

14, 1958

IN THE PRIVY COUNCIL

No. 7 of 1958

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N

LAURI JOSEPH NEWTON, LIONEL NEWTON,
FRANCIE UNA CHRISTIAN, HENRY JAMES LANE,
EXECUTORS OF THE ESTATE OF ROBERT NATHAN,
deceased, STELLA MAUD ADELINE LANE and
LEONARD ALFRED FENTON (Respondents) Appellants

- and -

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA (Appellant)
Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS
(IN THREE VOLUMES)

VOLUME II.

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IN THE PRIVY COUNCILNo. 7 of 1958

ON APPEAL
 FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N

LAURI JOSEPH NEWTON, LIONEL NEWTON
 FRANCIE UNA CHRISTIAN, HENRY JAMES LANE,
 EXECUTORS OF THE ESTATE OF ROBERT NATHAN,
 deceased, STELLA MAUD ADELINE LANE and
 LEONARD ALFRED FENTON (Respondents) Appellants

- and -

THE COMMISSIONER OF TAXATION OF THE
 COMMONWEALTH OF AUSTRALIA (Appellant)
Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS
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Each of the parties to these appeals admits for the purpose of these appeals the facts stated in the following paragraphs and the annexures thereto without prejudice to the right of any party to adduce such further evidence as he or she may be advised.

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10 The said facts while being facts agreed between the parties are subject to objection by any party as to their admissibility or as to the admissibility of any part thereof in any of the appeals on the ground of irrelevancy or otherwise.

1. Lanes's Motors Pty. Ltd. (hereinafter called "Lanes") is a company incorporated under the Companies Acts of the State of Victoria. Lanes was so incorporated in 1916 and has since its incorporation carried on the business of distributors and sellers of motor vehicles in Victoria. As at 30th June, 1949, the position of Lanes with regard to its capital, shareholders and directors was as follows :-

Capital

20 Nominal capital - £250,000 divided into 245,000 ordinary shares of £1 each and 5,000 5% cumulative preference shares of £1 each.

Issued capital - £242,321 divided into 237,321 ordinary shares and 5,000 preference shares as above.

Shareholders

Ordinary -	Robert Nathan	73,174
	Henry J. Lane)	
	Stella M. A.)	
	Lane)	36,587(a)
	Lauri J. Newton)	
	Lionel Newton)	
	Francie U.)	12,886(b)
	Christian)	
	Lauri J. Newton)	
	Lionel Newton)	
	Francie U.)	15,072(c)
	Christian)	

30

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Lionel Newton	15,072
Lauri J. Newton	15,072
Francie U. Christian	15,072
Stella M.A. Lane	36,586
Henry J. Lane	17,800

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237,321

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Preference - William B. Thomas

5,000

Total

242,321

- (a) held by Henry J. Lane and Stella M.A. Lane jointly as trustees of the Estate of the late Robert T. Lane in trust for Stella M.A. Lane as the beneficiary entitled to the income thereof for life. 10
- (b) and (c) held by Lauri J. Newton, Lionel Newton and Francie U. Christian jointly as trustees of the Estate of Joseph Nathan deceased (b) and of the Estate of Catherine M. Nathan deceased (c) in trust for themselves as beneficiaries equally entitled to the income thereof during their respective lives. 20

Directors

Robert Nathan, Lionel Newton, Lauri J. Newton, Henry J. Lane and William B. Thomas.

There were no changes in the shareholding or directors of Lanes at any material time save as set out herein.

A true copy of the Memorandum and Articles of Association of Lanes as at 30th June, 1949, is attached as Annexure 1. True copies of the profit and loss account of Lanes for the year ended 30th June, 1949, and of its balance sheet as at that date are attached as Annexure 2 and Annexure 3 respectively. 30

2. Neal's Motors Pty. Ltd. (hereinafter called "Neals") was at all times material a company incorporated under the Companies Acts of the State of Victoria. Neals was so incorporated in 1922 and from its incorporation until July 1952 carried on the business of distributors and sellers of motor vehicles in Victoria under its then corporate name 40

of Neal's Motors Pty. Ltd. As at 30th June, 1949 the position of Neals with regard to its capital, shareholders and directors was as follows :-

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Capital

Nominal capital - £150,000 divided into 145,000 ordinary shares of £1 each and 5,000 5% cumulative preference shares of £1 each.

Issued capital - £114,332 divided into 109,332 ordinary shares and 5,000 preference shares as above.

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10

Shareholders

Ordinary - Robert Nathan	36,900
Henry J. Lane) Stella M.A. Lane)	8,201(a)
Lauri J. Newton) Lionel Newton) Francie U.) Christian)	7,426(b)
Lauri J. Newton) Lionel Newton) Francie U.) Christian)	7,368(c)
Lionel Newton	7,368
Lauri J. Newton	7,368
Francie U. Christian	7,368
Henry J. Lane	<u>27,333</u>
	109,332
Preference - Cedric Broomhall	<u>5,000</u>
Total	<u>114,332</u>

20

30 (a) held by Henry J. Lane and Stella M.A. Lane jointly as trustees of the Estate of the late Robert T. Lane in trust for Stella M.A. Lane as the beneficiary entitled to the income thereof for life.

(b) and (c) held by Lauri J. Newton, Lionel Newton and Francie U. Christian jointly as trustees

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of the Estate of Joseph Nathan deceased (b) and
of the Estate of Catherine M. Nathan deceased
(c) in trust for themselves as beneficiaries
equally entitled to the income thereof during
their respective lives.

Directors

Lionel Newton, Lauri J. Newton, Henry J. Lane and
Cedric Broomhall.

There were no changes in the shareholding or dir-
ectors of Neals at any material time save as set
out herein.

10

A true copy of the Memorandum and Articles of Assoc-
iation of Neals as at 30th June, 1949 is attached
as Annexure 4. True copies of the profit and loss
account of Neals for the year ended 30th June, 1949,
and of its balance sheet as at that date are attached
as Annexure 5 and Annexure 6 respectively.

3. Melford Motors Pty. Ltd. (hereinafter called
"Melford") is a company incorporated under the Com-
panies Acts of the State of Victoria. Melford was
so incorporated in 1932 and has since its incorpora-
tion carried on the business of distributors and
sellers of motor vehicles in Victoria. As at 30th
June, 1949, the position of Melford with regard to
its capital, shareholders and directors was as
follows :-

20

Capital

Nominal capital - £50,000 divided into 50,000
ordinary shares of £1 each. Issued capital -
£16,506 divided into 16,506 ordinary shares of
£1 each.

30

Shareholders

Ordinary	- Henry J. Lane)	
	Stella M.A. Lane)	2,502(a)
	Stella M.A. Lane	2,000
	Leonard A. Fenton	3,000
	Lionel B. Wallace	<u>9,004(b)</u>
	Total	<u>16,506</u>

- (a) held by Henry J. Lane and Stella M. A. Lane jointly as trustees of the Estate of the late Robert T. Lane in trust for Stella M.A. Lane as the beneficiary entitled to the income thereof for life.
- (b) held by Lionel B. Wallace as trustee in trust for Lionel Newton (3,001 shares), Lauri J. Newton (3,001 shares) and Francie U. Christian (3,002 shares).

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10 Directors

Leonard A. Fenton, Lionel B. Wallace and Stella M. A. Lane (William B. Thomas was alternate director for Stella M.A. Lane who was absent from Australia).

There were no changes in the shareholding or directors of Melford at any material time save as set out herein.

20 A true copy of the Memorandum and Articles of Association of Melford as at 30th June, 1949, is attached as Annexure 7. True copies of the profit and loss account of Melford for the year ended 30th June, 1949, and of its balance sheet as at that date are attached as Annexure 8 and Annexure 9 respectively.

4. Each of the companies, Lanes, Neals and Melford, was at all time material a private company within the meaning of Division 7 of the Income Tax Assessment Act 1936-1949 and subject to that Division would have been liable to pay additional tax on the amount of profits of the income year ended 30th June, 1949 which was not distributed by 31st December, 1949.

30 5. Pactolus Pty. Ltd. (hereinafter called "Pactolus") is a company incorporated under the Companies Acts of the State of New South Wales on 23rd March, 1949. As at 30th June, 1949 and all subsequent times material the nominal capital of Pactolus was £25,000 divided into 25,000 shares of £1 each and its issued capital consisted of 5,000 ordinary shares of £1 each. As at 30th June, 1949 the holders of the 5,000 shares were John V. Ratcliffe (4,999 shares) and his son, Peter J. Ratcliffe (one share) and they were also the
40 directors of the company. The objects of Pactolus as set forth in its Memorandum of Association empowered it "to purchase or otherwise acquire and to sell exchange hold for investment or otherwise deal in"

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shares and other securities. A true copy of the Memorandum and Articles of Association of Pactolus in the form in which they stood at all times material is attached as Annexure 10.

As at 30th December, 1949, the shareholders in Pactolus were as follows :-

J.V. Ratcliffe	1 share	
P.J. Ratcliffe	1 share	
Pactolus Investments Pty. Ltd.	4998 shares	10

6. Pactolus Investments Pty. Ltd. (hereinafter called "Pactolus Investments") is a company incorporated under the Companies Act of the State of New South Wales on 25th October 1949. At all material times the nominal capital of Pactolus Investments was £25,000 divided into 25,000 shares of £1 each and its issued capital consisted of 15,000 ordinary shares of £1 each allotted to and held by John V. Ratcliffe and other persons as follows :-

John Vincent Ratcliffe		20
------------------------	--	----

Allotted 1.11.1949	1 share	
Allotted 25.11.1949	4999 shares	

Peter John Ratcliffe

Allotted 1.11.1949	1 share	
Allotted 25.11.1949	1 share	
Allotted 8.12.1949	998 shares	

Florence Louise Ratcliffe

Allotted 8.12.1949	1000 shares	
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Marelle Louise Ratcliffe

Allotted 8.12.1949	1000 shares	30
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Richard Alan Ratcliffe

Allotted 8.12.1949	1000 shares	
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John Vincent Ratcliffe and
Florence Louise Ratcliffe

Allotted 8.12.1949	1500 shares	
Allotted 8.12.1949	1500 shares	
Allotted 8.12.1949	1500 shares	
Allotted 8.12.1949	1500 shares	

The original directors of Pactolus Investments were John V. Ratcliffe and his son Peter J. Ratcliffe.

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A true copy of the Memorandum and Articles of Association of Pactolus Investments in the form in which they stood at all times material is attached as Annexure 11.

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7. John V. Ratcliffe wrote a letter dated 30th September, 1949 addressed to Lionel B. Wallace.

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10 Attached hereto as Annexure 12 is a copy of the said letter and the enclosures referred to therein.

Those enclosures refer inter alia to three subsidiary companies of which British Service Pty. Ltd. is a subsidiary of Lanes and Overland (Victoria) Pty. Ltd. and Devon Motors Pty. Ltd. are subsidiaries of Neals. The Directors of the said subsidiary companies as at the date of the said letter were as follows :-

British Service Pty. Ltd. - Robert Nathan,
Lionel Newton and Lauri J. Newton.

20 Overland (Victoria) Pty. Ltd. - Robert Nathan,
Henry J. Lane and Lionel Newton.

Devon Motors Pty. Ltd. - Robert Nathan, Lionel
Newton, Lauri J. Newton and Percy Rogers.

Attached hereto as Annexure 13 is a statement showing the shareholders as at 30th September, 1949, of each of the said subsidiary companies.

30 8. (a) On the 13th October, 1949, Lanes applied under the National Security (Capital Issues) Regulations for consent to issue 402,679 5% cumulative preference shares of £1 each and the said application was accompanied by a letter from Lionel B. Wallace dated 13th October, 1949.

Attached hereto as Annexures 14 and 15 respectively are true copies of the said letter and application.

40 (b) On 13th October, 1949, Neals applied under the National Security (Capital Issues) Regulations for consent to issue 405,668 5% cumulative preference shares of £1 each and the said application was accompanied by a letter from

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the said Lionel B. Wallace dated 13th October 1949.

Attached hereto as Annexures 16 and 17 respectively are true copies of the said letter and application.

- (c) On 12th October, 1949 Melford applied under the National Security (Capital Issues) Regulations for consent to issue 200,000 5% cumulative preference shares of £1 each and the said application was accompanied by a letter dated 12th October, 1949, from the said Lionel B. Wallace.

10

Attached hereto as Annexures 18 and 19 respectively are true copies of the said letter and application.

- (d) On 17th November, 1949, the Delegate of the Treasurer consented to the issue by Lanes within a period of six months from that date of not more than 402,679 5% non-participating cumulative preference shares of £1 each for cash.

20

Attached hereto as Annexure 20 is a true copy of the said consent.

- (e) On 17th November, 1949, the Delegate of the Treasurer consented to the issue by Neals within a period of six months from that date of not more than 405,668 5% non-participating cumulative preference shares of £1 each for cash.

Attached hereto as Annexure 21 is a true copy of the said consent.

- (f) On 14th November, 1949, the Delegate of the Treasurer consented to the issue by Melford within a period of six months from that date of not more than 200,000 5% non-participating cumulative preference shares of £1 each for cash.

30

Attached hereto as Annexure 22 is a true copy of the said consent.

9. The subsidiary companies at meetings held on 7th December, 1949, declared dividends which were paid or credited the same day as follows :-

40

British Service Pty. Ltd. declared dividends totalling £10,636.18.0. payable to Lanes including a dividend of £2,636.18.0 non-taxable by virtue of Section 107 of the Income Tax Assessment Act 1936-1949.

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10 Devon Motors Pty. Ltd. declared dividends totalling £90,659.6.8. payable to Overland (Victoria) Pty. Ltd. including a dividend of £1,659.6.8. non-taxable by virtue of Section 107 of the Income Tax Assessment Act 1936-1949.

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Overland (Victoria) Pty. Ltd. declared dividends totalling £119,175.6.8. payable to Neals including a dividend of £4,266.6.8. non-taxable by virtue of Section 107 of the Income Tax Assessment Act 1936-1949.

20 10. On 12th December, 1949, a cheque for £19,000 was deposited on behalf of Pactolus in a new account with the South Melbourne branch of the English Scottish and Australian Bank Ltd. where Lanes, Neals and Melford and the ordinary shareholders of those three companies had accounts. The opening of the Pactolus account had been arranged on 17th November 1949, when John V. Ratcliffe was introduced to the Bank Manager by one Donald H. Ross. The said cheque for £19,000 was drawn on the said bank by Industrial Acceptance Corporation Ltd. in pursuance of a request contained in a memorandum dated 8th December, 1949, addressed by John V. Ratcliffe to Donald H. Ross. The following is a copy of the
30 said memorandum :-

"Memo for Mr. Ross. From J.V. Ratcliffe

8th December, 1949

re Pactolus Pty. Ltd.

Opening of Account with the English
Scottish & Australian Bank Limited,
South Melbourne

40 Referring to the interview which I had with the Manager of the Bank, in company with you, while in Melbourne recently, I am enclosing herewith Authority Form duly completed, and should be glad if you would kindly submit this to the Manager of the Bank and ask him to despatch a cheque book, containing at least 100

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forms, to me promptly, in order that it will reach here by Friday the 16th instant without fail. If there is any risk with regard to the cheque book arriving after this date, would you kindly obtain a cheque book yourself and bring it to Canberra with you.

I have calculated that Pactolus Pty. Limited will need something less than £19,000 to meet the cheques which it will give on this new account and I am, therefore, paying this amount into the Sydney Office of I.A.C. today and would be glad if you would arrange with your Melbourne Office to draw a cheque for the same amount and pay it into the Bank when you open the Account. 10

Please send me a duplicate deposit slip.

(Sgd.) J.V. Ratcliffe.

P.S. A copy of the Articles of Association is attached hereto to be handed to the Bank"

Donald H. Ross was the Secretary of Industrial Acceptance Corporation Ltd. which is a Company incorporated in Victoria. 20

11. The subsidiary companies referred to in paragraphs 7 and 9 above at meetings held on 14th December, 1949, declared further dividends which were paid or credited the same day as follows :-

British Service Pty. Ltd. declared dividends totalling £7,933.0.6. payable to Lanes including a dividend of £5,933.0.6. non-taxable by virtue of Section 107 of the Income Tax Assessment Act 1936-1949. 30

Devon Motors Pty. Ltd. declared dividends totalling £46,162.8.0. payable to Overland (Victoria) Pty. Ltd. including a dividend of £6,074 non-taxable by virtue of Section 107 of the Income Tax Assessment Act 1936-1949.

Overland (Victoria) Pty. Ltd. declared dividends totalling £46,162.8.0. payable to Neals including a dividend of £6,074 non-taxable by virtue of Section 107 of the Income Tax Assessment Act 1936-1949. 40

12. Lanes

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(a) Pursuant to a resolution passed at a meeting of directors held on 18th November 1949 an extraordinary general meeting of Lanes was held at Melbourne on 14th December 1949 at which the following action was taken -

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(i) The nominal capital of the company was increased from £250,000 to £750,000 divided into £1 shares.

10 (ii) By a special resolution certain amendments were made to the Articles of Association.

Attached hereto as Annexure 23 is a true copy of the said special resolution.

(b) By virtue of the said amendments to the Articles of Association the nominal capital of Lanes was divided into -

20 79,107 A Ordinary shares (issued);
220,893 B Ordinary shares (158,214 issued);
5,000 A preference shares (issued);
445,000 B preference shares (unissued);
750,000 shares of £1 each (242,321 issued);

the issued shares of the company being converted as follows :-

(i) The 5,000 preference shares into A preference shares.

30 (ii) The 237,321 ordinary shares into A ordinary and B ordinary shares in such manner that (ignoring fractions) for each three ordinary shares previously held by each shareholder that shareholder now held one A ordinary share and two B ordinary shares.

(c) As a result of the said amendments to the Articles of Association the ordinary shareholding in Lanes was as follows :-

<u>Shareholder</u>	<u>A Shares</u>	<u>B Shares</u>
Robert Nathan	24,391	48,793
Henry J. Lane)	12,196	24,391(i)
Stella M.A. Lane)		

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<u>Shareholder</u>	<u>A Shares</u>	<u>B Shares</u>	
Lauri J. Newton)			
Lionel Newton)	4,295	8,591(ii)	
Francie U.Christian)			
Lauri J. Newton)			
Lionel Newton)	5,024	10,048(iii)	
Francie U.Christian)			
Lionel Newton	5,024	10,048	
Lauri J. Newton	5,024	10,048	
Francie U.Christian	5,024	10,048	10
Stella M.A. Lane	12,196	24,390	
Henry J. Lane	<u>5,933</u>	<u>11,867</u>	
	<u>79,107</u>	<u>158,214</u>	

- (1) held by Henry J. Lane and Stella M.A. Lane jointly as trustees of the Estate of the late Robert T. Lane in trust for Stella M.A. Lane as the beneficiary entitled to the income thereof for life.
- (ii) and (iii) held by Lauri J. Newton, Lionel Newton and Francie U. Christian jointly as trustees of the Estate of Joseph Nathan deceased (ii) and of the Estate of Catherine M. Nathan deceased (iii) in trust for themselves as beneficiaries equally entitled to the income thereof during their respective lives. 20
- (d) By virtue of the said amendments to the Articles of Association the following rights were attached to the A ordinary shares (subject to the rights of the holders of the A preference shares) - 30
- (i) A right to the whole of the dividends declared by the company on or after 14th December 1949 until the dividends reach a total of not less than £5.15.10d in respect of each share of which not less than 2/2d per share was to be out of income entitled to rebate under Section 107 but save as in (ii) no other right to participation in the profits. 40

(ii) A fixed cumulative preferential dividend of 5 per cent per annum as from 1st January, 1950.

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(iii) The same rights as to voting as B ordinary shares until the dividends referred to in (i) were paid and thereafter only when the dividends are in arrears or with regard to the reduction of capital winding up or any proposal affecting the rights of the A ordinary shares.

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10 (e) Subsequent to the holding of the extraordinary general meeting referred to in sub-paragraph (a) above a meeting of the directors of Lanes was held at Melbourne on 14th December 1949 at which the following resolutions were passed -

20 It was resolved that all Scrip for ordinary shares held prior to the Eighteenth day of November 1949 be called in for cancellation and be cancelled when and as received, and that Scrip for "A" and "B" Ordinary shares be issued to the shareholders entitled thereto.

30 It was resolved that pursuant to the powers contained in Article 47A, a branch register of members be established and set up in Canberra and that Stanley Raymond Phippard be and is hereby appointed as the authority under the said Article to affix the seal of the Company to Certificates in respect of shares on the said branch register and to note consider approve or reject transfers of shares on the said branch register and to direct the registration of transfers approved by him in such branch register and generally to exercise the powers of Directors as provided by such Article.

It was resolved that a Common Seal be obtained for use in Canberra.

40 (f) Pursuant to the said resolutions holders of the ordinary shares in the capital of Lanes handed in their scrip to the directors and received in exchange scrip in respect of A ordinary shares and B ordinary shares into which their ordinary shares had been converted as set

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out in sub-paragraph (c) above and the holder of preference shares handed in his scrip for the same and received scrip in exchange in respect of 5,000 A preference shares.

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(g) A Branch Register was established at Canberra and the said Stanley Raymond Phippard accepted the said appointment.

(h) On 15th December, 1949 each of the shareholders holding A ordinary shares in Lanes by an Instrument under Seal granted to Pactolus an option to be exercisable by notice in writing on or before 31st December, 1949 to purchase his or her A ordinary shares in Lanes at the price of £5.16.0 per share payable within 24 hours of the option being exercised. Each of the said shareholders appointed Donald H. Ross to be his (or her) agent to receive the purchase price and complete the transfers and deliver the share certificates. Each of the options was in identical form (save as to the number of shares and other appropriate changes). Attached hereto as Annexure 24 is a true copy of each of the said options in respect of the A ordinary shares. By these documents the following options were granted to Pactolus in respect of the number of shares and at the price set out below -

<u>Shareholder</u>	<u>A Shares</u>	<u>Price @ £5.16.0</u>
Robert Nathan	24,391	£141,467.16. 0
Henry J. Lane)	12,196	70,736.16. 0
Stella M.A. Lane)(i)		
Lauri J. Newton)	4,295	24,911. 0. 0
Lionel Newton)		
Francie U. Christian)(ii)		
Lauri J. Newton)	5,024	29,139. 4. 0
Lionel Newton)		
Francie U. Christian)(iii)		
Lionel Newton	5,024	29,139. 4. 0
Lauri J. Newton	5,024	29,139. 4. 0
Francie U. Christian	5,024	29,139. 4. 0
Stella M.A. Lane	12,196	70,736.16. 0
Henry J. Lane	5,933	34,411. 8. 0
	<u>79,107</u>	<u>£458,820.12. 0</u>

10

20

30

40

(i) Trustees of the Estate of the late Robert T. Lane

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(ii) Trustees of the Estate of the late Joseph Nathan

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(iii) Trustees of the Estate of the late Catherine M. Nathan

Mutual Admissions of Fact 25th May, 1956 - continued.

(i) On 16th December 1949 a meeting of the directors of Lanes was held at Melbourne at which the following resolutions were passed -

10

It was resolved that 402,679 "B" Preference shares of One pound each be made available for issue at par with the rights and privileges and subject to the conditions set out in Article 8D and that such shares be offered to the person or persons entitled to the dividends from the "A" Ordinary shares on or after the Nineteenth day of December 1949.

20

It was resolved that all "A" Ordinary shares be transferred to the Branch Register of Members at Canberra.

Pursuant to the said resolutions the said A ordinary shares were thereupon transferred to the Branch Register of Lanes at Canberra.

(j) All the holders of the A ordinary shares in Lanes signed the following document bearing the date of 19th December, 1949 :-

30

"WE, the undersigned, being all the shareholders in Lane's Motors Proprietary Limited, HEREBY CONSENT to the purchase by PACTOLUS PROPRIETARY LIMITED of all "A" ordinary shares in such Company at £5.16.0 per share and we waive the giving to us of any notice pursuant to Clause 15 of the Articles of Association and we agree that the Company may register transfers of the said shares accordingly.

Dated the Nineteenth day of December, 1949.

40

(sgd.) R. Nathan
Lauri Newton
Lionel Newton
by his attorney Lauri Newton
H.J. Lane
S.M.A. Lane
by her attorney W.B. Thomas
Francie Christian"

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(k) On 19th December, 1949 Pactolus exercised the options referred to in sub-paragraph (h) above to purchase the whole of the A ordinary shares in Lanes at a price of £5.16.0 per share. The said options were exercised by John V. Ratcliffe endorsing on each of the said Instruments under Seal the following notation :-

"Pactolus Pty. Ltd. hereby exercises this option
December nineteenth 1949
(Sgd.) J.V. Ratcliffe
Director."

10

John V. Ratcliffe then handed to Donald H. Ross cheques dated 19th December, 1949, drawn by Pactolus on the English Scottish & Australian Bank Ltd., South Melbourne, as follows:-

Robert Nathan	£141,467.16.0	
Henry J. Lane) Stella M.A. Lane)	70,736.16.0 (i)	20
Lauri J. Newton) Lionel Newton) Francie U. Christian)	24,911. 0.0 (ii)	
Lauri J. Newton) Lionel Newton) Francie U. Christian)	29,139. 4.0 (iii)	
Lionel Newton	29,139. 4.0	
Lauri J. Newton	29,139. 4.0	
Francie U. Christian	29,139. 4.0	
Stella M.A. Lane	70,736.16.0	30
Henry J. Lane	<u>34,411. 8.0</u>	
	<u>£458,820.12.0</u>	

(i) Trustees of the Estate of the late Robert T. Lane

(ii) Trustees of the Estate of the late Joseph Nathan

(iii) Trustees of the Estate of the late Catherine M. Nathan

Each of the said cheques was lodged with the

Bank of the respective payees on 21st December 1949.

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10 (1) Donald H. Ross handed to John V. Ratcliffe as director of Pactolus duly completed transfers by each of the holders of A ordinary shares in respect of the whole of his or her holding of A ordinary shares and the share certificates in respect thereof. The said transfers were on 19th December, 1949 produced at Canberra to Lauri J. Newton, one of the directors of Lanes, who noted the said transfers as being produced to him and thereupon the said transfers and the share certificates were lodged with Stanley R. Phippard the authority of Lanes at Canberra who had control of the branch register and he thereupon registered Pactolus as the holder of the said shares in the branch register at Canberra and issued shares certificates to Pactolus in respect of the several parcels of shares
20 comprised in the said transfers.

(m) A copy of a letter dated 16th December, 1949, from Lanes to Pactolus is attached as Annexure 25.

30 Pactolus on 19th December, 1949, lodged with the said Lauri J. Newton an application bearing that date for 402,679 B preference shares in Lanes, a cheque for £402,679 of the same date drawn in favour of Lanes and a request that such shares when allotted should be transferred to the Canberra register. Attached hereto as Annexure 26 is a true copy of the said application and request.

(n) At a meeting of the directors of Lanes held at Melbourne at 9.00 a.m. on 20th December, 1949 certain dividends were declared upon the A ordinary shares. The resolutions passed by the directors were as follows :-

40 (a) It was resolved that an interim dividend of £8,569.18.6 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income profits dividends or amounts in respect of which the recipient is entitled to the rebate

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of tax provided for by Section 107 of the
Income Tax Assessment Act 1936-1949.

(b) It was resolved that an interim dividend of £262,232 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.

(c) It was resolved that an interim dividend of £175,493.8.0 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June 1950.

10

The total dividends declared by the resolutions above set out were at the rate of £5.12.10 per A ordinary share and totalled £446,295.6.6. A cheque for the said £446,295.6.6 dated 20th December, 1949 was drawn by Lanes in favour of Pactolus. The said cheque by direction of Pactolus was handed to Donald H. Ross and paid to the credit of the account of Pactolus at the said Bank on 21st December, 1949.

20

(o) At a further meeting of the directors of Lanes held at Melbourne at 9.30 a.m. on 20th December 1949 the directors resolved pursuant to the application referred to in sub-paragraph (m) above to allot 402,679 B preference shares in Lanes at par to Pactolus for cash and further resolved that such B preference shares be transferred to the Canberra register. The said resolutions were as follows :-

30

It was resolved that 402,679 "B" preference shares of One pound each be allotted at par to Pactolus Proprietary Limited for cash.

It was resolved that all "B" Preference Shares be transferred to the branch register of members at Canberra.

40

The said cheque for £402,679 drawn by Pactolus in favour of Lanes was paid to the credit of Lanes account with the English, Scottish and

Australian Bank Ltd., South Melbourne on 21st December, 1949.

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10

(p) On 20th December 1949 a telegram from Lanes to Stanley R. Phippard at Canberra notifying the issue of the B preference shares in Lanes were sent from Melbourne. Attached hereto as Annexure 27 is a true copy of the said telegram.

(q) On the said 20th December, 1949, Pactolus sold 402,679 B preference shares in Lanes to the persons holding the B ordinary shares in Lanes proportionately to the number of B ordinary shares held at a price of £1 per share. Transfers of the said B preference shares were executed by Pactolus and handed to Donald H. Ross in favour of the following:-

Robert Nathan	124,160 Shares		
Henry J. Lane } Stella M.A. Lane }	62,079	"	(i)
Lauri J. Newton } Lionel Newton } Francie U. Christian }	21,865	"	(ii)
Lauri J. Newton } Lionel Newton } Francie U. Christian }	25,573	"	(iii)
Lionel Newton	25,573	"	
Lauri J. Newton	25,573	"	
Francie U. Christian	25,573	"	
Stella M.A. Lane	62,080	"	
Henry J. Lane	<u>30,203</u>	"	
	402,679 Shares		

(i) Trustees of the Estate of the late Robert T. Lane

(ii) Trustees of the Estate of the late Joseph Nathan

(iii) Trustees of the Estate of the late Catherine M. Nathan

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and the said Donald H. Ross handed to Pactolus
in exchange for the said transfers cheques
drawn by the said shareholders in Lanes in the
following amounts :-

<p>No.51</p> <p>Mutual Admissions of Fact 25th May, 1956 - continued.</p>	<p>Robert Nathan</p> <p>Henry J. Lane } Stella M.A. Lane }</p> <p>Lauri J. Newton } Lionel Newton } Francie U. Christian }</p> <p>Lauri J. Newton } Lionel Newton } Francie U. Christian }</p> <p>Lionel Newton</p> <p>Lauri J. Newton</p> <p>Francie U. Christian</p> <p>Stella M.A. Lane</p> <p>Henry J. Lane</p>	<p>£124,160</p> <p>62,079 (i)</p> <p>21,865 (ii)</p> <p>25,573 (iii)</p> <p>25,573</p> <p>25,573</p> <p>25,573</p> <p>62,080</p> <p><u>30,203</u></p> <p><u>£402,679</u></p>	<p></p> <p></p> <p>10</p> <p></p> <p></p> <p></p> <p></p> <p></p> <p></p>
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(i) Trustees of the Estate of the late Robert T. Lane 20

(ii) Trustees of the Estate of the late Joseph Nathan.

(iii) Trustees of the Estate of the late Catherine M. Nathan.

Each of the said cheques was on 21st December 1949 lodged to the credit of the account of Pactolus with the South Melbourne branch of the English Scottish and Australian Bank Ltd.

(r) The following table is a summary of the transactions referred to in sub-paragraphs (k) to (q) above :- 30

1. Transaction	2. Date of Cheque	3. Amount £. s. d	4. Drawn By	5. Drawer's Bank	6. Payable to	7. Payee's Bank	8. Paid into Payee's Bank	9. Debited Drawer's Account	
Sale of A Ordinary Shares	19.12.49	141,467.16.0	Pactolus	E.S.A.,S.M.	Robert Nathan	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	70,736.16.0	Pactolus	E.S.A.,S.M.	{ Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	(a)24,911. 0.0	Pactolus	E.S.A.,S.M.	{ Lauri J. Newton Lionel Newton	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	(b)29,139. 4.0	Pactolus	E.S.A.,S.M.	{ Francie Christian	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	29,139. 4.0	Pactolus	E.S.A.,S.M.	Lionel Newton	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	29,139. 4.0	Pactolus	E.S.A.,S.M.	Lauri J. Newton	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	29,139. 4.0	Pactolus	E.S.A.,S.M.	Francie Christian	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	70,736.16.0	Pactolus	E.S.A.,S.M.	Stella M.A. Lane	E.S.A.,S.M.	21.12.49	21.12.49	
	19.12.49	34,411. 8.0	Pactolus	E.S.A.,S.M.	Henry J. Lane	E.S.A.,S.M.	21.12.49	21.12.49	
	Issue of B Preference Shares	19.12.49	402,679. 0.0	Pactolus	E.S.A.,S.M.	Lanes	E.S.A.,S.M.	21.12.49	21.12.49
	Dividend on A Ordinary Shares	20.12.49	446,295. 6.6	Lanes	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	Sale of B Preference Shares	20.12.49	124,160. 0.0	Robert Nathan	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
		20.12.49	62,079. 0.0	{ Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
20.12.49		(a)21,865. 0.0	{ Lauri J. Newton Lionel Newton	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	
20.12.49		(b)25,573. 0.0	{ Francie Christian	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	
20.12.49		25,573. 0.0	Lionel Newton	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	
20.12.49		25,573. 0.0	Lauri J. Newton	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	
20.12.49		25,573. 0.0	Francie Christian	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	
20.12.49		62,080. 0.0	Stella M.A. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	
20.12.49		30,203. 0.0	Henry J. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49	

The cheques drawn by and payable to { Henry J. Lane } were on account of Estate of Robert T. Lane.

The cheques drawn by and payable to { Stella M.A. Lane } were on account of { Estate of Joseph Nathan (a) }
{ Lauri J. Newton }
{ Lionel Newton }
{ Francie Christian }
{ Estate of Catherine M. Nathan (b) }

(s) At a meeting of the directors of Lanes held on 22nd March, 1950 an interim dividend of £11,866.1.0 was declared out of the company's income in respect of the year ended 30th June 1950 on the A ordinary shares of the company. This dividend was at the rate of 3/- per share and together with the dividend referred to in sub-paragraph (n) above made a total dividend of £5.15.10 on each of the A ordinary shares in Lanes thus exhausting the special dividend rights attached to the A ordinary shares by the amendments to the Articles referred to in sub-paragraphs (a) and (d) above. The terms of the resolution declaring this dividend were as follows :-

10

20

It was resolved that an interim dividend of £11,866.1.0 be declared payable forthwith in respect of the A ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950.

30

On 22nd March, 1950 a cheque was drawn by Lanes in favour of Pactolus for the said sum of £11,866.1.0 and on 23rd March, 1950 the said cheque was paid to the credit of the account of Pactolus with the South Melbourne branch of the English, Scottish and Australian Bank Ltd.

(t) On 12th May, 1950 Pactolus sold and transferred the whole of the A ordinary shares held by it in Lanes, namely 79,107 shares, to Pactolus Investments for the amount of £1 per share and the said transfer was entered in the Canberra Register of Lanes on 2nd June 1950.

40

(u) On 28th June 1950 the directors of Lanes declared a dividend at the rate of 5 per cent per annum for the six months ended 30th June, 1950 on the 79,107 A ordinary shares. The said dividend was paid by a cheque dated 5th July 1950 which was paid into the account of Pactolus Investments at South Melbourne branch of the English, Scottish and Australian Bank Ltd. on 7th July, 1950.

(v) As at 30th June 1950 the holdings in the B

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ordinary and B preference shares in Lanes were
as follows :-

<u>Shareholder</u>	<u>B Ord.</u>	<u>B Pref.</u>	
Robert Nathan (deceased 26.6.50)	48,783	124,160	
Henry J. Lane } Stella M.A. Lane }	24,391	62,079 (i)	
Lauri J. Newton } Lionel Newton } Francie U. Christian }	8,591	21,865 (ii)	10
Lauri J. Newton } Lionel Newton } Francie U. Christian }	10,048	25,573 (iii)	
Lionel Newton	10,048	25,573	
Lauri J. Newton	10,048	25,573	
Francie U. Christian	10,048	25,573	
Stella M.A. Lane	24,390	62,080	
Henry J. Lane	<u>11,867</u>	<u>30,203</u>	
	<u>158,214</u>	<u>402,679</u>	

(i) held by Henry J. Lane and Stella M. Lane jointly as trustees of the Estate of the late Robert T. Lane in trust for Stella M.A. Lane as the beneficiary entitled to the income thereof for life. 20

(ii) and (iii) held by Lauri J. Newton, Lionel Newton and Francie U. Christian jointly as trustees of the Estate of Joseph Nathan deceased (ii) and of the Estate of Catherine M. Nathan deceased (iii) in trust for themselves as beneficiaries equally entitled to the income thereof during their respective lives. 30

During the income year ended 30th June, 1950 no dividends were declared on either the B ordinary or the B preference shares and the several shareholders made their returns of income to that date on the footing that they had derived no income in respect of their shareholdings in Lanes. True copies of the Profit and Loss Account of Lanes for the year ended 30th June, 40

1950 and of its balance sheet as at that date are attached hereto as Annexure 28 and Annexure 29 respectively.

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13. Neals

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(a) Pursuant to a resolution passed at a meeting of directors held on 18th November, 1949, an extraordinary general meeting of Neals was held at Melbourne on 14th December, 1949 at which the following action was taken -

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10 (i) The nominal capital of the company was increased from £150,000 to £750,000 divided into £1 shares.

(ii) By a special resolution certain amendments were made to the Articles of Association.

Attached hereto as Annexure 30 is a true copy of the said special resolution.

20 (b) By virtue of the said amendments to the Articles of Association the nominal capital of Neals was divided into -

36,444 A ordinary shares (issued);
213,556 B ordinary shares (72,888 issued);
5,000 A preference shares (issued);
495,000 B preference shares (unissued);
750,000 Shares of £1 each (114,332 issued);

the issued shares of the company being converted as follows :-

(i) The 5,000 preference shares into A preference shares.

30 (ii) The 109,332 ordinary shares into A ordinary and B ordinary shares in such manner that (ignoring fractions) for each three ordinary shares previously held by each shareholder that shareholder now held one A ordinary share and two B ordinary shares.

(c) As a result of the said amendments to the Articles of Association the ordinary shareholding in Neals was as follows :-

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- continued.

<u>Shareholder</u>	<u>A Shares</u>	<u>B Shares</u>	
Robert Nathan	12,300	24,600	
Henry J. Lane) Stella M.A. Lane) (i)	2,734	5,467	
Lauri J. Newton) Lionel Newton) Francie U. Christian) (ii)	2,475	4,951	
Lauri J. Newton) Lionel Newton) Francie U. Christian) (iii)	2,475	4,912	10
Lionel Newton	2,456	4,912	
Lauri J. Newton	2,456	4,912	
Francie U. Christian	2,456	4,912	
Henry J. Lane	9,111	18,222	
	<u>36,444</u>	<u>72,888</u>	

(i) Trustees of the Estate of the late Robert T. Lane

(ii) Trustees of the Estate of the late Joseph Nathan

(iii) Trustees of the Estate of the late Catherine M. Nathan 20

(d) By virtue of the said amendments to the Articles of Association the following rights were attached to the A ordinary shares (subject to the rights of the holders of the A preference shares) -

(i) A right to the whole of the dividends declared by the Company on or after 14th December, 1949 until the dividends reach a total of not less than £13.7.0 in respect of each share of which not less than £1 per share was to be out of income entitled to rebate under Section 107 but save as in (ii) no other right to participation in the profits. 30

(ii) A fixed cumulative preferential dividend of 5 per cent per annum as from 1st January, 1950.

(iii) The same rights as to voting as B ordinary shares until the dividends referred 40

to in (i) were paid and thereafter only when the dividends are in arrears or with regard to the reduction of capital winding up or any proposal affecting the rights of the A ordinary shares

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- 10 (e) Subsequent to the holding of the extraordinary general meeting referred to in subparagraph (a) above a meeting of the directors of Neals was held at Melbourne on 14th December 1949 at which the following resolutions were passed -

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It was resolved that all Scrip for ordinary shares held prior to the Eighteenth day of November 1949 be called in for cancellation and be cancelled when and as received, and that Scrip for "A" and "B" Ordinary shares be issued to the shareholders entitled thereto.

20 It was resolved that pursuant to the powers contained in Article 70A, a branch register of members be established and set up in Canberra and that Stanley Raymond Phippard be and is hereby appointed as the authority under the said Article to affix the seal of the Company to Certificates in respect of shares on the said branch register and to note consider approve or reject transfers of shares on the said branch register and to direct the registration of transfers approved by him in such branch register and generally to exercise the powers of Directors as provided by such Article

30

It was resolved that a Common Seal be obtained for use in Canberra.

- 40 (f) Pursuant to the said resolutions holders of the ordinary shares in the Capital of Neals handed in their scrip to the directors and received in exchange scrip in respect of A ordinary shares and B ordinary shares into which their ordinary shares had been converted as set out in sub-paragraph (c) above and the holder of preference shares handed in his scrip for the same and received scrip in exchange in respect of 5,000 A preference shares.

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(g) A Branch register was established at Canberra and the said Stanley Raymond Phippard accepted the said appointment.

(h) On 15th December, 1949 each of the shareholders holding A ordinary shares in Neals by an Instrument under Seal granted to Pactolus an option to be exercisable by notice in writing on or before the 31st December, 1949 to purchase his or her A ordinary shares in Neals at the price of £12.8.4 per share payable within 24 hours of the option being exercised. Each of the said shareholders appointed Donald H. Ross to be his (or her) agent to receive the purchase price and complete the transfers and deliver the share certificates. Each of the options was in identical form (save as to the number of shares and other appropriate changes). 10

Attached hereto as Annexure 31 is a true copy of each of the said options in respect of the A ordinary shares. By these documents the following options were granted to Pactolus in respect of the number of shares and at the price set out below - 20

<u>Shareholder</u>	<u>A Shares</u>	<u>Price at £12.8.4d</u>	
Robert Nathan	12,300	152,725.0.0	
Henry J. Lane) Stella M.A. Lane)(i)	2,734	33,947.3.4	
Lauri J. Newton) Lionel Newton) Francie U. Christian)(ii)	2,475	30,731.5.0	30
Lauri J. Newton) Lionel Newton) Francie U. Christian)(iii)	2,456	30,495.6.8	
Lionel Newton	2,456	30,495.6.8	
Lauri J. Newton	2,456	30,495.6.8	
Francie U. Christian	2,456	30,495.6.8	
Henry J. Lane	9,111	113,128.5.0	
	<u>36,444</u>	<u>£452,513.0.0</u>	40

(i) Trustees of the Estate of the late Robert T. Lane

(ii) Trustees of the Estate of the late Joseph Nathan

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(iii) Trustees of the Estate of the late Catherine M. Nathan.

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(i) On 16th December 1949 a meeting of the directors of Neals was held at Melbourne at which the following resolutions were passed -

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25th May, 1956
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10

It was resolved that 403,314 "B" preference shares of One pound each be made available for issue at par with the rights and privileges and subject to the conditions set out in Article 2E and that such shares be offered to the person or persons entitled to the dividends from the "A" ordinary shares on or after the nineteenth day of December 1949.

It was resolved that all "A" ordinary shares be transferred to the Branch Register of Members at Canberra.

20

Pursuant to the said resolutions the said A ordinary shares were thereupon transferred to the Branch Register of Neals at Canberra.

(j) All the holders of the A ordinary shares in Neals signed the following document bearing the date of 19th December, 1949 -

30

"WE, the undersigned, being all the shareholders in Neal's Motors Proprietary Limited HEREBY CONSENT to the purchase by PACTOLUS PTY. LIMITED of all "A" ordinary shares in such company at £12.8.4. per share and we waive the giving to us of any notice pursuant to clause 15 of the Articles of Association and we agree that the Company may register transfers of the said shares accordingly.

DATED the nineteenth day of December, 1949.

(Sgd.) R. Nathan
Lauri Newton
Lionel Newton
by his attorney Lauri Newton
H.J. Lane
S.M.A. Lane
by her attorney W.B. Thomas
F. Una Christian"

40

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(k) On 19th December 1949 Pactolus exercised the options referred to in sub-paragraph (h) above to purchase the whole of the A ordinary shares in Neals at a price of £12.8.4. per share. The said options were exercised by John V. Ratcliffe endorsing on each of the said Instruments under Seal the following notation :-

"Pactolus Pty. Ltd. hereby exercises this option
December nineteenth, 1949
(sgd.) J.V. Ratcliffe
Director"

10

John V. Ratcliffe then handed to Donald H. Ross cheques dated 19th December, 1949, drawn by Pactolus on the English Scottish and Australian Bank Ltd., South Melbourne, as follows :-

Robert Nathan	£152,725. 0.0	
Henry J. Lane } Stella M.A. Lane }	33,947. 3.4 (i)	
Lauri J. Newton } Lionel Newton } Francie U. Christian }	30,731. 5.0 (ii)	20
Lauri J. Newton } Lionel Newton } Francie U. Christian }	30,495. 6.8 (iii)	
Lionel Newton	30,495. 6.8	
Lauri J. Newton	30,495. 6.8	
Francie U. Christian	30,495. 6.8	
Henry J. Lane	<u>113,128. 5.0</u>	
	<u>£452,513. 0.0</u>	30

(i) Trustees of the Estate of the late Robert T. Lane

(ii) Trustees of the Estate of the late Joseph Nathan

(iii) Trustees of the Estate of the late Catherine M. Nathan

Each of the said cheques was lodged with the Bank of the respective payees on 21st December 1949.

(1) Donald H. Ross handed to John V. Ratcliffe as director of Pactolus duly completed transfers by each of the holders of A ordinary shares in respect of the whole of his or her holding of A ordinary shares and the share certificates in respect thereof.

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10 The said transfers were on 19th December, 1949 produced at Canberra to Lauri J. Newton one of the directors of Neals who noted the said transfers as being produced to him and thereupon the said transfers and the share certificates were lodged with Stanley R. Phippard the authority of Neals at Canberra who had control of the branch register and he thereupon registered Pactolus as the holder of the said shares in the branch register at Canberra and issued share certificates to Pactolus in respect of the several parcels of shares comprised in the said transfers.

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20 (m) A copy of a letter dated 16th December, 1949 from Neals to Pactolus is attached as Annexure 32.

Pactolus on 19th December, 1949 lodged with the said Lauri J. Newton an application bearing that date for 403,314 B preference shares in Neals, a cheque for £403,314 of the same date drawn in favour of Neals and a request that such shares when allotted should be transferred to the Canberra register.

30 Attached hereto as Annexure 33 is a true copy of the said application and request.

(n) At a meeting of the directors of Neals held at Melbourne at 9.10 a.m. on 20th December, 1949 certain dividends were declared upon the A ordinary shares. The resolutions passed by the directors were as follows :-

40 (a) It was resolved that an interim dividend of £36,444 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income profits dividends or amounts in respect of which the recipient is entitled to the rebate

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of tax provided for by Section 107 of the
Income Tax Assessment Act 1936-1949.

(b) It was resolved that an interim dividend of £137,086 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.

(c) It was resolved that an interim dividend of £121,556 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950. 10

(d) It was resolved that an interim dividend of £154,997.8.0 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of the dividends declared by Overland (Victoria) Pty. Limited. 20

The total dividends declared by the resolutions above set out were at the rate of £12. 7. 0 per A ordinary share and totalled £450,083. 8. 0. A cheque for the said £450,083.8.0 dated 20th December, 1949 was drawn by Neals in favour of Pactolus. The said cheque by direction of Pactolus was handed to Donald H. Ross and paid to the credit of the account of Pactolus at the said bank on 21st December, 1949. 30

(o) At a further meeting of the directors of Neals held at Melbourne at 9.40 a.m. on 20th December, 1949 the directors resolved pursuant to the application referred to in sub-paragraph (m) above to allot 403,314 B preference shares in Neals at par to Pactolus for cash and further resolved that such B preference shares be transferred to the Canberra register. The said resolutions were as follows :- 40

It was resolved that 403,314 "B" preference shares of One pound each be allotted at par to Pactolus Proprietary Limited for cash.

It was resolved that all "B" Preference Shares be transferred to the branch register of members at Canberra.

In the High Court of Australia

The cheque for £403,314 drawn by Pactolus in favour of Neals was paid to the credit of Neals account with the English, Scottish and Australian Bank Ltd., South Melbourne on 21st December, 1949.

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Mutual Admissions of Fact
25th May, 1956
- continued.

10 (p) On 20th December, 1949 a telegram from Neals to Stanley R. Phippard at Canberra notifying the issue of the B preference shares in Neals was sent from Melbourne. Attached hereto as Annexure 34 is a true copy of the said telegram.

20 (q) On the 20th December 1949, Pactolus sold 403,314 B preference shares in Neals to the persons holding the B ordinary shares in Neals proportionately to the number of B ordinary shares held at a price of £1 per share. Transfers of the said B preference shares were executed by Pactolus and handed to Donald H. Ross in favour of the following:-

	Robert Nathan	136,120 shares	
	Henry J. Lane)		
	Stella M.A. Lane)	30,256 "	(i)
	Lauri J. Newton)		
	Lionel Newton)		
	Francie U. Christian)	27,390 "	(ii)
	Lauri J. Newton)		
	Lionel Newton)		
30	Francie U. Christian)	27,180 "	(iii)
	Lionel Newton	27,180 "	
	Lauri J. Newton	27,180 "	
	Francie U. Christian	27,180 "	
	Henry J. Lane	<u>100,828</u> "	
		<u>403,314 Shares</u>	

(i) Trustees of the Estate of the late Robert T. Lane

(ii) Trustees of the Estate of the late Joseph Nathan

In the High
Court of
Australia

No.51

Mutual
Admissions
of Fact
25th May, 1956
- continued.

(iii) Trustees of the Estate of the late Cath-
erine M. Nathan

The said Donald H. Ross handed to Pactolus in
exchange for the said transfers cheques drawn
by the said shareholders in Neals in the
following amounts:-

Robert Nathan	£136,120	
Henry J. Lane } Stella M.A. Lane }	30,256 (i)	
Lauri J. Newton } Lionel Newton } Francie U. Christian }	27,390 (ii)	10
Lauri J. Newton } Lionel Newton } Francie U. Christian }	27,180 (iii)	
Lionel Newton	27,180	
Lauri J. Newton	27,180	
Francie U. Christian	27,180	
Henry J. Lane	<u>100,828</u>	
	<u>£403,314</u>	20

(i) Trustees of the Estate of the late Robert
T. Lane

(ii) Trustees of the Estate of the late Joseph
Nathan

(iii) Trustees of the Estate of the late Cath-
erine M. Nathan

Each of the said cheques was on 21st December,
1949 lodged to the credit of the account of
Pactolus with the South Melbourne branch of
the English, Scottish and Australian Bank Ltd. 30

(r) The following table is a summary of the trans-
actions referred to in sub-paragraphs (k) and
(q) above :-

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 Mutual Admissions of Fact
 25th May, 1956
 - continued.

1. Transaction	2. Date of Cheque	3. Amount £. s. d.	4. Drawn By	5. Drawer's Bank	6. Payable to	7. Payee's Bank	8. Paid into Payee's Bank	9. Debited Drawer's Account
Sale of A Ordinary Shares	19.12.49	152,725. 0.0	Pactolus	E.S.A.,S.M.	Robert Nathan	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	33,947. 3.4	Pactolus	E.S.A.,S.M.	{ Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	30,731. 5.0	Pactolus	E.S.A.,S.M.	Lauri J. Newton	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	30,495. 6.8	Pactolus	E.S.A.,S.M.	{ Lauri J. Newton Lionel Newton Francie Christian	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	30,495. 6.8	Pactolus	E.S.A.,S.M.	Lionel Newton	E.S.A.,S.M.	21.12.49	21.12.49
Issue of B Preference Shares	19.12.49	403,314. 0.0	Pactolus	E.S.A.,S.M.	Neals	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	450,083. 8.0	Neals	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
Sale of B Preference Shares	20.12.49	136,120. 0.0	Robert Nathan	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	30,256. 0.0	{ Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	(a)27,390. 0.0	{ Lauri J. Newton Lionel Newton Francie Christian	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	(b)27,180. 0.0	{ Lauri J. Newton Lionel Newton Francie Christian	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	27,180. 0.0	Lauri J. Newton	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
Dividend on A Ordinary Shares	20.12.49	27,180. 0.0	Francie Christian	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	100,828. 0.0	Henry J. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49

The cheques drawn by and payable to { Henry J. Lane } were on account of Estate of Robert T. Lane.
 { Stella M.A. Lane }

The cheques drawn by { Lauri J. Newton } were on account of { Estate of Joseph Nathan }
 { Lionel Newton } { Estate of Catherine M. Nathan }
 { Francie Christian }

The cheque for £30,731.5.0 payable to Lauri J. Newton was on account of Estate of Joseph Nathan.

The cheque payable to { Lauri J. Newton } was on account of Estate of Catherine M. Nathan.
 { Lionel Newton }
 { Francie Christian }

(s) At a meeting of the directors of Neals held on 22nd March, 1950 an interim dividend of £36,444 was declared out of the company's income in respect of the year ended 30th June, 1950 on the A ordinary shares of the company.

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Court of
Australia

No.51

10 This dividend was at the rate of £1 per share and together with the dividend referred to in sub-paragraph (n) above made a total dividend of £13.7.0 on each of the A ordinary shares in Neals thus exhausting the special dividend rights attached to the A ordinary shares by the amendments to the Articles referred to in sub-paragraphs (a) and (d) above.

Mutual
Admissions
of Fact
25th May, 1956
- continued.

The terms of the resolution declaring this dividend were as follows :-

20 It was resolved that an interim dividend of £36,444 be declared payable forthwith in respect of the A ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June 1950.

30 On 22nd March, 1950, a cheque was drawn by Neals in favour of Pactolus for the said sum of £36,444 and on 23rd March, 1950 the said cheque was paid to the credit of the account of Pactolus with the South Melbourne Branch of the English, Scottish and Australian Bank Ltd.

(t) On 12th May, 1950 Pactolus sold and transferred the whole of the A ordinary shares held by it in Neals namely 36,444 shares to Pactolus Investments for the amount of £1 per share and the said transfer was entered in the Canberra register of Neals on 2nd June, 1950.

40 (u) On 28th June, 1950 the directors of Neals declared a dividend at the rate of 5 per cent per annum for the six months ended 30th June, 1950 on the 36,444 A ordinary shares. The said dividend was paid by a cheque dated 6th July, 1950 which was paid into the account of Pactolus Investments at the South Melbourne branch of the English Scottish and Australian Bank Ltd. on 8th July, 1950.

In the High
Court of
Australia

(v) As at 30th June, 1950 the holdings in the B ordinary and B preference shares in Neals were as follows :-

<u>No.51</u>	<u>Shareholder</u>	<u>B Ord.</u>	<u>B Pref.</u>		
Mutual Admissions of Fact 25th May, 1956 - continued.	Robert Nathan (deceased 26.6.50)	24,600	136,120		
	Henry J. Lane } Stella M.A. Lane }	5,467	30,256 (i)		
	Lauri J. Newton } Lionel Newton } Francie U. Christian }	4,951	27,390 (ii)	10	
	Lauri J. Newton } Lionel Newton } Francie U. Christian }	4,912	27,180 (iii)		
	Lionel Newton	4,912	27,180		
	Lauri J. Newton	4,912	27,180		
	Francie U. Christian	4,912	27,180		
	Henry J. Lane	<u>18,222</u>	<u>100,828</u>		
		<u>72,888</u>	<u>403,314</u>		
	(i)	held by Henry J. Lane and Stella M.A. Lane jointly as trustees of the Estate of the late Robert T. Lane in trust for Stella M.A. Lane as the beneficiary entitled to the income thereof for life.			20
	(ii)	and (iii) held by Lauri J. Newton, Lionel Newton and Francie U. Christian jointly as trustees of the Estate of Joseph Nathan deceased (ii) and of the Estate of Catherine M. Nathan deceased (iii) in trust for themselves as beneficiaries equally entitled to the income thereof during their respective lives.			30

During the income year ended 30th June 1950 no dividends were declared on either the B ordinary or the B preference shares and the several shareholders made their returns of income to that date on the footing that they had derived no income in respect of their shareholdings in Neals. True copies of the profit and loss account of Neals for the year ended 30th June

1950 and of its balance sheet as at that date are attached hereto as Annexure 35 and Annexure 36 respectively.

In the High
Court of
Australia

14. Melford

No.51

(a) Pursuant to a resolution passed at a meeting of directors held on 18th November, 1949, an extra-ordinary general meeting of Melford was held at Melbourne on 14th December, 1949 at which the following action was taken -

Mutual
Admissions
of Fact
25th May, 1956
- continued

10 (i) The nominal capital of the company was increased from £50,000 to £400,000 divided into £1 shares.

(ii) By a special resolution certain amendments were made to the Articles of Association.

Attached hereto as Annexure 37 is a true copy of the said special resolution.

(b) By virtue of the said amendments to the Articles of Association the nominal capital of Melford was divided into :-

20 8,253 A ordinary shares (issued);
 191,747 B ordinary shares (8,253 issued);
 200,000 Preference shares (unissued);
 400,000 Shares of £1 each (16,506 issued);

the 16,506 issued shares of the company being converted into A ordinary and B ordinary shares in such manner that for each two ordinary shares previously held by each shareholder that shareholder now held one A ordinary and one B ordinary share.

30 (c) As a result of the said amendments to the Articles of Association the ordinary shareholding in Melford was as follows :-

<u>Shareholder</u>	<u>A Shares</u>	<u>B Shares</u>
Henry J. Lane)		
Stella M.A. Lane)	1,251	1,251 (i)
Stella M.A. Lane	1,000	1,000
Leonard A. Fenton	1,500	1,500
Lionel B. Wallace	<u>4,502</u>	<u>4,502 (ii)</u>
	<u>8,253</u>	<u>8,253</u>

In the High
Court of
Australia

No.51

Mutual
Admissions
of Fact
25th May, 1956
- continued.

(i) The shares held jointly by Henry J. Lane and Stella M.A. Lane were held upon the trusts of the Will of the late Robert T. Lane.

(ii) The shares held by Lionel B. Wallace were held by him as trustee in trust for Lionel Newton, Lauri J. Newton and Francie U. Christian as follows :-

	<u>A Shares</u>	<u>B Shares</u>	
Lionel Newton	1,501	1,500	10
Lauri J. Newton	1,500	1,501	
Francie U. Christian	<u>1,501</u>	<u>1,501</u>	
	<u>4,502</u>	<u>4,502</u>	

(d) Pursuant to the said amendments to the Articles of Association the following rights were attached to the A ordinary shares -

(i) A right to the whole of the dividends declared by the company on or after 14th December 1949 until the dividends reach a total of not less than £26.11.0 in respect of each share of which not less than £3 per share was to be out of income entitled to rebate under Section 107 but save as in (ii) no other right to participation in the profits. 20

(ii) A fixed cumulative preferential dividend of 5 per cent per annum as from 1st January 1950.

(iii) The same rights as to voting as B ordinary shares until the dividends referred to in (i) were paid and thereafter only when the dividends are in arrears or with regard to the reduction of capital winding up or any proposal affecting the rights of the A ordinary shares. 30

(e) Subsequent to the holding of the extra-ordinary general meeting referred to in sub-paragraph (a) above a meeting of the directors of Melford was held at Melbourne on 14th December 1949 at which the following resolutions were passed - 40

It was resolved that all Scrip for ordinary shares held prior to the eighteenth day of November 1949 be called in for cancellation and be cancelled when and as received, and that Scrip for "A" and "B" Ordinary shares be issued to the shareholders entitled thereto.

In the High
Court of
Australia

No.51

10 It was resolved that pursuant to the powers contained in Article 72A, a branch register of members be established and set up in Canberra and that Stanley Raymond Phippard be and is hereby appointed as the authority under the said Article to affix the seal of the Company to Certificates in respect of shares on the said branch register and to note consider approve or reject transfers of shares on the said branch register and to direct the registration of transfers approved by him in such branch register and generally to exercise the powers of Directors as provided by such Article.

20

Mutual
Admissions
of Fact
25th May, 1956
- continued.

It was resolved that a Common Seal be obtained for use in Canberra.

30 (f) Pursuant to the said resolutions holders of the ordinary shares in the capital of Melford handed their scrip into the directors and received in exchange scrip in respect of A ordinary shares and B ordinary shares into which their ordinary shares had been converted as set out in sub-paragraph (c) above.

(g) A Branch Register was established at Canberra and the said Stanley Raymond Phippard accepted the said appointment.

40 (h) On 15th December, 1949 each of the shareholders holding A ordinary shares in Melford by an Instrument under Seal granted to Pactolus an option to be exercisable by notice in writing on or before the 31st December, 1949 to purchase his or her A ordinary shares in Melford at the price of £24 per share payable within twenty four hours of the option being exercised. Each of the said shareholders appointed Donald H. Ross to be his (or her) agent to receive the purchase price and complete the transfers and deliver the share

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of Fact
25th May, 1956
- continued.

certificates. Each of the options was in identical form (save as to the number of the shares and other appropriate changes).

Attached hereto as Annexure 38 is a true copy of each of the said options in respect of the A ordinary shares.

By these documents the following options were granted to Pactolus in respect of the number of shares and at the price set out below -

<u>Shareholder</u>	<u>A Shares</u>	<u>Price @ £24.</u>	10
Henry J. Lane)			
Stella M.A. Lane)	1,251	£30,024 (i)	
Stella M.A. Lane	1,000	24,000	
Leonard A. Fenton	1,500	36,000	
Lionel B. Wallace	<u>4,502</u>	<u>108,048</u>	
	<u>8,253</u>	<u>£198,072</u>	

(i) Trustees of the Estate of the late Robert T. Lane

(i) On 16th December 1949 a meeting of the directors of Melford was held at Melbourne at which the following resolutions were passed - 20

It was resolved that 189,819 Preference shares of One pound each be made available for issue at par with the rights and privileges and subject to the conditions set out in Article 2D and that such shares be offered to the person or persons entitled to the dividends from the "A" Ordinary Shares on or after the Nineteenth day of December 1949.

It was resolved that all "A" Ordinary shares be transferred to the Branch Register of members at Canberra. 30

Pursuant to the said resolutions the said A ordinary shares were thereupon transferred to the Branch Register of Melford at Canberra.

(j) All the holders of the A ordinary shares in Melford signed the following document bearing the date of 19th December, 1949:-

"WE, the undersigned, being all the shareholders in Melford Motors Proprietary Limited HEREBY CONSENT to the purchase by PACTOLUS PROPRIETARY LIMITED of all "A" ordinary shares in such Company at £24.0.0 per share and we waive the giving to us of any notice pursuant to Clause 15 of the Articles of Association and we agree that the Company may register transfers of the shares accordingly.

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25th May, 1956
- continued

10

DATED the nineteenth day of December
1949.

(Sgd.) H.J. Lane
S.M.A. Lane
by her attorney W.B. Thomas
L.A. Fenton
L.B. Wallace."

20

(k) On 19th December, 1949 Pactolus exercised the options referred to in sub-paragraph (h) above to purchase the whole of the A ordinary shares in Melford at a price of £24 per share. The said options were exercised by John V. Ratcliffe endorsing on each of the said Instruments under Seal the following notation :-

"Pactolus Pty. Ltd. hereby exercises this
option
December nineteenth, 1949
(Sgd.) J.V. Ratcliffe
Director"

30

John V. Ratcliffe then handed to Donald H. Ross cheques dated 19th December, 1949, drawn by Pactolus on the English Scottish and Australian Bank Ltd., South Melbourne, as follows :-

Henry J. Lane)	
Stella M.A. Lane)	£30,024 (i)
Stella M.A. Lane	24,000
Leonard A. Fenton	36,000
Lionel B. Wallace	<u>108,048</u>
	<u>£198,072</u>

40

(i) Trustees of the Estate of the late Robert
T. Lane

In the High
Court of
Australia

Each of the said cheques was lodged with the
Bank of the respective payees on 21st December
1949.

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25th May, 1956
- continued.

(1) Donald H. Ross handed to John V. Ratcliffe as director of Pactolus duly completed transfers by each of the holders of A ordinary shares in respect of the whole of his or her holding of A ordinary shares and the share certificates in respect thereof. The said transfers were on 19th December, 1949 produced at Canberra to Leonard A. Fenton one of the directors of Melford who noted the said transfers as being produced to him and thereupon the said transfers and the share certificates were lodged with Stanley R. Phippard the authority of Melford at Canberra who had control of the branch register and he thereupon registered Pactolus as the holder of the said shares in the branch register at Canberra and issued share certificates to Pactolus in respect of the several parcels of shares comprised in the said transfers. 10

(m) A copy of a letter dated 16th December, 1949 from Melford to Pactolus is attached as Annexure 39. 20

Pactolus on 19th December, 1949, lodged with Leonard A. Fenton an application bearing that date for 189,819 preference shares in Melford, a cheque for £189,819 of the same date drawn in favour of Melford, and a request that such shares when allotted should be transferred to the Canberra register. 30

Attached hereto as Annexure 40 is a true copy of the said application and request.

(n) At a meeting of the directors of Melford held at Melbourne at 9.05 a.m. on 20th December 1949 certain dividends were declared upon the A ordinary shares. The resolutions passed by the directors were as follows :-

(a) It was resolved that an interim dividend of £3 per share be declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income profits or 40

amounts in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act 1936-1949.

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Court of
Australia

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Mutual
Admissions
of Fact
25th May, 1956
- continued.

- 10 (b) It was resolved that an interim dividend of £97,200 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.
- 20 (c) It was resolved that an interim dividend of £72,399.3.0 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950 in so far as such profits and taxable income extend, and as to the excess, if any, out of other available profits (not being profits subject to tax under Division 7 of the Income Tax Assessment Act 1936-1949) appropriating the most recently derived of such other available profits.

30 The total dividends declared by the resolutions above set out were at the rate of £23.11.0 per A ordinary share and totalled £194,358.3.0. A cheque for the said £194,358.3.0 dated 20th December, 1949 was drawn by Melford in favour of Pactolus. The said cheque by direction of Pactolus was handed to Donald H. Ross and paid to the credit of the account of Pactolus at the said bank on 21st December, 1949.

- 40 (o) At a further meeting of the directors of Melford held at Melbourne at 9.35 a.m. on 20th December, 1949 the directors resolved pursuant to the application referred to in sub-paragraph (m) above to allot 189,819 preference shares in Melford at par to Pactolus for cash and further resolved that such preference shares be transferred to the Canberra register. The said resolutions were as follows :-

It was resolved that 189,819 preference shares of One pound each be allotted at par to Pactolus Proprietary Limited for cash.

It was resolved that all Preference shares be transferred to the Branch register of members at Canberra.

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- continued

The said cheque for £189,819 drawn by Pactolus in favour of Melford was paid to the credit of the Melford account with the English, Scottish and Australian Bank Ltd., South Melbourne on 21st December, 1949.

(p) On 20th December, 1949 a telegram from Melford to Stanley R. Phippard at Canberra notifying the issue of the preference shares in Melford was sent from Melbourne. Attached hereto as Annexure 41 is a true copy of the said telegram. 10

(q) On 20th December, 1949, Pactolus sold 189,819 preference shares in Melford to the persons holding the B ordinary shares in Melford proportionately to the number of B ordinary shares held at a price of £1 per share. Transfers of the said preference shares were executed by Pactolus and handed to Donald H. Ross in favour of the following:-

Henry J. Lane)			
Stella M.A. Lane)	28,773	shares (i)	20
Stella M.A. Lane	23,000	"	
Leonard A. Fenton	34,500	"	
Lionel B. Wallace	103,546	"	
	<u>189,819</u>	shares	

(i) Trustees of the Estate of the late Robert T. Lane

and the said Donald H. Ross handed to Pactolus in exchange for the said transfers cheques drawn by the said shareholders in Melford in the following amounts :- 30

Henry J. Lane)		
Stella M.A. Lane)	£28,773	(i)
Stella M.A. Lane	23,000	
Leonard A. Fenton	34,500	
Lionel B. Wallace	103,546	
	<u>£189,819</u>	

(i) Trustees of the Estate of the late Robert T. Lane

Each of the said cheques was on 21st December, 1949 lodged to the credit of the account of Pactolus with the South Melbourne branch of the English, Scottish and Australian Bank Ltd. 40

(r) The following table is a summary of the transactions referred to in sub-paragraphs (k) to (q) above :-

1. Transaction	2. Date of Cheque	3. Amount £. s. d	4. Drawn by	5. Drawer's Bank	6. Payable to	7. Payee's Bank	8. Paid into Payee's Bank	9. Debited Drawer's Account
Sale of A Ordinary Shares	19.12.49	30,024. 0.0	Pactolus	E.S.A.,S.M.	{ Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	24,000. 0.0	Pactolus	E.S.A.,S.M.	Stella M.A. Lane	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	36,000. 0.0	Pactolus	E.S.A.,S.M.	Leonard A. Fenton	E.S.A.,S.M.	21.12.49	21.12.49
	19.12.49	108,048. 0.0	Pactolus	E.S.A.,S.M.	Lionel B. Wallace	E.S.A.,S.M.	21.12.49	21.12.49
Issue of Preference Shares	19.12.49	189,819. 0.0	Pactolus	E.S.A.,S.M.	Melford	E.S.A.,S.M.	21.12.49	21.12.49
Dividend on A Ordinary Shares	20.12.49	194,358. 3.0	Melford	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
Sale of Preference Shares	20.12.49	28,773. 0.0	{ Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	23.12.49	23,000. 0.0	Stella M.A. Lane	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	34,500. 0.0	Leonard A. Fenton	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49
	20.12.49	103,546. 0.0	Lionel B. Wallace	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	21.12.49	21.12.49

The cheques drawn by and payable to { Henry J. Lane } were on account of Estate of Robert T. Lane.
{ Stella M.A. Lane }

The cheques drawn by and payable to Lionel B. Wallace were on account of Lionel Newton, Lauri J. Newton and Francie U. Christian.

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Mutual Admissions of Fact 25th May, 1956 - continued.

(s) At a meeting of the directors of Melford held on 22nd March, 1950 an interim dividend of £24,759 was declared out of the company's income in respect of the year ended 30th June, 1950 on the A ordinary shares of the company. This dividend was at the rate of £3 per share and together with the dividend referred to in sub-paragraph (n) above made a total dividend of £26.11.0 on each of the A ordinary shares in Melford thus exhausting the special dividend rights attached to the A ordinary shares by the amendments to the Articles referred to in sub-paragraphs (a) and (d) above. The terms of the resolution declaring this dividend were as follows :-

10

20

It was resolved that an interim dividend of £24,759 be declared payable forthwith in respect of the A ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950.

On 22nd March, 1950 a cheque was drawn by Melford in favour of Pactolus for the said sum of £24,759 and on 23rd March, 1950 the said cheque was paid to the credit of the account of Pactolus with the South Melbourne branch of the English, Scottish and Australian Bank Ltd.

30

(t) On 12th May, 1950 Pactolus sold and transferred the whole of the A ordinary shares held by it in Melford namely 8,253 shares to Pactolus Investments for the amount of £1 per share and the said transfer was entered in the Canberra register of Melford on 2nd June, 1950.

40

(u) On 30th May, 1950, Pactolus Investments transferred the 8,253 A ordinary shares in Melford to Lionel B. Wallace to hold as trustee in trust for Pactolus Investments in pursuance of an Instrument under Seal executed by him and dated 30th May, 1950.

(v) On 28th June, 1950 the directors of Melford declared a dividend at the rate of 5 per cent per annum for the six months ended 30th June, 1950 on 8,253 A ordinary shares. The said dividend was paid by a cheque dated July, 1950 which was paid into the account of Pactolus Investments at the South Melbourne

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branch of the English Scottish and Australian
Bank Ltd. on 5th July, 1950.

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(w) As at 30th June, 1950 the holdings in the B
Ordinary shares and in the preference shares
in Melford were as follows :-

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- continued.

<u>Shareholder</u>	<u>B Ord.</u>	<u>Pref.</u>	
Henry J. Lane) Stella M.A. Lane)	1,251	28,773	(i)
Stella M.A. Lane	1,000	23,000	
Leonard A. Fenton	1,500	34,500	10
Lionel B. Wallace	<u>4,502</u>	<u>103,546</u>	(ii)
	<u>8,253</u>	<u>189,819</u>	

(i) The shares held jointly by Henry J. Lane
and Stella M.A. Lane were held upon the
trusts of the Will of the late Robert T.
Lane.

(ii) The shares held by Lionel B. Wallace were
held by him as trustee in trust for Lionel
Newton, Lauri J. Newton and Francie U.
Christian.

20

During the income year ended 30th June, 1950
no dividends were declared on either the B
ordinary or the preference shares and the
several beneficial owners thereof made their
returns of income to that date on the footing
that they had derived no income in respect of
their interests in the shareholdings in Melford.
True copies of the profit and loss account of
Melford for the year ended 30th June, 1950 and
of its balance sheet as at that date are
attached hereto as Annexure 42 and Annexure 43
respectively.

30

15. Melford

(a) John V. Ratcliffe wrote a letter dated 13th
October, 1950, addressed to Lionel B. Wallace.
Attached hereto as Annexure 44 is a true copy
of the said letter and enclosure.

(b) On 19th October, 1950 Melford by a letter
signed by Leonard A. Fenton Managing Director
applied under the National Security (Capital
Issues) Regulations for consent to issue for

cash at par to the present holders of shares in the company 193,675 shares of £1 each. Attached hereto as Annexure 45 is a true copy of the said letter.

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(c) On 25th October, 1950 the Delegate of the Treasurer consented to the issue by Melford within a period of six months from that date of not more than 193,675 ordinary shares of £1 each for cash.

0 Attached hereto as Annexure 46 is a true copy of the said consent.

(d) A meeting of the directors of Melford was held on 25th October, 1950 at which a dividend was declared on the B ordinary shares. The resolution passed by the directors was in the following terms :-

Resolved that a dividend of £80,000 be declared payable forthwith in respect of the B ordinary shares to the persons entitled thereto, and that such dividend be appropriated wholly and exclusively out of profits upon which the company has paid further tax on undistributed income under the provisions of Section 104 of the Income Tax Assessment Act, 1936, or corresponding provisions of earlier Acts, at present standing in the Tax Paid Profits Account. It was resolved further that such dividend be appropriated firstly out of the earliest of such profits standing in the account.

Pursuant to the said resolution this dividend was paid or credited to the holders of the B ordinary shares as set out in paragraph 14(w) above.

(e) On 29th November, 1950 several meetings were held by the shareholders of Melford.

Separate meetings of the preference shareholders and the B ordinary shareholders authorised an extraordinary general meeting to amend the Articles of Association. Pursuant to the authority so granted the Articles were amended by a special resolution passed at an

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25th May, 1956
- continued.

extraordinary general meeting of the company.

Attached hereto as Annexure 47 is a true copy of the minutes of the separate meeting of the preference shareholders.

Attached hereto as Annexure 48 is a true copy of the minutes of the separate meeting of the B ordinary shareholders.

Attached hereto as Annexure 49 is a true copy of the minutes of the said extraordinary general meeting of the company including the said special resolution.

10

(f) By virtue of the said amendments to the Articles of Association the nominal capital of Melford was divided into -

8,253 A ordinary shares (issued);
383,494 B ordinary shares (189,819 issued);
8,253 C ordinary shares (issued);
400,000 shares of £1 each (206,325 issued);

instead of as previously -

8,253 A ordinary shares (issued);
191,747 B ordinary shares (8,253 issued);
200,000 preference shares (189,819 issued);
400,000 shares of £1 each (206,325 issued);

20

the 8,253 issued B ordinary shares being converted into C ordinary shares and the 189,819 issued preference shares into B ordinary shares.

(g) As a result of the said amendments to the Articles of Association there were no longer any preference shares and the ordinary shareholding in Melford was as follows :-

30

<u>Shareholder</u>	<u>A</u> <u>Shares</u>	<u>B</u> <u>Shares</u>	<u>C</u> <u>Shares</u>
Henry J. Lane)			
Stella M.A. Lane)	-	28,773	1,251 (i)
Stella M.A. Lane	-	23,000	1,000
Leonard A. Fenton	-	34,500	1,500
Lionel B. Wallace	8,253	103,546	4,502 (ii)
	<u>8,253</u>	<u>189,819</u>	<u>8,253</u>

(i) The shares held jointly by Henry J. Lane and Stella M.A. Lane were held upon the trusts of the Will of the late Robert T. Lane.

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(ii) The shares held by Lionel B. Wallace were held by him as trustee in trust as follows :-

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A shares for Pactolus Investments.

B and C shares for Lionel Newton, Lauri J. Newton and Francie U. Christian.

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Admissions
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25th May, 1956
- continued.

(h) By virtue of the said amendments to the Articles of Association the following rights were attached to the C ordinary shares (subject to the rights of the holders of A shares) -

(i) A right to the whole of the dividends declared by the company on or after 29th November 1950 until the dividends reach a total of not less than £26.11.0 in respect of each share of which not less than £3 per share was to be out of income entitled to rebate under Section 107 but save as in (ii) no other right to participation in the profits.

(ii) A fixed cumulative preferential dividend of 5% per annum as from 1st January, 1951.

(iii) The same rights as to voting as other shares until the dividends referred to in (i) were paid and thereafter only when the dividends are in arrears or with regard to the reduction of capital winding up or any proposal affecting the rights of the C ordinary shares.

(i) A meeting of the directors of Melford was held at Melbourne on 30th November, 1950 at which the following resolutions were passed:-

It was resolved that Certificates representing 8,253 Shares, previously known as "B" Ordinary Shares, be hereby cancelled.

It was resolved that Certificates for the issue of 8,253 "C" Ordinary Shares are hereby authorised.

It was resolved that the 8,253 "C" Ordinary shares be transferred to the Canberra

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Register in accordance with requests from
Shareholders.

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(j) The holders of the 8,253 former B ordinary shares in the capital of Melford handed in their scrip to the directors and received in exchange scrip in respect of C ordinary shares into which their B ordinary shares had been converted as set out in sub-paragraph (g) above, and the holders of the former preference shares handed in their scrip for the same and received scrip in exchange in respect of B ordinary shares. 10

(k) On 30th November, 1950, each of the shareholders holding C ordinary shares in Melford by an Instrument under Seal granted to Pactolus an option to be exercisable by notice in writing on or before 31st December, 1950 to purchase his or her C ordinary shares in Melford at the price of £24 per share payable within 24 hours of the option being exercised. Each of the said shareholders appointed William S. Bennett, Secretary of Melford, to be his (or her) agent to receive the purchase price and complete the transfers and deliver the share certificates. Each of the options was in identical form (save as to the number of shares and other appropriate changes). 20

Attached hereto as Annexure 50 is a true copy of each of the said options in respect of the C ordinary shares. 30

By these documents the following options were granted to Pactolus in respect of the number of shares and at the price set out below :-

<u>Shareholder</u>	<u>C Shares</u>	<u>Price at £24</u>	
Henry J. Lane)			
Stella M.A. Lane)	1,251	£30,024	(i)
Stella M.A. Lane	1,000	24,000	
Leonard A. Fenton	1,500	36,000	
Lionel B. Wallace	<u>4,502</u>	<u>108,048</u>	
	<u>8,253</u>	<u>£198,072</u>	40

(i) Trustees of the Estate of the late Robert T. Lane.

(1) On 4th December, 1950 Pactolus exercised the options referred to in sub-paragraph (k) above to purchase the whole of the C ordinary shares in Melford at a price of £24 per share. The said options were exercised by John V. Ratcliffe endorsing on each of the said Instruments under Seal the following notation:-

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10 "Pactolus Pty. Ltd. hereby exercises this
 option
 December 4, 1950 Pactolus Pty. Ltd.
 (Sgd.) J.V. Ratcliffe, Director"

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25th May, 1956
- continued.

John V. Ratcliffe then handed to William S. Bennett cheques dated 4th December, 1950, drawn by Pactolus on the English, Scottish and Australian Bank Ltd., South Melbourne, as follows :-

	Henry J. Lane)		
	Stella M.A. Lane)	£30,024	(i)
	Stella M.A. Lane	24,000	
20	Leonard A. Fenton	36,000	
	Lionel B. Wallace	<u>108,048</u>	
		<u>£198,072</u>	

(i) Trustees of the Estate of the late
Robert T. Lane

Each of the said cheques was lodged with the Bank of the respective payees on 6th December, 1950.

30 (m) William S. Bennett handed to John V. Ratcliffe as director of Pactolus duly completed transfers by each of the holders of C ordinary shares and the share certificates in respect thereof. The said transfers were on 4th December, 1950 produced at Canberra to Leonard A. Fenton one of the directors of Melford who noted the said transfers as being produced to him and thereupon the said transfers and the

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share certificates were lodged with Stanley R. Phippard the authority of Melford at Canberra who had control of the Branch Register and he thereupon registered Pactolus as the holder of the said shares in the Branch Register at Canberra and issued share certificates to Pactolus in respect of the several parcels of shares comprised in the said transfers.

A true copy of each of the said transfers is attached hereto as Annexure 51.

10

(n) At a meeting of the directors of Melford held at Melbourne on 5th December, 1950 certain dividends were declared upon the C ordinary shares. The resolutions passed by the directors were as follows :-

Resolved that an interim dividend of £156,807 being at the rate of £19 per share be declared payable forthwith in respect of the "C" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended on the 30th June, 1950.

20

Resolved that an interim dividend of £24,759 being at the rate of £3 per share be declared payable forthwith in respect of the "C" ordinary shares to the persons entitled thereto, and such dividend be appropriated wholly and exclusively out of such income, profits or amounts in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act 1936-1949.

30

The total dividends declared by the resolutions above set out were at the rate of £22 per C ordinary share and totalled £181,566. A cheque for the said £181,566 dated 5th December, 1950 was drawn by Melford in favour of Pactolus. The said cheque was paid to the credit of the account of Pactolus with the South Melbourne branch of

40

the English, Scottish and Australian Bank Ltd.
on 6th December, 1950.

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(o) On 5th December, 1950 Pactolus transferred the C ordinary shares in Melford to Lionel B. Wallace to hold as trustee in trust for Pactolus in pursuance of an Instrument under Seal executed by him and dated 1st December, 1950.

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10 (p) At a further meeting of the directors of Melford held at Melbourne on 5th December, 1950, the directors resolved, pursuant to applications received from the B ordinary shareholders, to allot 189,819 B ordinary shares of £1 each in Melford at par on a share for share basis to the following shareholders :-

	Henry J. Lane)		
	Stella M.A. Lane)	28,773 shares (i)	
	Stella M.A. Lane	23,000	"
20	Leonard A. Fenton	34,500	"
	Lionel B. Wallace	<u>103,546</u>	"
		189,819 shares	

(i) Trustees of the Estate of the late Robert T. Lane.

Attached hereto as Annexure 52 are true copies of the said applications.

30 The amounts due on application and allotment of the 189,819 B ordinary shares were paid by cheques drawn by B shareholders in favour of Melford in the following amounts:-

	Henry J. Lane)		
	Stella M.A. Lane)	£28,773 (i)	
	Stella M.A. Lane	23,000	
	Leonard A. Fenton	34,500	
	Lionel B. Wallace	<u>103,546</u>	
		<u>£189,819</u>	

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(1) Trustees of the Estate of the late
Robert T. Lane.

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The cheques were paid into the account of
Melford on 6th December, 1950.

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(q) The following table is a summary of the
transactions referred to in sub-paragraphs
(1) to (p) above :-

	5.	6.	7.	8.	9.
	Drawer's Bank	Payable to	Payee's Bank	Paid into Payee's Bank	Debited Drawer's Account
	E.S.A.,S.M.	(Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	6.12.50	6.12.50
	E.S.A.,S.M.	Stella M.A. Lane	E.S.A.,S.M.	6.12.50	6.12.50
	E.S.A.,S.M.	Leonard A. Fenton	E.S.A.,S.M.	6.12.50	6.12.50
	E.S.A.,S.M.	Lionel B. Wallace	E.S.A.,S.M.	6.12.50	6.12.50
	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	6.12.50	6.12.50
ane	E.S.A.,S.M.	Melford	E.S.A.,S.M.	6.12.50	6.12.50
ane	E.S.A.,S.M.	Melford	E.S.A.,S.M.	6.12.50	6.12.50
nton	E.S.A.,S.M.	Melford	E.S.A.,S.M.	6.12.50	6.12.50
llace	E.S.A.,S.M.	Melford	E.S.A.,S.M.	6.12.50	6.12.50

) were on account of Estate of Robert T. Lane.

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(r) At a meeting of the directors of Melford held on 30th January, 1951 an interim dividend of £37,551.3.0 was declared out of the company's income in respect of year ended 30th June, 1951 on the C ordinary shares of the company. This dividend was at the rate of £4.11.0 per share and together with the dividend referred to in sub-paragraph (n) above made a total dividend of £26.11.0 on each of the C ordinary shares in Melford thus exhausting the special dividend rights attached to the C ordinary shares by the amendments to the Articles referred to in sub-paragraphs (e) and (h) above.

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The terms of the resolution declaring this dividend were as follows :-

That an interim dividend of £37,551.3.0 being at the rate of £4.11.0 per share be declared payable forthwith in respect of the "C" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of the taxable income forming part of the profits of the year ending on 30th June, 1951.

A cheque was drawn by Melford in payment of the dividend of £37,551.3.0 and the cheque was credited to the account of Pactolus with the South Melbourne Branch of the English, Scottish and Australian Bank Ltd. on 2nd February, 1951.

(s) As at 30th June, 1951 the B ordinary shareholding in Melford was as follows :-

Henry J. Lane)			
Stella M.A. Lane)	57,546 shares (i)		
Stella M.A. Lane	46,000 "		
Leonard A. Fenton	69,000 "		
Lionel B. Wallace	<u>207,092</u> "	(ii)	
	<u>379,638</u> shares		

(i) The shares held jointly by Henry J. Lane and Stella M.A. Lane were held upon the trusts of the Will of the late Robert T. Lane.

(ii) The B ordinary shares held by Lionel B. Wallace were held by him as trustee

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in trust for Lionel Newton, Lauri J.
Newton and Francie U. Christian.

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The beneficial owners of the B ordinary shares made their returns on the footing that the only dividends received by them during the income year ended 30th June 1951 from their interests in the shareholding in Melford were the dividends referred to in sub-paragraph (d) above declared on 25th October 1950.

True copies of the profit and loss account of Melford for the year ended 30th June, 1951 and of its balance sheet as at that date are attached hereto as Annexure 53 and Annexure 54 respectively.

10

16. Neals

- (a) John V. Ratcliffe wrote a letter dated 23rd April, 1951 addressed to Henry J. Lane.

Attached hereto as Annexure 55 is a true copy of the said letter and the schedule referred to therein.

20

Allcars Pty. Ltd. was incorporated on the 24th day of September 1927 under the Companies Acts of Victoria. Only three shares in the capital of Allcars Pty. Ltd. had been issued: two shares were held by Neals and the third share was held by Lionel B. Wallace as trustee in trust for Henry J. Lane (50%) Estate Robert T. Lane (34%), Estate Robert Nathan (8%) and Lionel Newton (8%).

The directors of Allcars Pty. Ltd. were Lionel Newton, Lauri J. Newton, Henry J. Lane and Percy Rogers.

30

- (b) On 12th June, 1951, several meetings were held by the shareholders of Neals. Separate meetings of the B preference shareholders and the B ordinary shareholders authorised an extraordinary general meeting to amend the Articles of Association. Pursuant to the authority so granted the Articles were amended by a special resolution passed at an extraordinary general meeting of the company.

40

Attached hereto as Annexure 56 is a true copy

of the minutes of the separate meeting of the B preference shareholders.

Attached hereto as Annexure 57 is a true copy of the minutes of the separate meeting of the B ordinary shareholders.

Attached hereto as Annexure 58 is a true copy of the minutes of the said extraordinary general meeting of the company including the said special resolution

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10 (c) By virtue of the said amendments to the Articles of Association the nominal capital of Neals was divided into -

36,444 A ordinary shares (issued);
184,400 B ordinary shares (43,732 issued);
29,156 C ordinary shares (issued);
5,000 A preference shares (issued);
495,000 B preference shares (403,314 issued);
750,000 shares of £1 each (517,646 issued);

20 29,156 of the issued B ordinary shares being converted into C ordinary shares in such manner that (ignoring fractions) for each five B ordinary shares held by each shareholder that shareholder now held three B ordinary shares and two C ordinary shares.

(d) As a result of the said amendments to the Articles of Association the Ordinary shareholding in Neals was as follows :-

	<u>Shareholder</u>	<u>A</u> <u>Shares</u>	<u>B</u> <u>Shares</u>	<u>C</u> <u>Shares</u>
30	Frederic E. Bunny) Lionel Newton) Lauri J. Newton)	-	(i) 14,760	(ii) 9,840
	Henry J. Lane) Stella M.A. Lane)	-	(iii) 3,280	(iv) 2,187
	Lauri J. Newton) Lionel Newton) Francie U.Christian)	-	(v) 2,971	(vi) 1,980
40	Lauri J. Newton) Lionel Newton) Francie U.Christian)	-	(vii) 2,947	(viii) 1,965

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<u>Shareholder</u>	<u>A Shares</u>	<u>B Shares</u>	<u>C Shares</u>
Lionel Newton	-	2,947	1,965
Lauri J. Newton	-	2,947	1,965
Francie U. Christian	-	2,947	1,965
Henry J. Lane	-	10,933	7,289
Pactolus Investments	36,444	-	-
	36,444	43,732	29,156

(i) and (ii) held by Frederic E. Bunny, Lionel Newton and Lauri J. Newton as trustees in trust for the Estate of Robert Nathan (deceased 26th June, 1950) the income thereof being income to which no person was presently entitled at any time material. 10

(iii) and (iv) Trustees of the Estate of the late Robert T. Lane.

(v) and (vi) Trustees of the Estate of the late Joseph Nathan.

(vii) and (viii) Trustees of the Estate of the late Catherine M. Nathan. 20

(e) By virtue of the said amendments to the Articles of Association the following rights were attached to the C ordinary shares (subject to the rights of the holders of A shares) -

(i) A right to the whole of the dividends declared by the company on or after 12th June, 1951 until the dividends reach a total of not less than £13.1.6 in respect of each share of which not less than 12/11d per share was to be out of income entitled to rebate under Section 107 but save as in (ii) no other right to participation in the profits. 30

(ii) A fixed cumulative preferential dividend of 5% per annum as from 1st July 1951.

(iii) The same rights as to voting as other shares until the dividends referred to in

(i) were paid and thereafter only when the dividends are in arrears or with regard to the reduction of capital winding up or any proposal affecting the rights of the C ordinary shares.

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10 (f) On 21st June, 1951 each of the shareholders holding C ordinary shares in Neals by an Instru-
ment under Seal granted to Pactolus an option to be exercisable by notice in writing on or before 30th June, 1951 to purchase his or her C ordinary shares in Neals at the price of £12.3.0 per share payable within 24 hours of the option being exercised. Each of the said shareholders appointed Harold Carr, Secretary of Neals to be his (or her) agent to receive the purchase price and complete the transfers and deliver the share certificates. Each of the options was in identical form (save as to the number of shares and other appropriate changes).

20

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- continued.

Attached hereto as Annexure 59 is a true copy of each of the said options in respect of the C ordinary shares. By these documents the following options were granted to Pactolus in respect of the number of shares and at the price set out below:-

	<u>Shareholder</u>	<u>C Shares</u>	<u>Price at £12.3.0</u>
30	Frederic E. Bunny) Lionel Newton) (i) Lauri J. Newton)	9,840	£119,556. 0. 0
	Henry J. Lane) (ii) Stella M.A. Lane)	2,187	26,572. 1. 0
	Lauri J. Newton) Lionel Newton) Francie U.) (iii) Christian)	1,980	24,057. 0. 0
40	Lauri J. Newton) Lionel Newton) Francie U.) (iv) Christian)	1,965	23,874.15. 0
	Lionel Newton	1,965	23,874.15. 0
	Lauri J. Newton	1,965	23,874.15. 0
	Francie U. Christian	1,965	23,874.15. 0
	Henry J. Lane	7,289	88,561. 7. 0
		<u>29,156</u>	<u>£354,245. 8. 0</u>

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- (i) Trustees of the Estate of the late Robert Nathan
- (ii) Trustees of the Estate of the late Robert T. Lane
- (iii) Trustees of the Estate of the late Joseph Nathan
- (iv) Trustees of the Estate of the late Catharine M. Nathan
- (g) The subsidiary companies referred to in the letter mentioned in sub-paragraph (a) at meetings held on 22nd June, 1951, declared dividends which were paid or credited the same day as follows :- 10
- Devon Motors Pty. Ltd. declared dividends totalling £86,680 including a dividend of £8,680 non-taxable by virtue of Section 107 of the Income Tax and Social Services Contribution Assessment Act 1936-1950 and the said £86,680 reached Neals through Overland (Victoria) Pty. Ltd. referred to in paragraph 7 above which passed on the dividends forthwith. 20
- Allcars Pty. Ltd. declared dividends totalling £18,812 non-taxable by virtue of the said section 107, of which £12,541.6.6 was payable to Neals in respect of its two-thirds interest.
- (h) A meeting of the directors of Neals was held at Melbourne on 22nd June, 1951 at which the following resolutions were passed :- 30
- It was resolved that all scrip for "B" ordinary shares held prior to the Twelfth day of June 1951 be called in for cancellation, and to be cancelled when and as received, and that scrip for 43,732 "B" Ordinary shares, with the Company's Seal affixed, be issued to the Shareholder's entitled thereto.
- Resolved that all "C" Ordinary shares be transferred to the Branch Register of Members at Canberra. 40

(i) The holders of the 72,888 issued B Ordinary shares in the capital of Neals handed in their scrip to the directors and received in exchange scrip in respect of 43,732 B Ordinary shares and 29,156 C ordinary shares into which 29,156 B ordinary shares had been converted as set out in sub-paragraphs (c) and (d) above. The C ordinary shares were transferred to the Canberra register of the Company.

In the High
Court of
Australia

No. 51

Mutual
Admissions
of Fact
25th May, 1956
- continued.

10 (j) On 25th June 1951, Pactolus exercised the options referred to in sub-paragraph (f) above to purchase the whole of the C ordinary shares in Neals at a price of £12.3.0 per share. The said options were exercised by John V. Ratcliffe endorsing on each of the said Instruments under Seal the following notation:-

20 "Option exercised
Pactolus Pty. Ltd.
(Sgd.) J.V. Ratcliffe, Director
25/6/1951"

John V. Ratcliffe then handed to Harold Carr cheques dated 25th June, 1951, drawn by Pactolus on the English, Scottish and Australian Bank Ltd., South Melbourne, as follows :-

Frederic E. Bunny	}	(i)	£119,556. 0.0
Lionel Newton			
Lauri J. Newton			

Henry J. Lane	}	(ii)	26,572. 1.0
Stella M.A. Lane			

30

Lauri J. Newton	}	(iii)	24,057. 0.0
Lionel Newton			
Francie U. Christian			

Lauri J. Newton	}	(iv)	23,874.15.0
Lionel Newton			
Francie U. Christian			

Lionel Newton	23,874.15.0
---------------	-------------

Lauri J. Newton	23,874.15.0
-----------------	-------------

Francie U. Christian	23,874.15.0
----------------------	-------------

Henry J. Lane	88,561. 7.0
---------------	-------------

40

	<u>88,561. 7.0</u>
	<u>£354,245. 8.0</u>

In the High
Court of
Australia

No.51

Mutual
Admissions
of Fact
25th May, 1956
- continued.

- (i) Trustees of the Estate of the late Robert Nathan
- (ii) Trustees of the Estate of the late Robert T. Lane
- (iii) Trustees of the Estate of the late Joseph Nathan
- (iv) Trustees of the Estate of the late Catherine M. Nathan.

Each of the said cheques was lodged with the Bank of the respective shareholders on 27th June, 1951, except for two cheques lodged as follows :-

10

Henry J. Lane 29th June 1951

Henry J. Lane)
Stella M.A. Lane) 2nd July 1951 (1)

- (1) Trustees of the Estate of the late Robert T. Lane.

- (k) Harold Carr handed to John V. Ratcliffe as Director of Pactolus duly completed transfers by each of the holders of C ordinary shares and the share certificates in respect thereof. The said transfers were on 25th June 1951 produced at Canberra to Lauri J. Newton one of the directors of Neals who noted the said transfers as being produced to him and thereupon the said transfers and the share certificates were lodged with Stanley R. Phippard the authority of Neals at Canberra who had control of the Branch Register and he thereupon registered Pactolus as the holder of the said shares in the Branch Register at Canberra and issued share certificates to Pactolus in respect of the several parcels of shares comprised in the said transfers.

20

30

A true copy of each of the said transfers is attached hereto as Annexure 60.

- (1) At a meeting of the directors of Neals held

at Melbourne on 25th June, 1951 at 4.00 p.m. certain dividends were declared upon the said C ordinary shares. The resolutions passed by the directors in declaring the dividends were as follows :-

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10 Resolved that an interim Dividend of 14/6d. per share be declared payable forthwith, in respect of the 29,156 "C" Ordinary Shares of the Company to the persons entitled thereto, and that such Dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts in respect of which the recipients are entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act 1936-1950.

Mutual
Admissions
of Fact
25th May, 1956
- continued.

20 Resolved that an Interim Dividend of £12.7.0 per Share be declared payable forthwith in respect of the 29,156 "C" Ordinary Shares of the Company to the persons entitled thereto, and that such Dividend be appropriated out of the profits forming part of the taxable income of the year ending on the 30th June, 1951.

30 The total dividends declared by the resolutions above set out were at the rate of £13.1.6. per C ordinary share and totalled £381,214.14.0. These dividends thus exhausted the special dividend rights attached to the C ordinary shares by the amendments to the Articles of Association referred to in sub-paragraphs (b) and (e) above. Two cheques making up the said £381,214.14.0 dated 25th June, 1951 were drawn by Neals in favour of Pactolus and the said cheques were paid to the credit of the account of Pactolus with the South Melbourne branch of the English Scottish and Australian Bank Ltd. on 27th
40 June, 1951.

(m) The following table is a summary of the transactions referred to in sub-paragraphs (j) to (l) above :-

1.	2.	3.	4.	5.	6.	7.	8.	9.	
Transaction	Date of Cheque	Amount £. s. d	Drawn by	Drawer's Bank	Payable to	Payee's Bank	Paid into Payee's Bank	Debited Drawer's Account	
Sale of C Ordinary Shares	25. 6.51	119,556. 0.0	Pactolus	E.S.A.,S.M.	{Frederic E. Bunny Lionel Newton Lauri J. Newton	E.S.A.,S.M.	27. 6.51	27. 6.51	
	25. 6.51	26,572. 1.0	Pactolus	E.S.A.,S.M.	{Henry J. Lane Stella M.A. Lane	E.S.A.,S.M.	2. 7.51	2. 7.51	
	25. 6.51	(a)24,057. 0.0	Pactolus	E.S.A.,S.M.	{Lauri J. Newton Lionel Newton	E.S.A.,S.M.	27. 6.51	27. 6.51	
	25. 6.51	(b)23,874.15.0	Pactolus	E.S.A.,S.M.	{Francie U.Christian	E.S.A.,S.M.	27. 6.51	27. 6.51	
	25. 6.51	23,874.15.0	Pactolus	E.S.A.,S.M.	Lionel Newton	E.S.A.,S.M.	27. 6.51	27. 6.51	
	25. 6.51	23,874.15.0	Pactolus	E.S.A.,S.M.	Lauri J. Newton	E.S.A.,S.M.	27. 6.51	27. 6.51	
	25. 6.51	23,874.15.0	Pactolus	E.S.A.,S.M.	Francie U.Christian	E.S.A.,S.M.	27. 6.51	27. 6.51	
	25. 6.51	88,561. 7.0	Pactolus	E.S.A.,S.M.	Henry J. Lane	E.S.A.,S.M.	29. 6.51	29. 6.51	
	Dividend on C Ordinary Shares	25. 6.51	360,076.12.0	Neals	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	27. 6.51	27. 6.51
		25. 6.51	21,138. 2.0	Neals	E.S.A.,S.M.	Pactolus	E.S.A.,S.M.	27. 6.51	27. 6.51

20 The cheque payable to {Frederic E. Bunny } was on account of Estate of Robert Nathan
{Lionel Newton }
{Lauri J. Newton }

The cheque payable to {Henry J. Lane } was on account of Estate of Robert T. Lane
{Stella M.A. Lane }

The cheques payable to {Lauri J. Newton } were on account of {Estate of Joseph Nathan (a)}
{Lionel Newton } {Estate of Catherine M. Nathan (b)}
{Francie U. Christian }

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Mutual
Admissions
of Fact
25th May, 1956
- continued.

(n) On 26th June, 1951, Pactolus sold and transferred the 29,156 C ordinary shares to Pactolus Investments for the amount of £1 per share. A cheque for £29,156 in payment for the shares was debited and credited to the respective accounts of Pactolus Investments and Pactolus at the English, Scottish and Australian Bank Ltd., South Melbourne on 28th June, 1951.

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Court of
Australia

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Mutual
Admissions
of Fact
25th May, 1956
- continued.

10 (o) As at 30th June 1951 the holdings in the B ordinary shares in Neals were as follows :-

Frederic E. Bunny)		
Lionel Newton)		
Lauri J. Newton)	14,760 shares (i)	
Henry J. Lane)		
Stella M.A. Lane)	3,280 "	(ii)
Lauri J. Newton)		
Lionel Newton)		
Francie U. Christian)	2,971 "	(iii)
Lauri J. Newton)		
Lionel Newton)		
Francie U. Christian)	2,947 "	(iv)
Lionel Newton		2,947 "	
Lauri J. Newton		2,947 "	
Francie U. Christian		2,947 "	
Henry J. Lane		<u>10,933</u> "	
		43,732 shares	

20

30

(i) Held by Frederic E. Bunny, Lionel Newton and Lauri J. Newton as trustees in trust for the Estate of Robert Nathan (deceased 26th June, 1950) the income thereof being income to which no person was presently entitled at any time material.

(ii) Trustees of the Estate of the late Robert T. Lane.

(iii) Trustees of the Estate of the late Joseph Nathan.

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Mutual
Admissions
of Fact
25th May, 1956
- continued.

(iv) Trustees of the Estate of the late Cath-
erine M. Nathan.

During the income year ended 30th June, 1951
no dividends were declared on the B ordinary
shares nor on the B preference shares held by
the same shareholders as set out in paragraph
13 (v) above and the several shareholders
made their returns of income to that date on
the footing that they had derived no income
from their shareholdings in Neals.

10

True copies of the profit and loss account of
Neals for the year ended 30th June 1951 and
of its balance sheet as at that date are
attached hereto as Annexure 61 and Annexure
62 respectively.

DATED the 25th day of May 1956.

(sgd.) CORR & CORR.

Solicitors for the Appellants.

(sgd.) H. E. RENFREE.

Crown Solicitor for the
Commonwealth and Solicitor
for the Respondent.

20

No.52

TRANSCRIPT OF SHORTHAND NOTES OF
EVIDENCE TAKEN BEFORE HIS HONOUR
MR. JUSTICE KITTO.

In the High
Court of
Australia

No.52

EVIDENCE of JOHN VINCENT RATCLIFFE

Transcript of
Shorthand Notes
of Evidence
taken before
His Honour
Mr. Justice
Kitto.

MR. MACFARLANE: Mr. Ratcliffe.

JOHN VINCENT RATCLIFFE, sworn:

Evidence of
John Vincent
Ratcliffe,
Examination.

MR. MACFARLANE: Your full names are John
Vincent Ratcliffe, and where do you live? ---
10 In Stuart Street, Longueville, New South Wales.

You are a Chartered Accountant carrying on
your own business in the A.P.A. Building, Martin
Place, Sydney; is that correct? --- Yes.

Prior to commencing business on your own
account, I think that for a number of years, end-
ing in 1931, you were an officer in the Taxation
Department of the State of New South Wales? ---
Yes.

I think you attained to the position of Assis-
20 tant Commissioner? --- Of the State Government,
yes.

In 1931 you left the Department to become a
member of the firm of Smith Johnson & Company,
Chartered Accountants, in Sydney; is that right?
--- That is so.

You remained with them as a partner until
1941? --- Yes, that is so.

When you commenced business on your own
account; is that right? --- Yes. I commenced
30 business as a Consulting Accountant.

I think you are now a Fellow of the Chartered
Institute of Accountants; is that so? --- Yes,
I am.

You became a Member of that Chartered Insti-
tute at or about the time that you commenced prac-
tice as a partner with Smith Johnson & Company?
--- Yes, several years after I joined the part-
nership.

In the High
Court of
Australia

Of course, in the practice which you have been carrying on since 1941, you have practised as a Consulting Accountant? --- Yes.

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Transcript of
Shorthand Notes
of Evidence
taken before
His Honour
Mr. Justice
Kitto.-

What classes of matters do you handle and advise upon as such consultant accountant? --- My practice is divided into two sections in the office: one is a taxation practice which I have carried on under a managing clerk; the other section is an audit and accounting practice which is also under a managing clerk. I carry on the consulting work, and, of course, that has a great deal to do with companies. 10

Evidence of
John Vincent
Ratcliffe,
Examination -
continued.

In that sphere, practically the whole of my time or the greater part of my time is devoted to reconstruction of companies, the amalgamation of companies, fusion of the interests in companies, re-capitalisation of companies, the arrangement of debenture issues, the raising of issues of unsecured loan stock, raising very large mortgages, I have acted and negotiated sales to very large blocks of shares in companies. I have negotiated the taking over and control of companies, and at the present time I have commenced on a very large re-construction and amalgamation. 20

I see? --- Of course, apart from that I am a director of a number of very large public companies, mainly because of financial knowledge.

And those activities that you have been describing, Mr. Ratcliffe, have they been your activities at least since 1941 when you commenced business on your own account? --- Yes, Mr. Macfarlan. 30

And I take it before that too? --- Yes, but not to the same extent because the work in the former was more divided. I would like to say as an introduction there that it was in the course of the conversion to public companies that this matter cropped up. Mr. Lauri Newton and Mr. Lionel Newton were on a Board of Directors with me and they asked me to give them a report on the firm of Maples of which they were partners and I think it was that report which impressed these gentlemen, and because of the nature of the survey of that business they suggested to Mr. Harry Lane that I should be called in in connection with these motor companies. 40

That business where you had met the Newtons

and Mr. Lane, I think you said that was a Sydney business, that you met them at board meetings in Sydney? --- Yes, that was a large Sydney public company.

In the High
Court of
Australia

I just want to ask you this, Mr. Ratcliffe: before 1949 how long had you known the Newtons or Mr. Lane and Mr. Fenton? --- I should say since shortly after the war ceased when they came into that particular company we are referring to.

No.52

10 It is Bebarfeld's Ltd. in Sydney? --- Yes, Bebarfeld's Ltd., a furniture company in Sydney.

Transcript of
Shorthand Notes
of Evidence
taken before
His Honour
Mr. Justice
Kitto.

I suppose you met them on and off from the end of the war onwards until 1949? --- Yes, at least every month.

Evidence of
John Vincent
Ratcliffe,
Examination -
continued.

20 Until this time shortly after Mr. Lauri Newton and Mr. Lionel Newton had spoken to you about Maples, did you have any knowledge of the affairs of these three motor companies: Neals, Melfords, or Lane's? --- No, I have never seen their accounts and although I knew these gentlemen were interested in these companies I did not know anything about their standing, other than that they were substantial concerns.

30 Would you tell His Honour, Mr. Ratcliffe, please, who it was who first saw you about these motor companies? --- I was in Melbourne in the first week of June in 1949 and I attended here various board meetings including one of Bebarfeld's which was held in the I.A.C. Board room and I think at the close of that meeting I was asked by one of the Newton brothers - I forget which one - would I see Mr. Harry Lane, and to have a talk to him about the capital of their other companies.

40 I agreed to see Mr. Lane whom I knew, of course, and I cannot remember whether I went around to his office at Lane's or where it took place but he told me there that their capital was very low and they felt that it should be looked into. He may have made some reference to public companies but I would not be sure about that and the upshot of that - I think it was a very brief conversation - was that I said, "Of course I will have to see your accounts and examine them and get familiar with the affairs of the company before I could do very much" and I think Mr. Lane said, "The current year is very near closed" and we arranged that when he had some draft accounts up to the 30th June, 1949 that he would send those up to me in Sydney.

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He did that and he said he would also send me some notes which would help me in understanding these accounts, and something general about the business affairs.

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Transcript of
Shorthand Notes
of Evidence
taken before
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Mr. Justice
Kitto.

Do you remember if Mr. Lane brought you those draft accounts or if he sent them to you? --- No, Mr. Lane posted those to me. Perhaps I am not quite correct in saying Mr. Lane posted them but Mr. Lane arranged with the secretaries of the companies to post them to me as they were ready and he sent his notes out and they came up, I think, not all together, probably separately. 10

Evidence of
John Vincent
Ratcliffe,
Examination -
continued.

Did you have an opportunity to look at those accounts, Mr. Ratcliffe? --- Yes, I examined those accounts in a fair amount of detail. I examined the assets and the liabilities and the Profit and Loss Account but mainly, of course, the balance sheets. Mr. Lane had given me some brief history of the preceding years but, of course, the main matters depended on the balance sheet at the 30th June, 1949. 20

Can you remember what brief history of the previous years Mr. Lane gave you? Was that something he told you? --- I find it very difficult to recall that particular part now because nothing very much turned on that.

Would you tell his Honour, Mr. Ratcliffe, please, of the observations you made, or views you formed, from consideration of those balance sheets and other accounts that were sent up to you? 30

MR. TAIT: Were these communicated observations or internal ones?

MR. MACFARLAN: I am certainly asking about internal ones. I acknowledge the point my learned friend Mr. Tait puts but I have to take the matters step by step. I think I will satisfactorily link this aspect up, Your Honour. (To Witness): Mr. Ratcliffe, my question was: what opinions or views did you form on those balance sheets and other accounts which had been handed to you? --- I had a look at the paid up capital of each company. I then looked down the balance sheet to see what other funds they had. There were certain undistributed profits in the Lane and Neals but my recollection is that they were not very large. In Lane's and Neals there were what you would call "family deposits". Those deposits by those particular family shareholders were roughly, I think in 40

each case, about £100,000. There were other deposits of probably £100,000 but they were from two subsidiaries so would be a wash-out in considering this problem. Of course, family deposits could be a weakness in the financial structure of the company, particularly if you converted it to a public company. You would have to make some provision about a matter like that and, of course, that is a matter I had to turn over in my mind to some extent. In Lane's the paid-up capital was about £240,000. I think there was some preference capital, £5,000 in each company. There was £5,000 preference in Neals and about £109,000 ordinary capital and in the Melford company there was about £16,500 of paid-up capital and in that company, of course, there was a substantial amount of what they call, "tax paid reserves" which, of course, have a special value if the company is converted, or, at that time, anyway, the company was converted to a public company.

In the High Court of Australia

No.52

Transcript of Shorthand Notes of Evidence taken before His Honour Mr. Justice Kitto.

Evidence of John Vincent Ratcliffe, Examination - continued.

Did you form at that time any opinions as to the capital structure of these companies? --- Yes, I thought it was obvious; to any accountant it would be obvious; that the paid-up capital was far too low - £240,000 in Lane's, with the assets and business that the company had was a very low capital. In Neal's, of course, it was even worse because the ordinary capital there was only £109,000, and that company had a subsidiary company - or I might say a sub-subsidiary, Devon Motors, and that company's capital, from recollection, was about 5,000 preference and 10,000 ordinary - and that company had a substantial business.

And what about Melford's? --- They had no subsidiaries, of course. They had roughly £200,000 undistributed profits and £16,500 of paid-up capital.

When you said it would be obvious to any accountant that they were under-capitalised, those three companies, why would you say that they were under-capitalised? --- In my view the company's paid-up capital should have a fair relation to the magnitude of its assets and its requirements for funds should be in the form of permanent capital. For example, if you need bank accommodation, the bank would first look at the paid-up capital. It would regard as a weakness in the financial structure if a company were dependant on undistributed profits, or if it were dependant upon directors' deposits or family deposits. That would

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Transcript of
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of Evidence
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Evidence of
John Vincent
Ratcliffe,
Examination -
continued.

be a considerable weakness.

Well now, did you see Mr. Harry Lane, and did you discuss any of the opinions that you had formed with him? --- Yes, I think I would have seen Mr. Lane in the middle of July because he probably came to Sydney in that month. But no great conversations would have taken place there because I was not in possession of very much information. I think that the first time that any discussions could have taken place to any extent would have been about the middle of August because I think the accounts would have come along - not before the end of July, but somewhere about that time.

10

Do you think you saw Mr. Lane some time in August? --- Yes, I think I would have seen him in Sydney some time in August.

And Mr. Newton too? --- I think it was almost certain that I would have seen Mr. Newton.

Mr. Lauri Newton? --- Both Mr. Newtons are on the Board, but I think Mr. Lionel Newton was abroad, so it would have been Mr. Lauri Newton, and Mr. Lane.

Do you remember having any discussions with Mr. Lane and/or Mr. Newton about these matters of the three motor companies in August? --- I think at that meeting I gained a fair amount of knowledge as to what their desires were first of all.

Can you tell His Honour, to the best of your recollection, what desires they expressed to you, what they said? --- I think the first subject of conversation would have been the capital, and I would have given some indication as to the figures to which I thought the paid-up capital should be raised. My recollection is that I had in mind a larger figure than Mr. Lane. Mr. Lane struck me as very cautious, and after discussion on that point I felt that to meet his wishes I would not be able to go quite as high as I had suggested in the preliminary conversation.

30

At that conversation you are now speaking of did you suggest any particular figure for the capital for any of these three companies? --- Not only at that conversation but at others. My recollection is that I wanted to go up around the £750,000 mark for both Lane's and Neal's, and at that time I did not think there was any discussion at all on

40

Melford's - not a great deal. I think we mainly discussed Lane's and Neal's.

In the High Court of Australia.

No.52

Transcript of Shorthand Notes of Evidence taken before His Honour Mr. Justice Kitto.

Evidence of John Vincent Ratcliffe, Examination - continued.

10 Do you think that you suggested to Mr. Lane or Mr. Newton the figure of £750,000 that you mentioned? --- What I would have done, I think, was to mention that as my preliminary figure and suggest that as a sort of basis for discussion. It seemed to me that Mr. Lane was really rather unhappy about a figure like that, and whether it was in August or September, he made his views very plain by saying that he would rather have 20% on a lower figure than 10% on a higher figure, and his view was that it was easier to cut down 20% in times of poor business than to cut down 10%. Those, of course, were very forceful considerations, and of course, Mr. Lane had experience of very poor times in the motor business. I had not, and I naturally had to defer to his expert knowledge of the business.

20 At any of these talks that you speak of in August, before the one I am coming to in Melbourne in September, was there any discussion by you or Mr. Lane or Mr. Newton about the formation of a public company? --- Yes, the question of conversion to a public company was discussed.

30 Just tell us what you can remember about it, Mr. Ratcliffe, please? --- My recollection of the early discussion was that there was at least serious difference of opinion as to whether the company should be converted to a public company.

40 When you say, a difference of opinion - between whom? --- I would not say even what it was - the gentlemen at that meeting. I gathered there was a difference of opinion in the whole Board, and of course, there were only two members present. It was so very marked that my recollection of it was that I felt when I went down in September, it would not be a very profitable thing to pay long attention to this conversion to a public company, because of this difference of opinion, and the only way that would come about was as the whole body got into conformity with their ideas, and get used to the idea of a public company.

Was there any discussion between you and Mr. Lane or Mr. Newton in these August conversations as to how the capital of these companies could be raised? --- Yes. I think in August, at that stage, I gave them a preliminary idea of the sug-

In the High
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Transcript of
Shorthand Notes
of Evidence
taken before
His Honour
Mr. Justice
Kitto.

Evidence of
John Vincent
Ratcliffe,
Examination -
continued.

gestion which was finally adopted. That was only a very brief idea. What I said, after I had seen them, was they could divide their shares into two classes, giving one class special dividend rights and thereby deferring the second class, that they could sell the class I first referred to and that they could use that money to take up a large number of shares at par, and that would raise their capital.

They did ask me, "Well, where would they sell these shares?", and at that stage I told them I had a company which if that procedure were followed would be prepared to make an offer for the shares. I think, at the end of the conversation, they seemed to like that idea because it was an alternative to becoming a public company, about which there was this difference of opinion. I suggested to them that they should not attempt to explain the thing to the whole Board, because I felt that there would be a garbled idea about it and they should leave it to me to discuss the alternatives with the Board, and with everyone present, and with their other advisers present. 10 20

In that way it was put over until I was going down in the normal course. In those days I went down to Melbourne at least once in three months, and on that occasion I was going down for a meeting of a public company, the headquarters of which were in Melbourne - not connected with this group at all - and the directors of Bobarfeld's, seized the opportunity to call a meeting, as I was the only Sydney director; and I think there were some other meetings I attended, too. I had set aside at least a day for this conference which took place in the I.A.C. board room. 30

I do not think you told us the date that occurred. Can you tell His Honour, just approximately, when that was? --- I did look at my diary on this and I was in Melbourne from the 15th September, which was either a Monday or a Tuesday, and I was there until the end of the week. I did not put down in the diary the date that I saw these gentlemen, I did put down the dates of the Board meetings, and I just put down other conferences, because an accountant keeps a note more of his times rather than the details a lawyer puts in his diary. 40

MR. TAIT: That is for the purpose of charging. You were not charging these people? ---

An accountant has to be commercial as well.

MR. MACFARLAN: You say anyway that the meeting occurred in that week in the I.A.C. board room in Melbourne? --- Yes.

And do you remember who was present at that meeting? --- Mr. Robert Nathan, who was Chairman then of Lane's. I do not remember what his position was on Neal's. There was Mr. Lauri Newton and Mr. Lane.

10 Mr. Harry Lane? --- Mr. Harry Lane. Mr. Newton had with him the accountant from Maple's; Mr. Atcheson, who has died since. He was there, and Mr. L.B. Wallace; their accountant and financial adviser, and Mr. F.E. Bunny was there, but I could not say in regard to Mr. Bunny whether he came in right at the commencement of the meeting or not; but he was certainly there for the last hour or so of the meeting.

20 Would you mind telling His Honour what was said on the subject of these three motor companies, what you said and what they said, and what was discussed? --- I think there was some discussion about the question of public companies, and very briefly, what change that might make in their tax position, and at that stage there might have been reference to the question of the capital, the figures the capital might have to be adjusted to to meet these requirements.

30 My recollection is that I did not devote a great deal of attention to that, because even at that meeting it was obvious at that time they were not willing to consider it as an immediate proposition, but they were willing to consider the capitalisation as a step to something like conversion to public companies at a later date. I then, as I mentioned, had the plan which I have just referred to, which I had mentioned to two of the directors in Sydney, and I outlined that plan for the whole meeting, and there was a fair amount of discussion about that. I think each of the gentlemen wanted
40 to clearly understand the broad mechanics of it and I went over that to the extent of explaining it again. Who would provide the shares, that it was solely a matter for their solicitor, the question of altering their articles, once they determined what rights would be given to the different classes. That was a thing which would not bother

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them, and then there would be the question of selling the shares.

I think that was gone over a little, back and forth, and I think the main question that was put to me then was: "How would we get at the price; how would you arrive at the price which you would offer for these shares?" I explained to them that the plan would be worked out in this way: "First of all, you would have to determine what were the dividend rights which were going to this class of share. If, for example, you put down special dividend rights at £7. per share that would be the first figure you would put down, and then, as it was proposed that when all those rights were cleared off the share was to carry 5%, based on the market at that time, that share would be worth £1. after the dividend rights had been wiped off, the special dividend rights, and that would give you £8. That is only the gross figure. You could not get anyone to submit that figure for those shares. They would have to be in the position to make some profits out of it or get a lesser figure than £8." The way I would get at it is this: I have had experience on negotiating with a public company to buy shares which have a very large amount of undistributed profits attached to them, and those people wanted a very considerable cut in what I would call the gross figure of £8, and the discussion with those people went along these lines: "There is no primary tax on dividend for a public company - that is rebated - but at that time there was a super tax of 1/- in the £. and after that tax was taken off the gross dividend you kept the money, and did not distribute it; you would have to pay 2/- in the £1. on that balance of 95%." 10 20 30

I said, "If you work that out that is $14\frac{1}{2}\%$ of the dividend", so in those particular discussions the directors of the public companies said, "That is $14\frac{1}{2}\%$ which has to come off?" and I had said to them, "Well, this might be a trading deal and you have not to provide for $14\frac{1}{2}\%$ on the lot." They said, "We are not going to trade these shares at all; we will only discuss it on the basis that we do not trade them." Then there was quite a battle as to what sort of price I could get from them, and we could not get anywhere near - - - 40

MR. MACFARLAN: This is what you explained to the meeting in September? --- Yes.

MR. TAIT: This is for somebody else.

MR. MACFARLAN: This is what you were explaining to the meeting? --- We could not get any closer to agreement. All I could get was they wanted another 15%; they wanted nearly 30%. In that case we never got to agreement at all because in my opinion it was not a proper price, and something else was done in that case.

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10 I said that in my case my company was a trading company and that it would be prepared to make an offer on the basis of deducting the gross price, deducting 14½% and also deducting £5,000 in each company and spreading that £5,000 over the number of shares to be sold in each company. That would be the basis on which I would get at the price. Of course you could not get any idea of it there, as any indication as to what price these shares would be given - purely theoretical.

20 Was there any discussion then among the gentlemen present when you put that proposal? --- Yes, there was a discussion. I think that the Chairman probably turned to Mr. Wallace and to Mr. Bunny and asked those gentlemen what their opinion was as to that procedure. I think there were probably some more questions directed to me by those gentlemen, they went over it, and in front of me at that meeting they indicated that in their opinion it was quite a reasonable proposition. I think I have skipped something - - -

30 I want to come back, and want you to bring your mind to other things for a moment, but could you just tell His Honour if there was any more discussion first of all about this very proposal which you have put, and which you have explained in the words which you have just chosen? --- My recollection is that the meeting lasted from shortly after lunch to I think, close to 5 o'clock - there may have been a break for afternoon tea.

40 Were you requested then to put something down in writing? --- Yes. The Chairman finally suggested that I should write out the form of the proposal so that they could give it more detailed consideration which, of course, meant that it would have to be examined by Mr. Bunny and Mr. Wallace.

50 Do you remember when the discussion was taking place on this proposal which you have put were there any questions asked you about the tax position? --- Yes, I was asked that question. I think I had volunteered at the early stages, but I was certainly asked later, because that was a

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point which they wanted to be clear about. I had said to them that the shares that they would sell, as far as I could see on the information which I had, which was that each shareholder held his shares as an investment, if that were so, and if they sold the shares, then the proceeds of the sale would not be assessable to income tax, and then I think there was some general look over the list of shareholders and looked down it and I think I asked whether any of them had been traders in shares, to see whether there would be any doubt cast on them. 10

I have some recollection that Mr. Lane said he had one special lot of shares which he had not taken up, but which he got in connection with a special covenant which he had entered into, but which would be tied to the company. He asked me about those and I said that in my opinion those shares were just the same as the other shares which he had. 20

I think finally round the table it was said, "Well, no-one had traded in shares and it was pretty clear that they were all held as investments."

Then you expressed the opinion as you have just told His Honour? --- I then confirmed the opinion which I had expressed.

You mentioned, if I may take you back to a little earlier part of the evidence you gave, about your proposal at this September meeting. You mentioned that your company would be prepared to buy these shares less the $14\frac{1}{2}\%$ and £5,000 in the case of each company? --- Yes. 30

Did you have any reason for fixing the figure of £5,000 which you explained to them? --- Yes, I did have a reason. I think I explained to them that the alternative was, instead of offering them to my company, it was open to them to sell them to any other company. From what I knew it would be very hard to find a company which was carrying on as a trade in shares, and which would enter into the transaction, buy and sell them, and therefore the class of company which would be the most likely buyer would be any public company which was an investor in shares, and such a company would be liable to tax at the rate of $14\frac{1}{2}\%$. 40

So, when they negotiated with such company,

they would have to understand that as to shares, first of all - this gross value - the first thing that company would do would be to say, "We have to pay $14\frac{1}{2}\%$ for tax", and then, of course, they would say, "Well, we are not going to pay out this large sum of money for the ultimate benefit of 5% on a much lower sum; and, of course, you must give us a discount on that price."

10 I suggested to them that, of course, that would be a considerable discount and I did remind them of the fact that I had some experience about what that discount would be.

You fixed a figure of £5,000 as being the figure with which Pactolus was prepared to deal? --- Yes. I felt that would be, in this situation, that I was clear that Pactolus would have no competition up to the $14\frac{1}{2}\%$; that no public company that was an investor would go as low as £5,000; it would have no competition on that.

20 I also felt, if they changed their minds and converted to a public company, it would cost them £5,000 and the $14\frac{1}{2}\%$. So that I felt that was a fair commercial basis on which to fix a price at the minimum price. Perhaps I should say the maximum price, should I?

Yes? --- The maximum price.

30 Was there any discussion, or any explanation by you of any other methods by which the capital structure of these companies could be altered? I am speaking of the September meeting now? --- Yes. I considered - - -

40 This is what you told them, is it? --- Yes. I told them that I should put to that another alternative, and that that alternative was to become a non-private company without floating on the Stock Exchange, because my feeling was that possibly it might be that, having the shares listed and that sort of thing, it might be the real trouble. So that there was the other alternative of becoming a non-private company mainly for tax purposes only, and they asked me how that would be done and I said, "Well, of course, the Government has just amended this private company tax division."

Section 103, was it? --- 103, and that they have rather highlighted the point on which you have become a private company, and that is the question

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of control by voting was emphasised, and at that time there was a plan which had been operated by quite a number of accountants and tax advisers, whereby they introduced new shareholders into a private company and gave those shareholders votes and they reduced the votes attaching to the large shareholders' shares so that you could take, as an example, a case like this: if there were seven shareholders in the company, the first point of becoming a non-private company was that you had to have over 20, from memory, and therefore you had to introduce another 14 shareholders if you had seven. That plan was operated something like this - - -

This is what you told them, was it? --- Yes. You got 14 people and you got them to take up 100 shares in their own name and with their own money, and every shareholder was then given 100 votes. No one had more than 100 votes, and so long as you did not introduce shareholders who were related to one another, you could make it quite clear that the definition in the Section did not give control to seven persons; and also that the other test that 75% of the voting control was not held by seven persons and their relations: I think that was the second test.

You explained that, did you? --- I explained that to them quite fully and my observation of that was that they really were not interested in it at all. It had nothing to do with what they were asking me to do. It had nothing to do with their capital. It was directly on the question of tax saving only; it was not what I had been sent for.

JOHN VINCENT RATCLIFFE, continuing his evidence:

MR. MACFARLAN: Mr. Ratcliffe, I was asking you at the adjournment yesterday about your recollection of the conference in Melbourne in the middle of September of 1949. Is there any other matter that you can remember that was discussed at that conference, either said by you or any of the gentlemen present? --- Yes, Mr. Macfarlan, there were, I think, at least two matters that I have not touched on. Amongst the information which Mr. Lane had given me, there was information as to the valuation of the Companies' properties, those valuations having been made about eighteen months before, showing that there had been an appreciation at the time of the valuation over the book figures.

That was a matter that I considered - as to whether the difference in valuation could be used to make an issue of shares. I considered that, and I also considered the question of the deposits. I think it became evident to me at an early stage that they were not agreeable to turning the deposits into capital. I am not sure whether I touched on that yesterday.

10 No, you did not mention that yesterday? ---
 At any rate, those two things together would not have got anything like the capital that I had in mind. There was another reason which I explained at the conference, with regard to the appreciation in value of the properties, and that was that I pointed out to them that on an excess profits tax, if they revalued the properties, that would be merely struck out and it would be of no use to them from that point of view.

20 I told them that there were very strong rumours, notwithstanding the old excess profits tax had been discontinued, but there were very strong rumours of a new one and, from the point of view of that tax, that supported my recommendation for a much higher capital. At any rate, I was against revaluing the properties.

30 Did the shareholders, Mr. Lane and Mr. Newton, or any other gentleman present, express any views? --- No, they just accepted what I said on that point. There was another aspect of the figure which I suggested, which was a high figure for capital, and that had relation to the future floating of the companies. I think I touched on that in one aspect yesterday, but there was another aspect to it, and that was this: That, if you had a high capital, the premium at the time of issue could be modified.

40 The fact was that when this became a public company, the premium for 150%. Under my proposal, of course, it would have been much less. To me, that had a considerable bearing on what capital you would increase it to at that time.

Was there any discussion at that conference about actual capital figures? That is to say, an amount of issued capital; do you recall? --- Well, I don't think there was a great deal of discussion. There was some discussion. This particular matter, of course, had been the subject of some discussion with Mr. Lane and Mr. Newton in August, and, of course, I had absorbed Mr. Lane's

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views, to a certain extent, and, to me, it would not be much good pushing a view which I had for a very high capital when I felt that the gentleman who was looked to for the financial side would not come up to that point.

Did you express to Mr. Lane, or to Mr. Newton, either in September or before, what your opinions were as to the capital structure for each of these three companies? --- I think yesterday I said that, in the case of Lane's and Neal's, what was in my mind then and what I had conveyed to them was, £750,000 for each of those two, but there was no discussion at that time about Melford's. On thinking that over about Lane's, I have an idea that in the case of Lane's I might have put a somewhat higher figure than that, and I think I have become confused, because the nominal capital was fixed at £750,000. I think I had a figure of £800,000 in mind.

10

After August did you express to any of these Directors your opinions about the issued capital of Melford's; as to what, in your opinion, it should be? --- I think that may have been touched on. But my best recollection seems to be that that was to be left until Mr. Wallace spoke to Mr. Fenton. I did have in mind that it was probably to be dealt with in the same way; it would not go up to what my figure would be.

20

Whether I actually at that conference or not, suggested the figure I had in mind, it would be very difficult to say now; but at some time I would have indicated what I had in mind for that company - that its capital should go up to £400,000, and my recollection is that that was not favoured and that is why in the first step it was made £200,000. But I had always in mind that they would agree to the £400,000.

30

Did anybody ask you at that conference what Pactolus was going to do with the shares as the transaction went on? --- Yes, I think that question was asked and I answered that question: Of course, Pactolus was a trader in shares, and it would have to sell them. At that conference I feel fairly sure there was no mention of Pactolus (Investments). I did not indicate who I would sell them to.

40

Was any question raised at that conference about selling them back to the vendors of the

shares? --- I think one of the gentlemen at least made an enquiry as to that, and I replied that, of course, in this transaction they had to part with the shares for good and that there could not be any understanding or any purchasing back at any time. It did not matter how far it was in the future

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Well then, was there any question raised at that conference by anybody about how Pactolus was going to finance this transaction if it went on?
10 --- Yes, I think one of the gentlemen asked me how large Pactolus was and I said, "Well, it is a small company but it has £25,000 in cash available". Somewhat to my surprise there were no further inquiries on that.

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Had you, yourself, at that time made any arrangements or plans with regard to Pactolus, financing it at that time? --- I made no plans whatever. No consideration was given to how Pactolus would find the money until the middle of
20 October when it looked as if - - -

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I will come to that later, if I may Mr. Ratcliffe. I would like to finish with this September conference if I may. Do you remember if at this September conference there was any discussion at all about the capital issue regulation? --- I think Mr. Bunny raised the question about the capital issue regulations. At that time there was a current opinion that they would become invalid by lapse of time. Mr. Bunny's view was that they
30 should be complied with and there was a discussion as to whether that would hold any great weight and on that issue I had, of course, some practical experience and I said, "Of course, if you make this application look as if you have got to get this money, as if it is new money, it will mean it will have to go before a board meeting and you might be a couple of months, but, of course, if you make it clear this money will be raised out of current resources, that is a different issue and from my experience they treat that as a formal matter."
40

Did anybody, by the way, at that conference ask you where or how you hit upon this proposal you had put to them? --- I think that question may have been asked and I probably answered it in a very general way.

MR. TAIT: I do not suppose he remembers the form of the question; you are giving him the words. Ask him what was said.

MR. MACFARLAN: I put the topic to you. Do

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you remember who it was who asked you about that and what that questioner said? --- I could not say who it was because each of the gentlemen now and again asked a question and I think that would be just a bit too much to remember now. I think I gave some indication about the preference share side of it having grown up out of the question of gift duty and on that issue I had, before Mr. Lane came up in August, before I got the figures, this general information in July about the low capital structure and I had been turning over in my mind this question of a company in this situation making a new issue of ordinary shares and naturally I started to check the proposals I had in mind and the question of gift duty came to me because of the definition of a "gift". 10

That definition is to the effect that there can be a gift on the issue of shares. I had a discussion with my solicitor about that and his view was in a case such as I put to him there would be gift duty. I resisted that view very strongly and told him that in my opinion there was no intent in the transaction to make a gift, that if there was a new issue of shares you calculated the value of one share and you only got the corresponding benefit in the other. His answer was, "That may be so and that is very logical but do you want to fight a case about this matter" so I said I would give the matter further consideration. After two or three days it had struck me that the simple issue was to issue preference shares which would have a fixed value of £1 and I communicated that to him and he said he thought that was a good solution and it was from that point that all the shares to be issued or dealt with were at some stage to be preference shares. 20 30

I think it is a fact, is it not - I will perhaps deal with this shortly - the first part of the transaction was suggested to you by Lord Justice Romer's judgment in Dewar's case in 19 Tax Cases? --- I was familiar with that judgment - I had read it some years before - and he made what, to my mind, was a striking remark that a life tenant could dispose of one or two years' income and the inference in his judgment was that that would be a capital transaction. 40

Do you recall, Mr. Ratcliffe, any other matter that was discussed at this conference? --- I cannot immediately recall it.

Was the position of Ajax Insurance at all discussed there? --- Of course, up to this time, Ajax had not been mentioned. It was not mentioned because all those gentlemen were the motor company directors although some of them may also have been on the Ajax Board, but my recollection was that at the conclusion of the conference Mr. Wallace said to me, "You remember we had this problem in Ajax. You have been advising us on it. Would you consider and put Ajax down and consider Ajax in conjunction with these companies." I had had a lot of difficulty about Ajax and could not get any plan that the Board of Ajax would accept. It was prior to this but I did put it down.

10

I will come to Ajax later. At that time you held a retainer from Ajax and I.A.C., is that right? --- That is correct.

And I think you had for some time held that retainer? --- For some years.

20

Well then you returned to Sydney and then, I take it the letter of the 30th September 1949 was prepared by you and written and sent, is that right? --- That is correct.

That is Annexure 12 to Exhibit "A2", Your Honour. Could the witness have a copy of that letter?

HIS HONOUR: Yes. (Document handed to witness).

30

MR. MACFARLAN: Mr. Ratcliffe, you will notice that is dated 30th September, 1949, and addressed to Mr. Wallace and it is headed "Re Ajax Insurance Co. Ltd. and other companies." Are you able to give any reason why Ajax was put in the heading, or was there any significance in that? --- There was no significance in it. I think I must have just dealt with it alphabetically.

40

You then set out really certain comments and certain figures relating, I take it, to the matters you had discussed at the September conference in 1949? --- Yes.

Could I ask you this generally first: the figures as you see, or as you will probably remember, relate both to 1949 and 1950? --- Yes.

You said you had the 1949 figures for the three motor companies? --- Yes.

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So far as the 1950 figures were concerned what was the basis upon which you compiled or wrote those figures? --- The 1950 figures were only rough estimates, taken as an example. Of course, in Ajax the figures you can see, I could make an attempt there, because of investments, to make a fairly close estimation of investments, but not the trade.

In the case of the motor companies, you say they were just estimates? --- Just bare estimates, that is all. 10

After June 1949, when Mr. Lane and Newton spoke to you, did you receive any written figures from them in the motor companies apart from the year's accounts for 1949? --- At that time, up to September?

Yes? --- No. I did get some subsequently or I saw them when I was in Melbourne.

Would you turn to the second page of that document. You see there "Ajax", you have set down a figure of nominal capital. Had that particular figure been the subject of any discussion between you and the Directors of Ajax? --- No discussion at all with Ajax. This was prior, of course, to the Ajax Directors as a whole being consulted. 20

Under the heading of nominal capital, there is reference there to the issue of 210,000 shares? --- Yes, part of that 210,000 was made up of an issue of 40,000 which I had advocated before. I just put it down again. 30

I think perhaps I can put this general question to you: were the figures relating to Ajax, and the calculations which you made referring to that company, computed upon the same principles as the figures relating to the three motor companies included in that letter? --- Yes, subject only to that closer estimate of the investment income.

For the 1950 year? --- Yes. 40

On page 2 there, you are speaking of the restrictions on transfer? --- Yes.

Had there been any discussion between you and any of the directors of those companies with

regard to restrictions on transfer of the articles?
 --- To the best of my recollection, no. I think when I sat down to deal with it, these were problems which struck me would have to be discussed, and all these things were really put down for discussion.

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10 And what did you have in mind as the basis of the discussion from the point of view of your proposal from your side on the restrictions of transfer referred to? --- When that question arose that was a very important question. If these companies were named proprietary companies it had to be dealt with before Pactolus could enter the transaction or any other company could be concerned in it.

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20 Is that the whole of the comment you make on that? --- No. I just want to complete that. I have made it clear, of course, that Pactolus intended to sell. Pactolus had to be able to get transfers registered and to get the transfers of its sale registered, the same as any other company.

30 Now, in this proposal to put something concrete before them I had to deal with this question of sale and this is the first time that I mentioned to them Pactolus investments. What had happened about that was this, when I came back from the conference in the middle of September I decided, in any event, whatever happened I would form an investment company for my family and then I had this problem of putting before these people "Where was Pactolus going to sell these shares?" At that time my idea was that I would sell them to a life assurance company, one or more. I had very close associations with very large life assurance companies and with some small ones, and, of course, at that time this class of share that it would be when the special rights were finished would be an attractive investment to the life assurance companies.

40 Now I had sold, or amongst negotiations I had in the financial side of my practice, I had negotiated and raised whole preference issues with these companies. I knew that and that was in my mind when special rights were cleared Pactolus would sell in that fashion.

Pactolus Investment in fact had not been incorporated in September? --- No, just about that time or after I put it into concrete form. I had probably written my solicitor and asked him to form the company.

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And I think it was incorporated, in fact, in November 1949? --- Yes, my recollection is that he took a little while about it because I wanted the company formed in Canberra and after he had sent it down there it was rejected because it was not printed. I had not thought of that and had had it roneoed.

Those were the considerations you had in mind when you referred to the reconstruction of transfer in the proposals you made in the September letter? 10
--- Yes.

You also referred to the subject of a branch register. You set up a branch register at Canberra? --- Yes. That arose out of a lot of difficulty which I had had in New South Wales. If you did not have a share that was listed on 'change, you had very detailed negotiations with the Stamp Office to fix a value and make a valuation, and long argument about it, and in one case, which I may say was a very simple case, it took us two months to get that question settled. So in this transaction I was not prepared to wait two months and the only course that appeared to me was to have the register in Canberra. 20

Then, on the next page, you refer, I think for the first time, to Pactolus Investments. That reference to "P" Investments is, of course, to Pactolus Investments, is it not? --- Yes.

You say, "It is proposed that Pactolus will purchase all the "A" shares" - which have been divided in the way you have mentioned before - "and receive the special dividends and then sell to Pactolus Investments --- Yes. 30

Then you say you put a proposal (the second paragraph on page 3 of Exhibit A.2.) which related to the possible conversion of these motor companies into public companies. You see that? --- Yes. This arose out of - if I may say so - Mr. Lane's conservative attitude to the amount of the capital, and I had a feeling that these shares would be preference shares and not available, and we would either have to issue more shares or convert these in some way. So I was offering that these would be made available to be sold to the public. 40

If the companies were converted into public companies? --- If they wanted it. This was

merely a suggestion for discussion. As a matter of fact, it was abandoned, but when they did bring up the public company, I again offered to sell to the public either the whole lot or half.

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I will come to that when I bring you to that point of time. This was the reason for that proposal which you put to them at that point of time, the 13th September? --- Yes.

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10 Then, the third paragraph of that letter deals with the situation that if the companies are not converted as public companies within a period of two years, then the Articles will be put in a position to meet the requirements of the listing on the Stock Exchange in respect of preference shares? --- Yes.

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20 And what happened about that, had there been a discussion, or was there a discussion, or what happened to that proposal? --- There had been no discussion. That was my initial suggestion on this question, so that they would be saleable shares, because I knew the Life Companies, for example, would insist on the Articles being in that form, not that the shares be listed, but the Articles be the same as Stock Exchange Articles as far as practicable. That was the usual practice.

30 Then the next proposal that you suggested there was: you say, "Consider whether the "B" holders (they were the ordinary shares retained by the vendor) should be given the option in the event that they do not require to carry out the requirements in (3) of returning the "A" preference capital." What was that reference to? --- I just put that down as a suggestion for them to consider. It is not something I wanted. In fact, I distinguished it from the other paragraph of emphasising "consider", but the whole matter was, of course, to be considered.

I think that proposal was never gone on with in any way, was that right? --- Quite right.

40 Then, paragraph 5 relates to the sale of the "B" preference shares which would be taken up by the receivers of the dividend? --- Yes.

And the fact, as it has been stated in evidence here, is that Pactolus took up the preference shares, made application for, and received an allotment of "B" preference shares, and subsequently

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Pactolus sold those preference shares back to the vendors? --- Yes. It was always intended that the vendors were to find the capital from the proceeds of the sales of the other shares.

I do not think I need take you through the figures, Mr. Ratcliffe, for the Ajax Insurance Company, but if you will please turn over to page 7 of Exhibit A.2., I want you to explain to His Honour the calculations which you have made on this page and the basis on which you have made them. I would like you to explain it first in principle only, and then, if you would, illustrate the application of those principles by reference to the figures which you have set out in the case of Lane's? --- In the first case, I took the estimated figures, the approximate figures for 1949, and the estimated figures for 1950, to see what amount on that basis could be distributed in the form of dividends, the maximum amount. Then, after that, I made some calculations as to what extra taxes there would be for two years, for those two years, if they were on a public company basis. That is shown here as the cost figure which Pactolus was to make.

These figures were prepared to show the result, but the three methods that had been put forward, they were to show that they were practically all the same. For instance, if they were on a public company basis, then they paid these extra taxes on the whole of their income for the two years. If they were a non-private company, not listed, but on the basis of the control which I explained yesterday, being in the hands of more than seven persons, then again they had to pay these extra taxes. The other curious result of those figures is that they were approximately the same as the $14\frac{1}{2}\%$, but the dividends a little more, but not much more, but of course, the cost figures shown here for Pactolus was not the cost I told them at the conference.

This is only the $14\frac{1}{2}\%$, and did not include £5000. What I was setting out to do here was - "There are three methods; there they are; they are approximately the same, and you can see them and make your own selection."

There was another reason why they were approximately the same, and that was this: when you convert to a public company, or to one of these non-private companies, the saving in tax - what you call the saving in tax - is a temporary saving in

tax - is a temporary saving in this way, because you are looking at the finances of the company, and what happens you form a holding company and there is a saving of tax because the dividends come out of the past year and the shareholders do not take them - they put them in the holding company - and for a space of about two years there is a building up of reserves, because it is two years beyond the first step that the public start to get their dividends.

10

At that stage there is no financial saving because the dividends paid to the public take up what the tax used to take, so that does show that on any principle here is the saving, by any method this is it, once and for all.

You spoke a moment ago about these figures not including the figure of £5000 about which you had already spoken. That is the £5000 you mentioned at the September conference, which would be what Pactolus would require over and above the 14 $\frac{1}{2}$ %, is that right? --- Yes. These figures, of course, were not accurate. That calculation as to what Pactolus would get would be when accurate figures were determined. You can look at these figures and see that the residue after deducting ordinary tax and super-tax, I think there is a summary here half way down, for the two years is approximately the same, a little bit more - "Cost", and there is 1949 and 1950. Looking at 1949 there is a figure £243,943 at 2/-; a figure of £163,000 for 1950 at 2/-. If you add those two up you will find that you have roughly the same figure at this stage as you have in the total dividends up above - £402,000. Adding £243,000 and £163,000 you have £406,000. The result was roughly the same. These were figures for discussion.

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As to that, might I say this: Mr. Ross checked these figures and made some alterations. For example, in the latter I think that I mentioned that I had missed the dividend of £250 paid on the Preference shares, and I did not want to re-cast the figures for that.

When you speak of these Preference shares you are referring to the 5000 "A" Preference shares that had been issued for some time in Lane's, at any rate? --- Yes; Mr. Ross went through and revised the figures and put that £250 into the calculations, but he did not raise this question at all.

50

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MR. TAIT: What questions? --- As to why I calculated the cost of Pactolus on a figure different from the total of those dividends.

MR. MACFARLAN: Could I just put this to you: of course, when you saw the actual trading figures month by month for Lane's, Melford's and Neal's from the first few months of the 1949/50 year what was the position; how did they relate to the estimates you had made? --- I think that the first estimate of figures which I saw would have been round the middle of October, and I cannot remember now whether they were up to the end of September. I think they were, but they could have been to the end of August. I think I saw three sets of lots of estimated figures. They did show quite an improvement in the first figures, then there was each time I looked at them, and I think the last figures I did actually see myself were at the end of October, and they showed an increasing progressive improvement had again occurred - each month was better than the preceding month. 10 20

These figures were in excess of what you would have expected on your estimates if they had been correct? --- Yes, they were substantially in excess.

Would you please go to page 7, and I would just like you to take each step which you have taken on that page and explain what is the step which you have taken and the significance of the step which you have taken. Explain the calculations which you made? --- The first figure under the heading of 1949 was taxable income of £372,610. That was an approximate figure, because all the details to get at that figure were not available. There was taxation not allowed, and so on, adjustments for depreciation - I just took this figure as an approximate figure. 30

This was 1949? --- Yes, of which we had draft accounts but not final accounts and not details for tax purposes, so I took the approximate figure. 40

Then you have to calculate the primary tax on the estimated taxable income. I think that primary tax was 5/- on the first £5000 and 6/- on the balance, but there were rebates of tax to be calculated, and there is a reference to those in the margin.

There is a rebate of 2/- in the £1 on Commonwealth Loan interest, and a rebate at an average rate on the dividends, and that was taken into consideration in getting at the £110,287 as the primary tax.

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10 Deducting that from the taxable income we arrived at a figure of £262,323, and then there is a deduction from that reserve - I think that is more usually called "retention allowance" nowadays - and that is on a sliding scale. I do not recollect the percentage, but the first few thousand pounds of distributable income was at a higher rate than the balance, and 10% was the final flat rate over £4000 or £5000. That calculation gave us £27,232 which you can see was just over 10%.

20 That, at any rate, is the retention allowance which you worked out in accordance with the provisions of Section 103(2)(e)? --- Yes. Then there is an item "Dividends". Perhaps that could be more correctly described for other purposes as the amount that had to be distributed to avoid Division 7 tax. That was set down at £235,091. I put it there - well, that is the dividend we take from that year.

30 1950, the next, that is described there as "Estimated Taxable Income" to indicate we have no figures available and that is put down at the round figure. Some estimate was made of the tax on that figure; you would not know what rebates you have to allow.

40 You then made an estimate of £74,000? --- Yes, £74,750, and it left £175,250. A calculation was made of the reserve or retention allowance, and that was fixed at £18,525. Then was put down "necessary dividend" £156,725. Then there are two figures put down, the two "reserves" one for 1948, which would have been the retention allowance for the 1948 year, £14,500, and the retention allowance for the 1949 year, £27,232, total £41,732.

They were deducted from the 1950 figure to say, "Well, we can take those in respect of the whole of 1950, and that would mean you could take £113,000."

That would mean you would have a carry forward of the 1950 figure as to that amount? --- Yes.

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You deducted from the earlier year? ---
Yes, but then I put under that £125,268. I was
just looking for a safe figure, because this was a
very rough estimate.

HIS HONOUR: I am afraid I have not just
followed why those two reserves were taken off -
the last two retention allowances you added togeth-
er to get your £41,272.

I did not quite follow your explanation as to
why you deducted that? --- You see, the necess-
ary dividend, and that £156,725 - that is taking
everything out of the 1950 year which you would
normally have to take; but, of course, that could
really only be done at the end of the year.

10

These were all supposition and in practice
and in fact, when this transaction was carried out
you only had to look at the profits of 1950 for
four or five months. But I was just suggesting
to them the maximum amounts that could be got;
that was all.

20

MR. MACFARLAN: That is, the £156,724? ---
Of course, it would be very unsafe to take £156,000.
So I said, "Well, assuming that would be the maxi-
mum for the year, we wouldn't go up to that; we
would use these two reserves" - and that would mean
£113,000 - and I thought perhaps we would exceed
that, and take £125,000.

I put this to you: The reserves you have
mentioned, less the reserves for 1948 and 1949;
you see those two figures? --- Yes.

30

Are they the retention figures for each of
those two years? --- That is correct. You can
see the 1949 figure just up above - £27,232 against
the figure "Reserve". Of course, you can't see
1948, because those figures are not here. I made
enquiries and found what that figure was.

At any rate, Mr. Ratcliffe, is that what you
have suggested - that those two Reserves for 1948
and 1949 be added together and taken from the
amount which was required, in your estimates, to
be distributed? --- Yes.

40

Or taken in as part of the amount which would
be required to be distributed in the 1950 year?
--- That is correct. It really showed this sum-
mary underneath: Total dividends, 1949 - £235,000;

1950 - £125,268; and then Reserves - £41,732. It showed the maximum amount they could get and distribute out of two years' profits.

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10 HIS HONOUR: One thing I am afraid I have not followed yet, Mr. Ratcliffe, and that is why you deduct the £27,232 both from the 1950 and 1949 year? --- Well, Your Honour, it was an attempt to deplete the dividend out of 1950 by saying, "Well, we've got this retention allowance. We are not compelled to distribute it, but we can." It is profits there available for distribution.

But my trouble is, in the 1949 year you have arrived at the dividend which you would have to pay if the Division 7 tax were not to be incurred; that is, £235,091? --- Yes.

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Reached after deducting the £27,232? --- Yes.

20 What has the same figure to do with 1950? --- May I put it this way: What I was dealing with in 1950 was a rough estimate, and when I got down to the £156,000, I thought, "Well, that would be a very dangerous figure to take in, because we might not get anything near £250,000, so I set out to minimise it and say, "I have other profits available that I can distribute and use those as part of my total amount available for distribution."

So, instead of putting them there, Your Honour, I could have disregarded that and say, "Just for safety, just distribute £125,000." That would have removed that confusion.

30 MR. MACFARLAN: May I put this to Your Honour: Of course, in 1949 the £27,000 was deducted in order to ascertain the amount which must be distributed.

HIS HONOUR: Yes, that is right.

40 MR. MACFARLAN: Then you get what Mr. Ratcliffe calls the dividend figure for that year and that, of course, is the retention allowance. When you come to 1950 he does not touch that £27,000 until he has ascertained what is the dividend figure out of the 1950 profits. Then, having ascertained what he must distribute, he then says - as these calculations show - "Well, you reduce that amount by the amounts which you have to credit in the retention fund for the 1948 and 1949 year."

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He makes the application after the dividend amount, distribution amount, has been ascertained. (To witness): Did you hear what I put to His Honour, Mr. Ratcliffe, or did you not? --- Yes.

Was what I put right? --- I thought, Mr. Macfarlan, the explanation I put to His Honour was, well, I could have left those figures out and say, "£125,000 would have been plenty." It would not have introduced this confusion. I think you just put it back the way I did it at first.

10

Perhaps I did. At any rate, then you reached a total of those three figures, ascertained as you have described; is that right? --- Yes.

Of £402,000 odd? --- Yes.

What is the next step you take in these calculations? --- The next step is this step that I have referred to: To see what would be the extra cost as a public company; and, of course, the public company had to pay more taxes than a private company. There was the super tax, which was on the whole of the taxable income excepting the first £5,000 - that was 1/0d. in the £ - and that is calculated at £18,380. Then there is a calculation to get at the tax on undistributed income. That has made the 6/0d. in the £ and is taken off; and then the 1/0d.; and then the balance at 2/0d.; and that is made, of course, on the assumption that they would not distribute any income at all. They are putting every effort into building up the Reserves.

20

30

So, the resulting figure that you get there is the £24,394; is that right? --- Yes, and that shows the total extra cost on that basis would be £42,774.

Could I just take these steps: You first of all calculate the 1/0d. tax on the £5,000? --- No.

£372,000 less the £5,000, getting a figure of £18,380? --- Yes.

The next figure, taxable income, £372,610? --- Less the primary tax which is calculated - - -

40

At 6/0d.? --- Yes, and then there is the 1/0d., and that leaves a balance on which 2/0d. would be charged if you did not distribute any amount, and

that is taken out at £24,394. Adding that to the £18,000 odd, you get £42,774 as the extra tax on a non-private company basis for 1949, on those assumptions.

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On the assumptions you have stated? --- Yes.

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10 Have you repeated that process in respect of the 1950 year? --- Yes, I took the same process - the £250,000 estimated taxable income, less £5,000; 1/0d. in the £ on that, £12,250. Then we put the £250,000 down again and deduct from that the estimated tax of £74,750; that leaves £175,250, from which is deducted the 1/0d. in the £ super tax £12,250, leaving £163,000, on which the tax is undistributed income - assuming again that there is nothing distributed - would be 2/0d.; that would be £16,300.

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20 So that the difference in tax on this basis between a private company and a non-private company in the 1950 year would be £28,550; and then there is an addition there of the two amounts, showing total cost £71,324.

Then you go to the next line, which is carried forward onto the next page - British Service - which was a subsidiary of Lane's? --- Yes, but there is one item on this page which is not repeated, of course: "British Service (reads) £490." I would have got that from the accounts.

30 It is carried forward to the next page. The figures now relate to the British Services figure. Would you explain this, Mr. Ratcliffe, the steps undertaken there? --- Again, the taxable income figures would have been an approximate figure based on the draft account £7,900, the tax was calculated at £2,120 partly at 5/- and partly at 6/-, that being the 6/- on the excess over £5,000 and that left £5,780. Then again you have the reserve which averages slightly more than 10% £1,456 though it averages much more here because the income is mainly in the lower scale. That leaves the amount to be distributed at £4,324.

40 That £4,324 is the amount which is required to be distributed? --- Yes, that is so. Then you go to the next figures where there is a summary under the heading of Cost, super tax £145. Of course, that would be 1/- on £2,900 which would be the excess of the taxable income over £5,000. That is not shown

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there but you make that mental calculation. The taxable income is £7,900. 1/- in the £ is charged on the excess over £5,000 and that would be £145. That is put down without the details. Then the part IIIA tax is put down.

£565? --- £565 and I think that is by calculation £5,780 less £145 which would probably give you £5,635, something like that, and that would give you 10%, 5/-, £565. That put the cost at £710 on those two taxes to bring it to a non-private company not distributing any amount.

10

That is for the 1949 year? --- Yes. In 1950 there is again a round estimate. For some reason I took this estimate below the approximate figure for 1949. I must have been given some explanation about it, I should think.

You put the taxable income at £6,000. The next line is really a reserve which has slipped into the wrong place has it not? --- Yes, I think it is in the wrong place. Tax at 5/- and 6/- £1,550.

20

Then you get your retention fund? --- Yes, and the dividends £3,340 which is left. Then there is another calculation of the super tax in the part IIIA tax £50 for super tax, that is 1/- on £1,000 being excess of £6,000 over £5,000. Then there is the part IIIA tax calculated the same way and that gets at a total of £490 and then there is a summary of the dividend the 1949 £4,324 and the figure for 1950 £3,340 giving a total of £7,664.

Which you round off at £8,000? --- Yes. Apparently I was satisfied that cutting the estimate to £6,000 was sufficient protection.

30

Then when you say tax saving £6,000, what is that figure there? What do you mean by the tax saving? --- What would have happened there is this: if the dividend had been distributed there would have been with all the shareholders on the maximum rate - and most of them were - they would have paid 15/- in the £ so that if they did not get this dividend you would say that that tax was saved, 15/-, and that would give you £6,000 and against that saving is shown the cost £1,200 and that is the total of the £710 for 1949 and £490.

40

Wait a minute, when you take the cost £1,200, what is that figure you refer to there? --- That

is the estimation there that the only cost would be the cost of conversion on the public company basis.

The actual estimate of cost of conversion? ---
Yes, estimated cost.

Now, so far as the reference there to tax saving is concerned, that is what you say would be the difference in tax if any one of those proposals that you had discussed with those people were carried out and what it would be if they were not, is that the position? --- Yes, on the first two proposals the figures worked out on a basis that there would be no distribution at all so the individuals would have no tax there and the third proposal was based on the --

When you say third proposal, which is that? --- I am just thinking did I make the first answer quite clear? It just struck me perhaps it was not clear and I think I said I made a calculation as a non-private company in which in the first two cases there was no distribution at all as non-private companies. I have set down what tax they would have to pay. The tax on undistributed income is 2/-, there would be no other tax and the shareholders would have no tax because they would not have got the dividends so there is a theoretical saving. If you do not get any income you do not pay any tax.

You say on those two bases for the reasons you set out the saving would be £6,000? --- Yes, it would be a saving in this way: it would be money which would not have to come out of the funds.

That is right. Then on the third basis, put the third basis? --- The third basis is as I explained before. It would be approximately the same if they sold the shares to a company which made approximately this amount of profit within the transaction and it would leave all the tax and the individuals together in approximately the same position as if they adopted either of the first two proposals.

Had you been asked any question about giving any advice with regard to tax saving? --- No, at no time was I asked to give advice on tax saving. I was not called in as a tax adviser at all. I was not their tax adviser.

Can you tell His Honour, Mr. Ratcliffe, if there was any reason why you showed here the amount of

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£6,000 which you describe as a tax saving? --- Yes, I think every accountant who is asked to convert to a public company or to make any reconstruction of a company would advise his clients what would happen to their tax position. It is a most important matter in considering their finances or what they would do. I cannot recollect any concern in which the Board would be able business men who would not want to know fully where they were going and they naturally insist on knowing their tax position and how they will end up. 10

In the next part of your calculation on Lane's in the middle of page 8 you show there one-third of 237,321 ordinary shares. That is just in the middle below the cost figure of £1,200? --- One-third of 237,321 ordinary shares - 79,107 "A" shares.

Yes. What step are you undertaking here in this part of your calculation? --- Here is a proposition first of all as to how many shares would be made "A" shares. That was the first thing I had to consider, what proposition I would put to them, how many, what proportion of the shareholders' shares would be "A" shares and I struck a little bit of difficulty here but I did not disclose it. The natural thing I thought was to split them in half, one half one way and one half the other but in this the very important transactions with these shares would have been as to voting rights; they would have to have them to enable me to sell them. No one would pay this amount of money unless they had a say in the vote. 20 30

A vote until the special dividend rights were exhausted? --- That was finally put in the Articles. It was not put in until later because at that stage it did not occur to me I should highlight it. I thought it a natural thing and naturally I thought that was the only restriction put on voting. I thought they lost the voting rights when the special dividends were declared and they got the dividend rights on preference shares and that they had the usual Articles. What I was up against was if I did the natural thing and split them half and half I thought that would cause trouble as they would see I would have as much voting or better voting, that whoever buys the shares as a block would have a vote to 50% and would only want 1% to have control. 40

MR. TAIT: That is buys the shares before the dividends are paid? --- Yes.

MR. MACFARLAN: I am asking how the figure of 79,107 and one-third appeared? --- The difficulty I foresaw on voting was that I thought I would take the next simple fraction below that. I think I probably toyed with the idea of 40% and said "That is a bit more difficult, let me take a third". I took the third in every case except Melford's. When I came to Melford I looked at it and thought "It is 15,600 shares, it is very small, I do not think I will go to a third and I will split it in half and if there is any difficulty I will take two or three shares off it and take below 50%," Curiously enough, no one at any time questioned that and it went through and for a time I had equal voting rights.

10

I think the special dividend rights were exhausted? --- Yes. A very important thing in this, apart from the votes, was that there was no pressure on to pay the tax free dividend. This was the lesser cause though and they paid all the other dividends, the undistributed profits tax, and so as to get itself into a position of getting a dividend on their shares again so they could leave this tax free dividends for an indeterminate time, they did that. If they left anything like that outstanding I had the votes or whoever had the shares had the votes.

20

So that then is the explanation of the one-third which is referred to there. What were you seeking to do? I want you to tell His Honour and describe any step you have taken, Mr. Ratcliffe, under the proposal you are putting forward on behalf of Pactolus? --- I think this is a summary on those figures and that explanation I made yesterday where I said, "Assume you put down the dividend at £7 and then the shares, exspecial dividend at £1, you have £8." That is the calculation in total figures, I think.

30

I would like you to go through it line by line? --- Total dividends, Lane's Motors £402,000. I think we had that figure on the previous page.

40

That is the figure you got from the addition of the 1949 and the 1950 figures? --- Yes, on page 7. I rounded it off, I think. Then there was British Service £8,000 which is shown. That makes taxable dividends £410,000. Then there is this tax paid dividend from British Service which was a rough estimate and what they would pay in tax from dividends £2,684 and then there was the £1 a share for the share when it only carried 5% which would have been standing at that time, that is £79,107 and that gave

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you a total of £491,791. Then you took the cost figures previously worked out which is the same as those figures and we took off £72,524 and that left £419,267 which was converted out at a net price of £5. 6. 0. a share.

That is the net price, is that what you are putting there, which Pactolus was prepared to offer in respect of the "A" ordinary shares in Lane's? --- That would be on the basis that it was two years' profits and these estimates and so on. This is an example of how it would be got.

10

An example of how you would be prepared to compute a result of the offer which you made and described at the mid-September conference? --- That is correct.

Well then, you go on then and say the tax saving and you deal with that. Would you just explain that column to His Honour? --- Yes. Let us put down the taxable income at £410,000 which is the figure just up above and it says less one-quarter, that was a rough and ready way of getting at the tax of 15/-. You take the one-quarter off instead of three-quarters of the figure.

20

You made all these calculations on the basis of the rate of tax? --- The shareholders would pay 15/- at that time. Of course, we are not going to get it.

Then you get a resultant figure there of £307,500? --- Yes.

And the £500, that is the tax liability. When you say tax liability what is the £500 referred to in there? --- The 15/- that would have been payable if these dividends had been paid to the shareholders.

30

Well then you carry that figure forward. What is the next step you take? --- Take from that figure the cost. £72,500, which is set out as £72,514 and round it off to £72,500. The purchaser made £72,500 profit and you would be in exactly the same position as if you converted either of the other two matters.

What you are doing there when you say that, is that you are equating these figures to the three possible methods to which these examples are applicable? --- Made up to show there is not much difference between them. What I did ignore in these figures

40

10 first of all, if you went on the Stock Exchange it would cost up to £5,000 for conversion costs, and if you sold Pactolus or a similar company it would cost you £5,000 over and above the taxes at 14½%. I ignored those because it was a common thing. There would have been no costs except legal costs. If you have a non-private company you merely change the voting power by some alteration of the articles and by asking someone to come and take a few hundred shares.

You then reached a figure in which you made a net saving of £235,000? --- Yes.

And that is what you say there is a net tax saving? --- Yes.

20 That is what is referred to after paying the profit to a purchaser such as Pactolus, or the taking into account what would be involved in the payment of tax. If the transaction were with non-profit, the non-listed companies, that is the position there? --- Yes.

Then you get the figure of £402,679. What is the step you take there? --- It looks like the multiple of shares, to get roughly £402,000.

Look at the bottom of page 9 where you say the capital after completion of "A" and "B" shares £237,321 and the new preference £402,679? --- I adopted that figure to get a round figure instead of just a fixed capital of £400,000, to bring the capital up.

30 To bring the capital up to £640,000? --- Yes, that was a sample. I added on £2,679.

The figure of £402,679? --- I have an idea there I even pushed the capital up a little more than Mr. Lane had in mind. That was my idea here which I modified from the round figure of £800,000, and came down to £640,000. Then there was the £5,000 which made it £645,000.

40 I want to take you down to that bottom line there. You have explained the new capital of £402,679. The company finds cash £10,005. What do you refer to there? Would you look at the next paragraph down on page 9 - Pactolus finds £6,583 and you get cash for shareholders from the company, from Pactolus? --- Yes, what Pactolus finds, of course, is

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set out just above. You have to pay for finally 79,107 shares and its profit £72,524, so it would find £6,583.

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I refer you to that paragraph because the figure of £10,005 referred to came back to the first paragraph on page 9. "What is the significance in the calculation you have made of £10,005 company finds cash"? --- The company, on the proposal, would have to pay certain tax and pay out certain dividends and they total £412,684 and it would get back in capital £402,679, so that the company would be worse off to the extent of £10,005. It would have to find that amount in cash. That would be the net cash after it got in the new capital and paid out the dividend.

10

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So that would be net cash as regards the company? --- Yes.

You have dealt with £412,684, you come then to the next paragraph, Pactolus finds £6,583 and you have explained that as being the difference between Pactolus profit and the amount which Pactolus would pay for the par value of the shares. That is the position there, £79,107? --- Yes.

20

That paragraph goes on then to provide for the cash for shareholders, and where it comes from. Do you see that? --- Yes, that is a summary of the net cash coming from the company and Pactolus. They get that cash in addition to the new shares. That is their final position.

When you say money from the company, that is a reference there to money coming from the company's resources? --- That is so.

30

The money from Pactolus less the difference between £79,000 and £72,000? --- Yes, at this time the way I understood it was that the company could not afford to find any money. My recollection is that any money the shareholders got they re-deposited with the company, of course it may have paid those deposits back later but at the time they took this £16,500, or most of it, and just placed it on deposit with the company.

40

After that you show a summary in the final paragraph. The capital after completion of this proposal which Pactolus was making, that is right, is it not? --- Yes.

The ordinary shares, "A" and "B", and the new preference shares, gives you a capital of £640,000 and the preference capital of £5,000 would total £645,000? --- Yes.

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You have said that was put forward as the Pactolus, or the way in which Pactolus would work out the proposal which you had made on its behalf at the September conference? --- Yes, this is the way it would work out if you had all those figures.

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10 And the result of this is that you show how the capital of the company could be brought up to the figure you mentioned? --- Yes.

And what would be the profit to Pactolus? --- Yes.

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And what would be received by the shareholders in cash? --- Yes.

20 And how they would receive it, either from Pactolus or from resources of the company, is that right? --- Yes, or alternatively, of course, it would have gone to the Tax Commissioner if they had converted and had not distributed. Roughly the company's position would have been the same, and it would have had capital.

You go on then to deal with the question of Neal's and I do not know that I need take you through Neal's and Melford's. Perhaps I can recall to you Melford's figures were based upon an increase of capital to £200,000, is that right? --- Yes.

30 And based upon an equal division of the shares between Pactolus and the existing shareholders? --- Yes.

But Neal's was based upon the division of one-third and two-thirds, as was Lane's? --- Yes.

And new capital was for £520,000, including the previously issued preference shares? --- Yes.

Is this right: The calculations which you made in regard to Neal's and Melford's were based upon draft accounts given to you by Mr. Lane? --- Yes.

40 And your estimates as to future profits relate to the trading results of those two companies during the year of 1950? --- Yes. I would say this: That

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at that stage, 1950 estimates, I probably looked at the 1949 figures and did not allow for an increase.

I appreciate that. They were none-the-less estimates of the 1950 trading results? --- Yes.

And was this right: That the calculations which you put there, in the case of those two companies by way of example, were of the same nature and according to the same principles as Lane's? --- Yes. I just took the figures and worked them out on the same principles.

10

Did you at any time after you wrote this letter have any conversations with any of the Directors between the 30th September and the time when you were next in Melbourne, in mid-November of 1949? --- Between the middle of September ---

I am asking you about the end of September, when you wrote this letter and mid-November, when you were down in Melbourne. The question I asked you is: Did you during that period of time have any conversations with any of the Directors, that you can remember? --- I think it is certain that I had some conversations, because I would have met him in mid-October. I do not think any of those conversations were of any importance. I may have asked a question, or something like that, but I think at that stage, Mr. F.E. Bunny - the matter had been referred to him to work on it and put it in some sort of shape for further, and perhaps, final consideration.

20

You received certain correspondence during that period? --- Yes.

30

I will come to that in a moment. But before you went down to Melbourne in November 1949, had you as Managing Director of Pactolus given any consideration to the obtaining of finance by Pactolus? --- Yes.

What consideration had you given? --- After the end of September, due to the correspondence I was getting, it began to appear that this transaction might go on, so I thought it is time now that I looked into the question as to what funds Pactolus will need. About the middle of May I wrote an application in detail.

40

You said about the middle of May? --- In the middle of May I wrote an application in detail to my

bank, and the bank of Pactolus, the Commercial Banking Company of Sydney Ltd., for an overdraft.

You said May, do you really mean May? --- Did I say May?

Yes? --- I meant October. Unfortunately my secretary was away, so it was written in my own handwriting. I took that down and saw the secretary at Head Office, who was Mr. Morgan - he has retired since - and I asked him would he have this application considered. It was an application for an overdraft of £125,000 for Pactolus. In that application I set out in detail the shares the Company was going to buy and a calculation as to what in my opinion they would be worth. I attached copies of the Balance Sheets of each of the companies, in confidence, and summarised, so that they could see there was backing there.

At any rate - - -

MR. TAIT: My friend is getting the contents of a letter and the witness is certainly describing what it is about. It seems to be of some importance.

MR. MACFARLAN: I have the letter here.

MR. TAIT: I did not know you had the letter.

MR. MACFARLAN (To witness): Have you the application you made? --- I have not got the letter, it belongs to the bank, but I asked the bank for a copy and I have that copy there now.

Which is the bank? The Head Office of the - - -? --- The Head Office of the Commercial Banking Company of Sydney Ltd.

Would you mind handing that copy to me, please? --- On the end of this copy letter there are some pencilled figures which I put there later on.

I have a copy here. At any rate, you made this application to the Bank for the overdraft limit of £125,000 or £150,000? --- £125,000. There would be £25,000 available apart from that.

Did you receive any letter in reply to that application? --- No, I did not receive a letter. Mr. Morgan rang me up and asked me to come and see him. He said that the General Manager was away but that

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he had taken the liberty of sending it up to him first and having had his general O.K., with an addition to the terms that Mr. Morgan had mentioned to me for the overdraft, it had been put before the Board and had been approved. The addition which Mr. Osborne made was that I should give - - -

A general charge? --- I myself should guarantee Pactolus in addition to a charge over these shares, and of course, I have very substantial assets.

Did you hear something further from the Bank?
--- Mr. Morgan said, of course, this will have to go to the Commonwealth Bank.

10

That is the Central Bank? --- Have to go to the Central Bank, and sometime later, it must have been before the end of May - - -

Do you mean May? --- I am sorry, October. He told me that he had some inquiries from the Bank. These inquiries were directed to the general nature of the businesses and so on, and I looked at them and I said, "Well, I will take some time to answer this; do you mind if I do not hurry?" because just about this time, time was passing on, and there had just been an arrangement for me to come down and discuss it again - - -

20

To come to Melbourne? --- Yes; I did not know what the position was, and I just left the application there in suspense, and I came to Melbourne.

You came to Melbourne, and I think that this was the position: that you never actually took up the overdraft with the Commercial Bank, is that right?
--- That is correct.

30

Or do I put this correctly - - -? --- Circumstances change. At the November conference the Ajax directors were there in the full body - - -

I will come to what happened there, if I may, in a moment, but if you just assent to this, if it is a fact: that you never completed the application for the Commercial Banking Co. of Sydney overdraft so far as related to those Central Bank requirements, the questionnaire which you had received? --- No, what I did do was I telephoned them again and asked would they still keep it in suspense as I did not want to drop it.

40

I will tender that copy of the application made to the Commercial Banking Co. of Sydney. My learned friend, Mr. Tait, tells me that he has no objection on the grounds of form.

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MR. TAIT: I would like to just see it before you put it in. (Mr. Tait perused document).

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10 Your Honour, what I had in mind was that the witness was producing a copy, because he had not the original, it being with the bank, of an application which he had made to the bank. What is handed to me is a sheet of paper which does not mention the bank at all, is not addressed to anybody, is headed "P. Pty. Ltd., Business" and I do not accept that - when the witness spoke of that I thought he was producing
- - -

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MR. MACFARLAN: So that there will be no trouble about it may I have this marked for identification and I will take steps to have the original obtained from the bank?

20 MR. TAIT: I think that is the only course - - -

MR. MACFARLAN: The witness has sworn this is a copy.

HIS HONOUR: If it comes to that, the witness has said that this is the document. If you want the original you are entitled to insist on it, Mr. Tait. Is that the position?

MR. TAIT: I only do that because I thought the witness said that he had a copy of the application. That is not an application.

30 MR. MACFARLAN: He said that the copy was given to him by the bank.

HIS HONOUR: Perhaps the witness might again describe what this document is.

MR. MACFARLAN: Thank you, Your Honour. The document which has been handed in will be marked for identification (1)?

HIS HONOUR: If necessary.

40 MR. MACFARLAN: (To witness): Where did you get that document there, Mr. Ratcliffe? --- It was handed to me by a senior officer of the Commercial

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Banking Co. of Sydney Ltd. I told him that I had not kept a copy, as he knew, because the original was in my handwriting, and I said, "I find I need a copy; would you supply me with one?" He said, "Yes, I will have a copy typed", and he brought it up to me. Perhaps I should explain that I am closely connected with the Commercial Banking Co. and there is a very close relationship - - -

HIS HONOUR: The question is really that it has been described as an application. On the face of it, it does not purport to be an application, and that is Mr. Tait's objection. 10

THE WITNESS: I think that in the course of it it said, "I make an application for an overdraft".

MR. EGGLESTON: Look at the middle of page 2.

MR. MACFARLAN: May I just ask more questions on that, Your Honour? I want to get it clear.

HIS HONOUR: Yes.

MR. MACFARLAN (To witness): When you went down to see the Bank on the first occasion, as you have described, when you discussed this with them, did you have that original document with you? --- Yes, I had it with me. 20

Did you have any other documents with you which related to the application? --- Yes. The balance sheets of the companies were attached to it.

Beyond the original of that document and the balance sheets did you hand any other documents to the Commercial Bank? --- No, I handed that to Mr. Morgan with the balance sheets. I said that I wanted the balance sheets back; this is an application for an overdraft. 30

Then you had a discussion with Mr. Morgan, the secretary, on that occasion? --- Yes.

As far as you can recollect is that document which you produced this morning a copy of the document which you handed to the bank on that day? --- Yes. I read it when I got it from the bank and it appeared to me to be exactly what I had written.

MR. TAIT: I am satisfied. As I pointed out, 40

I had not read the document. It appears to include a statement that he applies for an overdraft, so that identifies it.

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EXHIBIT EXHIBIT A.4 Copy application for overdraft.

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MR. MACFARLAN: Would Your Honour wish that my learned junior should read that now?

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HIS HONOUR: Is it important that I should hear it at this stage?

10 MR. MACFARLAN: I do not think so, Your Honour. I think that perhaps for present purposes the contents of it have been sufficiently summarised in the course of the argument which has just occurred.

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HIS HONOUR: The details can be referred to if and when it may be necessary.

20 MR. MACFARLAN: I do not think that the details will ever need to be dealt with, Your Honour. (To witness): Then, Mr. Ratcliffe, you said that you never went on with that proposal although you could have, you understood, because of the time which was passing. Do you remember that - time was moving along? --- I did make other inquiries regarding finance at the same time as I lodged the application with the bank. I made inquiries as to other sources, and there again I left them in suspense. I was told that a certain company was seeking an investment for £300,000, but there again I left it in suspense because conditions were changing.

30 Can I just ask you this factor now, although it goes ahead a little bit: when this transaction ultimately went on, and when it was completed, how much money in the result did Pactolus require to find? -- Finally, at that time, when the transaction went through, it had to find £19,000.

Is this right: it had found that entirely from its own resources? --- Yes.

May I have the letters, Your Honour. I think that they are Exhibit A.3 which was tendered yesterday?

40 HIS HONOUR: Yes.

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MR. MACFARLAN: I am going to ask, Your Honour, if I might hand these to the witness. I propose to ask him some questions about these letters. May he have them, Your Honour?

HIS HONOUR: You do not mind, Mr. Tait?

MR. TAIT: No, I do not mind.

MR. MACFARLAN: (Exhibit A.3 handed to witness) Mr. Ratcliffe, I have handed you there the bundle of letters which is marked Exhibit A.3. I want to ask you is the first letter at the top of that bundle a letter from Mr. Wallace dated 6th October 1949? --- Yes.

10

Mr. Wallace had written to you there on the subject of the form of the Articles which were proposed - that is, the amended form of Articles? --- Yes.

Then I would like you to turn to the next letter on the 10th October 1949. On that date Mr. Bunny, Corr & Corr wrote to you? --- Yes.

Do you remember that letter? --- Yes, I remember that letter; it was a very important letter.

20

I think, Mr. Ratcliffe, there was some comment in the early part of that letter with regard to the establishment of a Branch Register and the creation of the "A" Ordinary shares and the suggested application of the Capital Issues Regulations to them, and it was discussed that counsel's opinion might be obtained. Then you will notice that Mr. Bunny speaks, in the middle of page 3 of my copy - I was referring there in the copy to the reference to Ajax Insurance Co. Ltd. so far as regards the Articles and the transfer of shares? --- How does the paragraph start?

30

"There is no difficulty so far as Ajax Co. Ltd. is concerned", and it is a small paragraph of four lines? --- Yes, I have found that paragraph.

That letter goes on, "So far as the shares in the proprietary companies are concerned we will have to evolve some method of a free transfer of shares"? --- Yes.

Do you remember the proposal which Mr. Bunny put forward in that regard there, or has there been any conversation at all, or view expressed by you or Mr.

40

Bunny at this point of time, with regard to the form which the Articles would have to take on restrictions of transfers? --- At this stage?

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Yes? --- Of course this question of free transfer - he was dealing with the point raised in my memorandum that some method of transfer would have to be worked out, because they were proprietary companies with restrictions on transfer.

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10 I see. You would have no conversations with Mr. Bunny up to that point of time? --- This was ten days after my letter,

So you did not have any? --- No.

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You will notice that the letter goes on then to deal there with the conditions relating to the re-purchase of the "A" Ordinary shares, the shares which Pactolus would buy if the proposal went on? --- Yes.

20 Did you form any views on those proposals made by Mr. Bunny there? --- Yes, I formed very strong views about them. It struck me that here was Mr. Bunny proposing something which was directly contrary to what I had said at the conference. I could not make out how it came about, and I wrote a very strong letter to Mr. Lane about it, and I said, "Well, Mr. Bunny is working this out as his idea, but this is not a matter of drafting; this is a matter for the vendors to decide. I suggest you give him some instructions."

30 As to whether or not the vendors were to have any rights - - -? --- Yes, I said to Mr. Lane practically that I would not go on with the transaction if this clause were put in the contract.

With regard to the right of re-purchase? --- Yes.

You then in fact wrote to Mr. Bunny on 12th October in answer to that letter; did you not? --- Yes, I wrote him a very polite letter, though.

But you felt more strongly than you wrote? --- I told Mr. Lane the way I felt.

40 Then in that letter you did offer a number of matters that I do not desire to examine you about, such as the branch register, and the rights of the

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preference shares, the Capital Issue Regulations, and the Agreement for Sale? Do you see a paragraph headed "Agreement for Sale"? --- Yes.

You say there, "The purchaser, after taking up the new preference shares (reads) of the new preference capital."? --- Yes.

That would be a reference to your letter of 30th September, I take it? --- Yes.

Then there is a reference to the restriction on transfer, and then you deal with the question of Mr. Bunny's proposal of the repurchase, or right to repurchase by the vendors? --- Yes. 10

Would you look at the first paragraph on that copy, which consists of about a dozen lines? --- The note that you refer to?

Yes, that is the one. You say in the last sentence of that paragraph, "While, from the legal point of view (reads) out of the transaction."? --- Yes.

In the next paragraph you refer to what virtually is a profit making scheme under section 26A? --- Yes, that was my view of what would happen if they repurchased the shares. 20

Is this right? Is that what your attention, your mind was directed to, when you wrote that last sentence in the paragraph I just read to you? --- Yes.

You will notice two paragraphs down, the contract which was then being drafted and negotiated "must not include any provision ...(reads)... to the shares." Was that a similar thought in your own mind in relation to section 26A? --- Yes, the whole thing was changing due to the interpretation that was being put on the headings in my letter; the interpretation was put on those that they could keep a check on these shares in some way, a string on them, that they seemed to have overlooked, as I said in this letter. I stressed at the conference that this proposal was for an outright sale and they just make up their minds; if they decided to do it and decided to sell them and give them up, they would never get them back. 30 40

Would you go over the page, please, to the third

last paragraph of that letter, where you speak of Counsel's opinion? You say, "In conclusion, there is the matter of obtaining Counsel's opinion (reads).... of facts." Earlier in the letter you mention the questions of Capital Issues Regulations and the establishment of a Branch Register at Canberra? --- Yes.

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10 What had you in mind when you wrote that sentence: "I suggest, in this connection, it is unnecessary to place the full details before Counsel."? --- I just wanted it put briefly and concisely. Of course, I had my own views on this question which Mr. Bunny was raising - that they were his responsibility. I did not want a long delay over it. Time kept getting on.

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You then wrote to Mr. Harry Lane on the 13th October 1949? --- Yes. This is the letter I had in mind.

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20 In the first paragraph you say, "In this regard, Mr. Bunny is endeavouring to draft a contract (reads).... some string to the shares." You included a copy of the letter to Mr. Bunny, and you refer him to the marked portions of pages 3 and 4. I suppose those - - -? --- Those would have been the paragraphs about the strings, I should think.

The Agreement for Sale? --- Yes, that is what I was directing attention to.

30 Then in the next paragraph you say, "I feel that we should not enter into a transaction (reads)....without any string being attached."; running a risk, and so on. What were you referring to there when you use the phrase "which may result in the loss of the advantage sought to be obtained"? -- Well, the way I put the transaction, it was the same result as the other proposals - neither of which they wanted, of course - but this one would involve heavy taxation.

40 That would therefore be a loss of a considerable advantage; the way I put it to them. It would no longer be a proposal, in my opinion, to be considered at all. I think I said that later on.

HIS HONOUR: I do not know that I follow the answer.

MR. MARFARLAN: Would you mind putting your

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answer again, please? I want you to explain to His Honour, if you would, please, what were you referring to when you wrote this sentence: "I feel that we should not enter into a transaction which, at the outset, includes an arrangement which may result in the loss of the advantage sought to be obtained."? --- They had selected this one out of three, all of which arrived at the same result, as far as taxes were concerned and as far as other financial results to the company, and so on.

10

Now, here they were proposing a transaction in which they were going to sell shares and buy them back, which was like a forward Stock Exchange transaction; that kind of a profit-making scheme; and they were carrying out a transaction which was a disadvantage. That was the proposal in Mr. Bunny's letter.

HIS HONOUR: I follow that. "advantage sought to be obtained": I was wondering if you would define that for me? --- Perhaps I was putting it, Your Honour, in a selling way by putting it that way.

20

They were exercising their rights of choosing which way we would do it: If you do this, you are stepping into the net instead of walking around it, if I may put it in the vernacular way.

HIS HONOUR: Does that mean that the shareholders who were selling their shares would, if they adopted Mr. Bunny's suggestion, incur a tax liability - - -? --- That was my view.

As compared with what you were proposing, which would mean that the transaction would result to them in a tax saving? --- You cannot describe it as "a tax saving" when there is no liability at all. They were advised to sell shares which were investment shares.

30

It is the word "advantage" that I am trying to understand? --- Let me put it to you this way: In dealing with these people they are commercial gentlemen, and this is a sort of language which they understand. So I put it on the best footing.

40

The "advantage" was the tax advantage, though? --- That is so.

MR. MACFARLAN: Then you put it very squarely

to Mr. Lane that you think he should sell the shares unconditionally, I think, in the middle of that letter? --- Yes, but the vendors should make up their minds to sell the shares unconditionally - - -

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10 In the third last paragraph it says, "I feel sure that you will realise that this is not a mere insistence on my own opinion(reads).... of weakness in it." Why did you feel compelled to "stress" it, I think, is the word you used? Why did you feel compelled to stress that point to Mr. Lane? --- Because this was not a transaction which I would recommend. As a matter of fact, I did say in the draft letter that I would not enter into it. Then I thought, "That is not a very courteous way to write; perhaps Mr. Lane has the same opinion." So I changed it.

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When you say "the draft letter", you mean the original draft of this letter of 13th October? --- Yes, and I softened it down.

20 But you felt obliged, because of your relation with them, to advise them on this; did you? --- Yes.

30 Then you received another letter from Mr. Bunny which was dated 18th October 1949, dealing with the Branch Register again, and Capital Issue Regulations, and then you come to the Agreement for Sale. I think Mr. Bunny says, "There is no necessity to refer to the matters set out in paragraphs 2, 3, and 4, of your memorandum." That is the memorandum that is referred to there, as you understand it, I suppose - the letter of 30th September 1949, which you wrote to Mr. Wallace? --- Yes.

Paragraphs 2, 3 and 4, were the ones dealing with the proposals in the event of public float? --- Yes.

And the return of the preference share capital, in the event of a public float being made; is that right? --- That is correct.

40 You see that paragraph, Mr. Ratcliffe, that I am just drawing your attention to, which refers to a telephone conversation with Mr. Ross? --- Yes.

You knew that he was the Secretary of I.A.C.; did you not? --- Yes, I knew Mr. Ross in that position.

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Do you recall a telephone conversation with him at the time of which Mr. Bunny speaks? --- Yes, I recall it, following my letter to Mr. Lane.

Does this paragraph correctly summarize the effect of the conversation which you had with Mr. Ross on that occasion? --- Yes. This part he said here, "...and you agreed that in the draft agreement (reads).... contract for the sale of the 'A' shares." That is so, but there was also no necessity to put his proposal in, either.

10

Put his proposal - - -? --- That is what I understood from the conversation with Mr. Ross - that that was dropped.

HIS HONOUR: That is, "4."; is it not, Mr. Ratcliffe? --- No, this was new, Your Honour; this proposal of Mr. Bunny's in this letter.

What I mean is the phrase "There was now no necessity to refer to the matter(reads).... paragraphs 2, 3 and 4." That was paragraph 4; was it not?

20

MR. MACFARLAN: Return of capital in re-purchase of shares.

HIS HONOUR: I have become confused - "4" was the number given to it in Mr. Ratcliffe's letter.

MR. MACFARLAN: The fourth paragraph in his letter. (To witness): Can you remember what Mr. Ross said to you in that telephone conversation, Mr. Ratcliffe? --- Yes, I understood him to say they were agreeing to my company's suggestion of a proposal about re-purchase should not go in, it should be abandoned, and they also thought these other conditions, in fact all conditions, should be abandoned. That would get back to what I said - an unconditional sale of the shares.

30

And what did you say to that? --- I said that was quite all right but I said if you are in difficulty when you float Pactolus will still consider selling its shares to the public. Of course when they did float, I did sell them.

That was the conversation with Mr. Ross, and you see there you say you had not had any conversations with Mr. Bunny by this time that you can recall, other than at the September conference? --- No, I

40

think it was correspondence at that stage.

Can I take you to your letter of the 19th October, which is a reply to that one. There is a reference to the submission of a case for opinion to Mr. Hudson, then the reference you will see there that you had some draft articles and you sent that to Mr. Bunny, and you speak there of the dividend provision being changed to provide for half yearly payments? --- Yes.

10 What was that a reference to? ---That was again to make sure these preference shares would be saleable to an investing company like a life assurance company or any other public investing company.

 "Then for business reasons I asked that the preference dividends(reads)paragraph(f)." I do not think you make any reference in that letter to what Mr. Bunny had referred to under the heading of "Agreement for sale" in his letter of the 18th, the inclusion of paragraph 1(d) in the form of an agreement. Do you remember that? ---I remember some questions about that. I do not remember what (d) was.

20

I think you may take it that it contains a provision that Pactolus after taking the "B" preference shares in these companies would sell them back to the vendors as "A" ordinary shares? --- That was the one I was objecting to.

I am sorry, the fault is no doubt in my expression. What I was referring to was the transaction by which Pactolus would take up "B" preference shares newly issued and then sell them to the vendors, to Pactolus in the "A" ordinaries? --- Yes.

30

I think you may assume the reference in paragraph 1(d) of Mr. Bunny's letter is to that proposal? --- Yes.

His suggestion there was, to use his own words, "The only observation we have to make is as to the wisdom of the inclusion of paragraph 1(d)" You remember what he says, you have just read it? --- Yes.

40 You did not comment on that part of Mr. Bunny's letter? --- Not in this letter but I did tell him somewhere that I was in agreement with it. In my view it was solely a matter for them, if they were

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satisfied I would sell them shares as I wanted to. That was all right.

You wanted to? --- Yes, I wanted to, but I did not want to find £400,000 for a parcel of preference shares, and to keep them.

You sent a telegram regarding the case of Opinion that was proposed there was some reference in the letter of 15th October from you to Mr. Bunny about some further alterations in the draft articles? --- Yes.

10

I do not want to take you through the detail of all that there, but the reference there may be said to be references to the dividend rights which these "A" ordinary shares were to have, and in respect of what funds. Do you remember that? --- Yes.

What was the view you held at that time and were maintaining to Mr. Bunny? -- I referred that draft to my solicitor, Mr. Single of Messrs. Dawson, Waldron, Edwards & Nicholls, and asked him to look at it I thought there was a fault in it and when he had a look at it he said "Yes, there is a very serious fault". He proposed a re-draft which I think I put in this letter, but then the re-draft itself was faulty and I corrected it again later.

20

Would you tell His Honour what was the substance of the fault which you said was in these Articles, and which Mr. Single confirmed. I do not want you to read the whole of it aloud, just look at it? --- Can I read this paragraph in the letter? This paragraph states - it is the third paragraph - - -

30

Commencing with the words "The matter is one of some difficulty"? --- No, the preceding one, Preferences "A" and "B"(reads)..... tax paid dividends."

Is what you are putting there in behalf of Pactolus, under special dividend rights Pactolus should be entitled through the Articles to have recourse to the tax paid dividends? --- Yes, according to what was proposed. The Article as drafted did not carry out the proposal but he has literally followed the way I had put it in my letter. I had not expressed it well.

40

You had this further correspondence with Mr. Bunny and I think Mr. Single came into it at one stage and ultimately the view which was asserted by

you on behalf of Pactolus was adopted, is that right?
 --- Yes.

There were a lot of alterations before it was ultimately settled? --- Yes.

10 MR. EGGLESTON: I think, your Honour, it might be helpful if Your Honour referred to Page 2 of Annexure 12 to see just what this difficulty was. Your Honour remembers I could not follow it yesterday, but Mr. Ratcliffe gave me the clue by saying "It was in my original proposal." Clause A reads "Provide the "A" shares(reads)....a share." As that was profit, once these "A" shares had had 27/6d. tax paid, the company could then distribute the rest of all the tax paid profits to the other shareholders, and need not pay the dividend provided for in paragraph (a) at all, because it would not be paying them other than out of tax paid profit. But it could happen that that dividend might be held up for a considerable time, and it was the fact that it
 20 allowed the company to pay some dividend before the special dividend right was exhausted which was discussed here, and it was redrafted to get over it.

MR. MACFARLAN (To Witness): That was the letter of the 25th October that I was asking you about. On the 26th October you received a letter from Mr. Bunny? --- Yes.

30 I do not think there is anything further I need refer to there. Come to the letter of the 1st November 1949. There is a further reference there to the tax free profits, and I think the next letter is the 2nd November, Mr. Bunny to you. Do you remember that letter of the 2nd November 1949 from Mr. Bunny? He speaks of sending the Articles to you? --- Yes.

Then there is a reference to the Ajax Insurance Company Articles in the third last paragraph of the letter, and the Articles in the other company? --- Yes. "As you will see that we have incorporated...".

Yes. Would you read that? --- Yes.

40 You did not acknowledge it in the letter which you wrote on the 4th November. Did you acknowledge it in a letter which you wrote dated 7th November 1949 to Corr & Corr? --- Yes.

And what were your views, as you recall them, on

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the matters which Mr. Bunny raised in that paragraph you just read from the letter of the 2nd November? --- I just cannot make out what he is referring to there, 4(c); I cannot remember 4(c).

That is 4(c) of the new Ajax Articles. I do not think it is set out in the correspondence. But you see there what Mr. Bunny is saying? --- He is suggesting that something could be safely left out there.

And he refers there to an argument that the transaction might lack bona fides, or point to it being a transaction bound up with the immediate declaration of a dividend. You replied to that letter on the 7th November 1949. What did you understand, or what were your views, in regard to those matters which Mr. Bunny refers to, as to lack of bona fides? Do you see the paragraph I am referring to? --- Yes, I can see that paragraph but I cannot see where I answered it. 10

It does not appear to me that you made any reference to that particular point in the letter of the 7th? --- The paragraph that he is talking about there seems to relate to this question of the ways in which the special dividends were to be paid, or something like that, but I have not got that draft in front of me and it is very difficult to comment as to what he had in mind. 20

Can I put this question to you: So far as you were concerned, or knew, was there any question of lack of bona fides on these matters which were being written about? --- None at all. In fact, I cannot see how that could arise on 4(c), because all we were trying to settle were the proper rights, the proper carrying out of the proposal as to the rights which were attached to these shares. I cannot see how the question of bona fides could arise in that. 30

I put my question to you even more generally than that. So far as you were concerned, was there any question of lack of bona fides in relation to this transaction which was being negotiated at this time? --- Not at any time. I think the correspondence with Mr. Lane indicates the view I was taking throughout. 40

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MR. MACFARLAN: Mr. Ratcliffe, have you Exhibit A3 there? --- Yes.

10 I finished asking you about the letter of 7th November 1949, part of Exhibit 3, and the 8th November Mr. Bunny wrote to you again with regard to the forms of construction of the Articles and I think again on the 10th November he wrote to you. On the 11th November you wrote to Mr. Bunny. You see that letter there, Mr. Ratcliffe? --- Yes.

And in the largest paragraph of that letter he speaks there of the amount of tax-free profits mentioned in paragraph A. That would be paragraph A of the draft Articles, would that be right? --- Yes.

And you refer there to an amendment to the draft which you suggest? --- Yes.

20 What was the point of the amendment you were suggesting there? --- I think the dividend generally was being expressed as so much per share; this particular part, the tax-free part, was not. I thought there was a conflict.

You had in mind the tax-free part should also be expressed as so much per share? --- The same as the taxable part.

The letter also refers to an appointment for meeting these gentlemen in Melbourne on the 15th November. Did you go to Melbourne on the 15th November? --- I was in Melbourne on the 15th November.

30 And did you have a conference at all in connection with these transactions? --- Yes, I had a conference with the directors of the motor companies and at some stage that was interrupted so that the directors of Ajax could be there in lieu of the directors of the motor companies.

In lieu of them? --- Yes, all those who were on the Ajax Board who were not in there came in and I think some of the others may have gone out.

40 Would you just tell us firstly, dealing with the Ajax matter, what happened there? --- I think it was gone over with Ajax in practically the same way as it was gone over with the motor companies in the middle of September and they were given the same

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kind of information and they, after some discussion, particularly from the directors who had not been there originally, retired. One of the things that seemed to weigh most in their mind was this: that Ajax Insurance Company Ltd. was not a proprietary company. It was not listed, of course, it was private for income tax, it published its balance sheet and that balance sheet circulated amongst the people who insured with it and they were concerned about disclosing in those accounts the very large dividends that had been paid and they thought that was a draw back that would affect their business.

10

At the meeting you are speaking of now, did the directors of Ajax, or did they not, convey to you any decision about whether they would go on with the transaction? --- After one director came back and said they decided not to adopt the proposals. They said they would consider other proposals later and I think the Chairman gave the reason about the primary factor in their consideration.

20

I think you have said you then had a conference with the motor people? --- Yes.

Was that in the I.A.C. Board Room on that occasion? --- That was in the same room. I think that was the I.A.C. Board Room.

Who was present at that conference as far as you can recall, Mr. Ratcliffe? --- I think Mr. Robert Nathan, Mr. Harry Lane, Mr. Lauri Newton, Mr. Bunny, and I think Mr. Ross may have been at that meeting - I just cannot recall whether Mr. Wallace was at that particular meeting or not but I feel almost certain he was there. I do not remember him bringing up any question.

30

Will you tell His Honour, please, to the best of your recollection what was discussed at that meeting? --- I think the proposal was gone over generally, from recollection, and there was a discussion on the drafts which Mr. Bunny had got out up to that stage. I think it developed into more a discussion of the conclusions that had been come to in the correspondence.

40

When you say the drafts Mr. Bunny got out to that stage, the drafts of what? --- Draft amendments to the Articles and there was a draft option, I think no contract. The contract disappeared and had taken the form of an option agreement.

Take the amendment of the Articles. Do you remember any particular discussion on the form of the Articles? --- No, my recollection is that as far as I was concerned they had been satisfactorily settled.

50

In regard to the form of the option do you remember whether or not the option was then in the form it was when subsequently sent to you? --- I think it was, but I think the final option was probably different from what was produced in draft at that meeting; I am not sure. But at some stage the option that was finally adopted was a revision of the last one I had seen in Melbourne, I think.

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10 Do you remember any discussion at that meeting about the form of the option? --- As to the general form, of course, that was laid down by Mr. Bunny. I had shown my copy to Mr. Single as to that form, and he was satisfied. I think it was only a matter of detail as to one clause. I cannot just recall whether that was the clause we were talking about this morning - the one about preference shares.

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Preference shares? --- I think that was probably the one which was mentioned, and then when I got the option that had been taken out.

20 You do not remember any of the discussion at this meeting about this clause, do you? --- No, to be quite frank. There was nothing really outstanding at that meeting. The outstanding things that took place at that meeting were really about Ajax.

30 I see. Was there any discussion at that meeting, so far as you can remember, about the amounts to be paid in dividends and when they were to be paid? --- No, I do not think that they were discussed at that meeting, but while I was in Melbourne I was given the revised monthly figures of those companies - the middle of November - I think I still only saw to the end of September, there; I do not think the October ones were out. But later, after that meeting, I think, I got the October figures.

While you were in Melbourne on that occasion was there any discussion as to the form of the dividend resolutions? --- I do not think there was a discussion at the meeting.

40 On any occasion, when you were there in November, Mr. Ratcliffe? --- No. I think it may have been while I was in Melbourne that a request was made that I should draft them.

Do you remember who made that request? --- Well, I think Mr. Ross would have said would I draft the resolutions for him. I am not sure that he did make

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it while I was in Melbourne; I am a little bit inclined to think that he rang me up about the end of November and asked me to do it.

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Did Mr. Harry Lane ever speak to you about either the form of the dividend resolutions or the amounts to be distributed by way of dividends? -- No; it was Mr. Lane who provided me with the progress figures - the monthly figures - but he did not suggest what should be done. He said, "There you are", and left it to me to recommend what should be done. 10

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I think the fact is that you subsequently did draft the dividend resolutions? --- About the end of November or the beginning of December I drafted them.

That was, of course, after you returned to Sydney, was it not? --- Yes.

At the time when you drafted those resolutions did you have any further monthly trading accounts in relation to the company? --- If my recollection is correct that I only had September when I was in Melbourne, then I think that I would have got the October figures over the phone from Mr. Harry Lane. I think that he would have brought me up-to-date on them. 20

Would these company figures be of any assistance to you, or give you any guide in the recommendations which you would make as to the amount of the dividends? --- Yes. Those figures, in conjunction with what I had seen in Melbourne, showed a still further progressive increase in profits, and based on those I formed an idea as to what the company could pay out of profits it had earned up to that time. I think I came to the conclusion early in December that I had been a little bit optimistic with regard - I think it was Lane's - because I went back and had a look at the subsidiaries and came to the conclusion that it would be safe for the subsidiaries to pay additional dividends. I do not remember whether they were subsidiaries of Neal's, or of Lane's, but there were some subsidiaries in which, after the lapse of a week, some additional dividends were declared, and that was done so that I could more safely adopt the estimate I had made to take from Lane's, because that went into Lane's, or Neal's, whichever it was, or it may have been both, and I had to decide, of course, whether the company could safely pay out of the profits it had earned. 30 40

Were those dividend resolutions which you drafted the ones which were subsequently passed by the Boards of the various companies? --- I think there were ... When I drafted them and sent them to Melbourne I said that if the figures which I had estimated on were safe, then they could drop out a couple of references in a couple of places, and I mentioned those, I think it was, if your up-to-date figures still confirm that you could take out these particular references.

10

Was this done by letter? --- I think that I sent a memorandum with the draft dividend resolutions.

MR. EGGLESTON: I think that we have reached the point, if I may intervene, at which Your Honour will recall that yesterday I tendered the letters about negotiations, and my learned friend Mr. Tait referred to a letter composing some dividend resolutions, and an earlier letter of which they were an amendment.

20

What has happened has been that we have had a clean copy of the second one made for Your Honour, but we have not had the first one copied as there was some doubt as to just what letter it was that was wanted. It is actually a letter of the 30th November addressed to Mr. Wallace but at the moment we have not got the original here, and we have not got clean copies.

30

Would Your Honour bear with us if we go on and perhaps tender the second one, which refers to the earlier dividend resolutions, and we will undertake to my friends that we will have a proper copy made of the earlier letter and attachments to show what the original was from which the alteration was made.

May I say, Your Honour, at this stage, that what Mr. Ratcliffe has said corresponds with what appears in these, changes in the amounts of dividends.

HIS HONOUR: Yes.

40

MR. MACFARLAN (To witness): It does then appear that you wrote a letter, enclosing draft dividend resolutions, to Mr. Wallace on the 30th November 1949? --- Mr. Ross was really signing the correspondence in Mr. Wallace's name, and that is why I think I addressed it to Mr. Wallace.

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Then the second letter, which you also wrote on that same subject, was expressed to be a memo to Mr. D.H. Ross from yourself? --- Yes.

And is dated 13th December, 1949, and sets out some further dividend resolutions, and is expressed to be with reference to a telephone conversation which you and he had the previous night? --- Yes.

"The dividend resolutions were expressed to be (reads) in consequence of amendments." First of all, do you remember having a telephone conversation with Mr. Ross? --- On that particular night, I could not.

10

Can I say not on that particular night, but on the subject of the dividend resolutions? --- I think it is most probable that I had several telephone calls from Mr. Ross. I don't recollect them at night, though.

(To His Honour): Your Honour, this letter of 13th December could be either tendered now or Your Honour might feel it more convenient to wait till tomorrow until the letter of the 30th is copied and they can be tendered together to form the same exhibit?

20

HIS HONOUR: Very well.

MR. MACFARLAN: I do not think there is anything I need to refer to Your Honour in that letter at this immediate point of time.

(To witness): Mr. Ratcliffe, when you were in Melbourne do you remember having a conversation with Mr. Ross at any time about these transactions, or seeing anything in his office? --- I don't think I had any detailed conversation with him. He may have asked me various questions and I do remember one occasion he asked me - I was going out - would I just come around to his office for a moment while he showed me some other document.

30

You were going to some other appointment and you went around there? --- Yes.

Would you have a look at this document, please (handing document to witness)? Is that the document that you saw in Mr. Ross's office? --- Well, I did not see this document. This has a lot of things filled in and it is typed. My recollection is that I saw something similar to that which he drafted out as to form.

40

In handwriting? --- I think it was in his handwriting.

What you suggest is that those pencil ticks that appear there were not there, is that so, when you saw it? --- There are various remarks here as well as pencil and ink ticks. It was blank, in that way. It was set out here (indicating) a list of things which he worked out he had to attend to, and he asked me would I just read that and see if he had forgotten anything.

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10 Did you read it? --- Yes. I sat down for a moment and looked through it from front to back and said, "It seems to me you have covered everything", and then I think I just went off.

20 I will tender that document, Your Honour. Of course, that is not the original document. I think the witness has said that he saw a document which was handwritten and did not have any ticks, nor did it have any of the notes on it. I took that to mean ink and pencil writings that this one had, but that otherwise it appeared to be similar to this one that I produce.
(To witness): Was that stated? --- That is correct. The handwriting is what is there typed on the left side.

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MR. TAIT: It was only the left side you saw?
--- Yes, that is my recollection.

It is numbered 1, 2, 3, 4, 5? --- I think the headings and the rulings might have been there, but nothing in them.

30 MR. MACFARLAN: You saw this on your visit there in November, did you? --- I think I may. That is the only time I could have seen it. I was not in Melbourne again.

You were there for a week, I think you said, in November which commenced, it appears from these letters, about the 15th November? --- Yes.

Would that be the best of your recollection?
--- Yes, I was probably in and out two or three times for short periods in that week.

40 Then I do not think you had seen that document before, had you? --- No. Mr. Ross, as I said, caught me as I was walking out with my satchel.

Nor have you seen it since? --- No. I never asked for it, nor looked at it.

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MR. TAIT: It will get a description, no doubt, when you put it in as an exhibit?

MR. MACFARLAN: "Document seen in Mr. Ross's office."

HIS HONOUR: I suppose it could be named "A document, a draft of the typing of which was shown by Mr. Ross to Mr. Ratcliffe."

MR. MACFARLAN: Perhaps I could resort, for purposes of identification, to the words used on the top of this document, which are "check sheet"? 10

EXHIBIT EXHIBIT A5 Check Sheet.

MR. MACFARLAN: I do not think it is necessary to refer to that document at this point of time. It does deal with the shareholders, etc., and it goes right through to the declaration of dividends and the transactions at Canberra.

HIS HONOUR: With every step that had to be taken?

MR. MACFARLAN: Yes, and columns made for ticks to be inserted when those steps were completed. 20

When you were in Melbourne in this week during November, had anything occurred in any of these conversations which took place that affected your intentions with regard to bank accommodation or provision of money for Pactolus? --- Yes, the figures which were so produced were so much in advance of the figures which previously had been given to me that it showed that the company's position had actually improved and that I could recommend safely a larger sum to be paid out of the profits up to the date on which we would have declared a dividend, which was near the end of December and I really had a sum as a margin of safety in anything that would have been earned in the first part of December. 30

Did that mean then that you would not need to make any special accommodation for finance for Pactolus? --- That point and the fact that Ajax Insurance decided not to adopt this plan. That relieved me of finding a certain amount of money there as well so that the two things together increased profits and Ajax dropping out made it possible for me to decide that I could cover. 40

I think I can state this to you - it has been proved in evidence - on the 17th November while you were in Melbourne on this occasion, on behalf of Pactolus you opened a bank account with the E.S. & A. Bank at the South Melbourne Branch? --- Yes. My bankers were the Commercial Bank of Sydney and in Melbourne I only had a trust account there, and as it meant opening a new account I thought it would be most convenient to go to the bank where the accounts of these motor companies were kept.

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You returned to Sydney and these letters took place of which you have told His Honour, with regard to dividend resolutions? --- Yes.

I think you have told His Honour that at one point of time you received a check sheet from Mr. Ross?--- I think Mr. Bunny.

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Did you get any further documents at all from Mr. Ross after you returned to Sydney? --- Yes, I got a short note from Mr. Ross, a very small piece of paper attached to some figures: "Mr. Ratcliffe attached are our final figures." That had on it the date 15th December. There is no date of a receipt stamp on it from my office so I could not say when it arrived, it would depend on what day of the week 15th December was.

Would you have a look at these three documents which I hand to you and tell me if they are copies of the documents you received from Mr. Ross? --- Yes, they are copies, or these are the same documents I received a copy of. I did have them checked when they came in, as to two things. There is a column here "Proceeds of sale".

EXHIBIT

EXHIBIT A6 Final figures.

MR. MACFARLAN: You had certain figures checked? --- Yes, column 4 on each sheet which shows "Proceeds of sale at £5/16/- per share", that is Lane's Motors. I had those figures checked because that is what Pactolus had to pay.

Column 5 has costs of new preference shares. I only checked the total of that because Pactolus took those up in total and I just saw that the totals agreed with what I understood Pactolus had to find.

Those were the two columns you had checked? --- Yes I had them checked at that stage. I decided we

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would have some cheques written in advance of the meeting. Then I discovered we had no cheque book.

You wrote to Mr. Ross and asked him to get you a cheque book from the South Melbourne Branch for at least 100 cheques? --- I asked him to get one and in case it went astray to get a second one and to bring it to Canberra.

Did that document convey anything to you as regards the intentions of the vendors? --- When I received this document I concluded they had definitely decided to go on. This was the first time, when I got this slip of final figures, that I concluded that it was final. There was nothing said at any time that amounted to an agreement. It was always being considered and points being discussed, but no one ever said, "Yes, we will make a deal."

10

When you received these you felt fairly competent to go ahead on the basis that it would be completed? --- I made arrangements to go down and for my solicitor to come down, and finalise the matter.

20

This document, Exhibit A6, this last set of figures, had you seen that before it arrived by mail from Mr. Ross, or anything resembling it in Melbourne? --- I have no recollection of seeing this and I do not think it was prepared when I was in Melbourne. It could not have been because I remember now the dividend resolutions were not drafted and they did not have any amounts.

I want to ask you this, and it will involve taking you back to the November trip to Melbourne. At that time had Mr. Lane or any other one of the Directors asked you to take up a new appointment or a new assignment? --- Yes, I made a mistake when I said there was nothing else. At that meeting in November, I just recollected a while ago, Mr. Robert Nathan after the discussion about these matters finished, he said that the Board wished me to take up an appointment as their Taxation Adviser in lieu of Buckley & Hughes, but the Board had decided that they would like Buckley & Hughes to stay on for a year with me so that we could see together that there was nothing missed because of the change.

30

40

They wanted me to accept the appointment and in the circumstances, I had got to know so much about the company, I agreed to it. After that

meeting, I rang Mr. Hughes. I had been told by the Chairman that he had been to see Messrs. Buckley & Hughes, and after the meeting I rang Mr. Hughes and I said I would like to come and see him, and I went down to see him as a professional man.

You called on him? --- Called on him.

You first undertook the work for the three companies in June 1949, I think, as you have said, or July? --- The consulting work in July.

10 When they came to consult you about the matters you have described, you undertook their taxation advising work, in November 1949? --- Yes.

And did you render an account and charge them for the work which you had done from June 1949 onwards? --- I would not have sent them an account until after June 1950, because in my practice, if I have a permanent client, I send an account once a year only.

20 Did you send them an account? --- I would have sent them an account after June 1950, for all the work up to June 1950, because I did no work prior to the 1st July 1949.

Will you please go back to the bundle of letters, Exhibit A.3., and look at a letter of 2nd December 1949? --- Yes.

30 You see there Mr. Bunny acknowledges the draft resolutions and those would be in the letter of the 30th, and he says, "We have again looked at the draft agreement to be signed (reads) also approved." You acknowledged that letter by a letter dated 5th December to Corr & Corr, and you, I think, dealt with that in third paragraph of the letter of the 5th December, where you said, "I agree that it would be preferable to omit paragraph (d) clause 1 (reads) to omit it." I want to ask you, from the reference that Mr. Bunny made in his letter to the exclusion of the other clauses, for reasons well known to you - you remember he used those words in his letter - were the reasons the reasons you have given in evidence, or were there any other reasons? -- They were the reasons, going back to my letter to Mr. Lane.

40

When you come to the letter of the 5th December 1949, you said: "I agree it would be preferable to

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omit paragraph (d) of clause 1, as the business circumstances appear to be such that these shareholders would not be running any risk." What were you referring to there, when you spoke of business circumstances? --- First of all, the shareholders wanted to buy them. It was their company. This was a large part of its capital, and I think it was contemplated at the same time that these preference shares would go back to ordinaries. As far as Pactolus was concerned, it did not want to have to raise this amount of money and it made no arrangements to raise it; it was dependent on them taking it. So the business circumstances were such that the sale would go on anyway.

10

I do not think there is anything further in that letter. Then you remember, do you, that you sent a telegram to Mr. Bunny on the 12th December 1949. I think it is in the bundle you have there? --- Yes, there is one here. I remember this one, about the transfers.

20

Yes. You remember that was really in reply to a letter which Mr. Bunny had written you, dated 7th December? --- Yes.

In which he pointed out the difficulties? --- He was having difficulty about his amendment to his transfer clauses in the Articles.

Then, the position was on the 12th, you said that you were agreeable to the transaction going on if those two matters were covered by undertakings; is that right? --- Yes.

30

The restriction that they would register a transfer of shares and fix a fair value at not less than £1? --- Yes. That last one is very important.

Why do you say it is important to you? --- If they had fixed a fair value at less than £1., it would have cost Pactolus a lot of money.

Then, I think you attended at Canberra, did you not, on the 19th and 20th December? --- Yes.

I think you have read that formal document which was agreed upon, have you not, between the Commissioner and ourselves, the taxpayers here, setting out the facts of what occurred at Canberra, Exhibit A.2.? --- I have read it at one stage; I do not know that I have read the final stage.

40

At any rate, you believe it to be a fact that the final form recorded was what happened so far as was observed by you? --- Yes.

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Now, Mr. Ratcliffe, you were handed one of these books this morning. Turn to page 103 of the book labelled Annexures 37 to 60. That is a letter which had been written by you to Mr. Wallace on the subject of Melford Motors on the 13th October 1950? --- Yes.

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10 You see there that the first paragraph says, "I enclose herewith four copies of the memorandum which I have prepared regarding the proposal mentioned in Sydney"? --- Yes.

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20 Do you remember some conference or conversation in Sydney that is referred to in that letter? --- Yes, I remember Mr. Wallace was in Sydney and I think he saw me in my office and I think there was some mention made that the accounts of Melford would be ready very soon and I told him in that event when I had the draft accounts I would have a look at them and see if I could work out a proposal to increase the capital by another £200,000, which was always my recommendation. There was nothing definitely decided previously, it was just left. They did decide on the £200,000.

30 Is this what you said: it was always your recommendation it should be increased by another £200,000? --- Yes, I thought £400,000 for this company was the minimum figure you could reasonably fix.

And then did you communicate that recommendation to the directors of Melford's? --- I had discussed it on the first occasion back in December 1949 - not December, September and November, probably. Most likely it was in November because I remember at the September conference it was arranged Mr. Wallace would talk to Mr. Fenton first so I think there was some talk in November.

40 Would you tell me this, Mr. Ratcliffe: how did it happen, as far as you know, that Mr. Wallace came and saw you in or about October or a little earlier in 1950 on this matter? --- We had a lot of mutual interests and he may have come in about any one of them. I do not recall now how that interview came about.

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Can you recall for His Honour who raised the subject, as between you and Mr. Wallace, of the capital of Melford's Motors? --- I could have raised it this time, I think.

And do you remember anything that was said by you to Mr. Wallace, or by him to you on that subject, at that conversation? --- Not in detail, I think the discussion would have been very brief and it would have been agreed when I got the draft accounts I would examine them and send a memorandum. 10

Then, was anything said as far as you can recall at that conference about cash or shareholders wanting cash? --- Yes.

What was said then? --- I dealt with that in the letter.

Who said it, was it Mr. Wallace? --- No, I say here in the letter, "I have a recollection that subsequently Mr. Bunny mentioned that the shareholders would like to obtain some cash and I therefore made the additional suggestion which could be added to last year's plan if so desired". I have an idea I must have misapplied Mr. Bunny's suggestion to this company. He was possibly thinking of the estate of Robert Nathan and Neal's and Lane's unless he was speaking to me on behalf of some of these people, but their interests were minor in this company so I think I made a mistake in applying his remarks to this company. 20

Your recollection is that you made a mistake in October 1950 and now in thinking there was some mention made of shareholders and cash in relation to the Melford transaction? --- Looking back at it, when they decided they did not want any cash for them themselves I worked it out to issue them for every thousand shares but they did want it. That is pretty clearly when I misunderstood it. 30

That was the first conversation with Mr. Wallace. Do you remember if there were any further conversations between you and Mr. Wallace or any of the other directors of Melfords, or Mr. Bunny, with regard to the capital of Melford's? --- I think what I heard, I think most likely verbally, would have been that they had decided to go on with this plan. 40

When you say you heard, or heard verbally, do you remember from whom you heard, or who told you? --- I am just recollecting that in addition to Mr.

Wallace, Mr. Bunny was up in Sydney in the middle of October.

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1950? --- Yes; because I had discussions. Perhaps he was not there in the middle. I think he was there early in October, because I remember him writing to me after he got back to Melbourne, so he would have gone back before I wrote this letter.

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10 I would like to take you to this letter, and if you look, please, at the first page, which is page 103 in Exhibit A.2, you go on to deal there with the issue of a further 994 shares? --- Yes.

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And you say that you do that to show how much additional cash would be obtained for every further 1000 shares? --- Yes.

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And you did that, did you, because at the time you thought that the shareholders were wanting some cash? --- Yes. I was very clearly, I think, under the impression that they wanted a substantial amount of cash.

20 Whereas what you say you think now is you were mistaken in that? --- Yes, I think I clearly made a mistake.

May I ask you this: in fact the actual transaction which did occur, did that raise the capital of Melford's by the same amount as had been raised the first time? --- Exactly the same amount.

30 And involved the same transactions and calculations which had been made in relation to the first Melford's? --- Yes, they were identical, from recollection.

You have written, I think, a long memorandum attached to this letter, and I want, in the light of what you have just said about the capital being raised, the same amount, and the same principle being applied, to draw your attention to certain portions of that memorandum.

40 Will you please turn to page 105 and you will see in the second paragraph on that page that you referred there to the accounts of the company, and indicated that there would be a balance in the Appropriation Account of approximately £160,000 as a result of the appropriation recommended in a separate letter? --- Yes.

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That, I think, was a letter of the ---?--- 11th
October?

11th October, I think that was it. Do you re-
member what was the subject of that letter? --- Yes.
That letter was the usual kind of letter which I
wrote each year to a client when considering the
draft accounts, and I had had the Melford draft ac-
counts for the year ended 30th June 1950.

Which related to items of depreciation? --- It
only related to the ordinary things in the draft
accounts. It had no relation to this matter at all. 10

It was only relevant to this transaction inso-
far as it would produce a reflection really in the
Appropriation Account? --- Yes. There were recom-
mendations as to how accounts should be finally
settled.

The ordinary company accounts? --- Yes.

Then you go on in that annexure to deal with
the position that the shareholders desired to re-
ceive more cash, but I will not refer to that, that 20
was not adopted and was written, you think now,
under a mistake. But I would like to take you to
page 106, right in the middle of the page, and you
will see there: "The forecast in the Budget of some
increase in the percentage allowed as a reserve will
not, in my opinion, be large". Do you see that
paragraph? --- Yes.

And the next paragraph? --- Yes.

That refers to the Excess Profits Tax? --- Yes.

Was your knowledge of the Excess Profits Tax 30
any different at that point of time than it had been
when you were discussing the matter with the share-
holders in September 1949 in Melbourne? --- Well, in
the beginning of discussions for 1949 my recommenda-
tions there were based on what I regarded as strong
rumours. I cannot recall anything in the Press
about it, but there were very current rumours of an
Excess Profits Tax, but there was an election coming
on and it was thought that it was being held back
because of the election, but I felt that there was 40
something being done. However, here, at this stage,
I feel sure that when I wrote this it had been in the
Press, some announcement had been made here, other-
wise I would not have written in this style - I would
have still qualified it.

Then you refer to the fact that supplementary applications would need to be made to the Department of the Treasury for consent to issue 193,675 issued shares? --- Yes.

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When you say "formal application", this was in October 1950, what was the position? --- At that time the Government had announced that it would only be necessary to write a letter and consent would be granted in every case.

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10 MR. MACFARLAN: Your Honour will recall that there was no stipulation or condition in the application to the Treasury on this occasion with regard to the issue of preference shares or with regard to the money going back to the company, and the approval of the Treasury was in that respect unconditional, differing from the approval which had been given to the first Melford and the Lane's and Neal's transactions.

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HIS HONOUR: Yes.

20 MR. MACFARLAN (To witness): I think then, too, that you have read the part of Exhibit A.2, the Agreed Facts in this case, relating to this second Melford transaction, and that as far as it refers to those facts they occurred and are within your knowledge? --- Yes.

30 I just want to take you back to the case of Lane's. You remember, or I can remind you of this as it has been proved in evidence, that in March of 1950 the final dividend of the special rights of the "A" Ordinary shares was declared and paid to Pactolus under that? --- Yes.

Do you remember having any further work to do on behalf of the shareholders of Lane's or Neal's, or either of those two companies, for their companies? --- Yes.

40 What would that work relate to? --- It related to further consideration of the question as to whether they would convert to public companies. I was in Melbourne early in June of 1950 and we had a conference then of the directors available - I think Mr. Bunny was present at that meeting, and Mr. Wallace - and the discussion turned around making proposals and laying a plan to do it at some time in the future. They asked me to make some recommendation, and I subsequently made a recommendation in September 1950.

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I think there were some talks in between when they were in Sydney, and I was in Melbourne, but in the first week in September 1950 I sent them a separate recommendation - one for Lane's and one for Neal's - suggesting that the best course would be to form a holding company in each case, and that they could - - - After considering what they had said I thought they could then plan to float Lane's in October 1951, and that as far as Neal's was concerned it could be anything up to a year later or up to the end of that year in which October 1951 occurred - that would be June 1952. 10

Then you know, do you not, as a fact - I do not know whether it has been proved - that Lane's Holdings was incorporated in ----? ---- It was decided on in October 1950 in my office, I think, and I arranged to get the Memorandum and Articles printed in Sydney.

I think it was incorporated in November 1950 --? --- Yes.

Incorporated in the Australian Capital Territory? --- Yes. 20

Then I suppose you had a certain amount of work to do in connection with the incorporation of Lane's Holdings? --- Yes, I had a great deal to do, and I think everyone was very busy about Lane. If I might say, and go back for a moment, it was in September when I made the September proposal about the Holding Company, about it being converted, I again mentioned they wanted the "A" shares for the purpose of flotation in order that they would not have to sell, assuming that Pactolus would sell them to the public if they were converted, and it would compensate them; alternatively, if they did not want the whole lot, Pactolus would sell half. 30

They did not adopt either of those proposals. Of course, the reason subsequently turned out they needed money. That is why they did not want them.

I will come to that aspect about money in a moment. While you are on that, may I ask you this: After Lane Holdings was incorporated, I think it was not publicly floated in fact until some time in May 1951? --- Yes. 40

But, on the incorporation of Lane's Holdings, did you take up any shares in Lane's Holdings, or did Pactolus (Investments)? --- It never arose out

of that decision. They did not want those 79,000 shares converted and sold to the public. The decision was that they would become preference shares in the new company.

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In Lane's Holdings? --- Yes.

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Was that discussed by you with the directors of Lane's and agreed between Lane's and Pactolus (Investments)? --- Yes.

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10 Did that in fact happen ----? --- Yes. Pactolus Investments sold its 79,107 "A" shares to Lane's Holdings for £1 a share, and it took up 80,000 preference shares.

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In Lane's Holdings? --- Yes.

And I think there was a cash payment, was there not? - - -? --- For the difference, yes; £800 odd. And again, there was discussion about the Articles.

20 I was leading up to this, Mr. Ratcliffe: Although you had been discussing with these directors from time to time the formation of a holding company for Lane's and Neal's, in fact, of course, it was Lane's Holdings which was incorporated? -- Yes.

It was in fact Lane's Holdings which was the only company which was publicly floated in 1951? --- Yes.

That is the position; is it not? --- Yes.

30 What in fact happened to what you had been doing, or the Directors had been doing, with regard to the formation of a holding company for Neal's? --- At the end of 1950, about that time, it got pushed to one side because everyone concerned was very much occupied with all the matters that cropped up in Lane's; but when that was on the way sometime round March or a bit earlier, I think, I was given a reason then - - -

40 Was that March 1951? --- March 1951, that would be. I was told that in Neal's there would be a lot of difficulty because of the franchise held by Neal's and by Devon, and they were concerned about forming a holding company, the idea of conversion, until they could settle that difficulty and the only way that appealed at that

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time was to cut Devon adrift from Neal's so that it would not be publicized in any prospectus that the same people owned it.

Does that mean that Neal's held a franchise which was from an opposing motor group? --- Competitive.

Competitive motor group, from one of the franchises held by its own subsidiary, Devon? --- Yes.

That was regarded by the Lane's, from what they told you, as a difficulty that had to be solved before there was any public float? --- Yes. And that, in itself, of course, raised a difficult problem because Devon had only £15,000 odd capital and it was leaning on Neal's. 10

Then, Mr. Ratcliffe, was any other reason put to you by these shareholders of Neal's either at the time you are speaking, or any other time, against or in respect of the proposal to float Neal's as a public company? --- No. That was the difficulty, and after that second transaction took place, we went on discussing it. 20

The second transaction - - -? --- In Neal's.

I want to come to that second transaction? --- Well, up to that stage, of course, it was just about then that this question of the franchise came up.

On the 23rd April 1951 you wrote a letter to Mr. Harry Lane which, in fact, was the second Neal's transaction? --- Yes.

And prior to that, I think Mr. Harry Lane had given you some figures? --- Yes. 30

Would you please look at Exhibit A.3, Mr. Ratcliffe, the bundle of correspondence? The top letter is a letter from H.J. Lane to yourself dated 19th April 1951? --- Yes.

Do you remember receiving that letter? --- Yes.

It sets out the monthly figures, and in the concluding paragraph it says, "From our conversation I assume that these are the figures and will be sufficient for the purposes of your consideration." Do you remember that paragraph? --- Yes. 40

What was the conversation that Mr. Lane's letter, in that last paragraph, refers to? --- This would have been a conversation about Neal's; about the transaction which took place shortly after - -

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The second Neal's transaction? --- Yes.

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I suppose the conversation related to that? Can you recall any part of the conversation now? --- I have a general recollection that I was still in favour of more capital, and that would have been affected by this question of the franchise, because you would want to take up more capital in Devon, and therefore you would have it in Neal's first. But this is the stage when I saw they needed money and that is what I misunderstood.

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When you were told they needed money, who told you that? --- I think in that letter of Melfords, Mr. Bunny said that. I suppose this was a renewal of the conversation he had with me at the beginning of October 1950.

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You think Mr. Bunny said something to you? --- I am sure he did when I was up there and I said it in a letter.

Do you remember whether Mr. Lane or Mr. Newton said anything to you? --- I do not think it would be Mr. Lane. I think Mr. Bunny would have said it. He certainly said it about the estate of Robert Nathan and I think he said something generally "And there are a number of them who want money." I understand Mr. Lane was not amongst those.

I suppose this was mentioned on more than one occasion? --- It must have been renewed, I certainly would not have put this proposal forward in this form because my proposal would have a large part of, say, £240,000, taken up in capital in Neal's, so that we could have capitalised Devon and cut it adrift.

Then you would have got over the difficulty of forming a holding company for Neal's and a public float? --- That is right.

Did you know at that time that Mr. F.E. Bunny was one of the co-executors of the will of the late Robert Nathan? --- Yes.

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Did he tell you then that he and his co-executors were obliged to find a large sum of money for death duties? --- I knew that because I had done a lot of work for the estate recently, I had prepared valuations and done various things and had quite a number of conversations with him.

Coming back to that letter of 19th April written to you by Mr. H.J. Lane, it would appear Mr. Lane had had some discussion with you on these matters you had been mentioning, and promised to send you some figures? --- Yes. I think all the discussion with Mr. Lane would have been that he would say "Well I will send you up figures and you can consider what proposal you will make."

10

You replied to that letter of Mr. Lane's by the letter of the 23rd April 1951, which is at page 138 of Exhibit 2? --- Yes.

You have considered the figures Mr. Lane had put before you and the annual accounts. About the middle of the page you say there, "I have worked out the proposals for consideration, and these are," you then set them out? --- Yes.

20

I would like you to read to yourself what you have set out there and I would like you in a brief form to explain to His Honour the short nature of the proposals you made? --- I thought the simplest way of putting it forward was to refer back to the preceding proposal, the 1949 one. I suggested that they could carry out one or other of these modifications. I think if I had suggested a repetition of the preceding year in this case, at this stage, we would have got that vote difficulty of fifty-fifty again, so I suggested the same as last year which was 50% of the remaining shares less 10%. Then I suggested a second one, in case they did not want to go as far as the last year, which was 50% of the remaining shares less 20%.

30

When you say last year, to what are you referring? --- 1949.

Or the second Melford transaction? --- No, the Neal's transaction in 1949.

40

Would you carry on please, Mr. Ratcliffe? --- I then set out what the result of each of those alternative proposals should be.

Can you summarise the effect of the two proposals, and the consequence of each? --- Under the first proposal there was to be a price of £12/8/4 for a share, which was detailed at the top of page 139. I really do not follow that for the moment, because I cannot see how it was adjusted.

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That is on the first proposal? --- Yes, £12/8/4.

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10 You go on to deal with that first proposal in the succeeding paragraphs on page 139? --- Yes, it shows the total amount of dividend which would have to be paid under that proposal to arrive at that price.

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You have got there Item 2? --- I think why I have misunderstood it is this, it first of all repeats the 1949 figures and then adjusts them. I missed that.

20 Where do you get the repetition of the 1949 figures? --- I think they are repeated at the top of page 139, they are the 1949 figures.

£12/8/4 is the total figure? --- Yes, then it says Item 2 above, that is the whole tax paid dividend. This would reduce the price of shares to £12/1/3. Then we go over to the other proposal, take the price and then adjust it because of the variation of the tax paid dividend.

HIS HONOUR: That is what you said at the beginning of the letter. It can be carried with some modifications and they can be "A" and "B".

30 MR. TAIT: The price of the previous transaction was £12/8/4 although the estimate made on 30th September, or whatever you call it, was for a price of £12/8/4. The 10/- was added afterwards. Perhaps he goes back to the original letter.

MR. MACFARIAN: Mr. Ratcliffe, I suppose when you were drafting figures for 23rd April 1951 you were assuming you were working on the first Neal's proposal? --- Yes.

40 Then you worked out then that there would be, under this proposal, a total amount to be found by the company of £426,258? --- Yes.

Under the first proposal? --- Yes.

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You mentioned a second proposal. What is the effect of that? --- That was to take a fifth less in the number of shares than in the 1949 proposal, with the result that there were 29,156 "C" shares to be created. In this case this would mean that the tax paid dividend per share would rise to 14/6d., an increase of 1/7d., would be reflected in the price raising it up to £12.2.10d. per share, or £12.3.0d. per share, and then it sets out the amount of taxable and tax paid dividend per share, bringing the total to be paid under this heading to £382,074.19.6d.

10

That would be the amount to be found by the company under that proposal? --- Yes.

Then you go on to deal with certain proposals with regard to the Devon Motors, taxable income and dividend. Devon Motors was a sub-subsidiary of Neal's Motors? --- Yes.

Which is a subsidiary of Overland? --- Yes.

And you explained how that is to be dealt with. But do those figures relating to Devon Motors which you then set out at the bottom of page 139, affect the conclusions which you have reached with regard to (1) and (2) at the top of page 139? --- I do not quite follow you.

20

I am speaking of the bottom half of page 139, where you have already said that under proposal (1), £426,258 would need to be found by the company, but under the second proposal, it would involve the company finding £382,074? --- Yes.

30

You then go on to discuss the situation of Devon Motors Pty. Ltd. and its taxable dividends? --- Yes.

The matters that you discussed in relation to Devon Motors, do those matters affect the statement of the amounts or the conclusion of the amounts that you have already referred to in the top half of the page? --- Yes.

In what way? Will you just state it shortly?
 --- The dividends would have to be declared by Devon Motors in order to make it possible for these dividends to be paid by Neal's.

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So the dividends that you specify there on page 139, to be paid by Devon Motors, would need to be paid in order that Neal's can pay either the one or the two amounts mentioned under the proposal (1) and the proposal (2)? --- Yes.

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10 And that involved simply the payment of dividends of taxable or tax free monies from Devon Motors to Neal's? --- Yes.

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In the second last paragraph on that page you say that under either proposal the shareholders can form a trust similar to the Morton Trust to finance shipments, etc., if the amounts to be paid out will leave the company short of funds. Had there been any discussion between you and the shareholders about the Morton Trust? --- No.

20 What is the Morton Trust? Will you tell His Honour what you have in mind? --- This was a Trust, not really a Trust, a syndicate formed during the War to finance some hire purchase agreements by various people, and it was called the Morton Trust. These shareholders knew the name so it was merely this: they would have to get together and put the money in the joint venture to finance the shipments of this company. It was really a cautious statement of mine, reminding them that it was their decision to take the money, and I was reminding them, "You have to consider what you are going to do, if you run short of money in the company."

30

What happened? Mr. Lane wrote to you, I think, on the 7th May and said that the directors had decided to adopt the second proposal? --- Yes.

That is part of Exhibit A.3. Then the resolutions were prepared. What about the amendments to

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the Articles? Were fresh amendments made to the Articles, so far as you know? --- Yes. There were no "C" shares in existence. These were all "B" shares at that time. Pactolus Investments, the "A" shareholders held the "B" shares, so 29,156 "B"'s were converted to "C"'s.

Were the appropriate amendments made to the Articles? I think you drafted the dividend resolutions in connection with these transactions, too, did you? --- Yes.

10

I do not think I need call your attention to any other part of that correspondence in Exhibit 3. The second Neal's transaction has been referred to, as to the steps in the machinery, in the agreed admissions that have been placed before His Honour in Exhibit A.3. and you have read those, and so far as they are matters within your knowledge, they are correct; is that right? --- Yes.

I want to ask you now about certain of these "A" ordinary shares which were purchased. You have told His Honour what happened to the "A" ordinary in the case of Lane's. As regards the "A" ordinaries that were purchased by Pactolus in respect of the first Neal's transaction, were they sold to Pactolus Investments? --- Yes.

20

And does Pactolus Investments still hold them?
--- Yes.

As to the "A" ordinary shares of the first Melford transaction that Pactolus bought, were those shares sold to Pactolus Investments? --- I think they were. One lot was sold to someone else, so I have forgotten whether it was the first or the second lot.

30

I suggest to you it may have been the "A" ordinaries which were sold to Pactolus Investments? --
Yes.

And if they were sold to Pactolus Investments? --- The others were the "C"'s, the "C"'s were sold to somebody else.

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Do Pactolus Investments still retain the "A" ordinary shares? --- Yes.

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So far as the "C" ordinary shares from Melford were concerned, I think you said they were sold to somebody else? --- Yes.

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10 Were they sold by Pactolus or by Pactolus Investments? --- By Pactolus.

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To whom were they sold? --- They were sold to two daughters of Mr. Fenton.

20 Will you tell His Honour how it was that those shares came to be sold to Mr. Fenton's daughters? What circumstances led up to it? --- Mr. Lane approached me and said he wanted to make a gift of some shares to his children, and that the preference shares, the "A" ordinary shares, which were then preference, Pactolus had just acquired, would be very suitable. I told him I would consider it and did not see any reason why he should not sell them. He mentioned a number, 5,000 shares he wanted. He did not want the whole lot.

30 That is in Melford's? --- Yes, in Melford's. He mentioned that at the time when we were just about to sell them to Pactolus Investments, I think you will find a minute in the books of Pactolus Investments where it was suggested the investment company would either buy 8,253, the whole lot, or 3,253. There was certainly an intention at that time that they were only going to sell 5,000. Next time I saw Mr. Lane he said, "I mentioned a proposal of mine to Mr. Lauri Newton and he said, 'I think Mr. Fenton ought to be spoken to and given the opportunity for his children if these shares in Melford's are to be sold

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to anyone else'" and that was done. They then made an approach to me on behalf of the married daughters of Mr. Fenton.

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Who made the approach? --- Either Mr. Wallace or Mr. Fenton.

The shares were then sold, the "C" ordinary shares? --- They asked for the whole lot, the 8,253, instead of the 5,000 mentioned by Mr. Lane.

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The whole lot of the "C" ordinary shares? ---
Yes.

10

And Pactolus did, in fact, transfer all these "C" ordinary shares to these two daughters, is that right? --- Yes.

Of Mr. Fenton? --- I arranged it through Mr. Bunny and asked him to arrange transfers and collect the money.

Do you know by whom the money was paid? --- I could not say, Mr. Bunny collected the money and remitted it to the company.

Is that the whole of the circumstances of which you are aware concerning the sale by Pactolus of the "C" ordinary shares to Mr. Fenton's daughters? ---
Yes.

20

I had omitted to ask you this, Mr. Ratcliffe: you remember after the Pactolus purchased the "A" ordinary shares in Melford's there was a transaction, I think, between Melford's and Mr. Wallace? --- Yes.

Is that so? --- It was not a transaction, there were some transfers between Pactolus and Mr. Wallace.

I think you have formal documents relating to the relationship between Pactolus and Mr. Wallace

30

which can be produced, have you? Will you tell us what was the substance of that transaction and the relationship? --- Mr. Wallace had been trustee for some of the shareholders who sold to Pactolus. Pactolus agreed that after the transfers were put through into Pactolus' name they would transfer them back, subject to a Deed of Trust, to Mr. Wallace to hold them.

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10 On Pactolus' behalf? --- On Pactolus' behalf. The Deed of Trust was made out by him to Pactolus and he also wrote a letter to them, to Melford's, directing him that all dividends on those shares were to be paid direct to Pactolus Investment account.

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And the substance then of that is Mr. Wallace holds those "A" ordinary shares as Trustee for Pactolus Investments? --- Yes, for a while he would have held them for Pactolus, of course.

20 Until the special dividends were exhausted?
--- Yes.

That was done for the purposes of franchise?
--- The same purposes as he held the others in trust and still holds them.

The Newton shares? --- Yes.

Mr. Ratcliffe, you have given your account of the various transactions that have occurred in relation to these various sales and transfers and so on and you have given the whole account as far as your recollection goes? --- Yes.

30 And were there any other arrangements or understandings other than those of which you have spoken in evidence, or other than those which are referred to in the correspondence which has been put forward? --- There were no other arrangements.

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CROSS-EXAMINED BY MR. TAIT:

MR. TAIT: Mr. Ratcliffe, on this matter of the latter history of Pactolus and the shares they held, you have just been talking about one or two things there. As I understand it, the position about the 79,107 "A" shares in Lane's in the first transaction is that these "A" shares, as we have heard, were transferred from the seven original shareholders, or existing shareholders, to Pactolus?---Yes.

10

And they were transferred by Pactolus to Pactolus Investments?---Yes.

And what was the date of that?---About March 1950 I should think.

March 1950?---Somewhere about then.

I have it as the 12th May 1950. On the 12th May 1950 Pactolus sold and transferred the whole of the shares held in Lane's, namely 79,107 shares in Lane's to Pactolus Investments (I refer there to page 23 of the admissions)?---Yes.

20

And for that transfer, consideration of £1 a share was paid by Pactolus Investments to Pactolus?---Yes.

That is right so far?---Yes.

Let us follow that on from that. That is May 1950. In October 1950 Lane's Holding Company was formed but not floated until May 1951?---That is right.

And when Lane's Holding was floated these shares we are talking about then held by Pactolus Investments were exchanged for shares in the holding company, namely, 80,000 £1 preference shares?---Yes.

30

What was the rate, 5%?---Yes.

The same as the others?---Same rate.

So that the number of 79,107 was rounded off up to what you used before about this process?---To dress the balance sheet for a public company.

That is Lane's?---Yes.

The first Neal's Motors transaction, the number of shares involved there were 3644?---Yes.

You have told us now that those were again sold by Pactolus. They came from the existing shareholders in the December transaction to Pactolus, were transferred by Pactolus to Pactolus Investments again on the 12th May 1950, for £1 a share?---Yes.

10 It was paid in cash by Pactolus Investments to Pactolus?---I could not say without looking up the books, but there were dividends declared by Pactolus which Pactolus Investments received, or it could have been - - -

As a matter of fact, I will have to come back to this. You say there were dividends declared by Pactolus?---Yes.

20 They were dividends which were declared by Pactolus out of the Section 107 tax free dividends received by Pactolus from the companies - in this case Neal's - is that right?---Yes - - from a number of companies.

In this particular one we are dealing with at the moment, the Neal's shares?---Yes.

30 MR. EGGLESTON: If Your Honour pleases, it is, of course, no part of my concern to protect in any way the position of Pactolus Investments; none theless, from the way my friend is cross-examining, I am bound to direct attention to the fact that what my friend appears to be using is some information which the Commissioner has regarding the affairs of Pactolus Investments.

It is not my concern to raise any questions on behalf of Pactolus Investments, but I think that Mr. Ratcliffe is perhaps entitled to consideration.

HIS HONOUR: It had not occurred to me that Mr. Tait was doing that.

MR. TAIT: I got it from the witness just now.

40 MR. EGGLESTON: I am sorry. I thought from the way in which the question was put that it was put as something which Mr. Tait was putting as a

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fact as part of his instructions. If the witness said sufficient to enable Mr. Tait to put the question in the way in which he did, I withdraw. I will not object, because in one sense it is not my place, but I only mentioned that if anything of that kind is used it is a matter in which Mr. Ratcliffe, on behalf of Pactolus, would be entitled to object to investigation of those matters - - -

MR. MENZIES: On what ground?

MR. TAIT (To witness): You do not want any protection, do you, from me? You were saying yourself that there were dividends paid by Pactolus to Pactolus Investments, and I think you have agreed that they were paid out of the tax free - tax free because they were Section 107 dividends - dividends that you got from the motor companies?---I cannot answer that, Mr. Tait. 10

I thought you did before?

MR. EGGLESTON: No, he did not; that is why I rose. 20

THE WITNESS: That is the first time that I have heard anyone on behalf of the Department agree that we have any tax free dividends.

MR. TAIT: We had better have the Pactolus books. You are not serious about that last; you have seen the assessments in this case?---The Commissioner makes assessments against Pactolus and does not admit what you are saying.

I do not doubt that, but you have seen the assessments against the present appellants, have you not?---Yes. 30

And there were what I have just described as tax free dividends, Section 107?---In those assessments the Commissioner has assessed the appellants as to tax free dividends, put them in their assessments and then treated them as tax free.

That is what I say - he treated them as tax free?---In the assessments of the appellants. They cannot be in both places.

Have you got the Pactolus books here, the balance sheets and accounts of Pactolus?---There was a subpoena issued on the secretary of the company. 40

Do you produce them?---The secretary is here to produce them.

Will you, as the director of Pactolus, yourself produce them?---No.

You will not?---No. I think you should carry out the course which you have embarked upon.

I thought that you would be very willing to produce them to assist in the investigation of the matters now before the Court.

10 HIS HONOUR: I think that the witness is only pointing out that there is a person under subpoena to produce them, and if you want them there is a course you can adopt. He is not putting any obstacles in your way.

MR. TAIT: Very well.

If Your Honour will allow me, I call the secretary of Pactolus Ltd. under subpoena, Mr. R. Ratcliffe.

(RICHARD RATCLIFFE CALLED TO FLOOR OF COURT.)

20 MR. TAIT: You are Mr. R. Ratcliffe?

MR. R. RATCLIFFE: Yes.

MR. TAIT: You are the secretary?

MR. R. RATCLIFFE: Yes.

MR. TAIT: You are the secretary of what?

MR. R. RATCLIFFE: I was the secretary from December 1950 until June 1952.

MR. TAIT: Of what?

MR. R. RATCLIFFE: Of Pactolus and Pactolus Investments.

30 MR. R. TAIT: Have you the books of both companies in your possession?

MR. R. RATCLIFFE: Yes; the books which were subpoenaed?

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MR. TAIT: Yes. Do you produce them?

MR. R. RATCLIFFE: Yes. (Books produced and handed to Associatc.)

MR. TAIT: Perhaps you could identify them, would you?

MR. R. RATCLIFFE: That is the Minute Book of Pactolus Pty. Ltd.; that is the Minute Book of Pactolus Investments Pty. Ltd.; that is the private ledger of Pactolus Pty. Ltd.; those are the balance sheets and accounts for Pactolus Pty. Ltd. for the years ending June 1949, 1950 and 1951; this is a document signed by Mr. Wallace - these also were subpoenaed, two documents - for the "C" Ordinary shares in Melford Motors held by Pactolus Pty. Ltd.

10

MR. TAIT: It is a document of transfer?

MR. R. RATCLIFFE: It is a document of trust.

MR. TAIT: I know.

MR. R. RATCLIFFE: And also a document for the "A" Ordinary shares, held in trust by Pactolus Investments Pty. Ltd. in Melford Motors.

20

MR. TAIT: I would leave those documents and I will put them in if necessary, but I may refer to them afterwards.

Could you give me the Minute Book of Pactolus - I think it is the bottom one?

HIS HONOUR: Have you any objection to these books being seen, Mr. Ratcliffe (speaking to witness in box)?---Only if it is essential to the case.

I do not know anything about it, of course, Mr. Tait. The only point is that these are the books of another company; it may well be that you are entitled to see them, of course?---I should like to consult counsel before the morning, Your Honour.

30

HIS HONOUR: This seems a convenient point at which to adjourn.

MR. TAIT: I do not mind about that, Your Honour.

10 MR. TAIT: Mr. Ratcliffe, last night before the adjournment you remember I had started to ask you some questions about how and when Pactolus disposed of the "A" shares and we had gone through, I think, the Lane shares and then I asked you about the disposal to Pactolus Investments and asked you to produce, or rather, look up the minutes and balance sheet of Pactolus that were in the Court. You remember that, do you not?---I do not remember the last part about looking at the minutes.

MR. TAIT: Very well, it is right, is it not, that all the "A" shares that were acquired by Pactolus in December 1949 were sold by Pactolus to Pactolus Investments for £1 a share?---Yes.

That is right, is it not?---Yes.

Pactolus Investments became a shareholder in Pactolus at some date - I think it is set out in the admissions - after its formation?---Yes.

Do you remember the date?---No, I do not.

20 I think we have it here.

MR. EGGLESTON: It is in there, Mr. Tait. I do not want to hurry you but it is in there.

30 MR. TAIT: I just have not the reference to it. After Pactolus Investments became a shareholder in Pactolus, which was apparently some date before the 30th December because on page 6 of the admissions it is stated at the 30th of December 1949 Pactolus Investments was a shareholder in Pactolus holding 4,998 shares, after that happened did Pactolus declare a dividend payable to the shareholders of Pactolus including Pactolus Investments?---Is that a relevant question to this case?

That is a matter for His Honour to say but I submit it is.

HIS HONOUR: What is the relevance, Mr. Tait?

40 MR. TAIT: We are making the case under Section 260 which is an arrangement to which Pactolus was a party, an arrangement between various persons which I need not go into at the moment, of a very wide nature covering the whole

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of this matter and one of the features of the arrangement, of course, was that it was arranged with all the parties that these shares should be transferred to Pactolus Investments, the articles were altered to allow it to be done, and Pactolus Investments should acquire these shares from Pactolus. I am inquiring into how that was done and with what money it was done.

HIS HONOUR: Yes, but I think this question related to something quite subsequent to that.

10

MR. TAIT: No, Sir, it is leading up to that. What we suggest, Sir, I do not think there is any doubt about it, the Pactolus Investments - I do not know what money, I will ask him what money they had.

HIS HONOUR: Would you mind telling me again the date in relation to which you asked this question?

MR. TAIT: Some time between 30th December 1949 and the date when Pactolus Investments acquired the "A" shares from Pactolus and used the money I am going to ask about for that purpose.

20

HIS HONOUR: The arrangement being on the way you state it and on any view of the arrangement relating to what should happen in regard to the shares in these motor companies, does it extend to what Pactolus should do or how it should go about it?

MR. TAIT: It is part of the arrangement between the parties.

HIS HONOUR: I have not seen any trace yet as to whether Pactolus Investments should get any money.

30

MR. TAIT: That was not arranged but it was certainly arranged they should purchase them and I want to show where the money came from.

HIS HONOUR: I know you want to show where the money came from, but why?

MR. TAIT: Because it all came out of these companies, it was part of the money that came out of these companies and it was part of the use it was put to. Of course, it was paid, I suggest,

40

out of the tax free dividends which was one of the terms of the arrangement. I want to see what that was for.

HIS HONOUR: Very well, I think that had better be answered, Mr. Ratcliffe.

THE WITNESS: I would just like to say this: This is antecedent before Pactolus got any money from the transaction at all. The question Mr. Tait is putting - - -

10 HIS HONOUR: Your question really, Mr. Tait, is whether this money came to Pactolus as a result of the arrangement in any way. You could perhaps divide it into steps. What Mr. Ratcliffe has just said is really a denial of the relevance you have suggested, as I understand it.

MR. TAIT: I was not sure about that.

HIS HONOUR: I may not have followed it correctly.

20 THE WITNESS: I will answer the question and you will see the dividend Mr. Tait is asking about is antecedent to Pactolus entering into the transactions here.

MR. TAIT: That is antecedent to 30th December 1949?---Yes.

Let me ask you this: why was it that you insisted, as part of the arrangement, that some of the dividends paid to Pactolus from the company should be in tax free Section 107 amounts?---That was a part of the bargain.

30 Why was it?---Well, I do not think that is relevant either.

HIS HONOUR: I think we will have to have that, Mr. Ratcliffe, if this is part of the bargain.

MR. TAIT: What is the trouble, do you not wish to disclose them?---The trouble, Mr. Tait, is this: the Commissioner made assessments about Pactolus and I do not want that matter tried on this issue.

It is not to be tried on this issue, I assure

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you, but the part of the arrangement you made with the companies was that the dividends that were to be declared, what you call at one part the special dividends, were to be paid out of Section 107 amounts that would be tax free, that is right, is it not?---Yes.

MR. TAIT: And I am asking you why did you ask for that?---Because that would be to the advantage of Pactolus.

That would be to the advantage of Pactolus?---
Yes.

10

And it was also a term, as between you and the others, and the arrangement that the "A" shares that Pactolus purchased should be disposed of to Pactolus Investments before the 30th June 1950, is it not?---That was the final arrangement. There were no other arrangements up to that time.

MR. TAIT: That arrangement had been made before you exercised the option, for instance?---
At that time.

20

And that was, of course, so that Pactolus being a trading company, trading in shares, would have a loss in the year ended 30th June 1950?---It did not matter to Pactolus.

But that was the fact, that is why it was done?---No.

Tell me why---The fact that there were tax free and taxable dividends did not have anything to do with it - if that is a question.

The question is why did you make it an essential part of the arrangement that the shares that Pactolus acquired should be sold to Pactolus Investments before the 30th June 1950?---I wanted the sale to take place in the same year. I could have depended on a valuation of the shares but I preferred to make it before.

30

MR. EGGLESTON: Your Honour, I think perhaps the witness should leave the Court while I mention this.

HIS HONOUR: Yes. Would you mind Mr. Ratcliffe?

40

(THE WITNESS TEMPORARILY WITHDREW)

MR. EGGLESTON: I do not suggest my friend did that on purpose but there is something which I feel bound to draw attention to, and that is, the witness answered certain questions on the basis of an arrangement, then my friend said something about "an essential part of the arrangement". The way the witness answered it, of course, he would on the face of the notes appeared to have accepted the word "essential". It may or may not be significant. Of course Your Honour will see from our point of view what happened to the shares afterwards was of no concern to us.

10

HIS HONOUR: I take it Mr. Tait means essential to Mr. Ratcliffe.

MR. EGGLESTON: If it is to be understood that answer is to be read in that sense.

HIS HONOUR: Whoever it was regarded it as essential to introduce it into the plan, it was part and parcel of the plan.

20

MR. EGGLESTON: No, Your Honour. We agreed that it was part and parcel of the stipulations made that these shares should be free to be transferred. It was not in any sense a part of the arrangement that they should be transferred to a particular company.

HIS HONOUR: No, I appreciate that, but nevertheless the contemplation was that is the sort of thing that would happen and for the reason that is being put.

30

MR. EGGLESTON: Yes. I am not suggesting Mr. Ratcliffe did not have in mind, as he clearly has said here, he was going to do what he in fact did - either sell them to Pactolus Investments or sell them to someone else and therefore he wanted free rights of transfer. I am not concerned to contest that for a moment, indeed, we have shown in the documents we have put forward that was so.

40

My difficulty about the situation is the way in which my friend put the question, as I heard it - I may have misheard it, having first of all asked him "while it was a part of the arrangement that the shares would be transferred and in the same year" the next question would read something like

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this "why was it an essential part of the arrangement that they should be transferred to Pactolus Investments."

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If my friend attaches importance to it then the witness has got to be given an opportunity of clearing it up. I want now merely to record my objection to the form of that question because of the way in which an extra word got into the following question which was not in the first one.

HIS HONOUR: I should think Mr. Tait could easily frame his question so as to clear any difficulty about this point.

10

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MR. EGGLESTON: Yes. I did not want to say anything with the witness here, for obvious reasons.

HIS HONOUR: Quite.

MR. TAIT: I would say while the witness is still out that the word "essential" is all right - essential in the sense it was essential to Mr. Ratcliffe and essential to the others that if they had not agreed to it, Mr. Ratcliffe would not have gone on with it. Quite clearly he worked out a plan, there was something about a public company paying 14½% and he was not going to pay any tax, or the price would have been different.

20

HIS HONOUR: The sale need not have been to Pactolus but to someone else.

MR. TAIT: Pactolus was mentioned before December.

MR. EGGLESTON: We are not talking about that, we are talking about "essential arrangement".

30

MR. TAIT: I thought it was essential for the vendor to get this arrangement and he could have only got this arrangement on Mr. Ratcliffe's terms - that was one of the terms. I do not mind about the word "essential".

HIS HONOUR: It is a subjective question. If you put it to him he may or may not agree.

MR. TAIT: I am quite agreeable to do that.

JOHN VINCENT RATCLIFFE, further cross-examined by
Mr. Tait:

MR. TAIT: I asked you a question before you were asked to go out of the Court in which I used the word "essential". I do not know if you noticed it?---I do not remember the question.

10 The question was, was it not a fact that the sale by Pactolus of the "A" shares before 30th June 1950 to Pactolus Investments was an essential part of the transaction, of the arrangement? - - -

HIS HONOUR: That is, essential to you.

MR. TAIT: I would like to make it clear to you, you need only answer the question in the sense it means essential to you, do you follow?---Yes.

I want to make that clear?---It was not essential to me.

It was not essential the shares should be sold before the 30th June?---That was my view that it was not essential.

20 Was it an advantage?---In my opinion it would save me a long argument with the Tax Department. Otherwise I do not think it mattered.

You did not think it mattered?---I did not think it mattered.

You still made a point of the fact that the shares could be sold or the way should be open to sell them before the 30th June, did you not?---I provided for that.

You provided for that?---Yes.

30 HIS HONOUR: Am I right in taking when you say it was an advantage what you mean is you could have relied on a valuation and thereby shown a loss in that year?---This was a trading company. In my view I have the right to value the shares at 30th June. In my view it was a simpler issue to sell them before the 30th June.

That is what I mean, you could have relied on a valuation?---Yes.

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Transcript of
Shorthand Notes
of Evidence
taken before
His Honour Mr.
Justice Kitto.

Evidence of
John Vincent
Ratcliffe
Cross-
Examination
- continued.

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And the other figure would have shown you a loss which would have been an allowable deduction?-- It would have shown exactly the same figure.

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HIS HONOUR: The advantage was that the sale crystallised the loss?---Yes, Your Honour.

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MR. TAIT: I want to go back to these Section 107 amounts that form part of the dividends. First of all, we have the figures and it is quite clear that part of the dividends that was declared by the companies in favour of Pactolus - that is, the special dividends - were to be out of Section 107 amounts?---That was part of the rights attaching to the shares.

10

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In fact, it was in the Articles, was it not? First of all, let me ask you this: Did you regard it as essential from your point of view that part of those dividends should be Section 107 amounts?-- It was not essential from my point of view.

Not essential?---No.

Why is it that you asked for them - and indeed, I am not putting it too high, you insisted on it, did you not?---That was the bargain I made.

20

You put that in specifically, put it in as part of the bargain?---Yes.

And I want to know why?---Because it was more profitable to me to do that.

That means, as I understand it, that those dividends coming out of the company to Pactolus would retain their character of being tax-free under Section 107. Do I put it correctly, do you think? ---Yes.

30

That is right?---Yes.

So that in the hands of Pactolus they would be tax-free when they were distributed to another company and on, until possibly they reached individuals; is that right?---Yes.

And you therefore had in mind that if you obtained part of those special dividends, Section 107 amounts, they would be available in your hands - when I say your hands, I identify you as Pactolus -

40

for use as you might want to use them, and eventually, if passing them out of the company into the hands of individual persons, without attracting tax?---Yes, that is quite correct.

Did you, in fact, declare a dividend out of those tax-free amounts by Pactolus?---Not specifically out of those tax-free amounts.

10 By that you mean that the resolution for the dividend did not refer specifically to that, or what do you mean?---My recollection is that the dividend did appropriate tax-free income, but these dividends were mixed with other dividends; I did not identify them as these dividends.

And how much tax-free funds did Pactolus have apart from these amounts?---About £100,000. I have forgotten exactly, but a very large sum, I think.

At what date?---At the date of these transactions.

20 Does that mean December 1949?---From my recollection it does.

Are you prepared to stand on that, that there was £100,000 of tax-free amounts in Pactolus at the 31st December, 1949?---I have not refreshed my memory on that point.

30 Will you do so by looking at the balance-sheet produced in Court. Mr. Ratcliffe, junior, produced some documents. Perhaps you can have the balance-sheets and the minute books at the same time. (Documents handed to witness). What are you looking at now?---I am looking at the balance-sheet of Pactolus Pty. Ltd. at the 30th June, 1950. It says that during the year there was a tax-free profits account which sets out in detail tax-free profits at the 30th June, 1950, which had come from different companies.

What does it say?---Tax-free profits amounts, dividend, and so on, and then it lists them. The first one is a company that is not mentioned here, and that is £88,920.

40 What does the total of those amount to?---£158,692.

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And that, of course, is at the 30th June 1950, and includes, at any rate, all these tax-free amounts that you received from these motor companies?
---Yes.

I have the figures added up somewhere, but perhaps you will now refresh my recollection. My recollection was that those tax-free dividends were between £65,000 and £75,000?---Which particular ones?

The ones that came from the Motor companies?---
Not quite £60,000, roughly £60,000 - no, £70,000.

10

What you are looking at is the balance-sheet of Pactolus at the 30th June, 1950?---Yes.

I put this document in, Your Honour.

HIS HONOUR: How do you make it relevant? Do you object, Mr. Eggleston?

MR. EGGLESTON: I object, Your Honour, on the ground of relevance.

HIS HONOUR: What is the relevance, Mr. Tait?

MR. TAIT: First of all, in answer to my question, the witness has not answered from his recollection; he answered from what is in the document. The answer, therefore, appears in the document as the answer to the question.

20

HIS HONOUR: It does not necessarily make it relevant to the case?

MR. TAIT: The question was not objected to.

HIS HONOUR: Perhaps not, but what is the relevance of it to the issues I have to try?

MR. TAIT: The other ground is that the whole position of Pactolus as a company is, in our submission, relevant to the matter here. The case made by my friend was that Pactolus was a company which was a company to buy shares, to trade in shares, and was in a position to enter into this transaction, and Mr. Ratcliffe has given evidence about going to the bank to make certain arrangements, and so on. It is quite clear that the financial position of Pactolus is a relevant matter in this inquiry.

30

40

HIS HONOUR: It is not clear to me at the moment?

MR. TAIT: To start with, Mr. Ratcliffe has made it relevant by giving evidence as to going to the Bank to find security and to get an overdraft by Pactolus for the very purpose of this transaction.

HIS HONOUR: Why would it be relevant whether Pactolus were rolling in money or impecunious?

10 MR. TAIT (Continuing): We suggest that the purpose of this transaction was within Section 260, and that the transaction was not one of the parties at arms' length making a bargain about shares, but was one to avoid the liability for tax and that the arrangement contained within itself all the elements which made it unnecessary for Pactolus to have any financial stability or financial standing at all, and we desire to show what Pactolus was, what sort of a company it was, what transactions it carried on and what business it did, apart from this
20 matter and what its financial stability was. We suggest the very fact that the arrangement was made was immaterial that Pactolus should have any finance, because the whole thing was arranged as a cut and dried provision where certain things were to follow certain other things, and Pactolus was not running any risk at all.

30 That is an element in the case we make, and we do desire to show that Pactolus was a company that would not have been able, unless this sort of arrangement were made, to enter into this transaction.

HIS HONOUR: But your case must be just as strong or just as weak whatever the financial situation of Pactolus.

MR. TAIT: I agree it is very strong without this, but I do suggest it is relevant.

MR. EGGLESTON: It is not for you to express an opinion.

40 HIS HONOUR: Is it not true that your case would be just as strong or just as weak whatever the financial situation of Pactolus?

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MR. TAIT: I would still say it is a relevant matter; it is an element. You cannot measure the strength of the case, of course, but it is an element. I agree the case is all right without this - - -

HIS HONOUR: I do not know why you say you agree. I would not suggest it.

MR. TAIT: No, I am not putting words into Your Honour's mouth, but the view we take is it is not an essential, but that still does not mean that it is not a relevant matter. After all, the witness has given so much evidence about Pactolus and I desire to put it on another ground. I desire to test that evidence and I desire to go to his credit.

10

HIS HONOUR: You are quite entitled to go to his credit, but you do not do that by making an exhibit of this document.

MR. TAIT: He has looked at the document to answer a question, and I would respectfully submit I am entitled to put it in.

20

HIS HONOUR: I do not think at present it is relevant. When you are in your case, if you can show then that it is relevant, it may be different.

MR. TAIT: If Your Honour pleases, I will not press it.

HIS HONOUR: I reject the document tendered.

MR. TAIT: To finish off the matter I started last night, is that document marked for identification, Your Honour?

HIS HONOUR: No, it is not.

30

M.F.I. 1..... Balance Sheet of Pactolus Pty.
Ltd., 30th June, 1950.

MR. TAIT (To witness): I was going through the various groups of shares Pactolus had acquired and you told us, as far as Neal's transaction was concerned, the "A" shares were still held by Pactolus Investments?---Yes.

As to the first Melford transaction which was in 1949, I think the number of shares there was

8253. I think you told my learned friend those were sold by Pactolus to Pactolus Investments and then were transferred into the name of Mr. Wallace?
 ---Yes.

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Was that under a document of Declaration of Trust or what was it?---I did get a Declaration of Trust from Mr. Wallace and I think at the same time he signed a letter addressed to the Company that dividends were to be paid direct to Pactolus or
 10 Pactolus Investments.

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Pactolus Investments it would be, would it not?---Yes.

The second shares from Melford are the ones that came in December 1950. You told us that those were sold by Pactolus. I think you said Pactolus, not Pactolus Investments?---That is right.

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To Mr. Fenton's daughters?---Yes.

20 And did you tell us what price they were sold for?---£1 per share.

Can you tell us when that was?---Approximately April or May 1950.

That will do for my purpose.

MR. EGGLESTON: You are talking about the second Melford shares?

MR. TAIT: Yes.

THE WITNESS: It would be April or May 1951.

MR. EGGLESTON: It was April 1951. We have the correspondence here if you want it.

30 MR. TAIT: I think that is sufficient for my purpose. Those also were put in Mr. Wallace's name, were they not, in the Melford Company?---When they were acquired?

Yes?---Yes.

MR. EGGLESTON: When they were acquired by whom?---When they were acquired by Pactolus. After they were transferred to Pactolus they were transferred to Mr. Wallace to hold as trustee.

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MR. TAIT: And he still holds them?---No, they were sold.

He holds them now for Mr. Fenton's daughters?
---I do not think so. I do not know about that.

Do you not know the shareholding of Melford Motors now?---No, I do not.

Are you still advising the company?---Yes.

In the case of Melford's there was some commercial reason, was there not, why the actual shareholders should be limited in number and limited to certain people?---Yes. 10

Something to do with the franchise?---Yes.

Going back to one matter, the purchase of these shares that Pactolus got originally, which you say in the case of Pactolus Investments were purchased for £1 each, they were paid for in cash, I take it, were they?---They would be in cash or the equivalent, but I have not refreshed my memory on this.

Will you agree with this: That all that money, the cash, or the credit of them, if you like, all came from the dividends that came out of the motor companies?---I could not agree to that because at the start Pactolus had its own capital of £15,000 which was paid up in cash. 20

I see. Your Honour, I ask the witness questions and he answers questions which will take me right into the spheres Your Honour perhaps will say I should not enquire into. I will put it this way: I would desire to probe those answers of his. 30

HIS HONOUR: If you ask any questions, I will be able to rule on them.

MR. TAIT: Mr. Ratcliffe, when was the capital paid?---About the time of the formation of the company.

And where did it come from?---From me personally, and I lent it to certain members of my family so that they could take up shares.

In what?---In Pactolus Investments.

That was, of course, not until October 1949 40

when Pactolus Investments were formed?---That would be so.

And when the account was opened for Pactolus at the E.S. & A., South Melbourne, the £19,000 that was paid in you yourself found, did you not?---A good part, probably £7,000 or £8,000 of that was already in the bank account of Pactolus in Sydney.

10 You have told my friend, I understood, that you found the £19,000?---Not all of it. I only found the difference over what Pactolus had in cash at that time.

So Pactolus had £7,000?---Between £7,000 and £8,000.

And you found the rest, is that right?---Yes.

Would it be correct that on the 9th December 1949 you agreed to deposit with Pactolus £15,500 without interest?---Is that Pactolus or Pactolus Investments?

20 Pactolus Pty. Ltd.?---That would be correct, if that is in the minutes.

Then I will ask you to look at the minutes to see if it is correct.

MR. EGGLESTON: I do not know whether my friend is conscious that he has shifted from Pactolus Investments to Pactolus. He started to ask about Investments and then began to ask questions about how Pactolus would pay for something else. It may lead to confusion.

30 MR. TAIT: The question, I think, is clear enough. Mr. Ratcliffe, will you look at the minute book of Pactolus Pty. Ltd. of the 9th December 1949? I think it is beside you?---Yes, I lent the company £15,500.

Without interest?---Without interest.

Repayable on demand I think it says, does it not?---Yes.

40 And just above that you will find that there was a transfer to be made of £3,500 from the account of the company with the Commercial Bank of Sydney to the E.S. & A. Bank at South Melbourne?---Yes,

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but I am depending on recollection, and my recollection is that Pactolus had more than £3,500 at that time as its paid up capital, and had profits. That is why I fixed on £7,000 or £8,000.

Well now, going back to the amounts your received as special dividends - or rather, Pactolus received as special dividends - from what you told me earlier this morning it is clear, is it not, if you look at the balance sheet that that sum - that is the amount of the tax-free Section 107 profits that you got as part of the special dividends - forms part of a larger fund which was used to declare dividends from Pactolus to Pactolus Investments, is that right?---Yes, that is true. 10

And it was after those dividends had been declared that Pactolus Investments paid Pactolus for the purchase of the "A" shares?---Yes.

And the amount involved was some £70,000 - 161,213 "A" shares which you had altogether, would you agree with that? I do not need this accurately, Mr. Ratcliffe, if you can speak from recollection?--- It sounds a little bit high to me. 20

There were 79,107 from Lane's?---Yes.

and 36,444 from Neal's?---Yes.

And 8253, the first Melford?---124 - - -

Another 8253 - - -. Sorry I am wrong. Leave that one out. That was next year. The second Neal was next year. The total was 124,000, roughly? ---Yes.

And that number of shares was purchased before the 30th June 1950 by Pactolus Investments from Pactolus and paid for?---Yes, but not out of the dividends necessarily. 30

But the part of the funds that was used was, as I think you answered, these tax-free dividends that you got from the motor company?---Plus capital from Pactolus Investments.

Did you pay for this out of capital?---Pactolus had its capital of £15,000.

Very well. It did not have a capital of anything like £124,000, did it?---No. 40

Well now, I want to leave these matters that arose out of what you were asked at the end of your examination by Mr. Macfarlan and go to the general matters.

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10 First of all, you told us when you began to give your evidence, of your experience and you described your sections, how you had two sections, taxation and one general auditing, and that each was in charge of the managing clerk, and that you devoted yourself to re-organisation and re-construction?---Yes.

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I suggest that you rather left out in telling His Honour that, the fact that a great deal of your own work is taxation work?---Yes, I do taxation work as well.

In fact, I will not be putting it too high when I say you are known throughout Australia as one of the tax experts in Australian tax work?---I was known.

20 You do not think you are so well known?---
There are many others now.

Well, you are one of them still?---I have not given it up.

And you do a tremendous lot of work of that sort?---Only on very important matters that crop up.

You regard this as one of your important matters?---This was not a taxation matter.

30 That is what you said but you wrote a tax book on the Federal Income Tax, a well known tax book?---
When I was young.

At the same time I wrote one myself when I was young. Your book was on the 1936 Act, was it not?
---Yes.

Ratcliffe and McGrath?---And Hughes.

And you have done a good deal of work before Boards of Review in Taxation cases, I suppose?---
I do not think I have done much before the Boards of Review, one or two cases.

40 And in the matters you did describe that you

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did such things as the construction of companies, the amalgamation of companies, fusion of interests, re-capitalisation, and you went on in all those matters that taxation is nearly always, or practically always, a very important matter, did you not?
---I think I said that, Mr. Tait.

You agree with me, anyway. And, you told us how this matter first arose in connection with these motor companies and you told us that it was Mr. Newton, or one of the Newton brothers who asked you to see Mr. Harry Lane to have a talk with him about the capital of their other companies - that is other than the ones you were associated with - is that right?---Yes, Mr. Tait. 10

I suggest that he did not confine it to the talk about the capital of those companies but dealt with other matters in connection with the company?
---His own company?

Yes?---It was a very brief interview, Mr. Tait, and I have no recollection of anything other than the question of re-capitalisation. 20

I will leave it. You said you then got the balance sheets of the companies and had a look at them and studied them. You told us when it was, I think in July 1949, is that right?---Yes.

You had a look at those?---Yes.

And came to the conclusion that the capital was too small?---Yes.

That meant, of course, the paid-up capital was too small?---Yes. 30

And you thought it should be increased?---Yes, Mr. Tait.

To increase the paid-up capital, I suggest to you there were two ways, or two main ways it could be done: one is bringing in new money and the other is to use the moneys in the company and capitalise them?---They are ways you can do it.

And what other ways? How can you increase the paid-up capital other than by bringing in new money or using the money in the company in the form of accumulated profits or reserves to issue paid-up shares?---You could re-value the assets. That is not included in the company. 40

I included that because after you re-value you bring the money into the accounts of the company as reserves?---Yes.

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And you could capitalise that?---Yes.

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And all those methods, other than bringing in new money, would be done by issuing bonus shares. That is well known?---Yes.

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10 You increase the capital. The capital in these companies was too low, you thought, and you increased it. You can increase it by one of two methods: bringing in new money and/or using - and I will put all this - plus to issue bonus shares and you may not understand but I mean using accumulated profits, current profits that have come into the company's revaluations and reserves?---Yes.

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20 You looked at the history of the case, you told us. I think the words were: you said you had to get the accounts and get familiar with the affairs of the company. That is on page 107. Later on the same page you said Mr. Lane had given you some brief history of the preceding years?---Yes.

And you would naturally look into the history in the sense of what they had done in the past, what their capital had been in the past, how they were operating, and what had been taken out?---Yes.

And you found, of course, that in Lane's company £160,000 had been distributed in April 1949?---I did find that, yes.

30 Out of tax paid reserves?---I could not say how Mr. Tait, or what it was out of, I have not refreshed my memory on that.

Think a moment?---I remember the word "dividend".

They took £160,000 out in cash, did they not?

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---Whether they took it out in cash at that time
or not I did not look.

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They declared dividends?---Yes.

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And they did not put it in as share capital,
did they?---No, but it could have been in the
deposits.

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I agree with you but they took it into their
own hands as their own moneys?---Yes.

And I suggest to you that that was all out of
tax free, or substantially all out of tax free
amounts, it was a tax free dividend?---I cannot
recall it, Mr. Tait, I have not looked at that
since 1949. 10

It would be rather surprising, would it not,
if it had not been because there would have been a
very large income tax paid on it to an amount of
something like 15/- in the £ if it had not been?
---My recollection is they did have large taxable
dividends in their 1949 return but I could not
swear to that now. 20

You told us, I think, that Lane's issued,
amongst other companies - from the balance sheet
you did see - a comparatively small amount of tax
free profits and a comparatively small amount of
reserves, is that right?---I do not think I ref-
erred to tax free profits in Lane's, I thought I
referred to it in Melford's.

Perhaps you did. Look at Exhibit, Annexure
No.3. That is Lane's balance sheet at 30th June
1949, is it not?---Yes. 30

And the tax paid reserve then is £250?---Yes.

You did call attention to this, I remember it.

MR. TAIT: The substantial amount that is available is the amount of the profit for the current year, that is the year ended 30th June, 1949? --- Yes. Before you get to that - this bears out what I just said - it shows the balance on the Appropriation Account at 1st July 1948, and it shows they paid £111,500 out of that after that date.

10 You are quite right, it does. That is part of the dividends I was speaking about? --- That is not shown here as tax free dividends.

Well, it would not be? --- No, that is what I was trying to make plain.

It would not be shown here as tax free simply a taking off from the balance? --- It would be because it would come out of the tax paid reserve, shown there as a reduction of that reserve, or it would not appear at all. This here shows the appropriation account less dividends - that is obviously taxable dividends.

20 You think that is a taxable dividend? --- I think so.

MR. EGGLESTON: It could easily be cleared up if it is required. We can show the facts, as I recollect, from looking at Lane's Minute Book. It shows £111,000 was paid in December 1948 and tax free dividends were paid in March or thereabouts of 1949 - two different lots.

HIS HONOUR: The inference on the face of that document is that it was not tax free.

30 MR. TAIT: I think Mr. Ratcliffe is right about that. There were some tax free dividends, I do not know what the amount was now, in fact I have not seen it, sometime in April or March 1949? --- There may have been, I just do not recall them because I had not looked back to that date. I think I told you earlier that I have not refreshed my memory prior to 1949.

40 You did look back to that date when going into this, after Mr. Lane saw you? --- I think I would have.

I would have thought you would too.

HIS HONOUR: You could get it from other witnesses, if it is not agreed. I should think it would probably be agreed to.

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MR. EGGLESTON: We can get the Minute Book. In fact, I looked at the Minute Book myself to see what had been done. We can get it and give the figures for my friend's benefit to show what was declared on dividends in Lane's in the 1948/49 year, and the tax free amount.

MR. TAIT: Thank you. It does appear it is during the financial year 1948/49 that a considerable amount was drawn out of the company? --- Yes, it is clear from these documents here. Did Mr. Lane, when he gave you the balance sheets and had these earlier talks - way back when he first saw you in July or possibly August - suggest to you at all that he thought they should bring in some new capital, new money, at any time? --- There was no suggestion to that effect.

10

MR. TAIT: And in fact, right through, in so far as it was raised Mr. Lane, at any rate, was rather against it? --- Bringing in new capital from other people?

20

Yes? --- Yes, that was my impression.

You never got the impression, or were not told by Mr. Lane or Mr. Newton that they thought they needed new money in Lane's, for the purpose of the business, I mean? --- No.

And the same applies to Neal's? --- That would be so.

And Melford's? --- Correct.

So that throughout the matter of making an arrangement with them, the plan you put up, it was never a question of bringing in new money, further new money which would involve new shareholders or new money at all? --- No.

30

You did say - I am still on these early interviews, or the early stages of this matter - the thing I am looking at now is at page 108 of the transcript and I think that is a reference to a date in August. You answered Mr. Macfarlan by saying that after you had seen the balance sheet and considered the matter you formed certain conclusions yourself, do you follow that? --- Yes.

40

And what you say there, amongst other things,

is that the paid-up capital was far too low, £240,000 in Lane's with assets in the business that the Company had, was a very low capital. In Neal's, of course, it was even worse. You talked about the subsidiaries there and then you went on to Melford's. Will you tell me, when you formed the opinion that the capital was very low it was a corollary of that I take that it should be raised? --- Yes, I was to provide a report as to how it would be raised.

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10 Do you mean when Mr. Lane first came to you and said they wanted to see you and obtain your advice about capital, that he then said they wanted to raise the capital and that it was too low? --- I do not think he put it that way.

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The impression I got from your evidence was that he said this to you - you looked at the balance sheet and you thought or you considered it was far too low? --- Yes.

20 I use the words "far too low" what you said was "very low". Would you tell His Honour for what purpose you considered the capital was too low? --- I thought it was too low because it had some effect on their relationship with the motor companies from which they had franchises.

I want you to take this slowly. You may have more than one reason. You considered it would have some relation with the manufacturers you mean? --- With the manufacturers from whom they had the franchises. I think I did mention before there was the question of the bank.

30 Can I put that down as the second one. You told us something about that. What else? --- Of course there had been discussion about the conversion into a public company, and that is something they had to keep in mind.

Would you care to add any more reasons? I was going to suggest one which came out of something you said at one time. There might be an excess profits tax? --- Yes.

40 I think we understand generally what you mean by that? --- That had a lot of bearing on the amount in my mind.

I would like to get all the reasons why you think the capital too low, and for what purpose it

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was too low, why it mattered - that is what I really asked. Why did it matter that this capital was too low? --- As far as I can recall those were the main reasons I had.

Are you putting it to the Court that you have got here the commencement of a plan, that was done in the December transactions - the commencement of it and the object of the plan, that is, the object of the plan was to overcome the wrong position of the capital being too low, is that right? --- Yes.

10

Do I understand you to say that? --- Yes.

And that was the object of it? --- Yes.

And you do not say they had any other object? --- It could have another result as well.

What was the other result? --- I put in my previous evidence that there were various ways of doing this and it was a question of which way you selected to do it.

You said it could have other results, what do you mean by that? --- It was merely a matter of which way you did it.

20

I think you said when you made a choice you would end up with the same result? --- Yes.

What did you mean when you said it would have another result other than increasing capital for the purposes you have outlined? --- What I meant was - I should have said the same result.

Are you doing yourself justice, Mr. Ratcliffe, as a tax expert in this matter? --- I think so.

Are you carefully avoiding the tax saving that your plan brought about? --- It was not a tax saving. I thought I put that clearly. It was putting it in exactly the same result as they would have got by doing certain other things.

30

Let us go into these four reasons why you say the capital was too low. You thought it was too low and should be increased for four purposes or reasons? --- Yes.

The first was the relationship with the parent

motor companies, I do not know whether I express the word "parent" right, the companies from whom these distributing companies had the franchise? --- Yes.

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Would you not have thought that that was a matter for these expert businessmen, who were your clients, rather than for you to decide? --- Yes.

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10 Did they come to you and say, "Look, we think we have too low a capital and there may be a bit of trouble with the companies for whom we are acting? --- I did consider it.

MR. TAIT: Just answer the question. Did they tell you that when they came to you? --- There may have been some reference to it. I formed the impression that was possibly one of the reasons why they thought the capital should go up.

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20 You told me they did not ask for the capital to go up. The thing they came to you first about was that they wanted you to look into the capital? --- That is so.

And you looked into it by getting the balance sheets and you discovered the capital was too low and told them? --- My impression was that when they came to me and asked me to look at it, they had an idea it ought to go up.

Your discovery was something they already knew, that it was too low? --- No, it was something perhaps that they were considering.

30 You cannot remember them expressly mentioning that they thought they would have to raise the capital because there was some demand for that from their, what I call, parent companies - the companies for whom they were distributors, you cannot remember? --- No.

40 And when you found in Lane's balance sheet, I think the figure is £111,000, that amount had been drawn out of the company in the year in which the balance sheet which you were given was dealing with, did that not suggest to you there was not any such pressure by the motor company to keep the capital up? --- That suggested another thing, and that was the relationship of the profits to their capital.

Did that not suggest to you that there did not

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appear to be any need in Lane's at any rate for them to retain the monies in the company because they did not have enough capital? --- No.

And when you suggest that one of the purposes of raising the capital, when you discovered it was too low, was because of their relations with the motor company - - -

MR. EGGLESTON: If Your Honour pleases, I do not think the witness has said that.

MR. TAIT: I took it down. 10

MR. EGGLESTON: He gave my friend the reasons why he thought the capital was too low.

HIS HONOUR: I do not think he said anything about pressure?

MR. EGGLESTON: Nothing about pressure, and nothing about the purpose of the transaction.

MR. TAIT: My recollection, Your Honour, is that when I started this matter by asking for what reason it was too low and the purpose that it should be raised, in answer to that he gave me four reasons, and the first is the relation to motor companies. 20

MR. EGGLESTON: I am not contesting anything you said.

MR. TAIT: Very well. Is it a question he has not answered?

MR. EGGLESTON: I was objecting to the question when you say one of the purposes of doing so was because of the relationship with the motor companies. That is the way it was put, I think. 30

MR. TAIT: I will withdraw that question and take it another way. (To witness): Did you tell me that the reasons why you thought the capital was too low and should be raised were, amongst others, their relationship with the motor companies? --- Yes. That was one of the things that I did consider, but whether that was - - -

You thought, if I understand what you are saying, and correct me if I am wrong, that the capital should be raised because of something that might 40

arise in their relation with their motor companies?
 --- Not for that reason alone.

Not alone, but that was one reason? --- I thought that would be an advantage, to have a higher paid-up capital from that point of view.

That was one of the reasons why you thought the capital should be raised? --- Yes, I thought that a higher capital would be better from that point of view.

10 When you say that, do you mean it would be better from that point of view - and the point of view is what you describe as the relations with their motor companies for whom they were acting - to have more working capital in the company, or are you confining it to, it would be better to have more paid-up capital? --- They were both issues, of course, but my view would be that a person granting a franchise would look at the balance-sheet just like a bank, and if you are dependent on undistributed profits that can be taken out, that is not a very good
 20 guarantee. It is exactly the same as the bank.

MR. TAIT: I follow. So that you thought one of the reasons why it would be an advantage to raise the paid-up capital, was that because of the relationships with the motor companies, it would be better to have profits shown there as turned into capital? --- Permanent capital?

30 You have finished your answer, have you? --- You put it, I think, that it would be better to have profits as permanent capital.

What is the trouble about it? --- I did not follow it that way.

Did you not say, when they were looking at the balance-sheet, just like a bank would, they would rather see it in share capital than accumulated profits? --- You were talking about it being the other way. Would not they look at the total funds and in looking at the total funds, one looks at funds which are not permanent capital.

40 I appreciate what you say. That seems clear enough, and, of course, you noticed in the balance-sheet - I see you still have it open - that Lanes at the 30th June 1949 have not only had these profits, and as I pointed out, I think, the largest item is

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the profits for the current year, 30th June 1949,
is it not? --- Yes.

It is shown there as £302,799, after taking off
some Federal tax paid. I think that was tax paid
in respect of an earlier year; is that right? ---
Yes.

A little below that you find loans? --- Yes,
I mentioned that.

Yes. And the total is £164,000, and that in-
cludes some loans from Collins Motors, and the Motor 10
& General Company. Otherwise, it is all from share-
holders or estates with whom those shareholders
were connected? --- Yes, there is roughly £100,000
from the figure I mentioned.

It is a little over £100,000? --- Yes.

If there was any need to have a larger paid-
up capital in these companies, in respect of the
motor companies, that is the parent companies, that,
of course, could have been converted into paid-up
capital? --- I mentioned that. 20

Yes. Just answer the question. It could? --
Yes.

And that had not been done, quite clearly, at
the 30th June 1949? --- No.

So, would you agree that knowing it cropped
up, apparently, that the motor companies which had
thought about turning their advances into paid-up
capital, the answer is clear, of course, that had
not occurred? --- Yes.

Let us go on to the second reason you advanced 30
for saying the capital was too low and should be
increased. That was the bank overdraft matter, do
you remember? --- Yes.

What you have said about that was, you made it
clear enough - when a bank is asked to make advances
they look at the balance-sheet and the company's
paid-up capital is one item they look at, and per-
haps, as you expressed it just now, they would like
to see the funds in paid-up permanent capital rat-
her than in accumulated profits, or profits that 40
could be withdrawn, including loans? --- Yes.

What was the overdraft at the bank, of Lanes? At that time it was not an overdraft? --- No.

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They had a sum of £109,000 at the E.S. & A. Bank, in credit at the 30th June? --- Yes.

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Was the question of an overdraft so far as Lanes was concerned not a pressing one? --- Not at that stage.

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You never know? --- It varies.

10 Even with the best of regulated companies, sometimes one has to go to the bank? --- It varies tremendously in a few months.

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I know, in the motor trade? --- Yes.

But at the moment there is no pressure on it, so the idea, so far as Lanes were concerned, was in case they wanted something from the bank or something for the future? --- Yes.

20 And did Mr. Lane, or Mr. Newton, in these conversations tell you what they thought they might require? See if you understand this: Did they tell you that they thought they might require in the future, or foreseeable future, large amounts in the bank? Did they tell you that? --- Not in so many words.

Did you know anything - I speak of Mr. Lane and Mr. Newton - of their private resources, which would enable them to get money from the bank when they wanted it? Did you know anything of that? --- Their private resources?

30 Yes. Outside of this business? --- No, I did not know much about Mr. Lane.

That infers you did know something of Mr. Newton? --- I knew something of some of his interests. What I knew in relation to those interests was that he already had a great deal of money from the bank.

40 And, of course, it follows, if he got it, he got it from the bank. In regard to Neal's, I think the position was not quite the same, but if you look at the balance-sheet, annexure 6, there were loans to the company of £239,000 which were all by the shareholders, except - - -? --- No, there is a large sum.

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I was going to say, except this large sum. The first two items are £136,000, so there is £100,000, roughly? --- Yes, that was the figure I mentioned.

And the credit at the bank was £125,000? ---
Yes.

So the position of Neale's, at any rate, was that there was not any immediate call to go to the bank? --- No, I have just forgotten. I think I would have looked at Devon as well.

I do not think I have Devon's balance-sheet. 10
At any rate, there were sufficient funds there?

MR. MACFARLAN: Where?

MR. TAIT: In Neal's? --- I am putting it to you this way, that notwithstanding these figures at the 30th June, my recollection is that these companies had no money to spare.

Where did you get that from? --- I must have got that from discussions. I am talking about a period subsequent to the actual balance-sheet. I did not have any discussion with them on the 30th 20
June.

No, I followed your evidence, and the evidence is you had a very short talk with Mr. Lane? ---
Yes.

Namely, that he wanted you to look at the capital of these companies? --- Yes.

And nothing much more. And you said, "Let me see the balance-sheet," and he sent that to you, and you looked at the balance-sheet and investigated the matter and formed the conclusion that the capital was too low? --- Yes. 30

Was not that before anybody had told you verbally that they had not got too much money? Am I right? --- I would not be able to answer that definitely now, because before I tried to do anything, I had had conversations with Mr. Lane or Mr. Newton, or both, and I would have heard probably some reference to financial positions, I think.

That is what you want to say? --- Yes.

Were those conversations before you formed the impression, the opinion, that the capital was too low? 40

THE WITNESS: They were before I made up my mind as to any particular figures. I think when I first looked at the balance sheets I formed an off-hand impression before I studied them that they were very low.

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10 MR. TAIT: Referring you to your evidence, it was that Mr. Lane had come to you and had a conversation and he sent you the balance sheets in Sydney and you looked them over. Your evidence is, "I thought it was obvious to any accountant that the paid up capital was far too low .. with the assets and business that the company had was a very low capital." Then I asked you why you formed that impression and why it was necessary, in your view, at that time to increase it, and one of the reasons you gave was that they might want a Bank overdraft.

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20 And that was before any of the discussions with Mr. Lane or Mr. Newton you have now talked about, was it not? --- No, I do not think so. I did not say it was before I had any discussions.

Your evidence on this starts at page 106 and in answer to the question towards the bottom of the page, "Would you tell His Honour, Mr. Ratcliffe, please, who it was who first saw you about these motor companies?" You said something about being in Melbourne and then, "I forget which one - would I see Mr. Harry Lane and to have a talk to him about the capital of their other companies."? ---- That was in June.

30 You go on to say that you went around to his office and he told you that their capital was very low and they felt it should be looked into? --- Yes.

And he had made some reference to public companies? --- Yes.

40 Then it goes on that you told him you wanted to see the accounts and get familiar with the affairs of the company and Mr. Lane gave you some brief history of the previous years. At the bottom of page 107 you were asked by Mr. Macfarlan, "What opinions or views did you form on these balance sheets and other accounts which had been handed to you?" You said, "I had a look at the paid-up capital of each company. I then looked down the balance sheet to see what other funds they had." At the top

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of page 108 the question was, "Did you form at that time any opinions as to the capital structure of these companies?" And you said, "Yes, I thought it was obvious; to any accountant it would be obvious; that the paid up capital was far too low." There is no room so far for further conversations with Mr. Lane and Mr. Newton? --- At what time did I say that?

After you had been sent the balance sheets in Sydney. Is that right? --- Yes, but I would have seen them before and after getting those balance sheets. 10

Very well, but it does not appear very clearly that you did that from the evidence? --- Somewhere in the evidence I said I was seeing them each month.

You did later in the year.

MR. MACFARLAN: No, at that time he said.

MR. TAIT: You were seeing them in Sydney? --- Yes.

You have no recollection, have you, of any conversation with Mr. Lane and Mr. Newton when they told you that they thought they might have difficulty in getting an overdraft if they needed it for those motor cars? --- No, I do not remember that. 20

They never told you that? --- Not as far as I recollect.

The third matter you mentioned was a conversion into a public company? --- Yes.

As regards a conversion into a public company, one matter that would involve would be a Stock Exchange company, I suppose? --- That would be one way. 30

And that would mean bringing in new money? --- No.

Let us just examine what is meant by a conversion into a public company. There are various ways; one way is to go to the public and issue shares to the public and thereby bring in new money to the company. That is one way, is it not? --- Yes.

That was not a thing you had in mind that was 40

necessary or was a reason for saying the capital should be raised, because you have told me already there was no suggestion that they wanted to bring in new money? --- There was a suggestion that they did not want new shareholders at that time. There was a difference of opinion.

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10 When you say, "Conversion into a public company", are you merely referring to a public company as one which is a non-private company for taxation purposes? --- No, I am referring to a listed - - -

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A listed Stock Exchange company? --- Yes.

One way to bring that about would be to sell the existing shares? --- Some of them.

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Some of them to members of the public? --- Yes.

And that, of course, was quite clear that Mr. Lane and Mr. Newton had no intention of doing. They did not want that? --- No, that was not clear. I think some of them wanted to do it and some did not.

20 I beg your pardon, there was a difference of opinion that you told us about? --- Yes. I think those who wanted to do it probably wanted the money.

Wanted, perhaps, the negotiability of their interest? --- There were two things: I think they wanted to sell some of the shares.

But there was opposition to that, I think you said, by Mr. Harry Lane? --- My impression was that and I corrected that by saying when I got the impression I was not seeing the full Board.

30 Later on in the evidence I think you expressed it as a difference of opinion and you dropped that idea; you did not give any real further attention to doing that? --- As a matter of fact, I considered another alternative before I mentioned this capital. I considered a straight-out sale of the whole of the shares to a holding company, but the difference of opinion was so much that I thought it was useless at that stage putting it forward.

40 That was the third of the reasons. In regard to Melford's, the position was rather different, was it not? There was no suggestion that they should

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ever become a public company? --- No, not at that time.

Or at all? --- So far.

Do you mean up to date? --- Up to date.

We are dealing with the 1949-50 period? ---
Yes.

You have told me already that some position about the franchise might make changes difficult. Is that right? --- Yes.

As far as Melford's are concerned, conversion into a public company was not something that was being contemplated? --- I told you that I had not even looked at Melford's at that stage on this issue, because we had had no discussions about it. 10

Were not Melford's balance sheets among the ones they sent you? --- It was one.

I thought when you said the capital was too low you spoke of all three? --- I did.

And you did not think one reason why that low capital in Melford's should be changed was that that would facilitate the formation of a public company, did you? --- No. 20

Not in the case of Melford's? --- In the case of Melford's that did weigh on my mind a little as regards the franchise, because what I knew about the franchise, that would be a case where the balance sheets might go to America.

So that in that case it was the relationship with the motor companies that was the main thing you had in mind, or one of the things? --- It was one. I think it was probably more important than the others. 30

The fourth one you mention is the excess profit tax? --- Yes.

And in this period of July 1949 there were some rumours around the commercial world that that might be imposed? --- Yes.

And people were considering what it was. There was not any excess profit tax actually imposed, was

there? --- No. That was after an enquiry, from recollection.

I only wanted to get the fact that it never eventuated.

MR. EGGLESTON: That is different from saying it was not proposed.

MR. TAIT: I said it was proposed but the fact was there was no profit tax imposed.
 (To witness): That is how you stood with this matter at the time you gave the evidence about having studied those balance sheets - I think it was August or July 1949? --- Yes.

The capital was too low and you thought it was desirable to raise it. It was not a matter of bringing in new money but was a matter of using the resources of the company itself to create more share capital. Am I right? That is what you wanted to achieve? --- Yes.

You thought ought to be achieved? --- Yes.

Eventually you put this plan to the persons concerned; they accepted it and it was carried through partly in December 1949 and then, in the case of Neal's and Melford's, there was a repeat in the following year. Is that right? --- Yes.

And when you finished up, the paid-up capital in each company was increased? --- Yes.

From what it was when you first saw it? --- Yes.

It was a costly process, as far as these companies were concerned, was it not? --- In what way.

What I have in mind is that taking the whole of those transactions with the repeat ones, that Pactolus - with whom I identify yourself - in round figures got £250,000 out of these companies? --- Yes.

So that to achieve the objects that you saw were desirable, namely, to raise the low capital for the reasons you have stated, £250,000 in the end came out of those companies and came to Pactolus, partly in shares and partly in cash. Is that right? --- Yes, I think so.

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I have worked out the figures, as a matter of fact, as you might expect me to, and of that £250,000 I think the "A" shares were 161,200 - I am giving you round figures - and I have put those in the £250,000 at £1 each because Pactolus eventually got £1 each.

And eventually you and your family got at least £1 each? --- Yes.

And that made, with the cash you got - perhaps I should say Pactolus got - from the whole transaction a sum in the neighbourhood of £100,000 in cash? --- Probably.

MR. MACFARLAN: Did you include the "C" and the "A" shares?

MR. TAIT: Yes.

Mr. Ratcliffe, the original shareholders of these companies, leaving out Pactolus, got out of the whole transaction a certain amount of cash too, did they not? --- Yes. In fact they got, over all - and I put in again the repetitions of the following year - £400,000 in cash out of the companies? --- Yes.

And of course they also got a further holding of shares in their own companies namely, those "B" preference shares as they were then? The total of those - I added it up - Lane's 402,000 - I only want you to say yes to a round figure, a round figure of £1,185,000? --- Yes.

And of course when the thing was finished up, with those results, the original shareholders still had complete control of their companies? The shares that Pactolus had originally carried no votes except in special circumstances? --- They carried votes until certain rights were satisfied.

But when it was finished up? --- Yes.

And they were 5% preference shares and carried no voting rights except in certain circumstances, arrears of dividends and that sort of thing? --- Yes.

When you agreed with the figures that I worked out, that Pactolus took out from the companies'

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10 £250,000; the exact figure as I make it - and it can be checked - is £259,983, including the shares; when Pactolus had taken that out of the companies, and the shareholders had got the amount that they took in cash, which I mentioned, namely, £486,000, and the shareholders had got paid-up shares that they had not had before to the extent of £1,185,000, all of that came out of the companies, did it not, in the sense that there was no new money put in at all. Is that right? --- In a broad sense.

Well, in a broad way. You answer it as you think it should be answered. I will split it up. There was no new money brought into these companies, was there? --- No.

So that everything that came out, what Pactolus got, and the shareholders, in cash, and the payment up of the shares, was all out of the companies' resources? --- Yes.

20 And when I say it came out of the companies' resources, that means it all came out of profits that the companies had earned. The source where all this came from was the trading profits of the companies - are you agreeing? --- Finally.

Finally? --- Yes.

I am afraid I have not just fathomed the depth of that answer. Do you mean there is something intermediate? Did it come from somewhere else first? --- It depends what construction you put on the transaction.

30 I am not wanting to put any construction on the transaction. I am just asking you a fact. We have the fact that Pactolus got £250,000, the shareholders a round £400,000 and the shares were paid up that had not been issued before. First of all I said the moneys came out of the companies' resources and you agreed and now I am saying they really came out of the companies' profits? --- Moneys came out of the companies' profits and moneys were put back.

You mean for the issue of new shares? --- Yes.

40 Of course the shares had to be paid for by somebody, so that they are paid for by putting money back? --- Yes.

All right. I am asking you now to address

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yourself to this: In your view did the companies - and I put them together; you separate them if you want to - gain by these transactions? What did the companies gain from the amount of £250,000 which came out of the companies to Pactolus? Did they gain the objects you mentioned to me before, the results, these four things? --- The companies did not pay those moneys, from recollection. It was the shareholders who found those moneys.

Which moneys? --- What Pactolus got.

10

In a broad sense that is so. In a sense they did because the shareholders owned the company, but moneys came out of the dividends that were declared? --- Pactolus got the dividends, yes.

So that Pactolus got £250,000 from the companies and that depleted the companies' resources by that extent, and in a broad sense, the shareholders'? --- It did not, because you yourself explained that £160,000 was in shares, so it did not deplete the company to the extent of £250,000.

20

You are quite right to the extent that the companies were not depleted, but for this purpose, as you said, broadly, I am identifying the shareholders - there were seven of them, Nathan, the Newtons, Lane, and the rest - the ones that were there before you came in, I am identifying them with the company at the moment.

MR. EGGLESTON: I object to any questions which my friend asks, and is asking for an answer to now on the footing that the shareholders in the company can be identified. In my submission no useful answer can be achieved in this class of cross-examination if the witness is asked to assume something which is in fact not so.

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HIS HONOUR: I think we had better stick to Salomon and Salomon.

MR. TAIT: The shareholders at Pactolus were owned prior to this transaction taking place by the existing shareholders that were there when you came in? --- Yes.

40

So that in the sense that the £250,000, including the shares coming out of either of the companies which these shareholders had previously wholly

owned between them - or out of the shareholders, the fact is that the £250,000 did come wholly out of one of these sources, is that right? --- The shares came from the shareholders.

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And the money came from the companies? --- It was a balance of money that came from the company.

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10 And to the extent that the money came from the company; it was £100,000 odd; to the extent of that, in that sense, in one sense, would you agree that it made the shareholders of the company, who owned the company, that much poorer? --- Yes.

We will not worry about Salomon. My question is - and I want you to answer this fully if you will: What in your view did first the companies, and then secondly the shareholders of the companies who were there before you came in, gain by the £250,000 that you got? --- I do not think you can separate them.

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20 Let me put it this way: The men you were dealing with in this matter were experienced business men, were they not? --- Yes.

And you would not expect these gentlemen to part with £250,000 or anything like it, whether in shares in a company they owned, or out of their own shareholding without getting something really worthwhile for it? Do you agree with that? --- What they got was the same as they would have got as a public company.

30 What was it they got? Hard-headed business men made an arrangement with you with which you came out with £250,000, subject to what we have already discussed? --- The companies came out of it with greatly increased capital and funds.

You say the companies came out of it with greatly increased capital and funds? --- Yes.

That is the three motor companies? --- Yes.

Will you tell me what increased funds they came out of it with? --- The funds represented by the increased capital.

40 When you said "With increased funds" you did not include any funds in that sense, the funds represented by profits? --- No, I am including what is represented by the new capital.

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I misunderstood it? --- Represented by funds.

You did not mean "and funds" but increased paid-up capital and therefore increased funds in that sense? --- Yes.

So that the companies did not increase their assets by this transaction? --- Yes.

They did? --- Yes, the money must go into assets, be in the bank or in something.

The company increased their assets by these transactions? --- They must have. 10

I am sorry, I thought the companies decreased their assets by £100,000, which you took out of the company, and the amount which the shareholders took out of the company, how did that increase their asset? --- That is only one side of it.

Would you please tell me - I want to understand it? --- The increase in capital went into assets. It must have. It must be represented by assets.

Well, in the case of Lane's the increase in capital was 402,000 preference shares, was it? --- Yes. 20

And you say they increased their assets because they got cash for those? --- Yes, cash must have gone into the bank, so it would be part of their assets.

Is that right? --- Yes.

Although in Lane's, just before, the day before, they had issued the 402,000 preference shares they had paid a dividend of £450,000? --- On that one they depleted their assets. 30

On the balance of those assets, do you still say they increased their assets? --- Between the two - -

I said "on the whole transaction" I am not taking it in steps, I am looking at it now as a whole. Here is the plan you put up; the results you are going to get when everything is fixed up; you have the position of the company; I am asking you what did the companies gain, and you said they

gained an increase in paid-up capital and funds. I venture to think they did not gain any funds. Do you agree with that? --- Yes, broadly.

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The companies increased their paid-up capital, at the same time depleted their accumulated profits by a like amount? --- Yes.

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10 And that is what is ordinarily regarded or done by means of a capitalisation of profits which we hear about every day. Capitalisation of profits, that is what the companies gained? --- I do not hear of it every day.

Every week, if you like. You have heard of it? --- I have heard people do not do it.

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You have heard of people issuing bonus shares? --- Yes.

A bonus share issue is usually or can be a capitalisation of profits? --- I have not heard of one for about 20 years.

20 Why is that? Why is it not done? Usually treat profits as trading profits? --- Yes.

You are saying it is not done, why? --- Because there is another way provided.

What I find so difficult with your evidence, if I may say so, is why you are so reluctant to say the reason it has not been done for many years is because of the Taxation Act? --- That is correct.

Why have you not been saying that all the time? --- Why should I say that.

30 Do you try not to say it, or why do you not say it? --- I do not think I should give the answers you want me to give.

The fact is the Federal Act was altered - you will know more about the date of that than I, I think it was 1931 or late 1930 - when they eliminated the provision that allowed companies shares out of trading profits as distinct from capital profits to be exempt from tax. That is the thing that has made all the difference? --- They left some other provision.

40 That is why you say you have not heard of these

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bonus shares out of trade profits for many years?
--- That is right, because it would be foolish.

The reason why these companies could not, in your view, properly or sensibly take these trading profits and simply convert them into capital and achieve what you actually achieved was because the Taxation Act is in the form it is, and it would be subject to a very high tax. Do you agree with that? --- Yes.

Let us have things out in the open. That is the reason they could not do it the other way? - -

10

MR. EGGLESTON: The comment about 'having things out in the open', my friend should not make any comment which contains an implication of that kind.

HIS HONOUR: It has been made now.

MR. EGGLESTON: I rise to object so that if Your Honour expresses a view it may prevent it happening in the future.

HIS HONOUR: Yes. Well, Mr. Tait knows he should not comment in cross-examination.

20

MR. TAIT: Yes, I know. (To witness) You agree the matter that you wanted to achieve here, that is raising this paid-up capital, having a larger paid-up capital, and the achievement of it in the method you did it, which was out of profits, but for the provisions of the Act, which would have imposed a very large tax by the creation of bonus shares, without anything further, that is the reason why it was necessary to find some plan such as you put forward or one of the alternatives - do you agree with that? --- Yes. I would not have proposed a plan such as you are suggesting, to directly capitalise profits, I would have put other plans in that case.

30

You would not have suggested capitalising profit? --- No.

Why? --- Because of what you have just explained.

What is that? --- Because the tax law made it taxable, made company's shares taxable in that form.

40

In this particular case the tax law, applied to the particular taxpayers today, would make it taxable at a rate which was equivalent to, or about, 15/- in the pound? --- Yes, if that course had been adopted.

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Well now, you have told me that the company gained, from the carrying out of your plan which cost the company £250,000 in cash, in shares, and perhaps I should say the company and the shareholders - - -

10

HIS HONOUR: Mr. Eggleston will be objecting if you do not keep those two things distinct, perhaps with some justification.

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MR. TAIT: I was just putting it in a short way. (To witness): As I understand it the reason why what the company gained out of the plan, which cost the company £100,000 or thereabouts and the shareholders some shares which on face value was £161,000 or thereabouts, was that it got some more paid up share capital.

20

MR. EGGLESTON: If Your Honour pleases I waited for my friend to complete the question. This is another question which contains certain assumptions wrapped up in it, in the form of what the plan cost whom, and in my submission it should be framed simply with the omission of those assumptions. If the witness has already made a statement about those assumptions then it is on the notes and available. If he has not, the question is improper. It is very difficult for us to check up, as the questions are asked in this form, it is quite unessential that they should be asked in this form, and see what the witness has actually said about these things. A lot of them involve a good deal of, perhaps, legal analysis to see whether the assumptions are correct or not as a matter of law.

30

HIS HONOUR: I think the form of the question is open to some comment, Mr. Tait, perhaps for the reason that it wraps up comment.

40

MR. TAIT: I thought I was merely putting into the question something he had already told me. I will take it over again.

HIS HONOUR: I think if you stated it in a neutral fashion it would be better.

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MR. TAIT: I was trying not to prolong the matter by going over matters I thought had already been dealt with.

(To witness): Do you agree Pactolus gained out of this arrangement, when it was carried out, £100,000 in cash, and that came from the companies? --- I think it cost the shareholders that amount of money.

HIS HONOUR: That is the trouble with the word "cost".

10

MR. TAIT: I did not think I used the word "cost".

(To witness): Do you agree Pactolus gained £100,000 in money and that money came from the companies? --- Yes, I said that before, I think.

Do you also agree that Pactolus gained shares of a face value of £160,000 odd which previously had been owned by the various shareholders? --- I agree Pactolus bought the shares from the shareholders.

20

At any rate, they came out of the transaction with them, however they got them? --- Yes.

And we can add to that, I think you will agree, that those shares were worth £1 each? --- Yes.

In those circumstances, what I am directing you to now is, what in your view did the company gain by the whole arrangement? I think I have asked you before, and I thought you said, correct me if I am wrong, the Company gained an increase in paid-up capital? --- Yes.

30

You have identified that, it is the new issue of what was the "B" preference shares in the first case? --- Yes.

I take it that the companies, having gained that paid-up capital, in your view were better off, in a better position in regard to one or more, possibly all of those four matters you told me of earlier - the reasons why you thought the capital should be raised, is that right? --- Yes.

So that at the expense of whatever it cost the companies they gained one or more of these; their relations with the parent companies would be or could be on a better footing; they could be in a better position to get a bank overdraft - this does not apply to Melford's; they were in a position to convert into a public company; and they would be in a better position if there were an excess profits tax imposed. Is that right? ---
 10 Yes.

And you say that those four things were all the gains that the companies obtained? --- Yes.

We will now take the shareholders. The shareholders entered into this arrangement with you, and what did they, in your view, gain when it was completed, if anything? --- They gained the shares and a certain amount of cash.

They gained a certain amount of cash and these shares, and it is again the new issue of shares you are talking about? --- Yes, and they lost some of their old shares; there was a net gain of shares.
 20

The net result of it, I think you agree, as far as the structure of the companies are concerned, the capital structure if you like, was that what before this plan was carried out, was, or would be, profits of the companies, had now become capital, and when I say that, I mean some of it had. I am not saying the exact figures? --- Do you mean that I should identify it in that way?
 30

No. I am merely putting it broadly, that the result of the whole thing, so far as the companies are concerned, was that certain amounts that had been profits now were paid-up capital? --- Certain amounts were paid out as profits in dividends, and certain amounts were paid in as capital.

When it was all finished up, what had happened was that the profits were now represented as paid up capital, except what had been paid out? ---
 40 Not represented, taking the place of.

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Is not the technical term to use about the profits, that the assets of the company represent profits, and they also represent share capital and any other item you find in the way of resources? --- And bank overdrafts, and loans.

That is what the assets represent. After you have finished this, the assets were the same, were they not? --- I do not think they were. They are not the same assets. Something was taken out and something put back.

10

There were certain monies taken out, and there were less assets in the form of money, but apart from that, what change was there in the assets? --- I think that was approximately right. If you look at the cash position, when you pay out dividends and you get back capital, there is a difference according to how much capital you put in, and how much you pay out.

You did not get in as much as you paid out?
--- No.

20

Subject to that, the assets were the same? --
Yes.

Whereas before those assets had represented a small amount of capital and considerable profits, now those assets, subject to that depreciation in cash, represented a larger amount of paid-up capital and not so much profits; is that right?
--- Yes.

In your evidence, and I go back again to where we were before, you said, at page 108, when you were answering Mr. Macfarlan, in the second last question, after having been asked: "Do you remember having any discussion with Mr. Lane and/or Mr. Newton about these matters of the three motor companies in August?" - in regard to "these matters", I am not sure what that refers to specifically, possibly "these matters" are the ones that you have formed opinions about, having looked at the balance-sheet - this was your answer: "I think at that meeting I gained a fair amount of knowledge as to what their desires were first of all." At that

30

40

meeting of the middle of August, what were the desires of these people? What did they want to do? First of all: "I gained a fair amount of knowledge as to what their desires were."? Mainly as to the amount of capital.

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What does that mean? ---As to the additional amount of capital, I gained a knowledge of the views of Mr. Lane as to high capital and low capital, and so on.

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10 How much it should be, or just the fact it should be more? --- No, as to how high it should be, and so on.

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First, did you gather that their desire was to increase the paid-up capital? --- Yes.

That was one of the desires that they made clear to you, that you gained a knowledge of?
--- Yes.

20 And did you also gain a knowledge that it was desired to do it, to increase the capital, without bringing in new money, to do it, in one sense, out of the profits, to use the profits for that purpose? --- They did not put that to me.

Did you gather that is what they were really aiming to do? --- No. They had no views at all as to what should be done.

They had some views about forming a public company and some views about bringing in new capital. You have told us those things? --- It is one and the same thing.

30 They did not have any views, apart from those matters, as to how it should be done. They left that to you? --- Yes.

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And all you could say their desire was, was that the paid-up capital should be increased? -- Yes.

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It should be done in such a way that it would be in conformity with any step that they did decide to take to convert to a public company.

MR. TAIT: What does that mean, that it should be raised to an amount which would be suitable for that purpose? --- An objection, for example, to a high capital was that that would be objected to because it would be too high in their view when it became converted so that went to the amount to be raised.

10

That is a matter that went to the amount to be raised? --- Yes.

Before we come to that, I want to go to how it should be done. Did they say anything about that or did you get a fair idea of their desires in respect of how it should be done? --- No.

None at all? --- They had no views as to how it should be done except at that time they did not want to convert - let us put it this way: they had not made up their minds to convert, they had not resolved their differences on that issue.

20

HIS HONOUR: I would like to adjourn now, if it is convenient to you.

MR. TAIT: Yes, Sir, it is.

MR. EGGLESTON: If this is a convenient time, I would like to put on record what I said I would get from the Lane's Motors Minute Book as to the declaration of dividends. A minute on page 16 of the minute book, minutes of the Directors' meeting held at the office of Messrs. Buckley and Hughes on the 23rd December 1948: "There was a resolution that an ordinary dividend of £111,500 be and is hereby declared payable out of the profits of the year ended 30th June 1948." So in December 1948 the £111,500 was paid out of the profits in the year ended 30th June 1948.

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Then on the 24th March 1949, a Directors' meeting was held at which it was resolved that a number of dividends out of tax free profits - I need not give Your Honour the details unless my friend wants them - would be paid and they total approximately £138,000 and they were paid out of profits which had borne tax under Division 7 in each case. They were expressed to be payable wholly and exclusively out of profits which had borne tax under Division 7 and that dividend was declared on that date, 24th March 1949. The total, as I say, was approximately £138,000.

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HIS HONOUR: They were out of tax paid dividends and the first was not.

MR. EGGLESTON: The first was not.

MR. TAIT: When was the first one paid?

MR. EGGLESTON: The first one was paid on 23rd December 1948.

HIS HONOUR: Within the six months?

MR. EGGLESTON: And thereby making a distribution. I do not know that they made sufficient distribution or left something out but it was making a distribution out of profits for the year ended six months before, but the other one was out of profits in various periods.

The figure of taxable dividends at 23rd December was £111,500. It would perhaps be best if I gave the amounts of the tax free too so the total can be added up at any time. The first one was £19,600 out of profits of the years up to and including the year ended 30th June 1943; £30,360/19/7d. out of profits of the year ended

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30th June 1944; £31,243 out of profits of the year ended 30th June 1946; £55,572 out of profits for the year ended 30th June 1947; and £1,666/13/4 out of the dividend received by the company during the year ended 30th June 1948 from All Cars Pty. Ltd. which was paid by that company wholly and exclusively out of profits which had borne tax under Division 7.

MR. TAIT: The last ones then did not appear in the balance sheet? 10

MR. EGGLESTON: No, they reduced the tax paid profits reserves down to £250.

MR. TAIT: Mr. Ratcliffe suggested they would be shown if they had been taken off. If they had been paid they would be taken off.

MR. EGGLESTON: The profit and loss appropriation, of course, showed £111,750 which was the amount mentioned plus the £250 preference dividend, but the other was merely taken out of existing reserves and the details are not shown in the balance sheet. 20

HIS HONOUR: And the balance £250 was left.

MR. EGGLESTON: That was in March 1949.

JOHN VINCENT RATCLIFFE, continuing his evidence:

MR. TAIT: Mr. Ratcliffe, before the luncheon adjournment I called your attention to what you had told us as appears on page 108 of the transcript, namely, that in the conferences or interviews about the middle of August you had gained, you said, a fair amount of knowledge as to what their desires were, first of all, and I had asked you, you remember, about that before lunch and you told us that? --- Yes. 30

And this is the middle of August, of course, when you were in those particular conferences? --- Yes.

Will you tell me this: did they - and by "they" I mean whoever were there representing these companies, it may have been Mr. Harry Lane or Mr. Newton - did they mention there any difficulty they had or considered they had about taxation? --- No, they did not, Mr. Tait. 40

Having seen the balance sheet, or the balance sheets, as at 30th June 1949, you, of course, realised that in regard to the profit for the year ending that date that unless something was done about it before the 31st December coming, there would be a very large amount of taxation? --- Yes.

You realised that? --- Yes.

10 If it had not been distributed there would be a Division 7 tax which would be at approximately 15/- in the £. and that if it was distributed it would cover the same tax in the hands of the shareholders? --- Yes.

20 Mr. Ratcliffe, that was, was it not, a problem and a real immediate problem that had to be considered? --- Yes. I think I said to you before lunch that one of my first ideas was to form a holding company. The purpose of that was to give them time so that they might resolve their differences and turn themselves into a public company before the 30th June following.

30 I will come to that in a moment. I had referred you to this passage because it was in the August conferences. Later on you were telling us of the times you met them, and I think this was following the letter of yours with the figures in it of the 30th September 1949. On page 134 you were asked this question, "Have you been asked any questions about giving any advice with regard to tax savings?". You said "At no time was I asked to give advice on tax savings. I was not called in as a tax adviser at all; I was not the tax adviser." Knowing that - what I call the problem; you can call it what you like, the fact that if something was not done before December there would be this tax looming up - knowing that, although you might not regard yourself as a tax adviser, did you not call their attention to that position? --- I do not think I directly called their attention to it. It was something I took into consideration.

40 You would know of it, of course, as you said? --- Yes.

And furthermore, I suggest, it would be very much in the foreground of your mind, would it not? --- Undoubtedly, yes.

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They did not ask you about it and you were not asked to give advice, as you say here, and you did not directly say to them anything about it? -- There was some reference to the position that they had got into in respect to their 1949 return including a large taxable dividend, and that brought up the question - let me put it this way: I told them I disagreed with the advice they had been given on that because they would have a very heavy tax to find because of the provisional tax.

10

Would you explain what this was? --- It was that £111,000 was paid during the year up to 30th June 1949.

I am not sure I understand you; 30th June 1949 is the year we are dealing with and £111,000 had been paid the previous year? --- During that year.

During the year, yes; that is so? --- And got into the shareholders' funds.

I beg your pardon, I thought you were speaking of the Company's return? --- One of the problems, of course, was finance. That was the first time that had been done and they had to provide for ordinary tax and provisional tax - something like 30/- in the £.

20

It was the fact that was one of their difficulties, and I do not know whether it was one of the difficulties they called you in about, but it was mixed up with the question, as you have just said, that they had this large distribution and they had to find individually the tax on it? --- They did not ask me about that. I drew attention to it. That was one of the financial troubles they had.

30

Did you say to them, "We cannot let that occur again"? --- No, what I did say was that the advice was wrong and they should not have made the distribution.

I follow now. Did you tell them that? --- I am practically sure that at some stage I told them.

40

In other words, what you were saying to them was, "You should have called me in last year."? -- No, I did not say that.

That is what it amounted to, did it not? ---
It did not amount to that Mr. Tait.

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Well, something like that. You thought they
should not have had to pay that? --- I merely said
that I had a different view from the people who had
advised them.

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10 As I understand that - correct me if I am
wrong - what you really meant was, "This year, if
you ask me about it, I will have a plan that will
avoid that sort of thing."? --- No, that does not
mean that.

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Is that what you meant? --- No, of course I
did not mean that. I was not discussing that
angle.

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20 It follows from what you have said in exami-
nation-in-chief that this matter of the tax that
would be payable either by the Company or the
shareholders before December, unless something was
done, was not a matter that was really discussed
between you? --- What I said was that it was not
a matter that they brought up or questioned me
about. I think that is what I said.

I think you also said you mentioned it but
did not call their attention to it particularly?

MR. EGGLESTON: He did not say that.

MR. TAIT: You gave them no advice about it.
Is that right? --- I did at some time give them
advice about it.

30 What advice did you give them? --- I said in
relation to that, when the transaction was entered
into, "If you do not pay this by the 31st December,
the Company will have to pay the tax and you will
still have the liability on the special rights."

When you said "If you do not pay this", you
were referring to the special dividend? --- Yes.

40 And did you regard that fact as a very strong
reason why they should accept your plan? --- Not
as a strong reason for accepting my plan. That
was a matter for them to choose, because I gave
them three alternatives, all of which worked out
approximately the same.

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And all of which would have avoided this tax before December that you spoke of? --- Not directly, because the first two would have required the holding company to be formed because we were past the 30th June 1949.

I was going to call your attention to that. It would not have affected the tax that would fall before December, either on these companies or their shareholders, if you had formed a holding company in October, say, or any time after the 1st July, would it? --- Then the holding company would have got the dividend, and, in that case, they had until the 30th June 1950 to decide the matter.

10

I follow.

You told us, I think, that you were appointed tax adviser to the company in November, was it not? --- Yes.

When you were asked to advise the companies, I take it that you would feel that you should advise them on any problem of taxation which appeared present? --- On the problems of taxation which arose out of any advice I was giving them. I would not go outside that.

20

Let us take it this far: At least you would agree, would you not, that your plan, the plan that was adopted, as you have just said, made it essential that the special dividend should be paid before the 31st December? --- That is so far as the company was concerned, yes.

Otherwise there would be a very heavy tax? --- That is provided we did not do anything else.

30

So that it was an essential, you would agree as far as this, an essential part of the plan that you put to them, and which was adopted, that the dividends should be distributed before the 31st December? --- Finally it was, yes.

What do you mean by finally? --- When we did not put in the holding company, of course, it became essential then.

You mean by that that once they had adopted your plan and not one of the alternative, is that it? --- We could have adopted one of the alternatives right up to the end of December, it just depended how long it took you to form a holding company.

40

Subject to that, adopting one of those alternatives, the holding company or the other one, it was an essential part of your plan to distribute it before December? --- Yes, once this plan was decided on.

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10 And of course if they had been minded to take the holding company, for instance, that would have involved a distribution of dividends before December of this company to the holding company? --- Yes, the money would come out of this company to the holding company.

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20 Well now, I want to take you to the working out of what we will call the plans and if you will allow me I would like to work backwards or start at the end because I want to start with the application of your plan to the second Neal's Motors case, and that is to be found in the Admissions starting, I think, at page 62. And in addition to what is stated in the Admissions at page 62 you will remember that we have about that the letters which form part of Exhibit A.3 and they are the last of these letters starting with one of the 19th April 1951 from Mr. Harry Lane to yourself. At the end of the letter the paragraph says, "From the conversation I assume that these are the figures and will be sufficient for the purpose of your considerations." You had something before this letter by way of conversation about this very matter? --- Yes.

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30 Will you just tell me - I think you mentioned it before - but will you tell me the general nature of that conversation or conversations that preceded this letter about what we are calling the second Neal distribution? --- I think I went through this, and gave the best of my recollection already.

40 I think you did, but would you mind giving it to me shortly again? I want to ask you some questions about it? --- I have a recollection that I went through the recommendation of the holding company in September for Neal's. My recollection was that I made a recommendation for both Neal's and Lane's separately in September. If I remember rightly in Lane's it went on to a conversation and I think I said that Neal's became in abeyance because everyone was concentrating on Lane's. Then I think I said that it was revived somewhere around about March, I think it was, at that stage

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that to the best of my recollection I heard the information about the franchises of Devon and Neal's. They were in conflict.

Does that mean in effect - - -? --- That was an explanation for a further postponement of Neal's to put it into a public company.

So that for the time being that was off? --- Yes, it was further postponed.

Then that being so, what led up to this letter that you have in front of you?-- My recollection is that when the information about the franchises came up, as I said before, I felt in order to separate these two companies, which would have to be done finally, we would have to raise the capital of Devon and also correspondingly raise that of Neal's and - - -

10

But that does not seem to me to be anything about the second of the Neal transactions. How did that come about, what was the conversation that brought that about? --- I should think it would be at the same time as this conversation.

20

I think they probably asked what I would suggest as an alternative having in mind that we could raise this extra capital for Neal's and put it into Devon for the future separation of them, that I then suggested they could do this plan.

You suggested they could do this plan, they could do it now, at that time? --- Yes.

I do not quite follow why you suggested that. What has that got to do with the raising of more capital or a public holding company? --- This is the way we raised the capital before. If we wanted another £240,000 to get Devon up so that it would stand on its own feet, you did it the same way. I thought I explained that fully yesterday.

30

You did. You said "Now we could do it again what we did before with Neal's, including the taking up of the new shares"? --- Yes, I think it was then I was told they wanted cash.

What was your reaction then, it is almost certain that meant taking money out? --- That meant they were again postponing it.

40

The holding company idea? --- Adjusting it, yes.

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What did you say about that? "Oh well we will not do the plan"? --- I did not say that, I drafted it out for them.

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In order that they should get the cash? --- Yes, that is what I said in the letter I think.

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10 Before you come to the letter, is that all you can tell us of your recollection of the conversations that are referred to at the bottom of the Exhibit A.3., the letter of the 19th April? --- I should think what I did say at the end of it, "Well, in order to prepare something for you to consider, I will have to know your position. You will have to send me up some figures about how the business is going, what profit you are making and so on." I think that gave rise to this letter.

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That is Mr. Lane's letter? --- Yes.

20 He said "I will send you the figures." He, in fact, did send you figures in this letter and said "Then you forward us a plan on the figures." At that stage when he forwarded the figures and you were to work them out on the plan, was that plan to include the taking up of new shares or merely to take the money? --- Merely shows that there would be no shares there, no mention of shares in it, to my recollection.

30 You do not mean Mr. Lane's letter now, you mean your reply? --- Yes my reply.

Mr. Lane's letter, I do not think mentions it? --- No.

40 So that the time you wrote your letter, following Mr. Lane's letter - is to be found in Annexure 55 at page 138 of the second book. You have that letter in front of you. You are telling me now you knew that what they wanted was a withdrawal of money and a plan that did not involve the taking up of new shares? --- I would like to check that, my recollection was that it was.

If you look at the bottom of page 139, the second last paragraph, it will put you on the

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track, I think, where the Morton Trust was referred to? --- Yes, that would not necessarily account for the whole of it. That was only if they had to support it. It did not indicate some substantial money would go out. I thought there was something to be paid, but there were no shares.

In the middle of page 139 you see there "under proposal 2(reads) would have to meet" that is the amount that was to be paid out? --- Yes but it does not say it would not get anything towards meeting it.

10

I think we all agree they did not get anywhere? --- I admit they did not get anything. What I was trying to recollect was whether at this time I was under the instruction they were taking the lot or whether some was to go back as capital. It is not in the letter at all, the only thing in the letter seems to be if you take out a substantial amount of money you can form a trust account and support the company.

20

So that you are satisfied now are you that when you replied to Mr. Lane's letter of 19th April, you were preparing a plan which did not provide for the taking up of any new shares? --- I am not satisfied, that is the point. I thought it was in this letter that I knew that no shares were being taken up - well, it is not in the letter.

There is nothing in the letter to suggest that any shares would be taken up? --- No, that is so, but it is my recollection some might be taken up.

30

And you did not mention the fact in the letter? --- I have not mentioned it in the letter but I also have not mentioned the whole of it will be taken out in cash.

Taken out and retained? --- Yes, and retained.

What you are saying to His Honour now is, your present mind about the matter is that you do not know whether when you wrote the letter of the 23rd April you had in mind that this plan should be one for merely taking money out or should be a plan for taking it out and then putting some back for new shares - you do not remember? --- No, it may have been that I left it in such a way it was for them to say.

40

Did you regard at this date, when you wrote the letter, the plan as one that was quite feasible and suitable for the taking out of the money, although the money might not be put back? --- Yes.

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10 And the plan, as dealt with in that letter of the 23rd April, in substance, not in figures, and in form, was the same plan as had been adopted previously, in December 1949, with all the companies, except this matter of whether new shares should be issued. Is that right? --- Yes.

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So you would agree, would you, that the plan, and I use that word again, of what you proposed to them was quite workable and feasible although there were no new shares taken up in the company? --- Originally, I would not have proposed it for that purpose.

20 No, because originally you had a purpose, you have told us, of retaining the money in the company? --- Yes, and putting money back into the company.

But as far as the plan itself was concerned, it was one that could be worked even if the money was not required to go back? --- The shares could be sold.

Yes, that is what it comes to? --- Yes.

30 In this letter of the 23rd April of yours, it starts off: "I have considered the figures in your letter of the 19th inst. regarding Neal's Motors Pty. Ltd., and have come to the conclusion that a transaction similar to that carried out in 1950 could be carried out before the 30th June next, subject to certain modifications."? --- Yes. It is the word "similar" which causes me to doubt whether I did not have some shares in mind.

But subject to that matter that you have a doubt about, it was as you say, it would be carried out in a similar way; is that right? -- Yes.

40 Now, what were the certain modifications you referred to there? --- I think they were as to the number of shares and as to profits.

On the second page of that letter of the 23rd April, just after the middle of it, you say this: "If the profits are in accordance with the estimate

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in your letter (that is Mr. Lane's letter) proposal 2 would just about avoid Division 7 tax on 1951 profits."? --- Yes.

Would you say that the purpose of this plan was to avoid Division 7 tax? --- I do not think so. It was to give them the cash from the sale of the shares.

Would you say that the purpose was to enable them to draw the money out of the Company without having to pay Division 7 tax? --- No, I think that was a result of it. 10

But you would agree that they could always have drawn this money, without your plan they could have drawn the amount out of the company by merely passing a resolution and making the money available; is that right? --- Yes.

And if they had done that, without your plan, they would have paid tax? --- Yes.

And the virtue of your plan, if I may say so, was that they did not pay tax? --- My plan was that they should realise the shares. 20

You do not agree with that. However, you say your plan was - - -? --- To realise the shares.

However, they said they would adopt one of your proposals. I think the figures were slightly altered, but whatever they were, the amount that was distributed was £381,214. You remember that figure? --- I remember it approximately.

It appears at page 71 of the Admissions, on that sheet. We wrote the figure in as an addition. That, of course, was a substantial amount to draw out of the Company, out of Neal's, was it not? --- Yes. 30

And do you know, when these dividends were paid, that £381,000, of what became the "C" shares, which were sold to Pactolus, and then Pactolus paid for the "C" shares to the shareholders, whether any of the money that the shareholders received was put back into the company by way of deposit? --- No, I do not know. 40

You would not say it was not? --- I would not remember either way, because I do not think I followed it once the cheques were delivered.

But I thought, Mr. Ratcliffe, you were primarily concerned with, or your primary obligation and duty was, to concern yourself with the capital structure of these companies? --- Yes.

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And from the point of view of capital, the amount that the company had available, whether the money was put back on deposit, would be of some importance, would it not? --- Yes.

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10 You never found out? --- I knew, I think, the position of the company at this time; it had cash available.

And you thought, did not need this money that was drawn out? --- Did not need it immediately, because I put a warning in there, because I thought they might need it. As a fact, they did need it, from recollection, within six months.

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20 At any rate, the amount was paid out, and you did not concern yourself with what was done with it, whether it was put back as deposit? --- It was months afterwards before I would actually see it, because the balance-sheet would not come up until August.

The figures concerned in this second Neal's matter - it is clear in this second transaction that the amount that Pactolus agreed to pay for the shares, if bought, which was £354,425, was more than covered by the money that Pactolus re-received by way of dividends, which was £381,000 odd? --- Yes.

30 And they therefore paid the amount for the shares out of the dividend they received? --- Not necessarily. Pactolus had a fairly substantial bank balance at that date.

And cheques went through the bank at the same date? --- Not from my recollection; I think one of the shareholders on this occasion might have carried his cheque around with him in his pocket, I remember one did that.

40 You are quite right, I overlooked that? --- That was the other way around.

Mr. Harry Lane carried the cheque around for two days? --- No, one carried it around for a week.

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That is true, but that only means that the cheques given by Pactolus for the shares were not put through the bank and by the time they were put through the bank, whether immediately or after two or three days of being carried around, Pactolus had received a large amount by way of dividend. That is clear, is it not? --- Yes, it received the dividends.

And you do not suggest, do you, that at the date when they did draw the cheques for the paying of the shares in the second transaction - the date of the cheques was 25th June 1951 - that at that date Pactolus had in the bank an amount to cover the sum of £354,000? --- No.

10

The amount Pactolus got for itself out of the transaction would appear, on the figures I have here, to be £36,969 in cash which is the difference - I am taking the figures on this sheet - that is the difference between the £381,000 and the £354,000.

HIS HONOUR: £26,000, is it not?

20

MR. TAIT: £26,000, I am sorry, I added it up wrongly. £26,900 and then in addition to that, Pactolus obtained £29,156 in the "C" shares valued at £1, so that Pactolus got £56,000 in value, cash and shares, in respect of the second Neal transaction? --- Yes.

And I ask you again, in respect of that transaction, what did the shareholders or the company gain from that amount that was paid to Pactolus, or Pactolus retained? --- They sold the shares and got the cash for them.

30

And you agree that what they got was instead of drawing the money out of the bank and paying a large amount of tax on dividends, they got the same money at the expense of £56,000? --- That is a contradiction, is it not, Mr. Tait? They did not get the same money, they got the money less £26,000.

Very well, they got the money less £26,000 and the tax they would have paid would have been approximately 15/- in the £. on the dividend £381,000, or in the amount they received £354,000; it would have been roughly £250,000 odd they would have had to pay in tax if they had just drawn it from the company without your plan? --- If they had taken the dividend, yes.

40

Now, we go from that to the other transactions where there was an issue of new shares and those were, in each case I think, the transactions which took place in December 1949. They were "B" preference shares, were they not? --- Yes.

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10 And can you tell me why those "B" preference shares were issued to Pactolus and then sold by Pactolus to the shareholders rateably to their original shareholding and why were they not issued direct by the company to the shareholders? --- I thought I stated that before, Mr. Tait.

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Would you mind telling me now so I can get it again? --- My recollection is that that was a term of the capital issues consent that the holder of the shares, the recipient of the dividend, should take up the preference shares.

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The recipient of the dividend? --- Yes.

20 You are referring, first of all, to the provision in the application to the capital issues where it was said in that that these shares - it is at page 19 of Annexure 14 in the book of annexures - the application said it proposed that the shares be taken up with the shareholders and paid to them out of funds obtained through the declaration by the company of tax free and taxable dividends. Is that what you are referring to? --- Yes.

30 And later on in the same application it says, "The company does not wish to directly capitalise any profits but prefers to declare dividends and allow the shareholders to make application for the shares and use the funds from the dividends to pay them". Is that it? --- Yes.

And because of that you say it was necessary to issue the "B" preference shares to Pactolus who received the dividend, is that right? --- Yes.

40 If it had not been filled - what was put in there was a condition, I suppose, in the capital issues because they assented to it on the issue of the application? --- Yes.

If it had not been filled it would not have mattered? --- If consent would have been given on different terms; it would not have mattered.

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Is that why in the second Melford transaction which took place in December 1950, the "B" preference - or were they "B" new preference - were issued direct to the shareholders and not to Pactolus? --- On that occasion there was a consent to issue them for cash without any other provision in it. It was a straight out consent for cash.

So there was no condition in the second one such as there was in the first with regard to capital issues consent? --- No.

10

You were able to have them issued direct, is that it? --- Yes.

That seems to me to point to the fact, and I think you said the only reason why they were not issued direct in the first case was it was put in capital issues and consented to? --- Yes.

I see that the application for the second transaction of Melford Motors - the application of capital issues - appears at page 107 in the second book of annexures and it said, "Re proposed issue of shares," and then it shows what the paid up capital was, some were 5% preference and some ordinary and it says, "It is proposed to issue ... " I see what you mean; that was to be issued for cash to the present holders? --- Yes. I think they were ordinary shares, not preference shares.

20

Who were the present holders? --- The "B" preference shares had been converted to ordinary, from recollection, and they would have been the holders of them.

30

The application was made on the 19th October 1950, which, of course, was before the alteration to the Articles and the creation of the new shares for the purpose, was it not? --- Yes. They were not taken up until the Articles were altered.

Did you yourself draw the application to the Capital Issues Board, the first one in October 1949? --- I think I saw it, at any rate.

There is something in the correspondence that you drew them. Indeed you, yourself, in annexure 12 at the bottom of the letter, which is on page 1, said, "I will proceed with the completion of the draft application to the Capital Issues Board but will await your reply before having them typed."? --- Yes, I would have sent the draft to Melbourne.

40

You were responsible for the form of the application, were you? --- Yes, I think so.

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I see it was actually signed by Mr. Wallace?
--- Which Company is that?

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The one I am looking at is Lane's. I think he signed them all.

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MR. EGGLESTON: Are you looking at the application or the covering letter?

MR. TAIT: I am looking at the covering letter.

10

MR. EGGLESTON: If you look at the applications, you will find they are signed by different people.

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MR. TAIT: The covering letter is signed by Mr. Wallace and the application in regard to Lane's is signed by Mr. H.J. Lane, but Mr. Wallace signed the covering letter in each case. How did he come into the matter for the purpose of sending on the application with the covering letter to the Capital Issues Board? --- I could not say offhand, Mr. Tait.

20

You do not know? --- I do not know, really, because normally it would have been sent by Mr. Bunny, who was the solicitor.

You sent to Mr. Wallace your letter of the 30th September? --- Yes.

I want to know why it was you sent that to Mr. Wallace covering all the companies? --- He must have written to me. Did I say "your letter"?

30

You do not refer to an earlier letter. You merely say, "I am enclosing five copies of the document"? --- There must have been some arrangement at the conference that I send them down to him.

That you send them down to Mr. Wallace? --- Yes. He would take the matter up with the separate companies.

You would regard him as representing, for this purpose, the various companies? --- Yes.

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Looking at the application in respect of Lane's, which is annexure 15, page 20, in paragraph 2(f) it is said, "Is it proposed to apply for listing of the Company's shares?" You say, "No." I think you mentioned listing as bound up with one of your alternatives, and that it had been discarded for the reasons you have already stated? --- Postponed would be a better word.

MR. EGGLESTON: These shares were never listed.

THE WITNESS: There was no decision. 10

MR. TAIT: Going back to Mr. Wallace's covering letter, did you draw that as well as the application? --- I may have done so. It just depends whether there was an important matter that had to be put into it. I have forgotten what is in it.

You had better have a look at it. It is at page 19 of the first annexure? --- I think I did because of the reference to gift duties in it.

I would call your attention to the first paragraph. (Reads paragraph.) There is a sentence in the middle, "The company does not wish to be ... capitalized." Do you consider that that was, in the circumstances, a proper and full disclosure to the Capital Issues Board of what was going to be done? --- I think so. 20

Do you think there was any indication in this where the word "shareholders" is used there, the shareholders who were going to receive the dividend would be shareholders who at this time were not shareholders of the company at all but a company to whom the shares would be sold after a rather unusual alteration to the Articles? --- They would be the shareholders who received the dividend. That was implicit in this. 30

And you did not think it was necessary that you should disclose to the authorities anything more of your plan than the mere fact that the issue for which you were asking the consent should be paid for out of dividends? --- Do you mean the Commonwealth Actuaries when you say "the authorities"? 40

You were addressing it to the Actuary or the Board: whether it was the Actuary or the Board I am not sure of that one? --- I thought this was an adequate letter.

At the end of the first paragraph, after saying that "They would be paid for (reads) still owing". That would be the dividends that the present shareholders, apart from Pactolus, had already received? --- They were the deposits. At that stage I did not know whether they would still not take up some shares partly out of deposits.

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Some of the new issue? --- Yes.

10 Is that so? Was there any suggestion of that on the plan as you set it out on the 30th October, a fortnight before this? --- No, but at this time the position varied a great deal - after this time.

And indeed, when you wrote this, the number of shares mentioned in this letter - I say when you wrote it, and I am taking what you said about that, do you notice the number of shares is 402,679, which is exactly the same figure - 402,679 - which was in your September 30 figures at page 9; new preference, 402,679? --- Yes.

20

So there had not been any contemplated change which you were allowing for, but in the application you were allowing for the very same number of new shares as you have proposed in your tentative figures of 30th September? --- Yes.

All of which under that plan were to be taken up by Pactolus? --- Yes.

30

And in these circumstances will you still say that you have put the matter fairly and completely before the authority dealing with this capital issues matter? --- I think so.

Well now, the next matter I want to ask you about is the tax-free dividend. That is a term which I think I have used - and which I will use - to refer to Section 107 dividends? --- Yes.

The plan as it emerges from the figures you put in the letter of 30th September, of course, in each case provided for a certain amount of dividends to be paid out of tax-free amounts? --- Yes.

40

You worked out the dividends on those figures separately, you remember, did you not? --- Yes.

And although the figures alter, a certain amount, as the dividend resolutions show, was in tax-free dividends, was it not? --- Yes.

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What I wanted you to explain was why were these tax-free amounts included? Let me put this to you to show what I am asking you: You started with an amount - when I say "started", I mean started in the figures of the 30th September - with the amount of the taxable income as disclosed in 1949 by the balance sheets you had already got and as estimated for 1950? --- Yes.

You worked out an amount there based upon that taxable income, working it down through the applications of the provisions of Section 103 until you arrived at a figure of the dividends you proposed should be paid (page 7, £402,000), which was varied in the end on these figures by a slight amount. There was something added for British Service, and then some tax paid amounts for British Service, and the amount you can see finally worked out at page 8.

10

That being so, you provided for and ultimately carried that the dividends should be paid partly out of tax-free amounts? --- I think I answered that this morning.

20

Did you? I am sorry, but what is the answer? --- I think I said that it was part of the bargain that Pactolus made.

Yes, but this morning I was asking you about the tax-free amounts that Pactolus got by way of dividends. Yes, I suppose that is the same thing. You say that was part of the bargain? --- Yes, it was allowed for in the price; full value was paid for it. But the taxable dividends - full value was not paid.

30

In respect of that tax-free amount that was distributed - it varied; I have the figures here somewhere. In Neal's 1949 resolutions the amount was £36,444. At any rate, it was somewhere about that amount. Why was it not possible to declare a dividend payable to the existing shareholders out of that without bringing in Pactolus at all? The way was clear, was it not, to declare that dividend to the shareholders without its attracting tax? --- Yes, it could have been.

40

And if they wanted to they could have then, having received the money, put it back into the company by taking out new shares? --- Yes, that is so.

Or alternatively as to that amount they could have made a short cut and issue bonus shares, fully paid, without attracting tax? --- Yes.

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So far as the shareholders were concerned there was no real need to include this tax-free amount in the special dividend? --- They were no worse off - and no better off.

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10 All I said was there was no need, they were no better off or no worse off - according to what you say it was included because you wanted it? --- Yes.

I do not think I have understood as to why you considered you did want it. What was the reason? --- I think I did answer that question.

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I asked you, I know. All I am saying is that I am not sure that I understood what you did say. Would you mind telling me again? --- I said, first of all, that it was part of the bargain, then I think I answered a further question.

20 I remember that, it was part of the bargain, but that does not tell me why you really did it? --- It was to the advantage of Pactolus, and you, yourself, examined it this morning.

What was the advantage to Pactolus? --- Because it could be distributed tax free - re-distributed tax free.

To whom? --- The shareholders.

Pactolus? --- Yes.

30 Carry it a little further for me because at the material time it was not Pactolus, it was Pactolus Investments? --- Yes.

And Pactolus Investments was a company which could not be taxed on it, or get the section 46 rebate? --- Section 107 rebate.

Even though it had not been section 107 amounts they would not have paid tax because of section 46? --- If it had not been a section 107 rebate, they would still have paid undistributed profits tax.

40 It would be undistributed profits tax by Pactolus? --- Pactolus Investments.

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Pactolus Investments having received dividends from Pactolus would be up for undistributed profits tax if it did not distribute? --- Yes.

And the advantage of the section 107 amounts were? --- It did not have to distribute, you could choose the time, put it that way. You did not have to distribute within a limited time. Now, of course, it has to be distributed by 1962.

That is quite true, that is the amending act. It has not yet distributed? --- It has distributed some of it. 10

So that you required the amount to be included as part of the dividend, to be included as an amount tax free in the hands of the company, having in mind the ultimate distribution by Pactolus Investments, did you? --- Yes.

So that is the reason you included it in the earlier figures of the 30th September? --- Yes.

So that as early as 30th September the figures were drawn on the footing the shares would be sold eventually by Pactolus to Pactolus Investments? --- No. 20

Then I do not follow you as to why you included that amount in the 30th September figure? -- It did not matter which shares were sold, it was still a tax free dividend. I always had in mind at that time these shares would not be sold to Pactolus Investments.

It comes to this, whoever you might sell them to, it would be an advantage as the amount was available as a tax free dividend? --- It had no relation to those shares once it was received by Pactolus; it did not matter what you did with the shares Pactolus had. 30

No, it is the Pactolus dividend I am talking about? --- Yes.

I am reminded that in the 30th September documents - was that a draft or provision for a draft in which you brought in Pactolus Investment, that they are to contract Pactolus and Pactolus Investment are to contract to the vendors in certain events? --- Yes, but that was not an accepted plan at that stage, it was only a suggestion. 40

At any rate, they were in the picture, as it were. You might have been proceeding in that way? --- No. In order to put down a plan, I had to put down something as to the sale. I came to the conclusion the best way was to put down the name of the holding company because it could take them but at that time because of financial reasons I really had in mind I would not sell them to Pactolus Investments.

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10 You put it down in fairly positive terms because at the top of the draft, the terms of the contract of sale, page 3, you say this: "The "A" shares become 5% cumulative preference shares, Pactolus Pty. Ltd. will sell some shares to Pactolus Investments Pty. Ltd."? --- Yes, I realise those things are there but I put it to you they were there as a proposal for discussion.

Discussion with whom? --- With the parties.

20 Did it matter to the parties whether you sold these shares to Pactolus Investments or somebody else? --- No, at this stage I was mentioning Pactolus Investments, I had not thought who I would sell them to really.

You did think at this stage you would be selling them to Pactolus Investments? --- Not necessarily, what was in my mind was this, I had not considered the question of finance.

Still you put this down at this stage? --- Yes, some proposition.

30 And I think you have told me already, whether it was Pactolus Investments or somebody else, you did regard it as necessary that they should be sold by Pactolus? --- Yes.

And within a limited time? --- Yes.

Before the end of the financial year? --- I thought that was the preferable course.

40 Speaking of Pactolus, you spoke of other transactions which Pactolus had, I do not want to go into them, but Pactolus was formed in March 1949, was it not? --- Yes.

With a capital of £5,000. We have got the facts. You took the bulk of the shares and your son had one share? --- Yes.

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What business did it do and had done before September 1949, what class of business? --- It bought shares and sold them.

One transaction of buying shares, or several?
--- More than one.

How many? --- It entered into one large transaction and then it entered into transactions on the Stock Exchange. They were small, but they were large orders with the brokers at the time. This is in September. When this cropped up all orders were cancelled because I considered all the funds of the company would be necessary. I could not have a freezing in the Stock Exchange shares. 10

Prior to the cancellation of the orders what was the extent of the purchase of these Stock Exchange shares? Was it as much as the share capital of £5,000? --- Probably about £1,500.

About £1,500 of Stock Exchange shares you had bought up to that time? --- Yes, they had only just been bought. 20

It was not a very long period, was it? --- No.

This is March? --- Yes.

Incorporated in March, and to September, and you had been doing some buying, you said, and did you say selling, on the Stock Exchange? --- When I cancelled the buying orders - - -

I am talking about before you cancelled the buying orders. Were there any sales on the Stock Exchange up to that time? --- No.

You bought about £1,500, and you had one other transaction of a large nature? --- Yes. 30

Was that a transaction of the same general nature as this transaction we are dealing with, the transaction that you entered into with these companies? --- No. It was a transaction on the shares of a company and there were no special rights attached to those shares.

Was it merely buying shares in a company? --- And selling them.

Did a taxation matter come into it at all? --- Well, that company distributed its profits to 40

Pactolus and Pactolus then sold the shares; it had nothing left.

So it was a transaction where Pactolus purchased certain shares, I suppose? --- Yes.

And then later on, sold them? --- Yes.

In the meantime, they had got dividends? --- Yes.

10 Which, of course, when in Pactolus's hands were subject to its general trading operations? --- Yes.

And were also subject to Section 46 rebate, no doubt? --- Yes, there was a small amount of tax-free profits there in the company.

I do not want to go into the transaction in detail, unless you want to explain it further, but I am asking you, except from what you have said, it had features the same as the transactions we are dealing with, although not all the features? --- It does not seem to me to be the same.

20 You mean for the reason that there were no alterations of the Articles? --- Yes.

And that Pactolus merely bought the shares, the dividends were declared and they sold them back? --- They did not sell them back.

They retained them? --- Sold them to somebody else.

Did they sell them to Pactolus Investments? --- No.

30 MR. EGGLESTON: It was not formed in June. You asked him what happened before September.

MR. TAIT: I asked him about the Stock Exchange.

(To witness): When was this transaction with this Company? --- Before June, 1949.

40 Would I be right in suggesting, Mr. Ratcliffe, that what you had done in that instance, before June 1949, was a help in giving you a lead to the plan that you suggested to these gentlemen when they came to you, and when you had to advise them? --- No.

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It would not be? --- No.

The name "Pactolus" was your choosing? --- Yes.

What does it mean? --- It is the name of a
river in Syria somewhere.

It is the river that had sands of gold? -- Yes,
may I explain it a little bit more.

If you like to, but I was not going to ask you
any more? --- I was offered a large parcel of gold
shares, £165,000 worth, and I had to consider how I
would handle them. I thought of a company, and
these shares were from alluvial mining; that is
where I got the name. 10

I just noticed the name. I just wondered
whether you had chosen it or not.

HIS HONOUR: It seems to have nothing to do
with "pactum", agreement or arrangement.

MR. TAIT: No, Your Honour.

(To Witness): But the arrangement was so suc-
cessful with this gold-padded company - shall I
call it - the one we are dealing with now, with
£250,000, it rather justified its name, if I may
say so. Do you agree with that? --- Yes. 20

And if we want a reference, referring to this
arrangement generally, perhaps we could call it a
"Pactolian" arrangement? --- I do not know, that
sounds like a harp to me.

I want to ask you a few questions about the
figures in annexure 12, which you have already been
taken through. I am looking at the second page.
It does not appear in your memorandum about the
alterations to be made in the Articles, which you
remember was headed "Ajax", anything about the
voting rights to be provided for. Eventually, I
see, by what we have now in the Articles, that the
"A" shares would not carry any voting rights once
they became preference shares; is that right? ---
Yes. 30

That was always the suggestion, was it? It
was not some new thing that was put in afterwards?
--- No, it was always the suggestion. They had
voting rights. 40

You told me you wanted that for the time being?
---- That was very important.

And after they were paid, they had no voting rights. The position there was that that did not affect these "A" shares that were taken out from the existing shareholders by the division of two for one, or two for three. They did not affect those shareholders' control of the Company? ---No.

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10 And that, I take it, was a thing that the shareholders themselves would want. They did not want them having voting rights until the special dividends were paid. After that, they did not want these "A" shares to have voting rights. Is that right? --- That is correct.

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There is a reference at the bottom of page 2 to the Branch Register in Canberra. You have told us about that. May I take it that the only point and reason for going to Canberra was connected with Stamp Duty, or was there more than that? --- No.

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20 It was Stamp Duty, you told us how it arose? --- The real difficulty was trying to get the values of shares settled in a reasonable time.

The values settled for Stamp Duty purposes? --- Yes.

And when you say that, I remember that you did say that when you said a reasonable time, that goes back to the fact that it was vital that this matter be done before the 31st December? --- No. I do not think that that was the point.

30 Why issue them promptly? Surely we have had this before. I thought you agreed it would not have done under this plan if the dividends were declared to, say, the 5th January? --- That did not give rise to the suggestion about the Canberra register. I think I explained my experience was it took a couple of months in New South Wales to get a transfer.

40 That is what I am saying, a couple of months was no good under this plan because it had to be done by the 31st December? --- Also the transfers had to be put through promptly.

You mean from the time the transfers were lodged, and they had to be put through promptly and that goes to the question of getting moneys to pay for the shares? --- Yes.

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And in fact, it was all done on the same day as we saw in the end? --- Yes.

Before we leave page 3 - that is what I am on - it is headed, "Contract for sale of shares", I gather from your evidence and the correspondence it was the intention at one time, or the suggestion at one time, to have a contract - by that I mean a written legal contract - setting out the rights of the parties? --- I suggested that.

And that is what you mean by the words "Contract for sale of "A" shares" on this document? --- Yes. 10

And you are now setting out items which were put in it? --- Yes, things I thought they would like to consider.

How was the idea of having a written contract dropped; how did it come to be dropped? --- I think we did have a written contract in the form of an option.

You had that but what you had in mind was something more than that, was it not? --- No, I did not have it in mind. I put these things down as things they might want to consider. 20

And to go in the contract? --- Yes.

And it was decided that there was no need to have a contract to set out all these things? --- Because none of these things were adopted.

And you do not suggest that it was your idea originally that there should be a contract between the parties when they had come to an agreement about this setting out what each should do and possibly when they should do it because they were already bound. Was not that your original idea? --- No, I had no difficulty in this, Mr. Tait. What I was writing down there was something for them entirely to consider and discuss. 30

And the questions of having a contract, when they came up again, was that discussed? Did somebody say, "We do not need a contract"? --- I think there was an attempt to draft a contract. 40

How was that dropped? --- I think that is already covered in the correspondence.

Not that considered point, I do not think that was in correspondence.

MR. EGGLESTON: I think it was, Mr. Tait.

MR. TAIT: What is your recollection of who said, "We need not have a contract"?---Mr. Bunny wrote a letter in which he suggested some clause be put in the contract.

I remember that?---And I wrote back to Mr. Lane and said I did not agree with that.

10 After that there was no contract?---No.

Who said, "We do not need a contract"?---I think Mr. Bunny would have said that because he drew the option.

20 At the bottom of page 3 which you set out headed, "Contract for sale" the last clause is, "P. Proprietary undertakes it will take up the new preference shares to an amount of £170,000 and that immediately these shares are fully paid it will sell them to the holders of the "B" shares in the proportion to which these persons hold the "B" shares, permit the whole of the "B" shareholders to nominate some other person to purchase their proportion of "B" shares." That clause is in the form of an undertaking. That was never put in writing, was it?---No, none of it, Mr. Tait.

That was always the arrangement as suggested by you, was it, that was dropped afterwards?---No, I said that in the evidence yesterday.

30 And did you on behalf of P. Proprietary, or P. Proprietary otherwise, ever give an undertaking?---No, Mr. Tait, there was no formal undertaking.

But it was always an understood thing between the parties - and perhaps I should say when it was agreed the thing should go on that was always part of the arrangement and understood and you were all willing to accept it on that footing, that being a written undertaking?---It was understood.

40 It was also understood, the second part of it, that when P. Proprietary had taken up those new preference shares, immediately they were fully paid,

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would sell them to the holders of the "B" shares in the proportion they held the "B" shares. That was part of it too, I suppose, was it? Did you follow? P. Proprietary having undertaken to take up the new shares, when they have taken them and fully paid them they will sell them to the original holders, really?---Yes.

That was always part of it?---Yes.

And always understood?---Yes.

Although that was never expressed in writing? 10
---No.

But was always part of the arrangement between them when there was an arrangement?---Yes.

I now turn to the figures. There are a few things here on page 4 I want to - - -

MR. EGGLESTON: Are you leaving that document?

MR. TAIT: Yes.

MR. EGGLESTON: Your Honour, I only want to direct attention to something, so it will appear in the notes about the time of this discussion, on whether there was any abandonment of the idea of having a contract that my learned friend was putting. 20

In Exhibit A3 in the letter of the 10th October on page 3 at the top of that page it appears. This is a letter from Mr. Bunny to Mr. Ratcliffe, "We have prepared a draft amendment of the articles in Ajax Insurance Company and have also drafted an agreement whereby the shareholders in that company will sell what will be their "A" ordinary shares to your company. To get over any difficulty in relation to the completion of the transaction in Canberra we propose that this document should take the form of an option given by the shareholders of your company, which option can be exercised by notice in writing given by Mr. Ross" - which should read, "to Mr. Ross" - "who will also be a party to the agreement". Actually it is clear enough in the form that that is what was done. 30

In the next letter, Mr. Ratcliffe under the same heading - Mr. Ratcliffe's letter of the 12th 40

October, again on page 3 - says, "I note what you propose with regard to the option to the purchasing company and this seems to me to be a simple means of carrying out the transaction".

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10 I only say that because the witness did say it is dealt with in the correspondence and if one is reading through the notes at a later stage, it is handy to have the reference at the same part of the transcript to save chasing it up. My learned friend is talking about abandoning a contract. That is not an accurate description of what took place in the letters. What took place was instead of both parties receiving a copy of the contracts and exchanging them, it was entered into in the contract by accepting that it was a matter of agreement.

20 The only other thing I wanted to say was if it was intended to imply the other clauses were dropped out of some formal documents and still remained clauses, of course it is clear when Mr. Bunny suggested an option it was that the witness was referring to. He was also proposing the clauses to which Mr. Ratcliffe objected.

My learned friend asked me to produce two letters and perhaps it would be convenient if I did that now.

EXHIBIT

EXHIBIT A.7....Letter dated 30th
November 1949 from
Mr. Ratcliffe ad-
dressed to Mr.
Wallace with at-
tached draft
dividend resolu-
tions.
Memorandum dated
13th Decmber from
Mr. Ratcliffe to
Mr. Ross.

30

MR. EGGLESTON: The memo reads, "Referring to your telephone conversation with me last night, I now set out the revised or additional dividend resolutions which are necessary in consequence of the contracts." Then there are certain resolutions set out in that memorandum.

HIS HONOUR: You do not want to bother with the detail, do you?

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MR. EGGLESTON: I am not concerned with their detail. The final form of resolution, of course, follows what was actually proposed. The final resolution, as passed, was in the form of the amended draft; but my learned friend was very curious, I gather, about some changes in the amounts of dividends, which I think Mr. Ratcliffe has already said something about. There were some changes in amounts of dividends and they show what the changes were. I understand that is why my learned friend wanted it.

10

MR. TAIT: There is just one point; the ones we were asking for which have now been produced, being the ones attached to the first letter of the 30th November, are not the ones we want. What we wanted to get hold of were the ones in which some figures in the original draft had been altered in ink. I do not mean done afterwards, but done at the time.

MR. EGGLESTON: I did not understand my learned friend to want the original, but we will produce it. Do you mean this is not an exact copy?

20

MR. TAIT: Not as I understand it.

MR. EGGLESTON: You mean that he does not show the figures struck out and others substituted?

MR. TAIT: Yes.

MR. EGGLESTON: We will produce that, if we may be allowed to leave it over until Tuesday.

HIS HONOUR: Yes, Mr. Tait.

30

MR. TAIT: Mr. Ratcliffe, please.

JOHN VINCENT RATCLIFFE, further cross-examined by Mr. Tait.

MR. TAIT: Mr. Ratcliffe, I was directing your attention to certain matters in Annexure 12, which is the first in that book of annexures. Mr. Eggleston has lent me a copy of his, so that you can follow it.

You will remember on Friday, I think I had asked you certain matters about both the covering

40

letter and the documents which followed, and I had gone on to page 4 which begins the series of figures. Page 4 is headed "Ajax Insurance Co.Ltd"?
 ---Yes.

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10 Before I go to the figures, you told us in your evidence that you had been asked in the middle of September conference to - the words you used, I think, were these, "To put the form of your proposal in writing", and I take it that these documents of the 30th September and the figures we are now going to look at are the answer by you to that request, are they?---Yes.

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This is the putting in writing of your proposal?---Yes.

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For the consideration of the other parties; am I right in that?---Yes.

20 Well now, you have already been through these, and I do not want to take you through in detail, but I will ask you to look at the Ajax ones merely because, as a matter of form, I think in a sense it is more simple than the others. It is the form of what you did I want to ask you about.

The first thing you did, then, was to work out the amount of dividends that would be available or could be distributed?---Yes.

In the Ajax - it is page 4 and runs to the top of page 5, where a total is worked out of £152,300; that is on the top of page 5?---Yes.

30 May I take it that the amounts you worked out there for dividends available to be distributed - and this was the amount that was to be a special dividend, was it not, under your plan?---Yes.

40 That, first of all, it was the minimum amount of distribution that was necessary in order to avoid Division 7 tax. That, I think, is reasonably clear from the way you worked it out. You allowed for, in both 1949 and 1950, what you called in Ajax "reserve", which you told us was what is now known as "the retention allowance" under Section 103?---Yes.

So that the amount you worked out was the minimum required to avoid Division 7 tax; would you

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agree with that?---Yes.

And that, of course, to avoid that tax that amount had to be distributed before, so far as the 1949 documents are concerned, the 31st December of that year?---Yes.

Well, I was not quite clear whether you also had in mind as an object in working out the amount of dividend, whether you should endeavour to take out the maximum amount that was available having in mind it would be re-invested as capital. Was that one of the objects you had in mind?---This was to show the maximum amount you could take out for two years. 10

The maximum amount you could take out for two years?---Two years, I think.

It is rather curious. On the one hand you work out the minimum that must be distributed because you allow for the retention allowance?---Yes.

And on the other hand, you are trying to get the maximum amount to take out, because you wanted to, I take it, capitalise as much as you could; is that right?---Yes. 20

So that those two things were in your mind?---Yes.

And indeed, I think I am right in saying in one of the companies at least when the final figures were agreed upon, you distributed what had previously been deducted as a retention allowance; am I right in that?---Well - - - 30

I will not press you; I thought you might have had it in mind. I think I am right in that.

You accordingly worked out, in the case of Ajax, an amount of £152,300. The next thing, you did - and I am still on page 5 - you worked out what you called "Saving in tax". Well now, that, as we see there - you took an amount of 14/6d. in the pound on the amount of the total dividends £152,300, and the starting figure was £110,418, from which you deducted "cost (see below)", and got a net saving which was subject, possibly, to some adjustment?---Yes. 40

Well now, am I right in saying that that - and perhaps this is obvious - it was a saving in tax in the sense that if your plan had not been adopted, or any alternative plan - do you follow?---Yes.

This tax would have been paid by the shareholders?---I do not think so, Mr. Tait.

Well, perhaps I did not put it quite clearly - either by the shareholders or by the company as a Division 7 tax?---Yes, most probably by the company.

10 It depends whether they distributed it or not. If they distributed it, they paid 14/6d. themselves; if it was not distributed, the company would have paid?---I would not have advised - - -

At any rate, the saving in tax was a saving in that sense. Your plan would bring it about that that tax, either one or the other, would be avoided, saved. That is what that means, "Saving in tax"?-- Any one of the three alternatives would have brought this position.

20 And you put it down in this setting out of your proposal in figures for their consideration, you put it down to show them that they would gain by adopting your plan?---Yes, I put down primarily, as you can see, the basis of the public company.

30 But so far we have not come to the public company?---Well, either of the first two alternatives, if I may put it that way. These calculations show that I made those calculations primarily and used it to see that the other one was approximately the same.

I am not sure I follow that, but so far, just taking this in order, you first of all worked out the dividend to be distributed?---Yes.

40 And then the saving in tax, and that was to show them what would be the result of your plan, I take it. There is nothing - so far, you have not yet, in these figures, come to anything about a public company; you are coming to it in the next line - I do not overlook that, but so far, you have just worked out the saving in tax if that dividend were distributed. It is a step in something else? ---It is the difference in tax if they do not distribute.

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All right. Well then, you come to public company and you head it "Cost - Public company". Well now, I would just like to know the significance of the word "Cost", as you used it; why you used the word "Cost". There is a word you used later on of the same figure on the top of the next page "P's profit". Why did you express it as cost there?---Well, here the calculation was made on two whole years' income; it was not a calculation made on what dividends would be paid. P's profit was based on the calculation of dividends. Tax free dividends - - -

10

Now, wait a minute. When you have worked out this "Cost - Public company" - it runs down to the fifth line from the end of page 5, and finished up with a figure of £25,505?---Yes.

And that is the figure that appears on the next page on the second line, "Less P's profit, £25,500", it is the same figure?---Yes.

That is the calculation of how the latter figure was worked out?---Well, I explained that.

20

Just answer that. Is it the calculation of the way the £25,500 on the top of page 6 is worked out?---It is the same figure, Mr. Tait; I took it as the same figure.

Well, perhaps that means the same thing. I suggest to you that when you used the word "cost" followed by the words "Public company tax", what you were working out for your clients was the cost to them, under your plan, of making the savings in tax that are mentioned just above; is that right? ---No, Mr. Tait. I explained this before, I think.

30

I know, but I do not think you understand it altogether. You say "No" to my question, do you. You did not put this down in order to explain to your clients the cost to them of adopting your plan? ---No, this was not exactly the way I told my clients.

You told me these were the figures you prepared in answer to their request to put in writing your proposal, your formula, to explain it to them?--- I said that.

40

And there were no other figures at this time,

or explanation, given to them, was there?---There were no other, not until I went there.

Not until you went there, that is later?---Yes.

Then I suggest to you when you put down "cost" followed by "public company" and put down a certain calculation £25,500, following on the next page with P's profits. That was saying to them P will get that much out of it and although by my plan you would save, gross, the amount on the third line of page 5, £110,418. We have now taken the charge or cost to you, my profit, your nett saving will be that much less. That is what you are saying to them?---Yes, on those sample figures.

When you come to look at the cost of the public company, you have told us what the idea of that was - I think I have got it correctly, namely, if this company, in this case Ajax, had been a public company it would have paid in addition to the ordinary company tax, which would have been the same at that time whether a private or public company, a super tax plus 2/0d. undistributed tax under part 3A - is that right?---Yes.

Can you work it out what that super tax and part 3A tax would be, starting as I see with the taxable income, the first line 1949 super tax £86,130?---Yes.

That, of course, is the taxable income you used on the previous page for 1949?---Yes.

And the same with 1950. Do I understand that the idea of this was that if Ajax had been a public company it would not of course have to pay Division 7 tax but it would have had to pay this tax?---Yes.

On the 1949 income?---Yes, and on the 1950 income.

It is not the whole story, you will not think I am putting it to you as that. But it would have been necessary, would it not, for Ajax to have been a public company on the 30th June 1949, in order for that company to avoid Division 7 tax or a distribution before the 31st December?---Yes.

So this cost that you are putting to the shareholders, when you worked out these figures on the

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Evidence of John Vincent Ratcliffe Cross-Examination - continued.

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footing that if they had formed Ajax into a public company last June - that is before 30th June last - then this would have been the position. Is that what you were putting to them?---I was putting to them what the difference would have been for two years as a public company.

I realize there were two years in it. One of those two years was 1949?---Yes.

What I am putting to you is that when you made these figures up in September it was too late to form it into a public company for the purpose of the 1949 position?---I thought I made it clear on the first two alternatives, you had to have a holding company to deal with 1949. 10

It would be too late to form a public company merely to do the simple matter of avoiding being a private company and having to make a distribution or be taxed accordingly under Division 7?---Yes.

Did you say this, one of the alternatives you put, or mentioned to them, was the formation of a holding company?---Yes. 20

Which could have been formed say in September or October and then a distribution could be made before December in the first company, the Ajax company?---Yes.

That would avoid Division 7?---Yes.

That dividend would go to the holding company, which company would get a rebate?---Yes.

The question then would be, how do you get that amount of dividend out of the holding company, would it not?---Yes. 30

That would be a problem for the public holding company?---Yes.

And when the money came out of the public company, unless you had some other arrangement, it would be subject to tax in the shareholders' hands? ---Yes, but I put these examples forward on the basis that there would be no distribution.

No distribution in the public company, the holding company?---Yes, that is my recollection of 40

what I said before.

That perhaps explains what I wanted to ask you. In this calculation why did you include the 2/0d. undistributed profits tax? That must have been on the footing that they did not distribute their income?---Yes, I think I recollect making it clear the whole three were based on the fact there was no distribution whatever, therefore full tax as a public company would be paid. You would have to take that into consideration. These figures computed that difference.

10

I do not want to go into that in any detail. You did not yourself work out both and show them how this public holding company idea would work. You have not got any figures you worked out, have you, or any explanation of how it would work?--- These were the figures. These show the exact cost based on these estimated figures of taxable income.

20

There is nothing in here to show the fact that under that plan they would finish up with increased capital in the holding company and not in the trading company?---No, there is nothing of that here.

And, indeed, I gathered from what you told me on Friday that what you thought was necessary was an increase of the share capital of the trading company?---Yes.

30

And this alternative public company idea, as I see it, and I think I am right, would finish up with an increase in the capital in the holding company. In other words, profits would be turned into share capital in the holding company, not the trading company?---In that case, that would only be the first step.

There would be another step?---Then the public company, it would be a simple matter to raise the capital of the trading company?

To issue more shares?---Capitalised profits on a different basis.

40

That is future profits. You are capitalising profits here, you are dealing with profits here?--- Let me put it to you this way: The dividends would have gone into the holding company. I provided here for the tax the holding company would have had

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to pay. As a public company they had the money and they would just buy the shares with the money. It was a simple second step to increase the trading company's capital.

All I need ask you about that then - I think, as I understand it, you do agree, as far as it appears from here - you put it to them but otherwise you did not work out anything apart from these documents to show them how that would work?---No.

We have not got any other documents about this public company idea?---No.

10

And you always knew, I take it, that one of the things that the shareholders, or at any rate some of them were against was bringing in new shareholders?---Yes.

And, of course, to form a public company, a holding company, for income tax purposes would mean an increase, bringing in outside shareholders. I have forgotten the number but if you have 7, you have to bring in another 14 to make it up to 21, is that right?---Yes, I was not referring to that. I was referring to listing on the stock exchange.

20

But that was the thing, I thought, before this time, the 30th September, you had decided they would not have and you discarded it - put it aside as something they did not seem to be unanimous about. To say the least, you thought you had better put it aside?---They did not want a company listed on the stock exchange.

And you told us that at the middle of September conference that appeared fairly clear to be their attitude?---Yes.

30

And you put it aside?---I did not press it.

This cost on page 5, public company, is, of course, as you say clearly worked out on the footing that in the public company there would be no distribution because the super tax is laid off?---Yes, the undistributed profits tax is laid off.

I think you told us, when you were giving your evidence about this, that you roughly - I think I am right in saying roughly - took the cost for a public company of super tax plus undistributed profits tax as 14½%?---Yes.

40

The figures here, of course, do not work out at $14\frac{1}{2}\%$. You would not expect them to, would you? --- $14\frac{1}{2}\%$ assumes adjustments have already been made on the first £5,000.

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10 I just worked it out myself and I wanted to see whether you agreed with the idea I am putting. I worked out $14\frac{1}{2}\%$ on the taxable income of £86,130, that is the 1949 taxable income, and it comes to £12,488. That does not surprise you I suppose. I do not ask you to work it out and say the exact figures, but would you agree that would be so?--- Not off hand, I would like to examine it. I think that is due to the adjustments on the first £5,000.

They can be looked at. I think I can leave it at that.

MR. EGGLESTON: £12,000 compared with what?

MR. TAIT: Compared with the figures of £10,930 on page 5, that is more. I have not had it checked.

20 MR. EGGLESTON: That would be so because the 1/- did not go on to the first £5,000.

MR. TAIT: (To Witness) I pass now to page 5. For my purpose, I have drawn a line across after the figure £25,505, because you then sort of start again. You put down £7/12/6d. per share, taxable dividends £152,500. That is the figure from the top of the page, rounded off probably?---Yes.

30 And that amount of £7/12/6d. per share, is working it out on the share capital of this company? ---Yes.

Then you add £1/7/6d. tax paid dividend, £27,500, and those I take it are distributions out of amounts which are subject to Section 107, and in that sense tax paid?---Yes.

We have not got where that £1/7/6d. came from, but I take it you found an amount in the Ajax Company was available to that extent?---Yes, I think the letter shows you.

40 You are quite right. Such an amount for provision for distribution of a dividend out of tax paid amounts occurs in each of the companies. I

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need not refer to it, because you know in the figures I am now looking at, 30th September, for Lane's, Neal's and Melford's, in each case there is a provision for tax paid dividends?---Yes.

The shareholders themselves were, of course, in no difficulty about the tax paid amounts in these companies. They could always be distributed to the shareholders by way of dividend without tax and put back into the company in the form of share capital, if it was wanted?---Yes.

10

That could always have been done, apart from your plan?---Yes.

And you told me, I think, but I was not just clear how it worked out that you insisted - I do not know whether that is the right word - or you included tax paid amounts to be distributed because it was necessary for you and Pactolus to have it. Am I right?---It would not be correct to say it was necessary.

What would you say, desirable?---It was an advantage to their shareholders.

20

MR. EGGLESTON: That is, in fact, what he said before.

MR. TAIT: Is it correct that if you had not been able to get them to agree to a distribution in these special dividends of a tax paid amount, you would not have been prepared to go on with the plan? ---I would not say that at all.

So it was not, in that sense, essential to you to have them?---No, it was not essential.

30

What was the word you used, "desirable"?---An advantage.

I need not go through it again because I think you told His Honour what the advantage was and how it worked out. Then, having worked it out, at the bottom of page 5, you added the amount of the 20,000 shares that you were going to make "A" ordinary shares and brought out the total figure of £200,000, and on the top of the next page you deducted the figure I referred to, and you got £174,500. That you then worked out as being the price - £8/15/- a share and you made it a round figure of £175,000?---Yes.

40

So that calculation at the bottom of page 5 and at the top of page 6, I take it to be your working out of the price that you would offer for the "A" shares?---Yes, based on all these assumptions.

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10 Based on the assumptions that are made here. And one of the assumptions, of course, for that was what appears next, in which you show the shares to be converted - one-third, and you told us why one-third was chosen. That was chosen in each of the companies except Melford's?---Yes.

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Melford's was half and the others were each one-third?---Yes.

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20 Will you go back then to page 6. You sort of summed up the position so far as Ajax is concerned. You say, "New capital to be £210,000, made up of (1) 40,000 new preference shares of £1 each taken up by present holders out of tax free dividend of £40,000." Previously the capital had been £60,000 as appears just above. We are not concerned with what happened about this, because this is Ajax, but that was a provision you made in these proposals, as it were, that they should draw tax free dividends, an amount of £40,000 to take up preference shares with that amount?---Yes.

In other words, it is an ordinary bonus issue, I think?---I think I said that that was a previous suggestion made, probably the year before, to do this, and which they had not then accepted.

30 What I am concerned with - and rather puzzled about - is this: if it was proposed they should do that the year before, or at any time, in regard to the £40,000, why did they not say, "We will do the same thing in regard to the tax free amount on the bottom of the previous page." Why did they not say: "You may want it, but we agree we will do that ourselves. We will issue bonus shares for that."

40 MR. EGGLESTON: Are you still talking about Ajax?

MR. TAIT: Yes.

MR. EGGLESTON: Because if so, Ajax never said what they would do or what they would not do.

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MR. TAIT (To Witness): Why was it, as to your proposal, that it accepted the position that they would take £40,000 of the tax free dividend, but did not accept the position that they would take the other £27,000 that is provided?---Because that would be an advantage for any purchaser of these shares, and at that time there was no certainty, by any means, that Pactolus would be the purchaser.

You say it would be an advantage for any purchaser for them to get a certain amount of tax free distribution?---Yes. 10

Then, you go on, in No.(2) on page 6, "170,000 new preference shares of £1 each taken up by P. Pty. Ltd. and sold to present holders at £1 per share." That was even as early as the 30th September figures. That was always part of the plan running through all the companies, to take up new preference shares, Pactolus to take them up and to sell them right away to the holders. That was always part of the plan?---From the time that the difficulty was suggested about the gift duty, this became part of the plan. 20

Just to complete page 6, you show then that Pactolus will pay £175,000 - that is the price above - leaving holders with 5/- a share in cash, and they would put back, as I understand, £170,000 in the new preference shares?---Yes.

So that the shareholders would be paid the price of £8/15/-, a total £175,000. They would keep £5,000 in cash and put back £170,000 in preference shares?---Yes. 30

And on the next line, Pactolus would have 20,000 "A" shares of £1. each and £5,000 in cash, making in value £25,000 altogether, which is the figure above?---Yes.

I take it then, that when you made up these figures in September, there was an expression, a desire, by the shareholders to get a certain amount in cash. You provided that in each of the companies, I notice. That is only Ajax, but it goes through all the others. In each company they were to retain some in cash, the bulk going back into "B" preference shares?---I could not swear that the answer to that is yes. 40

First of all, it is right that that was a

provision in each of the companies?---Yes, I think there was some cash in each of the companies.

Can you tell me how that came about?---That may have been due to my proposal. They left it to me to work out the proposal.

10 Is that the position, you are not sure whether they asked you to allow for that, or merely that you put it in because you thought they might want it, or it was part of your proposal?---At that time the question of cash was not important.

It was not a very large amount as compared with the other figure?---No.

20 HIS HONOUR: May I just see whether I have followed the substance of that, by asking you this, Mr. Ratcliffe. If I am not right, correct me if I have misapprehended the position. On the figures you took - they are to some extent hypothetical, I realise - on pages 4 and 5, there are really two main points: (1) That it would tell the persons concerned that if the company were to pay tax without making any distribution of profits before the 31st December, it would pay £110,418 over and above the ordinary company tax. That is the first thing. Then (2) if they had become a public company before the 30th June 1949, then, without making any distribution of profits they would have to pay tax over and above ordinary company tax, amounting to £25,500 only?---Yes.

30 But they did not become a public company before the 30th June?---That is so.

What you were telling them was perhaps this: if you adopt any of the plans that I can place before you, any of which will save all the tax over and above the ordinary company tax, that plan could give Pactolus, or any other purchaser, a profit of £25,000, and you would not be any worse off than you would have been if you had formed a public company at any time?---Yes.

40 MR. TAIT: The following sheets deal with Lane's and the other companies and you have already been asked about those. I do not want to go over them again. There are just one or two matters. The first matter appears on page 7. It comes into all of these, and it is when you were working out

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the dividend distribution. It is the reduction from the 1950 figures of what you call reserves, 1948 and 1949. You told us, I think, earlier, that those were the retention allowances for 1948-49. It was not very clear why it was that you really deducted those, and then added them to the total dividends. I understood this much: that your intention was that when you declared dividends following this plan, the first one will be out of the 1949 profits. The next one that I have provided for will be out of the 1950 profits. Then you will also declare dividends out of the 1948-49 reserves. But why was it that you put that in? 10

Why was it not all right for your firm to simply have looked at the 1949 profit, provided for the retention reserve, then the 1950 profit on an estimated basis, and then simply distribute it. I do not quite follow you. You see my difficulty. Will you tell me that?---I explained to His Honour. Just wipe them out and take the lower figure, some lower figure? 20

It would not make any difference to your plan if you had done that. Is that what you mean, and taken a lower figure?---That is so.

I think you have explained this in a good deal of detail and I will not go over it again. On page 8, going back to Lane's, because the figures are perhaps more significant, the division of capital into one-third of 237,321 ordinary shares - that is the present issue - then you provide for one-third to be "A" shares, 79,107 "A" shares, were, as you told us, to carry voting rights while the special dividends were unpaid. Then they did not have voting rights; is that right?---Yes. 30

Unless preference dividend was in arrears at any time. Those voting rights that were retained until the special dividends were paid was obviously only a voting power up to one-third of the total voting strength?---Yes.

It did not in any sense give you control, did it?---No. I would like to put it this way, that it would not have given any purchaser control, any purchaser who bought the shares. 40

If he had only got a third?---He would have had the largest parcel of shares.

But on the other voting power he would have been up against all the other shares held pretty tightly by one or two families, would he not?---Yes.

You told us that you had originally considered whether you might not make it half, but you cut it down to one-third for some reason?---Yes. I looked at it from the point of view that the voting position was such that there would be an objection immediately if I struck it in half.

10 The objection you thought might come would be for the very reason that a half would give the new purchaser pretty near control. If it was exactly half there might be a deadlock. But that was the reason?---Yes.

When you come to Lane's, still on page 8, your net price is worked out in the same way as you did before at £5.6.0d. per share, and that figure is £419,267. That £5.6.0d. was 10/- per share less than the amount eventually paid, was it not?---I do
20 not recollect, but I think that would be so.

We will see it presently, but the actual figure of the price in cash was £5.6.0d.?---Whatever the price was, it might have widely varied from this.

Quite so. These were preliminary figures?---Yes.

I appreciate that. I do not think I need go into this tax saving any further. It is the same sort of formula as the one we looked at in the case
30 of Ajax?---Yes.

Then on page 9 you work out the amount of net saving and go on to the new capital, £402,679. That was, I think, the exact amount of the new preference shares eventually issued in Lane's. It could have been altered, but in fact it was not altered. That was the figure, was it not?---I think it was.

Yes, £402,679 in B. preference shares. Am I
40 right in suggesting that the way in which that amount of new capital to be issued was arrived at was substantially this: You worked out the dividends, both taxable and tax paid, that would be paid. Then you allowed for a certain amount of

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cash to come out of the company, and that was in the case of Lane's £10,005. I do not know why the £5, but that is the figure you put down. The new capital was the balance. Was that really the method of arriving at the amount?---No. I think this shows that if you took up the whole two years' profits, then the price for the shares on the basis of special rights which it would take two years to pay off would produce these figures.

That is all right; I think I have that. Still on page 9, I can see where you have already got the figure of dividends, taxable and tax paid, of £412,684. That is from page 8. As a matter of fact, it does not actually appear there, but it is the total of tax dividends £410,000 and tax paid dividend from British service £2,684. Those two make up the exact amount of £412,684 which was to be the distribution under this plan. Having got that, I am suggesting that your next step was to decide how much cash should be taken out of the company, where you say "Company finds cash". If you planned that the company should find, say, £50,000 instead of £10,000, the new capital would be so much less. That is so, is it not?---I do not quite follow that.

What I am asking you is this: Just taking this as a formula or a working out, you have worked out the figure of £412,684. The two figures on page 8 which, added together, make that amount are new figures as far as these sheets are concerned. They are not mentioned earlier. What I want to know is which one of those figures was the fixed amount and which was the balance?---The fixed amount was the capital. I was looking to get £400,000.

You wanted something like £400,000 of new capital?---Yes.

And therefore, the difference between that £400,000 and the figure of dividends left was £12,000, but the way you did it, it left £10,000?---That was to get a multiple of the shares to make a distribution.

Then may I take it that what you were really trying to work out - - and these figures must have taken some working round to get them to work out, I should think?---No. They were just taken in this way to show what would happen - that the shareholders

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would have to wait at least two years before they could get anything on their B. shares.

But as I understand it now, you rather started with the view that you would provide for new capital of £400,000?---Yes.

And having that figure in mind, you got an amount of dividend that you thought you could distribute, which would provide for that plus some amount of cash?---Yes; it just came out this way.

10 It sounds as if it just happened?---I am quite sure there was no question of going through and adjusting the estimated taxable income or the estimate for 1950 at all.

I am not suggesting that there was anything wrong with it?---It was not only not wrong, but my recollection is that this is the way it came out when it was first worked out.

20 All right; it does provide clearly that, having made this distribution of dividends and having taken £412,684 out of the company, £402,679 would go back as preference shares, and the balance the company would find in cash?---Yes.

What happened to that you explain below. It would go to the shareholders, and in addition, they would get in this case of Lane's £6,503 from Pactolus, and in the case of the other company, instead of having to put in some cash, they would get something out of the dividends. Is that right?---Yes. Are you referring to the statement on page 9?

30 I am looking at page 9, yes?---I may have misunderstood you when I gave that answer. I think I put it the wrong way round. Pactolus, on this estimate, had to pay cash to shareholders.

I put that. It is the other company that is the other way round. When you say, "Cash for shareholders", it means that the shareholders will get cash out of the dividends that are paid - the figure above for dividends, taxable and tax paid?--- They would get cash left over out of the price.

40 The only money that was made available for these transactions was the money that came out of the company, subject to an amount that Pactolus had

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to find to finance the matter for the time being?---
Yes.

Subject to that, the only money was out of the
company, was it not?---Yes.

When you get down towards the end of page 9,
you work out the capital after completion. You
show the A. and B. shares and the new preference
shares, and before you add the present preference
shares you have a figure of £640,000. It occurred
to me that in working out your figures you might
have made the amount £650,000 as a nice round
figure. Would there have been any difficulty in
doing that?---There would have been no difficulty. 10

You would have had to take more profits; is
that the position?---No, I do not think so. It
would have meant on these figures, I suppose, that
the shareholders would not have got so much cash.

I do not think there is anything in the other
cases, but there is a small matter on page 10, in
the case of Neal's. Towards the latter half of
the page, when you are working out the total divi- 20
dends distributable, you put in this note: "Check
re profit and loss appropriation re past profits of
£50,000 and add if these taxable on distribution,
£50,000."?---Yes.

So that you are saying there, "If this £50,000
is taxable on distribution, we will include it in
what we are working out"?---It could be, yes.

So that if it were not taxable on distribution,
your suggestion there would be, "You need not do
it"?---You can deal with that separately, any time. 30

So that the fact that the amount was taxable
on distribution was the fact which was to decide
whether it should be included or not?---It was put
down in case it was necessary.

I leave those figures and take you now to the
dividend resolutions that were mentioned on Friday.
I do not find that I want to put these in, Your
Honour, but if my friend wants me to put them in,
I will do so. 40

MR. EGGLESTON: My friend seemed to have some
difficulty about these things. He called for the

documents and I think he had better put them in.
I exercise my right to insist that he put them in.

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MR. TAIT: Certainly.

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EXHIBIT

EXHIBIT R.1.....Originals of letters
in Exhibit A7 and
annexures thereto,
plus copies of draft
resolutions annexed
to letter of 30/11/49
altered in accord-
ance with letter of
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MR. TAIT (To Witness): Now, will you take in
front of you Exhibit 7. The first document there
is the letter dated 30th November, 1949, which you
wrote to Mr. L.B. Wallace. You addressed this to
Mr. Wallace, as you did the 30th September docu-
ments. I take it that he was the man you addressed
these things to in negotiations or discussions
about the working out of the plan?---Yes, Mr. Tait.

20

Mr. Wallace, amongst other things, was the
auditor, was he not, for one, or more than one, of
these companies?---I do not think he was the auditor
of all of them, anyway. He may have been of
Melford's.

His name appears as auditor on some of the
balance sheets put in, but I think only two of
them?---He was probably auditor of Melford's.

30

At any rate, you addressed to him as on behalf
of all these people you were dealing with; is that
right?---Yes.

You enclosed with this - you say, "Enclosed
herewith draft resolutions.....(reads).....(3)
Lane's". You drew, yourself, these draft resolu-
tions, I take it, did you?---Yes, Mr. Tait.

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And these were the first, as far as you know, the first drafts of resolutions that were prepared in this matter?---As far as I know.

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Will you tell me - to make the matter I want to ask you about clear, will you look at the draft resolutions for the Neal company in that 30th November. It starts with Devon Motors and then goes to Overland and then to Neals?---Yes.

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The figures all through there were different figures from the figures in the 30th September document we have just been dealing with; you know that, do you?---Yes.

10

For instance, in Overland, just to take Overland, there was nothing that I could find in the September document about what is in Resolution 1, that is, an amount to be paid out of Section 107 amount; in the 30th September, Resolution 2, a figure of £25,909 appears, but there is nothing in regard to Resolution 3.

When you come to Neal's, the figures in each are different from the figures you had, or the total you had, in the 30th September. What happened, and how was it that these figures that you had put down temporarily and as estimates on the 30th September - how did they come to be altered, and who fixed the amounts that have appeared up to this point?---Those first figures - I thought that was clear that they were all estimates, and to some extent guesses.

20

Yes, I realise that?---You would not expect them to be anything like these figures.

30

But what we have not got so far is where did the figures that were used - and at the moment, we only have the figures as they were at the 30th November, when you drew these - where did they come from, whose were they?---These were my figures.

Then it was you that, having further information than you had on the 30th September, decided

how much the amounts should be put down in these drafts; is that right?---Yes, Mr. Tait.

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And you decided those figures after what? After seeing in more detail the figures of the companies; would that be right?---Yes, I think that would be right.

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And, by the 30th November, you had got perhaps some better position to estimate the 1950 figures; would that be right, too?---Yes, Mr. Tait.

10 Well now, I see that these 30th November figures which were put in your first draft resolutions were again altered and increased before - - - Indeed, they were altered by the letter you have with that of the 13th December?---Yes.

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And the 13th December figures, I think I am right in saying, are the figures that were actually used when the resolutions were passed; am I right? ---Yes, Mr. Tait.

20 MR. EGGLESTON: That depends which 13th December figures you mean, Mr. Tait.

MR. TAIT: Were there two?

MR. EGGLESTON: Well, they were altered, as you were at pains to point out.

MR. TAIT: The figures in the letter. The figures in the letter were altered by the letter of 13th December.

30 MR. EGGLESTON: I think, Your Honour, my friend should be clear about it. The letter of the 13th December contained some figures and attached some amendments to resolutions, and those amendments have been altered in ink; that is, the figures in some of those amendments have been

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altered in ink. So, if my friend wants to ask him about some figures, I think he should draw the witness's attention to that, rather than get an answer which may be ambiguous.

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HIS HONOUR: I think you had better perhaps look at them, Mr. Tait.

MR. TAIT: I am sorry, Your Honour, I did not notice those.

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MR. EGGLESTON: I think my friend, Mr. Menzies, and I have perhaps cleared this up. If I understand correctly, what has happened is that the letter of the 13th December, as I understand, contains certain proposed amendments of the original dividend resolutions which were enclosed with the letter of the 30th November. 10

HIS HONOUR: They contain resolutions, not amendments of them.

MR. EGGLESTON: If Your Honour looks at the letter of the 13th December, it is in the form of - - He says, "I now set out.....", that is to say, it is not a new resolution which is set out. In the other cases there are some new resolutions, and there are some where Mr. Ratcliffe indicated that an amount of £30,370 would become £36,344, and so on. Now, what has been done, and this is perhaps something that has just happened in the filing, attached to this in the file is the original dividend resolution in which the alterations have been made to accord with the letter of the 13th December. Whoever had this, made up this file, amended the original resolution and pinned them on. I did not appreciate that that was so, because I had not checked the alterations. It is quite clear that all you have is the two letters - 30th November with resolutions attached, and the letter 13th December suggesting alterations, and we, in fact, have amongst our papers the draft resolutions with the amendments made. 20 30

HIS HONOUR: Well, in view of that there does

not seem to be any point in having them in evidence.

MR. EGGLESTON: No, Your Honour.

HIS HONOUR: I am only wondering whether it might be confusing at a later stage.

MR. EGGLESTON: The only point is that there is a good deal of transcript about this and it would be unintelligible without it.

10 MR. TAIT (To Witness): The point I want, Mr. Ratcliffe, is this: I have got, from my point of view at any rate, three sets of figures for the amount of the dividends, you follow. The first is the 30th September ones, the ones in that which I could realise were just estimates, and not supposed to be final.

Then I have a set of figures for the resolutions which you drew, and which were attached to the 30th November letter.

20 Then I have some amendments of those, and a new set of figures, not all different but some of them different, which were mentioned in the 13th December letter.

What I am trying to get at is how did those alterations come about. First of all, you told me you made up the figures, the second letter, that is, the 30th November one, because you had further information, you had further looked at the balance sheets and you made up those amounts; is that right?---Yes.

30 And when you had made those up, did that alter the price you would pay for the shares?--- Which one, November?

Yes, the November. You see, I can direct

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your attention to it if you look at the 30th November letter and the attachments to that, and if you look at Lane's, for instance, which in mine is the last one - the difference is quite small, I am told, in Lane's, so that we need not worry about that.

I will go on now to the difference between 30th November and 13th December?---Yes.

If you look at the letter of 13th December, it says this, "Referring to your telephone conversation with me last night, I now set out the revised..... (reads).....the amendments". Well now that is your memo; what were "the amendments" that you referred to there?---I think he would have given me some figures on the phone, Mr. Tait, to the best of my recollection.

10

You think it was only on the phone?---I think it says here, "Referring to your telephone conversation".

Yes, that is right. Can you remember, in reference to that phone conversation, what were these amendments about; why were there to be amendments, and who suggested them. It looks as if Mr. Ross suggested them so far as you are concerned, does it not?---No, I think that what Mr. Ross would have done would be to give me information as to the latest figures, because I think I wrote on the 30th November as to progress figures to October.

20

That may well be so, because I notice in Lane's that the substantial alteration is to increase substantially the dividend out of the 1950 profits. That would be the sort of thing you have in mind, would it; the figures were better than they had appeared before, and therefore you could increase the dividend out of 1950 profits?---Yes.

30

You say, to the best of your recollection that is the nature of the amendments referred to at the top of the letter of the 13th December?---Something like that, Mr. Tait.

Do you want to add anything to that?---I only saw this this morning for the first time; I concluded that that is what it must have been referring to.

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Not the first time; you wrote it?---The first time for some years.

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10 All right. We will take that to be so then. You will see that the first thing in the letter of 13th December is about Melford Motors which says that the resolutions are not affected except to the extent that the alteration in Resolution 3 previously advised, namely, omission of the words "insofar as" down to "profits"?---I had been concerned when I drafted the individual resolutions as to whether the profits were available, and apparently I was reassured at this time and decided I could leave that portion out.

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Melford, then, does not contain any alteration, save that from the letter of 13th December.

20 Neal's Motors contains alterations that are mentioned first in Devon, then in Overland, and then in Neal's Motors. Now, as you compare the new ones in Devon Motors with your draft of the 30th November, I see that in Devon the new resolutions are completely different in amount. First of all, it is now proposed to take out £6074 out of Section 107 amounts, to take nothing out of 1949, but to take £40,088.8.0 out of 1950. That is completely different, is it not?---Yes.

30 Well then, the same to some extent with Overland, because there the new first resolution in Overland is apparently carrying on with £6,074 of Section 107 amounts, carrying it through, and it is carrying through also the amount of £40,088.8.0. So that the desire, you follow it from the figures here - what was decided upon on this telephone appears now in the 13th December memorandum, that as far as those two companies, was completely different than your draft?---Yes.

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Well, what is the general effect of it, and why were they different; are you able to tell me that?---Not offhand, Mr. Tait; I would have to study it. I cannot recall it.

Well now, I would call your attention - if you will go on to the Neal's Motors resolutions. There the alteration - it is said in the letter of 13th December that it will be necessary to increase the amounts in Resolutions 1 and 4. "In Resolution 1(reads).....£36,444". That, of course, is an addition of the exact amount of £6,074, which is Section 107 distribution, first in Devon, then in Overland, and now you are carrying that on into Neal's. That is clear enough, is it not?--- Yes.

10

And then the other alteration in Neal's, it is said, is that in Resolution 4: the amount of £114,909 will become £154,997.8.0. Now, that is an increase in Resolution 4, which deals with an interim dividend out of Overland really.

20

HIS HONOUR: Devon directly, is it not?

MR. TAIT: Devon was a subsidiary of Overlands; it passed from Devon to Overland and then to Neal's.

HIS HONOUR: Yes, I see.

MR. TAIT: So that the net effect of the alteration of the 13th December 1949 was this: first of all, the dividends out of the subsidiary were increased from £114,000 odd to £154,000, which is an increase of £40 odd thousand, and then there was an increase in the Section 107 amount by £6,074. Well now, that is in Neal's, and I just want you to look at Lane's to see what they did there. In Lane's in the 30th November resolutions, there were provisions for a small amount out of Collin's Motors. Now, in Collin's Motors, in Lane's, there was a small dividend, as I say, of £200. How did Collin's Motors come into the picture, Mr. Ratcliffe?---That was a subsidiary of Lane's, I think, Collin's Motors.

30

A subsidiary of Lane's? --- I think it was.

Or a subsidiary of a subsidiary? --- I think it was a direct subsidiary.

It is a small amount. We have not got a reference. That was why I was asking you. It is not in the admissions as Collins Motors. I only want it to that extent. You believe, you think now that it was a subsidiary of Lane's? --- Yes.

10 And the dividend that was provided to be declared here would go into Lane's? --- That is my recollection.

MR. EGGLESTON: My instructions are that it is in fact a subsidiary of Lane's.

20 MR. TAIT: Going down then, British Service, the next resolution provided for an amount of £2,637.18.0d, out of the tax paid amounts and then to other dividends, one out of 1949 and one out of 1950. Then going past that on to Lane's itself we find the position that the resolution provided for an interim dividend out of the section 107 amount which was the same figure as was in British Service, that is carrying it all through Lane's. Resolution 2 was a dividend out of the taxable income for the year ended 30th June 1949, and resolution 3 out of the taxable income for the year ended 30th June, 1950.

30 The alterations that were made in Lane's were these: Alterations were made by the figures of the 13th December. Nothing was altered in Collins Motors. In British Service the alteration was in regard to the section 107 amount, which was altered to £5933. Then there was an alteration in the other two resolutions altering them considerably.

40 MR. EGGLESTON: If Your Honour please, I think some confusion may arise from the way my friend is putting this. As I understand it the British Service, Overland and Devon Resolutions which were forwarded were additional dividend resolutions, not alterations of existing dividends, and consequently having distributed more from the subsidiaries to the parent company the proposed resolutions, which have not yet been passed in the case of the parent company, were amended to provide for a bigger distribution than was originally contemplated.

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That accounts for the fact that the resolutions proposed for the parent companies are amended by adding on the full amount of the second resolutions in the subsidiaries not by the difference between the two amounts but by adding on the full amount. Unless that is appreciated, and I do not think it is, we will get into a good deal of confusion about this.

MR. MENZIES: That is only in relation to tax free; there were increases in relation to taxable. 10

MR. EGGLESTON: That is true because their own profits were concerned too. In the case of one and four they are increases by the amounts which have been passed on from subsidiaries.

MR. TAIT: I appreciate that, now, I had not on the face of it. Your Honour may remember in the admissions on page 9 there is a reference to dividends in the subsidiaries declared on the 7th December, 1949. That, of course, is before this letter of the 13th. Those have already been declared. 20

On the 7th December that shows in British Service dividends totalling £10,637.18.0d. payable to Lane's, including a dividend of £2,636.10.0d. non-taxable by virtue of section 7 were declared - those are the resolutions in the 30th November document. My friend is quite right about that. What is done on the 13th December is add additional ones to it. On page 10 you will find the second dividend declared at a subsidiary holding meeting on the 14th December, which were paid or credited the same day. British Service declared dividends totalling £7,933.0.6d., that is the very figure of the two resolutions referred to in the 13th December. That £7,933 included £5,933 non-taxable. 30

When you come to Lane's, however, the amendment suggested in 13th September just goes to amending the figures in the 30th November draft resolution. The first alteration in Lane's Motors was in Resolution 1. The amount of £2636.18.0d. should be omitted and the amount of £8,569.18.6d. substituted. The difference between those two figures is £5,933.0.6d. which now has come out of British Service as an additional amount. 40

The other alterations in Lane's is Resolution 3 which deals with the distribution out of the year to the 30th June 1950, and that is by altering the figure £147,805.19.0d. to £175,493.8.0d.

(To witness): Do you follow those figures I have been referring to? --- Yes.

If you take the £175,493.8.0d., which was to include the increased amount out of 1950, and you take the increase that was made over the figures that had previously been given for that year, you will find the differences £27,687. 9. 0d.? --- Yes.

And that is equivalent to the dividend of 7/0d.? --- Yes.

10 The dividend that was actually paid in March 1950 but not provided for in these resolutions? --- No.

That was 3/0d. in the case of Lane's and amended to £11,866.4.0d.? --- Yes.

20 Then those two together make 10/0d. I am putting this to you, that those two amounts - the increase that is made in Resolution 3 here, plus the March one - accounted for the 10/0d. additional in price that was added to your original £5. 6. 0d. in the case of Lane's, and that made it £5.16. 0d.? -- Yes, I think so. I remember the price was adjusted.

You can check it. It became £5.16. 0d.? --- That was a coincidence, the £5.16. 0d.

What I am pointing out to you is, and I see that you agree, the increase in Resolution 3, plus the dividend that was made up in March, made 10/0d.? --- Yes.

That was the increase in price? --- Yes.

30 There was no provision, was there, in your original plan - now I go back to 30th September - for a March dividend? It was a dividend that was to be paid all at the one time? --- I do not think so. It was the total dividend to be paid to extinguish the special rights. There was no discussion as to when it would be paid.

It did not indicate it was to be paid all at once or not? --- No.

You did not indicate either way? --- No.

40 You did not say anything about when it was to be made, is that right? --- That is right.

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This question of paying an amount over the dividend in March in the case of Lane's was 3/0d.? --- Yes.

I want to know when that cropped up and if it was as a result or bound up with the increase of the distribution that was going to be made and of the 1950 year profit? --- See what I mean? --- Yes.

They did clearly increase amounts out of the 1950 year profits. Was the payment of a dividend in March bound up with that or not - or how did it come about? --- I do not think so. 10

How did it come about? --- I think that came about because on my recollection I had to keep well within the profits available when fixing distribution in December.

That is perhaps another way of putting what I was trying to convey to you. It was a question of keeping within the amount that the Company could afford to distribute, in one sense, in December? -- Yes. 20

What I suggested to you was that when the additional amount was determined upon, as an amount to come out of 1950 profits, because figures were better by that time - - -? --- Yes.

That involved putting some of it forward until March, this actual distribution. Would you say that was right? --- I do not know. I do not recall that there was anything still to be provided for in March or at some subsequent date in the original figures. 30

Do you recall who it was who suggested that the 3/0d. dividend, in the case of Lane's, should be paid in March? --- I did. I think that is suggested in this letter. There is still 3/0d. left to pay.

May we take it then when these figures were finally agreed upon, and we will take it on the 13th December, when these things were fixed up, at that stage it was quite understood between the parties that there would be a dividend. I suppose the amount, by that time, had been fixed, that 3/0d. would be paid in March. That was understood? --- At what time was that. 40

I am talking now of the 13th December or thereabouts? --- Yes, at 13th December.

All parties, you on the one side and those representing and working for the shareholders on the other, quite understood there would be a dividend of 3/0d. in March which would complete a special dividend in the case of Lane's? --- I suggested March because by then the Company would have more profits.

10 It was quite clear it was understood that that dividend would be paid in March? --- No, I do not think there was any definite proposal except that it would have to be paid to extinguish special rights.

The proposal by you was that it should be paid in March? --- Yes.

And it was accepted by the others? --- Yes, I suggested that.

20 I do not know about agreeing, but they accepted it in the sense that they did not say no. It may be said that was part of the general understanding that that would be done. Do you agree with that? --- Yes.

30 I just wanted to see how this extra amount, the tax free amount, was really arrived at. I suggest with the result of the figures I work out you may be able to agree to it at once, looking at the dividends of Lane's at 30th November when the additional amount, £27,687, was added to the estimated taxable income for 1950, that was going to be distributed, the amount, with alterations possibly but alterations that came from somewhere, which increased the original price from £5. 6. 0d. to £5.16. 0d., by 10/0d. when that was done the additional, what you described in the 30th September document as P's profit, based roughly on the 14½%? --- Yes.

40 That was worked out, and indeed I worked it out as 14½% on the 10/0d. a share increase which is £39533 and it works out at exactly the amount by which the tax free dividends were increased, namely £5933. Would that be right? --- I know there was a revision of the price. My recollection is that before the revision the profit to Pactolus did not agree with the offer. I thought the adjustment,

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when it was finally made, brought it into line. I would not swear to that.

Perhaps it is really much the same as I was putting to you? --- This final adjustment was taken into consideration in revising the price.

Does that mean then, without going into the details of the figures, it was found by the latest figures available that you could safely distribute more of the 1950 profits - that was the first thing? --- Yes.

10

And that had the result of putting up the distribution of dividends by a certain amount? --- Yes.

The taxable dividend went up by the same amount? --- Yes.

7/Od. plus 3/Od. and the price went up by the same amount, 10/Od.? --- Yes.

In addition to that, the non-taxable dividend went up by what I have worked out as 14 $\frac{1}{2}$ % on that increase in price, and that would be right, that would be the sort of thing you would do? --- Yes, but I think that is a coincidence there. I do not know whether it was on Lane's or not. I think it was Lane's. I think you are comparing this price with the rough and ready price in September.

20

I am? --- I cannot recollect but I think that on the figures before 13th December the price would not have been in line with the September prices. I am not sure.

Would not have been? --- I do not think they would have been.

30

That may well be so. All I am putting to you is that the thing that brought about the increase in price was an additional distribution out of estimates from 1950. That is clear enough? --- Yes, I said that had to be taken into consideration.

Was there anything else that brought up the price? --- You would have to go back and work out the 30th September figures and say on those figures what the price would have been.

40

They were worked out at £5. 6. Od.? --- I am

talking about 30th November, when we are getting actual figures.

It is the same except the only alteration is a very slight amount of £37 in the taxable dividend, otherwise the total amount is the same.

MR. EGGLESTON: There is no alteration of price on the 30th November.

MR. TAIT: We are talking about total taxable dividends.

10 THE WITNESS: If there was no alteration at the 30th November, as compared with 30th September, what you are putting about the revision of the price would be correct, I think.

MR. TAIT: I have not worked it out. The difference is that small amount, the adjustment of £37. 0. 0. Assuming that is so, which you can check, of course, then I want to establish that that being so the increase of 10/Od. in price was an increase of 10/Od. in the taxable dividends that were 20 to be distributed out of 1950 profits? --- I could not swear to that.

I give you the figures, perhaps you will look at these. The increase made in the letter of the 13th December in the dividend out of the 1950 year was £27,687. 9. Od.

MR. EGGLESTON: On the taxable dividend to be declared in December.

MR. TAIT: Yes. That is 7/Od. Then in addition to that, and as a further addition to the original figures of September, there was 3/Od. declared 30 in March. The two together make 10/Od. That is why I say to you that it is clear the price went up 10/Od. and the taxable dividend, out of the 1950 year, went up 10/Od., and then something else happened. The only thing that happened was an increase in the non-taxable dividends, the Section 107 dividends, and that went up, which was in line with your plan, by 14½% on the 10/Od. increase. That would be in line with your plan? --- The 14½% comes off 40 the total taxable dividend.

It did not in this case? --- In getting at the price?

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If you work it out $14\frac{1}{2}\%$ on the 10/Od., which in this case is £39,533, you will get the amount of £5,933, and that is the amount by which the Section 107 dividend went up. So that, what I am suggesting to you in this case is that in addition to putting up taxable dividends to cover 10/Od. increase, the non-taxable dividends were put up by $14\frac{1}{2}\%$ and that was drawn out of the subsidiaries in the case of Lane's - drawn out of the increased amount in British Service? --- Any increase in tax free dividends had to be added in full to the price. That is why I do not understand what you are putting although your figures may work out.

10

What I suggest to you has happened, is this, the price went up by 10/Od.? --- Yes.

As the result of finding that they could distribute more out of the 1950 year, that year perhaps turning out well? --- Yes.

They increased the price by 10/Od., and when I say "they" I include you? --- They increased the dividend that was taxable, the dividend out of taxable profit for 1950, increased that by 10/Od.

20

It is clear in the figures that they increased by 7/- in the December dividend and 3/- in the March dividend. None of that had been provided for before. And in addition to that the dividend that was tax free, that went to Pactolus, and it was subject to Section 107, that was increased by £5,933, and that was $14\frac{1}{2}\%$ on the 10/-.

MR. EGGLESTON: If Your Honour please, I rise to object to this last statement, because according to my calculations $14\frac{1}{2}\%$ of £39,533, which is the figure my friend gave, is not £5,933.

30

HIS HONOUR: It seems to me that we could probably be all day on this. Would it not save time if you put these calculations, which you are putting to Mr. Ratcliffe, on paper to give him an opportunity of checking them and giving you the answer later?

MR. TAIT: I realise I am putting to him figures which I cannot expect him to work out. I will do that, Your Honour.

40

(To Witness): Let me finish it in this way. Would it or would it not be in accordance with your proposal, in addition to increasing the taxable

dividends by the amount of the increase in dividends, to also increase the non-taxable dividends on that. Would it, or would it not be in accordance with your plan? --- Any increase in the tax free dividends would have to be wholly reflected in the price, because that is the way the price was worked out.

10 HIS HONOUR: Is it not rather a hypothetical question until we get the answers to the other questions?

MR. TAIT: Very well, Your Honour.

HIS HONOUR: I notice a pencil note on the last page of Exhibit R.1. Perhaps that ought to come off the Exhibit?

MR. EGGLESTON: I think that connects up with one of the letters, as to whether it should be the amount per share, or the total amount.

20 HIS HONOUR: I think it should be excluded from the Exhibit. It is no part of the document originally.

MR. TAIT: I think it is the 257,490 - £3, per share multiplied by the number of shares.

MR. EGGLESTON: I am quite agreeable to it being excluded.

HIS HONOUR: It may not worry me, but it may worry other people.

MR. TAIT: To save confusion, I will cross it out, Your Honour.

30 (To Witness): There are just one or two questions I want to ask you about the letters which now appear as Exhibit A.3. My attention has been called to one matter. Do you see the letter of the 13th December there? --- Yes.

Will you turn to the second page, and you see under Lane's Motors, after referring to changes in the resolutions, it says this, "On a working basis, there would still be 3/- to be paid to exhaust the special rights."? --- Yes.

40 We have not got elsewhere, as at that stage, a statement of the total special rights. Do you know

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if there is one. It must have been agreed what the total special rights would be. You do not know where we can find a statement of what those total special rights were to be? --- They went into the amended items.

MR. EGGLESTON: That had been done on the 18th November - I am sorry, it was done on the 14th December, pursuant to a meeting of directors.

MR. TAIT: It is pretty clear, is it not, from the very passage that I am pointing out to you, that the total amount of the special rights by this time had been worked out, at the total of those resolutions which are dealt with here, plus 3/-? --- Yes. 10

You said, "According to my calculations (reads).... in March 1950." That is in line with what you have told me this morning? --- Yes.

But it is clear enough, having looked at this, that at this time the total amount, including 3/- held over, had been worked out? --- Yes.

I now go to Exhibit 3. The first letter is dated 6th October, and is from Mr. Wallace to you, and in the last paragraph, he was referring to the adoption of the I.A.C. articles, which he said, "Have been approved by the Stock Exchange, and it would, of course, simplify matters if at a later date any of the companies concerned were converted to public companies and listed on the exchange"? --- Yes. 20

It is clear, is it not, that at this date, there would be no decision by the companies to later convert into public companies. You agree with that? --- Yes. 30

It is expressed that they might or might not, at a later date, wish to. Therefore, he is saying, "We might as well have the articles. It would facilitate it"? --- There was no decision on anything at this stage.

There is no decision or no agreement that they wanted to convert at some future date into a public company. That had not been agreed to. He said, "If any." 40

HIS HONOUR: I think it is, "If any of the companies"?

MR. TAIT: If any of the companies were converted. That was the position about this conversion? --- As to that matter, there had also been no decision.

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Will you go on to the next letter, the 10th October, the second page. In the middle of the page, you will find this paragraph: "The position, therefore, is that". You see that passage? --- Yes.

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10 Will you look at that passage: "The position therefore is, if what is proposed is within the provisions of this clause.....(reads).....its object." Now, if you will look at the paragraph before, you will see what is referred to by "this clause". It is Clause 8 of the Capital Issues Regulations? --- Yes.

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20 What I want to know is what you understood when Corr & Corr wrote to you and said: "If what is proposed falls within the provisions of this clause, which requires the approval of the Treasury, the whole scheme would fail in its objects." What do you understand in that? --- I read that in relation to what he was writing about, because I did have an opinion that what he was putting was not correct.

That is a different matter. But if he had been correct, would you have agreed with him that the whole scheme would have failed in its object? --- No, I would not.

30 What did you think he meant? --- It was a question of knowing what the effect of those regulations was.

40 It comes to this, that in regard to the Capital Issues, as you have explained once before, under what you proposed, all that would be needed would be formal application, as it were, to Capital Issues, because once you told them that all you wanted was to capitalise profits and increase the capital in that way, they would give you the consent without any further bother as a matter of course. Is that right?

MR. EGGLESTON: If Your Honour pleases, what my friend has just said is perfectly correct, but it has nothing to do with the subject matter of this particular discussion, and I think before my

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friend puts questions in that way, he should read to the witness or give the witness the opportunity of reading what particular regulation was being discussed.

HIS HONOUR: I took it that the preceding sentence stated that - or have I misunderstood it?

MR. EGGLESTON: I took it that it did, but my friend does not. He is talking about the question of issuing new preference shares to be taken up out of the proceeds of dividends to be declared. This is dealing with an entirely different thing. 10

HIS HONOUR: So it seemed to me.

MR. EGGLESTON: My friend is putting this question to the witness on a footing which I think is a wrong basis.

HIS HONOUR: Mr. Tait, I do not know whether you would agree with this, but if you take the two sentences together, is not the meaning that there is a regulation or sub-regulation which says that if you increase the rate of dividend on preference shares, it has no effect unless the Treasurer has approved it? 20

MR. TAIT: Yes.

HIS HONOUR: And the next sentence says that if what is proposed falls within that - that is to say, that if the increased rate of dividend on those preference shares is not approved by the Treasurer, and is for that reason voided by the sub-regulation - then the scheme is defeated?

MR. TAIT: I am asking the witness what he understood by it. 30

HIS HONOUR: I know, but that was not your last question.

MR. TAIT: I know, Your Honour, but I am leading up to it. He had already told us that he did not worry about Capital Issues so long as the matter was a formality.

HIS HONOUR: I do not think he had.

MR. TAIT: But once it was not a formality, the whole scheme would fail. 40

HIS HONOUR: I do not think he said that. I may be wrong, but I think that what he said was that at this stage applications for consent to new issues had become a formality. I do not think he dealt with the question of the increase in the rate of dividend. Is that your question?

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10 MR. TAIT: That is my point precisely. This was a discussion of the question whether that proposed alteration in the articles - to alter the rates attaching to A. shares - would be effective or not.

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HIS HONOUR: That is the trouble. He did say that when you asked for the Treasurer's consent to a new issue, it had become a formality.

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MR. EGGLESTON: Not quite that; it was if you were not asking for any new cash.

HIS HONOUR: Yes; I should have added that.

MR. TAIT: He said that before.

20 HIS HONOUR: I know, and you are putting it that he said this before.

MR. TAIT: I must have put it wrongly, if that is so.

HIS HONOUR: Then would you mind putting it again?

30 MR. TAIT (To witness): You have already told us that, in your view, the Treasurer's consent to the capital issue would be a formality provided what you asked for was simply that you were going to capitalise profits and not bring in new money? --- And if you did not go to the public.

Do you understand that what is being suggested by Corr & Corr here is that, because of a certain clause, it may be that an alteration of the articles to provide for an increase of dividends - that is, your special dividends....? --- But there was no increase provided.

40 You did not agree with Mr. Bunny; but is he not putting to you that there may be some question that an increase of that nature would require the Treasurer's consent? --- That was his view.

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I know, and that is what he is saying here? --
Yes, and the paragraph is related to that, but I
did not take any notice of it.

I want to know - because this goes to the
fundamentals of what your scheme was - why was it,
in your view, that if he was right, he should add,
"If that is so, if it falls within the provisions
of this clause, the whole scheme fails"? --- I
thought he was suggesting - - -

MR. EGGLESTON: If Your Honour pleases, my
friend cannot ask the witness why Mr. Bunny said
that.

10

MR. TAIT: Surely I can ask him. He may not
know.

HIS HONOUR: I do not think you can ask what
Mr. Bunny meant. You can only ask the witness what
he understood.

MR. TAIT (To witness): What did you think he
meant by it? --- I really did not take any notice
of it.

20

Was it said or understood between you and Mr.
Bunny that if you had to make an application for
the Treasurer's consent in connection with your
scheme, which would involve the Treasury looking
into the position at all and not accepting it as a
mere formality, that would not do at all; you
would have to avoid that? --- No, that was not so.

Then can you suggest any other meaning that
Mr. Bunny had when he said, "The whole scheme would
fail in its object"? We have not got Mr. Bunny here,
but you got this letter - - -

30

HIS HONOUR: Does it matter whether he can sug-
gest a meaning?

MR. TAIT (To witness): Can you suggest any
reason why the scheme would fail in its object if -
- -

MR. EGGLESTON: If Your Honour pleases, in my
submission it is objectionable to ask the witness
to make suggestions as to what Mr. Bunny meant.

HIS HONOUR: I do not think it even goes to
the issue of credibility.

40

MR. TAIT (To witness): At any rate, had you yourself any views as to whether it would be fatal to the scheme if the Treasurer's approval had at any stage to be asked to anything that was not a mere formality. What was your view? --- I had no views on this in that way.

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When you say "on this", you mean this matter that is raised here? --- Yes.

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10 But on the matter I have just asked you about, had you any views that if in connection with your plan the Treasurer's consent was required for anything at all, which would involve a full explanation or looking into it and something more than a mere formality, that would be fatal to your scheme or make the scheme unworkable? --- My view was that we were not going to the public for money, and therefore it would be a formality to get his consent.

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20 You have not answered my question Can you tell me in connection with your plan whether if that had not been so - if it turned out that at some stage of the scheme it was necessary to get the Treasurer's consent more than as a mere formality - in your view that would have been fatal to your scheme or would have been an objection that made it unworkable? - - -

MR. EGGLESTON: I am sorry, Your Honour. I do not know whether my friend is putting this on the basis that Treasury consent is obtained or - - -

30 HIS HONOUR: He is putting it on any basis. He says, "What was your view? Did you think it was an objection, fatal or serious, to the scheme, if it involved explaining the whole thing to the Treasurer?" Is that right, Mr. Tait?

MR. TAIT: Yes, that is right. I am putting it perfectly generally.
(To witness): What do you say to that? --- I never had any view, because I never considered it.

40 Well, I will have to take your answer. Will you go on with the letter of 10th October and go to the next page. Apparently my copy is different from yours, but I want you to look at a paragraph which commences, "Mr. Ross will be authorised to accept the purchase money for the A. ordinary shares." Do you see that? --- Yes, it is on page 4.

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That was acceptable to you? It was addressed to you by Mr. Corr, was it, - that Mr. Ross should do that? --- Yes.

And in fact, when the time came, Mr. Ross did accept the purchase money for the A. ordinary shares, did he not? You handed over the cheque to Mr. Ross? --- Yes. I am just a bit confused between the preference shares and the ordinary shares.

This is the purchase money for the A. ordinaries. As you understood it, he accepted that on behalf of the other shareholders? --- Yes. He handed me the transfers and I handed him the cheque. 10

And in that matter, he was acting on behalf of the shareholders? --- Yes.

And he was also authorised, as you understood it, to pay to your company the purchase money for the new preference shares? --- Yes.

I now leave that file of letters.

HIS HONOUR: Mr. Ross was the Secretary of Industrial Acceptance Corporation, was he not? --- Yes. 20

And I think you had some connection with that company? --- Yes.

Were his actions in relation to the plan in reference to the motor companies taken at your request? --- No, Your Honour.

At whose request? --- Mr. Bunny would have arranged with Mr. Ross. I had nothing to do with it.

MR. TAIT: There are just a couple of matters in connection with the second Melford distribution. By that I mean the distribution in Melford Motors which was made in December 1950. In a letter written by you to Mr. Wallace, dated 13th October 1950, which appears as Annexure 44 at page 103 of the book, you say, "I have a recollection that subsequently Mr. Bunny mentioned that the shareholders would like to obtain some cash, and I have therefore made the additional suggestion which can be added to last year's plan if so desired." You recollect that now? --- Yes. 30 40

You understood that in connection with the second Melford distribution there was some cash that the shareholders wanted. We have the actual amount they got and I need not take you through that.

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HIS HONOUR: There has already been some evidence about it.

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10 MR. TAIT: Yes, but I just wanted to know that this witness knew that the shareholders of Melfords did want it.

THE WITNESS: I think I said as to that that I thought I misunderstood what Mr. Bunny said to me, in applying it to Melford's.

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20 MR. TAIT: I thought you told us that in connection with the second Neal's distribution? --- No. I was dealing with this transaction. and this was the first time it appeared. Mr. Bunny had been to see me some time before, and, of course, the people he was representing were not shareholders in Melford's at all.

The people who wanted the cash? --- The main people who wanted the cash.

That would be a bit awkward? --- I just misunderstood it and applied it to Melford's, I think.

You did apply it to Melford's to provide for some cash to be drawn out? --- Yes.

30 I am told that when the second Melford one was put through the amount of cash drawn was the same? --- There was no change. That confirms my view that I made a mistake.

40 Mr. Ratcliffe, I was asking you about the second Melford Motors transaction which occurred in 1950 and I have been referring to the letter as October 1950. You will remember in regard to that letter you set out to Melford Motors certain statements of figures and capital and I think you said alternatives. There is just one point I want to ask you about. You say at the bottom of page 104 of Annexure 12 that "189,919 new preference shares(reads)....preference shares." What I wanted to ask you was, what are these schedules prepared last year that you were referring to? Are they something

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we have? --- I think so, Mr. Tait. That was the schedule that set out the price we paid to the shareholders and so on.

Are those the schedules that Mr. Ross prepared?
--- Yes, I think so.

Exhibit A.6. The point I am concerned with is whether there are some other schedules? --- I was referring to the final figures.

As would be disclosed in the schedules which are in Exhibit A.6? --- I have not seen Exhibit A.6 but I assume it is the same. 10

You can take it that it is A.6. (Document handed to the witness) Is that what you mean? --- Yes, that is it.

I wanted here to put in for you to identify certain minutes of Pactolus Proprietary Limited. Those are in Court and I think they are contained in one of those books. The first one is the 9th December 1949. I might take these, Sir, all together because they are minutes which started - the first one is connected with the opening of the bank account at South Melbourne and the transfer to it and they are all dealing with matters connected with these very transactions, I mean the ones set out in the admissions. I have a list of the dates that I am going to put in. I would like to have those read and if necessary I will give the dates and the witness can identify it. 20

HIS HONOUR: Would it not be easier to extract them? 30

MR. TAIT: It could be done. Substantially they are all the minutes, but some are not quite relevant; but substantially they are all the minutes between December 1949 and 26th June 1951. There are thirteen.

MR. EGGLESTON: If Your Honour pleases we do not want to put any difficulties in my friend's way. If he wants to tender the minutes and has had copies made, we will agree with that.

HIS HONOUR: That would be more convenient. 40

MR. EGGLESTON: I do not think there is anything here to which we would object except on the

ground of relevance. It would probably be most convenient if that were done and any submission about relevance made later.

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MR. TAIT: We have not had copies made at the moment. I have a copy; but I propose to give the dates so that they can be identified for the purpose of Exhibit and I would like, while this witness is in the box, to have them read. These are the dates:-

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10 9th December 1949
 19th December 1949
 20th December 1949
 30th December 1949
 11th May 1950
 10th November 1950
 4th December 1950
 5th December 1950
 15th December 1950
 21st March 1951
20 15th May 1951
 25th June 1951
 26th June 1951

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EXHIBIT EXHIBIT R.2 ... Minutes of Pactolus
 Proprietary Limited
 from 9th December
 1949 to 26th June
 1951.

MR. TAIT: With Your Honour's permission I would like Mr. Aickin to read those.

30 MR. EGGLESTON: You do not want these in the shorthand notes do you?

MR. TAIT: No, but I would like Mr. Aickin to read them while the witness is in the Box.

(Mr. Aickin then read the various Minutes).

MR. TAIT: We will have those typed out, Your Honour, and have them put in. We will have to borrow the book for that purpose.

40 HIS HONOUR (To witness): Have you any objection to the book being borrowed Mr. Ratcliffe? ---
No.

MR. TAIT: I hand you the book, Mr. Ratcliffe, opened at the minutes of the meeting 19th December,

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1949, which was the second one read, in whose handwriting is that? --- That is my handwriting.

Later on someone else clearly wrote them? ---
Yes.

Who else wrote the minutes? --- These were done in Canberra, I did something while somebody else did something else.

Perhaps you will just turn on from there to the ones not in your handwriting? Before that they are in Miss Vincent's handwriting. It is Miss Vincent's handwriting on the 30th September. 10

I need not ask you to go through them all. Miss Vincent was the Secretary of the Company? ---
Yes, some might be in my son's handwriting.

On the 11th May 1950 there were a considerable number of dividends declared out of tax paid reserve or tax paid amounts. You will see in the admissions at page 25 in regard to Lane's that on the 12th May, 1950, the day after that meeting, Pactolus sold the whole of the ordinary shares held in it by Lane's to Pactolus Investment for £1 a share? ---
Yes. 20

There are similar statements later on about the other Companies. Those monies that were declared as dividends out of tax free amounts by Pactolus, and paid at that time, was Pactolus Investment the large shareholder in Pactolus? --- Yes, it owned all the shares.

Except one? --- It owned all of them.

And the declaration of those dividends was in part at least for the purpose of paying for the shares that were purchased by Pactolus Investment from Pactolus on the next day, 12th May, 1950. Do you agree with that? --- They were used in part. 30

For that purpose? --- Yes in part.

And may I take it the same thing applies to the dividends which were declared on the 25th June 1951. There were four separate dividends declared out of tax paid amounts. They were used in the hands of Pactolus Investment, at least in part, to pay for the shares that that Company bought from Pactolus? --- Yes. 40

It does not appear on the face of it why those dividends were declared in separate amounts all the time - so many of them - what was the reason for that? --- I think there was a question at that time a lot of difficulties had cropped up about declaration of tax-free dividends. They were split up in case at any point there was something wrong, so that the whole amount would not be bad.

10 Under the terms of Section 107 it must be a payment exclusively out of amounts which were tax free? --- Yes.

You were running no risks? --- This was the way it was usually done in every company.

Perhaps it was. Perhaps not splitting them up as much as that. There is one other question arising out of that. On the 20th December, 1949 the minutes record states that you reported to the company, to Pactolus, that you had received offers to purchase the "B" preference shares? --- I think that is the meeting in Canberra.

20

On the 20th December 1949, the wording being "He further reported receipt of offers to purchase all these shares at £1 a share" and "these shares" refers in that case to the 5% preference shares in Melford Motors in one resolution, the next one Neal and the next one Lane. What I want to ask you is, what are these offers that you said you received for these B preference shares? --- Verbal offers.

30 Just verbal. The fact that they, the old shareholders, could purchase these shares from Pactolus had always been, I think you told me this morning, an understanding and part of the arrangement? --- Yes.

So that it was not any special written offer that you were reporting. You were merely referring in those words to what we had this morning? --- Yes.

Is that right? --- Yes.

40 I think from what you have just said to me, the minutes here refer to the offers, you say they were verbal offers. Were they offers received that day or offers received from some particular person, or were they simply your method of recording the

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fact that you knew it was part of the arrangement, the wider arrangement that they would purchase? --- I think what you said last was probably the position, Mr. Tait. It would be very difficult now to recollect.

Now there is only one other question I have. You were asked about your appointment as Tax Adviser to these three motor companies. Were you not Tax Adviser to the shareholders? --- At the same time, Mr. Tait.

10

What do you mean by that? --- I was appointed at the same time.

At the same time you were appointed to the companies you were appointed Tax Adviser to the shareholders? --- To the best of my recollection, yes.

And that I think, speaking from recollection myself, I think you told us that was November 1949.

MR. MACFARLAN: Yes.

MR. TAIT: You signed the tax returns for the shareholders, did you not? --- Yes, the ones I was looking after I did.

20

Were those appointments by the shareholders then made in a general sort of way or were they made formally? By that I mean did you receive a written appointment from each shareholder or where did you get this from? --- I was told that I was to do it. Mr. Robert Nathan, the Chairman, spoke to me and I was told I was to look after a group.

As far as your recollection is concerned that was all verbal? --- Yes.

30

Thank you.

HIS HONOUR: I do not know whether it matters, Mr. Ratcliffe, but who did the banking? --- You mean in Melbourne?

Yes? --- In December 1949 it was done by Mr. Ross.

I see. There were a number of cheques from the 9th December. They were all paid in by Mr. Ross? --- Yes. I gave them to Mr. Ross.

40

And they would all be paid in simultaneously?
 --- Yes.

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And the same would apply in regard to the
 second Melford transaction in December 1950? ---
 It would not be Mr. Ross.

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But the same procedure would be followed? I
 suppose it would be the same again? --- Yes, Your
 Honour.

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10 MR. TAIT: You remember that the above agree-
 ment mentioned in the first case Mr. Ross and in
 the second I think you will find it was a gentleman
 by the name of Bennett.

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HIS HONOUR: Yes, I had forgotten.

MR. MACFARLAN: I think Your Honour the option
 agreement mentions that Mr. Ross was the agent for
 the shareholders, not that I think it matters very
 greatly.

MR. MENZIES: The witness mentioned that Ross
 did so.

20 MR. MACFARLAN: Your Honour, before I re-
 examine, my learned friend Mr. Tait asked two ques-
 tions regarding documents consisting of Exhibit A.7,
 that is in regard to resolutions which were passed
 by the subsidiaries and each of the three motor com-
 panies and as to certain figures which were referred
 to in those resolutions. In the course of that ex-
 30 amination my learned friend put certain conclusion
 figures really to the witness with which of course
 we do not agree as my learned friend Mr. Eggleston
 said at the time, as the witness had no opportunity
 of checking. I only mention the matter, Your Honour,
 so that it may be made quite clear. Perhaps Your
 Honour could ascertain where that evidence stands.
 The figures were put down and put to the witness.
 He should have an opportunity of checking.

40 HIS HONOUR: That part of the evidence was
 left in abeyance. We could compare on a sheet of
 paper what he says with the result of the transac-
 tion. He would have an opportunity to consider it
 and then would be in a position to answer the ques-
 tions.

MR. MACFARLAN: I did rather think Your Honour
 that that was the manner in which the evidence was
 left by Your Honour.

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This morning you were asked certain questions by my friend Mr. Tait, when he was cross-examining you about Annexure 12 to Exhibit A2.; that is to say, the letter of the 30th September. You said this morning, when he was asking you questions about page 5, that you would not have advised the shareholders or the company to distribute the profits as they desired; that is to say, those profits in excess of what was the permitted retention allowance. Will you tell His Honour why you would have given that advice? --- Yes. It arose out of the provisional tax. These three companies paid a total of about £225,000, or declared dividends and credited them to the shareholders during the year ended 30th June 1949. The tax on that total would represent about £169,000. As these companies had not previously declared dividends, - at least for quite a number of years, they also had to pay in respect of the 1949 year a second amount of £169,000 because of the provisional tax.

10

20

At the highest rate? --- That was the highest rate. It meant about £338,000 in respect of dividends of £225,000.

That would have been the total tax payable in the hands of the shareholders? --- In respect of these dividends in regard to the 1949 year. In respect of the companies' profits for the year 1949, which would have had to be declared by December 1949, I think the figures showed that the three companies would have had to declare about £444,000.

30

HIS HONOUR: Do you mean to distribute? --- To declare and credit.

Declare dividends? --- Yes. The ordinary tax on that would have been £333,000 and the provisional tax £333,000, which would have made a total of £666,000. from which would have been deducted the 1949 provisional tax of £169,000, so that in respect of that year, they would have received dividends of £444,000 and had to find taxation of £498,000. Apart from that, the income of these people from other sources was also arriving, and aside from these companies they were in difficulties in respect of their other sources of income.

40

MR. MACFARLAN: I think you made those calculations from the records that have been filed in

the proceedings in this case over the weekend? ---
Yes.

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10 Then my learned friend asked you a further
question about Annexure 12 when he was asking you
about page 6. You said in the course of your ans-
wer to him that there was no certainty that
Pactolus would be the purchaser. You remember that
that question was one arising out of my learned
friend's cross-examination on the letter of 30th
September 1949? ---- Yes.

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And it related particularly to the example
figures which you gave in relation to Ajax Insur-
ance? --- Yes.

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You said in answer to him that there was no
certainty at that time that Pactolus would be the
purchaser? --- Yes.

20 Had you given any advice to the companies or
the shareholders that somebody else might be the
purchaser or that other companies might be? --- I
suggested to them that any non-private company
could purchase these shares on a certain basis.
That was how the price was arrived at. I told them
that, of course, a company that dealt in shares
could purchase them, but I did add that I did not
know of a company that was dealing in shares.

30 What I particularly wanted to ask you was -
what was the position with regard to life insurance
companies as a possible purchaser of these shares
from the shareholders? ---- I did consider life in-
surance companies, but I did not tell these parties
about life insurance companies, for the reason that,
having examined the position, I concluded that they
would be a purchaser at no higher price than
Pactolus; that they might put in a lower price be-
cause of this situation: it was well known that the
High Court had ruled that all investments of a life
company were part and parcel of its business, and
if it turned them over, that was equivalent to deal-
ing. But at that time the taxation affairs of life
40 insurance companies were very much in doubt, and,
of course, those doubts were not resolved until
April 1953 when the High Court made a final deter-
mination on certain questions.

Was that the A.M.P. case? --- Yes, but, of
course, from the aspect of dealing, I had to consid-
er whether they would buy them to deal, and my view

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was that they would buy them to hold, and therefore, even from that aspect, you would have to look at it to see what price they could pay, because they had this taxation to cover in any deal or in any purchase on the basis on which the Income Tax Department made the assessment, and that would, in my opinion, have not been less than 14 $\frac{1}{2}$ %. Of course, it would depend in each company on their other income and many other factors, and you would have to work it out in detail.

10

That was the general reason you had for not advising the shareholders? --- Yes; it seemed to me that it would be useless for them to go and offer them to a life insurance company, expecting to get a higher price than Pactolus was prepared to offer or what a non-private company would be prepared to offer.

Then you were asked some questions with regard to the covering letter which was sent by Mr. Wallace in the case of each company to the Commonwealth actuary for the Capital Issues Board. Do you remember being asked about that letter, which I think you said you almost certainly drafted? --- Yes.

20

That appears at page 19 of Exhibit A.2. My learned friend Mr. Tait particularly drew your attention to the last part of the first sentence of that letter, which says, "The shares would be taken up by shareholders....(reads).....or in part by the use of dividends previously declared and still owing"? --- Yes.

30

At that stage, on 13th October, had anything been clearly stated or settled between you and the vendors with regard to this transaction? --- Nothing at all was settled.

In particular, it was not settled on that date that the vendors would be proceeding along the lines of the particular plan which you had put to them and which they did ultimately adopt? --- No.

What did you have in mind when you drafted that sentence which I have read to you? -- You mean the accuracy of the sentence or the reason for putting it in?

40

I want the reason for putting it in, and also as to the accuracy? --- The reason was to make the

consent as wide as was reasonable in the circumstances, so we would not have to go back again if the proposal was changed in some way. There was a certain leeway available. As to the accuracy of it, it appears in the balance sheets of Melford's, the dividend declared the preceding year appeared in a separate account in Melford's account, so I thought that was correct. As to the other two companies, I think I got the information when I was in Melbourne, but you must remember that was a draft letter. It was drafted as to gift duty and things like that, but it was a matter for Mr. Wallace to check the statements of fact in it. That was not my responsibility. He asked me for my assistance on the form of it.

10

You say you got the information when you were in Melbourne? --- Yes.

What were you going to say on that? --- My impression was, I understood that the deposits there from shareholders were deposits out of dividends undrawn.

20

That is in the case, at any rate, of Lane's and Neal's? --- Yes.

Where there are substantial deposits from shareholders? --- Yes.

Did you have those deposits in mind when you drew that sentence? --- That was what I had in mind when I drafted it.

30

That last part of the first sentence there? -- Yes.

My learned friend asked you some questions with regard to what information was from time to time before you between July 1949 and December 1949 when this transaction was ultimately completed. Did you receive the monthly trading statements of these companies shortly after the end of each month? --- No.

40

Or any figures at all showing their trading records? --- My recollection is that I saw them in November.

You saw them in November for each month up to what - the end of October? --- For several months

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and that could have been to the end of September or to the end of October, most likely to the end of September. I think, subsequent to that, I got a note, or an advice, when I was talking, as to a subsequent month's figures being available, and what they were.

Are you referring there to some information about the middle of December, or shortly before the middle of December, as to the November figures? --- That would be right.

10

My learned friend also asked you a number of questions about balance sheets for each of the companies for the period ending June 1949. That is part of Exhibit A.2? --- Yes.

And he asked you certain questions as to whether at that time you were told that there was to be a likelihood of an overdraft being required, or whether they had been in trouble to the franchise in respect of the business done by these people, as to the reasons why you thought the capital should be increased. You were, of course, not looking at these balance sheets on the 30th June 1949. It was a little later. But did you confine the consideration, or the opinion you formed, as to the position of these companies as at the date when you were looking at them? --- No, I did not. Of course, if you had a normal year in the motor business, June 1949 would be a low point in your stock. Of course, often there are special circumstances which change that position. For example, this year they probably will all have a very high stock, but in that year they had very low stocks.

20

30

By December, I think the correspondence shows, they were not able to afford to take any money out of the company, because there is one reference there in one of the last letters which I read, to Mr. Ross - either a letter or a memo - saying you would not have to find any money if they put these excess sums back on deposit. So I think it is pretty clear at that date the company had no money to spare. It was vastly different from what it was in June 1949, and of course, a year or so later they had tremendous overdrafts.

40

(THE WITNESS WITHDREW)

MR. EGGLESTON: Your Honour, subject to the question of whether my friend wants Mr. Ratcliffe to do any more sums, could Mr. Ratcliffe be excused from further attendance on the understanding that he will make himself available if required? He would like to get back to Sydney.

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HIS HONOUR: What do you say, Mr. Tait?

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10 MR. TAIT: Yes, Your Honour, I would agree with that. The one outstanding matter is the one that has been mentioned. I said this morning I would work it out. It is very difficult to put it to him in the box, and I think when we work out a simple statement of figures, it may be agreed to, that that is the result of the figures. If it is not agreed to after we work it out, all I want to do is to put it to Mr. Ratcliffe at some convenient time, and I am quite willing to do it at any time he can be made available. I do not know when I will get those figures worked out.

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20 HIS HONOUR: It may be possible, by agreement, to dispense with Mr. Ratcliffe?

MR. TAIT: I would have thought so. Our interpretation of the figures, if it is right, may be agreed to. I will try to get it worked out simply, but I am not sure that I can get it done by tomorrow.

30 MR. EGGLESTON: If it is a mere question of figures and calculations, we are prepared to co-operate in working them out, and to agree as to what the figures amount to. My intervention was stimulated by the fact that my friend said that $14\frac{1}{2}\%$ of the figure was £5,933. My calculation was that it was £5,732. However, as far as we are concerned we are quite prepared to co-operate. But if my friend wants to put to Mr. Ratcliffe certain propositions about it, if he wants to make any point about the working out of the final figures, which we have not, as Your Honour will appreciate at this stage, attempted to trace in detail, it may be that
40 Mr. Ratcliffe should be available to say what the working out was, and if my friend wants to do that, then perhaps it would be desirable that Mr. Ratcliffe should wait for another day, rather than that he

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should go to Sydney and come back again. Perhaps my friend could give an indication on that?

HIS HONOUR: As far as I am concerned he can leave on his undertaking to return if and when required. If Mr. Tait can say when he will be ready with these figures, and whether he wants Mr. Ratcliffe back in the witness box, Mr. Ratcliffe can go, or he can stay, if it is a short period only.

MR. EGGLESTON: Your Honour will see that we have not attempted to trace through the detailed workings out. All sorts of calculations must be made, and if my friend wants to draw any conclusion, or comment on the fact that it has not been done, we tendered Mr. Ratcliffe and he was available for it. If it is a mere question of working out figures and agreeing that 14 $\frac{1}{2}$ % of something is so much, or that change was made, we are perfectly agreeable to co-operate and agree on any calculation of figures as long as we check them. I merely wanted to clear up the point that I do not want it said hereafter, it was not gone into.

10

20

HIS HONOUR: What will we do, Mr. Tait?

MR. TAIT: I thought we would leave it simply in that way. I do not mind, if Mr. Ratcliffe finds it convenient to remain here until tomorrow. We might by tomorrow morning be in a position to show my friend the figures and finish the whole thing up, but I am not in a position to promise it, because I have not worked the figures out. But if that cannot be done, I do not mind if Mr. Ratcliffe goes away and comes back at some convenient time, or possibly, he might not have to come back at all.

30

HIS HONOUR: I think, Mr. Ratcliffe having heard that, can exercise his own judgment as to what is more convenient to him.

MR. EGGLESTON: The next witness will be Mr. Harry Lane, Your Honour.

EVIDENCE OF HENRY JAMES LANE

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HENRY JAMES LANE, SWORN:

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MR. EGGLESTON: Your full name is Henry James Lane and you reside at 28 Albany Road, Toorak, and you are a Company Director? --- That is right.

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In 1949, were you a shareholder in Lane's Motors Pty. Ltd.? --- Yes.

In Neal's Motors Pty. Ltd.? --- Yes.

10 And in your capacity as a trustee of the estate of your late brother, Robert, in Melford's Motors? --- I was not a director. I was a shareholder. I was representing the estate as a co-trustee.

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20 Would you tell His Honour, in the first half of 1949, what was the relationship of the various parties who were shareholders in these three motor companies? First of all, in Lane's Motors, we have the shareholding set out in the Mutual Admissions of Fact. I just want you to tell His Honour so that His Honour can get the general picture of the various parties concerned. On page 1, it shows Lane's Motors. Who was Mr. Robert Nathan? --- Mr. Robert Nathan was the Chairman of the Company and a shareholder, and the uncle of Mr. Lauri Newton and Lionel Newton.

Henry J. Lane is yourself? --- Yes.

And Stella Lane is your late brother's widow? --- The wife of my late brother.

30 And between you you hold shares as trustee of his estate? --- Yes.

Stella Lane also held shares in her own right? --- Yes.

And you hold shares in your own right? --- Yes.

Then, there was a parcel of shares held by Lauri Newton, Lionel Newton and Francie Una Christian? --- Yes.

As trustees of the estate of Joseph Nathan? --- Yes.

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Who was Joseph Nathan? --- Joseph Nathan was the father of the three mentioned.

And there was another parcel of shares held by the same three persons as trustees of the estate of Catherine Nathan? --- Yes.

Who was Catherine Nathan? --- Catherine Nathan was the deceased wife of the late Joseph Nathan.

Well then, was Lionel Newton in Australia about the middle of 1949? --- No, Lionel Newton was abroad. 10

He was abroad, yes? --- Mrs. Stella Lane was also abroad.

She was also abroad. And who acted for her in these matters? --- Mr. W.B. Thomas acted as her attorney; he had her power of attorney.

Now, Lionel Newton, Lauri Newton and Mrs. Christian also held shares in their own right, as appears from the exhibit, and Mr. Thomas himself 5000 Preference shares. What was his position in relation to the company? --- He was then manager and secretary of the company. 20

Well now, in the case of Lane's I think that was the shareholding position.

In the case of Neal's, on page 3 you have the same parties but holding shares in different proportions? --- Excepting that I do not think Mrs. Stella Lane had any shares in Neal's; the estate of Robert Lane had.

The estate of Robert Lane held 8,201, and Stella Lane held no shares in her own right? --- And W.B. Thomas held no shares. 30

But Cedric Broomhall? --- Had Preference shares.

And what was his position? --- He was manager of Neal's. I am not sure whether, at that time, he was not a director; I think he was a director.

So far as Neal's were concerned, you held relatively greater shares? --- Yes.

Why was that, Mr. Lane; what was your relationship to Neal's? --- Well, Lane's Motors was

originated by my brother, and I originated Neal's Motors myself, and as a result had a bigger holding.

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Well then, in the case of Melford's dealt with on page 4, the shareholding was yourself and Stella Lane as trustees of your brother Robert's estate? --- Yes.

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Stella Lane holding 2000 shares in her own right? --- Yes.

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10 Mr. Fenton, 3000? --- I am not sure of the figures, but I have read the admissions.

Quite. Well, what was Mr. Fenton's position? --- He was the manager of the company, and I think, a director, but I am not sure of that.

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Henry James
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continued.

20 Can you tell us something of the history of Melford's, and how these shareholdings came to exist? --- The company originated out of personal contact with my late brother well before World War II, and as a result they acquired, I think, a franchise for the Ford car previously owned by Linaore's. They acquired this particular company, although it was competitive with his other company, and also competitive with the company I was operating, and in which he had shares.

It was competitive with both Lane's and Neal's, but your brother acquired the franchise? --- My brother negotiated the franchise.

Did Mr. Fenton hold the 3000 shares in his own right? --- Oh, yes.

30 And was he the active person in the management in Melbourne? --- Yes. In fact, my brother rarely went up there at all because of his associations elsewhere.

There was another parcel of 9000 shares held by Mr. Wallace as trustee for Lionel Newton, Lauri Newton and Francie Una Christian? --- Yes.

40 How did that shareholding come into existence in the first place? --- That was because - I was not personally interested in this matter but I knew all about it - that was because of the association of Mr. Robert and Mr. Joseph Nathan with my brother, of Lane's Motors, and my company too,

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and the franchise was acquired without bringing that specifically to attention. It was thought it would be dangerous to have their names appearing as shareholders in any share register available for anybody to look at. So it was arranged for L.B. Wallace to hold those shares in trust, which was done immediately the company was formed and continued right through.

And had those shares been held by Mr. Wallace as trustee for some time? --- Yes, as long as I can recall. 10

What was Mr. Robert Nathan's condition at this time; did he take an active part in the business? --- He used to pop in, but he knew very little about the motor business, very little indeed.

What was his main interest? --- Furniture.

And what about Mr. Lauri Newton? --- Well, after World War I, Mr. Newton's father - - - Mr. Lauri Newton did take more interest in the companies. It has to be appreciated that my brother died in 1943, Mr. Joseph Nathan had died previously, and I was practically the only one left with a full knowledge of all the operations of the company. Really, I became the one person to run all those places, to put it that way. 20

Well, after Mr. Joseph Nathan died, Mr. Newton took a lot more interest? --- Yes.

Was the motor business his primary concern? -- Oh, no, his other business was his primary concern. 30

And what was that? --- The furniture business - Maple's.

Mr. Lane, I want to take you to the early part of 1949, and I want you to tell us what led up to your first having any conversation with Mr. Ratcliffe about your companies. Before I do that, had you known Mr. Ratcliffe for some time before 1949? --- Yes, I think I met Mr. Ratcliffe very early at the beginning of the war, just casually with somebody else. 40

You had a business association with him? --- Not then. While I was absent on service, the company with which I was connected acquired an interest of all the shares of Bebarfald's in Sydney, and as

a result of that - - - I was passing through Sydney on leave and I met Mr. Ratcliffe. I was on leave, and it was the first time I met Mr. Ratcliffe. Then subsequently in Mr. Lionel Newton's absence I was Director of Berbarfalds and attended all the Board meetings during that period and had a lot of contact with Mr. Ratcliffe who was also a director of that company.

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10 I was directing your attention to the time you first spoke to Mr. Ratcliffe about the motor companies; prior to your speaking to him did you have some conversation with Mr. Lauri Newton? --- I might mention I had come to consult Mr. Ratcliffe prior to that in regard to a gift tax problem of my own. I wanted to make a gift and had asked him if I could consult him professionally at one of those meetings. He refused but said he would be pleased to see me privately and I did get his advice on the gift tax matter.

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Henry James
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20 Before you spoke to Mr. Ratcliffe about the motor companies, you had had some conversation with Mr. Lauri Newton about them? --- Early in 1949 it became very apparent that as soon as any restrictions were lifted and goods were in supply, petrol rationing removed, there would be a lot of difficulty for us with our capital.

30 Would you tell His Honour just what the situation of the capital was at that time? He has got the balance sheets. Tell him how you regarded it as a business? --- Talking about Lane's, I think the capital was about £250,000, and the capital of Neal's about £109,000. I am not sure what the capital of Melford's was, something under £20,000.

40 It was £16,500 in fact. How did you regard that? --- I saw early in 1949 that as a private company we would have difficulties with our present capital structure and being able to satisfactorily finance our business. I knew Mr. Newton had consulted Mr. Ratcliffe in regard to the conversion of Maples into a public company, and he had spoken to me, but quite frankly I resisted to some extent, the formation of these companies into public companies. They had been founded by my brother and I, we had carried them through as private companies and I felt I would like to keep them as private companies.

What was Mr. Newton's position? Did he express any desire to you? --- Eventually. I was

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dying hard. I knew something would have to happen and perhaps we would have to form a public company but I just could not make myself realise that it had to be. Mr. Newton, after seeing Mr. Ratcliffe about Maples, which I understand was rejected, on account of some objectors in the partnership, and they did not form a public company, asked me if I would have a talk with Mr. Ratcliffe about the formation of the company into a public company. I did. About that time I was half sold myself that it would have to be done. 10

Had you in mind any particular time when it would have to be done? --- At that time the Government had not changed. We did not know how long a lot of things, including petrol rationing which of course was quite an item whether people bought motor cars or not, quite apart from difficulty of supply, supplies were very short and orders were tumbling in in thousands, would continue. We just did not know where we were heading. 20

We have got figures here for deliveries for the years 45/46 onwards. I did mention them in opening and that is the only reason I put them to the witness now as part of the figures to give Your Honour an indication of the business circumstances. I propose to ask the witness to give these deliveries from 1945-46 onwards. These are only for Lane's? --- These are deliveries by Lane's, the deliveries we effected to clients.

Is that an extract from your records of the figures? --- Yes. 30

EXHIBIT EXHIBIT A8 ... Extract of figures
re Lane's.

Would the other companies, Melford's and Neal's show the same kind of trend? --- I cannot speak for Melford's, I know that Neal's would. Melford's would be similar.

I was asking you whether at this time you had any idea in your own mind. You said you were half sold on the idea of forming a public company. Had you anything in mind as to when? --- We did discuss the matter with Mr. Ratcliffe. 40

At the moment I am just asking you before you went to Mr. Ratcliffe? --- No we did not.

Did Mr. Newton ask you to see Mr. Ratcliffe?
 --- Yes.

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And did you see him? --- Yes.

With Mr. Newton? --- Yes.

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Will you tell us, as far as you can remember,
 what the substance of that first discussion was.
 First of all, when was it? --- I think it was in
 July 1949, as nearly as I can recollect.

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10 Will you tell His Honour the substance of
 that first discussion with Mr. Ratcliffe? --- The
 first discussion, the first approach to Mr. Rat-
 cliffe was for him to advise in regard to the
 formation of a public company and in regard to
 capital structure, what, in his opinion, was the
 amount of capital we should have and how we should
 go about it. I had no knowledge of public com-
 20 pany conversion or anything at that time, although
 I had been associated with a company that was con-
 verted but I was not active in the conversion part.
 I just wanted general help and ideas as to how we
 should go about it, and what we should do.

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Did you express any opinion about the capi-
 tal? --- I had very definite ideas about the capi-
 tal. Firstly I did not want too high a capital.
 I was not considering the formation of the company
 into a public company just for the sake of selling
 shares at a big profit. This was a company in my
 view that we had started and we wanted to keep
 30 operating satisfactorily for the shareholders,
 whoever they were, and I had no idea. I entirely
 under-estimated the earning capacity of the company
 at that stage. My idea of capital was not in ex-
 cess of £600,000 in the case of Lane's, and I
 stressed that very hard.

Well now, did you express a view about the
 other companies? --- Yes, I think I expressed a
 view in regard to Melford's. In regard to Neal's
 I stressed, in view of the earning capacity. In
 my view this company's capital had to be such that
 40 it would pay a 10% dividend even in adverse cir-
 cumstances. I did not want to be put in the
 position of having a high capital and having to
 find a dividend. I really tried to cover against
 the years which might not be so good, so that I
 could continue paying dividends to shareholders.

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At the first interview with Mr. Ratcliffe did you put these matters to him that you are now telling us? --- I think so. I think I told him my ideas of what the capital should be if we did consider making it a public company. I am sure I did.

What did Mr. Ratcliffe say? --- I think Mr. Ratcliffe was thinking about millions and I was thinking about hundreds of thousands. He probably assessed the future better than I did at that time. I think the first approach was £750,000 or £800,000.

10

At that time did you give him any balance sheet, figures or accounts? --- I do not think we gave him any accounts, just general conversation. I may have had some figures with me.

For the whole of 1949, would you have had the figures up to June of that year? --- I would not have the figures. I would have known that. We take our figures each month.

20

All right. Well then is there anything else you can remember about that first interview that you had? --- At that first interview he asked for our balance sheet. I cannot recall what it was exactly. I know Mr. Ratcliffe wanted more information than we had for the previous year and he wanted more figures than for the 1949 year. I was only dealing with one part.

You subsequently provided Mr. Ratcliffe with the figures to the 30th December 1949? --- Yes.

30

When did you next have any conversation with Mr. Ratcliffe about it? --- I am not clear as to that. My recollection of it was that after the July meeting we had some discussion in August and another discussion in September. I think we would not have had our 1949 figures in balance. It would not have been complete, but I did have a conversation with him, I think in August, but I cannot recollect whether it was in Melbourne or Sydney. I went over to see him a good deal in Sydney, two or three times a month, on matters relating to our own affairs.

40

And did Mr. Ratcliffe come to Melbourne from time to time? --- Mr. Ratcliffe could have come to Melbourne, I think it was September, I cannot recall strictly. We used to have an occasional meeting in Melbourne.

You do not remember whether it was Melbourne or Sydney, but you did have some discussion in August. Was Mr. Newton with you? --- Yes.

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What did Mr. Ratcliffe say? --- Mr. Ratcliffe said at that meeting that he would give further consideration to it. I have not a clear recollection of what the nature of that was.

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10 Did he subsequently tell you about the proposal that he had in mind? --- We were told. I am not quite sure whether it was the next month, but we were told at one stage that he had a private company that was engaged in buying and selling shares and that he would submit the details about it and that it would be a favour to us to buy some shares from us and that would provide capital.

Transcript of Shorthand Notes of Evidence taken before His Honour Mr. Justice Kitto.

Did he explain what kind of shares they would be? --- No, not at that stage.

Evidence of Henry James Lane Examination - continued.

Not at that stage? --- No.

20 What was the next step, Mr. Lane? What was the next discussion? --- I think the next discussion would be about a month later. I may have seen Mr. Ratcliffe in the meantime, but the next discussion was I think some time in September.

In September? --- Yes, in September, when he put in a more complete report.

Where was that? --- I think that was in Melbourne.

30 In Melbourne? --- I think so. I think there was a letter, I think in September.

There was a letter in September? --- It would be before that letter.

Who was present on that occasion? --- I think that Mr. Lauri Newton was there too, but I don't think anybody else.

40 And what did he tell you on that occasion? -- He told us on that occasion that if we altered our Articles of Association and gave certain shares, certain rights in regard to dividends, he would buy the shares with those rights, and with the money that we received for this purpose we could capitalize the company, increase the capital of the company.

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HIS HONOUR: I think he should give more detail. He said "certain shares".

MR. EGGLESTON: If Your Honour pleases. Mr. Lane, can you give us more detail about the kind of rights? --- The rights to certain dividends. He would fix the price of the shares.

Did he say how much? --- Not at that stage.

What else happened at that meeting between you, Mr. Newton and Mr. Ratcliffe? --- I think I raised the question of how would that help us, and I was informed that this was a sale of shares and if such a transaction occurred it would be capital as far as we were concerned, and we would not have any liability for tax as a result.

10

Do you remember anything else about this particular interview? --- No, I cannot recollect anything more.

What was your reaction to this suggestion? What did you say to Mr. Ratcliffe? --- I said that in addition to Mr. Newton and myself, there were other shareholders who had to be informed in regard to this matter, and that either Mr. Newton's or my ultimate decision would have to be the unanimous decision of the shareholders. I think Mr. Ratcliffe said that he would get further in touch with us or see us again about it after we had considered the matter, and I think that up to that time we had not discussed it with Mr. Robert Nathan, who was the principal shareholder. There was really nothing concrete to discuss. He might have known we were talking about it, but that is all he would have known.

20

30

Did you make any arrangement at that interview about further discussion? --- I am sure we would have, but I just cannot recall it.

What was the next occasion on which there was any discussion with Mr. Ratcliffe about this matter? --- I can recall a meeting in Melbourne, but I do not know the date, where we did discuss it, I think, with Mr. Ratcliffe.

40

Who were present then? --- If my recollection is right and it refers to the same meeting, I think Mr. Robert Nathan was there, Mr. Lauri Newton, myself, I think Mr. Len Fenton - I might be getting my months mixed up; I am not sure - and Mr. Thomas. I cannot recall anybody else.

Was Mr. Bunny there? --- Mr. Bunny was not there at the beginning, but we had him there because we were having the discussion. We had him waiting to convey it to him afterwards in Mr. Ratcliffe's presence. We had to call him in to advise us on it.

MR. MENZIES: When was this?

10 MR. EGGLESTON (To Witness): When did this particular interview take place? --- I am not sure whether it was September or October, but it was either late September or early October.

Can you tell us what Mr. Ratcliffe said on this occasion? --- Mr. Ratcliffe outlined his whole proposal in somewhat the ultimate form.

20 Will you tell us as well as you can remember just what he actually said? Give us as much detail as you can of what he actually said about his proposal? --- Mr. Ratcliffe mentioned certain - he had mentioned them before - other courses that were open to us - - the formation of a public company, the formation of a holding company and this course; but whether that was mentioned at that particular meeting - I think it was - I am not quite clear, however. He put it up to us for consideration. He made the plain statement that if we attached to certain shares certain dividend rights and we disposed of them to him - no actual figures, I think, were mentioned in regard to values; they may have been - that he would be
30 prepared to consider the purchase of those shares, and we in turn were to receive the money and we could then increase our capital.

40 Was any figure mentioned for capital increase at this meeting? --- I do not know that it was, but I had very definitely conveyed my ideas of capital, and I think they were accepted, because it would have been very difficult to go against my views as chief of the company. I would not have been happy if they had, and I would not have felt happy if the company had been capitalized more highly than it was.

Did Mr. Ratcliffe explain anything about the way in which he would work out the price for these shares? --- Not that I recall, but he may have done so.

Can you remember anything else that took place at that meeting? --- Was this the meeting when the Ajax position was mentioned? I do not know whether I am entitled to ask that.

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Just keep to the meeting you have been speaking about so far? --- I am sorry, but I cannot recall. There was a meeting in which Ajax was involved, and I am not sure whether it was that meeting. In any case, I do not think anything further than that was discussed.

HIS HONOUR: Did he tell you what special dividend rights he was talking about? --- He did tell us that he would attach certain rights. I had some idea that it would be fairly high. I knew what the shares were worth, and before I sold the shares we would make sure we were getting value for them. 10

But in the conversation, I suppose he gave you some idea of what special dividend rights he wanted? --- They would be rights attached to those dividends which would have to be paid before any other dividends could be declared.

No question of how much at that stage? --- I do not think so at that stage, but it may have been so. I know that at another stage, anyhow, some approximation of price was made clear. 20

Yes, Mr. Eggleston.

MR. EGGLESTON: If Your Honour pleases. At the adjournment yesterday, my learned friend, Mr. Tait, handed me some calculations which he was anxious, I think, to obtain our agreement to. Now, Sir, we have not had an opportunity of making a detailed check, but it was connected with the question of whether Mr. Ratcliffe would be needed. 30

Now, as I understood my friend - - - I do not know whether my friend, Mr. Menzies, would prefer Mr. Tait to be here.

MR. MENZIES: I think that would be better; I am familiar with this, but I think perhaps it would be better.

MR. EGGLESTON: I will say what I want to say, and if my friend wants to defer it until Mr. Tait is available, we could do that.

HIS HONOUR: Yes. 40

MR. EGGLESTON: It appears to us to be correct so far as arithmetic is concerned, but we would make a detailed check of that. All I wanted to say

about it at this stage is this: that if it is desired, in any sense, to use this as a substitute for cross-examining Mr. Ratcliffe as to how the price is made up, we would not agree that it is such a substitute.

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10 We have not thought it necessary to go into the details of the calculations which were made. We have shown the original exposition and the basis of exposition by Mr. Ratcliffe to the directors and shareholders. We have shown the final figures as they came out. We have not attempted to trace the workings out between the initial and the final figures. But if it is sought to draw inferences from this as to how the profit was calculated and so on, then we would not agree that it is a substitute for cross-examining Mr. Ratcliffe.

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20 We regard it as, in one sense, an irrelevant matter. We have not attempted to trace in detail the days on which it was done or re-construct the course of the actual working out, when the information was supplied, and so on.

I only say that now because we do not want it said afterwards that this shows the price was calculated on a certain basis, and that certain inferences adverse to our case can be drawn from that kind of calculation.

30 HIS HONOUR: And you will indeed say, I take it, that if inferences are to be drawn from it they should be put to Mr. Ratcliffe so that he may have an opportunity to deny them if they are wrong.

MR. EGGLESTON: Quite, Your Honour. So I merely leave it at that stage, at the moment, Your Honour, and if my friend says he wants to have Mr. Ratcliffe cross-examined about those things, well then, he can. If not, we will let Mr. Ratcliffe go.

HIS HONOUR: Do you wish to deal with it now, Mr. Menzies?

40 MR. MENZIES: I think I can say, having regard to what my learned friend has said, which is that they would not agree to that document - that is what my learned friend's intimation really is - that it would be necessary for us, I think, to put these figures to Mr. Ratcliffe.

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HIS HONOUR: Well, you wish to do that later in the day, I presume?

MR. MENZIES: I would prefer that Mr. Tait should do it, but I would see no reason whatever, provided it was not an inconvenience to Your Honour, that another witness should not stand down for a while so that this matter can be finalised, and then Mr. Ratcliffe can go, if need be.

HIS HONOUR: Have you any particular wish about that, Mr. Eggleston? 10

MR. EGGLESTON: No, I have not, Your Honour. Mr. Ratcliffe has other business to attend to in Melbourne today; I asked him to come here this morning to find out what was happening in this regard. I am not sure whether he would be intending to go back this evening - - - Mr. Ratcliffe tells me he would be available tomorrow morning.

HIS HONOUR: Well, suppose we fix it for tomorrow morning; he will not be needed here today.

MR. EGGLESTON: If Your Honour pleases. 20

Now, Mr. Lane, would you go back into the witness box, please?

HENRY JAMES LANE, continuing his evidence

MR. EGGLESTON: Well now, Mr. Lane, yesterday I had been asking you about the meeting in Melbourne at which Mr. Robert Nathan, Mr. Newton, you thought Mr. Fenton. Mr. Thomas, and at a later stage, Mr. Bunny, were present? --- Yes.

And at which Mr. Ratcliffe explained his proposal? --- Yes. 30

And you told us as much as you could remember, unaided, about what happened at that conference? -- Yes.

Now, I just want to direct your attention to some particular things, and ask you if you can remember whether anything was said about them.

First of all, capital issues consent; was anything said about capital issues consent? --- I do not think at that particular meeting, no.

Was anything said about taking up Preference shares? --- Yes. If I could go over that a little

--- --

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10 Yes? --- Mr. Ratcliffe's suggestion was - we had at that time two classes of shares, 5000 Preference shares, and the remainder of the capital being Ordinary shares. He advised that if we made a different category of share and classified a certain portion of our Ordinary shares as "A" shares and attached to those shares that were made "A" shares certain dividend rights, he would be prepared to make an offer for those shares.

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20 The other shares were to be classified as "B" shares, that is, the remainder of the Ordinary shares, and that out of the proceeds of the sale we could take up "B" Preference shares, after having, I think, increased our capital. I am not quite sure whether we had to increase our capital. After increasing our capital, we could then use the proceeds from the sale of the "A" Ordinary shares to take up "B" Preference shares in the company, and re-invest the money back in the company.

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30 Now, the other matter - was anything said at that meeting about the tax position, or about taxation, generally? --- I am not quite sure that it was at that meeting, but I did ask the direct question, what was the tax situation, and I was told that, as a result of the sale of those shares we would have a capital gain, and we would be removed from the obligation to pay tax because we had sold our shares.

Yes? --- And in answer to another direct question, that such taxation as applied was 'Pactolus', the obligation of Pactolus as the recipient of the dividends.

40 Yes. As a result of that meeting, or at that meeting, was any decision arrived at by those present as representing the shareholders in the company as to what they would do? --- After that meeting, not in Mr. Ratcliffe's presence, a further discussion occurred, when we had decided that we would proceed with the last, I think it was, of the three alternatives that Mr. Ratcliffe proposed to us.

Yes? --- That was the transaction that eventually took place.

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Yes? --- That was not in Mr. Ratcliffe's presence, I do not think. In fact, I am sure it was not, because it was not ever conveyed to him. He knew we were interested, but we did not convey any decision.

I had formulated certain views after that discussion that we would proceed, as soon as possible afterwards, to quotation or conversion to a public company, and that matter was discussed at that meeting after Mr. Ratcliffe left.

10

After Mr. Ratcliffe left. Now, what was the next step so far as you were concerned, so far as you and your associates were concerned, in pursuance of this decision to go on with the transaction? --- Well, at that meeting, too, when Mr. Bunny was present, we had decided that this was a matter that I would not have the time to handle in view of my other things, that it involved a lot of legalities, and that all future matters should be handled by Mr. Ross and Mr. Bunny.

20

Yes, go on, Mr. Lane? --- Well, I do not recall anything further about that meeting, Mr. Eggleston.

No. Well, what was the next step that was taken; when did you next have any discussions with Mr. Ratcliffe? --- Later on that month - I am not sure of the date - I was required to attend a meeting, a directors' meeting, of Bebarfald's in Sydney, of which Mr. Lauri Newton was also a director, and we went over to Sydney together and decided we would have a discussion with Mr. Ratcliffe about this matter, a further discussion. I know somebody was with us, but I am not sure whether it was Mr. Ross - somebody was there with us at that meeting.

30

Some other person from Melbourne? --- Some other person we took with us. I think it would be Mr. Ross because at that time he had been informed he would have to handle all the machinery of this thing.

Did you have a discussion with Mr. Ratcliffe in Sydney while you were there? --- Yes.

40

What was the nature of that discussion, what did you do on that occasion? --- We simply took Mr. Ross, or whoever it was with us, to go over the plan that Mr. Ratcliffe had detailed to us in regard to our actions in altering the rights of the shares and the various steps that had to be taken to conform with the plan that was laid down.

Did you supply Mr. Ratcliffe with figures? ---
 Oh, yes, I would have supplied him with figures. I cannot recall them but I certainly would have supplied him with all the figures I had up to that date but no final determination was made at the meeting in regard to price, only general conversation to acquaint Mr. Ross, and if I might add to further inform me because I am not an accountant, a lawyer or a solicitor and I had great difficulty in following these things, and Mr. Ross was an accountant.

10

On the 30th September, Mr. Ratcliffe wrote a letter to Mr. Wallace which is annexure 12 and which you have seen, and it contains in the annexures detailed figures in relation to each of the companies and also in relation to the Ajax Company, a memorandum of alterations to be made and suggested terms of contract. You have seen that recently? --- Yes, I saw it within the last month.

20

Did you see that at or shortly after the time it was received in Melbourne by Mr. Wallace? --- Yes, I would have seen it then. It would have been shown me.

Ajax Insurance Company Limited was mentioned in that. Were you interested in that Company? -- Yes, I was a Director of that Company.

I think it is common ground, that Company did not accept the proposal - the shareholders would not accept the proposal to sell their shares? --- Yes.

30

What was ultimately done in relation to Ajax Insurance Company? --- Subsequently, Ajax Insurance Company was more or less a sister company to the Industrial Acceptance Corporation, while the shares may have been held in different proportions slightly, it was part of Industrial Acceptance corporation. It was a Company formed to handle the insurance business that naturally came to Industrial Acceptance Corporation.

40

I want to know what the shareholders of Ajax did with their shares? --- They eventually sold them to Industrial Acceptance Corporation and Industrial Acceptance Corporation at that time was a public company, it was sold to them and is now a part of that company, or a subsidiary of that Company.

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After the receipt of a letter of 30th September, you have told us that Mr. Ross and Mr. Bunny were left to handle the details of what was done?
--- Yes.

Could the witness have Exhibit A3? (document handed to witness).

Would you just turn over there to a letter of 13th October? --- Yes. I see that letter. I have not read it yet.

Would you just read it through. Do you remember receiving that letter from Mr. Ratcliffe?
--- Yes. 10

Were you aware, before you got it, that Mr. Bunny was proposing to include a clause in the contract for repurchase of the shares in the event of a company not being formed into a public company? --- I think I was responsible for Mr. Bunny's action in this matter. Mr. Ratcliffe always insisted that this was a deal to which there could be no strings attached. 20

I think "strings" has been used. Perhaps it is a convenient one? --- Yes. I had formed the opinion in my discussion with Mr. Ratcliffe that the shares which we would eventually sell to him would in due course reach an insurance company. I cannot quite explain how that arose. I think both Mr. Newton and I both had that view. My view was, and I expressed it to Mr. Bunny, that if we were not able to proceed with the conversion in the time we thought, if difficulties arose, probably we would be faced with an insurance company holding a large number of our shares and wanting a seat on the Board and things like that a lot of those companies do. I desired to avoid that if possible. That is what happened at that time. 30

Was it as a result of what you said that Mr. Bunny proposed this course? --- I think so.

Then you got this letter from Mr. Ratcliffe pointing out that this might attract tax in the way he explained in the letter to Mr. Bunny? --- Yes. 40

HIS HONOUR: The letter to Mr. Lane?

MR. EGGLESTON: No, in consequence of the things explained in a letter to Mr. Bunny that was attached.

THE WITNESS: I think Mr. Ratcliffe would have been disturbed about that and that is why he wrote to me because I was more or less out of it at that stage, the ordinary workings of what we were proposing was being handled by Mr. Ross and Mr. Bunny.

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10 MR. EGGLESTON: After you received this letter did you have some discussions? --- With Mr. Ross, Mr. Nathan and Mr. Lauri Newton, and I arrived at the conclusion this was an amount of approximately £75,000 odd, it involved only a 5% annual dividend on the £75,000, and in view of the condition of the Company and its prospects there would be no failure to declare preference dividends as and when they were due and my argument was more or less a foolish one. I was looking for something which might or could not in any normal circumstances arise. I was anticipating something that would not happen.

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20 Did you give Mr. Bunny some instructions as a result of having formed that view and spoken to Mr. Robert Nathan? --- I think I told Mr. Bunny that we waived anything of that nature and the transaction was to remain as it was originally.

Do you know whether Mr. Ratcliffe was advised of your decision after consulting the others, that the shares should remain outstanding? --- I cannot recall it, but I am sure it would have been.

30 You do not know yourself? --- I cannot remember seeing it. It would have been done by letter and I would have been informed, and I may have seen the letter. I would have assumed it was done. I am sure it was done. Mr. Bunny would have acted on the instructions or information given to him.

40 Do you remember the next point at which you were concerned in any discussions about this matter? --- It is quite possible I may have seen Mr. Ratcliffe and had some discussions with him, just cursory discussions, but the next meeting was, I think, the meeting in November in which the Ajax matter - this was before that - the next meeting was the meeting in Melbourne when Mr. Ratcliffe attended and made the proposals to Ajax, and also had further discussions with us.

So far as the Ajax side was concerned, the directors of Ajax considered the matter and decided against accepting Mr. Ratcliffe's offer? --

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It was not all the directors of Ajax because in my particular instance and in Mr. Robert Nathan's instance - Mr. Newton was not a director of Ajax, we would not discuss the matter. We let them make their own decision. We did not discuss the Ajax proposition with Mr. Ratcliffe at all. We had not introduced it and it was something which came in somewhere, I do not know how. Since we were interested and had decided to proceed with Mr. Ratcliffe on this transaction we remained neutral on the matter, and let them make their own decisions.

10

The Directors other than you and Mr. Robert Nathan decided against it? --- Yes.

So far as Ajax was concerned? --- Yes.

Can you tell us what happened at the November meeting so far as any discussions between the motor company people and Mr. Ratcliffe were concerned? Do you recall any details of that discussion? --- No, but I think Mr. Ross would have been at that discussion also, in November. I cannot recall anything other than a general discussion on the whole procedure to be adopted, and the meetings that were to be held. The discussions were more for the enlightenment of Mr. Robert Nathan than anybody. At that time I commenced to understand a bit about them, which I did not previously. There may have been other things that transpired, but they are not clear in my memory.

20

Was anything else done at that meeting so far as the motor companies are concerned, in relation to Mr. Ratcliffe? --- Oh, yes. I think it was at that meeting that we arranged for him to handle our accounts.

30

In what capacity? --- As Taxation Consultant.

Your former taxation consultants had been whom? --- Buckley and Hughes.

You think it was at that meeting in November? --- I think it was at that meeting, and I recall now that Mr. Robert Nathan, who was Chairman, was to see Messrs. Buckley & Hughes; he was to see Mr. Hughes of Buckley & Hughes.

40

Was there any further discussion that you recall about the terms of the arrangement prior to the actual execution of the options, between November and the 19th December? --- You mean a general discussion?

Anything at all? --- I kept Mr. Ratcliffe informed of our figures.

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10 Did you have any discussion with him about the amounts of dividends? --- Yes, I think I did. I was aware, of course, that we had to declare a dividend by the 30th December or pay tax. I would have conveyed to him that we had funds to pay the dividends, and we did have, my points of view being that we had to declare a dividend by the end of December, or the company would have to pay tax. I would have made that quite clear to Mr. Ratcliffe. I would have informed him of the financial position of the company, that we were able to pay the dividends by the end of December and we would have had to do one thing or the other.

20 Was anything said about the preparation of the dividend resolutions, between you and Mr. Ratcliffe? --- No, I think that was all done with Mr. Ross. It may have been done with me, but I have not a recollection. I think it would more likely be done with Mr. Ross or Mr. Bunny.

30 Do you remember any discussion taking place about a clause of the agreement that provided for Mr. Ratcliffe's company to take up preference shares and sell them to the shareholders? --- That arose; I am not sure when it arose. That matter had arisen before November, but in the original statement of Mr. Ratcliffe, in his proposal to us, it was a straight out sale of shares and a receipt of money for the sale of shares by the shareholders, and the re-investment in the company.

40 Re-investment by whom? --- By the shareholders who had sold the shares, in the form of preference shares. The issue in regard to Capital Issues was one that was raised fairly late in the day by our solicitor. I was not familiar with Capital Issues; I knew it existed. I did not know what it was then - as I have heard in Court - that it was a matter of form only, and I think our solicitor was trying to protect us, to do the right thing, so we would not be in trouble with Capital Issues.

Do you remember anything else about any discussion about the terms of the agreement in relation to taking up preference shares? I think it is common ground. As a result of that discussion, it was decided that the preference shares would be taken up by Mr. Ratcliffe? -- Solely as the result of that, we were advised by Mr. Bunny

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that it had to be the recipient of the dividend that took up the shares, and it was finally done in that manner, to comply with Capital Issues.

Is there anything else you can recall prior to the execution of the option by you and the other shareholders in relation to negotiations about this matter? --- No, I cannot recall anything further.

I do not think I need take you through what, in fact, happened in December. It is all set out in the agreed facts. You have read it. You and the other shareholders executed the options? --Yes. 10

And the option was exercised by Pactolus Pty. Ltd., the shares were transferred on the Canberra register, and then dividends were declared, and you purchased the preference shares which were taken up by Pactolus and became the holders of those preference shares? --- Yes.

Could you tell us whether you made any enquiries about the financial position of Pactolus? --- In fact, I did not. My association with Mr. Ratcliffe had been one as a Director of Bebarfalds. I knew he had good associations in New South Wales. It never entered my head to doubt his ability to undertake this transaction in whatever form it was undertaken. I am not familiar with whom he was associated, but I knew he was acting for a lot of people, and I thought that probably some of the people he was acting for were involved in this with him. But I might say that he was regarded as a man of substance and a man of his word, and I was in a private company which was used to doing business that way. 20 30

I want to take you to the second Melford transaction. Can you tell His Honour how the second Melford sale originated? --- I know very little about that. I know that I was informed that it was proposed; I was consulted as a trustee of my brother's estate for consent. I satisfied myself that in view of our legal advice we were entering into a legal transaction and it would be in the interests of the company. Apart from that, and attending the necessary meetings that I was required to attend, I actually played no part in that, but I was kept fully informed by the other shareholders of what was transpiring, and knew all about it. But I do not know how it originated. 40

Did you hold any views about the capital of Melford Motors as it stood after the first sale? --

Yes. Melford Motors was still under-capitalised. It had so much turnover. It has to be realised that in the motor business everything you touch is £1,000 and £1 million goes nowhere.

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You have told us that you were kept informed about the second Melford sale? --- I was fully informed right from the inception.

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And you approved it? --- I agreed to it. I think I had discussions with our solicitor about it.

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10 And you did whatever was necessary in the way of voting to carry it through? --- Yes.

I want to come now to the second Neal transaction. That originated in a letter which is part of Exhibit A.3. You see a letter there from Lane's. It is dated 19th April 1951 and it is addressed by you to Mr. Ratcliffe? --- Yes.

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20 It starts off: "Dear John, Herewith find the monthly profits .. (reads) .. costs statements." Then you give the figures of the monthly profits of Neal's and Devon Motors, and assume what the total profit for the year would be. Then you say at the bottom: "From our conversation I assume .. (reads) .. for your consideration." It refers back to a conference you had some time shortly prior to that. Will you tell His Honour, as best you can remember, what happened at that conversation in or about April 1951? --- This conversation was, I think, in Sydney. At that time we were in process of the conversion of Lane's to a public company, which occurred, I think, on the 30 21st April 1951. All the work had been done. That conversion was under-written some time previously and there was no worry about that.

40 I told John that I thought it was time we proceeded to convert Neal's Motors to a public company and he said he would have a look at it for me. He asked me to give him figures for the company. I had no idea what the purpose was, but just for his consideration, I sent those figures. It was for his consideration for conversion to a public company.

50 The next letter was a letter of the 23rd April from Mr. Ratcliffe to yourself which is at page 138 of the Annexures. It starts off: "Dear Harry, I have considered the figures in your letter of the 19th instant regarding Neal's Motors Pty. Ltd., and have come to the conclusion that a transaction similar to that carried out in 1950 could be carried out before the 30th June next, subject to certain modifications." Then the

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modifications are set out, and a lot of details. That is obviously in answer to your letter of the 19th April. Prior to your getting that letter, had Mr. Ratcliffe said anything about carrying out a similar transaction to the one in 1950? --- No.

He had not? --- There was no reference to it. This was a great surprise to me.

You got that letter, and what did you do with it? --- I would have sent a copy to Mr. Bunny and I would have consulted my associates in the company with regard to it, and discussed the position; Then we sought legal advice as to the validity of such a transaction and we were informed that it was a perfectly legal transaction to undertake.

I want to put this quite generally. Was there any discussion between you and your fellow shareholders about the taking up of further preference shares in Neal's? --- No, I would not have consented to the transaction that involved any increase in capital.

Was that because of some views you held? --- Partly from my own particular point of view, yes, but from the other shareholders point of view, at the time I thought they wanted some funds.

Do you know why they wanted funds? --- I know that they had all had great difficulty in meeting taxation. That was one reason. By that time Mr. Robert Nathan was dead, and his estate was a big one and would have required a lot of funds for probate or estate duty.

As a result of the discussions you have mentioned, was it decided to proceed? --- It was decided to proceed. Our legal adviser advised us that it was a sound legal transaction which would not attract tax to us, and we proceeded.

The next letter in the bundle you have is dated 7th May, written by you to Mr. Ratcliffe, saying, "At a meeting held on Friday, 4th May, at which all the parties concerned were present, it was decided to drop proposal No.2 referred to in your above quoted letter and I was requested to advise you accordingly." I think the rest of it is merely concerned with procedure, dates and the like. Was this your communication to Mr. Ratcliffe of the acceptance of the proposal he had put forward?--Yes.

From then on, was there any negotiation or any modification of terms or anything like that? -- Not that I can recall. I think it followed the same pattern as the previous one. He had all the information in regard to our companies. He made an offer. We gave him an option. I am not sure

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whether he made a formal offer. He must have, and we gave him an option to acquire the shares. He exercised the option and the transaction went on.

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The company declared its dividend? --- Yes. Pactolus paid us for the shares and the recipients retained the profits on the shares.

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10 Did you have any agreement or arrangement with Mr. Ratcliffe about these shares which Pactolus purchased, other than what appears in the documents that have been put before the Court? -- In no case was there any agreement or arrangement about any of these documents that is not in the documents. The only agreements that existed were those in the documents. There was, as you know, some attempt to alter the rights of the "A" shares in the first place, but that was waived and the documents as they exist comprise the agreement, and it was never otherwise.

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Evidence of Henry James Lane Examination - continued.

20 MR. MENZIES: The Manager of the E.S. & A. Bank at South Melbourne is here under subpoena, Your Honour, to produce the original cheques and pay-in slips, and if Your Honour would permit me to introduce this topic at the moment, perhaps I could call the Bank Manager to produce these things to the Court, and then if he wished to do so, he could get away.

HIS HONOUR: Yes.

BLAIR CURRIE, called:

30 MR. MENZIES: Mr. Currie, are you attending under subpoena? --- I am.

You are at the present time the Manager of the E.S. & A. Bank, South Melbourne? --- I am.

And you have with you, I understand, the cheques or most of the cheques that were used in relation to transactions on the 19th and 20th December 1949, in Lane's, Neal's and Melford Motors? --- That is so.

Mr. Currie, do you produce those cheques? -- I do.

40 You also have the pay-in slips which were used on that occasion? --- I have.

Do you produce those? --- I do.

Then there were two later transactions, one in 1950, somewhere about May. Do you produce the cheques and pay-in slips used on that occasion? -- I do. Actually, there were 154 entries altogether requested, but I must apologise for the absence of 20.

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Then there was a later transaction, still in relation to Neal's Motors, and you produce the pay-in slips and cheques in relation to that transaction? --- Yes.

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In addition to the original documents you have mentioned, have you also photostat copies of the cheques? -- I have all the credit slips.

You mentioned that something like 20 cheques were missing. Have you photostat copies of the ledgers which cover those cheques that are no longer available? --- I have.

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Evidence of
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continued.

Do you produce those? -- Yes. (All documents produced and handed to the Court.)

MR. MENZIES: I understand that my learned friend has a list of all the documents that have been produced. It might be of convenience at a later stage if we had that copied. Then we could attach the list to the documents, so that it would show on the face what there is.

HIS HONOUR: Yes, thank you.

20

EVIDENCE OF HENRY JAMES LANE continued:

Cross-
Examination.

CROSS-EXAMINED BY MR. MENZIES:

In 1949, you were then a man of very wide commercial and financial experience? -- I would not admit "financial", but I had a wide knowledge of the business in which I was engaged.

I do not want you to be too modest. Let us try the "financial" first. I suggest to you that you were a man of wide financial experience. I suppose that one of the biggest financial organizations in Australia is the Industrial Acceptance Corporation, is it not? --- Yes.

30

Were you not a Director of it? --- I was.

And you were also a Director of an insurance company - the Ajax Insurance Company? --- Yes.

And in addition to these motor companies, you were also a Director of a number of other companies that carried on business in Australia? -- Only associated with the motor business - our own subsidiaries.

And you would agree that to conduct a motor business itself requires a good deal of financial experience and ability? -- Well, I admit that you have to know a bit about it, but I do regard myself as a financial man in the normal way of a financier or a banker. I had a good knowledge of it in relation to our own business.

40

That is all I want. You had a good knowledge

of it in relation to your own business. I am not suggesting that you were a banker. And you were associated with a number of other men in these businesses, who were also skilled and experienced business men? --- Yes.

And I take it that it would not be an extravagance to say that you knew these businesses inside out? --- Well, I had to.

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10 Lane's was a company that had had quite a long history; I am not quite certain, but from 1916 or something like that? -- Yes, but I was not always associated with Lane's. I did not go into Lane's until 1945. I was primarily associated with Neal's, which was the company I founded. My brother died in 1943, and after I came out of the Army, I elected to go to Lane's because of a suggestion that was made that somebody would be appointed to take charge with whom I did not agree.

20 I do not want to go too deeply into these things, if you will just answer the questions. You will have plenty of opportunity to give any further explanation that you want when my learned friend re-examines you. Did you say that you had no association with Lane's until 1945? -- I had an association.

Were you a shareholder? --- No.

You held no shares of your own? --- No shares at all.

30 You say that it was not until 1945 that you obtained shares in Lane's? --- Yes.

Did you obtain those by purchase from your brother? --- No.

How did you get them? -- I had made a contract with the company to undertake its management and I got that as the consideration.

You had an issue of shares from the company? --- Yes.

Neal's, I think, had been in business from something like 1922 onwards? --- Yes.

40 And at all times you had been the guiding spirit of Neal's Motors? --- Yes.

When did you first become acquainted with the business of Melford Motors? -- I became acquainted with it right from its inception, as a result of conversations with my brother.

Did you know all the business of that company from that time? -- Yes. We would have discussions about how things were going in all our various companies.

You and your brother were close together?---Yes.

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And these companies were principally the companies of two families - the Lanes on one side and the Nathans and the Newtons, which are the same family, on the other side?---Yes.

The only what I might describe as foreign element in Lane's was 5,000 preference shares which Mr. Thomas had?---Yes.

In Neal's 5,000 preference shares that Mr. Broomhall had?---Yes.

But in Melford's, Mr. Fenton was a substantial shareholder?---Not until after my brother died. 10

He came into the group, as it were, at that time?---Yes. He was the Manager and chief executive of the company and he was admitted to the company.

Not on the basis of a preference shareholder, but on the basis of an ordinary shareholder?---Yes.

By 1949 you knew these companies through and through?---Yes.

The business which they were doing, and their financial situation?---Yes. 20

Their relationship with their bank?---Yes.

And you had the advantage, too, of skilled advisers in the conduct of the business of these companies - I am speaking of people like Mr. Bunny?---Yes.

And your taxation advisers were Buckley and Hughes - what was Mr. Wallace in relation to these companies?---Mr. Wallace acted as - he was the auditor of Neal's Motors; I think he was the auditor of Melford's. 30

He was an accountant?---Yes.

And the auditor of Neal's and Melford's?---Yes.

Then, too, as occasion made it desirable, you could call on Industrial Acceptance Corporation and its officers to give you a hand, as it were?---Well, we did call on them on this occasion.

You could, and you did when you wanted to?---

Well, we arranged that; we had never called on them previously.

Let me put this to you quite generally in relation to the three motor companies: in the middle of 1949 they were in an extraordinarily healthy position, were they not?---Yes.

Each one of them?---Yes.

Let us just have a look to get the details. I will take the balance sheet of Lane's.

10 MR. EGGLESTON: Would you want the witness to have a copy?

MR. MENZIES: I should like him to have a copy. (Copy handed to witness). (To witness): I am referring to Annexure No. 3 of this book of accounts. It is headed, "Lane's Motors Proprietary Limited, Balance Sheet as at 30th June 1949." Have you got that?---Yes.

20 Will you look at the Assets side first? I take it that your assets were conservatively valued?---Yes.

And in round figures the addition of your assets was £950,000---Yes.

And of that £22,800 was goodwill?---Yes.

The rest were tangible assets at that date, and conservatively valued?---Yes.

30 If you look on the Liabilities side, am I right in thinking that apart from an item of Sundry Creditors of £146,000-odd there were, as it were, no external liabilities at all?---There was £164,000 owing to shareholders.

I will come to that in a minute. Let us first take this item of Sundry Creditors, £146,000 at the bottom. You have that?---Yes.

That was really the only outside liability, was it not; outside the group?---Yes.

And you had this great aggregation of assets, and this £146,000 that would have to go out of the group to other people. Now you have drawn my

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attention to the loans to shareholders?---Yes.

MR. EGGLESTON: Loans by shareholders.

MR. MENZIES: Loans by shareholders. If you take the first eight of the items of loans they are all loans owing to shareholders?---Yes.

And those dividends that have been paid declared and not drawn?---In part I think they would be, anyway.

And the Collins Motors was a subsidiary?---A subsidiary of Lane's. 10

It was a case of Lane's owing its subsidiary money?---Yes, borrowed money from its subsidiary which was not then operating.

When you say that it was not then operating were not dividends drawn from Collins Motors for the purpose of these transactions with which we are now dealing?---I cannot recall it, but I say there were some dividends drawn from various companies.

Let me pursue this for a moment. When you say that Collins Motors were not operating is your memory letting you down?---No; it was not operating as an active company selling motor cars. That was the original intention, and what it did operate for before it was absorbed by Lane's. 20

Was not Collins Motors carrying on business in 1949?---No.

Did you, out of the moneys which you received by virtue of these transactions, make deposits with Collins Motors, you yourself?---No, I do not think that I ever had any deposit with Collins Motors. 30
In fact, I am sure that I never had any deposit personally with Collins Motors.

(MR. MENZIES CALLED FOR EXHIBIT "A.6".)

MR. MENZIES (To witness): Would you look at Exhibit A.6, and if I may make a rough calculation it appears to me from that that in or about December of 1949 sums totalling £16,100 were deposited by various shareholders, not including yourself, with Collins Motors. If you look at the bottom right-hand side of the page you will find a list of 40

deposits by shareholders to be made with two companies, British Service Proprietary Limited and Collins Motors Proprietary Limited, and if you add up those figures you will find that they will total £16,100 for Collins Motors. Have you got that?--- I can see the Collins Motors list.

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10 I suggest to you - this is Mr. Ross's document - that it was part of the scheme that this £16,100 should be deposited by the shareholders with Collins Motors, and that came out of the moneys which they received in the same way as some other sum totalling roughly £23,000 was deposited with the other subsidiary, British Services Proprietary Limited?---Yes, but I think you asked me if I had money deposited with Collins Motors.

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20 Let us get back to the point. I asked was Collins Motors carrying on business and you said that it was not. At this time was Collins Motors carrying on business?---It was still operating as a company, but not carrying on trading business; not trading.

Can you tell me why it wanted money on deposit if it were not trading?---No, I cannot tell you that.

30 Let me suggest to you that Collins Motors was carrying on investment business at this time, and making profits, and moneys were drawn from Collins Motors?---That may be so. I am referring to its operation as a motor company. It was not operating as a motor company.

Did you mean before that it was not operating as a motor company, or that it was not carrying on any business from which funds would be derived?---Well, I knew it was not operating as a motor business, but I am not - - -

Did you also know that it was operating as an investment company?---I cannot recall it, but if it were I would not deny it.

40 Let us get back to these Lane's Motors figures. Would you agree that this is a very excellent balance sheet from the point of view of the shareholders?---Yes.

And among other things there was a credit

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balance of over £100,000?---Yes.

And that this balance sheet is to be looked at in the light of this further consideration that during the year something like £ $\frac{1}{4}$ m. had been taken out of Lane's in the way of taxable and tax-paid dividends?---In which year?

In the year ended 30th June 1949?---Yes. There was a dividend declared in December, 1948, but some of that might have been paid back in these loans, might it not?

10

I am not suggesting that it was not; it may have been, I do not know. What I want to suggest is this result followed a year in which, in round figures, £ $\frac{1}{4}$ m. had been paid out in dividends?---I cannot - I seem to remember an amount - I can recall an amount of £114,000 or £148,000 declared for dividends in December 1948. I cannot recall the rest of it.

Let me remind you. Let me suggest to you that in December 1948 £111,000 - I will omit the hundreds - was paid out of the funds in such a way that those who received it were liable to tax?---Yes; that is where my £8,000 came from.

20

I will come back to that. In March 1949 there was £138,000 paid out of tax-free funds?---In March 1949 - I cannot recall that.

Those are the figures which my learned friend Mr. Eggleston gave. Perhaps you would accept it?---Yes.

MR. EGGLESTON: If my friend is basing anything on this, Your Honour, I think that it should be pointed out that the total of shareholders' deposits - my friend said paid out in dividends - the total of shareholders' loans, if you exclude Collins Motors and Motor and General Agency, is £111,500 approximately, so it would seem, as Mr. Lane says his £8,000 was his dividend, that the taxable dividends declared in December have not in fact been withdrawn from the company at this stage.

30

MR. MENZIES: If Your Honour pleases, may I suggest that this should be kept for re-examination.

40

HIS HONOUR: Yes.

MR. EGGLESTON: I only rose at this stage because my friend used the expression to the witness, and used it as something which he had gleaned from the accounts, that that amount had been paid out.

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HIS HONOUR: The witness either agrees or does not agree. If he agrees under any misapprehension you can re-examine.

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10 MR. EGGLESTON: If Your Honour pleases, I will leave it at that, but I thought that my friend would be happy to correct his question when it was pointed out that it does not seem to have been paid out.

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HIS HONOUR: It may be or it may not.

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MR. MENZIES (To Witness): Could you tell me what were the deposits on loans by shareholders as at 30th June 1948?---No.

20 Have you any recollection at all whether this £8,362 that you had on deposit on 30th June 1949 was placed there during the calendar year?---I cannot see how it could get there otherwise, Mr. Menzies. I think that was the dividend that was declared in 1948. I might be wrong.

Did you declare dividends prior to 1948 in Lane's Motors?---I do not think we did. Not while I was with the company.

1948 was the first year that Lane's Motors declared dividends?---I think so.

30 Anyhow, if anything turns on this we can get the 1948 balance sheets, but I just want to get this from you, that, having regard to the payments that had been made by the company, even if these deposits came out, the position at the 30th June 1949 was a very healthy one indeed?---Well, I do not agree. The fact is that we owed the bank £109,000. We had, excluding Collin's Motors, £52,000; we had over £100,000 liability to shareholders which could be withdrawn at any moment.

40 Now, you say you owed the bank £109,000; where does that appear?---It appears on this statement - the E.S. & A. Bank, South Melbourne.

Would you look on which side of the balance

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sheet that is?---(Witness looked at document.) I beg your pardon.

Well, in view of that, will you not agree your financial position was excellent?---Yes, but while we had that asset at the bank, we also had loans countering it, which, if withdrawn, would have altered that figure. I just put it the wrong way round. Whatever those loans were reduced by would have reduced the balance at the bank.

Perhaps we could lead to that with this question, that the only outside liability was something like £150,000?---Yes. 10

Now, let us come to Neal's; that is Annexure No.6. If you look at the assets side again, you will see that they total £687,422?---Yes.

Including £10,000 goodwill?---Yes.

And again, were the assets conservatively valued?---Yes, they were properly valued. They were not valued excessively; they would be written down to the extent you were permitted to write them down; the buildings, stock and all that sort of thing would be taken normally. 20

Would you agree that these assets were worth more than appears in the balance sheet?---Yes.

Now, on the liabilities side, the outside liabilities there to sundry creditors amount to £38,798; have you got that figure?---£35,6 - - -

£38,798; it is the fourth figure on the liabilities side?---Yes.

And, in this case, there were again the substantial deposits which were all by subsidiary companies or by shareholders?---Yes. 30

And you had a credit balance of over £125,000?---Yes.

And you also had something over £50,000 in Commonwealth Bonds?---Yes.

So that, not only was the financial position good, but your fluid position was good?---Yes, excepting, Mr. Menzies, that a lot of these monies

could be withdrawn at any time. It was quite good, yes, but any withdrawals of money would affect our credit at any time, the credit we had at the bank.

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Now just take Lane's. I notice that you, yourself, had something like £23,000 deposit?--- Yes, that is tax money being saved for the next tax; I was saving money up for my tax in the company, and letting it have it free of interest.

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10 Can you tell me whether Neal's - - - After all, Neal's was the company with which you were most familiar. Can you tell me whether Neal's had paid dividends during the year ended 30th June 1949? ---I do not think so. I am not quite clear on it, but I do not think we had declared dividends from Neal's, excepting while I was absent on service. There was something done that I am not quite familiar with at this stage. I think it was the result of some legislation; I think it had to deal with capitalisation.

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20 I take the figure Mr. Eggleston gave. He said in addition to the £111,000 of dividends declared in Lane's to the end of June 1949, there was £225,000 declared in the other two companies, that is Neal's and Melford's. I am asking you whether any part of that was declared by Neal's?---I cannot recall.

Well, would you find out perhaps for this afternoon?---Yes, I will find out.

30 Would you pass to Melford; that is Annexure No.9. On the assets side you have a total of £469,000?---Yes.

Including £6,000 goodwill?---Yes.

£38,000 owing by the bank, and Commonwealth Loan of £20,000?---Owing by the bank? You mean credit at the bank?

Yes, a credit at the bank, £38,296?---Yes.

And you had £20,000 worth of Commonwealth Stock?---Yes.

40 And again, were the assets, the land and stock, conservatively valued?---I do not know, I was not concerned with Melford myself; I was not a director of Melford Motors.

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Do you know the company's premises at Elizabeth Street?---Yes.

From your knowledge, would you say £81,000 was an extraordinarily conservative valuation of those premises?---In 1949?

In 1949?---Well, I think restrictions applied then, anyway.

I am just asking you the question?---They would have cost more to build in 1949.

If you cannot answer it, say so, but I am asking you, do you regard £81,000 as a very conservative valuation for those premises?---I would regard it as a low valuation, but I would not say very conservative. I have never been inside the building, I do not know what is contained in the building. I would regard it as the figure that the building cost.

10

Well then, if you come to the other side, the liabilities side, you have outside creditors, sundry trade creditors, £7,500?---Yes.

20

And additional sundry creditors of £20,000?---Yes.

Making £28,000 in all?---Yes.

And those are the only creditors outside the shareholders' dividend accounts, which I presume are dividends declared and unpaid of £51,000. You see that, it is the fourth item?---Oh, yes.

And there was, in this company, a tax paid profits reserve of £192,000?---Yes.

And can you say whether Melford paid any dividend during the year ended 30th June 1949?---I cannot recall, Mr. Menzies.

30

You will find out about that one too?---Yes, but I was not a director of the company; I only acted as trustee for Mrs. Stella Lane.

And you will agree that this, too, is a very excellent balance sheet?---Yes. On the other hand, they had a shareholders' dividend account - an asset at the bank of £38,000, and shareholders' dividend

account, £58,100 that could be withdrawn. So that if those monies had been withdrawn they were only
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Well, they had their Commonwealth Loans?---Yes.

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And I take it that the relationship between the E.S. & A. Bank and these three companies has always been extraordinarily friendly?---You might be surprised. When we wanted money for Lane's Motors from the E.S. & A. Bank, they would not give it to us.

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Well, let me read what you said in relation to this matter. I refer Your Honour to a prospectus of Lane's Motors Holdens Ltd. dated 23rd May 1951.

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(To Witness): I just want to read you a short passage from your own report as managing director of Lane's Motors, and I read for the purpose of asking you in a moment whether or not it is correct:

"Throughout its long history the trading company's finances have been soundly controlled, and it has never been necessary to resort to any other than its own resources and facilities available through its bankers in order to maintain the finances necessary for its business. It enjoys the confidence of its bankers, the English Scottish & Australian Bank Ltd., with whom it has always had excellent relationships"?---That is correct; that was correct at that date.

Well now, that being the position as at the 30th June 1949, the only problem I suggest to you, that faced these companies was how it could keep its trading profits either as trading profits in its own hands or returned to it by its shareholders for use in the business?---Would you mind repeating that, Mr. Menzies?

That the only problem that any one of these companies faced in 1949 was the retention of its trading profits, or the conversion of those trading profits into capital?---No, I do not agree with that, Mr. Menzies. In 1949 we knew we were facing a period in the not far distant future of a very much accelerated business volume.

You were troubled about that, were you?---Oh, yes.

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That was a serious problem for you?---My word it was.

And you were conscious that you would need what, greatly increased financial resources?---We would need more capital.

That is outside capital?---Well, more capital.

Are you talking about outside capital?---I did not speak about outside capital.

I understood you to say that your problem was not merely the conversion of your trading profits into capital, but you needed additional capital?--- We needed further capital, yes. 10

When you say "further capital", are you speaking of outside capital?---I was not speaking of anything; I just meant further capital.

You mean share capital?---We needed more money in the business.

And do you mean money that was to come from sources outside the company?---I cannot tell you what I mean -just that we wanted to increase our capital for various reasons. 20

If we can take this quietly, Mr. Lane. To go back, you are saying you would not have had sufficient capital merely by converting your trading profits as they were made into capital; that would not have been enough, is that right?---I am afraid I do not quite understand the question, Mr. Menzies. I think you are looking for an answer in a certain direction - - -

Mr. Lane, the only answer I am looking for is the best answer you can give in the witness box. Now, I will ask you the question again. Perhaps I could go back a little bit. We have looked at these balance sheets and you have agreed that the company at that time was in an excellent financial position with plenty of fluid resources?---Yes. 30

But you say that in prospect there was need for more money?---Yes.

Now, I am asking you, did you need further money than you could get from the company's trading 40

profits, if they could be converted into capital?--- Well, there was very little left in the company after taxation was paid, and that would not have been enough, because the monies that were on deposit, they would all have disappeared. But that was not my thought at the time; I only thought we wanted a better capital structure.

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10 Well, if you had to pay taxation you would not have sufficient monies in the company for the financial commitments that you foresaw?---I never thought of taxation, Mr. Menzies; I only thought that we wanted an increase of capital. I never thought anything about taxation in the matter.

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20 Mr. Lane, I will ask you this question expressly. Do you mean His Honour to understand that in the period between July and October 1949 you were not concerned with the problem of taxation at all?---If you mean by that our approach to Mr. Ratcliffe, our discussions with Mr. Ratcliffe, we were not concerned with taxation in any form, or ever had any thought of it in mind.

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You have heard my question. Please answer the question. At that time did you, yourself, regard taxation as a problem?---I always regarded taxation as a problem.

At this stage, with these companies, it was a very serious problem?---As far as it became a serious problem when they had to pay it out.

30 In the second part of 1949 you faced one of two things, unless something was done: first of all, there would be a distribution to shareholders of very large sums indeed which would bear tax at 15/- in the pound; the other alternative was that the company would retain the moneys and it would itself pay 15/- in the pound?---That was the taxation position.

You were well aware of that position at the time of this balance sheet, 30th June 1949?---I was always aware of it, not only then.

40 I am looking at annexure 3, looking at the balance sheet on the liability side you will see a figure - "Add profit year ending 30th June, 1949, £372,608" have you got that?---This is annexure 3.

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Yes, Lane's Motors, about line 10, under the heading "Profit & Loss Account Appropriation"?--- That is right.

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And it showed your profit for the year was £372,608?---Yes, less federal tax, £302,000.

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HIS HONOUR: That is not right, Mr. Lane. It is right as you see it but it will not be right in the notes?---It is carried forward there.

"Less Federal Tax £69,800, leaving a balance of £302,799" that is right?---Yes.

10

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MR. MENZIES: Taking it round figures, once you deducted tax from that sum there was something like £300,000 that would bear tax at 15/- in the pound if it were retained in the Company?--- Correct.

Or if distributed to shareholders?---Correct.

Was that not your big problem?---Mr. Menzies, at this particular time when we consulted Mr. Ratcliffe we never thought of tax. We never consulted Mr. Ratcliffe in regard to tax. I think you are trying to get an answer from me that that is why we consulted Mr. Ratcliffe.

20

I have not asked you a question about consulting Mr. Ratcliffe. I want you to tell His Honour whether or not in the middle of June 1949, being a man who knew the businesses inside out, your great concern was you should not have to pay one way or another something like £200,000 tax in Lane's Motors?---It was not my great concern at the moment. I knew we would have to pay tax.

30

If it were merely a matter of tax, you would pay it lightheartedly?---No.

What would you have done?---We would have paid the tax, but nobody ever pays tax lightheartedly.

I withdraw the word "lightheartedly". You have plenty of resources from which you could pay tax?---I believed in the future we would not have resources.

Your view was you could pay the tax and there were resources there that you could use?---I could

40

pay the tax when the resources were there, which I could use if the depositors or shareholders left some of their money in the Company.

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Coming back to this, was it not a matter of very great concern to you that either Lane's or its shareholders should not have to pay something over £200,000 in tax?---It was so much concern to us that that is why I was persuaded to go and interview Mr. Ratcliffe in order to form a public company.

10 So the reason why you went to Mr. Ratcliffe was because of this tax problem?---No.

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What did you say a minute ago? Did you not say it was because of this you went to see Mr. Ratcliffe to form a public company?---It was because of possible difficulties in the future. I do not think I said because of the tax position entirely.

I need not go to Neal's and Melford's, will you agree there was the same problem there?---Yes.

20 And after you had been to Mr. Ratcliffe you received from him, on the 30th September, a letter which showed in terms tax savings amounting to £760,000?---Did I receive that letter? Was that letter addressed to me.

No, it was not addressed to you but Mr. Lane do you say you did not receive it?---I do not say I have not seen it.

I asked you did you receive it?---I cannot recall.

30 When this letter came, Mr. Lane, you were the principal, as it were, of Neal's and Lane's - you were Managing Director of Lanes?---Yes.

And did you give close consideration to the proposal that was made from Mr. Ratcliffe in his communication of 30th September?---Can I see that communication please?

Yes, it is annexure 12, that and the documents that follow it?---Yes, I saw that after - - -

Did you give it close consideration?---I cannot recall it all, but I must have.

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And among other things, let us take Lane's, did you appreciate that one thing that it was telling you was that £307,500 could be saved in tax? You see it at the bottom of page 8, £307,500?--- Tax liability.

Did you appreciate what Mr. Ratcliffe was saying? Instead of that being a tax liability it could be saved and nothing need be paid in tax?--- Well, I would have appreciated that, if we sold the shares, as I had been told by Mr. Ratcliffe, that we were removed from the liability of paying tax. 10

You did appreciate at least half of what you were being told was that in Lane's Motors £307,500 of tax could be saved?---Well we had had advice from Mr. Ratcliffe and we had at this stage taken it to Mr. Bunny and asked his advice about it and we were told we would not be involved in tax because we were not recipients of the dividends, we had sold our shares, and it was capital profit and our transaction would not attract tax. 20

I do not think you understood my question. Look at page 8 and you will see at the bottom of that page a heading "Tax Savings", then you get £307,500?---Yes.

Did you appreciate that one part of the adoption of what was set out would be that you would have a tax savings of £307,500?---Well I would rather put it this way - if I might answer it this way - I knew we would not be taxed for that amount, I believed we would not be taxed for that amount. 30

And you knew that unless you did something you would be taxed for that amount?---Yes, if we had not sold our shares we would have been taxed for an amount, anyway.

That amount?--I assume the correctness of the figures.

We will assume the correctness of Mr. Ratcliffe's figures?---Yes.

And you appreciate, of course, that what Mr. Ratcliffe was putting to you in this £307,500 - the actual figures I was putting to you was merely in Lane's - because he has brought in 1950 profits as well, you appreciate that?---I do, I did not when I looked at it first. 40

Did you appreciate too that what Mr. Ratcliffe was saying to you was that if you adopt this proposal you will save, in Lane's, £307,500, and that saving will cost you £72,500?---I knew that it would cost £72,500, and perhaps more, if my memory is correct. I knew that Mr. Ratcliffe was not doing this for fun. He was entering into a transaction in which he would take some amount of risk, I presume, and he would have to pay taxes. I do not know what taxes he has had to pay. I always assumed he would be involved in a lot of taxes in this transaction.

10

I will come to that in a moment. Let me put this to you. Is this the position: you were prepared to meet the cost to Mr. Ratcliffe of £72,500 for the purpose of saving a tax liability of £307,500?---I was prepared to accept the proposition after legal advice, Mr. Menzies, that we would not be taxable on the transaction.

20

And you were prepared to pay £72,500 to get out of that tax?---We were prepared to pay £72,500 to eliminate ourselves from the tax, yes - eliminate ourselves from being taxed.

In Neal's Motors - just to get the figures again - if you will still look at annexure 12, and putting it in round figures, in Neal's Motors, as you will see on page 12, the tax saving was again £307,500, exactly the same figure as in Lane's. It is under the heading "Saving"?---Yes.

30

And the cost of saving £307,500 tax was to be £64,388?---Yes.

You understood that?---I understood - - -

And you were prepared to pay that cost for the tax saving?---Mr. Menzies, we were prepared to sell our shares and by so doing we would not attract tax.

40

I am just asking you to go back to your consideration of this proposal. When you received and you had it as Mr. Ratcliffe set it out, that if you adopted it you would save £307,500 and it would cost £64,388. Did you appreciate that?---Mr. Menzies, you asked me about this document. I have not the slightest doubt I have seen it. I do not recall a thing about it, what I thought about it at the time. I must have seen it, I admit that. I cannot recall what my thoughts were about it at the time.

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Can you really recall very much about what occurred either on receipt of this document or before receipt of this document?---I have recalled all I can. As far as I am concerned I have made a complete disclosure in any evidence I have given, and Mr. Ratcliffe completely disclosed it. I cannot recall. What I cannot recall I do not want to swear to. I am on oath, I do not want to swear to anything I am not sure about.

I want you to look at this again. You see the word "Saving"?---Yes.

10

At this time you read it carefully?---I would have read it.

And would not a thing which sticks in your mind, as an experienced business man and a tax payer, if you were to let Mr. Ratcliffe, as it were, have £64,388, you would save tax £307,500?---We knew if we did that we would not, - we believed we would not have to pay tax. We did not regard it as a saving. We were informed by a legal advisor and Mr. Ratcliffe. The question of tax was not involved so far as we were concerned. We knew we were making a deal with Mr. Ratcliffe.

20

When you got this document you had not seen your legal advisor about it at all?---I think I might have, I feel sure we would have said something about it.

When Mr. Ratcliffe said something about saving, did you not take his language at face value?---I do not remember it even. I am sorry. I am not going to say I remember I went through that in detail, because I do not. I am not trying to - - -

30

Mr. Lane, although your business is very large, a saving of £307,500 is something which would appeal to you?---Yes, very definitely.

And you would think it was good business, would you not, to pay £64,388 to save £307,500?---Yes, but I knew enough not to do anything about this thing without legal advice, or consent to anything.

Coming to Melford's, just to get the comparable figures there, you will find those on page 15 and again under the heading "Tax Saving"?---Yes.

40

You get a tax saving of £145,770 at a cost of £29,297. Have you got those figures?---Yes. I do not know that I ever saw those Melford figures at all. I do not think I did see the Melford figures at all. I was not a Director and I was not in any discussions except as a consenting party for the sale.

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10 You say that you are confident that you studied these figures so far as Lane's and Neal's were concerned, but you are not confident -- -?---I did not say I was confident as far as Lane's and Neal's were concerned.

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I am sorry. I thought you told me a little while ago that you gave them close consideration.

MR. EGGLESTON: No, he did not say that. That is what you put to him.

20 MR. MENZIES: First of all, you said, "I have seen them," and I asked you whether you gave them close consideration, and my recollection is that you said that you did?---I am sorry, I am sure I did not say that.

Is the position now, although you may have seen these figures, you have no recollection of studying them?---No.

Are you certain you saw these figures?---No, I have said that.

30 So the position is: you may not have seen these figures in October of 1949?---I may not have. I was fully aware of the transaction. I may not have seen it in that form. I knew what the transaction meant.

And that relates both to Lane's and Neal's?---I cannot recall seeing this set of figures. I may have seen them. I do not deny I saw them. If I had seen them, I would have considered them.

Did you not invite Mr. Ratcliffe to make certain proposals to you?---No.

You did not?---No. We asked for his advice. We did not invite Mr. Ratcliffe to make any proposals.

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Was this the only written advice that you got from him?---I cannot recall that. The correspondence will disclose that. I cannot recall what letters we got over that period. If I could make an explanation, Your Honour, it has to be recalled that I was active in other business, and I had a lot of other things to do and to consider. These meetings and discussions were held, and then I had to turn immediately to something else.

You think that the prospect of saving a quarter of a million pounds is not something which would stick in your mind?---I am sure it would. 10

Do you understand now, Mr. Lane, that this document contains a proposal for saving a quarter of a million pounds?---I understand now, yes.

And is this the first time that you have understood this was contained in that document?---I have not seen the Annexures. I have heard something about some letters that Mr. Ratcliffe had sent, or some figures, but I have not seen that document. I have not seen the annexures previously, 20

You have not seen the annexures previously?---Not previous to this.

Previously to my showing them to you this morning?---No, and that applies to every one of them, I have not seen any of them.

That is your oath?---That is on my oath.

Neither in the preparation of this case nor back in 1949, did you ever see these annexures until I showed them to you this morning?---I could not say that in 1949. I must have seen a lot of correspondence at that time. I said I had not seen these annexures in the course of the preparation of this case. I could not take oath on what I have seen and have not seen in 1949. 30

You do not remember whether or not you saw these annexures in 1949?---I do not remember whether or not I saw those annexures in 1949, but may I say something I was very closely in this thing and I knew the general plan, and I knew its ultimate result. 40

Let me go back a little. You kept running

figures for Lane's and Neal's to show month by month how you were getting on?---Yes. We kept what we call a monthly cost statement that each month gave us, approximately six weeks after the end of that month, our profits.

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Six weeks after the end of the month?---Six weeks after the end of the month.

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10 And do you know whether similar records were kept in Melford Motors?---I believe so, I am not sure, but it was kept in Neal's.

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So within six weeks of the 30th June, you knew, in broad outline, what was the result of your year's trading?---Yes, I can go further than that and say that I would be able to make a fair estimate by the end of June, in accordance with the amount of business we have done.

And looking back at it now, it is fair to say, is it not, that the year ended the 30th June 1945 had proved to be a good year?---Yes.

20 And being a good year, there was a very substantial tax liability looming up?---Yes.

Unless something was done?---Yes.

And were you not concerned that something should be done so that the tax liability which loomed never arrived?---That is one of the reasons that we consulted Mr. Ratcliffe in regard to the formation of a public company, so we would remove from the private company tax.

30 When you saw Mr. Ratcliffe, did you not tell him that?---No.

That one of the things you wanted to do was to get out of private company tax?---No, we did not

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tell him that.

Why not?---I do not know why not.

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That was the point of it?---No. The point was that we wanted to become a public company in order that we would not pay private company tax.

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Let us take it step by step. We will take Lane's, just as an instance. In round figures you foresaw taxation on your 1949 profits of something like £220,000?---Yes.

And your position was that if that prospective liability became an actual liability, you could meet it?---We could meet that tax?

10

Yes?---Yes.

But you were anxious not to meet it?---Yes.

And one of the ways in which you had some understanding at the time, that you might escape it, was the formation of a public company, and your reason for contemplating the formation of a public company was to ensure that that tax prospect never became an actual liability?---That is right.

20

And it was because of that you saw Mr. Ratcliffe?---Yes.

Did you not tell Mr. Ratcliffe what it was that actuated you in considering the formation of a public company?---I do not recall it, but I have no doubt that we would say to Mr. Ratcliffe that the burden of private company tax and being compelled to either distribute the money or pay tax on it, would be the fact, and that is why we were going to form a public company.

30

You did not really only consult Mr. Ratcliffe

about the formation of a public company?---That is all in the first place, no other reason whatever, excepting what I have told you now.

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Did you make him understand that why you were contemplating a public company was to get out of private company tax?---Yes.

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You made that clear to him?---He would understand that.

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10 It does not matter whether he understood it. Did you tell him?---I have no doubt at all we would tell him.

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And you were speaking to him primarily on behalf of Lane's and Neal's?---Only on behalf of Lane's and Neal's at that stage.

You had Mr. Newton with you, did you?---Yes.

And he was representing Melford's, was he?---I do not know whether he was representing Melford's. He was there at the meeting. He would have talked for Melford Motors, not me.

20 And your evidence to His Honour is what you did was to consult him in relation to each of these companies about forming a public company?---Yes.

30 Are you able to say whether it was ever contemplated that Melford's would be turned into a public company?---Yes, it was contemplated until the matter was subsequently discussed, I understand. Mr. Newton can probably give better evidence on that than I. I understand that difficulties would arise with the Ford Company in regard to that.

You say that in July 1949, when you first consulted Mr. Ratcliffe about these things, that

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one of the things on which you sought his advice was turning Melford's into a public company?---I would say so, although I was not the prime mover.

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You also sought his advise as to turning Neal's into a public company?---Yes.

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And of turning Lane's into a public company?---
Yes.

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And **your** view was that all that would have to happen by the 31st December 1949 before you could get out of this impending private company tax liability?---Yes, we had another alternative that Mr. Ratcliffe gave us, that we could have formed a holding company and suspend it for another year.

10

You told me the only thing you consulted him about was the forming of a public company?---Yes.

So you went along to him and said, "We have got three companies here. We want your advice about turning them all into public companies before the 31st December"?---Not before the 31st December, turn them into public companies as soon as it was practicable.

20

And did you tell him why?---I think I have mentioned previously to you that the matter of taxation would have cropped up, and it was a vital factor in everything we did, and he would have known that anyway without me telling him.

Then, we can carry on from here, on the basis that Mr. Ratcliffe knew what your problem was about taxation?---Of course he would. He was not our taxation consultant but would know.

30

And what you were really consulting him about was about your taxation at that time?---No.

Was there any reason for turning these into public companies, other than your tax problem?---I think so. I had resigned myself to forming it into a public company, and I thought it was right, in order to make our holdings liquid. They were assets, but they were assets that had no value to anybody except ourselves.

My recollection is that Mr. Ratcliffe said

40

that you were resistant?---So I was.

Resistant to the idea of a public company. Do you agree with that?---I was, yes.

And yet you asked him about the formation of public companies and nothing else?---That is true. I was resistant to the public companies, and I said in my evidence yesterday that I was resistant.

10 He said further that you were resistant to his suggestion of public companies?---No, I was resistant to his suggestion of a higher capital, not a public company.

20 When did your resistance to the idea of a public company cease?---It ceased really before I got to Mr. Ratcliffe. I had had many conversations with Mr. Lauri Newton about it. I realised that it had to be done, but we had been able to run things in our own way in the past, and I did not see why we should not have the sole control and do what we liked in the future. Apart from that, I realised also that all my assets were frozen in private companies. They had no real value to anybody outside, and I was not unmindful of the position that the others were placed in. In our operations, there has never been a dissentient, and if one party pressed hard enough, the other party would acquiesce and go with them, and that is what I did.

30 And in the long run, neither Neal's nor Melford's ever became a public company?---No, and I can explain that, too, if you wish.

Let us get back to Mr. Ratcliffe. I think you said yesterday that, in the course of conversation some time in September, he put three proposals to you. The first was that the motor companies should themselves be converted into public companies? ---Yes.

The second was that a holding company should be formed for each of the motor companies?---Yes.

40 And the third was that special rights should be attached to certain shares in each of the companies and those shares should be sold?---Yes.

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And were those proposals put to you as something from which you could make your choice?---Yes.

Did you understand that, by converting each of the motor companies into a public company before the 31st December 1949, your problem of private company tax for the year ended 30th June 1949 would be solved?---Yes, but if I may add, in forming a public company you are required to give the performance of the company over a certain number of years, and those were not satisfactory years from an earning point of view in which to float a public company, because of the short supply that existed. If you go back from 1949, you get into the war years when we had no business.

10

What you are now saying could be put this way, could it, that 1949 was a bad time to convert these motor companies into public companies?---It would have been a bad time for those companies.

But your understanding from Mr. Ratcliffe was that if you adopted that course, by converting Lane's, Neal's and Melford's into public companies before the 31st December, you would solve your tax problem in relation to undistributed profits tax on the profits for the year ended 30th June 1949? ---I knew that without asking him.

20

But anyhow, did he tell you that?---Yes, he did tell me.

May I take it from what you have said that you were not in favour of the formation of public companies at that time because, for business reasons, it was inopportune?---Inopportune and impracticable, I thought, to get it through in that time.

30

Would the formation of a holding company meet exactly the same business difficulties as the conversion of the motor companies into public companies? ---I beg your pardon.

Would the formation of a holding company for each of the motor companies not meet exactly the same business difficulties as the conversion of the motor companies into public companies?---No, it would not.

40

You felt that you could form a holding company?

---We could have formed a holding company.

Which was a public company?---No, it would not have been a public company because of the shareholders.

The proposal so far as the holding company was concerned was that it should not be a public company?---No, that would be the first step towards a public company.

10 But in 1949, before the 31st December, was the only proposal you had in mind in relation to a holding company that it should be a private company?---It would have to be a private company; it could not be otherwise.

20 We have got to the stage that, although you were consulting Mr. Ratcliffe about the formation of public companies, your view was that it was quite impracticable; that you could not convert the motor companies into public companies and you could not have a holding company that was a public company?---Yes.

Let me put this to you: Was not your inquiry from Mr. Ratcliffe a very much more direct one - how can we get out of this tax?---No, definitely no.

You say again that your one inquiry to him was for advice as to the formation of public companies? ---Yes.

And do you say that that was to be done before the 31st December 1949?---I did not say that.

30 I am asking you - do you say it?---No, I asked generally for the future.

You were not looking for a solution before the 31st December 1949?---No.

Had you reconciled yourself to the payment of undistributed profits tax on the profits for the year ended 30th June 1949?---I knew we would have to pay them.

So you were surprised when you got from Mr. Ratcliffe a proposal which would mean that you

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would not have to pay them?---Very much surprised
- very much surprised - something we had not even
thought of or anticipated when that proposal came
from Mr. Ratcliffe.

You have no recollection of seeing the docu-
ment in which it was put into form?---I have no
recollection, but I will not deny having seen it.
I will not deny that mass of figures for all these
companies.

This surprise is something that sticks in
your mind, is it?---The surprise in regard to Mr.
Ratcliffe's version of it? 10

No, Mr. Ratcliffe's suggestion of a way in
which three-quarters of a million pounds of tax
could be saved?---It was a great surprise.

When did you first learn that three quarters
of a million pounds of tax could be saved?---In
our first discussions with Mr. Ratcliffe, I think
I got down with a pencil and paper and found out
that if we sold our shares there would be so much
tax saved. If we took his advice, we would not
have to pay so much tax; there would be an appre- 20
ciable amount of tax saved. I could not as an
accountant figure it out, but in my own way I could
make a calculation on it.

You said, I think, that was on the occasion of
your first talk with Mr. Ratcliffe?---No, Mr.
Ratcliffe on our first talk - - -

I should like that answer read over.

(The shorthandwriter then read the answer: 30
"In our first discussions with Mr. Ratcliffe, I
think I got down with a pencil and paper and found
out that if we sold our shares there would be so
much tax saved.")

Do you want to amend that?---Yes. In our

first discussion with Mr. Ratcliffe, he did not give us any advice at all. He wanted more information.

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Would you please tell me what amendment you desire made to that answer?---Would you read it again? (Shorthandwriter read note.) That was not in the first discussion. It would be, I think, in the second or third discussion; I am not sure which.

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10 HIS HONOUR: It reads "in our first discussions", plural?

THE SHORTHANDWRITER: Yes, Your Honour.

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THE WITNESS: It was not in the first discussion with Mr. Ratcliffe. When we first discussed the matter with Mr. Ratcliffe and asked about this he asked for figures about the company, and did not give us any advice at all.

20 MR. MENZIES: Was that on the first occasion Mr. Ratcliffe gave you no advice?---No, no advice at all.

So that on the first occasion when he gave you advice you appreciated that there would be a tax saving?---Yes. But he also told us before that that we would not attract tax as a result of this transaction.

When you say "before that" I do not quite follow?---He stated to us that he had a proposal to make to us that would remove us from the liability for tax. Then he made this proposal.

30 Again I am sorry not to have followed you, but I thought you told me a few minutes ago that he made three proposals to you. Is that right?
---Yes.

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Was his statement about tax - no liability
for tax - in relation to the three proposals?---
No, only the last one.

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Only to the last?---Only the last

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Were you left to understand that if you
adopted either of the other proposals you would
be up for tax?---No, I knew that if we formed a
public company we would be only liable for the
primary tax; I also knew that if we formed a
holding company and you distributed all your
profits you would not be liable for the tax for
another year, only that.

10

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You say you knew that if you adopted the
first or second proposal there would be no tax,
and Mr. Ratcliffe told you that if you adopted
the third proposal there would be no tax. Is
that it?---We would not be taxable. But Mr.
Ratcliffe also made another suggestion in regard
to what was common practice at the time on making
a certain number of shareholders, but I do not
think that was persevered with very far.

20

Was that the proposal to turn each of the
motor companies into a public company by introdu-
cing - - -?---Introducing outside people as share-
holders. Dummying it up, really.

Leaving dummies out of it for the time being,
you did not want any other foreign interests in
these companies if you could avoid it?---Yes, that
was my thought.

HIS HONOUR: Yes, Mr. Eggleston.

30

MR. EGGLESTON: If Your Honour pleases.
Before lunch, my learned friend had asked Mr. Lane
about dividends declared by Neal's and Melford's
during the year ended 30th June, 1949. I do not
mean out of the profits of that year, but during
that year.

We have the minute books, and by arrangement
with my learned friend I am stating this in the
form of an admission, which is the information
which my friend wants.

40

On 23rd December 1948, Neal's declared ordinary dividends of £62,300 out of the profits for the year ended 30th June 1948. So that would have been the taxable dividend in the hands of the shareholders.

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10 As far as Melford's is concerned, on 23rd December 1948 Melford's declared a dividend of £51,800 out of the profits of the year ended 30th June 1948. I think Your Honour will find, in fact, that that is the amount which stood to the credit of the shareholders' dividend accounts in the balance sheet, somewhere round about £51,000.

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Those were the only dividends declared in those two companies during that year, with the exception of the £250 Preference dividend declared twice half-yearly in Neal's. That is on the 5000 Preference shares.

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HIS HONOUR: What about Lane's?

20 MR. EGGLESTON: We gave Your Honour the Lane's figures, £111,500, I think, in December, and then there was £138,000 odd, tax free dividends, declared in March.

HIS HONOUR: I remember the £111,000 was not tax free, and the other was.

30 MR. EGGLESTON: And, Your Honour, my learned friend, Mr. Menzies, reminds me that I did give Your Honour the total figure of the dividends declared in December. It was about £225,000, and it is the total of those three amounts, the Lane's, Neal's, and Melford's, which Mr. Ratcliffe used in calculating the provisional tax.

HIS HONOUR: Yes. Thank you, Mr. Eggleston.

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HENRY JAMES LANE, further cross-examined by Mr. Menzies.

MR. MENZIES: Mr. Lane, I want to pass now to the proposal that was accepted in relation to the three companies in the second part of 1949.

You may remember this morning you told my learned friend, Mr. Eggleston, that at a meeting of shareholders following a meeting with Mr. Ratcliffe, the shareholders agreed that they would go on with this particular proposal. Do you remember, Mr. Lane, what was the date of the meeting, or the month in which that meeting was held, when the shareholders agreed to go on with what I might call the Pactolus proposal? --- I think that was either September or October; I am not too sure of it. I do not think we conveyed it to Mr. Ratcliffe - - - 10

I was going to ask you about that. When Mr. Ratcliffe had made a proposal to you and you had, as it were, stayed behind to decide whether or not you would accept it, and the acceptance of it would require a good deal of work in the way of drafting amendments to Articles, dividend resolutions, and so forth, all of which were done, do you not think really that you did communicate to Mr. Ratcliffe that you would be going on with that proposal? --- We might have indicated it, but it was not actually definite, Mr. Menzies. 20

But was it not definite after that meeting; did you not definitely decide that this particular proposal was the one you would adopt? --- We had agreed that that was so, yes. 30

And you did appreciate, of course, that to carry it out would involve a lot of work? --- Yes.

And some of that work would have to be done by Mr. Ratcliffe, particularly the drafting of dividend resolutions, and things of that sort? --- Oh, yes.

And bearing all those things in mind, would you not think it likely that you told Mr. Ratcliffe that you were going on with this? --- I do not think we intimated to him definitely that we would proceed. 40

Have you any reason why you did not? --- None at all, Mr. Menzies, only - I think that was the

first time Mr. Bunny had been brought into it, and we wanted to have further discussions with Mr. Bunny.

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You had discussions with Mr. Bunny that afternoon? --- Oh, yes.

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10 Well, that being your recollection, will you tell His Honour when it was that you did tell Mr. Ratcliffe that you were going on with this proposal? --- I would think it would be at the November meeting or thereabouts, or may be a little before that.

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I see. Well now, let - - -? --- If I might interrupt you, I may have been in conversation with Mr. Ratcliffe apart from the general meeting I told you about.

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Well, we could get at this anyhow, there was no reason for keeping it back from him? --- Oh, no.

And you were seeing him? --- Yes.

20 And a lot of arrangements were being made to put the thing in hand? --- The arrangements were in the hands of Mr. Bunny.

Well, let me see do I understand what the proposal was as you accepted it, and as Neal's Motors is the company you are particularly interested in, let us take it in relation to Neal's Motors. It was proposed that the Articles of Neal's Motors should be amended? --- Yes.

And that special dividend rights should be attached to certain shares? --- Yes.

30 That those shares should be sold to Pactolus? --- Yes.

That the money that was recieved by Pactolus in dividends should be used to pay for the shares? --- Yes.

That the money that the shareholders received was to be used to pay for new preference shares in the company? --- Yes.

40 And that, by that process, what came out of the company as dividends went back as capital, or part of it, the greater part of it? --- Well,

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actually we sold the shares for a certain amount, and it was the amount for which we sold the shares that went back.

Do you agree generally with the way I put it, or would you like to make any amendment? --- Oh, no.

I just want to get your understanding of it. That was your understanding of it? --- Yes.

Let us look at that in the figures so far as Neal's are concerned, because that was your special interest? --- Yes. 10

The special dividend rights that were attached to one-third of the shares were rights to receive dividends of £13 per share. Do you remember that? --- Yes.

The purchase price was £12.8.4. for each of those shares? --- Yes.

That left a figure of 18/8d. difference between the dividend and the purchase price which was to remain with Pactolus, and that difference amounted in all to £64,388? --- I will accept that figure. 20

What I want to ask you about in relation to these things is this: take first of all, the difference between the £12.8.4. and the £13.7.0. When was it agreed that the dividends would be £13.7.0. and the purchase price £12.8.4.? --- That was not agreed upon until we gave the option to Pactolus.

I want to remind you that the option to Pactolus was not given until some time about the middle of December, the 15th, but sometime previously to that you had adopted articles which attached special dividend rights of £13.7.0. to the shares? --- Yes. 30

MR. EGGLESTON: The 14th December, the options were executed the day after.

MR. MENZIES: So the dividend resolution preceded the option by a day? --- I accept the dates.

At this time, so far as I have followed the evidence, you were in Melbourne with the other shareholders? --- Yes.

Mr. Ratcliffe was in Sydney? --- Yes. 40

So far as we have been able to see there was no correspondence dealing with this question of price. Do you know of any correspondence? --- No not that I remember.

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You do not remember having seen it? --- I think Mr. Bunny was the means of conveying it to us. He finalised it.

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10 You having said you thought the price was reasonable - did you think the price was reasonable? --- Yes.

Evidence of Henry James Lane Cross-Examination - continued.

20 When did you get the opportunity of knowing what the price was for determining whether or not it was reasonable? --- Mr. Ratcliffe had mentioned figures before, as a general principle, without establishing a definite figure for the shares. When that figure was conveyed to me I was able to calculate in my own way, just what the difference was and the difference between what we were receiving from Pactolus and he was receiving. He was getting money, and in addition he was getting shares. I fully realised that.

Having regard to the plan that was adopted and which you explained a moment or two ago, you were not really in any way concerned with the financial resources of Pactolus, were you? --- I was not concerned, I always believed that they would be able to meet their obligations if required.

30 The point I want to make is that they were really not incurring any substantial obligations to you because it was part of your arrangement that they should get a larger dividend than the purchase price - that Pactolus should receive a larger dividend than the purchase price, and should use that dividend to pay for the shares? --- That is quite correct, at that stage, but that was not understood in the first instance.

Was it not always understood? --- I do not think so.

40 When did you first come to understand that? --- I do not think Mr. Ratcliffe knew in the first instance just what dividends we would be able to pay, if he did, I had not committed myself to him.

But, Mr. Lane, independently of the amount of the dividends, it was always intended, was it not,

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that the dividends should substantially cover the purchase price? --- I do not think that is quite correct. We had to declare dividends. We knew by the end of December and Mr. Ratcliffe would have taken that into his considerations and I think Mr. Ratcliffe advised us this way.

I want you to go back to the question I first asked, when you first began to discuss this. I put this to you, the scheme was certain rights should be attached to the shares, those shares should be sold, a dividend should be paid, and that dividend should be used to purchase shares; and you agreed to that? --- Yes. 10

Was that not always the case? --- Not it was not always the case, that developed out of discussions that occurred.

Did you ever have in mind that Pactolus was to find, from his own resources, something over a million pounds? --- Not that amount, I knew we would have to declare some dividends by the end of December which could be used, whether that would be sufficient for Mr. Ratcliffe to do it, I did not know in the early stages. 20

Was it not always intended that Pactolus should make a profit? --- Surely.

Was it not always necessary that the dividend should exceed the purchase price? --- That the dividend should exceed the purchase price?

Yes? --- I do not know.

Take it quietly. You say it was always intended that Pactolus should make a profit? --- Yes.

What it was to receive was the dividend, and what it was to pay was the purchase price? --- Yes. 30

Was it not, from the start, intended that the dividend should exceed the purchase price? --- Yes, but not necessarily at the same time as they were declared. They may have had to provide money for a period.

It was always intended that should be done within a short time? --- That was Mr. Ratcliffe's idea.

And yours too? --- No, as far as we were concerned it did not matter. We had a demand for the dividend which we would eventually pay, anyway. 40

On the 17th November, Mr. Ratcliffe opened a bank account in the name of Pactolus with the E.S. & A. Bank, South Melbourne, which was your bank? --- Yes.

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10 At that time he knew that the sum he would require to cover this interim of which you are speaking, was £19,000. It is set out in his letter of 8th December. It is on page 10 of the Mutual Admissions, line 10. I will just read this passage to you. It is a letter from Mr. Ratcliffe to Mr. Ross dated 8th December, "I have calculated that Pactolus Pty. Limited will need something less than £19,000 to meet the cheques which it will give on this new account."? -- Yes.

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That turned out to be a very accurate estimate in the long run.

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20 At that stage was it not perfectly apparent to you that the dividend would exceed the purchase price and the financial stability of Pactolus was not a matter which concerned you very greatly? -- It was at that stage, because we had to declare certain dividends and he was acquiring shares; we were buying the shares back from him - that is the "B" preference shares - and the money was coming back from the company.

30 I appreciate that, and all this was to be done in one transaction around the table, with the passage of cheques? --- I was not aware of all those arrangements. I had been to the meetings, but it was Mr. Bunny.

I just want to ask you this question, Mr. Lane, did you know what did in fact take place, what took place in Canberra? --- I do not know if I knew it, whether it was to take place in Canberra, but I knew it was to take place.

And there was at no time any proposal that Pactolus should owe the shareholders any large sum of money for shares which it had bought from them? --- No, not as far as I know.

40 Mr. Eggleston, would you produce the resolution of the Directors of Lane's, passed on the 18th November 1949, which initiated the amendment to the articles, attaching the special resolutions? I am referring to paragraph 12 of the admissions, page 11: "Pursuant to a resolution passed by Meeting of Directors held on the 18th November...".

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MR. EGGLESTON: I will produce it, Your Honour.

MR. MENZIES: I will come back to that.
(To Witness): It was always your intention, was it not, whoever it was that purchased the "B" preference shares, that the newly created preference shares should go to the original shareholders? --- That was for Capital Issues consent, why that was done.

You say the reason why it was done in two stages was really because of Capital Issues? ---
Yes.

10

And it was always your intention that whoever purchased these shares with special rights that the shareholders should have the newly created preference shares? --- Yes.

Was it not, too, always your intention that these shares with special rights should be sold to Pactolus and not to any insurance company or other financial institution? --- No, it was never - that was not so. Pardon me. I may have been mistaken.
Are you talking about the "A" shares?

20

I was putting to you that it was always your intention that the "A" shares should be sold to Pactolus and to nobody else? --- Following Pactolus, or do you mean they could not be sold by Pactolus to anybody else?

No, I am talking about the sale from the shareholders to somebody else? --- No, that was the only offer we got for the shares and we accepted it.

You never had any idea they would be sold to anybody other than Pactolus - the "A" shares - by the shareholders? --- No.

30

In the next stage, Mr. Ratcliffe made it clear to you, did he not, that Pactolus would be selling the shares that were sold to it by the shareholders? --- Yes, we always understood that that might be the case, but not definitely so.

Did you not know all the way through that would be so? --- No.

You appreciated, did you not, that it was an element of this transaction that Mr. Ratcliffe's company would not have to pay £750,000 in tax,

40

because if it did, it could not have carried out the transaction? ---- I did not anticipate that Mr. Ratcliffe would have to pay £750,000 in tax, but we did anticipate - I did at any rate - that it would have to pay a considerable amount of tax. I did not know how it would be arranged by him, but I had anticipated he would have a very substantial amount of tax to pay.

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10 And you thought that this £166,000 that he was receiving would be depleted by taxation? ---- Yes, very substantially.

Did he tell you that? ---- No.

That was just your own guess? ---- I could not see how it could be done otherwise.

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20 Did you ever hear of Pactolus Investments? -- I did hear of Pactolus Investments, but they were not of any significance to me, because I always was of the opinion that all these shares which were not sold would be sold to an insurance company.

I want to put it to you that you were told that Pactolus Pty. Ltd. would be selling the "A" shares to Pactolus Investments? ---- I will admit that I was told, but it did not mean much to me.

You did not care? ---- No, I did not realise - I did not understand Mr. Ratcliffe's transactions; I still do not understand.

30 But you did know? ---- It was mentioned. I think it was mentioned in some correspondence at some time.

Your recollection is perfectly correct? ---- I have seen that in the mutual admissions.

So you knew the shares were going on from Pactolus to Pactolus Investments? ---- I did not appreciate it at the time, but I do now.

And you stipulated, did you not, that the "A" shares, upon the special dividend being paid, should cease to have a vote? ---- Unless the dividend was in arrears.

40 Unless the preference dividend was in arrears? ---- Yes.

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Let me come to the second Neal's transaction. You remember that my learned friend this morning invited your attention to a letter of the 19th April. It is part of Exhibit A.3? --- Yes, I think I recall that letter now. What number is it?

It is A.3, dated 19th April 1951? --- Yes.

What you did there was to set out the monthly profits of Neal's and its subsidiary, Devon? --- Yes.

10

And as I followed your evidence, your recollection was that the last sentence of this letter, which reads as follows: "From our conversation, I assume that these are the figures and will be sufficient for the purpose of your considerations" referred to a discussion that you had had with Mr. Ratcliffe in relation to converting Neal's into a public company? --- Correct.

What is that recollection based upon? --- At that time we had already - if I am correct in the date of Lane's Motors conversion to a public company as at that date - prior to that date we had finalised and had all the shares of Lane's Motors under-written, and the matter as far as we were concerned, excepting the actual sale of the shares by the brokers, was completed. I told Mr. Ratcliffe that now we had finished with this one, it was time we got on with the conversion of Neal's to a public company.

20

You have a precise recollection of that? --- I have a recollection of that, yes, but that must have been in a conversation with Mr. Ratcliffe somewhere. I do not know where it was; I think it might have been in Sydney.

30

Can you offer any explanation as to why, in the letter you got from Mr. Ratcliffe dealing with the figures that you had provided on the 19th April 1951, there is no reference whatever to converting Neal's to a public company? Perhaps you might look at Annexure 55 on page 139 of the volume. I suggest to you that when you glance at that, you will find that it is merely a proposal to pay dividends out of Neal's and it contains no reference whatever to the formation of a public company? --- The first paragraph reads, "I have considered the figures in your letter of the 19th inst. regarding Neal's Motors Pty. Ltd. and have come to the

40

conclusion that a transaction similar to that carried out in 1950 could be carried out before the 30th June."

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Which has nothing whatever to do with the formation of a public company? --- I know it has not, but I did not know he was going to write that letter when he asked me for the figures. I did not know what he was going to do.

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10 I appreciate that, but in the absence of any documentary evidence, does not this suggest to you that that last paragraph of your letter to Mr. Ratcliffe of the 19th April was not referring to conversations in relation to the formation of a public company, but was concerned with conversations regarding the payment of a further dividend out of Neal's? --- On the contrary, no conversation of that nature occurred. I simply said that it was time we got on to Neal's to convert that to a public company, and asked for his views, and he
20 asked me to send him the figures. Those were the figures I sent him. That was at his request. I had no idea of this arising out of it.

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Let us look at these figures. They are profits for part of the year 1950-51, up to date. Does not that suggest to you that you were looking at the possibility of distributing these profits in some way? --- You might think so, but that was not so. He might have asked me to send him the monthly figures and I gave him the monthly figures as he requested them. He requested these. He
30 might have requested them in this form, but I did not understand the significance of it.

Anyhow, your recollection is that you did not discuss with him the distribution of any further dividends; you merely discussed whether or not the time was ripe to turn Neal's into a public company? --- That is all I did discuss, and I would like to point out to you that these are broken figures for a year. They are not taken
40 from a balance sheet. I had to take them off a monthly statement, and that might account for them being in that form.

And you will notice further that you followed them with an estimate of the profits for the rest of the year? --- Yes.

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Again, I suggest to you, providing information that would be useful if there were to be a further distribution of profits? --- If Mr. Ratcliffe had that in mind, I did not. Mr. Ratcliffe's ultimate suggestion was a greater surprise than the first one.

The position is, then, that when you were providing these figures, you believed that you were providing them for no purpose other than to assist Mr. Ratcliffe in his consideration of whether or not the time was appropriate for Neal's to be a public company? --- Yes. 10

And this letter of his of the 23rd April, dealing with something else, was a bolt from the blue? --- Or a holding company. I would have consented to a holding company.

You were keen on this proposal, were you? --- What proposal?

A public company for Neal's? --- Yes.

What further did you do about it when you got back his letter of 23rd April which said nothing about it? --- We got his letter with the offer and we gave it the same consideration as previously and accepted it. 20

But I am pointing out to you that it did not deal in any way with the thing on which you had asked his advice? --- Not at all.

I am asking you - did you write any other letter saying, "What about the thing on which we sought your advice, namely, turning Neal's into a public company"? --- I submitted it to the shareholders and Mr. Bunny, and on Mr. Bunny's advice again we accepted the transaction. There was no question at that time of increasing capital. 30

And there was no question in this transaction of turning Neal's into a public company? --- No, but there was in my first approach to Mr. Ratcliffe.

As the transaction was carried through the only thing that the second Neal's transaction did was to distribute the company's profits and ensure that part of them was retained by Pactolus and part went to the shareholders? --- Yes; that was the result of it. 40

That, you would agree, would not assist you in connection with the formation of a public company? --- Not at all. But if I could add something to that: when this matter was discussed, the question of finances, it was said that with certain shareholders it was becoming a very important thing and particularly since Mr. Robert Nathan had died, and from his estate points of view it became an important thing. I think some of the other shareholders - I was not wanting money - I think some of the other shareholders were wanting funds to meet their obligations.

10

At any rate you knew about the estate of Mr. Robert Nathan? --- I did not know very much about it; I knew something about it. I knew that he would be liable in the final analysis for a lot of tax.

Casting your mind back, would you agree that this is what might have happened: that the other shareholders in Neal's were saying, "We want some money in the way of dividends", and then you said to Mr. Ratcliffe, "Can you help us to get some money out of Neal's?" Following that conversation you provided him with these figures on the 19th April and he provided you with the plan on the 23rd April? --- I give a categorical denial to that suggestion; such a thing never happened. The facts are as I have stated them, and there is nothing I can add to them.

20

Is this the position: you did not know anything about the need of the other shareholders for money until you received this letter of 23rd April from Mr. Ratcliffe? --- Some of the shareholders always wanted money; I knew that.

Did you ever think of helping to satisfy their requirements for money until you got this letter of 23rd April? --- I never thought a word about it, and would not have considered it.

30

Why would you not have considered it? --- There was no reason for me to consider it unless they pressed me; unless they were pressing me for it there was no need for me to consider it.

Is the position that nobody was pressing you for dividends? --- No, nobody pressed me for dividends at any time.

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At all? --- No.

At any time? --- No.

(Discussion between Counsel.)

MR. EGGLESTON: The only thing about this, Your Honour, is that my friend has asked for the notice in the case of Lanes. There was a factor in the case of Lane's which I think resulted in the ultimate Articles as adopted being different from what was in the notices calling the meetings. We will take Neal's and look up the minute and look for the notice calling the meeting and get that for you. 10

MR. MENZIES: Could we have the minutes of the actual meeting themselves, on 14th December?

MR. EGGLESTON: Yes. Do you want these immediately, or will it do later on?

MR. MENZIES: Later on.

MR. EGGLESTON: We will put that in hand.

HIS HONOUR: Yes.

MR. MENZIES (To Witness): Since 1951 when you made this distribution have you done any more about turning Neal's into a public company? --- Yes, we did. At the end of 1951 we approached, by arrangement with Mr. Newton, we invited the principals of our suppliers to lunch, advising them it was our intention to form this into a public company, and get their consent. By that time, of course, at the end of 1951, there was a very serious economic situation developing, and we had to postpone it, and in 1951, with Neal's and Lane's, we got into quite a deal of difficulty although we weathered it. In Lane's we had a very heavy obligation to the bank in the early part of 1952 - - - 20 30

Mr. Lane, you know that I am asking you about Neal's, do you not? --- Yes, Neal's in the early part of 1952. If I did not say Neal's I intended to say it. We got into a very serious situation with the bank; we could not get any more money, and we had to refuse to accept any supplies.

Let us look at Neal's at the 30th June 1951? --
Could I ask the number? 40

It is annexure 62. I take the last balance sheet we have got, and it is 30th June 1951, Neal's, and the assets amount to £1,202,937? --- Yes.

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Including £229,000 cash? --- Yes.

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And on the liabilities side what we have described as the outside creditors amount to £67,451? --- Yes.

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That was pretty healthy, was it not? --- That was in 1951. I referred to 1952, Mr. Menzies.

10 MR. EGGLESTON: Is that counted - the provision for tax - as an outside creditor for that purpose?

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MR. MENZIES: I should take that into account. (To witness): Even taking the £211,000 into account you would still say that this was a very, very healthy balance sheet, would you not? --- Yes.

It is the latest one we have got? --- The latest one which is here, not the latest one.

20 Let me come to the occasion about which you just gave me some evidence, that in December 1951 you considered a public company? --- No, before December.

But you did consider it in December? --- No, it was in December that we had - - -

I see. I thought you told me that it was in December? --- No, it was earlier than December.

When was that? --- I think it was about October or September.

MR. EGGLESTON: He said, "at the end of 1951".

30 MR. MENZIES: Mr. Lane, that was the first time you discussed it with your suppliers? -- Yes.

Did you regard a discussion with your suppliers and their agreement to a public company to be an essential step in forming the public company? --- Yes.

That was not done at any occasion up until October 1951?--- It was no use doing it till you decided to do it.

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I want to go back for one or two questions to the second Neal transaction. The position as it turned out, was it not that a sum of money, £360,000 in round figures, was distributed by the company? --- I accept that figure.

And none of that went back into the company? --- None of it.

When you told me earlier that you would not have agreed to a distribution of the profits and the estimated profits shown in your letter of the 19th April 1951, was that on the basis that you did not think it was advisable to distribute those profits? --- No, I never gave any consideration to them.

10

Well, when you told me that you would not have agreed to the distribution of the profits contained in the letter of the 19th April 1951, what did you mean? --- Did I say that I would not agree to it?

I think you said, "I would not have agreed to the distribution of those monies"? --- I hardly think I said that; if I did, it was a mis-conception.

20

Was the position that you would have rejected yourself the distribution of the profits for the year ending 30th June 1951? --- I would not have thought so.

You were quite agreeable to the distribution of those profits? --- I would have, at that time. I would not have at the end of 1951.

And that is provided they were distributed in such a way that taxation was not attracted? --- No, taxation was not attracted to the company.

30

Or the shareholders? --- No, that is so. You are talking about dividends declared to shareholders?

I am including yourself? --- Well, as dividends they would have been taxable.

And were you against the distribution of these profits shown in your letter of the 19th April because you thought that distribution would attract tax in the hands of the shareholders? --- The year had not expired, and the question had not arisen.

40

But what has it to do with it, Mr. Lane, that the year had not expired? --- Nothing at all. We could not take profits out of that period, but the question was never raised.

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But you said the year had not expired. Now, I am asking you what did that have to do with it? --- Well, nothing at all, really.

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10 Were you always prepared to distribute these 1951 profits? --- In the normal way that would not have come up till after the end of the financial year, and up to the time when they had to be distributed. But the question never arose at any time.

Transcript of Shorthand Notes of Evidence taken before His Honour Mr. Justice Kitto.

But it arose fairly and squarely on the 23rd April? --- It arose from Mr. Ratcliffe's suggestion, but from no other suggestion.

Evidence of Henry James Lane Cross-Examination - continued.

20 You gave my learned friend some evidence about what happened eventually in Lane's, and I would just like to get from you the facts in a little more detail. Lane's Motors (Holdings) Ltd. was incorporated in October 1950, was it not, Mr. Lane? --- Yes, thereabouts. I am not sure of the exact date, but before the end of the year 1950.

And the only new money that was introduced into Lane's Motors was introduced in May 1951? --- In May 1951?

30 In May 1951 when 628,000 shares of 5/- each were offered for public subscription? --- Well, that was not new money, that was shares that were sold. Was it new money?

Well, I think there was some new money? --- I am not quite sure. We sold our shares and they were sold at a premium.

Perhaps we had better have the prospectus and it will speak for itself; what is in the prospectus will be correct? --- Oh, yes.

40 I will tender the prospectus. It is a prospectus of Lane's Motors (Holdings) Pty. Ltd., dated 23rd May 1951. It has a heading, "Shares now offered for subscription, 628,000 Ordinary shares at 5/- each, £157,000". It seems to be a prospectus of that issue.

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EXHIBIT. EXHIBIT R.3 ... Prospectus of Lane's
Motors (Holdings)
Pty. Ltd. dated 23rd
May 1951.

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MR. MENZIES (To witness): What I wanted to get from you was whether or not new money was brought in at that stage. No new money was brought in at any other stage? --- No. There was a re-valuation of assets included in that, but I think the capital remained the same.

10

Well now, you produced yesterday, Mr. Lane, some figures of deliveries of Lane's to show how enormously its business grew over the period? --- Yes.

And you successfully coped with that business? --- Just about. We thought we would be in a bit of trouble for quite a while.

But successful management saved the day? --- Not exactly successful management, but a lot of hard, slogging work on the part of the staff to get cars delivered before people changed their minds.

20

And I think you indicated yesterday that, although we have not the figures for Neal's or Melford's, the figures would show a comparable increase? --- Yes, consistent with the availability of supplies to those companies. I am not aware of Melford's figures.

I take it that what you did was to give Lane's as a fair sample of what happened in the three companies? --- Yes. It is common knowledge, of course, that goods were shipped to us over and above our requirements. We were called on to pay, and we had to raise the money. We did it by working ourselves into the ground to get the cars out.

30

And, so far as Lane's is concerned, you did have it as a public company, insofar as Neal's and Melford's were concerned you did not; and all got through in very much the same way? --- No, I think the position of Melford would be different, because

40

I think their supply, at that stage, would be an entirely Australian supply. Ours was partly Australian and partly overseas.

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So your problem was greater? --- Because we had to meet chartered shipments.

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That applies to both Lane's and Neal's? --- Yes.

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10 The position is, as the Mutual Admissions stand, the only Transfers of Shares that are in are those in the second Neal's transaction, Annexure 60, and for the purpose of completeness I would ask you to produce - at some convenient time - the transfers in the other companies, the transfers of "A" shares.

Evidence of Henry James Lane Cross-Examination - continued.

MR. EGGLESTON: Only the transfers of "A" shares.

MR. MENZIES: Yes.

MR. EGGLESTON: We have got them and will produce them.

20 HIS HONOUR: Mr. Lane, one thing I do not quite understand, the second Neal transaction in 1951, you were explaining to Mr. Menzies that you asked Mr. Ratcliffe's advice in April? --- Yes.

With regard only to the question of floating a public company? --- Converting to a public company.

30 In fact, you went on with that later on in the year, September or October? --- Not Neal's, we proposed to go on with it but events worked against it.

I know, you did take a step towards it? --- We did take a step towards it.

Did you ask Mr. Ratcliffe's advice then? -- No, we had not asked Mr. Ratcliffe's advice as a preliminary we wanted to make sure, before we did

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anything that our principal supplier, in fact our only supplier, would be agreeable to that.

You did not think it necessary to ask your supplier in April? --- No, we did not. I do not know how that happened. When we came close to it we would have had to ask them before we took any action to convert.

However, you got your suppliers' consent in September or October, and they raised no obstacle? --- They raised no obstacle.

10

Did you then apply to Mr. Ratcliffe for advice? --- No, by then the debacle hit us and we did not go ahead with it.

How long after was that? --- It started to be evident in December.

In the interval you did not approach Mr. Ratcliffe at all? --- No.

Were there any reasons for not approaching Mr. Ratcliffe in that interval that did not exist in April? --- No, Your Honour, no actual reasons, excepting - - -

20

I do not understand why you went to Mr. Ratcliffe in the one place and not in the other? --- I would have had Mr. Ratcliffe's suggestion in regard to the formation of the public companies in April or May of that year. Before we did anything I would have requested a meeting to make sure that it would be acceptable before I went on. It was only mentioned by the way to Mr. Ratcliffe in the first place.

30

I do not think you quite appreciate my difficulty. When you had it in mind to convert in April you go to Mr. Ratcliffe for advice. When you have it in mind in September or October, you do not. Why the difference? --- It was not a designed meeting, it was just a meeting at which I had mentioned it to him. It was not an arranged meeting, not arranged that I should go and consult Mr. Ratcliffe about it.

You are there referring to the conversation you mentioned in a letter of 19th April? --- Yes, I think I was in Sydney on other business and I saw Mr. Ratcliffe and I mentioned this, that now that Lane's was on the way to conversion at that time

40

would he consider conversion of Neal's. It was not an arranged meeting.

You asked advice from him? --- I asked him what about it.

You wanted him to consider it? --- I wanted him to consider it.

10 My difficulty remains. You wanted him to consider it in April; why did you not want him to consider it in September or October? -- I cannot explain that excepting that in conversation with Mr. Lauri Newton I thought these people ought to be told as soon as possible of our intentions to convert to a public company, and we ought to let them know.

You appreciate I am not concerned with that. You went to your distributors but the question is why you did not go to Mr. Ratcliffe? -- I am sorry I cannot explain that. It is just one of those things that happens.

20 What was the purpose of going to Mr. Ratcliffe in April? Was there some other difficulty that you wanted him to solve? --- No, I did not go to him with the intention of converting it, I only told him in conversation. I did not make a special visit for the purpose.

You asked him to consider it? -- I told him it was time we converted to a public company and we ought to do something about it.

30 You asked him to consider something? -- I did not ask him to consider it until September. He said let me have the figures, I would like to have a look at it.

Why did you assume the figures would be sufficient for his purpose? --- He said he would like to consider it.

Consider what? --- Consider not the suggestion but that it was time we ought to consider converting Neal's to a public company.

40 What had he to consider, what problem did he have to address his mind to? --- He was our taxation adviser then.

What problems did he have to address his mind to as your taxation adviser? -- As taxation adviser, I do not know, it was just one of those things I discussed with him casually in the first place.

You had a conversation with him in the first place and then wrote a letter giving the figures he asked for, for his consideration? --- Yes.

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Re-Examination.

You must have had in mind some problem to which he was addressing his mind? --- I had no problem, it was just to let him know what we were proposing to do.

What were his considerations? -- He said he would like to see the figures, have a look at them.

He was not going to have bit of fun with them? -- I do not know what he was going to do with them. I did not anticipate getting the proposal which was afterwards received.

I am not concerned with what you got afterwards. 10
You told Mr. Menzies that that came as a bombshell?
--- So it did.

It was sufficient to make you drop whatever you had in mind about converting? -- We would not have converted until after the end of December. It would not have been the right time of the year to have converted, in the middle of June.

You cannot solve my difficulty then as to what were the considerations you mentioned that you thought Mr. Ratcliffe was going to apply his mind to in April? 20
-- I suppose because I have used rather a loose term in the correspondence; the figures he asked me to send him. I did not know what his considerations were.

Or what he was doing? -- No, I had not the slightest idea.

So far as you knew, he might have wanted them for curiosity? -- Yes, to see how we were going.

What would he want to do that for? --- I do not know.

RE-EXAMINED BY MR. EGGLESTON:

30

MR. EGGLESTON: In relation to the flotation of Lane's Motors Holdings into a public company, did Mr. Ratcliffe do some work in connection with that flotation? --- I think we asked him for advice in regard to it.

Will you tell His Honour what he did in relation to the conversion of Lane's? -- I am afraid I cannot recall. I know we discussed it with him. I just cannot recall it. We did discuss it with him but just what arose out of the discussions I cannot now recall. 40

Do you remember at what stage you discussed it with him, at what stage of the proceedings? -- I would have discussed it with him, I think, towards the end of 1950 and I think we had to get Capital Issue's consent for that too. I think he did advise us in regard to what we ought to get for our shares as to what they should be sold for, but that question did not arise so far as we were concerned, because the broker made us an offer which was satisfactory to us. I think it was in the vicinity of Mr. Ratcliffe's suggestion of what the shares ought to be sold at. 50

Can you remember anything else that Mr. Ratcliffe did in relation to the Lane's flotation?
 --- No, I cannot.

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In relation to the flotation of Neal's, was a holding company formed? --- Eventually, yes.

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When was it formed? --- I am not sure whether it was formed in 1952 or 1953.

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10 You have told His Honour that at Mr. Newton's suggestion you spoke to the suppliers representatives towards the end of 1951, in relation to Neal's? --- Yes.

Evidence of
 Henry James
 Lane,
 Re-examination
 - continued.

Were there any considerations which would determine whether you should have approached Mr. Ratcliffe before you approached the suppliers? --- No reason whatsoever, as long as the suppliers were informed before we actually took any action. That was the main thing before we committed ourselves to anything.

20 You said that in December 1951 there were difficulties about the formation of Neal's. Would you tell His Honour, just briefly, what occurred at that time and what the difficulties were? --- The difficulties were not any different than with other purchasers in this country, and particularly with motor cars. We had placed orders, at the request of the suppliers, much in excess of what we could handle, because we were informed that it did not matter how many orders we placed - you won't get them - and we placed orders accordingly, in the
 30 hope of getting as many as we could. Unfortunately the suppliers - while the office in Australia accepted that and told us that those orders were relayed to London and their supplies were very short and shipping was not available - got about a dozen charter ships and loaded them up with motor cars, and shipped them out to Australia. That was not only a fact in the case of Lane's Motors, and we had to meet one and a half million pounds of money in a month for motor cars.

40 For shipments? --- For shipments that arrived. They were those complete units in the main.

In the case of Neal's, did you have the same experience? --- We had exactly the same kind of experience although unfortunately Neal's were not able to meet their commitments.

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What happened in relation to Neal's? --- I am not sure whether I am stating it correctly. We had a liability with the Bank of £960,000 - whether that was our liability to the bank plus the outstanding drafts against us - or not - - -

But at one stage you were up for £960,000 in Neal's? --- In the early part of 1952.

And did that have any effect on your plans as to the float? --- Yes, it had a very serious effect.

How did it affect your plans? --- It was obviously wrong to go to a flotation or conversion into a public company, and expect the public to buy shares in the conditions that then existed, because everything was depressed. There were a lot more restrictions imposed in the way of imports, and we had no knowledge at that time how long they were going to exist. We would have been entirely wrong, and there was no means of assessing when these restrictions would be lifted. It so happened that these restrictions were lifted to a large extent a year later, but it took us a long time to get out of our trouble, and we could not have gone to a flotation with a heavy liability to the Bank. 10

Then, you have told us in 1952 or 1953, a holding company was, in fact, formed in relation to Neal's? --- Yes. 20

And has any further step been taken in relation to the formation? --- Further steps were contemplated after that, but there was a change in distributing arrangements by the suppliers. Both the people whose cars Neal's sell have an Australian factory and they intimated to us, the same as others have - that it was their intention to take over distribution in the country themselves, and leave us only the city, and to have gone into flotation as a public company with that knowledge, without disclosing it to the prospective purchasers of shares, would have been entirely wrong. We had a knowledge of that, and we had to withhold. Of course, we had a similar situation arising at Lane's Motors which now, however, has been solved. 30 40

My learned friend asked you about the state of

10 Lane's balance sheet at the 30th June 1949. It is annexure 3, and there was one item in the balance sheet with which he did not deal. I just want to ask you something about that. It is the very last item on the liability side, deposits on new vehicles, see contra, £94,752. It has actually been deducted from the sundry debtors on the other side, so as to show, as it were, net sundry debtors of £1,578. What was the situation with relation to deposits on new vehicles at this time? ---

20 Orders were coming in literally in thousands. I think at the end of one year we held more orders in hand undelivered than we could have received in any one year, or had delivered in any one year. We had to impose a deposit payment to try and steady off the custom which existed then. The purchasers were going round placing orders anywhere and everywhere to see what car they could get first. I think later investigation will substantiate this, that we always kept the total amount of the deposits in a fund, as much as we possibly could.

In other words, we did not use those deposits that we received - and they amounted to a considerable amount - to the profit of the company. We preserved in our accounts, as much as we possibly could, and I think in total at all times, an amount not less than the amount of the deposits we had.

How much a car? --- £25 a car.

30 There was £94,000 at that time? --- That is at that time. It had reached higher figures.

And for the purpose of your planning, what proportion of those orders did you regard as solid orders that would survive a sudden access of supply? --- In the situation, before they got too high, I discounted them 33-1/3rd%. Then I discounted them 50%, and finally I discounted them 75%.

40 And what would the discount have been as at the 30th June 1949, would you say? --- I would always cut off not less than 75% of the total number, probably a little less - I cannot recall.

At that time? --- Yes. It was only my own personal discounting. There was nothing in the books about it.

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For the purpose of your own planning of the conduct of the business? --- Yes. It was a liability if we could not meet it.

Your Honour, those are the only matters on which I want to re-examine, but it was drawn to my attention during the cross-examination that I had not asked Mr. Lane anything about the circumstances of the sale of Melford's shares to Mr. Fenton's daughters. I do not know whether my friend wants me to go into it, but Mr. Lane knows something about it and could explain something about it, and I would ask leave to examine him about it. It will not take a moment. My friend will have the right, of course, to ask further questions if he wants to.

10

HIS HONOUR: Yes; you might as well clear it up.

MR. EGGLESTON (To witness): You know, and it is part of the admitted facts, that Pactolus Pty. Ltd. sold the C. shares in Melford's to two ladies who are in fact Mr. Fenton's daughters? --- Yes,

20

Can you tell His Honour shortly how that came about? --- In 1951, I think it was - yes, I think that was what I was seeing him about when this question of Neal's cropped up. I think that was one of the reasons I had seen him or the principal reason I had seen him. I wanted to acquire - at least, I wanted my son to acquire, some of my B. preference shares in Neal's Motors, and Mr. Ratcliffe entirely misunderstood my conversation about this.

30

Just tell His Honour what it was? --- He advised me that if it was the intention, as it was, to convert those B. preference shares to ordinary shares, I might be involved in some further gift tax. I had declared and paid gift tax on the gift to my son, but he was then in the business and I wanted him to acquire some of these shares. Mr. Ratcliffe then brought to my attention that it would be wrong to do it for the reason I have stated, and suggested that I might like to buy some Melford shares. I did not know which Melford shares they were, but they were Melford shares. Well, I was not a shareholder in Melford, and I was not interested. But I did say to him that Mr. Lauri Newton might want them or might know someone who would buy them and that I would mention the matter to him. What happened subsequently is only hearsay, but I understand that Mr. Newton did not want them

40

anyway or did not know anybody who wanted them, and he spoke to Mr. Fenton, who said he would like his daughters to acquire them. He had made a gift to them, too, and he would like them to have some shares in Melford Motors.

MR. MENZIES: I do not desire to ask any questions on that.

(THE WITNESS WITHDREW)

EVIDENCE OF LAURI JOSEPH NEWTON

10 MR. KERRIGAN: Your name is Lauri Joseph Newton and you live at No. 4 Hamilton Road, Malvern?
--- Yes.

And you are a furniture warehouseman? --- Yes.

I understand that your principal business interest is in Maples? --- That is right.

And you are a partner in that firm? --- I am.

And at all material times you have held approximately one-fifth interest? --- Yes.

20 I understand there were six partners in 1949, and of the four active partners you were the only one in Melbourne during the whole time? --- For a period. I was not the only one in Melbourne, but one was ill in Melbourne.

That was Mr. Robert Nathan? --- Yes.

And one was abroad. That was your brother? --- Yes.

And Mr. Lamond was away for a few months? --- Yes, in Queensland.

The business of Maples covers a number of

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branches, does it not? --- It does.

I think it has about twelve stores in the city of Melbourne? ---- Yes.

And about fifteen in Victoria, N.S.W. and Tasmania? --- Correct.

Did that necessitate your moving about during 1949 to see these particular stores? ---- It did.

In addition, you are a director of three real estate companies? ---- Yes.

You had directors' meetings to attend there? --- Yes. 10

And you are a director of Lane's and Neal's? --- Yes.

And some shares are held beneficially for you by Mr. Wallace in Melford's? --- That is right.

You were also at this time a director of Bebarfald's in Sydney? --- Yes.

And that involved you in going to Sydney about once a month or thereabouts? --- That is right.

For several days at a time? --- For a week at a time approximately. 20

As I am reminded, on Bebarfald's board you were the only furniture man? --- During that period, my brother being away.

Where did you meet Mr. J.V. Ratcliffe? ---- I met him in Sydney at Bebarfald's in 1944.

And was he a member of Bebarfald's board? --- He was; he had been for about two years or it may have been three years - two years I think.

You met him in 1944? ---- That was when I met him. 30

And you saw him from time to time? --- Thereafter, yes, quite regularly.

Would it be right to describe him as the financial member of Bebarfald's board? --- He was.

And, of course, you knew he was a chartered accountant? --- Yes.

And a taxation consultant? --- Yes.

I understand that, as far as your own personal tax position was concerned, in 1949 the profits from Maples had made it rather difficult for you? --- That is right.

10 Were those profits distributed to you or were they retained in the business of Maples? --- Retained in the business.

And in 1949, you had a discussion with Mr. Ratcliffe about Maples, had you not? --- Yes.

Before you had that discussion, had you had any conversations with your brother Lionel and your uncle, Robert Nathan? --- I had, yes.

What was the purpose of having that discussion? --- The purpose of the discussion was to consider the advisability of making Maples a public company.

20 I do not want to go into this, but I understand Mr. Ratcliffe advised you against it at that time? --- He did.

And gave you certain advice as to what you should do? --- Yes.

In relation to that company? --- That is right.

I think your brother Lionel was away, is that so? --- Yes, he was.

Abroad, and you had his Power of Attorney? --- Yes.

30 Do you remember sending a cable to him? --- I do.

Do you remember what month it was in 1949? --- Yes, it was in the month of April.

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Did you get a cable back from him? --- I did.

I will show you first of all; is this document a copy of the cable which you sent? (Document shown to witness).

MR. TAIT: I object. I do not know what is in the cable. The position about Maples does not seem to me to be relevant with the matter we are discussing. I understand this: it may be that my friend is merely leading up to something in connection with Mr. Ratcliffe, but if this cable is about something about Maples, which seems to follow the subject matter my friend is putting, I would object. 10

MR. KERRIGAN: It is something about motor cars.

MR. TAIT: Perhaps I am wrong.

MR. KERRIGAN (To witness): Is that a copy of the cable which you sent? --- Yes.

Is this the cable you received in reply? (Document shown to witness.)? --- Yes. 20

I tender those documents.

MR. TAIT: Perhaps I could see them before they go in.

MR. KERRIGAN: Very well. (Documents handed to Mr. Tait.)

HIS HONOUR: Are you objecting or not, Mr. Tait?

MR. TAIT: No, I have no objection.

EXHIBIT. EXHIBIT A.9 Copy cable sent by witness to Mr. Lionel Newton, and reply thereto, April 1949. 30

MR. KERRIGAN (To witness): One thing which I want to ask you about this -- the large annual contribution -- what was that a reference to? --- Our taxation assessment.

After you received that cable from your brother did you have a conversation with Mr. Lane? --- Yes, I did.

MR. KERRIGAN: What was the substance of the conversation with Mr. Lane? --- I suggested that I was in favour of the motor companies being converted to public companies.

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I might ask you this: had you discussed that matter with anybody else? --- I had discussed that with Mr. Robert Nathan.

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Anybody else? --- Yes, with Mr. Aitchison.

10 Who was Mr. Aitchison? --- Mr. Aitchison was the secretary of Maples.

Was he qualified in any way? --- He was a qualified accountant, and he had advised me for some time prior to this incident that it should be considered seriously. I also discussed it with Mr. L.B. Wallace; he had recommended it on a number of occasions.

Evidence of
Lauri Joseph
Newton,
Examination
- continued.

20 You discussed it with Mr. Lane. What was his reaction to it? --- Mr. Lane was not favourably disposed towards it, but he was prepared to consider the suggestion, which he did.

Had you anything particular in your mind if those motor companies could be turned into public companies? --- Yes.

What was the particular thing you had under consideration? --- From my own personal point of view?

Yes? --- I would be in a position where I could sell my shares, or realise my shares and meet my obligations.

30 At that time, 1949, were you able to meet your tax obligations? --- No, I was not.

You, I think, had participated, at the end of 1948, in this distribution of profits in each of the three companies? --- Yes.

Of course that would be part of your return for the following year, is that so? --- Yes.

40 Had you personally received the money, or what had happened to it, these dividends. Did you have the use of it? --- It had gone back into the company.

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So your position was that you had to pay tax and provisional tax, and had not had any money? --- That is right.

Now, Mr. Newton, in the two motor companies of which you were a director what was the state of the motor car business in, we will say, June/July 1949? --- It was improving quite rapidly.

So far as prospects were concerned, in your consideration, what was going to be the future? --- The prospects appeared to be very good. 10

Had you formed any views as to the capital position of Neal's and Lane's? ---- Yes.

What view did you form? --- I formed the view that they were both under-capitalised. I was quite helped in those views by both those other persons I referred to previously, Mr. Aitchison and Mr. Wallace.

I understand you and Mr. Lane both went to see Mr. Ratcliffe? --- Yes.

Do you recollect what month it was when you first went to see Mr. Ratcliffe? --- Yes, it was July, I think, of 1949. 20

Were you present during the conversation between Mr. Ratcliffe and Mr. Lane? --- Yes.

Did you do some talking yourself, or was it just to Mr. Lane? --- I did practically not any talking.

What was the substance of the conversation? What did Mr. Lane put to Mr. Ratcliffe? --- Mr. Lane told Mr. Ratcliffe that we had come to Sydney to discuss the formation of converting these two companies into public companies. 30

Which two? --- Lane's Motors and Neal's Motors.

In your recollection at that first talk was there anything said about Melford's? --- No, I do not think so. In fact, I am almost certain of it.

Was anything else said that you recall? --- Yes; that the capital of the company needed to be increased, Mr. Lane thought.

Yes. And what did Mr. Ratcliffe say? --- I do not think Mr. Ratcliffe said anything at all, except that he probably did agree the capital was too low and it should be higher, but he would consider the suggestion which Mr. Lane had made concerning the public company idea.

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Did he ask for anything? --- Yes, he asked for the papers, the accounts of those two companies, when they were ready.

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10 And did he say what he would do after he got the papers? --- Yes, he said he would consider them and communicate with Mr. Lane again, or see him again.

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continued.

Mr. Newton, did you have any hand in supplying any documentary information to him, did you prepare it, or see it before it went? --- No.

Did you see Mr. Ratcliffe again? --- Yes.

20 Do you recollect how long afterwards, or when it was? --- Yes, I think it was probably at the end of July that I saw him. I used to see him every month on account of Bebarfald's.

And was Mr. Lane a member of the Board of Bebarfald's? --- He was at that time; he was an alternate director.

And on the second occasion, was it in Sydney or Melbourne? --- I think in Sydney.

And was Mr. Lane with you? --- Yes.

30 Can you tell His Honour your recollection of what took place on the second occasion with Mr. Ratcliffe? --- Yes, it was on this occasion when Mr. Ratcliffe informed us that he would have a proposal to put forward to us, instead of the public company.

Did he go into any detail? --- I think he probably did, very lightly something about the selling of shares.

Did he say who the shares were to be sold to, what his proposal would be in that regard? --- No, I do not think he did. He may have, but I do not think so, at the time.

40 Do you recollect what Mr. Lane said, or you

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said, about any proposal that he might like to make?
--- Yes, we said any proposal he wanted to make
would need to be considered by all of the persons
concerned in those companies.

And by anybody else? --- And also by people we
would have there to listen to his proposal, and who
would be in a position to guide us and advise us.
Whether we told him the names of those persons or
not, I do not know.

Eventually, there was a conference with Mr. 10
Ratcliffe and your Board and your advisers in
Melbourne? --- Yes.

Now, before that conference, do you recall
whether you saw Mr. Ratcliffe again, before the
conference or not? --- I probably did. I probably
saw him in August; I would be in Sydney again for
Bebarfald's meeting.

Now, on the August occasion, do you recall any-
thing that was said between you and Mr. Ratcliffe,
or by you or Mr. Lane, while you were there? --- 20
Not particularly.

Anyway, you think you probably saw him again?
--- Yes.

And is it your recollection that there was
some further conversations about this matter? ---
Yes, between Mr. Ratcliffe and Mr. Lane particular-
ly, I would imagine.

You attended the meeting in Melbourne, did you
not? --- Yes.

At the I.A.C. Board room? --- Yes. 30

Do you remember the date, or approximately the
date, or the month? --- Well, I know it was Septem-
ber and it would be - - - Well, I do not think
later than the middle of the month; it may have
been earlier than that.

Tell me, Mr. Newton, was it a long meeting? --
Yes.

And do you recollect who was present? --- Yes,
I think so. Mr. Nathan was there, Mr. Lane, Mr.
Thomas, myself, Mr. Bunny, Mr. Wallace, Mr. 40
Aitchison, and, I think, Mr. Ross.

Mr. Ross? --- I think.

You have told His Honour that the first meeting with Mr. Ratcliffe - you do not recollect, in fact, you are pretty certain, that Melford's was not mentioned at the first meeting? --- I do not think it was.

10 Between the first meeting and this meeting in Melbourne, what is your recollection about Melford; did that crop into the conversation at all? --- It did.

And have you any recollection at whose instigation Melford was mentioned? --- Yes, I think Mr. Ratcliffe mentioned that to me in Sydney. He had learned that we were interested in this company.

Well, that is your recollection. It was raised in Sydney by Mr. Ratcliffe? --- Yes.

20 And do you recall whether Mr. Ratcliffe asked for any information about that company from you or Mr. Lane, and its books and its figures? --- Yes, I think he is sure to have done so.

So when you got to the Board meeting, all three companies had been mentioned to Mr. Ratcliffe? --- Yes.

Just tell us, as far as you can recollect, what took place at the September meeting in Melbourne? --- That was the meeting at which Mr. Ratcliffe explained his several proposals.

30 What were his several proposals? --- One was the one which we had originally enquired about, a public company.

What did he say about that? --- He said it was a good idea. He also told us about a holding company, and a proposal of his own, which is the one we are discussing now.

I see. And did you enter into any of the discussion that you can recall? --- No, I would say practically not at all.

40 Do you recollect anything else that was said by anybody in connection with any of these proposals? --- Yes, I recollect the matter of the sale of

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shares being discussed, and whether, if a sale was brought about, whether they would be taxable.

Do you remember who asked that? --- I think probably Mr. Wallace and Mr. Bunny, maybe even Mr. Aitchison. Mr. Lane may have; I am not sure.

And do you recall any reply by Mr. Ratcliffe to that? --- Emphatically, the proceeds would not be taxable; and Mr. Bunny, I think, said he agreed with Mr. Ratcliffe.

Now, is there anything else that you recall about this conference in September in Melbourne? --- I do not think so, excepting that - - -

Did you follow all the detail of it? --- Did I?

Yes? --- No, I did not.

Do you recollect Mr. Ratcliffe saying who would purchase these shares? --- Yes, I think the Pactolus company was mentioned.

Was anything said about dividends? --- Yes, I think so.

What was said about dividends? --- I think that the dividends had to be attachable to the shares which were going to be sold.

HIS HONOUR: What dividends had to be attached to them? --- The dividends which were in the company's books then had to be declared, in the company's accounts, and still had to be declared.

MR. KERRIGAN: And after the conference, was there any further discussion between you and your co-directors of these motor companies? --- I think there were general chats from time to time, Mr. Kerrigan.

Do you recall whether there was a talk immediately after the conference ended, when Mr. Ratcliffe was not present? --- No, I do not, Mr. Kerrigan.

Mr. Ratcliffe had put three proposals? -- Yes.

Was any one of them favoured more than the others, or not? --- Yes, one.

10

20

30

When did that happen, when did the shareholders express favour for one more than the other? --- I think during the conference. They expressed views in that direction, those who did express views.

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Was Mr. Ratcliffe asked to do anything further about it? --- Yes, he was asked to put his proposal in writing and forward it to Melbourne for further consideration.

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10 Subsequently a letter was received from him by Mr. Wallace, did you know anything about that? --- I knew the letter was received.

Did you see the letter? --- I should say I certainly did, although I do not remember seeing it.

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Lauri Joseph
Newton,
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continued.

Do you recall that it had a lot of schedules of figures attached to it? --- Yes.

Would you know a copy of it if you saw it again? --- I do not think so.

20 Have you any recollection about when it was received, or when you saw it? --- I know that it was at the end of September.

Just have a look at annexure 12, the first page and turn to the following pages and see if you can recall whether that is a copy of the document you saw? --- Do you want me to go right through these?

Have you gone far enough? --- Yes, I think they probably are the ones I saw.

30 Did you study it yourself when you saw it, or have a discussion with anybody about it? --- I no doubt read it as the meeting was proceeding, that is all, and listened to what everybody else had to say about it and tried to follow it on these calculations.

You say this was at a meeting? --- Yes.

Do you recollect who was present at the meeting when this was discussed? --- All of those persons I mentioned before, excepting Mr. Bunny who was not there, but I think Mr. Fenton was there.

40 You think Mr. Fenton was there? --- Yes.

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You noted that the letter was headed "re Ajax"?
--- Yes.

Do you know how Ajax came into this proposal
at all? --- No, I do not know at all.

You have no recollection? --- No.

Was any decision reached by your Board after
the receipt of that letter as to what would be done
in respect to the proposals? --- Yes, after receipt
and consideration by the Board it was decided to
adopt Mr. Ratcliffe's proposal - what we termed as
Mr. Ratcliffe's proposal. 10

Which Board Meeting was this? --- It was not
a Board Meeting, a gathering.

A meeting of all those interested? --- Yes, Mr.
Fenton was there, I think.

You added Mr. Fenton was there, also, you
think? --- I think so, yes.

Was any decision reached by those present as
to in whose hands the matter should be left? ----
Yes. 20

What was that? --- It was decided Mr. Wallace
would look after it on behalf of everybody there
and he, in turn, suggested that Mr. Ross could be
made available to do all the book work, or have
the book work attended to, or have the machinery
done whatever was necessary for the transaction.

Was anybody else to do anything? --- Somebody
had to tell Mr. Bunny and I do not know who did,
somebody from the gathering had to inform Mr.
Bunny of the decision to accept the proposal. 30

Mr. Bunny was to look after the legal side of
it, is that what you mean? --- Yes, that is what
I mean.

After that was done, do you recall seeing any
further correspondence about the matter from Mr.
Ratcliffe? --- Yes, I remember seeing the letter
that Mr. Lane received from Mr. Ratcliffe.

Did you read the letter that Mr. Lane received?
--- I am sure I would have read it at the time.

Did you have a discussion with Mr. Lane about it? --- Yes.

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10 In your recollection, what was the matter in the letter that was discussed? --- The matter in the letter was to the effect that Mr. Bunny had written to Mr. Ratcliffe with certain recommendations concerning the transaction as to some strings which were to be applied to the sale of these shares. The gist of the letter was that Mr. Ratcliffe did not think it was right and it should not be there. Mr. Lane and I had a discussion, and I also had a discussion with Mr. Bunny.

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Did you consult Mr. Robert Nathan at that stage? --- I think we surely would have told him.

Evidence of Lauri Joseph Newton, Examination - continued.

What was your decision? --- That we would abide by Mr. Ratcliffe's idea and not Mr. Bunny's.

In other words, unconditional? --- Unconditional.

20 I suppose after September 30th, you were still going down to Bebarfald's meetings? --- Yes.

I imagine you saw Mr. Ratcliffe down there? -- Yes, each time.

I suppose you had conversations with him about this matter? --- I should think so.

Do you recall any of the conversations? --- No, I do not think so, not particularly.

Well then, do you remember in November being told something about things that were necessary to be done? --- Yes.

30 In whose hands was that arrangement? --- I think Mr. Ross - about the meetings.

Did you attend the meetings? --- I think I attended all the meetings, all that it was necessary for me to attend.

I understand, eventually, you were told it was necessary for a director to go to Canberra? --- Yes.

And you went down there? --- I went to Canberra.

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Did anybody go to Canberra, not with you, but go as your adviser, or anything? --- Yes.

Who was that? --- Mr. Bunny.

You have read what took place at Canberra in the mutual admissions? --- Yes.

That is correct, is it? --- Yes.

In the proposal put forward by Mr. Ratcliffe, certain "B" preference shares were to be issued? --- Yes.

As you understood the proposal originally, who was to take those up? --- The then shareholders. 10

And you know that that was not carried out, that Pactolus took them up? --- Yes.

Do you know why that was done? --- Because of the manner in which the Capital Issues consent was issued, that the shareholders who received the dividends on the other shares, the "A" shares, had to be the purchasers of those preference shares.

And I think, as far as you are concerned, you understood that those preference shares when taken up would be sold to the original shareholders? --- Yes. 20

MR. TAIT: If Your Honour pleases, there was a matter with Mr. Ratcliffe, as Your Honour will remember. I understand that Mr. Ratcliffe is here, and I would propose to go into the matters about which I wanted to ask him. My learned friend agrees that he could be taken now.

HIS HONOUR: Yes.

JOHN VINCENT RATCLIFFE, recalled:

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MR. TAIT: You have seen the memorandum of figures which we had the other day. Have you gone through them to see what they are? --- Yes.

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10 May I hand Your Honour a copy of this document, and these are all the figures which are already to be found in documents which are exhibits or admissions. I would just run through it with Mr. Ratcliffe to see if he understands, as I understand, what it means.

(To witness): It starts with Lane's Motors, does it not? --- Yes.

Evidence of
John Vincent
Ratcliffe,
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20 The first line, which is called taxable dividends as per memo 30/9/49 is the £410,000. That is the figure - you may have found it or looked it up; I do not know whether you have - which appears on page 8 of Annexure 12 dealing with Lane's. It is the figure which appears against the words "taxable dividends" about three-quarters of the way down on page 8. You do follow that, do you? --- Yes.

30 Then there is the £38 adjustment which appears to have been an additional amount which came into the matter - I do not know from where; I do not know whether you know - before the letter of 30th November with the draft resolutions, because the figure that next appears after adding £38 is "Dividends as per draft resolutions £410,038." That is the total of the Lane's resolutions in Exhibit 7 of the 30th November, is that right? Do you follow that? --- Yes, that is correct.

40 Then has been added "Additional taxable dividends as per memo of 13/12/49". I do not know whether you borrowed that figure, £39,553, which is equivalent to 10/- a share, but it is made up of the figures in that part of Exhibit 7 which is the 13th December letter or memorandum, adding together the Lane's dividends as altered by that letter, and including, of course, the 3/- which was to be paid in March, mentioned in that letter. Do you follow that? --- Yes.

So far we are right. Then there is a further addition "Tax free dividends as per memo of 30/9/49", that goes back again to Annexure 12, and is on page 8, and is the exact figure there of £2,684, an adjustment of £47 which crept in, and we do not know

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why or how, and which leaves the amount of dividend tax free as per draft resolution - that means the resolutions of the 30th November 1949 - £2636. That is the figure which appeared in Exhibit 7.

Then to be added to that has been the alteration which was made by the memorandum of the 13th December 1949 where tax free dividends have added £5933. When you have added those together you get a figure of total dividends paid on "A" Ordinary shares - that is what we have been calling the special dividends - and that is the amount of which, including the amount that was paid in March, the 3/- which Lane's paid in March, is £458,161, which is £5.15.10, the amount mentioned in the amending Articles. Are we right so far? --- Yes.

10

Do you agree that that is the reconciliation so far of the figure which you put down in your original estimates of the 30th September? It is a reconciliation of what was eventually done, in the way of dividends? --- Yes.

20

You agree with that? --- Yes.

You see that there has been added the nominal value of the "A" shares, £79,107, and then we have picked up the item "Profit to Pactolus" as it appeared again in the memorandum of 30th September on page 8, £72,524, which is the figure which appears on page 8 about the fifth line from the bottom. Then there is an adjustment - that £9 appears to be the difference between the £47 which was deducted from the tax-free dividends, you see above, and the £38 which by way of adjustment was added to the taxable dividend. I gather from what you said in evidence before that you have not got yourself the sort of working papers for working this out available? --- I think that those variations came about to try and express it in an exact amount per share.

30

Is that it. That is quite likely; very well. That made a deduction of £9, as we have taken it off, what you called in September "the profit to Pactolus", then we have added the additional amount of profit being further tax free dividends received as above £5933, and to arrive at that you took a figure of £78,448, which is the amount required to bring the figures above up to the actual purchase price of £5.16. 0 per share. Do you follow that? --- Yes.

40

I do not know whether Your Honour has followed the figures.

HIS HONOUR: Yes, Mr. Tait.

MR. TAIT: The others, I might say, have been done in the same way. Looking at Lane's will you tell me this, Mr. Ratcliffe. In your company, Pactolus, you see there was a price paid for the "A" shares of £5/16/-, a total of £458,820, and there were dividends received, including the March one of £5/15/10d., £458,161. Will you tell me how those two matters were dealt with in the Pactolus account? Were they set off one against the other, do you know? --- I do not think so; I think the dividends were brought in as they were received.

Showing as dividends received? --- Yes.

And the price paid for the shares would be shown as the price paid for the shares? --- Yes.

And then, when the shares were sold eventually for £1, that would be set off against the price paid for the shares; is that right? --- Yes, something like that. I think it was probably brought in as just a receipt in the profit and loss account.

The price received for the shares when they were eventually sold to Pactolus? --- Yes.

I would point out to you, Mr. Ratcliffe, that the £5,933 which is added to the tax free dividends, and as this is made up, went to make up the new net price, that figure is 15% of the £39,553, which is an additional 10/-. I said the other day, I think, it was 14½%; my friend was more accurate. I worked it out again, and it is 15%. Have you worked it out? --- No, I did not work it out, but you would not get an exact 14½%; say you worked out your price at £5/16/2d, that would vary it.

I appreciate that. Your price is worked out in shillings, it has not any pence in it? --- That is so.

I quite appreciate that, but it happened to be worked out at 15%. What has been done is this, is it not, as appears there. First of all, let me ask you this: the additional amount of dividends, additional taxable dividends, which appears in the fourth line from the top £39,533, which is 10/- a

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share, that was an additional amount of dividends paid out of the profits for the year ended 30th June, 1950? --- Yes.

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The effect of the amendments made by the letter of the 13th December was to add to the profits that were taken out of the June 1950 year? --- Yes.

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So that the whole 10/- was an additional amount of dividend to be paid - equivalent to 10/- a year - out of those profits. Well then, having taken an additional 10/- a share out of those profits, the price was adjusted, of course, that is, what was worked out eventually as £5/16/- was adjusted by taking the total dividends now to be paid, as it appears there, adding the nominal value of the shares, and taking away what you had in the 30th September memorandum, called P's profit; is that right? --- Yes.

10

Evidence of
John Vincent
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And the P's. profit as it had appeared at 30th September was added to now that the adjustment was made by the very amount of £5,933, which was the additional tax free dividend paid? --- Yes. What was done was that the formula was applied - 10/- was put down, 14½% roughly 1/6d. was deducted, and then, as it was tax free, 1/6d. was added, and you got 10/-, which went on to the price.

20

The £5,933 is 1/6d., is it not? --- Yes.

Well, that is right, that is what you did. So that, when it was decided to increase the amounts to be distributed, the special dividends, by 10/- a share - because, I think you have told us the figures for the year at that time were such that you could safely do it? --- Yes.

30

When you increased those dividends by 10/-, you added an amount out of tax free dividends, which was added to what you originally called P's profits? --- Yes. The formula was applied in adjusting the price. Could I explain that in this case of Lane's there was a mistake made.

Oh, was there? In whose favour? --- In favour of Pactolus. The price should have been £5/18/-.

40

Well, I do not think I picked that up; will you just explain that? --- I do not know how it occurred but on applying the formula to it, it is

out by roughly 2/2d. a share, or 2/- a share. That is, to the whole transaction.

I see? --- This did not happen in any other case.

10 I see what you mean. In other words, you suggest that to do it correctly these figures should appear as if in the latter part of it, instead of adding £5,933 as additional profits - that is, the 1/6d. - it should have been 2/2d.? --- I should have taken 2,000 off instead of adding it.

Well, it is rather late to alter it now? --- When I found it out it was too late; the price had been agreed on and paid. I did look at it, and looking at all the transactions together, curiously enough the total came out correct.

You have used several times this morning the words "the formula"? --- Yes.

20 Do I understand by that you mean the formula, what we find in annexure 12, the 30th September document? --- No. The formula was what I advised the parties - that there would be 14½% tax on dividends received in a public company, in a company not a private company, plus 5,000.

And you are working on the basis of adding this 14½%? --- Plus 5,000 per company. Now, that was not added in Melford's. I remember that I said it would not be; we just added enough to round off the figures.

30 And you did actually add in 5,000, as such, in the 30th September figures. So that you were carrying on up to when the actual figures, the final figures, were arranged, the same formula as applied in the 30th September figures; is that right? --- Yes.

Tell me this: was it part of the original arrangement when you made your proposal you put it that Pactolus should, in adding the 14½% - that that should all be out of tax free profits? --- No, Mr. Tait.

40 That is what was actually done? --- I do not think so.

In this particular case all the additional

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amounts, the 10/-, the Pactolus item of 14½%, was all taken out of the tax-free amount? --- Any additional amounts, yes.

I have not worked it out but you say not necessarily in the others? --- I am fairly sure there was a large sum of taxable dividends.

We have had, you will remember, and it has been put in the minutes of Pactolus, the dividends out of tax-free amounts, Section 107 amounts, were declared, I think, in May 1950 or thereabouts. You remember the items? --- I remember they were read out. 10

There were separate items of dividend? -- Yes.

The tax-free dividends then were received as part of the special dividends in December, and then insofar as any tax-free ones in March, I am not sure of those, but in December at any rate, they remained intact, as it were, or still remained as tax-free items in the hands of Pactolus up to the date of the declaration and those dividends in May? --- Yes. 20

They were not, as it were, what you had received as special dividends out of tax-free amounts, section 107 amounts. Those amounts were not used for something else in Pactolus? --- No.

I will not go through all of these, I will just call your attention to the last one. Melford Motors is simple. There you start with the taxable dividends, as per the memo. of 30th September 1949, £194,360. There is a £2 adjustment here, no doubt to get the round figures. Then you find the draft resolutions, that means the draft resolutions as they appeared in the draft resolutions of 30th November 1949. Then there was additional tax-free dividend as per the memorandum of 30th September, which appears in the figures, giving a total of the total special dividends, as it were, paid on A. shares of £219,117, being £26.11.0. per share. That is the amount mentioned in the documents in the articles. Then adding the value of the nominal share to be sold, you take off the original amount of profit to Pactolus and you get an amount of £24? --- Yes. 30 40

Do you agree these figures merely express a reconciliation between the 30th September and final

figures that were used. They reconcile the two.

You agree they reconcile the two? --- Yes.

EXHIBIT EXHIBIT R.4 ... Reconciliation of 30th
September figures with
the final transactions.

RE-EXAMINED BY MR. MACFARLAN:

10 MR. MACFARLAN: You were questioned about the
£5,000 by my learned friend Mr. Tait which you had
said in your evidence previously was to be the
price to Pactolus, spread over the whole transact-
ion - referring to each company, each transaction
in each company? --- Yes.

And you said this morning, I think, there was
a smaller sum than the £5,000 taken in the case of
the first Melford transaction? --- Both transactions.

We will take the first one first. What was the
sum that was taken? --- About £1100.

20 When the second Melford transaction occurred,
as I think you have just indicated, that same
figure was taken with respect to it? --- Yes.

This word "net" which appears before the word
"price" in this document R.4, that, I take it, has
no meaning or significance to you. It was a price
that was determined? --- The prior word there, that
is the price, to an accountant the statement is up-
side down, you start off with price.

30 I think you have already said in answer to my
learned friend Mr. Tait you worked out the price
and you worked out the adjustments that are de-
tailed here on the basis of the application of this
formula? --- That is when the alterations were made?

Yes? --- Yes.

This item of 10/- which appears opposite
£39,553, in the Lane's transaction Exhibit R.4 - in
relation to taxable dividends that 10/- was reached
not merely as one step only but two steps, as I
think you have explained to Mr. Tait this morning?
--- Yes.

(THE WITNESS WITHDREW)

40 MR. TAIT: There is one matter I would like
to mention, Your Honour. I have spoken to my learn-
ed friend and it is quite likely the evidence may
finish today. I might say now that we are not call-
ing any evidence. I would find it personally

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Ratcliffe,
Recalled -
continued.

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No. 52.

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Lauri Joseph
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- continued.

convenient if the evidence is finished before the day is out, not to start my address to Your Honour until tomorrow. My friend, I understand, is quite agreeable to that course.

HIS HONOUR: That is very reasonable, I think.

LAURI JOSEPH NEWTON, continuing his evidence:

MR. KERRIGAN: Yesterday afternoon I asked you about your journey to Canberra in December 1949 to take part in the exchange of documents, cheques and so on that took place there? --- Yes. 10

In respect of A. shares in each of these three companies, transferred by you to Pactolus, was there any understanding as to any return of those shares to you at any time? --- No.

Did you have any knowledge of what Pactolus might do with those shares? --- No, not any.

Coming to the Melford transaction, in October 1950, do you remember seeing any correspondence in respect of that? That is the second Melford transaction? --- No, I do not think so. 20

Did you have any discussion with anybody about a further sale of shares in Melfords? --- Yes, I would have had discussions.

Do you recollect who you had discussions with? --- It would be with Mr. Wallace, Mr. Lane, and I think Mr. Bunny.

Do you recall what was discussed between you on that occasion? --- No, I do not think so.

Generally, what was your attitude towards that transaction? --- I approved of the transaction on the advice. 30

Apart from that, did you play any part in it so far as you recollect? --- No.

Coming to the second Neals transaction, in April 1951, did you have any conference with Mr. Ratcliffe - that is, yourself personally - on that? --- I think so, with Mr. Lane.

Do you recall what the conference with Mr.

Ratcliffe was about? --- Mr. Ratcliffe had proposed that some more shares be sold.

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Before that proposal came, did you have any conferences with him at all? --- No, I do not think so.

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Did you have any talk about Neals, with Mr. Lane? --- Yes.

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10 What was the talk with Mr. Lane about Neals, in 1951? --- Now that we had Lanes Motors formed into a public company, that we should now proceed to do the same thing with Neals Motors. I do not know whether that was raised by me or by Mr. Lane, but we discussed it, the two of us.

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And do you recall a proposal for the sale of shares being received from Mr. Ratcliffe? --- Yes.

Did you have any discussion about that proposal with anybody? --- Only with Mr. Lane and Mr. Bunny, and probably Mr. Wallace, I think; I would not be sure about Mr. Wallace.

20 Did you realize the effect that proposal would have if carried out? --- Yes. It was pointed out to me what would happen, I am sure.

Was it pointed out to you that there was no suggestion of the money which would be received by the shareholders being put back into the company? --- Yes.

From your personal point of view, how did you receive that proposal? --- It suited me personally because I would be getting some money, some cash.

30 And you needed the cash at the time? --- Yes.

For what purpose? --- For meeting my obligations to both the bank and the taxation department.

I understand, Mr. Newton, you are one of the three executors of the will of Mr. Robert Nathan? --- Yes.

Mr. Bunny being one. And who is the third, Mr. Lionel Newton? --- Yes, my brother.

Did you three, as executors, have any discussion about this proposal of Mr. Ratcliffe's? -- Yes.

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Did you reach any conclusion about it? -- Yes, we came to the conclusion - I think we had two conferences.

As to what? --- Mr. Bunny and I, in the first place, I think, when we were considering it, and Mr. Lane and Mr. Bunny and I realized then that it would give us some funds for the estate duty. Then my brother came in and Mr. Bunny and he and I had another conference on that same point.

I understand Mr. Robert Nathan left a large estate? --- Yes. 10

And the duties would be very heavy? --- Very heavy indeed.

From your knowledge of the condition of the assets, did it involve the sale of assets to enable the duties to be paid? --- Yes.

In either of those transactions, the Melford No.2 or the Neals No.2 was there any arrangement that shares sold by you should be returned to you at some future date? --- No. 20

I understand you included none of the profits of any of these three sales in your income tax? --- That is correct.

Was that on advice? --- Yes.

CROSS EXAMINED BY MR. MENZIES:

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MR. MENZIES: Mr. Newton, have I followed your position correctly when I say that in the second half of 1949 you were short of cash? --- Yes.

There was a pressing need for you to ensure that your income tax for the current year would not be increased by further distributions from the motor companies? --- Yes, not only the second half, the first half. 30

Let us come to the first half. Part of your trouble was, was it not, that during the year ended the 30th June 1949 you had received quite considerable taxable dividends from the three motor companies? --- Yes.

Without going into the figures with mathematical accuracy, may I put to you that during that year the three motor companies had distributed something like £225,000 in taxable dividends to shareholders. Do you recall that? --- Yes. I do not know if that is the exact figure, but I would say approximately.

10 You need not go as far as that. You had received a share of that and in all it made quite a considerable amount that you had to account for as taxable income in the year ending 30th June 1949? --- Yes.

And I suppose you appreciated that you would have a big tax bill based on your return for the 30th June 1949? --- Yes.

And you were also aware that the three motor companies had an excellent year in 1949, the year ended 30th June 1949? --- Yes.

20 And that unless some changes were made those companies had only two alternatives: one was to declare substantial dividends, on which shareholders would be taxed at the rate of 15/- in the £; the other was to retain the profits and for the companies to pay undistributed profits tax at the rate of 15/- in the £? --- Yes.

And you were fully aware of that? --- Yes.

And your own personal position made it most undesirable, did it not, that you should receive another large amount of taxable dividends? --- Yes.

30 And at the same time, I suppose, you were not anxious that the companies should have to find 15/- in the £ on the bulk of their profits made during the year ended 30th June 1949? --- I should think that would be the position.

It would be a very real embarrassment to the company, would it not, if that had occurred? --- I dare say it would; I had not thought of that.

40 Anyhow, you knew the position, and knowing that there were only these two alternatives unless something were done, it was your idea that something should be done? --- Yes. In what way do you mean, Mr. Menzies?

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We will come to that. I just want you to follow me. If things remained as they were without any change there was no escape from something like 15/- in the £ on the companies' profit during the year ended 30th June 1949? --- One way or the other.

One way or the other; and therefore you thought there should be a change? --- Well, I hoped for a change.

And the reason for the change, was it not, was to escape from this heavy taxation burden that was looming in the not far distant future? --- Would you repeat that? 10

And your reason for hoping for a change was to escape from the burden of the taxation that was looming in the not far distant future? --- Well, if it was possible to escape, I suppose.

And it was with those thoughts in your mind that you consulted Mr. Ratcliffe, did you not? --- No.

First of all, did you have those thoughts in your mind - that something should be done to escape from this heavy taxation burden? --- When are you speaking of, Mr. Menzies? 20

I am speaking of the middle of 1949.

THE WITNESS: No.

MR. MENZIES: When did you first appreciate that there was a substantial tax burden in the offing? --- I do not know when I would have first appreciated that, Mr. Menzies; certainly not up until the middle of 1949. 30

The date I put to you was about the middle of 1949 - at that time this became a matter of great concern to you. Do you agree with that? --- No, I do not.

You had been receiving monthly statements of the profits in the motor companies, had you not? -- Monthly statements?

Yes? --- Oh yes.

And those statements over the period right through showed that the profits were very high 40

indeed? --- They would, I should imagine.

And you as an experienced business-man knew that in a private company the receipt of high profits involves taxation problems? --- I know that.

You knew that well, didn't you, and you had had some experience of it in the past year when there had been distributions, hadn't you? --- I had had that experience.

10 And that was one of the things you did not like? --- Well, I do not think it had dawned on me then, Mr. Menzies.

When did it dawn on you? --- Which do you mean?

When did it dawn on you that unless something were done there was going to be a lot of tax paid on the 1949 profits? --- By the company?

By the company or the shareholders? --- Probably about July or August of 1949.

20 And July was the very month when you first consulted Mr. Ratcliffe? --- I think it was July, yes.

Didn't you take to him this problem of yours - "We face very heavy taxation: can you help us?"
--- No.

Why not? --- Well, at that time we were concerned about the improvement of the capital structure, with the thoughts of a public company in mind.

You have already told me that about this time you were also troubled about the taxation burden?
--- Before that time.

30 Before that time? --- I personally, yes.

And you knew Mr. Ratcliffe as a tax consultant?
--- Yes.

And when you took the problems of these companies to him, can you give any reason why you did not discuss with him this heavy taxation burden that was looming up? --- I think he probably would have raised it to us, Mr. Menzies.

I am asking, can you give any reason why you

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did not raise it with Mr. Ratcliffe? --- No.

There was not at any time, was there, Mr. Newton, any proposal that Melford Motors should become a public company? --- Yes.

When was that first proposed? --- At about the same time.

About the same time as what? --- As the other companies - Lane's and Neal's.

That was in July 1949, was it? -- Thereabouts. That proposal was not made to Mr. Ratcliffe. 10

Who was it made to? --- Only between Mr. Fenton and myself. We discussed it.

You discussed it and rejected it, did you not? --- We did. He did and I agreed.

So that when you saw Mr. Ratcliffe in July of 1949 you had rejected any motion of turning Melford Motors into a public company? --- Oh, I think we might have - - - it might have been discussed many times, Mr. Menzies.

I think I am just going back to what you told me. Perhaps I should not have done that. But you told me you had discussed not with Mr. Ratcliffe but with Mr. Fenton in July of 1949, or thereabouts, that he rejected it and that you agreed with his rejection. Is that right? --- That was one of the many occasions. 20

That rejection stayed and it stands today? --- I think it still stands, although it has been raised many times since.

And always rejected? --- By Mr. Fenton. 30

And you have agreed? --- Well, by force of circumstances.

So at no time from July 1949 up to the present time has there been any decision to turn Melford Motors into a public company? --- That is correct.

The decision has always been not to do so? --- That is right.

So at no time did you consult Mr. Ratcliffe

about the capital of Melford's as a public company and how that might be achieved? --- Not from a public company point of view, no.

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Now what was the topic about Melford's that was discussed with Mr. Ratcliffe? --- When, Mr. Menzies?

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10 When it was first raised with him at some time that you will give me. When was Melford's first raised with Mr. Fenton? --- I would think - I am not sure but I think it would be perhaps August or September; August, I think.

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1949? --- Yes.

That was not with a view to turning Melford's into a public company, but merely to getting money out of Melford's was it not? --- No.

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What was it for? --- The improving - - To increase the capital.

Do you mean by that to get money out? --- No, it was under-capitalised.

20 I just want you to listen to me. When you are speaking of increasing capital are you referring to this: to take money out with one hand and put it back with the other? --- I would not understand that, Mr. Menzies.

30 You did understand that, did you not, Mr. Newton? Did you not understand that Melford's had very large profits, and that this scheme was to take those profits out in such a way that they would not attract tax, and put them back as capital? --- No, I did not understand that.

That was not your understanding? --- No.

40 What was your understanding of what was being done by Melford Motors? --- Nothing was being done by Melford Motors in the first place until Mr. Ratcliffe learned that we were interested in this third company, and he then asked for the balance sheets concerning it, which were supplied to him. Then he made the suggestion that he would probably be able to improve our capital structure by certain steps, as he had done concerning the other companies.

And those steps involved at any rate the payment

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by Melford's of a substantial dividend, did it not?
--- Yes.

Which also involved that money going back into
the company as capital? --- Yes.

And you appreciated that right from the begin-
ning? --- When it was explained to me.

The payment of the large dividend did not help
the capital structure of the company at all, did it
- it stopped there. If you take dividends out of
a company and stop there you do not improve its
capital structure, do you? --- That would be right. 10

When you speak about improving the capital
structure of the company what you are talking about
is that those dividends should be channelled back
into the company as capital? --- I would not know
about that one.

I want to put this to you, Mr. Newton: that
what you were concerned with in Melford Motors was
not so much what you call "improving the capital
structure of the company" as dealing in a way which 20
you thought satisfactory with current profits -
the profits of 1949. That is right, is it not? --
No.

Would you take the balance sheet of Melford
Motors as at 30th June 1949? (Document handed to
witness). Before you look at this I want to remind
you of one thing: that the dividends which were
paid by Melford's in December 1949 and March 1950
totalled in round figures £190,000; just keep that
in mind? --- Yes. 30

Would you look at the fourth figure on the
liabilities side, which reads "Taxed profits re-
serve account £192,449."? --- Yes.

You knew that existed? --- I must have known
it existed.

In the previous year you remember that you
had received a tax free dividend from Lane's of
quite a considerable amount, do you not? --- For
the previous year?

For the previous year. 40

MR. EGGLESTON: You mean the previous finan-
cial year?

MR. MENZIES: Yes, the previous financial year. Do you remember that? --- No, I do not, but probably that is so.

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10 Here you had a taxed profits reserve account of £192,000. We will assume for the moment that you wanted to increase the capital of the company by something like £190,000. It would have been the easiest thing in the world, would it not, to have declared a tax free dividend to shareholders, and for the shareholders to have re-invested that money with the company as additional capital? --- You are assuming that, are you?

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I am asking you? --- You said "assume".

I am asking you that. It would have been? -- I suppose so; yes.

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You would by that means have increased your capital without the payment of any tax to the Commissioner or any tribute to Pactolus, would you not? --- Yes, I dare say.

20 But that would not have solved your problem, would it? --- I do not know, Mr. Menzies.

Look at the bottom item on these accounts. You have a Profit and Loss Appropriation Account of £134,000. Have you got that? --- Yes.

That was your problem, was it not; that was what was going to attract the tax?

MR. KERRIGAN: I object to "that was your problem". Mr. Newton is not a director, nor was he indeed a shareholder - - -

30 HIS HONOUR: You may re-phrase that.

MR. MENZIES: I do not know if you want to take advantage of that, but the position was, was it not, that Mr. Wallace was a nominee for you and your brother and sister? --- Yes.

And was nominee-director for you and your brother and sister? --- He must have been, I suppose.

40 Was not the problem of the company this item of £134,000 which was full of taxation, unless something was done? --- Well, I suppose that would be the position, although I would not be aware of it.

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Why would you not be aware of it? ---Well, because I was not very well versed in these matters.

But, Mr. Newton, you have told me that in the middle of 1949 you were well aware that unless something was done in these three companies somebody was going to pay 15/- in the pound taxation on the current profits. You do not want to go back on that? --- I knew that was always the case anywhere.

And you knew this item to which I am directing your attention now represented current profits? --- Yes, I suppose I would be told that. 10

Was not the problem of the company, and the shareholders, including those who were shareholders through trustees, how to turn that item into capital without paying tax? --- I would say "No".

You know, do you not, that Pactolus' profit on this Melford deal was considerable, do you not? --- Yes, I have heard so.

You knew at the time, did you not; I mean, it is not a matter of hearing it, you knew right through you were paying Mr. Ratcliffe or his company, you were allowing his company to retain a very large sum of money indeed? --- We knew -- Mr. Lane pointed out to me that Mr. Ratcliffe's company would make a profit out of the transaction or make a gain. 20

The figures show that the gain in Melfords was over £29,000. Now, you wanted something for your £29,000 did you not? --- We did not just walk up and take £29,000 without asking for something. 30

So the answer is yes, you did want something? --- We had not paid £29,000.

But you did, did you not; the shareholders' interest was depleted by £29,000 by virtue of this transaction? --- Yes.

And you knew - without knowing the actual figure, you knew that there was a large sum going to Mr. Ratcliffe and his companies, did you not? -- Yes.

Now, what I am asking you for is what were you looking for in Melford's for that £29,000? --- Well, 40

we would be - - - I presume Melford's would be avoiding or saving some expenses in the way of taxation when they completed it.

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Will you look at the balance sheet again. Substantially what you were looking for was to get this £134,000 out of profits and into capital without attracting tax? ---- Well, we were not looking for that originally.

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10 What were you looking for in Melford's? ----
We only wanted to have the capital increased when I spoke to Mr. Ratcliffe.

You are not speaking of getting new money in from outside interests? ---- No.

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All you mean is turning what is shown in your balance sheets as profits of some sort into capital? ---- Mr. Ratcliffe had pointed that out to us.

And I understand you said that is what you wanted? ---- I did not quite know, myself.

20 But the only thing you knew is that if you did this you could save some tax; is that not the thing you knew? ---- Mr. Ratcliffe would point that out to us.

And is not that the only thing that you really knew about the transaction? ---- No.

Well, what else did you know? ---- That he would be receiving his share of, you say, £29,000.

Yes? ---- And the capital of the company would be increased.

30 And you were aware, were you not, that if all you wanted was an increase in the capital of the company you could have declared a tax free dividend and not paid Mr. Ratcliffe a penny? ---- That would be pointed out to me; I did not know that, not I personally.

But you say you do think that would be pointed out to you? ---- Yes.

But you were in favour of the scheme that was carried through, were you not? ---- Well, it showed certain advantages.

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And the advantage that it showed was that you got rid of the money in the company that was liable to bear tax in the next tax year? --- That was one of the advantages.

And the only advantage, was it not? --- I would not think so, if we had our capital increased.

Mr. Newton, was not the consideration for the £29,000 that the shareholders were foregoing, that they and their companies would escape the taxation that was looming? --- Well, that was a fact, I suppose, Mr. Menzies. 10

I put it to you that it is the only one, Mr. Newton? --- No, not if the capital was going to be increased as well.

But you could increase the capital without paying the £29,000? --- Probably somebody pointed it out to me.

You told me you had no doubt that you chose this other scheme for a good reason? --- That it was more advantageous than the other one. 20

And the only advantage was that you got rid, as it were, of the £134,000? --- That was the difference in the two.

And that is why you chose the other? --- Well, obviously, naturally; anybody would do that.

And you were prepared that the £29,000 should adhere to Mr. Ratcliffe for that? --- Yes.

You have told me that at no time was it practical politics to turn Melford's into a public company? 30

MR. EGGLESTON: He did not say that.

MR. MENZIES: Yes, he did.
(To Witness): I put it to you, Mr. Newton, you did tell me that it was, at no time, practical politics to turn Melford Motors into a public company? --- No, I used words to that effect, or something to that effect.

That is all I want? --- For trading purposes.

Now, let me come to Neal's. Oh, there is one other thing I wanted to ask you about Melford's. 40

Before the second Melford deal was made, there was a large sum of tax free profits paid by the company to shareholders upon the declaration of dividend, was there not? --- Before - - -

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Before the second Melford deal? --- The 1951?

Yes. 1950, it was. I was saying that before that was carried through the company did declare tax free profits of something like £80,000? --- That is probably right.

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10 I think it is in the book somewhere.

MR. EGGLESTON: Page 52 of the admissions.

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MR. MENZIES: Your Honour will see at the bottom of page 52 that on the 25th October 1950 there was a dividend out of tax free profits of £80,000 and that this dividend was paid or credited to the holders of the "B" ordinary shares. (To Witness): That was not to improve the capital position of the company, was it, Mr. Newton? --- No, I do not suppose so, Mr. Menzies.

20 It was to put you and the other shareholders in funds? --- Yes.

And when we come to the second Neal transaction, the object of that was to put you and the other shareholders in funds, was it not? --- As it turned out.

And that was the only purpose or effect that it had? --- It was the only effect.

And the only purpose? --- No.

30 Well, what other purpose was there? --- I think the purpose was probably that Mr. Ratcliffe had put this proposition to us to sell the shares to him again, or again sell shares to him.

But you were not going into the transaction merely for the purpose of letting Mr. Ratcliffe make a handsome profit, were you? --- No.

40 Why did you go into this transaction at all, the second Neal's transaction? --- It was because of the time, when Mr. Lane and I thought we should be proceeding with the formation of a public company with Neal's.

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You knew, did you not, that to withdraw £301,000 from the company was not helping you to form a public company? --- I would know that. When was that?

By this transaction that took place, towards the end of 1950, no, June 1951? --- I am speaking of prior to that time.

We are getting away from the point. You were telling me what was the purpose of the transaction that was carried through in June 1951. You said that it had a purpose other than getting money out into the hands of the shareholders tax-free. I am asking what other purpose it had? --- I do not know that it had any other purpose. On that particular question, prior to that, we had a purpose and that was the formation of a public company, or a move to do so.

10

You, yourself, were in need of cash in the middle of 1951? --- Yes.

You were only too anxious to get your hands on quite a substantial part of this money? --- Yes.

20

And you knew exactly what you were doing when you took part in this transaction? --- I knew because I was advised by Mr. Ratcliffe and Mr. Bunny that this transaction was quite in order to proceed with.

And you knew, did you not, that for this transaction Pactolus would receive something in the neighbourhood of £50,000? --- That probably would be pointed out to me. £50,000 was it?

30

To be precise, it was £52,481. You knew that, in round figures? --- I knew that.

Why were you prepared to allow Pactolus to make that money? --- Because of the money I would get out of it.

And the money you would get tax-free? --- I wanted money.

As a businessman, you do not suggest that you would have been a party to the declaration of dividends amounting to over £320,000 if 15/- in the £1 tax was to be paid on those dividends? --- Of course, I would prefer it not.

40

You still have not answered my question. You would not have been a party, having regard to your past experience of declaring dividends in this company of something like £320,000 on which shareholders would not pay merely 15/- in the £1, but pay provisional tax? --- I would be a party to it because we were advised to do it.

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You were not advised to do it in such a way that you attracted tax? --- No.

10 I am asking you now, were you not paying £52,000 to get this money tax-free? --- I suppose yes is the answer to that.

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And you knew very well that that was the case? --- That would be pointed out to me.

That was the thing that you consulted Mr. Ratcliffe about? --- That is the thing Mr. Ratcliffe put up to us.

I am asking you, is it the thing you consulted him about? --- No, he put the proposition to us.

20 Tell me, what did you consult Mr. Ratcliffe about in relation to the Neal's transaction? --- Nothing at all.

Did you know Mr. Ratcliffe was being consulted? --- Yes, I mean nothing other than the public company idea in the early part of that year.

We are talking about during 1951? --- Yes.

30 April 1951, to be more precise. At that time did you not consult Mr. Ratcliffe about getting current profits out of the company in such a way that it would not bear tax? --- No.

You were not a party to consulting him about such a purpose? --- No.

When he made such a proposal to you, were you surprised? --- Yes.

Did you take up with him then the fact that he did not give you the advice that you sought? --- I probably did.

Have you any recollection of it? --- I could not say emphatically. We no doubt did.

40 You knew further, did you not, that it would be quite impracticable for you to turn Neal's into a public company without the approval of your suppliers of motor cars? --- We did not know that, but guessed that. That was our judgment,

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When you wanted to consider the conversion of Neal's into a public company, did you not consult your suppliers? --- We informed them and they approved of the idea.

Did you inform them at any time prior to October 1951? --- No, I should think not.

I put it to you that in April 1951 you were not considering Neal's as a public company, you were merely concerned with the current profits that would bear tax? --- No, I do not agree. 10

I want just to go through the overall picture with you for a moment. If you take the three transactions that occurred at the end of 1949, the position was that Mr. Ratcliffe showed you a tax saving of what, in round figures, I can describe as three-quarters of a million pounds. You know that, did you not? --- I would know that, it would be pointed out to me.

And you knew that the companies and the shareholders would not get the whole of that three-quarters of a million but that Mr. Ratcliffe and his companies would get something like £160,000 of it? --- Yes. 20

Was not that £160,000 really a payment for you getting the difference between that and a quarter of a million tax-free? --- The difference between what?

Three-quarters of a million and £160,000? -- Did you say payment.

Yes? --- That was the gain that Pactolus would make. 30

I am asking you why you allowed Pactolus to have that gain? I am putting it to you that it was because you would get, I am talking of the shareholders, tax-free the difference between three-quarters of a million and £160,000. What do you say to that? --- That would be right. That is what he got.

Re-examination

RE-EXAMINED BY MR. KERRIGAN

MR. KERRIGAN: In 1949 who were the tax consultants to the company? --- Buckley & Hughes. 40

And were they tax consultants to the shareholders, too, or to you anyway? --- Yes.

(THE WITNESS WITHDREW)

EVIDENCE OF FREDERIC ERNEST BUNNY

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MR. EGGLESTON: Your full name is Frederic Ernest Bunny and you live at 5 Monaro Close, Kooyong? --- Yes.

You are a member of the legal firm of Corr & Corr? ---- Yes.

And a solicitor of the Supreme Court of Victoria? ---- Yes.

10 You are, of course, familiar with the subject matter of these proceedings. I want to direct your attention, first, to the early part of September 1949, when you attended a conference in the I.A.C. Board room. Were you present at the beginning of that conference? --- I would say not. When I arrived it was obvious that the conference had been going on for some time.

Were you called to it? --- Yes. A message was sent to me asking me if I would attend.

20 Who was present when you got there? --- The late Mr. Robert Nathan was in the chair, Mr. Harry Lane, Mr. Lauri Newton, Mr. Ratcliffe, Mr. Wallace, Mr. Ross and Mr. Aitcheson.

HIS HONOUR: What was the date of this conference, Mr. Eggleston?

MR. EGGLESTON: I am sorry, Your Honour, it was in September.
(To the witness): Can you fix the date? --- I rather thought that it was about the 9th September, but I would not be sure of that; that is, 1949.

30 Would you tell us what happened? Who spoke to you when you arrived there and what was told you at that conference? --- Mr. Robert Nathan said that Mr. Ratcliffe had made a proposition to himself and his associates and he would like me to hear what the proposition was and to express an opinion as to whether I thought it was legal or otherwise. Mr. Ratcliffe then spoke. He said that he had looked at the balance sheets of the companies, the three companies - Lanes, Neals and Melfords - and each of
40 them had a low paid up capital, and he had considered that and was of the opinion that it was not desirable to leave them in their present state.

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He said that he had suggested to the shareholders that certain dividend rights - and he used the word "certain" because at that time nothing was determined as to the amount - should be attached to some of the shares in each of the companies, and that a company in which he was interested, Pactolus Proprietary Limited by name, would then make an offer to purchase these shares to which the special dividend rights had been attached.

10

MR. EGGLESTON: Was anything said about what was to happen to the purchase money? --- He then said that it was proposed that the purchase money should be used in the taking up of preference shares which each company would then issue.

Did he say anything about the way in which the price of the shares would be based? --- He said that the price would be based on the special dividend rights. I asked if those dividend rights had been determined, and he said, "No." He said that a certain amount would be taken into account in fixing those dividend rights and the shares themselves would be valued at £1 in addition to that amount.

20

Was anything said about Capital Issues at that time? --- Yes. I raised the matter of Capital Issues for two reasons. I thought the fact that dividend rights were being attached to the shares, although they were in existence, would be within the operation of the Capital Issues Regulation as to the issue of preference shares, or alternatively, the variation of the rights attached to preference shares. I also said that in my opinion Capital Issues control consent would require to be given for the issue of the new preference capital. Mr. Ratcliffe rather challenged my view about the variation in the dividend rights, but I did not persist at that time in that opinion.

30

Was anything said while you were there about any alternative proposals? --- No.

40

Was anything said about what Pactolus Proprietary Limited was going to do with the shares? --- After a little discussion as to how these dividend rights were to be attached to the shares, and I said that it was quite simple to amend the Articles

to attach those rights, a discussion then occurred as to various other matters, including this Capital Issue consent and so forth.

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10 What I asked you, Mr. Bunny, was whether anything was said about what Pactolus was going to do with the shares? --- Yes, I am sorry. I said to Mr. Ratcliffe, "What are you going to do with the shares after you get them?" He then said, "After the dividend rights have been exhausted I propose to sell them." He did not at that stage indicate to whom he proposed to sell them, and I rather think that this was somewhat an aside, this interview with Mr. Ratcliffe, as between Mr. Ratcliffe and myself. I doubt whether many of those in the room realized what was the import of my question.

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HIS HONOUR: Did he give any indication of the nature of these dividends? --- As to the amount?

20 No, not the amount, as to the nature of the dividends? --- It was to be expressed in the matter of money.

But had that any relation to anything in particular? --- No, except that that had to be established, to give the holders certain dividend rights, and after the rights had been exhausted, a cumulative preference right of 5%.

30 MR. EGGLESTON: Was anything said relating the special dividend rights to profits of any particular period or anything of that kind? --- Yes; it was indicated that the dividend rights would include, as I understood it, the whole of the profits for the year ended 30th June 1949 and also the profits for the year ended 30th June 1950.

40 Then was there a discussion about taxation? -- Yes. Comparatively late in the discussion whilst I was there, I think it was Mr. Nathan who asked me whether the purchase price of the shares would be subject to taxation. Those were not his exact words but that is the substance of it. I knew something of the structure of the company and the shareholders and expressed the view that as none of the shares had been purchased for re-sale but held for investment I thought that the purchase price would not

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attract tax. Mr. Ratcliffe agreed with that view.

Mr. Ratcliffe agreed, yes. Then what further took place at that conference, Mr. Bunny? Was any decision come to? --- Late afternoon had been reached and Mr. Nathan and Mr. Lane and Mr. Lauri Newton, who were more or less seated, as I recall it, at the top of the table, had a short discussion between themselves, and I understood them to be generally agreeable to the proposal which had been put forward, and it was then suggested to Mr. Ratcliffe - by whom I cannot recall - that he should put the proposal in writing.

10

What was your next part in the matter after that conference? --- I gave the matter some thought myself. I think I saw Mr. Lane within the next two days, and the next real matter in which I was concerned was a perusal of the letter received from Mr. Ratcliffe, of the 30th September 1949.

That is Annexure 12 in the Annexures? ---
Yes.

20

When Annexure 12 arrived did you go to work on the drafting? --- I had a further conference with Mr. Lane. It is possible that Mr. Newton was there but I really took my main instructions from Mr. Lane. I had a talk with him and he looked at the letter and that portion of it which related to the conditions to be inserted in the contract. As far as the figures were concerned, I at no time paid any regard to those at all.

30

You left that for other people to work out and you ultimately inserted figures that you were given? --- That is so.

In Exhibit A3, Mr. Bunny, there are letters and copy letters passing between you and Mr. Ratcliffe as to the terms of the agreement which you were drawing up? --- Yes.

I think the first one - - -

THE WITNESS: Might I have a look at it?

(Exhibit A3 passed to the witness).

MR. EGGLESTON: The first letter to which I want to direct your attention is the letter of the 10th October. It is a letter written by you to Mr. Ratcliffe? --- Yes.

And on page 3 -- that is of my copy -- --

THE WITNESS: Could you give me the opening passage?

10 MR. EGGLESTON: "In the agreement to be signed by the shareholders we propose to insert various conditions". Have you got that? --- Yes, I have that.

You said "In the agreement to be signed (reads) into a public company generally." Now that right of re-purchase of course was not included in the letter of the 30th September? --- No, Sir.

20 Could you tell His Honour the origin of that right of re-purchase which you said you proposed to insert? --- I think it arose out of the conference which I had with Mr. Lane. Whether it was his idea or mine I am not too sure.

Then from that letter you elicited a reply from Mr. Ratcliffe dated 12th October? --- Yes.

30 It is under heading 4 "Agreement For Sale" in that letter from Mr. Ratcliffe. It is the fifth paragraph of that section and he said, "I note that here you refer to the re-purchase of 'A' ordinary shares in the event of a certain eventual-ity. . . . (reads) at the conference in Melbourne." Was that correct? --- Yes, that was so.

I think you acknowledged that in a later letter?

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--- Yes, I adverted to that in my later letter;
the 18th October is the date, I think.

Then Mr. Ratcliffe went on in this letter to
point out that the existence of such an agreement
between the parties might lead to the Commissioner
putting up an argument under Section 26A? ----
That is so. I had overlooked Section 26A.

I will not take you to all the text of the
letter, but on the following day Mr. Ratcliffe
wrote to Mr. Harry Lane about the same problem? 10
--- Yes.

And sent him a copy of the letter to you.
What took place as a result of that move by Mr.
Ratcliffe? --- I had a further conference with
Mr. Lane at which Mr. Ross - and I think Mr.
Wallace was present. We discussed the problem.
So far as Lane's was concerned, the number of "A"
shares which would be outstanding was 79,107, if
I remember correctly. It was pointed out that 20
if and when Lane's Motors became a public company
it would not be a great disadvantage if those
shares, which by that time it was anticipated
would be cumulative preference only, should be
outstanding as preference shares; and when this
was discussed with Mr. Lane he then said that as
far as he was concerned the shares could be sold
to Pactolus Pty. Ltd. without any restrictions
whatsoever.

Without any restrictions: he himself said
that? --- Yes. He indicated then that he was 30
expressing his own view; he would have to talk
the matter over with Mr. Nathan and Mr. Lauri
Newton; and within a day or so I was told by
Mr. Lane that Mr. Newton and Mr. Nathan had agreed
that the shares should be sold unconditionally.

In the meantime you wrote on the 18th October, which was, as appears, the day after the conference, to Mr. Ratcliffe in the terms which appeared in that letter in which you said that Mr. Lane had to consult Mr. Nathan and Mr. Newton, and "he feels that these gentlemen will have no objection to the non-appearance of the matter suggested in the three paragraphs mentioned"?---That is so.

10 The result of that was to exclude all the provisions about any restriction on the "A" shares? ---That is so. Nothing more was ever heard of those restrictions so far as I was concerned.

In the same letter you went on to say, "The only observation we have to make is as to the wisdom of the exclusion of paragraph 1(d)"?---That is right.

To what did paragraph 1(d) relate?---It was an obligation on the part of Pactolus to take up preference capital and sell it to the original vendors.

20 Perhaps it would be convenient, Your Honour, if that original draft, which was under discussion, were tendered to make this clear.

HIS HONOUR: Yes.

MR. EGGLESTON: You have a clean copy, I think, of the draft?---Yes.

My friend may see it if he wants to check it.

MR. TAIT: I accept it.

MR. EGGLESTON: That is the draft (document shown to witness)?---No, this is not it.

30 I am sorry, this is the original draft. That is the draft after the elimination of the other clauses?---Yes.

I think it is necessary to tender copies of both, because the clause under discussion was in fact 1(f) of the original draft but became 1(d), I think, in the next?---That is correct.

HIS HONOUR: One is the original draft agreement for the purchase of shares by Pactolus?

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MR. EGGLESTON: That is the longer document. The shorter one is the draft referred to in the letter of 18th October - a draft agreement on the basis that these provisions are not to be included.

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EXHIBIT

EXHIBIT A.10 Original draft agreement for purchase of shares by Pactolus; Draft agreement on the basis that certain provisions are not to be included.

10

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MR. EGGLESTON: Your Honour will see, if I may just direct Your Honour's attention to it, that (a) (b) and (c) deal with the exercise of the option and payment of purchase price, and then in the original draft (d) and (e) were, I think, clauses relating to the re-purchase of shares and so on, clauses dealing with the conversion to a public company and that sort of thing. In the second draft, if Your Honour looks at it, I think that (a) (b) and (c) remained the same, and the clause which had been (f) in the first draft became (d) of the second draft.

20

HIS HONOUR: Yes.

MR. EGGLESTON: Mr. Bunny was saying, "We are submitting a draft agreement on the basis that these provisions are not to be included (reads).....rest on the mutual trust between your company and the original shareholders." (To witness): Would you explain to His Honour what you had in mind in writing that passage?---I still had in mind the factor of Section 26A of the Income Tax Assessment Act. I now realise that it would not have mattered whether it was in the agreement or not, whether it was a binding obligation or not, and at that stage I was saying, "Well, these people know that these preference shares will have to be issued and purchased back in order to give effect to this proposal", and I thought that would be safe.

30

In the same letter, the next paragraph, you dealt with the question of the splitting of cheques to provide for the amount necessary to buy back the preference shares?---Yes.

40

What did that difficulty relate to?---That was bound up with the same idea - that is the letter of the 18th October still?

Yes; it is in the letter of the 18th October in the paragraph following the one at which you are looking. In the second paragraph under the heading, "Agreement for Sale". "You have missed the point we are attempting to make"---I had written to Mr. Ratcliffe pointing out to him that if the same cheques were used - that is, if the Pactolus cheque were used - to purchase the preference shares there would be a difference because the amount payable for the re-purchase of the preference shares was not the same as the amount payable for the purchase of the "A" shares.

10

Yes; that was what you had originally raised with him?---Yes, that is right, and he had misunderstood what I said, and I was again explaining what I had in mind.

In this one you said, "It occurs to us that this may create too close an association between the sale of the "A" Ordinary shares and the purchase of the new preference issue". What did that have relation to?---It still had the possibility that somebody might seek to attach to that an argument that Section 26A could still apply.

20

I do not think that there is anything else there which I want to ask you about. The rest of the correspondence, does that represent the whole of the negotiations so far as you had any part in them?---It does.

30

In a later letter of the 2nd December, I think it is, you reverted to this question of 1(d) of the draft?---That is so.

You said, "We have again looked at the draft agreement.....(reads).....well known to you?---Yes.

The reasons were what?---Those expressed in Mr. Ratcliffe's letter of the 10th October.

I think it is the 12th, actually?---I am sorry, the 12th.

And you then proposed that that clause should also be omitted?---That is so.

40

Mr. Ratcliffe's reply is on there, and he agreed that it would be preferable to omit it, and that business circumstances were such that the "B"

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shareholders would not be running any risk?---That is so. There was a further slight alteration in regard to that. When one compares the second draft which His Honour has, and the option agreements as finally used, there was a passage in Clause 2 which related back to the matters dealt with in Clause 1(d), and that is also excluded in the final draft.

Yes, in other words, when the obligation to take up preference shares was dropped out, the part of Clause 2 which related to those preference shares was also dropped out?---That is so.

10

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Did you have any further discussions with Mr. Ratcliffe between the 30th September and the final execution of the options?---Yes, I saw Mr. Ratcliffe on the 15th November, I think it was, and we looked through the progress that we had made to date in regard to the alterations to the Articles and draft documents. I asked if the final figures were yet available for insertion in the amendment to the Articles, and in the option agreement, and I was told that they were not then available. They were supplied to me within the next two or three days.

20

Yes, and were any alterations made in them after the figures were supplied to you?---I think there was an alteration in the Lane's amount, a special dividend in respect of Lane's.

Did you have any discussion with Mr. Ratcliffe at that conference about the meetings?---Yes, we looked through the various meetings which would require to be held, and I indicated to him that certain shareholders' meetings would require to be held, and that arrangements would have to be made for the establishment of the Branch Register at Canberra; that a resolution of the Board would require to be made after the Articles had been amended, and that somebody would have to be appointed as the Canberra Authority for the purpose of the Articles.

30

Yes?---He indicated to me that there was a solicitor in Canberra that had acted as agent for Mr. Ratcliffe's own Sydney Solicitor, and it was decided to approach that gentlemen, Mr. Phippard, to see whether he would act, and tentative arrangements were then made for the meetings in Canberra.

40

Well then, from there on Your Honour, I think the whole of the matter is in the documents; I am not going to take Mr. Bunny through them.

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You actually went to Canberra, did you not, Mr. Bunny?---Yes.

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And you have taken part in the agreed statements of facts here?---Yes.

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And those facts are correct?---Yes.

10 Except, I think, one date, which is the date as to Mr. Robert Nathan - - -?---Yes, it should be the 16th June 1950. I think it says the 26th: as a matter of fact, I think it is referred to as two different dates.

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Now, I want to take you to the transaction, the second Melford transaction, which occurred in 1950?---Yes.

20 When did you first hear of any proposal to carry out a similar sale of shares to the first Melford one?---That was within a day or so of the receipt in Melbourne of Mr. Ratcliffe's letter that originated the proposal; I just cannot recall the date of it.

Prior to that letter, had you had - - - It is the letter of the 13th October 1950, page 103. Prior to that, had you been consulted in any way about a similar transaction?---No.

30 When you were shown this letter, did you get instructions at the same time?--- I am not too sure whether it was the same day. My recollection is that the letter was sent down to me, and then I had a conference with Mr. Lauri Newton, and possibly Mr. Fenton, but I am not too sure of that.

And what took place at that conference?---The matter was looked at, and I was asked as to whether the same advice was available as was previously given, that the purchase price of the shares would not attract tax in the hands of the vendors, and I said that I saw no reason to change my previous opinion.

40 Yes. Well then, did you receive instructions

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to proceed with the drafting?---That is so; from then on.

On this occasion, was there any necessity to negotiate terms in any way with the purchaser, the proposed purchaser?---Not terms of any contract. The final figures had yet to be supplied; I think there was a possibility of some variation.

But so far as your part in it was concerned, it was the same as before?---That is so.

Well then, you used similar drafts, you took steps to have the Articles amended or to have amendments prepared?---That is so.

And then the transaction was carried out in the way in which it is described in the admissions? ---That is so.

Now, I want to take you, Mr. Bunny, to the second Neal's sale, and I want you to tell me, first of all, what you know as to the second Neal's transaction and its origins?---To give the full picture, Sir, it would be necessary for me to go back to a date shortly after the death of Mr. Robert Nathan. Under Mr. Nathan's will, Mr. Lauri Newton, Mr. Lionel Newton and I were the executors. I was in Sydney on other work, and took the opportunity of seeing Mr. Ratcliffe. I asked him if he would make valuations of the shares held by Mr. Nathan in Lane's and Neal's and in Bebarfald's. I told Mr. Ratcliffe at that stage that a large amount of money would be required for probate and estate duty purposes, that the estate was very considerable and I thought possibly up to £400,000 would be required for that purpose.

Yes. Well now, when did you first hear anything about a proposal that Pactolus would purchase shares?---That was when the letter which contained the proposal from Mr. Ratcliffe was shown to me; I would say it was within a day or so of its receipt in Melbourne.

At this time you were an executor of Mr. Robert Nathan's estate?---That is so.

Prior to your seeing that letter, had anything been mentioned to you by anybody about any approach to Mr. Ratcliffe?---Not that I can recall.

10

20

30

40

When you received that letter - -?---What is the date of it?

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10 The 23rd April, 1951, it is in reply to a letter from Mr. Lane of the 19th April which is in the third bundle of those. Mr. Bunny, on this occasion, as executor, it was necessary for you to be one of the deciding parties?---That is so. Mr. Lane, Mr. Lauri Newton and I were at a meeting of a Board of which we were all directors, and after the conclusion of the meeting this letter was produced. I had already seen a copy. We all had a look at it and I pointed out to Mr. Lauri Newton that this was an opportunity to realise, as corpus, some of the shares held by Mr. Nathan in the Neal's company. I had realised the difficulty which would arise if dividends were declared, because of the application of the doctrine of appropriation, and I was not anxious to have that for consideration.

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20 I pointed out to him, as I said before, that this was a realisation as corpus and treated as such for the payment of duties. He indicated he would desire to see his brother. Eventually, I think within a day or two, the three of us got together and I repeated the advice which I had given. It was then agreed that we should be parties to the proposal.

This proposal differed from the previous one in that no money was to be put back in the form of preference shares?---That is so.

30 Were you asked about that difference?---I think I was and I said that I could not see that there was any reason to change my previous opinion. As a matter of fact I had, by that time, seen an opinion given by Sir Garfield Barwick and Mr. Kerrigan which was taken at the time of the proposal to float Lane's Motors Pty. Ltd. into a public company. That opinion expressed the view, as I read it, that a proposition such as was now in contemplation was not taxable as income in the hands of the sellers of the shares.

40 Well then, following on that decision by you and the two Mr. Newtons, as executors, was a decision taken by the other shareholders?---I was told that the other shareholders had agreed and I was instructed then to go ahead with the document.

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You entered into that transaction as one of the executors, in due course?---That is so.

And so far as the terms of the contract and the drafting was concerned, was the same contract, the same drafts, used as in the previous case, with the appropriate modifications?---That is right.

CROSS-EXAMINED BY MR. MENZIES

MR. MENZIES: When your advice was first sought in September of 1949, what was proposed was outlined to you, was it not?---That is so.

10

Did you understand from what you were told that the purchase price that would be paid by Pactolus would depend upon two elements, one fixed and one variable. The fixed one would be £1 per share for each share subject to the transaction?---That is right.

The variable one would depend entirely upon the rate of dividend that was attached as special rights to the shares?---I think that is substantially correct.

20

It was made clear, was it not, that those two elements, the value of the shares plus the dividend, would exceed the purchase price?---Yes, I think I knew that at the time.

When you were called in to advise on this transaction, were you interested in what it would cost the shareholders?---No, that was not part of my activities at all.

You knew it would cost them something because of this difference we have referred to?---Yes, I should think at that conference, or shortly after, I knew there was a difference.

30

But you say that you never concerned yourself in any way with that difference?---Yes.

It was their bargain and they could pay what they thought fit for what they were getting?---That is so.

10 When we come to the correspondence, would you agree with me that the correspondence does take this line, that where to put something into an agreement which could be left to understanding might involve a tax difficulty, it was better to leave it out of the agreement and rely on the understanding?---That only applied to clause 1(d).

But that was the principle that was adopted in that particular case?---Only in respect of clause 1(d).

Again speaking quite generally of the correspondence, it shows, does it not, that Mr. Ratcliffe was very anxious not to have the whole proposal submitted to Counsel?---I do not know why.

20 But that is so, it does say that?---He said it.

MR. EGGLESTON: Mr. Ratcliffe was not cross-examined on that.

MR. MENZIES: I am asking Mr. Bunny, The next question, he has answered in advance.

(To the witness): Did he explain to you that reluctance?---No.

And you do not know what it was?---No, I did not inquire.

30 I want to refer you now to the letter of the 10th October 1949, part of Exhibit A.3. There is a sentence on page 2 that I want to ask you about. It reads: "The position, therefore is....(reads)... ..the whole scheme would fail in its object." To what were you referring there?---To the fact that there would be no special dividends.

Unless the Treasurer agreed?---Yes.

40 But were you concerned that the proposal to attach special dividends should not go to the Treasurer?---No, there was no reason in my mind, why it should not have gone.

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It would disclose a great deal more than the letter that was eventually sent to the Treasurer, would it not?---It was not a letter, it was a form of application.

My recollection is that it was accompanied by a letter?---It was accompanied by a letter.

And it did not refer in any way to the payment of the special dividends as a means of providing the money to take up the preference shares?---The letter speaks for itself.

10

But we agree that it did not make any reference to that?---No.

Whereas, if it had been decided that these regulations did apply, that would have had to be disclosed?---Of necessity.

And had you assumed that the Treasurer would in those circumstances have refused his consent?---I had no mind on that subject at all.

Coming back again to this sentence. What was in your mind when he said, "If what is proposed.... (reads)....the whole scheme would fail in its object."?---That is if the consent was not obtained.

20

The figures for the December 1949 deals were, I think, received by you subject to an alteration in Lanes, somewhere about the middle of November, were they?---Yes, that would be right.

And there is in the Minute Book a record of a meeting of the directors on the 18th November. The one I have is Neals, and I merely take this one by way of example. They were all in the same form. It refers to the amendments that would have to be made to the Articles of Association?---Yes.

30

I gather that the actual document was then before the meeting, and has not been found?---That is so.

But I have been handed another document which I am told is a copy of it?---I have no reason to believe otherwise.

And, at any rate, when this document was composed it was known in Neals that the special

dividend would be £13.7.0d. on each ordinary A. share?---That is so.

And subject to what you have to say about Lanes, that would be equally true of the other companies, making such adjustments as are necessary to record the actual dividend that had been agreed upon?---Yes, that is so.

Do you know by whose agreement the price of the shares was fixed?---No.

10 Do you know by whose agreement the amount of the dividend was fixed?---No.

You saw no correspondence that dealt with either of those matters?---No.

There is one thing I should put to you. This document - I do not think it is important for present purposes - appears to be dated 12th December 1949?---Yes.

20 It appears that there must have been some document in existence on the 18th November, and it may be that is an error?---I would think that the document on the 18th November was probably a skeleton of that, and that this was sent out on the 12th December and dated the day it was sent.

That would not have been good enough because you have to give your notice for a special meeting? ---But I think that the admissions record the fact that all shareholders consented to the short service.

30 MR. EGGLESTON: The document is in existence. If it is not in the admissions, we can produce it.

MR. MENZIES: I do not really think it matters very much. All I wanted to do is to clear up what might be a misapprehension about the date of this document?---Such a document is in existence, at any rate.

40 In regard to the second Neals transaction, it had the effect of putting money which was trading profits of the company into the hands of the shareholders, did it not?---Moneys - yes, I think that would be right, represented by trading profits anyhow.

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And that was the purpose and object of the exercise?---As far as I was concerned as executor, truly, yes.

And you have told us of your conversations with the others?---That is so.

And they too?---As executors, there was no question about it.

And the other shareholders?---I cannot speak for them.

Did you not discuss the matter with them?---
Only on the broad lines as to whether the matter should go on or not. 10

And there was complete unanimity that it was a good thing?---As far as I can remember, the instructions were unanimous.

You referred to some opinion that you say in relation to Lanes Motors Holdings. There was not, in regard to Lanes Motors Holdings, any fixation of special dividend rights to shares?---Not in the public company. 20

And there was nobody who represented Pactolus Limited's part in the transaction that we are examining?

HIS HONOUR: That is to say, corresponding?

MR. MENZIES: There was no body corresponding? ---No. Pactolus was still in it, of course.

As a shareholder, but there was nobody to play the role corresponding to Pactolus Limited?---No.

MR. EGGLESTON: I think my friend is under a misapprehension. 30

MR. MENZIES: I merely asked a question and got the answer.

THE WITNESS: Perhaps, I misunderstood the question.

Re-Examination. RE-EXAMINED:

MR. EGGLESTON: Mr. Bunny, on what transaction was the opinion that you saw given?---It was

the effect of the transaction of 1949.

And for what purpose was that opinion taken?
 ---So that we could be assured - when I say "we"
 I mean the Directors of Lane's Motors - that there
 was no liability attaching to Lane's Motors Pty.
 Ltd. in respect of these dividends which had been
 declared for 1949.

10 Your Honour, I appear to have forgotten again
 to deal with the transaction in relation to Mr.
 Fenton's daughters.

HIS HONOUR: Oh, yes.

20 MR. EGGLESTON: I want to say this. Mr.
 Fenton is not here: he had booked to go overseas
 I think two days after this case started. I spoke
 to my learned friend Mr. Tait and I am authorized
 by him to disclose to Your Honour this conversation.
 We had said to Mr. Fenton that in case any question
 arose as to anything that he might be asked about
 we wanted him to give up his trip, but his health
 was not good and he had been advised I think to take
 a holiday, and as a consequence of his representa-
 tions really I spoke to Mr. Tait myself and said
 "He is available. We will have him here if you
 want to ask him any questions. On the other hand,
 we are calling Mr. Harry Lane and Mr. Lauri Newton."
 Mr. Lauri Newton of course was interested in
 Melford's. I said "In those circumstances need
 we keep Mr. Fenton here?" And Mr. Tait said "No,
 Mr. Fenton can go." He did not want to ask him
 30 anything or to put forward any admissions which he
 was alleged to have made, or anything of that kind.
 I asked Mr. Tait if I could say that to Your Honour
 because Your Honour might make some observation as
 to why Mr. Fenton was not called.

40 Perhaps the same matter may make it unnecessary
 to further impede the record with the documents
 relating to the sale of Pactolus to Mr. Fenton's
 daughters. I merely mention that to see if it is
 desired to ask Mr. Bunny any questions. If it was
 necessary it would be done.

HIS HONOUR: What do you say, Mr. Aickin?

MR. AICKIN: We do not desire to pursue that
 matter any further.

(THE WITNESS WITHDREW)

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MR. EGGLESTON: Mr. Ross will be the next witness.

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EVIDENCE OF DONALD HUGH ROSS

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MR. NIMMO: Mr. Ross, is your full name Donald Hugh Ross?---Yes.

Do you reside at 14 Boandyne Court, Toorak?----
Yes.

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Donald Hugh
Ross,
Examination

And are you a Director and Secretary of Industrial Acceptance Corporation Limited?---Yes.

Are you a member of the Chartered Institute of Accountants, Mr. Ross?---Yes. 10

And in 1949 were you Secretary of Industrial Acceptance Corporation Limited?---Yes.

In 1949, Mr. Ross, were you concerned in any way with the sale of shares by shareholders in Lane's Motors, Neal's Motors and Melford Motors to a company known as Pactolus Pty. Ltd.?---Yes.

In what way did you become concerned in those transactions?---About September 1949 Mr. L.B.Wallace, the Auditor and financial adviser to I.A.C., called me into his office. It so happens that he has the office in the same building as I.A.C., and my office is on the same floor. He asked me would I be prepared to do some secretarial work for the group, i.e. Lane's Motors, Neal's Motors and Melford Motors. I said yes, provided I could be relieved of some of my duties in I.A.C. 20

And was that arranged?---Yes.

What was the nature of the work which you carried out, the duties you performed after you accepted that appointment?---Upon instructions from various people, such as Mr. Lane, Mr. Bunny, I carried out such secretarial duties and other clerical work that arose from directors' meetings and those instructions. 30

Did you have any part in the negotiations which were carried on, or in determining the terms

upon which the shares were sold?---None whatsoever.

By the way, after Mr. Wallace asked you to take this work on did Mr. Wallace himself take any active part in those transactions as far as you know?---No.

Mr. Ross, will you have a look at Exhibit A5? It has been referred to as a check sheet prepared by you. (Exhibit A5 handed to the witness.) Did you in fact prepare that document?---Yes.

10 Will you tell His Honour under what circumstances you brought it into existence?---Yes, Your Honour. From time to time as I received instructions I would list down what had to be done. This is the usual practice I follow with all office work. I list it not only to assist me with the work I have to do so that I can just tick it off when it has to be done: I make a practice of showing the date on which the work has to be completed. It is
20 also of assistance to me in following up other people who have to do jobs say before or after those allotted to me.

HIS HONOUR: A much more arduous task?---Yes, Your Honour.

MR. NIMMO: Will you now have a look at Exhibit A.6, which is referred to as final figures prepared by you. (Document shown to witness.) Did you prepare the original of those figures?---
Yes.

30 Would you tell His Honour in what circumstances you brought the original into existence?---Yes, Your Honour. At the point in my instructions when I found that the purchase price of the shares had been fixed, and the amounts to be deposited by each shareholder had been received by me, I decided that I should just summarise all the figures, because in this firm it was of assistance to me in following through the other work. For example, when dealing with the present holdings I made sure to check with a list of shareholders and the share
40 registers. When it came to a splitting of the shares I made sure that in turn would agree with the new shares which were going to be issued. When dealing with the proceeds of sale in turn I knew those figures would be wanted for an option agreement. Cost of the preference shares I knew would

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be required for another purpose. So, as I said before, when building upon this other sheet, it is just something I would do in any other office job.

In addition to the two documents at which you have looked, did you also prepare a document which was referred to as a time-table?---Yes, I did.

In relation to the completion of these transactions?---I did prepare such a document.

Will you look at the document produced. (Document handed to witness.) Is that the timetable in relation to the transactions which you yourself prepared?---Yes. 10

I tender those, if Your Honour pleases.

HIS HONOUR: Have you seen them, Mr. Menzies.

MR. NIMMO: Perhaps I should show them to him. (Documents shown to Mr. Menzies.)

EXHIBIT EXHIBIT A.11 Timetable relating to transactions, prepared by Mr. Ross.

MR. NIMMO: In that document, Mr. Ross, you make reference to some work sheets in relation to your trip to Canberra?---Yes. 20

Have you been able to find those work sheets? ---May I ask if I called them work sheets or another timetable? I do not think that I took any work sheets to Canberra.

It is at the top of the second page, Your Honour; perhaps the witness could have a look at it.

HIS HONOUR: Yes. (Document handed to witness.) 30

THE WITNESS: You are quite correct. I said "Refer to other work sheets for detailed items arising from this list". I referred to this one, which is attached.

HIS HONOUR: That is the last page?---The last page which is headed "Take to Canberra".

MR. NIMMO: Now, Mr. Ross, how did that timetable come into existence? What were the circumstances which brought that about?---Again, as I said earlier, it is my usual practice. I was asked to go to Canberra; I knew after consultation with the solicitors and from the clerical work I had already done that certain documents would be necessary in Canberra, and I would be asked to do certain secretarial work there, so, as is usual, I listed them.

10

What you have just said in relation to the work you had to do at Canberra, does that apply equally to the other work covered by that document? ---That is correct.

With regard to each of these three documents, Mr. Ross, was each document brought into existence of your own volition or were you instructed to prepare documents of that kind?---Of my own volition.

20

Entirely?---Absolutely.

In the course of these proceedings reference has been made to a letter written by Mr. Ratcliffe to you, and dated the 9th December 1949. Have you heard of that letter?---I have.

30

Could you tell His Honour when you first heard of it?---Your Honour, some time early in 1952 Mr. Kissane of the Taxation Department called at my office and asked if I had seen such a letter, or did I have such a letter, in my possession. I said that I would be only too pleased to look in the files. I got the files, and in his presence I turned over where such a letter should be, and I could not find the letter, and told him at that time that I was sorry, but it was not in the files.

40

Was there any further conversation about it before Mr. Kissane left?---Yes. I told him I had some work sheet files in the strong room, which had been tied up and put away. I would be pleased to get them out, but if he would not mind I would like to leave it for a day or two because I was about to go into a Board meeting and would be tied up for the next two days. He said that would be all right, and I told him after having looked at the files I would phone him; sometime the following week

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I did get the files out of the strong room, I made a thorough search and could not find any letter.

Have you subsequently searched for that letter?---Yes. I think it was just at the beginning of this hearing in this Court that Mr. Bunny phoned me and said that "this letter has been mentioned, it has been asked for, can you find it?" I said, "I will make another thorough search." I went through the files myself; I had my secretary go through them; turned over page by page and the letter does not appear.

' 10

Mr. Ross, have you any recollection of having received that letter yourself?---I do not recollect having received the letter.

Have you any recollection of having seen the letter yourself?---No.

Is it right to say that you have no recollection of the context of such a letter?---No, that is not quite correct. In this paragraph in the letter we are talking about - - -

20

13th December?---13th December. It refers to deposits by shareholders on this exhibit you showed me.

That is A.6?---I list certain deposits. I must have got them from somewhere, and there is no evidence in the files as to where I got these deposits from. So, if the only place those deposits were was in that letter, then I did see that letter.

Cross-
Examination.

CROSS-EXAMINED BY MR. AICKIN

30

MR. AICKIN: Mr. Ross, you told His Honour that you prepared A.5, the check sheet, from time to time as you received instructions. Would you tell His Honour from whom it was you received the particular instructions that you listed; take Item 1 for example, "Established amount available for 1949 dividend". Perhaps I might pass Your Honour a copy of the Exhibit.

HIS HONOUR: Yes, thank you Mr. Aickin.

MR. AICKIN (To Witness): If you would look at Item 1?---Yes, Sir.

40

From whom did you get the instructions which led you to put that down as Item 1?---It is not possible for me to individualise these items; I can only say that all my instructions were received from Mr. Bunny and Mr. Lane, or from Directors' meetings held by the Newton Group.

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10 And you would receive none of them - none of them were received from Mr. Ratcliffe?---No instructions that I would act on; correspondence did take place between us.

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I think you also said you prepared Exhibit A.6 at the point when you found that the purchase price was fixed. I may not have the exact text of your answer, but as I understood it, you said at the point when you found that the purchase price was fixed, and the amounts to be paid by each shareholder were given to you, you prepared Exhibit A.6? ---That is correct.

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20 When was the purchase price fixed?---I have no idea.

How did you learn that it had been fixed?---I cannot remember.

Have you any idea at all who told you that it had been fixed?---I repeat my previous comment, that I got all my instructions from Mr. Bunny or Mr. Lane, and I cannot tell you from whom I received that instruction.

30 I was not talking about an instruction; I asked about when you learned that the purchase price had been fixed. Did you learn that, so far as your recollection goes, from Mr. Lane or Mr. Bunny?---I repeat, I do not know.

Would it have been from Mr. Ratcliffe?---No.

Well now, when were the amounts to be paid by each shareholder given to you?---Where are you reading from now, Sir.

40 I am not reading from the documents, Mr. Ross; I am referring to an answer which you gave to Mr. Nimmo, that you prepared Exhibit A.6 when the amounts to be paid by each shareholder were given to you. Now, can you tell us when that was?---

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The amounts to be paid by each shareholder refers to the cost of the new preference shares.

It refers to cheques to be made out by each of the shareholders in favour of Pactolus?---It refers to the cost of the new preference shares.

Do you regard that as different from the way I expressed the question, Mr. Ross - the cheques to be made out in favour of Pactolus by each of the shareholders?---They are one and the same.

And when were those amounts given to you, Mr. Ross?---I do not remember. 10

Do you remember who they were given to you by? ---No.

And so far as you know, you worked out no figures of your own accord; is that right?---That is correct, except a consolidation of figures.

You merely wrote down actual amounts given to you by other persons?---That is correct.

And you say that, so far as you know, the amounts were given to you either by Mr. Lane or Mr. Bunny? ---Or I took them from various minutes passed by the company. 20

Which minutes are you referring to?---I am referring generally to the minutes passed at the shareholders' meetings, and minutes passed at Directors' meetings.

Well, perhaps you would take the minute book of Neal's as an example, and tell us which minutes you are speaking of. But before you look at the minute book, perhaps you would tell us, to the best of your recollection, when you compiled these final figures - perhaps I might tell you, before you answer that question, that Mr. Ratcliffe said in evidence that he received this document, an original of these documents in Sydney with a covering note bearing date the 15th December 1949. 30

Now, can you, with the aid of that, tell us approximately when you prepared Exhibit A.6?---No, Sir; I repeat, I have no idea as to the exact date when I prepared this document. 40

Now, would you look at Exhibit A.7. It is the letter of 30th November and the memorandum of the 13th December. (Documents handed to witness). If you look at the memorandum of the 13th December?--- Headed "Re dividend resolution"?

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Yes. That is addressed to you, is it not?---
Yes.

From Mr. Ratcliffe?---That is correct.

10 Would you look at that and tell me whether you
are able to say whether or not Exhibit A.6, the
final figures, was prepared after you had received
that memorandum?---I still repeat, Sir, I do not
know the date when I prepared these figures.

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20 Well, if you would look at Exhibit A.7, the
memorandum of the 13th December, and tell me whether
the alterations in the figures which are contained
there would have been necessary in order to enable
you to prepare Exhibit A.6?---(Peruses document).
This document bears no relationship to the parti-
culars I have shown and which you are referring to.
This one deals with dividends, and this one has
nothing to do with the dividends.

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HIS HONOUR: We will have to get that on the
notes?---A.7. deals with Alterations to Dividend
Resolutions.

The figure on that has no relation to the
figure on A.6.?---Correct.

30 MR. AICKIN: Were you dealing with all the
clerical work in relation to these transactions in
December, 1949?---All the clerical work, yes.

Did you understand the nature of the trans-
actions?---From my instructions which were all to
do with secretarial work, calling of meetings,
alterations of capital, it appeared to me it was
all to do with changes in capital.

Did you understand the nature of the trans-
action?---No.

40 Were you aware, for example, that there was a
definite relationship between the proceeds of sale
of the "A" shares, the "A" ordinary shares, and the

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amount of the dividends to be declared?---At the time, no, but since sitting in the Court, yes.

With that aid, would you think that having regard to the changes in the dividend resolutions, the amounts of the dividends which are set out in the memorandum of the 13th December, that you must have had that information before you could prepare A.6 which gives, amongst other figures, the total proceeds of sale?---In my opinion the changes in dividend, as shown in Exhibit A.7, had nothing to do with the proceeds of sale.

10

So that that does not assist you to fix the date of the preparation of Exhibit A.6?---No.

Perhaps you will agree with this proposition that in view of what you have said about the deposits, it seems probable that you prepared Exhibit A.6 after the receipt of the missing letter dated 9th December?---Would you repeat that please?

Do you agree, in view of what you said in answer to Mr. Nimmo about the deposits referred to in Exhibit A.6, that you prepared Exhibit A.6 after the receipt of the missing letter dated 9th December? ---No.

20

Why not?---Advice on deposits could have come orally.

Perhaps you will tell us why you told Mr. Nimmo that the figures given under the heading "Deposits" were obtained by you from the letter of the 9th December?---That is not the reply I gave.

Perhaps you will repeat the reply for me?---I will tell you what I think I said.

30

You were asked if you had any recollection of the contents of the letter of 9th December?---I said as I had used the figures headed "Deposits" that if I did not receive those figures on deposits from any other source then I could have seen the letter of 9th December.

The expression "if I did not receive the figures from any other source" is something you have just supplied for the first time.

40

MR. EGGLESTON: If you look at the shorthand notes you will see it is in there before.

MR. AICKIN: I asked you whether you agreed that the expression "if I did not receive the figures from some other source" had not been introduced into your answer just now to me?---I still do not understand the question.

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You did the banking on the 21st December of the cheques in favour of Pactolus and the cheques in favour of the shareholders, is that right?--- May I ask to save me refreshing my memory - -

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10 I am asking you whether you did the banking?--- At this stage I can only tell you the detail I did by referring to the time schedule. Personally, I have not done any banking.

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Would you give me your recollection?---Whose banking?

20 Did you pay into the E.S. & A. Bank, South Melbourne, the cheques in favour of Pactolus, and the cheques in favour of the shareholders in these three companies which arose out of the transactions with which you were concerned in this clerical capacity?---I do not remember whether I actually did it or not. I could have. I could have handed some cheques that belonged to the shareholders to them individually. I could have arranged for the banking of the others, my memory does not tell me.

Were you given any instructions about the banking?---I think I have a reference on the check sheet to it.

30 Perhaps you would look at the check sheet?--- Yes, May I now look at the time table?

Yes, by all means?---May I read from this check sheet?

Perhaps you would tell us your recollection, having refreshed it by looking at the check sheet? ---I repeat I do not know whether I did the banking or not.

40 Perhaps we will go back to Canberra for a moment. You were authorised by the shareholders of these three companies to receive from Pactolus the purchase price for the A. ordinary shares, is that right?---I believe that is a provision in the option agreement and if it is I carried it out.

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Then you received those cheques. Did you not receive, on behalf of Pactolus, the cheques in favour of Pactolus made out by the shareholders in these companies for the purpose of the B. preference shares?---Yes.

Have you any recollection what you did with those cheques?---No, but if you allow me to read from the notes I will be able to tell you what I did with them.

You can refresh your recollection from the notes and tell us your recollection when you have done that, but do not read from the notes. If you have any recollection, having looked at it, perhaps you will tell us what it is. If you have not, perhaps you will say so?---Even after reading these I still cannot say whether I banked them.

10

What I asked you was, if you had any recollection of what you did with them after you received them?---No.

I would like you to look at some documents from the E.S. & A. Bank. You agree, do you not, that you received these cheques that I have been speaking of in Canberra?---Yes.

20

Can you tell us whether you had made out any of the cheques yourself, not on your own bank account, but filled in the amount and the payee, and so on, from these final figures?---I do not believe I did.

Do you know who obtained the cheques. If you look at Exhibit A.6 for a moment, you will see at the bottom of it the notation "Cheques are wanted from each shareholder.....(reads).....payable to the company."?---The shareholders themselves, in the main, handed me their cheques. One shareholder may have brought cheques for others.

30

Perhaps you would look at those documents. The pay-in slip, on the top, and the signature on the bottom line - is that your signature?---No, it is not my signature.

Do you know whose it is?---I wrote it, but it is not my signature.

40

It appears to read, "D.H. Ross", is that right?---That is correct.

And you wrote it in?---I did.

And is the balance of the document in your handwriting, the pay-in slip?---No.

Do you know whose handwriting it is?---Yes.

Whose is it?---My Secretary's.

Are you able to say whether it was made out by her on your instructions?---I would say, yes.

10 Do you know when that was done?---As there is a date stamp on the top, it says, 21st December, but I do not know whether it was written out on that date or not.

Are you able to say whether the arrangement for the banking of the various cheques involved were made out beforehand, the pay-in slips and so on, because you knew some days before the amounts of all these cheques?---No, they were not.

They were not made out in advance?---No.

20 And is your recollection then that they were made out after you returned from Canberra?---I believe they were.

Are you able to recollect now that perhaps you banked those cheques that I handed you?---I personally did not bank these cheques.

What is it which induced you to say that now? ---No executive in our company, or any other similar company, goes to the bank and deposits the cheques.

30 In view of that, how is it that you were quite unable a few minutes ago to recollect whether or not you had banked the cheques?---My reply to that was that I could not remember, but if you would allow me to look at the worksheets or cheque slips, I would be able to assist.

You looked at the cheque slips?---And you would not allow me to read the contents, which are self explanatory.

You agree, do you, that is your name written by you on the pay-in slip?---Yes, D.H. Ross.

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And that is a payment into the bank account of Collins Motors?---Yes.

And the cheques in question are drawn by whom? ---One is drawn by the executors of C.M. Nathan deceased, one by Una Christian, and one by Stella M. Lane.

And the date of each cheque is?---Did you only give me three cheques out of five?

Are there five?---There are five listed on the docket and I have only three. 10

I think there are a number of cheques missing, and it is probable that those are cheques by Lionel Newton and Lauri Newton for £2,500; are those the missing ones?---That is correct.

I will tender those documents, if Your Honour pleases.

MR. EGGLESTON: If Your Honour pleases, I do not object to the relevance of these documents. I only ask, is it necessary, in view of the admissions that have been made, that my friend insists on having the actual cheques put in? 20

HIS HONOUR: I cannot answer that.

MR. EGGLESTON: I know, Your Honour. If he has some point, well and good, but if it is only to fill in some further details which have not, as far as I can see, got any significance, it is only cluttering the case up with documents. I cannot object to it. I am only imploring my friend not to make this case any more heavily loaded with documents. 30

HIS HONOUR: Well, Mr. Aickin?

MR. AICKIN: I think, in order to lighten the burden of my friend, it might be possible to deal with the matter, subject to the witness giving the appropriate answers to the questions that I will have to put, by treating these cheques as examples, representative of what happened to all the other cheques involved in these transactions. I would tender these cheques and I will not tender the balance of the cheques. 40

MR. EGGLESTON: Your Honour, if my friend by that suggests that he is obtaining my agreement to these cheques being representative samples of something, then I would want to know what it is suggested they represent. In other words, what their significance is. As far as we are concerned, we have made no point of any suggestion that the cheques were independently banked, or anything like that. Indeed, it is perfectly apparent from the way in which we have put the case that if these cheques had been independently presented, Pactolus did not have the funds to meet them. We are not contesting that for one moment. If the £400,000 worth of cheques had been presented in Melbourne before the other cheques in favour of Pactolus came in, the funds were not there.

10

20

I do not know whether my friend wants to go beyond that, but if he says, in response to my request he is going to treat this as an example, I want to know what he is going to treat that as an example of, and what inference he is going to draw. I am not agreeable to treat it as typical unless I know what they are supposed to be typical of.

HIS HONOUR: I do not want to ask you in advance what you make of them.

30

MR. AICKIN: In the circumstances, Your Honour, I think I have no course other than to tender all the cheques. It may be convenient to give them a single Exhibit number. We have prepared a list of the cheques and the pay-in slips.

HIS HONOUR: What is this directed to, Mr. Aickin?

MR. AICKIN: It is directed to supplying the detail of that which is stated in general terms in the mutual admissions.

HIS HONOUR: Yes, I know, but to what end? I did say a moment ago that I did not want to ask you what use you intended to make of that, but perhaps in general terms you could state it.

40

MR. AICKIN: It is put in this way: that all that was done was done pursuant to an arrangement between the taxpayers, the companies, and Pactolus Pty. Ltd., and Mr. Ratcliffe, and this is part of the arrangement: that all the banking should be

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done on the one day in the manner in which these cheques and pay-in slips show that it was done, and that it was done by Mr. Ross on behalf of the persons concerned.

HIS HONOUR: These will only show, of course, what in fact was done.

MR. AICKIN: Yes, that is so.

HIS HONOUR: There is no dispute about that, is there?

MR. AICKIN: It is not entirely clear, the extent to which there is no dispute on this. There is no admission of any kind, for example, dealing with these deposits. 10

HIS HONOUR: How do you mean dealing with them?

MR. AICKIN: If one takes A.6, part of the pattern we say is that some part of the money that came out of these companies, the three motor companies, was to go back on deposit to the companies.

HIS HONOUR: I know I am dealing with those things, but what happened? Mr. Eggleston has said and it is quite obvious that these cheques had to be banked simultaneously because Pactolus did not have enough money to meet the cheques unless deposits were made. What more do you want? 20

MR. AICKIN: Well, there is more in this than the cheques in favour of Pactolus and drawn by Pactolus. The first series of cheques which I tendered related to the deposits with Collins Motors, and there is no evidence other than these cheques that those deposits contemplated in Exhibit A.6 were ever made, or when they were made. It is a matter which no doubt could have been covered by mutual admission in view of what my learned friend says, but it is not so covered and it is for that, amongst other reasons, that it is desired that the detail should be placed on record, and this seems to be the most convenient method of doing it. 30

HIS HONOUR: Unless some further admission could be made? 40

MR. AICKIN: Well, it is a little difficult to formulate one at this stage of the hearing.

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10 MR. EGGLESTON: For reasons which are not at
the moment clear to me, Your Honour, I understand
that my learned friends having proposed that cer-
tain paragraphs should be in the mutual admissions,
they were not agreed to and those paragraphs did
not go in, and it has been pointed out to me that
in fact there is no statement in the mutual admis-
sions covering, for example, the deposits to the
credit of the subsidiary companies; but in these
proceedings, since my friend at an early stage
manifested some interest in the time-table and so
on, we have taken the course of putting before Your
Honour the time-table and the check sheets and so
on. I imagine that if Mr. Ross had been allowed
to read out what he was going to read out it would
have provided for the deposits of these cheques
that had already been provided for in A.6 to the
20 credit of the subsidiaries' account.

HIS HONOUR: Mr. Eggleston, the difficulty is
this: here are some documents tendered and they
are admissible.

MR. EGGLESTON: Quite, Your Honour.

HIS HONOUR: I must admit them unless there is
some easier method - - -

30 MR. EGGLESTON: I am a bit longwinded about it
but I am leading up to the fact that if my learned
friends want these documents in I would have no
objection to their being tendered. They do not
have to be proved, they can be offered for what
they say on their face. If that is sufficient it
may avoid questions being asked of Mr. Ross. I
would like to look through them before they are
tendered but I see no reason why that could not be
done.

HIS HONOUR: Are you tendering them all?

MR. AICKIN: Yes, Your Honour.

40 HIS HONOUR: And you have heard Mr. Eggleston's
offer?

MR. AICKIN: Yes. We are quite content that
they should go into evidence in that way. Mr. Ross

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is merely identifying documents that he has handled and proving their authenticity. If that is not in dispute then they can go in without their being individually referred to, subject to it being understood that that which appears on the face of them is taken at its face value.

HIS HONOUR: Yes, I take it that if they are admitted they will be admitted, as Mr. Eggleston says, as authentic and as evidence of all they contain. That is subject, as he says, to his looking through them and checking them.

10

MR. AICKIN: Yes. The most convenient way of dealing with them no doubt would be to tender them as a single exhibit and to make available the list which has been prepared of these cheques.

HIS HONOUR: Yes.

MR. AICKIN: There is one aspect of the matter which may make it necessary for me to ask my learned friend to go somewhat further than he already has done, in view of the fact that certain of the cheques are missing. For example, Mr. Ross drew attention to the fact that the cheques of Mr. Lionel Newton and Mr. Lauri Newton in the first deposit in Collins Motors were missing. If my learned friend is prepared to agree that the cheques by those two taxpayers in all the relevant payments in were in fact handled by Mr. Ross and dealt with in the same manner as the other cheques bearing the same date and referred to in the same pay-in slip, no difficulty will arise about it; but looking simply at the cheques, there are these gaps. Mr. Ross has filled in the gap in regard to the first example.

20

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I do not think this goes to the substance of the matter, but I do not want it to be left in the situation where it would be said at a later stage that we cannot draw the inference that we seek to draw from these cheques, because they are not complete. There are these gaps.

MR. EGGLESTON: Perhaps if my friend tells me what is missing I can help him. Is it only cheques?

40

MR. AICKIN: What is missing is cheques by Mr. Lionel Newton and Mr. Lauri Newton and the Estate

of Mr. Joseph Nathan in relation to the transactions in December, and the pay-in slips.

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10 There is no significance attaching to the fact that they are missing but the Bank has in fact not been able to find them. Their existence of course is plain from what has been said, and I mention the matter merely because I do not wish it to be left in the condition that some comment can be made adverse to any inference which we might
10 seek to draw from these documents because they are incomplete. It is a gap which can be filled in by a somewhat tedious process, and in view of the fact that we are endeavouring to prevent this matter from being more tedious than it has been I mention it now. I can give my friend a list of the cheques which are not included and a list of those which are.

20 MR. EGGLESTON: Well, Your Honour, I have made our position clear: subject to our checking through and ensuring that there is no accidental error to lead us to make the wrong admissions, we are perfectly prepared to agree that these documents should be accepted as evidence of what they purport on their face to record, and that I think is all my friend needs.

30 As far as the deposit of cheques is concerned, the relevant pay-in slip, if legible - and so far I have heard nothing to the contrary - will show what cheques were deposited in the Bank on the day in question, and indeed those documents will, I think, be evidence without any witness to swear to them. We make no point on it, anyway. We say we are perfectly prepared to accept all that and to fill in any gaps, to avoid any tediousness on the part of my friend.

All I ask is that we have the opportunity of looking through the documents which they propose to tender and satisfying ourselves that they are in order. That could be done when Your Honour adjourns today.

HIS HONOUR: Could it be done conveniently here, because we are the custodians of the banks' documents?

MR. EGGLESTON: Yes, that is what I had in mind. We would stay here when Your Honour rises

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and go through these and say what we think about them. I have no desire to place obstacles in your way in any shape or form.

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HIS HONOUR: I think that has been very evident right through.

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MR. EGGLESTON: My friend has been rather more coy than I have.

HIS HONOUR: Is that satisfactory to you, Mr. Aickin?

MR. AICKIN: If Your Honour pleases. 10

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These cheques and pay-in slips have been copied by the bank, and the bank manager produced photostat copies of them which it may be convenient for my friends to take the photostat copies and examine them, and leave the originals in the custody of the Court.

MR. EGGLESTON: Have you photostats of all of them?

MR. AICKIN: Yes.

HIS HONOUR: Yes, Mr. Aickin. 20

MR. AICKIN: I formally tender all of these cheques and pay-in slips as listed, subject to the comments which I have already made as to those which are on the list of missing.

HIS HONOUR: They will all together form Exhibit R.5.

EXHIBIT EXHIBIT R.5 Cheques and pay-in
slips; complete list,
and list of missing
documents. 30

MR. AICKIN: I think that the list might usefully form part of the exhibit itself.

HIS HONOUR: That is the list of missing documents?

MR. AICKIN: Yes.

HIS HONOUR: Are there two lists - a list of the missing documents and a list of documents which are there?

MR. AICKIN: There is a complete list, and then a separate list of those which are on the main list but missing from the bundle of cheques and pay-in slips.

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MR. NIMMO: There is just one question which I should perhaps have asked during examination-in-chief. With your permission, I should like to ask it now.

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HIS HONOUR: Yes.

10

MR. NIMMO: Mr. Ross, you had nothing to do with the second Melford transaction or the second Neal transaction did you?---No, Sir.

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(THE WITNESS WITHDREW)

MR. EGGLESTON: That is the case for the appellants, if Your Honour pleases.

HIS HONOUR: You do not call any evidence, Mr. Tait?

20

MR. TAIT: We are not calling any witnesses, and if Your Honour is prepared to adjourn, I wish to address tomorrow morning.

HIS HONOUR: Very good.

MR. AICKIN: If Your Honour pleases, I think that yesterday my learned friend Mr. Menzies called for the Minutes of the Directors' meeting of the 18th November in each of those companies, and the notices convening the meeting of the 14th December at which the Articles were amended so as to attach the special dividend rights.

30

The minute book of Neal's was produced, and the notice of meeting referred to by Mr. Bunny in his evidence this morning, and that was the notice which bore date 12th December.

We desire to tender the actual text of the minutes of the Directors' meeting of the 18th November which is referred to but not set out in the Actual Admissions, and also the notice convening the meeting of the 14th December.

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I do not think that those documents have been formally put in, and we would tender them, if Your Honour pleases. I think that the documents were identified by Mr. Bunny; we can have copies of them made.

HIS HONOUR: It would be better to tender a copy of the minutes.

MR. AICKIN: Yes, that can be done, and a copy can be prepared and tendered so that my friend may see it - a single exhibit, the minutes of the meeting of Directors of 18th November and the notice of convening a meeting of the 14th December. 10

HIS HONOUR: You would prefer to do that tomorrow?

MR. AICKIN: Yes.

There are two other matters which may be convenient to mention at this stage. Exhibit R.2 was minutes of the relevant meetings of directors of Pactolus Pty. Ltd. We have had those copied, and perhaps it may be convenient to tender the copy now and to provide my friends with copies. 20

MR. EGGLESTON: We already have them; they have been given to us.

MR. AICKIN: The only other matter is that I think my learned friend Mr. Tait did ask my learned friend Mr. Eggleston to produce the share transfers of the "A" Ordinary shares in each of the companies. I think that my friend undertook to do so, but they have not yet been produced.

MR. EGGLESTON: No, they are still being sorted out. They apparently have to be extracted from the files, but they will be produced. 30

MR. AICKIN: I think that those were the only outstanding documents.

That was my understanding in relation to the minutes of the Directors' meetings of the three motor companies of the 18th November, that Mr. Eggleston produced Neal's minutes as a representative sample, but if that is not so we would desire that each of them should go in. 40

HIS HONOUR: Is there anything else you want?

MR. AICKIN: No, Your Honour.

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N

LAURI JOSEPH NEWTON, LIONEL NEWTON
FRANCIE UNA CHRISTIAN, HENRY JAMES
LANE, EXECUTORS OF THE ESTATE OF
ROBERT NATHAN, deceased, STELLA
MAUD ADELINE LANE and LEONARD ALFRED
FENTON (Respondents) Appellants

- and -

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA (Appellant)
Respondent
(Consolidated Appeals)

RECORD OF PROCEEDINGS
(IN THREE VOLUMES)

VOLUME II.

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