed assets of Hobby Horse Hall and whatever value you might put on to these, is that not correct?
- A. That is so. D
- Q. And those fixed would have to be based on an estimate of the value of the fixed assets and an estimatal value of each, is that not correct?
- A. Why should it be based on an estimate, Mr. Adderley?
- Q. Well, would it not have to be based on an estimate
- A. The buildings were built there and I imagine

they knew how much they cost when they were built and this figure is probably come forward in all the balance sheet as a deduction of the company.

Q. Not that particular figure but some figure is carried forward.

A. Right.

Q. Exactly, just as in the year ending the 30th of April, 1954, over on your left hand side there under fixed assets ... "Office Furniture and Fittings less:- Reserve for Depreciation Track Furnishings and Equipment Less:- Reserve for Depreciation and so on, then we have Buildings £58,549.16. 9. Less:- Reserve for Depreciation £29,542. 2. 9. and so on and the following year it depreciated by approximately £6,000 and so on. Are they not figures based on estimated value?

A. Figures based originally, I would say, probably on the costs of the buildings of the fixed assets there as they come forward they depreciated so much each year and so much money is made and so on, and the figure changes. I do not think for a minute that this figure of £29,000 is estimated (indecipherable) of the company, no.

Q. No, just understand me right. Not estimated by you or estimated for a particular year but these figures are based on estimates. For example the depreciation of the buildings, do you not agree that that is an estimated figure?

A. Depreciation usually is charged to the (indecipherable)

Q. Yes.

A. I can only tell you what my experience with the present company is and that is exactly what we do.

Q. And that is an estimated figure.

A. It is not an estimated figure, you figure you would depreciate over ten years.

Court: I understand what the figure is, Mr. Adderley. If it is an ordinary figure on an ordinary balance sheet and there is no particular exception to the ordinary rules, I understand what that figure is and how it has arrive there. Is that sufficient for your purpose.

Mr. Adderley: Yes sir, but it is also important

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- from Dr. Sawyer's point of view so far as what he states, sir, are available profits for distribution, which I am coming to now.
- Q. Do you understand that fixed surplus balance, this is the year ending the 30th of April 1954. The surplus at the end of the year ending 30th April 1954 was £30,440. 3.10. Would you say that that was the amount available for distribution to the shareholders?
- A. Yes. A
- Q. That is what you regard that as?
- A. Yes.
- Q. The amount of the surplus as shown on the 30th of April 1954 of £30,440. 3.10. you regard as the amount available for distribution to the shareholders?
- A. I do, but there was an amount of £39,949. 3.10. available. That was available until an amount was taken from it. £30,440. 3.10. was available after the shareholders' withdrawals. B
- Q. That was the 30th of April 1954?
- A. After the shareholders' withdrawals, and is still available for distribution.
- Q. That is the amount which you regard as being still available for distribution?
- A. Yes.
- Q. Would you agree that that is the figure ... let me ask you again to see whether we are talking about the same thing. That is a figure which is based on the fixed assets, assets on the cash in hand at the bank and the accounts payable? C
- A. Based on profits as well, and also depreciation, depreciation affects profits.
- Q. Depreciation may affect profits but the depreciation with which we are dealing here is excavation, do you agree with that?
- A. Done so much each year whether you agree on a certain amount for each year or for a certain number of years it is depreciated over a certain number of years. D
- Q. Whatever amount you agree on is your estimated figure, do you agree with that?
- A. I do not know what you mean by an estimated figure.
- Q. Well, Dr. Sawyer, let us put it this way then. Suppose I buy this briefcase for two pound this year, and next year I buy it with one pound ten shillings, I therefore depreciated

- its value by ten shillings. Do you understand what I mean. That is an estimate of ten shillings, it may not be worth one pound.
- A. I think I understand as well as you what depreciation means.
- Q. Exactly, then do you not agree that the ten shillings is an estimated depreciation?
- A. You based the depreciation on the life of the case.
- A Q. And is it not an estimated figure. The figure is not a calculatable figure in terms of value of which you could be certain, like if you know you have a certain amount of money in the bank, there is no question about that, the bank records show that, but when you are estimating fixed assets it is called an estimate, is that not correct?
- A. Down to the last penny, yes.
- B Q. So if you are going to base what you call your surplus available for distribution on estimated figures would you not say that that is a dangerous practice for making payments of dividends on that figure?
- A. My understanding of accounting procedure is that that is the figure which is available to shareholders.
- Q. That is for the purpose of paper calculation?
- A. No, it is not a paper calculation, one figure affects the other.
- C Q. If that is the figure on which you say that you have to arrive at an estimate of an amount available for distribution and each year throughout the life of this company you set aside a certain amount for distribution, you told us that that figure is somewhere in excess of £31,000, how do you explain the fact that when the company found itself with the premises destroyed by fire in January 1958 it did not have the
- D A. Mr. Adderley, I am not called upon, but this writ was issued against me, to answer any questions as to what subsequently happened to the company after 1957. This was in 1958, you say and besides the premises were insured and as we called properly insured, at the time. Proper precautions were taken.
- Q. Exactly. That was a mistake to say that you had it insured, but you did not really have it insured, do you agree with that now do you not?
- E

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- A. Well, apparently it has transpired that is an arguable point.
- Q. The point is that the value of the assets was not there, is that not correct?
- A. But they were insured.
- Q. The buildings may have been insured, but do you agree that in January of 1958 the liability of the Company was somewhere in the vicinity of
- A. Show me the balance and I will see. A
- Q. If we could find that we would have it to present it, but do you know that Dr. Sawyer?
- A. No, I do not know.
- Q. Do you have any idea how much they actually were? You were still actually operating the track, you should know that.
- A. There was no operation in 1958 except for one week.
- Q. But there was operation in 1956-57 and 1957-58.
- A. Yes. I have the 1956 balance sheet here and I could read to you what it is. B
- Q. The time the track was destroyed by fire was in January of 1958. Do you know that the liability of the Company was at that time was around
- A. I do not know that.
- Q. Let us presume at the moment that that is in fact the case. That the liability of the company were in excess of £16,000 pounds. Do you also know that the company did not assets with which to discharge those liabilities? C
- A. They would have had assets if insurance was paid.
- Court: Did they have assets to discharge the liabilities, that is the question?
- A. The insurance was not paid.
- Court: They did not have the assets did they?
- A. No, because the insurance was not paid.
- Q. There were not assets with which to discharge those liabilities? D
- Court: The reason is another matter.
- Q. So when the company stopped operating the race track in February of 1958, the company, so far as its own accounts were concerned was insolvent. Do you agree with that?
- A. Probably so.
- Q. You agree with that do you not?
- A. This was in 1958?
- Q. Yes. Do you agree with that?

- A. Well, we took a petition to the Court to have it wound up in 1958 and the Court did not agree.
- Q. The Court did not agree to wind it up, but the Court did not agree to ... but you have introduced an interesting point there Dr. Sawyer. But do you not know that the Court did not wind it up because the Court was not satisfied that there was not available surplus for distribution after it had wound up. That is exactly the point with which we are dealing with now. Is that not correct?
- A. I believe that was the case.
- Q. Exactly. So that is exactly the point which I am making now. That at time, at the end of the pre-mature termination of the 1958 racing season, the company was insolvent. Is that not correct?
- A. I would think it was.
- B Q. And the company was insolvent because the estimated value of the company based on the fixed assets was wrong? Do you agree with that?
- A. No, I do not.
- Q. Well, Dr. Sawyer if it was not wrong the Company would not have been insolvent, it is quite obvious from the figures.
- A. It was so because the buildings were burnt down and it made quite a big difference when the insurance was not paid. But in 1957 the buildings were there.
- C Q. But we are talking about 1958.
- A. But they only paid me up to 1957.
- Q. That is the whole point, you may not quite realise what I am getting at at the moment. That is the whole point in basing your distributable profit on estimated value, because you did not know what they really are at this time, as it happened in this particular case. Now do you not maintain that the amount which you withdrew from the company were always available for distribution?
- D A. I do maintain.
- Q. Exactly. You maintain that the total really of £39,000 which without deductions which were allowed for the total amount there of £39,000, you maintain that that amount was always available

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all over those three to four years, to you for distribution to the shareholders of the company?

- A. I do.
- Q. Right. So that amount of money having been paid to you the company found itself in February of 1958, insolvent? So the amount of money which was in fact paid to you was not really available for distribution at all, it was not there to be distributed? A
- A. In other words, what you are saying, Mr. Adderley, is that owning all the shares of the company I was not entitled to any money.
- Q. What I am suggesting to you, Dr. Sawyer, that as a business and the operator of this company you should have known that it was wrong to base the value of your distributable profit on an estimate of the value of the assets of the company. !
- A. What you are saying, Mr. Adderley, is that those balance sheets do not mean anything. B
- Q. Exactly, the balance sheets do not mean anything.
- A. I am afraid that you do not know anything about accountancy then Mr. Adderley.
- Q. Well, then Dr. Sawyer, please tell us where this £31,000 is. I know you have got money in the bank, and it is not there.
- A. This has nothing to do with money in the bank.
- Q. It has everything to do with money being in the bank, Dr. Sawyer, because this company was insolvent in February of 1958. C
- Court: The main assets went up in flames, you can add that it is written in the books and that it on the basis that if it is destroyed you will get the insurance money. If that asset is suddenly destroyed after the balance sheet is published, when the next balance sheet is made out it will appear in the books as nothing, as nil. But surely that will be an asset, it was purely in futurity that the insurance company will pay up is it not? D
- Mr. Adderley: That is exactly my point sir. But it is an improper business practice to base the value of the distributable profit on estimated value of the assets. And that is what I am talking about. Let me explain to you and you will see what I am getting at.

In this particular case the value of the distributable profit is based on the value of the surplus, and that surplus value is in fact an estimated value of the fixed assets and Dr. Sawyer's view of distributable profit is based on that estimated value. If we find that by taking that estimated value the available actual cash in the hands of the company is used and distributed among the shareholders and it is then found that the company is insolvent, that company has distributed its capital.

A

Court: I agree with you.

Mr. Adderley: Exactly sir. That is the point which I am trying to bring out here. Even if Dr. Sawyer had declared a dividend in 1954, 1955, 1956 and 1957, that would have been an improper dividend and it would have amounted to withdrawals from capital and that is exactly what has happened in this case. The company again in 1958 draw on liabilities and assets and even if the company had declared a dividend, but the company did not do that, but even if it had declared a dividend it is our submission, sir, that the company had no power to do that because it then had to draw on capital, and that is exactly is the position in this case sir. And this is what I am trying to find out, whether Dr. Sawyer understands the position here, because it was also determine whether he was entirely innocent of what he was doing or whether he was not, because these are matters of facts which cannot be denied, so far as the value is concerned, and based on the surplus which is an estimated value. And they have used all the capital in the company and distributed it, and they find themselves in the position where liability is in excess of the asset then those dividends or anticipated dividends are improper. You see the point do you, Dr. Sawyer. I was gradually coming to that, but I just took this opportunity to explain to your lordship what the position really is. Do you understand the point which I am making?

B

C

D

A. I understand what you are saying, but I do not say that I agree with it.

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Q. You say that you do not agree with it although you know that at the time the race track was destroyed by fire it liability substantially exceeded its asset?

A. All I am saying in answer to your question is that upward to 1957 there were profits available for distribution to the shareholders and the balance sheet show that.

Q. Book value.

A. It is not book value. Depreciation always affects profits.

Q. If the company is wound up then Dr. Sawyer, if it is not book value, tell us then how you meet your liabilities to your creditors?

A. I take it for granted that you can always on a proper balance sheet, as we think these things are, you can always go to a bank and borrow money on your assets.

Q. What assets are there available on which you can borrow money?

A. Not in 1958, in 1957 there was.

Q. I see. And you say that you can always borrow money to pay off your dividends?

A. I am not saying that at all, Mr. Adderley.

Q. You say that you would have to borrow money to pay your creditors? Would you have to borrow money to pay your dividends too?

A. We did not have any creditors in 1957, Mr. Adderley.

Q. You had creditors in 1958 though?

A. I am talking about 1957, you are talking about 1958.

Q. We have to talk about 1958, we cannot just stop with 1957. You cannot isolate one year from the other.

A. You have already isolated it for me, Mr. Adderley, because the writ only goes from 1957.

Q. No the writ does not go from 1957. The writ deals with your withdrawals from the company in May 1953.

A. Up to 1957, not to 1958.

Q. Exactly. But what I am putting to you, Dr. Sawyer, is that neither you nor the company had any authority to withdraw the capital of the company on the basis of the value of the fixed assets. Which was only estimated value?

A. I was not withdrawing from the capital and I believe that.

A

B

C

D

E

Q. You do not think that you were drawing on the capital of the company. I am just want to be clear on that. You do not think so? You think that you were drawing on the assets available for distribution and you still think that in spite of the fact that in February of 1958 the assets of the company were substantially less than the liabilities?

A. It was through that the insurance company did not pay us the insurance, off.

Q. That is exactly what I was saying. The insurance was something that you could not guarantee and that is the whole point about it. The next thing about it is that you would have paid money out of capital.

A. We did not.

Q. Now let us look at 1954 again. You maintained Dr. Sawyer, that in 1954 you had to undertake substantial capital improvement to the race track and that accounted for the accounts payable of £14,496.14. 1. Is that right?

A. That is exactly what it says.

Q. And on account of the improvement which you had to make at the race track those accounts payable appear in the balance sheet. Is that right?

A. I would say, yes.

Q. Now let us look at the accounts payable and see whether the fact substantiate your maintenance. The accounts payable totalled £14,496.14. 1. Now let us look at these accounts and see in fact if these accounts can be attributable to capital improvements of buildings.

A. I also said high maintenance charges as well.

Q. Now Mr. Nihon was cross-examined about it; Dr. Sawyer, this morning you gave us evidence in examination in chief about this same matter that these accounts payable were attributable to these substantial capital improvements which you made.

A. You are twisting words around, Mr. Adderley. Money was not available to pay these bills because of the heavy capital improvements.

Q. Money was not available to pay these bills because of the heavy capital improvements.

A. And high maintenance charges.

Q. Now we are having high maintenance as well.

A. I said that this morning, Mr. Adderley.

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- Q. And did you not, you remember when Mr. Nihon was cross-examined, about the actual items of repairs to the buildings and equipment, and you this morning, Mr. Knowles stated a long list of repairs to the buildings which was being used to substantiate these accounts payable.
- A. There were more repairs needed doing than were actually done.
- Q. Let us look at these figures and see if they would actually substantiate your contention. A
- "S.J. Armoury, Esq. £153. 17. 6." You did not buy any building material from Mr. Armoury did you?
- A. No, we did not, but we bought a calculating machine, which is a part of the operation of the track.
- Q. That was nothing to do with repairs to the buildings?
- A. I said maintenance and running costs.
- Q. You have got to run the thing Mr. Sawyer, you cannot operate it with nothing. B
- A. But the machine which was left there was no good.
- Q. How old was it?
- A. We cannot go into that now.
- Q. "Ronald A. Albury £871.10. 0." That is not for building material was it?
- A. I do not know what that was for.
- Q. I am sure that was not building material.
- A. Feed I presume. C
- Q. And Artie's Dry Goods Store £3.13. 0. That is not for building material? American Totalisator Company Inc. £4,310.17. 9.
- A. What do you say to that one, that was not capital improvement?
- Q. That is nothing to do with repairs to buildings? That is not for repairs to the roofs or repairs to any part of the pari-mutuel buildings?
- A. Oh. The roofs in addition to all these things, I told you that this morning. D
- Q. "Bahamas General Hospital", Bahamas Publishing Company Ltd., Kenneth F. Butler & Company Limited, Bahamas Printing Works, Miss Beverley Brice, Burns House Limited, A.K. Coke Esq.
- A. All this building works were for the running of the track.
- Q. Exactly. They all were for the running of the track and nothing to do with repairs to

the buildings. All those figures had nothing to do with repairs to buildings, would you agree? Would you or would you not agree?

A. I did not limit myself to repairs to the buildings, those were done in addition and also were shown on the balance sheet.

Q. Karl Claridge Esq., £11.16. 0.; City Lumber Yard £1,412. 9. 9. I will give you that one. Charles E. Carey £82.13. 0., perhaps I will give you that one too. Columbus Pharmacy, what building materials would you buy at the Columbus Pharmacy? Christofilis Brothers, Curry's Radio Shop, Deal's Printing Press, East Bay Service Limited, R.R. Farrington Esq., Fort Montagu Beach Hotel, General Equipment, Limited. I will give you General Hardware Company. The Gimlet. Who is the Gimlet?

A. That is an advertising firm.

Q. That is for advertisements, that is nothing to do with building repairs?

B

A. No.

Q. The Nassau Herald, that is not for buildings; I-Need-A-Laundry; Interinsular Mails, Limited; John S. George & Company, Limited. I will give you that one - £52.17. 9.; June's Studio that is only £12.10. 0. but that is not for building materials. Kelly's Limited, I will give you that one; Kelly's Lumber Yard £18. 1. 8, you have that one; Kelly's Motor Company Limited, Knowles' Printing Service; Kerland Limited; Malcolm's Tyre Service; Moseley's Limited.

A. Malcolm's Tyre Service, that was necessary.

Q. Malcolm's Tyre Service £102. 9. 2.? Maura Lumber Company Limited, you can have that one; Maynard-Page, who is that?

A.

Q. Maury-Roberts Company Limited, that is not Alexis Nihon, Esq. £25. 4. 3.,

D

I am sure that was not building material; Nassau Guardian; Nassau Daily Tribune; Nassau Dunbrik, I will give you that one. Stop-N-Shop, Nassau Auto Part, Limited, Nassau Plumbing Service, that is the System I believe?

A. Certainly a part of it. The plumbing of the whole premises had to be reinstalled.

Q. All the plumbing and a part of the system, I believe?

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- A. All the plumbing, all the toilets of everything.
- Court: You said that all of the items of Schedule 3 contributed to improving the organisation and some were payable for is that the way you would put it down?
- A. Yes sir.
- Court: The proportion is one and a proportion is the other. A
- Mr. Adderley: No, my Lord, my submission to him is that the greater proportion of these figures are normal operating expenses sir, and not only attributable as originally
- Court: I think in number they are; whether in a month they are the total is about half and half.
- Mr. Adderley: Total available is nothing to do with the buildings.
- A. I mentioned that this morning, that was a part of the cost. B
- Q. The last item referred to was the Nassau Plumbing and now we come to The Public Treasury; Mr. E.L. Peddie, Public Health Department; Race Recording Company Limited, Royal Service Station, Sunshine Bottling Company, Limited, Dr. A. Soltys; Symonette Shipyards Limited, perhaps you can have that one; Sinclair Cuba Oil Company; Mrs. R.W. Sawyer; Taylor Industries, Limited; B.K. Thompson, Limited. C
- A. Yes. Taylor Industries Limited had to do with the reinstating of the electrical system.
- Q. Stanley Toogood; What To Do In Nassau. You have got a number of items there which can be attributable to the capital improvement, I agree with you there. But you also have a substantial number, perhaps half, which are put in the category of normal operation costs. Do you agree with that? D
- A. I would say substantially that they were to do with the capital and the high reinstatement costs of the premises.
- Q. Having done that we got to the 30th of April 1954, the accounts payable amounted to £14,496.14. 1., and you had in the bank £1,363. 0. 2. How did you expect to pay all these bills?

- A. I explained that rather in detail this morning.
- Q. How did you expect to pay the bills?
- A. They could not be paid and I borrowed the £10,000 from Mr. Nihon and loan that £10,000 to the Company.
- Q. We know that is what in fact happened after the end of the racing season, but during the course of the 1953-54 season did you intend that the company should have to borrow money to pay these accounts at the end of the season?
- A. No, we hoped that we would make enough to pay them.
- Q. You were hoping that the company would make enough money to pay off these bills without having to borrow money?
- A. Quite.
- Q. And the hope fell short by £13,000.
- B A. That is right.
- Q. So what all this really amounts to is that you over-estimated the income of the race track, is that not it?
- A. I think that is right.
- Q. So at the end of the season you found that the company owed approximately £13,000 more than it had?
- A. That is right.
- Q. Do you also agree that if you had made no withdrawals of your own it would have had money to pay those bills?
- C A. I would also agree that if Mr. Nihon had not also made withdrawals we would have had the money too.
- Q. Would you not also agree that the company had agreed to pay Mr. Nihon?
- A. No, I would not agree to that.
- Q. You do not agree that the company agreed to pay Mr. Nihon Three percent?
- D A. That is going to be a point for my Counsel to argue, Mr. Adderley.
- Q. I want to know as a matter of fact you are saying that the company did not agree to pay Mr. Nihon Three percent.
- A. I am saying as a matter of fact that the company paid him the three percent.
- Q. I want you to answer my question. Are you saying that you do not agree that the company agreed to pay Mr. Nihon Three per-
- E cent?

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- A. By the Resolution of the Company we were relying on the Agreement.
- Q. I do not care what you were relying on, I am asking you a simple straightforward question. Are you saying that the Company did not agree to pay Mr. Nihon Three percent?
- A. They did agree.
- Q. When the when did the company agree to pay you anything?
- A. I was to get the money from the race track. A
- Q. No, Dr. Sawyer.
- A. I was to get whatever was left of the profits after each track operation.
- Q. I am asking you a perfectly simple question. We are dealing with the 1953-54 racing season. When did the company in a general meeting of the Directors agree to pay you anything?
- A. Nothing.
- Q. They never did?
- A. No. B
- Q. Did you call a meeting of the Directors for that purpose?
- A. No.
- Q. Why?
- A. I do not get what you are getting at, Mr. Adderley. Will you phrase your question again?
- Q. I said why did you not?
- A. You asked me whether the company agreed to pay me money and I said that they did not. C
- Q. They did not agree to pay you anything?
- A. No.
- Q. Right. So at that time were you not in control of the Board of Directors?
- A. Yes, I was.
- Q. Well, why did you not call a Board of Directors meeting and have the Board of Directors agree to pay you a salary or to pay you the dividends, or to give you authority to make withdrawals from the Company? D
- A. Because, as I have told you and as you know yourself. I very like overestimated what the track was going to make.
- Q. No, Dr. Sawyer, no, that is not the answer. I am asking you why did you not call a meeting of the Directors of which you were in control and give you authority to pay you that money?
- A. I told you that I did not.
- Q. Why?

- A. I did not think that is all. I did not think that it was necessary to do so.
- Q. You had only just become a member (indecipherable) is that not a fact?
- A. You yourself said, Mr. Adderley, that myself and the company were one and the same thing.
- Q. I never said that.
- A. You did, earlier in cross-examination.
- Q. I never said anything like that, I am not such a fool.
- A. Those words came out of your mouth.
- Q. You may have liked them to come out of my mouth. But now let us find out why as you said that you did not authorise yourself to pay yourself?
- A. Because I did not, Mr. Adderley, that is all.
- Q. I just said why? Can you give us any reason why?
- A. For no reason, I did not think that it was necessary. I owned the company, and the company was mine.
- Q. That is the answer. You did not think it was necessary for the company to authorise you to pay yourself anything? Is that not correct?
- A. In a one man company like that, I do not think it was. The whole thing in the history of the company happened that way.
- Q. You only know a little about the history of the company recently, is that not right?
- A. How much do you know about the history of the company?
- Q. More than you do. Now let us deal with the payments to you. You were a Director of the Company, is that not right?
- A. Yes.
- Q. You were the President of the Company, is that not right?
- A. During the 1954 season.
- Q. We are talking about the 1954 season, and you were Treasurer also?
- A. I think I was.
- Q. President, Treasurer and Director of the Company?
- A. Yes.
- Q. You controlled the Board of Directors of the Company?
- A. Yes, I did.
- Q. And during that period you withdrew from the Company an amount in excess of £13,000?

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- A. Around £12,000 I think it was.
- Q. No, the actual amount which was withdrawn was in excess of £13,000. Actually £14,872. 6. 9.
- A. That cannot be so because the shareholders' withdrawals totals as shown on the balance sheet says £24,527.17. 9. and over £12,000 of that was Mr. Nihon's Three percent.
- Q. Certain amount of this, you are given credit for £500 which you paid into the company; you are given credit for a truck for £950 which you practically had paid for; and you are given credit for £27.18. 0. So that the net total is £12,394. 8. 9.
- A. I said around £12,000.
- Q. So in fact you withdrew from the company £13,872. 6. 9. in terms of actual cash withdrawals from the company's bank account. Do you agree with that?
- A. I still think that it was more like £12,000 if you say £13,000 it must be so.
- Q. £13,000 it is because the adding machine says that therefore I cannot argue with that. £13,872. 6. 9. And all these amounts you actually withdrew either by cash or by cheque out of the bank account of the company, is that not correct?
- A. I am prepared to accept that.
- Q. And throughout that period you did this without any authority to do so. Is that not correct?
- A. No Resolution by dividends were declared.
- Q. Not dividends, Dr. Sawyer, you are getting a little ahead. We have not come to dividends yet. What this amounts to is, that you were using company's funds to take either cash or write cheques in your own favour and what I am putting to you is that you should have obtained from the company their authority for you to do that first, before you can think about dividends.
- A. I did not consider it that way.
- Q. Exactly. I know, Dr. Sawyer, that you did not consider it that way and what I want to know is why you did not consider it that way?
- A. Because I felt that myself and the company as being the same thing.
- Q. You felt that you and the company were one and the same thing although the shares you had, you had not even finished paying for

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the shares. Now let us deal with the withdrawals. You felt that you could withdraw any amount of cash or in cheques from the company's bank account, so long as the money was there, is that not right?

A. I thought so.

Q. You felt that way, and in fact you did so. Did you not consider when you were doing this how it might effect the value of those shares?

A

A. No, I cannot say that I did.

Q. You did not consider that?

A. No.

Q. You did not consider whether it might effect the value of the shares or not?

A. No, it never occurred to me.

Q. Dr. Sawyer, do you not consider that it was important that it should have occurred to you, that if you would withdraw all the cash out of the company it would effect the value of the shares of the company?

B

A. In fact it did not.

Q. In fact it did not? Although the company had to borrow money you said? Would that not effect the value of it?

A. I cannot consider that it did at that time.

Q. You say that you do not think that it was necessary for the company to give you authority to pay yourself money?

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A. I did not at that time, otherwise I would not have (Illegible)

Q. Well, do you think so now?

A. No, I still do not think so, not under the circumstances that occurred at the time.

Q. So you think that it was not necessary for you to get authority to do so?

A. Yes, because I felt that myself and the company were one and the same thing.

Q. You are now satisfied that you and the company are not one and the same?

D

A. "In 1954 I was.

Q. In 1954 you thought that you and the company were one and the same thing and that you could do so without authority?

A. I did.

Q. And you did not think that it was necessary to have the company, the Board of Directors or a General Meeting give you authority to pay the money?

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No, that was never brought to my attention by the people who were handling the money.
You were not told the facts. The withdrawals about which we are referring, Dr. Sawyer, occurred substantially from the 22nd of September 1953 to the 15th of April, 1954. That is roughly the racing season. All the cheques are during the season. When you were making these withdrawals, were you taking them
consideration of what the company's
real financial position was?

A. I believe that I was, we had had an excellent season, but not as good as I expected.

Q. You said that you had had an excellent season but you did not have as good a one as expected. Are you saying then that when you made these withdrawals, you expected that you would have had a better season that in fact you did have?

A. I think so.

Q. You realise now that you should not have made these withdrawals then?

A. I cannot see it, Mr. Adderley. I cannot see any reason why I should not have made those withdrawals.

Q. You see no reasons why you should not have withdrawn the money, in spite of the fact that at the end of the year the company had no money to pay its bills?

A. The company made a loan to pay the bills and they did.

Q. No, we have not gotten to the loan just yet, we are just about to get to the loan, but before the company borrowed the money, before the loan, did you not consider the fact that all the capital of the company had been depleted?

A. I cannot say that I did consider it.

Q. Suppose the company did not get a loan?

A. You may suppose a lot of things, Mr. Adderley, but the company in fact did get one did they not?

Q. You are a man of business, operating a company, the shares of which you have not quite finished paying for yet, and liable of course to forfeiture if you do not fulfil your purpose, so this is not an ordinary situation, do you agree with that?

A. I believe that even if I had not loaned the

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- company the money the bank would have loaned the money to the Company.
- Q. You believe that you had not loaned the company the money the bank would have.
- A. I do.
- Q. Now at the beginning of the season when you started making your withdrawals, did you keep an account yourself?
- A. I did not keep a day to day account.
- A Q. You mean that you did not know how much money you had withdrawn from the company?
- A. I knew approximately as I went along, but I do not think that I took the ledger and kept it myself.
- Q. You had an approximate idea, but you did not really know how much you withdrew?
- A. I left that to the accountant.
- Q. You left that to the accountant, but just so long as there was money in the bank you thought and felt that you could withdraw that money, is that not right?
- A. I would not put it exactly like that, Mr. Adderley.
- Q. You would not put it exactly like, but I understand how you would put it, Dr. Sawyer, but that is exactly how it happened.
- A. We did not put it that way at all. We did not say that as long as there was money in the bank we could start withdrawing.
- C Q. Well, there was no withdrawing when there was no money in the bank, we know that much. All of the cash withdrawals which you made, they were in fact made from cash, is that not right?
- When I say cash, I mean from the cash pari-mutuel float on race days, is that not right?
- A. The ones marked Montagu Park.
- Q. All the cheques made in favour of the Montagu Park Racing Association are in respect with- drawals, from the Montagu Park Racing Association float at the race track?
- D A. I think that was agreed to earlier.
- Q. Agreed by whom?
- A. Mr. Deal said that.
- Q. That may be what Mr. Deal said, but that is what we now know. Now that money had not yet reached the bank account of the company, do you agree with that?
- A. I do not think you understand, Mr. Adderley.

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- Q. I do.
- A. I do not think you do.
- Q. Go on then, tell me what I do not understand.
- A. You do not understand what the float at the race track is.
- Q. Well, tell me what the float at the race track is so that you can show me how the money really come out of the bank account of the company.
- A. Float actually is money you put down there to carry on and start the racing going, so that you are able to pay out money. A
- Q. That is the cash you have on hand when you begin your race day.
- A. Yes. It eventually comes out of the company's account.
- Q. It eventually comes out of the company's account.
- A. Yes.
- Q. But the money we are talking about, is what is actually the Montagu Park Racing Association cash float, at the beginning of every race day, is that not right. B
- A. That is right.
- Q. And these cash withdrawals were made from that float. Is that not right?
- A. I believe most of them were, Mr. Adderley, I cannot explain the whole of them.
- Q. Can you think of any circumstances under which any of them might have been withdrawn from some other source? C
- A. I do not believe so, the other ones were labelled Montagu Park.
- Q. That is the only one. That would be the only cash in hand the company would have is it not?
- A. Down on the track.
- Q. Are you sure, that was the amount which they had down on the track on race days?
- A. Down on the track, yes.
- Q. And on every race day you made a cash withdrawal of anything between perhaps £50 and £100 or £300? D
- A. I do not remember any required amount, but I remember £50.
- Q. Most of them of the 1953-54 season were £50 cash withdrawals. Did you have the authority of the Directors of the general meeting to make those cash withdrawals from the company?
- A. No, I did not have.

- Q. Did you think that you should have?
 A. No, the thought never occurred to me as I said before, because I was the company and it belonged to me.
 Q. Now, if you were the company and it belonged to you, why did you not make the cheques which you put back payable to Raymond Sawyer?
 A. It seemed to me to be a more convenient way of handling it.
 Q. It seemed to be a more convenient, wouldn't it seemed to be a more convenient way and more businesslike manner for you to make the cheques payable to yourself than to the company?
 A. It could have been done.
 Q. Well, in retrospect you agree that that was a better way to do it.
 A. I would say probably a better way.
 Q. Yes, because with cheques made payable to Montagu Park Racing Association that is misleading is it not?
 A. It could be to someone who does not know.
 Q. Exactly. So far as these accounts are concerned, nobody knows. We have to know how you actually get it. To anybody dealing with these accounts would it not appear that these were actually withdrawals made by the company.
 Court: You said "anybody", do you mean auditors and accountants or casual persons?
 C Mr. Adderley: Anybody. Because these do not show who gets the money. These merely show a cheque, do you see my point?
 Court: You said that auditors could not find out.
 Mr. Adderley: No sir, they could not find out. They cannot find out from the records. All they know is that it appears to them that the company withdrew the money itself.
 Court: And the auditors surely require to know where the money went. They require vouchers for equipment that have been bought. I agree with the first lot. I have not examined the accounts as I should have been able to.
 D Mr. Adderley: We have the evidence of the cheque being made payable to the company, do you not agree, Dr. Sawyer, that it appears as though that money is being withdrawn by the company?

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A. I will also say that the auditors will not have been able to find out.

Q. I think that is what the Chief Justice has just said. That is not what I asked you. What I asked you is if it is not a fact that that appeared to be the money which was used by the Montagu Park Racing Association, is that not right?

A. It would not of been because I have endorsed it on the back. A

Q. No sir, I am sure that is not right. Let us examine the cheque.

Court: Is there only the one cheque?

Mr. Adderley: No sir, there are more cheques, in four little packs.

Q. On the back of the cheque dated the 30th of January 1954, Dr. Sawyer, which is made payable to the Montagu Park Racing Association Limited, there is written "for deposit to the credit of the Montagu Park Racing Association Limited Royal Bank of Canada". All the cheques made personally to you, Dr. Sawyer, were endorsed, but those made payable to the Montagu Park Racing Association Limited; again deposited to the credit of the Montagu Park Racing Association, there is nothing on that one, and nothing on that one (goes through cheques). Deposited to the credit of the Montagu Park Racing Association, that is the bank stamp itself. You can look at all these, Dr. Sawyer, and I am quite sure that you will find that none of these were endorsed by you. B

A. But nevertheless the accountant knew exactly the way in which it was to be handled.

Q. Ah, yes, Dr. Sawyer, you told the accountant to charge these to your personal account did you not?

A. Yes, I did.

Q. Exactly, to your personal account independent, but so far as the records of the Company is concerned these withdrawals appeared to have been made by the Company, do they not? D

A. They were not intended to do so.

Q. They were not?

A. The Accountant knew what to do.

Q. They were intended but that did.

A. There was no intention to deceive anybody.

Q. Well, Dr. Sawyer, the first cheque here, it is dated December the 22nd 1953. I see that

that is made payable to Dr. Raymond Sawyer and that is struck out by you and is made payable to cash, and then after that not one of these cheques is made payable to you. Now can you tell me why this first cheque was made payable to you then struck out and made payable to cash?

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A. I do not remember.

A Q. Do you know why none of the others were made payable to you?

A. Well, I imagine it must have been because that is the way it happened before. Mr. Deal probably advised that it was a convenient way to do it. He had full knowledge of the way in which it was done.

Q. You are saying that Mr. Deal probably advised you that this is how it should be done, that the cheque should be made payable to the Montagu Park Racing Association, is that it?

B A. That is how it is usually done. That was my first experience with the Race Track.

Q. That was not your first experience in writing a cheque though, is that not right?

A. No.

Q. Just let me ask you once more. It is quite clear on this that as far as you are concerned this does not appear as if this money was used by the Montagu Park Racing Association?

A. No.

C Q. It does not appear that way to you. Now at the end of the season you found that you had to borrow money to pay off the debts of the Company, is that not right?

A. That is correct.

Q. And was Mr. Nihon the first person you asked to lend you the money?

A. Yes, I think he was.

Q. And at that time, of course, Mr. Nihon still had an interest in the race track and he wanted to protect his interest, do you agree with that?

A. He had an interest.

Q. And do you also agree that he wanted to protect that interest?

A. He probably always tried to do that.

Q. Exactly. Now when you agreed to buy the shares from Mr. Nihon you paid him no cash at all?

E A. Well, I conveyed to him some property in lieu of cash, which he accepted.

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- Q. There was no actual cash. You conveyed to him the property which was valued at £20,000.
- A. That is right.
- Q. So you actually paid him no cash for shares.
- A. That is right.
- Q. Now the £40,000 you agreed to be paid over a period of five years at the rate of £8,000 per year, is that right?
- A. Yes, that is right.
- Q. At the time when you entered into your agreement which was in May 1953, did you then that you did not have the money yourself to pay for those shares? A
- A. I did not consider that I would have enough to pay off all the instalments as made up, I relied on my income at the race track.
- Q. You knew in May 1953 that you would not have enough money to pay for all the shares without making withdrawals from the company?
- A. That is right. B
- Q. How would you have expected to pay for the shares if the company did not make any money?
- A. I would not have been able to pay for the shares.
- Q. You would not have been able to pay for them?
- A. That is right.
- Q. You were gambling then?
- A. I suppose I was, Mr. Adderley.
- Court: Would it be gambling? If you buy a garage or a restaurant and you agree to pay the proprietor over the years you surely expect to make your living over the years out of the restaurant. That is how you pay the instalments, I would not call it a gamble. A business thing, when you pay £60,000 for a business, you expect to make a profit, do you not? C
- Mr. Adderley: He was not certain; it was a gamble.
- Court: I agree, it was not certain. D
- Mr. Adderley: He said himself quite honestly that he knew he would have to rely on the earnings from the race track, even then, that is the point which I am trying to make.
- Court: Racing seemed to have been a very profitable thing in Nassau all these years and there were also a lot of money being taken out.
- Mr. Adderley: I have no doubt, there have been profits of over £4,000 in 1953-54 season. E

Court: It is gambling on the race track and the one people who don't gamble is the people who run it (indecipherable)

Mr. Adderley: I am quite sure of that. They have nothing to do with it at all, and as I understand it, they do not.

Court: He was relying upon the profits to pay for the shares.

A Q. You knew that you will have to rely upon the profits of the Montagu Park Racing Association to pay him off and not having paid him off and you also realise that amounted to using his own money to buy his shares?

A. How do you figure that out?

Q. Well, you had not paid him. He had an agreement with you to get the shares back so that you forfeited the shares and you withdrew the money out of the company to try to pay him and failed. Then of course he had all the shares devalued.

B A. That in fact did not happen.

Q. If you in fact had paid for the shares, or if you in fact were paying for the shares independent of the profits of the company, I will agree. But since you have got to use the profits of the company to pay him for the shares are you not devaluing his shares by them?

A. I do not intend to argue hypothetically.

C Q. We are not arguing hypothetically, Dr. Sawyer.

A. That is not what happened to them.

Q. In fact it did happen; you still do not agree that that devalued the shares?

A. No.

Q. I just wanted to know how your business mind ticked. Now at the end of the year, you went to Mr. Nihon and he agreed to lend you £10,000. He lent you the money and you paid the money into the company.

D A. I loaned the money to the company.

Q. We are coming to that. Now in May 1954, Mr. Nihon said that this letter was composed by you.

A. That is not true.

Q. The letter of May 1954. Will you agree that it was not composed by Mr. Nihon?

A. I think that it was composed by the lawyer of the company.

Q. It was composed by the lawyer for the company,

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- not Mr. Nihon's lawyer or your lawyer, do you agree to that?
- A. Mr. Higgs, I think it was.
- Q. You agree that it was Mr. Higgs?
- A. Yes.
- Q. And did you sign this letter at Mr. Higgs' office or at Mr. Nihon's house?
- A. At Mr. Higgs' office.
- Q. And was Mr. Nihon there when you signed it?
- A. I believe he was, but I would not swear.
- Q. Did you not take this to his house?
- A. Not the letter as I recall.
- Q. That is the evidence which he gave. That you took this letter to his house, and when you brought it there you signed it.
- A. Not as I recall.
- Q. Now we need to look at two things at the same time, my Lord, that is the letter and paragraph 16 of the agreement of the 6th of May, 1953. The letter of the 25th of May, 1954. Do you have them Dr. Sawyer?
- A. Yes.
- Q. Paragraph 16 of the agreement of the 6th May 1953 reads:-

"The Purchaser undertakes not to cause the Montagu Park Racing Association Limited to become indebted to any person or persons corporation or corporations in excess of Ten thousand pounds (£10,000) nor knowingly to do or permit to be done anything whereby the existing lease with the Bahamas Government may become cancelled or revoked."

The first part of it is the operable part for our purpose. Now Dr. Sawyer -- "The Purchaser undertakes not to cause the Montagu Park Racing Association Limited to become indebted to any person or persons corporation or corporations in excess of Ten thousand pounds (£10,000)" Do you agree that that means, in your direction of the affairs of this company, you would not allow the company to become indebted to anybody for an amount in excess of £10,000. Any one person or a number of persons, do you agree with that?

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A. I would think a number of persons. What it means to me is that I should not allow the company to become indebted over £10,000.

Q. And that, of course, is for the purpose of stabilizing the value of the company, is that not correct?

A. I would think that it was a good clause.

Q. Yes, and for the purpose of stabilizing the value, so that the company does not get too far in debt, because if he gets too far in debt, of course, it would lose its value, do you also agree with that?

A. That is right.

Q. And would you also not agree that that is for the purpose of maintaining the value of the shares which you had not yet bought from Mr. Nihon?

A. I think it was for the purpose of protection.

Q. Because he had not been paid for his shares, and it would amount to protection for the value of the shares. Now let us look at your letter of the 25th of May 1954. The first paragraph merely states a fact:-

"I agree to place to the account of the Montagu Park Racing Association Limited the sum of Ten thousand pounds (£10,000) which you are loaning to me by way of a second mortgage on the security of my home in Montagu Heights Subdivision and by way of a first mortgage on the furniture goods chattels and effects belonging to the buildings on the said property."

So we get here what amounts to a personal loan from him to you. Now we then go into the company affairs:-

"Of this sum, approximately £7,000 will represent moneys which I realize I should not have withdrawn from the Bank Account of the Montagu Park Racing Association Limited."

Now the first point that I want to ask you there, Dr. Sawyer, is, why £7,000?

A. I do not know where that figure came from, I cannot remember.

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Mr. Nihon said that the figure of £7,000 was arrived at because you told him at the time that that was the amount, the approximate amount of the accounts payable?

A. I could have done so, but I do not remember.

Q. You do not remember?

A. I do not believe that that was the reason. I am sure that I never told Mr. Nihon that was the amount I owed to the Bank Account of the company. How that figure of £7,000 was arrived at, I do not remember.

A

Q. I did not say that you owed the company £7,000 what he said was that you told him that the account payable was approximately £7,000.

A. That is possible, Mr. Adderley.

Q. It is possible that you told him that.

A. Yes.

Q. But in fact the account payable was more than twice that amount. Do you agree with that?

B

A. The account payable was approximately £15,000.

Q. Well, how is it that you say then that "of this sum, approximately £7,000 will represent moneys which I realize I should not have withdrawn....." Why do you say that only £7,000 you regard as moneys which you ought not to have withdrawn?

A. I do not recall where the figure came from Mr. Adderley.

That is all I can say about it, but I was aware of this clause 16 at the time and that is the reason why I borrowed the money to loan the company.

C

Q. I know you borrowed the money to loan the company, the company in fact got nothing of which you borrowed, the money you borrowed and the withdrawals had nothing to do with one another. In fact the amount of money which you had withdrawn at that time amounted in excess of £13,000, do you agree with that?

D

A. It was more like £12,000 not £13,000.

Q. Do not let us argue with that. But do you agree that that is so. That is why I do not understand now why at this stage you only admit to have withdrawn £7,000.

A. As I said, Mr. Adderley, I do not remember where the figure £7,000 came from.

Q. You ought to remember. Let me make a suggestion to you Dr. Sawyer, to see whether

that might refresh your memory or you might agree, that during the 1953-54 season you in fact paid Mr. Nihon interest and principle payments on account of his shares of approximately £7,000?

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A. That would come to approximately £7,000, yes.

Q. Now do you remember that that is so?

A. I know I paid him £5,000 as interest.

Q. Let me find the exact figure for you. The exact figure is £6,708.15. 5. and the interest is £1,708.15. 5. and the principle is £5,000. So in fact the total is £6,708.15. 5. Could it be that this figure £7,000 is related to the amount of money that you paid to Mr. Nihon?

A. I would not think so.

Q. And you also say no to, that the amounts of money which are shown on the particulars of our claim on February 1st "to cheque Raymond W. Sawyer £1,479. 9. 0., to cheque Raymond W. Sawyer £1,000. On the 1st of March, to cheque Raymond W. Sawyer £1,155. 1. 4., and on the 1st of April, £3,000 and £151. 7. 5. Do you also say that those were amounts which you in turn paid to Mr. Nihon out of your personal account?

A. If you will let me see them.

Q. If I let you see the cheques, perhaps you will recognize them more quickly that say?

A. Yes.

Q. These are the cheques. The 1953-54 ones, they are right on top. The first cheque you had, the one for the 1st of February.

A. What is the amount?

Q. £1,479. 9. 0. and £1,000. And the 1st of March for £1,155. 1. 4. and the 1st of April £3,000 and £161. 7. 5.

A. What was the last one?

Q. £161. 7. 5. for the 1st of April. Now do you also say that those are amounts which you then paid Mr. Nihon out of your personal account? All are endorsed by you and deposited in the Royal Bank of Canada.

A. Yes, they are.

Q. In actual fact the amounts which you paid to Mr. Nihon were actually deposited to his account at Barclay's by you or by someone on your behalf. Is that not right?

A. It may of been someone on Mr. Nihon's behalf but not on mine.

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- Q. You are quite sure about this?
A. I usually made out the cheque and leave it with Mr. Deal. As I recall what transpired after that I do not know.
Q. You did not have them deposited at Barclay's Bank, to Mr. Nihon's account?
A. As I recall Mr. Deal dealt with that.
Mr. Adderley: I beg your pardon, my Lord, but there is a letter which I would like to exhibit of which I have not yet made copies. This is a letter, Dr. Sawyer, dated the 4th of February 1954 from the manager of the Barclay's Bank to you. Will you just look at it and tell me whether you remember receiving this letter. (Dr. Sawyer is handed letter).
A. I do not recall that I did.
Q. You do not recall having received this letter. This is a copy that you see is addressed to Mr. Nihon and I will just read the first paragraph of the letter:-

A

B

"As a request from Mr. Alexis Nihon and in accordance with the terms of the agreement dated the 6th of May, 1953, and your letter dated the 7th of May 1953, we shall be pleased and you will note that payments of the sums due under this agreement should be made to us on the dates set aside and not direct to Mr. Nihon. You will appreciate that this is necessary in order that we may abstract payments in accordance with your instructions because Mr. Nihon probably may not be in the Colony on all the dates when payment may be due."

C

- Do you remember following that instruction?
A. What difference does it make, Mr. Adderley, so long as Mr. Nihon received his money.
Q. Will you just answer my question, Dr. Sawyer.
A. I do not remember having received the letter, Mr. Adderley. I may have, I do not know.
Q. Thank you, that is all I needed to know. Now let us come back to the letter. What I was asking you was ... (my Lord I intend to exhibit this, but I have not got any copies of it, I will exhibit it when I have had copies made).

D

Court: It tells him to pay the bank direct instead of to Mr. Nihon.

Mr. Adderley: Yes.

Q. What I started to ask you was, the amount which was paid to Mr. Nihon by you that year, that amounted to £6,700, and what I am suggesting to you is that the amount which you withdrew from the company and paid to Mr. Nihon represent approximately the £7,000 which you referred to in this letter?

A

A. That is not my recollection.

Q. Because, Dr. Sawyer, Mr. Nihon did not know and did not realise that you were going to have to withdraw money from the company to pay for his shares?

A. I think that Mr. Nihon was well aware of all that.

Q. But I am suggesting to you that the reason why you stated in this letter - "of this sum approximately £7,000 will represent moneys I realize I should not have withdrawn" is in respect of an amount which you withdrew from the company and paid to Mr. Nihon out of your personal account?

B

A. I do not say that.

Q. Are you saying then that that is not the case?

A. I really cannot remember where the £7,000 came from, I do not recall that.

C

Q. You do not recall so that it is possible that Mr. Nihon is right if it is suggested that the reason why £7,000 is used is because £7,000 represents the withdrawals to pay for the shares?

A. No matter how you twist it, Mr. Adderley, I say no.

Q. These are the words which you used and these words must mean what they say - "Of this sum, approximately £7,000 will represent moneys which I realize I should not have withdrawn" There is only meaning that I could put on them. Now having dealt with the amount you said ... "of this sum approximately £7,000 will represent moneys which I realize I should not have withdrawn ..."

D

This does not say anything about debts contracted by the company. The clause 16 to which you have been trying to direct our attention to say that this is something to

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- do with clause 16, clause 16 of the agreement deals with accounts payable by the company. This letter deals with withdrawals from the company by you, is that not correct?
- A. Yes.
- Q. Are they not two entirely different things altogether?
- A. Not really, Mr. Adderley, because it means that, I had in my mind, that I was undertaking to carry out the provisions with respect of clause 16. A
- Q. Well, why did you say that, why was that stated in the letter?
- A. I did not type the letter, Mr. Adderley.
- Q. But you signed the letter.
- A. Yes, I did.
- Q. This is your letter is it not?
- A. Yes, I signed it.
- Q. Well, why does the letter say it. You agreed that clause 16 deals with accounts payable by the company, you agree with that? B
- A. Clause says not to allow the company to be in debt over £10,000.
- Q. Exactly, that is accounts payable by the company. The letter deals with withdrawals from the company by you, do you not agree that those are entirely two different matters?
- A. They could have been withdrawals from the company to pay for a large part of the capital improvement? C
- Q. Are you suggesting that you made withdrawals to pay for these things?
- A. The money was withdrawn from the company.
- Q. Are you saying that money was withdrawn from the company to pay for these things.
- A. Not out of my personal account.
- Q. Do not let us suggest that now. Do you not agree Dr. Sawyer, that the contents of this letter was concerned only with withdrawals which you made from the company and had nothing to do with what accounts were made payable by the company? D
- A. That is what it meant to be.
- Q. That is what it was meant to be, but you agree with that figure?
- A. That is what it means to me.
- Q. What does this mean then, "I realise that I should not have withdrawn from the Bank

- account of the Montagu Park Racing Association Limited".
- A. All the money was withdrawn by me from the bank account whether to pay salaries, to pay debts or anything, this does not say personal withdrawals.
- Q. Well, Dr. Sawyer, what else are we talking about other than your personal withdrawals?
- A. I do not know what you are talking about.
- A Q. You do not know what I am talking about? What are you talking about?
- A. I told you what it means to me.
- Q. You told me what it means to you. Well when you say ... "I should not have withdrawn ..." are you talking about the £13,000 which you withdrew? Is not that what you are talking about?
- A. In my mind no. It was to conform with clause 16 of the agreement.
- B Q. In your mind?
- A. Yes.
- Q. You were not talking about the money which you had withdrawn from the company?
- A. No.
- Q. Well, what do you mean then when you say ... "I realise that I should not have withdrawn ..." what does that mean?
- A. Because I withdrew all the money from the company to pay debts to pay salaries, to pay for anything.
- C Q. You just stop there a minute. "I withdrew money from the company to pay debts ...
- A. All the money was withdrawn by me on my signature by cheques.
- Q. No, that is not what you said, Dr. Sawyer. Now you are saying that you withdrew all moneys from the company to pay debts?
- A. Yes, that is what I am saying now.
- Q. Exactly, you say that you withdrew money from the company to pay salaries?
- D A. I did. The money was withdrawn from the company's account and I signed the cheques.
- Q. "I withdrew all the money from the company to pay debts and salaries"
- A. Yes, Mr. Adderley, you very well know that the cheques were signed by me. The money was withdrawn from the company's account, to pay debts and salaries, yes.
- Q. The money came out of the company's account to pay wages and salaries.
- E

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- A. And improvements and anything else.
- Q. Are you saying then that the moneys which you withdrew from the company between the 22nd of December 1953 and the 15th of April 1954 were withdrawn to pay salaries and improvements?
- A. Yes, not as shown on the balance sheets, no, it is shown in the shareholders withdrawals.
- Q. I know that it is shown in the shareholders withdrawals, but you are now saying that these sums of money ...
- A. This letter does not say that that £7,000 is shareholders withdrawals.
- Q. I know that it does not. But what I am suggesting to you, Dr. Sawyer, that is why I want to be quite clear on what you are saying, and you are saying that the money which you withdrew you used to pay salaries, to pay debts, to pay wages and to pay for improvements to the race track?
- A. I did not say that Mr. Adderley.
- Q. You did say that.
- Court: If that money was withdrawn to pay salaries and wages and so on it could not have been wrong to withdraw it could it? Why would you say that you realise that you should not have made those withdrawals?
- A. All I said, my Lord, was that I was the signing officer for the company, and I signed all the cheques for whatever withdrawals came out of the bank account, they might have been for weekly wages.
- Q. We are only concerned with withdrawals which were charged to your account, that is all that we are concerned about and the withdrawals which you very well know were charged to your personal bank account. Is that not right?
- A. Yes, that is right.
- Q. So we are only talking about your personal withdrawals, and you do not say that you withdrew them other than for your personal use?
- A. No, I have not.
- Q. So that all of those withdrawals you made for your personal use?
- A. I did.
- Q. Exactly. So this business about wages and salaries, you should not have said that?

A

B

C

D

- A. But that is just what I have said, Mr. Adderley.
- Q. Let us not go back over the same argument again. You understand what we are talking about now?
- A. Yes.
- Q. You say that you realise that you should not have withdrawn these sums?
- A. I do not say that.
- A Q. You do not say that?
- A. It does not say that this £7,000 was the shareholders' withdrawals as shown on the balance sheet.
- Q. What does it mean then when you say "of this sum approximately £7,000 will represent moneys which I realise I should not have withdrawn". What do you say that means?
- A. I have already told you on at least two occasions, Mr. Adderley, do you want me to explain it again?
- B Q. No, Dr. Sawyer, you are trying to tell me something altogether different, from what it implies in the letter.
- A. That is what I am trying to tell you, what it means to me, that is all I can say.
- Q. And what does it mean to you?
- A. I have already told you and I will tell you again. It relates to clause 16.
- Q. You say that that relates to clause 16.
- C A. Yes.
- Q. And clause 16 relates to accounts payable, and when you say that I realise that I should not have withdrawn funds, you do not really mean that?
- A. Not from my personal account, no.
- Q. No, not from your personal account, you say that I realise that I should not have withdrawn funds from the Bank account of the Montagu Park Racing Association Limited.
- D That is what you say.
- A. Yes, for improvements or anything else.
- Q. No, no, this is past tense. "I realise I should not have withdrawn from the Bank account of the Montagu Park Racing Association Limited". "I realise that I should not have withdrawn" that is past tense.
- A. Yes, because it occurred in 1954.
- Q. It was in 1954.
- A. Right, and these accounts were for that period.
- E

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- Q. Are you saying then that the withdrawals were made to pay the accounts payable?
- A. I am suggesting to you that what this means to me is that not in the future should I allow the company to become indebted for more than £10,000. Where the figures of £7,000 come from, I do not know.
- Q. We are not talking about that, we are talking about what you meant when you wrote this letter. A
- Court: . You referred to the past, not to what you should not do in the future, you referred to what you did in the past.
- Q. "I realise that I should not have withdrawn". This speaks about what you have already done, and you are saying that you realise that you should not have done that. You did not say that any bills were presented for this money did you?
- A. Well, that is what I am suggesting that this meant to me. B
- Q. You are suggesting that this is meant to mean that you realise that you should not have withdrawn any moneys to pay bills in excess of £10,000.
- A. In other words to incur debts of over £10,000 or in other words do not make so many more improvements or do not spend so much money on the track. That is what it meant to me.
- Q. Let me see if I can put it right according to what you are saying. You realised that you should not have withdrawn money from the bank account to pay for bills in excess of £10,000? C
- A. I did not say that. I am saying what it means to me is that not in the future, or not in the past, in the 1954 season we became indebted to £14,000 because of the terrific amount of improvements and heavy charging we had to do. Now what this meant to me at that time was that that should not occur in the future. It should not have occurred in 1954. D
- Q. In the future you would not incur any liabilities on behalf of the company in excess of £10,000. Is that right? You are saying that this means that you would not allow the company to incur any debts in excess of £10,000.
- A. That is what it meant to me.

- Q. That is what it meant to you?
 A. Yes.
 Q. Although the words say "I realize that I should not have withdrawn" you still say that that is what it means?
 A. Yes, I do.
 Q. Now let us go on to the next paragraph and tell us what this one means to you:-

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"I hereby agree not to make any more withdrawals of this nature in future from the said Company's Bank account."

What does that mean?

- A. That meant to me that in the future do not make any amount of improvements or any amount of capital investments down there to exceed to make the company go into debt over £10,000.
 Q. This does not say anything about improvements, Dr. Sawyer, you are talking about withdrawals. You say "I hereby agree not to make any more withdrawals.

B

- A. Regardless of what it is for it means not to all the company to go into debt for more than £10,000.
 Q. But in fact you are not getting any more money out. "I hereby agree not to make any more withdrawals of this nature". In other words, I agree not to make any more withdrawals of the kind which I did during the 1953-54 season. Is that not what that means?

C

- A. No.
 Q. What did you say.
 A. It means not make any more of the same kind that occurred in the 1954 season.
 Q. Exactly. That means withdrawals to you own personal account of £13,000.
 A. No, it does not mean that to me.
 Q. You say that this letter does not refer to the withdrawals of £13,000 which you made from the account, is that what you are saying.

D

- A. That is what I am saying.
 Q. And you agree?
 A. Yes.
 Q. Now ... "I further agree that this money will be used to pay all the outstanding accounts to date." You then say that you agree that that money will be used to pay all the outstanding accounts to date.

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- A. That refers to the £10,000.
Q. No, it refers to the use of this money to pay these accounts.
A. It refers to the loan of £10,000 to the company to pay off the accounts of the company.
Q. Be used to pay off the accounts of the company, is that not right?
A. Yes.
Q. And that is what the money was intended to be used for? A
A. Yes.
Q. And that is why you were putting the money back into the company?
A. I loaned it to the company.
Q. You say that you loaned the company the money and you took a promissory note from the company for £10,000, is that not correct?
A. That is what I said.
Q. But that was never shown in the company's balance sheet. Why is that? B
A. I do not know.
Q. You do not know? Let us look at the balance sheet for the year ending the 30th of April, 1955.
Court: We are not dealing with the counterclaim of £10,000 is that it Mr. Adderley?
Mr. Adderley: We are not actually dealing with the counterclaim aspect of it, but this amount mentioned is the same amount. C
Court: What is your defence for the counterclaim? It never was made.
Mr. Adderley: Exactly it is not a loan at all, this is money which he been paid into the company and has been withdrawn, it is not a loan at all. It is not loaned to the company by him, he paid it into the company, because he owed the company, the company did not owe him.
Court: He can only claim it as a creditor under liquidation. D
Mr. Adderley: No sir.
Court: He cannot do that.
Mr. Adderley: No sir. He said that this was an amount which he repaid to the company. That this amount which he borrowed from Mr. Nihon in May 1954 was repaid to the company by him in respect of his withdrawals which he had made during that year. He say that

he is lending to the company. We say that although he signed a promissory note to the company in his own favour, he signed at the bottom of the note on behalf of the company, although he did that we say that.

Court: I understand.

Q. Let us look at the balance for the year ending 30th April, 1955.

Court: It is agreed that this amount did not appear in the books anywhere?

Mr. Adderley: It does not appear in fact, it appears for a which I am going to deal with now.

Q. Have you got the balance sheet for 1955?

A. Yes.

Q. Now that shows under Liabilities and Capital the shareholders withdrawals during the year as being £8,184. 9. 2. Do you agree Dr. Sawyer, that that figure reflects the repayment of £10,000 to your personal account?

A. I heard Mr. Deal say that he had treated it that way but its entry in the books, I do not agree that I gave it to repay - I loaned the money to the Company.

Q. I know you have said that you told Mr. Deal once time, but agree that that figure if it was not for the £10,000 should be £18,184. 9. 2.?

A. So I heard Mr. Deal explained.

Q. Let me show you how I arrived at it then. The Three percent payment which was made to Mr. Nihon by the company that year amounted to £10,394.15. 1. and the actual total withdrawals amount to £12,789.13. 1. But you were given credit for the first year, I believe you were paid a salary. You were given credit of a salary of £5,000.

A. For managing the operations.

Q. Yes. You were given credit for that so although your total withdrawals from May 1954 to May 1955 amounted to £12,789.13. 1. you are given credit for £5,000 so the net withdrawals amount to £7,789.13. 1. That is the amount of the claim which the company is now making against you in respect of that year. £7,789.13. 1. Now, to that should added the Three percent pari-mutuel pool payment made to Mr. Nihon. And if you add those figures together you will get

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- £18,184. 9. 2. That is how we arrived at that figure. Now do you follow how we arrived at that figure?
- A. I am afraid I got lost.
- Q. Let me start again then.
- Court: Is that the 1955 account.
- Mr. Adderley: Yes sir, the 1955 accounts.
- Court: So the withdrawals were £8,184. 9. 2.
- Mr. Adderley: That is it as it was shown. If the £10,000 had not been repaid by Dr. Sawyer, to the company that figure would have been £18,184. 9. 2. That is £10,000 more. A
- Court: £18,184. 9. 2.
- Mr. Adderley: Yes. Now that figure is the total of the Three percent payment to Mr. Nihon, £10,394. 16. 1. Now that does not appear as a figure on the balance sheet. That was given in evidence by Mr. Deal as an amount paid to Mr. Nihon as a Three percent payment.
- Court: How much was it? that year. B
- Mr. Adderley: £10,394.16. 1. And the net withdrawals by Dr. Sawyer that year, amount to £7,789.13. 1.
- Court: I want to know why? He put it down here as £8,184. 9. 2.
- Mr. Adderley: That £8,184. 9. 2. is really -- that is why I say the £10,000 showed negatively -- should be £18,184. 9. 2., but since the £10,000 was put in it is only shown as £8,184. 9. 2. C
- Court: That is his withdrawals?
- Mr. Adderley: Yes sir. So if you add to £10,294.16. 1. £7,789.13. 1. which is the net amount in our claim to which we say he was responsible for that year, the total you get is £18,184. 9. 2. That is how the figure is arrived at. So that is the extent to which the cheque is shown negatively. Because it is not shown on the balance sheet in any form, and what is in fact shown as shareholders' withdrawals in there, that is not right at all. D
- Court: Before we leave the matter of £10,000 what did Mr. Deal say about the £10,000 and preparing his accounts?
- Mr. Adderley: His evidence was that Dr. Sawyer told him eventually not to show it in the accounts.
- Q. Now Dr. Sawyer, do you agree that in this

balance sheet for the 30th of April 1955 the amount shown as shareholders' withdrawals during the year, £8,184. 9. 2., is not right?

A. It does not appear to be quite enough.

Q. Do you see how the figure is arrived at?

A. Yes, I follow them with Mr. Deal then.

Q. And do you now see that that figure is really £18,184. 9. 2.?

A. Yes, I do.

A Q. So that so far as that figure is concerned in this balance, that is wrong? Do you agree with that?

A. It should be £18,184. 9. 2.

Q. Now how did you explain the fact that if the £10,000 which you say that you loaned the company was in fact a loan it does not appear in the balance sheet?

A B. I cannot explain it Mr. Adderley, I do not remember issuing any instructions to Mr. Deal to deal with that. I am not saying that I did, I do not remember issuing any instructions to him to knock it off in that way. As I recall when I loan it to the company that it should be entered in the books.

Q. You told him that it should be entered in the books as a loan?

A. I think he so did.

Q. And you said that he did so. And then you gave him instructions and you told him that it should not appear in the balance sheet?

A C. I do not remember instructing him about that account.

Q. In fact it did not appear in the balance sheet?

A. No, it does not.

Q. And in fact you agreed with this balance sheet?

A. I did.

Q. You agreed with this one?

A. Yes.

A D. Q. Now what I want to know is how is it that you agree with this balance sheet that does not show your loan?

A. It was an oversight, Mr. Adderley.

Q. It is not, Dr. Sawyer, more consistent with the fact that that £10,000 was given you as a credit against the amount which you had withdrawn from the company?

A. I follow your additions now, at the time it

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was done, I do not recall, telling Mr. Deal to take it off the balance sheet.

Q. It is not addition I am talking about, I am talking about a principle now. You are saying that it may have been an oversight, but it is not from my point of view or from anybody's point of view. What I am suggesting to you is in fact that it is not shown at all is consistent with the fact that these withdrawals which you were making were not based on a dividend or anything like that at all, but merely concerned a loan by the company to you and you were repaying the company £10,000?

A. Then why would I have the promissory note?

Q. Well now, do you have a promissory note?

A. I believe there is a copy of it.

Q. Well, then you do not actually have the note even.

A. I think Mr. Knowles has a copy in his files.

Q. No, I gave you a copy yesterday. The original is the company's.

A. Most of those documents were deposited.

Q. You deposited the note with the company.

Court: The copy has got about £8 worth of stamps on it.

Q. That is not a copy that is the original note. That is what I am asking him now. Why does he not have the note, why does the company have the note?

A. The company gets

Q. But this is your note Dr. Sawyer, not the company's.

A. There is no reason why a lawyer cannot keep it Mr. Adderley.

Q. No reason why a lawyer cannot it. I suppose you are right. You are saying that it was not kept by the company, it was kept by Mr. Higgs or Mr. Kelly on your behalf?

A. I would think so.

Q. So see, in the 1956 agreement, Dr. Sawyer. Again I am a little ahead of myself, but I need to refer to this at the moment with regard to this. I want you to look at paragraph 16 of the 1956 agreement:-

"Sawyer hereby further declares that the Montagu Park Racing Association Limited is not indebted to him personally or to his wife Ivarene Sawyer."

A

B

C

D

- What does that mean Dr. Sawyer?
- A. It means that on signing this agreement, the Montagu Park Racing Association Limited owes me no money.
- Q. It means that on signing this agreement the Montagu Park Racing Association Limited owed you no money. Well what about the loan?
- A. At the time I did not have that to remember.
- Q. You mean that you forgot that the company owed you £10,000?
- A. I never forgot it Mr. Adderley.
- Q. But you signed an agreement which you says "Sawyer hereby further declares that the Montagu Park Racing Association Limited is not indebted to him personally or to his wife Ivarene Sawyer"?
- A. I see that Mr. Adderley.
- Q. Yes, well, is that not true?
- A. That is what I signed, so I must have agreed.
- B Q. You say that is what you signed so that I must have agreed with it. But is it not a fact that on the 29th of February 1956 so far as you were concerned, Montagu Park Racing Association Limited owed you no money at all. Is that not right?
- A. That is the agreement which I signed.
- Q. And is it not a fact that this promissory note was only a fiction? That is not beneficially a debt owed by the company to you is it?
- C A. It was when it was drawn Mr. Adderley.
- Q. Well, changed this position between the 6th of May 1954 and the 29th of February 1956?
- A. Nothing as far as I know. The only thing I could say is that it was an oversight that is all, when I agreed that the company did not owe me any money.
- Q. You say that it was an oversight when you agreed that the company did not owe you any money?
- D A. Yes.
- Q. I am suggesting to you Dr. Sawyer that the reason why it was so stated in this agreement is because that at that time you did not consider the company owed you any money because you had reconsidered that you had repaid the company half of what you had taken that you should not have taken. And that is the reason why you say the company owed you no money. That is what I suggest to you

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- is the reason why you say it. Is that not correct?
- A. You may suggest Mr. Adderley, but I do not agree with you.
- Q. You do not agree that that is the reason why?
- A. No.
- Q. We will come back to this 1956 agreement in any event. Was it your intention in the 1953-54 season to bankrupt the company Dr. Sawyer?
- A. No, it was not.
- Q. Did you find at the end of the 1954 season that the three percent payment which had to be made to Mr. Nihon was too heavy for the company to pay out?
- A. I thought it was unreasonable.
- Q. Well, why did you agree to move a similar resolution yourself in 1956?
- A. The 1956 agreement, Mr. Adderley, as you know was prepared, not at my instigation, but at Mr. Nihon's instigation.
- Q. Dr. Sawyer, I believe it was prepared in the office of Mr. Kelly.
- A. It was drafted on the instructions of Mr. Nihon.
- Q. And signed by you.
- A. It was one of the very unpleasant things that I had to do.
- Q. Are you saying that you did not do it willingly?
- A. I said that I had to do it but I did not do it willingly.
- Q. Well, who made you do it then?
- A. I had to do because at that time Mr. Nihon had the £10,000 mortgage on my home and I could not raise the money from any other source.
- Q. You had to do it?
- A. I felt that giving him back half the shares was wrong. I had bought £50,000 of the shares in the beginning, but nevertheless I signed it Mr. Adderley.
- Q. You are a mature man Dr. Sawyer. You had had two years experience in the operation of the race track. You knew what the earning capacity of the track was did you not?
- A. I did.
- Q. In 1956 you still say that that was unreasonable?

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- A. What was?
 Q. The three percent for Mr. Nihon.
 A. I thought that it was rather a lot of money, yes, to take out of the company for consideration of past service.
 Q. But you yourself not only agreed, but you yourself moved the resolution in the Directors' meeting of the company?
 A. I said that this morning, Mr. Adderley.
 A Q. And you are now saying that you did it unwillingly.
 Court: Do I understand that you moved the Resolution out of gratitude you mean?
 A. I cannot say that it was gratitude.
 Court: If Dr. Sawyer thinks that Mr. Nihon made too good a bargain it cannot matter can it? I cannot see any intention to bankrupt the company, how could that help Dr. Sawyer, he could have bankrupt it himself in 1953.
 B Mr. Adderley: No sir. As Mr. Nihon suggested in his examination in chief it was much different from that. If the company went bankrupt and Dr. Sawyer still holds the operation of the race track himself all he would then have to pay Mr. Nihon would be the £40,000 for his shares, to purchase the company he would then have to do so, he would then not have to pay Mr. Nihon the three percent. He would save for himself some £12,000 a year. That is why I put this to him because Mr. Nihon said that in his examination in chief.
 C Court: When you entered into the agreement you did not know how much the three percent would amount to, did you?
 A. At that time I do not think I did.
 Court: The more he got the more you got.
 A. That is right.
 D Q. You had seen the balance sheet for the company the year before, before you bought it?
 A. I do not remember, Mr. Adderley.
 Q. But you were the Chairman of the Racing Commission?
 A. I do not think that it was submitted at that time. It may have been, I do not remember having seen it.
 Q. So must have known how this three percent amount to?

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- A. I do not really have any recollection of the amount.
- Q. You mean you agreed for Mr. Nihon to be paid Three percent and you did not know how much it was?
- A. It appeared to me that the proportions to me would have likely to be 13% and out of my 10% I could manage to make some money out of it.
- Q. At the end of the 1954 season you are saying that you realise that the three percent was more than the company could pay if you had to pay for your shares out of the company as well, is that not right? A
- A. You asked me the question and I answered it.
- Q. You said "yes". The answer to that is yes.
- A. I did not volunteer any information, you asked the question and I answered it.
- Q. Well, do you answer yes to that question?
- A. I thought that it was a little more than the company could pay out. B
- Q. That is not the question I asked you. I asked you if at the end of the year you did not think that the amount of Three percent was more than it could pay?
- A. It was a little harsh.
- Q. You thought that it was a little harsh. Although you moved the Resolution yourself, in 1953 and you moved the same Resolution again in 1956.
- A. Yes. C
- Q. You still call it harsh.
- A. In practice the way it worked out, it appeared to be harsh.
- Q. Now, at the end of the 1953-54 season, you knew that the company did not have any money to pay its debts, did you not?
- A. What year is that?
- Q. 1953-54. You knew the company had no money to pay its debts?
- A. In the 1954 season? D
- Q. Yes. No money?
- A. Not enough.
- Q. And in spite of that you continued to withdraw money from the company?
- A. I did not know at the time I was withdrawing.
- Q. You did not know at the time you were making the withdrawals that the company's accounts payable were so high?
- A. It did not end up with as much as that.

- Q. Well, it ended up with as much as £40,000.
 A. I thought that the company would make as much that year to straighten out all the accounts payable.
 Q. You thought that the company would make enough that year to pay off all its accounts.
 A. It is quite obvious, otherwise I would not have incurred them.
 Q. It was quite obvious otherwise you would not have made those withdrawals?
 A. To incur the debts to the extent of the improvements.
 Q. You would have still withdrawn the money, you may not have incurred the liabilities?
 A. I probably would not have withdrawn the money either.
 Q. You probably would not have withdrawn the money either if you knew better, is that not right?
 A. I did not say that, Mr. Adderley.
 Q. Well, if you knew that the company was not going to make enough money you would not have made the withdrawals. Let us put it that way. Would you agree with that?
 A. I would say this. If I had thought that the company would have ended up with over £10,000 in the accounts receivable, I do not think I would.
 Q. You do not think that you would have withdrawn the money? In other words neither would you think then that the company would have been entitled in those circumstances to declare a dividend for you.
 A. The company did not declare a dividend.
 Q. That is exactly my point, they did not in fact. And is it not also a fact that in those circumstances the company could not declare a dividend?
 A. You and I look at the balance sheet entirely differently, Mr. Adderley. I had rather rely on the accountant, I am not an expert with figures.
 Q. I would like for you to have a look at the 1954 balance sheet. Dr. Sawyer, is it correct to say that these balance sheets were prepared primarily for the Racing Commission?
 A. No, that is not correct.
 Q. The Montagu Park Racing Association was

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- required though to provide these for the Racing Commission?
- A. It was required to submit a copy to the Racing Commission.
- Q. And is it not correct that the balance sheets were done in this form really for the information of the Racing Commission?
- A. That is not entirely correct. It was done primarily for the shareholders.
- Q. It was done partially so for the Racing Commission, but not entirely. A
- A. It was not done for the Racing Commission, they required a copy that is all.
- Q. They required a copy, but they would normally be the only outsiders who would want to know what the company's position was.
- A. I would think so.
- Q. The first balance sheet which you have before you, the 1954 balance sheet, that shows shareholders' withdrawals of £24,000 plus. Now nowhere on your balance sheet or in your profit and loss statement do you show that three percent payments are being paid to Mr. Nihon. B
- A. Not that I could see.
- Q. Now can you tell us why that is done in that way. Why that fact is kept off the balance sheet.
- A. I do not think there is any particular reason for it, it is just shown as shareholders' withdrawals, that is all. C
- Q. I do not want to know what it is shown as, I want to know why the fact that he was getting three percent of the gross was kept off the balance sheet.
- A. No reason at all.
- Q. I am suggesting to you, Dr. Sawyer, that the reason why it was done in this way is to prevent the Racing Commission from knowing that Mr. Nihon still had an interest in the Race Track. D
- A. I do not think so, Mr. Adderley.
- Q. Was it not important to you that nobody knew or thought that Mr. Nihon had an interest in the Race Track?
- A. I think that everybody felt during the entire period that he did.
- Q. Is that consistent with what you have already told us?

A. Yes.

Court: Why would it be important to conceal his interest from the Racing Commission?

Mr. Adderley: Well, sir, before Dr. Sawyer purchased his shares in the Montagu Park Racing Association Limited, he had been the Chairman of the Racing Commission, and this I put to him yesterday, that during the time he was Chairman of the Racing Commission he was on the worst terms with the Montagu Park Racing Association, and as he indicated yesterday, that he felt that the operation under the Montagu Park Racing Association before he became a shareholder was a disgrace to the Colony, and what I am putting to him is that after he purchased the shares in the company he did not really want anybody to know that Mr. Nihon still had an interest in the company. That was the reason why failed to show the payment of three percent to Mr. Nihon on the balance sheets.

Court: You deny that?

A. Yes.

Q. You say that that is not so?

A. Yes.

Q. Now you say that everybody knew that Mr. Nihon had an interest in the Race Track?

A. I said that I felt that a lot of people felt that he had an interest in the Race Track, not knew that he did.

Q. They felt that he had? We referred yesterday to a letter which Mr. Nihon wrote to you in December of 1953. This letter is dated the 9th of December 1953. Do you remember that?

A. I do.

Q. And is it not correct that this letter was written as a result of suggestions being made that Mr. Nihon did have an interest in the Race Track?

A. There were rumours flying around all the time.

Court: He is a Director; it would be filed in the Registry and it would be known to the public.

Mr. Adderley: And that would be that he has only got one share.

Court: He had a real financial interest, is that it?

Mr. Adderley: Yes, sir, and none of the agreements were recorded. I now refer to this letter:-

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"I have your letter of December 5th and I must say that in the meantime I have heard from Al (I do not know who that Al is) and I am writing him today requesting him to pick up the Cadillac and park it at the Shamrock.

I was extremely surprised and astonished to hear that there is a rumour prevailing in certain quarters that I still own the track and that you are merely acting as a front for me." A

This sounds like something which you must have written Mr. Nihon about, is that right?

A. I know I wrote Mr. Nihon several letters. I do not know that I wrote him particularly about that. There were rumours flying about all the time.

Q. "This is the most vicious gossip that could be spread out but you have been living long enough in Nassau to know how they can spread false rumours; in Canada they speak often about the track and I have been telling everybody who wants to hear it that I have sold the track to you. When I will reach Nassau I will have it published and if necessary I will give a sworn affidavit to the effect that you are the sole owner of the track. (Minus the two shares which are only a formality.) I am sorry to hear about this situation which is not very pleasant for you but time will make its proof, as the truth always comes out." Does that not suggest as Mr. Nihon said that you wrote to him asking him to provide the confirmation of the fact that you owned the race track? This is what this letter amounts to really. B

A. That is possible.

Q. And is it not a fact that it was in your interest to convince persons, because of your position, that Mr. Nihon had no interest in the race track? C

A. I cannot say that that is entirely true. Mr. Nihon had friends in the Colony who would have known.

Q. Not entirely true, but it is a fact.

A. Yes.

Q. Does this not sound very much like you were D

asking him to provide such information for either public purposes or for your purpose -- let me read this sentence for you -- "When I will reach Nassau I will have it published and if necessary I will give a sworn affidavit to the effect that you are the sole owner of the track." Does that not sound as if that is as a result of a request made by you?

A. I made no such request, that was done on Mr. Nihon's own initiative.

Q. Now remember, Dr. Sawyer, this is December 1953 before the first balance sheet is prepared, and early in December before the race track season began. And you were anxious to show that Mr. Nihon had no interest in the race track.

A. I did not make it public, but as I said there were rumours going around.

Q. Yes, but that is not quite what I put to you. What I put to you is that as early as December 1953, even before the first racing season under your management began, you were anxious to show that Mr. Nihon had no interest in the race track, and you wanted him in a position to confirm that, so that you could use that information or publicly, a public statement from him. Is that not correct?

A. I did not ask him to publish any statement.

Q. You did not ask him to publish such statement?

A. In fact he never did, did he?

Q. In view of the fact that in December of 1953, is that not consistent with the position in April of 1954 when the fact of the three percent payment to Mr. Nihon was kept off the balance sheet altogether?

A. I do not see the connection.

Q. Do you agree when Mr. Deal says that that fact was kept off the balance sheet on your instructions?

A. No, I never instructed Mr. Deal at all.

Q. When did you tell him how to show Mr. Nihon's three percent on the balance sheet?

A. Not that I recall.

Q. You do not recall that you told him?

A. No, I do not.

Q. Do you recall hearing Mr. Deal say that he did not know anything about the three

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- percent payment to Mr. Nihon until after the first race track day?
- A. I am pretty sure that I told him about the three percent and to draw the cheque otherwise he would not have drawn the cheque for it.
- Q. You would have had to tell him what it was for would you have not?
- A. I told him that it represented three percent, I am sure of that. A
- Q. Did you tell him anymore than that?
- A. I do not recall having told him anymore than that.
- Q. Do you think that you would have told him that the three percent was a payment being made to Mr. Nihon by the Montagu Park Racing Association?
- A. In fact the cheque was made out to me.
- Q. The cheque for the three percent to Mr. Nihon was made out to you and not paid directly to Mr. Nihon? B
- A. In fact I endorsed the cheques over to Mr. Nihon.
- Q. Would you agree if I say that the cheques for the three percent payments to Mr. Nihon were made out to you and not to Mr. Nihon to conceal Mr. Nihon's identity with the Montagu Park Racing Association?
- A. I do not agree that that was so.
- Q. Was any record of the payments of the three percent to Mr. Nihon kept in the account books of the company? C
- A. I believe Mr. Deal kept a separate account book for the three percent.
- Q. He kept a separate account of the Three percent, but so far as the accounts of the company were concerned they appeared to be paid to you?
- A. No, not in his journal, surely.
- Q. But the cheques were made, for the purpose of years, payable to you? D
- A. They were, but he kept a separate account as he said himself.
- Q. Accept that they were not put on your personal withdrawals. None of these three percent payments to Mr. Nihon were included in these personal withdrawals. As far as the company was concerned the company made cheques payable to you, and you endorsed

- them over to Mr. Nihon and so far as the company was concerned, the company was making the payment to you, is that correct?
- A. Yes, that is right.
- Q. Well, in fact that means that that payment is really to be made by the company to Mr. Nihon, is that not right?
- A. It was not done that way in the first two years.
- A Q. That is not quite what I have asked you. What I have asked you is that, is it not correct that in fact this is a payment being made by the company to Mr. Nihon, not by the company to you?
- A. The fund from which he was being paid by came out of the company's accounts.
- Q. You are still not answering what I am asking you Dr. Sawyer. What I put to you is this, that in fact the three percent payment was a payment by the company to Mr. Nihon. Is that not correct?
- B A. In the first two years it was paid to me and I endorsed it over to Mr. Nihon.
- Q. You are not answering my question?
- A. Yes, I am answering your question.
- Q. No, you are not. What I am asking you, Dr. Sawyer is this. You see when the company -- let me put it this way for you. When the company make a cheque payable to you so far as the company is concerned that is funds which the company is putting to your disposal, what you do with it is your business. Is that not correct?
- C A. Yes.
- Q. Exactly. So, as far as the company was concerned this was done in such a way so as to suggest that these payments were being made to you. Is that not correct?
- A. The cheques were made out to me, yes.
- D Q. Exactly, the cheques were all made payable to you.
- A. For the first two years.
- Q. Yes. The cheques after being made payable to you, what you do with them is none of the company's business. Is that not correct?
- A. That is right.
- Q. But as a matter of fact you endorsed the cheques and had them given to or paid into Mr. Nihon's account. Is that not so.

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In the Supreme A. That is correct.
 Court of the Q. Now tell me why then the cheques were not made
 Bahama Islands payable to Mr. Nihon?
Common Law Side A. I felt that it was an obligation of the agree-
 Defendants ment which inferred that the Purchaser must do
 Evidence it, and the cheques were made out to me. I
No. 16 interpreted it to mean that and the cheques
 Dr. Raymond Court: Is it the real and correct way to do it
 W. Sawyer. is for the whole of the thirteen percent to
 Cross- be paid to the company then, Dr. Sawyer would
 Examination declare a dividend and would draw certain sums
 (Contd.) from the company as dividends and put it into
 his personal account, then he would draw a
 cheque for Mr. Nihon from his personal account
 for the three percent?
 Mr. Adderley: No sir.
 Court: That would not have been the correct way
 of doing it?
 Mr. Adderley: No sir. That is exactly what we
 are saying is the wrong way. This payment to
 Mr. Nihon is a payment out of the gross pari-
 mutuel returns from the company to Mr. Nihon.
 And this has nothing to do with Dr. Sawyer's
 withdrawals at all.
 Court: This is direct from the company. So the
 company is still under obligation.
 Mr. Adderley: This has nothing to do with Dr.
 Sawyer's dividend and neither as he suggest
 that the three percent payment to Mr. Nihon
 is to be made out of his dividend. None of
 the amounts which we say are Dr. Sawyer's
 withdrawals are the 3% payment to Mr. Nihon.
 Court: No.
 Mr. Adderley: None of the amounts in the state-
 ments of claim, as what I am putting to him
 now, has nothing to do with his personal
 withdrawals. What I am putting to him is
 so far as the company's records are concerned
 it appears as if these payments are being
 made to him, where in fact those payments
 should have been made direct to Mr. Nihon.
 Court: Just by one cheque direct to him?
 Mr. Adderley: This happened immediately after
 the three percent payments were made to Mr.
 Nihon following each race day. Either on
 Wednesday or Thursday, Saturday or Monday.
 So what I am putting to him is that the fact
 that the cheques were made payable to him

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was for the purpose of keeping off the records the fact that the payments were in fact being made to Mr. Nihon under an obligation to the company. And then back to the question, that that is the reason why it is not so shown in the balance sheets. But this is nothing to do with the net profits of which Dr. Sawyer claims to be entitled to. And what I am suggesting to Dr. Sawyer is that the reason these cheques were being made payable to you is so the company record does not show that payments were being made by the company to Mr. Nihon.

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A

A. Why in the following balance sheet when the cheques were being made direct to Mr. Nihon, why is it that the balance sheet is written in the same way?

Q. That is a part of the truth, but is not quite what it should be.

B

A. I think so.

Q. It is only a part of the truth.

A. The shareholders' withdrawals are shown in the same way.

Q. We will come to that in a minute. Do you agree that the 1957 accounts were treated in the same way; then perhaps we will have a little argument here.

A. No. I agree with the first draft.

C

Q. You do not agree that this was done to keep Mr. Nihon participation in the company off the record?

A. No, I would not say so, Mr. Adderley.

Q. You would also agree though that it was in your interest that it was not generally known that Mr. Nihon had any participation interest in the company.

A. I did not think that it was anybody's business.

Q. Exactly, it was not anybody's business, and you would not want it to be known?

D

A. I do not think that anybody, irregardless of who it is whether Mr. Nihon or anybody.

Mr. Knowles: My lord, I have to interrupt here, but my learned friend keeps putting the same questions over and over again.

Mr. Adderley: If he would answer the questions I am putting to him properly, I would not have to be asking the same ones over again.

Court: I have got it all down, it is not correct that the balance sheets were prepared

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primarily for the Racing Commission but they do require a copy. It was not intended to keep Mr. Nihon's interest secret. I wanted to be known as the sole owner of the track. I do not agree that the payment of the 3% for Nihon was made through me to conceal his identity. I do not think that we can get anything more than that. He has said it and he has denied it. I do not see anything wrong with that.

Mr. Adderley: There are different aspects of this which I am trying to produce. If I cannot produce a different aspect of this, because this is not quite for the lack of vital information as my learned friend might make it out to be. I must cross-examine to get at all the facts.

Q. Now look at the 1954 balance sheet, Dr. Sawyer, and tell me if you agree that in 1954 the company was in no position to declare a dividend.

A. I think it was.

Q. You think that in 1954 the company was in a position to declare a dividend?

A. It had £30,000 left after the withdrawals were charged. £30,000 available in the form of surplus even after the withdrawals had been charged.

Q. We are talking about £30,000, but this £30,000 was only on paper. Do you agree with that?

A. No, I do not agree with that, and I disagreed with that yesterday.

Q. But you say that it was in a position to pay a dividend. Let us say that if the company was paying a dividend of £12,000 in 1954, you will agree that it would have had to borrow the money to pay it?

A. No.

Q. Where would it come from?

A. Well, in fact £12,000 was taken out.

Q. Those were accounts payable £14,000.

A. That is right.

Q. So that £12,000 which you took out would have had to pay off the £14,000?

A. Well, the balance sheet shows the amount which was there as surplus for distribution to the shareholders.

Q. That is not what I ask you. What I ask you is that if the accounts payable were payable,

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- the money to pay the dividend would have had to have been borrowed, is that not right?
- A. It could have easily been borrowed.
- Q. That is the point. You would have had to borrow the money to pay the dividend?
- A. Yes.
- Q. Is that not right?
- A. Yes, and it could have easily been borrowed.
- Q. We are talking about the 1954 accounts.
- A. Yes.
- Q. And in that year to pay a dividend of £12,000 you would have had to borrow £12,000 to pay it?
- A. I suppose that could be so.
- Q. That is right?
- A. I suppose that could be said, yes.
- Q. My Lord, I am putting to the witness the affidavit which he swore in the winding up of the Company.
- B Court: Yes.
- Q. This is your affidavit, Dr. Sawyer, which you swore in your petition to the court to wind up the company in 1958:-

C "On taking over Hobby Horse Hall from the said Alexis Nihon, I found the buildings in a dilapidated condition and the Company was obliged to spend a considerable sum of money in improvements to the buildings in rehabilitation generally of the premises including the race track."

Now you go on to say:-

D "The first racing season, that is to say from May 1953 to May 1954, resulted in a net loss to me of £10,000. Notwithstanding the loss borne by me the said Alexis Nihon received from the Company approximately £12,000 as a gratuity for his past services. I was obliged to borrow the said deficit of £10,000 from the said Alexis Nihon and was then obliged to loan this amount to the Company."

- Do you remember that?
- A. I loaned the Company the money, yes.

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- Q. You loaned the company the money, but was it not all assets?
A. Yes.
Q. "The first racing season, that is to say from May 1953 to May 1954, resulted in a net loss to me of £10,000." You say there that in the first season resulted in a net loss to you of £10,000. I do not quite know how you are saying that?
A. I know I had to borrow £10,000 on my own account which I loaned the company, I would consider that as a fairly considerable loss. A
Q. No, Dr. Sawyer, we are talking about why did the company had accounts payable at that time in excess of £14,000, and you are saying this, that the operation of the company resulted in a net loss to you whereas in fact, that is not the case, is it?
A. Well, that is what I intended to say, and of course as you know these things were drafted, very likely by counsel in England, and the wording is legal, Mr. Adderley, and all I can explain to you is the way I felt about it. I felt that I had losses of £10,000, and I had to borrow it. B
Q. Counsel may have made a draft, but this is your affidavit. You say that you felt that you had lost £10,000.
A. That is so.
Q. But do you agree that in fact that is not the case, that it was the company which had to stand the loss, that the company then had to find the money? C
A. That is true, I should have said a loss to the company.
Q. So, Dr. Sawyer, if this amounted to a loss to the company, surely, you cannot now justify the cash withdrawals you did?
A. At the time the cash withdrawals were made I did not think that the season would end up as a loss. D
Q. You did not think that the company would be in that position at the end of the year?
A. No.
Q. If we agree, Dr. Sawyer, that the company would have suffered a loss then do you still say that the company was in a position to declare a dividend?
A. Out of the available profits, yes.

- Q. You still say that. I would like for him to have, my Lord, the 1955 balance sheet. Now the 1955 balance sheet does not show that the company is liable to you for the sum of £10,000. Do you realise that?
- A. No.
- Q. Do you also know that what is shown as shareholders' withdrawals during the year as £8,184. 9. 2., that your £10,000 is deducted from the shareholders' withdrawals for that year?
- A. We went all through that yesterday, Mr. Adderley, yes I know that.
- Q. You do know that?
- A. Yes, we went through that yesterday.
- Q. Now, do you say that that was done by Mr. Deal on his own initiative or on your instructions?
- A. I do not recall having instructed Mr. Deal to do it.
- Q. But do you think that Mr. Deal would do something like this without your instructions?
- A. Probably it was what he considered correct accounting procedure. I never tried to instruct Mr. Deal at any time on his accounting procedure because I am not an accountant.
- Q. This is not accounting procedure, Dr. Sawyer; you may admit that this may be regarded as accounting procedure but in my mind these are not matters of accounting if the company is indebted to you for £10,000, how that is in fact shown is the accounting procedure, but that should be shown, is a matter of policy. Do you agree with that?
- A. It should have been shown.
- Q. You feel as though it should have been shown?
- A. Yes.
- Q. But when you saw this balance sheet in 1955, did you question the fact that it was not shown?
- A. I do not recall having questioned the fact that it was not shown.
- Q. When you saw this balance sheet did you question the fact that the shareholders' withdrawals were shown as £8,184. 9. 2. only when they were £18,184. 9. 2.?
- A. I do not recall having questioned that.
- Q. Well, do you not think that if you had thought that this was strange that you would have questioned it?

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A. I would think so, yes.
 Q. Well, do you not think that the fact that you did not perhaps question it means that it was a fact that you did not question it because you knew exactly what was going on?
 A. Apparently I did not.
 Q. You say apparently you did not.
 Court: What it means is that the company's books balance was always £10,000 more?
 Mr. Adderley: Anybody who did not go into the mechanical features of it would not know that there was anything wrong, or what the position was. Do you agree with that Dr. Sawyer that this does not really show what the company's financial position is on the 30th of April, 1955?
 A. It did not show my loan.
 Q. But if what you call a loan is not really a loan at all, then it might be accurate, wouldn't you say?
 A. I would say that that is a possibility, yes.
 Q. Is not that consistent with the position as it really was, that this was not really a loan by you to the company?
 A. That is what you are saying, Mr. Adderley, I am not.
 Q. I asked you if you do not think that it is consistent?
 A. I do not agree. I do not remember why it was done this way and why it was not shown as a loan on the balance sheet, I could have ordered it, yes. But there is no question in my mind that it was not a loan to the company.
 Q. No question in your mind, at least at that time, but you have changed your mind about it since. But we will come to that. Is there also no question in your mind, if what you say is the case that this is an inaccurate balance sheet?
 A. In that respect.
 Q. It would also be an inaccurate balance sheet in that respect as showing that the three percent payment to Mr. Nihon are withdrawals from profits, is that not correct?
 A. I think that that is correct accounting procedure.
 Q. Do you say that the three percent payment to Mr. Nihon were out of profits?
 A. They should have been from profits, and they were so done.

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- Q. They should have been. Those three percent payments to Mr. Nihon were they not made on the basis of the gross pari-mutuel returns?
- A. Yes.
- Q. And they were always made on that basis, is that not correct?
- A. Yes.
- Q. And the three percent payments which were made to him, were they not all made to him as of the day after the racing or the following day?
- A. Yes.
- Q. Always out of the gross pari-mutuel?
- A. That is correct.
- Q. Without any relation to what the net profit of the company might be. Is that not correct?
- A. Yes, but you are trying to say that it was an expense to the company, and we say that it was not.
- B Q. I am not trying to say it is. Everybody knows that you agreed to that.
- A. There was no such question in my mind, Mr. Adderley.
- Q. Do you not agree with this interpretation. I am just going a little further than that, and say that the payments to Mr. Nihon were made as three percent payments of the gross pari-mutuel without relation to net profit, is that not correct?
- C A. The £10,000 pari-mutuel earnings was three percent of the profit.
- Q. So irrespective of this, would you also not agree those are not properly regarded as payments out of net profit?
- A. If it was so shown on the balance sheet Mr. Deal must have thought that that was the better way.
- Q. Mr. Deal says that it was shown in that way on the balance sheet because you so instructed him. Do you agree with that?
- D A. I am telling you that I did not.
- Q. You said that he did so on his own account?
- A. He kept the accounts and he showed them as withdrawals.
- Q. And so far as Mr. Deal is concerned and the accounts of the company these cheques were made payable to you?
- A. Yes, I agree.
- Q. If you look at the balance sheet for 1955, we

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have accounts payable for £5,000 plus, and current assets at the Royal Bank of Canada of £7,000 off. Do you see that?

A. Yes.

Q. During that year, your personal withdrawals less your salary amounted to £7,789.13. 1. The total withdrawals £12,789.13. 1. less £5,000 -- £7,789.13. 1. Do you agree that if the company had paid you a dividend of £7,798.13. 1. in that year, they must also have had to borrow

A

A. It shows that it had money in the bank after the withdrawals.

Q. Yes, Dr. Sawyer, but that is not quite the point I am putting to you. What I am putting to you is this. Your accounts payable was £25,000. Your cash at the Royal Bank of Canada is just over £7,000. And if a dividend was to be paid to you that year in the amount of £7,789.13. 1. the company would have had to borrow the money either to pay your dividend or to pay back its accounts payable. Do you agree with that?

B

A. The dividend is shown and deducted and after the dividend, the so call dividend, then the shareholders' withdrawals. And after that it shows a balance of £7,000 in the Bank.

Q. Do you agree that the company would have to borrow the money to pay you the dividend?

A. I cannot see that point.

C

Q. I accept what you have said so far as the surplus and you are concerned, but I am talking about the money with which the company would pay its accounts payable and you. Do you not agree that the company would have had to borrow the money to pay them?

A. It would have to borrow some of it, yes.

Q. And indeed they would have to borrow something in the neighbourhood of £5,000 because the accounts payable are less than £2,000 less than the money in the bank; so you would have to borrow somewhere in the neighbourhood of £6,000, to pay you a dividend of £7,789.13. 1. Do you agree with that?

D

A. In the vicinity of £5,000, yes.

Q. In the 1953-54 season you continued to make cash withdrawals on race days from the company's float, do you agree with that?

A. I believe so, yes.

- Q. In the 1955 season in addition to the cheque made payable to you there were 20 cheques made payable to the Montagu Park Racing Association in respect to cash withdrawals. During that year, the 1954-55 season, did you know what the cash position of the company was?
- A. As I recall, it appeared to be somewhat improved.
- A Q. Improved over the previous years, but what I want to know is whether the withdrawals which you were making were in any way related to what the financial position of the company was or were they made indiscriminately hoping that the profits would be sufficient?
- A. They were not made indiscriminately, I thought that I was entitled to some of the profits out of the operations of the race track.
- B Q. What I want to find out is this, whether these withdrawals were made weekly from January to May, if they were done with any regard to what the actual cash position of the company was?
- A. I think so, I did not withdraw very much money, in that way, and every cheque is marked Dr. Sawyer personal was in lieu of the loan. There was no attempt to deceive anybody.
- C Q. I want to know whether when this was being done did you realise that the cash position of the company was comparatively low.
- A. I did not think so.
- Q. Would you agree now though, that it was?
- A. At that time, 1955-56, there were profits available out of surplus.
- Q. We have already agreed that to pay the dividends the company would have had to borrow the money to pay it, and what I am putting to you is that the use of the cash of the company in this way precluded the payment of any dividends at the end of the year.
- D A. I do not think so.
- Q. Now during the 1954-55 season would you agree that you had no regard for your promise not to make any withdrawals from the company?
- A. The letter means something different to me than it does to you.
- Q. What I am putting to you is that in 1954-55 season your withdrawals from the company followed the same pattern as in the 1953-54 season?
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A. Yes.

Q. Let us look at the 1956 balance sheet. By February of 1956 the relationship between you and Mr. Nihon was reaching the breaking point. Do you agree with that?

A. I agree with that.

Q. And in February of 1956, he retook the shares of the company?

A. Yes.

Q. In the previous two years there were two cheques, but in that year there was only one. Is that not indicative of the fact that by the 1955-56 year that kind of withdrawals you felt that you should not have done? A

A. I cannot say that it made any difference. In fact I never considered it improper.

Q. The withdrawals in the 1955-56 season, were with that exception, and two minor amounts all made by cheques payable to you?

A. Yes. B

Q. The balance sheet for 1956 shows cash assets Royal Bank of Canada and Barclays a total amount of approximately £8,600 and before you do that Dr. Sawyer, go back to the 1955 balance sheet, I want to change a figure here for us. What I put to you was that the company would have had to borrow approximately £6,000 to pay you a dividend in 1955.

A. Yes.

Q. So in the 1955 season your net cash withdrawals amounted to £7,789.13. 1. your cash in the Royal Bank and Barclays Bank was £10,700, you have accounts payable of £5,000 so you had to borrow just under £3,000 either to pay these accounts payable or to pay the dividends, approximately £2,800. Do you agree with that? C

A. Around that figure, yes.

Q. So far as the balance sheet is concerned it doesn't appear to be salaries to you? To your mind, it came out of this £5,000. D

A. Mr. Nihon has showed you exactly where it appears. It appears to be salaries.

Q. It appears as salaries, but it does not appear to be salaries to you. So that is the only way we can arrive at what the company claims as the net amount which you include in addition to the profit.
We are not telling you that you should not

- have taken £5,000 for your salaries. So now, do you see where we are?
- A. Right.
- Q. Right. The next you draw is £9,307.13. 3. The company cash position at that time. If you deduct the accounts payable from your actual cash position you've got a profit of £6,600 and probably would have to borrow again approximately £6,700 to pay the dividend of £9,307.13. 3. Do you agree with that?
- A. Right.
- Q. And the remaining portion, without the fact regarding to the fact that in the previous year the company also had to borrow £2,800 and £1,200, you paid your dividend?
- A. As it was available.
- Q. I will quote you as saying, Sir ----- ah, don't let us go into that. But I am only dealing with the cash which was so far as salaries are concerned ----- Now we are coming back to the statement made in the agreement of 1957. In 1957 -----
- Wit. You are supposed to be reading the first draft now, right?
- Q. No. The question of the draft will effect the total of the dividends and the total with which we are dealing which is the total withdrawal of £13,851.12. 5. for which the company deducts £5,000 of your salary and which leaves the remaining withdrawal of £8,851.12. 5. It has got the stamp value of the Royal Bank of Canada - £4,021. 0. 0., Barclays Bank - £39, cash on hand - £100. So you have got cash available - roughly £4,100 and your counterfeit payable property bought. So, you've got the remaining cash somewhere near £3,700.
- A. I notice that all of these figures you are quoting, Mr. Adderley, you never take the accounts receivable into account.
- Q. But I didn't quote accounts receivable and I didn't take into consideration some of the actions from the other side either.
- Ct. But were they small accounts or were they depreciated?
- Csl. They were always small, Sir, but in determining the division which I am dealing with at the moment, I am talking about the company to declare the dividends

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and we can't bear on accounts payable because they don't have the actual money, you see. But in terms of the actual available total cash of the company they are having to borrow money to pay off lawyer's debts. In 1957 our accounts payable only was £10. But it actually, it doesn't affect our surplus very much, Dr. Sawyer.

A. £1,500.

Q. In 1957?

A. Yes.

Q. Sorry, £1,500. And you made good and deducted from a deductible account? Right?

A. Right.

Q. Now, what I will start off with here is our cash position at the end of April, 1957 at a time when the company would have slowed down its activities. What we have got is a net capital of presumably £3,700. You see that? Do you see that, Dr. Sawyer?

A. I see the Royal Bank - £4,021.16. 8.....

Q. Yes, Royal Bank - £4,021.16. 8; Barclays Bank - £39.14. 6; and cash on hand - £100.

A. £4,050.

Q. £4,100 roughly. And the accounts payable has got £4,050 rough, so we have a net figure of £3,700 and, you will, well, last year the company's withdrawal the company would have realised a dividend of £8,851.12. 5. which means that the company would have to borrow approximately £5,000.12. 5. to meet your dividend that year. You knew that?

A. Right.

Q. So, over the years ending 1954-55-56 and 57, if you were entitled to the dividend at which you were entitled, do you agree that the company would have had to - to pay your dividend - the company would have had to borrow approximately £20,000?

A. I don't have the figures before me.

Q. Well, will you read one at a time --- 1954 was approximately £12,000; 55 - £2,800; 56 - £3,700; and 57 approximately £5,000 roughly; so, roughly, we are talking about the company having to borrow approximately £20,000 to meet the dividend which you would analyse to be a fact. Do you agree with that?

A. Yes.

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- Q. Now, let us go back to 1956, or the 1956 agreement.
- Ct. Is that true? That figure you have stated, can you accumulate it like that? You say that - as there were debts outstanding of £5,000 in one year and he withdrew £5,000 they would have to borrow £10,000 in order to pay him. But those debts would have been paid that year, wouldn't they? And the next year those accounts payable would have paid all?
- A Q. Yes. But the accounts payable aren't cash charged at all.
- Ct. Aren't they charged for?
- Q. No, my Lord. Accounts payable aren't cash charged for.
- Ct. Well, that is for accounts payable. Of course, as they were charged for, it would be right.
- B Q. Yes, as they were charged for that would be right, sir, but these aren't charged for. If one of these is dealt with then the only thing that is really charged for here is this.
- Ct. Yes; well, I am settled.
- Q. Have you got the 1956 agreement, sir?
- Ct. Here we are.
- Q. Now in 1956 Mr. Nihon foreclosed under the agreement and of the 151 shares you agreed to buy a half of them back. Is that all correct?
- C A. I agreed to buy 149½ of them.
- Q. You agreed to buy from him 149½ and you became the shareholder of 149½ and he became the shareholder of 149½?
- A. Yes.
- Q. This point has not been dealt with before, Dr. Sawyer, but it is true, isn't it, that the £10,000 which you borrowed from him in 1954 was incorporated in this agreement?
- D A. It appears to be agreed upon in a later clause but now you are telling me that "he did not loan me any money", is that what you are getting at?
- Q. No, no. You paid him in 54-55, at the beginning you owed him £40,000 on shares. You paid him a total of £10,000 in 54-55. Well, in 54 you borrowed £10,000 on the second mortgage on your profit. So in 56 when you bought half the shares at what appears to be the same price of the purchase of all the

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shares. But in this Agreement you were given what amounts to the £20,000 but the amount which is agreed is for £40,000 and in Para. 5 Mr. Nihon agreed to discharge the second mortgage?

A. This is true.

Q. So in fact the £10,000 in respect to that mortgage is incorporated in that £40,000 which you agreed to pay upon this mortgage?

A. That is true.

Q. My Lord, it follows what I am going to submit, Sir.....

So, then it appears that he paid the same price for all the shares as he paid for one of them. The fact is he has been given credit for previous payments. But that is not really so, you were given £20,000 for £10,000

Ct. For previous years.

Q. He was then debited with £10,000 for the first attempt which really wouldn't affect the £10,000 on the second mortgage?

Ct. The point is that the first were not expensive when he bought half.

Q. That is half, Sir. But what they incorporated as entitlement of the first is the £10,000 which he borrowed the first time. So, under your first agreement you are already buying 297 shares for £50,000 but under this agreement you are buying 149½ shares for £50,000?

A. That is what the account says.

Q. That's what it in fact amounts to, doesn't it?

A. It seems to me that there were shares that would have depreciated in value considerably, Sir.

Q. Is that values here? £50,000.

A. Yes.

Q. It only appears that way, doesn't it? And you would also feel that it is that way? You would agree to that, wouldn't you? At the shareholders' meeting again, on the day in which the agreement was signed you moved the resolution that the company paid Mr. Nihon 3% of the gross value; is that not correct?

A.

Q. Now, in paragraph 17 of the 1956 Agreement you state this, "Sawyer hereby also declares that since the 6th May, 1953 he has not withdrawn any money out of any account of the Montagu Park Racing Association Limited for

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his personal use except £5,000 as Managing Director and the sums which he paid to Nihon under the said recited agreement dated the Sixth day of May, 1953."

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- Ct. Clause what is it?
Q. 17.
Ct. Under which agreement?
Q. 1956.
Ct. It says that he has not withdrawn any money.
Q. Quote, "Sawyer hereby also declares that since the 6th May, 1953 he has not withdrawn any money out of any account of the Montagu Park Racing Association Limited for his personal use except £5,000 as Managing Director and the sums which he paid to Nihon under the said recited agreement dated the 6th day of May, 1953;" and in fact Dr. Sawyer, that is not correct?
A. I withdrew money.
Q. Other than what you are referring to here?
B A. Yes, against profits, yes.
Q. Well, I am not doubting what you said, but is it not correct that this statement in this paragraph is not correct? Do you agree with that?
A. I withdrew money.
Q. I know you withdrew money. This tells that you withdrew money, too. I know you say you withdrew money which you were entitled to, Dr. Sawyer, but what I am putting to you is; this in paragraph 17 says that you declared that since the 6th May, 1953 that you have not withdrawn any money out of any account of Montagu Park Racing Association Limited "for his personal use except £5,000 as Managing Director and the sums which he paid to Nihon." Do you agree that that is not correct, because in addition to the £5,000 paid to yourself and the sums paid to Mr. Nihon that you withdrew amounts over and above that?
C A. Yes.
Q. You agree with that?
A. Yes.
Q. I understand, Dr. Sawyer ... let us finish this now ... paragraph 16. "Sawyer hereby further declares that the Montagu Park Racing Association Limited is not indebted to him personally or to his wife Ivarene Sawyer."

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Do you now say that that is not true, yet you signed it?

A. I did.

Q. Paragraph 17. You now say it's not true, yet you signed it? Can you tell us now if there is an explanation for your signing this agreement with these two paragraphs. Would you now tell us they were not true?

A. The only reason I can give you is the one I gave you yesterday, that I was resistant in signing the agreement for at least eight to ten months. Nihon had the axe over my head and I felt that I had to know. A

Q. Could you tell us accurately when this agreement was signed?

A. In February, 1956.

Q. February, 1956? And you said Mr. Nihon had the axe over your head eight to ten months?

A. As I recall, he started actions against me in May, 1955. B

Q. When you say actions, is it legal actions or...

A. He had his lawyer write me that I had frauded under purchase risks.

Q. This is quite agreed.

A. But I am only saying. You asked me the question and I answered.

Q. That's right. You frauded the agreement and you agreed to pay £18,000 a year, did you?

A. Yes.

Q. And you had apparently not done so? C

A. Quite right.

Q. So, I am sure you aren't fair to call that the axe over your head, are you?

A. I also had the £10,000 from him in my house at the time.

Q. But you took the money though. You borrowed money from him, didn't you?

A. I am only showing you the position I felt I was placed in, Mr. Adderley. You asked the question, I answered. D

Q. No, you are not. You tell us that Mr. Nihon had the money ... that Mr. Nihon had axe over your head. What I am putting to you is that that is not only not fair ... that is not even true because you frauded in your agreement in the first year, didn't you?

A. This was verbally agreed to but, my Lord, by word of mouth.

Q. Mr. Nihon agreed to it. Well, now you frauded the second year, didn't you?

- A. Yes.
- Q. Now, you didn't expect him to allow you to keep on frauded under the agreement indefinitely, did you?
- A. I am not saying that isn't fraud under the agreement.
- Q. That and the terms of the second and third agreements. Aren't they more favourable to you? Are they not more favourable to you than the first agreement?
- A. You mean to buy half the shares for the same price? Don't you think that's also more favourable, Mr. Adderley?
- Q. No, no. You are paying £40,000 over eight in several fives.
- A. You can't twist that one around, Mr. Adderley.
- Q. No, no, no, Dr. Sawyer. You are paying
- A. Paying the same price for half the shares. But if you take over eight years i.e. in fives, is that alright?
- B. But the fact still remains if you are paying the same price for half the shares I think that is right.
- Q. Don't you agree you are paying
- A. No, I am paying the same price for half the shares. I should think that is quite a different
- Q. You agree that you were only entitled to half shares?
- C. A. Under this agreement.
- Q. Under the agreement. Well, why did you say you were entitled to draw all the profits then in 56 and 57?
- A. Because this year the profits would make up for it.
- Ct. Because what? It says in the agreement that this year the profits are to extend to 3% in other words would tie the 3% in the shares.
- D. Q. Exactly. What you are saying here is that it appears as if you are only getting the benefit of half when in fact you are getting the benefit of all. So it is not quite right to say that you were paying more than half a month?
- A. Also losing the control as a Director, Mr. Adderley.
- Q. Yes, but that arose
- A. And was not having the important control of

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- the shareholders; I mean having the majority of the shareholders' shares.
- Q. Yes, but your financial position deteriorated ...
- A. I think the payments were still made the same time.
- Q. No, no, Dr. Sawyer, payments on the second agreement ... they would still be at the rate of £5,000 a year.
- A. Including the 3%. I was referring to the 3%.
- Q. Yes, the 3% payment was made that year, but your payment of being £5,000 Dr. Sawyer, instead of being £80,000 it was £5,000 a year for Mr. Nihon, is that right? A
- A. That is right.
- Q. And no part to the extent in which you participate in the profit was referred; you wouldn't feel as though you were entitled to any length after the second agreement than before that?
- A. No.
- Q. Exactly. So isn't this in fact more favourable to you? B
- A. With the exception of losing the control as a Director and also losing my share.
- Q. No, we are talking about how it actually was broken down into pounds, shillings and pence.
- A. You asked me a question and I answered.
- Q. Yes, and wouldn't you agree to the fact that you are anticipating profits to the same extent, Sir, would pay Mr. Nihon for the first stead of over five years over eight years? Now which term is more favour to you? C
- A. The same, I would say, with the exception of the
- Q. With the exception of the control or the exception of the position as director of the company. But in the first year -- in 56 to 57 that won't mean anything because you completely controlled the affairs of the company?
- A. I can say as the Manager of the Company. D
- Q. Yes, you managed the affairs of the company and you fail to see that you tricked the company on your own, did you not?
- Ct. How was it regarded, Mr. Nihon owned just about the shares after, did he?
- Q. Yes, Sir. Did he ever make a claim for the dividends or ... for these shares? What happened?
- If this was done, probably if the company were allowed to declare a dividend? E
- Ct. Did he ever ask for profits on these shares?

- Q. There is no dividend actually. It is declared. Dividends declared.
- Ct. No. Did he ever ask for dividends to be declared? There is a complete silence about what he was going to get.
- Q. Yes, Sir. So far as the company is concerned, so far as the company records are concerned the company records show that he is the owner of half the shares. Sir, and Mr. Nihon owned half the shares. So it appears as if the company did declare dividends on those shares (let us say 10 shares), he would be entitled to so much on his shares, Sir, and Mr. Nihon would be entitled to so much on his shares. Now, what Mr. Nihon actually does with the money is between he and Dr. Sawyer --- between the company and the two of them; i.e. the finance between the second agreement and the first. What Mr. Nihon does with the money is regulated by an agreement between the two of them, Sir, which has nothing to do with the company. But as far as the company is concerned the company is not obliged to pay the dividends to Dr. Sawyer and Mr. Nihon; but under Mr. Nihon's agreement with Dr. Sawyer he is obliged not to take out his 3%.
- Ct. They never did declare it, didn't they?
- Q. No, Dr. Sawyer, it says
- Ct. Just give me a chance to go back through the 1953 agreement where in the 1953 agreement it says in clause 7:-

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"The Purchaser agrees to pay to the Vendor one half of the gross proceeds received by Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind conducted by them at Hobby Horse Hall the race track of Montagu Park Racing Association Limited and the Purchaser agrees to pay the said one half of the gross proceeds received by Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind to the Vendor within a period of Thirty (30) days after the receipt of

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the same at the office of Barclay's Bank Nassau together with a detailed statement, and all books relating to the sweepstake shall be made available to the Vendor at all reasonable times."

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- Do you remember Clause 7?
- Q. That is paragraph 8, Sir, of the document.
- Ct. Well, what happened to paragraph 7, did they not ... they never had paragraph 7?
- Q. They never had one. A
- Ct. They never had one. Good, I must put that in my mind, good.
- Q. What I was putting to you is the fact that after the 1956 agreement between the company of the two shareholders and the company obligated to Dr. Sawyer and Nihon as between the two of them personally, was independant to the company. So, that is a different matter altogether.
- Q. Have you got the 1956 agreement, Dr. Sawyer? B
- A. Yes.
- Q. Now, under the 1953 agreement in paragraph 19:-

"the Purchaser agrees that the sum of Five thousand pounds (£5,000) will be set aside each year to be used for depreciation on the Company's property until payment in full has been made to the Vendor."

- Remember we were dealing with that yesterday afternoon? Now in the 56 agreement, that was originally incorporated in the agreement and deleted. Does your copy show the deletion of paragraph 13? C
- A. Yes, I have it.
- Q. Have you got the agreement?
- A. Yes, I have it.
- Q. Do you see now where it is deleted?
- Ct. Section 1e had been cut out?
- Q. Yes, Sir. Dr. Sawyer, do you know why that was deleted? D
- A. I would think that the interpretation of the 53 agreement was, the company, as any other business would do, just from time to time or year to year incorporate what happens.
- Q. In fact that was put down in the balance sheet ... depreciate the fixed assets of the company.

- A. May well.
- Q. But what I put to you yesterday was the this was in fact referring not to the normal depreciation, it was written off on the balance sheet, this in fact was referring to the £5,000 in cash which is required by the company
- A. I don't accept that.
- Q. You don't agree that that is so?
- A. You are reading ... I have to take the agreement all in one piece.
- Q. Alright. Did the company ever set aside any cash for depreciation or cash reserved?
- A. Not with the exception of showing as the depreciation on the balance sheet.
- Q. No, no. I mean actual cash.
- A. Or sinking.
- Q. But I am calling it reserve here, or actual cash which is put aside for depreciation, that is never done. Now, did the company, the director of the company ever decide to do so?
- A. Not to depreciate?
- Q. Yes.
- A. No, they didn't.
- Q. Beg pardon?
- A. They didn't decide to do so.
- Q. Did they ever decide in 54 and 55? Did the company decide not to set aside actual cash for depreciate.
- A. It was depreciated. It's in evidence.
- Q. I understand that, but that is not what I have asked of you. I see on the balance sheet the depreciation and fixed assets, but what I am asking is if in 1954 and 1955 the company decided not to set aside actual cash for depreciation or as reserve?
- A. There is no reason for that.
- Q. So the answer is no?
- A. Yes.
- Q. My Lord, I have the copy of the Articles of Association which I will like to refer to the witness. I will like to refer to the paragraph 77 of the Articles.
- Q. Are you ready, Dr. Sawyer?
- A. Yes.
- Q. Now, do you agree that that paragraph of the Articles of Association gives the directors the power to set aside actual cash reserve or funds for depreciation?

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- A. Yes.
- Q. And, do you still say that paragraph 19 in the 1953 agreement was not referring to the power of directors under paragraph 77?
- A. I still say no.
- Q. That 19 only referred to the
- A. It only refers to the regular depreciation each year.
- Q. I see. The company in fact never exercised the powers under paragraph 77?
- A. No.
- Q. But they never in fact decide not to do so either?
- A. That's rather a difficult question.
- Q. It is a difficult question, as you told us. And you say that paragraph 19 of the 1953 agreement does not put any obligation upon you to require the company to actually set aside cash for depreciation?
- A. No.
- Q. Do you agree, Dr. Sawyer, that before any dividend could be payable by a company would have to decide whether it's set aside cash or not?
- A. A company has the right to.
- Q. Yes. It would have the right to do so, but it would have to decide whether it wanted to do so or not before it in fact declared a dividend?
- A. According to the Articles.
- Q. Well, according to the Articles here the Articles gave them the power to set aside and it also required them
- A.
- Q. You agree to that, though, they decided whether they wanted to set aside cash before declaring dividends?
- A. Yes.
- Q. Look at paragraph 70. Beg your pardon, paragraph 72:-
- "No dividend shall be payable except out of the profits arising from the business of the Company."
- Do you see that, Dr. Sawyer?
- A. Yes, Sir.
- Q. Do you say that paragraph 72 means that profits should be distributed out of what you call the surplus of the company?

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- A. Profits arising from the business of the company.
- Q. Is that right? You say that profits arising from the business of the company -- profits arising from the business of the company is the same as what is known as surplus?
- A. I said profits contributed to surplus.
- Q. Profits contributed to surplus, but when the Articles say that:-
- A "No dividend shall be payable except out of the profits arising from the business of the company."
- that means that the surplus is considered to be profits arising from the business of the company?
- A. In my mind.
- Q. In your mind. Let's put it as though that is your thinking; that's not for me. After the 1956 agreement, you lost control of the directorate of the company; would you agree that you retained your control as the manager of the company?
- A. I managed the affairs of the company down at the track.
- Q. Yes, but you could still sign cheques on the bank accounts and all that was not changed until 1957, in January, 1957 I think.
- A. That is right.
- C Q. I believe that in 1957 the Racing Commission imposed the position on the licence that you remain President of the company?
- A. I recall there was some benefit commission to that affect. I don't have a copy of it in front of me.
- Q. My Lord, I refer the witness to a letter dated the 4th October, 1957. There is a copy of that in the correspondence file, Sir. I am only concerned with the first numbered paragraph, Dr. Sawyer. Do you recall receiving that letter from the Racing Commission?
- D A. I recall it before, but I don't have it in front of me.
- Q. Yes. So we could agree that there is a commission that imposed that position to the Montagu Park Racing Association Limited that you were made President. So far as they were concerned it didn't matter with the race track.

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A. They apparently felt that way because they didn't want to have anything to do with Mr. Nihon.

Q. But I would put it the other way around -- it was you. So inspite of the fact that Mr. Nihon ... No, I am talking about the 1956 season now. The agreement was in February, 1956 -- that was sort of half way through the season. You remained in the active control as the manager of the company, right? Is that right?

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A. During 1956; yes.

Q. It wasn't until 1957 that the discrepancies of the fire were actually changed, is that right?

A. January, 1957.

Q. January, 1957, yes.

Now: In January, 1957 the meeting that you gave evidence about in examination in chief -- the 24th January, 1957. My Lord, I would like the witness to see the minutes of the Directors' Meeting of the 24th January, 1957.

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A. I have it.

Q. Now, have you got the minutes in the file, or the draft?

A. These are the minutes, I don't have the draft.

Q. You don't have the draft?

Now, according to your evidence, Dr. Sawyer, certain parts of those amendments which are in the draft

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A. I don't have it.

Q. Now, according to your evidence, Dr. Sawyer, the meeting of the directors agreed to the proposition which was set out on page 2:-

"Resolved that Dr. Sawyer is entitled to the entire net profits of the company after having paid to Mr. Nihon Three percent of the gross sum paid into the pari-mutual pool as defined in the Race Course Betting Act, 1952 on each and every race day on the Third day following each meet during the Racing Season provided that is the total amount received by Mr. Nihon as a result of the said payments to him of Three percent of the gross sum paid into the said pari-mutual pool is less than One-half of the net proceeds of the Company for any one

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Racing Season, then Mr. Nihon shall be paid an additional sum representing the difference between the amounts received by him on the said Three percent of the gross sum paid into the said pari-mutual pool and the said one-half of the net profits of the Company for the said Racing Season."

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A This is the first time, you will agree, Dr. Sawyer, that any suggestion was made in any minutes of the Company that you were relying on the profits of the company to pay Mr. Nihon.

A. Yes.

Q. You say yes?

A. Yes.

Q. "On motion duly made and seconded it was agreed that, provided funds are available from the profits of the company due Dr. Sawyer, payments should be made from the company's bank account or bank accounts in favour of Mr. Nihon for the account of Dr. Sawyer in accordance with the terms and conditions or the said agreement of the 29th February, 1956."

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And from there it goes on:-

"Net profits of the Company (then struck out, M.P.R.A. is now added), after having paid to Nihon Three percent of the gross sum paid into the pari-mutuel pool as defined in the Race Course Betting Act, 1952 on each and every race day on the Third day following each meet during the Racing Season PROVIDED that if the total amount received by Nihon as a result of the said payments to him of Three percent of the gross sum paid into the said pari-mutual pool is less than one-half of the net proceeds of the Company for any one Racing Season, then Nihon shall be paid an additional sum representing the difference between the amounts received by him on the said Three percent of the gross sum paid into the said pari-mutual pool and the said One-half of the net profits of the Company for the said Racing Season."

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Now, Mr. Nihon said that that proposition was made at that meeting but it was never agreed to by the Directors at that meeting. Certainly, it was my understanding and it was also Mr. Godfrey Kelly's understanding that ... You believe that that was agreed at the meeting? Yes. Dr. Sawyer, I will refer you again to the affidavit in the winding up position: My Lord, again I am afraid we only have one copy of this at the moment, Sir. Would you make a note of the paragraph to which I am referring, Sir and you would need to refer to this and I would need the relevant paragraph 7 of his affidavit:-

"In January of 1957 the said Alexis Nihon through his control of the directors obtained a resolution of the Company removing me as the sole signing officer of the Company and caused the Company to forward to its Bankers a new banking resolution authorizing signatures by two persons out of the three signing officers named therein which included the said Alexis Nihon, Mr. Herbert Deal and myself."

Now, this is the relevant part of your affidavit, Dr. Sawyer. "At this meeting of the directors, I made certain counter proposals in an effort to ensure that my salary as manager would be paid." It goes on "I also tried to obtain agreement that provision would be made either to delcare a dividend at the end of the racing season or that advancement in anticipation of profits be paid to me, which will enable me to continue repaying on the balance of the said loan due to the said Alexis Nihon but he refused to agree to this proposal." Now, this is your affidavit sworn in 1958; and all you say in that, Dr. Sawyer, is that you tried to obtain agreement.

A. But he did refuse -- if he struck it out.
Q. No, no. What you are saying in this affidavit is that you were trying to get agreement on this; but you could not get agreement on this. But you don't say in this affidavit that the

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- company agreed to do so but Mr. Nihon struck it out, did it? In this affidavit
- A. In fact these minutes were defined then. What I am saying to you is that Mr. Kelly's conception was agreed to and my conception was agreed to
- Q. But this is not your conception on what was agreed to, Dr. Sawyer, in February, 1958.
- A. Yes, it is. I merely said that Mr. Nihon didn't agree.
- A Q. No, you didn't say Mr. Nihon didn't agree. You said, "I tried to obtain agreement." So what you are saying is
- A. I did.
- Q. You did try to obtain agreement?
- A. Read what the file says was agreed on.
- Q. No, no: I will say this much for this purpose; the minutes which you actually agreed on may not reflect what was in fact the agreement at this meeting and what you are saying now, is it not ... that in fact the minutes agreed to was what was prepared as a draft, is that not right?
- A. That was my conception, yes.
- Q. So you understood that the meeting agreed. Are you now saying that it is possible that the meeting did not agree?
- A. No. My deciding was that it was agreed to at the meeting and subsequently, in the final minutes it was struck out.
- C Q. I know we need to take this one stage at a time; that you understood that this was the agreement arrived at at the meeting.
- A. Yes.
- Q. Now, but that is what you said in your affidavit in 1958. All you said there was that you tried to get his agreement.
- A. Right. That is quite true; I said I tried.
- Q. You said that, "I also tried to obtain agreement." Does that not mean that you were unable to obtain agreement?
- D A. Finally, it wasn't agreed to because it was the final minutes.
- Q. No, so far as you are concerned, Dr. Sawyer, it wasn't your decision, Dr. Sawyer, that the meeting agreed to what was in the draft, but Mr. Nihon, after the meeting, struck those paragraphs out of the minutes.
- A. Yes.

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- Q. If you are right, that does not alter the fact that the meeting agreed to the resolution; do you see what I mean now?
- A. This is my understanding of what transpired at the meeting and what was agreed to.
- Q. Yes, it was your understanding that it was in fact agreed to, but what I am putting to you is that if that is the case, you would not have said in your affidavit in 1958 that you only tried to obtain agreement, you would have said that you obtained agreement?
- A. No. I still say that it was agreed to.
- Q. You think it is the same as the words, "I also tried to obtain agreement"?
- A. I think that is quite in fact what it means.
- Q. Dr. Sawyer, will you listen to the question before you answer?
- A. Well, you asked the question
- Q. No. You are just answering the question now for the first time; I want to be sure that you know what you are saying. I am reading here:-

"I also tried to obtain agreement."

Do you see that that means that you obtained agreement?

- A. It does not mean that I obtained agreement, it means that I tried to obtain agreement.
- Q. But doesn't that also mean that you failed to obtain agreement?
- A. No, I wouldn't say that.
- Q. You wouldn't say that that means that?
- A. It doesn't say so.
- Q. O.K. I want you to tell me what you think this language here means. You say that this does not mean that you did not obtain agreement?
- A. I don't think so.
- Q. You don't think so?
- Now, the paragraph goes on, "I also tried (that provision would be made either to declare a dividend at the end of the racing season or that advancement in anticipation of profits be paid to me, which will enable me to continue repaying on the balance of the said loan due to the said Alexis Nihon) but he refused to agree to this proposal." Do you say that at that time he had the control of the Board of Directors?

- A. I did. That is 1957.
- Q. January, 1957, but if he had to go to the Board of Directors and he refused to agree how could you say that the Directors agreed?
- A. In fact that is what happened, Mr. Adderley.
- Q. He in fact did not have control of the Board of Directors at that time?
- A. He did.
- Q. Look at the particular resolution concerning that he did not control the Board of Directors.
- A. Yes. He, in 1958, Mr. Adderley, he did.
- Q. But how could he have controlled the Board of Directors and the Board of Directors agreed to something he did not want?
- A. I didn't say they agreed, Mr. Adderley.
- Q. Why didn't they agree?
- A. I will say once again, Mr. Adderley, because the draft was not in the final minutes. You know that yourself.
- Q. I know it was not in the final minutes because what was in the draft or the final minutes had nothing to do with what actually took place at the meeting and that is what we are concerned about, not what is written down here but what actually took place at the meeting -- the directors agreed to the resolution.
- A. I say this is what took place at the meeting; that is what I am saying.
- Q. I know the motion may be put as so, but are you saying that the directors agreed to the resolution, yes or no?
- A. My feeling was that they had agreed.
- Q. Your feeling was that they had agreed. So then, did that not then mean that the Directors were agreeing to something to which Mr. Nihon disagreed?
- A. No; to something that he did.
- Q. My question requires a "yes" or "no" answer, Dr. Sawyer.
- A. To my feeling, he did.
- Q. Now, in the General Meeting for 1956 the minutes of the Annual General Meeting for 1956: Have you got that, Dr. Sawyer?
- A. I do.
- Q. What is the date of that meeting? Sometime in November, I believe, or was it May?
- A. The 12th May, 1956.
- Q. The 12th May, 1956, but I think the minutes

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show that the meeting was on the 10th -- by all the Directors, or the shareholders? Do those minutes report and confirm, also approve the Balance Sheet for 1956?

A. It says that the Balance Sheet was approved.

Q. It says that the Balance Sheet was approved; but you now say that you objected to the Balance Sheet in that form, is it not?

A. I said that I did not agree to the £3,373 etc. being made in payment for the

Q. Yes, that is not in fact altered in the minutes.

A. No.

Q. Mr. Nihon also says that he doesn't approve of it in that form either. That is not in fact shown in the minutes either, I think?

A. No.

Q. Neither the objection which both of you had to the Balance Sheet is in fact shown in the minutes, is that not right? Do you agree that he in fact objected to the Balance Sheet?

A. I don't remember. I know I did.

Q. You know you did but you don't remember whether he did? He says he doesn't remember whether you did. So both of you you would say, disapproved on the Balance Sheet. Do you agree to that?

A. I objected to one item.

Q. You will agree that that is very important. You will agree that that is a very important item though? It has everything to do with why we are here.

A. Well, it may.

Q. I agree that it may not be here, but it is important to both of you. He did not approve of the Balance Sheet in that form; you said that?

A. Yes.

Q. Exactly; and if it were not for that item perhaps we may not have been here, but it is important to both of you. Both of you are saying that you did not approve of the Balance Sheet in that form. You said that much?

A. I don't express that in broad terms the way you put it, I objected to one portion.

Q. We are only talking about that one portion. I am not talking about all the items, Dr. Sawyer, I am talking about, you know the one which we are talking about and Mr. Nihon said

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he did not approve of it in that form; but do you also say that those minutes do not accurately reflect what took place at that meeting?

A. It makes no mention of my impression.

Q. Quite so. The minutes, so far as that aspect is concerned, are not right?

A. It does not make any mention of my objection.

A. It does not make any mention of your objection. Now, do you remember then, that the minutes were approved inspite of your objection?

A. It must have been.

Q. Mr. Nihon says he did not approve and you say you did not approve, so I don't see, if you don't approve and he doesn't approve, how it might be written down there; but what is written down there may not be right. All I am getting at, Dr. Sawyer, is that you have to be suspicious of the actual contents of the minutes, you agree with that?

A. Except in one regard, I am not suspicious.

Q. We are not talking about the minutes so far as that portion -- to approve the Balance Sheet.

A. There was no suspicion there.

Q. And they were not in the minutes. Now, I am at the point which may be fundamental -- the question of whether or not the Balance Sheet was approved.

A.

Q. But are you prepared to say on oath today that you know that that Balance Sheet was approved in 1956?

A. All I can go by is what is in the minutes of the Annual General Meeting and it says that it was approved.

Q. Yes, but you did not approve of the minutes. Are you now saying that you did not approve?

A. I said that I objected to that one item.

Q. Exactly. That is the reason why we are here, but don't let us keep harping on this one item. You are saying now that at that meeting you did not approve of that item in the Balance Sheet?

A. That is right.

Q. Right. But the minutes do not show that?

A. They don't.

Q. So, are we not entitled to say that the

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- minutes may not be an accurate reflection of what in fact took place at that meeting?
- A. There was an omission, if that is what you mean.
- Q. You say that there was one omission. Are you prepared to say that that was the only omission?
- A. That is the only one that I recall.
- Q. That is the only one that you recall. Now, let us look at that Balance Sheet. My Lord, I would like the witness to look at the Balance Sheet for the year ending April, 1956. A
- Ct. May I look at it for a minute?
- Q. Now, over on the right hand side, shareholders' withdrawals is £11,565.13.10. Can we agree that that amount represents the 3% payment to Mr. Nihon?
- A. Yes.
- Q. And can we also agree that the amount of £5,933.18. 9. represents the sums which were paid to you which you say you paid to Mr. Nihon; and over on the other side, the total of £3,373.14. 6. are the amounts which you repaid yourself, is that right? B
- A. That is right.
- Q. Now, so far as you are concerned, you say that the amount shown -- £3,373.14. 6. should be over here on shareholders' withdrawals?
- A. Yes.
- Q. And so far as Mr. Nihon is concerned, he says that the £5,933.18. 9. should be over on this side under your name also. You said that? C
- A. That is what he said.
- Q. Right. And that the shareholders' withdrawals, of course, should be in the profit and loss statement. Now, when this Balance Sheet was before the meeting do you say that it was before the meeting in type form or in pencil?
- A. As I recall, it was in type form.
- Q. You recall it was in type form, but you now say that it was not in this form, is that right? Sorry, that 1957 is the one that you say was wrong. Is that right? D
- A. That is right.
- Q. Now, you say that you did not approve of the Balance Sheet in this form?
- A. In respect of the £3,373.14. 6.
- Q. That is the only one that you say was wrong. Now, as far as you are concerned, Dr. Sawyer,

if you say the date was correct, that, of course, would be a very important item to you; if that is not to be shown as an asset to the company?

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A. I feel that it should not be shown as an asset to the company.

Q. So, don't you think that if you took that strong an objection to that item in the minutes that it would have been inserted in the minutes.

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A. It should have been.

Q. And when did you find out that it was not in the minutes?

A. I don't actually recall, Mr. Adderley, but I have been refreshing my memory over the last few weeks before this date when I went through all of the minutes, then I recalled it again.

Q. I know, but do you recall that you did not agree to the meeting and you don't remember whether you knew before whether it was in the minutes at the meeting in that form?

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A. I don't remember this, Mr. Adderley. How can I be expected to remember this, Mr. Adderley?

Q. I don't know what you remember. There are lots of things that you remember and that you don't remember, so I can't decide that for you, Dr. Sawyer. So far as you were concerned, the amount which was paid to Mr. Nihon by you, do you regard them in the same light as the 3% payment to Mr. Nihon?

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A. In one respect, I think. They should have been paid as though they were charged property against profit, but otherwise, they do.

Q. I didn't ask if they should be charged as profits - I asked you if you feel as though the amount which you paid to Mr. Nihon should be put in the same category as the 3% payment to Mr. Nihon?

A. On the Balance Sheet, yes. That is what we are talking about, isn't it?

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Q. Yes. That is what we are talking about. Well, do you feel that the amounts that were paid to you which you didn't pay to Mr. Nihon, do you say that they are in the same category also?

A. They were monies that I feel I was entitled to use as a shareholder of the company.

Q. I know they were monies which you felt that you were entitled to use, but that isn't quite

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what I asked you. What I asked you is, if you feel that they were in the same position as the 3% payments being made by the company to Mr. Nihon?

- A. I feel that they were in the same category.
- Q. Sorry, I don't hear that.
- A. I said, I feel that the £3,373.14. 6. were in the same category as the payment of the shares -- £5,933.18. 9.
- Q. You feel that they were the same because all of those amounts were in fact paid to you? A
- A. Yes.
- Q. So, the fact that you paid money to Mr. Nihon, so far as the company was concerned, that has nothing to do with the company records. Do you agree that whether this figure of £5,953.18.9. should be shown over here or over this side they should be shown together. Do you agree with that?
- A. I think. B
- Q. Whether that remains here or there, no distinction should be made between one figure or the other. Do you agree with that?
- A. Yes.
- Q. And having put those two figures together -- £3,373.14. 6. and £5,933.18. 9. do you say that they are in the same category as the 3% payment to Mr. Nihon?
- A. Insofar as sequence in the Balance Sheet is concerned, yes. C
- Q. So far as the company is concerned, do you say that those payments are in the same category?
- A. They certainly were earlier on, but as you know, later on it was
- Q. We are not at 56 now, Dr. Sawyer, that is why ... But the 56 payments were in fact made directly by the company to Mr. Nihon?
- A. I believe so, I haven't checked it.
- Q. You have the cheques for 1954-55 which were made payable to you and endorsed by you and given to him; so after that they were made by the company directly to him? D
- A. I believe that is what was done.
- Q. Yes. As far as you were concerned at that stage -- 1956 stage, these payments were being made by the company to Mr. Nihon, is that right?
- A. That is what I believe.
- Q. Well, don't you know that?

- A. I haven't seen the cheques, but as I recall, they were paid directly to him.
- Q. And cheques were signed by you?
- A. That is true.
- Q. Yes. So the payments that were made to him were being made directly to him by the company?
- A. At that time, yes.
- Q. And that was also the case in 1957. The payments were made directly to him by the company. Is that right? And the payments which were made to you were made to you by the company?
- A. To my recollection, they were.
- Q. Now, the amount which you were entitled to receive from the company, Dr. Sawyer, are those not amounts to be determined by the number of shares which you hold in the company?
- A. Yes. Shares having to do with profits.
- Q. So, as far as you were concerned in 1956, the total of £9,307.13. 3. was payable to you by the company?
- A. Yes.
- Q. But at that time, Dr. Sawyer, you only held half the shares in the company.
- A. With Mr. Nihon's shares.
- Q. So far as the company was concerned, you only owned half the shares of the company; is that right?
- A. Right.
- Q. So far as the company is concerned you would only be entitled to 50% of the declared dividends?
- A. No.
- Q. The answer is "no", but so far as the company is concerned the company had to pay you for more than half your share?
- A. I felt my share was the only
- Q. The company would have to declare a dividend for all the distributors ... whatever amount of dividend the company decided to declare the company would have to pay all of that to you?
- A. That is what I said.
- Q. That is what you said inspite of the fact that you only held half the shares?
- A. I feel that they were the only
- Q. Do you agree that the position was the same -- that you were only entitled to $149\frac{1}{2}\%$ of the

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shares; and do you also say that at that time you were entitled to all of the dividends declared by the company?

A. I feel that way.

Q. Payable to you from the company?

A. I feel that way.

Q. Now, let us come to the 1957 Balance Sheet. On what you call the first draft, do you see down at the bottom there typed, "seen by Dr. Sawyer and not seen by Mr. Nihon"?

A

A. That is correct.

Q. At that time, was it not a fact that Mr. Deal showed it to Mr. Nihon and then had he actually made any changes to you before he actually prepared the final Balance Sheet?

A. He didn't in this case.

Q. You say that is the only one that you saw; and you say you didn't see the signed copy of the Balance Sheet?

A. Not till recently.

B

Q. So, if Mr. Deal says that he showed that to you and you approved of it that wouldn't be right?

A. That wouldn't be right.

Q. Now, this Balance Sheet shows the figure of £5,481.10. 2. - personal account payable to Dr. Raymond W. Sawyer. Do you agree that that figure includes the 3% - from the year before?

A. Yes.

Q. And the £6,743.16. 9. are the amounts paid to you which you paid to Mr. Nihon?

C

A. That is right.

Q. Again, do you agree that those figures, wherever they belong, belong together?

A. That is my feeling.

Q. Now, look over on the right hand side of your page there, Dr. Sawyer. It shows that the net profit for the year 1956-57 is £10,377.10.5. and shareholders' withdrawals - £11,301.19. 7. If the shareholders' withdrawals, as we see is the case, do you agree that that amount of the shareholders' withdrawals is Mr. Nihon's 3% only?

D

A. £11,301.19. 7.

Q. And do you agree that if that 3% ensures a change of the operating costs of the company that year, the company would show a trading loss of just under £1,000?

A. That is obvious.

- Q. Dr. Sawyer, I am going to put it to you that Mr. Deal is perfectly right when he says that the Balance Sheet was put to you and you approved of it before you actually signed it.
- A. That is not my recollection.
- Q. Is it possible then that if you put it that way, that your recollection may be drawn.
- A. It is possible.
- Q. So, it is possible that you approved of it, before you signed it?
- A. I have no recollection of having even seeing it until recently.
- Q. You have no recollection, but what I am putting to you is that what he said is in fact right and that you are in no position to say that is not right.
- A. In my view it is not right.
- Q. In your view it is right, but you could be wrong?
- B A. Anybody could be wrong.
- Q. I just want to be sure that you are not saying that he is wrong. In January, 1957, if you were satisfied at that time that you were entitled to withdraw the sums which you did withdraw from the company, why did you think it necessary to have the company to agree to a resolution in the form in which you say you wanted that resolution agreed to?
- C The Directors Meeting of the 24th day of January, 1957. Do you say that you attended and that the meeting did agree to a resolution in that form?
- A. I think we just wanted to regularise the procedures.
- Q. Why did the company think it necessary then to regularise the procedures?
- A. I feel it would be for my protection.
- Q. So far as you are concerned, it has not been regular before then. Well, what happened to make you want to regularise it by that particular company?
- D A. All I know is that I signed this new agreement and since Mr. Nihon had the control of the directorate I felt that I needed some protection.
- Q. Wasn't it because you realized you knew ... that before then, you were not entitled to make withdrawals, but now you were entitled to?

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- A. No. I don't say that at all.
- Q. Would you agree that that occasion in 1957 was the first occasion that the company thought a dividend might have been raised by you?
- A. That is possible.
- Q. Did you make your payments under the second agreement, Dr. Sawyer, at the time?
- A. Yes. I recall somewhere in 57 or 58 I did hold it for a period of two or three days but immediately the money was made available, my lawyer sent a letter saying that the money was ready to pay him and Mr. Nihon came and picked it up. A
- Q. So, then you subsequently defrauded those payments to him for those cheques?
- A. Only for a matter of a few days. We believed that we would have the entry before then.
- Q. Dr. Sawyer, I am not talking about entry here, I am only talking about the question of defraud. Didn't he have to take action against you for the balance of his cheques? B
- A. Yes.
- Q. Would you say, Dr. Sawyer, that you gave Mr. Deal no instructions at any time in regard to the preparation of the accounts?
- A. I don't recall having done so.
- Q. Dr. Sawyer, the company gave you a promissory note for £10,000; and you now say that the £10,000 is still owed to you by the company, is that right? C
- A. I feel that the £10,000 was loaned by me to the company and I would be repaid back for it.
- Q. Do you still say that the company owes you £10,000?
- A. I say, in the 1956 agreement, that I would agree that the company owes me some money.
- Q. You did agree in 1956. But what I want to know is, if you still say that the company owes £10,000?
- A. I feel that the company still owes £10,000. D
- Q. But inspite of that, would you know that, in the 1955 Balance Sheet, that £10,000 was written off?
- A. It was taken off.
- Q. Do you still say that the company owes you £10,000?
- A. Well, I can't say that, Mr. Adderley, because I agreed under the 56 agreement that that wasn't so.

- Q. So, so you say that the company does not owe you £10,000?
- A. Under the 1956 agreement, I agreed that the company was not indebted to me.
- Q. Is that not a fact to say that the company does not owe you £10,000?
- A. I can't claim because I find that I signed the 1956 Agreement.
- Ct. But you are claiming it, aren't you?
- A. It can't be claimed.
- Ct. There is no money to pay, is there?
- Q. As we can see now, Sir, we took £10,000 from the total withdrawals. We do not claim that amount of money from him. That is the point I am trying to make, Sir.
- Ct. But he has not got it.
- Q. We do see that. We say that he has been paid that through the company. So it didn't arise because of the fact if we get judgment for the amount of our claim, Sir. We have already given him credit for that amount.
- Ct. You have already given it to him?
- Mr. Adderley: Exactly. May I just finish this one point, Sir?
- Ct. Yes.
- Q. Dr. Sawyer, you would also agree, wouldn't you, that the £10,000 is also written off the company's account in the 1955 Balance Sheet?
- A. It is.
- Q. And that was approved, wasn't it?
- A. It was.
- Q. Approved by you, too; wasn't it?
- A. It was.
- Ct. This was specifically approved?
- A. At the Annual General Meeting.
- Ct. Was it done and specifically mentioned?
- Q. No. It wasn't mentioned, Sir, I haven't quite finished, Sir, I am almost.
- Q. Dr. Sawyer, when you bought the shares of the Montagu Park Racing Association Limited in 1953, do you agree that the only assets of the

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- Q. But this was before the resolution was altered, though, wasn't it? The resolution was altered in 1957, wasn't it?
- A. Yes.

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Q. But at that time

A. Yes.

Q. But you do know that he got the 3%?

A. I am not sure. My recollection is that he

Q. It was on this one occasion, I think, it was around, somewhere around £150?

A. It wouldn't have been more than that.

Q. Do you agree, Dr. Sawyer, that under the Montagu Park Racing Association Limited's commitment to Mr. Nihon, the circumstances under which he got his 3% was changed? A

A. Please phrase that question, I don't understand it.

Q. Do you agree that the credits on which the 3% payments were made to him between 1953 and the beginning of the 1958 seasons had changed by the beginning of the 1958 season?

A. It is possible because of the amendments of the Act.

Q. Because of the amendments of the Act the credit on which the payments were made were changed? B

A. The change was in respect that according to our agreement, he was only entitled to the agreed amount.

Q. By that same token, the Montagu Park Racing Association would only be entitled to an agreed amount also?

A. By way of 10%.

Q. No, no. By way of a percentage of the 7%. If his percentage of the 7% and your percentage of the C

A. But this in fact will involve a reduction in the amount which he received.

Q. It would have done. If it were calculated on that basis, the credit was, I would say, an entirely different one from which the 3% payments were made.

A. Credit is the same. I don't know what you are getting at. D

Q. Yes, but at the time the original 3% payments were agreed to, then Montagu Park Racing Association had to pay the shares out of the 10% remaining to it?

A. Yes.

Q. But by 1958, for that racing season, the Montagu Park Racing Association Limited didn't have to pay the shares out of those 7% That came out of the same source but being different method.

- A. The Racing Commission handled that.
- Q. Yes. Is it not also correct to say that the 1953 and 1956 commitments of Montagu Park Racing Association Limited to Mr. Nihon was based on the that Montagu Park Racing Association Limited would have to pay the purse out of the 10%?
- A. Well, that is the facts here.
- Q. And that continued up until, I think, the 1958 season, didn't it?
- A. One week.
- Q. Now, when you bought the shares in 1953, the surplus which was carried forward in the Balance Sheet of the company at that time, somewhere in the neighbourhood of £30,000, do you remember that?
- A. The book value of the assets or the cash?
- Q. The surplus or the book value of the assets.
- Ct. Yes.
- B Q. That is what I am asking him, if it is understood that the Balance Sheet shows surplus of somewhere in the neighbourhood of £30,000. Did you not understand at that time that that was based on the value of the assets of the company?
- A. Yes.
- Q. The accounts payable prior to your purchase of the shares became Mr. Nihon's obligation, so there were no sort of hand-receipted income which the company realized after you received the money?
- C A. No.
- Q. At the time you purchased, in May, 1953, did you not also know that the lease had expired in November, 1958?
- A. Yes.
- Q. And did you also know that at the expiring of the lease the fixed assets in terms of the building would have caused the company considerable loss?
- D A. I expected it to be.
- Ct. That was why the insurance company drew a claim, is it?
- Q. The point is that you knew at the time that the lease expired in November and you also knew at that time that the fixed assets in terms of the building would become the property of ... so far as the company was concerned, whatever value was carried forward on book, at the

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expiration of the lease, would have to be written off?

A. It would have to be written off -- depreciation.
Q. Yes, it would have to because the company actually holds nothing at that stage?

A. Yes.

Q. Dr. Sawyer, I would just like you to look at a letter which you wrote to Mr. Nihon in 1953. The other letter is one which I have already referred to -- one from Mr. Nihon; but this is one partly relating to that. What I have put to you, Dr. Sawyer, previously was that the Balance Sheet purposely omitted any reference to the 3% payments which were made to Mr. Nihon because of the fact that you did not want anybody to know that Mr. Nihon had any association with the race track and that in fact his 3% were shown as shareholders' withdrawals to keep from the eyes of the Racing Commission that fact that he had any association with the race track, and you say "no", that is not the case. What I want to put to you now is that the fact that in December, 1953, if the second paragraph of your letter doesn't suggest to you that that is precisely your state of mind at that time; that you wanted to have as little to do with Mr. Nihon as possible for public consumption?

A. According to a suggestion put forward to him in certain propositions he says that he still had dealings with the race track.

Q. That is so. And I want to direct your attention to the last sentence in the second paragraph in which you say:-

"However, if I were to take delivery of your car and then meet you with it on your arrival it would serve only to start the tongues wagging again with vicious, lying gossips."

So, doesn't it suggest to you the fact that at that time you didn't even feel free to meet him at the Airport? Let me suggest to you that that is consistent to what I have already suggested to you, that you wanted to have as little to do with him in public as possible, too.

A. I wanted to stop the rumours.

Q. I accept that. You wanted to stop the rumours

and one of the ways of doing it was, keep the true facts of his relationship with Montagu Park Racing Association Limited on the Balance Sheet clear?

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- A. I didn't think that would serve any purpose.
- Q. But if it would on the Balance Sheet as the 3% withdrawals with the group on the Profit and Loss Statement, the Racing Commission would know that he still had an interest in the race track.
- A. They did.
- Q. My Lord, I would like to put both in as exhibits. I have already referred to December 9th. But at the time, we did not have copies of neither of them, Sir. If you keep the original letter, Sir, I can have the copy. I believe it is a fact, Dr. Sawyer, that there was never an audit of the accounts of the company before by anybody?
- A. No. Not to my knowledge.
- Q. In your accounts payable, you referred to the £10,000 on Friday. In the promissory note which the company afforded to give you in May, 1954, the note actually provides for the payment of interest of 5%. Is there any reason why you do not pay an interest on that £10,000?
- A. Not to my knowledge.
- Q. In 1958 you petitioned the Court to wind up the company, is that not right?
- A. Yes.
- Q. Was there any real reason at that time why you should petition the Court to wind up the company?
- A. As I recall, the bank was suing the company for £3,000 and I would have to pay it. It was advised that that was the proper procedure to take.
- Q. No, no, the bank and their situation didn't arise until sometime well after 1958.
- A. It is the same principal.
- Q. No, you mentioned the fire, but what I am putting to you is that, that in fact the bank didn't actually sue the company until well after 1958. Don't let's confuse the bank with what went on in 1958.
- A. No, I am saying it is the same principal. I am saying that it was only £3,000 and I was advised by my legal counsel that that was the thing to do.

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- Q. Did you purposely want to wind up the company?
In other words, terminate your relationship with Mr. Nihon?
- A. I just went on with the legal advice I was given.
- Q. Was it a result of legal advice?
- A. It was a matter between Mr. Nihon and me.
- Q. So far as you are concerned, from the point of view of the management of the company your position as manager, as a shareholder, do you say that there was no reason why this should be done? A
- A. I didn't get the point.
- Q. So far as you were concerned, do you say that at that time the company hadn't paid you the salary for, I think, three payments? Three payments were not paid in 1957 and you were in fact suing the company at that time? Do you say that there were no reasons for you to want to wind up the company other than those that you know of? B
- A. Not that I know of. I acted on legal advice.
- Q. Wasn't it a fact that you wanted to wind up the company? It was by this time you felt that you wanted to rid yourself of having the company to pay Mr. Nihon 3%.
- A. No.
- Q. You didn't feel as though that was the case?
- A. No.
- Q. The last withdrawal was exactly made by cheque which was dated the 1st May, 1957. Do you remember that? C
- A. As I recall, that was the one that the ink pot got thrown on.
- Q. Yes. At the time that cheque was written, did that leave any money in the Company's bank account?
- A. I don't recall.
- Ct. What's the date of the cheque?
- Q. The 1st May, 1957 -- £1,629. 9. 1. D
- A. Mr. Nihon joined in the signing of that cheque. Both our signatures were on it.
- Q. That was the cheque made payable to you? We can get the actual figures from the account, Dr. Sawyer, but you don't remember that that pretty well left nothing in the bank account of the company at that time?
- A. I don't recall.
- Q. And that is not in respect of the amount you said you paid Mr. Nihon?

- A. It was.
- Q. I don't know whether you paid it or not, I am only asking. I don't know whether that amount was paid to Mr. Nihon or not.
- A. I think it was.
- Q. My Lord, I am referring to the minutes of an Annual General Meeting of the 12th May, 1956. Do you remember, Dr. Sawyer, that in fact in January of 1958 you were not the Secretary of the company?
- A Ct. In 1955?
- Q. In 1958. That was the beginning of the second season. Do you remember, Dr. Sawyer, that the 1956 agreement provides for the sale to you of 149½ shares and of the remaining 149½ it only provides 148½, if it has been stated properly? Do you recall that much?
- A. Yes.
- Q. And that was done because of the uncertainty of position in regard to the Robert Ernest Murphy shares; is that not right?
- A. I feel that at the time I wanted myself to be free of that task. I can't say I thought that was from the
- Q. Dr. Sawyer, what I am trying to point out to you is: if it is not a fact that the reason why it was said that only 299 shares were purchased was because of that one share. There was no other reason why that was stated?
- A. Not that I know of.
- Q. The overdraft or loan that the company had at the Royal Bank of Canada, I believe, it was endorsed by you personally?
- A. Yes. Under that bank, it was.
- A Ct. It was what?
- A. The company in 1958 which was only one week, owed the Royal Bank of Canada £5,000.
- Q. What I was asking is: was it not a fact that you gave your personal guarantee to the bank in respect of that loan to the company?
- A. I feel it was on behalf of the company.
- Q. No. But the company was actually borrowing money?
- A. Yes, I know. But I signed on behalf of the company. That was my thought.
- Q. Yes. But didn't you guarantee payments to the bank? Did the bank require this of you and you signed in your personal capacity of guarantee?

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- A. If I had, then they would have recovered it from me but they recovered it from the company.
- Q. We are not talking about the company, what I am talking about here is that at the time the advance was made to the company. They did so because you gave the bank your personal guarantee?
- A. Well, I only gave my guarantee on behalf of the company.
- Q. The company can't give a guarantee for a loan for itself. A
- A. Then, why did the bank recover it from them? What I am talking about is that at the time the advance was made, the bank was not prepared to do so unless you gave your personal guarantee.
- A. I know I signed, Mr. Adderley. There is no question about that.
- Q. And you signed in your personal capacity then, to guarantee payments to the bank? The fact is that the bank recovered from the company. B
But we are not talking about whether you have got to pay the company or whether you have got to pay the bank. What we are talking about is that at the time, the bank was only prepared to lend the company the money in respect of your personal guarantee.
- A. I say no.
- Q. Under the 1953 agreement you agreed to undertake or endeavour to renew the lease on the Montagu Park Racing Association Limited. Is there any reason why that was left out in the 1956 agreement? C
- A. Not to my knowledge.
- Q. When the 1956 agreement was signed though, you that the lease would be renewed?
- A. I thought that in the normal course of events the lease would be renewed.
- Q. Although the 1956 agreement didn't state this time the occasion of your part in the renewal of the lease, in fact you will remember that the company, it was in 1955, passed a resolution to the same affect? D
- A. I don't recall, but it may have.
- Q. I am referring, my Lord, to the minutes of the 22nd November, 1955:-

"On motion duly made and seconded it was agreed that Dr. Raymond W. Sawyer, the Managing Director of the Company, should

exercise the Company's franchise in respect of the property leased by the Company from the Bahamas Government known as "Hobby Horse Hall", and situate in the Western District of the Island of New Providence."

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- Do you agree that that had the same effect too? That is what is in mind? Is that not right?
- A A. Read it again.
Q. Repeat quote.
A. Nevertheless, Mr. Adderley, I expected that the company would get a renewal of the lease.
Q. In 1958? Did you expect that the company would get a lease?
A. I had nothing to do with it then.
Q. You were still the Managing Director of the Company.
A. In 1958?
- B Q. No. I am talking about after that time in 1958, that you are talking about. You were still one of the Directors of the company.
A. Yes.
Q. And in fact the lease was not renewed in respect of Montagu Park Racing Association Limited?
A. No.
Q. But it was renewed in respect of another company?
A. No.
- C Q. This new company which you are in has got a new lease?
Ct. When did you stop being Managing Director?
A. January of 1958, my Lord.

Cross-examination by Hon. L.J. Knowles:

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- Q. Did the Racing Commission consider about four weeks within the same dates to renew this lease before you or Mr. Nihon in 1958?
A. The Racing Commission could only give you the licence. They had nothing to do with the lease.
- D Q. I am sorry. I think you made a mistake, Dr. Sawyer.
A. They just make the property's Executive the Bahamas Government and as I recall at the time, petition for Montagu Park was put to the Legislature and the Legislature refused to grant me the lease.
Q. At the time of your petition for the winding up

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- of the company, was the relationship between you and Mr. Nihon harmonious?
- A. At the time of the wind up?
- Q. Yes.
- A. They certainly were not.
- Q. Was the company on a merger of a dead lock?
- A. It appeared to be a dead lock.
- Q. Was that the ground for your application?
- A. Yes.
- Q. In 1953, was Mr. Nihon aware that you wanted to sell all of the track? A
- A. No.
- Q. You told Mr. Adderley you bought the shares in 1953 -- the surplus showed approximately £30,000. Now was the capital of the company namely £3,000, included in that surplus also, or shown separately?
- A. Shown separately, it always was.
- Q. Under these two agreements, the 1953 and the 1956, did you assume the responsibility of paying the 3% of the pari-mutuel to Mr. Nihon? B
- A. I did.
- Q. And was a penalty provided if those sums were not taken?
- A. Yes.
- Q. I just read Clause 9 of the 1953 agreement:-
- "If the said sums representing three per cent of the pari-mutuel are not paid to the Vendor within a period of Thirty days after the same have become due and payable as provided in Clause 8 hereof then such default shall create a forfeiture and all sums due and payable under this agreement shall immediately become ipso facto payable by the Purchaser to the Vendor. C
- A. That is quite true and that is the reason why I felt that it was my very real responsibility to pay that money to Mr. Nihon.
- Q. Now would you look at the accounts payable for 1954. Do you see an item for American Totalisator Company Inc. £4,310.17. 9.? D
- A. Yes.
- Q. City Lumber Yard, £1,412. 9. 9.?
- A. Yes.
- Q. Nassau Plumbing, £2,025. 2. 8.?
- A. Yes.

- Q. Taylor Industries, £475.17. 4.?
 A. Yes.
 Q. Were they capital improvements?
 A. They were all capital improvements.
 Q. They amount then to approximately £8,000?
 A. Yes.
 Q. Do these accounts payable cover wages that were involved in effecting repairs and things of that nature?
 A. No. These as I recall were amounts upheld.
 Q. Do they cover any items which were paid for in cash, being accounts payable?
 A. No.
 Q. Were any items paid for in cash?
 A. Yes, as we went along during the closed Summer season, before the season opened, a lot of improvements were made and paid for.
 Q. Does this schedule reveal the true position as regards improvements to the track in 1954?
 A. I would think that another £2,000 or £3,000 at least would be for improvements and fixtures.
 Q. In addition to the £8,000?
 A. That is correct.
 Q. With regard to this statement which you made - "the company agreed to pay Mr. Nihon his 3%". Would you explain to the Court what is meant by that?
 A. I meant that Mr. Nihon was paid out of company funds. I felt it my responsibility to see that he was paid because of that Clause of the agreement, certainly.
 Q. Were you referring to any contract between Mr. Nihon and the Company?
 A. No.
 Q. You were asked whether the Directors agreed to pay you the withdrawals that were actually made. Will you tell the Court whether it was an actual fact whether the Directors approved or disapproved of these withdrawals?
 A. The Directors approved these withdrawals.
 Q. Did they know that they were being made?
 A. They did.
 Q. Was there anything under the 1953 agreement to prevent you and Mrs. Sawyer and Mr. Newton Higgs from sitting down and holding a meeting as Directors or Shareholders approving these withdrawals?
 A. None whatsoever.
 Q. Where did the majority of these withdrawals

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 Dr. Raymond
 W. Sawyer.
 Cross-
 Examination
 by Hon.
 C.J. Knowles
 (Contd.)

In the Supreme Court of the Bahamas Islands Common Law Side Defendants Evidence No. 16 Dr. Raymond W. Sawyer. Cross-Examination by Hon. C.J. Knowles (Contd.)

go? Did you retain them or did they go somewhere else?
 A. They went into Mr. Nihon's pocket.
 Q. Did you put any money into the company when you first took it over?
 A. I think that there were a few hundred pounds. The truck was one item that I can recall and I did meet a couple of pay rolls. I did have to borrow money from the bank. I did put some money into the company. A
 Q. Did you give any instructions to the accountant as to how Mr. Nihon's 3% cheque was to be handled?
 A. The only instruction I recall giving the accountant was that he was to draw up the cheque and when I signed it he was to deliver it to him.
 Q. Did you give any instructions as to how these payments were to be set out in the book?
 A. No. It was left almost entirely to Mr. Deal. B
 Q. When the original shares were forfeited in 1956, due to a default on your part, had you paid any part of the first price of £50,000?
 A. I paid £30,000.
 Q. With regard to the letter of the 25th of May 1954, you stated that Mr. Newton Higgs drew up that letter. Did you give him any instructions what to put in the letter?
 A. None at all.
 Q. Do you know who did give him instructions? C
 A. I would believe that Mr. Nihon did.
 Q. At the time you signed the letter, did you know how much you had withdrawn from the company?
 A. No.
 Q. Did you know exactly how much debt was owing?
 A. No.
 Q. Will you look at the promissory note please? Is the promissory note signed and dated?
 A. Yes, the 27th of May it looks like, 1954. D
 Q. And who signed on behalf of the company?
 A. I did and Mr. Newton Higgs.
 Q. At this time was Mr. Newton Higgs a Director?
 A. He was, also the Secretary.
 Q. Did Mr. Newton Higgs approve of the execution of this document?
 A. He certainly did because he drew it.
 Q. I see it bears the company's Seal, Dr. Sawyer?

- A. Yes, I noticed that.
- Q. Who was shown on the Annual Return in the Registry as the owner of the shares?
- A. Between 1953 and 1956 I was shown as the owner. Mr. Nihon owned one share and his wife owned one share. This qualified his becoming a Director. Mr. Newton Higgs was my nominee and my wife was a nominee.
- A Q. Do you remember that in the 1957 charge accounts certain charges were shown against yourself?
- A. Yes.
- Q. Do you agree with any of the charges that show in the Balance Sheet against you?
- A. They should have appeared as shareholders' withdrawals.
- Q. You told Mr. Adderley that in 1957 the company would have had to borrow approximately £30,000 to pay your dividend that year?
- B A. Yes.
- Q. In that year that was a surplus of £42,854. With regard to the 1956 agreement did you give the accountant any instructions for the withdrawing of this agreement?
- A. No, that was done by Mr. Nihon. He instructed Mr. Godfrey Kelly to prepare it which he did. It was presented to me on completion.
- C Q. Why did you sign it?
- A. I felt that I had no alternative, unless I wanted to lose everything that I had invested in my venture in the track. It would have meant that I would have lost the £30,000 I had put into it plus the £10,000, the mortgage on my home.
- Q. Dr. Sawyer, when you bought the shares in the company in 1953 and again in 1956 did you consider that you were buying the surplus?
- D A. Of course I did.
- Ct. You did not sue for your £10,000. What was the reason for that?
- A. No reason that I can recall. I was actually involved in the management of the company.
- Ct. Section 72 of the Articles of Association reads - "No dividend shall be payable

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except out of the profits arising from the
business of the company." Would it be
right to say that the dividend could have
been paid out of the gross profits?

- A. The shareholders in my view, are entitled to
the surplus and of course the profits go
into that surplus.

A

No. 17EVIDENCE OF KENNETH A. COOKSON

Kenneth A. Cookson S/S:
Examined by Mr. Knowles.

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No. 17
 Kenneth A.
 Cookson.
 Examination

- A Q. Will you give us your name please?
 A. Kenneth Allison McKenzie Cookson.
 Q. And where do you live?
 A. 15 Victoria Court, Elizabeth Street, Nassau.
 Q. Are you a Chartered Accountant?
 A. Yes.
 Q. And that is of the Institute of Chartered Accountants of England and Wales?
 A. Yes.
 Q. And you have belonged to this institute for 34 years?
 A. I have.
- B Q. Are you a member of the Institute of Chartered Accountants of Ontario, Canada?
 A. I am.
 Q. Are you the resident partner of Roth Baily and Sons.
 A. I am.
 Q. Does this firm have affiliated firms in Canada, Great Britain, United States of America and some fourteen other countries?
 A. Yes, probably more countries.
- C Q. Are you associated with Dr. Sawyer in any way?
 A. No.
 Q. Are you then entirely independent as far as this case is concerned?
 A. I am completely independent.
 Q. Have you read the pleadings in this case?
 A. I have.
 Q. Have you inspected the financial statement of Montagu Park Racing Association Limited as reported on by Herbert A. Deal the accountant of the Company, for the financial years which ended 30th of April 1954, 1955, 1956, 1957 and 1959?
 A. I have.
- D Q. And you have also seen certain draft accounts for 1957?
 A. Yes, I have.
 Q. Have you also read two agreements between Doctor Sawyer and Mr. Nihon?

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Kenneth A. Cookson. Examination (Contd.)

- A. The 1953 and the 1956.
- Q. So far as the financial statements are concerned what do they show as regard the availability of profits for distribution to shareholders?
- A. These accounts for 1953, 1954, 1955, 1956 and 1957 all show considerable profits in excess of any drawings which may have been made.
- Q. When you speak of profits are you speaking of net or gross profits? In what sense do you use that term? A
- A. I am using the term of what was available after all the expenses or no expense of the Company had been taken into account. The profits of the racing each time of the year.
- Q. How is that related to surplus?
- A. Well, surplus is, of course, created after the profits which remain in excess of whatever may have been drawn out by shareholders of the firm. B
- Q. What I meant to ask you was when you are using the profits, are you including surplus as well?
- A. Yes.
- Q. But was the surplus available for distribution to the shareholders?
- A. It was.
- Q. When Dr. Sawyer first took the shares with the Company in 1953, what was the position with regards any surplus that existed at that time? The surplus shows in the 1954 account as £39,949. 3.10. C
- A. If I could see those accounts I could confirm that figure. (Examines Accounts). On the 6th of April, 1953, there was a surplus of £39,949. 3.10.
- Q. And what happened to that surplus when Dr. Sawyer purchased his shares in 1953?
- A. It belonged to him.
- Q. Was a reserve for depreciation made in each year of the accounts? D
- A. I think there was, but unless I look at these accounts I would not be able to say definitely.
- Q. Let us look at the accounts first. The Office furniture was depreciated; the track furniture and equipment were depreciated; the motor car and trucks were depreciated and the buildings were depreciated.

- A. Yes, that is right.
- Q. The water sprinkling system was depreciated; there was no water system in the building. The reserve for depreciation £29,542. That was put down as 50%, in fact.
- A. That had been provided presumably continuously over the years until 30th April, 1954 and in 1954 it stopped. It appears that £4,737 was provided in that year. In the off racing season and a further £2,972. 7.11. provided during the period of the racing season. So together with that one year something like £7,000 was provided for depreciation.
- Q. Do you regard that as satisfactory or otherwise?
- A. In view of the work done and the fixed assets, I think it was entirely accurate.
- Q. Will you look at the accounts for 1955 and tell us what was the position with regard to depreciation there? For the summer season - £6,527.
- A. That is right for the out-of-season period and for the racing season there was another £2,781 making £9,300 roughly.
- Q. And, supposedly, that would be accurate for the depreciation.
- A. Yes, of course.
- Q. Do you regard that as satisfactory?
- A. I would say so.
- Q. Now the 1956 account. For the summer season £5,519.
- A. That is for the out-of-season racing period.
- Q. And the Winter season - £3,145.
- A. Exactly right.
- Q. And in 1957 ... the summer season - £5,122.15. and the winter season - £2,561.
- A. Yes, that is right.
- Ct. You have the figure £58,549.16. 9. and it is written down - reserved depreciation. You put in the same figure the next year but you add in what you have depreciated the next year. Is that the way it is done?
- A. Yes.
- Ct. You do not show the capital each year. You show a different figure. You just alter a lower figure each year, an accumulated figure to show depreciation.
- A. Yes.

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- In the Supreme Court of the Bahama Islands Common Law Side
- Defendants Evidence No. 17 Kenneth A. Cookson. Examination (Contd.)
- Q. The value of the buildings and other items were being written off?
- A. Yes.
- Q. Now do the 1959 accounts tell us anything? Of course at this time the assets had been loss and so no depreciation is shown in the 1959 accounts, is that not right?
- A. No, it does not show. The 1959 accounts I have to take the summer as the basis because we have no accounts for 1958, therefore to express any opinion I would really need to see how 1957 through 1958 became 1959, but the buildings in the balance sheet of March 1959 had disappeared, they were virtually destroyed, I am told by fire, and in this balance sheet at the 31st March and figure of £33,000 was substituted for the total amount recoverable from the insurance company.
- Q. It was put to Dr. Sawyer that in order to pay the company's debts and Dr. Sawyer's withdrawals, the company would have had to borrow against its surplus. As an accountant do you think there was anything wrong with such a borrowing if it had taken place?
- A. I do not think that it was wrong at all. It is the usual procedure and that is what banks are for.
- Q. Is it right for a company to borrow against its surplus and distribute the loan in the form of dividends to its shareholders?
- A. Certainly.
- Q. Mr. Cookson, have you considered what would have been the position on the 1st of May 1957 if Dr. Sawyer had not made any personal withdrawals at all?
- A. Yes. I have made a calculation and I think the best I can do is to tell you of how I have done that. The accounts from April 1957 proclaimed a surplus, after any withdrawal which Dr. Sawyer may have made in past years, of £42,854. Had Dr. Sawyer never withdrawn anything of a personal nature, there would have merely been available in surplus for Dr. Sawyer £58,972.13.10.
- Q. Did you arrive at that by adding certain of the withdrawals back?
- A. Exactly right. For 1954, 1955 which actually was a reverse figure of £10,000 and 1956.
- Q. How do you deal with the £10,000 as a loan?
- A
B
C
D

A. For this purpose that the £10,000 was received by Dr. Sawyer via profit. I do not necessarily agree that that was the right treatment but that is the effect of it.

Q. Are you dealing with it as a repayment of a withdrawal rather than a loan?

A. For the purpose of finding out what was available in surplus was. If the claim as being considered not by the court of £29,972.16. 7. awarded to the plaintiff we have to deduct that amount theoretically which means at that stage there would have still been available to Dr. Sawyer in the surplus account £28,999.17. 3. even after. Then to take it a stage further, if you consider that the loss of the building had to be met out of surplus we must deduct another £13,148.17. 5.

Court: That is the written down value of the building?

A. Yes. There is even then a surplus of £15,850.19.10. available to Dr. Sawyer. Then the final matter that you have to take into consideration in this figure is that Dr. Sawyer would have withdrawn 3% of the Parimutuel for 1957 to pay over to Mr. Nihon and if that had been done even then there was a final surplus available to Dr. Sawyer of £4,549. 0. 3.

Court: When I have written down here "Sawyer's withdrawal" you mean for whatever purpose?

Mr. Knowles: Not for whatever purpose, my Lord, just for his own purpose. Not the 3% and not his salary. We are not dealing with the 3% in anyway and we are not dealing with salaries.

Court: Just personal withdrawals?

Mr. Knowles: We are talking about personal withdrawals which are complained of in this case.

A. That is right.

Q. That means then that if on the 1st of May 1957 Dr. Sawyer had then withdrawn his entire amount of withdrawals, the building not being destroyed by fire, and all Mr. Nihon's 3% payments having been paid, even after Dr. Sawyer's full withdrawal in 1957, there would have been a surplus of £4,549. 0. 3.?

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No. 17
Kenneth A. Cookson.
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- In the Supreme Court of the Bahama Islands Common Law Side Defendants Evidence No. 17 Kenneth A. Cookson. Examination (Contd.)
- A. Yes.
- Q. What about the capital account?
- A. £3,000.
- Q. Is that separate?
- A. Quite separate.
- Q. Not part of the surplus?
- A. No. That would be additionally into the shareholders.
- Q. Have you read the copies of the minutes of the meetings of the shareholders and Directors for the period 1953 to 1959? A
- A. I have.
- Q. Are you acquainted with the minute referring to the payment of the first portion of the pari-mutuel intake and the 3% to Mr. Nihon?
- A. Yes, I am.
- Q. In your opinion, should Dr. Sawyer's withdrawals and payments to Mr. Nihon be differentiated? B
- A. No.
- Q. Do you regard the 3% payment to Mr. Nihon as an expense of the company?
- A. No.
- Court: That is an opinion you have formed after having read the agreement?
- A. After having read the agreement and assessing all the information at my disposal.
- Court: You mean that he could not have sued the Company and got it?
- A. That is a legal question and I am afraid I cannot answer that. C
- Court: But it is from your examination as a chartered accountant. Anyhow you have presented your opinion on it.
- A. Yes.
- Court: From the accounting point of view you do not regard it as an expense of the Company?
- A. No, I see no reason to do so.
- Q. Do you consider that the 3% payment as shown correctly or incorrectly in the balance sheet of Herbert Deal & Company? D
- A. I think they are shown correctly as withdrawals of shareholders.
- Q. Have you examined the Company's books to determine when the 3% payment was first paid directly to Mr. Nihon?
- A. Yes, I have. I find that through 1956 that the payments, as far as the book records are concerned, were made to Dr. Sawyer and it

was in January 1957 that the books reflect that these payments were then being paid directly to Mr. Nihon.

Q. Do you have the date of the first payment?

A. Yes, I have got it here. The 14th of January 1957. (I would like if I might, just to look at that entry, just to make sure that my answer is right). It is right.

A Q. In your opinion as an accountant, was Dr. Sawyer entitled or otherwise to make the withdrawals that he did make under the authority of the two agreements?

A. Yes.

Q. What is your understanding of the agreements in regards to any balance that was left after Mr. Nihon had been paid his 3%?

A. Well, then, it belonged to Dr. Sawyer.

Q. What about creditors?

A B The creditors really concerned with the capital of the company.

Q. What do you mean by capital?

A. The £3,000.

Q. In your opinion do these accounts show the position with regard to creditors and debtors clearly?

A. I think so.

Q. Did Dr. Sawyer's withdrawals in anyway jeopardize the rights of creditors?

A. No.

C Court: What do you mean "jeopardize the rights of creditors". Could that mean prejudiced their rights?

Mr. Knowles: Yes.

Court: Except that the reserve position would be that all dividends have been distributed up to the hilt and it prejudiced the rights of potential creditors.

A D Well, your Lordship, the creditors look at the capital account of the Company and if he lends his money when there is not sufficient capital perhaps he is running an amount of risk.

Court: All you can say is that there was not reserve capital from an accounting point of view, and the creditors are entitled to look at the capital account only.

A. Yes.

Q. Are you able to define surplus for us?

A. Surplus is the accumulation of profits over

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the years that have not been distributed to shareholders by way of withdrawals or dividends as the case may be. The capital in surplus, perhaps the other items which would have effect the surplus account such as in the major accounting balance sheet that one sees. There are sometimes adjustments but they are all explained in full but in principle what is available as an accumulation of profit owing to the shareholders after any dividend or withdrawal have taken place. It is shareholders' money.

- Q. Is there anything in these accounts to show what the original £3,000 was invested in?
- A. I could not answer that, it is way back to the beginning of the company.
- Q. We will deal with the accounts before you which you have done.
- A. Naturally some part of the £3,000 is in the fixed assets of the company, for if you like, in the bank account.
- Q. Does it mean that we do not know where it went to?
- A. We know that the first capital was used for the purposes of setting up the race track.
- Q. Do we know that as a fact?
- A. The first entry in the books was that the capital was created on the liability side and the other entry must have been the cash which came in from the bank so from that point forward the cash from the bank was dispersed for a variety of purposes.
- Court: It was paid up capital?
- Mr. Knowles: Yes. But of course, when we talk about withdrawal from capital it is to paid up capital to which reference is made, that is the £3,000. That is the only capital we are concerned with with regards to that company.
- Q. Now in the 1957 account do you notice on the left hand side that certain charges are being made to Dr. Sawyer?
- A. I do. Two items.
- Q. £5,281.10. 2. and £6,743.16. 9. Can you understand why those items were charged there?
- A. No.
- Q. What is wrong?
- A. In my view they should have been treated exactly as the amounts that have been deducted

with the shareholders withdrawals. There does not seem to be any reason to distinguish, or have any new treatment at all in these accounts.

Q. What is the significance to you as an accountant, of the frequency of the shareholders' withdrawals as liabilities of the company?

A. They are liabilities of the company once a dividend has been declared.

Q. I am just asking you to look at any one of these accounts and to tell us what to you is the meaning of the entry of shareholders' withdrawals and deductions from surplus?

A. The effect is that once that deduction is made those funds are no longer available for the creditors of the Company.

Q. And is the company exchanging any difference in those sums?

A. No.

Q. Is it in effect then invalidate those sums altogether. The Company says "this money no longer belongs to me"?

A. Quite right.

Q. Did you examine Mr. Deal's affidavit dated the 7th of February 1958?

A. I did.

Q. Did you note there that he says that the year ending the 30th of April, 1956 to 1957 respectively showed losses?

A. I saw that.

Q. Did you agree with that statement?

A. No.

Q. What is your view?

A. There were in effect profits in both those years. What Mr. Deal I think intended to say was that the profits of that particular year were not quite up to the amount that had been withdrawn and therefore it created what he called a loss.

D Court: The withdrawals were greater than the profits. Were they much greater?

A. No. The point there is that Mr. Deal in my opinion should have taken into account that there was at the beginning of the period a surplus, a very considerable surplus, that was available to the shareholders. The statement he made I think was nothing more than misleading.

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- In the Supreme Court: If the withdrawals were more than the Court of the Bahama Islands Common Law Side Defendants Evidence No. 17 Kenneth A. Cookson. Examination (Contd.)
- A. A surplus at the beginning of the period.
- Q. Mr. Cookson, I want you to deal with the withdrawals from the cash float. Perhaps you have heard the evidence of Dr. Sawyer.
- A. I could not quite see the significance of the questions asked because the float money was out at the race course and the money which is in the bank belonging to the company is virtually one and the same thing. It happens to be a little bit out there for the purpose of running the race track on that day and the rest of it was in the bank. So if Dr. Sawyer drew money it made no difference whatsoever whether he took it from the bank account or out of the float. And actually by paying a cheque into the float he was making the cheque payable to the company, protecting the company against that cheque getting lost; that is the usual accounting practice to make a cheque payable to company so it had to go through the bank account. But as far as I can see there was no significance whatsoever in drawing funds from the float out at the race track.
- Q. Apparently, Mr. Cookson, it was suggested that the method by which it was done was improper, that is to say the company was drawing a cheque payable to itself, as it were?
- A. No. It was in no way improper.
- Q. Finally, Mr. Cookson, that in your opinion as an accountant, was there anything at all improper in these withdrawals by Dr. Sawyer from the company's account?
- A. I can see nothing wrong with them at all.
- Q. Was there any withdrawals from capital?
- A. No.

A

B

C

D

Cross-examination by Mr. Adderley.

Cross-examined by Mr. Adderley:

- Q. Mr. Cookson, you began your evidence by telling us that you were not associated with Dr. Sawyer in any way.
- A. I did.
- Q. That is not correct is it?
- A. It is correct.

- Q. Have you not though, during the course of this case been making yourself available to Dr. Sawyer and his Counsel and giving them suggestions as to the conduct of this case?
- A. I think you are confusing things.
- Q. We are not confusing things. I asked you a simple answer.
- A. I have no dealings with Dr. Sawyer whatsoever up to the time till I was approached by Mr. Knowles to give some professional advice in this case.
- A. To be exact. You were approached by him to give professional advice in connection with the defence of Dr. Sawyer.
- A. The nearest that I have ever been to Dr. Sawyer is that he and I have been next door to each other in the carport.
- Q. That does not answer my question though, my question was, was it a fact that as a result of that you have since assisted him in the conduct of his defence of this case.
- A. It is not the result of any friendship.
- Q. Do not anticipate what I am trying to say. You may not know what it means to be an independent witness. What I am putting to you is that you have sat here in this court assisting Dr. Sawyer in the conduct of the defence of his case. Is that not correct?
- Mr. Knowles: I cannot think why my learned friend should object to that Sir.
- Mr. Adderley: I have no objection to that at all Sir, but I do object to the fact that this witness has come here, called by the defendant as an "independent witness".
- Court: I do not think that he used the word "independent".
- Mr. Adderley: Yes, sir, "I am completely independent" are the exact words which he used.
- D Court: "I am independent" - I understood that to mean, of any social knowledge or business affairs with the defendant. Not an "independent witness" like somebody called from the Treasury to produce a cheque. He is presumably an expert witness hired by one side.
- Mr. Adderley: But he did not say that Sir.
- Court: Presumably they have got proof of his evidence and conferred with him.

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Mr. Adderley: Exactly Sir. I want to get that into the record, but if I leave it in the record the way in which he has said it - "I am completely independent", it may be assumed that I accept that, but I do not accept that.

Court: He did not say "independent witness" he said "I am independent of Dr. Sawyer". I have regarded him always as an expert witness that does not mean that you are independent.

Mr. Adderley: An expert witness called by the defendant, but he in his evidence said that he is "completely independent", sir, but I have to get it into the record that that is not so.

A

Court: You are not "independent" once you are hired as an expert witness, at all.

Mr. Adderley: No sir. And that is the whole point of my cross-examination on this particular point.

Court: How could he be an "independent witness" called by one side in a case like this.

B

Mr. Adderley: I have no objection to his being called or to his assisting Dr. Sawyer in his defence, but I have an objection to his ever saying that he is "completely independent".

Q. Now, Mr. Cookson, let us look at the accounts for the year ending the 30th of April, 1954. And these show a figure which is brought forward from the 30th of April, 1953, I believe, of a surplus of £39,000 plus. Is that right?

C

A. Right.

Q. Now let us put yourself in Dr. Sawyer's position at the moment here. When he purchased the shares in the company in May 1953, the surplus shown in the balance sheet of the company at that time was what figure? I think it is shown there.

A. The surplus at May the 6th 1953 was £39,949. 3.10.

D

Q. And do you say that that figure represents assets of the company which are available for distribution as profits to each shareholder.

A. Assets are not distributable as dividends at any time.

Q. Let me put that question in another way. Are you saying then that that amount of money of £39,949. 3.10. represents surplus available

- for distribution among the shareholders of the company?
- A. Yes, I agree that that is the net work of the business of the company.
- Q. That is not the question, I am asking you if you are saying that that amount represents surplus which is available for distribution to the shareholders?
- A. I am saying that.
- A Q. So on the 6th of May, 1953, do you think that the directors of the company could possibly have declared a dividend on the basis of that surplus?
- A. They could have.
- Q. At that time, I believe, there was one pound in cash in the bank. Do you agree?
- A. I do not know.
- Q. That is a fact that we do know, that on the 6th of May, 1953 there was one pound in cash in the bank account of the Montagu Park Racing Association. We have had that in evidence so for the purpose of the examination let us presume that that is correct. Would you say then that the company could have declared a dividend on the basis of the surplus figure shown in the balance sheet?
- A. If there is a surplus shown by the accounts you may declare a dividend at any time at all. Whether you can actually pay it or not, because there is no money in the bank, is another question.
- Q. Let us assume that on the 6th of May 1953 if the Directors of the Company chose to declare a dividend. Where would the money have come from with which to pay it?
- A. They would have awaited for money. They would have had to borrow money from the bank, they could not have paid it otherwise.
- Q. So the company would have had to borrow to the money against the value of the assets which was the surplus available for distribution. Is that not right?
- A. They would have had to borrow money against the assets of the company as security at the bank.
- Q. The availability of surplus for distribution, the figure which we have before us, determine the amount of surplus available for distribution, is that not correct?

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- A. £39,000 plus was available for distribution.
- Q. You would agree that it was on paper?
- A. Yes.
- Q. In fact it did not exist in terms of actual cash available for distribution?
- A. There never was any funds in the bank to reach that amount of money at that time, it was a running concern.
- Q. You also know that the fixed assets of this company were on leased land? A
- A. I do.
- Q. Do you also then agree that in the event that the company had to borrow money against that kind of surplus it was borrowing money in respect of an asset on leased land?
- A. I am saying that if they borrowed money, the person from who they borrowed the money would make the conditions and they would probably say, what assets have you got to show for it. That is true, it would be on leased land, but then they would know that. B
- Q. But so far as the company is concerned the company would have had to borrow money. Now then in the event that the company may have to borrow, perhaps a total of £20,000 to actually pay these dividends, at the end of that season all of that surplus would have got to be written off?
- A. No, you do not write off surplus.
- Q. Well, then at the end of the season, where is the surplus if the surplus is your fixed asset? C
- A. Surpluses are based on the value of the fixed assets and the amount which is owing to creditors.
- Q. If the basis of the surplus is the value of your fixed assets, and the determination of the lease where is your surplus?
- A. The surplus in 1959 presumably would have been represented by the written down value, or scrapped value of the assets. We are looking at figures of 1954 at which time there was no thought that the race track was not going to be continued. D
- Q. So far as you are concerned, Mr. Cookson, as an accountant, would you agree that in no practice as an accountant that you have got to write off your value at the end of your lease?
- A. Of course not.

- Q. You mean that you do not have to?
 A. No, I say that you must have it written off.
 Q. We cannot determine the conduct of the accountant or the party in this action against the possibility that the lease might have been renewed, can you?
 A. No, that has nothing to do with it. We are writing down these assets to a scrap value to coincide with the end of the lease.
 A Q. So that if at the end of the lease the company had to borrow £30,000 against surplus assets, it would have owed £30,000 and would have had nothing to repay it with?
 A. We do not borrow against assets.
 Q. Because if you borrow money you have got to pay it back.
 A. That is right.
 Q. So if you are borrowing money against your surplus on the basis of the value of your surplus at the end of your lease, you still own money and got nothing?
 B A. Your surplus is telling you what you have got.
 Q. So at the end of 1957, what is your surplus?
 A. About £31,552.13. 8.
 Q. For the purpose of our argument, let us say that the assets were determined at the 1st of May 1957. If on the 30th of April, 1957 the Company had borrowed money to the extent of £20,000 how was this to be paid on the 1st of May 1957?
 C A. I do not think that they would have been able to borrow the money anyway. The lease was up and there was nothing to borrow it on.
 Q. We are not talking about borrowing money on that particular day, we are talking about borrowing money over a period of years which is carried forward in our books. We are talking about arising out a situation whereby on the 30th of April 1957 there is shown in the books of the accounts of this Company an account payable of £20,000 in respect of borrowed money. If our lease determines on the 1st of May 1957, where does the money come from with which to pay back that loan?
 D A. Provided that the shareholders do not withdraw any money in excess of whatever surplus there was the money would have to be in the bank or receivable from somebody who owed money to the company or else the value of the property that they still owned.

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- Q. Provided the shareholders had not withdrawn the money which should have been available to pay the loan.
- A. The accounts showed that and Mr. Deal expressed the opinion exactly as they are.
- Q. They do not, because as a matter of fact we know that the company was insolvent, and at least it could not pay its debts of approximately £16,000 in February of 1958 because it had no money.
- A. That is as far back as 1958. I have not got to that we have been dealing with other accounts.
- Q. But it happens to be known as a matter of fact that in February of 1958 the accounts had accounts payable of approximately £18,000 and no money.
- A. I have not seen any accounts for 1958. I cannot help you.
- Q. Let us presume that this was the position for the purpose of our examination that in February of 1958 the company books showed that it had accounts payable of approximately £16,000 and no money in the bank. It is still got a surplus, on paper. Where does the money come from with which to pay its liabilities?
- A. What ever assets you have got. You must have assets.
- Q. You do not have to have assets, if we are talking about the capital value, assets need not be. You would agree to that would you?
- A. No.
- Q. For the purpose of your assets, do you assume that the surplus represent an accumulation of profits?
- A. I rely on a set of accounts which were prepared by a public accountant and I have no reason to doubt whatsoever those accounts in general are not correct.
- Q. We are not talking about the accuracy of the accounts, we are talking about what those accounts actually mean. On the 6th of May 1953 do you agree that the surplus at that time was represented by the fixed assets of the company?
- A. Not only the fixed assets, all the assets.
- Q. There were no other assets.
- A. On the 6th of May 1953 we must have had other assets. There was cash in the bank ...
- Q. There was only one pound in the bank, Mr. Cookson.

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- A. Then let us see the 1953 accounts.
- Q. We do not have to argue about that, both Dr. Sawyer and Mr. Nihon have given that in evidence, and they agreed on that between them.
- A. We have there according to these statements £2,128.18. 6. as the current assets. The larger item there is what as described as repayments which are expenses of the company that were paid before May 1953 but which applied to the next financial year, or subsequent financial years.
- A. The surplus figure which is shown is how much?
- Q. The surplus at 6th of May 1953 is £39,949. 3. 10.
- A. And as an Accountant so far as you are concerned that surplus must represent the accumulation of profits over a period of years?
- A. Yes.
- Q. When we are talking about accumulation of profits, in these particular circumstances would you not agree that that accumulation is represented by the value of the fixed assets?
- A. The value of the fixed assets happen to be in this balance sheet equivalent to the surplus and the surplus can only have been derived, as far as I would know, I have not seen the earlier accounts, from the operation of the race track.
- Q. That is what you would expect, that that in fact should be the case, but in this particular case, in these particular circumstances in this particular company, but what I am putting to you is that the value of the fixed assets as shown on the balance sheet which is the same as the value of the surplus, means that the value of the surplus is represented by the value of its fixed assets.
- A. The fixed assets are not represented entirely by the surplus, but the surplus plus the capital of £3,000.
- Q. What is the value of the fixed assets?
- A. Here they are shown as £42,949. 3.10. and surpluses £39,494. 3.10. plus the capital of £3,000.
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- Q. This is for May 1953?
A. Yes.
Q. Do you not say that the surplus in there is said to be represented by the value of the fixed assets?
A. That is the result, yes. The fixed assets and other assets are equal to the surplus and to the capital. There were no creditors at that date.
Q. At that time the balance sheet showed no cash reserve, in the bank. Is that correct?
A. No, no cash in the bank.
Q. And the value of our surplus, we cannot honestly relate to the value of these fixed assets?
A. No.
Q. So since we are dealing with assets on leased land do you still say that shareholders are entitled to regard that surplus as available distribution to them? Shareholders on 6th May, 1953?
A. Yes.
Q. We have agreed that this is only on paper, of course.
A. I agreed with what I see and understand.
Q. And you would also agree to meet any dividends, it would had to borrow money against what amounts to the value of the fixed assets?
A. It would have had to borrow money.
Q. But the amount of dividend they would have declared or money which they would have to borrow would have to depend upon the value of the fixed assets?
A. It depends upon the lender.
Q. So far as we are talking about the company declaring a dividend do we not have to relate the dividend to the surplus which shows on paper? Do you agree with that?
A. I am saying the lender of the money have to try to ask for some sort of security and he would look at the balance sheet and he would decide for himself whether he thinks those fixed assets are justified in making a loan. But he, of course as a banker, might loan money without any security.
Q. We are not talking about that. We are talking about the balance sheet of this company as it stands and a banker would know that he
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would have to lend money against the fixed assets of the Company. There is nothing else against which he could lend, is there?

A. No.

Q. And you will have to agree, that to lend the money against the value of the fixed assets on leased land?

A. Yes.

Q. Would you not also agree that it is a very hazardous, almost reckless, for a company to declare a dividend under those circumstances?

A

A. I do not think in this case it was reckless, because depreciation being taken into account, that in effect reduce what the shareholders could draw out of the company and would serve to hamper the value of these leased assets by the time the lease expired.

Q. As an accountant, looking at the balance sheet of the 6th of May 1953, I think we agree that your interpretation of the word "surplus" is the accumulation of profits over the years during the operation of the company.

B

A. That is right.

Q. And that accumulation would presumably be the amount that would have been available, at one time, for distribution. The fact that they are included in the surplus means that they are still available, or the amounts which have not in fact have been distributed as profits?

C

A. They had not been distributed as profits.

Q. It is an amount which could have been distributed as profits, but in fact had not been distributed. Is that not right?

A. That is right.

Q. Looking at the balance sheet of this Company and having in view the fact that the all the assets of the company was known and easily visible and calculated, is it not obvious that what in fact appears to be a surplus of accumulated profits is in fact a surplus based on an estimate of the value of the fixed assets?

D

A. I do not think so. The interpretation of the word "surplus" means that that belongs to the shareholders.

Q. Does not the fact that the assets of the company were composed almost entirely of the fixed assets on lease-hold land. Does that not suggest to you that what appears to be a

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surplus is not in fact a surplus in the sense that you are using it at all?

No, I cannot agree with that. I merely interpret what the know facts are that is surplus available to shareholders.

Q. You as an accountant, if you see a balance sheet of a company without knowing anything about the company, which shows a surplus of £39,000, any reasonable normal accountant would come to the conclusion that that is in fact an accumulation of profits which are available for distribution.

A

A. Yes.

Q. Now within the contexts of the operation of this particular company, when Dr. Sawyer came as a purchaser in May 1953, it is not obvious that the surplus really amount to an estimate value of the fixed assets though?

A. The assets are equivalent to the capital and the surplus, because there were no creditors at that date.

B

Q. And no cash reserves either, no other assets of the company except those known as physical assets?

A. And those shown on the balance sheet.

Q. As an accounting problem capital which is re-invested in capital improvements buildings, that of course would depreciate your surplus?

A. No.

Q. So if today the value of my building is £10,000 and tomorrow I choose to put a valuation of £20,000 on it, that has nothing to do with the surplus at all, should it?

C

A. No.

Q. Let us be quite sure about that, Mr. Cookson, because it is important within the contexts of what we are talking about here, I think. Appreciation in the value of fixed assets should not have any effect upon your available surplus, should it?

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A. No. That is capital gain, or capital profit.

Q. That is really an accumulation of or an accretion to the capital, I believe it is called.

A. There are various ways of describing it.

Q. But what it amounts to is, is an accretion to the capital.

A. Yes.

Q. So if you pay your dividends out of what

amounts to an appreciation of the value of the fixed assets you are really paying your dividends out of capital, are you not?

A. Yes.

Q. If that happens, that is what it would amount, would it not?

A. I think it would.

Q. In this particular case how do you know that what appears to be a surplus is not in fact an appreciation of the value of the fixed assets?

A

A. Because I have accepted the certified accounts of a professional accountant I cannot go back further.

Q. And if in fact that is wrong in the sense that what appears to be a surplus is in fact an appreciation in your capital value then everything that you have said you would have to adjust. You would have to re-appraise your position, would you not?

B

A. I cannot answer that question because I do not know the facts behind the 1953.

Q. I am suggesting at the moment that if that was so, it was a fact that what appears to be a surplus on the 6th of May 1953 is in fact a surplus which has been effected by an appreciation in the value of the fixed assets, would that not affect everything you have said?

A. If surplus included any sums that had resulted from a revaluation of the fixed assets then in my opinion that would not be available as funds for distribution to the shareholders.

C

Q. Let us leave aspect of it just for the moment and come back to the value of our fixed assets on the 6th of May 1953, and at that time what is shown in the balance sheet as surplus, the amount suggests that it is a reflection of an estimate of the value of the fixed assets, of the Company.

A. But it does in this case, it shows so on the balance sheet, that the value of the fixed assets are the equivalent of capital and surplus at 6th of May 1953.

D

Q. The total of the surplus plus £3,000.

A. Yes, there were no creditors at that date.

Q. So what is shown as the surplus is really the value of the fixed assets plus £3,000?

A. No. The surplus plus £3,000 in this case, are equivalent to the value of the fixed assets and certain other assets of a minor value on this balance sheet.

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- Q. The surplus amount to the value of the fixed assets?
- A. Yes.
- Q. Does not suggest to you that appears to be surplus in the normal accounting sense in which you would expect to find that surplus is not really a surplus at all, but really an estimate value of the fixed assets of the Company?
- A. No, I am afraid it is not so. That is the way in which it was taken over. A
- Q. When you say that it is a surplus, for accounting purposes, I agree with you. But we want to get at what the facts really are, or what the situation is really is at a particular time. And is it not the case that this figure is arrived at on account of the value of the fixed assets?
- A. I cannot think that it is. We must look at the previous financial statement for earlier years and then you can trace through exactly the procedure has been. It must have come forward in 1952 as a surplus and in effect it is. B
- Mr. Adderley: My Lord, I would like to put to the witness the balance sheet for the year ending the 31st of December 1949. My learned friend has indicated to me that he would object to the admissibility of that.
- Court: If it is a document which you have sprung on them without no notice to produce, and have not been inserted in your affidavit, I think you should not be admitted to put in in. C
- Mr. Adderley: I have had notice to produce the balance sheets and all the documents which the company has had in its possession. This happens to be a balance sheet of the company for 1949 and one for 1951 which has only quite frankly, has just come into my possession, and I would not otherwise submit that for the consideration of the court as relevant evidence if it were the fact that it is a balance sheet which deals precisely with the point with which I have been dealing with at the moment. It happened to be matters which have not come into my possession before. If my learned friend wants time to consider that, I am prepared to accommodate him to that extent. I accept that point of view of surprise but I also put it forward on two D
- E

grounds. Firstly that the defendant, through me, has been served with notice to produce, in any event, these documents. That happens to be the year when the capital value of the Company was depreciated, on paper, that is why it happens to be an important year.

A Court: How could that effect the present defendant. He has nothing to do with it. If they handed it over to him with a certain amount of surplus, he could not check on that could he?

Mr. Adderley: This, as you indicated a moment ago, is a very important part of the defendant state of case and if I should put it this way; I have been putting to this witness the fact that the 1953 balance sheet looked at without any more information, question or consideration, what appears to be one which shows a surplus of £39,000, which in the normal course of events would be surplus which in fact it was, cash and so on, what I would like to put to the witness now is the fact that in fact merely by looking at that balance sheet it is possible to come to the conclusion that what appears to be a surplus is the estimated value of the capital assets of the company. And to prove that that is in fact is the case, I am producing the balance sheet of the company for 1949 which was the year in which the capital assets of the company were revalued to show a surplus at the end of that year. That is the whole point whether or not a dividend was payable, or whether it would have been payable, and if so, out of capital. Because the surplus depends upon the value of the capital assets, and that is the whole question here.

C Court: This may mean recalling the Defendant or the Directors of the Company would it not, because this presents a wide field.

D Mr. Adderley: This happens to be a document which came into my possession somewhere around 12.00 o'clock yesterday. Obviously if I had time before we would have used it before. But it merely happened to come into my possession at that time. It is relevant to the question of what in fact is the available surplus for distribution and I now have it available and wish to produce it for the information of the

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court. If that may involve the re-examination of the defendant or the plaintiff then it is my submission that that is not an improper course for the court to take once it has got all the available information and the evidence before it on which it should come to a conclusion. Because if as a matter of law which is one of the considerations in this case whether the amounts of money which were paid were paid out of capital or possibly out of profit, if it is out of capital then it is not distributable as a dividend and no ratification or sanction by the shareholders could ratify a payment of a dividend out of capital. But if in fact it is not a payment out of capital, then it might be otherwise. So I think it goes to the whole root of this aspect of the case.

A

Court: They will be relevant.

Mr. Knowles: My Lord, this is my submission that on the 27th of February 1954 I gave my learned friend the usual notice to produce all documents relating to the matter in question in this action. Then on the 12th of March I wrote him this letter:-

B

"Dear Sir, I would like to inspect the balance sheets of the above company for the ten years prior to 1954 and notice is hereby given to you to produce these as a file. Please let me know when they will be available for inspection."

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I receive no answer to that letter, but my learned friend called me on the telephone and said that he was not going to produce them.
Mr. Adderley: I did not tell them that Sir, I never told him that. I told him that I did not have them in my possession and that is perfectly true.

Mr. Knowles: I wrote this letter on the 12th of March 1964. I did not receive a reply, but my learned friend told me on the telephone that he regarded these as irrelevant. And he also said that I could argue whether they were relevant or not at the trial. I have not done so and the result is that now my learned friend comes along with the documents that I had asked him to produce he says that

D

they are relevant and now he wants to produce them. My Lord, I do submit that in no circumstances should these documents be allowed.

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Court: I have a discretion if I said that the case could not proceed without them and I would, of course order them to be produced. What have you to say in reply?

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A Mr. Adderley: Merely this, let me say that as a matter of fact at the time I spoke to my learned friend, I did not have the documents in my possession. I told my learned friend that. I told them that if they were relevant we would have to argue the relevancy of the matter before the courts. The documents happened to come into my possession yesterday, and I produce them for the court's consideration. It is my submission that I am not only been given notice to produce these documents which I am now prepared to produce in evidence, because they have not come into our possession, but I also submit that they are of most fundamental relevancy to the question of whether or not

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Court: Relevant to your contention.

B Mr. Adderley: Yes sir. Not only relevant to our contention, but I have been served with notice to produce those same documents as well, and I am in fact doing what I was served with notice to do. I cannot produce something which I do not have in my possession. What I have in my possession I produce. If it comes into my possession in the middle of the trial, then I still feel as though I am not only obliged to produce that document, but indeed I also have the right to produce that document as well. If as I suggest it may amount to having to recall the defendant, if the court thinks that necessary, then I do not think that it would work any undue hardship, just so long as the court have an opportunity to have all the relevant evidence before it.

C D Court: I do not think that this balance should be produced. It would undoubtedly be relevant, but I think at this stage it would be a hardship on the defendant for it to be produced. Because it would undoubtedly mean, first of all, opening up again the case for the company which Mr. Nihon now represents and recalling

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- the defendant. It might mean recalling Mr. Reid and it will certainly mean consultation between the defendant and his expert witness. And also the fact that it was in the defendant's possession or his company, it is a relevant matter, but if it was being kept away by the defendant, the plaintiff said that their contention is based upon these past balance sheets and I think they should get these balance in their possession before launching the action. I think at this stage it is really too late. A
- Q. As a matter of practice, in the management of a company, let us take this particular company, as member of the Board of Directors - are you a Director of any company?
- A. Yes.
- Q. As a member of the Board of the Directors of a company, the knowledge which you may have in any particular year is a reflection of the business of that company, is it not? B
- A. The Directors would presumably receive some sort of report from the manager and they would study the affairs of the company.
- Q. Looking at this balance sheet of 6th of May 1953, before the directors would declare a dividend on the basis of those figures, is it not important to know how those figures were arrived at?
- A. They have certified accounts and that is on what they rely. C
- Q. For example if the figures as they appear show surplus of so much, on the 31st of December 1962, the 6th of May 1953 surplus was so much. Are not the Directors of the Company entitled to know the source of that surplus of how that surplus is made up before they determine whether a dividend is distributable out of that surplus?
- A. They are certainly entitled to know and they should know. D
- Q. Because what in fact appears to be a surplus of an accumulation of profits may in fact not be the case, is that not so?
- A. I could not tell you.
- Q. In any particular set of circumstances that is a possibility, is it not?
- A. It could have been a mistake.
- Q. It need not be because if in fact instead of being a surplus there is a depreciation in the value of the assets. E

- A. I am not aware that there has been.
- Q. You as an accountant in this particular case you not aware that that is so, so far as what you are saying, you have to base your evidence on what you have before you.
- A. That is right.
- Q. But if you were a Director of this Company in May 1953, you would have more knowledge than you in fact have now?
- A. I think I must qualify the answer here, if I have been a director of that Company for a number of years, I would have the knowledge, but a new incoming Director would not necessarily have that knowledge or feel it necessary to go back over earlier ground and find out anything because in the normal course of events he could rely on the accuracy of the account and the reports of the Directors and he has no reason for complaining.
- Q. I have no reason to say that these are not right unless I look at them.
- Q. Do you know whether this was done by anyone in this particular case?
- A. I do not know. I have seen the certified accounts which showed that these had been used by an accomplished accountant.
- Q. But you do know that they have not been audited?
- A. No, I am not saying that. I considered that they had been audited, because I have seen Mr. Deal's statement on the Balance Sheet.
- Q. Mr. Deal himself never audited them. You must have heard him say that in evidence. He said he never audited his own accounts, and you as an accountant cannot audit your own accounts.
- A. They say on the accounts "These statements have been prepared from the books and records of your company and in our opinion show a true position at 30th April 1954". I take that as meaning that they have been audited.
- Q. Will you tell me what is the difference between this statement of an accountant and an audit.
- A. An accountant may be in the relation of the independency with his principle and receives a salary and is under orders. An auditor is his own master and interprets the accounts for his own professional knowledge and is not subject to suggestions from any officer or director of the Company.

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- Q. Whereas an accountant is?
A. An accountant is an employee of the Company.
Q. Is it a fact that an accountant who is an employee of a company prepares the accounts of the Company, when he produces the balance sheets, he is not merely certifying the accuracy of his figures?
A. He obviously is saying that he thinks this is the true position. That is his opinion.
Q. But necessarily as an auditor. A
A. As his accounts are those of the firm Herbert A. Deal and Company, Accountants and Auditors, I cannot think anything else.
Q. What were you reading from a moment ago, Mr. Cookson?
A. The 1954 first sheet inside the folder, and I think I am right in saying that in subsequent years the same statement has been made.
Q. Is that not inconsistent with this statement which is on Exhibit A? B
A. It looks like the same statement.
Q. No, it is not. This says, "prepared from the accounts and records of the Montagu Park Racing Association Limited signed Nihon".
A. This is the one which helps because in my opinion this is addressed to the directors of the Company.
Q. Does your exhibit A say "prepared from the records and statements of the Montagu Park Racing Association"? C
A. Yes, it does, on that statement, but on this one it says something slightly different.
Q. Quite a bit different?
A. Yes.
Q. But if Mr. Deal acted as an accountant, you would not expect him to act as an auditor, would you?
A. No.
Q. Would you not agree that so far as the assets of the Company are concerned we know what liquid assets the Company had. We also know what fixed assets the company had. In those circumstances is it not obvious by inspection of your 1953 balance sheet that the fixed assets of the Company amount to the surplus of the Company? D
Mr. Knowles: Should that not be the balance sheet for 1954?
Mr. Adderley: I do not have those among my documents. (Document produced). E

- Q. Let us then deal with the balance sheet to the 31st of April 1954. What is the surplus at that date?
- A. £54,968. 1. 3.
- Q. And what is shown as brought forward from the 6th of May 1953?
- A. £39,949. 3.10.
- Q. That is the figure brought forward from the statement of 6th of May 1953. In determining whether a dividend should be paid at that stage, that is the 30th of April 1954, and what dividend should be paid, do you agree that the Directors should know whether that surplus really represents an accumulation of net profits or an accumulation of capital.
- A. They know that it is an accumulation of profits, they cannot know otherwise.
- Q. But an accumulation of surplus profit could be one or two things. They should be surplus derived from the profits of the Company. And the Directors in determining what dividend should be paid on the 30th of April 1954 would you not agree that they should be satisfied that it is right that that surplus does in fact represent a surplus of accumulated profit?
- A. Yes.
- Q. If in fact it does not represent a surplus of accumulated profit, it would make all the difference to their calculations, would it not?
- A. The Directors may declare a dividend quite safely, I would say, without contravening any provision of a company law or act if there are profit available for distribution and determine by what may have been an audit or although an audit may not be necessary.
- Q. Even though that may be wrong.
- A. It might be, yes.
- Q. The actual figures may not be wrong, but the source of those figures might be wrong.
- A. I can only say that categorically I can see that there are profits here which are described as surplus and as a professional accountant I would say that those are available for dividends to the shareholders.
- Q. As a Director of a company you have to deal with the financial position of your company, have you not?

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A. A Board of Directors might decide it unwise to declare a dividend or to distribute anything to the shareholders because possibly in the next few months they might have to buy a new generator or to buy a new ship or something like that, with the cash, therefore the shareholders would have to do without any dividends.

Q. We are talking about slightly two different things. You are talking about expenditure, I believe, and I am talking about the meaning of what appears to be surplus on your balance sheet. And what I am putting to you is that as a Director you have to be satisfied before you declare a dividend that what shows as surplus on your balance sheet is in fact an accumulation of profit.

A. Generally speaking, yes.

Q. What exceptions do you make to that?

A. There are occasions when there has been a capital profit made and under certain circumstances the company distributes them to shareholders.

Q. So you would agree that the Directors have to be satisfied that the surplus is in fact accumulated profits?

A. Yes.

Q. From the point of view of the known assets of the Company, for the purposes of our cross-examination, we know what the assets of the company were. You accept that?

A. Yes.

Q. The balance sheet does not show that the fixed assets are on leased land. That of course would not effect the profits and surplus, would it?

A. Except for the fixed assets removable, cars, trucks, sprinkling system and clothing. Things that could be picked up and moved away.

Q. So it is obvious to any officer of that company what the assets of the company really are?

A. Yes.

Q. Irrespective of any balance sheet consideration as a director of this company would it not also be obvious that the assets of the company basically comprised of those fixed assets?

A

B

C

D

- A. Yes.
- Q. And as a Director of the company you would know that those fixed assets are on leased land?
- A. Yes.
- Q. In those circumstances, does that not affect what you have said about the availability of surplus for distribution?
- A. No, because they had depreciated these assets every year.
- A. The circumstance arising whereby the dividends are declared and if paid would it have to be paid out of borrowed money?
- A. That is probable.
- Q. And having paid it out of borrowed money, on the determination of your lease, you have got to write all the value of your fixed assets and you are still left owing money?
- A. No, because your fixed assets would have come down when they are lost and so does your surplus have come down, because you have paid it out. The two sides would have reduced figures.
- Q. In fact, you end up still owing money.
- A. No.
- Q. Where would the money come from then, to repay the money that you borrowed? How are you going to get it out of surplus if this surplus?
- A. In this case you are actually getting it out of the accumulated depreciation which has not required any expenditure of money. Every year there has been about £8,000 of depreciation put through the books that means that the cash balances gradually will up and not be required for any other purpose and then when everything mathematically comes out at the termination of the lease then you will have the money in the bank to pay back the banker brought about by that depreciation which has been accumulating over the years.
- Q. You should have a balance in the bank?
- A. Theoretically you would have.
- Q. If in fact you do not have it, then what we will do?
- A. If withdrawals have been overwithdrawn then you will not have any balance.
- Q. The balance sheet for the year ending the 30th of April 1954 show a net profit of

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- £15,000 plus and surplus at the beginning of the year £39,000 and at the end of the year £30,400. How do we account for the depreciation or the devolution of the surplus?
- A. Because in getting a figure of £15,000 which is the net profit for the year that figure has been obtained by treating as expense the amount of depreciation which has been put through the books and loss accounts, thereby reducing the profit to the real figure. If they had not put through any depreciation at all, that profit for that year would have been greater than £15,000 by approximately £8,000. A
- Q. At the end of that year, the company has got cash in the bank of £1,300 plus?
- A. That is right.
- Q. It has got accounts payable in access of £14,000?
- A. That is right.
- Q. It shows on paper, a net profit of £15,000. If the 3% payments to Mr. Nihon are shown in the profit and loss statement, the net profits would be considerably less? B
- A. That is right.
- Q. That would not affect the surplus?
- A. Yes, it would affect the surplus, because you would have less profits, if you had treated the 3% as an expense of the company, then your profits for the year would have been so much less. C
- Q. Would that effect the figure of your surplus?
- A. Yes.
- Q. To what extent?
- A. Whether it is an expense of the Company paid to a third party or whether it is a shareholders' withdrawal it is equally money leaving the surplus account, so your surplus comes down.
- Q. Is it leaving your surplus account or is it leaving your profit and loss? D
- A. It is the same thing. In the general terms of the accumulation of profits.
- Q. If the 3% is shown as an expense of the Company that would alter your net profit, would it not?
- A. That is right.
- Q. What extent would that affect your surplus at the end of that year?
- A. In this particular case it would not affect

your surplus because the 3% was taken directly, I believe, as a shareholders' withdrawal so the net result in book-keeping is exactly the same thing.

Q. Are you familiar with the term "shareholder withdrawal"?

A. I do understand the term.

Q. Have you ever been a Director of a company or have you ever come across a company whose business was conducted in this way?

A. I have seen many companies, big companies and small companies and companies very much like this, and I have seen companies whose business was conducted in this way.

Q. Have you ever seen a balance sheet before which showed a shareholder's withdrawal in the way it is shown on this balance sheet?

A. Yes.

Q. Irrespective of the payment of dividend?

A. Yes.

Q. Under what circumstances?

A. If you have a company with only one or two people participating in the profit.

Q. Have you ever seen Directors giving dividends in anticipation of the profit at the end of the year.

A. Yes.

Q. In the balance sheet for 30th April 1954, you have accounts payable in excess of £14,000 and you only have £1,300 in the bank. Do you agree that there is not enough money there with which to pay off these accounts payable?

A. I do.

Q. Do you also agree that the surplus which appears on that balance sheet is not available to pay off those accounts payable?

A. The surplus would not have anything to do with the accounts payable.

Q. You can't use your surplus to pay off your accounts payable, can you not?

A. Yes.

Q. But it is not there?

A. No.

Q. In other words for the company to pay off its debts either it would have had to borrow money or those withdrawals should not have been made?

A. For one thing neither the shareholders nor the creditors would have been paid off at the same time.

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- Q. What I am putting to you is that at the end of the racing year the Company has found itself in a position where it has got to borrow money to pay off its accounts payable. If the withdrawals had not been made it would not have to borrow money. Do you agree with that?
- A. Yes, I agree with that.
- Q. But if the withdrawals had not been made and the accounts had been paid that would reduce the surplus would it not? A
- A. No. If he had not withdrawn any money and that money instead of being paid out via Dr. Sawyer to Mr. Nihon had not been paid, the creditors would have had payment immediately, because there would have been money in the bank with which to do it. But that in no way would affect the surplus except to increase it, because nobody had withdrawn anything from the profit. B
- Q. If in fact Dr. Sawyer had not withdrawn money from the company, it would increase your surplus?
- A. If he had not withdrawn anything from the surplus, the surplus would have been a bigger figure, that is quite true.
- Q. If in fact he had not made these withdrawals which he said he had made, the Company would have had £12,000 plus pounds in the bank. Do you agree with that? C
- A. No, I do not agree, because surplus and money are not the same thing.
- Q. How would it affect the surplus figure? If in fact he had not withdrawn £12,394. 8. 9. from the account would that not affect the surplus?
- A. Yes.
- Q. If it did not affect the surplus figure, this figure would be higher?
- A. Yes. D
- Q. Suppose that money had been used to pay off the Company's accounts, how would that affect your surplus figure?
- A. It would not touch it.
- Q. It would be the same as it is now, would it not?
- A. Of course.
- Q. If there had not been paid off, the figure would of been higher?

- A. The surplus would not have been effected by any withdrawals from cash, but when you actually pay the accounts payable, it would not touch the surplus.
- Q. What is shown on that balance sheet as a shareholder withdrawal includes what we now know to be 3% payment to Mr. Nihon, do you understand that?
- A. Yes.
- A Q. Do you agree that that is the amount of money which was paid out of the gross income to Montagu Park Racing Association?
- A. No, I look upon this as a distribution of profits.
- Q. Do you agree that this 3% is paid out of the gross figure?
- A. Out of the income of the company and the income of the company is derived from the pari-mutuel funds of the company.
- B Q. The net profits of the company are they not determined by a gross figure less the expenses of the company?
- A. No.
- Q. How are they determined?
- A. After all the expenses of the company are paid.
- Q. That is exactly what I said. So if the company had to make a payment out of a gross figure is that not an expense of the company?
- C A. Yes.
- Q. The expenses of the company would have to also be deducted from the same gross figure through income, is that not correct?
- A. Yes, to get net profit.
- Q. Having done that the figure which we arrive at is said to be net profit, and that is what we can call the net profit of the company for that year?
- D A. Yes.
- Q. The net profit need not be a net profit in terms of actual cash?
- A. No.
- Q. It could be improvements to the capital value?
- A. No. They would not be an expense to the company.
- Q. The net profit has got to show in the actual cash the company has plus what its profit and loss show?

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- A. The cash balance has no relation to profit and loss.
- Q. If all the expenses of your company are shown on your profit and loss statement the figure we arrive at is really a net figure?
- A. Yes.
- Q. The availability of surplus for distribution, how is that affected by the net profit of the Company?
- A. The surplus goes up when you add on the net profit and comes down when you pay out withdrawals. A
- Q. So the net profit increases the amount of your surplus?
- A. Yes.
- Q. In the first trading year of the Montagu Park Racing Association the net profits shown on the statement are £15,018.17. 9. But if the 3% payments to Mr. Nihon are shown on your profit and loss account the net profit would be £2,885. 8. 9. Do you agree with that? B
- A. Yes.
- Q. In determining what dividend might be paid at the end of that year, would you have to also relate that in these circumstances of this Company, to your net profits?
- A. Yes.
- Q. If in fact the net profits in the trading year together with what is brought forward in your surplus is not a realistic figure then it would affect the dividend which might be payable, would it not? C
- A. No.
- Q. It might be a proper balance sheet if it says that the figures are right, but it might be defective if it says that what appears to be one thing is another? Would that not make your calculations all wrong?
- A. No, I think the calculations in this case are probably right. D
- Q. I must accept this as a proper surplus.
- Q. What I want to know is that if the contents of this Company if it has got to borrow money either to pay off its accounts payable or to borrow to pay off its dividends, I want to know where the money is coming from to repay the amount which you had to borrow from the bank?
- A. Whatever you take out will reduce the assets

and the liabilities and in the final analysis provided nobody has drawn out more than the available profits, you must wind up with money in the bank to pay your loan.

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Q. Suppose then we end up in a position where the Company has got no more assets but has got, say, £14,000 or £15,000 worth of liabilities, although on paper it might appear that you have got it, but if in fact you have not got it, does that not mean that you have been withdrawing more than you should have?

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A. If that happens it would truly mean that you have withdrawn profits or surplus that had never existed.

Q. Is that not exactly the fact in this particular case?

A. No.

Q. Why do you say that?

A. Because that is my opinion.

B. Q. In the circumstances of this particular Company, we know that when it ceased operation, when the track was destroyed by fire, in 1958, we know that at that time it had accounts payable of approximately £16,000. We also know that it had actually nothing with which to pay it.

A. That is right, the Directors cannot anticipate a fire destroying the assets which are the true value to pay off your creditors, that of course was a thing that happened through no fault of the Directors.

C. Q. But that could happen at any time.

A. And no-one could foresee the disaster before it happened.

Q. What you call a disaster affects what you also say is available surplus for distribution, and if you are right then no disaster should affect your available sums for distribution. Is that not right?

A. Nor has it done so, because when I was under examination there were figures read out to show that even though the worst possible conditions there was always money in the surplus.

Q. Is not your surplus, in this particular case, as you are saying that the fact that the insurance company did not pay off means that there was no money to pay off the liability?

A. That is not right.

D. Q. So are you not therefore saying that your surplus really amounts to the value of your fixed assets?

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- A. I guess that is alright, but the fixed assets disappeared in flames.
- Q. Are you not now saying that what is in fact your surplus is really the value of your fixed assets?
- A. No, I precisely said that your surplus was derived from accumulated profits over the years.
- Q. In this particular case, if the assets had not been destroyed by fire, it would still exist on paper? A
- A. It virtually amplify the depreciation.
- Q. You are saying that if the insurance company had paid off the Montagu Park Racing Association, it would then have had its surplus to pay off its liability?
- A. No, surplus does not pay off liability. It would have had cash in the bank to pay off its creditors.
- Q. So the fixed assets would have been translated into money in the bank? B
- A. Yes.
- Q. So that in this particular case where that in fact did not happen is it not a delusion to suggest that what is in fact the value of the fixed assets really is the same as the surplus of the company?
- A. It was a loss of capital.
- Q. And if that was a loss of capital and that same loss affected the cash position of the Company does that not mean that what you thought was surplus was really capital? C
- A. No. I said that the fixed assets there, that went up in fire, was £13,000, was a loss of capital. It virtually destroyed the £3,000 capital which the creditors could look for, but as the loss was greater than £3,000 the only other people who could suffer by that are the shareholders and it can only amount to surplus account. D
- Q. But there is no surplus account other than on paper, but you have got to pay bills with money. You cannot pay bills with a balance sheet. What I am saying is that the fixed assets of the Company which was destroyed by fire if the insurance money had been paid the Company would have had £3,000 in the bank, in which case it would have paid off all its creditors, and it would have had available

- money for distribution among its shareholders. In the Supreme Court of the Bahama Islands Common Law Side
- A. It would have had extra money. Defendants Evidence
- Q. In view of the fact that we know that not to be the case, that the assets were destroyed, and there was no insurance money paid, and the fact that at that time the Company was left with £16,000 worth of debts and no money. No. 17
- A. The value of those buildings that were destroyed was £13,000. All the fixed assets at the same time including that destroyed assets were £18,000. The insurance company, I believe, paid £6,000 for certain of the assets that were lost. So the net loss was £12,000 which was less than the amount available in surplus for the shareholders. So even on the worst interpretation that you could put on this thing, there was still sums on paper due to the shareholders. Kenneth A. Cookson. Cross-Examination (Contd.)
- A
- Q. It is on paper, and is it not so that the funds were only on paper and you arrived at a calculation there allowing for fire and withdrawals and so on and which you say produce a surplus of £4,500 and as you said, this was only on paper.
- B
- A. What else can I hang on to.
- Q. You arrived at that figure on paper and if as a matter of fact having arrived at your paper calculation the money is not there, you say that taking into consideration the fire and everything, there should be a surplus of £4,500 approximately. Is that right?
- C
- A. Yes.
- Q. Having arrived at that calculation, then I say to you, that in fact that money does not exist, what does that mean then?
- A. One thing I cannot answer that because the Company continued after this damage with fire and I have not seen any accounts for 1958 and therefore what I have seen for 1959 in my particular department it has no practical value.
- D
- Q. But your figures were arrived at on the 1954 to 1957 period. We did not consider 1959.
- A. I do not know what was spent in 1958 or 1959.
- Q. We actually get to the end of the line when we stop at February 1958, because the Company stopped operating, and according to you at that time the company

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- A. I can only explain the facts as I see them on accounts which end on the 30th of April, 1957.
- Q. So what I am putting to you is that at that time it just was not there.
- A. I do not know, they were there at that time, but what happened on May the 8th 1958, I do not know.
- Q. If your figures according to the figures which you have arrived at there should be available surplus of £4,500 at that time. If in fact it was not there what would that mean to you? A
- A. That it had been lost.
- Q. Lost in what way.
- A. Disappeared, vanished, and that is where your paper figures will come in.
- Q. You mean that nobody could have stolen the money out of the Royal Bank of Canada. Would that not mean to you that the money had been withdrawn from the Company which should not have been withdrawn? B
- A. It probably means to me that there was some expenses that I know nothing about that occurred in the financial year which started on the 1st of May, 1957.
- Q. Let us assume that you have got all of that before you, and that we are all doing the right thing. I am putting the position to you that you have given them a figure whereby a surplus of £4,500 would exist and I am putting to you this proposition that suppose that at that time that money did not in fact exist. You have got all your available information before you, accounts payable and everything, what does that suggest to you had happened? C
- A. I will say that not a thing had happened.
- Q. As an accountant, I want to know, how would you explain that?
- A. I will say that it must have been there and was there on the 30th of April, 1957. Something had happened subsequent to that date which may give you your answer, but of which I have no knowledge. D
- Court: If it was not in fact there
- A. It will just have to be written off. The shareholders had lost something and had no explanation as to why they had lost it.
- Q. You could not account for it by the fact that money might have been withdrawn from the Company which should not have been? E

- A. No.
- Q. Why?
- A. The accounts had been reviewed by a public accountant.
- Q. On the 1955 accounts, the shareholders' withdrawals for the year are shown as £8,184. 9. 2. Do you now understand that that figure is wrong?
- A. How could I know that it is wrong with the exception with this one adjustment that I feel that it is probably down there in the light of new information that comes about through this note payable, otherwise I do not know that it is wrong.
- Q. Taking that into consideration, so far as what you now know about it, you would not show it as shareholders' withdrawals, would you?
- A. I would show it as a payment due to a creditor, under the liability of the Company.
- Q. And you would not show it as a shareholders withdrawal, would you?
- A. No.
- Q. Do you know as a matter of fact that during the year ending April, 1955, the 3% payments to Mr. Nihon amounted to £10,394.16.1.?
- A. Yes.
- Q. If those amounts paid to Mr. Nihon by the Company are shown as shareholders' withdrawals where do we find them in the balance sheet?
- A. In the figure of £8,184. 9. 2.
- Q. How do we fix up £10,000 and £8,000?
- A. There are several figures that make this out.
- Q. What do you mean by that?
- A. It virtually means that as far as I understand, Dr. Sawyer probably did not withdraw any money in 1955, in fact he may have paid something back in.
- Q. Over and above the £10,000 which he owed?
- A. I can remember a figure of £2,100.
- Q. According to our figures and Dr. Sawyer's own admission, during that year he actually withdrew £7,789.13. 1., in the year ending April 1955, Mr. Nihon's 3% payments by the Company amounted to £10,394.16. 1. Now I want to know how do you explain to me that the shareholders are shown as £8,000?
- A. You have to take three figures together, the withdrawals of Dr. Sawyer - £7,789.13. 1.

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- and he was given credit for £10,000. Subtract one figure from the other and you get this £2,000 odd pounds that I am talking about. We are dealing with these figures which are shown here and which you say are perfectly alright and they actually reflect what the position is. At this stage in April 1955 I see here, shareholders' withdrawals during the year £8,184. 9. 2; we know that during that year Mr. Nihon's 3% payments amounted to £10,394.16. 1., A
Dr. Sawyer's withdrawals amounted to £7,789.13.1. yet this statement shows shareholders as £8,184. 9. 2.?
- A. Because when you take in that £10,000 that was treated in the accounts as being a repayment by Dr. Sawyer, that is what I am trying to get over to you.
- Q. If the £10,000 which Dr. Sawyer put into the Company's bank account in May 1954 is treated as a repayment to the Company by Dr. Sawyer, this figure of £8,184. 9. 2. is right? B
- A. Yes.
- Q. So that for the purpose of this balance sheet that £10,000 has been treated as a repayment by him to the Company?
- A. Yes.
- Q. How does that affect the surplus at the end of that year?
- A. It means that if it had been treated as a loan the surplus would have been less. C
- Q. The surplus would have been £10,000 less, so your surplus that year would have been £24,000 plus?
- A. Yes.
- Q. The surplus shown at the 30th of April 1954 amounts to £30,440. 3.10. If the Company would have had to borrow £12,000 to pay off its accounts payable during that year that too would affect the surplus, would it not at the end of the 1954 year? The surplus would really be £18,000? D
- A. No, if they had borrowed money they would have had the money in the bank and would have had a credit of whoever lent you the money.
- Q. And would not that show in your liabilities?
- A. Yes.
- Q. It does not actually show in the balance sheet because that in fact it did not happen. But what I am suggesting is this, that the money

which was actually withdrawn by Dr. Sawyer might have been used for the payment of the accounts payable. In which case for him to receive the equivalent dividend of what he withdrew, the Company would have had to borrow that money. Do you agree with me?

A. Yes.

Q. And if the Company borrowed that money to pay him a dividend that would show under the liability of the Company. The lender would be a creditor, but it would not affect your surplus?

A. No.

Q. So in fact the surplus that year would not be affected, but when we come to 1955, the surplus for that year, if we got out £10,000, to take into consideration, would be £24,000 plus?

A. Yes.

Q. To pay a dividend that year, if the accounts payable are paid, £5,000 plus, of the amount withdrawn, the Company would have had to borrow somewhere in the neighbourhood of £5,000?

A. Probably.

Q. That would also decrease your surplus, would it not?

A. Yes.

Q. In 1956 instead of carrying forward a surplus of £34,000 you would be carrying forward a surplus of £22,000?

A. Yes.

Q. During that year the net withdrawal amounted to £9,307.13. 3. You have accounts payable of over £2,000, you have £8,000 in the bank, so you will have to borrow an additional £3,000?

A. No.

Q. Do you understand that what we are talking about are amounts which have been withdrawn by the defendant during the 12 month period?

A. Yes.

Q. Have you ever heard of an anticipated dividend?

A. Yes.

Q. And an anticipated profit?

A. Yes.

Q. Suppose at the end of the year a company shows a loss?

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- A. There will be no dividend, but there is always the surplus.
- Q. The surplus can be drawn if in reality you have a surplus.
- A. There was always surplus in this Company, there was never any distribution of the profits which would turn the surplus into a deficit. We have got £30,000 odd practically at all times available.
- Q. Not in the Royal Bank of Canada? On paper. A
- A. On paper, agreed.
- Q. Now do you also agree that it is deceiving to use such figures for the purpose of arriving at a dividend which is in fact paid? That it is not only dangerous but wrong?
- A. No.
- Q. If in fact our figures exist on paper and if in fact a dividend is paid does that not mean that you have got to borrow money to pay your dividend? B
- A. It may very well mean that.
- Q. And having borrowed money to pay your dividend and your surplus in fact is on paper, that you end up with a company with debts and no assets?
- A. No, I cannot agree with you.
- Q. Do you agree that accounting alone is not the only consideration which must be applied to determine what is available for distribution as dividends? C
- A. I do not agree with the way you put it. I think accounting is the only method of reaching a fair decision as to what the financial position of any company is, but I will agree with you that there are possibly sometimes other considerations that have to be taken into account.
- Q. What are the considerations that have to be taken into account?
- A. The Directors might say that next year we might have to buy machines that might cost about £10,000 and we had better not distribute any money. That is the only type of thing I am referring to. D
- Court: The only consideration is prudence, that is whether it should be done or whether it is a good thing, or not. I would not change a thing. These withdrawals could be distributed out of surplus if there was a

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by a court later on. Had you asked him any-
thing about that?

Mr. Adderley: I have not got to that yet.

Court: Where there is something put under the
wrong heading, it would of course affect the
accounts temporarily. Nothing would affect
the account permanently under liquidation, the
money would be there or in the bank. Are you
saying that the money was put in the wrong
category and therefore the Directors should
have seen that?

A

Mr. Adderley: No, sir, because what he is saying
in any event is this that it does not matter
on these figures whether they are put in one
place or the other, because there is always on
paper, surplus. What I am putting to him is
the question whether or not the Directors are
entitled to rely on what are in reality figures
on paper which may not accurately reflect a
true financial position of the Company. That
is what I am asking.

B

Court: Surplus is what the accountant writes
down under the word surplus, from the point
of view of the Directors. An auditor could
not work unless the figures of the accountant
were accepted and he ran the pay sheet through.
Here you are saying that these figures here,
although they may be technically called
surpluses, in fact should not have been, if
they cannot be put down in two ways, if you
think that the wrong term had been used and
that they should have been put down differently,
what is wrong with them?

C

Mr. Adderley: Not that they should have been put
down differently, but that upon a proper
investigation of those figures, he would find
that what appears to be a surplus, is not a
surplus at all, and that is what I am putting
to him, that in declaring a dividend the
Directors must not only rely upon what the
accountant's figures are, because what
appears to be a surplus if that is in fact not
a surplus then it is merely a mistake.

D

Court: Then if the accountant has made a mistake,
they should not take advantage of him.

Mr. Adderley: If in fact that is the case,
whatever the accountant puts down, if it is
the Directors responsibility to know that
the surplus which the account actually show

surplus, and in order to pay the surplus, (there is no such thing as a paper surplus, paper surplus is a lie), it must exist, or there is a fraud.

A. It is the only expression we have in our accounting world.

Court: You have got to go back and show the surplus from the beginning or if it was none existence, therefore a lie, it is a fraud.

A Mr. Adderley: That is exactly the point, that in determining what dividends should be declared the Directors have to take into consideration matters other than pure accounting figures.

Court: Sometimes it may be prudence.

Mr. Adderley: It is not a question of prudence. I am not talking about prudence. I am talking about what the Directors must take into consideration in reality. If in fact what appears to be a surplus is not really a surplus, then of course, it is not available for distribution.

B

A. No.

Q. In determining whether your surplus is in fact a surplus or not have not the Directors got to look at more than what is just accounting figures?

A. No.

Q. But how else would they know whether they have got a real surplus or not?

C

A. The figures and the books are the only way of determining the company's financial position.

Court: Had you shown some error in the accounts, it becomes not a real surplus in fact but in name. He says that as long as the books are presented like this, it is a real surplus.

Mr. Adderley: With respect my Lord, the question, I think, not one of accounting but rather more one of law, as to what the Directors are entitled to do. Merely because the accountant happens to show figures on paper does not mean that the Directors are entitled to declare dividends on the basis of those figures.

D

Court: On that, Mr. Cookson bows out does he not. Unless you wish to use him as an expert witness as to accounting practice. But he had taken the figures from beginning to end and sees nothing wrong with them. If it has been allocated to the wrong account by a Director, that might be ratified in a judgment

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are in reality a surplus and not in fact something else. And that is what I am putting to the witness now. And that it is possible for the Directors to determine by that method what is in fact available for distribution, as opposed to what appears to be available for distribution by merely looking at the accounts of the accountant.

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A Court: It can only appear to be so, but through error. What is the error? It appeared to be a surplus, but in fact it is not so. What you mean that there is an error that has crept in. It has been put in under the wrong heading.

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Mr. Adderley: Not so much under the wrong heading. The error here is the calculating surplus on the basis of the value of the fixed assets.

Court: These surpluses should be accumulated profits.

B Mr. Adderley: You agree with that sir, that they should be accumulated profits.

A. But it is.

Q. That is what the word surplus means and as an accountant when you see surplus on this balance sheet that is what it means?

A. Yes, it means surplus. What is left over after deductions of the liabilities from the assets. That would be obtained by accumulated profits from trading.

C Q. I accept that as your definition of surplus. So what I am putting to you is the possibility, that what appears to be surplus may not in reality be surplus?

A. (Indecipherable)

Q. If we treat our £10,000 as you said, as a note owed to the company, you would agree that the accounts are wrong to that extent?

A. Yes.

D Q. They are wrong to the extent that if Dr. Sawyer says that the company owes him £10,000 those should be shown in these accounts?

A. There is a note in existence that I have seen which means that it is a liability of the Company and nothing else.

Q. So to that extent our balance sheet here is wrong?

A. That is right.

Q. Would you agree that, let us say, a mistake of that kind would only happen if either the

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accountant did it deliberately or he did it upon the instructions of the Directors? It might be an omission through lack of knowledge. In this case I am aware that the loan that Dr. Sawyer made to the Company was set up in the books of the Company as a loan under the wording accounts payable. Much later that position was reversed and therefore there must be some explanation somewhere why it was decided to reverse it. Either the accountant thought that it was wrong himself or he was so instructed by somebody else that it had been treated wrongly and he evidently acquiesced in changing what in my view was the correct entry in the first initial book.

- A
- Q. Did you hear the accountant say that he was so in fact instructed by Dr. Sawyer?
- A. I am afraid I cannot recall what the witness said.
- Q. If this is an account payable, it should show in the balance sheet? B
- A. Yes, as an account payable.
- Q. You have said in evidence that the 3% payments to Mr. Nihon are correctly shown as shareholders' withdrawals. On what do you base that statement?
- A. That is my interpretation on having read through the second agreement of 1956.
- Q. Have you read the minutes of the company?
- A. Yes, I have. C
- Q. And have you read the Resolution passed by the Company agreeing to make those payments to Mr. Nihon also?
- A. I have, and having read the agreement and the minutes and the Resolution my belief is that that payment to Mr. Nihon was correctly treated as a withdrawal of funds. To my mind the agreement is the only thing one can base one's decision. That is a very definite document that says how the thing is to be interpreted. D
- Q. You do not regard the minutes of a Company as a definite document?
- A. I regard two contracts as being more important and which were done in this particular case.
- Q. You regard a contract between two shareholders in a Company as being more important than a Resolution passed by the Directors of that company?

- A. I could not decide whether that was more important, but it is my interpretation on looking at all this evidence, I as an accountant, can only take into consideration that this agreement of 1956 is one that we must look to in deciding what is the right treatment. And that is it should be in my view, a shareholders' withdrawal.
- A Q. Is it not the object of a balance sheet to show what the true net profits of the Company are?
- A. Yes.
- A Q. And you arrive at the net profit, I believe, by a process of deducting your expenses from your revenue?
- A. Yes.
- A Q. You also stated as a matter of opinion, that once a dividend has been declared and payment made to shareholders those moneys were not recoverable by the Company?
- B A. I said that the Company no longer had any interest in moneys which had so been distributed, because by that time it has been put in the possession of the shareholders.
- A Q. I merely want to put to you that that is in fact not the case, because if dividends are improperly declared they are recoverable by the Company.
- A. That might be a point of law, because if dividends have been improperly declared, I suppose action could be brought to recover it. That is understood by all accountants.
- C Q. The cheques made payable to the Montagu Park Racing Association, we now know as a matter of fact that they represent money, cash which was actually withdrawn from the cashpool of the Company on a race day. And you have expressed the opinion that it made no difference how this was done. Is it not correct that a cheque made payable to the Company by the Company suggest that that money was withdrawn by the Company.
- D A. It may do, but I do not think that it makes any difference. The object of the exercise is that if you make a cheque payable to some (indecipherable) that cheque becomes valuable only by reason of the bank, because it can only be deposited in a bank account. If you make the cheque out to cash anybody

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- can pick it up and take it to the bank and possibly cash it. I do not think it has any significance at all if the fact that the company had drawn a cheque payable to itself.
- Q. That is not what I asked you. If you make a cheque payable to yourself, at the moment, that is yours, you may give it to me, but if you cash it yourself, that is yours.
- A. I may cash it and pay it into another bank account. A
- Q. As an accountant, if you were doing the accounts of this Company, you would have to find out more about those cheques to know how to deal with them in your accounts, would you not?
- A. No, I would know automatically.
- Q. You would know automatically that those were amounts which were withdrawn by a shareholder?
- A. By whoever the signor of the cheques was.
- Q. You would know by looking at one of these cheques, made payable to the Montagu Park Racing Association, signed by The Montagu Park Racing Association Dr. Sawyer, that the money was withdrawn by the person who signed the cheque? B
- A. The operation of this cheque in your bank account would be debited by the bank as coming out of the Company, the next day it would come in again, and you would get nowhere, and nobody gets anything. What this cheque did was apparently replace a sum of cash which Dr. Sawyer required presumably when he was out at the race track. C
- Q. The question which I asked you was, if as an accountant you would be able to deal with that without further explanation?
- A. Yes.
- Q. How would you show it then?
- A. Because I would know that it had replaced the cash that came in presumably from the pari-mutuel. D
- Q. But how would you show it in the accounts?
- A. It would not be shown, it would just eventually be a drawing of whatever Dr. Sawyer took out of the float. It would then be established as a withdrawal by Dr. Sawyer.
- Q. You would still have to know that. The cheque is not made payable to Dr. Sawyer, it is made payable to the Company. I do not see

- how you would know how to account for this unless Dr. Sawyer told you.
- A. Because when Dr. Sawyer took whatever the sum of money was out, from the float, he took it in cash, and he said I am taking that and here is payment for it. Now the cheque itself would automatically be debited to him because he would have told whoever drew the cheque up that that was what was going to happen.
- A Q. What you are saying is that having seen this cheque made payable to Montagu Park Racing Association if Dr. Sawyer comes to you and said "Here are the cheques, give me £50" you will know that he has got that £50, he has got the cash? What I am putting to you is this, he would have to tell you what he is taking that for for you to know how to enter that in the books of the Company?
- B A. Not at the moment when he is taking the cash. When he asks somebody to prepare the cheque, which I suppose he did, he will say I am going to cash this out from the float this afternoon at the race track and to charge it to my account. That was probably what I think he did say.
- Q. He will have to tell the accountant so that it will be shown correctly in the books.
- C A. Any cheque that is drawn for any purpose, the accountant must know the purpose of that cheque so presumably when he is instructed to make out this cheque he was told then to charge this to my withdrawals account.
- Q. He would have to tell him that - unlike the cheque payable to Dr. Raymond W. Sawyer, that would be obvious.
- A. Yes, that would be different.
- Q. You will agree now that that is the way in which it was done?
- D A. No.

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Re-examined by Mr. Knowles:

Re-examination by
Mr. Knowles.

- Q. When an accountant talks about "figures on paper" does he also require some solid assets to which those figures relate?
- A. That is one and the same thing. The solid assets are described that way.
- Q. To what solid assets the figures would have to relate?

- In the Supreme A. Solid assets should be in the form of buildings,
Court of the machines, or motor cars, anything that was used
Bahama Islands in the operation of the Company's business.
Common Law Side Q. With regard to this loan, I would like for you
Defendants to look at the Ledger Account B.12. That
Evidence account shows that on the 30th of April 1955
No. 17 the £10,000 loan was so shown. On the 30th of
Kenneth A. April 1955, so far as the books were concerned
Cookson. the £10,000 still appeared as a loan. Is that
Re-Examination A. Yes. A
(Contd.) Q. Is that reflected in the accounts of the
A. balance sheet as of the 30th of April, 1955?
Q. No.
Q. On the same page does it show when the adjust-
A. Yes. The adjustment was made on the 30th of
April, 1956; after the commencement of the new
agreement.
Q. And you were asked about payments of dividends B
out of the fixed assets. May accretions to
fixed assets when realised be drawn into the
profit and loss account and divided among the
shareholders?
A. Yes.
Q. It is right to say then that there is nothing
against the payment of dividends out of
accretions to fixed assets?
A. As long as they are realised.
Q. Do you have any reason to believe that the C
surpluses shown in these balance sheets were
not derived from profit?
A. No.
Q. Is there anything in the balance sheets to
identify the fixed assets with the capital?
A. No, but one knows so well that capital is
what was used initially as part of the race
course.
Q. Do we know for what purpose the capital was
used? D
A. No, that must have been from the beginning of
the company.
Q. You have referred to a 1953 statement.
A. I have seen a 1953 statement, but not before
I came into this witness box.
Court: The accounts were produced after Dr.
Sawyer took over the Company so they would
automatically be out.
The £10,000 loan was put down as a repayment

by Dr. Sawyer to the Company, that is in the 1955 balance sheet.

A. That was the second operation of the Company.

Court: If it could not have been treated as a loan what would have been the position the next year and ensuing years, would it have affected the figures in any way?

A. You would have had that surplus.

Court: What was left of the withdrawals?

A. No. After the withdrawals had taken place there could have been £10,000 left available to the shareholders.

Court: The company failed with liabilities of about £15,000, is that not right?

A. I could not say sir. When the company failed, I was not a part of it.

Court: But there were assets consisting only of the policy and the balance sheet of the company?

B A. Some money, I think £6,000, was recovered from the insurance company and there may have been other small assets that were worth something. Something that were removable, like trucks, and what was lost in the buildings which had a value at that time of £13,000 in the books of the insurance company.

Court: The buildings were written down to £13,000?

A. That is right.

C Court: You say that on the basis of the contract between the two parties, that it was right to put down the 3% to Mr. Nihon as a shareholder's withdrawal?

A. That is my opinion.

Court: The other opinion is that it should have been put down as an expense of the company?

A. That is right.

Court: If it had been put down like that what affect would it have had on the accounts of the company?

D A. It would have reduced the available profits and therefore would have reduced the amount which was available to the shareholders.

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EVIDENCE OF C.W.F. BETHEL

Defendants C.W.F. Bethel S/S
Evidence Examined by Mr. Knowles:
No. 18

C.W.F. Bethel. Q. What is your full name, Mr. Bethel?
Examination A. Charles Walter Frederick Bethel.

Q. I think you are a member of the Senate? A

A. Yes.

Q. And a member of the Cabinet?
A. Yes.

Q. Where do you live?
A. Eastern Road.

Q. Did you own shares in the Montagu Park Racing
Association?
A. Yes, I did.

Q. Would it be right to say that at one time you
and your brother owned all the shares? B

A. Yes.

Q. Was that in the year 1946?
A. Thereabout.

Q. Were you aware that on the register of members
one share was registered in the name of the
estate of Robert Emmet Murphy?
A. This share was brought to our attention by our
attorney who advised us that it was of no
consequence because the share was issued along
with some others, single shares and nominee C
shares. The company was acquired and no
attention was paid to this outstanding share.

Q. How long did you and your brother own the
company?
A. About two years.

Q. During that period were any notices of
meetings issued in respect of this share?
A. None that I can remember.

Q. Did anybody represent this share, or ever
contact you or attend the meetings of the D
company?
A. No.

Q. Would it be true to say that during that
period while you and your brother owned the
shares the entire business of the company was
conducted without reference to this share
registered in the name of the estate of
Robert Emmet Murphy?

A. No attention was paid to this share. We operated the company as though this share did not exist. We were advised by our attorney to take this course.

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Cross-examined by Mr. Adderley:

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C.W.F. Bethel. Examination (Contd.)

Cross-examination by Mr. Adderley.

Q. In fact though, Mr. Bethel, the share was never forfeited while you had the control of the company?

A. No.

A Q. Were you not the President and a Director of the company?

A. Yes.

Q. Do you remember when you ceased to be the President and a Director of the company?

A. When the shares were sold to Lord Carnarvon, that was in 1948.

Q. Was his company carrying the address as limited?

A. I do not know. The shares were transferred by our attorney after we agreed to sell.

B

Q. Do you remember whether you were still president of the company in 1950?

A. I do not remember, it was a long time ago.

Q. Let us refer, to Exhibit "A2" the minutes of an Adjourned Annual General Meeting dated the 5th of April 1950:-

"The following members were present, namely:- Charles Walter Frederick Bethel, John Herbert Bethel, Kenyon Edward Minton Goode, Dorothy Ann Black, Floyd Lester Weech, Caribbean Investments Limited, by their proxy Stafford Lofthouse Sands, and Roynas & Co., by their proxy Eugene Dupuch.

C

"On motion, Mr. Charles W.F. Bethel the President of the Company took the chair. Mr. Stafford Lofthouse Sands presented the attached proxy from Caribbean Investments Limited dated the 29th day of March, A.D. 1950.....

D

"Mr. Eugene Dupuch presented the attached proxy from Roynas & Co....."

and so on. This was in April 1950 and the

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minutes were signed by Mr. Bethel as Chairman and by Dorothy Black as Secretary also by Mr. John Bethel, Kenyon E.M. Goode also, by their proxy, Roynas & Co. E.A. Dupuch and Stafford L. Sands for Caribbean Investments Limited.

Now do you remember now that you were president in 1950?

- A. Yes, according to records, I was.
- Q. I believe you were president of the company from the time when you purchased the shares in it in 1946? A
- A. Yes.
- Q. While you were president of the company and a director, I believe you indicated that you and your brother and I think it is true to say that you and your brother controlled the Board of Directors of the company?
- A. Yes.
- Q. Do you recall that on a number of occasions during the time when you were president of the company the company in general meetings approved balance sheets of the company? B
- A. Yes, but I believe by this time Lord Carnarvon had come into the picture and probably at that time we were more or less nominee shares and we probably acted for him as nomineeing shareholders, by 1950.
- Q. But at that time you were president and director, Mr. Goode vice-president and director, John H. Bethel, director; Dorothy Ann Black Secretary-treasurer and director. That was in April 1950. And do you recall that on a number of occasions during the time when you were president and a director of the company that the company in general meetings approved balance sheets? C
- A. Yes.
- Q. In reference to the minutes of the 5th of April 1950:-

"The Chairman presented the attached Report of the Directors for the period ending the 31st day of December, A.D. 1949, the said report being dated the 29th day of March, A.D. 1950, and on motion duly made and seconded, the same was unanimously approved and adopted." D

"The Chairman presented the Balance

Sheet of the Company as of the 31st day of December, A.D. 1949 and the Profit and Loss Statement of the Company for the period ending the 31st day of December, A.D. 1949, both duly audited by Deal and Deal, and on motion duly made and seconded, the said Balance Sheet and Profit and Loss Statement and the appropriations contained and set out therein were unanimously accepted, approved, ratified and confirmed."

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A

That, Mr. Bethel, refers to the Balance Sheet of the Company as of the 31st of December 1949, when you were still President and a Director of the Company.

My Lord, the minutes to which I have been referring have been agreed and put in as exhibits. These minutes refer to the balance sheet of the company for the year ending the 31st of December 1949. That is the same balance sheet which I tried to produce in evidence on behalf of the plaintiff yesterday. What I would like to do is to cross-examine this witness on that balance sheet which was approved by the company at the time when he was President and a Director.

B

Mr. Knowles: My Lord, I object to that.

Mr. Adderley: This is my learned friend's witness,

C

and I think to cross-examine the witness called by the defendant on matters which are already in evidence, and the matters which are already in evidence are the minutes of the company at a time when this witness was the President and a Director of the Company. And what I seek to do is to cross-examine his witness on the basis of evidence which we already have. This might very well be an anomalous result of your Lordship's ruling with regard to the Balance Sheet yesterday, but this is a different witness altogether and we are dealing with a witness called by the defendant, and what I am admitting is that I am entitled to cross-examine this witness on the basis of evidence which has been already put in by agreement between the parties. The minutes which we have before us, are the minutes of the 5th of April, 1950 of the adjourned Annual General Meeting of

D

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the shareholders, at which the Balance Sheet of the Company as of the 31st of December 1949 was approved by the company at a time when this witness was the President and a Director. And what I am seeking to do, sir, is to cross-examine the witness on his knowledge and recollection of what took place at that time. I can do that in my submission by two methods. One by reference to the minutes itself and secondly by reference to the Balance Sheet which are referred to and adopted by those minutes. I say that this is an anomalous situation created by the fact that yesterday the same minutes with a different context, your Lordship, did not allow it. But in this particular context, I am seeking to do that, Sir, through the cross-examination of this witness called by the defendant. And it is on that that I wish your Lordship could rule, because if that is so, what it would amount to is, that the defence could call whatever witnesses they like and then they can determine on what he might be cross-examined. This is not a plaintiff witness, this is a defence witness, called by the defence who is being cross-examined by the plaintiff, and being cross-examined on matters which at one time were in his knowledge and at a time when he was President and a Director of the company. And that is what I seek to do. To cross-examine this witness on the basis of the minutes which have already been put in evidence and the Balance Sheet which have been adopted by the meeting referred to in those minutes.

Mr. Knowles: My Lord, I do not object to my learned friend cross-examining this witness on anything which is in those minutes. He says that I am seeking to determine the matters which should be allowed in cross-examination. That of course are matters which my learned friend himself automatically excluded this kind of cross-examination when he declined to produce this very Balance Sheet upon which now he hopes to produce. This Balance Sheet is not now in evidence and I earnestly submit that to allow my learned friend to proceed with this cross-examination would be to allow the same evidence to come in which I respectfully submit would be very unfair to the defendant.

A

B

C

D

E

Court: The balance sheet cannot be produced, and it follows from that that they cannot be referred to on the basis of cross-examination. He can be cross-examined on the minutes. He can be asked of recollection of figures but he cannot be asked of the actual figures of the balance sheet.

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(Contd.)

A

Mr. Adderley: May I make this submission to you, that the minutes of the meeting adopted these balance sheets. The minutes to which I am referring are already in evidence, and these minutes of the meeting adopts the balance sheet of the company for that year and those minutes have been agreed between the parties and are in evidence. What I now seek to do, is to cross-examine this witness on the basis of those minutes and the balance sheet which has been adopted by those minutes. That is what I wish your Lordship's ruling on, because I am seeking to cross-examine the witness on the basis of the evidence which is before the court, and the evidence which is before the court include the adoption of the balance sheet for that year.

B

Court: The fact that the minutes are admissible does not render the documents to which they refer admissible in any way.

Mr. Adderley: Am I then, my Lord, precluded from cross-examining this witness on the contents of those minutes of that balance sheet?

C

Court: Yes, you are precluded from cross-examining this witness on that balance sheet, the document which is inadmissible.

Mr. Adderley: May I put this question to the witness. I would like to ask the witness whether he recalls that in 1948 the capital value of the assets were appreciated as a result of a revaluation by Mr. Dudley Gamblin and Mr. Basil Burnside who were then Government assessors. If that is a question which you would rule as inadmissible I would like you to so indicate.

D

Court: If you want to ask him whether he ordered those assets to be revalued or something like that then that is a different matter, that would be permissible.

Mr. Adderley: Can I ask, if the company procured a revaluation then? Can I put it that way? If the company had the capital assets revalued?

In the Supreme Court: You can ask him whether a revaluation of
 Court of the the assets of the company was ordered or not.
 Bahama Islands Do you?

Common Law Side A. I do not remember.

Q. Do you remember whether there was a revaluation
 of the buildings and the property?

Defendants

Evidence

No. 18

A. I remember vaguely but it was probably done
 after Lord Carnarvon took over.

C.W.F. Bethel. Mr. Adderley:

Another question I would like to
 ask permission to ask is if he recall that the
 surplus of the company was increased as a
 result of a revaluation of the buildings and
 fixed assets of the company.

Cross-

Examination

(Contd.)

A

Court: This question is inadmissible. It concerns
 facts and information contained in the
 accounts, which are documents which have been
 held to be inadmissible and therefore not
 before the court.

No. 19EVIDENCE OF H. NEWELL KELLYIn the Supreme
Court of the
Bahama Islands
Common Law SideH. Newell Kelly S/S:
Examined by Mr. Knowles:Defendants
Evidence
No. 19
H. Newell
Kelly.
Examination

- Q. What is your full name, Mr. Kelly?
A. Henry Newell Kelly.
- A Q. And where do you live?
A. I live at West Bay Street.
- Q. Do you know the late Mr. George Murphy?
A. I knew him very well indeed.
- Q. Were you employed by Mr. George Murphy?
A. I was.
- Q. When was that?
A. From 1929 to 1938.
- Q. Are you acquainted with the Montagu Park Racing Association Limited?
B A. Yes, I was. At one time I was president or vice-president.
- Q. The records show that you were president, a member and a Director, and that was from the period 1938 to 1946.
A. I might have still been on the Board, but I left the Montagu Hotel in 1941. Mr. Murphy was not operating the hotel then.
- Q. Did you know Robert Emmet Murphy?
A. Yes.
- C Q. During the period that you were a member, a director and president of this company, did he participate in the affairs of the company in any way?
A. No, I cannot remember.
- Q. Did you ever hear that he had any real interest in this company?
A. As far as I know he had no interest at all. He was just given one share to form the company, he was a nominee of George Murphy.
- D Q. Were any dividends declared?
A. No.
- Q. What happened then, to the profits of the company?
A. They all went to Mr. Murphy.
- Q. Without any formal declaration of dividends?
A. Right.

Mr. Newell Kelly: Examined by Hon. L.J. Knowles:

- Q. When Mr. Murphy owned the shares with Montagu Park Racing Association, Mr. Kelly,

Examin
Hon. L.J.
Knowles.

In the Supreme Court of the Bahama Islands Common Law Side

Defendants
Evidence
No. 19
H. Newell
Kelly.
Examination
(Contd.)

I think he was the owner of all the shares, Mr. Kelly, was he not?
 A. He was.
 Q. As far as you know, did he owe anybody any money on these shares?
 A. No.
 Q. Did he have any of the shares claimed with anybody?
 A. Not as I know of.
 Q. So far as you know, all the other shareholders were nominees of
 A. As far as I know.
 Q. Do you know whether Robert Ernest Murphy is alive?
 A. I couldn't say. I think I heard that he died, but I couldn't specifically say.
 Q. During the time that you were a Director were cheques received from time to time?
 A. Well, when anyone had purchased anything, they paid for them.
 Q. Has he ever carried overdrafts?
 A. Well, I don't know; but I don't think he would have because I know he always had money.

A
B

No. 20

EVIDENCE OF THE HON. GODFREY
KENNETH KELLY

In the Supreme
 Court of the
 Bahama Islands
Common Law Side
 Defendants
 Evidence
No. 20
 The Hon.
 Godfrey Kenneth
 Kelly.
 Examination

The Hon. Godfrey Kenneth Kelly:
Examined by Hon. L.J. Knowles.

- Q. Is your full name Godfrey Kenneth Kelly?
 A. Yes, it is.
 Q. Do you live on the Eastern Road in the Eastern District of the Island of New Providence?
 A. Yes.
 Q. Are you an Attorney-at-law, a member of the House of Assembly and a member of the Cabinet?
 A. Yes.
 Q. Are you the Minister for Education?
 A. Yes.
 Q. Were you, or are you a director of the plaintiff company - The Montagu Park Racing Association Limited?
 A. Yes. I was elected as a director in May, 1956.
 Q. At that time, were you familiar with the two agreements between Mr. Nihon and Dr. Sawyer? One made the 5th May, 1953 and the other the 29th February, 1956?
 A. Yes.
 Q. What was your understanding as to the rights of these two persons to the profits of the company?
 A. What's in the agreements: that Mr. Nihon is to get 3% of the gross and his share of the profits; and the balance remaining of the profits is to go to Dr. Sawyer. That was my understanding.
 Q. Did you ever explain this Agreement to Mr. Nihon?
 A. Yes, but he never fully accepted it.
 Q. When was it that he decided to accept it?
 A. Fully?
 Q. Well, when he came from vacation and particularly after the second agreement, in May 1956 or 1957.
 Q. Did he still aim for luck?
 A. No.

- In the Supreme Court of the Bahama Islands Common Law Side Defendants Evidence No. 20 The Hon. Godfrey Kenneth Kelly. Examination (Contd.)
- Q. Did he accept this meeting before the 1956 Agreement?
- A. I don't think so.
- Q. Do you remember a meeting of the Directors on the 12th May, 1956?
- A. Yes.
- Q. And were there any accounts of the company as of the 30th April, 1956 considered?
- A. Yes.
- Q. Will you look at the Balance Sheet for 1956? And on the assets side about the 8th item, do you see there a sum for Dr. Raymond W. Sawyer of £3,373.14. 6.?
- A. Yes.
- Q. Was that item in fact at this meeting on the 12th May, 1956?
- A. Yes.
- Q.
- A. Yes. Well, as I said before, my understanding of the arrangements between Dr. Sawyer and Mr. Nihon was that Mr. Nihon should get his 3% of the entire value and the balance of the profits went to Dr. Sawyer. And, in accordance with that understanding, I felt that this item of £3,373 should have been included and the shareholders' withdrawals should have been included.
- Q. Did you see the other balance sheets?
- A. Yes. They were considered down to the end of the racing season.
- Q. Will you look at the 1957 for example - the 1957 final accounts. Do you see the items - Dr. Raymond W. Sawyer £5,481.10. 2. and £6,743.16. 9.? In your opinion, could they appear as charges against Dr. Sawyer?
- A. No. To my recollection, that's the amount which Dr. Sawyer paid Mr. Nihon under the agreement for the purchase of shares in Montagu Park Racing Association Limited.
- Q. Well, while that £5,481 includes the £3,373, does Dr. Sawyer want that taken out?
- A. Yes.
- Q. But would you say that that £5,481 was shown in the 1956 accounts?
- A. Yes.
- Q. And won't you say that that £5,481 can be recovered?
- A. Yes.
- Q. Now, I'll like to ask you about a meeting

of the Directors on the 24th January, 1957.
Do you remember that meeting?

A. Yes.

Q. Was Mr. Nihon there?

A. Yes.

Q. Dr. Sawyer?

Q. And, I think, you?

A. Yes.

Q. Will you tell us what happened at that meeting?

A

A.

Q. Now, will you read through these minutes? Those are draft minutes. Who would have prepared these?

A. I would have prepared these right after the meeting.

Q. And having prepared them, did you attach certain documents to the draft minutes? Let's go to the end of the minutes.

B

A. Yes. This draft letter here, which I don't think I possibly prepared.

Q. And what about the draft memorandum?

A. No. I think Mr. Clarke prepared that.

Q. And what did you do with the draft minutes?

A. Well, I checked it with Mr. Nihon and afterwards, prepared them.

Q. Could you tell us in Mr. Nihon's words what he said?

A. I don't know.

C

Q. Besides showing it to Mr. Nihon, did you show it to anyone else?

A. As far as I can remember, Mr. Foster Clarke.

Q. It says at the top, "For your perusal and approval - G.K.K. per AMF." Who is A.M.F.?

A. Mrs. Alice Farrington, my Secretary. That's not Mrs. Farrington's handwriting.

Q. If you notice in these draft minutes, reference was made to certain proposals that were made by Mr. Clarke on behalf of Dr. Sawyer.

D

A. Yes.

Q. "Mr. Clarke referred to the Agreement, dated the 29th February, 1956 between Mr. Nihon and Dr. Sawyer whereby Dr. Sawyer was obligated to make certain payments to Mr. Nihon from time to time in accordance with the terms and conditions therein set out. Mr. Clarke stated that Dr. Sawyer was relying on his profits

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Evidence
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The Hon.
Godfrey
Kenneth Kelly.
Examination
(Contd.)

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Defendants
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No. 20
The Hon.
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Examination
(Contd.)

from the Company to meet these payments to Mr. Nihon.

On motion duly made and seconded it was agreed that, provided funds are available from the profits of the Company due Dr. Sawyer, payments should be made from the Company's bank account or bank accounts in favour of Mr. Nihon for the account of Dr. Sawyer in accordance with the terms and conditions of the said agreement of the 29th February, 1956.

A

The Chairman presented to the meeting a letter from him addressed to the Company authorizing the Company to make these payments to Mr. Nihon from time to time from his share of the profits of the Company. A copy of this letter is hereto attached."

Then it goes on further:-

B

"On motion duly made and seconded the following Resolution was agreed to:

RESOLVED that Dr. Sawyer will be entitled to the entire net profits of the M.P.R.A. after having paid to Mr. Nihon three per cent of the gross sum paid into the pari-mutual pool as defined in the Race Course Betting Act 1952 on each and every race day on the Third day following each meet during the Racing Season PROVIDED that if the total amount received by Mr. Nihon as a result of the said payments to him of three percent of the gross sum paid into the said pari-mutual pool is less than one-half of the net proceeds of the Company for any one Racing Season, then Mr. Nihon shall be paid an additional sum representing the difference between the amounts received by him on the said Three percent of the gross sum paid into the said pari-mutual pool and the said one-half of the net profits of the Company for the said Racing Season."

C

D

Now, is that a true reference or otherwise, or what happened?

- A. Well, these meetings were always rather heated, and as I say, I generally prepared these minutes after the meetings. My feeling was as to what happened at the meetings; and accordingly, I prepared the minutes and committed the drafts to Mr. Nihon for his proof. But, looking at this draft, I see that he has actually marked out those paragraphs that you have just read.
- A Q. At the meeting itself, did he disapprove of Mr. Clarke's proposals?
- A. I don't know really; there had been a rather heated discussion on it, but I just don't remember. It was certainly my feeling that this was one of the meetings that he had agreed to; due to the fact that I prepared the minutes right after the meeting, otherwise I would have included it in the draft of the minutes.
- B Q. Now, will you look at the draft letter which is dated the 24th January, 1957. Do you see some comment in ink on this letter?
- A. Yes.
- Q. Do you know who made that comment?
- A. Yes. That is my handwriting.
- Q. (Indecipherable)
- A. (Indecipherable)
- Q. Mr. Nihon has complained that notices of meetings of the company were not sent to him. What do you say about that?
- C A. Well, I sent out all the others.
- Q. Do you know who gets the share as the Robert Ernest Murphy share?
- A. As far as I know it's Mr. Nihon.
- Q. Do you know if notices of any meetings were sent to anybody in respect of that share?
- A. No.
- Q. In fact, isn't there arrangement under the name of the estate of Robert Ernest Murphy?
- D A. Yes
- Q. My Lord, my learned friend has asked me, Sir, to give him the register of members of the Company, but it happens, Sir, that at the time I applied for these documents, Sir, I didn't have them in my set and they are not included in my other documents, Sir. So, I am prepared to leave this in your hands as he says, Sir, but I would draw your attention to the fact that they were not in my set on

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No. 20
The Hon.
Godfrey
Kenneth Kelly.
Examination
(Contd.)

the occasion because I didn't have them at the time, but they happen to be in my possession now, Sir.

?????

Mr. Adderley: I am not denying that, Sir. What I am bringing to your attention is, the fact, as I understand it, Sir, quite voluntary, Sir, that I agreed with my learned friend, Sir, that the register of records could be put in, Sir. What I am, but what I am trying to draw your attention to, Sir, is the fact that these registers, Sir, were not included in my initial documents which my learned friend is implying; and I am drawing your reference, Sir, that your Lordship has ruled that such documents would not be permitted. I am not denying my agreement, Sir, but I am drawing the Court's attention to what has already gone before them. If the Court orders that they be, Sir, then I intend to agree, Sir.

A

Ct. Are you objecting to these being put in?

Mr. Adderley: What I would draw your attention to, Sir, is the fact that these registers were not in my list of documents, Sir.

Court: There was an agreement that they may not be.

Mr. Adderley: I agreed with my learned friend before, Sir.

Court: You agreed that they could be produced?

Mr. Adderley: Yes, Sir.

Court: I just want to know now if you still agree.

Mr. Adderley: I have no objection to them being put in, Sir, but I merely thought that I could draw your attention to the fact that what the Court has already ruled yesterday is now being changed.

B

C

Cross-
examination
by Mr.
Adderley.

Cross-examination by Mr. Adderley.

Q. Mr. Kelly, you said that you became a director, I believe, in 1956?

D

A. Yes, it was May, 1956.

Q. And before that time, you were not an officer or director of the

A. I don't believe so.

Q. So then, if Mr. Nihon says he didn't receive notices of the meetings in 1954 and 1955 you wouldn't know anything about that, would you?

A. That's right.

In the Supreme Court of the Bahama Islands Common Law Side Defendants Evidence No. 20 The Hon. Godfrey Kenneth Kelly. Cross-examination (Contd.)

Q. So, it is not correct in fact to say that you know that Mr. Nihon did not receive notices of these meetings?

A. I said during my period.

Q. Exactly. You said after you became a director in 1956. You wouldn't know what happened in 1954 or 1955, is that alright?

A. Yes.

A Q. Now, you say that under the agreement with Mr. Nihon, it was your understanding that Mr. Nihon was entitled to 3% of the gross value of the Company, is that right?

A. Yes.

Q. Do you also say that it was your understanding that Dr. Sawyer was entitled to 10% of the gross value of the income?

A. No.

Q. You do not say that?

B Q. As a director of the company, Dr. Sawyer was entitled to the net profit of that 10%, is that not right?

A. Yes.

Q. But Mr. Nihon was entitled to 3% of the gross profit?

A. That is correct.

C Q. Were you not a director at the meeting on the 29th February, 1956 when the resolution was agreed to or confirmed, remember, it was confirmed that the Company agreed to pay 3% of the gross proceeds to Mr. Nihon?

I am referring, my Lord, to the meeting of the 29th February, 1956:-

"The undermentioned Directors were present, namely:-

Raymond Wilson Sawyer,
Ivarene Gladys Sawyer,
Alexis Nihon.

Mr. Godfrey K. Kelly was also present and acted as Secretary of the meeting."

D And further down:-

"On motion of Dr. Raymond W. Sawyer and seconded by Mrs. Ivarene G. Sawyer (Mr. Nihon being interested, refrained from voting) the following Resolution was agreed to:-

In the Supreme
Court of the
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Defendants
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No. 20
The Hon.
Godfrey
Kenneth Kelly.
Cross-
Examination
(Contd.)

RESOLVED that the Resolution in respect of the excellent services rendered this company by Alexis Nihon which was passed at a meeting of the Directors of the Company held on the 6th day of May, A.D. 1953, be and the same is hereby amended as follows:-

As a consideration for the excellent services rendered this Company by Alexis Nihon be it resolved that Alexis Nihon his executors administrators or assigns retain three percent of the thirteen percent granted to the licensee on the pari-mutual pool."

A

Do you remember that meeting and that resolution?

- A. Yes.
- Q. In your examination in chief, Mr. Kelly, you said that, "my understanding was that after Mr. Nihon got his 3% of the pari-mutual that then Dr. Sawyer got the rest of the profits." Is it not right to say that what you read in the letter is that after Mr. Nihon got his 3% of the gross pari-mutual Dr. Sawyer got the rest of the net profits? B
- A. Yes. But the 3% would be cut out of the net profits first.
- Q. The gross profits, you mean?
- A. No. The net profits of the Company would be used to pay Mr. Nihon's 3%. C
- Q. No, no; isn't it a fact the Company agreed to pay him 3% of the gross pari-mutual?
- A. Yes.
- Q. Exactly. That is what was agreed to, isn't that a matter of fact?
- A. Yes.
- Q. And that's not 3% of any profits?
- A. No. It was the understanding that that 3% would come from the net profits; in fact it was tied in that. D
- Q. And on what basis the Company intended to pay this 3%?
- A. There was a resolution was passed by the Company providing the payment of 3% of the gross pari-mutuel.
- Q. That's all the resolution is; do you agree that all the resolution did was to pay Mr. Nihon's 3% of the gross profits?

- A. Yes. But that has to be read with the agreement.
- Q. That is a different matter altogether.
- A. I think that resolution is actually quoted in the agreement, Mr. Adderley.
- Q. Now, let us come to the meeting of the 24th January, 1957. You have what you would call the draft minutes before you. Those were in fact the draft minutes, but you also prepared the final minutes of that meeting, is that not right?
- A. Yes. That's right.
- Q. The minutes of that meeting of the 24th January, 1957 which was subsequently confirmed by the next meeting, Mr. Kelly, were they not also signed by you?
- A. Yes.
- Q. Prepared by you, that is?
- A. Yes.
- B Q. Would you look at them and identify your
- A. Yes.
- Q. And would you look at those minutes?
- A. The final minutes reflect what was in my draft minutes with the exception of the paragraph Mr. Nihon has marked out.
- Q. The minutes have been signed, and we can see that they were signed Mr. Nihon, Mrs. Nihon and by yourself?
- A. Yes.
- C Q. Does that not mean that by signing your name to those minutes, you were aware as to what the contents of those minutes were and what in fact took place at that meeting?
- A. Well, let me get my draft minutes; I am looking at the final minutes. I would confirm that what happened was that there was nothing in the final minutes which, in my view, did not actually take place. And looking at my draft minutes it would seem that they must have been as accurate as the other matters.
- D Q. Would you not also agree to the fact that after you signed those minutes I suggest that at that time in your own mind, you were satisfied that those minutes would be the reflection of one complete minute?
- A. But what is in those minutes complies with what actually took place.
- Q. But the fact that you were putting your

In the Supreme Court of the Bahama Islands Common Law Side Defendants Evidence No. 20 The Hon. Godfrey Kenneth Kelly. Cross-Examination (Contd.)

In the Supreme
Court of the
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No. 20
The Hon.
Godfrey
Kenneth Kelly.
Cross-
Examination
(Contd.)

- signature at the end of those minutes, does that not mean that at that time you were satisfied that those minutes obtained the agreements arrived at at that meeting?
- A. Not necessarily everything was right.
- Q. You mean that you would sign minutes of a meeting that were accurate?
- A. They are accurate.
- Q. No, no, Mr. Kelly; what you are suggesting now that they might not be accurate. But what I am saying now is if you would sign minutes of a meeting that were not accurate? A
- A. No. What I am saying is, so far as I remember they are accurate. That's why I tried to see if there was any dispute with regard to the other matters which I felt had been agreed to and Mr. Nihon and Mrs. Nihon held upon for review ... (interrupted by Mr. Adderley).
- Ct. But that's just a matter of opinion.
- Q. No, my Lord, I am sure it should go deeper than that because it is a question of whether an agreement was arrived at. Mr. Nihon doesn't deny that the matter was discussed at the meeting; what he does deny is that any agreement was arrived at. It is not a question of whether there was a controversy or not, Sir, they agree to that; but what Mr. Nihon says is that there was no agreement to that effect. But what I am putting to the witness is the fact that he had signed those minutes means that he had signed those minutes which accurately reflect the agreement arrived at at that meeting. Is that alright? B
- Court: Do you agree? C
- A. I think I've answered the question about three times, my Lord.
- Q. You prepared the minutes, is that right?
- A. Yes.
- Q. And what you are saying then is, that what is contained in the minutes was agreed at the meeting, but are you also saying that something else was agreed at the meeting which is not contained in those minutes? D
- A. That's my view. There must have been because I didn't prepare any draft till after the meeting. The person who prepared the minutes at the meeting could put matter in here that would have been read to all the members at the meeting from the Agreement.

- Q. As to whether an agreement was made or not?
 A. Yes. I remember particularly this one; and it was rather difficult to get anyone to find out whether the agreement was reached to a point or not.
 Q. So, the fact that there were matters that were subsequently left out of the minutes which were finally prepared and signed by you, does that not suggest to you today that at the time of the signing of the minutes, you were satisfied that no agreement was arrived at on the matter?
 A. I don't know.
 Q. You don't know; is that what you say?
 A. Yes. I am trying to explain as best I can; this was back in 1957 and I don't think I can add anything more.
 Ct. It was signed then, not till 1958?
 A. No. I can remember I took it to Mr. Nihon and I signed it shortly after the meeting.

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Common Law Side
 Defendants
 Evidence
No. 20
 The Hon.
 Godfrey
 Kenneth Kelly.
 Cross-
 Examination
 (Contd.)

Cross-examination by Mr. Knowles:

- Q. Did Dr. Sawyer sign the final minutes of that meeting?
 A. No. Looking at the minutes, I see where I have pencilled the initials of their signatures but they haven't signed.
 Q. Do you recall why they didn't sign?
 A. Well, at that stage I was dealing with Mr. Foster Clarke who was representing Dr. Sawyer and I would have checked the minutes after his signature.

Cross-
 examination
 by Mr.
 Knowles.

In the Supreme
Court of the
Bahama Islands
Common Law Side

No. 21

EVIDENCE OF FOSTER CLARKE

Defendants

Hon. Foster Clarke:

Evidence

Examined by Hon. L.J. Knowles:

No. 21

Foster Clarke.
Examination

Q. Is your name Foster Clarke?

A. That is correct.

Q. Where do you live, Mr. Clarke?

A. Village Road.

Q. Are you an attorney-at-law?

A. Correct.

Q. A member of the House of Assembly?

A. Yes.

Q. A member of the Cabinet?

A. Yes.

Q. And the Minister for Health?

A. Correct.

Q. Did you attend a meeting of the Directors of
the Plaintiff Company - The Montagu Park
Racing Association Limited at any time?

A. I did attend a meeting. That was some years
ago.

Q. Does the 24th January, 1957 sound right?

A. I don't know. I was required to attend that
meeting on behalf of my client, but I can't
give you the exact date.

Q. Do you have a copy of your dates there?

A. I have a copy. The meeting was said to have
been held Thursday, the 24th January, 1957.

Ct. These are notes, are they?

A. These are notes, my Lord, prepared by myself
prior to the meeting.

Mr. Adderley: My Lord, as I understand, these are
notes that were prepared prior to the
meeting, Sir.

Ct. Yes. He said prior to the meeting.
I must object to that, Sir.

Ct. ?

Mr. Clarke: Well, may I say, my Lord, that these
are notes prepared by me, at a time prior ...

Ct. Yes. But there is a memorandum which has
apparently not been disclosed; on the other
side, I think that's the reason you objected,
isn't it Mr. Adderley?

Mr. Adderley: Yes, Sir.

Mr. Knowles: May he see the draft minutes?

A

B

C

D

- Ct. Yes.
- Ct. You've agreed to put them in, haven't you?
- A. Yes, my Lord.
- Q. Will look at the draft minutes on the other side? Are there any attachments to those minutes?
- A. Yes. Several attachments.
- Q. Do you recognize any of those attachments?
- A. I do. I recognize the memorandum prepared by me, the memorandum ex Foster Clarke Re The Montagu Park Racing Association Limited.
- A Q. Is that the memorandum to which you're referring?
- A. This is that memorandum to which I am referring.
- Q. What happened to that? When you took it from the meeting, what did you do with it?
- A. I submitted a copy to the Attorney of the Company, Godfrey Kelly.
- B Q. Now, will you tell us what happened at the meeting?
- A. When you say what happened, do you mean the full details of everything that happened or a part of what happened?
- Q. Do you leave something out?
- A. A part of it; that's what we normally do.
- Q. What do you mean when you say, "followed the terms?"
- A. My proposals to the meeting; to the credit of the Company as a Director's purpose, was that the point raised in my memorandum should be agreed to.
- C Q. Yes. There is also a letter, a draft letter attached.
- A. A draft letter signed by Dr. Raymond W. Sawyer.
- Q. Is it actually signed?
- A. Well, likely. This is a copy of the letter.
- Q. Where did this come from?
- D A. Where did it come from?
- Q. Yes.
- A. It was presented by Dr. Sawyer.
- Q. So, these proposals were made in this letter. Did the meeting agree or disagree? What happened to that effect?
- A. Well, first of all, I felt, or I thought the meeting had agreed, but later on I had reason to believe otherwise. There was an agreement, as far as I was concerned, at the time of the

In the Supreme
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Defendants
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Foster Clarke.
Examination
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Defendants

Evidence

No. 21

Foster Clarke.

Examination

(Contd.)

meeting and, as I remember, there was a draft minutes presented and then accompanied with the draft minutes, all of this. So it just wasn't in my agreement that perhaps, such ...

Q. I mean at the time of the meeting. Was it a general agreement?

A. I thought there was a general agreement. But I had reasons to think otherwise after the draft of the minutes was finished.

Q. Are they the drafts, then to which you are referring? A

A. Yes. That's correct.

Q. In which certain paragraphs have been cancelled?

A. That's correct.

Q. Do you know who made the cancellation of those paragraphs?

A. I didn't see the cancellations made; I mean I didn't see the person make the cancellations.

Q. Do you understand why they were cancelled? B

A. I believe I can. At the time of the corrections, the cancellations were made by Mr. Nihon, but I didn't see him do it.

Q. May he see the final minutes, my Lord?

Ct. I think so.

Q. You are sure that Dr. Sawyer and Mrs. Sawyer did not sign those minutes?

A. That is correct.

Q. Do you remember receiving them from Mr. Kelly?

A. The original draft or the minutes which I have in front of me now? C

Q. We're dealing with the final minutes.

A. The final minutes?

Q. Yes.

A. I can't say that I remember; I have given it to the secretary in due course, along with a monthly copy of the file.

Q. Did you gather any information as to why Dr. Sawyer and Mrs. Sawyer did not sign?

A. Obviously because he did not agree to the minutes; finally when he agreed to the minutes, he put the proposals first. D

Cross-
examination
by Mr.
Adderley.

Cross-examination by Mr. Adderley:

Q. Mr. Clarke, I believe this was a meeting of the Directors, which you attended, is that all right?

A. That's correct.

- Q. Was it at the Registered Office of the Company? In the Supreme
 A. Yes. The Registered Office of the Company. Court of the
 Q. And was it attended by all the Directors? Bahama Islands
 A. All the Directors were present. Common Law Side
 Q. You were the only person present who was not
 a Director? Defendants
 A. Two persons. Myself and Mr. Newton Higgs. Evidence
 Q. I see, who were not Directors? No. 21
 A. That's correct. Foster Clarke.
 A According to the draft minutes, I believe it Cross-
 Q. appears that made certain proposals at the Examination
 meeting? (Contd.)
 A. On behalf of Dr. Sawyer.
 Q. You would agree, of course, that as an attorney,
 not a Director of the Company, that you could'nt
 make suggestions, that a Director would have to
 do that?
 A. That's correct. I was allowed to make these
 proposals.
 B Q. Well, you may have, but don't you remember that
 Mr. Nihon suggested not to sign any in your
 presence?
 A. Well, there's no record of that here; he may
 have suggested. I don't recall whether he did
 or not. But there is no record of that
 suggestion either in the first draft minutes
 or the final minutes.
 Q. You say that it was your understanding that
 the meeting approved?
 C A. That was my understanding when I left the
 meeting.
 Q. Did not Mr. Nihon object at the meeting?
 A. Not to my knowledge or understanding. My
 memory of this is, that there was an agreement
 at the time, and from that agreement there is
 a change.
 Q. Did you leave the meeting before it ended?
 A. I am not sure exactly if it was before the
 meeting ended. I think all the matters which
 D I wanted to withdraw from the meeting were
 closed.
 Q. The suggestion that was made there is, that
 the Company should agree and declare a
 dividend, I believe, or approve of the
 payment by the Company to Mr. Nihon?
 A. That's correct.
 Q. Why did it become necessary in January of
 1957 to incorporate such a resolution in the
 minutes of the Directors of the Company?

- In the Supreme Court of the Bahama Islands Common Law Side
- Defendants Evidence No. 21 Foster Clarke. Cross-Examination (Contd.)
- A. I imagine it was a rare reason because the control was being taken away from Dr. Sawyer.
- Q. No. That happened since 1956.
- A. Not really.
- Q. Yes. That happened in February of 1956.
- A. Well, in fact I remember about Mr. Nihon getting 3% of the gross, I there's no reason why Dr. Sawyer should not also get his money out of that.
- Q. What I am putting to you is the fact that Mr. Nihon should get 3% of the gross; you're the first person who said that much, Mr. Clarke. I am very glad to hear that.
- A. It's incorporated in the agreement.
- Q. I know. That's what I was trying to hear all along, but nobody seems to want to admit that. But, that is beside my point. What I am asking is this, that this has been going on now since the 1954 season. So we have 54-55-56 seasons. There were three seasons during which these withdrawals were taking place; but what I want to know is, why in January, 1957 it was then necessary to incorporate such a resolution?
- A. I think the real reason at this point was that Mr. Nihon, having made the decision to take the controls out of the hands of Dr. Sawyer prohibited him from signing the agreement.
- Q. But what I was putting to you was the fact that Mr. Nihon took over the control of the Board of Directors in 1956, the year before.
- A. He had control of the Directors but he was not exercising the day-to-day control of the operation of the track. At this point, it seems to me that what he did was, he wanted to change the banking resolution and he wanted to run through other things that would in fact give him control - the day-to-day control of the track's operation.
- Q. He needed the banking resolution changed, yes; but that was struck out. But the actual management of the race track itself in 1957 wasn't in the hands of Dr. Sawyer, was it?
- A. No; that will rather make my point, if you say that the manager is the controller and the person who has the authority of the signing of cheques.

A

B

C

D

- Q. You mean, for a company to buy, that if only two persons can sign cheques is a hollow angle? That's all I put that to. Is there anything improper about that?
- A. What I said was, that while Mr. Nihon had, or could have had control in 1956 over the Directors he did not sign to exercise the help of himself; that's all I said.
- A Ct. You say that he wanted to make it legal concerning him?
- A That's correct.
- Q So, are you suggesting that at that time Mr. Nihon's suggestion was to take over the management of the race track himself?
- A He certainly was taking over the payments of money out of the race track funds.
- Q In fact he really provided for actual is that all right?
- A That's correct. But he had control.
- B Q Of this deal, you mean?
- A He had control.
- Q At that time, Dr. Sawyer was still the manager, how much control could he have?
- A He controlled the Directors, Mr. Adderley: and at this point, according to his wife, he sold everything.
- Q But what I am putting to you is that in 1957, in January of 1957, Dr. Sawyer was still the Managing Director of the Company and still in control of the race track. What had changed was the fact that he had to sign along with Mr. Nihon or Mr. Deal. But there's no question of Mr. Nihon otherwise taking control of the race track, was there?
- C A Not with the knowledge of the fact that you suggest no, but I say that at this point, what he was thinking to do and what he did do was in fact take legal control of the whole thing.
- D Q What you are saying is, that at that time, then he found it necessary with the resolution of the Company, to gather the payments to him, is that right?
- A Dr. Sawyer thought that.
- Q Dr. Sawyer found it necessary to have a resolution of the Company to approve the payments to him?
- A That's correct.
- Q Are you saying that that so because of the

In the Supreme
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Foster Clarke.
Cross-
Examination
(Contd.)

In the Supreme
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Common Law Side

Defendants
Evidence

No. 21

Foster Clarke. A.

Cross-
Examination
(Contd.)

fact that he couldn't sign cheques on his own
account any longer?

A. That is so, because he no longer had control
over the money in the Company's accounts.

Q. What I am putting to you is exactly what you
have said that he wanted Company to pass
these resolutions at this time because he
could not sign cheques on his own any longer?

A. That's correct.

Exhibit E.1

MEMORANDUM OF ASSOCIATION

In the Supreme
Court of the
Bahama Islands
Common Law Side

BAHAMA ISLANDS,
New Providence.

Exhibit E.1
Memorandum of
Association.

THE COMPANIES ACT

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

A

of

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

Name. 1. The name of the Company is THE
MONTAGU PARK RACING ASSOCIATION,
LIMITED.

Registered Office. 2. The registered office of the
Company will be situate in the Island
of New Providence.

B

Objects. 3. The objects for which the Company
is established are:-

Stamps
£5.0.0.

(a) To promote and carry on horse-
racing, polo, golf and other
suitable games, sports or
pastimes which the Company
shall think fit to promote and
carry on, especially with the
object of providing suitable
attractions for tourists to the
Colony.

D

(SD) Harcourt Malcolm,
Barrister-at-Law,
Chambers,
Nassau,
Bahamas.

(b) To carry on any other business
of a similar nature, or any
businesses which may in the
opinion of the Directors be
conveniently carried on by
this company.

(c) To acquire by purchase, lease
or otherwise, a part of the

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.1
Memorandum of
Association.
(Contd.)

- property known as "HOBBY HORSE HALL"
situate in the Western District of the
said Island of New Providence and any
other property which the Company may
deem suitable for the purposes of the
Company, and to improve and utilize all
such property for the benefits of the
Company, and to pay for the same either by
cash or by shares in the present Company
or otherwise as to the Company shall seem
fit, and to mortgage, lease, sell or
otherwise deal with or dispose of any
rights or property so acquired. A
- (d) To borrow money upon transferable or
other Bonds or Mortgage Debentures, or any
other security founded or based upon all
or any of the property (including uncalled
capital for the time being), and rights of
the Company, and to become party to any
bill of exchange or promissory note. B
- (e) To raise and assist in raising money for
and to aid by way of bonus, loan, promise,
endorsement, guarantee on bonds, debentures
or other securities or otherwise, any
corporation in the Capital Stock of
which this Company holds shares or with
which it may have business relations and
to act as employee, agent or manager of
such corporation, and to guarantee the
performance of contracts by any person
or persons with whom this Company may have
business relations. C
- (f) To enter into partnership or into any
other arrangement for sharing profits,
union of interest, co-operation, joint
adventure, reciprocal concession or
otherwise with any person or company
carrying on or engaged in or about to
carry on and engage in any business or
transaction capable of being conducted as
to benefit directly or indirectly this
Company. D
- (g) To mortgage, lease, sell or otherwise
dispose of the property and assets of
the Company or any part thereof for such

consideration as the Company may deem fit, including shares, debentures or securities, or securities of any company.

In the Supreme Court of the Bahama Islands
Common Law Side

- (h) To pay all costs, charges and expenses incurred or sustained in or about the promotion and establishment of the Company, or which the Company shall consider to be preliminary.

Exhibit E.1
Memorandum of Association.
(Contd.)

- A (i) To distribute in specie or otherwise as may be resolved any assets of the Company among its members, and particularly the shares, debentures or other securities of any other company formed to take over the whole or any part of the assets or liabilities of this Company.

- B (j) To acquire from the Crown, the Governor or any Public Board, or other authority, or from any body or person, any concession, charter, right or privilege, which may seem desirable for the furtherance of any object of the Company; and to make any arrangement which may seem desirable for the last named purpose with The Crown, the Governor or any Public Board, authority, body, or person; and to comply with, work, sell, or otherwise turn to account any such concession, charter, contract, right or privilege.

- C (k) To distribute among the Members any assets of the Company in specie.

- (l) Generally to do all acts and exercise all powers and carry on all business incidental to the due carrying out of the objects for which this Company is incorporated, and necessary to enable the Company to carry on profitably its operations and undertakings.

- Limited
D Liabi- 4. The liability of the members is limited.
lity.

Capital. 5. The capital of the Company is £3,000 divided into 300 shares of £10 each, with power to divide the shares in the capital,

In the Supreme Court of the Bahama Islands Common Law Side for the time being, into several classes and to attach thereto respectively any preferential, deferred, qualified, or special rights, privileges or conditions.

Exhibit E.1
Memorandum of Association.
(Contd.)

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the Capital of the Company set opposite our respective names.

A

Witness our hands this 23rd day of November, A.D. 1933.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
1. (SD) George Murphy, Shirley Slope, Nassau, New Providence. Merchant.	1. One
2. (SD) Gertrude Anna Murphy, Shirley Slope, Nassau, New Providence. Housewife.	2. One
3. (SD) Robert Emmett Murphy, Shirley Slope, Nassau, New Providence. Manager.	3. One
4. (SD) Ralph Gregory Collins, "Centreville", Nassau, New Providence. Merchant.	4. One
5. (SD) Stafford Sands, "The Knowle", New Providence. Merchant.	5. One

B

C

WITNESS to the foregoing signatures:

(SD) Useph Baker, Nassau,
Bahamas.
Articled Law Student.

BAHAMA ISLANDS,
New Providence.

In the Supreme
Court of the
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Common Law Side

A I, Useph Baker of the City of Nassau in the said Island of New Providence Articled Law Student make Oath and say that I was present and saw George Murphy, Merchant, Gertrude Anna Murphy, Housewife, Robert Emmett Murphy, Manager, Ralph Gregory Collins, Merchant, all of the said City of Nassau and Island of New Providence, and Stafford Sands, Merchant, of the said Island of New Providence, sign and as and for their Act execute and deliver the foregoing Memorandum of Association dated the 23rd day of November, A.D. 1933, for the purposes therein mentioned; and that I subscribed my name as the witness to the due execution thereof.

Exhibit E.1
Memorandum of
Association.
(Contd.)

(Sd) Useph Baker.

Sworn to this 24th day
of November, A.D. 1933.

B (Sd) Harcourt Malcolm.

Justice of the Peace.

BAHAMA ISLANDS,
Registrar General's Office

I certify the foregoing to
be a true copy of the
original deposited in this
Office.

Leonard Knowles.
Registrar General.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.2

ARTICLES OF ASSOCIATION

Exhibit E.2
Articles of
Association.

THE COMPANIES ACT

ARTICLES OF ASSOCIATION

of

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A

EXPLANATORY

1. In these presents, unless there be something in the subject or context inconsistent therewith:-

"The Company" means the above-named Company.

"The Office" means the registered office for the time being of the Company.

"The Register" means the register of members to be kept pursuant to Section 21 of The Companies Act.

"Month" means calendar month.

"In writing" and "written" mean and include words printed, lithographed, represented or reproduced in any mode in a visible form.

B

"The Directors" means the Directors for the time being of the Company.

"Special Resolution" and "Extraordinary Resolution" have the meaning assigned thereto respectively by the Companies Act.

Words importing the singular number only include the plural number, and vice versa.

Words importing the masculine gender only include the feminine gender.

C

Words importing persons include corporations.

2. In addition to the registered office of the Company in the Colony, the Company may have an office for the transaction of business in the Dominion of Canada, in the United States of America and at any other place or places.

In the Supreme Court of the Bahama Islands
Common Law Side

SHARES

Exhibit E.2
Articles of Association.
(Contd.)

A 3. None of the funds of the Company shall be employed in the purchase of, or lent on, shares of the Company.

4. The business of the Company may be commenced as soon after the incorporation of the Company as the Directors shall think fit, and notwithstanding that part only of the shares may have been allotted.

5. The shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons, on such terms and conditions, and at such times as the Directors think fit.

B 6. Save as herein otherwise provided, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not, except as ordered by a Court of competent jurisdiction, or as by Act required, be bound to recognize any equitable or other claim to or interest in such share on the part of any other person.

CERTIFICATES

C 7. The certificates of title to shares shall be issued under the Seal of the Company, and shall be signed by the President or the Vice-President, and shall be countersigned by the Secretary or some other person appointed by the Directors.

D 8. Every member shall be entitled to one certificate for the shares registered in his name or to several certificates, each for one or more of such shares, and every certificate of shares shall specify the number and the denoting numbers of the shares in respect of which it is issued, and the amount paid up thereon.

9. If any certificate be worn out or defaced, then upon production thereof to the Directors,

In the Supreme Court of the Bahama Islands Common Law Side they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the Directors, and on such indemnity as the Directors deem adequate being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.

Exhibit E.2
Articles of
Association.
(Contd.)

FORFEITURE OF SHARES

A

10. If any member fails to pay any call, or any money due by him to the Company, on or before the day appointed for the payment thereof, the Directors may, at any time thereafter, during such time as the call or money due remains unpaid, serve a notice on such member, requiring him to pay the same, together with interest and any expenses that may have accrued and been incurred by the Company by reason of such non-payment.

11. The notice shall name a day (not being less than seven days from the date of the notice) and a place or places, on and at which such call or debt and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call was made or debt is due will be liable to be forfeited.

B

12. If the requisitions of any such notice as aforesaid are not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all calls, debts, interest and expenses due in respect thereof, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares, and not actually paid before the forfeiture.

C

13. Any share so forfeited shall be deemed to be the property of the Company, and the Directors may sell, re-allot, and otherwise dispose of the same in such manner as they think fit.

D

14. The Directors may, at any time before any share so forfeited shall have been sold,

re-allotted, or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.2
Articles of
Association.
(Contd.)

A 15. Any member whose shares have been forfeited shall notwithstanding be liable to pay and shall forthwith pay to the Company, all calls, debts, interest and expenses owing upon or in respect of such shares at the time of the forfeiture, together with interest thereon, from the time of forfeiture until payment, at six per cent. per annum, and the Directors may enforce the payment thereof if they think fit.

COMPANY'S LIEN ON SHARES

B 16. The Company shall have a first and paramount lien upon all the shares registered in the name of each member, and upon the proceeds of sale thereof, for his debts, liabilities, and engagements, solely or jointly with any other person, to or with the Company whether the period for the payment, fulfilment, or discharge thereof shall have actually arrived or not, and no equitable interest in any share shall be created except upon the footing and condition that Article 6 hereof is to have full effect. And such lien shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed the registration of a transfer of shares shall operate as a waiver of
C the Company's lien, if any, on such shares.

D 17. For the purpose of enforcing such lien, the Directors may sell the shares subject thereto in such manner as they think fit, but no sale shall be made until such period as aforesaid shall have arrived, and until notice in writing of the intention to sell shall have been served on such member or his personal representatives, and default shall have been made by him or them in the payment, fulfilment, or discharge of such debts, liabilities, or engagements for seven days after such notice.

18. The net proceeds of any such sale after payment of the costs of such sale shall be applied in or towards satisfaction of the debts, liabilities, or engagements of such member and

In the Supreme Court of the Bahama Islands
Common Law Side the residue (if any) paid to him, his personal representatives, or assigns.

Exhibit E.2
 Articles of
 Association.
 (Contd.)

19. Upon any sale for enforcing a lien in purported exercise of the powers hereinbefore given, the Directors may cause the purchaser's name to be entered in the register in respect of the shares sold, and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the register in respect of such shares, the validity of the sale shall not be impeached by any person, and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

A

TRANSFER AND TRANSMISSION

20. The instrument of transfer of any share shall be signed by both the transferor and transferee, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof.

B

21. Shares in the Company may be transferred in any form which the Directors may think fit to register.

22. The Directors may decline to register a transfer of any share on which the Company has a lien. They may also decline to register a transfer of any share to any person of whom they do not approve. And they may also decline to register a transfer of any share without assigning any reason therefor.

C

23. Every instrument of transfer shall be left at the office for registration, accompanied by the certificate of the shares to be transferred, and such other evidence as the Directors may require to prove the title of the transferor or his right to transfer the shares.

24. The personal representatives of a deceased member (not being one of several joint holders) shall be the only persons recognized by the Company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint registered holders of any registered share, the

D

survivors shall be the only persons recognized by the Company as having any title to or interest in such shares.

In the Supreme
Court of the
Bahama Islands
Common Law

Exhibit E.2
Articles of
Association.
(Contd.)

A 25. Any person becoming entitled to shares in consequence of the death or bankruptcy of any member, upon producing such evidence that he sustains the character in respect of which he proposes to act under this Article, or of his title, as the Directors think sufficient, may, with the consent of the Directors (which they shall not be under obligation to give) be registered as a member in respect of the shares, or may, subject to the regulations as to transfers hereinbefore contained, transfer such shares.

B 26. The Directors shall have the same right to refuse to register a person entitled by transmission to any shares or his nominee, as if he were the transferee named in an ordinary transfer presented for registration.

ALTERATION OF CAPITAL

27. The Company may, from time to time, by special resolution increase the capital by the creation of new shares of such amount as may be deemed expedient.

C 28. The new shares shall be issued upon such terms and conditions and with such rights and privileges annexed thereto as the special resolution creating the same shall direct, and if no direction be given, as the Directors shall determine, and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the Company, and with a special or without any right of voting.

D 29. If any difficulty shall arise in the apportionment of such new shares, or any of them amongst the members, such difficulty shall, in the absence of direction by the Company be determined by the Directors.

30. Except so far as otherwise provided by the conditions of issue, or by these presents, any capital raised by the creation of new shares

In the Supreme Court of the Bahama Islands Common Law Side shall be considered part of the original capital, and shall be subject to the provisions herein contained with reference to transfer and transmission, forfeiture, lien, and otherwise.

Exhibit E.2
Articles of
Association.
(Contd.)

31. The Company, may, from time to time, by Special Resolution, sub-divide or, by Ordinary Resolution, consolidate its shares or any of them. And the Special Resolution whereby any share is sub-divided may determine that, as between the holders of the shares resulting from such sub-division, one or more of such shares shall have some preference or special advantage over or as compared with the others or other.

A

BORROWING POWERS

32. The Directors may, from time to time, at their discretion, raise or borrow, or secure the payment of, any sum or sums of money for the purposes of the Company.

33. The Directors may raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as they think fit, and, in particular, by the issue of bonds, perpetual or redeemable debentures or debenture stock, or any mortgage, charge, or other security on the undertaking or the whole or any part of the property of the Company (both present and future), including its uncalled capital for the time being.

B

GENERAL MEETINGS

C

34. General Meetings shall be held once at least in every calendar year at such time, not being more than fifteen months after the holding of the last preceding general meeting, and at such place (either within or without the Colony) as may be determined by the Directors. At these meetings the Annual Report of the Directors shall be presented, the Directors elected for the ensuing year and the general business of the Company transacted. Such general meetings shall be called "ordinary meetings", and all other meetings of the Company shall be called "extraordinary meetings".

D

35. The Directors may, whenever they think fit, convene an extraordinary meeting, and they shall, on the requisition of the holders of not less than one-fourth in value of the subscribed and issued shares of the Company forthwith proceed to convene an extraordinary meeting of the Company.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.2
Articles of
Association.
(Contd.)

A 36. Seven days' notice, specifying the place, day and hour of meeting, and in case of special business, the general nature of such business shall be given to the members in manner hereinafter mentioned; or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any meeting.

B 37. All business shall be deemed to be special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors.

C 38. When all the members in person or by proxy sign the minutes of an ordinary or extraordinary meeting, the same shall be deemed to have been duly held, notwithstanding that the members have not actually come together or that there may have been technical defects in the proceedings. And a resolution in writing signed by all the members shall be as valid and effectual as if it had been passed at a meeting of the members duly called and constituted.

PROCEEDINGS AT GENERAL MEETINGS

39. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business, except to declare a dividend, or to take measures to obtain a quorum.

D 40. A quorum shall consist of members holding or representing a majority in value of the subscribed and issued shares of the Company.

41. The President or Vice-President shall preside as Chairman at every general meeting of

In the Supreme Court of the Bahama Islands the Company. In their absence the members present shall choose some one of their number to be chairman.

Common Law Side

Exhibit E.2
Articles of
Association.
(Contd.)

42. The Chairman, may with the consent of the meeting adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

A

43. Every question submitted to a meeting shall be decided, in the first instance, by a show of hands, and in the case of an equality of votes the Chairman shall, both on a show of hands and on a poll, have a casting vote in addition to the vote or votes to which he may be entitled as a member.

44. At any general meeting, unless a poll is demanded by the Chairman, or by members holding or representing one-fourth in value of the subscribed and issued shares of the Company, a declaration by the Chairman that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the books of proceedings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

B

45. If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once, or after an interval or adjournment, or otherwise, and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In case of any dispute as to the admission or rejection of a vote, the Chairman shall determine the same, and such determination made in good faith shall be final and conclusive.

C

D

VOTES OF MEMBERS

46. On a show of hands every member present in person or by proxy shall have one vote, and upon a poll every member present in person or by proxy

shall have one vote for every share held by him.

47. Votes may be given either personally or by permanent or ad hoc written proxy.

48. The instrument appointing a proxy shall be in writing, under the hand of the appointor or of his attorney. Any person appointed a proxy need not be a member of the Company.

A 49. The instrument appointing a proxy shall be deposited with the Secretary before or at the meeting for which it is to be used, and may be permanent or ad hoc. If a proxy is permanent it may be recorded with the Secretary.

B 50. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation, or transfer shall have been received before the meeting.

51. An instrument appointing a proxy may be in any form which the Directors think fit to approve.

DIRECTORS

C 52. The Directors of the Company shall be elected from among the members of the Company holding shares of the Company absolutely in their own right, in every subsequent year at the first ordinary meeting of the year. They shall be elected for a year but shall hold office until their successors are duly elected or until the office is vacated as provided by Article 53. The Directors shall be not less than three, nor more than ~~seven~~ in number.
five

53. The office of a Director shall ipso facto be vacated:-

- D
- (a) if he becomes bankrupt, or suspends payment, or compounds with his creditors.
 - (b) if he be found lunatic or become of unsound mind.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.2
Articles of
Association.
(Contd.)

Amended by
Special Reso-
lution 14th
March, 1956.

In the Supreme
Court of the
Bahama Islands
Common Law Side

(c) if he ceases to be a member of the Company.

(d) if by notice in writing to the Company, he resign his office.

Exhibit E.2
Articles of
Association.
(Contd.)

(e) if he is requested in writing by members holding or representing more than one half in value of the subscribed and issued shares of the Company to vacate his office.

But the continuing Directors may act notwithstanding any vacancy in their body. A

54. Any casual vacancy occurring in their body may at any time be filled up by the Directors, but any person so chosen shall retain office so long only as the vacating Director would have retained the same if no vacancy had occurred.

PROCEEDINGS OF DIRECTORS

55. The Directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings and proceedings, as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined, ~~two~~ Directors shall be a quorum. B
three

Amended by
Special Reso-
lution 14th
March, 1956.

56. Any two Directors may at any time convene a meeting of the Directors. Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes, the Chairman shall have a second or casting vote.

57. A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the regulations of the Company for the time being vested in or exercisable by the Directors generally. C

58. The President or Vice-President shall preside at all meetings of the Directors. In the absence of the President and Vice-President the Directors present shall choose some one of their number to be Chairman of the meeting. D

59. All acts done by any meeting of the Directors, or by any person acting as a Director, shall,

notwithstanding that it afterwards be discovered that there was some defect in the appointment of any such Directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.2
Articles of
Association.
(Contd.)

- A 60. When all the Directors sign the minutes of a meeting of the Directors the same shall be deemed to have been duly held notwithstanding that the Directors have not actually come together or that there may have been technical defects in the proceedings. And a resolution in writing, signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

POWERS OF DIRECTORS

- B 61. The officers of the Company shall be elected annually by the Company or appointed annually by the Directors, and shall consist of a President, a Vice-President, a Secretary, and a Treasurer, and such other officers as the Company or the Directors may from time to time think necessary. They shall hold office until their successors are elected or appointed. But any officer may be removed at any time by the Directors. If any office becomes vacant during the year the Directors may fill the same for the unexpired term.
- C

62. The officers shall perform such duties as may be prescribed by the Directors.

63. Any person may hold more than one of these offices, and neither the Secretary nor the Treasurer need be a member of the Company.

PRESIDENT

- D 64. The President shall act as Chairman of all meetings of the members and of the Directors. He shall also perform such other duties as may be prescribed by these Articles, the Company in general meeting, or the Directors.

VICE-PRESIDENT

65. The Vice-President, in the absence or disability of the President, may perform the

In the Supreme Court of the Bahama Islands Common Law Side duties and exercise the powers of the President, and shall perform such other duties as may be prescribed by these Articles, the Company in general meeting, or the Directors.

Exhibit E.2
Articles of
Association.
(Contd.)

TREASURER

66. The Treasurer shall have the custody of all the funds and securities of the Company, and shall keep full and accurate accounts of the receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Directors. He shall disburse funds of the Company as may be ordered by the Directors, taking proper vouchers for such disbursements, and shall render to the Directors at regular meetings of the Directors, or whenever they may require it, an account of all his transactions as Treasurer, and of the financial condition of the Company, and shall perform such other duties as may be prescribed by the Directors.

A

B

SECRETARY

67. The Secretary shall attend and keep the minutes of the meetings of the members and of the Directors. He shall also keep all other books and records of the Company, summon meetings, and perform such other duties as may be prescribed by the Directors.

THE SEAL

C

68. The Directors shall provide for the safe custody of the Seal, and the Seal shall never be used except by the authority of a resolution of the Directors or a general meeting, previously given.

AUTHENTICATION OF DEEDS AND DOCUMENTS

69. All deeds executed on behalf of the Company may be in such form and contain such powers, provisos, conditions, covenants, clauses, and agreements as the Directors, or the Company in general meeting, shall think fit, and, in addition to being sealed with the seal of the

D

Company, shall be signed by the President or such other person as the Directors or the Company in general meeting shall from time to time appoint, and countersigned by the Secretary or such other person as the Directors or the Company in general meeting shall from time to time appoint.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit E.2
Articles of Association.
(Contd.)

DIVIDENDS

- A 70. The profits of the Company shall be divisible among the members holding shares in proportion to the amount of the shares held by them respectively.
71. The Company in general meeting, or the Directors may declare a dividend to be paid to the members according to their rights and interests in the profits, and may fix the time for payment.
72. No dividend shall be payable except out of the profits arising from the business of the Company.
- B 73. The Directors may from time to time pay to the members such interim dividends as in their judgment the position of the Company justifies.
74. The Directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company.
75. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned.
- C 76. No dividend shall bear interest as against the Company.
77. The Directors may, before recommending any dividend, set aside, out of the profits of the Company, such sums as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for special dividends, or for repairing, improving, and maintaining any of the property of the Company, and for such other purposes as the Directors shall in their absolute discretion think conducive to the interests of the Company; and may invest the several sums so set aside upon such investments (other than shares of the Company) as
- D

In the Supreme Court of the Bahama Islands Common Law Side they may think fit, and from time to time deal with and vary such investments, and dispose of all or any part thereof for the benefit of the Company, and may divide the reserve fund into such special funds as they think fit and employ the reserve fund or any part thereof in the business of the Company, and that without being bound to keep the same separate from the other assets.

Exhibit E.2
Articles of
Association.
(Contd.)

ACCOUNTS

A

78. The Directors shall cause true accounts to be kept of the stock-in-trade of the Company, of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and of the assets, credits and liabilities of the Company.

79. The books of account shall be kept at one of the offices of the Company and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Directors, shall be open to the inspection of the members during hours of business.

B

80. Once at the least in every year the Directors shall unless waived by a resolution of the members in general meeting, lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

81. Unless waived by a resolution of the members in general meeting, a balance sheet shall be made out in every year, and laid before the Company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the Company.

C

AUDITOR

82. Unless waived by a resolution of the members in general meeting, the Directors shall make all necessary arrangements for an annual audit of the books and accounts of the Company. Any auditor appointed need not be a member of the Company.

D

NOTICES

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit E.2
Articles of
Association.
(Contd.)

83. A notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid envelope addressed to such member at his last known address.

A

84. The signature to any such notice to be given by the Company may be written, typewritten, or printed.

85. Any notice, if served by post, shall be deemed to have been served at the time when the envelope containing the same would be delivered in the ordinary course of post; and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and put into the post office.

B

86. Notice of meetings of members shall be given by the Secretary at least seven days before the date of such meeting.

87. Notice of special meetings shall state the objects for which the meeting is called.

88. Any member or Director may waive the right to receive notices by an instrument in writing signed by him, before, at, or after any meeting.

CERTIFICATE

C

I hereby certify that the foregoing Articles of Association were adopted as the Articles of Association of The Montagu Park Racing Association, Limited by a Special Resolution which was unanimously passed as a Special Resolution at an Extraordinary General Meeting of the above-named Company held at Building No. 309, Bay Street, Nassau, Bahamas on the 4th day of February, A.D. 1948 at which meeting members of the Company for the time being entitled, according to the regulations of the Company, to vote Two hundred and Ninety-nine of the Three hundred authorised and issued shares of the Company were present in person or by proxy, and that the said Special Resolution was unanimously confirmed as a Special Resolution at an Extraordinary General Meeting of the above-named Company held at the same place on

D

In the Supreme Court of the Bahama Islands Common Law Side the 19th day of February, A.D. 1948 at which said meeting members of the Company for the time being entitled, according to the regulations of the Company, to vote Two hundred and Ninety-nine of the Three hundred authorised and issued shares of the Company were present in person or by proxy.

Exhibit E.2
Articles of
Association.
(Contd.)

AS WITNESS my hand and the Common Seal of the Company this 19th day of February, A.D. 1948.

(Sgd.) Philip G.D. Bethell (Seal)

A

Secretary.

Exhibit A.5

MINUTES OF GENERAL MEETING
4th November, 1933

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of
General Meeting,
4th November,
1933.

At the First General Meeting of the Shareholders of the MONTAGU PARK RACING ASSOCIATION LIMITED held this fourth day of November 1933 at the Registered Office at the (Illegible) Beach Hotel, Nassau, N.P. the following shareholders were present:-

A

Hon. Ralph G. Collins, Mr. George Murphy,
Mr. Stafford Sands.

On Motion Mr. Collins took the Chair.

On Motion duly made and seconded the following officers were duly elected:-

Hon. Ralph G. Collins, President.
Mr. George Murphy, Vice-President and
Treasurer.
Mr. Stafford Sands, Secretary.

B

On Motion duly made and seconded it was resolved that the Royal Bank of Canada at its Nassau Branch be appointed the Bankers of the Company.

On motion duly made and seconded it was resolved that Mr. George Murphy be authorized to sign leases, cheques and other instruments for the transaction of the usual and necessary business of the Company and also to sign on behalf of the Company the lease of the property from the Bahamas Government on which the Emerald Beach is situated.

C

On Motion duly made and seconded it was resolved that the President and the Secretary be authorized to complete the Royal Bank of Canada's regular form relative to Banking Arrangements covering same in all banking transactions.

On motion duly made and seconded the following were appointed the Managing Committee for the Montagu Park Racing Association Limited for the ensuing year:-

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of
General Meet-
ing, 4th
November,
1933.
(Contd.)

Hon. Ralph G. Collins, President.
Mr. George Murphy, Vice-President.
Hon. Sir George Johnson, Kt.
Mr. John Burnside.
Mr. Stafford Sands.

On motion the meeting adjourned.

Confirmed

Ralph G. Collins

A

S. Sands

Secretary.

Exhibit A.5

MINUTES OF GENERAL MEETING
4th May, 1938

In the Supreme
Court of the
Bahama Islands
Common Law Side

MINUTES OF THE ANNUAL GENERAL MEETING OF
THE MONTAGU PARK RACING ASSOCIATION
LIMITED, HELD AT No. 327, BAY STREET, IN
THE CITY OF NASSAU AT 4 p.m. ON WEDNESDAY
A THE 4th DAY OF MAY, 1938.

Exhibit A.5
Minutes of
General Meeting,
4th May, 1938.

Present: The Honourable Ralph G. Collins, Messrs.
George Murphy, Stafford Sands.

The President, The Honourable Ralph G. Collins
took the Chair. Mr. Harry P. Sands, the Attorney
for the Company, was also present. All the share-
holders present waived notice of the meeting as
testified by their signing these minutes.

Minutes of previous meeting were read and
confirmed.

B Mr. Murphy on behalf of the Directors reported
that no matters of unusual importance had trans-
pired during the past year.

On Motion it was resolved that 99 fully paid
shares of the Company be issued to The Honourable
Ralph G. Collins in consideration of One thousand
pounds paid by him to the Company account upon the
incorporation of the Company.

C On Motion it was resolved that 196 fully paid
shares of the Company be issued to Mr. George
Murphy in consideration of advances made by him
to the Company.

The President instructed the Secretary, Mr.
Stafford Sands to cause the shares to the incor-
porators of the Company and the above mentioned
shares to Mr. Collins and to Mr. Murphy to be
issued accordingly.

D On Motion it was unanimously resolved that
Messrs. George Murphy, John Burnside, Henry Newell
Kelly be elected Directors of the Company for the
ensuing year.

In the Supreme Court of the Bahama Islands Common Law Side The President instructed the Secretary to file with The Registrar General the necessary annual statements of the Company.

Exhibit A.5 Minutes of General Meeting, 4th May, 1938. (Contd.) The President also instructed the Secretary to keep a register of shareholders and of Directors of the Company and a register of mortgages (if any) by the Company.

There being no further business on motion the meeting adjourned.

A

Confirmed and Approved:

Ralph G. Collins

President.

George Murphy. S. Sands. Gertrude Anne Murphy.

Exhibit A.5
MINUTES OF GENERAL MEETING
17th December, 1940

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of
General Meeting,
17th December,
1940.

A MINUTES OF THE ANNUAL GENERAL MEETING OF
THE MONTAGU PARK RACING ASSOCIATION,
LIMITED, HELD AT THE OFFICE OF MR. GEORGE
MURPHY, BAY STREET, IN THE CITY OF NASSAU
ON TUESDAY THE 17th DAY OF DECEMBER, 1940
AT 1 p.m.

Present: Messrs. H. Newell Kelly, George Murphy,
John Burnside and Stafford Sands.

The President, Mr. Kelly, took the Chair.

Mr. Harry P. Sands, the Attorney for the
Company was also present. All the shareholders
present waived notice of the meeting as testified
by their signing these minutes.

B Minutes of the previous meeting were read and
confirmed.

Mr. Murphy on behalf of the Directors reported
that no matters of unusual importance had trans-
pired during the past year.

On Motion it was unanimously resolved that
Messrs. George Murphy, John Burnside and Henry
Newell Kelly be elected Directors of the Company
for the ensuing year.

C The President instructed the Secretary to
file with the Registrar General the annual state-
ment of the Company.

There being no further business on motion the
meeting adjourned.

Confirmed and Approved:

H. Newell Kelly
President

John Burnside. George Murphy. S. Sands.

Gertrude A. Murphy.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5

MINUTES OF GENERAL MEETING
6th October, 1942

Exhibit A.5
Minutes of
General Meet-
ing,
6th October,
1942.

MEETING OF THE MONTAGU PARK RACING ASSOCIA-
TION, LIMITED, HELD AT THE OFFICE OF MR.
GEORGE MURPHY, BAY STREET, IN THE CITY OF
NASSAU ON TUESDAY, THE 6th DAY OF OCTOBER,
1942, AT 12.30 p.m.

A

Present: Messrs. H. Newell Kelly, George Murphy,
John Burnside and Stafford Sands by proxy.

The President, Mr. Kelly, took the Chair.

Mr. Harry P. Sands, the Attorney for the Company
was also present. A proxy by Mr. Stafford Sands in
favour of Mr. George Murphy was presented and
accepted. All the shareholders present waived notice
of the meeting as testified by their signing these
minutes.

Minutes of the previous meeting were read and
confirmed.

B

Mr. Murphy on behalf of the Directors reported
that no matter of unusual importance had trans-
pired during the past year and that it had been
decided not to operate Montagu Park Track during
the past season.

On Motion it was unanimously resolved that
Messrs. George Murphy, John Burnside and Henry Newell
Kelly be elected directors of the Company for the
ensuing year.

C

The President instructed the Secretary to file
with the Registrar General the annual statement of
the Company.

There being no further business on motion the
meeting adjourned.

Confirmed and Approved: George Murphy.
G.A. Murphy.

H. Newell Kelly
President.

Confirmed: J.H. Bethell. John Burnside.
4/2/48

D

Exhibit A.4MINUTES OF EXTRAORDINARY GENERAL MEETING
4th February 1948In the Supreme
Court of the
Bahama Islands
Common Law SideTHE MONTAGU PARK RACING ASSOCIATION,
LIMITEDExhibit A.4
Minutes of
Extraordinary
General Meeting,
4th February,
1948.

A At an Extraordinary General Meeting of the members of the above-named Company held at Building No. 309, Bay Street, Nassau, Bahamas on the 4th day of February, A.D. 1948 at 11.00 o'clock in the forenoon pursuant to a written notice thereof posted by Registered Mail to each of the members of the Company at the addresses appearing on the Register of the Members of the Company and advertised in the Official Newspaper of the Colony on the 14th, 17th and 21st January, A.D. 1948.

B The following members were present in person or by proxy, namely:- Charles Walter Frederick Bethell, by his proxy Philip George Drover Bethell, John Herbert Bethell, Geoffrey Allardyce Bethell, and Philip George Drover Bethell.

In the absence of Mr. Charles W.F. Bethell the President of the Company, on motion, Mr. John Herbert Bethell the Vice-President of the Company took the Chair.

C Mr. Philip George Drover Bethell, the Secretary of the Company, presented to the meeting copies of the official newspaper of the Colony, The Nassau Guardian, for the 14th, 17th and 21st January, A.D. 1948 showing the advertisement of the notices calling this meeting, and on motion duly made and seconded, it was ordered that such advertisement be cut out of each issue of the official newspaper and be attached to these minutes. The Secretary also presented to the meeting five certificates of the posting by
D Registered Mail of the notice of this meeting to the members, together with a copy of the said notice and four advices of delivery received back from the Post Office, and on motion duly made and seconded, these were also ordered to be attached to these minutes.

In the Supreme Court of the Bahama Islands Common Law Side Mr. Philip G.D. Bethell presented the attached proxy from Mr. Charles W.F. Bethell dated the 20th day of January, A.D. 1948 authorising him to represent Mr. Charles W.F. Bethell at this meeting.

Exhibit A.4
Minutes of
Extraordinary
General Meet-
ing, 4th
February,
1948.
(Contd.)

The minutes of the Annual General Meeting of the Company held on the 6th day of October, A.D. 1942 were read and confirmed.

The Chairman informed the meeting that the Company when incorporated had never adopted any Articles of Association and he recommended to the meeting that the Company do now adopt Articles of Association with a view to the more efficient management of the affairs of the Company. The Chairman also presented to the meeting a draft form of Articles of Association for consideration.

A

On motion duly made and seconded, the following Special Resolution was unanimously agreed to, namely:-

RESOLVED that the draft Articles of Association submitted to this meeting (a copy of which is attached to these minutes) be adopted as the Articles of Association of the Company.

B

On motion duly made and seconded, it was resolved that another Extraordinary General Meeting of the Company be held on the 19th day of February, A.D. 1948 for the purpose of considering, and if thought fit, of confirming the Resolution passed at this meeting as a Special Resolution of the Company.

C

On motion, the meeting adjourned.

J.H. Bethell.
Chairman

Philip G.D. Bethell.
Secretary

Charles W.F. Bethell by his proxy Philip G.D. Bethell.

? Bethell.

Confirmed: Geo. A. Bethell.
19/2/48.

ADMINISTRATION DES POSTES
 POSTAL ADMINISTRATION
 des ILES BAHAMA
 of BAHAMAS

(A remplir par le bureau d'origine)
 (To be filled in by the office of origin)
 Envoi recommande (.....) 1)

A Registered article
 Lettre - Boite - Colis
 Letter - Box - Parcel
 avec valeur declaree de
 insured for
 enregistre au bureau de poste de
 registered at the office of

 le: 15/1/48 sous le No. 5-305
 on: under No.
 expedie par: M.....
 sent by: M.....
 B et adresse a: Geoffrey Allardyce Bethell
 and addressed to: M.....
 a: Nassau
 at:

1) Indiquer dans la parenthese la nature de l'envoi
 Indicate in parenthesis the nature of the article
 (lettre, imprime, etc.)
 (letter, printed paper, etc.)

Timbre du bureau expéditeur
 de l'avis

C AVIS DE RECEPTION Stamp
 ADVICE OF DELIVERY 15/1/48
 (A remplir par l'expéditeur) Bahamas
 (To be filled in by the sender
 with the address to which the
 form should be returned on
 completion)

A:
 To: S.L. Sands
 D Rue et Numero: Nassau
 Street and Number:
 Lieu de destination:
 Place of destination:

.....
 Service (Pays de destination)
 des postes (Country of destination)
 Postal service

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

Exhibit A.4
 Minutes of
 Extraordinary
 General Meet-
 ing, 4th
 February, 1948.
 (Contd.)

In the Supreme Court of the Bahama Islands Common Law Side

ADMINISTRATION DES POSTES
POSTAL ADMINISTRATION
des ILES BAHAMA
of BAHAMAS

Exhibit A.4
Minutes of
Extraordinary
General Meet-
ing, 4th
February, 1948.
(Contd.)

(A remplir par le bureau d'origine)
(To be filled in by the office of origin)
Envoi recommande (... ..) 1)
Registered article
Lettre - Boite - Colis
Letter - Box - Parcel
avec valeur declaree de
insured for
enregistre au bureau de poste de
registered at the office of
le: 15/1/48 sous le No. 5307A
on: under No.
expedie par: M
sent by: M
et adresse a: Philip George Drover Bethell
and addressed to: M
a: Nassau
at:

A
B

1) Indiquer dans la parenthese la nature de l'envoi
Indicate in parenthesis the nature of the article
(letter, imprime, etc.)
(letter, printed paper, etc.)

Timbre du bureau expéditeur
de l'avis

AVIS DE RECEPTION Stamp
ADVICE OF DELIVERY 15/1/48
(A remplir par l'expediteur) Bahamas
(To be filled in by the sender
with the address to which the
form should be returned on
completion)
A:
To: S.L. Sands
Rue et Numero: Chambers
Street and Number:
Lieu de destination:
Place of destination:

C
D

Service (Pays de destination)
des postes (Country or destination)
Postal service

Regn. No. 5303 CERTIFICATE OF POSTING OF A
REGISTERED POSTAL PACKET

In the Supreme
Court of the
Bahama Islands
Common Law Side

A Postal Packet addressed as under, upon which a Fee of Three Pence has been paid, in addition to the Postage (of..... s..... d) has been registered and (for Parcels only) posted here this day.
See also OVERLEAF.

Exhibit A.4
Minutes of
Extraordinary
General Meet-
ing, 4th
February, 1948.
(Contd.)

A Ap. John Herbert Bethell Nassau. Date Stamp 14 Jan. 48 Nassau, Bahamas

Accepting
Officer's)
Initials) ?

Regn. No. 5304 CERTIFICATE OF POSTING OF A
REGISTERED POSTAL PACKET

A Postal Packet addressed as under, upon which a Fee of Three Pence has been paid, in addition to the Postage (of..... s..... d) has been registered and (for Parcels only) posted here this day.
See also OVERLEAF.

B Ap. Robert Emmet Murphy Nassau, N.P. Date Stamp 14 Jan. 48 Nassau, Bahamas

Accepting
Officer's)
Initials) ?

Regn. No. 5305 CERTIFICATE OF POSTING OF A
REGISTERED POSTAL PACKET

A Postal Packet addressed as under, upon which a Fee of Three Pence has been paid, in addition to the Postage (of..... s..... d) has been registered and (for Parcels only) posted here this day.
See also OVERLEAF.

C Ap. Geoffrey Allardyce Bethell Nassau. Date Stamp 14 Jan. 48 Nassau, Bahamas

D Accepting
Officer's)
Initials) ?

In the Supreme Regn. No. 5306 CERTIFICATE OF POSTING OF A REGISTERED
Court of the POSTAL PACKET
Bahama Islands

Common Law Side A Postal Packet addressed as under, upon which a Fee of
Three Pence has been paid, in addition to the Postage
Exhibit A.4 (of..... s..... d) has been registered and posted here
Minutes of (for Parcels only) this day.
Extraordinary See also OVERLEAF.
General Meet-
ing, 4th

February, 1948. Ap. Charles Walter Frederick Bethell 14 Jan. 48 A
(Contd.) Nassau. Nassau,
Bahamas

Accepting)
Officer's) ?
Initials)

Regn. No. 5307A CERTIFICATE OF POSTING OF A REGISTERED
POSTAL PACKET

A Postal Packet addressed as under, upon which a Fee of
Three Pence has been paid, in addition to the Postage
(of..... s..... d) has been registered and posted here B
(for Parcels only) this day.
See also OVERLEAF.

Philip Geo. Drover Bethell 14 Jan. 48
Ap. Nassau. Nassau,
Bahamas

Accepting)
Officer's) ?
Initials)

Exhibit A.4MINUTES OF EXTRAORDINARY GENERAL MEETING
19th February 1948In the Supreme
Court of the
Bahama Islands
Common Law SideTHE MONTAGU PARK RACING ASSOCIATION,
LIMITEDExhibit A.4
Minutes of
Extraordinary
General Meet-
ing, 19th
February, 1948.

A An Extraordinary General Meeting of the members of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 19th day of February, A.D. 1948 at 11.00 o'clock in the forenoon pursuant to a written notice thereof posted by Registered Mail to each of the members of the Company at the addresses appearing on the Register of the Members of the Company and advertised in the Official Newspaper of the Colony on the 14th, 17th and 21st January, A.D. 1948.

B The following members were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Geoffrey Allardyce Bethall, and Philip George Drover Bethell.

On Motion, Mr. Charles W.F. Bethell, the President of the Company took the Chair.

C The minutes of the Extraordinary General Meeting of the Company held on the 4th day of February, A.D. 1948 were read, and on motion duly made and seconded, the Special Resolution contained in those minutes reading as follows, namely:-

"RESOLVED that the draft Articles of Association submitted to this meeting (a copy of which is attached to these minutes) be adopted as the Articles of Association of the Company."

was (together with the rest of the minutes of the said Extraordinary General Meeting) unanimously approved, ratified and confirmed.

D On motion duly made and seconded, the Secretary was instructed to record a copy of this Special Resolution with the Registrar General.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion, the meeting adjourned.

C.W.F. Bethell

Chairman.

Exhibit A.4
Minutes of
Extraordinary
General Meet-
ing, 19th
February,
1948.
(Contd.)

Philip G.D. Bethell.

Secretary.

G.A. Bethell.

J.H. Bethell.

Confirmed:
C.W.F. Bethell.
28th Dec. 48.

A

Exhibit A.4MINUTES OF GENERAL MEETING
28th December 1948THE MONTAGU PARK RACING ASSOCIATION,
LIMITEDIn the Supreme
Court of the
Bahama Islands
Common Law SideExhibit A.4
Minutes of
General Meet-
ing, 28th
December, 1948.

A The Annual General Meeting of the members of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 28th day of December, A.D. 1948 at 11.00 o'clock in the forenoon.

The following members were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Geoffrey Allardyce Bethell, and Philip George Drover Bethell.

On motion, Mr. Charles W.F. Bethell, the President of the Company took the Chair.

B The minutes of the Extraordinary General Meeting of the Company held on the 19th day of February, A.D. 1948 were read and confirmed.

C The Chairman presented the attached balance sheet of the Company made up to the 30th day of June, A.D. 1948, and the attached statements of income and expenditure of the Company for the thirteen month period ending on the 30th day of June, A.D. 1948 and the four month period ending on the 30th day of June, A.D. 1948, all duly audited by Mr. Paul Gignac, and on motion duly made and seconded, the same were unanimously approved, ratified and confirmed.

The Chairman also presented the attached statement showing the General Ledger of the Company as of the 30th day of November A.D. 1948, prepared and certified by Mr. Paul Gignac in accordance with the certificate thereon, and on motion duly made and seconded, the same was unanimously approved, ratified and confirmed.

D On motion duly made and seconded, Messrs. Charles Walter Frederick Bethell, John Herbert Bethell, Geoffrey Allardyce Bethell and Philip George Drover Bethell were elected Directors of the Company for the ensuing year.

In the Supreme Court of the Bahama Islands
Common Law Side

On motion duly made and seconded, Mr. Charles Walter Frederick Bethell was elected President of the Company for the ensuing year.

Exhibit A.4
Minutes of General Meeting, 28th December, 1948.
(Contd.)

On motion duly made and seconded, Mr. John Herbert Bethell was elected Vice-President of the Company for the ensuing year.

On motion duly made and seconded, Mr. Geoffrey Allardyce Bethell was elected Treasurer of the Company for the ensuing year.

A

On motion duly made and seconded, Mr. Philip George Drover Bethell was elected Secretary of the Company for the ensuing year.

On motion duly made and seconded, the Secretary was instructed to notify the Manager of the Nassau Branch of The Royal Bank of Canada of the re-election of Officers and Directors of the Company.

B

On motion duly made and seconded, the Secretary was instructed to prepare and forward to the Registrar General the annual statement required by Section 22 of The Companies Act and to fulfill all other statutory requirements.

On motion, the meeting adjourned.

W.F. Bethell
Chairman.

Philip G.D. Bethell
Secretary.

Confirmed:
W.F. Bethell
5th April 50.

C

J.H. Bethell.

G.A. Bethell.

Exhibit A.3

MINUTES OF GENERAL MEETING
29th March 1950

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.3
Minutes of
General Meet-
ing, 29th
March, 1950.

A The Annual General Meeting of the members of
the above-named Company was held at Building No.
309, Bay Street, Nassau, Bahamas on the 29th day
of March, A.D. 1950 at 11.00 o'clock in the
forenoon pursuant to a written notice thereof
posted by registered mail to each of the members
of the Company on the 16th day of March, A.D.
1950 at the addresses appearing on the Register
of the Members of the Company and advertised in
the official newspaper of the Colony on the 16th,
18th and 22nd days of March, A.D. 1950.

B The following members were present, namely:-
Charles Walter Frederick Bethell, John Herbert
Bethell, Kenyon Edward Minton Goode, Dorothy Ann
Black, and Caribbean Investments Limited by their
proxy Stafford Lofthouse Sands.

On motion, Mr. Charles W.F. Bethell, the
President of the Company took the Chair.

C The Chairman informed the meeting that as
the other large shareholder of the Company,
namely Roynas & Co., was not present, in his
opinion it would be advisable to adjourn the
meeting for one week.

On motion duly made and seconded, it was
resolved that the meeting be adjourned until the
5th day of April, A.D. 1950 at 11.00 o'clock in
the forenoon.

C.W.F. Bethell
Chairman.

D Dorothy Black
Secretary.

J.H. Bethell. Kenyon Goode.
Caribbean Investments Limited by their proxy
Stafford Stands.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2

MINUTES OF GENERAL MEETING
5th April 1950

Exhibit A.2
Minutes of
adjourned
General Meet-
ing, 5th
April, 1950.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

The adjourned Annual General Meeting of the members of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 5th day of April, A.D. 1950 at 11.00 o'clock in the forenoon. A

The following members were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Kenyon Edward Minton Goode, Dorothy Ann Black, Floyd Lester Weech, Caribbean Investments Limited, by their proxy Stafford Lofthouse Sands, and Roynas & Co., by their proxy Eugene Dupuch.

On motion, Mr. Charles W.F. Bethell, the President of the Company took the Chair. B

Mr. Stafford Lofthouse Sands presented the attached proxy from Caribbean Investments Limited dated the 29th day of March, A.D. 1950 authorizing him to represent that Company at this meeting.

Mr. Eugene Dupuch presented the attached proxy from Roynas & Co. dated the 5th day of April, A.D. 1950 authorizing him to represent that Partnership at this meeting.

The Secretary presented copies of the notices mailed by registered return receipt mail to the members of the Company on the 16th day of March, A.D. 1950, and on motion duly made and seconded, the said notices were ordered to be filed with the records of the Company. C

The minutes of the Annual General Meeting of the Company held on the 28th day of December, A.D. 1948 were read and confirmed.

The Chairman presented the attached Report of the Directors for the period ending the 31st day of December, A.D. 1949, the said report being dated the 29th day of March A.D. 1950, and on D

motion duly made and seconded, the same was unani-
mously approved and adopted.

In the Supreme
Court of the
Bahama Islands
Common Law Side

A The Chairman presented the Balance Sheet of
the Company as of the 31st day of December, A.D.
1949 and the Profit and Loss Statement of the
Company for the period ending the 31st day of
December, A.D. 1949, both duly audited by Deal and
Deal, and on motion duly made and seconded, the
said Balance Sheet and Profit and Loss Statement
and the appropriations contained and set out
therein were unanimously accepted, approved,
ratified and confirmed.

Exhibit A.2
Minutes of
adjourned
General Meet-
ing, 5th
April, 1950.
(Contd.)

On motion duly made and seconded, Messrs.
Charles Walter Frederick Bethell, Kenyon Edward
Minton Goode and John Herbert Bethell and Mrs.
Dorothy Ann Black were unanimously elected
Directors of the Company for the ensuing year.

B On motion duly made and seconded, Mr.
Charles Walter Frederick Bethell was elected
President of the Company for the ensuing year.

On motion duly made and seconded, Captain
Kenyon Edward Minton Goode was elected Vice-
President of the Company for the ensuing year.

On motion duly made and seconded, Mrs.
Dorothy Ann Black was elected Secretary and
Treasurer of the Company for the ensuing year.

C On motion duly made and seconded, the
Secretary was instructed to notify the Manager
of the Nassau Branch of The Royal Bank of
Canada of the election of Officers and Directors
of the Company.

On motion duly made and seconded, the
Secretary was instructed to prepare and
forward to the Registrar General the annual
statement required by Section 22 of The
Companies Act and to fulfill all other statutory
requirements.

On motion, the meeting adjourned.

D C.W.F. Bethell
Chairman.
Dorothy Black
Secretary. J.H. Bethell. Kenyon Goode.
Roynas & Co. by their proxy E. Dupuch.
F.L. Weech.
Caribbean Investments Limited by their proxy
Stafford Sands.

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION, LIMITED

REPORT OF DIRECTORS

Exhibit A.2
Minutes of
adjourned
General Meet-
ing, 5th
April, 1950.
(Contd.)

The Directors beg to submit herewith the Balance Sheet and Accounts of the Company made up to the 31st day of December, A.D. 1949. This Balance Sheet and the Accounts accompanying it have been approved by the Directors who recommend all appropriations contained therein and also recommend that the same be accepted and approved by the Company.

A

In the opinion of the Directors, while the net profits are not as large as had been hoped for the position of the Company cannot be considered unsatisfactory.

DATED the 29th day of March, A.D. 1950.

BY ORDER OF THE BOARD

C.W.F. Bethell

President.

B

Exhibit B.2

MINUTES OF GENERAL MEETING
6th February 1953

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

Exhibit B.2
Minutes of
General Meet-
ing, 6th
February,
1953.

A The Annual General Meeting of the members of the above named Company was held at the Registered Office of the Company, Building No. 309, Bay Street, Nassau, Bahamas, on the 6th day of February, A.D. 1953 at 10.30 o'clock in the forenoon.

The following members were present, namely:- Alexis Nihon, Alice Nihon, Alden Lockhart Watt, and Leonard Dudley Roberts.

On motion, Mr. Alexis Nihon, the President of the Company took the Chair.

B The minutes of the Annual General Meeting of the Company held on the 29th day of March, A.D. 1950, and the minutes of the adjourned Annual General Meeting of the members of the Company held on the 5th day of April, A.D. 1950 were read and confirmed.

The Chairman presented the Report of the Directors, and on motion duly made and seconded the same were unanimously approved and adopted.

C The Chairman presented the Balance Sheet of the Company made up to the 31st December, A.D. 1952, and the Profit and Loss statement of the Company for the period ending the 31st December, A.D. 1952, both duly audited by Deal and Deal, and on motion duly made and seconded, the said Balance Sheet and Profit and Loss Statement and the appropriations contained and set out therein were unanimously accepted, approved, ratified and confirmed.

D On motion duly made and seconded, Mr. Alexis Nihon, Mrs. Alice Nihon, Mr. Alden Lockhart Watt, and Mr. Leonard Dudley Roberts were unanimously elected Directors of the Company for the ensuing year.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion duly made and seconded, Mr. Alexis Nihon was elected President and Treasurer of the Company for the ensuing year.

Exhibit B.2
Minutes of
General Meet-
ing, 6th
February,
1953.
(Contd.)

On motion duly made and seconded, Mrs. Alice Nihon was elected Vice-President and Secretary of the Company for the ensuing year.

On motion duly made and seconded, the Secretary was instructed to notify the Manager of the Nassau Branch of The Royal Bank of Canada of the election of Officers and Directors of the Company. A

On motion duly made and seconded, the Secretary was instructed to prepare and forward to the Registrar General the annual statement required by Section 22 of The Companies Act and to fulfil all other statutory requirements.

On motion, the meeting adjourned.

(written in ink) Confirmed:

(Sd.) A. Nihon
Chairman.

B

(written in ink) 6th May, 1953.

(Sd.) Alice Nihon
Secretary.

Exhibit B.2
MINUTES OF GENERAL MEETING
6th May 1953

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

Exhibit B.2
Minutes of
Extraordinary
General Meet-
ing, 6th May,
1953.

A An Extraordinary General Meeting of the share-
holders of the Montagu Park Racing Association,
Limited was held at No. 324 Bay Street, Nassau,
Bahamas on the 6th day of May, A.D. 1953 at 2.30
o'clock in the afternoon.

The undermentioned shareholders were present,
namely:- Alexis Nihon, Raymond Wilson Sawyer,
Alice Nihon, Roderick Newton Higgs and Ivarene
Gladys Sawyer.

On motion Mr. Alexis Nihon, the President of
the Company, took the chair.

B The minutes of the Annual General Meeting
of the shareholders of the Company, held on the
6th day of February, A.D. 1953 were read and
confirmed.

The Chairman presented a resignation (hereto
attached) from himself as President and Treasurer
of the Company, the same to take effect from
this date.

C The Chairman also presented a resignation
(hereto attached) from Alice Nihon as Vice-
President and Secretary of the Company, the same
to take effect from this date.

On motion duly made and seconded Dr. Raymond
W. Sawyer was elected President of the Company
until the next Annual General Meeting of the
shareholders of the Company.

On motion duly made and seconded Mrs.
Ivarene G. Sawyer was elected Vice-President of
the Company until the next Annual General Meeting
of the shareholders of the Company.

D On motion duly made and seconded Dr. Raymond
W. Sawyer was elected Treasurer of the Company

In the Supreme Court of the Bahama Islands until the next Annual General Meeting of the shareholders of the Company.

Common Law Side

On motion duly made and seconded Mr. R. Newton Higgs was elected Secretary of the Company until the next Annual General Meeting of the shareholders of the Company.

Exhibit B.2
Minutes of
Extraordinary
General Meeting,
6th May,
1953.

(Contd.)

On motion duly made and seconded the transfer of the following shares of the capital stock of the Company was approved:

- 1 share from Alexis Nihon to Ivarene Gladys Sawyer
- 1 share from Alden Lockhart Watt to Raymond Wilson Sawyer
- 1 share from Leonard Dudley Roberts to Roderick Newton Higgs.

On motion duly made and seconded it was decided that the registered office of the Company should be removed from No. 309 Bay Street to No. 324 situate on the South Side of Bay Street in the City of Nassau.

The Chairman then informed the meeting that as Messrs. Watt and Roberts had transferred their shares in the Company they were no longer qualified to be Directors of the Company under Article 53 of the Articles of Association of the Company, and on motion duly made and seconded Messrs. Raymond Wilson Sawyer, Alexis Nihon, Roderick Newton Higgs and Mrs. Alice Nihon and Mrs. Ivarene Gladys Sawyer were elected the Directors of the Company until the next Annual General Meeting of the shareholders of the Company.

On motion duly made and seconded the following Resolution was agreed to:-

Resolved that all previous Resolutions relating to the banking accounts of the Company are hereby revoked, cancelled and annulled and the following Resolutions substituted therefor:

(a) RESOLVED:

- 1. That The Royal Bank of Canada is hereby appointed the Banker of the Company, and

that a Current Account be opened at the said Bank.

In the Supreme Court of the Bahama Islands Common Law Side

A 2. That the President of the Company, Raymond Wilson Sawyer, be and he is hereby authorized on behalf of the Company to make, sign, draw, accept or endorse all or any cheques, promissory notes, drafts, acceptances, bills of exchange and other instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits, (including overdrafts) upon the credit of the Company in any manner whatsoever.

Exhibit B.2
Minutes of Extraordinary General Meeting, 6th May, 1953.
(Contd.)

B 3. That Raymond W. Sawyer, Ivarene G. Sawyer and R. Newton Higgs, or any one of them may alone receive cheques and paid vouchers and verify the Company's account or accounts with the said Bank; and may also endorse notes and drafts "for collection" on account of the Company through its bankers and endorse notes and cheques "for deposit" with the Company's bankers to the credit of the Company.

C 4. That the Bank be furnished with a list of the names of the Directors and Officers of the Company, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such Directors and Officers.

5. That this Resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the branch of the said Bank at which the account of the Company is kept.

(b) RESOLVED:

D 1. That a Special Account be opened at the said Bank.

2. That Alexis Nihon be and he is hereby authorized on behalf of the Company to

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.2
Minutes of
Extraordinary
General Meet-
ing, 6th May,
1953.

(Contd.)

make, sign, draw, accept or endorse all
or any cheques on the said Special
Account.

3. That Alexis Nihon may alone receive
cheques and paid vouchers and verify the
Company's said Special Account with the
said Bank.

On motion the meeting adjourned.

A

(written in ink) Confirmed:

Chairman.

(Signed) RAYMOND W. SAWYER

(written in ink) 6th Sept. 1954.

(Signed) R. NEWTON HIGGS

Secretary.

Exhibit B.2

MINUTES OF GENERAL MEETING
6th September 1954

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.2
Minutes of
General Meet-
ing, 6th
September,
1954.

A The Annual General Meeting of the shareholders of The Montagu Park Racing Association, Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 6th day of September, A.D. 1954 at 3.00 o'clock in the afternoon.

The undermentioned shareholders were present, namely:- Raymond Wilson Sawyer, Ivarene Gladys Sawyer and Roderick Newton Higgs.

On motion Dr. Raymond W. Sawyer, the President of the Company, took the Chair.

B The Secretary informed the meeting that notices of this meeting had been mailed to Alexis Nihon and Alice Nihon on the 20th August, 1954.

The minutes of the Extraordinary General Meeting of the shareholders of the Company, held on the 6th day of May, 1953, were read and confirmed.

On motion duly made and seconded Dr. Raymond W. Sawyer was elected President of the Company until the next Annual General Meeting of the shareholders of the Company.

C On motion duly made and seconded Mrs. Ivarene G. Sawyer was elected Vice-President of the Company until the next Annual General Meeting of the shareholders of the Company.

On motion duly made and seconded Dr. Raymond W. Sawyer was elected Treasurer of the Company until the next Annual General Meeting of the shareholders of the Company.

D On motion duly made and seconded Mr. R. Newton Higgs was elected Secretary of the Company until the next Annual General Meeting of the shareholders of the Company.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion duly made and seconded Dr. Raymond
W. Sawyer was elected Managing Director of the
Company at a salary of £5,000 per annum.

Exhibit B.2
Minutes of
General Meet-
ing, 6th
September,
1954.
(Contd.)

On motion duly made and seconded Messrs. Alexis
Nihon, Roderick Newton Higgs and Mrs. Alice Nihon
and Mrs. Ivarene Gladys Sawyer were elected the
Directors of the Company until the next Annual
General Meeting of the shareholders of the Company.

A

On motion duly made and seconded the execution
of a demand promissory note by the Company on the
27th May, 1954 in favour of Dr. Raymond W. Sawyer
for £10,000 with interest at 5% was approved,
ratified and confirmed.

The Treasurer then presented the accounts and
balance sheet of the Company as at 30th April, 1954,
showing a net profit of £15,018.17. 9., and on
motion the said accounts and balance sheet were
approved.

B

On motion duly made and seconded the follow-
ing Resolution was agreed to:-

RESOLVED that each and all of the acts,
transactions and proceedings of the Directors
and Officers of the Company to this date be
and they are hereby sanctioned, approved,
ratified and confirmed.

The Secretary was requested to prepare and
forward to the Registrar General the Annual Return
required by Section 22 of The Companies Act.

C

On motion the meeting adjourned.

(written in ink) Confirmed:

(Signed) RAYMOND W. SAWYER
Chairman.

(written in ink) 21/11/55.

(Signed) R. NEWTON HIGGS
Secretary.

Exhibit B.2
MINUTES OF GENERAL MEETING
21st November 1955

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.2
Minutes of
General Meet-
ing, 21st
November,
1955.

A The Annual General Meeting of the share-
holders of The Montagu Park Racing Association,
Limited was held at the Registered Office of the
Company, No. 324 Bay Street, Nassau, Bahamas on
the 21st day of November, A.D. 1955, at 3.00
o'clock in the afternoon.

The undermentioned shareholders were present,
namely:- Raymond Wilson Sawyer, Ivarene Gladys
Sawyer and Roderick Newton Higgs.

On motion Dr. Raymond W. Sawyer, the Presi-
dent of the Company, took the Chair.

B Mr. Alexis Nihon and Mrs. Alice Nihon, the
other shareholders of the Company, were absent
from the Colony and therefore unable to attend
the meeting.

The minutes of the Annual General Meeting of
the shareholders of the Company, held on the 6th
day of September, 1954, were read and confirmed.

C On motion duly made and seconded Dr. Raymond
W. Sawyer was elected President of the Company
until the next Annual General Meeting of the
shareholders of the Company.

On motion duly made and seconded Mrs.
Ivarene G. Sawyer was elected Vice-President of
the Company until the next Annual General Meeting
of the shareholders of the Company.

On motion duly made and seconded Dr. Raymond
W. Sawyer was elected Treasurer of the Company
until the next Annual General Meeting of the
shareholders of the Company.

D On motion duly made and seconded Mr. R.
Newton Higgs was elected Secretary of the

In the Supreme Court of the Bahama Islands
Common Law Side

Company until the next Annual General Meeting of the shareholders of the Company.
 On motion duly made and seconded Dr. Raymond W. Sawyer was elected Managing Director of the Company at a salary of £5,000 per annum.

Exhibit B.2

Minutes of
 General Meeting, 21st
 November,
 1955.

(Contd.)

On motion duly made and seconded Messrs. Alexis Nihon, Roderick Newton Higgs and Mrs. Alice Nihon and Mrs. Ivarene Gladys Sawyer were elected the Directors of the Company until the next Annual General Meeting of the shareholders of the Company.

A

On motion duly made and seconded it was agreed that Dr. Raymond W. Sawyer, the Managing Director of the Company, should exercise the Company's franchise in respect of the property leased by the Company from the Bahamas Government known as "Hobby Horse Hall", and situate in the Western District of the Island of New Providence.

B

The Treasurer then presented the accounts and balance sheet of the Company as at 30th April, 1955, showing a net profit of (written in ink) £12,175.10. 7. and on motion the said accounts and balance sheet were approved.

On motion duly made and seconded the following Resolution was agreed to:-

RESOLVED that each and all of the acts, transactions and proceedings of the Directors and Officers of the Company to this date be and they are hereby sanctioned, approved, ratified and confirmed.

C

The Secretary was requested to prepare and forward to the Registrar General the Annual Return required by Section 22 of The Companies Act.

On motion the meeting adjourned.

(Written in ink) Confirmed:

(Signed) RAYMOND W. SAWYER
 Chairman.

(Written in ink) 29/2/56.

D

(Signed) R. NEWTON HIGGS
 Secretary.

Exhibit B.2MINUTES OF GENERAL MEETING
29th February 1956THE MONTAGU PARK RACING ASSOCIATION,
LIMITEDIn the Supreme
Court of the
Bahama Islands
Common Law SideExhibit B.2
Minutes of
Extraordinary
General Meet-
ing, 29th
February,
1956.

A

An Extraordinary General Meeting of the shareholders of The Montagu Park Racing Association, Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 29th day of February, A.D. 1956 at 11.00 o'clock in the forenoon.

All the shareholders were present in person or by proxy, namely:- Raymond Wilson Sawyer, Alexis Nihon, Ivarene Gladys Sawyer, by her proxy Raymond Wilson Sawyer, Alice Nihon, by her proxy Alexis Nihon, Roderick Newton Higgs, by his proxy Godfrey Kenneth Kelly.

B

On motion Dr. Raymond W. Sawyer, the President of the Company, took the Chair.

The minutes of the Annual General Meeting of the shareholders of the Company, held on the 21st day of November, A.D. 1955, were read and confirmed.

In the absence of Mr. R. Newton Higgs, the Secretary of the Company, on motion Mr. G.K. Kelly acted as Secretary of the meeting.

C

The Chairman presented a proxy (hereto attached) from Mrs. Ivarene Gladys Sawyer, dated the 29th day of February, A.D. 1956, authorizing him to represent her at this meeting.

Mr. Alexis Nihon presented a proxy (hereto attached) from Mrs. Alice Nihon, dated the 29th day of February, A.D. 1956, authorizing him to represent her at this meeting.

D

Mr. G.K. Kelly presented a proxy (hereto attached) from Mr. R. Newton Higgs, dated the 24th day of February, A.D. 1956, authorizing him to represent Mr. Higgs at this meeting.

In the Supreme Court of the Bahama Islands Common Law Side On motion of Mr. Alexis Nihon and seconded by Mr. G.K. Kelly the following Resolution was unanimously adopted as a Special Resolution in pursuance of Section 42 of The Companies Act:

Exhibit B.2
Minutes of
Extraordinary
General Meet-
ing, 29th
February,
1956.
(Contd.)

RESOLVED that the Articles of Association of the Company be altered in manner following:-

1. In Article 52 the word "Five" shall be substituted for the word "Seven".
2. In Article 55 the word "Three" shall be substituted for the word "Two".

A

On motion the meeting adjourned.

(written in ink) Confirmed:

(Signed) RAYMOND W. SAWYER
Chairman.

(written in ink) 14th March,
1956.

(Signed) A. NIHON

(Signed) IVARENE G. SAWYER.

B

(Signed) GODFREY K. KELLY
Acting Secretary.

Exhibit B.2

MINUTES OF GENERAL MEETING
14th March 1956

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
 LIMITED

Exhibit B.2
 Minutes of
 Extraordinary
 General Meet-
 ing, 14th
 March, 1956.

A An Extraordinary General Meeting of the shareholders of The Montagu Park Racing Association, Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 14th day of March, A.D. 1956 at 3.15 o'clock in the afternoon.

All the shareholders were present in person or by proxy, namely:- Raymond Wilson Sawyer, Alexis Nihon, Ivarene Gladys Sawyer, by her proxy Raymond Wilson Sawyer, Alice Nihon, by her proxy Alexis Nihon, Roderick Newton Higgs.

B On motion Dr. Raymond W. Sawyer, the President of the Company, took the Chair.

The minutes of the Extraordinary General Meeting of the shareholders of the Company, held on the 29th day of February, A.D. 1956, were read and confirmed.

The Chairman presented a proxy (hereto attached) from Ivarene Gladys Sawyer, dated the 14th day of March, A.D. 1956, authorizing him to represent her at this meeting.

C Mr. Alexis Nihon presented a proxy (hereto attached) from Alice Nihon, dated the 14th day of March, A.D. 1956, authorizing him to represent her at this meeting.

D On motion of Mr. Alexis Nihon, seconded by Mr. R. Newton Higgs, the following Special Resolution of the shareholders of the Company which had been unanimously adopted at the Extraordinary General Meeting of the shareholders of the Company which was held on the 29th day of February, A.D. 1956, was approved, ratified and confirmed:-

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.2
Minutes of
Extraordinary
General Meet-
ing, 14th
March, 1956.
(Contd.)

RESOLVED that the Articles of Association of
the Company be altered in manner following:-

1. In Article 52 the word "Five" shall be
substituted for the word "Seven".
2. In Article 55 the word "Three" shall be
substituted for the word "Two".

On motion the meeting adjourned.

A

(written in ink) Confirmed:

(Signed) RAYMOND W. SAWYER
Chairman.

(written in ink) 12.5.56.

(Signed) R. NEWTON HIGGS
Secretary.

Exhibit B.2

MINUTES OF GENERAL MEETING
12th May 1956

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.2
Minutes of
General Meet-
ing, 12th May,
1956.

A The Annual General Meeting of the share-
holders of The Montagu Park Racing Association,
Limited was held at the Registered Office of the
Company, No. 324 Bay Street, Nassau, Bahamas on
the 12th day of May, A.D. 1956 at 11.30 o'clock
in the forenoon.

All the shareholders were present, namely:-
Raymond Wilson Sawyer, Alexis Nihon, Ivarene
Gladys Sawyer, Alice Nihon, Roderick Newton
Higgs.

B Messrs. Godfrey K. Kelly and Herbert Deal
were also present at the meeting.

On motion Dr. Raymond W. Sawyer, the
President of the Company, took the Chair.

The minutes of the Extraordinary General
Meeting of the shareholders of the Company, held
on the 14th day of March, A.D. 1956, were read
and confirmed.

C On motion duly made and seconded the
transfer of one share of the capital stock of
the Company from Roderick Newton Higgs to
Godfrey Kenneth Kelly was approved, subject to
the approval of the Exchange Control.

On motion duly made and seconded Dr.
Raymond W. Sawyer was elected President of the
Company until the next Annual General Meeting
of the shareholders of the Company.

On motion duly made and seconded Mrs. Alice
Nihon was elected Vice-President of the Company
until the next Annual General Meeting of the
shareholders of the Company.

D On motion duly made and seconded Mr. Alexis
Nihon was elected Secretary and Treasurer of the
Company until the next Annual General Meeting of
the shareholders of the Company.

In the Supreme Court of the Bahama Islands Common Law Side Exhibit B.2

On motion duly made and seconded Dr. Raymond W. Sawyer, Mr. Alexis Nihon, Mrs. Alice Nihon, Mrs. Ivarene Gladys Sawyer and Mr. Godfrey Kenneth Kelly were elected the Directors of the Company until the next Annual General Meeting of the shareholders of the Company.

Minutes of General Meeting, 12th May, 1956.

(Contd.)

The Treasurer then presented the accounts and balance sheet of the Company as at 30th April, 1956, showing a net profit of £15,545.10. 2. and on motion the said accounts and balance sheet were approved.

A

The Chairman informed the meeting that he had made application to the Governor-in-Council for a renewal of the lease of Hobby Horse Hall and that he had received a reply to the effect that this application would not be considered before September, 1956.

On motion duly made and seconded the following Resolution was agreed to:-

B

RESOLVED that each and all of the acts, transactions and proceedings of the Directors and Officers of the Company to this date be and they are hereby sanctioned, approved, ratified and confirmed.

The Secretary was requested to prepare and forward to the Registrar General the Annual Return required by Section 22 of The Companies Act.

On motion the meeting adjourned.

(Written in ink) Confirmed:

C

Chairman.

(Written in ink) 23/1/58

(Signed) R. NEWTON HIGGS
Secretary.

Exhibit A.5
MINUTES OF DIRECTORS' MEETING
4th May 1938

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of
Directors'
Meeting, 4th
May, 1938.

Minutes of a Meeting of the Directors of
the Montagu Park Racing Association,
Limited held at No. 327 Bay Street, in
the City of Nassau on Wednesday the 4th
day of May, 1938.

A

Present:- Messrs. George Murphy, John Burnside,
H. Newell Kelly.

On motion Mr. Murphy took the Chair.

On motion Mr. Kelly acted as Secretary of
the Meeting.

On motion it was resolved that the Royal
Bank of Canada be bankers of the Company. The
Secretary was instructed to send a list of the
Directors to the Bank.

B

On motion the transfer of one share held by
Mr. Murphy to Mr. H.N. Kelly was approved.

On motion the transfer of one share held by
Mr. Collins to Mr. John Burnside was approved.

On motion the transfer of 99 shares held by
Mr. Collins to Mr. Murphy was approved.

On motion the following officers were elected
for the ensuing year:- Mr. Kelly, President, Mr.
Murphy, Vice-President and Treasurer, Mr. Stafford
Sands, Secretary.

C

There being no further business the meeting
adjourned.

Confirmed and approved:

H. NEWELL KELLY
President.

17.12.40.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5

MINUTES OF DIRECTORS' MEETING
17th December, 1940

Exhibit A.5
Minutes of
Directors'
Meeting, 17th
December,
1940.

Meeting of the Directors of the Montague
Park Racing Association, Limited held at
the office of Mr. George Murphy, Bay
Street in the City of Nassau on Tuesday
the 17th day of December, 1940, at 1.15
p.m.

A

Present:- Messrs. George Murphy, John Burnside and
H. Newell Kelly.

On motion Mr. Kelly took the Chair. Mr.
Stafford Sands, the Secretary, was also present.

On motion it was resolved that the Royal Bank
of Canada be bankers of the Company. The Secretary
was instructed to send a list of the Directors to
the Bank.

On motion the following officers were elected
for the ensuing year:- Mr. Kelly, President, Mr.
Murphy, Vice-President and Treasurer, Mr. Stafford
Sands, Secretary.

B

There being no further business the meeting
adjourned.

H. Newell Kelly
President.

John Burnside.

George Murphy.

S. Sands.

C

Exhibit A.5

MINUTES OF DIRECTORS' MEETING
6th October 1942

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of
Directors'
Meeting, 6th
October, 1942.

A Meeting of the Directors of the Montagu
Park Racing Association, Limited held at
the office of Mr. George Murphy, Bay
Street in the City of Nassau on Tuesday
the 6th day of October 1942, at 12.45 p.m.

Present:- Messrs. George Murphy, John Burnside,
H. Newell Kelly.

On motion Mr. Kelly took the Chair.

The minutes of the last meeting were read and
confirmed.

On motion it was resolved that the Royal Bank
of Canada be bankers of the Company. The Secretary
was instructed to send a list of the Directors to
the Bank.

B On motion the following officers were elected
for the ensuing year:- Mr. Kelly, President, Mr.
Murphy, Vice-President and Treasurer, Mr. Stafford
Sands, Secretary.

On motion it was resolved that Montagu Park
Race Track should not be operated during the coming
winter season. The decision not to operate the
Montagu Park Race Track during the past winter
season was approved and confirmed.

C On motion it was resolved that Montagu Park
property be placed at the disposal of the proper
authorities for the duration of the war on such
terms as Mr. Murphy may decide and that Mr. Murphy
be given full authority to make any arrange-
ments on behalf of the Company with relation to
Montagu Park property which he may think fit.

On motion it was resolved that the Articles
of Association of the Company which had been
circulated be approved and signed by the Share-
holders of the Company.

In the Supreme Court of the Bahama Islands Common Law Side There being no further business the meeting adjourned.

Confirmed and approved:

Exhibit A.5
Minutes of
Directors'
Meeting, 6th
October, 1942.
(Contd.)

H. Newell Kelly
President.

George Murphy.

John Burnside.

A

(Illegible)

H. Newell Kelly.
9.4.46.

Exhibit A.5

MINUTES OF DIRECTORS' MEETING
9th April 1946

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.5
Minutes of
Directors'
Meeting, 9th
April, 1946.

A A meeting of the Directors of The Montagu Park Racing Association, Limited was held at Building No. 327, Bay Street, Nassau, Bahamas, on the 9th day of April, A.D. 1946 at 11.00 o'clock in the forenoon.

All of the Directors were present, namely:- Henry Newell Kelly, George Murphy, and John Burnside.

Mr. Stafford Sands the Secretary of the Company was also present.

On motion, Mr. Henry Newell Kelly, the President of the Company took the Chair.

B The minutes of the meeting of the Directors held on the 6th day of October, A.D. 1942 were read and confirmed.

The Chairman informed the meeting that he had negotiated a renewal of the lease held by the Company on the property known as "Hobby Horse Hall" or "Montagu Park Race Track" for a further period of fifteen years from the 24th day of November, A.D. 1943 at the rental of Four Hundred Pounds per annum.

C On motion duly made and seconded, it was resolved that the Company do lease the premises known as "Hobby Horse Hall" or "Montagu Park Race Track" from the Bahamas Government for the term of Fifteen years from the 24th day of November, A.D. 1943 at the annual rental of Four Hundred Pounds and it was resolved further that the said lease be signed and sealed on behalf of the Company by the Vice-President and the Secretary of the Company in the presence of a competent witness, and thereupon
D the said lease was duly signed and sealed.

The Secretary informed the meeting that one share in the Company, numbered 1, now standing in

In the Supreme Court of the Bahama Islands Common Law Side the name of Mr. Henry Newell Kelly in the Register of the Company had been transferred by Mr. Kelly to Mr. Charles Walter Frederick Bethell.

Exhibit A.5
Minutes of Directors' Meeting, 9th April, 1946.
(Contd.)

On motion duly made and seconded, the transfer of one share in the Company, numbered 1, from Mr. Henry Newell Kelly to Mr. Charles Walter Frederick Bethell was approved, and thereupon a new certificate for this share was issued to Mr. Bethell in lieu of certificate No. 1 which was cancelled.

A

The Chairman presented his resignation as President and a Director of the Company to take effect at the close of the present meeting.

On motion duly made and seconded, the resignation of Mr. Henry Newell Kelly as President and a Director of the Company was accepted to take effect as and from the close of the present meeting and Mr. Charles Walter Frederick Bethell was elected President and a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. Kelly.

B

The Secretary informed the meeting that one share in the Company, numbered 2, now standing in the name of Mrs. Gertrude Anna Murphy in the Register of the Company had been transferred by Mrs. Murphy to Mr. Philip George Drover Bethell.

On motion duly made and seconded, the transfer of one share in the Company, numbered 2, from Mrs. Gertrude Anna Murphy to Mr. Philip George Drover Bethell was approved, and thereupon a new certificate for this share was issued to Mr. Bethell in lieu of certificate No. 2 which was cancelled.

C

The Secretary informed the meeting that one share in the Company, numbered 4, now standing in the name of Mr. John Burnside in the Register of the Company had been transferred by Mr. Burnside to Mr. Geoffrey Allardyce Bethell.

On motion duly made and seconded, the transfer of one share in the Company, numbered 4, from Mr. John Burnside to Mr. Geoffrey Allardyce Bethell was approved, and thereupon a new certificate for this share was issued to Mr. Bethell in lieu of certificate No. 4 which was cancelled.

D

The Secretary informed the meeting that one share in the Company, numbered 5, now standing in the name of Mr. Stafford Sands in the Register of the Company had been transferred by Mr. Sands to Mr. John Herbert Bethell.

In the Supreme Court of the Bahama Islands
Common Law Side

A On motion duly made and seconded, the transfer of one share in the Company, numbered 5, from Mr. Stafford Sands to Mr. John Herbert Bethell was approved, and thereupon a new certificate for this share was issued to Mr. Bethell in lieu of certificate No. 5 which was cancelled.

Exhibit A.5
Minutes of Directors' Meeting, 9th April, 1946.
(Contd.)

B The Secretary informed the meeting that share certificate No. 6 for Ninety-nine shares in the Company, numbered 6 to 104 inclusive and share certificate No. 7 for One Hundred and Ninety-six shares in the Company, numbered 105 to 300 inclusive both now standing in the name of Mr. George Murphy in the Register of the Company had been transferred by Mr. Murphy to Mr. Charles Walter Frederick Bethell.

C On motion duly made and seconded, the transfer of Ninety-nine shares in the Company, numbered 6 to 104 and One hundred and Ninety-six shares in the Company, numbered 105 to 300 inclusive was approved, and thereupon one certificate for Two hundred and Ninety-five shares in the Company, numbered 6 to 300 inclusive was issued to Mr. Charles Walter Frederick Bethell in lieu of certificates Nos. 6 and 7 which were cancelled.

Mr. George Murphy presented his resignation as Vice-President and Treasurer and Director of the Company to take effect at the close of the present meeting.

D On motion duly made and seconded, the resignation of Mr. George Murphy as Vice-President and Treasurer and Director of the Company was accepted to take effect from the close of the present meeting.

On motion duly made and seconded, Mr. John Herbert Bethell was elected Vice-President and a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. George Murphy.

In the Supreme Court of the Bahama Islands Common Law Side On motion duly made and seconded, Mr. Geoffrey Allardyce Bethell was appointed an additional Director of the Company for the remainder of the Company's current year.

Exhibit A.5
Minutes of
Directors'
Meeting, 9th
April, 1946.
(Contd.)

On motion duly made and seconded, Mr. Geoffrey Allardyce Bethell was elected Treasurer of the Company for the remainder of the Company's current year in the place and stead of Mr. George Murphy.

Mr. John Burnside presented his resignation as a Director of the Company to take effect at the close of the present meeting. A

On motion duly made and seconded, the resignation of Mr. John Burnside as a Director of the Company was accepted to take effect from the close of the present meeting, and Mr. Philip George Drover Bethell was elected a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. Burnside.

Mr. Stafford Sands presented his resignation as Secretary of the Company to take effect at the close of the present meeting. B

On motion duly made and seconded, the resignation of Mr. Stafford Sands as Secretary of the Company was accepted to take effect from the close of the present meeting, and Mr. Philip George Drover Bethell was elected Secretary of the Company for the remainder of the Company's current year in the place and stead of Mr. Sands.

On motion, the meeting adjourned. C

H. Newell Kelly
Chairman.

S. Sands.
Secretary.

George Murphy.

John Burnside.

Confirmed:
C.W.F. Bethell.
10th April, 46.

Exhibit A.5

MINUTES OF DIRECTORS' MEETING
10th April, 1946

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.5
Minutes of
Directors'
Meeting, 10th
April, 1946.

A A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 10th April, A.D. 1946 at 11.00 o'clock in the forenoon.

All of the Directors were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Geoffrey Allardyce Bethell, and Philip George Drover Bethell.

The Honourable Stafford L. Sands, the Company's Solicitor was also present.

B On motion, Mr. Charles W.F. Bethell the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 9th day of April, A.D. 1946 were read and confirmed.

On motion duly made and seconded, the attached resolution relative to the opening and operation of the bank account of the Company was unanimously agreed to.

C The Chairman informed the meeting that he held share certificate No. 12 for Two hundred and Ninety-five shares in the Company and that he desired to have the same cancelled and to have Five share certificates each for Fifty-nine shares issued to him in lieu thereof, and thereupon this was done.

D The Secretary informed the meeting that share certificate No. 13 for Fifty-nine shares in the Company, numbered 6 to 64 inclusive now standing in the Register in the name of Mr. Charles Walter Frederick Bethell had been transferred by Mr. Charles Walter Frederick Bethell to Mr. John Herbert Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of Direc-
tors' Meeting,
10th April,
1946.
(Contd.)

On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 6 to 64 inclusive from Mr. Charles Walter Frederick Bethell to Mr. John Herbert Bethell was approved and it was resolved that a new certificate for these shares be issued to Mr. John Herbert Bethell in lieu of certificate No. 13 which was thereby cancelled.

The Secretary informed the meeting that share certificate No. 14 for fifty-nine shares in the Company, numbered 65 to 123 inclusive now standing in the Register in the name of Mr. Charles Walter Frederick Bethell had been transferred by Mr. Charles Walter Frederick Bethell to Mr. Geoffrey Allardyce Bethell.

A

On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 65 to 123 inclusive from Mr. Charles Walter Frederick Bethell to Mr. Geoffrey Allardyce Bethell was approved and it was resolved that a new certificate for these shares be issued to Mr. Geoffrey Allardyce Bethell in lieu of certificate No. 14 which was thereby cancelled.

B

The Secretary informed the meeting that share certificate No. 15 for Fifty-nine shares in the Company, numbered 124 to 182 inclusive now standing in the Register in the name of Mr. Charles Walter Frederick Bethell had been transferred by Mr. Charles Walter Frederick Bethell to Mr. Philip George Drover Bethell.

C

On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 124 to 182 inclusive from Mr. Charles Walter Frederick Bethell to Mr. Philip George Drover Bethell was approved and it was resolved that a new certificate for these shares be issued to Mr. Philip George Drover Bethell in lieu of certificate No. 15 which was thereby cancelled.

D

On motion duly made and seconded, it was resolved that the Registered Office of the Company be transferred from The Fort Montagu Beach Hotel situate on the South side of Bay Street in the Eastern District of New Providence

to the Savoy Theatre Building situate on the North side of Bay Street in the City of Nassau.

On motion duly made and seconded, the Secretary was instructed to notify the Registrar General of the transfer of the Registered Office of the Company and to advertize the same in the Official Newspaper.

A On motion duly made and seconded, the Secretary was instructed to forward a list containing the names and addresses of the present Officers and Directors of the Company to the Registrar General.

B On motion duly made and seconded, the Secretary was instructed to summons by notice two Extraordinary General Meetings of the Company at Fourteen day intervals for the purpose of considering, and if thought fit, adopting Articles of Association.

On motion, the meeting adjourned.

C.W.F. Bethell.
Chairman.

Confirmed:
C.W.F. Bethell.
17th Dec. 47.

Philip G.D. Bethell.
Secretary.

H.H. Bethell.

C G.A. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of Direc-
tors' Meeting,
10th April,
1946.

(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

For use only by Com-
panies Incorporated
in the United States.

RESOLUTION OF DIRECTORS re BANKING ACCOUNT
AND SECURITIES

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.5
Minutes of
Directors'
Meeting, 10th
April, 1946.
(Contd.)

At a meeting of the Board of Directors, duly
held on the 9th day of April 1946 IT WAS UNANIMOUSLY
RESOLVED:

- (1) That the Royal Bank of Canada is hereby
appointed the Banker of the Company.
- (2) That the Directors or any one of them be and
they are/he is hereby authorized for and on
behalf of the Company to negotiate with,
deposit with, or transfer to the said Bank
(but for credit of the Company's account only)
all or any cheques, promissory notes, bills of
exchange, orders for the payment of money,
drafts signed on behalf of the Company by them
or any one of them and other negotiable paper
endorsed on behalf of the Company by them or
any of them or the name of the Company
impressed thereon by rubber stamp or otherwise;
also to arrange, settle, balance and certify
all books and accounts between the Company and
the Bank and to receive all paid cheques and
vouchers and to sign and deliver to the Bank
the Bank's form of settlement of balances and
release; provided, however, the President,
Vice-President, Secretary or Secretary-
Treasurer may in writing appoint from time to
time such officer or employee of the Company
as may be deemed advisable for the purpose
of receiving all paid cheques and vouchers
and of signing and delivering to the Bank the
Bank's form of settlement of balances and
release.
- (3) That the Directors or any one of them be and
they are/he is hereby authorized on behalf of
the Company to make, sign, draw, accept or
endorse all or any cheques, promissory notes,
drafts, acceptances, bills of exchange,

A

B

C

D

orders for the payment of money, warehouse receipts, bills of lading and other instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits, including overdrafts, from The Royal Bank of Canada upon the credit of the Company in any manner whatsoever; and, further, to mortgage, hypothecate, pledge, give, assign and transfer to the Bank all or any book debts and other debts due or growing due, stocks, bonds, warehouse receipts, bills of lading, insurance policies, promissory notes, bills of exchange and other securities, and to give and to authorize any other person to give to the Bank security and promises to give security under Section 88 of the Bank Act of the Dominion of Canada, warehouse receipts and bills of lading and promises to give warehouse receipts and/or bills of lading and any and all other security and promises to give security which a bank may take under the provisions of the Bank Act of the Dominion of Canada or other law whatsoever, and to give and to authorize any other person to give notices of intention to give security under Section 88 of the Bank Act of the Dominion of Canada and to manage and transact and settle all banking matters and banking business whatsoever with the said Bank or with its officials; and generally to exercise all rights and powers which the Directors might or could exercise under the authority of the Company's certificate of incorporation and the laws governing the Company.

(4) That all securities, documents and instruments, whether negotiable or not, signed, made, drawn, accepted or endorsed as aforesaid shall be valid and binding upon the Company.

(5) That the Bank be furnished with a list of the names of the Directors, Secretary and other officers of the Company authorized to sign for it, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such officers.

(6) That this resolution be communicated to the said Bank and remain in force until notice in

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.5
Minutes of
Directors'
Meeting, 10th
April, 1946.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

writing to the contrary be given to the Manager
of the branch of the said Bank at which the
account of the Company is kept, and receipt of
such notice is duly acknowledged in writing.

Exhibit A.5
Minutes of
Directors'
Meeting, 10th
April, 1946.
(Contd.)

CERTIFICATE

We, the undersigned, hereby certify that the
foregoing resolution was duly passed at a Meeting of
the Board of Directors of THE MONTAGU PARK RACING
ASSOCIATION, LIMITED, duly held this 9th day of
April, 1946.

A

Witness our hands and seal of the Company at
NASSAU, BAHAMAS this 9th day of April, 1946.

(Corporate Seal)

C.W.B. President.

P.G.D.B. Secretary.

Exhibit A.4

MINUTES OF DIRECTORS' MEETING
17th December, 1947

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.4
Minutes of
Directors'
Meeting, 17th
December,
1947.

A A meeting of the Directors of the above-named Company was held at Building No. 309 Bay Street, Nassau, Bahamas on the 17th day of December, A.D. 1947 at 11.00 o'clock in the forenoon.

All of the Directors were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Geoffrey Allardyce Bethell and Philip George Drover Bethell.

Mr. Stafford L. Sands, the Company's Solicitor was also present.

B On motion, Mr. Charles W.F. Bethell, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 10th day of April, A.D. 1946 were read and confirmed.

C "There was read and submitted to the meeting Printed Rules, Regulations and Conditions of Lease by this Company of a compartment in the vaults of The Royal Bank of Canada, for the rental and upon the terms and conditions hereinafter set out. Such compartment being hereinafter referred to as a safety deposit box.

On motion, duly proposed and seconded, it was unanimously resolved:

D That the said form of Lease and Rules, Regulations and Conditions applicable thereto, be and the same are hereby approved, and that K.R. Higgs, J.H. Bethell, P.G.D. Bethell, G.A. Bethell and C.W.F. Bethell or any one of them be and they are hereby authorized to sign the said agreement and to have access to and control of the contents of such safe deposit box, with full power to each of them

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.4
Minutes of
Directors'
Meeting, 17th
December,
1947.
(Contd.)

to appoint substitutes in their place and stead,
and the present resolution shall apply not only
to the said safe deposit box but to any other
safe deposit box that may be leased by this
Company, and that the present resolution be
communicated to the Bank and remain in force
until notice in writing to the contrary be given
to the Manager of the Branch of the said Bank in
which any box is leased and receipt of such
notice duly acknowledged in writing."

A

On motion, the meeting adjourned.

C.W.F. Bethell.
Chairman.

Confirmed:
C.W.F. Bethell.
31 Dec. 48.

Philip G.D. Bethell.
Secretary.

G.A. Bethell.

B

J.H. Bethell.

Exhibit A.4

MINUTES OF DIRECTORS' MEETING
30th December 1948

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.4
Minutes of
Directors'
Meeting, 30th
December,
1948.

A A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 30th day of December, A.D. 1948 at 11.00 o'clock in the forenoon.

All of the Directors were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Geoffrey Allardyce Bethell, and Philip George Drover Bethell.

On motion, Mr. Charles Walter Frederick Bethell, the President of the Company took the Chair.

B The minutes of the meeting of the Directors held on the 17th day of December, A.D. 1947 were read and confirmed.

Mr. Philip George Drover Bethell presented his resignation (hereto attached) as Secretary of the Company dated the 30th day of December, A.D. 1948 to take effect immediately.

C On motion duly made and seconded, the resignation of Mr. Philip George Drover Bethell as Secretary of the Company was accepted to take effect immediately and Mr. Austin Baker was appointed Secretary of the Company for the remainder of the Company's current year in the place and stead of Mr. Philip George Drover Bethell, and thereupon Mr. Baker took his seat in the meeting.

D The Chairman presented the resignation (hereto attached) of Mr. Philip George Drover Bethell as a Director of the Company dated the 30th day of December, A.D. 1948 to take effect immediately.

On motion duly made and seconded, the resignation of Mr. Philip George Drover Bethell

In the Supreme Court of the Bahama Islands Common Law Side as a Director of the Company was accepted to take effect immediately, and thereupon Mr. Philip George Drover Bethell withdrew from the meeting.

Exhibit A.4
Minutes of
Directors'
Meeting, 30th
December,
1948.

(Contd.)

The Chairman informed the meeting that share certificate No. 9 for one share numbered 2 now standing in the Register in the name of Mr. Philip George Drover Bethell had been transferred by Mr. Philip George Drover Bethell to Mr. Francis Edward Conway.

A

On motion duly made and seconded, the transfer of one share in the Company, numbered 2, from Mr. Philip George Drover Bethell to Mr. Francis Edward Conway was approved and it was resolved that a new certificate for (Illegible) No. 9 which was declared to be cancelled.

On motion duly made and seconded, Mr. Francis Edward Conway was elected a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. Philip George Drover Bethell, and thereupon Mr. Conway took his seat in the meeting.

B

The Chairman presented the resignation (hereto attached) of Mr. Geoffrey Allardyce Bethell as a Director and Treasurer of the Company dated the 30th day of December, A.D. 1948 to take effect immediately.

On motion duly made and seconded, the resignation of Mr. Geoffrey Allardyce Bethell as a Director and Treasurer of the Company was accepted to take effect immediately, and thereupon Mr. Geoffrey Allardyce Bethell withdrew from the meeting.

C

The Chairman informed the meeting that share certificate No. 10 for one share numbered 4 now standing in the Register in the name of Mr. Geoffrey Allardyce Bethell had been transferred by Mr. Geoffrey Allardyce Bethell to Mr. Austin Baker.

D

On motion duly made and seconded, the transfer of one share in the Company, numbered 4, from Mr. Geoffrey Allardyce Bethell to Mr. Austin Baker was approved and it was resolved that a

new certificate for this share be issued to Mr. Austin Baker in lieu of certificate No. 10 which was declared to be cancelled.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion duly made and seconded, Mr. Austin Baker was elected a Director and Treasurer of the Company for the remainder of the Company's current year in the place and stead of Mr. Geoffrey Allardyce Bethell, and thereupon Mr. Austin Baker

Exhibit A.4
Minutes of
Directors'
Meeting, 30th
December,
1948.

A

The Chairman presented the resignation (hereto attached) of Mr. John Herbert Bethell as Vice-President of the Company dated the 30th day of December, A.D. 1948 to take effect immediately.

(Contd.)

On motion duly made and seconded, the resignation of Mr. John Herbert Bethell as Vice-President of the Company was accepted to take effect immediately.

B

On motion duly made and seconded, Mr. Francis Edward Conway was elected Vice-President of the Company for the remainder of the Company's current year in the place and stead of Mr. John Herbert Bethell.

The Chairman informed the meeting that share certificate No. 18 for Fifty-nine shares numbered 6 to 64 inclusive now standing in the Register in the name of Mr. John Herbert Bethell had been transferred by Mr. John Herbert Bethell to Roynas & Co.

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On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 6 to 64 inclusive, from Mr. John Herbert Bethell to Roynas & Co. was approved and it was resolved that a new certificate for these shares be issued to Roynas & Co. in lieu of certificate No. 18 which was declared to be cancelled.

D

The Chairman informed the meeting that share certificate No. 19 for Fifty-nine shares in the Company, numbered 65 to 123 inclusive, now standing in the name of Mr. Geoffrey Allardyce Bethell in the Register of the Company had been transferred by Mr. Bethell as to Thirty-eight shares numbered 65 to 102 inclusive to Roynas &

In the Supreme Court of the Bahama Islands
Common Law Side Co. and as to Twenty-one shares numbered 103 to 123 inclusive to Caribbean Investments, Limited.

Exhibit A.4
 Minutes of Directors' Meeting, 30th December, 1948.
 (Contd.)

On motion duly made and seconded, the transfer of Thirty-eight shares in the Company, numbered 65 to 102 inclusive from Mr. Geoffrey Allardyce Bethell to Roynas & Co. and the transfer of Twenty-one shares in the Company, numbered 103 to 123 inclusive from Mr. Geoffrey Allardyce Bethell to Caribbean Investments, Limited was approved, and it was resolved that two new certificates for Thirty-eight of these shares, one for Thirteen shares numbered 65 to 77 inclusive, and one for Twenty-five shares numbered 78 to 102 inclusive, be issued to Roynas & Co. and that a new certificate for Twenty-one of these shares, numbered 103 to 123 inclusive, be issued to Caribbean Investments, Limited in lieu of certificate No. 19 which was declared to be cancelled.

A

The Chairman informed the meeting that share certificate No. 20 for Fifty-nine shares numbered 124 to 182 inclusive now standing in the Register in the name of Mr. Philip George Drover Bethell had been transferred by Mr. Philip George Drover Bethell to Caribbean Investments, Limited.

B

On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 124 to 182 inclusive, from Mr. Philip George Drover Bethell to Caribbean Investments, Limited was approved and it was resolved that a new certificate for these shares be issued to Caribbean Investments, Limited in lieu of certificate No. 20 which was declared to be cancelled.

C

The Secretary informed the meeting that share certificate No. 16 for Fifty-nine shares numbered 183 to 241 inclusive now standing in the Register in the name of Mr. Charles Walter Frederick Bethell had been transferred by Mr. Charles Walter Frederick Bethell to Caribbean Investments, Limited.

On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 183 to 241 inclusive, from Mr. Charles Walter Frederick Bethell to Caribbean Investments, Limited was approved and it was resolved that a new certificate for these shares be issued to Caribbean Investments,

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Limited in lieu of certificate No. 16 which was declared to be cancelled.

In the Supreme Court of the Bahama Islands
Common Law Side

The Secretary informed the meeting that share certificate No. 17 for Fifty-nine shares numbered 242 to 300 inclusive now standing in the Register in the name of Mr. Charles Walter Frederick Bethell had been transferred by Mr. Charles Walter Frederick Bethell to Caribbean Investments, Limited.

Exhibit A.4
Minutes of Directors' Meeting, 30th December, 1948.

(Contd.)

On motion duly made and seconded, the transfer of Fifty-nine shares in the Company, numbered 242 to 300 inclusive, from Mr. Charles Walter Frederick Bethell to Caribbean Investments, Limited was approved and it was resolved that a new certificate for these shares be issued to Caribbean Investments, Limited in lieu of certificate No. 17 which was declared to be cancelled.

On motion duly made and seconded, it was resolved that the resolution of the Directors passed on the 10th day of April, A.D. 1946 relative to the opening and operation of a bank account for the Company with the Nassau Branch of The Royal Bank of Canada be and the same is hereby cancelled and revoked, and that the said Bank be notified accordingly.

On motion duly made and seconded, IT WAS UNANIMOUSLY RESOLVED:-

- (1) That The Royal Bank of Canada is hereby appointed the Banker of the Company.
- (2) That the Directors or any one of them be and they/he are/is hereby authorized for and on behalf of the Company to negotiate with, deposit with, or transfer to the said Bank (but for credit of the Company's account only) all or any cheques, promissory notes, bills of exchange, orders for the payment of money, drafts signed on behalf of the Company by them or any one of them and other negotiable paper endorsed on behalf of the Company by them or any of them or the name of the Company impressed thereon by rubber stamp or otherwise; also to arrange, settle, balance and certify all books and accounts

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.4
Minutes of
Directors'
Meeting, 30th
December,
1948.
(Contd.)

between the Company and the Bank and to receive all paid cheques and vouchers and to sign and deliver to the Bank the Bank's form of settlement of balances and release; provided, however, the President, Vice-President, Secretary or Secretary-Treasurer may in writing appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of receiving all paid cheques and vouchers and of signing and delivering to the Bank the Bank's form of settlement of balances and release.

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- (3) That the Directors or any two of them be and they are hereby authorized on behalf of the Company to make, sign, draw, accept or endorse all or any cheques, promissory notes, drafts, acceptances, bills of exchange, orders for the payment of money, warehouse receipts, bills of lading and other instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits, including overdrafts, from The Royal Bank of Canada upon the credit of the Company in any manner whatsoever; and, further, to mortgage, hypothecate, pledge, give, assign and transfer to the Bank all or any book debts and other debts due or growing due, stocks, bonds, warehouse receipts, bills of lading, insurance policies, promissory notes, bills of exchange and other securities, and to give and to authorize any other person to give to the Bank security and promises to give security under Section 88 of the Bank Act of the Dominion of Canada, warehouse receipts and bills of lading and promises to give warehouse receipts and/or bills of lading and any and all other security and promises to give security which a bank may take under the provisions of the Bank Act of the Dominion of Canada or other law whatsoever, and to give and to authorize any other person to give notices of intention to give security under Section 88 of the Bank Act of the Dominion of Canada and to manage and transact and settle all banking matters and banking business whatsoever with the said Bank or with its officials; and generally to exercise all rights and powers which the Directors might or could exercise under the authority of the Company's certificate of incorporation and the laws governing the Company.

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(4) That all securities, documents and instruments, whether negotiable or not, signed, made, drawn, accepted or endorsed as aforesaid shall be valid and binding upon the Company.

In the Supreme Court of the Bahama Islands
Common Law Side

(5) That the Bank be furnished with a list of the names of the Directors, Secretary and other officers of the Company authorized to sign for it, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such officers.

Exhibit A.4
Minutes of Directors' Meeting, 30th December, 1948.
(Contd.)

(6) That this resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the Branch of the said Bank at which the account of the Company is kept, and receipt of such notice is duly acknowledged in writing.

The Secretary informed the meeting that Mrs. Margaret Conway Macauley was prepared to lend the Company the sum of One thousand Four hundred and Seventy-five pounds on open account free of interest.

On motion duly made and seconded, it was resolved that the Company do borrow the sum of One thousand Four hundred and Seventy-five pounds from Mrs. Margaret Conway Macauley on open account free of interest.

The Secretary informed the meeting that Mr. Timothy Alfred Macauley was prepared to lend the Company the sum of Four thousand Four hundred and Twenty-five pounds on open account, free of interest.

On motion duly made and seconded, it was resolved that the Company do borrow the sum of Four thousand Four hundred and Twenty-five pounds from Mr. Timothy Alfred Macauley on open account free of interest.

The Secretary informed the meeting that Caribbean Investments, Limited was prepared to lend the Company the sum of Eleven thousand and

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit A.4
 Minutes of
 Directors'
 Meeting, 30th
 December,
 1948.

(Contd.)

Eight hundred pounds on open account free of interest.

On motion duly made and seconded, it was resolved that the Company do borrow the sum of Eleven thousand and Eight hundred pounds from Caribbean Investments, Limited on open account free of interest.

The Chairman informed the meeting that the Company was indebted to Messrs. Charles Walter Frederick Bethell, Philip George Drover Bethell, Geoffrey Allardyce Bethell, John Herbert Bethell and Mrs. Elsa Patricia Kelly in the sum of Three thousand Five hundred and Forty pounds each on open account free of interest and that he had been notified by these respective parties that they required payment of these respective loans.

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On motion duly made and seconded, it was resolved that the Company do repay the following open account interest free loans, namely:-

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Charles Walter Frederick Bethel	£3,540
Philip George Drover Bethell	£3,540
Geoffrey Allardyce Bethell	£3,540
John Herbert Bethell	£3,540
Elsa Patricia Kelly	£3,540

The Secretary informed the meeting that he had been requested by Caribbean Investments, Limited, Mr. Timothy Alfred Macauley and Mrs. Margaret Conway Macauley to request the Company to issue five promissory notes of One thousand pounds each bearing interest at Four and One-half per centum per annum repayable on the 5th day of May, A.D. 1949 and five promissory notes of One thousand pounds each bearing interest at Four and One-half per centum per annum repayable on the 1st day of May, A.D. 1950 to Messrs. Charles Walter Frederick Bethell, Philip George Drover Bethell, Geoffrey Allardyce Bethell, John Herbert Bethell and Mrs. Elsa Patricia Kelly. The Secretary further informed the meeting that he had received letters from Caribbean Investments, Limited guaranteeing Six thousand Six hundred and Sixty-six pounds Thirteen Shillings and Four pence in respect of the said promissory notes totalling Ten thousand pounds from Mr. Timothy Alfred Macauley guaranteeing Two

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Thousand and Five hundred pounds in respect of the said promissory notes totalling Ten thousand pounds and from Mrs. Margaret Conway Macauley guaranteeing Eight hundred and Thirty-three pounds Six shillings and Eight pence in respect of the said promissory notes totalling Ten thousand pounds.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit A.4
Minutes of Directors' Meeting,
30th December, 1948.

(Contd.)

- A On motion duly made and seconded, it was resolved that in consideration of the respective guarantees from Caribbean Investments, Limited in the amount of Six thousand Six hundred and Sixty-Six pounds thirteen shillings and four pence, from Mr. Timothy Alfred Macauley in the sum of Two thousand and five hundred pounds, and from Mrs. Margaret Conway Macauley in the sum of Eight hundred and thirty-three pounds six shillings and eightpence, the Company do issue five promissory notes each for One thousand pounds bearing interest at Four and one-half per centum per annum repayable on the 5th day of May, A.D. 1949 to Messrs. Charles Walter Frederick Bethell, Philip George Drover Bethell, Geoffrey Allardyce Bethell, John Herbert Bethell and Mrs. Elsa Patricia Kelly respectively, and that the Company do issue a further five promissory notes each for One thousand pounds bearing interest at Four and one-half per centum per annum repayable on the 1st day of May, A.D. 1950 to Messrs. Charles Walter Frederick Bethell, Philip George Drover Bethell, Geoffrey Allardyce Bethell, John Herbert Bethell and Mrs. Elsa Patricia Kelly respectively.
- B
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On motion duly made and seconded, it was resolved that the Registered Office of the Company be transferred from the Savoy Theatre Building situate on the North side of Bay Street in the City of Nassau to Building No. 309 situate on the North side of Bay Street in the said City of Nassau and that the necessary notices be forwarded to the Registrar General and advertised in the Official Newspaper, and that the necessary sign be displayed outside of the said Building No. 309.

On motion duly made and seconded, the Secretary was instructed to notify the Registrar General and the Manager of the Nassau Branch of The Royal Bank of Canada of the changes which had taken place

In the Supreme in the Officers and Directors of the Company.
Court of the
Bahama Islands On motion, the meeting adjourned.
Common Law Side

C.W.F. Bethell.
Chairman.

Exhibit A.4
Minutes of
Directors'
Meeting,
30th December,
1948.
(Contd.)

A.W. Baker.
Secretary.
J.H. Bethell.
Philip G.D. Bethell.
G.A. Bethell.
F.E. Conway.

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Exhibit A.4

MINUTES OF DIRECTORS' MEETING
30th March 1949

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.4
Minutes of
Directors'
Meeting,
30th March,
1949.

A A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 30th day of March, A.D. 1949 at 11.30 o'clock in the forenoon.

The following Directors were present, namely:-
John Herbert Bethell, and Austin Baker.

On motion Mr. John Herbert Bethell took the Chair in the absence of the President and Vice-President of the Company.

B The Chairman informed the meeting that Mr. Charles Walter Frederick Bethell, the President and a Director of the Company was absent from the Colony.

The minutes of the meeting of the Directors held on the 30th day of December, A.D. 1948 were read and confirmed.

The Secretary presented the attached resignation from Mr. Francis Edward Conway as Vice-President and a Director of the Company, dated the 28th day of March, A.D. 1949 to take effect immediately.

C On motion duly made and seconded, the resignation of Mr. Francis Edward Conway as Vice-President and a Director of the Company was accepted to take effect immediately.

On motion duly made and seconded, Mr. John Herbert Bethell was elected a Vice-President of the Company for the remainder of the Company's current year in the place and stead of Mr. Conway.

D The Secretary presented to the meeting a letter from Caribbean Investments, Limited requesting the Company to cancel share certificate

In the Supreme Court of the Bahama Islands Common Law Side No. 29 for 59 shares in the Company, numbered 242 to 300 inclusive, and to issue four new share certificates in lieu thereof, one certificate for 56 shares numbered 242 to 297 inclusive, and three certificates each for one share, numbered 298, 299 and 300 respectively, and on motion duly made and seconded, this was agreed to and thereupon the said share certificates were issued.

Exhibit A.4
Minutes of
Directors'
Meeting,
30th March,
1949.
(Contd.)

The Secretary informed the meeting that share certificate No. 33 for one share in the Company, numbered 300, now standing in the name of Caribbean Investments, Limited in the Register of the Company had been transferred by that company to Captain Kenyon Goode.

A

On motion duly made and seconded, the transfer of one share in the Company, numbered 300, from Caribbean Investments, Limited to Captain Kenyon Goode was approved and it was resolved that a new certificate for this share be issued to Captain Kenyon Goode in lieu of certificate No. 33 which was declared to be cancelled.

B

On motion duly made and seconded, Captain Kenyon Goode was elected a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. Francis Edward Conway.

On motion duly made and seconded, Captain Kenyon Goode was elected an additional Vice-President of the Company for the remainder of the Company's current year.

C

On motion duly made and seconded, the Resolution of the Directors relative to the operation of the Bank Account of the Company with the Nassau Branch of The Royal Bank of Canada passed on the 30th day of December, A.D. 1948 was revoked.

On motion duly made and seconded, the attached resolution relative to the Bank Account of the Company with the Nassau Branch of The Royal Bank of Canada was unanimously agreed to.

On motion duly made and seconded, the Secretary was instructed to notify the Registrar General and the Manager of the Nassau Branch of

D

The Royal Bank of Canada of the changes which had taken place in the Officers and Directors of the Company.

In the Supreme Court of the Bahama Islands
Common Law Side

On motion, the meeting adjourned.

J.H. Bethell.
Chairman.

Confirmed:
J.H. Bethell.
5/4/49.

Exhibit A.4
Minutes of
Directors'
Meeting,
30th March,
1949.
(Contd.)

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A.W. Baker.
Secretary.

In the Supreme
Court of the
Bahama Islands
Common Law Side

CARIBBEAN INVESTMENTS, LIMITED
309, Bay St.
Nassau - Bahamas

28th March,
1949.

Exhibit A.4
Minutes of
Directors'
Meeting,
30th March,
1949.
(Contd.)

Messrs. The Montagu Park Racing
Association, Limited,
309, Bay Street,
Nassau.

A

Dear Sirs,

I enclose herewith share certificate No. 29
for 59 shares in your Company numbered 242 to
300 inclusive. Would you be good enough to cancel
this certificate and issue four new share certifi-
cates in lieu thereof as follows, namely:-

- 1 share certificate for 56 shares, numbered
242 to 297 inclusive,
- 3 share certificates, each for 1 share,
numbered 298, 299 and 300 respectively.

B

Yours very truly,

CARIBBEAN INVESTMENTS, LIMITED

by: Stafford L. Sands
President.

For use only by Companies
Incorporated in the United
States.

In the Supreme
Court of the
Bahama Islands
Common Law Side

RESOLUTION OF DIRECTORS RE BANKING ACCOUNT
AND SECURITIES

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit A.4
Minutes of
Directors'
Meeting,
30th March,
1949.

(Contd.)

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At a meeting of the Board of Directors, duly
held on the 30th day of March, 1949 IT WAS UNANI-
MOUSLY RESOLVED:

- (1) That the Royal Bank of Canada is hereby
appointed the Banker of the Company.
- (2) That the Directors, Paul Gignac and Stafford
Lofthouse Sands or any one of them be and
they are/he is hereby authorized for and on
behalf of the Company to negotiate with,
deposit with, or transfer to the said Bank
(but for credit of the Company's account only)
all or any cheques, promissory notes, bills of
exchange, orders for the payment of money,
drafts signed on behalf of the Company by them
or any one of them and other negotiable paper
endorsed on behalf of the Company by them or
any of them or the name of the Company
impressed thereon by rubber stamp or otherwise;
also to arrange, settle, balance and certify
all books and accounts between the Company and
the Bank and to receive all paid cheques and
vouchers and to sign and deliver to the Bank
the Bank's form of settlement of balances and
release; provided, however, the President,
Vice-President, Secretary or Secretary-
Treasurer may in writing appoint from time to
time such officer or employee of the Company
as may be deemed advisable for the purpose of
receiving all paid cheques and vouchers and
of signing and delivering to the Bank the
Bank's form of settlement of balances and
release.
- (3) That the Directors, Paul Gignac and Stafford
Lofthouse Sands or any two of them be and they
are hereby authorized on behalf of the Company
to make, sign, draw, accept or endorse all or

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In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.4
Minutes of
Directors'
Meeting,
30th March,
1949.
(Contd.)

any cheques, promissory notes, drafts, accep-
tances, bills of exchange, orders for the
payment of money, warehouse receipts, bills
of lading and other instruments whether nego-
tiable or not; also to borrow money and obtain
advances, loans and credits, including over-
drafts, from The Royal Bank of Canada upon the
credit of the Company in any manner whatsoever;
and, further, to mortgage, hypothecate, pledge,
give, assign and transfer to the Bank all or
any book debts and other debts due or growing
due, stocks, bonds, warehouse receipts, bills
of lading, insurance policies, promissory notes,
bills of exchange and other securities, and to
give and to authorize any other person to give
to the Bank security and promises to give
security under Section 88 of the Bank Act of
the Dominion of Canada, warehouse receipts and
bills of lading and promises to give warehouse
receipts and/or bills of lading and any and all
other security and promises to give security
which a bank may take under the provisions of
the Bank Act of the Dominion of Canada, or
other law whatsoever, and to give and to autho-
rize any other person to give notices of
intention to give security under Section 88 of
the Bank Act, of the Dominion of Canada, and to
manage and transact and settle all banking
matters and banking business whatsoever with
the said Bank or with its officials; and
generally to exercise all rights and powers
which the Directors might or could exercise
under the authority of the Company's certificate
of incorporation and the laws governing the
Company.

- (4) That all securities, documents and instruments,
whether negotiable or not, signed, made, drawn,
accepted or endorsed as aforesaid shall be
valid and binding upon the Company.
- (5) That the Bank be furnished with a list of the
names of the Directors, Secretary and other
officers of the Company authorized to sign for
it, together with specimens of their signa-
tures, and that the said Bank be from time to
time notified in writing of any change of such
officers.

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(6) That this resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the branch of the said Bank at which the account of the Company is kept, and receipt of such notice is duly acknowledged in writing.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit A.4
Minutes of Directors' Meeting,
30th March, 1949.

(Contd.)

A

CERTIFICATE

We, the undersigned, hereby certify that the foregoing resolution was duly passed at a Meeting of the Board of Directors of THE MONTAGU PARK RACING ASSOCIATION, LIMITED duly held this 30th day of March, 1949.

WITNESS our hands and seal of the Company at NASSAU, BAHAMAS this 30th day of March, 1949.

(Corporate Seal)

J.H.B.
Vice-President.

B

A.W. Baker
Secretary.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.4

MINUTES OF DIRECTORS' MEETING
5th April, 1949

Exhibit A.4
Minutes of
Directors'
Meeting,
5th April,
1949.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, Building No. 309, Bay Street, Nassau, Bahamas, on the 5th day of April, A.D. 1949 at 11.00 o'clock in the forenoon. A

The following Directors were present, namely:- John Herbert Bethell, Kenyon Goode, and Austin Baker.

On motion, Mr. John Herbert Bethell took the Chair in the absence of the President of the Company.

The Chairman informed the meeting that Mr. Charles Walter Frederick Bethell, the President and a Director of the Company was absent from the Colony. B

The minutes of the meeting of the Directors held on the 30th day of March, A.D. 1949 were read and confirmed.

There was read and submitted to the meeting Printed Rules, Regulations and Conditions of Lease by this Company of a compartment in the vaults of The Royal Bank of Canada, for the rental and upon the terms and conditions hereinafter set out. Such compartment being hereafter referred to as a safety deposit box. C

On motion, duly proposed and seconded, it was unanimously resolved:-

"That the said form of Lease and Rules, Regulations and Conditions applicable thereto, be and the same are hereby approved, and that the Directors and Paul Gignac or any two of them be and they are hereby authorized to sign the said agreement and to have access to and control of the contents of such safe deposit box, with full power to each of them to appoint substitutes in their place and stead, D

and the present resolution shall apply not only to the said safe deposit box but to any other safe deposit box that may be leased by this Company, and that the present resolution be communicated to the Bank and remain in force until notice in writing to the contrary be given to the Manager of the Branch of the Bank in which any box is leased and receipt of such notice duly acknowledged in writing."

A

On motion, the meeting adjourned.

J.H. Bethell.
Chairman.

Confirmed:
C.W.F. Bethell.
19th May, 49.

A.W. Baker,
Secretary.

Kenyon Goode.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.4
Minutes of
Directors'
Meeting,
5th April, 1949.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3

MINUTES OF DIRECTORS' MEETING
19th May 1949

Exhibit A.3
Minutes of
Directors'
Meeting,
19th May, 1949.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 19th day of May, A.D. 1949, at 11.30 o'clock in the forenoon.

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The following Directors were present, namely:- Charles Walter Frederick Bethell, Captain Kenyon Goode, and John Herbert Bethell.

On motion, Mr. Charles Walter Frederick Bethell the President of the Company took the Chair, and Mr. John Herbert Bethell acted as Secretary of the meeting.

The minutes of the meeting of the Directors held on the 5th day of April, A.D. 1949 were read and confirmed.

B

The Chairman informed the meeting that share certificate No. 22 for one share in the Company, numbered 4, now standing in the name of Mr. Austin Baker in the Register of the Company had been transferred by Mr. Baker to Mrs. Dorothy Ann Black.

On motion duly made and seconded, the transfer of one share in the Company, numbered 4, from Mr. Austin Baker to Mrs. Dorothy Ann Black was approved, and it was resolved that a new certificate be issued to Mrs. Black in lieu of certificate No. 22 which was declared to be cancelled.

C

The Chairman informed the meeting that share certificate No. 21 for one share in the Company, numbered 2, now standing in the name of Mr. Francis Edward Conway in the Register of the Company had been transferred by Mr. Conway to Mr. Floyd Lester Weech.

On motion duly made and seconded, the transfer of one share in the Company, numbered 2, from Mr.

D

Francis Edward Conway to Mr. Floyd Lester Weech was approved, and it was resolved that a new certificate be issued to Mr. Weech in lieu of certificate No. 21 which was declared to be cancelled.

In the Supreme Court of the Bahama Islands
Common Law Side

The Chairman presented the attached resignation from Mr. Austin Baker as Secretary, Treasurer and a Director of the Company, dated the 19th day of May, A.D. 1949 to take effect immediately.

Exhibit A.3
Minutes of Directors' Meeting,
19th May, 1949.
(Contd.)

A On motion duly made and seconded, the resignation of Mr. Austin Baker as Secretary, Treasurer and a Director of the Company was accepted to take effect immediately.

On motion duly made and seconded, Mrs. Dorothy Ann Black was elected Secretary, Treasurer and a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. Baker.

B On motion duly made and seconded, the Secretary was instructed to notify the Registrar General and the Manager of the Nassau Branch of The Royal Bank of Canada of the changes which had taken place in the Officers and Directors of the Company.

On motion, the meeting adjourned.

C.W.F. Bethell
Chairman.

Acting Secretary.

Kenyon Goode.

C J.H. Bethell.

Confirmed:
C.W.F. Bethell.
23rd May, 49.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3

MINUTES OF DIRECTORS' MEETING
23rd May 1949

Exhibit A.3
Minutes of
Directors'
Meeting,
23rd May,
1949.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 23rd day of May, A.D. 1949 at 12.00 o'clock noon.

A

All of the Directors were present, namely:- Charles Walter Frederick Bethell, Captain Kenyon Goode, John Herbert Bethell, and Dorothy Ann Black.

On motion, Mr. Charles Walter Frederick Bethell, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 19th day of May, A.D. 1949 were read and confirmed.

B

The Chairman informed the meeting that the Company was desirous of employing Captain Kenyon Edward Minton Goode as Manager and Stipendiary Steward of the Company's race course and he presented to the meeting a form of Management Contract which had been negotiated with Captain Goode.

On motion duly made and seconded, the following resolutions were unanimously agreed to, namely,

C

"RESOLVED that the Company do enter into a contract for the employment of Captain Kenyon Edward Minton Goode as Manager and Stipendiary Steward of the Company's race course on the terms and conditions set out in the draft contract attached to these minutes, and

RESOLVED FURTHER that the said contract be signed and sealed on behalf of the Company by the President of the Company in the presence of the Secretary of the Company."

D

As Captain Goode was personally interested he did not vote on the above resolutions.

On motion, the meeting adjourned.

C.W.F. Bethell,
Chairman.

Confirmed:
2nd Nov. 49.
C.W.F. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3
Minutes of
Directors'
Meeting,
23rd May,
1949.
(Contd.)

A

Dorothy Black.
Secretary.

Kenyon Goode.

J.H. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3

MINUTES OF DIRECTORS' MEETING
2nd November 1949

Exhibit A.3
Minutes of
Directors'
Meeting,
2nd November,
1949.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 2nd day of November, A.D. 1949 at 11.00 o'clock in the forenoon.

A

All of the Directors were present, namely:- Charles Walter Frederick Bethell, Captain Kenyon Edward Minton Goode, John Herbert Bethell, and Dorothy Ann Black.

On motion, Mr. Charles Walter Frederick Bethell, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 23rd day of May, A.D. 1949 were read and confirmed.

B

The Vice-President, Captain Kenyon E.M. Goode presented to the meeting a copy of the proposed contract for the construction of a "Race Finish Recording Tower" at the Company's Racecourse with Nassau Contracting Company, Limited and he recommended that the said contract be executed by the Company.

The Vice-President also informed the meeting that as the rental of the present offices occupied by the Company had been unjustifiably increased he had made arrangements to sublet certain premises in the Peek Building in the City of Nassau from Ewart Jack Penfold and he presented to the meeting a copy of the proposed Sub-Lease.

C

On motion duly made and seconded, the following resolutions were unanimously agreed to, namely:-

RESOLVED that the Company do enter into an agreement with Nassau Contracting Company, Limited for the construction of a "Race

D

Finish Recording Tower" for the sum of £1,896 such agreement to be in the form of the copy submitted to this meeting and attached to these minutes, and

In the Supreme Court of the Bahama Islands Common Law Side

A RESOLVED FURTHER that the Company do sublet rooms 3, 4, 5, 6, 11 and 12 of the first (local second) floor of the Peek Building in the City of Nassau from Ewart Jack Penfold for the residue of the term of three years from the First day of January, 1948 less the last day thereof at the monthly rental of £50 payable quarterly in advance such Sub-Lease to be in the form of the copy submitted to this meeting and attached to these minutes, and

Exhibit A.3
Minutes of Directors' Meeting, 2nd November, 1949.
(Contd.)

B RESOLVED FURTHER that all documents necessary to carry the above transactions into effect be signed and sealed on behalf of the Company by the Vice-President of the Company in the presence of the Secretary of the Company.

On motion, the meeting adjourned.

C.W.F. Bethell,
Chairman.

Confirmed:
C.W.F. Bethell,
25th Dec. 49.

Dorothy Black,
Secretary.

Kenyon Goode, Capt.

J.H. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3

MINUTES OF DIRECTORS' MEETING
28th December, 1949

Exhibit A.3
Minutes of
Directors'
Meeting,
28th December,
1949.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 28th day of December, A.D. 1949 at 11 o'clock in the forenoon.

A

All of the Directors were present, namely:- Charles Walter Frederick Bethell, Captain Kenyon Edward Minton Goode, John Herbert Bethell, and Dorothy Ann Black.

On motion Mr. Charles Walter Frederick Bethell, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 2nd day of November, A.D. 1949 were read and confirmed.

B

The Vice-President Captain Kenyon Edward Minton Goode informed the meeting that during the temporary absence of Mrs. Dorothy Ann Black, the Secretary of the Company, it would be necessary to provide another signing officer in order to facilitate the signing of cheques and he recommended that Miss Margaret Louise Baines be appointed Assistant-Secretary of the Company for the remainder of the Company's current year with power to sign cheques together with any other Director of the Company.

C

On motion duly made and seconded, it was resolved that Miss Margaret Louise Baines be appointed an Assistant-Secretary of the Company.

On motion duly made and seconded, it was resolved that the resolution of the Directors passed on the 30th day of March, A.D. 1949 relative to the operation of the bank account of the Company with the Nassau Branch of The Royal Bank of Canada be and the same is hereby cancelled and revoked, and that the said bank be notified accordingly.

D

On motion duly made and seconded, IT WAS
UNANIMOUSLY RESOLVED:-

In the Supreme
Court of the
Bahama Islands
Common Law Side

- (1) That the Royal Bank of Canada is hereby appointed the Banker of the Company.
- (2) That any one of the Assistant-Secretary Miss Margaret Louise Baines and the Directors be and they are/he or she is hereby authorized for and on behalf of the Company to negotiate with, deposit with, or transfer to the said Bank (but for credit of the Company's account only) all or any cheques, promissory notes, bills of exchange, orders for the payment of money, drafts signed on behalf of the Company by them or any one of them and other negotiable paper endorsed on behalf of the Company by them or any of them or the name of the Company impressed thereon by rubber stamp or otherwise; also to arrange, settle, balance and certify all books and accounts between the Company and the Bank and to receive all paid cheques and vouchers and to sign and deliver to the Bank the Bank's form of settlement of balances and release; provided, however, the President, Vice-President, Secretary or Secretary-Treasurer may in writing appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of receiving all paid cheques and vouchers and of signing and delivering to the Bank the Bank's form of settlement of balances and release.
- (3) That any two of Miss Margaret Louise Baines the Assistant-Secretary of the Company and the Directors be and they are hereby authorized on behalf of the Company to make, sign, draw, accept or endorse all or any cheques, promissory notes, drafts, acceptances, bills of exchange, orders for the payment of money, warehouse receipts, bills of lading and other instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits, including overdrafts, from The Royal Bank of Canada upon the credit of the Company in any manner whatsoever; and, further, to

Exhibit A.3
Minutes of
Directors' Meet-
ing, 28th
December, 1949.
(Contd.)

A

B

C

D

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3
Minutes of
Directors'
Meeting,
28th December,
1949.

(Contd.)

- mortgage, hypothecate, pledge, give, assign and transfer to the Bank all or any book debts and other debts due or growing due, stocks, bonds, warehouse receipts, bills of lading, insurance policies, promissory notes, bills of exchange and other securities, and to give and to authorize any other person to give to the Bank security and promises to give security under Section 88 of the Bank Act of the Dominion of Canada, warehouse receipts and bills of lading and promises to give warehouse receipts and/or bills of lading and any and all other security and promises to give security which a bank may take under the provisions of the Bank Act of the Dominion of Canada or other law whatsoever and to give and to authorize any other person to give notices of intention to give security under Section 88 of the Bank Act of the Dominion of Canada and to manage and transact and settle all banking matters and banking business whatsoever with the said Bank or with its Officials; and generally to exercise all rights and powers which the Directors might or could exercise under the authority of the Company's certificate of incorporation and the laws governing the Company. A
- (4) That all securities, documents and instruments, whether negotiable or not, signed, made, drawn, accepted or endorsed as aforesaid shall be valid and binding upon the Company. C
- (5) That the Bank be furnished with a list of the names of the Directors, Secretary and other officers of the Company authorized to sign for it, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such officers.
- (6) That this resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the branch of the said Bank at which the account of the Company is kept, and receipt of such notice is duly acknowledged in writing. D

On motion duly made and seconded the Secretary was instructed to notify the Registrar General and the Manager of the Nassau Branch of The Royal Bank of Canada of the changes which had taken place in the Officers of the Company.

On motion, the meeting adjourned.

C.W.F. Bethell
Chairman.

Confirmed:
C.W.F. Bethell.
17th Jan. 50.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3
Minutes of
Directors'
Meeting,
28th December,
1949.
(Contd.)

A

Dorothy Black,
Secretary.

Kenyon Goode.

J.H. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3
MINUTES OF DIRECTORS' MEETING
17th January, 1950

Exhibit A.3
Minutes of
Directors'
Meeting,
17th January,
1950.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 17th day of January, A.D. 1950 at 12.00 o'clock noon.

A

All of the Directors were present, namely:- Charles Walter Frederick Bethell, Captain Kenyon Edward Minton Goode, John Herbert Bethell, and Dorothy Ann Black.

On motion, Mr. Charles Walter Frederick Bethell, the President of the Company took the chair.

The minutes of the meeting of the Directors held on the 28th day of December, A.D. 1949 were read and confirmed.

B

The Chairman informed the meeting that it was necessary to make new arrangements with the Nassau Branch of The Royal Bank of Canada in connection with the lease of a compartment in the vaults of the said Branch.

On motion duly made and seconded, it was resolved that the resolution relative to the lease by the Company of a compartment in the vaults of the Nassau Branch of The Royal Bank of Canada passed at the meeting of the Directors held on the 5th day of April, A.D. 1949 be cancelled and revoked.

C

There was read and submitted to the Meeting printed Rules, Regulations and Conditions of Lease by this Company of a safe deposit box in the vaults of The Royal Bank of Canada, for the rental and upon the terms and conditions therein set out.

"On motion, duly proposed and seconded, it was unanimously resolved:-

D

A That the said form of Lease and Rules, Regulations and Conditions applicable there-
to, be and the same are hereby approved, and
that Mr. Eric Fisher jointly with either
Herbert Deal or Captain Kenyon Edward Minton
Goode be and they are hereby authorized to
sign the said agreement and to have access to
and control of the contents of such safe
deposit box, with full power to each of them
to appoint substitutes in their place and
stead, and the present resolution shall apply
not only to the said safe deposit box but to
any other safe deposit box that may be leased
by this Company, and that the present resolu-
tion be communicated to the Bank and remain
in force until notice in writing to the
contrary be given to the Manager of the
Branch of the Bank in which any box is leased
and receipt of such notice duly acknowledged
B in writing."

On motion, the meeting adjourned.

C.W.F. Bethell,
Chairman.

Confirmed:
C.W.F. Bethell,
29th March, 50.

Dorothy Ann Black,
Secretary.

J.H. Bethell.

C Kenyon Goode.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3
Minutes of
Directors'
Meeting,
17th January.
1950.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2
MINUTES OF DIRECTORS' MEETING
29th March 1950

Exhibit A.2
Minutes of
Directors'
Meeting,
29th March,
1950.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 29th day of March, A.D. 1950 at 10.45 o'clock in the forenoon.

A

All of the Directors were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Kenyon Edward Minton Goode, and Dorothy Ann Black.

On motion, Mr. Charles Walter Frederick Bethell, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 17th day of January, A.D. 1950 were read and confirmed.

B

The Chairman presented to the meeting the Balance Sheet and Accounts of the Company made up to the 31st day of December, A.D. 1949 by Messrs. Deal and Deal, Accountants and Auditors, and on motion duly made and seconded, the said Balance Sheet and Accounts were approved, all appropriations set out therein were agreed to, and it was decided to submit the same to the Annual General Meeting of the Company.

The Chairman presented to the meeting a draft report (hereto attached) to be submitted by the Directors at the Annual General Meeting of the Company, and on motion duly made and seconded, the same was approved and the Chairman was authorized to submit the same at the Annual General Meeting.

C

On motion, the meeting adjourned.

Dorothy Black,
Secretary.

C.W.F. Bethell,
Chairman.

J.H. Bethell.

Confirmed:
C.W.F. Bethell,
8th Aug. 1950.

D

Kenyon Goode.

DIRECTORS' DRAFT

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

REPORT OF DIRECTORS

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2
Minutes of
Directors'
Meeting,
29th March,
1950.
(Contd.)

A The Directors beg to submit herewith the Balance Sheet and Accounts of the Company made up to the 31st day of December, A.D. 1949. This Balance Sheet and the Accounts accompanying it have been approved by the Directors who recommend all appropriations contained therein and also recommend that the same be accepted and approved by the Company.

In the opinion of the Directors, while the net profits are not as large as had been hoped for the position of the Company cannot be considered unsatisfactory.

B DATED the 29th day of March, A.D. 1950.

BY ORDER OF THE BOARD

C.W.F.B.

President.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2
MINUTES OF DIRECTORS' MEETING
8th August 1950

Exhibit A.2
Minutes of
Directors'
Meeting,
8th August,
1950.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 8th day of August, A.D. 1950 at 11.00 o'clock in the forenoon. A

The following Directors were present, namely:- Charles Walter Frederick Bethell, John Herbert Bethell, Kenyon Edward Minton Goode, and Dorothy Ann Black.

On motion, Mr. Charles Walter Frederick Bethell, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 29th day of March, A.D. 1950 were read and confirmed. B

The Chairman informed the meeting that Captain Kenyon Edward Minton Goode the Manager and Stipendiary Steward of the race course of the Company would agree to rescind the contract of service entered into between the Company and himself on the 23rd day of May, A.D. 1949 and join in a mutual release of all claims and demands arising under the said contract provided that the Company would agree to do the same, and the Chairman recommended that the Company do agree. C

On motion duly made and seconded, the following resolutions were agreed to, namely:-

RESOLVED that the Company do enter into an agreement with Captain Kenyon Edward Minton Goode rescinding the agreement made between the Company and Captain Goode dated the 23rd day of May, A.D. 1949 whereby the Company employed Captain Goode and Captain Goode agreed to serve the Company as Manager and Stipendiary Steward at the Company's race course and join with Captain Goode in a D

mutual release of all claims and demands arising under the said agreement, and,

RESOLVED FURTHER that all documents necessary to carry the above transactions into effect be signed and sealed on behalf of the Company by a Director of the Company in the presence of the Secretary of the Company.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2
Minutes of
Directors'
Meeting,
8th August,
1950.

(Contd.)

A As Captain Goode was personally interested he did not vote on the above resolutions.

Captain Kenyon Edward Minton Goode presented his resignations (hereto attached) as the Vice-President and a Director of the Company to take effect immediately.

B On motion duly made and seconded, the resignations of Captain Kenyon Edward Minton Goode as the Vice-President and a Director of the Company were accepted to take effect immediately.

The Secretary informed the meeting that share certificate No. 34 for one share in the Company, numbered 300, now standing in the name of Captain Kenyon Edward Minton Goode in the Register of the Company had been transferred to Mrs. Barbara Marian Gamblin.

C On motion duly made and seconded, the transfer of one share in the Company, numbered 300, from Captain Kenyon Edward Minton Goode to Mrs. Barbara Marian Gamblin was approved, and it was resolved that a new certificate for this share be issued to Mrs. Gamblin in lieu of certificate No. 34 which was declared to be cancelled.

On motion duly made and seconded, the Secretary was instructed to notify the Manager of the Nassau Branch of The Royal Bank of Canada and the Registrar General of the resignations of Captain Kenyon Edward Minton Goode as the Vice-President and a Director of the Company.

D On motion, the meeting adjourned.

Dorothy Black,
Secretary.

C.W.F. Bethell,
Chairman.

Kenyon Goode.

Confirmed:

J.H. Bethell.

C.W.F. Bethell.
23rd Aug. 50.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2
MINUTES OF DIRECTORS' MEETING
23rd August 1950

Exhibit A.2
Minutes of
Directors'
Meeting,
23rd August,
1950.

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

A Meeting of the Directors of the above-named Company was held at Building No. 309, Bay Street, Nassau, Bahamas on the 23rd day of August, A.D. 1950 at 3.00 o'clock in the afternoon.

A

The following Directors were present, namely:- Charles Walter Frederick Bethell, and Dorothy Ann Black.

On motion, Mr. Charles Walter Frederick Bethell the President of the Company took the Chair.

The Chairman informed the meeting that Mr. John Herbert Bethell, the third Director of the Company, was absent from the Colony.

B

The minutes of the meeting of the Directors held on the 8th day of August, A.D. 1950 were read and confirmed.

The Chairman informed the meeting that on the balance sheet of the Company made up to the 31st December, 1949 an item of £9,370 was shown as an amount recovered from T.A. Macauley, Esq. less collection charges. The Chairman further informed the meeting that this payment was in fact a payment by Caribbean Investments, Limited, Timothy Alfred Macauley and Margaret Conway Macauley and should be applied pro rata in respect of the guarantees given by these three parties to the Company and referred to in the minutes of the meeting of the Directors held on the 30th December, 1948.

C

On motion duly made and seconded, the following resolutions were unanimously agreed to, namely:-

RESOLVED that the said sum of Nine thousand Three hundred and Seventy pounds appearing on the balance sheet of the Company of the

D

31st December, 1949 under the heading "Amount recovered from T.A. Macauley, Esq., less Collection Charges" should be treated as repayments by Caribbean Investments, Limited as to Six thousand Two hundred and Forty-six pounds Thirteen shillings and Fourpence by Timothy Alfred Macauley as to Two thousand Three hundred and Forty-two pounds Ten Shillings and by Margaret Conway Macauley as to Seven hundred and Eighty pounds Sixteen shillings and Eightpence in respect of the guarantees given by these parties respectively under date of the 31st December, 1948 in accordance with the minutes of the meeting of the Directors held on the 30th December, 1948, and

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit A.2
Minutes of Directors' Meeting, 23rd August, 1950.
(Contd.)

A

RESOLVED FURTHER that the interest on the said guarantees at the rate of $4\frac{1}{2}\%$ per annum should be waived up to the date of these minutes, and

B

RESOLVED FURTHER that the said guarantees should be endorsed by a proper officer of the Company so as to show that the sum of Four hundred and Twenty pounds only was due under the said guarantee of Caribbean Investments, Limited, that the sum of One hundred and Fifty-seven pounds Ten shillings only was due under the said guarantee of Timothy Alfred Macauley and that the sum of Fifty-two pounds Ten shillings only was due under the said guarantee of Margaret Conway Macauley, and that the interest thereon respectively had been waived up to the date of these minutes.

C

The Chairman informed the meeting that the Company was indebted to Caribbean Investments, Limited in the sum of £11,800 on open account free of interest. He further informed the meeting that Caribbean Investments, Limited required the said sum to be repaid and that he had made arrangements with Mr. Alexis Nihon to loan the Company this amount on a demand promissory note free of interest.

D

On motion duly made and seconded, the following resolutions were unanimously agreed to, namely:-

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.2

Minutes of
Directors'
Meeting,
23rd August,
1950.

(Contd.)

RESOLVED that the Company do repay Caribbean Investments, Limited the sum of Eleven thousand Eight hundred pounds in respect of the open account loan free of interest due by this Company to that Company, and

RESOLVED FURTHER that the Company do borrow the sum of Eleven thousand Eight hundred pounds from Alexis Nihon on a demand promissory note free of interest, and

A

RESOLVED FURTHER that the said demand promissory note be signed and sealed on behalf of the Company by the President or the Vice-President of the Company in the presence of the Secretary or an Assistant Secretary of the Company.

The Chairman informed the meeting that the under mentioned share certificates had been transferred by Caribbean Investments, Limited to Mr. Alexis Nihon, namely:-

B

Number 26 for 21 shares, numbered 103 to 123 inclusive,
Number 27 for 59 shares, numbered 124 to 182 inclusive,
Number 28 for 59 shares, numbered 183 to 241 inclusive,
Number 30 for 56 shares, numbered 242 to 297 inclusive,
Number 31 for one share, numbered 298, and
Number 32 for one share, numbered 299.

C

On motion duly made and seconded, the transfer of the above-mentioned shares from Caribbean Investments, Limited to Mr. Alexis Nihon was approved, and it was resolved that new certificates for these shares be issued to Mr. Nihon in lieu of certificates Numbers 26, 27, 28, 30, 31 and 32 which are hereby declared to be cancelled.

The Chairman further informed the meeting that share certificate Number 37 for one share in the Company, numbered 300, had been transferred by Mrs. Barbara Marian Gamblin to Mrs. Alice Nihon.

D

On motion duly made and seconded, the transfer of one share in the Company, numbered 300,

from Mrs. Barbara Marian Gamblin to Mrs. Alice Nihon was approved, and it was resolved that a new certificate for this share be issued to Mrs. Nihon in lieu of certificate Number 37 which is hereby declared to be cancelled.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit A.2

A Mrs. Dorothy Ann Black presented her resignations (hereto attached) as a Director and Secretary and Treasurer of the Company, to take effect at the close of the present meeting, and on motion duly made and seconded, these resignations were accepted.

Minutes of Directors' Meeting, 23rd August, 1950.
(Contd.)

On motion duly made and seconded, Mr. Alexis Nihon was elected a Director of the Company for the remainder of the Company's current year in the place and stead of Mrs. Dorothy Ann Black.

B Mr. Charles Walter Frederick Bethell presented his resignation (hereto attached) as President of the Company, to take effect from the close of the present meeting, and on motion duly made and seconded, this resignation was accepted.

On motion duly made and seconded, Mr. Alexis Nihon was elected President of the Company for the remainder of the Company's current year in the place and stead of Mr. Bethell.

C On motion duly made and seconded, Mr. Charles Walter Frederick Bethell was elected Vice-President of the Company for the remainder of the Company's current year to fill the vacancy created by the resignation of Captain Kenyon Edward Minton Goode as Vice-President of the Company on the 8th August, 1950.

On motion duly made and seconded, Mrs. Alice Nihon was elected a Director of the Company for the remainder of the Company's current year to fill the vacancy created by the resignation of Captain Kenyon Edward Minton Goode as a Director of the Company on the 8th August, 1950.

D On motion duly made and seconded, Mr. Alexis Nihon was elected Treasurer of the Company for the remainder of the Company's current year in the place and stead of Mrs. Dorothy Ann Black.

On motion duly made and seconded, Mr. Leonard Dudley Roberts was elected Secretary of the Company

In the Supreme Court of the Bahama Islands Common Law Side for the remainder of the Company's current year in the place and stead of Mrs. Dorothy Ann Black.

Exhibit A.2
Minutes of Directors' Meeting, 23rd August, 1950.
(Contd.)

On motion duly made and seconded, Mrs. Alice Nihon and Mrs. Barbara Marian Gamblin were elected Assistant Secretaries of the Company for the remainder of the Company's current year.

On motion duly made and seconded, the resolution of the Directors relative to the operation of the bank account of the Company with the Nassau Branch of The Royal Bank of Canada passed on the 28th day of December, A.D. 1949 was revoked.

A

On motion duly made and seconded, the attached resolution relative to the operation of the bank account of the Company with the Nassau Branch of The Royal Bank of Canada was unanimously agreed to.

On motion duly made and seconded, the Secretary of the Company was instructed to notify the Registrar General and the Nassau Branch of The Royal Bank of Canada of the changes which had taken place in the Directors and Officers of the Company.

B

On motion, the meeting adjourned.

Secretary

Chairman.

Approved:
September First
1950

A. Nihon.
Alice Nihon.

C

Exhibit A.1

MINUTES OF DIRECTORS' MEETING
8th January, 1951

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
 LIMITED

Exhibit A.1
 Minutes of
 Directors'
 Meeting,
 8th January,
 1951.

A A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, Building No. 309, Bay Street, Nassau, Bahamas on the 8th day of January, A.D. 1951 at 4.00 o'clock in the afternoon.

The following Directors were present, namely:- Alexis Nihon, Alice Nihon, and John Herbert Bethell, and Mrs. Alice Nihon acted as Secretary for the meeting.

On motion, Mr. Alexis Nihon, the President of the Company took the Chair.

B The Chairman informed the meeting that Mr. Charles Walter Frederick Bethell, the fourth Director of the Company, was absent from the Colony.

The minutes of the meeting of the Directors held on the 23rd day of August, A.D. 1950 were read and confirmed.

C The Secretary informed the meeting that share certificate No. 35 for one share in the Company, numbered 4, now standing in the name of Dorothy Ann Black in the Register of the Company had been transferred by Mrs. Black to Mr. Alexis Nihon.

On motion duly made and seconded, the transfer of one share in the Company, numbered 4, from Mrs. Dorothy Ann Black to Mr. Alexis Nihon was approved, and it was resolved that a new certificate be issued to Mr. Nihon in lieu of certificate No. 35 which was declared to be cancelled.

D The Secretary informed the meeting that share certificate No. 36 for one share in the Company, numbered 2, now standing in the name of Floyd Lester Weech in the Register of the Company had been transferred by Mr. Weech to Mr. Alexis Nihon.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.1
Minutes of
Directors'
Meeting,
8th January,
1951.
(Contd.)

On motion duly made and seconded, the transfer of one share in the Company, numbered 2, from Mr. Floyd Lester Weech to Mr. Alexis Nihon was approved, and it was resolved that a new certificate be issued to Mr. Nihon in lieu of certificate No. 36 which was declared to be cancelled.

The Secretary informed the meeting that share certificate No. 23 for fifty-nine shares in the Company, numbered 6 to 64 inclusive, now standing in the name of Roynas & Co. in the Register of the Company had been transferred by Roynas & Co. to Mr. Alexis Nihon.

A

On motion duly made and seconded, the transfer of fifty-nine shares in the Company, numbered 6 to 64 inclusive, from Roynas & Co., to Mr. Alexis Nihon was approved, and it was resolved that a new certificate be issued to Mr. Nihon in lieu of certificate No. 23 which was declared to be cancelled.

The Secretary informed the meeting that share certificate No. 24 for thirteen shares in the Company, numbered 65 to 77 inclusive, now standing in the name of Roynas & Co. in the Register of the Company had been transferred by Roynas & Co. to Mr. Alexis Nihon.

B

On motion duly made and seconded, the transfer of thirteen shares in the Company, numbered 65 to 77 inclusive, from Roynas & Co., to Mr. Alexis Nihon was approved, and it was resolved that a new certificate be issued to Mr. Nihon in lieu of certificate No. 24 which was declared to be cancelled.

C

The Secretary informed the meeting that share certificate No. 25 for twenty-five shares in the Company, numbered 78 to 102 inclusive, now standing in the name of Roynas & Co. in the Register of the Company had been transferred by Roynas & Co. to Mr. Alexis Nihon.

On motion duly made and seconded, the transfer of twenty-five shares in the Company, numbered 78 to 102 inclusive, from Roynas & Co., to Mr. Alexis Nihon was approved, and it was resolved that a new certificate be issued to Mr. Nihon in lieu of certificate No. 25 which was declared to be cancelled.

D

On motion duly made and seconded, the resolution of the Directors relative to the operation of the bank account of the Company with the Nassau Branch of The Royal Bank of Canada passed on the 23rd day of August, A.D. 1950 was revoked.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion duly made and seconded, it was
UNANIMOUSLY RESOLVED:-

Exhibit A.1
Minutes of
Directors'
Meeting,
8th January,
1951.
(Contd.)

- A (1) That the Royal Bank of Canada is hereby appointed the Banker of the Company.
- (2) (a) That the Directors, Philip George Drover Bethell and Geoffrey Allardyce Bethell or any one of them be and they are/he is hereby authorized for and on behalf of the Company to negotiate with, deposit with, or transfer to the said Bank (but for credit of the Company's account only) all or any cheques, promissory notes, bills of exchange, orders for the payment of money, drafts signed on behalf of the Company by them or any one of them and other negotiable paper endorsed on behalf of the Company by them or any of them or the name of the Company impressed thereon by rubber stamp or otherwise; also to arrange, settle, balance and certify all books and accounts between the Company and the Bank; provided, however, the President, Vice-President, Secretary or Treasurer may in writing appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of signing and delivering to the Bank the Bank's form of settlement of balances and release.
- B
- C (2) (b) That the President alone be and he is hereby authorized to receive all paid cheques and vouchers from the Bank.
- D (3) That Alexis Nihon alone, or any two of the Directors and Philip George Drover Bethell and Geoffrey Allardyce Bethell or any two of them be and they are hereby authorized on behalf of the Company to make, sign, draw, accept or endorse all or any cheques, promissory notes, drafts, acceptances, bills of exchange, orders for the payment of money, warehouse receipts, bills of lading and other

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.1
Minutes of
Directors'
Meeting,
8th January,
1951.

(Contd.)

instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits, including overdrafts, from The Royal Bank of Canada upon the credit of the Company in any manner whatsoever; and, further to mortgage, hypothecate, pledge, give, assign and transfer to the Bank all or any book debts and other debts due or growing due, stocks, bonds, warehouse receipts, bills of lading, insurance policies, promissory notes, bills of exchange and other securities, and to give and to authorize any other person to give to the Bank security and promises to give security under Section 88 of the Bank Act of the Dominion of Canada warehouse receipts and bills of lading and promises to give warehouse receipts and/or bills of lading and any and all other security and promises to give security which a bank may take under the provisions of the Bank Act of the Dominion of Canada or other law whatsoever, and to give and to authorize any other person to give notices of intention to give security under Section 88 of the Bank Act of the Dominion of Canada and to manage and transact and settle all banking matters and banking business whatsoever with the said Bank or with its officials; and generally to exercise all rights and powers which the Directors might or could exercise under the authority of the Company's certificate of incorporation and the laws governing the Company.

A

B

C

- (4) That all securities, documents and instruments, whether negotiable or not, signed, made, drawn, accepted or endorsed as aforesaid shall be valid and binding upon the Company.
- (5) That the Bank be furnished with a list of the names of the Directors, Secretary and other Officers of the Company authorized to sign for it, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such officers.
- (6) That this resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the branch of the said Bank at which the

D

account of the Company is kept, and receipt of such notice is duly acknowledged in writing.

In the Supreme Court of the Bahama Islands Common Law Side

The Chairman presented the resignation (hereto attached) of Mr. Leonard Dudley Roberts as Secretary of the Company to take effect immediately. Exhibit A.1

Minutes of Directors' Meeting, 8th January, 1951.

(Contd.)

A Mrs. Alice Nihon presented her resignation (hereto attached) as Assistant Secretary of the Company to take effect immediately.

On motion duly made and seconded, the resignation of Mr. Leonard Dudley Roberts as Secretary of the Company was accepted to take effect immediately.

On motion duly made and seconded, the resignation of Mrs. Alice Nihon as Assistant Secretary of the Company was accepted to take effect immediately.

B On motion duly made and seconded, Mrs. Alice Nihon was elected Secretary of the Company in the place and stead of Mr. Leonard Dudley Roberts.

On motion duly made and seconded, Mr. Leonard Dudley Roberts was elected Assistant Secretary of the Company in the place and stead of Mrs. Alice Nihon.

C On motion duly made and seconded, the Secretary was instructed to notify the Registrar General and the Manager of the Nassau Branch of The Royal Bank of Canada of the resignation of Mr. Leonard Dudley Roberts as Secretary of the Company and the election of Mrs. Alice Nihon to that office, and of the resignation of Mrs. Alice Nihon as Assistant Secretary of the Company and the election of Mr. Leonard Dudley Roberts to that office.

On motion, the meeting adjourned.

Secretary,
A. Nihon.

A. Nihon,
Chairman.

D J.H. Bethell.

Confirmed:
A. Nihon,
13.1.51.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.1

MINUTES OF DIRECTORS' MEETING
13th January 1951

Exhibit A.1
Minutes of
Directors'
Meeting,
13th January,
1951.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, Building No. 309, Bay Street, Nassau, Bahamas on the 13th day of January, A.D. 1951 at 11.00 o'clock in the forenoon.

A

The following Directors were present, namely:-
Alexis Nihon, Alice Nihon, and John Herbert Bethell.

On motion, Mr. Alexis Nihon the President of the Company took the Chair.

The Chairman informed the meeting that Mr. Charles Walter Frederick Bethell, the fourth Director of the Company, was absent from the Colony.

B

The minutes of the meeting of the Directors held on the 8th day of January, A.D. 1951 were read and confirmed.

The Chairman informed the meeting that it was necessary to make new arrangements with the Nassau Branch of The Royal Bank of Canada in connection with the lease of a compartment in the vaults of the said Branch.

On motion duly made and seconded, it was resolved that the resolution relative to the lease by the Company of a compartment in the vaults of the Nassau Branch of The Royal Bank of Canada passed at a meeting of the Directors held on the 17th day of January, A.D. 1950 be cancelled and revoked.

C

There was read and submitted to the Meeting printed Rules, Regulations and Conditions of Lease by this Company of a safe deposit box in the vaults of The Royal Bank of Canada, for the rental and upon the terms and conditions therein set out.

D

On motion, duly proposed and seconded, it was unanimously resolved:

In the Supreme
Court of the
Bahama Islands
Common Law Side

A

That the said form of Lease and Rules, Regulations and Conditions applicable thereto, be and the same are hereby approved, and that Paul Gignac jointly with Eric Fisher are hereby authorized to sign the said agreement and to have access to and control of the contents of such safe deposit box, and that the present resolution be communicated to the Bank and remain in force until notice in writing to the contrary be given to the Manager of the Branch of the Bank in which this box is leased and receipt of such notice duly acknowledged in writing.

Exhibit A.1
Minutes of
Directors'
Meeting,
13th January,
1951.

(Contd.)

On motion, the meeting adjourned.

A. Nihon,
Chairman.

B Alice Nihon,
Secretary.

J.H. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
28th January 1952

Exhibit B.1
Minutes of
Directors'
Meeting,
28th January,
1952.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, Building No. 309 Bay Street, Nassau, Bahamas on the 28th day of January, A.D. 1952 at 10.30 o'clock in the forenoon.

A

The following Directors were present, namely:-
Alexis Nihon and Alice Nihon.

On motion, Mr. Alexis Nihon, the President of the Company took the Chair.

The minutes of the meeting of the Directors held on the 13th day of January, A.D. 1951 were read and confirmed.

B

The Chairman presented the attached resignation from Mr. Charles W.F. Bethell dated the 28th day of January, A.D. 1952 as a Director and Vice-President of the Company to take effect immediately.

On motion duly made and seconded, the resignation of Mr. Charles W.F. Bethell as a Director and Vice-President of the Company was accepted to take effect immediately.

The Chairman informed the meeting that share certificate No. 8 for one share in the Company, numbered 1, now standing in the Register of the Company in the name of Mr. Charles W.F. Bethell had been transferred by Mr. Bethell to Mr. Alden Lockhart Watt.

C

On motion duly made and seconded, the transfer of share certificate No. 8 for one share in the Company, numbered 1 from Mr. Charles W.F. Bethell to Mr. Alden Lockhart Watt was approved and it was resolved that a new certificate for this share be issued to Mr. Watt in lieu of certificate No. 8 which was declared to be cancelled.

D

On motion duly made and seconded, Mr. Alden Lockhart Watt was elected a Director and Vice-President of the Company for the remainder of the Company's current year in the place and stead of Mr. Charles W.F. Bethell.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
28th January,
1952.

A

The Chairman presented the attached resignation from Mr. John H. Bethell, dated the 28th day of January, A.D. 1952 as a Director of the Company to take effect immediately.

(Contd.)

On motion duly made and seconded, the resignation of Mr. John H. Bethell as a Director of the Company was accepted to take effect immediately.

B

The Chairman informed the meeting that share certificate No. 11 for one share in the Company, numbered 5, now standing in the Register of the Company in the name of Mr. John H. Bethell had been transferred by Mr. Bethell to Mr. Leonard Dudley Roberts.

On motion duly made and seconded, the transfer of share certificate No. 11 for one share in the Company, numbered 5 from Mr. John Herbert Bethell to Mr. Leonard Dudley Roberts was approved and it was resolved that a new certificate for this share be issued to Mr. Roberts in lieu of certificate No. 11 which was declared to be cancelled.

C

On motion duly made and seconded, Mr. Leonard Dudley Roberts was elected a Director of the Company for the remainder of the Company's current year in the place and stead of Mr. John Herbert Bethell.

The Chairman informed the meeting that as the Company had a substantial surplus on the 22nd day of September, A.D. 1951 they had paid an interim dividend of £6,000 to the members of record as of that date which he felt was justified.

D

On motion duly made and seconded, it was resolved that the payment of an interim dividend of £6,000 on the 22nd day of September, A.D. 1951 to the members of record as of that date is hereby approved, ratified and confirmed.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion duly made and seconded, the Secretary was instructed to notify the Registrar General and the Manager of the Nassau Branch of The Royal Bank of Canada of the changes which had taken place in the Officers and Directors of the Company.

Exhibit B.1

Minutes of
Directors'
Meeting,
28th January,
1952.
(Contd.)

On motion, the meeting adjourned.

Secretary.

Chairman.

A

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
31st December 1952

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
31st December,
1952.

A The Directors beg to submit herewith the
Balance Sheet and Profit and Loss Statement of the
Company made up to the 31st day of December, A.D.
1952. The Balance Sheet and Profit and Loss
Statement have been approved by the Directors, who
recommend all appropriations contained therein,
and also recommend that the same be accepted and
approved by the Company.

B In the opinion of the Directors, while the
net profits are not as large as had been hoped
for, the position of the Company cannot be
considered unsatisfactory.

DATED the 6th day of February, A.D. 1952.

BY ORDER OF THE BOARD

(Signed) A. NIHON

President.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
MINUTES OF DIRECTORS' MEETING
6th February 1953

Exhibit B.1
Minutes of
Directors'
Meeting,
6th February,
1953.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, Building No. 309, Bay Street, Nassau, Bahamas, on the 6th day of February, A.D. 1953 at 10.00 o'clock in the forenoon.

A

All of the Directors were present, namely: Alexis Nihon, Alice Nihon, Alden Lockhart Watt, and Leonard Dudley Roberts.

On motion, Mr. Alexis Nihon, the President of the Company, took the Chair.

The minutes of the meeting of the Directors held on the 28th January, A.D. 1952 were read and confirmed.

B

The Chairman presented the Balance Sheet and Profit and Loss Statement of the Company made up to the 31st December, A.D. 1952, both duly audited by Deal and Deal. On motion duly made and seconded, the said Balance Sheet and Profit and Loss Statement were approved, and all appropriations set out therein were agreed to, and it was decided to submit the same to the Annual General Meeting.

The Chairman presented to the meeting a draft of the Report of the Directors (hereto attached) to be submitted by the Directors to the Annual General Meeting of the Company, and on motion duly made and seconded, the same was approved and the Board was authorized to submit the same to the Annual General Meeting.

C

On motion, the meeting adjourned.

(written in ink) Confirmed:

(signed) A. NIHON,
Chairman.

D

(written in ink) 6th May, 1953.

(Signed) ALICE NIHON,
Secretary.

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
6th May, 1953

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
6th May, 1953.

A A meeting of the Directors of The Montagu Park Racing Association, Limited was held at No. 324 Bay Street, Nassau, Bahamas on the 6th day of May, A.D. 1953 at 3.30 o'clock in the afternoon.

All the Directors were present, namely:-
Raymond Wilson Sawyer, Alexis Nihon, Roderick Newton Higgs, Alice Nihon and Ivarene Gladys Sawyer.

On motion, Dr. Raymond W. Sawyer, the President of the Company, took the Chair.

B The minutes of the meeting of the Directors of the Company, held on the 6th day of February, A.D. 1953 were read and confirmed.

On motion duly made and seconded the following Resolution was approved:-

C As a consideration for the excellent services rendered this Company by the President, Alexis Nihon, be it resolved that, in the event of the purchase of the assets of Montagu Park Racing Association Limited by the Purchaser he retain Three percent of the Thirteen percent granted to the licensee on the pari-mutuel pool and one-half of the gross proceeds by The Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind held at Hobby Horse Hall.

D Mr. Alexis Nihon informed the meeting that he had agreed to transfer 294 of his shares in this Company to Dr. Raymond W. Sawyer, and on motion duly made and seconded the transfer of the said 294 shares was approved, subject to the approval of the Exchange Control.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
6th May, 1953.
(Contd.)

On motion duly made and seconded it was resolved that the shares which are being transferred to Dr. Raymond W. Sawyer from Mr. Alexis Nihon should be endorsed with a notation that they are subject to the above resolution and to the contractual obligations contained in an agreement to be entered into between Mr. Nihon and Dr. Sawyer.

On motion the meeting adjourned.

Secretary

Chairman.

A

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
22nd March 1955

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
22nd March,
1955.

A A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 22nd day of March, A.D. 1955 at 11.00 o'clock in the forenoon.

The undermentioned Directors were present, namely:- Raymond Wilson Sawyer, Roderick Newton Higgs, Ivarene Gladys Sawyer.

On motion Dr. Raymond W. Sawyer, the President of the Company, took the chair.

B The minutes of the meeting of the Directors of the Company, held on the 6th day of May, A.D. 1953, were read and confirmed.

The Chairman presented waivers of notice from Alexis Nihon and Alice Nihon, the other Directors of the Company, dated the 22nd day of March, A.D. 1955.

On motion duly made and seconded IT WAS RESOLVED:-

C That Barclays Bank (Dominion, Colonial and Overseas) be appointed the Bankers of the Company.

That the said Bank be and they are hereby authorized:-

D 1. To honour and comply with all Cheques Drafts Bills Promissory Notes Acceptances negotiable instruments and orders expressed to be drawn accepted made or given on behalf of this Company at any time or times whether the banking account or accounts of this Company are overdrawn by any payment of or in relation thereto or are in credit or otherwise.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
22nd March,
1955.
(Contd.)

2. To honour and comply with all instructions to deliver or dispose of any securities or documents or property held by the Bank on behalf of the Company.

Provided any such Cheques Drafts Bills Promissory Notes Acceptances negotiable instruments orders and instructions are signed by Raymond Wilson Sawyer.

3. To treat all Bills Promissory Notes and Acceptances as being endorsed on behalf of the Company and to discount or otherwise deal with them provided such endorsements purport to be signed by Raymond Wilson Sawyer.

A

On motion the meeting adjourned.

(written in ink) Confirmed:

(Signed) RAYMOND W. SAWYER
Chairman.

(written in ink) 29/2/56

(Signed) R. NEWTON HIGGS
Secretary.

B

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

I, Alice Nihon of the Island of New Providence, being a Director of The Montagu Park Racing Association, Limited, hereby waive all previous notice of a meeting of the Directors of the said Company to be held on the 22nd day of March, A.D. 1955.

A

AS WITNESS my hand this 22nd day of March,
A.D. 1955.

(Signed) ALICE NIHON.

Signed by the said Alice Nihon in the
presence of:-

(Signed) YVONNE KNOWLES.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
22nd March,
1955.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
22nd March,
1955.
(Contd.)

I, Alexis Nihon of the Island of New Providence, being a Director of The Montagu Park Racing Association, Limited, hereby waive all previous notice of a meeting of the Directors of the said Company to be held on the 22nd day of March, A.D. 1955.

AS WITNESS my hand this 22nd day of March,
A.D. 1955.

(Signed) ALEXIS NIHON.

Signed by the said Alexis Nihon in the
presence of:-

(Signed) GODFREY K. KELLY.

A

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
29th February, 1956

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
29th February,
1956.

A A meeting of the Directors of Montagu Park Racing Association, Limited, was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 29th day of February, A.D. 1956 at 10.30 o'clock in the forenoon.

The undermentioned Directors were present, namely:- Raymond Wilson Sawyer, Ivarene Gladys Sawyer, Alexis Nihon.

Mr. Godfrey K. Kelly was also present and acted as Secretary of the meeting.

B On motion Dr. Raymond W. Sawyer, the President of the Company, took the Chair.

The Chairman presented to the meeting waivers of notice of this meeting from Alice Nihon and Roderick Newton Higgs, the other Directors of the Company. These waivers are hereto attached.

The minutes of the meeting of the Directors of the Company, held on the 22nd day of March, A.D. 1955, were read and confirmed.

C On motion of Dr. Raymond W. Sawyer and seconded by Mrs. Ivarene G. Sawyer (Mr. Nihon being interested, refrained from voting) the following Resolution was agreed to:-

RESOLVED that the Resolution in respect of the excellent services rendered this Company by Alexis Nihon which was passed at a meeting of the Directors of the Company, held on the 6th day of May, A.D. 1953, be and the same is hereby amended as follows:-

D As a consideration for the excellent services rendered this Company by

(initialled
in ink)
A. NIHON
R.W.S.
I.G.S.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Alexis Nihon be it resolved that Alexis Nihon his executors administrators or assigns retain Three percent of the Thirteen percent granted to the licensee on the pari mutuel pool.

Exhibit B.1

Minutes of
Directors'
Meeting,
29th February,
1956.

(Contd.)

Mr. Nihon informed the meeting that as Dr. Raymond W. Sawyer had not carried out the terms of the agreement made between him the said Dr. Sawyer and Mr. Nihon, dated the 6th May, 1953, the said agreement had been cancelled and the 297 shares of the capital stock of this Company which were held in escrow by Barclays Bank D.C.O. had therefore been transferred to him.

A

On motion duly made and seconded the transfer to Alexis Nihon of the following shares of the capital stock of this Company, namely:-

- 295 shares from Raymond Wilson Sawyer
- 1 share from Ivarene Gladys Sawyer (as a nominee shareholder for Raymond Wilson Sawyer)
- 1 share from Roderick Newton Higgs (as a nominee shareholder for Raymond Wilson Sawyer)

B

was approved, provided the approval of the Exchange Control is obtained.

Mr. Nihon then requested that the Certificates representing these 297 shares, namely:-

- No. 38 for 21 shares, numbered 103 - 123
- No. 39 for 59 shares, numbered 124 - 182
- No. 40 for 59 shares, numbered 183 - 241
- No. 41 for 56 shares, numbered 242 - 297
- No. 42 for 1 share, numbered 298
- No. 43 for 1 share, numbered 299
- No. 46 for 1 share, numbered 2
- No. 47 for 13 shares, numbered 65 - 77
- No. 48 for 59 shares, numbered 6 - 64
- No. 49 for 25 shares, numbered 78 - 102
- No. 50 for 1 share, numbered 1
- No. 51 for 1 share, numbered 5

C

D

(initialled
in ink)
A. NIHON
R.W.S.
I.G.S.

be cancelled and new Certificates issued as follows:-

- No. 52 for 1 share, numbered 1, in the name of Roderick Newton Higgs (to be held as a nominee for Alexis Nihon)

- No. 53 for 1 share, numbered 2 in the name of Alexis Nihon
 No. 54 for $148\frac{1}{2}$ shares, numbered 5 - $152\frac{1}{2}$ in the name of Alexis Nihon
 No. 55 for $146\frac{1}{2}$ shares, numbered $153\frac{1}{2}$ - 299 in the name of Alexis Nihon

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit B.1
 Minutes of Directors' Meeting,
 29th February, 1956.

(Contd.)

A Mr. Nihon further informed the meeting that he had agreed to transfer $149\frac{1}{2}$ shares of the capital stock of the Company standing in his name to Raymond Wilson Sawyer. Dr. Sawyer then requested that $148\frac{1}{2}$ of these shares be transferred to him and the other 1 share be transferred to his wife Ivarene Gladys Sawyer, and that a new Certificate No. 56 for $148\frac{1}{2}$ shares, numbered 5 - $152\frac{1}{2}$ be issued to him, and a new Certificate No. 57 for 1 share, numbered 2, be issued to Ivarene Gladys Sawyer.

B On motion duly made and seconded the transfer of $148\frac{1}{2}$ shares of the capital stock of the Company from Alexis Nihon to Raymond Wilson Sawyer, the transfer of 1 share of the capital stock of the Company from Alexis Nihon to Ivarene Gladys Sawyer and the issue of the new Certificates Nos. 56 and 57 were approved, provided the approval of Exchange Control is obtained.

C On motion duly made and seconded it was resolved that all the new Share Certificates should be endorsed with a notation that they are subject to the above Resolution and to the contractual obligations contained in an agreement to be entered into today between Alexis Nihon and Raymond Wilson Sawyer.

On motion duly made and seconded it was agreed that Dr. Raymond Wilson Sawyer should continue as Manager of Hobby Horse Hall at a salary of £5,000 per annum so long as he renders competent and efficient services to the satisfaction of the Board of Directors of the Company.

On motion the meeting adjourned.

D (written in ink) Confirmed:
 (signed) RAYMOND W. SAWYER,
 Chairman.

(written in ink) 24/1/57 (words "15th May, 1956" crossed out)

(written in pencil) agreed not to prepare minutes of meeting 15/5/56

(signed) GODFREY K. KELLY (signed) A. NIHON
 Acting Secretary. (initialled) R.W.S.
 I.G.S.

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
29th February,
1956.
(Contd.)

I, Roderick Newton Higgs of the Island of New Providence, being a Director of The Montagu Park Racing Association, Limited, hereby waive all previous notice of a meeting of the Directors of the said Company to be held on the 29th day of February, A.D. 1956.

AS WITNESS my hand this 24th day of February,
A.D. 1956.

(Signed) R. NEWTON HIGGS

Signed by the said Roderick Newton Higgs in
the presence of:-

(Signed) GODFREY K. KELLY

A

THE MONTAGU PARK RACING ASSOCIATION
LIMITED

I, Alice Nihon of the Island of New Providence, being a Director of The Montagu Park Racing Association, Limited, hereby waive all previous notice of a meeting of the Directors of the said Company to be held on the 29th day of February, A.D. 1956.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
29th February,
1956.
(Contd.)

A

AS WITNESS my hand this 29th day of February,
A.D. 1956.

(Signed) ALICE NIHON

Signed by the said Alice Nihon in the
presence of:-

(Signed) YVONNE KNOWLES

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
24th January 1957

Exhibit B.1
Minutes of
Directors'
Meeting,
24th January,
1957.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of The Montagu Park Racing Association Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 24th day of January A.D. 1957 at 3.00 o'clock in the afternoon.

A

All the Directors were present, namely:-
Raymond Wilson Sawyer, Alexis Nihon, Ivarene Sawyer, Alice Nihon, and Godfrey Kenneth Kelly.

Mr. Foster Clarke was also present as he was acting for Dr. and Mrs. Sawyer, Mr. R. Newton Higgs was also present.

On motion Dr. Sawyer, the President of the Company, took the Chair.

B

The minutes of the meeting of the Directors of the Company, held on the 29th day of February, A.D. 1956, were read and confirmed.

Mr. Nihon proposed that all previous banking resolutions relating to the banking accounts of the Company should be cancelled, revoked and annulled, and, after some discussion, on motion duly made and seconded the attached resolution was agreed to and signed by all the Directors pursuant to the provisions of Article 60 of the Articles of Association of the Company.

C

In view of the change in the Banking Resolution of the Company, Mr. Clarke suggested that Dr. Sawyer and Mr. Nihon be jointly and severally liable under a Bond of Indemnity to the Receiver General and Treasurer of the Colony in accordance with the provisions of The Race Course Betting Act in the penal sum of £5,000, and also that Dr. Sawyer and Mr. Nihon be jointly and severally liable to the Company's bankers on any overdrafts, loans or advances to the Company.

D

(initialled
in ink)
A.N.
A.N.

On motion duly made and seconded the following Resolution was agreed to:-

A RESOLVED that Dr. Sawyer and Mr. Nihon be jointly and severally liable under a Bond of Indemnity to the Receiver General and Treasurer of the Colony in accordance with the provisions of The Race Course Betting Act in the penal sum of £5,000, and also that Dr. Sawyer and Mr. Nihon be jointly and severally liable to the Company's bankers on any overdrafts, loans or advances to the Company.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit B.1
Minutes of Directors' Meeting,
24th January, 1957.
(Contd.)

B The question of Dr. Sawyer's salary as the Company's Manager of Hobby Horse Hall was then discussed, and on motion duly made and seconded it was resolved that the sum of £5,000 previously agreed upon as the annual salary for the Manager of Hobby Horse Hall be paid to Dr. Sawyer by five instalments of £1,000 on the First days of May, July, September and December, A.D. 1957 and March A.D. 1958, and on the same days in each and every year thereafter so long as Dr. Sawyer remains the Manager of Hobby Horse Hall.

Mr. Nihon suggested that in the future the Manager of Hobby Horse Hall should refer the following major matters to the Board of Directors for their consideration before taking any action thereon:-

- C
- (1) The number of meets to be held in each year.
 - (2) The amount of the purses to be paid to the winning horse owner.
 - (3) The hiring of an accountant or accountants.
 - (4) Concessions.
 - (5) Tote machines.
 - (6) The hiring of a pari-mutuel manager.
 - (7) The general policy of the Company.

D On motion duly made and seconded Mr. Nihon's suggestion with respect to the seven foregoing major matters was unanimously agreed to.

Mr. Nihon raised the question of the Company's policy regarding insurance against loss of the Company's money due to riot and/or hold-ups, and the Chairman was asked to look into the matter and arrange the necessary insurance.

(initialled
in ink)
A.N.
A.N.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
24th January,
1957.
(Contd.)

On motion the meeting adjourned.

(written in ink) Confirmed:

(Signed) ALICE NIHON,
Chairman.

(written in ink) 23rd Jan.
1958.

(Signed) A. NIHON,
Secretary.

(Signed) ALICE NIHON
A. NIHON
GODFREY K. KELLY.

A

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
23rd January 1958

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

Exhibit B.1
Minutes of
Directors'
Meeting,
23rd January,
1958.

A A meeting of the Directors of The Montagu Park Racing Association, Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 23rd day of January, A.D. 1958 at 3.30 o'clock in the afternoon.

The undermentioned Directors were present, namely:- Alice Nihon, Alexis Nihon and Godfrey Kenneth Kelly.

B Dr. R.W. Sawyer and Mrs. Ivarene Sawyer, the other Directors of the Company had received notice of this meeting, but were not present thereat.

On motion Mrs. Alice Nihon, the Vice-President of the Company, took the chair.

The minutes of the meeting of the Directors, held on the 24th day of January, 1957, were read and confirmed.

C The Chairman presented to the meeting the attached letter, signed by Mr. Alexis Nihon, Mrs. Alice Nihon and Mr. Godfrey K. Kelly, addressed to Dr. R.W. Sawyer, dated the 22nd January, 1958, removing him as President of the Company pursuant to the provisions of Article 61 of the Articles of Association of the said Company.

On motion duly made and seconded the said letter to Dr. Sawyer, removing him as President of the Company, signed by the three Directors aforesaid, was approved, ratified and confirmed.

D The Chairman further informed the meeting that the Chairman of the Racing Commission was being informed of the fact that Dr. Sawyer had been removed as President of the Company.

(initialled
in ink)
A.N.
A.N.
G.K.K.

In the Supreme
Court of the
Bahama Islands
Common Law Side

On motion duly made and seconded Mr. Alexis Nihon was appointed the President of the Company in the place and stead of Dr. R.W. Sawyer.

Exhibit B.1
Minutes of
Directors'
Meeting,
23rd January,
1958.

On motion duly made and seconded it was agreed that Mr. Nihon should request the Company's Accountants to produce the Company's balance sheet and accounts for the period from the 1st May, 1956 to the 30th April, 1957.

(Contd.)

Mr. Nihon referred to the minutes of the meeting of the Directors of the Company, held on the 29th day of February, A.D. 1956, whereby it was agreed that Dr. R. W. Sawyer should continue as Manager of Hobby Horse Hall at a salary of £5,000 per annum so long as he rendered competent and efficient services to the satisfaction of the Board of Directors of the Company.

Mr. Nihon also referred to the minutes of the meeting of the Directors of the Company, held on the 24th day of January, A.D. 1957, at which meeting Dr. Sawyer was present, whereat it was agreed inter alia that he, Dr. Sawyer, was to refer to the Board of Directors the number of meets to be held in each year, the granting of the concessions at the Race Track by the Company, the submission of the contract for the totalisator machines and the hiring of the pari-mutuel manager, which Dr. Sawyer had failed to do.

On motion duly made and seconded it was thereupon agreed that Dr. Sawyer had not rendered competent and efficient services to the satisfaction of the Board of Directors, and that he be dismissed as Manager of the Company's Race Track known as "Hobby Horse Hall" as and from the 24th instant. The Secretary was thereupon instructed to write Dr. Sawyer informing him that he had been dismissed as Manager of "Hobby Horse Hall" as and from the 24th instant.

On motion duly made and seconded Mr. Herbert Deal was appointed Acting General Manager of "Hobby Horse Hall" as and from the 24th January, 1958, at a salary to be fixed by the Board of Directors at a later date, and the Secretary was instructed to write Dr. Sawyer instructing him to turn over to Mr. Deal immediately all keys, papers,

(initialled
in ink)
A.N.
A.N.
G.K.K.

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documents and other articles in connection with "Hobby Horse Hall".

The Secretary was instructed to write a letter to the Chairman of The Racing Commission informing him of the following.

1. That the said letter to Dr. Sawyer informing him of his removal as President of the Company signed by the three Directors afore-said was approved, ratified and confirmed at this meeting.
2. That at this meeting Dr. Sawyer was dismissed as Manager of the Company's Race Track known as "Hobby Horse Hall" as and from the 24th instant.
3. That at this meeting Mr. Herbert Deal was appointed Acting General Manager of Hobby Horse Hall as and from the 24th instant.

On motion duly made and seconded the following Resolution was agreed to:-

RESOLVED that all previous Resolutions relating to the banking accounts of the Company are hereby revoked, cancelled and annulled and the following Resolutions substituted therefor:

1. That The Royal Bank of Canada is hereby appointed one of the Bankers of the Company.
2. That any two of the following, namely, Alexis Nihon, Herbert Deal and Godfrey Kenneth Kelly, be and they are hereby authorized on behalf of the Company to make, sign, draw, accept or endorse all or any cheques, promissory notes, drafts, acceptances, bills of exchange and other instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits (including overdrafts) upon the credit of the Company in any manner whatsoever.
3. That any one of the Directors may endorse notes and drafts "for collection" on

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit B.1
Minutes of Directors' Meeting, 23rd January, 1958.
(Contd.)

(initialled in ink)
A.N.
A.N.
G.K.K.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
23rd January,
1958.
(Contd.)

account of the Company through its
bankers and endorse notes and cheques
"for deposit" with the Company's bankers
to the credit of the Company.

4. That Alexis Nihon may alone receive cheques and paid vouchers and verify the Company's account or accounts with the said Bank.
5. That the Bank be furnished with a list of the names of the Directors and Officers of the Company, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such Directors and Officers. A
6. That this resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the branch of the said Bank at which the account of the Company is kept. B
1. That Barclays Bank D.C.O. is hereby appointed one of the Bankers of the Company.
2. That any two of the following, namely, Alexis Nihon, Herbert Deal and Godfrey Kenneth Kelly, be and they are hereby authorized on behalf of the Company to make, sign, draw, accept or endorse all or any cheques, promissory notes, drafts, acceptances, bills of exchange and other instruments whether negotiable or not; also to borrow money and obtain advances, loans and credits (including overdrafts) upon the credit of the Company in any manner whatsoever. C
3. That any one of the Directors of the Company may endorse notes and drafts "for collection" on account of the Company through its bankers and endorse notes and cheques "for deposit" with the Company's bankers to the credit of the Company. D

(initialled
in ink)
A.N.
A.N.
G.K.K.

4. That Alexis Nihon may alone receive cheques and paid vouchers and verify the Company's account or accounts with the said Bank.

In the Supreme Court of the Bahama Islands Common Law Side

5. That the Bank be furnished with a list of the names of the Directors and Officers of the Company, together with specimens of their signatures, and that the said Bank be from time to time notified in writing of any change of such Directors and Officers.

Exhibit B.1
Minutes of Directors' Meeting, 23rd January, 1958.
(Contd.)

A

6. That this resolution be communicated to the said Bank and remain in force until notice in writing to the contrary be given to the Manager of the branch of the said Bank at which the account of the Company is kept.

On motion the meeting adjourned.

(written in ink) Confirmed:

B

(Signed) A. NIHON,
Chairman.

(written in ink) February
6th 1958

(Signed) A. NIHON,
Secretary.

(Signed) A. NIHON
(Signed) ALICE NIHON
(Signed) GODFREY K. KELLY

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
6th February 1958

Exhibit B.1
Minutes of
Directors'
Meeting,
6th February,
1958.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of The Montagu Park Racing Association, Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 6th day of February, A.D. 1958 at 3.35 o'clock in the afternoon. A

The undermentioned Directors were present, namely:- Alexis Nihon, Alice Nihon, Godfrey Kenneth Kelly.

On motion, Mr. Alexis Nihon, the President of the Company, took the Chair.

Dr. Raymond W. Sawyer and Mrs. Ivarene Sawyer, the other Directors of the Company, had received notice of this meeting, but did not attend. B

The minutes of the meeting of the Directors of the Company, held on the 23rd day of January, 1958, were read and confirmed.

The Chairman informed the meeting as follows:-

1. That Dr. Sawyer had exceeded his authority and had had extensive repairs and alterations made to the Company's leasehold property known as "Hobby Horse Hall", costing approximately £4,000, without consulting the Board of Directors when he was fully aware that the lease to the Company was expiring on the 24th November, 1958, and that it had not then been renewed. C
2. That Dr. Sawyer awarded a concession for the printing of the Racing Programme and publicity in this Programme without the approval of the Board of Directors.

(initialled
in ink)

A.N.
G.K.K.
A.N.

On motion duly made and seconded it was agreed that when the exact amount of these unauthorized D

expenditures is determined Dr. Sawyer be asked to reimburse the Company accordingly.

The Chairman reported that in a letter, dated 4th October, 1957, written by the Racing Commission to Dr. Sawyer, the then President of the Company, the Racing Commission stated that it had decided to issue a licence to the Company for the 1957-1958 Season on the understanding that certain conditions set out in their said letter were fulfilled.

Mr. Godfrey Kelly then reported to the meeting that he received a copy of the said letter on the 20th December, 1957, and that he gave it to Mr. Nihon a few days later.

The Chairman felt that the contents of the said letter should have been communicated to all the Directors of the Company by Dr. Sawyer as soon as he could conveniently have done so after receipt of the same.

The Chairman stated that had he been acquainted with this letter he would have objected and protested to the Racing Commission as to the conditions set out therein.

The Chairman reported that Dr. Sawyer had presented to the Supreme Court of the Bahama Islands a Petition for the winding up of the Company.

After discussion it was agreed that the Chairman should instruct Messrs. Higgs & Kelly, the Attorneys of the Company, to give notice to the Petitioner, or his Attorney, of the Company's intention to oppose the winding up proceedings.

On motion the meeting adjourned.

(written in ink) Confirmed:

(Signed) A. NIHON,
Chairman.

(written in ink) 18/3/58

(Signed) A. NIHON,
Secretary.

(Signed) ALICE NIHON.
(Signed) A. NIHON.
(Signed) GODFREY K. KELLY.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
6th February,
1958.

(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
18th March, 1958

Exhibit B.1

Minutes of
Directors'
Meeting,
18th March,
1958.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of the above-named Company was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 18th day of March, A.D. 1958 at 3.00 o'clock in the afternoon. A

All the Directors were present, namely:-
Alexis Nihon, Alice Nihon, Raymond Wilson Sawyer,
Ivarene Gladys Sawyer and Godfrey Kenneth Kelly.

Mr. Herbert Deal, the Company's Accountant,
was also present.

On motion, Mr. Alexis Nihon, the President of
the Company, took the Chair. B

The minutes of the meeting of the Directors
of the Company, held on the 6th day of February,
A.D. 1958, were read and confirmed.

On motion duly made and seconded the follow-
ing Resolutions were agreed to:-

RESOLVED:

1. That the Company do borrow from Alexis Nihon a sum not exceeding Ten thousand pounds (£10,000) for a period of Thirty (30) days for the purpose of paying and discharging bona fide accounts of the Company duly authorized, incurred and due and owing. C
2. That the Company do give to Alexis Nihon a chattel mortgage on all the Company's assets to secure any moneys loaned by him to the Company up to the said sum of Ten thousand pounds (£10,000). Interest thereon to be payable to Mr. Nihon by the Company at the rate of Seven percent (7%)

(initialled
in ink)
G.K.K.
A.N.
A.N.

3. That the said chattel mortgage be signed, sealed and executed for and on behalf of the Company by Godfrey Kenneth Kelly in the presence of Alice Maude Farrington.

In the Supreme Court of the Bahama Islands
Common Law Side

A Dr. and Mrs. Sawyer abstained from voting on the foregoing Resolutions as they felt that instead of borrowing the sum of £10,000 from Mr. Nihon the insurance moneys, when received, should be used to pay off the creditors. However, no one at the meeting could say when the insurance moneys would be received by the Company. Mr. Herbert Deal stated that many of the creditors of the Company were persistently pressing for payment of their accounts.

Exhibit B.1
Minutes of Directors' Meeting,
18th March, 1958.
(Contd.)

B The question of various accounts which had been rendered against the Company was then discussed, and the Chairman informed the meeting that as he was not aware of any verbal or written contracts which have or may have been made, he felt that Dr. Sawyer should go through these accounts and initial the same.

The Chairman then informed the meeting that Dr. Sawyer had from time to time borrowed certain moneys from the Company and that he felt that Dr. Sawyer should now pay the sum of £26,972.16. 7. to the Company as shown on the attached Memorandum prepared by Mr. Herbert Deal at the request of Mr. Nihon. Dr. Sawyer denied that he owes this sum to the Company.

C On motion the meeting adjourned.

(written in ink) Confirmed:

(Signed) A. NIHON,
Chairman.

(written in ink) 18/4/59

(Signed) A. NIHON,
Secretary.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1

MINUTES OF DIRECTORS' MEETING
18th April, 1959

Exhibit B.1
Minutes of
Directors'
Meeting,
18th April,
1959.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED

A meeting of the Directors of The Montagu Park Racing Association Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 18th day of April, A.D. 1959 at 11.00 o'clock in the forenoon.

A

The undermentioned Directors were present, namely:- Alexis Nihon, Alice Nihon, Godfrey Kenneth Kelly.

On motion, Mr. Alexis Nihon, the President of the Company, took the Chair.

The minutes of the meeting of the Directors of the Company, held on the 18th day of March, A.D. 1958, were read and confirmed.

B

The Chairman read to the meeting a letter, dated 15th April, and received at the Registered Office of the Company on the 17th April, written to the Company by the Hon. Dr. R.W. Sawyer, which letter reads as follows:-

Nassau, Bahamas.
15th April, 1959.

The Montagu Park Racing Association Ltd.,
Bay Street,
Nassau.

C

Attn: Mr. Alexis Nihon.

Re: The Montagu Park Racing Association Limited

Dear Mr. Nihon,

In reply to the Notice by the above-mentioned Company dated the 7th April, 1959 calling a meeting of the Directors, I have to inform you as follows:-

1. The matters referred to in paragraphs 1, 2 and 3 of the Notice have already been dealt with at previous meetings of the Directors.
2. The allegation referred to in paragraph 2 of the Notice has already been denied by me at a previous meeting of the Directors. In the event my previous denial has not been incorporated as a part of the Company records, I hereby once again emphatically and specifically deny the allegation contained in paragraph 2 of the Notice referred to above.
3. The matter referred to in paragraph 3 of the Notice has also been dealt with at a previous meeting of the Directors of the Company at which time I denied that I was indebted to the Company in the sum of £26,972.16. 7.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit B.1
Minutes of Directors' Meeting,
18th April, 1959.
(Contd.)

A

B

Under the circumstances I do not propose to attend the meeting called for the 18th instant.

Yours truly,

R.W. Sawyer.
RAYMOND W. SAWYER.

C

Referring to Paragraph 1 of the said Notice, the Chairman informed the meeting that up to now the insurance company had declined to pay up the losses for the fire which occurred at Hobby Horse Hall on the grounds that the Company had a very limited insurable interest which was due to the fact that the lease of Hobby Horse Hall had been granted by the House of Assembly to Bahamas Race Co. Ltd., a Company headed by Dr. Sawyer.

The Chairman pointed out to the meeting that should the lease to the Company have been renewed normally like it should have been there would not have been any question about obtaining payment of the insurance moneys amounting to £33,000.

D

The fact that Bahamas Race Co. Ltd. had been granted the lease notwithstanding the fact that

In the Supreme
Court of the
Bahama Islands
Common Law Side

Dr. Sawyer is a director of this Company and has a personal agreement with the President, has, the Chairman said, caused this Company to sustain up to now heavy losses.

Exhibit B.1
Minutes of
Directors'
Meeting,
18th April,
1959.
(Contd.)

The Chairman brought to the attention of the meeting the fact that the Company still owes him the sum of £6,000 which he loaned to the Company to pay its creditors, and there is only £493. 7.11. left in the Company's Bank account at Barclays Bank D.C.O.

A

With reference to Paragraph 2 of the said Notice re alleged misfeasance in relation to the Company by Dr. Sawyer, the Chairman stated that it was a known fact that when one is a Director in a Company one has to protect and defend the interests of the shareholders and not to work against them as in the case of Dr. Sawyer and Bahama Races Limited. A study of this situation had been made and it had been agreed to issue a writ against Dr. Sawyer for the sum of £100,000 representing the minimum profit that the Company would have realized during the next ten years should the lease have been renewed to this Company.

B

On motion duly made and seconded it was resolved that Mr. Alexis Nihon, the President of the Company, on behalf of the Company be and he is hereby authorized at his discretion to cause a writ to be issued against Dr. Sawyer for the sum of £100,000.

C

With reference to Paragraph 3 of the said Notice, the Chairman pointed out that in the minutes of a meeting of the Directors of the Company held on the 18th March, 1958, according to the statements and the memorandum prepared by Mr. Herbert Deal, the Company's Accountant, Dr. Sawyer is indebted to the Company in the sum of £26,972.16. 7.

Mr. Kelly stated that it was his understanding that the said sum of £26,972.16. 7. drawn by Dr. Sawyer was done so in anticipation of dividends.

D

On motion duly made and seconded it was resolved that a writ be issued immediately by the

legal firm of Messrs. Higgs & Kelly for the said sum of £26,972.16. 7. plus interest at 5% from each date of withdrawal until repayment.

On motion the meeting adjourned.

Chairman.

A (Signed) ALEXIS NIHON,
Secretary.

(Signed) ALEXIS NIHON
(Signed) ALICE NIHON
(Signed) GODFREY K. KELLY

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit B.1
Minutes of
Directors'
Meeting,
18th April,
1959.
(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit A.3
AUDITORS' REPORT
14th July 1948

Exhibit A.3
Auditors'
Report,
14th July,
1948.

Nassau, Bahamas.
July 14th 1948.

The Directors,
Montagu Park Racing Association Ltd.,
Nassau, Bahamas.

A

Gentlemen,

As instructed we have examined the Books and Records of the Montagu Park Racing Association, Ltd., for the four months ended June 30th, 1948 and in this connection submit the following schedules:-

Schedule No. 1 Balance Sheet as at June 30th, 1948.

Schedule No. 2 Profit and Loss Statement 4 months ended June 30th, 1948.

B

Schedule No. 3 Reconciliation of Bank Balance as at June 30th, 1948.

Schedule No. 4 Accounts Receivable as at June 30th, 1948.

Schedule No. 5 Accounts Payable as at June 30th, 1948.

Schedule No. 6 Schedule of Horses owned by Company as at June 30th, 1948.

In comparison with previous periods, a considerable discrepancy would appear to exist in revenue from the Bars and also from admissions which are a great deal lower for March, April and May than for January and February. As stated in previous audits, inventories were not checked, but taken by the Management, and admission figures could not at this time be verified, so are subject to correction, however the attached Balance Sheet and accompanying Profit and Loss Statement, together with supporting schedules, would appear to show in our opinion subject to the above corrections, the financial position of the Company as at June 30th, 1948 and the result of operations for the period then ended.

C

D

Yours very truly,

(Sgd.) F. Smith,
Auditor.

Paul Gignac,
Auditor.

MONTAGU PARK RACING ASSOCIATION LIMITED
BALANCE SHEET AS AT JUNE 30th, 1948

<u>ASSETS</u>		<u>LIABILITIES</u>	
<u>Current Assets</u>		<u>Accounts Payable</u>	265. 7. 1.
Loans Receivable	44. 0. 0.	Outstanding (Illegible)	1,410.11. 4.
Accounts Receivable	496. 7. 2.	1946-1947	849. 6. 7.
Royal Bank of Canada	12,706. 5.11.	1947-1948	<u>561. 4. 9.</u>
<u>Fixed Assets</u>	<u>£13,246.13. 1.</u>	<u>Accrued Expenses</u>	47. 0. 3.
Buildings (At Cost)	6,000. 0. 0.	Salaries (General)	16. 0. 0.
Improvements	20,027. 1. 5.	Wages (General)	19.19. 6.
	26,027. 1. 5.	Wages (Trainers, Grooms Etc.)	<u>11. 0. 9.</u>
Less: Depreciation	<u>6,610.11. 3.</u>	<u>Badges (Deposits)</u>	4.12. 0.
Equipment (General)	3,008. 1.10.	Loans Payable	17,700. 0. 0.
Less: Depreciation	<u>989. 7. 6.</u>	E.P.K. Bethell	3,540. 0. 0.
		C.W.F. Bethell	3,540. 0. 0.
Horses		P.G.D. Bethell	3,540. 0. 0.
Equipment	1,102. 3. 9.	G.A. Bethell	3,540. 0. 0.
Less: Depreciation	<u>896.11. 7.</u>	J.H. Bethell	<u>3,540. 0. 0.</u>
Truck	1,928.18. 4.	Capital Stock	3,000. 0. 0.
Less: Depreciation	<u>869.11. 0.</u>	300 shares @ £10.0.0.	
		each	
Other Assets		Surplus	3,000. 0. 0.
Inventory:		Profit & Loss	12,920. 9. 9.
Fees	1,260. 5. 0.	Balance Feb.28, 1948	2,074.11. 5.
Horses: At Cost	873.15. 0.	Add: Net Profit 4 months ended June 30, 1948	<u>10,845.18. 4.</u>
Suspense A/C	<u>13. 0. 0.</u>		
Prepayments			
License:			
Pari-mutuel	75. 0. 0.		
Property Tax	12.10. 0.		
Rental	<u>166.13. 4.</u>		
<u>TOTAL ASSETS</u>	<u>£38,348. 0. 5.</u>	<u>TOTAL LIABILITIES</u>	<u>£38,348. 0. 5.</u>

In the Supreme Court of the Bahama Islands Common Law Side
Exhibit A.3.
Auditors' Report,
14th July, 1948.
(Contd.)

MONTAGU PARK RACING
STATEMENT OF INCOME
FOUR MONTHS ENDED

INCOMEHorses

Stable Rentals Etc.	998. 9. 4.	3,737.19. 0.
Fees Etc.	563.10. 0.	
Sale:- Manure	227. 0. 0.	
Sales:- Horses	15. 0. 0.	
Blacksmith	4.10. 0.	
Feed	1,379. 6. 1.	
Rental Equipment	24.17. 0.	
Income from Privately Owned Horses	<u>564. 6. 7.</u>	

Pari-Mutuel

Percentage retained (Net)	26,894. 9. 7.	20,909. 2. 2.
Breakage	<u>702. 9. 6.</u>	
	27,596.19. 1.	
	6,687.16.11.	

Less:

Salaries	4,252.15. 0.	
Exchange	50.10. 6.	
Shortages	874.16. 9.	
Tickets	1,320. 0. 0.	
License	33. 6. 8.	
Stationery & Printing	75.15. 0.	
Bus Tickets	66.18. 0.	
Rental Calculator	8.15. 0.	
Rental Money Boxes	<u>5. 0. 0.</u>	

Bars:- Grand Stand & Club House 1,060. . 0.

Admissions 4,630. 4.10.

Programmes 125.16. 0.

Jockey Club

Membership	329. 5. 0.	433.15. 0.
Box Rentals	<u>104.10. 0.</u>	

Miscellaneous Income

Rental Kitchen	<u>6. 0. 0.</u>	6. 0. 0.
----------------	-----------------	----------

£28,780.15. 0.

ASSOCIATION LIMITED
AND EXPENDITURE
JUNE 30th 1948

Schedule No. 2.

In the Supreme
Court of the
Bahama Islands
Common Law Side

EXPENDITUREExhibit A.3

<u>Advertising</u>		353. 0. 4.	Auditors'
<u>Cables & Telephones</u>		4.10. 7.	Report,
<u>Electricity</u>		127. 0. 7.	14th July,
<u>Repairs & Maintenance</u>		1,735.17. 7.	1948. (Contd.)
Miscellaneous Materials	281.17. 5.		
Wages:- General Upkeep	1,358. 4. 4.		
Miscellaneous Equipment			
Upkeep	24.15.10.		
Landscaping	<u>71. 0. 0.</u>		
<u>Horses</u>		1,639.10. 9.	
General Upkeep	1,577. 7. 5.		
Medicine	<u>62. 3. 4.</u>		
<u>Jockeys Trainers & Grooms</u>		199.16. 8.	
Hospital	4. 0. 0.		
Clothing & Colours	47.12. 4.		
Wages: Trainers & Grooms	63.10. 4.		
Wages: Jockeys	<u>84.14. 0.</u>		
<u>Insurances</u>		122. 4.11.	
<u>Interest Exchange & Bank Charges</u>		11.14. 1.	
<u>Legal & Audit Fees</u>		177.16. 3.	
<u>Miscellaneous Expenses</u>		62.15.10.	
<u>Officials</u>		158.17. 0.	
<u>Property Tax</u>		8. 6. 3.	
<u>Purses</u>		5,369. 4. 0.	
<u>Rental</u>		133. 6. 8.	
<u>Stationery & Printing</u>		10. 0. 6.	
<u>Salaries: General & Administrative</u>		5,036. 0. 0.	
<u>Truck Expenses</u>		489.14. 5.	
<u>H.H.H. Sporting Club</u>		15.14. 0.	
<u>Grounds Personnel Payroll</u>		463.14. 0.	
<u>Depreciation Reserve</u>		1,815.11.10.	
Trucks	128.11.11.		
Building & Improvements	1,301. 7. 1.		
Horses Equipment	184. 2. 1.		
General Equipment	<u>201.10. 9.</u>		
<u>Profit & Loss</u>			
Net Profit 4 months ended June 30th 1948		10,845.18. 4.	

£28,780.15. 0.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Schedule No. 3.

MONTAGU PARK RACING ASSOCIATION, LTD.
RECONCILIATION STATEMENT OF BANK BALANCE
AS AT JUNE 30th, 1948

Exhibit A.3

Auditors'
Report,
14th July,
1948.
(Contd.)

Outstanding Cheques at June 30:

No. 19245	Ivan Hall	£	16.	0.	0.	
19423	Ivan Hall		10.	0.	0.	
19425	Louis Louis		1.	0.	0.	
15562	Ivan Hall		10.	0.	0.	
19513	Bethell- Robertson Co. Ltd.		105.	9.	5.	
			<u>£ 142. 9. 5.</u>			

A

<u>Balance at Royal Bank of Canada</u>	£12,848.15. 4.
<u>Less: Outstanding Cheques</u>	142. 9. 5.

Balance as per Cash Book at
June 30, 1948

£12,706. 6.11.

B

Schedule No. 4.

MONTAGU PARK RACING ASSOCIATION, LTD.
 ACCOUNTS RECEIVABLE
AS AT JUNE 30th, 1948

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

Exhibit A.3

Auditors'
 Report,
 14th July,
 1948.
 (Contd.)

	W. Armbrister	£	1. 5. 0.
	J. Bastian		2.10. 0.
	Vincent Bell		60. 0. 0.
A	L. Bowe		3. 6. 0.
	Park Benjamin		12. 0. 0.
	Carl Brice		245. 2.10.
	J. Cleary		5. 0. 0.
	A.K. Cole		2.12. 0.
	J. Glico		20. 0. 0.
	A. Griffith		3.15. 0.
	H. Griffith		5.10. 9.
	L. Hanns		1. 5. 0.
	Hennessy & Co.		25. 0. 0.
B	C. Holmes		12. 0. 0.
	T. Johnson		16.13. 7.
	W. Lockhart		4. 0. 0.
	Louis L. Louis		1. 5. 0.
	J.A. MacTaggart		16. 0. 0.
	E.S. Mackey		10. 0.
	F. Maura		7.10. 0.
	Mrs. A. Moore		1.14. 0.
	Mrs. V. Patterson		4. 0. 0.
	M. Perotti		15. 0.
C	W.B. Pinder		4. 0. 0.
	E.J. Rolle		2. 0. 0.
	J. Rolle		3.14. 0.
	Allan Roberts		4.14. 0.
	L. Rahmings		7.10. 0.
	Raymond Rose		4. 0. 0.
	S.H. Thomas		2.10. 0.
	J. Tilliacos		1. 5. 0.
	Twenty-First Century Corp.		8. 0. 0.
	W.A. Weeks		5.15. 0.
D	Sam White		1. 5. 0.
			<hr/>
			£ 496. 7. 2.
			<hr/> <hr/>

In the Supreme
Court of the
Bahama Islands
Common Law Side

Schedule No. 5.

MONTAGU PARK RACING ASSOCIATION, LTD.
ACCOUNTS PAYABLE
AS AT JUNE 30th, 1948

Exhibit A.3

Auditors' Report, 14th July, 1948. (Contd.)	Bay Street Garage	£	53. 5. 7.	
	Central Gas Station		23. 2. 0.	
	City Lumber Yard		3.15. 3.	
	Consolidated Construction Co. Ltd.		14.12. 6.	A
	Bahamas Government - Electricity		63. 8. 3.	
	Malcolm Tyre Service		73.11. 3.	
	Maura Lumber Co.		2. 8. 0.	
	Nassau Dry Cleaning Co.		3.19. 0.	
	Nassau Guardian Ltd.		1. 9. 3.	
	Dr. Soltys		18. 0. 0.	
	Taylor Industries Ltd.		7. 0. 0.	
	The Voice		16. 0.	
			<hr/>	
		£	265. 7. 1.	B
			<hr/> <hr/>	

Schedule No.6.

In the Supreme
Court of the
Bahama Islands
Common Law Side

MONTAGU PARK RACING ASSOCIATION, LTD.
SCHEDULE OF HORSES OWNED BY COMPANY
(AT COST)

Exhibit A.3

Auditors'
Report,
14th July,
1948.
(Contd.)

	Bad Bascomb	£ 30. 0. 0.
	Blue Moon	50. 0. 0.
	Bahama Mama	50. 0. 0.
A	Buccaneer	50. 0. 0.
	Cleopatra	12. 0. 0.
	Comet	11.10. 0.
	Cuba Libre	23.15. 0.
	Champagne	27. 0. 0.
	Dawn	15. 0. 0.
	Daisy Mae	18. 0. 0.
	Eh-Bubba-Re-Bop	17. 0. 0.
	Estralita	50. 0. 0.
	Fincastle	22. 0. 0.
B	Flicker	20. 0. 0.
	Four Roses	50. 0. 0.
	Glamour Gal	18. 0. 0.
	Glamour Boy	25. 0. 0.
	Highland Queen	75. 0. 0.
	Highball	50. 0. 0.
	Little Joe	5. 0. 0.
	Midway	20. 0. 0.
	Mystery	10. 0. 0.
	Mouse	30. 0. 0.
C	Phantom	12. 0. 0.
	Peanut	20. 0. 0.
	Red Jac	40. 0. 0.
	Spitfire	25. 0. 0.
	Skipper	17.10. 0.
	Scatterbrain	10. 0. 0.
	Sadie Green	15. 0. 0.
	Theme Song	20. 0. 0.
	Vanguard	35. 0. 0.
D		<u>£ 873.15. 0.</u>

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit C.5

BALANCE SHEET AND ACCOUNTS (WITH COVERING
LETTER), 30th APRIL, 1954

Exhibit C.5
Balance Sheet
and Accounts
(with Covering
Letter),
30th April,
1954.

HERBERT A. DEAL AND COMPANY
Accountants and Auditors
P.O.Box 376 Nassau-Bahamas

The Directors
The Montagu Park Racing Association
Limited,
P.O. Box 145
Nassau, Bahamas.

May 8th 1954 A

Gentlemen,

Accounts 30th April 1954

We attach herewith the following statements of
your Company for the period 7th May 1953 to 30th
April 1954.

- (a) Balance as at 30th April 1954
- (b) Profit and Loss Statement for the period B
7th May 1953 to 30th April 1954
- (c) Profit and Loss Statement for the period
7th May 1953 to 31st December 1953
- (d) Profit and Loss Statement for the period
1st January 1954 to 30th April 1954.

These statements have been prepared from the
books and records of your Company, and, in our
opinion show a true position as at 30th April,
1954.

Yours faithfully, C

(Signed) Herbert A. Deal & Company.

EXHIBIT A

THE MONTAGU PARK RACING ASSOCIATION, LTD.
 PROFIT AND LOSS STATEMENT FOR THE PERIOD
7th MAY 1953 to 31st DECEMBER 1953

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

Exhibit C.5
 Balance Sheet
 and Accounts
 (with Covering
 Letter),
 30th April,
 1954.
 (Contd.)

REVENUE

	Stable Rents	904. 0. 6.
A	Feed and Miscellaneous Sales - Less Cost	183. 5. 0.
	<u>TOTAL REVENUE</u>	<u>£1,087. 5. 6.</u>

EXPENSES

	Salaries	495. 0. 0.
	Track Maintenance	1,144. 1. 0.
	Bank Charges	3. 3. 3.
	Advertising	25. 0. 0.
	Accountancy	200. 0. 0.
B	Car and Truck Maintenance	436. 6. 9.
	Printing and Stationery	39.12. 6.
	Horses' Maintenance	86. 3. 0.
	Insurance	344. 5. 4.
	Miscellaneous	28.10. 0.
	Cables and Postage	29. 8. 9.
	Lights	174.14. 0.
	Loss on Sale of Equipment	140. 1. 8.
	Travelling	71.11. 2.
	Overdraft Interest	54.12. 5.
C	Reserve for Bad Debts	47.16. 0.
	Depreciation	4,737.11.10.
	<u>TOTAL EXPENSES</u>	<u>£8,057.17. 8.</u>

NET LOSS FOR PERIOD CARRIED TO
 PROFIT AND LOSS STATEMENT FOR
 THE PERIOD 7th MAY 1953 to 30th
 APRIL 1954

£6,970.12. 2.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Schedule 1.

THE MONTAGU PARK RACING ASSOCIATION, LTD.
ACCOUNTS RECEIVABLE

<u>Exhibit C.5</u> Balance Sheet and Accounts (with Covering Letter), 30th April, 1954. (Contd.)	Mrs. Mary Armbrister	5.12. 0.	
	Mr. Eric Archer	12.10. 0.	
	American Totalisator Company, Inc.	3.11. 9.	
	Mr. L.C. Brice	1.12. 0.	
	Mr. Henry Burrows	3.14. 6.	A
	Bahamas General Hospital	3.10. 0.	
	Miss Beverley Brice	202.17.11.	
	British Colonial Hotel	16. 0. 4.	
	Mr. Phillip Brown	2. 4. 0.	
	Mrs. J.F.C. Brice	14.12. 0.	
	Mrs. H.S. Black	4.10. 0.	
	Mr. John Claridge	43. 3. 0.	
	Christofilis Brothers	2. 4. 6.	
	Carlton House	12. 5. 0.	
	Mr. Levi Davis	6. 2.	B
	Mr. G.T. Dean	2.18. 8.	
	Mr. James Eve	6. 0. 0.	
	Mr. C. Esfakis	3.10. 0.	
	Mr. N.J.French	29. 3. 0.	
	Fort Montagu Beach Hotel	295.15. 0.	
	Mrs. Fleming	4.10. 0.	
	Mr. W. Hulyer	16. 0.	
	Mr. E. Holmes	7.19. 7.	
Mr. Eddie Higgs	1. 4. 0.		
Mr. W.A. Hudson	9.10. 0.	C	
Mr. R. Newton Higgs	8.10. 0.		
Mr. Thad Johnson	9. 2. 3.		
Miss Anne Kelly	4. 0. 0.		
Miss Moira Kennedy	1.10. 0.		
Mrs. A.V. Lillas	2. 8. 0.		
Mr. A.E. Lloyd	6. 8. 0.		
Mrs. M. Lockhart	1. 5. 7.		
Mrs. Faye Lorandos	19.11.		
	<hr/>		
	TOTAL CARRIED FORWARD	£ 724. 3. 2.	D

	TOTAL BROUGHT FORWARD	£ 724. 3. 2.	In the Supreme Court of the Bahama Islands
	Mr. Edroy Munroe	1.12. 0.	<u>Common Law Side</u>
	Mr. H. Morley	16. 0.	
	Mr. George Munroe	1.12. 0.	
	Mr. George Moncur	17. 4. 0.	<u>Exhibit C.5</u>
	Mr. Frank Miller	10.16. 0.	Balance Sheets and Accounts
	Mr. J. Marshall	1.12. 0.	(with Covering Letter),
	Mrs. Z. Mackey	16. 0.	30th April, 1954.
A	Mr. E. Mackey	6.10. 0.	(Contd.)
	Mr. Larry McPhail	20. 0. 0.	
	Mr. Bruce Newbold	17. 0. 0.	
	Mr. Mario Parotti	6. 0.	
	Mr. R. Pratt	8. 8. 0.	
	Mrs. C.M. Pearce	59.12. 8.	
	Mrs. Vera Patterson	3.10. 0.	
	Mr. Ralph Parks	14. 2. 8.	
B	Mr. C.D. Russell	159.17. 9.	
	Mr. A.S. Russell	29. 2. 0.	
	Mr. Hezekiah Smith	21.16. 0.	
	Mr. A. Sherman	8. 2. 0.	
	Dr. A. Soltys	1. 0. 0.	
	Mr. Hugh Strachan	1.12. 0.	
	Mr. John Tiliacos	2. 8. 0.	
	Mr. A.L. Thompson	2.10. 0.	
	Mr. O.B. Thompson	2.10. 0.	
	Miss E. Thompson	1. 0. 0.	
C	Mr. W.A. Weeks	8. 0. 0.	
	Mr. Harold Woodman	18.19. 0.	
	Mr. M.N. Wells	1.10. 0.	
	Mr. A.N. Williams	2. 0. 0.	
	AS PER BALANCE SHEET	£1,148. 7. 3.	

Schedule 3. In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION, LTD.
ACCOUNTS PAYABLE

	S.J. Amoury, Esq.	153.17. 6.	<u>Exhibit C.5</u>
	Ronald A. Albury, Esq.	871.10. 0.	Balance Sheets
	Artie's Dry Goods Store	3.13. 0.	and Accounts
	American Totalisator Company, Inc.	4,310.17. 9.	(with Covering
	Bahamas General Hospital	65. 0. 0.	Letter),
A	Bahamas Publishing Company, Limited	83.11. 0.	30th April,
	Kenneth F. Butler & Company, Limited	6. 1. 0.	1954.
	Bahamas Printing Works	1,045.17. 5.	(Contd.)
	Miss Beverley Brice	78. 0. 0.	
	Burns House, Limited	17. 6. 0.	
	A.K. Cole, Esq.	50. 0. 0.	
	Karl Claridge, Esq.	11.16. 0.	
	City Lumber Yard	1,412. 9. 9.	
	Charles E. Carey, Esq.	82.13. 0.	
	Columbus Pharmacy	7. 9. 0.	
B	Christofilis Brothers	155.12. 3.	
	Curry's Radio Shop	4.15. 0.	
	Deal's Printing Press	58. 6. 0.	
	East Bay Service, Limited	3.15. 6.	
	R.R. Farrington, Esq.	52.14. 8.	
	Fort Montagu Beach Hotel	448. 8. 7.	
	General Equipment, Limited	65.16. 9.	
	General Hardware Company	296.13. 5.	
	The Gimlet	69. 5. 9.	
	The Nassau Herald	10. 0. 0.	
C	I-Need-A-Laundry	82. 0. 3.	
	Interinsular Mails, Limited	134. 9. 7.	
	John S. George & Company, Limited	52.17. 9.	
	June's Studio	12.10. 0.	
	Kelly's, Limited	27.12. 0.	
	Kelly's Lumber Yard	18. 1. 8.	
	Kelly's Motor Company, Limited	25. 1. 6.	
	Knowles Printing Service	9.12. 0.	
	Kerland, Limited	10. 0. 0.	
	Malcolm's Tyre Service	102. 9. 2.	
D	Moseley's, Limited	22.18. 3.	
	Maura Lumber Company, Limited	187. 9. 3.	
	Maynard-Page	146. 7. 4.	
	Maury-Roberts Company, Limited	13.16. 0.	
	Alexis Nihon, Esq.	25. 4. 3.	
	Nassau Guardian (1844), Limited	181. 0.10.	
	Nassau Daily Tribune	420. 4. 0.	
	TOTAL CARRIED FORWARD	£10,827.13. 8.	

In the Supreme Court of the Bahama Islands	TOTAL BROUGHT FORWARD	£10,827.13. 8.	
<u>Common Law Side</u>	Nassau Dunbrik Company, Limited	25.11. 0.	
	Nassau Stop-N-Shop, Limited	1. 6. 0.	
	Nassau Auto Port, Limited	34. 7.10.	
<u>Exhibit C.5</u>	Nassau Plumbing Service	2,025. 2. 8.	
Balance Sheets	Public Treasury	201. 7. 0.	
and Accounts	E.L. Peddie, Esq.	26. 0. 0.	
(with Covering	Public Health Department	17. 2. 0.	
Letter),	Race Recording Company, Limited	13. 3. 2.	A
30th April,	Royal Service Station	257. 3. 1.	
1954.	Sunshine Bottling Company, Limited	11. 8. 0.	
(Contd.)	Dr. A. Soltys	30.17. 0.	
	Symonette Shipyards, Limited	101. 6. 6.	
	Sinclair Cuba Oil Company	11. 4. 8.	
	Mrs. R.W. Sawyer	252. 2. 8.	
	Taylor Industries, Limited	475.17. 4.	
	B.K. Thompson, Limited	19. 8. 0.	
	Stanley Toogood, Esq.	9.14. 0.	
	What-to-do-in-Nassau	156. 0. 0.	B
	AS PER BALANCE SHEET	£14,496.14. 7.	

THE MONTAGU PARK RACING ASSOCIATION LIMITED

PROFIT AND LOSS STATEMENT FOR THE PERIOD 7th MAY 1953
to 30th APRIL 1954

<u>NET LOSS FOR PERIOD 7th MAY 1953 to</u> <u>31st DECEMBER 1953 AS PER</u> <u>EXHIBIT A</u>	<u>NET PROFIT FOR PERIOD 1st JANUARY</u> <u>1954 to 30th APRIL 1954 AS PER</u> <u>EXHIBIT B</u>
£6,970.12. 2.	£21,989. 9.11.
<u>NET PROFIT FOR PERIOD</u> <u>CARRIED TO BALANCE</u> <u>SHEET</u>	
£15,018.17. 9.	
<u>TOTAL</u>	<u>TOTAL</u>
£21,989. 9.11.	£21,989. 9.11.
	<u>NET PROFIT FOR PERIOD CARRIED</u> <u>TO BALANCE SHEET</u>
	£15,018.17. 9.

571.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit C.5
Balance Sheets
and Accounts
(with Covering
Letter),
30th April,
1954.
(Contd.)

THE MONTAGU PARK RACING

BALANCE SHEET AS ATASSETSCurrent Assets

The Royal Bank of Canada		1,363. 0. 2.
Cash on Hand		11.11. 6.
Accounts Receivable <u>Schedule 1</u>	1,148. 7. 3.	
<u>Less:- Reserve for Doubtful Accounts</u>	248. 9. 9.	899.17. 6.
		<hr/>
Deposit with Bahamas Government		3,485. 7. 2.
Resale Supplies Inventory		360.13.10.
Prepaid Expenses <u>Schedule 2</u>		1,921. 6.11.
		<hr/>
<u>Total Current Assets</u>		£ 8,041.17. 1.

Fixed Assets

Office Furniture and Fittings	686.13. 8.	
<u>Less:- Reserve for Depreciation</u>	217.15. 2.	468.18. 6.
		<hr/>
Track Furnishings and Equipment	8,915. 9. 6.	
<u>Less:- Reserve for Depreciation</u>	3,495.18.10.	5,419.10. 8.
		<hr/>
Motor Cars, Trucks and Tractors	1,231. 8. 6.	
<u>Less:- Reserve for Depreciation</u>	307.16. 9.	923.11. 9.
		<hr/>
Buildings	58,549.16. 9.	
<u>Less:- Reserve for Depreciation</u>	29,542. 2. 9.	29,007.14. 0.
		<hr/>
Water Sprinkling System, Ticket Machine Installation and Renovations	5,564. 6. 0.	
<u>Less:- Amount Written Off</u>	618. 5. 1.	4,946. 0.11.
		<hr/>
<u>Total Fixed Assets</u>		£40,765.15.10.
		<hr/>
<u>TOTAL ASSETS</u>		<u>£48,807.12.11.</u>

ASSOCIATION LIMITED

30th APRIL 1954In the Supreme
Court of the
Bahama Islands
Common Law SideLIABILITIES AND CAPITALExhibit A.3Current Liabilities

Accounts Payable <u>Schedule 3</u>	14,496.14. 1.
Accrued Expenses	276. 2. 9.
Trainers and Jockeys Commission	22.16. 0.
Accounts Receivable - Credit Balances	38.14. 6.

Auditors'
Report,
14th July,
1948.
(Contd.)

<u>Total Current Liabilities</u>	£14,834. 7. 4.
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Deferred Liabilities

Unpaid Pari-Mutuel Tickets	533. 1. 9.
----------------------------	------------

CapitalAuthorized Capital

300 Shares at £10 each	£ 3,000. 0. 0.
------------------------	----------------

Issued Capital

300 Shares at £10 each fully paid	3,000. 0. 0.
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Surplus

Balance - 6th May 1953	39,949. 3. 10.
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<u>Add:-</u> Net Profit for period 7th May 1953 to 30th April 1954	15,018.17. 9.
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	54,968. 1. 7.
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<u>Less:-</u> Shareholders Withdrawals	21,527.17. 9.	30,440. 3.10.
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TOTAL LIABILITIES AND CAPITAL£48,807.12.11.Prepared from the accounts and records of
THE MONTAGU PARK RACING ASSOCIATION,
LIMITED by,

Herbert A. Deal & Co.

Accountants and Auditors.

8th May, 1954.
Nassau, Bahamas.

THE MONTAGU PARK RACING

PROFIT AND LOSS STATEMENT FOR THE PERIODEXPENSESPari-Mutuel and Race Day Expenses

Management - Pari-Mutuel	1,205.10.11.
Wages - Pari-Mutuel	8,295. 0. 0.
Wages - Outside	1,323. 0. 0.
Ticket Machines Rental and Supplies	4,551.11. 3.
Shortages	122. 3. 2.
Printing and Stationery	518. 1. 4.
Band	455. 0. 0.
Purses	21,620. 0. 0.
Lights	266. 7. 0.
Miscellaneous	130.17. 0.
Medical and Veterinary	216. 4. 3.
Photo Finish Expense	194. 2. 0.
Starting Gates Expense	614. 6. 7.
Trophies	93. 3. 0.

Total Pari-Mutuel and Race Day Expenses £39,605. 6. 6.

Horses' Expense - Wages and Supplies £ 532.11.11.

Track Maintenance

Wages	1,020. 7.11.
Supplies	442. 7. 9.
Miscellaneous	295. 4. 1.

Total Track Maintenance £ 1,757.19. 9.

Administrative Expenses

Salaries	710. 0. 0.
Government Lease	400. 0. 0.
Insurance	302.19.10.
Telephones, Cables and Postage	68. 8. 4.
Advertising and Publicity	2,219. 4. 8.
Miscellaneous	11.13.11.
Motor Vehicle Maintenance	114.16. 6.
Accountancy	750. 0. 0.
Legal	52.14. 6.
Overdraft Interest	48.18. 7.
Reserve for Bad Debts and Accounts Written Off	210.13. 9.
Travelling Expenses	57.14. 0.

Total Administrative Expenses £ 4,947. 4. 1.

DEFRECIATION

£ 2,992.11.11.

GRAND TOTAL EXPENSES

£49,835.14. 2.

NET PROFIT CARRIED TO PROFIT AND LOSS STATEMENT
FOR PERIOD 7th MAY 1953 to 30th APRIL 1954

£21,989. 9.11.

TOTAL

£71,825. 4. 1.

575.

ASSOCIATION LIMITED

EXHIBIT B

In the Supreme
Court of the
Bahama Islands
Common Law Side

AT JANUARY 1954 to 30th APRIL 1954

REVENUE

Exhibit A.3

Auditors
Report,
14th July,
1948.
(Contd.)

Pari-Mutuel and Race Day Revenue

Track Percentage		52,578. 6. 3.
Clubhouse Admissions	7,424. 7. 1.	
<u>Less:- Government Tax</u>	<u>863.11. 9.</u>	6,560.15. 4.
Clubhouse Box Rental		588. 0. 0.
Grandstand Admissions	7,997. 0. 0.	
<u>Less:- Government Tax</u>	<u>850. 0. 3.</u>	7,146.19. 9.
Race Entry Fees		2,086. 0. 0.
Race Card Revenue - Less Cost		263.12.11.

Other Revenue

Stable Rents		1,332. 2. 0.
Restaurant and Bar Concessions		851. 0. 0.
Feed and Miscellaneous Sales - Less Cost		95. 0. 0.
Exchange Profit		323. 7.10.

TOTAL RACE SEASON REVENUE

£71,825. 4. 1.

TOTAL

£71,825. 4. 1.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit C.4

BALANCE SHEET AND ACCOUNTS WITH COVERING
LETTER, 30th APRIL 1955

Exhibit C.4
Balance Sheets
and Covering
Letter,
30th April,
1955.

Herbert A. Deal & Company.
Accountants and Auditors.

P.O. Box 376,
Nassau, Bahamas.

7th July, 1955.

A

The Directors,
The Montagu Park Racing Association, Ltd.,
Nassau, Bahamas.

Dear Sirs,

We attach herewith the following Statements
of your Company as at 30th April, 1955.

Exhibit A - Balance Sheet as at 30th April,
1955.

Exhibit B - Profit and Loss Statement for the
period 1st May, 1954 to 30th April,
1955.

B

Exhibit C - Profit and Loss Statement for the
period 1st May, 1954 to 31st
December 1954.

Exhibit D - Profit and Loss Statement for the
period 1st January, 1955 to 30th
April, 1955.

These Statements have been prepared by us as
at 30th April, 1955, and in our opinion, they show
the position of the accounts as at 30th April,
1955.

C

Yours faithfully,

Herbert A. Deal & Co.

HAD:gk

Herbert A. Deal & Company,
Accountants & Auditors.

EXHIBIT C

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
PROFIT AND LOSS STATEMENT FOR THE PERIOD
1st MAY 1954 to 31st DECEMBER 1954

Exhibit C.4
Balance Sheets
and Covering
Letter,
30th April,
1955.
(Contd.)

<u>REVENUE</u>		
A	Stable Rents	1,269.16. 1.
	Feed and Miscellaneous Sales -	
	Less Cost	20. 0. 0.
	<u>TOTAL REVENUE</u>	<u>£ 1,289.16. 1.</u>
<u>EXPENSES</u>		
	Salaries	1,385. 8. 4.
	Track Maintenance	1,621.11. 6.
	Bank Charges	8. 8.
	Advertising	14. 9. 6.
B	Accountancy	200. 0. 0.
	Car and Truck	
	Maintenance	132.18. 6.
	Printing and	
	Stationery	10. 0. 0.
	Horses' Maintenance	138.15. 0.
	Insurance	266. 2. 5.
	Cables, Postage and	
	Telephones	46.19. 8.
	Lights	95.13. 0.
C	Overdraft Interest	30. 6. 9.
	Depreciation	6,527. 9. 8.
	<u>TOTAL EXPENSES</u>	<u>£10,470. 3. 0.</u>
	<u>NET LOSS FOR PERIOD CARRIED TO</u>	<u>£ 9,180. 6.11.</u>
	<u>EXHIBIT B</u>	<u><u>£ 9,180. 6.11.</u></u>

In the Supreme Court of the Bahama Islands
Common Law Side

Herbert A. Deal & Company,
Accountants & Auditors.

Schedule 1.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
ACCOUNTS RECEIVABLE

Exhibit C.4

Balance Sheets

and Covering

Letter,

30th April,

1955.

(Contd.)

Mrs. Merline Adderley	23. 4. 0.	
Ronald Albury, Esq.	3.10. 0.	
L.H. Alleyne, Esq.	14. 8. 0.	A
Eric Archer, Esq.	12.10. 0.	
Mrs. Mary Armbrister	29.14.11.	
L.C. Brice, Esq.	2. 8. 0.	
British Colonial Hotel	470. 0. 0.	
Phillip Brown, Esq.	2. 4. 0.	
Edwin Brown, Esq.	5. 6. 6.	
Henry Burrows, Esq.	3.14. 6.	
Basil Butler, Esq.	2. 0. 0.	
Addington Cambridge, Esq.	40. 0. 0.	
John Carey, Esq.	1.11.	B
Sidney Carroll, Esq.	13.12. 0.	
Marie Cash	16.12. 0.	
W.G. Cash, Esq.	6. 9. 0.	
Miss Maria Charlton	5. 0. 0.	
George Christie, Esq.	3. 4. 0.	
Christofilis Brothers	2. 4. 6.	
John Claridge, Esq.	43. 3. 0.	
Thomas Cleare, Esq.	1. 0. 0.	
Levi Davis, Esq.	6. 2.	
G.T. Dean, Esq.	5. 0. 0.	C
James Eve, Esq.	16. 0. 0.	
Grace Parrington	23.16. 0.	
G.T. Fillery, Esq.	5. 0. 0.	
N.J. French, Esq.	29. 3. 0.	
Eddie Higgs, Esq.	1. 4. 0.	
Godfrey Higgs, Esq.	13.10. 0.	
E. Holmes, Esq.	7.19. 7.	
W.A. Hudson, Esq.	10.10. 0.	
Alvin Ingraham, Esq.	1. 0. 0.	
Miss Carol Johnson	16. 0.	D
Miss Anne Kelly	4. 0. 0.	
Harry Kemp, Esq.	2. 0. 0.	
Alexander Knowles, Esq.	16. 0.	
Alonza Laing, Esq.	7. 3. 6.	
Harold Lecke, Esq.	12.11. 4.	
Lawrence Lightbourne, Esq.	18.14. 8.	
Mrs. Faye Lorandos	19.11.	

BALANCE CARRIED FORWARD

£ 860.16. 6.

	BALANCE BROUGHT FORWARD	£ 800.10. 0.	In the Supreme Court of the Bahama Islands
	Larry McPhail, Esq.	20. 0. 0.	<u>Common Law Side</u>
	Andrew McKinney, Esq.	3.10. 0.	
	Jack MacTaggart, Esq.	18. 0. 0.	
	E. Mackey, Esq.	14. 0. 0.	<u>Exhibit C.4</u>
	Sonny Mackey, Esq.	1. 0. 0.	Balance Sheets
	M.P. Maura, Esq.	7. 0. 0.	and Covering
	J. Marshall, Esq.	30. 0. 0.	Letter,
A	Arlington Miller, Esq.	13.12. 6.	30th April,
	Frank Miller, Esq.	24.18. 0.	1955.
	George Moncur, Esq.	36.12. 0.	(Contd.)
	Edroy Munroe, Esq.	12. 0. 0.	
	George Munroe	1.12. 0.	
	Urban Munroe, Esq.	6. 6. 0.	
	Alexis Nihon, Esq.	53.18. 0.	
	Ralph Parks, Esq.	14. 2. 8.	
	Mario Parotti, Esq.	6. 0. 0.	
	Mrs. Vera Patterson	4.10. 0.	
B	Ronald Pratt, Esq.	8. 8. 0.	
	Racing Commission	140. 0. 0.	
	Roy Ramsey, Esq.	16. 0. 0.	
	Miss R. Roberts	4.15. 0.	
	David Rolle, Esq.	1. 0. 0.	
	A.S. Russell, Esq.	31. 0. 0.	
	Ben Sherman, Esq.	24.16. 0.	
	Hezekiah Smith, Esq.	28.16. 0.	
	S.N. Smith, Esq.	5. 0. 0.	
	Dr. A. Soltys	1. 0. 0.	
C	E. Thompson, Esq.	1. 0. 0.	
	O.B. Thompson, Esq.	2.10. 0.	
	Verdant Gardens	13.10. 0.	
	M.N. Wells, Esq.	1.10. 0.	
	W.A. Weeks, Esq.	9.12. 0.	
	Mrs. Minerva Wells	1. 0. 0.	
	Harold Woodman, Esq.	18.19. 0.	
	<u>AS PER BALANCE SHEET</u>	<u>£1,415.15. 8.</u>	

In the Supreme
Court of the
Bahama Islands
Common Law Side

Herbert A. Deal & Company,
Accountants & Auditors.

Schedule 2.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
ACCOUNTS PAYABLE

Exhibit C.4
Balance Sheets
and Covering
Letter,
30th April,
1955.
(Contd.)

American Totalisator Company, Inc.	721.10. 2.	
Bahamas Printing Works	26.13. 1.	
Miss Beverley Brice	84. 7. 5.	A
Bahamas Pavers, Limited	187. 0. 0.	
British Colonial Hotel	267.14. 6.	
City Lumber Yard	982. 9. 4.	
Christofilis Brothers	22.18. 0.	
Centerville Garage	4. 5. 0.	
Herbert A. Deal, Esq.	50. 0. 0.	
Dodge, Inc.	14. 0.	
East Bay Service, Limited	3.15. 6.	
Fort Montagu Beach Hotel	145. 3. 7.	B
General Equipment, Limited	48. 3.11.	
General Hardware Company	11.15. 0.	
The Herald	10. 0.	
R.N. Higgs, Esq.	181. 4. 8.	
Interinsular Mails, Limited	245. 9. 9.	
John S. George & Company, Limited	16.13. 3.	
June's Studio	3.15. 0.	
Kelly Motor Company	966. 1. 6.	
Kerland, Limited	5. 5. 0.	
Moseley's, Limited	22.18. 3.	C
Maura Lumber Company, Limited	16. 6.	
Nassau Guardian (1844), Limited	159.15. 0.	
Nassau Daily Tribune	30.16. 0.	
Nassau Plumbing Service	402. 6. 8.	
Public Treasury	126.18. 0.	
Public Health Department	55. 0. 0.	
Princess Margaret Hospital	60. 0. 0.	
Dr. H.A. Quakenbush	4.12. 0.	
Race Finish Recording Company	4.17. 3.	
Dr. K.V.A. Rodgers	12. 0.	D
Sunshine Bottling Company, Limited	10. 5. 6.	
Standard Plumbing Company, Limited	3.15. 0.	
Symonette Shipyards, Limited	26. 6. 6.	
Sinclair Cuba Oil Company	5.12. 4.	
	<hr/>	
BALANCE CARRIED FORWARD	£4,889.19. 8.	

	BALANCE BROUGHT FORWARD	£4,889.19. 8.	In the Supreme Court of the
	Skyline Club	1.13. 0.	Bahama Islands
	Songs of the Island, Limited	84. 0. 0.	<u>Common Law Side</u>
	Telecommunications Department	19. 4. 0.	
	Taylor Industries, Limited	221.17. 9.	<u>Exhibit C.4</u>
	What To Do In Nassau	49. 0. 0.	Balance Sheets
	Stanley Toogood Studios	86. 9. 4.	and Covering Letter,
A	<u>AS PER BALANCE SHEET</u>	<u>£5,352. 3. 9.</u>	30th April, 1955. (Contd.)

THE MONTAGU PARK RACING

BALANCE SHEET AS ATASSETSCurrent Assets

The Royal Bank of Canada		7,187. 6. 7.
Barclays Bank (Dominion, Colonial and Overseas)		3,639.14. 6.
Cash on Hand		11.18. 9.
Deposits		5. 0. 0.
Accounts Receivable - <u>Schedule 1</u>	1,415.15. 8.	
<u>Less:-</u> Reserve for Doubtful Accounts	391.17. 9.	1,023.17.11.
		<hr/>
Accounts Payable - Debit Balances		95. 2. 5.
Resale Supplies Inventory		25. 0. 0.
Prepaid Expenses		1,447. 9. 3.
		<hr/>
<u>Total Current Assets</u>		£13,435. 9. 5.

Fixed Assets

Office Furniture and Fittings	726.13. 8.	
<u>Less:-</u> Reserve for Depreciation	287.15. 1.	438.18. 7.
	<hr/>	
Track Furnishings and Equipment	8,915. 9. 6.	
<u>Less:-</u> Reserve for Depreciation	4,407. 9. 9.	4,507.19. 9.
	<hr/>	
Motor Cars, Trucks and Tractors	1,231. 8. 6.	
<u>Less:-</u> Reserve for Depreciation	615.13.11.	615.14. 7.
	<hr/>	
Buildings	58,549.16. 9.	
<u>Less:-</u> Reserve for Depreciation	35,397. 2. 4.	23,152.14. 5.
	<hr/>	
Water Sprinkling System, Ticket Machines Installation and Renovations	5,564. 6. 0.	
<u>Less:-</u> Equipment sold and amounts written off	3,633. 5. 3.	1,931. 0. 9.
	<hr/>	
<u>Total Fixed Assets</u>		£30,646. 8. 1.
		<hr/>
<u>TOTAL ASSETS</u>		£44,081.17. 6.
		<hr/> <hr/>

ASSOCIATION LIMITED

EXHIBIT AIn the Supreme
Court of the
Bahama Islands
Common Law Side30th APRIL 1955LIABILITIES AND CAPITALExhibit C.4Current LiabilitiesBalance Sheets
and Accounts
with Covering
Letter,
30th April, 1955.
(Contd.)

Accounts Payable - Schedule 2	5,352. 3. 9.
Accounts Receivable - Credit Balances	54.15. 6.
Accrued Expenses	40. 0. 0.
<u>Total Current Liabilities</u>	<u>£ 5,446.19. 3.</u>

Deferred Liabilities

Unpaid Pari-Mutuel Tickets	1,203.13. 0.
----------------------------	--------------

CapitalAuthorized Capital300 Shares at £10 each £ 3,000. 0. 0.Issued Capital300 Shares at £10 each
fully paid 3,000. 0. 0.SurplusBalance - 30th April
1954 30,440. 3.10.Add:- Net Profit for the
year ended 30th
April 1955 - As
per Exhibit B 12,175.10. 7.

42,615.14. 5.

Less:- Shareholders
withdrawalsduring the year 8,184. 9. 2. 34,431. 5. 3.

TOTAL LIABILITIES AND CAPITAL

£44,081.17. 6.Prepared from the accounts and records of
THE MONTAGU PARK RACING ASSOCIATION,
LIMITED by,

Herbert A. Deal & Co.

Accountants and Auditors.

7th July, 1955.
Nassau, Bahamas.

THE MONTAGU PARK RACING
PROFIT AND LOSS STATEMENT FOR THE PERIOD

EXPENSES

Pari-Mutuel and Race Day Expenses

Management - Pari-Mutuel	850. 0. 0.
Wages - Pari-Mutuel	7,596. 0. 0.
Wages - Outside	2,257. 2. 0.
Ticket Machines Rental and Supplies	5,269.14. 9.
Shortages	59. 7.10.
Printing and Stationery	296. 8. 8.
Band	140. 0. 0.
Purses	17,700. 0. 0.
Lights	68.18. 0.
Miscellaneous	34.15. 0.
Medical and Veterinary	151.11. 6.
Photo Finish Expense	258. 6. 0.
Starting Gates Expense	738.15. 0.
Trophies	63.14.10.

Total Pari-Mutuel and Race Day Expenses £35,484.13. 7.

Horses' Expense - Wages and Supplies £ 118. 4. 0.

Track Maintenance

Wages	743. 4. 0.
Supplies	283. 9. 7.
Miscellaneous	753. 0. 8.

Total Track Maintenance £ 1,779.14. 3.

Administrative Expenses

Salaries	1,510. 0. 0.
Government Lease	400. 0. 0.
Insurance	300. 0. 0.
Telephones, Cables and Postage	55. 6. 9.
Advertising and Publicity	780.19.10.
Miscellaneous	9.19. 0.
Motor Vehicle Maintenance	171.19. 6.
Accountancy	850. 0. 0.
Legal	102.10. 2.
Overdraft Interest	26. 2. 3.
Entertaining and Complimentary	345. 3. 6.
Reserve for Bad Debts	143. 8. 0.

Total Administrative Expenses £ 4,695. 9. 0.

DEPRECIATION £ 2,781.18. 1.

GRAND TOTAL EXPENSES £44,859.18.11.

NET PROFIT FOR PERIOD CARRIED TO EXHIBIT B £21,355.17. 6.

TOTAL £66,215.16. 5.

585.

ASSOCIATION LIMITED EXHIBIT D
FIRST JANUARY 1955 to 30th APRIL 1955

In the Supreme
Court of the
Bahama Islands
Common Law Side

REVENUE

Pari-Mutuel and Race Day Revenue

Track Percentage		45,044. 2. 1.
Clubhouse Admissions	8,422.17.11.	
<u>Less:- Government Tax</u>	<u>821.16.10.</u>	7,621. 1. 1.
Clubhouse Box Rental		618. 0. 0.
Grandstand Admissions	9,634. 0. 0.	
<u>Less:- Government Tax</u>	<u>947. 8. 8.</u>	8,686.11. 4.
Race Entry Fees		1,235. 0. 0.

Exhibit C.4
Balance Sheets
and Accounts
with Covering
Letter,
30th April,
1955.
(Contd.)

Other Revenue

Stable Rents		1,105.15. 9.
Restaurant and Bar Concessions		751. 0. 0.
Programme Concession - Less Cost		400. 0. 0.
Feed and Miscellaneous Sales - Less Cost		47. 4. 2.
Exchange Profit		707. 2. 0.

Total Race Season Revenue

£66,215.16. 5.

TOTAL

£66,215.16. 5.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit C.3

BALANCE SHEETS AND ACCOUNTS (WITH COVERING
LETTER), 30th APRIL
1956.

Exhibit C.3
Balance Sheets
and Accounts
(with Covering
Letter),
30th April,
1956.

Herbert A. Deal and Company,
Accountants and Auditors.

P.O. Box 376,
Nassau, Bahamas.

12th May, 1956.

A

The Directors,
The Montagu Park Racing Association, Ltd.,
Nassau, Bahamas.

Dear Sirs,

We attach herewith the following Statements
of your Company as at 30th April, 1956.

Exhibit A - Balance Sheet as at 30th April,
1956.

Exhibit B - Profit and Loss Statement for the
year ended 30th April, 1956.

B

Exhibit C - Profit and Loss Statement for the
period 1st May, 1955 to 31st
December, 1955.

These Statements have been prepared by us as
at 30th April, 1956, and in our opinion, they show
the position of the accounts as at 30th April,
1956.

Yours faithfully,

Herbert A. Deal & Co.

C

HAD:gk

587.

THE MONTAGU PARK RACING
PROFIT AND LOSS STATEMENT FOR

EXPENSES

<u>Pari-Mutuel and Race Day Expenses</u>	
Management - Pari-Mutuel	850. 0. 0.
Wages - Pari-Mutuel	8,500.10. 0.
Wages - Outside	2,864. 1. 3.
Ticket Machines Rental and Supplies	4,591.15. 5.
Old Pari-Mutuel Tickets Written Off	1,132. 0. 3.
Shortages	134. 5. 5.
Printing and Stationery	321.10. 3.
Band	192. 0. 0.
Purses	19,280. 0. 0.
Lights	149.10. 0.
Miscellaneous	52. 1. 0.
Medical and Veterinary	174.18. 9.
Photo Finish Expense	199. 3. 4.
Handicapper's Salary	325. 0. 0.
Starting Gates Expense	622.10. 0.
Trophies	12. 5.
<u>Total Pari-Mutuel and Race Day Expenses</u>	<u>£39,389.18. 1.</u>
<u>Track Maintenance</u>	
Wages	775. 1.10.
Supplies	304. 5. 7.
Miscellaneous	244. 1. 0.
<u>Total Track Maintenance</u>	<u>£ 1,323. 8. 5.</u>
<u>Administrative Expenses</u>	
Salaries	1,335. 0. 0.
Government Lease	400. 0. 0.
Insurance	335.18. 5.
Telephones, Cables and Postage	48. 7. 4.
Advertising and Publicity	1,245.13. 6.
Miscellaneous	10. 8. 3.
Motor Vehicle Maintenance	167. 1. 9.
Accountancy	850. 0. 0.
Legal	111.14. 6.
Overdraft Interest	31. 5. 8.
Entertaining and Complimentary	268.11. 0.
Reserve for Bad Debts and Accounts Written Off	218. 2. 1.
<u>Total Administrative Expenses</u>	<u>£ 5,022. 2. 6.</u>
<u>DEPRECIATION</u>	<u>£ 3,145. 4. 9.</u>
<u>TOTAL RACE SEASON EXPENSES</u>	<u>£48,880.13. 9.</u>
<u>NET LOSS FOR CLOSED SEASON - SCHEDULE C</u>	9,145.13.10.
<u>NET PROFIT FOR YEAR CARRIED TO BALANCE SHEET</u>	15,545.10. 2.
<u>TOTAL</u>	<u>£73,571.17. 9.</u>

ASSOCIATION LIMITED EXHIBIT B
THE YEAR ENDED 30th APRIL 1956
REVENUE

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

<u>Pari-Mutuel and Race Day Revenue</u>		
Track Percentage		50,117.18.10.
Clubhouse Admissions	9,833.14. 0.	
<u>Less:- Government Tax</u>	<u>1,075.12. 0.</u>	8,758. 2. 0.
Clubhouse Box Rentals		669. 0. 0.
Grandstand Admissions	9,596. 0. 0.	
<u>Less:- Government Tax</u>	<u>965. 9. 4.</u>	8,630.10. 8.
Race Entry Fees		1,442. 0. 0.
<u>Other Revenue</u>		
Stable Rents		792.18. 0.
Restaurant and Bar Concessions		800. 0. 0.
Programme Concession		500. 0. 0.
Miscellaneous Sales - Less Cost		138. 0. 0.
Exchange Profit		519.15. 3.
Unpaid Pari-Mutuel Tickets - Seasons 1954 and 1955		1,203.13. 0.
<u>TOTAL RACE SEASON REVENUE</u>		<u>£73,571.17. 9.</u>

Exhibit C.3
 Balance Sheets
 and Accounts
 (with Covering
 Letter),
 30th April,
 1956.
 (Contd.)

TOTAL

£73,571.17. 9.

THE MONTAGU PARK RACING
BALANCE SHEET AS AT

ASSETS

Current Assets

The Royal Bank of Canada	8,572. 9. 9.	
Barclays Bank (Dominion, Colonial and Overseas)	39.14. 6.	
Cash on Hand	10. 0. 0.	
Deposits	5. 0. 0.	
Accounts Receivable - <u>Schedule 1</u>	1,510.19. 2.	
<u>Less:-</u> Reserve for Doubtful Accounts	556. 1.10.	954.17. 4.
Accounts Payable - Debit Balances		114. 0. 0.
Prepaid Expenses		252.18. 0.
Dr. Raymond W. Sawyer		3,373.14. 6.
<u>Total Current Assets</u>		<u>£13,322.14. 1.</u>

Fixed Assets

Office Furniture and Fittings	726.13. 8.	
<u>Less:-</u> Reserve for Depreciation	360. 8. 5.	366. 5. 3.
Track Furnishings and Equipment	8,915. 9. 6.	
<u>Less:-</u> Items of Equipment Sold	64. 5. 9.	
<u>Less:-</u> Reserve for Depreciation	8,851. 3. 9.	
	5,292.12. 1.	3,558.11. 8.
Motor Cars, Trucks and Tractors	1,231. 8. 6.	
<u>Less:-</u> Reserve for Depreciation	923.11. 1.	307.17. 5.
Buildings	58,549.16. 9.	
<u>Less:-</u> Reserve for Depreciation	41,252. 1.11.	17,297.14.10.
Improvements - Balance Last Year	1,931. 0. 9.	
<u>Add:-</u> Improvements this year to Ground, Buildings and Equipment	3,469. 6. 3.	
	5,400. 7. 0.	
<u>Less:-</u> Amounts Written Off	1,544. 2. 1.	3,856. 4.11.
<u>Total Fixed Assets</u>		<u>£25,386.14. 1.</u>
<u>TOTAL ASSETS</u>		<u>£38,709. 8. 2.</u>

ASSOCIATION LIMITED
30th APRIL 1956

EXHIBIT A

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

LIABILITIES AND CAPITALCurrent Liabilities

<u>Accounts Payable - Schedule 2</u>	2,215. 9. 7.
Accounts Receivable - Credit Balances	161.19. 6.
Jockey's and Trainer's Commissions	22.16. 0.
Bahamas Turf Club	44. 0. 0.
Accrued Expenses	240. 0. 0.
<u>Total Current Liabilities</u>	<u>£ 2,684. 5. 1.</u>

Exhibit C.3
 Balance Sheets
 and Accounts
 (with Covering
 Letter),
 30th April,
 1956.
 (Contd.)

Deferred Liabilities

Unpaid Pari-Mutuel Tickets	548. 0. 3.
----------------------------	------------

Capital

<u>Authorized Capital</u>	
300 Shares at £10 each	<u>£3,000. 0. 0.</u>
<u>Issued Capital</u>	
300 Shares at £10 each fully paid	3,000. 0. 0.

Surplus

Balance - 30th April 1955	34,431. 5. 3.
<u>Add:- Net Profit for the year ended 30th April 1956 - as per Exhibit B</u>	<u>15,545.10. 2.</u>
<u>Less:- Shareholders Withdrawals</u>	<u>49,976.15. 5.</u>
11,565.13.10. <u>5,933.18. 9.</u>	<u>17,499.12. 7. 32,477. 2.10.</u>

TOTAL LIABILITIES AND CAPITAL

£38,709. 8. 2.

Prepared from the accounts and records of
 THE MONTAGU PARK RACING ASSOCIATION,
 LIMITED by,

Herbert A. Deal & Co.

Accountants and Auditors.

12th May, 1956.
 Nassau, Bahamas.

In the Supreme
Court of the
Bahama Islands
Common Law Side

EXHIBIT C.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
PROFIT AND LOSS STATEMENT FOR THE PERIOD
1st MAY 1955 to 31st DECEMBER 1955

Exhibit C.3
Balance Sheets
and Accounts
(with Covering
Letter),
30th April,
1956.
(Contd.)

REVENUE

Stable Rents	770. 19. 0.	A
Miscellaneous Sales	167. 10. 0.	
<u>TOTAL REVENUE</u>	<u>£ 938. 9. 0.</u>	

EXPENSES

Salaries	1,529. 0. 0.	
Track Maintenance	1,477. 9. 2.	
Advertising	5. 0. 0.	
Accountancy	200. 0. 0.	
Car & Truck Maintenance	103. 7. 3.	B
Printing & Stationery	4.11. 6.	
Horses' Maintenance	658.15. 3.	
Insurance	266. 2. 5.	
Cables, Postage and Telephones	19. 5. 0.	
Lights	128. 2. 6.	
Overdraft Interest	3.19.10.	
Travelling	168.12. 2.	
Miscellaneous	8. 0. 0.	C
Depreciation	5,519. 9. 9.	
<u>TOTAL EXPENSES</u>	<u>£10,084. 2.10. .</u>	
<u>NET LOSS FOR CLOSED SEASON</u>	<u>£ 9,145. 13.10.</u>	

Schedule 1. In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
ACCOUNTS RECEIVABLE

Exhibit C.3

	Mrs. Merline Adderley	23. 4. 0.	Balance Sheets and Accounts (with Covering Letter), 30th April, 1956. (Contd.)
	Ronald Albury, Esq.	3.10. 0.	
	L.H. Alleyne, Esq.	35.16. 0.	
A	Eric Archer, Esq.	12.10. 0.	
	Mrs. Joyce Bastian	2. 0. 0.	
	Howard Bethell, Esq.	3.10. 0.	
	Leon Bowe, Esq.	2. 0. 0.	
	Cyril Bowe, Esq.	14. 4. 8.	
	British Colonial Hotel	45. 0. 0.	
	H.C. Brooks, Esq.	12. 0. 0.	
	Phillip Brown, Esq.	30.12. 0.	
	Addington Cambridge, Esq.	40. 0. 0.	
	Earle Cambridge, Esq.	9. 2. 0.	
B	John Carey, Esq.	7.12. 0.	
	Sidney Carroll, Esq.	13.12. 0.	
	William Carroll, Esq.	1.11. 0.	
	Mrs. Una Carroll	17. 3.	
	W.G. Cash, Esq.	11.13. 2.	
	Mrs. Maria Charlton	10. 0.	
	John Chipman, Esq.	5.19. 3.	
	John Claridge, Esq.	43. 3. 0.	
	Eric Cleare, Esq.	1. 3. 3.	
	G.M. Cole, Esq.	23.10. 0.	
C	Coral Harbour	7. 0. 0.	
	R.H. Curry & Company, Limited	23. 6. 0.	
	Leonard Dames, Esq.	1. 0. 0.	
	Levi Davis, Esq.	6. 2.	
	Roy Davis, Esq.	1.11. 5.	
	G.T. Dean, Esq.	15.12. 0.	
	Mrs. Irene Demeritte	16.19.10.	
	Emerald Beach Hotel	20. 0. 0.	
	Mrs. Grace Farrington	23.16. 0.	
	Paul Farrington, Esq.	500. 0. 0.	
D	James French Jr., Esq.	7. 9. 1.	
	N.J. French, Esq.	29. 3. 0.	
	Fort Montagu Beach Hotel	17.10. 0.	
	Ivan Hall, Esq.	3. 6. 0.	
	W. Hamilton, Esq.	9.11.11.	
	Leroy Hanna, Esq.	10. 0. 1.	
	Eddie Higgs, Esq.	1. 4. 0.	
	BALANCE CARRIED FORWARD	£1,031.15. 1.	

In the Supreme Court of the Bahama Islands <u>Common Law Side</u>	BALANCE BROUGHT FORWARD	£1,031.15. 1.	
<u>Exhibit C.3</u>	Mrs. Louise Higgs	7.11. 0.	
Balance Sheets	E. Holmes, Esq.	7.19. 7.	
and Accounts	W.A. Hudson, Esq.	10.10. 0.	
(with Covering	Wilfred Huyler, Esq.	13.18. 0.	
Letter),	Alvin Ingraham, Esq.	1. 0. 0.	
30th April,	Harry Kemp, Esq.	2. 0. 0.	
1956.	Alonza Kemp, Esq.	7. 3. 6.	
(Contd.)	Harold Lecke, Esq.	12.11. 4.	A
	Mrs. Faye Lorandos	19.11.	
	Tex Lunn, Esq.	6.12. 0.	
	Larry MacPhail, Esq.	20. 0. 0.	
	E. Mackey, Esq.	14. 0. 0.	
	E.S. Mackey, Esq.	1.12. 0.	
	Sonny Mackey, Esq.	1. 0. 0.	
	J. Marshall, Esq.	34.10. 0.	
	R.M. Miller, Esq.	4.10. 0.	
	Cecil Miller, Esq.	8.12. 0.	
	Frank Miller, Esq.	24.18. 0.	B
	Gerald George Moncur, Esq.	36.12. 0.	
	Charles A. Munroe, Esq.	10. 0. 0.	
	H. Morley, Esq.	1. 0. 0.	
	Edroy Munroe, Esq.	12. 0. 0.	
	Urban Monroe, Esq.	6. 6. 0.	
	Ralph Parks, Esq.	14. 2. 8.	
	Mario Parotti, Esq.	6. 0.	
	Mrs. Vera Patterson	5. 0. 0.	
	G. Pickering, Esq.	6. 0. 0.	
	Ronald Pratt, Esq.	8. 8. 0.	C
	Princess Margaret Hospital	7. 0. 0.	
	Hon. Asa H. Pritchard	5. 0. 0.	
	Racing Commission	20. 0. 0.	
	Roy Ramsey, Esq.	16. 0.	
	Miss R. Roberts	4.15. 0.	
	David Rolle, Esq.	1. 0. 0.	
	Royal Victoria Hotel	12. 0. 0.	
	A.S. Russell, Esq.	35.18. 3.	
	C.D. Russell, Esq.	20. 0. 0.	
	Shamrock Stables	4. 0. 0.	D
	Morris Smith, Esq.	5. 0. 0.	
	S.N. Smith, Esq.	11. 0. 0.	
	Dr. A. Soltys	1. 0. 0.	
	William Strachan, Esq.	3.12. 0.	
	E. Thompson, Esq.	1. 0. 0.	
	O.B. Thompson, Esq.	2.10. 0.	
	Mrs. Elizabeth Turner	2. 8. 0.	
	BALANCE CARRIED FORWARD	£1,446.16. 4.	

	BALANCE BROUGHT FORWARD	£1,446.16. 4.	In the Supreme Court of the
	N. Wallace, Esq.	3. 0. 0.	Bahama Islands
	Wenzel Weech, Esq.	17. 6. 0.	<u>Common Law Side</u>
	M.N. Wells, Esq.	1.10. 0.	
	Sam White, Esq.	6.15.10.	<u>Exhibit C.3</u>
	Bernard Williams, Esq.	16.12. 0.	Balance Sheets
	Harold Woodman, Esq.	18.19. 0.	and Accounts
		<hr/>	(with Covering
A	<u>AS PER BALANCE SHEET</u>	£1,510.19. 2.	Letter).
		<hr/> <hr/>	30th April,
			1956.
			(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Schedule 2.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
ACCOUNTS PAYABLE

<u>Exhibit C.3</u>			
Balance Sheets and Accounts (with Covering Letter), 30th April, 1956. (Contd.)	American Totalisator Company, Inc.	31.10. 0.	
	Bahamas Printing Works	486.15. 0.	
	British Colonial Hotel	95.15. 6.	
	Bahamas Pavers, Limited	242.19. 0.	A
	City Lumber Yard	833. 8.10.	
	Christofilis Brothers	30.10. 0.	
	Capitol Service Station	1.10. 0.	
	Mr. Cecil R. Cartwright	4. 0. 0.	
	East Bay Service, Limited	3.15. 6.	
	Fort Montagu Beach Hotel	145. 3. 7.	
	General Equipment, Limited	7. 6.	
	Higgs & Kelly	42. 5. 6.	
	Interinsular Mails, Limited	60. 0. 0.	
	Kelly Motor Company	4.17. 0.	B
	Maura Lumber Company, Limited	32. 5. 2.	
	Nassau Guardian (1844), Limited	21.17. 6.	
	Royal Service Station	8. 5. 6.	
	Skyline Club	4. 6. 0.	
	International Camera Store	5.18. 0.	
	Public Treasury	160. 0. 0.	
	<u>AS PER BALANCE SHEET</u>	<u>£2,215.15. 9.</u>	

Exhibit C.2

BALANCE SHEETS AND ACCOUNTS (WITH COVERING
LETTER), 30th APRIL, 1957

In the Supreme
Court of the
Bahama Islands
Common Law Side

Herbert A. Deal and Company,
Accountants and Auditors.

P.O. Box 376
Nassau, Bahamas

15th July, 1957

Exhibit C.2
Balance Sheets
and Accounts
(with Covering
Letter),
30th April,
1957.

A

The Directors,
The Montagu Park Racing Association, Ltd.,
Nassau, Bahamas.

Dear Sirs,

We attach herewith the following Statements
of your Company as at 30th April, 1957.

Exhibit A - Balance Sheet as at 30th April,
1957.

Exhibit B - Profit and Loss Statement for the
year ended 30th April, 1957.

Exhibit C - Profit and Loss Statement for the
period 1st May, 1956 to 31st
December, 1956.

B

These Statements have been prepared by us as
at 30th April, 1957, and in our opinion, they show
the position of the accounts as at 30th April,
1957.

Yours faithfully,

Herbert A. Deal & Co.

C HAD:gk

THE MONTAGU PARK RACING
BALANCE SHEET AS AT

ASSETS

Current Assets

The Royal Bank of Canada	4,021.16. 8.	
Barclays Bank (Dominion, Colonial and Overseas)	39.14. 6.	
Cash on Hand	100. 0. 0.	
Deposits	5. 0. 0.	
Accounts Receivable - <u>Schedule 1</u>	1,514.14.10.	
<u>Less:-</u> Reserve for Doubtful Accounts	556. 1.10.	958.13. 0.
Accounts Payable - Debit Balances		57. 7.10.
Prepaid Expenses		271. 5. 5.
Dr. Raymond W. Sawyer - Personal Account		5,481.10. 2.
Dr. Raymond W. Sawyer - Principal and Interest		
Payments to Mr. Alexis Nihon		6,743.16. 9.
Alexis Nihon, Esq.		33.10. 5.
<u>Total Current Assets</u>		<u>£17,712.14. 9.</u>

Fixed Assets

Office Furniture and Fittings	726.13. 8.	
<u>Less:-</u> Reserve for Depreciation	433. 1. 9.	293.11.11.
Track Furnishings and Equipment	8,851. 3. 9.	
<u>Less:-</u> Reserve for Depreciation	6,177.14. 5.	2,673. 9. 4.
Motor Cars, Trucks and Tractors	1,231. 8. 6.	
Additions during the year	600. 0. 0.	
	1,831. 8. 6.	
<u>Less:-</u> Reserve for Depreciation	1,379. 8. 6.	452. 0. 0.
Buildings	58,549.16. 9.	
<u>Less:-</u> Reserve for Depreciation	45,400.19. 4.	13,148.17. 5.
Improvements - Balance last year	3,856. 4.11.	
<u>Less:-</u> Amounts Written Off	2,121.11. 9.	1,734.13. 2.
<u>Total Fixed Assets</u>		<u>£18,302.11.10.</u>

TOTAL ASSETS

£36,015. 6. 7.

ASSOCIATION, LIMITED
30th APRIL, 1957

EXHIBIT A

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

LIABILITIES AND CAPITALCurrent Liabilities

Accounts Payable - Schedule 2
 Accounts Receivable - Credit Balances
 Bahamas Turf Club
 Accrued Expenses

466.12. 5.
 10. 0. 0.
 44. 0. 0.
 250. 0. 0.

Exhibit C.2
 Balance Sheets
 and Accounts
 (with Covering
 Letter),
 30th April,
 1957.

Total Current Liabilities

£ 770.12. 5.

(Contd.)

Deferred Liabilities

Unpaid Pari-Mutuel Tickets

692. 0. 6.

CapitalAuthorized Capital

300 shares at £10 each £3,000. 0. 0.

Issued Capital

300 shares at £10 each
 fully paid

3,000. 0. 0.

Surplus

Balance - 30th April
 1956

32,477. 2.10.

Add:- Net Profit for the
 year ended 30th
 April, 1957 - as
 per Exhibit B

10,377.10. 5.

42,854.13. 3.

Less:- Shareholder's
 withdrawals

11,301.19. 7.

31,552.13. 8.

TOTAL LIABILITIES AND CAPITAL

£36,015. 6. 7.

Prepared from the accounts and records of
 THE MONTAGU PARK RACING ASSOCIATION,
 LIMITED by,

Herbert A. Deal & Co.
 Accountants and Auditors.

15th July, 1957.
 Nassau, Bahamas.

THE MONTAGU PARK RACING
PROFIT AND LOSS STATEMENT FOR THE

EXPENSES

<u>Pari-Mutuel and Race Day Expenses</u>	
Management - Pari-Mutuel	1,000. 0. 0.
Wages - Pari-Mutuel	8,403. 5. 0.
Wages - Outside	2,874.10. 0.
Ticket Machines Rental and Supplies	4,497. 0.11.
Shortages	190.13. 4.
Printing and Stationery	412.19. 8.
Band	240. 0. 0.
Purses	24,040. 0. 0.
Lights	44.15. 2.
Miscellaneous	97. 8. 8.
Medical and Veterinary	172. 6. 0.
Photo Finish Expense	277.18. 1.
Handicapper's Salary	350. 0. 0.
Starting Gate Expense	684. 1. 5.
<u>Total Pari-Mutuel and Race Day Expenses</u>	<u>£43,284.18. 3.</u>
 <u>Track Maintenance</u>	
Wages	849. 2. 0.
Supplies	216. 3. 3.
Miscellaneous	195.13. 8.
Horses' Expense	186. 1. 6.
<u>Total Track Maintenance</u>	<u>£ 1,447. 0. 5.</u>
 <u>Administrative Expenses</u>	
Salaries	1,185. 0. 0.
Government Lease	400. 0. 0.
Insurance	221.16. 3.
Telephones, Cables and Postage	50. 4. 8.
Advertising and Publicity	1,243. 7. 7.
Miscellaneous	12.16. 6.
Motor Vehicle Maintenance	102. 8. 0.
Accountancy	1,000. 0. 0.
Legal	81. 9. 0.
Overdraft Interest	33. 4. 8.
Entertaining and Complimentary	631. 5. 0.
Accounts Written Off	15. 0. 0.
Fines	25. 0. 0.
<u>Total Administrative Expenses</u>	<u>£ 5,001.11. 8.</u>
 <u>DEPRECIATION</u>	 <u>£ 2,561. 7. 3.</u>
 <u>TOTAL RACE SEASON EXPENSES</u>	 <u>£52,294.17. 7.</u>
 <u>NET LOSS FOR CLOSED SEASON - SCHEDULE C</u>	 7,706. 7.10.
 <u>NET PROFIT FOR YEAR CARRIED TO BALANCE SHEET</u>	 10,377.10. 5.
 <u>TOTAL</u>	 <u>£70,378.15.10.</u>

601.

ASSOCIATION, LIMITED

EXHIBIT BIn the Supreme
Court of the
Bahama Islands
Common Law SideYEAR ENDED 30th APRIL, 1957REVENUEPari-Mutuel and Race Day Revenue

Track Percentage		48,975. 4. 7.
Clubhouse Admissions	9,478.17. 0.	
<u>Less:- Government Tax</u>	<u>1,114.12. 0.</u>	8,364. 5. 0.
Clubhouse Box Rentals		670. 0. 0.
Grandstand Admissions	8,225. 0. 0.	
<u>Less:- Government Tax</u>	<u>878. 7. 3.</u>	7,346.12. 9.
Race Entry Fees		1,455. 0. 0.
<u>Other Revenue</u>		
Stable Rents		994.12. 0.
Restaurant and Bar Concessions		700. 0. 0.
Programme Concession		500. 0. 0.
Miscellaneous Sales - Less Cost		237. 8.10.
Exchange Profit		570.14. 8.
Unpaid Pari-Mutuel Tickets - Season 1956		<u>564.18. 0.</u>
<u>TOTAL RACE SEASON REVENUE</u>		<u>£70,378.15.10.</u>

Exhibit C.2
Balance Sheets
and Accounts
(with Covering
Letter),
30th April,
1957.
(Contd.)TOTAL£70,378.15.10.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Herbert A. Deal & Company,
Accountants & Auditors.

EXHIBIT C

Exhibit C.2
Balance Sheets
and Accounts
(with Covering
Letter),
30th April,
1957.
(Contd.)

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
PROFIT AND LOSS STATEMENT FOR THE PERIOD
1st MAY 1956 to 31st DECEMBER 1956

REVENUE

Stable Rents	1,148.16. 0.	A
Miscellaneous Sales	154. 4. 0.	
	<hr/>	
<u>TOTAL REVENUE</u>	£1,303. 0. 0.	

EXPENSES

Salaries	1,260. 0. 0.	
Track Maintenance	1,306. 6. 8.	
Accountancy	500. 0. 0.	
Car and Truck Maintenance	169.16. 6.	B
Printing and Stationery	8.18. 6.	
Horses' Expense	198. 4. 9.	
Insurance	305.11. 4.	
Cables, Postage and Telephones	37.16. 0.	
Lights	80. 5. 2.	
Overdraft Interest	9. 9. 8.	
Miscellaneous	13. 4.	
Bank Charges	9.10.11.	C
Depreciation	5,122.15. 0.	
	<hr/>	
<u>TOTAL EXPENSES</u>	£9,009. 7.10.	

NET LOSS FOR CLOSED SEASON

£7,706. 7.10.

Herbert A. Deal & Company,
Accountants and Auditors.

Schedule 1.

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
ACCOUNTS RECEIVABLE

Exhibit C.2

	Mrs. Merline Adderley	23. 4. 0.	Balance Sheets
	Mr. L.H. Alleyne	35.16. 0.	and Accounts
A	Mr. Eric Archer	12.10. 0.	(with Covering
	Howard Bethell	3.10. 0.	Letter),
	Mr. Peter Bethell	10. 0. 0.	30th April,
	Mr. Carl Blades	19. 4. 0.	1957.
	Mr. Nathaniel Bosfield	2. 0. 0.	(Contd.)
	Mr. J.T. Bowe	16. 0. 0.	
	Mr. Roy Bullard	5. 0. 0.	
	Mr. Philip Brown	34.16. 0.	
	British Colonial Hotel	17.10. 0.	
	Mr. Addington Cambridge	190. 0. 0.	
B	Mr. Sidney Carroll	13.12. 0.	
	Mr. William Carroll	1.11. 0.	
	Mrs. Una Carroll	17. 3.	
	Mr. W.G. Cash	9.18. 2.	
	Mr. Franklyn Chase	10.10. 0.	
	Mrs. Maria Charlton	10. 0.	
	Mr. H.J. Claridge	43. 3. 0.	
	Coral Harbour Club	8.10. 0.	
	Mr. Levi Davis	6. 2.	
	Mr. G.T. Dean	15.12. 0.	
C	Mr. Lowell Demeritte	21.16. 0.	
	Emerald Beach Hotel	20. 0. 0.	
	Mr. James Eve	17. 0. 0.	
	Mrs. Grace Farrington	23.16. 0.	
	Mr. Paul Farrington	137. 5. 6.	
	Mr. Richard Farrington	4.16. 2.	
	Mr. Samuel Ferguson	3. 0. 0.	
	Mr. James French Jr.	7. 9. 1.	
	Fort Montagu Beach Hotel	15. 0. 0.	
	Mr. George Godet	7.16. 0.	
D	Mr. J. Grammatico	17.12. 0.	
	Mrs. Agnes Gray	14.12. 0.	
	Mr. Wellington Hamilton	29.19.11.	
	Mr. Eugene Heastie	7.12. 0.	
	Mr. Eddie Higgs	1. 4. 0.	
	Mr. R.N. Higgs	19. 4. 0.	
	Mrs. Louise Higgs	7.11. 0.	
	Mrs. George Higgs	5. 0. 0.	
	BALANCE CARRIED FORWARD	£ 834.13. 3.	

In the Supreme Court of the Bahama Islands <u>Common Law Side</u>	BALANCE BROUGHT FORWARD	£ 834.13. 3.	
	Mr. W.A. Hudson	10.10. 0.	
	Mr. Roger Higgs	4. 0. 0.	
	Mr. Wilfred Huyler	37. 6. 0.	
<u>Exhibit C.2</u>	Mr. Alvin Ingraham	18. 8. 0.	
Balance Sheets	Mr. Thomas Johnson	14. 4. 0.	
and Accounts	Mrs. Gertrude Kelly	19. 8. 0.	
(with Covering	Mr. Harry Kemp	2. 0. 0.	
Letter),	Mr. A. Laing	7. 3. 6.	A
30th April,	Mr. Harold Lecke	12.11. 4.	
1957.	Mr. Lawrence Lightbourn	74. 0. 6.	
(Contd.)	Mrs. Maria Lockhart	3. 0. 0.	
	Mrs. Faye Lorandos	19.11.	
	Mrs. Oliver Lucas	15. 0. 0.	
	Mr. D. McNeill	20. 0. 0.	
	Mr. Larry MacPhail	20. 0. 0.	
	Mr. Jack MacTaggart	10. 0. 0.	
	Mr. E. Mackey	14. 0. 0.	
	Mr. E.S. Mackey	1.12. 0.	B
	Mr. Sonny Mackey	1. 0. 0.	
	Mr. J. Marshall	27. 2. 0.	
	Mr. R.M. Millar	4.10. 0.	
	Mr. Frank Miller	24.18. 0.	
	Mr. George Moncur	36.12. 0.	
	Mr. H. Morley	1. 0. 0.	
	Mr. Edroy Munro	12. 0. 0.	
	Mr. Urban Munro	6. 6. 0.	
	Mr. Thomas Moree	2. 0. 0.	
	Mr. Ralph Parks	14. 2. 8.	C
	Mr. Mario Parotti	6. 0.	
	Mr. A.F. Pindling	15.15. 9.	
	Mr. Ronald Pratt	8. 8. 0.	
	Mr. Roy Ramsey	16. 0.	
	Mr. David Rolle	1. 0. 0.	
	Mr. Kermit Rolle	2. 0. 0.	
	Royal Victoria Hotel	32. 0. 0.	
	Mr. A.S. Russell	45. 2. 3.	
	Sir Victor Sassoon	1. 0. 0.	
	Mr. Ben Sherman	8. 0. 0.	D
	Mr. Morris Smith	5. 0. 0.	
	Dr. A. Soltys	1. 0. 0.	
	Mr. William Strachan	18. 4. 0.	
	Mr. A. Strawder	8. 8. 0.	
	Mrs. Ena Terrell	8. 8. 0.	
	Mr. E. Thompson	1. 0. 0.	
	Mr. O.B. Thompson	2.10. 0.	
	BALANCE CARRIED FORWARD	£ 1,407. 5. 2.	

	BALANCE BROUGHT FORWARD	£1,407. 5. 2.	In the Supreme Court of the
	Mrs. Elizabeth Turner	2. 8. 0.	Bahama Islands
	Tropical Clubs, Limited	45.16.10.	<u>Common Law Side</u>
	Mr. N. Wallace	3. 0. 0.	
	Mr. Charles Wells	4. 0. 0.	<u>Exhibit C.2</u>
	Mr. M.N. Wells	1.10. 0.	Balance Sheets
	Mr. Samuel White	6.15.10.	and Accounts
	Mr. B. Williams	25. 0. 0.	(with Covering
A	Mr. Harold Woodman	18.19. 0.	Letter),
			30th April,
	<u>AS PER BALANCE SHEET</u>	<u>£1,514.14.10.</u>	1957.
			(Contd.)

In the Supreme
Court of the
Bahama Islands
Common Law Side

Schedule 2.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
ACCOUNTS PAYABLE

Exhibit C.2

Balance Sheets	Bahamas Pavers, Limited	103.13. 0.	
and Accounts	Bahamas Electrical Corporation	20. 0. 0.	
(with Covering	Christofilis Brothers	31.12. 0.	
Letter),	General Hardware Company	5.13. 0.	A
30th April,	Messrs. Higgs & Kelly	60. 9. 0.	
1957.	Maura Lumber Company, Limited	11.13. 5.	
(Contd.)	Nassau Guardian (1844), Limited	63. 4. 0.	
	Nassau Plumbing Service	10. 4. 0.	
	Royal Service Station	12.17. 6.	
	Race Finish Recording Company	41.14. 6.	
	Mr. Ralph Roberts	61.19. 9.	
	Ripco, Limited	6. 0. 0.	
	Telecommunications Department	19. 6. 8.	
	Taylor Industries, Limited	2. 5. 7.	B
	Visitor's Guide	16. 0. 0.	
	<u>AS PER BALANCE SHEET</u>	<u>£ 466.12. 5.</u>	

Exhibit C.1BALANCE SHEET, 31st MARCH 1959

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
BALANCE SHEET AS AT 31st MARCH 1959

Exhibit C.1
Balance Sheet,
31st March,
1959.

ASSETS

A	<u>Current Assets</u>		
	Barclays Bank D.C.O.	488. 7. 11.	
	Cash on Hand	57. 12. 8.	
	Deposits	5. 0. 0.	
	Accounts Receivable - Less		
	Reserve for Doubtful Accounts	1,986. 4. 8.	
	Inventory of Ticket Stationery and Supplies - Estimated	300. 0. 0.	
	Dr. Raymond W. Sawyer - Personal Account Balance - 30th April 1957	5,481. 10. 2.	
B	<u>Less:- Salary Payments due</u>	3,000. 0. 0.	2,481. 10. 2.
	Dr. Raymond W. Sawyer - Principal and Interest Payments to Mr. Alexis Nihon Balance - 30th April 1957	6,743. 16. 9.	
	Payment - 1st May 1957	1,629. 9. 1.	8,373. 5. 10.
C	Mr. Alexis Nihon - Personal Account	1,689. 15. 4.	
	<u>Less:- Mortgage Interest due</u>	498. 8. 0.	1,191. 7. 4.
	Fire Insurance Claim in full	33,300. 0. 0.	
	<u>Total Current Assets</u>		<u>£48,183. 8. 7.</u>
	<u>FIXED ASSETS</u>		
	Track Equipment - Estimated	1,000. 0. 0.	
	Office Equipment - Estimated	100. 0. 0.	
D	<u>TOTAL ASSETS</u>		<u><u>£49,283. 8. 7.</u></u>

In the Supreme Court of the Bahama Islands	<u>LIABILITIES AND CAPITAL</u>	
<u>Common Law Side</u>	The Royal Bank of Canada	3,161. 0. 9.
	Accrued Expenses	798.16. 2.
	Mortgage Payable - Mr. Alexis Nihon	6,000. 0. 0.

<u>Exhibit C.1</u>	<u>CAPITAL</u>	
Balance Sheet,	<u>Authorized and Issued</u>	
31st March,	300 Shares at £10 each fully paid	3,000. 0. 0.
1959.		

(Contd.)

<u>SURPLUS CAPITAL</u>	
Balance - 31st March 1959	36,323.11. 8.

A

<u>TOTAL LIABILITIES AND CAPITAL</u>	<u>£49,283. 8. 7.</u>
--------------------------------------	-----------------------

Prepared by,

Herbert A. Deal & Co.,
Accountants and Auditors.

Nassau, Bahamas.
30th May, 1959.

Exhibit D
DRAFT ACCOUNTS

THE MONTAGU PARK RACING ASSOCIATION, LIMITED
DR. RAYMOND W. SAWYER'S ACCOUNT TO 30th APRIL, 1957

In the
Supreme Court
of the Bahama
Islands
Common Law
Side

	<u>Personal</u>	<u>Salary</u>	<u>Payments & Interest to A. Nihon</u>	<u>Total</u>
A				
	Balance - April 30th 1956	3,373.14. 6		3,373.14. 6
	May 1st 1956		1,650. 0. 0	1,650. 0. 0
	May 22nd 1956	100. 0. 0		100. 0. 0
	May 28th 1956	1,500. 0. 0		1,500. 0. 0
B	June 20th 1956	1,507.15. 8		1,507.15. 8
	July 27th 1956	1,000. 0. 0		1,000. 0. 0
	Sept. 1st 1956	1,000. 0. 0		1,000. 0. 0
	Dec. 29th 1956	2,000. 0. 0		2,000. 0. 0
	Feb. 1st 1957		2,323. 5. 9	2,323. 5. 9
C	March 1st 1957		1,130. 8. 3	1,130. 8. 3
	April 1st 1957		1,640. 2. 9	1,640. 2. 9
	April 30th 1957 - Credit due on Salary	1,000. 0. 0	1,000. 0. 0	- - -
		<u>£5,481.10. 2</u>	<u>5,000. 0. 0</u>	<u>6,743.16. 9</u>
				<u>17,225.6.11</u>

Exhibit D
Draft
Accounts,
30th April,
1957.

THE MONTAGU PARK RACING
BALANCE SHEET AS AT

ASSETS

Current Assets

The Royal Bank of Canada	4,021.16. 8.	
Barclays Bank (Dominion, Colonial and Overseas)	39.14. 6.	
Cash on Hand	100. 0. 0.	
Deposits	5. 0. 0.	
Accounts Receivable - <u>Schedule 1</u>	1,514.14.10.	
<u>Less:- Reserve for Doubtful Accounts</u>	556. 1.10.	958.13. 0.
Accounts Payable - Debit Balances		57. 7.10.
Prepaid Expenses		271. 5. 5.
Dr. Raymond W. Sawyer		5,481.10. 2.
Alexis Nihon, Esq.		33.10. 5.
<u>Total Current Assets</u>		£10,968.18. 0.

Fixed Assets

Office Furniture and Fittings	726.13. 8.	
<u>Less:- Reserve for Depreciation</u>	433. 1. 9.	293.11.11.
Track Furnishings and Equipment	8,851. 3. 9.	
<u>Less:- Reserve for Depreciation</u>	6,177.14. 5.	2,673. 9. 4.
Motor Cars, Trucks and Tractors	1,231. 8. 6.	
Additions during the year	600. 0. 0.	
	1,831. 8. 6.	
<u>Less:- Reserve for Depreciation</u>	1,379. 8. 6.	452. 0. 0.
Buildings	58,549.16. 9.	
<u>Less:- Reserve for Depreciation</u>	45,400.19. 4.	13,148.17. 5.
Improvements - Balance last year	3,856. 4.11.	
<u>Less:- Amounts Written Off</u>	2,121.11. 9.	1,734.13. 2.
<u>Total Fixed Assets</u>		£18,302.11.10.
<u>TOTAL ASSETS</u>		£29,271. 9.10.

ASSOCIATION, LIMITED
30th APRIL 1957

EXHIBIT A

In the Supreme
 Court of the
 Bahama Islands
Common Law Side

LIABILITIES AND CAPITALCurrent Liabilities

Accounts Payable - <u>Schedule 2</u>	414.13.11.
Accounts Receivable - <u>Credit Balances</u>	10. 0. 0.
Bahamas Turf Club	44. 0. 0.
Accrued Expenses	250. 0. 0.

Exhibit D
 Draft Accounts,
 30th April,
 1957.
 (Contd.)

Total Current Liabilities £ 718.13.11.

Deferred Liabilities

Unpaid Pari-Mutuel Tickets 692. 0. 6.

CAPITAL

Authorized Capital
 300 Shares at £10 each £3,000. 0. 0.

Issued Capital
 300 Shares at £10 each
 fully paid 3,000. 0. 0.

SURPLUS

Balance - 30th April
 1956 32,477. 2.10.

Add:- Net Profit for
 the year ended 30th
 April 1957 - as per
 Exhibit B 10,429. 8.11.

42,906.11. 9.

Less:- Shareholders
withdrawals

11,301.19. 7.		
6,743.16. 9.	18,045.16. 4.	24,860.15. 5.

TOTAL LIABILITIES AND CAPITAL

£29,271. 9.10.

Accounts Drafts - Seen by Dr. Sawyer.
 Not Seen by Mr. Nihon.

THE MONTAGU PARK RACING
PROFIT AND LOSS STATEMENT FOR THE

EXPENSES

Pari-Mutuel and Race Day Expenses

Management - Pari-Mutuel	1,000. 0. 0.
Wages - Pari-Mutuel	8,403. 5. 0.
Wages - Outside	2,874.10. 0.
Ticket Machines Rental and Supplies	4,497. 0.11. 4.
Shortages	190.13. 4.
Printing and Stationery	412.19. 8.
Band	240. 0. 0.
Purses	24,040. 0. 0.
Lights	44.15. 2.
Miscellaneous	97. 8. 8.
Medical and Veterinary	172. 6. 0.
Photo Finish Expense	236. 3. 7.
Handicapper's Salary	350. 0. 0.
Starting Gates Expense	684. 1. 5.
<u>Total Pari-Mutuel and Race Day Expenses</u>	<u>£43,243. 3. 9.</u>

Track Maintenance

Wages	849. 2. 0.
Supplies	216. 3. 3.
Miscellaneous	185. 9. 8.
Horses Expenses	186. 1. 6.
<u>Total Track Maintenance</u>	<u>£ 1,436.16. 5.</u>

Administrative Expenses

Salaries	1,185. 0. 0.
Government Lease	400. 0. 0.
Insurance	221.16. 3.
Telephones, Cables and Postage	50. 4. 8.
Advertising and Publicity	1,243. 7. 7.
Miscellaneous	12.16. 6.
Motor Vehicle Maintenance	102. 8. 0.
Accountancy	1,000. 0. 0.
Legal	81. 9. 0.
Overdraft Interest	33. 4. 8.
Entertaining and Complimentary	631. 5. 0.
Accounts Written Off	15. 0. 0.
Fines	25. 0. 0.
<u>Total Administrative Expenses</u>	<u>£ 5,001.11. 8.</u>

DEPRECIATION

£ 2,561. 7. 3.

TOTAL RACE SEASON EXPENSES

£52,242.19. 1.

NET LOSS FOR CLOSED SEASON - EXHIBIT C

7,706. 7.10.

NET PROFIT FOR YEAR CARRIED TO BALANCE SHEET

10,429. 8.11.

TOTAL

£70,378.15.10.

ASSOCIATION LIMITED

EXHIBIT BYEAR ENDED 30th APRIL, 1957In the Supreme
Court of the
Bahama Islands
Common Law SideREVENUEPari-Mutuel and Race Day Revenue

Track Percentage		48,975. 4. 7.
Clubhouse Admissions	9,478.17. 0.	
<u>Less:- Government Tax</u>	<u>1,114.12. 0.</u>	8,364. 5. 0.
Clubhouse Box Rentals		670. 0. 0.
Grandstand Admissions	8,225. 0. 0.	
<u>Less:- Government Tax</u>	<u>878. 7. 3.</u>	7,346.12. 9.
Race Entry Fees		1,455. 0. 0.
<u>Other Revenue</u>		
Stable Rents		994.12. 0.
Restaurant and Bar Concessions		700. 0. 0.
Programme Concession		500. 0. 0.
Miscellaneous Sales - Less Cost		237. 8.10.
Exchange Profit		570.14. 8.
Unpaid Pari-Mutuel Tickets - Season 1956		564.18. 0.
<u>TOTAL RACE SEASON REVENUE</u>		<u>£70,378.15.10.</u>

Exhibit D
Draft Accounts,
30th April,
1957.
(Contd.)TOTAL£70,378.15.10.

In the Supreme Court of the Bahama Islands Common Law Side

Exhibit F.1

AGREEMENT BETWEEN ALEXIS NIHON AND RAYMOND WILSON SAWYER, 6th MAY, 1953

Exhibit F.1
Agreement between Alexis Nihon and Raymond Wilson Sawyer, 6th May, 1953.

BAHAMA ISLANDS
New Providence.

AN AGREEMENT made the Sixth day of May in the year of our Lord One thousand Nine hundred and Fifty-three BETWEEN Alexis Nihon of the Eastern District of the Island of New Providence (hereinafter called the Vendor of the one part AND Raymond Wilson Sawyer also of the Eastern District of the said Island of New Providence Doctor of Dental Surgery (hereinafter called the Purchaser) of the other part WHEREBY IT IS AGREED as follows:

A

Stamp
Bahamas
5/-

1. Subject to the approval of the Exchange Control Board having been obtained for the transfer of the shares the Vendor will sell and the Purchaser will buy Two hundred and Ninety-seven (297) shares out of a total of Three hundred (300) shares being the capital stock of Montagu Park Racing Association Limited (a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony) and this will give the Purchaser the right to manage exclusively and operate the said race track and in his sole discretion shall manage and direct the affairs of the Montagu Park Racing Association Limited as he shall see fit except with respect to the conditions as provided in this agreement. The two remaining shares of the capital stock of the Montagu Park Racing Association Limited will not participate in any profits made by the Company except as provided in Clauses 7 and 8 hereof specifically the Three percent on the pari-mutuel pool and the one half of the gross proceeds received by the Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweep-stake lottery or drawing in connection with racing of any kind held at Hobby Horse Hall.

B

A.N.
R.W.S.

C

(Illegible)
Attorney-at-Law,
Nassau, Bahamas.

D

2. The purchase price shall be Sixty thousand pounds (£60,000 payable as follows: By the

Purchaser conveying to the Vendor free from incumbrances the property known as "Ridgeway" situate in the Eastern District of the said Island of New Providence comprising Thirty-eight (38) lots together with the appurtenances thereunto belonging including the Purchaser's interest in the property coloured Yellow and the right of way to the Sea as per the plan attached to an indenture of mortgage dated the Fifth day of January A.D. 1952 made between the Purchaser of the one part and Perlea Limited (therein described) of the other part and now of record in the Registry of Records in Book W.19 at pages 67 to 76 upon the signing of this agreement and the balance of Forty thousand pounds (£40,000) as follows:

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit F.1
Agreement
between Alexis Nihon and Raymond Wilson Sawyer,
6th May, 1953.
(Contd.)

A

The sum of One thousand pounds (£1,000) on or before the 1st of February, 1954.

The sum of One thousand pounds (£1,000) on or before the 1st of March, 1954.

B

The sum of Three thousand pounds (£3,000) on or before the 1st of April, 1954.

The sum of Three thousand pounds (£3,000) on or before the 1st of May, 1954.

The sum of One thousand pounds (£1,000) on or before the 1st of February, 1955.

The sum of One thousand pounds (£1,000) on or before the 1st of March, 1955.

The sum of Three thousand pounds (£3,000) on or before the 1st of April, 1955.

C

The sum of Three thousand pounds (£3,000) on or before the 1st of May, 1955.

The sum of One thousand pounds (£1,000) on or before the 1st of February, 1956.

The sum of One thousand pounds (£1,000) on or before the 1st of March, 1956.

The sum of Three thousand pounds (£3,000) on or before the 1st of April, 1956.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.1
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
6th May, 1953.
(Contd.)

The sum of Three thousand pounds (£3,000) on or before the 1st of May, 1956.

The sum of One thousand pounds (£1,000) on or before the 1st of February, 1957.

The sum of One thousand pounds (£1,000) on or before the 1st of March, 1957.

The sum of Three thousand pounds (£3,000) on or before the 1st of April, 1957.

A

The sum of Three thousand pounds (£3,000) on or before the 1st of May, 1957.

The sum of One thousand pounds (£1,000) on or before the 1st of February, 1958.

The sum of One thousand pounds (£1,000) on or before the 1st of March, 1958.

The sum of Three thousand pounds (£3,000) on or before the 1st of April, 1958.

B

The sum of Three thousand pounds (£3,000) on or before the 1st of May, 1958,

together with interest thereon in the meantime at the rate of Five pounds per centum per annum payable on the same dates as hereinbefore specified for the principal payment on the balance remaining due from the date of the signing of this agreement.

A.N.
R.W.S.

3. The completion of the purchase and the transfer of the said shares shall take place on the signing of this agreement.

C

4. The Vendor declares that the major debts and other obligations of Montagu Park Racing Association Limited have been discharged and that he will act immediately to discharge all of them other than those in dispute and will indemnify the Purchaser against any claim or obligation existing prior to the signing of this agreement in the event of any judgment against Montagu Park Racing Association Limited.

5. All accounts receivable by Montagu Park Racing up to the date of the completion of this purchase

D

are to be paid to the Vendor and the Purchaser hereby covenants with the Vendor to endorse in favour of the Vendor any cheques made payable to Montagu Park Racing Association Limited and to turn over any money or other security received by them in respect of accounts payable to this company prior to the date of completion of this purchase. The Vendor will have the right to hire any attorney of his own choice to prosecute or defend on behalf of Montagu Park Racing Association Limited any action or claim made against them or on their behalf in respect of any account or claim prior to the date of completion of this agreement. The Purchaser specifically agrees to deduct from the purses the amounts due to the Vendor by various horse owners during the last racing season namely 1953. A list of the accounts receivable by Montagu Park Racing Association Limited will be established as soon as possible and a copy thereof handed over to the Purchaser.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit F.1
Agreement
between Alexis Nihon and Raymond Wilson Sawyer,
6th May, 1953.
(Contd.)

6. On the signing of this agreement the said Two hundred and Ninety-seven (297) shares of Montagu Park Racing Association Limited will be transferred by the Vendor to the Purchaser and endorsed in blank by the Purchaser and deposited with Barclays' Bank Nassau in escrow until the cash balance of Forty thousand pounds (£40,000) has been paid at which time they will be delivered to the Purchaser.

7. The Purchaser agrees to pay to the Vendor one half of the gross proceeds received by Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind conducted by them at Hobby Horse Hall the race track of Montagu Park Racing Association Limited and the Purchaser agrees to pay the said one half of the gross proceeds received by Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind to the Vendor within a period of Thirty (30) days after the receipt of the same at the office of Barclay's Bank Nassau together with a detailed statement, and all books relating to the sweepstake shall be made available to the Vendor at all reasonable times.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.1
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
6th May, 1953.
(Contd.)

8. The Purchaser agrees to pay to the Vendor Three (3) percent of the gross sums paid into the pari-mutuel pool as defined in the Racecourse Betting Act 1952 on each and every race day and to pay such sum over to the Vendor on the third day following each meet during the racing season. For example, if the pari-mutuel pool totals Twenty thousand pounds (£20,000) on any given race day then and in such event the Purchaser shall receive the sum of Two thousand pounds (£2,000) or ten percent thereof and the Vendor Six hundred pounds (£600) or three percent thereof. In the event the figure of Thirteen percent to the licensee of the Montagu Park Racing Association Limited is reduced or increased by the Legislature of the Bahamas then and in such event the said figures of Ten Percent and Three percent shall be reduced or increased proportionately.

A

9. If the said sums representing Three percent of the pari-mutuel are not paid to the Vendor within a period of Thirty days after the same have become due and payable as provided in Clause 8 hereof then such default shall create a forfeiture and all sums due and payable under this agreement shall immediately become ipso facto payable by the Purchaser to the Vendor.

B

A.N.
R.W.S.

10. The Vendor covenants that there are no outstanding contracts of the Montagu Park Racing Association Limited of any other kind other than the two contractual obligations hereinbefore mentioned in Clauses 7 and 8 existing between this Company and the Vendor and the Purchaser agrees that the minute passed at the meeting of the Directors of the Montagu Park Racing Association held on the 6th day of May, 1953 reading as follows "As a consideration for the excellent services rendered this Company by the President, Alexis Nihon, be it resolved that, in the event of the purchase of the assets of Montagu Park Racing Association Limited by the Purchaser he retain Three percent of the Thirteen percent granted to the licensee on the pari-mutual pool and one-half of the gross proceeds by the Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind held at Hobby Horse Hall" become a part of this

C

D

agreement. Further, the Purchaser agrees that the contractual obligations in reference to the Three percent of the pari-mutuel pool as in Clause 8 of this agreement and the one-half of the gross proceeds received by the Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind as in Clause 7 of this agreement will be marked on the shares.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.1
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
6th May, 1953.
(Contd.)

A

11. Upon the completion of this purchase the Vendor will deliver all insurance policies in respect of the assets of The Montagu Park Racing Association Limited to Barclay's Bank Nassau in favour of the Vendor to be held by them in escrow until the payment of the balance of Forty thousand pounds (£40,000) has been made at which time they will be endorsed in favour of the Purchaser and delivered to him.

B

12. The Purchaser agrees that he will not at any time cause or permit any other person or persons corporation or corporations to conduct any sweepstake lottery or drawing in connection with racing of any kind to be held at the said Hobby Horse Hall without first obtaining the consent of the Vendor.

C

13. That upon the completion of this agreement and the conveyance to the Vendor by the Purchaser of the said property hereinbefore defined known as "Ridgeway" the Vendor shall have the right to be represented by Two Directors on the Board of the Montagu Park Racing Association Limited.

D

14. The Purchaser undertakes to renew the existing concession with the Fort Montagu Beach Hotel for a period of One year and agrees to grant them an option for a further period of three years at a seasonal rate of Five hundred Pounds (£500) providing the Fort Montagu Beach Hotel agrees to grant to the Purchaser the existing Fifty percent reduction on food and liquor for all the Directors of the Montagu Park Racing Association Limited.

15. The Purchaser undertakes to insure against fire and hurricane and keep insured until the balance of Forty thousand pounds (£40,000) and interest are paid to the Vendor the assets of Montagu Park Racing Association Limited in an

In the Supreme Court of the Bahama Islands Common Law Side amount of not less than Fifty thousand pounds (£50,000) and to endorse the policy or policies in favour of the Vendor and to deliver a copy thereof to Barclay's Bank Nassau. If within thirty days before the expiration of the policy or policies the Purchaser has not renewed the same then it shall be lawful for the Vendor to do so and such amount shall be payable by the Purchaser to the Vendor but the Vendor shall be under no obligation to insure the said premises should the Purchaser fail to do so.

Exhibit F.1
Agreement
between Alexis Nihon and
Raymond Wilson Sawyer,
6th May, 1953.
(Contd.)

A.N.
R.W.S.

16. The Purchaser undertakes not to cause the Montagu Park Racing Association Limited to become indebted to any person or persons corporation or corporations in excess of Ten thousand pounds (£10,000) nor knowingly to do or permit to be done anything whereby the existing lease with the Bahamas Government may become cancelled or revoked.

17. The assets equipment and inventories will be accepted by the Purchaser in their present state and condition and the following items are excepted from the sale, namely:

- 1,000 new folding chairs
- 22 flood lights and lamps
- 1 Massey Harris tractor
- 1 filing cabinet and 1 cheque protectorograph
- 1 universal marine motor personal belongings of the Vendor.

The Purchaser agrees to store this equipment free of charge until the same is removed.

18. The Purchaser agrees that the Vendor will retain his present box free of charge for himself and his heirs and assigns. The Purchaser further agrees that the Vendor shall have the right to issue Fifteen (15) free passes per week for each season, either in the Club House or in the Grandstand, any additional passes signed by the Vendor will be honoured but charged to him at the end of each season.

19. The Purchaser agrees that the sum of Five thousand pounds (£5,000) will be set aside each

A

B

C

D

year to be used for depreciation on the Company's property until payment in full has been made to the Vendor.

In the Supreme
Court of the
Bahama Islands
Common Law Side

A 20. Should the Purchaser make default in the payment of any sums under this agreement then and in such case all amounts due under this agreement shall immediately become due and payable to the Vendor and the Purchaser agrees to write to Barclay's Bank Nassau enclosing a copy of this agreement and instructing them to deliver the said shares to the Vendor in the event of any default in the payment of any of the sums due under this agreement and the Vendor shall have the right to sell the said shares by public auction or private contract and pay himself from the proceeds thereof all sums due to him under this agreement and after deducting all expenses in connection with the sale to pay the balance thereof to the Purchaser. In the event of a sale of the said shares by private contract the Vendor will first offer the same to the Purchaser for a period of Thirty days at the same price and on the same conditions as contained in the offer previously received by the Vendor.

Exhibit F.1
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
6th May, 1953.
(Contd.)

C 21. The Purchaser agrees to apply each year for not less than Twenty-five (25) meets for each season and to operate the race track for the meets granted by the Racing Commission unless prevented from doing so by an Act of God or by any measure beyond his control otherwise he will be responsible for the damages sustained to the interest of the Vendor.

22. The Vendor agrees to leave the sum of One Pound (£1) only to the credit of Montagu Park Racing Association Limited Bank Account on the signing of this agreement.

D 23. The services of Mr. Herbert Deal as Accountant shall be retained until the end of December 1953 and the Vendor agrees to pay the balance of his salary until that date namely One hundred and Fifty pounds.

24. The stallion "Hedron" is included as part of the assets of Montagu Park Racing Association Limited but without guarantee.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit F.1
Agreement
between Alexis Nihon and Raymond Wilson Sawyer,
6th May, 1953.
(Contd.)

25. The Purchaser hereby guarantees the performance of this agreement for himself his heirs executors administrators and assigns.

26. The general and private offices of the Montagu Park Racing Association Limited shall be used in common and the Vendor shall be given a key.

27. The Purchaser agrees to do his utmost to obtain the Fifteen year extension of lease application for which has already been made by Montagu Park Racing Association Limited.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

Alexis Nihon (Seal)

Raymond W. Sawyer (Seal)

Signed Sealed and Delivered by the said Alexis Nihon and Raymond Wilson Sawyer in the presence of:-

Alice M. Farrington.

C. A. P. C. I. L. Esq.
Alexis Nihon
Raymond W. Sawyer
29/5/56

A

B

BAHAMA ISLANDS
New Providence.

In the Supreme
Court of the
Bahama Islands
Common Law Side

A I, Alice Maude Farrington of the Island of
New Providence, Secretary, make oath and say that
I was present and saw Alexis Nihon, Company
Director and Raymond Wilson Sawyer, Doctor of
Dental Surgery, both of the Eastern District of
the said Island of New Providence, sign, seal and
as and for their act and deed execute and deliver
the annexed Agreement dated the Sixth day of May,
A.D. 1953 for the purposes therein mentioned; and
that I subscribed my name as the witness to the
due execution thereof.

Exhibit F.1
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
6th May, 1953.
(Contd.)

Sworn to this 6th day)
of May, A.D. 1953) Alice M. Farrington.
Before me,)

(Illegible)

Notary Public

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.2

AGREEMENT BETWEEN ALEXIS NIHON AND RAYMOND
WILSON SAWYER, 29th FEBRUARY 1956

Exhibit F.2

Agreement BAHAMA ISLANDS
between Alexis New Providence.
Nihon and
Raymond Wilson
Sawyer,
29th February,
1956.

AN AGREEMENT made the 29th day of February in
the year of Our Lord One thousand Nine hundred and
Fifty-six BETWEEN Alexis Nihon of the Eastern
District of the Island of New Providence (herein-
after called Nihon) of the one part AND Raymond
Wilson Sawyer also of the Eastern District of the
said Island of New Providence Doctor of Dental
Surgery (hereinafter called Sawyer) of the other
part WHEREBY IT IS AGREED as follows:

A

1. That the agreement dated the Sixth day of May
A.D. 1953 and made between Nihon and Sawyer is
hereby cancelled revoked and annulled and is
replaced by this agreement.

B

2. Subject to the approval of the Exchange
Control Board having been obtained for the
transfer of the shares Nihon will sell and Sawyer
will buy One hundred and Forty-nine and One half
(149½) shares out of a total of Three hundred
(300) shares being the capital stock of Montagu
Park Racing Association Limited (a company incor-
porated under the laws of the Bahama Islands and
carrying on business within the Colony). Out of
the remaining One hundred and Fifty and One half
(150½) shares of the capital stock of the Montagu
Park Racing Association Limited One hundred and
Forty-nine and One half (149½) shares will only
participate in the profits made by the Company as
provided in Clause 8 hereof specifically the
Three percent on the pari-mutuel pool or one half
of the net profits of the Montagu Park Racing
Association Limited, whichever sum is the greater.

C

3. The purchase price shall be Sixty thousand
pounds (£60,000). Of this sum Nihon acknowledges
having received the sum of Twenty thousand pounds
(£20,000) by the conveyance to Nihon by Sawyer of
certain hereditaments situate in the Eastern
District of the said Island of New Providence on

D

Stamp
5/-

the Sixth day of May A.D. 1953 which said conveyance is recorded in the Registry of Records in the City of Nassau in Book L.20 at pages 332 to 342. The balance of Forty thousand pounds (£40,000) shall be paid as follows:-

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit F.2

Agreement between Alexis Nihon and Raymond Wilson Sawyer, 29th February, 1956.
(Contd.)

- A The sum of One thousand pounds (£1,000) on or before the 1st of February, 1956.
- The sum of One thousand pounds (£1,000) on or before the 1st of March, 1956.
- The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of April, 1956.
- The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of May, 1956.
- B The sum of One thousand Pounds (£1,000) on or before the 1st of February, 1957.
- The sum of One thousand pounds (£1,000) on or before the 1st of March, 1957.
- The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of April, 1957.
- The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of May, 1957.
- C The sum of One thousand pounds (£1,000) on or before the 1st of February, 1958.
- The sum of One thousand pounds (£1,000) on or before the 1st of March, 1958.
- The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of April, 1958.
- The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of May, 1958.
- D The sum of One thousand pounds (£1,000) on or before the 1st of February, 1959.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.2
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
29th February,
1956.
(Contd.)

The sum of One thousand pounds (£1,000) on or
before the 1st of March, 1959.

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of April, 1959.

The sum of One thousand Five hundred pounds
(£1,500) on or before the 1st of May, 1959.

The sum of One thousand pounds (£1,000) on or
before the 1st of February, 1960. A

The sum of One thousand pounds (£1,000) on or
before the 1st of March, 1960.

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of April, 1960.

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of May, 1960.

The sum of One thousand pounds (£1,000) on or
before the 1st of February, 1961. B

The sum of One thousand pounds (£1,000) on or
before the 1st of March, 1961.

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of April, 1961.

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of May, 1961.

The sum of One thousand pounds (£1,000) on or
before the 1st of February, 1962.

The sum of One thousand pounds (£1,000) on or
before the 1st of March, 1962. C

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of April, 1962.

The sum of One thousand and Five hundred pounds
(£1,500) on or before the 1st of May, 1962.

The sum of One thousand pounds (£1,000) on or
before the 1st of February, 1963.

The sum of One thousand pounds (£1,000) on or
before the 1st of March, 1963.

The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of April, 1963.

The sum of One thousand and Five hundred pounds (£1,500) on or before the 1st of May, 1963.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit F.2
Agreement
between Alexis Nihon and Raymond Wilson Sawyer,
29th February, 1956.
(Contd.)

A Together with interest thereon in the meantime at the rate of Five pounds per centum per annum payable on the same dates as hereinbefore specified for the principal payment on the balance remaining due from the First day of February, A.D. 1956.

4. The cash balance of Forty thousand pounds (£40,000) together with interest thereon shall be paid when due by Sawyer to Barclay's Bank D.C.O. Nassau for Nihon's account.

B 5. On the signing of this agreement Nihon agrees to discharge the second mortgage of Ten thousand pounds (£10,000) dated the Twenty-fifth day of May, A.D. 1954 from Sawyer to Nihon and recorded in the said Registry of Records in Book U.20 at pages 444 to 448.

6. The completion of the purchase and the transfer of the said shares shall take place on the signing of this agreement.

C 7. On the signing of this agreement the said One hundred and Forty-nine and One half ($149\frac{1}{2}$) shares of Montagu Park Racing Association Limited will be transferred by Nihon to Sawyer and endorsed in blank by Sawyer and deposited with Barclay's Bank Nassau in escrow until the cash balance of Forty thousand pounds (£40,000) has been paid at which time they will be delivered to Sawyer.

D 8. Nihon shall receive Three (3) percent of the gross sum paid into the pari-mutuel pool as defined in the Race-course Betting Act 1952 on each and every race day on the third day following each meet during the racing season, or one half of the net profits of the Montagu Park Racing Association Limited whichever sum is the greater. For example, if the pari-mutuel pool

In the Supreme Court of the Bahama Islands Common Law Side totals Twenty thousand pounds (£20,000) on any given race day then and in such event Nihon shall receive the sum of Six hundred pounds (£600) or three percent thereof. In the event the figure of

Exhibit F.2
Agreement
between Alexis
Nihon and
Raymond Wilson
Sawyer,
29th February,
1956.

(Contd.)

Thirteen percent to the Licensee of the Montagu Park Racing Association Limited is reduced or increased by the Legislature of the Bahamas then and in such event the said figures of Ten percent and Three percent shall be reduced or increased proportionately.

A

9. Sawyer agrees that the minute of the meeting of the Directors of the Montagu Park Racing Association Limited held on the Sixth day of May 1953 reading as follows: "As a consideration for the excellent services rendered this Company by the President, Alexis Nihon be it resolved that, in the event of the purchase of the assets of Montagu Park Racing Association Limited by the Purchaser he retain Three percent of the Thirteen percent granted to the Licensee on the pari-mutuel pool and one-half of the gross proceeds by the Montagu Park Racing Association Limited as their percentage for promoting and organizing any sweepstake lottery or drawing in connection with racing of any kind held at Hobby Horse Hall" should be amended to read as follows: "As a consideration for the excellent services rendered this Company by Alexis Nihon, be it resolved that Alexis Nihon his executor, administrator or assigns, retain Three percent of the Thirteen percent granted to the Licensee on the pari-mutuel pool and Sawyer agrees that it becomes a part of this agreement. Further, it is hereby agreed that the contractual obligations on Clause Eight of this agreement will be marked on the shares."

B

C

10. That upon the completion of this agreement Nihon shall have the right to be represented by Three Directors on the Board of the Montagu Park Racing Association Limited. The total number of Directors shall be five and a quorum shall be three.

D

11. Sawyer undertakes to insure against fire and hurricane and keep insured until the balance of Forty thousand pounds (£40,000) and interest are paid to Nihon the assets of Montagu Park Racing Association Limited in an amount of not less than

Fifty thousand pounds (£50,000) and to endorse the policy or policies in favour of Nihon and to deliver a copy thereof to Barclay's Bank, Nassau. If within thirty days before the expiration of the policy or policies Sawyer has not renewed the same then it shall be lawful for Nihon to do so and such amount shall be payable by Sawyer to Nihon but Nihon shall be under no obligation to insure the said premises should Sawyer fail to do so.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit F.2
Agreement
between Alexis Nihon and
Raymond Wilson Sawyer,
29th February, 1956.
(Contd.)

A

12. The assets equipment and inventories will be accepted by Sawyer in their present state and condition and the following items are excepted from the sale, namely:-

- A.N. 500 new-folding chairs
R.W.S. 12 flood lights and lamps
1 Massey Harris tractor
1 universal marine motor personal belongings of Nihon.

B This equipment will be stored free of charge until removed.

A.N. ~~13. -- Sawyer and Nihon agree that the sum of Five~~
R.W.S. ~~thousand pounds (£5,000) will be set aside each~~
~~year to be used for depreciation on the Company's~~
~~property.~~

C

14. Should Sawyer make default in the payment of any sums under this agreement then and in such case all amounts due under this agreement shall immediately become due and payable to Nihon, and Sawyer agrees to write to Barclay's Bank, Nassau enclosing a copy of this agreement and instructing them to deliver the said shares to Nihon in the event of any default in the payment of any of the sums due under this agreement and Nihon shall have the right to sell the said shares by public auction or private contract and pay himself from the proceeds thereof all sums due to him under this agreement and after deducting all expenses in connection with the sale to pay the balance thereof, if any, to Sawyer. In the event of a sale of the said shares by private contract Nihon will first offer the same to Sawyer for a period of Thirty days at the same price and on the same conditions as contained in the offer previously received by Nihon. Provided that should Sawyer make default in payment of any sums under this

D

In the Supreme Court of the Bahama Islands Common Law Side

Exhibit F.2
Agreement between Alexis Nihon and Raymond Wilson Sawyer,
29th February, 1956.
(Contd.)

agreement after he has already paid to Nihon the sum of Twenty thousand pounds (£20,000) on account of the balance of Forty thousand pounds (£40,000) due under this agreement then and in such event the balance of Twenty thousand pounds (£20,000) due under this agreement by Sawyer to Nihon shall not immediately become due and payable and in such event Nihon agrees to give Sawyer one year's extension on all subsequent payments due him under the provisions of Clause Three of this agreement.

A

15. Sawyer hereby guarantees the performance of this agreement for himself his heirs executors administrators and assigns.

16. Sawyer hereby further declares that the Montagu Park Racing Association Limited is not indebted to him personally or to his wife Ivarene Sawyer.

17. Sawyer hereby also declares that since the Sixth day of May A.D. 1953 he has not withdrawn any money out of any accounts of the Montagu Park Racing Association Limited for his personal use except Five thousand pounds (£5,000) as Managing Director, and the sums which he paid to Nihon under the said recited agreement dated the Sixth day of May, A.D. 1953.

B

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

Alexis Nihon (Seal)

Raymond W. Sawyer (Seal)

C

Signed Sealed and Delivered by the said Alexis Nihon and Raymond Wilson Sawyer in the presence of:-

Godfrey K. Kelly.

Exhibit F.3

LETTER TO BARCLAY'S BANK FROM RAYMOND
W. SAWYER

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.3
Letter to
Barclay's Bank
from Raymond
W. Sawyer,
7th May, 1953.

Nassau, Bahamas,
7th May, 1953.

A The Manager,
Barclay's Bank (Dominion, Colonial &
Overseas),
Nassau.

Dear Sir:-

I enclose herewith the following Share Certificates in The Montagu Park Racing Association, Limited in my name and endorsed by me in blank:

- B
- No. 38 for Twenty-one shares, numbered 103-123 inclusive.
 - No. 39 for Fifty-nine shares, numbered 124-182 inclusive.
 - No. 40 for Fifty-nine shares, numbered 183-241 inclusive.
 - No. 41 for Fifty-six shares, numbered 242-297 inclusive.
 - No. 42 for One share, numbered 298.
 - No. 43 for One share, numbered 299.
 - No. 47 for Thirteen shares, numbered 65 to 77 inclusive.
 - C No. 48 for Fifty-nine shares, numbered 6 to 64 inclusive.
 - No. 49 for Twenty-five shares, numbered 78 to 102 inclusive.

I am also enclosing herewith a copy of an agreement entered into today between me and Mr. Alexis Nihon relative to the purchase of these shares.

D You will note that in Clause 3 of this agreement I am obligated to make certain payments to Mr. Nihon through your Bank on certain specific dates, and that in the event of default in payment of any of these sums Clause 20 of this agreement provides that all amounts due under this agreement

In the Supreme Court of the Bahama Islands Common Law Side shall immediately become due and payable to Mr. Nihon, and you are hereby instructed in such event to deliver the above-mentioned shares to Mr. Nihon without any further instructions from me.

Exhibit F.3

Letter to
Barclay's Bank
from Raymond
W. Sawyer.
7th May, 1953.
(Contd.)

Yours faithfully,

A

Exhibit F.4

LETTER FROM SAWYER TO NIHON
25th May, 1954

In the Supreme
Court of the
Bahama Islands
Common Law Side

Nassau, Bahamas,
25th May, 1954.

Exhibit F.4
Letter from
Sawyer to
Nihon,
23rd May, 1954.

A Mr. Alexis Nihon,
East Bay Street,
Nassau.

Dear Mr. Nihon,

B I agree to place to the account of the Montagu
Park Racing Association Limited the sum of Ten
thousand pounds (£10,000) which you are loaning to
me by way of a second mortgage on the security of
my home in Montagu Heights Subdivision and by way
of a first mortgage on the furniture goods chattels
and effects belonging to the buildings on the said
property.

Of this sum, approximately £7,000 will repre-
sent moneys which I realize I should not have
withdrawn from the Bank account of the Montagu
Park Racing Association Limited.

I hereby agree not to make any more withdrawals
of this nature in future from the said Company's
Bank account.

I further agree that this money will be used to
pay all the outstanding accounts to date.

C Yours faithfully,

Raymond W. Sawyer

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit F.5

PROMISSORY NOTE, 27th May, 1954

Exhibit F.5
Promissory
Note,
27th May,
1954.

Stamps £8. 6. 8.

Nassau, Bahamas,
27th May, 1954.

On demand we promise to pay to Raymond Wilson Sawyer or his order the sum of ten thousand pounds (£10,000) together with interest thereon from the date hereof at the rate of Five pounds per centum per annum for value received.

A

IN WITNESS WHEREOF Montagu Park Racing Association, Limited have caused their Common Seal to be hereunto affixed.

Raymond W. Sawyer,
President.

The Common Seal of Montagu Park Racing Association, Limited was affixed hereto by Raymond Wilson Sawyer, the President of the said Company, and the said Raymond Wilson Sawyer affixed his signature hereto on the 27th day of May in the year of Our Lord One thousand nine hundred and fifty-four in the presence of:-

B

(Illegible)
Secretary.

Exhibit F.6

COPY RECEIPT
13th February, 1956

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING
ASSOCIATION LIMITED

THE MONTAGU PARK
RACING ASSOCIATION
LIMITED

Exhibit F.6
Copy Receipt,
13th February,
1956.

No. 3

A Name Robert Emmett Murphy,
Esq.

Received 1 share
No. 3, Robert Emmet
Murphy Esquire.

Shares One

13th Feb. 56.

Date A.D. 19

A. Nihon.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit G

AFFIDAVIT OF RAYMOND WILSON SAWYER
6th February, 1958

Exhibit G
Affidavit of
Raymond Wilson
Sawyer,
6th February,
1958.

IN THE SUPREME COURT
" "
Equity Side.

1958

No. 19

In the Matter of The Companies Act

A

- and -

In the Matter of The Montagu Park Racing
Association Limited

AFFIDAVIT

I, Raymond Wilson Sawyer of the Eastern
District of the Island of New Providence one of
the Bahama Islands, Dental Surgeon, make oath and
say as follows:-

1. That on the 28th day of January A.D. 1958 I
presented a Petition to this Honourable Court for
the winding up of the Montagu Park Racing Associa-
tion Limited (hereinafter called "the Company")
under the Order of the Court.

B

2. That certain of the statements of fact con-
tained in the Petition relate to differences and
disagreements arising between your Petitioner and
Alexis Nihon who are equal shareholders of the
Company as to the proper management of the affairs
of the Company.

3. That the said statements in the Petition
relating to such differences and disagreements are
not a full and complete account of such circum-
stances and that the following paragraphs of this
Affidavit are submitted to this Honourable Court
as a supplement to the circumstances already
described in the Petition.

C

4. That I became the holder of 294 ordinary
shares of the Company on the 6th May A.D. 1953
and later that year acquired another ordinary
share and began operating Hobby Horse Hail. I

D

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit G
Affidavit of
Raymond Wilson
Sawyer,
6th February,
1958.
(Contd.)

- A purchased the said 295 ordinary shares of the Company from the said Alexis Nihon for the price of £60,000 and at that time I entered into and signed an Agreement (hereinafter referred to as "the First Agreement"). On taking over Hobby Horse Hall from the said Alexis Nihon I found the buildings in a dilapidated condition and the Company was obliged to spend a considerable sum of money in improvements to the buildings and in rehabilitation generally of the premises including the race track. The first racing season, that is to say from May 1953 to May 1954, resulted in a net loss to me of £10,000. Notwithstanding the loss borne by me the said Alexis Nihon received from the Company approximately £12,000 as a gratuity for his past services. I was obliged to borrow the said deficit of £10,000 from the said Alexis Nihon and was then obliged to loan this amount to the Company. Under the First Agreement, the sum of £20,000 was paid on account of the said purchase price and I had agreed to pay the balance or sum of £40,000 over a period of years. The said 295 ordinary shares of the Company held by me were given to the said Alexis Nihon to secure repayment of the said balance. Under the First Agreement I should have paid £8,000 annually on account of the said balance but because of the loss sustained during the first year's operation I was only able to pay £5,000 plus interest.
- B
- C 5. The 1954-1955 racing season was more profitable but further improvements to Hobby Horse Hall had to be made. I was again only able to pay £5,000 principal and interest to the said Alexis Nihon instead of the agreed amount of £8,000 on the First Agreement.
- D 6. In February 1956 I was notified by the said Alexis Nihon that I had defaulted under the First Agreement and that he was entitled to convert to his own use the said 295 ordinary shares which I had pledged to secure the said loan and had taken possession of the same from Barclay's Bank D.C.O. The said Alexis Nihon presented a new agreement (hereinafter referred to as "the Second Agreement") for me to sign and I was told that I must either make good the default referred to in paragraphs 4 and 5 hereof or sign the Second Agreement. I was reluctantly compelled to accept

In the Supreme Court of the Bahama Islands Common Law Side the alternative proposition and I signed the Second Agreement on the 29th February 1956. In the Second Agreement I was obliged to agree that a half interest in the Company be given back to the said Alexis Nihon and was further obliged to agree that the said Alexis Nihon should have control of the directorate of the Company.

Exhibit G
Affidavit of
Raymond Wilson
Sawyer,
6th February,
1958.

(Contd.)

7. In January of 1957 the said Alexis Nihon through his control of the directors obtained a resolution of the Company removing me as the sole signing officer of the Company and caused the Company to forward to its Bankers a new banking resolution authorizing signatures by two persons out of the three signing officers named therein which included the said Alexis Nihon, Mr. Herbert Deal and myself. At this meeting of the directors I made certain counter proposals in an effort to insure that my salary as Manager would be paid. I also tried to obtain agreement that provision would be made either to declare a dividend at the end of the racing season or that advances in anticipation of profits be paid to me which would enable me to continue repaying on the balance of the said loan due to the said Alexis Nihon but he refused to agree to this proposal.

A

B

8. On the 1st July 1957, an instalment of £1,000 for salary was due to me from the Company. This matter had been confirmed by resolution of the Company dated the 24th January 1957 at which time the dates of payments were also agreed to. Notwithstanding the said resolution, the said Alexis Nihon refused to sign the required pay cheque and instructed the said Herbert Deal not to sign the same. On the 28th August 1957 I caused a Writ to be issued against the Company for the said sum of £1,000 salary.

C

9. On the 1st September 1957, a second instalment of £1,000 for salary was due to me from the Company. The said Alexis Nihon again refused to sign and payment was not made. On the 10th September 1957 I caused another Writ to be issued against the Company for the additional sum of £1,000 salary.

D

10. On the 1st December 1957 a third instalment of £1,000 for salary was due to me from the Company but the same has not been paid.

11. The circumstances disclosed in paragraphs 4 to 10 hereof show that the said Alexis Nihon has acted unscrupulously and in an unpartnerlike manner.

In the Supreme Court of the Bahama Islands Common Law Side

12. The said Alexis Nihon has consistently ignored my rights as a shareholder and is seeking to oust me from the Company and has behaved repugnantly to a continuance of the partnerlike relationship contemplated.

Exhibit G
Affidavit of
Raymond Wilson
Sawyer,
6th February,
1958.

(Contd.)

A

13. That in paragraph 7 of the Petition filed in this matter I stated that I was the "beneficial owner" of 295 ordinary shares of the Company and by this statement I meant that in truth and fact I was the "holder" of such ordinary shares.

14. That in paragraph 8 of the said Petition at line 9, thereof I stated that "the Company agreed by resolution on the same day to transfer the shares from the said Alexis Nihon to" me whereas in truth and in fact this line should read that "the Company by resolution on the same day approved the transfer of the shares from the said Alexis Nihon to" etc.

B

Sworn at the Registry of)
Records this 6th day of) (Signed) RAYMOND W. SAWYER
February A.D. 1958)

Before me,

(Signed) JAMES LIDDELL,
Registrar.

C

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit H.1

LETTER FROM NIHON TO SAWYER
9th December, 1953

Exhibit H.1
Letter from
Nihon to
Sawyer,
9th December,
1953.

Alexis Nihon,
Shamrock Residence,
Nassau, Bahamas.

December 9th,
1953.

A

Dr. Raymond Sawyer,
Hobby Horse Hall,
Nassau, Bahamas.

Dear Ray,

I have your letter of December 5th and I must say that in the meantime I have heard from Al and I am writing him today requesting him to pick up the Cadillac and park it at the Shamrock.

I was extremely surprised and astonished to hear that there is a rumour prevailing in certain quarters that I still own the track and that you are merely acting as a front for me.

B

This is the most vicious gossip that could be spread out but you have been living long enough in Nassau to know how they can spread false rumours; in Canada they speak often about the track and I have been telling everybody who wants to hear it that I have sold the track to you. When I will reach Nassau, I will have it published and if necessary I will give a sworn affidavit to the effect that you are the sole owner of the track. (Minus the two shares which is only a formality). I am sorry to hear about this situation which is not very pleasant for you but time will make its proof, as the truth always comes out.

C

My best wishes for the coming Season.

A. Nihon.

Alexis Nihon.

AN/N

D

Exhibit H.2

LETTER FROM CLARKE TO HIGGS AND KELLY
8th April, 1957

In the Supreme
Court of the
Bahama Islands
Common Law Side

8th April, 1957.

Exhibit H.2
Letter from
Clarke to
Higgs & Kelly,
8th April,
1957.

A Higgs & Kelly,
Chambers,
Nassau.

Attn: Godfrey K. Kelly, Esq.

Dear Mr. Kelly,

Receipt is acknowledged of three copies of the Minutes of the Directors of The Montagu Park Racing Association held in your office on the 24th January 1957. I note that Mr. and Mrs. Nihon have signed the copies and that you now request signatures by Dr. and Mrs. Raymond W. Sawyer.

B From memory, it would seem to me that a number of important points have been omitted from the Minutes. I will be obliged to discuss this matter fully with my clients before proceeding any further. In the meanwhile, if you wish me to return the proposed Minutes I will be glad to do so at your request.

Yours sincerely,

F.S.

FOSTER CLARKE

FC/s

C c.c. Dr. R.W. Sawyer.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit H.3

LETTER FROM HOBBY HORSE HALL SIGNED BY
NIHON TO SAWYER

26th September 1957

Exhibit H.3

Letter from
Hobby Horse
Hall signed
by Nihon to
Sawyer,
26th September
1957.

HOBBY HORSE HALL
The Montagu Park Racing Association Ltd.
Nassau, N.P. Bahamas.

A

Registered

September 26th, 1957.

Dr. Raymond Sawyer,
Nassau, Bahamas.

Re: Montagu Park Racing Association Ltd.

Dear Doctor,

Although I personally never received your letter of September 16th, I have seen my wife's copy and copy forwarded to me by Mr. Newton Higgs. I should first point out that the letter from the Racing Commission of September 2nd was not enclosed so that I have never seen it.

B

I agree with you in principle that the request from the Racing Commission should be complied with and the proposed letter is substantially in order with one or two changes which I have noticed to be necessary.

To hasten matters, I enclose a re-draft of the letter to the Racing Commission already signed by me as Secretary-Treasurer of the Company, with a copy for your files.

C

As to the financial statements, they have not been approved by the Directors and would have to be so approved before they are passed on by the shareholders. I am satisfied that the Racing Commission would accept the unapproved statements prepared by Mr. Deal. I enclose letter to them signed by me as Secretary-Treasurer and I suggest that you enclose the financial statement and mail it to them.

D

643.

I have not had the remaining directors sign the notice of Shareholders' Meeting for September 28th but because it is premature and because it would not appear necessary in any event for the reasons above stated I have so informed Mr. Higgs.

Yours very truly,

A. Nihon.

Alexis Nihon,
Secretary-Treasurer.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit H.3

Letter from
Hobby Horse
Hall signed
by Nihon to
Sawyer,
26th September
1957.
(Contd.)

A

AN/cvt
Encl.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit H.4

LETTER FROM CLARKE TO HIGGS & KELLY
3rd April 1958

Exhibit H.4

Letter from
Clarke to
Higgs & Kelly,
3rd April,
1958.

Higgs & Kelly,
Chambers,
Nassau.

3rd April, 1958.

Attn: Godfrey K. Kelly, Esq.

A

re: The Montagu Park Racing Association

Dear Mr. Kelly,

I return herewith original Directors Minutes of the above mentioned Company dated the 18th March 1958 and I acknowledge receipt of your letter dated the 28th ult. enclosing a copy of the said Minutes for my file.

I regret to inform you that my clients Dr. and Mrs. R.W. Sawyer have refused to sign the Minutes as requested on the following grounds:-

B

1. The question of the overdraft at the Royal Bank of Canada which was fully discussed at the Meeting of the Directors to which the Minutes refer has not been dealt with. It is my understanding that this matter was discussed at great length and it was agreed that the Company was responsible for the said overdraft.
2. The question raised by Mr. Nihon suggesting that Dr. Sawyer should pay a large sum of money to the Company was based on the memorandum prepared by Mr. Deal at the request of Mr. Nihon. It is felt that the memorandum should not have been attached to the Minutes and in view of the fact that the memorandum deals with matters already approved by the Company it is felt that the entire matter is improper and should not have been included in the Minutes.

C

Yours sincerely,

F.C.

FOSTER CLARKE

FC/f

c.c. Dr. R.W. Sawyer.

Leonard J. Knowles Esq.

D

Exhibit H.5

LETTER FROM SAWYER TO MONTAGU PARK RACING
ASSOCIATION LIMITED
15th April, 1959

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit H.5
Letter from
Sawyer to
Montagu Park
Racing Asso-
ciation Ltd.
15th April,
1959.

Nassau, Bahamas.
15th April, 1959.

A

The Montagu Park Racing Association Ltd.,
Bay Street,
Nassau.

Attn: Mr. Alexis Nihon.

Re: The Montagu Park Racing Association Ltd.

Dear Mr. Nihon,

In reply to the Notice by the above-mentioned
Company dated the 7th April 1959 calling a meeting
of the Directors, I have to inform you as follows:-

B

1. The matters referred to in paragraphs 1, 2 and
3 of the Notice have already been dealt with at
previous meetings of the Directors.

2. The allegation referred to in paragraph 2 of
the Notice has already been denied by me at a
previous meeting of the Directors. In the event my
previous denial has not been incorporated as a part
of the Company records, I hereby once again
emphatically and specifically deny the allegation
contained in paragraph 2 of the Notice referred to
above.

C

3. The matter referred to in paragraph 3 of the
Notice has also been dealt with at a previous meet-
ing of the Directors of the Company at which time
I denied that I was indebted to the Company in the
sum of £26,972.16. 7. as alleged in the Notice.

Under the circumstances I do not propose to
attend the meeting called for the 18th instant.

Yours truly

D

RAYMOND W. SAWYER.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit I.1

AFFIDAVIT OF HERBERT ARCHIBALD DEAL
7th February, 1958

Exhibit I.1
Affidavit of
Herbert
Archibald
Deal,
7th February,
1958.

IN THE SUPREME COURT

1958

Equity Side

No. 19

In the Matter of The Companies Act

A

- and -

In the Matter of The Montagu Park Racing
Association, Limited

AFFIDAVIT

I, Herbert Archibald Deal of the Eastern
District of the Island of New Providence, Public
Accountant, make oath and say as follows:-

1. That my firm of Accountants "Herbert A. Deal
& Co." have been the Accountants for The Montagu
Park Racing Association, Limited (hereinafter
called the Company) from the year 1950 to date,
and that Balance Sheets and annual accounts for
this Company have been prepared by us and submitted
to the Company from time to time.

B

2. That I am familiar with the accounts of the
Company covering the period from the year 1950 to
date.

3. That my Firm prepared the accounts of the
Company for the year ending 30th April, 1956, and
that the balance sheet of the Company as at the
30th April, 1956 shows the following figures:-

C

(a) Net profit for period 30th
April 1955 to 30th April 1956
before payments of (b) and
(c) herein £15,545.10. 2.

(b) Special payment of three
percent of pari-mutuel pool
paid to Mr. Alexis Nihon
for 1956 Racing Season and

D

	shown on Balance Sheet as a Shareholder's Withdrawal	11,565.13.10.	In the Supreme Court of the Bahama Islands <u>Common Law Side</u>
	(c) Shareholders Withdrawals - Dr. R.W. Sawyer	5,933.18. 9.	<u>Exhibit I.1</u>
	(d) Accounts Receivable - Dr. R.W. Sawyer	3,373.14. 6.	Affidavit of Herbert Archibald Deal, 7th February, 1958.
A	(e) Surplus	32,477. 2.10.	(Contd.)
	(f) Cash at Banks	8,612. 4. 3.	

4. That after the above payments to Mr. Alexis Nihon and the above withdrawals by Dr. R.W. Sawyer are charged to the net profit of the Company, the Company shows a loss for the year ending 30th April, 1956 of £1,954. 2. 5.

B 5. That while the bank balances of the Company stand at £8,612. 4. 3. as at 30th April, 1956 there were creditors of the Company to be paid immediately, amounting to £2,684. 5. 1. That on the 1st, 22nd and 28th May, 1956 and the 20th June, 1956 Dr. R.W. Sawyer withdrew from the Company's account at The Royal Bank of Canada for his own purposes, the sums of £1,650, £100, £1,500 and £1,507.15. 8. respectively. That on the 25th July, 1956, on the 1st September, 1956 and on the 29th December, 1956
C Dr. R.W. Sawyer withdrew from the Company's said bank account the sums of £1,000, £1,000, and £2,000 respectively, being payments on his salary of £5,000. These withdrawals from the Company's bank account considerably reduced the bank balances far below what would be required for payrolls, insurance, rental of the Company's leasehold property and other operating disbursements for the period May, 1956 to December, 1956. In fact,
D after the withdrawals by Dr. R.W. Sawyer and the disbursements for this period the bank balances of the Company as at 31st December, 1956 were overdrawn by an amount of £5,548. 6.11.

6. That the gross receipts by the Company during the period May, 1956 to December, 1956 were negligible and amounted only to £232. 6. 0. and since virtually the whole of the receipts of the Company is received in each year during the Racing Season - January to April - a substantial

In the Supreme Court of the Bahama Islands Common Law Side

Exhibit I.1
Affidavit of
Herbert
Archibald
Deal,
7th February,
1958.
(Contd.)

bank balance is required to carry the Company through the period from May to December in each year, and consequently the declaration of a dividend by the Company on the above sum of £8,612. 4. 3. or any portion thereof would not have been in the best interests of the Company.

7. That my Firm prepared the accounts of the Company for the year ending 30th April, 1957, and that the unapproved balance sheet of the Company as at the 30th April, 1957 shows the following figures:-

(a)	Net Profit for period 30th April, 1956 to 30th April, 1957 before payments of (b) and (c) herein	£10,377.10. 5.	
(b)	Special payment of three percent of pari-mutuel pool paid to Mr. Alexis Nihon for 1957 Racing Season and shown on Balance Sheet as a Shareholder's withdrawal	11,301.19. 7.	
(c)	Shareholder's withdrawals shown in the Company's list of Current assets - Dr. R.W. Sawyer	6,743.16. 9.	
(d)	Accounts Receivable - Dr. R.W. Sawyer	5,481.10. 2.	
(e)	Surplus	31,552.13. 8.	
(f)	Cash at banks	4,061.11. 2.	

8. That after the above payments to Mr. Alexis Nihon and the above withdrawals by Dr. R.W. Sawyer are charged to the net profit of the Company, the Company shows a loss for the year ending 30th April, 1957 of £7,668. 5.11.

9. That while the bank balances of the Company stand at £4,061.11. 2. as at 30th April, 1957 there were creditors of the Company to be paid

A

B

C

D

immediately, amounting to £770.12. 5. Furthermore, on the 1st May, 1957, Dr. R.W. Sawyer withdrew from the Company's account at The Royal Bank of Canada the sum of £1,629. 9. 1. for his own purposes, and £1,000 being a payment due on his salary of £5,000. These withdrawals from the Company's bank account considerably reduced the bank balances far below what would be required for payrolls, insurance, rental of the Company's leasehold property and other operating disbursements for the period May, 1957 to December, 1957. In fact, after the withdrawals by Dr. R.W. Sawyer and the disbursements for this period the bank balance of the Company as at 31st December, 1957 were overdrawn by an amount of £4,306.17. 8.

In the Supreme Court of the Bahama Islands
Common Law Side

Exhibit I.1
Affidavit of
Herbert Archibald Deal,
7th February, 1958.

(Contd.)

10. That the cash receipts by the Company during the period May, 1957 to December, 1957 were negligible and amounted only to £303.15. 6. and since virtually the whole of the receipts of the Company is received in each year during the Racing Season - January to April - a substantial bank balance is required to carry the Company through the period from May to December in each year, and consequently the declaration of a dividend by the Company on the above sum of £4,061.11. 2. or any portion thereof would not have been in the best interests of the Company.

11. That while the surplus is shown as £31,552.13. 8. as at 30th April, 1957 this figure does not take into account the above withdrawals by Dr. R.W. Sawyer amounting to £6,743.16. 9. and should this amount be charged against the surplus, the surplus figure would be reduced to £24,808.16.11. These surplus figures are book values only and bear no relation to the real values of those assets of the Company which are today represented by office furniture, track equipment motor vehicles buildings and fixtures, the value of which to the Company at the expiration of the lease will be considerably less than this figure carried in the accounts.

12. That during the years 1954 to 1957 inclusive, Dr. R.W. Sawyer withdrew from the accounts of the Company the sum of £39,972.16. 7., and in May, 1954 he repaid to the Company £10,000. Further, Dr. R.W. Sawyer has a credit of £3,000

In the Supreme Court of the Bahama Islands Common Law Side owing to him, being three £1,000 payments due on the 1st July, 1st September and 1st December, 1957 in respect of salary.

Exhibit I.1
Affidavit of
Herbert
Archibald
Deal,
7th February,
1958.
(Contd.)

13. Of the above sum of £39,972.16. 7. withdrawn by Dr. R.W. Sawyer, £27,811.17. 9. was withdrawn to pay Mr. Alexis Nihon the instalments of principal and interest thereon due by Dr. R.W. Sawyer to Mr. Nihon on account of the purchase price of shares in the Company.

A

14. That the principal figures reflecting the financial position of the Company now are as follows:-

BANK BALANCES

Bank Balances as at 6th February 1958

The Royal Bank of Canada - Balance by
Company's Cash Book - Overdraft £5,862. 3. 1.

Less:- Amount of cheques made but not
issued 3,013. 5. 4. B

Balance at Royal Bank - Overdraft £2,848.17. 9.

Barclays Bank (D.C. & O.) - Balance
at Bank and in Company's Cash Book -
Overdraft 79. 5. 8.

OVERDRAFT BALANCES AT BANKS £2,928. 3. 5.

ACCOUNTS PAYABLE

Approximate amount due Creditors as
at 31st January 1958 (Included in
the above amount is the amount of
£4,000 being approximate amount
due for rental of Ticket Machines
and Ticket Stationery) £9,175. 3. 0. C

OTHER AMOUNTS OWING

Salaries and Wages £ 823.19. 0.

1st Race Day's Outstanding Pari-
mutuel Tickets to be paid £ 335.12. 3.

Total amount due creditors	<u>£13,262.17. 8.</u>	In the Supreme Court of the Bahama Islands <u>Common Law Side</u>
<u>ACCOUNTS RECEIVABLE</u>		
<u>Balances as at 31st January 1958</u>		
Dr. Raymond W. Sawyer	£5,481.10. 2.	<u>Exhibit I.1</u> Affidavit of Herbert Archibald Deal, 7th February, 1958. (Contd.)
<u>Less:- Payments due on Salary</u>	<u>3,000. 0. 0. 2,481.10. 2.</u>	
A Horse Owners and others	3,096.11. 0.	
	<u>£ 5,578. 1. 2.</u>	

15. That from the above figures it will be seen that the immediate source from which cash can be realized falls short of the amount required for creditors by £7,684.16. 6. approximately.

Sworn to this 7th day }
of February, A.D.1958) Herbert A. Deal.

B Before me,

 James (Illegible)

 Registrar General

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit I.2
STATEMENT OF WITHDRAWALS
30th April, 1957

Exhibit I.2
Statement of
Withdrawals,
30th April,
1957.

THE MONTAGU PARK RACING ASSOCIATION,
LIMITED
SUMMARY ACCOUNT OF DR. RAYMOND W. SAWYER
IN THE COMPANY'S GENERAL LEDGER FOR PERIOD
7th MAY 1953 to 30th APRIL 1957, AND
SHOWING DEBIT BALANCE STANDING AT 30th
APRIL 1957

A

DEBITS

Cash drawn for Principal Payments to Mr. Alexis Nihon during Period	18,500. 0. 0.
Cash drawn for Interest Payments to Mr. Alexis Nihon during Period	7,682. 8. 8.
Cash drawn for Salary during Period	15,000. 0. 0.
Cash drawn, after credits and re- payments, carried as personal withdrawals during the period	2,160.18.10.
<u>TOTAL NET WITHDRAWALS CHARGED IN THE ACCOUNT</u>	<u>£43,343. 7. 6.</u>

B

LESS:- CREDITS

Total amount written off at 30th April 1954 and charged Company's Surplus Account as Shareholder's with- drawals	12,394. 8. 9.
<u>Less:- Amount returned and repaid 27th May 1954</u>	<u>10,000. 0. 0.</u>
	2,394. 8. 9.
Salary for year to 30th April 1955	5,000. 0. 0.

C

Total amount written off
at 30th April 1955 and

653.

charged Company's
Surplus Account as
Shareholder's with-
drawals

7,789.13. 1.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Salary for year to
30th April 1956

5,000. 0. 0.

Exhibit I.2
Statement of
withdrawals,
30th April,
1957.
(Contd.)

A
Total amount written
off at 30th April
1956 and charged
Company's Surplus
Account as Share-
holders withdrawals

5,933.18. 9.

Salary for year to
30th April 1957

5,000. 0. 0.

B
Total amount equal to
Principal and Interest
Payments to Mr. Nihon
for year to 30th April
1957 transferred out
pending Directors'
approval

6,743.16. 9.

37,861.17. 4.

DEBIT BALANCE SHOWN AT 30th APRIL
1957

£ 5,481.10. 2.

Prepared by,

(Signed) HERBERT A. DEAL & CO.

Accountants and Auditors.

In the Supreme
Court of the
Bahama Islands
Common Law Side

THE MONTAGU PARK RACING ASSOCIATION, LIMITED
STATEMENT OF WITHDRAWALS BY DR. RAYMOND W. SAWYER
DURING THE PERIOD 7th MAY 1953 to 30th APRIL 1954
SHOWING CREDITS FOR REPAYMENTS, SALARY, PERSONAL
WITHDRAWALS AND PRINCIPAL AND INTEREST PAYMENTS TO
MR. ALEXIS NIHON

Exhibit I.2
Statement of
withdrawals,
30th April,
1957.
(Contd.)

		<u>For</u> Personal <u>Account</u>	<u>For</u> Principal Payments To A. <u>Nihon</u>	<u>For</u> Interest Payments To A. <u>Nihon</u>	A
May 29, 1953	By Deposit (Credit)	500. 0. 0.			
Jul 7, 1953	To A.S. Russell	1. 9. 0.			
Dec 22, 1953	To Cash	120. 0. 0.			
Jan 13, 1954	To Cash	50. 0. 0.			
Jan 15, 1954	To Cash	50. 0. 0.			
Jan 22, 1954	To Cash	50. 0. 0.			
Jan 15, 1954	To Cash	300. 0. 0.			
Feb 1, 1954	To Cash		1,000. 0. 0.	1,479. 9. 0.	B
Feb 2, 1954	To Cash	50. 0. 0.			
Feb 12, 1954	To Cash	50. 0. 0.			
Feb 19, 1954	To Cash	100. 0. 0.			
Feb 26, 1954	To Cash	105. 0. 0.			
Feb 16, 1954	To Cash	1,700. 0. 0.			
Mar 1, 1954	To Cash		1,000. 0. 0.	155. 1. 4.	
Mar 5, 1954	To Cash	50. 0. 0.			
Mar 8, 1954	To Cash	50. 0. 0.			
Mar 12, 1954	To Cash	50. 0. 0.			
Mar 16, 1954	To Cash	50. 0. 0.			C
Mar 23, 1954	To Cash	50. 0. 0.			
Mar 23, 1954	To Cash	30. 0. 0.			
Mar 24, 1954	To Cash	500. 0. 0.			
Mar 26, 1954	To Cash	100. 0. 0.			
Mar 29, 1954	To Cash	300. 0. 0.			
Mar 30, 1954	To Cash	50. 0. 0.			
Mar 30, 1954	To Cash	20. 0. 0.			
Apr 1, 1954	To Cash		3,000. 0. 0.	161. 7. 5.	
Apr 2, 1954	To Cash	50. 0. 0.			
Apr 6, 1954	To Cash	100. 0. 0.			D
Apr 9, 1954	To Cash	50. 0. 0.			
Apr 13, 1954	To Cash	50. 0. 0.			
Apr 15, 1954	To Cash	3,000. 0. 0.			
Apr 30, 1954	By Thames Truck (Credit)	950. 0. 0.			
Apr 30, 1954	By Payrolls (Credit)	27.18. 0.			
		<u>£5,598.11. 0.</u>	<u>5,000. 0. 0.</u>	<u>1,795.17. 9.</u>	

THE MONTAGU PARK RACING ASSOCIATION, LIMITED
 STATEMENT OF WITHDRAWALS BY DR. RAYMOND W. SAWYER DURING
 THE PERIOD 1st MAY 1954 to 30th APRIL 1955 SHOWING
 CREDITS FOR REPAYMENTS, SALARY, PERSONAL WITHDRAWALS AND
PRINCIPAL AND INTEREST PAYMENTS TO MR. ALEXIS NIHON

In the
 Supreme
 Court of
 the Bahama
 Islands
 Common Law
Side

		<u>For</u> <u>Salary</u>	<u>For</u> <u>Personal</u> <u>Account</u>	<u>For</u> <u>Principal</u> <u>Payments</u> <u>to A.</u> <u>Nihon</u>	<u>For</u> <u>Interest</u> <u>Payments</u> <u>to A.</u> <u>Nihon</u>	<u>Exhibit I.2</u> <u>Statement</u> <u>of with-</u> <u>drawals,</u> <u>30th</u> <u>April,</u> <u>1957.</u> <u>(Contd.)</u>
A	May 27, 1954	Repaid	10,000. 0. 0.			
	May 27, 1954	To Cash	500. 0. 0.			
	Jun 12, 1954	To Cash	500. 0. 0.			
	Jun 12, 1954	To British Colonial a/c	10.17. 5.			
B	Aug 26, 1954	To Cash	900. 0. 3.			
	Jan 3, 1955	To Cash	1,000. 0. 0.			
	Jan 14, 1955	To Cash	100. 0. 0.			
	Jan 21, 1955	To Cash	25. 0. 0.			
	Jan 28, 1955	To Cash	25. 0. 0.			
	Feb 1, 1955	To Cash		3,000. 0. 0.	1,467. 2. 6.	
	Feb 4, 1955	To Cash	25. 0. 0.			
	Feb 7, 1955	To Cash	1,000. 0. 0.			
	Feb 11, 1955	To Cash	45. 0. 0.			
	Feb 18, 1955	To Cash	25. 0. 0.			
C	Feb 22, 1955	To Cash	25. 0. 0.			
	Feb 25, 1955	To Cash	50. 0. 0.			
	Mar 1, 1955	To Cash		1,000. 0. 0.	122.14.10.	
	Mar 4, 1955	To Cash	50. 0. 0.			
	Mar 8, 1955	To Cash	50. 0. 0.			
	Mar 10, 1955	To Cash	50. 0. 0.			
	Mar 15, 1955	To Cash	50. 0. 0.			
	Mar 18, 1955	To Cash	50. 0. 0.			
	Mar 22, 1955	To Cash	50. 0. 0.			
	Mar 25, 1955	To Cash	100. 0. 0.			
D	Mar 29, 1955	To Cash	50. 0. 0.			
	Mar 29, 1955	To Cash	50. 0. 0.			
	Apr 1, 1955	To Cash	50. 0. 0.			
	Apr 1, 1955	To Cash		1,000. 0. 0.	118,18. 1.	
	Apr 5, 1955	To Cash	50. 0. 0.			
	Apr 11, 1955	To Cash	100. 0. 0.			
	Apr 14, 1955	To Cash	200. 0. 0.			
	Apr 30, 1955	To Kelly Motor Co. (Cheque 33/5 R.B. of C.)	950. 0. 0.			
E	Apr 30, 1955	By Salary for year to 30 April	5,000.0.0.	5,000. 0. 0.		
			<u>£5,000.0.0.</u>	<u>8,919. 2. 4.</u>	<u>5,000. 0. 0.</u>	<u>1,708.15. 5.</u>

In the
Supreme
Court of
the Bahama
Islands
Common Law
Side. A

THE MONTAGU PARK RACING ASSOCIATION, LIMITED
STATEMENT OF WITHDRAWALS BY DR. RAYMOND W. SAWYER DURING
THE PERIOD 1st MAY 1955 to 29th FEBRUARY 1956, SHOWING
CREDITS FOR REPAYMENTS, SALARY, PERSONAL WITHDRAWALS AND
PRINCIPAL AND INTEREST PAYMENTS TO MR. ALEXIS NIHON

Exhibit I.2
Statement
of with-
drawals,
30th
April,
1957.
(Contd.)

			<u>For</u> <u>Salary</u>	<u>For</u> <u>Personal</u> <u>Account</u>	<u>For</u> <u>Principal</u> <u>Payments</u> <u>to A.</u> <u>Nihon</u>	<u>For</u> <u>Interest</u> <u>Payments</u> <u>to A.</u> <u>Nihon</u>	A
	May 13, 1955	To Cash				12.14.10.	
	May 13, 1955	To Cash		780. 0. 0.			
	May 13, 1955	To Cash				500. 0. 0.	
	May 13, 1955	To Cash		1,500. 0. 0.			
	Jul 5, 1955	To Cash		1,000. 0. 0.			
	Dec 31, 1955	To Cash-					
		Fgt & Duty		13. 6. 7.			
	Jan 27, 1956	To Cash		50. 0. 0.			
	Jan 31, 1956	To Cash		100. 0. 0.			
	Feb 3, 1956	To Cash		50. 0. 0.			
	Feb 4, 1956	To Cash				1,257.10. 8.	B
	Feb 19, 1956	To Cash		50. 0. 0.			
	Feb 15, 1956	To Cash		750. 0. 0.			
	Feb 11, 1956	To Cash		4,000. 0. 0.			
			<u>£ - - -</u>	<u>8,293. 6. 7.</u>	<u>- - -</u>	<u>1,770. 5. 6.</u>	

THE MONTAGU PARK RACING ASSOCIATION, LIMITED
 STATEMENT OF WITHDRAWALS BY DR. RAYMOND W. SAWYER DURING
 THE PERIOD 1st MARCH 1956 to 30th APRIL 1956, SHOWING
 CREDITS FOR REPAYMENTS, SALARY, PERSONAL WITHDRAWALS AND
 PRINCIPAL AND INTEREST PAYMENTS TO MR. ALEXIS NIHON

In the
 Supreme
 Court of
 the Bahama
 Islands
 Common Law
 Side

	<u>For Salary</u>	<u>For Personal Account</u>	<u>For Principal Payments to A. Nihon</u>	<u>For Interest Payments to A. Nihon</u>	<u>Exhibit I.2 Statement of with- drawals, 30th April, 1957. (Contd.)</u>
A					
Mar 1, 1956	To Cash		2,000. 0. 0.	501. 7. 4.	
Mar 27, 1956	To Cash	50. 0. 0.			
Apr 3, 1956	To Cash		1,500. 0. 0.	162. 5. 11.	
Apr 30, 1956	To Verdant Gardens	23. 3. 7.			
	To Columbus Pharmacy	7. 4. 4.			
B Apr 30, 1956	To Salary for year to 30th April				
	5,000.0.0.	5,000. 0. 0.			
	<u>£5,000.0.0.</u>	<u>4,919.12. 1.</u>	<u>3,500. 0. 0.</u>	<u>663.13. 3.</u>	

In the
Supreme
Court of
the Bahama
Islands
Common Law
Side

THE MONTAGU PARK RACING ASSOCIATION, LIMITED
STATEMENT OF WITHDRAWALS BY DR. RAYMOND W. SAWYER
DURING THE PERIOD 1st MAY 1956 to 30th APRIL 1957,
SHOWING CREDITS FOR REPAYMENTS, SALARY, PERSONAL WITH-
DRAWALS AND PRINCIPAL AND INTEREST PAYMENTS TO MR.
ALEXIS NIHON

Exhibit I.2
Statement
of with-
drawals,
30th
April,
1957.
(Contd.)

		<u>For</u> <u>Salary</u>	<u>For</u> <u>Personal</u> <u>Account</u>	<u>For</u> <u>Principal</u> <u>Payments</u> <u>to A.</u> <u>Nihon</u>	<u>For</u> <u>Interest</u> <u>Payments</u> <u>to A.</u> <u>Nihon</u>	A
	May 1, 1956	To Cash		1,500. 0. 0.	150. 0. 0.	
	May 22, 1956	To Provost Marshall	100. 0. 0.			
	May 28, 1956	To Cash	1,500. 0. 0.			
	Jun 20, 1956	To Cash	1,507.15. 8.			
	Jul 25, 1956	To Cash 1,000.0.0.				B
	Sep 1, 1956	To Cash 1,000.0.0.				
	Dec 29, 1956	To Cash 2,000.0.0.				
	Feb 1, 1957	To Cash		1,000. 0. 0.	1,323. 5. 9.	
	Mar 1, 1957	To Cash		1,000. 0. 0.	130. 8. 3.	
	Apr 1, 1957	To Cash		1,500. 0. 0.	140. 2. 9.	
	Apr 30, 1957	To Remainder of Salary to 30th April 1957 1,000.0.0.	1,000. 0. 0.			C
		<u>£ 5,000.0.0.</u>	<u>2,107.15. 8.</u>	<u>5,000. 0. 0.</u>	<u>1,743.16. 9.</u>	

Exhibit J

LETTER FROM GRAHAM TO SAWYER
4th October 1957

In the Supreme
Court of the
Bahama Islands
Common Law Side

EXTRACT FROM LETTER ADDRESSED TO DR.
R.W. SAWYER BY THE CHAIRMAN OF THE
RACING COMMISSION
(Referred to on p. 138 of the Minutes
of Proceedings in Case 122 of 1959.)

Exhibit J
Letter from
Graham to
Sawyer,
4th October,
1957.

A

Nassau, Bahamas.
4th October, 1957.

Dr. R.W. Sawyer,
The President,
Montagu Park Racing Association Ltd.,
Nassau.

Dear Sir,

.....

B

Nevertheless, the Racing Commission, after
careful consideration, has decided to issue a
license to the Montagu Park Racing Association
Ltd. to operate the race track known as Hobby Horse
Hall for the forthcoming 1957-58 season on the
understanding that the following conditions are
fulfilled.

1. That you shall continue as President and
Managing Director of the Company.

.....

Yours faithfully,

C

Peter D. Graham
The Chairman
The Racing Commission.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit N.1

DRAFT MINUTES OF DIRECTORS' MEETING OF
24th January 1957

Exhibit N.1
Draft Minutes
of Directors
Meeting,
24th January,
1957.

Draft Minutes of Meeting on 24.1.1957

A meeting of the Directors of The Montagu Park Racing Association Limited was held at the Registered Office of the Company, No. 324 Bay Street, Nassau, Bahamas on the 24th day of January, A.D. 1957 at 3.00 o'clock in the afternoon.

A

All the Directors were present, namely:-
Raymond Wilson Sawyer, Alexis Nihon, Ivarene Sawyer, Alice Nihon and Godfrey Kenneth Kelly.

Mr. Foster Clarke was also present as he was acting for Dr. and Mrs. Sawyer. Mr. R. Newton Higgs was also present.

On motion Dr. Sawyer, the President of the Company took the chair.

B

The minutes of the meeting of the Directors of the Company, held on the 29th day of February, A.D. 1956, were read and confirmed.

Mr. Nihon proposed that all previous banking resolutions relating to the banking accounts of the Company should be cancelled, revoked and annulled, and, after some discussion, on motion duly made and seconded the attached Resolution was agreed to and signed by all the Directors pursuant to the provisions of Article 60 of the Articles of Association of the Company.

C

In view of the change in the Banking Resolution of the Company, Mr. Clarke suggested that Dr. Sawyer and Mr. Nihon be jointly and severally liable under a Bond of Indemnity to the Receiver General and Treasurer of the Colony in accordance with the provisions of The Race Course Betting Act in the penal sum of £5,000, and also that Dr. Sawyer and Mr. Nihon be jointly and severally liable to the Company's bankers on any overdrafts, loans or advances to the Company.

D

On motion duly made and seconded the following Resolution was agreed to:

In the Supreme Court of the Bahama Islands Common Law Side

RESOLVED that Dr. Sawyer and Mr. Nihon be jointly and severally liable under a Bond of Indemnity to the Receiver General and Treasurer of the Colony in accordance with the provisions of The Race Course Betting Act in the penal sum of £5,000, and also that Dr. Sawyer and Mr. Nihon be jointly and severally liable to the Company's bankers on any overdrafts, loans or advances to the Company.

Exhibit N.1
Draft Minutes of Directors Meeting, 24th January, 1957.
(Contd.)

The question of Dr. Sawyer's salary as the Company's Manager of Hobby Horse Hall was then discussed, and on motion duly made and seconded it was resolved that the sum of £5,000 previously agreed upon as the annual salary for the Manager of Hobby Horse Hall be paid to Dr. Sawyer by five instalments of £1,000 on the First days of May, July, September, December and March, and March 1957 and March A.D. 1958 and on the same days in each and every year thereafter so long as Dr. Sawyer remains the Manager of Hobby Horse Hall.

Mr. Nihon suggested that in the future the Manager of Hobby Horse Hall should refer the following major matters to the Board of Directors for their consideration before taking any action thereon:

- (1) The number of meets to be held in each year.
- (2) The amount of the purses to be paid to the winning horse owner.
- (3) The hiring of an accountant or accountants.
- (4) Concessions.
- (5) Tote Machines.
- (6) The hiring of a pari-mutuel manager.

~~Mr. Clarke referred to the agreement, dated the 29th February 1956 between Mr. Nihon and Dr. Sawyer whereby Dr. Sawyer was obligated to make certain payments to Mr. Nihon from time to time in accordance with the terms and conditions therein set out. Mr. Clarke stated that Dr. Sawyer was relying on his profits from the Company to meet these payments to Mr. Nihon.~~

~~On motion duly made and seconded it was agreed that provided funds are available from the profits of the Company due Dr. Sawyer, payments should be made from the Company's bank account or bank accounts in favour of Mr.~~

A
B
C
D
Dr. Sawyer pointed out that for the years 1956-1957 only £4,000.0.0. had been paid to him and that the balance of £1,000 was due in March 1957. On motion duly made and seconded it was agreed to pay to Sawyer this £1,000.0.0. in March 1957.

In the Supreme Court of the Bahama Islands of the 29th February 1956.
Common Law Side

Exhibit N.1
Draft Minutes
of Directors
Meeting,
24th January,
1957.
(Contd.)

~~The Chairman presented to the meeting a letter from him addressed to the Company authorizing the Company to make these payments to Mr. Nihon from time to time from his share of the profits of the Company. A copy of this letter is hereto attached.~~

On motion duly made and seconded the following resolution was agreed to:-

~~RESOLVED-that-Dr.) Sawyer is will be entitled to the entire net-profits-of-the-M.P.R.A. Company after having paid to Mr. Nihon Three per cent of the gross sum paid into the pari-mutuel pool as defined in the Race Course Betting Act 1952 on each and every race day on the Third day following each meet during the Racing Season PROVIDED that if the total amount received by Mr. Nihon as a result of the said payments to him of Three per cent of the gross sum paid into the said pari-mutuel pool is less than one-half of the net proceeds of the Company for anyone racing season, then Mr. Nihon shall be paid an addition sum representing the difference between the amounts received by him on the said Three per cent of the gross sum paid into the said pari-mutuel pool and the said one-half of the net profits of the Company for the said Racing Season.~~

(7) The general policy of the Company.

On motion duly made and seconded Mr. Nihon's suggestion with respect to the seven foregoing major matters was unanimously agreed to.

Mr. Nihon raised the question of the Company's policy regarding insurance against loss of the Company's money due to riot and/or hold-ups, and the Chairman was asked to look into the matter and arrange the necessary insurance.

On motion the meeting adjourned.

Chairman.

A

B

C

D

Exhibit N.2
DRAFT LETTER,
24th January, 1957

In the Supreme
Court of the
Bahama Islands
Common Law Side

Nassau, Bahamas,
24th January, 1957.

Exhibit N.2
Draft Letter,
24th January,
1957.

The Montagu Park Racing Association Limited,
324 Bay Street,
Nassau.

A

Dear Sirs,

I wish to refer to the agreement, dated the
29th February, 1956, between Mr. Alexis Nihon and
myself under which agreement I am obligated to
make the following payments to Mr. Nihon:

The sum of One thousand pounds (£1,000) on or
before the 1st of February, 1957

Etc.

Together with interest thereon in the meantime
at the rate of Five Pounds per centum per annum
payable on the same dates as hereinbefore specified
for the principal payment on the balance remaining
due from the First day of February, A.D. 1956.

B

Provided my net profit in the Company is
sufficient, I hereby request you to pay to Mr.
Nihon out of my share of the net profits of the
Company the sums hereinbefore set out in this
letter at the times stated.

Yours faithfully,

Raymond W. Sawyer.

C

I agree to accept payment of the money due me by
Dr. Sawyer under the said agreement in accordance
with the terms herein indicated. If Dr. Sawyer's
share of the net profits of the Company is
unsufficient to pay me the said sums at the times
stated then Dr. Sawyer will still remain obligated
to pay me the said sums at the times stated.

Alexis Nihon.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit N.3

MEMORANDUM EX FOSTER CLARKE
24th January 1957

Exhibit N.3
Memorandum
ex Foster
Clarke,
24th January,
1957.

Memorandum ex Foster Clarke
Re: The Montagu Park Racing Association,
Limited

Directors meeting Thursday 24th January, 1957. A

1. F. Clarke will attend the meeting and will act on behalf of Dr. Raymond Sawyer and Mrs. Irene Sawyer.

2. Dr. and Mrs. Sawyer will object to the Banking Resolution proposed by Mr. Nihon for the appointment of three signing officers on the following grounds:-

(a) Contrary to agreement made on the 29th. February 1956 and previous Banking Resolutions. B

(b) Dr. Sawyer is solely responsible to The Royal Bank of Canada on overdraft of Company and loans (if any) to Company.

(c) Dr. Sawyer is solely responsible to Bahamas Government and Racing Commission for funds payable from the pari-mutuel pool, gate receipts etc.

(d) Dr. Sawyer is solely responsible to Government on bond of indemnity regarding payment of monies mentioned in (c) hereof. C

(e) Dr. Sawyer is at the present time solely responsible for repairs to the premises.

3. If the Banking Resolution proposed by Mr. Nihon is agreed to then Dr. Sawyer will move the following Resolutions:-

(a) RESOLVED that the sum of £5,000 previously agreed upon as the salary as Managing Director of the Company be D

paid to him by instalments of £1,000 on the first days of May, July, September, December and March A.D. 1958 and on the same days in each and every year thereafter or until this matter is varied or changed by subsequent Resolution of the Company.

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit N.3

Memorandum
ex Foster
Clarke,
24th January,
1957.

(Contd.)

- A (b) RESOLVED that notwithstanding the payment of the salary as Managing Director of the Company referred to in paragraph (a) hereof, Dr. Sawyer shall have the right to withdraw the sum of £6,850. on the anticipated profits of the Company such withdrawals to be made by instalments of £2,400 on the 28th day of January A.D. 1957, the sum of £1,150 on the 28th day of February A.D. 1957, the sum of £1,650 on the 28th day of March A.D. 1957 and the balance or sum of £1,650 on the 28th day of April A.D. 1957 and on the same days in each and every year hereafter or until the debt due from Dr. Sawyer to Mr. Nihon is completely settled.
- B
- C (c) RESOLVED that Dr. Sawyer is entitled to the entire net profits of the Company after having paid to Mr. Nihon Three per cent of the gross sum paid into the Pari-mutuel pool as defined in the Race Course Betting Act 1952 on each and every race day on the Third day following each meet during the Racing Season PROVIDED that if the total amount received by Mr. Nihon as a result of the said payments to him of Three percent of the gross sum paid into the said Pari-mutuel pool is less than One-half of the net proceeds of the Company for any one Racing Season, then
- D Mr. Nihon shall be paid an additional sum representing the difference between the amounts received by him on the said Three percent of the gross sum paid into the said Pari-mutuel pool and the said one half of the net profits of the Company for the said Racing Season.
- (d) RESOLVED that the sum of £1,000 shall be left in the account of the Company at the

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit N.3

Memorandum
ex Foster
Clarke,
24th January,
1957.

(Contd.)

close of each Season as a reserve for expenses which might occur prior to the opening date of the next Racing Season provided that such amount shall be clearly shown in the books of the Company to be owned by Dr. Sawyer.

(e) RESOLVED that all Banking obligations including the float of the Company shall be undertaken and signed jointly by all three signing officers of the Company.

A

(f) RESOLVED that the bond of indemnity in the sum of £5,000 required from the Company under the provisions of the Race Course Betting Act and given to the Receiver General of the Bahama Islands shall be a joint undertaking by the three signing officers of the Company and shall be executed and delivered by the said three officers.

B

(g) RESOLVED FURTHER that the present bond of indemnity from Dr. Sawyer to the Receiver General shall be cancelled and revoked.

Exhibit O.1

LETTER FROM NIHON TO SAWYER
9th December 1953

In the Supreme
Court of the
Bahama Islands
Common Law Side

December 9th, 1953.

Exhibit O.1
Letter from
Nihon to
Sawyer,
9th December,
1953.

A Dr. Raymond Sawyer,
Hobby Horse Hall,
Nassau, Bahamas.

Dear Ray,

I have your letter of December 5th and I must say that in the meantime I have heard from Al and I am writing him to-day requesting him to pick up the Cadillac and park it at the Shamrock.

B I was extremely surprised and astonished to hear that there is a rumour prevailing in certain quarters that I still own the track and that you are merely acting as a front for me.

C This is the most vicious gossip that could be spread out but you have been living long enough in Nassau to know how they can spread false rumours; in Canada they speak often about the track and I have been telling everybody who wants to hear it that I have sold the track to you. When I will reach Nassau I will have it published and if necessary I will give a sworn affidavit to the effect that you are the sole owner of the track. (Minus the two shares which is only a formality). I am sorry to hear about this situation which is not very pleasant for you but time will make its proof, as the truth always comes out.

My best wishes for the coming Season.

Alexis Nihon.

AN/NM

In the Supreme
Court of the
Bahama Islands
Common Law Side

Exhibit O.2

LETTER FROM SAWYER TO NIHON
5th December 1953

Exhibit O.2
Letter from
Sawyer to
Nihon.
5th December
1953.

HOBBY HORSE HALL
The Montagu Park Racing Association Ltd.
Nassau, N.P.
Bahamas.

December 5th, 1953.

A

Dear Alex,

Received your letter of December 1st and you certainly are right when you say that I am extremely busy, what with Christmas approaching, all of the problems entailed in getting the track and employees lined up for the coming season, and also trying to cope with my dental practice and Public duties.

Notwithstanding this, I would always try to be of help and assistance to a friend. However, in this case an all important fact must be taken into consideration. That is, that Nassau is a small and curious town, and the rumour is still prevalent in certain quarters that you still own the track and that I am merely acting as a front for you. We have had to fight this malicious propaganda all summer and I am happy to report that we almost have it licked. However, if I were to take delivery of your car and then meet you with it on your arrival it would serve only to start the tongues wagging again with vicious lying gossip. Consequently, everything considered, I deem it inadvisable to place myself in a position open to criticism.

B

C

I suggest that you let either Al Watt or Leonard Roberts handle this for you.

I have as yet heard nothing from Watt regarding re-employing Ambrose or replacement.

Lady Neville's address is: Upland Park,
Brook, near Godalming, Surrey, England.

D

Best regards,
(Signed) RAY

O N A P P E A L

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N :

THE MONTAGUE PARK RACING ASSOCIATION Appellants
LIMITED (Plaintiffs)

- and -

THE HONOURABLE DR. RAYMOND WILSON Respondent
SAWYER (Defendant)

(and Cross-Appeal Consolidated)

R E C O R D O F P R O C E E D I N G S

BULCRAIG & DAVIS,
Amberley House,
Norfolk Street,
Strand,
London, W.C.2.

Solicitors for Montague Park
Racing Association.

LOVELL, WHITE & KING,
1 Serjeant's Inn,
Fleet Street,
London, E.C.4.

Solicitors for The
Honourable Dr. Raymond
Wilson Sawyer.