

THE HEARING RESUMED AS FOLLOWS ON THE 23RD NOVEMBER, 1999,

AT

10 A.M.:

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MS. DILLON: Sir, there are a number of documents which we will be circulating. Everybody has been circulated with these. There is a separate copy when Ms. Howard gets down, we will proceed until that happens.

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CHAIRMAN: Certainly, carry on.

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MS. DILLON: Mr. Pat Whelan please.

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MR. COLLINS: I am here on behalf of the bank again, My Lord, pursuant to the grounds of representation you gave me on the last occasion, My Lord.

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CHAIRMAN: Very good.

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PAT WHELAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY
MS. DILLON:

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1 Q. MS. DILLON: Good morning Mr. Whelan.

A. Morning.

2 Q. I want to ask you some questions about a transaction that took place in Anglo Irish Bank in November of 1989, and I think you are familiar with that transaction? Can you tell me what position you held in the bank in 1989?

A. Executive Lending Officer was the title at the time.

3 Q. Was your immediate superior Mr. William Barrett?

A. He was indeed.

4 Q. And he has previously given evidence to the Tribunal?

A. That's correct.

5 Q. Now, I think Mr. Barrett told us on the last occasion that he had a meeting with Mr. Michael Bailey on the 23rd of November of 1989. Now, I understood from Mr. Barrett's evidence you weren't present for the entire of that meeting; is that correct?

A. That's correct.

6 Q. I think you were asked to come in towards the end of that meeting?

A. That's right.

7 Q. And the reason that you were brought in was to deal with the administrative details?

A. Yes.

8 Q. Can you explain to us what was meant from the bank point of view about the administrative details?

A. Preparing letters of offer, the authorization to drawdown the cheque and preparing a cheque for £50,000.

9 Q. Did you in fact prepare the cheque for £50,000?

A. One of my colleagues would have typed up the cheque, but I would have instructed them to do so.

10 Q. And there was a cheque requisition, which is Anglo 2.1 document - I think the Registrar will put it on the screen for you now, we will have the documents with you shortly.

This is a cheque requisition form in relation to the £50,000 cheque. I think if you look at the screen beside you Mr. Whelan, you may be able to see it. Do you see that document?

A. I do, yeah. That document is actually the document to open the account, it is not the document to authorise issuing the cheque.

11 Q. And do you see halfway down, sorry at the top underneath the words "09 codes", you see the initials "PR PD", I think it is, "PW", and that's you I think?

A. That's me.

12 Q. You in fact opened the account?

A. I did.

13 Q. And beneath that there was another initial "PW", and I think that's yours, and I think we can scroll it up, if that's possible? Can you see that, Mr. Whelan?

A. I can, yes.

14 Q. I think is that your handwriting in relation to that document?

A. It is indeed, yes.

15 Q. And I think that refers to a loan account of Michael and Tom Bailey, and then the bank's interest in contract for lands purchase, charge over lands at Cherryorchard, that again has an initial "PW", and I think that's your initial?

A. Yes.

16 Q. Following that did you requisition a cheque for £50,000?

A. I did indeed.

17 Q. Yes, and did you give the cheque to Mr. Michael Bailey?

A. I would have handed the cheque to my colleague, Mr. Barrett, and he would have passed the cheque onto the clients.

18 Q. Onto the clients. Now, I think on the 23rd of November of 1989 one of the items of security required by Anglo Irish Bank was a promissory note?

A. Yes.

19 Q. To be signed by Michael and Tom Bailey in favour of Anglo Irish Bank?

A. Yes.

20 Q. That document is Anglo 2.8. And I think Ms. Howard will give you a book of these documents now, Mr. Whelan. I am sorry that we - (document handed to witness). Now, that document in fact is witnessed by Mr. Barrett who previously gave evidence on behalf of Anglo Bank and it is a promissory note in the sum of £50,000?

A. That's correct.

21 Q. Was that prepared in the bank?

A. It would have been, yes.

22 Q. And were you present when that was signed?

A. I can't recall whether I was there when it was actually signed, I am not sure.

23 Q. Do you recollect Mr. Tom Bailey being present in the bank?

A. I didn't meet Tom that day, he went there, as far as I can recall he may have come in afterwards.

24 Q. On the day?

A. On the day, yeah.

25 Q. Because that promissory note is dated the same day as the cheque, the 23rd of November?

A. That's correct.

26 Q. Did you have any conversation with Mr. Michael Bailey as to why he required that £50,000?

A. No I didn't, I wasn't involved.

27 Q. You simply got the instructions from Mr. Barrett to open the account debit and prepare the cheque?

A. Yes.

28 Q. And that's what you did. Now, I think you then subsequently also prepared the drawdown of the balance of the funds which were £230,000, and I think you will find that on the 12th of December of 1989?

A. That's correct, yes.

29 Q. You arranged for the drawdown of the balance of the funds which was a sum of £230,000, that document is Anglo 2.14?

A. Yes.

30 Q. I think. And that was a cheque?

A. Cheque for 230,000, that's correct.

31 Q. In favour of Bovale Developments?

A. Yes.

32 Q. And that was credited to the same account?

A. Debited from the same account.

33 Q. I beg your pardon. And I think that previously on the 24th of November you had sent a facility letter to Bovale Developments Limited?

A. Yes.

34 Q. Setting out the security that the bank would require and setting out the total sum of £280,000?

A. That's correct, yes.

35 Q. Did you prepare that letter?

A. I did, yeah.

36 Q. Did you then oversee the putting in place of a security that was satisfactory to the bank?

A. I did, yes.

37 Q. In the course of these letters and correspondence that you had did you have any discussion with either Mr. Michael Bailey or Mr. Tom Bailey about the purpose for which the funds were required?

A. No, I didn't.

38 Q. So you made no inquiry at all in relation to the funds once Mr. Barrett had had his original meeting with Mr. Michael Bailey?

A. That's correct.

39 Q. Did you at any stage meet Mr. Tom Bailey?

A. No, I didn't.

40 Q. Did you meet Mr. Michael Bailey?

A. I can't recall whether I met him, I spoke to him on the day, I am not sure on that point. He was in the office on the day, but I can't recall whether I spoke to him about the particular transaction.

41 Q. Yes. Did you subsequently speak to him by telephone?

A. No.

42 Q. I just want to show you a document, I think that refers to a telephone conversation you had with Mr. Michael Bailey, which is - it was in relation to the security, I think you were - it was in relation to the bank's undertaking.

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CHAIRMAN: Anglo 2.14 seems to be signed by Mr. Whelan.

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43 Q. MS. DILLON: No, I think it is Anglo 2.16. This is a document of the 24th of November, it is a letter --

A. I have it here, I have it in front of me.

44 Q. -- addressed to Gerry Fogarty of Smith Foy and Partners. That refers to the undertaking you were seeking from Smith Foy in relation to the security from the bank in respect of the loan, and you say on the final paragraph: "If you have

any problems issuing this form of undertaking, perhaps you might contact Michael Bailey, as we spoke to him yesterday morning and we --

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MR. COONEY: Sorry, Mr. Chairman, we don't seem to have that.

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CHAIRMAN: No, that's not in the booklet.

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45 Q. MS. DILLON: That in fact, I think, Mr. Whelan, refers to a meeting on the 23rd of November, and that was the meeting at which you had arranged the original drawdown of the loan. Now, I think subsequently --

A. Exactly.

46 Q. -- the full amount of the loan was cleared on the 15th of May of 1990?

A. Yes.

47 Q. And there was a one repayment - sorry this is the letter. (Ms. Dillon indicating). Do you see that, Mr. Whelan? Can you confirm that the conversation you were referring to in the final paragraph there was your conversation with Mr. Bailey?

A. That would have been the conversation my colleague had with him on the, in the office on the 23rd.

48 Q. It wasn't a conversation you had with Mr. Bailey?

A. No, no.

49 Q. All right. Now, I think subsequently the loan was repaid in full on the 15th of May of 1990?

A. That's correct.

50 Q. And I think that's to be found at Anglo 2.61, which is one of the documents people should have, the statement.

A. Yes, I have it here.

51 Q. And that shows that the loan was repaid in full on the 15th of May of 1990?

A. That's correct, yes.

52 Q. Now, in between the time that the loan was drawn, the original cheque for £50,000 was paid, and the loan was drawn down, the balance of the loan on, in December of 1989, you were seeking to put adequate security in place to protect the bank's interest and you were doing that through your solicitors?

A. Michael O'Sullivan, yes.

53 Q. Did you have any further discussion yourself with Mr. Michael Bailey or Tom Bailey over that period of time?

A. No, I didn't.

54 Q. Who did Mr. Bailey normally deal, who did Mr. Tom Bailey normally deal within Anglo?

A. Bill Barrett.

55 Q. And Mr. Michael Bailey?

A. The same Mr. Barrett.

56 Q. And not any other member of the staff?

A. Not at that particular time.

57 Q. Thank you very much.

A. Okay.

58 Q. If you answer any questions anybody else has.

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THE WITNESS WAS CROSS-EXAMINED BY MR. COONEY AS FOLLOWS:

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59 Q. MR. COONEY: Just a few questions, if I may?

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Mr. Whelan, I represent the Murphys who are the vendors of the lands in question. I think among the documents which have been handed to you is a handwritten note, I think probably Mr. Barrett's handwriting, the second document in

the booklet you have got?

A. I have it here.

60 Q. Yes, and that document, I think, refers to 10 percent deposit about midway down; isn't that right?

A. That's correct, yes.

61 Q. And it is quite clear from that document that the amount of the deposit was to be £230,000; isn't that correct?

A. Yes.

62 Q. And that's clearly identifiable as the sum for the deposit; isn't that right?

A. Yes.

63 Q. And then across from that there is the plus sign and it says "£50,000"; isn't that right?

A. That's correct.

64 Q. So this £50,000 is in addition to the sum of £230,000 which has been borrowed from Anglo Irish to pay the deposit on this purchase of the lands; isn't that right?

A. That's the way it appears, yes.

65 Q. Yes. And then after the word "cash" there is a bracket followed by the words and figure of £150,000; isn't that right?

A. That's right, yes.

66 Q. That note was made by Mr. Barrett; isn't that right?

A. That's correct.

67 Q. And it would appear - that's a note of his conversation with Mr. Bailey and of Mr. Bailey's requirements?

A. That's correct.

68 Q. So it would seem that in addition to seeking to borrow the sum of £230,000 which represents the deposit on the purchase of the lands, Mr. Bailey was also discussing with Mr. Barrett drawing down a further sum of £150,000; isn't that right?

A. Well, he was looking for 50,000 on that particular day.

69 Q. Yes. And he had actually arranged for, Mr. Barrett had agreed that he would advance him £50,000 of that 150; isn't that correct?

A. Yes.

70 Q. And you implemented that agreement, as you have told us?

A. Yes.

71 Q. But there is no doubt on the day Mr. Bailey went in to Mr. Barrett, he not only sought the £230,000 deposit but also mentioned a sum of £150,000, and he arranged to get 50,000 of that sum there and then. Isn't that right?

A. That's correct.

72 Q. And he got that?

A. Yes.

73 Q. Thank you.

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MR. COLLINS: We have no questions.

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THE WITNESS WAS CROSS-EXAMINED BY MR. O'MOORE AS FOLLOWS:

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74 Q. MR. O'MOORE: Sir, arising out of Mr. Cooney's questions I have a short number of questions. It will take less than two minutes.

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Mr. Whelan, I represent Mr. Gogarty, and I think you know his interest in this matter. The note that Mr. Cooney referred you to is a note prepared by Mr. Barrett. Did you have anything to do with its preparation?

A. My writing is at the last four lines, other than that I wasn't involved.

75 Q. Yes. And the discussion about the £50,000 cash or the £150,000 figure, you weren't present for that discussion at

all?

A. No, I wasn't.

76 Q. You don't know anything about it?

A. No, I don't.

77 Q. Any answer you gave to Mr. Cooney is utterly speculative on what you think the note means?

A. Yes.

78 Q. You haven't discussed the note with Mr. Barrett, and apart from what any of us know from his evidence to the Tribunal, you have no idea what the note actually means or was intended to mean?

A. That's correct.

79 Q. Can you confirm to me, I think the only name that appears in the portion of the note prepared by Mr. Barrett is in fact the name "Joe Murphy"?

A. Yes, that's on the page, yeah.

80 Q. And the name "James Gogarty" appears no where?

A. That's correct.

81 Q. Thank you very much.

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MR. COONEY: Could I ask him arising out of that, Chairman, a few questions, if I may please?

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MS. DILLON: This is most unusual.

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CHAIRMAN: Just a moment. Mr. Cooney, let's not get into a conflict, I just want to know what's the premise on which you base this?

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MR. COONEY: Yes, because I think that the witness may have some further evidence to give on this point which would be of relevance.

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CHAIRPERSON: Certainly inquire, Mr. Cooney, but you are bound by his answers in the sense that if he says a particular, if he gives a particular reply, you appreciate that?

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MR. COONEY: Yes, of course.

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MR. COLLINS: I wonder would you hear me before Mr. Cooney is allowed to. Mr. Barrett gave evidence, Chairman, you will recall on the 6th of July of 1999, and in the course of that evidence he stated on a number of occasions that he didn't recall the circumstances in which the 150 figure was mentioned, and he said specifically, and I will refer, it is page 33 of the transcript, Question 162 and the answer: "He didn't ask me for £150,000" but he goes on to say: "Your other assumption makes sense". I think it was in answer to Mr. Allen.

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Mr. Barrett was the man who dealt with the substance of this transaction. The witness that is giving evidence today dealt only with the mechanics of the transaction. If Mr. Cooney wanted to explore this issue he ought, in my respectful submission, to have explored it with Mr. Barrett. Mr. Cooney didn't seek to cross-examine or examine Mr. Barrett at all when he gave evidence. And in my respectful submission it is not appropriate to ask this witness to deal with the substance of Mr. Barrett's evidence, having regard to what this witness has said, namely that he wasn't present for the discussion with Mr. Bailey concerning the substance of the loan and his answer to Mr. O'Moore, which is that the portion of the document

which Mr. Cooney put to this witness, was not a document prepared by this witness, nor does it reflect or record a meeting at which he was present.

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MR. COONEY: I think what Mr. Collins says is correct were it not for this, Mr. Chairman; in the course of his Statement of Evidence and in his evidence Mr. Barrett says that towards the end of the meeting Mr. Barrett called in his assistant, Pat Whelan; explained the transaction to him, explained the transaction to him and asked him to arrange for the necessary administrative ..."Process the transaction". (inaudible). If it turns out this witness doesn't recall this portion of the meeting or the explanation given to him by Mr. Barrett so be it, I can't ask any questions, but on the basis of what was said by Mr. Barrett in the Statement of Evidence and in his oral evidence I think I am entitled to ask him about this.

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CHAIRPERSON: Well, Mr. Cooney, could we reach an accord in relation to this. If you put questions which are not leading questions, there should be no reason why Mr. --

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MR. COONEY: Not what, Mr. Chairman?

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CHAIRMAN: Not leading questions.

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MR. COONEY: I am cross-examining the witness.

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CHAIRMAN: It doesn't matter, you are asking in this instance of re-examining him on a matter which you have already dealt with before Mr. Barrett. I want to find out first and foremost was the witness present at any time when

this matter was discussed, and if so what's his recollection, that's all I want to know.

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MR. COONEY: If you rule, Mr. Chairman, I am not entitled to ask a leading question I am bound by your rule.

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CHAIRMAN: I want to get a perfectly fair understanding of what this man - that's all I want.

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MR. O'MOORE: Before Mr. Cooney embarks on this I should point out these were questions that could have been asked before I examined this witness, and it turns into a Tweedle Dumb and Tweedle Dee type scenario.

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CHAIRMAN: Mr. Cooney, I have every desire that you should have a full opportunity to inquire into this matter. I do want it on a fair basis. If you can find the information by asking was he present when any matters were discussed in relation to the two items.

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MS. DILLON: Might I suggest that rather than changing any procedure the Tribunal has adopted to date, I could ask the questions of the witness as to what recollection, if any, he has of the matter, rather than putting Mr. Cooney to the trouble of it?

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MR. COONEY: This has reached the stage of a low farce now, Mr. Chairman.

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CHAIRMAN: Thank you very much, Mr. Cooney, for your comment. It was very helpful to have leading counsel making that type of comment. Do you wish to pursue the

matter?

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MR. COONEY: I don't.

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CHAIRPERSON: Very good. The matter is --

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MR. COONEY: Under protest.

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CHAIRPERSON: There is no protest, you are entitled to pursue it if you want. You make your mind up whether you want to do it or not.

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MR. COONEY: Mr. Chairman, I do want to do it.

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CHAIRMAN: Get on with it.

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THE WITNESS WAS RE-CROSS-EXAMINED BY MR. COONEY AS FOLLOWS:

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82 Q. MR. COONEY: Please don't speak to me like that, I am interrupted by Mr. Collins, Mr. O'Moore and then by Counsel for the Tribunal. It seems to me if the Tribunal is intent on being fair and objective, as it frequently says it is, this is a matter which could be inquired into very shortly and briefly and without contention, I don't see why a few additional questions should become the subject of contention or that restrictions such as the one that you seek to impose on me should be imposed about leading questions.

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Mr. Whelan, I am sorry for this delay. There is just one or two questions I want to ask you. Do you recall what Mr. Barrett explained to you? What the transaction was,

when he asked you to join him and Mr. Bailey?

A. I don't. As far as I recall I was to prepare the cheque and the letter of authority.

83 Q. Mr. Barrett, did he explain the matters to you and you have no memory?

A. I don't, no.

84 Q. And you don't remember him saying that that sum of £150,000 was the payment to an intermediary such as an estate agent?

A. No.

85 Q. You don't recall that?

A. No.

86 Q. Thanks very much.

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THE WITNESS WAS THEN EXAMINED BY MR. COLLINS AS FOLLOWS:
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87 Q. MR. COLLINS: Just a couple of brief questions on the issue you have been discussing, Mr. Whelan, on the specific matter of the £50,000 or £150,000, do you recall having any discussion with anybody, be it Mr. Barrett or Mr. Bailey, about the purpose for that loan or the use to which that money was to be put?

A. No.

88 Q. I see. Now, just on the matter of detail then, Mr. Whelan. I think it was suggested to you that you may have had a telephone conversation with Mr. Michael Bailey at some point, and I think you said you didn't?

A. That's correct.

89 Q. And I think a letter was put to you which referred to a conversation with Mr. Bailey?

A. That's correct, yes.

90 Q. And I wonder if the witness could have that document if he doesn't already have it, or perhaps it could be put up on

the screen. It was 2.16, Anglo 2.16 I think. Just to be absolutely clear, Mr. Whelan, I think that refers to the meeting in the bank the previous day; is that correct?

A. That's correct, yes.

91 Q. The last sentence doesn't refer to a telephone conversation; is that correct?

A. That's correct.

92 Q. And it doesn't, and still less does it refer to any telephone conversation subsequent to Mr. Bailey coming to the bank and meeting with Mr. Barrett as a result of which you prepared the documents that have been discussed in your evidence?

A. That's correct.

93 Q. You are quite clear that you didn't discuss, have such a telephone conversation with Mr. Bailey subsequently?

A. Yes.

94 Q. Thanks.

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CHAIRPERSON: Thank you.

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MS. DILLON: Nothing further, Sir.

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CHAIRPERSON: Very good. Thank you very much for coming down.

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THE WITNESS THEN WITHDREW

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CHAIRMAN: I will sit again at half past ten.

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THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

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MR. ALLEN: Chairman, before you proceed with the taking of evidence, I wonder - there is a matter that I might mention to you. It occurred, I had been discussing other matters with Mr. O'Neill, it, relates to this, Sir; it relates to the kitten book, for want of a better description of it, the small notebook on which, in respect of which Mrs. Caroline Bailey was asked questions yesterday.

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Upon looking at the transcript there were certain of the questions which were put to her, I am not - I am not saying they were simply put to her, but they - certainly one could draw from them the inference that there was a suggestion, I put it no further than that, that this book and the entries in the book might have come into existence later than it appears on its face.

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Now, I am happy to discuss this with My Friend later, Chairman, subject to what you wish to do about it, but I would ask that if there is an apprehension in that regard, that the book be submitted to the appropriate experts, which I believe would involve it being sent to the UK to establish the date upon which it came into existence and the time at which the entries were entered into the book.

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If that is the matter which is troubling or concerning, when I say "troubling", if that is a matter to which you, Sir, are having, are having regard, my clients have specifically instructed me to ask that the book be subjected to whatever the appropriate tests are for the purpose of establishing beyond contradiction that it was, that the entries were entered at the time that is reflected

by the book.

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MR. O'NEILL: I am sure it is a matter that we can discuss, Sir, and if it is necessary to have this book examined forensically, that that examination would take place.

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CHAIRPERSON: Certainly, I don't want to say anything which would indicate or might be considered to indicate any form of judgement whatsoever as at this point in time, and whatever facilities are required by you, it is a matter for yourself and Mr. O'Neill to discuss, I have no doubt you can reach accord.

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MR. ALLEN: I have no difficulty with that.

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CHAIRMAN: Mr. Allen, I am particularly anxious not to appear to express even a scintilla --

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MR. ALLEN: There is no question of that, Sir. I wasn't suggesting that you were, I am simply making, I am simply making a request --

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CHAIRMAN: It is a facility which you may require, if you require it, discuss it with Mr. O'Neill and I would doubt that there would be any problem whatsoever, I can do no more than that.

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MR. ALLEN: Thank you, Sir.

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MR. COONEY: Could I support Mr. Allen on this, Mr. Chairman. Some of the questions asked by Mr. O'Neill,

while they weren't direct, clearly insinuated they were made at a date later or a time different. If this forensic examination was to clear up those doubts once and for all, it would be a most useful exercise, Mr. Chairman.

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CHAIRMAN: When you are ready, Mr. Gallagher?

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MR. GALLAGHER: Yes, Sir. I call Mr. Thomas Bailey, Sir. You will recall that yesterday Mr. O'Neill explained why it became necessary for the Tribunal to change the procedure it had outlined earlier in relation to the calling of witnesses. Mr. Thomas Bailey was invited through his solicitors to furnish a narrative statement to the Tribunal on two occasions and he exercised his right not to do so.

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In those circumstances it has become necessary to call Mr. Thomas Bailey without the benefit of having a prior note of what he is going to say, save insofar as that evidence has been indicated in the course of the examination of other witnesses by his counsel.

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In those circumstances I have directions to call and question Mr. Bailey in relation to matters that are within his knowledge.

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CHAIRMAN: The same as yesterday.

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A. I was born in 1961 in County Roscommon. I went to national school and went to secondary school for three years and came to Dublin then as an apprentice bricklayer and worked in the building industry since.

103 Q. How many years did you serve as an apprentice bricklayer?

A. Two years.

104 Q. And were you employed by a company at that time or by an individual?

A. By an individual.

105 Q. What did you do after the two years?

A. I started working for myself then as a, just going around working for different builders, working personally for myself.

106 Q. I see. Were you working with your brother at that stage?

A. No.

107 Q. When did you start working with your brother, Michael?

A. As a bricklayer I started in 1980 I think, as a bricklayer working for him.

108 Q. You were working for Michael initially; is that correct, or with him?

A. With him.

109 Q. I see.

A. Sorry, for him.

110 Q. For him?

A. Yeah.

111 Q. And what company, if any, did he have at that time?

A. Princess Homes.

112 Q. I see. Where did you work? What sites did you work on at that time?

A. I worked in Tallaght, Glenageary, Swords, Clondalkin. I think that was it.

113 Q. Were you, were you a Director of Princess Homes?

A. No, no.

114 Q. Were you a shareholder?

A. No.

115 Q. I see. Was your brother a Director?

A. He was, yeah.

116 Q. Yes. When was Bovale Developments Limited formed?

A. In 1983.

117 Q. And did you become a Director of Bovale Developments Limited?

A. I did, yeah.

118 Q. Who were the other Directors?

A. My brother, Michael.

119 Q. Were you a Director of any other company?

A. Was I or --

120 Q. Were you or have you at any time since 1983 been a Director of any other companies?

A. Yeah, there was another company, Crestbry Limited, I was a Director of that.

121 Q. Yes. Are they the only companies of which you are a Director of which you can recall?

A. Since that?

122 Q. Since, yes?

A. There is a management company that is, I would be a Director of Duaforth Limited is a company, just a management company.

123 Q. Would you spell that?

A. D-U-A-F-O-R-T-H.

124 Q. When you say it is a management company, would you say what you mean?

A. Just looks after a development after we have it built, just managing the grounds and maintaining the place.

125 Q. I see. What grounds are maintained by Duaforth Limited?

A. A site on South Circular Road called Hybrasal,

H-Y-B-R-A-S-A-L.

126 Q. Now, when Bovale Developments Limited was formed what developments did, what work did it do or what --

A. It started with ten houses in Melrose Park in Kinsealy Court, Swords, on the Felton Road in Swords. Went on from there to do development at Seamount View. Went from there to do development at 7 Oaks, Drumcondra. From there to development at Grosvenor Court in Clontarf. Done another development then in Swords, Melishan Court was the name of it, another development, Carlton Court in Swords. Dalcashel Downs in just beyond Hart's Corner in Phibsborough. Then it went back out to Swords again to do another development there --

127 Q. What was the name of that development?

A. A second phase in Carlton Court. Went from there to Hybrasal then in the South Circular Road. And we are back out in Swords now again.

128 Q. Where are you in Swords again?

A. A development called Borova.

129 Q. Where is that?

A. Swords as well.

130 Q. What part of Swords?

A. Dublin Road, Swords.

131 Q. I see. When you started your initial developments, did you buy sites or did you buy land which was virgin land in respect of which you had to obtain planning permission?

A. No, mainly land with planning permission in the earlier days.

132 Q. I see. What was the first site you acquired where you didn't have planning permission, where you had to go through the planning process to obtain permission?

A. I think it was Melishan Court in Swords.

133 Q. When that was approximately?

A. '87 I think.

134 Q. And do many houses --

A. I am not 100 percent sure, around that time anyway.

135 Q. Sometime in the mid or late 80s; is that correct?

A. That's right.

136 Q. And how many houses did you apply for permission?

A. 101.

137 Q. Pardon?

A. 101.

138 Q. I see. And did you obtain permission from An Bord
Pleanala or from the County Council?

A. I don't recall.

139 Q. I see. Was there any question of rezoning the lands
involved?

A. Yes, the land was rezoned, yeah.

140 Q. I see. When was the land rezoned?

A. I think it was not so long after we buying it, we bought it
and went for rezoning and got it, got it rezoned.

141 Q. How did you get it rezoned? What were the steps that had
to be taken to get it rezoned?

A. I had to go into the Council and make a submission to get
it rezoned and it was voted on and went through.

142 Q. I see. Did you talk to the planners about that before you
made your submission?

A. I did.

143 Q. Talk to the planners?

A. No I didn't, no.

144 Q. Did anybody on your behalf talk to the planners before
that?

A. Architect would have, yeah.

145 Q. Who was your architect?

A. Alan Tomkins.

146 Q. I see. What was the nature of the submission made seeking the rezoning of these lands?

A. Say that again?

147 Q. What was the nature of the submission that was made to Dublin County Council seeking the rezoning of this land?

A. Well, the architect would have compiled a submission to get it rezoned.

148 Q. I see. And was it necessary to speak to any councillors in relation to the rezoning of the land?

A. Councillors would have been lobbied for, to ask them for their votes for the land.

149 Q. Who lobbied them?

A. Michael mainly, and I would have done a little bit.

150 Q. I see. What counter, sorry perhaps we will leave that for the moment. You lobbied councillors you say to rezone the land?

A. That's correct.

151 Q. And what zoning did the land have at that time?

A. I think it was agricultural zoning it had previous to that.

152 Q. How long had the company been trading roughly, at this time?

A. About five years.

153 Q. And how many units had it built in that time, approximately?

A. I would say about 200 or 250 I would say.

154 Q. I see. And was it trading successfully at that time?

A. Well, we were selling all the houses we built.

155 Q. I understand, was it trading profitably perhaps rather than successfully?

A. No, it would have been hard times, no.

156 Q. Well, the acquisition of lands at Melishan Court, which were zoned agricultural, a significant step for the company at that time?

A. I suppose every step we took was significant, we always kept growing up, so.

157 Q. Well, if you had bought sites which had planning permission in the initial stages, and this, as I understand it, was a significant change or break through for the company, in that you were acquiring agricultural lands or lands zoned agricultural and you were going to have to seek to get it zoned, and clearly that was a risk that might not come off?

A. That's true, yeah.

158 Q. Do you have a copy of any submission that was made on your behalf by Mr. Tomkins to the Council in relation to the zoning of the lands?

A. No.

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MR. ALLEN: I am sorry to interrupt My Friend, Sir, but there are a number of points I wish to make in relation to this questioning.

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The first is that these lands are not, do not form part of the land the subject matter of this inquiry. The second is, no queries have ever been addressed to us in relation to this, the development at Melishan Court, that indeed would be reflective of the extent of my familiarity with it, it is not something I have had to concern myself.

.

To be asking this witness without any notice to him, for a submission that might have been made by his architect in relation to the lands which are not the subject matter of this Tribunal of Inquiry, would appear to be, with the

greatest of respect, Sir, would appear to be not an economic use of your time, Chairman, apart from the fact that it is fundamentally unfair to the witness.

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CHAIRPERSON: Mr. Gallagher?

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MR. GALLAGHER: I can assure Mr. Allen that we are concerned about the economic use of time. We find ourselves, however, in a situation where we haven't been furnished with a narrative account by this witness and it is necessary therefore, to ask him a number of questions. You may decide in due course that some of those questions are questions that don't trouble you, but it seems to me that in order to appreciate how Mr. Bailey became involved in building and ultimately became involved in the acquisition of the Murphy lands, it would be of assistance to the Tribunal to know what his background and what his experience is and what knowledge he has of planning, the planning process and the rezoning process, if any.

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And it is for that reason I ask, I simply ask if he has a copy of the submission that was made by his architect to the County Council. If he doesn't have it, then that's the end of it, I am not pressing him in anyway.

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MR. ALLEN: Chairman, just bear with me for a moment, Sir, to demonstrate the, how fundamentally flawed I say that approach is.

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CHAIRMAN: Permit me, I will shorten your --

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MR. ALLEN: Very good, Sir.

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CHAIRMAN: On this basis, that I agree with both of you.

First and foremost, it is not within the Terms of Reference as such, the fact that we have made, that you have heard no inquiries is simply the fact that we knew nothing about it, it is as simple as that, this is the sort of thing that will have to be dealt with as it comes bit by bit from your witness. There may be aspects of the situation which may arise from what he says which will have to be looked into. That's aside.

.
I think we do want to know very broadly, his background as he approaches the major development or major purchase, nothing more, and nothing less. I think it could be dealt with quite quickly in a couple of questions.

.
It is purely, as it were, historically descriptive of his approach, his experience as he comes into the major development of the other lands.

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MR. ALLEN: So-be-it, Sir. Could I just say this, I want to be as silent as possible during this hearing, the examination of this witness, to ask this witness to produce, without notice, a submission from an architect, which was made in a year which he doesn't know, is hardly indicative of seeking to establish a general broad outline of his background.

.
CHAIRPERSON: Well, perhaps you will inquire does he have it or can he, does his architect have it?

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159 Q. MR. GALLAGHER: That's the question I asked in fact, if he

doesn't have it, he doesn't have it. Do you have it, Mr. Bailey?

A. No.

160 Q. Now, we know of certain events that occurred and are alleged to have occurred in 1989. Can you assist the Tribunal by indicating what land bank, if any, Bovale Developments had at that time, say the beginning of 1989 and what developments it was carrying out, if any, at that time?

A. We were working in Dalcashel Downs in Hart's Corner in Phibsborough, we were working in Carlton Court as well at the same time, the two sites would have overlapped. I don't recall that we had any other sites at that time.

161 Q. I see. What kind of development were you carrying out at Dalcashel Downs?

A. Houses and apartments.

162 Q. Was that a large development?

A. There was 140 units.

163 Q. And the other development at Carlton Court, how many units there approximately?

A. There was a total I think of 157 in the end.

164 Q. So you had two substantial sites going together?

A. Yeah, well overlapping more so than going together.

165 Q. What do you mean by "overlapping", one followed on the other but there was some overlap?

A. Yeah, correct, yeah.

166 Q. Which came first in time?

A. Dalcashel Downs was first.

167 Q. I see.

A. Well, the first phase of Carlton was previous to that, it was in '88.

168 Q. And did you have a site office on each of those sites?

A. The site office would have been on the Carlton Court site.

169 Q. When you left Carlton Court to commence the Dalcashel Downs development, did you move the site office?

A. No, no.

170 Q. Does that mean then that the Carlton Court site office was the effective headquarters of Bovale for the period while Carlton Court phase one, Dalcashel Downs and Carlton Court phase two were being carried out?

A. Yeah, correct.

171 Q. And what accommodation did you have there for the site office?

A. Portacabins.

172 Q. How many?

A. We had a big one and a small one at the time. One big one and one small one.

173 Q. I see. And was the clerical staff of Bovale accommodated in those two portacabins at Carlton Court over that period?

A. That's correct, yeah.

174 Q. What years are we talking about, Mr. Bailey, please?

A. '88,'89 '90.

175 Q. I see. And what clerical staff did you have in Carlton Court at that time?

A. Two girls.

176 Q. I see. Would you just mind please writing the names of the two ladies down for me please. .

(Registrar hands paper to witness. Witness writes down names of clerical staff).

A. There was actually another girl on temporary as well.

177 Q. Perhaps you would write her name also?

A. Um hum. (Registrar gives paper to Counsel for the Tribunal)

178 Q. The first person you have named is your wife, Caroline

Bailey, who gave evidence yesterday; isn't that correct?

A. That's correct, yes.

179 Q. And the other two have been allocated the references MR and OF, so we will refer to them in that way, if it becomes necessary to do so?

A. Okay.

180 Q. Who was the first employee of the company who worked in a clerical --

A. My wife, Caroline.

181 Q. I see. Approximately what year did she start working for the company?

A. She started at the inception like.

182 Q. I see.

A. In 1983.

183 Q. And when did it become necessary then to take on additional assistants, MR for example, when did she start roughly?

A. I couldn't be 100 percent sure, but it would have been possibly --

184 Q. Roughly?

A. '86 I would say, '87 I would say.

185 Q. All right. Then OF, when did OF --

A. She just worked temporary for us at the time.

186 Q. When did she start approximately?

A. '88.

187 Q. And did all three continue to work for the company during succeeding years from '88 onwards?

A. Not, not the last girl.

188 Q. I see.

A. But she is back working with us now again.

189 Q. I see. I think yesterday your wife indicated that some other staff were taken on in the period in between?

A. In between times, yeah. MR would have been with us for a

long time.

190 Q. I think she perhaps left fairly recently, according to your wife's evidence, if I understand it correctly?

A. She left last year at some stage, yeah.

191 Q. Now, in dealing with the acquisition of sites, including the lands at Swords and Melishan Court, the other sites and the other sites you have indicated, what role, if any, did you play?

A. Very little, mainly my brother that looked after that.

192 Q. I see. Did he discuss matters with you as to what lands you would need and what sites he felt should be acquired?

A. We would have had some discussion, yeah, but he would have been, he would be looking at land every day of the week. He wouldn't be annoying me with every site he would see.

193 Q. Well, was it your practice to go to see sites before you purchased them?

A. No, it would be the very late stages that I would look at the sites, negotiations would have been going on a long time before that.

194 Q. Yes. So do I understand you to say your brother would identify a possible site that you might purchase, would conduct negotiations and would then bring you along to look at the site before the deal was concluded?

A. Yeah, it would be very late in the stage when I look at it.

195 Q. Would you look at it normally before the deal was concluded?

A. Yeah, I normally would, yeah.

196 Q. And I take it that you would have a discussion about what should be paid and what the potential of the site was and what difficulties, if any, would arise in relation to developing it?

A. Not much discussion, because I leave it to his experience

in dealing with land over the years. I wouldn't - he is a good bit older than me, he has a lot more experience in that. My job was to look after the building of the houses and dealing with all the different lads on site and making sure we got the sales closed and that, it would be only interfering with my time if I was spending time at that work.

197 Q. Were you, as it were, a foreman on site who supervised what was happening on site?

A. Yeah.

198 Q. Supervised sales, preparation of houses for sales, provision of services, matters of that nature; is that correct?

A. Dealing with the day-to-day running of it, and I am still a foreman as well.

199 Q. And did you deal with the employment of workmen on site with subcontractors and matters of that nature?

A. Correct, yeah.

200 Q. Were you responsible for the purchasing of materials?

A. Yeah, everything.

201 Q. Would you order the materials?

A. Back that time I would, yeah. I would do all the deals for the materials with the sales reps that would come in and that.

202 Q. At that time what company records were kept of, in relation to the affairs of the company?

A. Say that again?

203 Q. What company records were kept of and relating to the affairs of the company?

A. Well the usual books, you would have to keep them.

204 Q. Can you tell me what books were kept, that you are aware of?

A. Well the invoices, all the invoices would have to be written up or put into computer and the VAT aspect of that had to be sorted out. The sales of houses. I don't know the names of the different books, but whatever books had to be kept were kept.

205 Q. Did you have any role in the writing up of these books?

A. No.

206 Q. Did you have any role in furnishing information to your wife, to MR, or to OF in relation to what was happening on site? What expenses were being incurred?

A. Well, they would get that from the cheque book and that. There was no order books or anything like that.

207 Q. There wasn't an order book?

A. No.

208 Q. So do I understand you to say that information would be gleaned from the cheque book?

A. Um. Correct.

209 Q. Did you have a cheque book in your physical possession?

A. I would have, from time to time, yeah.

210 Q. Would your brother, Michael, have a cheque book in his possession?

A. Sometimes he would have as well, yeah.

211 Q. Was there a cheque book kept in the office in Carlton Court?

A. I would possibly have it on, you know, sometimes I would have to meet a guy, a sales rep would ask me for a cheque, I would take the book with me, but most of the time it would be kept in the office.

212 Q. And had you an entitlement to sign cheques in your own name or did you require your brother's name?

A. In the earlier years it required both of us, but which you probably see there is a lot of cheques just with my

signatures on it, but that was, times we will say when Michael wouldn't be around, and we write the cheque and I have to pay it out, there would be a letter sent to the bank with the numbers on and Mick authorising the payment of them cheques.

213 Q. Yes. You have told me that you weren't quite familiar with what books were kept, but you said that whatever books had to be kept were kept, I am paraphrasing what you said now. What do you know about the book that has been described as "the kitten book", and that type of book that was kept?

A. That was a memory aid for me, that book.

214 Q. A memory aid for you?

A. Yeah.

215 Q. And who wrote up that book?

A. My wife, Caroline.

216 Q. And was that written up for you on an annual basis or a daily basis, a weekly basis, how was it written up?

A. I think from looking through, it was a weekly basis, wasn't it?

217 Q. I see. Was there a separate book for each year?

A. I would say there probably, possibly was, yeah.

218 Q. And where was that book normally kept?

A. As far as I know it was being kept in the office, in a drawer in the office.

219 Q. And why did you need it as a memory aid?

A. Because that was cash payments that I have given to guys that were working for me on top of their wages, I just wanted to keep a record of it.

220 Q. I see. How are employees normally paid by the company?

A. By cheque normally, plus some cash.

221 Q. I see. That would be done, I take it, on a weekly basis?

A. Yeah.

222 Q. Were you responsible for these payments?

A. The wages?

223 Q. Yes?

A. Oh yeah.

224 Q. I see.

A. Um.

225 Q. And in relation to the cash, how would you acquire that, where would you get it?

A. I would get some of it from extras in houses and I would get some in the bank then as well, then as well.

226 Q. I see. Now, can you tell the Tribunal the banks from which you obtained monies to pay out wages or --

A. Branches that, Bank of Ireland branches that would be close to where the sites were.

227 Q. Can you name some of those branches?

A. Bank of Ireland in Swords, Bank of Ireland in Phibsborough, Bank of Ireland, James' Street. Whatever branch was convenient, we would have to get an advice from the bank for the lads to change their cheques, they get paid on a Thursday, they had to change it. If we didn't have an advice from our own branch to that particular branch the lads wouldn't be able to change their cheques.

228 Q. Did you arrange to have an advice sent from your own branch in Montrose to the other branches?

A. Yes, I would, yeah, and both of us have to sign it as well.

229 Q. And did you from time to time go to those branches to get money?

A. Yes.

230 Q. Yourself?

A. Yeah. Correct.

231 Q. And in order to get the money, would you write a cheque

drawn on the Bovale account in Montrose?

A. That's right.

232 Q. At that time were you living in Dublin or were you living in Meath, where were you living?

A. I was living in Meath since 1986.

233 Q. I see.

A. Yeah.

234 Q. Was it the practice of your brother to visit the sites then on a daily basis or weekly basis or how frequently?

A. Not necessarily daily, no.

235 Q. Would you be in contact with him on a daily basis?

A. No.

236 Q. Did you have meetings to discuss the progress of sales and progress of development matters of that nature?

A. I think Michael would come in on the site sometimes and we would just have a walk around the site and discuss things as we are walking around, we wouldn't ever have a board meeting or anything like that.

237 Q. I see. Would you discuss the size and type of houses that might be built in particular locations?

A. We would, yeah. Yeah.

238 Q. Did you have dealings with the architect employed by the company at that time?

A. I would, yeah, in designing houses and that.

239 Q. What was his name?

A. Alan Tomkins.

240 Q. Alan Tomkins. I take it that as brothers you trusted each other completely and --

A. That's correct.

241 Q. You said that you moved to Meath in 1986, and yesterday your wife talked about a specialised farming operation that you are carrying on, can you elaborate on that please?

A. I breed purebred Suffolk sheep.

242 Q. I see.

A. And some purebred cattle as well.

243 Q. Is this a large operation?

A. What do you mean by "large"?

244 Q. Perhaps you will tell me what's the size of it?

A. Well, the farm I lived on at that stage was 25 acres but some of the sheep would be pretty expensive.

245 Q. How many sheep do you run on the 25 acres?

A. Now? Well, I have more land now but at that time I would have about 60 I suppose.

246 Q. I see. What price would those sheep be around that time approximately?

A. I know in 1989 I gave 58,000 for 16 sheep at a sale in Scotland.

247 Q. For 16?

A. And I bought, sorry I bought a stock ram the same year as well for 10,000 Sterling Guineas. And I have given as much as 94,000 Punts for a sheep.

248 Q. I see. Tell me, have you extended your farming operation since that time?

A. I have, yeah.

249 Q. What size of farm do you operate now, approximately?

A. 185 acres.

250 Q. When did you acquire the additional lands?

A. The 150 acres just in the recent years, 160 acres.

251 Q. Can you tell me about your sources of income in the years 1989/'90/'91?

A. I was getting a wage from the company and the farming as well.

252 Q. Did you have any other income?

A. No, except, well I would be getting some extras for houses,

a certain amount of income off that as well.

253 Q. I don't quite understand that, what do you mean by "extras for houses"?

A. People want an extra bit of tiling in their bathroom or something and we do it for, it would be only small money like £100 or that.

254 Q. I see. Would you get that hundred pounds or so for every house?

A. No, no.

255 Q. Is it possible you were getting larger sums than £100 for houses?

A. There would be some, I would.

256 Q. What would be the largest sum you would get for a house?

A. 10 to 15,000 I suppose if you were doing an extension, that would be very rare though.

257 Q. Is this an extension on a house that you were building as part of the developments at Melishan Court or wherever it might be?

A. That's right, yeah.

258 Q. And how often would you get a sum of 10 to £15,000?

A. Possibly just once or twice maybe on a site, it wouldn't be a regular thing.

259 Q. I see. So, your income then, as I understand it, was what you were paid, a wage you were paid by the company on a weekly basis, together with some additional sums that you would get, ranging from £100 perhaps up as high as £15,000?

A. Well, the 15 wouldn't be regular now.

260 Q. And was your practice to deposit these monies into your bank account or one of your bank accounts?

A. Not necessarily, no.

261 Q. What percentage of your salary, your income would be lodged to your bank account in the years say 1989?

A. All my wages would be lodged.

262 Q. And what percentage of your total income would that be approximately?

A. That would be the majority of it.

263 Q. Does that mean that it was 51 percent approximately or do you say it was significantly more than --

A. It would be significantly more.

264 Q. Can you be any more specific, would you say it is 75 percent or 80 percent, 90 percent?

A. It is ten years ago.

265 Q. I understand. How many units a year were you building at that time, roughly?

A. I would say between 70 and 100.

266 Q. And I take it that your brother was entitled to 50 percent of any --

A. That's correct, yeah.

267 Q. -- any income that derived from any work carried out by or on behalf of the company?

A. That's correct.

268 Q. So if there was 10 or £15,000 paid in respect of an extension your brother would be entitled to 50 percent of that?

A. That's correct, yeah.

269 Q. Did you have any Director's loans, borrowings from the company?

A. Yeah, there was some there, yeah.

270 Q. Do you know how much that was?

A. No.

271 Q. How would one find out what the Directors --

A. The accountants would know.

272 Q. The accountants would know?

A. Yeah.

273 Q. How would the accountants know?

A. It would be down as a Director's loan from --

274 Q. Who would tell them?

A. I would tell them.

275 Q. You would tell them?

A. Yeah.

276 Q. Did you have dealings with the accountants on a regular basis?

A. I would have, yeah.

277 Q. Can you name the accountant you dealt with usually?

A. Joe O'Toole.

278 Q. Joe O'Toole. Mr. O'Toole has given evidence here earlier?

A. That's right.

279 Q. When did you start dealing with Mr. O'Toole?

A. 1983.

280 Q. Has he been your accountant since 1983?

A. He has, yeah.

281 Q. Sorry, perhaps more correctly, has he been the company accountant since 1983?

A. That's right.

282 Q. I think your wife told us yesterday that you and your wife have Mr. Corcoran as a personal accountant?

A. That's correct.

283 Q. But the company's affairs have been dealt with by Mr. O'Toole since 1983?

A. Yeah.

284 Q. Has he personally dealt with them since 1983?

A. Oh yeah, well he had a partner before he joined McGrath & Company, he had a partner, he actually looked after it in the early days.

285 Q. When you say "he"?

A. His partner.

286 Q. What was his name?

A. Can I say it?

287 Q. Well sorry, Mr. O'Toole's partner in the firm, is it the firm he is in now?

A. No.

288 Q. I see. Mr. O'Toole took over then in what year?

A. Whenever they dissolved their partnership, I don't know what year it was.

289 Q. Roughly, was it in the mid-80s or late 80s?

A. I think it might have been the late 80s, I couldn't be sure.

290 Q. Mr. O'Toole will be able to tell us?

A. He will, yeah.

291 Q. How frequently would you have discussions with Mr. O'Toole in relation to the affairs of the company?

A. A couple of times a month maybe.

292 Q. Yes. Would you normally discuss with him the financial status of the company, its outgoings, its borrowing, cashflows and matters like that?

A. He would always do that with me, yeah.

293 Q. Did he come out to the office to you?

A. No.

294 Q. Did you go to him?

A. Yeah.

295 Q. I see. Would you bring him records and details to update him on what the position was?

A. His main work for me would be going to meetings in the bank and I would go to, go through the figures and the projections that we would have to give the bank on a half yearly or quarterly basis, that would be that.

296 Q. Would you furnish him with the raw material which would enable him to come up with those projections, figures,

cashflows, etc.?

A. Yes, I would. Yes.

297 Q. Would you take that information from the records that were maintained in the Carlton Court site by and large?

A. Well, the records would be really, the amount of sales I had and the building costs I had, I wouldn't necessarily have to look up records to do it, I would know on a day-to-day basis what I was at.

298 Q. So then you would tell him, perhaps out of your head, from memory, about these matters?

A. Correct.

299 Q. When he came to compiling the annual accounts, did Mr. O'Toole have recourse to you, did he refer to you for clarification of different matters?

A. He would have, yeah.

300 Q. Was that done on an annual basis?

A. Yeah.

301 Q. Would he contact you, rather than your brother, or would he contact both of you, do you know?

A. Possibly in the earlier years he would contact both of us, but in the later years he would just contact myself.

302 Q. When you say "in the later years", what do you mean?

A. In the last four or five years.

303 Q. I see. But in the late 1980s, early 1990s who would he normally deal with?

A. He would have dealt with both of us, I would say, from memory anyway.

304 Q. I see. I take it that he would perhaps have more reason to contact you because you were, as it were, the person dealing with the sites on the ground and with the expenditure, repayments of wages, payments of suppliers, etc.?

A. That's right.

305 Q. Did you furnish him with all the information that he asked for in relation to the trading of the company, the outgoings of the company, etc.?

A. He would have got the books that were in the office to compile the audit from that.

306 Q. Yes, but the question I asked you was did you furnish him with all the information that he sought from you, in relation to the trading of the company, and the outgoings?

A. Well, he wouldn't have seen the kitten book.

307 Q. He didn't see the kitten book?

A. No.

308 Q. He didn't see it in any year?

A. No.

309 Q. Is that what you are --

A. No, never.

310 Q. I mean, when you say the "kitten book", you are referring to a particular book, but I understand that there were kitten books or the equivalent kept for each year since you started trading, is that your evidence?

A. Yeah.

311 Q. And is it your evidence that Mr. O'Toole never saw any of those books?

A. That's correct.

312 Q. Now, in relation to bank accounts, did you inform him of all bank accounts that were held by or on behalf of the company?

A. I would have, yeah.

313 Q. Did you inform him of all assets and liabilities of the company that you knew about?

A. Sure, yeah. Correct.

314 Q. And did you give him that information truthfully and

accurately so far as you were concerned?

A. That's right.

315 Q. Did you tell him about Directors' loans for example?

A. Not necessarily all of them, no.

316 Q. What loans did you not tell him about?

A. There was some cheques there, yes, that was on screen, he wouldn't have known anything about them.

317 Q. Which cheques are you referring?

A. The cheques that you showed, the AIB cheque and the £50,000 cheque.

318 Q. Which one was that? There were a number of cheques shown yesterday?

A. There was one made out for 50,000 to AIB and one for 50,000 cash.

319 Q. There were two cheques in September of 1990; is that right?

A. That's right.

320 Q. What do you say about those? Do I understand you to say you didn't tell him about those cheques?

A. That's correct.

321 Q. But surely he knew that cheques had been written, the £50,000 had to be accounted for?

A. That's right.

322 Q. And how did you account to him for that £50,000?

A. I don't believe he asked me about this, I don't believe he asked me about them.

323 Q. You don't think he asked you?

A. No.

324 Q. There was one cheque of, drawn for £50,000 on the 7th of September of 1990, it was payable, according to the evidence we heard yesterday, to AIB Limited?

A. That's right, yeah.

325 Q. Do you say you didn't give Mr. O'Toole any explanation as

to what the cheque was for?

A. I don't believe I did, no.

326 Q. What was it used for?

A. For farming, farming expenses, yeah.

327 Q. Did Mr. O'Toole ask you for an explanation as to how that cheque was drawn or why it was drawn or why it was payable to AIB or whatever payee it was payable to?

A. I don't recall him asking, no.

328 Q. Did you not hear Mr. O'Toole's evidence that he had asked for an explanation and he was told that that cheque had been paid to Smith Foy and Partners?

A. I did hear the evidence, yeah.

329 Q. So you are disagreeing with Mr. O'Toole, do you?

A. If that's what he was told at the time.

330 Q. Sorry?

A. If that's what he was told at the time, I don't know.

331 Q. Well, do you accept that he was told that at the time?

A. Did he say who told him?

332 Q. First of all, do you accept that he was told it at that time, you heard him say it?

A. If he said he was told it, I am sure he was.

333 Q. Did you tell him?

A. I don't recall that I did.

334 Q. If you did tell him that it had been paid to Smith Foy, that information was incorrect, isn't it?

A. That's right.

335 Q. And it was incorrect because the money was in fact paid to AIB Limited?

A. That's correct.

336 Q. Did the cheque stub show who the payee was?

A. I don't know.

337 Q. Well, I take it that if the cheque stub showed AIB Limited

as the payee, that the name of the payee would not have to be sought by Mr. O'Toole?

A. That's right.

338 Q. Can you explain why the cheque was made payable to AIB Limited and not to Thomas Bailey and Caroline Bailey?

A. No, I can't, no.

339 Q. Who decided that the cheque should be paid, first of all who decided that it should be drawn?

A. I would say it was me.

340 Q. Right. Did you do this after consultation with your brother Michael?

A. Not necessarily, no.

341 Q. Who do you direct to draw the cheque, to write up the cheque?

A. Caroline.

342 Q. And did you direct that the cheque should be made payable to AIB Limited?

A. Most likely I did, yeah.

343 Q. And why did you not say, draw cheque payable to Tom Bailey and Caroline Bailey?

A. I don't know.

344 Q. Wasn't it likely to cause confusion, to put it mildly, if the name of the payee was incorrectly stated when in fact the money was being paid for your benefit and for your wife's benefit?

A. Say that again?

345 Q. Wasn't it likely to cause confusion if the name of the payee was incorrectly stated, as AIB Limited, when in fact the cheque was being paid for your benefit and your wife's benefit?

A. That's correct, yeah.

346 Q. Why did you not take steps to ensure that that confusion

would not arise by putting your own name and/or your wife's name?

A. I don't know.

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MR. ALLEN: Chairman, I am sorry to interrupt My Friend, but I want to make a submission to you in relation to this line of questioning.

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The witness is being questioned about a particular cheque, the cheque was put to Mrs. Bailey yesterday. We had it on the screen, it is clearly made payable to AIB Limited. It has been established that the entry in the book, in the books of the company didn't reflect that. You now know that, indeed you have known it for some considerable time.

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It was a cheque written on the 7th of September of 1990. It has nothing whatever to do with the business of this Tribunal, it has no relevance whatever to this working of this Tribunal. What we are now witnessing is the trawling by Mr. Gallagher, in some form of quasi public Revenue audit in which he seeks to link this witness, his brother, his wife, now that is not, in my respectful submission, the function of this Tribunal and it is certainly not Mr. Gallagher's function as lead counsel to this Tribunal.

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I also want to make the point, Sir, that at no time during the so-called examination of Mr. Gogarty, were any questions put to him by Counsel for the Tribunal about the source of funds in offshore accounts or any questions of any kind in relation to that.

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This is in marked contrast to the exercise, and I use the word with caution, which is being conducted here. This doesn't advance the work of this Tribunal in anyway.

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If there are matters which involve the Revenue, those are matters which are properly to be pursued by the Revenue. And it is, in my respectful submission, Sir, grossly unfair and grossly unnecessary to pursue the witness in this way in relation to these matters. If he was asked a simple question in relation to it he could dispose of it, he is not, he is asked a whole series of questions in a type of roundup exercise which does this Tribunal no favours at all.

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CHAIRPERSON: Mr. Gallagher?

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MR. GALLAGHER: Sir, can I say again, and I absolutely reject what Mr. Allen has said in his most inopportune intervention, and the cheque I am asking about is a cheque which Mr. Allen seems to have forgotten about. It is a cheque drawn on the Bank of Ireland on the 7th of September of 1990.

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It is a cheque which is referred to in the accounts of Bovale Limited, and it is a cheque which is described as an addition of £50,000 for the cost of the acquisition of the Bovale lands, the Murphy lands by Bovale.

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That is the relevance of that cheque. It is shown in the accounts, and we will deal with that on another occasion perhaps. But that's its relevance. It is shown in the accounts as having been expended as additional expenditure

over and above the £230,000 that had already been expended towards the acquisition of the Murphy lands, that was produced in the accounts prepared by Mr. O'Toole. We now know that that money which Mr. O'Toole said in evidence he had been told had been paid to Smith Foy, was in fact drawn by Caroline Bailey on this witness' instructions, in favour of AIB Limited and lodged to their farm account.

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Therefore I say it is extremely relevant.

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MR. ALLEN: Sir, with respect, I don't think that my interjection was inopportune.

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CHAIRMAN: Can we just deal with the relevancy of your interjection.

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MR. ALLEN: The witness has acknowledged the factual situation in relation to the cheque. These were not the only questions put to him. I am objecting to Mr. Gallagher's entire line of questioning insofar as his endeavors on behalf of the Revenue Commissioners are concerned. He is not here, it is not - this is a serious point, Sir, it is not, I hope, going to be thrown in my face as giving offence or as constituting an impertinence, this Tribunal is established for a specific purpose, the exercise which is being pursued here does not form any part of the purpose for which the Tribunal was established.

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Yesterday we were talking about builders' Christmas bonuses, what that could have had to do, cash bonuses which by the way, which are acknowledged, what that could have had to do with the Terms of Reference of this Tribunal is

beyond me. But there is clearly, in my view, a mistaken approach being taken by Counsel to the Tribunal in relation to this matter, in the sense that they are pursuing matters which should more properly be pursued by the Revenue Commissioners. They are not here to do the work of the Revenue Commissioners.

MR. GALLAGHER: Sir, I am not here to do any work for the Revenue Commissioners. I do want to draw your attention to the evidence of Mr. O'Toole, which he gave on Day 76 at page 100, Question 638. This is a reference to the cheque that we have been referring to.

At Question 633: "This was one of the cheques that you queried because it was described as a "Sundry cheque"?"

Answer: But I don't know who the payee was. It was not recorded here who the payee was.

Question: Who did you have the discussion with to establish what the precise nature of this transaction was for the purpose of the, your reconciliation of the account?

Answer: Again it is not recorded on this who had the actual transaction, but I imagine we would have identified it with Tom Bailey, I would imagine, who we would have identified it with.

Question: Right, and because you attributed it to an additional payment in that year, it seems obviously you made a conclusion following upon your investigation that that was where it should go; is that right?

Answer: Correct.

Question: Right, so you are satisfied in stages.

Firstly that there had been such a payment; is that right?

Answer: Yes. Well, the payment went through the bank, so obviously --

Question: It went through the bank?

Answer: Yes.

Question: Are you satisfied that there was a payment?

You are satisfied that it was on foot of that cheque?

Answer: Yes.

Question: You were satisfied from your discussions with Mr. Tom Bailey that it was a sum which should properly be attached to the Murphy land?

Answer: That is right. Yes, that was our understanding of it yes.

Question: Right. There is reference to Smith Foy in that account in one of the documents, I think it is under "Sundries"; is that right?

Answer: That's right

Question: Yes, what does that say again?

Answer: It just has a heading "Smith Foy", and there are a number of cheques basically to do with land sales".

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And it goes on in similar vein for the next three pages, Sir. So in relation to those cheques and the matters that arose from them, I simply draw your attention to the fact that Mr. O'Toole has given evidence in relation to this cheque, has given evidence in relation to the explanation that he was given relating to this cheque and to the fact that this cheque was posted in the accounts of Bovale as an additional sum expended to acquire the Murphy lands in the year ended 31st of - sorry, 30th of June of 1991.

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MR. COONEY: I wonder, Mr. Chairman, it seems to me that there is possibly some confusion here. Does the Tribunal

introduce all of these matters for the purposes of teasing out the truth or otherwise of the allegations made by the Baileys, that they agreed to give Mr. Gogarty £150,000 and did so? Is that the relevance of these questions, Mr. Chairman, because if it is I think Mr. Gallagher should make it very clear that the number of the cheque that he is now dealing with is entirely different from the number of the cheque produced by Mr. Gogarty to this Tribunal, and that's a very important point.

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CHAIRPERSON: I am satisfied --

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MR. GALLAGHER: That is, of course, a different cheque.

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CHAIRMAN: I am satisfied that that examination is proper and appropriate, insofar as it relates to the weight to be given to, to the evidence of this witness in relation to financial transactions.

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MR. COONEY: Does that include the dispute which exists between Mr. Bailey and his brother and Mr. Gogarty as to the payment of the £150,000?

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CHAIRMAN: It is a question for me in due course to assess the weight and the reliability of any evidence this witness may have given in relation to financial transactions.

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MR. COONEY: But I am respectfully asking does it relate to this particular issue, because if it does it is of concern to me?

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CHAIRMAN: I have answered the question.

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MR. COONEY: You haven't, with respect.

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CHAIRMAN: I have given the only answer I am going to give at this stage, because I will have to consider the entire matter in a proper, balanced manner. This is an interesting episode, but it may only be an episode that must be looked at in the overall countenance of the evidence as a whole.

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MR. COONEY: Of course, I quite understand that, Mr. Chairman, but you will, I hope --

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CHAIRMAN: I note your concern.

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MR. COONEY: My concern about this is merely to do with Mr. Gogarty and his credibility. I am respectfully asking you now if this particular portion of the evidence is being received on that issue?

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CHAIRMAN: I have already indicated that it relates and is germane to the weight and credibility to be given to all or any of this witness' evidence, the degree is something which I will not discuss with you at this moment because it would be unfair, until I have assessed the entire matter in a calm and collected overall manner.

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MR. COONEY: I very much appreciate that, Mr. Chairman. I am not asking you about the degree of weight, Mr. Chairman, I am asking you to identify the issue.

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CHAIRMAN: I have already done so, Mr. Cooney, and I don't

intend to go further.

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MR. COONEY: Well, I would like to know that, Mr. Chairman, because it seems to me that that is the only relevant issue --

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CHAIRMAN: I have already stated quite clearly and firmly how I view the relevance of this evidence. The weight to be given to it is something which I will consider in due course.

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MR. COONEY: I have no doubt that you will do that, Mr. Chairman. That's not my point. The point is when you are giving weight to it, which particular issues will you have in mind at the time?

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CHAIRMAN: That is a matter which I will have to consider in the light of all the evidence.

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MR. COONEY: But surely as a party who may be affected by this, I am entitled to know at this stage if Mr. Gogarty's credibility is --

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CHAIRMAN: Mr. Cooney, I can't see that you are directly involved in this, no doubt you have challenged the credibility of Mr. Gogarty in detail and you will seek to, no doubt, associate with that challenge any evidence from any witness who may be called in the course, and I think that would be a perfectly proper submission by you. It is equally proper that I should take it in a global sense and not make a spot decision here that he, that that witness is X, Y or Z. I will have to sit down carefully, look at

what you are saying, look at the quality of what you are saying, look at the evidence that supports it and come to a conclusion, and that's my function as the Sole Member of this Tribunal. I intend to carry out that function in due course.

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MR. COONEY: I entirely agree, Mr. Chairman, if I may say so with respect, I agree that is your function. It seems to me, Mr. Chairman, as the evidence unfolds before this Tribunal, the parties who are concerned by it are entitled to know on which particular issue is that evidence being given.

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CHAIRMAN: There could be no doubt at this moment.

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MR. COONEY: On the contrary, it seems Mr. Allen says on one hand that this evidence appears to be trawling through this man's tax affairs, I am not going to enter into that dispute, we had it in relation to my client. So far as I am concerned I wish to know, Mr. Chairman, if these questions about these cheques are being directed to this witness on the issue of his credibility as against Mr. Gogarty, about the payment of £150,000, because if it is, Mr. Chairman, it seems to me --

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CHAIRMAN: Mr. Cooney, I have already answered, these questions are clearly addressed to his credibility.

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MR. COONEY: On which issue, Mr. Chairman?

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CHAIRMAN: No, I am not going to discuss with you as to what the effect, you are an experienced senior counsel, you

know exactly the sort of reply which you will no doubt advance in due course in submissions. I am not going to sit down here and give judgements as to what I am going to do in relation to any aspect of this matter, until I sit down and think of the matter of judgement.

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MR. COONEY: I am merely asking you to identify, or Mr. Gallagher to identify the particular issues to which these questions are directed. Now, in every piece of litigation and every Tribunal, whether it is a judicial Tribunal or quasi judicial Tribunal, this is a fundamental requirement, that evidence be directed toward a particular issue and that the parties involved should know what that issue is. Is there any reason, Mr. Chairman, why the Tribunal in this instance will not identify the issue to which these are directed? That's all.

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CHAIRMAN: At the risk of repeating it for the enth time, this cross-examination is being addressed to the general credibility of this witness.

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MR. COONEY: Credibility on what?

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CHAIRMAN: Mr. Cooney, I have dealt with the matter, I have ruled on it and I am not going to discuss the matter further with you.

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MR. COONEY: Thank you very much.

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MR. ALLEN: There is one matter arising from what you have just said, Sir. You have indicated that this particular line of questioning is directed towards the credibility of

this witness. I want to make the following observations in relation to that, Sir; that is unprecedented. It is unprecedented that the question, the questioning of a witness in chief be addressed towards his credibility, it is unknown. It is unknown, Sir.

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CHAIRPERSON: Mr. Allen, this is a Tribunal of Inquiry into the facts. It is not a litigation and it is not governed by the rules of litigation, it is an attempt, and I hope ultimately a successful attempt, to ascertain what are the facts and what is the truth and that is what I am here to do. That is what I am going to do. This examination is perfectly correct in my, perfectly relevant and should proceed.

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MR. ALLEN: Sir, I just want to make one final point in relation to it. I see that you have your mind made up in relation to it, but it is a point which seems to me which requires to be put firmly on the record.

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The examination by your counsel of Mr. Gogarty was used specifically for the purposes of establishing his credibility, not testing his credibility, establishing his credibility and that comes from the mouth of your leading counsel. You have now told us, Sir, that this witness without being told and his legal team without being told, is being questioned in relation to his, for the purposes of testing his credibility.

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I just want to make it clear, Sir, that that is indicative of the two tiered approach of this Tribunal.

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CHAIRMAN: Proceed with the evidence.

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MR. GALLAGHER: I would just like to deny there is a two tiered approach, I am trying to establish information and facts. I am putting to this witness what has been said by other people in other, on other days, to give him an opportunity of dealing with it.

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I have put those, that evidence to him in relation to this particular cheque and invited his explanation, nothing more and nothing less than that.

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MR. COONEY: Just as he did with Mr. Gogarty about the Guards for instance.

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MR. GALLAGHER: Well, Mr. Gogarty was tested about his credibility. Mr. Gogarty's credibility arises in relation to evidence given by this witness and other witnesses, that is a matter for you, Sir, to deal with.

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MR. COONEY: It is absurd to say Mr. Gogarty was tested in this way.

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CHAIRPERSON: Mr. Cooney, it is my recollection before any evidence was given you indicated that Mr. Gogarty was "a something and audacious liar", however let us not get into a debate on that for the moment.

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MR. COONEY: That is not so.

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CHAIRMAN: It is on the record.

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MR. COONEY: Not before he started his evidence.

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MR. GALLAGHER: We won't get into that, perhaps at another time it can be looked into. Can I suggest we break for just a few moments at this stage?

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CHAIRMAN: Very good.

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THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

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347 Q. MR. GALLAGHER: Mr. Bailey, just before the break I was endeavoring to obtain some information in relation to the cheque for £50,000, dated the 7th of September of 1990, which was drawn in favour of AIB Limited. What was that money used for?

A. Farming expenses.

348 Q. I think you had a farming account with your wife?

A. That's correct.

349 Q. Was that in AIB in Navan?

A. That's correct.

350 Q. And where would the, where were the proceeds of this cheque deposited or lodged?

A. In the AIB.

351 Q. Yes, in what account do you know?

A. I don't know.

352 Q. I see. What do you say they were used for specifically, in relation to farming?

A. For buying stock.

353 Q. When was the stock bought, approximately?

A. Around that time.

354 Q. That's --

A. When the cheque was lodged.

355 Q. Sometime around 7th of September of 1990?

A. Yeah.

356 Q. Now, there was a further cheque for £50,000 drawn on the 30th of September of 1990, that's the cheque number 3439, its drawn on the Bovale account, Bovale Developments Limited account Montrose branch. I will show you a copy of that cheque. (Document handed to witness).

A. Thank you.

357 Q. Can you say whose handwriting appears on that cheque?

A. That's my handwriting that wrote out the cheque.

358 Q. And it is signed by yourself and your brother Michael; is that correct?

A. That's correct.

359 Q. What was that money used for?

A. For farming as well.

360 Q. And into what account was that placed?

A. It went into a deposit account, from what I seen yesterday.

361 Q. A deposit account in whose name?

A. Tom and Caroline Bailey I think.

362 Q. I see. What was that used for?

A. Farming expenses as well.

363 Q. When was that expended, approximately?

A. At the same time.

364 Q. When you say "farming expenses", what exactly do you mean?

A. Paying for stock and the running of the farm and that.

365 Q. I see. And did you tell your accountant of these payments totaling £100,000 in September of 1990?

A. I don't know.

366 Q. Were you asked for any explanation as to the £50,000 that's shown on that cheque dated the 30th of September of 1990?

A. Not that I can recall.

367 Q. Do you know how it was treated in the accounts?

A. No.

368 Q. I want to turn to 1990, if I may, Mr. Bailey, sorry 1989, can you assist the Tribunal by telling us what you recall about the economic climate about that time?

A. I think --

369 Q. Particularly insofar as house building and land prices, etc. were concerned?

A. Well, times were slow enough in 1989.

370 Q. I see. What about interest rates, were they high or low, can you recall?

A. I can't remember.

371 Q. I see.

A. They weren't as low as they are today anyway.

372 Q. I see. And in terms of a land bank, and sites, did Bovale at that time have any sites or a land bank on which it could develop?

A. No, it had on-going sites all right.

373 Q. Yes, but apart from the sites you have told us about, did it have any other land bank that it could move on to in the immediate future and develop in the immediate future after the two sites you have talked about, Carlton Court and Dalcashel Downs I think were developed?

A. No, I don't think we had, no.

374 Q. Tell me, when did you first hear of Mr. James Gogarty?

A. Around summertime of '89.

375 Q. I see. From whom did you hear his name?

A. My brother Michael.

376 Q. And in what circumstances, what did Michael tell you about him?

A. That he had a parcel of land for sale in North County Dublin.

377 Q. Did he tell you anything else about the land?

A. Just told me the amount of it, that was in it, around 700 acres.

378 Q. Right. And did he tell you what the asking price was?

A. No, we didn't discuss price at that stage, no, he just told me he was looking at it.

379 Q. Did he tell you where the lands were situated?

A. He would have, yeah, yeah.

380 Q. What do you next recall happened in relation to the land or in relation to your brother's contacts with Mr. Gogarty?

A. He would have told me that he was looking at it, as he was at other pieces of land at the time as well, and I wouldn't have known was it for Bovale he was buying it or for whatever he was buying it at the time, and he just said that Mr. Gogarty had, this man by the name of Mr. Gogarty had the sale of the land.

381 Q. Did you not have a discussion about whether or not it would be appropriate for or desirable for Bovale to buy that land bank at that time?

A. Say that again?

382 Q. Did you not ask your brother or did you discuss with him, whether it would be appropriate or desirable for Bovale to acquire all or part of these lands at that time?

A. We would have had some vague discussions about it, but I would have been leaving it to Michael, because he was the expert as regards land.

383 Q. What do you next recall discussing with Michael and the lands?

A. He said then that he had agreed a price for it, and I was happy enough with that and we went ahead and bought the lands.

384 Q. When did he tell you this?

A. It would have been in the late summer of '89.

385 Q. Would that be around --

A. Possibly August, September I would say.

386 Q. August/September?

A. Yes.

387 Q. What did he tell you he had agreed to do?

A. He agreed to buy the lands for 2.3 million, and that Mr.

Gogarty had to get 150,000 on top of that.

388 Q. I see. And where Michael - can you recall where Michael told you that?

A. Do I recall where?

389 Q. Yeah, where?

A. No I don't, no.

390 Q. In what circumstances did this conversation take place?

A. It would have been just on site, one day he would have been on site and said it to me.

391 Q. Did you walk those lands or any part of them before the deal was done?

A. No.

392 Q. Had you known about the purchase of lands at Forest Road at that time?

A. I heard about it, but it was of no interest to me.

393 Q. Why not?

A. Because I had enough on at the time.

394 Q. Do you mean that you didn't have time to be involved yourself or it wasn't something that Bovale was involved in?

A. Bovale wasn't involved.

395 Q. I see. It was only your brother Michael; is that correct?

A. That's correct.

396 Q. Now, after you were told that you had purchased these lands what inquiries, if any, did you make about the lands and

their location?

A. Very little, it was just seeing maps of the locations they were in, that's all.

397 Q. Did you make any inquiries about the zoning or the servicing of the land?

A. No. Well, Michael would have told me it was all agricultural land.

398 Q. Did you talk about the financing of these lands, of the purchase of these lands?

A. We would have had some discussions about it, yeah. But I was leaving it to Michael like, that was his forte, it wasn't anything, it didn't, it wasn't mine.

399 Q. Did you know anything about the communications that passed between your brother, your solicitors and anybody else in relation to the lands?

A. No.

400 Q. Did you know about the letter of the 8th of June of 1989 that we have referred to?

A. No.

401 Q. When did you first see that letter?

A. The Magill Magazine I think was it, or whatever article it appeared in.

402 Q. Did you know anything about a joint proposal or a proposal for a joint development --

A. No, no.

403 Q. -- that was referred to in that?

A. No, no.

404 Q. Did you know anything about the offer contained in that letter to purchase the land with various deferred closing dates?

A. No, no.

405 Q. Are you telling the Tribunal that the first time you knew

about the purchase price of the land was when your brother told you that he had agreed to buy it?

A. That's correct.

406 Q. And he told you that he had agreed to buy it for 2.3 million pounds and to give £150,000 to James Gogarty?

A. That's correct.

407 Q. And I think without checking, you said that that was sometime in August or September of 1989?

A. I think it was around at that time, yeah.

408 Q. Now, what do you next recall in relation to the land and in relation to the transaction?

A. That there was a meeting arranged at Duffy Mangan Butler's office to agree to it, that we had to go in and, to Duffy Mangan, myself and Michael, he told me to come in for a meeting one day.

409 Q. Yes.

A. That was the next discussion.

410 Q. What did you do?

A. I went to the meeting.

411 Q. And what happened at that meeting?

A. It was James Gogarty came in and said that we were purchasing the land and said the price, and Kevin Duffy was, he just wanted that clarified, I think that was the idea of it.

412 Q. Sorry, I don't mean - would you please explain, he wanted what clarified?

A. James Gogarty wanted clarified with Duffy Mangan that we were buying the land and the price agreed and the contracts were to be issued on the land.

413 Q. And what else do you remember?

A. That's all I can remember.

414 Q. Do you remember anybody else at that meeting?

A. James Gogarty was at it, yeah.

415 Q. And who else?

A. Kevin Duffy and myself and Michael.

416 Q. I see.

A. Yes.

417 Q. Do you remember what happened subsequently to that or around that time? Did anything else happen of interest?

A. After that?

418 Q. Well, after it or before it?

A. There was a further meeting in McArdle's office to sign the contracts.

419 Q. I see.

A. And it didn't happen that particular day.

420 Q. When were the contracts signed?

A. It was, I think it was December, was it? I think it was, yeah.

421 Q. The 19th of December I think?

A. Yeah. We tried to sign them before that but it didn't happen.

422 Q. What arrangements, if any, had been made to finance the purchase of the lands?

A. Michael would have had discussions with Anglo Irish as regards paying the deposit on the land.

423 Q. Did you have any part in those discussions?

A. No.

424 Q. Did you attend at the offices of Anglo Irish Banks in relation to any borrowings?

A. Discussions?

425 Q. Did you attend at the offices in relation to any borrowings, whether it was discussions, or to --

A. I don't recall.

426 Q. -- drawdown money or anything like that?

A. I recall picking up the cheque for £50,000 that we gave to James Gogarty in the Royal Dublin.

427 Q. Would you tell the Tribunal about that please?

A. Myself and Michael went in to the offices and picked up a cheque, and we went down and changed it in the AIB in O'Connell Street and put it into a briefcase and went into the Royal Dublin and gave it to James Gogarty.

428 Q. How did you come to go to the Anglo Irish offices, at whose request and whose advice did you go there?

A. Michael would have told me that he was going and asked me to come along.

429 Q. When you got there what happened?

A. Got to --

430 Q. The Anglo Irish Bank office, what happened?

A. I don't recall what happened, even though I have seen a document there that I signed, I presume I signed it that day, but I don't recall that.

431 Q. But you collected a cheque?

A. That's correct, yes.

432 Q. And what arrangements, if any, had been made to cash the cheque?

A. We were told we could cash the cheque in the AIB in O'Connell Street.

433 Q. Who told you that?

A. Whatever person we dealt with that day.

434 Q. Who did you deal with?

A. I don't know.

435 Q. Do you say that you don't remember being in the Anglo Irish Bank offices?

A. I remember picking up the cheque with Michael and going down to the AIB, but I don't recall who I was talking to in the Anglo Irish Bank.

436 Q. I see. Can you recall going into the AIB in O'Connell Street?

A. Yes, I can, yeah.

437 Q. Where is that branch in O'Connell Street?

A. It is not there any longer. From memory, there was a branch as far as I can remember about half way down the street.

438 Q. On which side of O'Connell Street?

A. The same side as the Royal.

439 Q. The same side as the GPO?

A. Yeah.

440 Q. And you went in there, were you known in that branch?

A. No, no.

441 Q. Was your brother, Michael, known in that branch?

A. No.

442 Q. What did you do then when you went into the branch with a cheque for £50,000?

A. We went upstairs to a, it seems to be a commercial cashier section of it, we had a briefcase with us and the cashier, we presented the cheque and the cashier gave us out the cash for it.

443 Q. What was the briefcase for?

A. To put it into.

444 Q. To put the money in?

A. Yeah.

445 Q. Was it empty? Was it an empty briefcase?

A. It was, yes.

446 Q. Who had taken the briefcase along?

A. Michael.

447 Q. What happened, what happened after that, you went upstairs?

A. Went upstairs and put the money in the briefcase and walked up then to the Royal Dublin and met --

448 Q. Can you remember what denominations the money was in?

A. I don't recall, no.

449 Q. Was the briefcase full?

A. No.

450 Q. I see. So what did you do then?

A. We went up and met Jim Gogarty in the Royal Dublin and gave him the briefcase and gave him two postdated cheques.

451 Q. What time of the day was this approximately?

A. I think it was before lunch.

452 Q. Where did you meet Jim Gogarty in the hotel?

A. In the foyer of the hotel.

453 Q. Did you know him?

A. I did.

454 Q. Had you known him before that?

A. I had met him before that, yeah.

455 Q. Where did you meet him before that?

A. I met him in Carlton Court.

456 Q. I see. How many times had you met him?

A. Previous to that?

457 Q. Previous to the meeting in the Royal Dublin Hotel?

A. Two or three times. I met him in Duffy Mangan Butler's office.

458 Q. All right.

A. Met him in Carlton Court twice that I can remember anyway.

459 Q. I see. Are you sure about that, Mr. Bailey, that you met him three times prior to this occasion?

A. No, twice I am saying.

460 Q. Twice. I beg your pardon. Just to be clear on it, the two occasions you say you met him prior to the Royal Dublin Hotel were?

A. One in Carlton Court and one in McArdle's office.

461 Q. In McArdle's?

A. Sorry, Duffy Mangan's office, sorry.

462 Q. I see. How many times were you in Duffy Mangan's office in total?

A. Once.

463 Q. Once. Was that the occasion that you have just described a few moments ago, where Mr. Bailey, Mr. Kevin Duffy and --

A. No, it was Fred Duffy I think, the older man, Kevin was the junior guy, I don't think he was there that day.

464 Q. I see. So it was Mr. Fred Duffy that you say?

A. Yes, that's right, sorry about that, yeah.

465 Q. That's all right. You were only in that office, that office on one occasion; is that correct?

A. That's correct.

466 Q. And was that the occasion when letters were exchanged, documents were sent out, is that correct? The letter about the sale, was that the occasion?

A. That's the occasion, yeah.

467 Q. Now, to come back to the Royal Dublin, you say you had met Mr. Gogarty and you met him in the foyer of the hotel, what - can you first say who was present when you met him?

A. Just myself and Michael and he was there.

468 Q. And Jim Gogarty?

A. Yeah.

469 Q. And what was said and by whom?

A. The discussions just took place between Michael and Jim Gogarty.

470 Q. Yeah, but what was said by Michael and what was said by Jim Gogarty?

A. He gave him the briefcase and said "that's what's agreed Jim" and he gave it to him.

471 Q. I see. And did Michael say anything else?

A. Not that I recall.

472 Q. Was this before or after the meeting in the office of Duffy Mangan Butler?

A. I think it was afterwards.

473 Q. Right. And when you handed over the briefcase, did Mr. Gogarty say anything?

A. I don't recall what he said now, I am sure he did say something, I am sure he said "thanks".

474 Q. What did you understand the money was being paid to Mr. Gogarty, what was the reason for paying?

A. As far as I was concerned he was an agent for the land and

--

475 Q. He was?

A. He was an agent for the land.

476 Q. I see.

A. That was his fee for finding the land for us.

477 Q. Finding the land?

A. Um.

478 Q. You knew at the time, did you, that he was employed by the Murphy interest or one of the Murphy companies, did you?

A. No, I didn't.

479 Q. You didn't?

A. No, no.

480 Q. Did you know that he had been at one stage employed by some of the Murphy interests?

A. I don't know if that, at that stage would I have known that, I may have discovered it later, well I did discover it later.

481 Q. So, what was your understanding of Mr. Gogarty's status and role in the dealings with the land?

A. That he was an agent to sell the land.

482 Q. Correct me if I am wrong in this, is it normally the duty of the vendor of the land to employ an agent to sell it, to

pay a commission to that seller?

A. No.

483 Q. It is not?

A. I wouldn't think so, no.

484 Q. Has your firm ever employed an agent to sell land on its behalf?

A. In recent times, yeah.

485 Q. Well, in the early '90s did it ever employ, in the late 80s or early '90s did it employ anybody to sell land on its behalf?

A. No.

486 Q. When an agent is employed to sell land or has been employed in the recent past, have you agreed to pay a commission to the agent?

A. Say that again?

487 Q. When you employ somebody to sell land, when you have employed somebody in the recent past, did you agree to pay that agent commission on the sale?

A. Yeah.

488 Q. So did it not strike you as unusual that the purchaser was paying a fee to this agent in the Royal Dublin Hotel?

A. I suppose it was unusual, but that was the deal that Michael done and I wasn't arguing about it.

489 Q. Did you think that there was anything improper or unlawful or improper in either asking for the money or in paying the money?

A. I didn't think about it. It wasn't my job to buy in the land, that was the deal that was done and that was what was agreed.

490 Q. What else was said at that meeting, can you recall?

A. I don't recall.

491 Q. Was anything else done or --

A. He got two postdated cheques as well.

492 Q. I see. Tell me about the postdated cheques. Who drew the postdated cheques, who wrote them out?

A. I think Michael wrote them, I am nearly sure it's his writing, handwriting that's on it.

493 Q. Where were they signed?

A. I don't know.

494 Q. I take it yourself and Michael had a discussion before you met Mr. Gogarty about what was going to happen?

A. Yeah, well he told me what was agreed and I went along with that.

.

MR. ALLEN: Sorry, Chairman, sorry I wonder in case of myself, could we have the cheque on the screen, the one that's in the possession of the Tribunal?

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MR. GALLAGHER: We will do that in due course. I will give it to Mr. Allen, a copy to Mr. Allen.

.

CHAIRMAN: In due course you will be given it, in due course.

.

495 Q. MR. GALLAGHER: A meeting had been arranged by your brother you tell us; is that correct?

A. That's correct, yeah.

496 Q. And you met him at his request and you went to the Anglo Irish Bank?

A. That's correct.

497 Q. And you collected the cheque?

A. Yeah.

498 Q. Did he tell you where you were going to go after that? In other words did he tell you that he had a meeting arranged

with James Gogarty?

A. I am sure he would have, yeah.

499 Q. And did he talk to you about the two cheques and the money that he was going to hand over to James Gogarty?

A. He would have, yeah.

500 Q. Where did that conversation take place?

A. Possibly in the car on the way to the Anglo Irish.

501 Q. And was that cheque, were the cheques signed by you in your brother's presence on that occasion?

A. I would think they were, yeah.

502 Q. Can you remember where they were signed?

A. No.

503 Q. Well, were they signed before you went into the Anglo Irish Bank?

A. I don't know. They could have been signed in the car, I don't know.

504 Q. I see. Were they signed on the day in any event, either before or after you went to the Anglo Irish Bank?

A. Yeah, yeah.

505 Q. And you say that these were handed over to Mr. Gogarty?

A. Yeah.

506 Q. Now, this was a meeting that you say was, correct me if I am wrong in this, that was taking place in the foyer of the hotel?

A. Yeah.

507 Q. In full view of everybody?

A. Yeah.

508 Q. Were the cheques handed over first or --

A. I think the cheques may have been in the briefcase as well, I don't really recall, I think they may have been, I couldn't be 100 percent sure.

509 Q. I see. What was your understanding about the dates, date

of payment of the cheques or the date on which they would become payable?

A. They were postdated security for Jim Gogarty for the balance of the money that was due to him.

510 Q. How did you know that?

A. By the dates on the cheques.

511 Q. Did you not query why they were postdated, were you told?

A. No, I don't recall querying it, no.

512 Q. Did you ask Mr. Gogarty for a receipt for this monies?

A. No.

513 Q. Would it not be important to be able to show to your accountant that you had expended a sum of £150,000 in addition to the 230,000 deposit which you say was paid?

A. I don't think Mr. Gogarty would have given a receipt for it now.

514 Q. Why not?

A. Because it was cash, he didn't want it recorded.

515 Q. But so far as you were concerned, it was your company's money that was going out, why did you not get a receipt for it?

A. I don't know. We didn't ask for it.

516 Q. Normally if you are paying out money I take it you would look for a receipt so that your records could be kept and your accountant satisfied with preparing your accounts?

A. That's right, yeah.

517 Q. Can you give any explanation as to why you didn't ask Mr. Gogarty for a receipt?

A. Because Mr. Gogarty didn't want it recorded, that's my understanding of it.

518 Q. But who gave you to understand that? What lead you to understand that?

A. Because Michael said he had to get 150,000 in cash.

519 Q. Why did the fact that he was getting 150,000 in cash exclude the question of getting a receipt from him?

A. Because he wouldn't have given it.

520 Q. Why not?

A. Because he didn't want it recorded.

521 Q. I just don't understand why you say he didn't want it recorded?

A. Because it was cash. He didn't want to be showing it.

522 Q. Was that for tax reasons do you think or did he tell you?

A. I would think so, yeah.

523 Q. In any event he wasn't asked for - was he asked for a receipt?

A. Not that I recall, I wouldn't say he was.

524 Q. Now, am I correct in thinking that that meeting took place - was a short meeting, long meeting, roughly how long did it take?

A. It was fairly short, 15 minutes, maybe 20 minutes.

525 Q. I see. When did you next meet Mr. Gogarty?

A. It would have been in McArdle's office then for the signing of the contracts, just shortly after that.

526 Q. That was the contracts we know were signed on the 19th of December, if my memory serves me?

A. No, there was a meeting previous to that. They were signed on the 19th but there was another meeting that they weren't signed at.

527 Q. I see. That would be sometime --

A. Previous to that, previous to the 19th of December.

528 Q. Right. Roughly how long, a week or two or something of that order?

A. I think so, yeah.

529 Q. When after that did you next meet Mr. Gogarty?

A. Signed the contracts - I don't really recall meeting him

for a long time after that then.

530 Q. When was the next time you do recall meeting him?

A. I can't put a date on it.

531 Q. Do you know where it was or in what circumstances you met him?

A. I think it was possibly the arbitration that happened over the lands.

532 Q. I see.

A. It was a couple of years later.

533 Q. I see.

A. No, he wasn't at the arbitration either, sorry, I don't recall the next date I met him.

534 Q. I want to go back a little, if I may please, to --

A. I do recall being in his house all right in '96, all right.

535 Q. Perhaps that's later on, we will come to that in due course. I want you to go back, Mr. Bailey, if you would, to early summer of 1989. My understanding is that in or about that time you were first told by your brother about the land which we now know are called "the Murphy lands"?

A. That's right, yeah.

536 Q. Did you meet Mr. Gogarty or have conversations with Mr. Gogarty in or around that time?

A. I met him in June of '89 and, on the site in Carlton Court.

537 Q. Would you tell me please, when and in what circumstances you met him and what transpired and who was present?

A. From my recollection it was - the first time I was introduced to him was in June of '89 when he arrived on site one day and Michael was waiting for him and he introduced me to him. They were going to Ray Burke's house.

538 Q. Yes, why were they going to Ray Burke's house?

A. Michael said he wanted to make a contribution, that Jim

Gogarty wanted to make a contribution to Fianna Fail or to Ray Burke.

539 Q. When had Michael told you this?

A. Possibly that morning.

540 Q. Can you identify the date on which this happened or the approximate date?

A. The election was on I think at the time, I think, that was, from my recollection - I couldn't put a date on it now.

541 Q. Do I understand you to say that this took place sometime before the actual election, the date of the election but that you cannot be more specific than that?

A. That's right, yeah, yeah.

542 Q. But did you meet Mr. Gogarty in the morning or the evening, the afternoon, can you recall?

A. I think it was morning time.

543 Q. And can you say what was said on that occasion?

A. Mick just introduced me to him and that was, I don't recall any conversation with him.

544 Q. What did Jim Gogarty and your brother do?

A. They went off in Mick's car, as far as I was concerned they were going to Ray Burke's house.

545 Q. Was there anybody else with them?

A. No.

546 Q. Did they have any briefcase or bag? Did Mr. Gogarty in particular have any briefcase or bag with him that you saw?

A. He did, yeah.

547 Q. He did?

A. Yeah.

548 Q. What did he have?

A. A small type briefcase.

549 Q. I see. This was a briefcase he had taken with him in his car to Carlton Court; is that correct?

A. That's correct, yeah.

550 Q. Did your brother have any briefcase or --

A. No.

551 Q. -- folder or any document, envelope with him, that you saw?

A. No, no.

552 Q. Did you know Ray Burke at that time?

A. No, I did know him, not personally.

553 Q. I see. Can you say what else happened on that day that you can remember?

A. They arrived back to the site after possibly half an hour, maybe an hour, I don't know. I was working on the site, I just seen them going off, seen Jim Gogarty going off.

554 Q. Did you speak to him on that occasion?

A. No.

555 Q. Did your brother tell you what had happened?

A. He did, yeah. He told me that Jim Gogarty made a contribution to Ray Burke.

556 Q. Did he say how much?

A. No.

557 Q. Did he say anything else about what transpired at the meeting?

A. No, not that I can recall.

558 Q. Did you have any conversation with Mr. Gogarty about the meeting?

A. No, I didn't, no.

559 Q. Then do I understand that the next meeting you had with Mr. Gogarty was sometime later?

A. That's right, yeah.

560 Q. When was that exactly, just --

A. I have said it there before, in McArdle's office I think was the next meeting then, not McArdle's office, Duffy Mangan's office, sorry I am mixing them up, sorry.

561 Q. I see. Then, do I understand you correctly to say that you then met in the Royal Dublin Hotel?

A. That's right.

562 Q. And you subsequently met them in McArdle's office?

A. That's right.

563 Q. And then you didn't meet him for a long time after that?

A. No.

564 Q. And you thought it might be at the arbitration, then you said no it wasn't at the arbitration?

A. No, he wasn't.

565 Q. Just so I am clear on what you are saying. I don't want to be in anyway inaccurate with you.

A. There was one or two times previous to '96 that I met him, you know, that I gave him some money, but I don't recall dates or that.

566 Q. I see. Would you try to remember when you next met Mr. Gogarty, you say it wasn't at the arbitration?

A. No, it wasn't. No. I can't recall, no.

567 Q. Well --

A. I can't recall a date.

568 Q. All right, I won't tie you to a date, but can you remember where or in what circumstances?

A. He was looking to get the balance of his money off us and he would have been ringing Mick on a regular basis to try and get it from him, and eventually Mick then just put him on to me, gave him my number and asked him to ring me, to see could I get a few pound for him.

569 Q. Yes. Well, did you meet Mr. Gogarty in the Swiss Cottage?

A. I am nearly sure I was at that meeting but it was a very brief meeting for me.

570 Q. I see.

A. Because from, my recollection of that meeting was that I

was just working out the road and Mick asked me to drop in for a meeting, but I would have been in my working clothes and that, and I don't recall any discussion that went on, I just had my lunch and whatever discussions, I left that to Mick, I went back to work.

571 Q. Who was present at that meeting?

A. I think Jim Gogarty and Frank Reynolds and Mick and myself.

572 Q. Did you have drawings at that stage of the various lands?

A. Mick would have had stuff, yeah.

573 Q. What kind of drawings would they be?

A. Just maps showing, ordinance surveys I would say, I don't recall what drawings they were to be honest.

574 Q. Any layout drawings, for example, for any possible development of the, any of the lands?

A. Not that I recall, no.

575 Q. I see.

A. But it was, as I say, it was a very brief meeting for me, from my recollection I went in and had lunch. We joined the queue and I ate my lunch and just went back to work and left the discussions with Mick.

576 Q. I see. Did you have a discussion with Frank Reynolds and Jim Gogarty on that occasion?

A. No, no, I recall having - we just, might have been just ordinary day-to-day chat, but I don't recall having any discussions about the land or anything.

577 Q. You don't, I take it from that, recall any discussion about possible development of the lands?

A. No, no.

578 Q. Do you recall any discussion about a possible sale of part of the lands?

A. No, I don't.

579 Q. Was anybody else present at that meeting that you remember?

A. Not that I recall.

580 Q. Do you remember actually sitting down with Mr. Gogarty and Mr. Reynolds at any stage and talking about the lands or anything of interest --

A. No, no.

581 Q. -- to either of you?

A. No.

582 Q. So if there was a meeting that day you didn't participate in it, is that what you are saying?

A. That's correct, yeah.

583 Q. Did you see anybody else in the presence of Mr. Gogarty or Mr. Reynolds?

A. I can't say I did, it is as good while back like.

584 Q. Now, as and from December of 1989 Bovale Developments Limited had a contractual duty to purchase the 700 plus acres of land known as the Murphys land; isn't that right?

A. That's correct.

585 Q. Was the company in a position to close the purchase in December of 1989 or indeed in the succeeding months, in order words had it money place to do that?

A. I don't recall.

586 Q. Can you recall when the company first had money in place to buy the lands?

A. No.

587 Q. Do I understand your evidence to be that after the meeting in the Royal Dublin Hotel at which postdated cheques were handed over to Mr. Gogarty, that you understood that he had two cheques, one dated for 30th of March of 1989 and one dated for 30th of September of 1989, that he was to hold as security for the payment?

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MR. ALLEN: '90.

588 Q. MR. GALLAGHER: I beg your pardon, I misstated 1989. Two cheques dated 30th of March, 1990, and 30th of September, 1990, respectively?

A. That's right.

589 Q. And he was to told those as security for a payment of a further sum of £100,000?

A. That's correct.

590 Q. Now, what steps, if any, were taken to pay Mr. Gogarty the £50,000 that you say he was due around the 30th of March of 1990?

A. I would have gathered up some money to give him.

591 Q. What money did you gather up?

A. It is in the kitten book there, the different payments that he got in 1990.

592 Q. Well, he had, according to what you tell the Tribunal he was entitled to, pursuant to the agreement that you had, to payment of £50,000 on or before the 30th of March of 1990?

A. That's right, yeah.

593 Q. Now what steps, what money did you pay him prior to the 30th of March, 1990?

A. I don't recall the dates that - I don't recall the dates that he was given money.

594 Q. Well, here he had a cheque for £50,000 that he was entitled to lodge --

A. Um.

595 Q. -- on the 30th of March of 1990, unless you paid him the money on or prior to that date?

A. That's right, yeah.

596 Q. What steps did you take to raise the money or to collect the money prior to that date to pay him the £50,000?

A. I would have gathered whatever I could to give to Michael

to give to him.

597 Q. And how much was that?

A. I don't know.

598 Q. When did you give it to Michael?

A. On various different dates.

599 Q. In the months of December, January, February and March of 1990, '89 and '90?

A. Well, there is three payments recorded in the kitten book, I don't even know the dates of them so --

600 Q. Yes, but we are dealing now with the first payment of £50,000 on foot of the cheque, or at least in respect of which the cheque dated the 30th of March of 1990 was security?

A. Um.

601 Q. What payments, if any, were made to Mr. Gogarty to your knowledge on or prior to the 30th of March of 1990?

A. I don't know.

602 Q. Do you know what happened to the cheque dated the 30th of March, 1990?

A. Michael got it back from him I think, and we just disposed of it, tore it up.

603 Q. When did he get it back from him?

A. I don't know.

604 Q. How do you know he got it back from him?

A. I remember seeing it, but I can't recall when it was.

605 Q. Where did you see it?

A. Michael showed it to me.

606 Q. What was the purpose of showing it to you?

A. To show me that he got it back.

607 Q. Did you not believe what he would tell you? Was there any other purpose in showing you the cheque?

A. I don't know.

608 Q. You see you can't recall when you were shown the cheque?

A. No I can't, no.

609 Q. Can you put a year on it?

A. No.

610 Q. Was it before the 30th of March of 1989, 1990?

A. I don't believe it was that early, it was later on.

611 Q. I see.

A. I can't put a year on it.

612 Q. Had the £50,000 been paid at that stage?

A. It had, yeah.

613 Q. I see.

A. There was no way he was giving it back until it was.

614 Q. I see. And in what amounts was the £50,000 paid? Was it paid as a single amount or a number of amounts?

A. Yeah.

615 Q. Did you pay any of those?

A. I remember paying him a couple of thousand I think on two occasions, it was in the later years, in '94 I think or '95.

616 Q. How much did you pay him in '94?

A. I think I gave him a total of either 3 or 4,000, I don't know.

617 Q. Where was, where did that happen?

A. It would have happened on the sites that I was working on at the time.

618 Q. Where exactly did you hand it over?

A. I can't recall the site that it was on.

619 Q. Where did you get the money?

A. From extras of houses --

620 Q. From what houses?

A. -- that I was building at the time.

621 Q. What houses were they?

A. '94 - I would have to check and see where I was at the time.

622 Q. But you remember the number or address of the house or the site numbers that you got this money from?

A. What's recorded in the book, is it?

623 Q. No, the monies, the 3 or £4,000 that you gave?

A. No, I don't, no.

624 Q. In 1994?

A. No.

625 Q. You don't remember. How much was he owed then out of the £150,000?

A. In '94?

626 Q. When you paid him the 2 or £3,000, what was the balance outstanding then?

A. I think in or about 40,000 I think.

627 Q. I see.

A. Um. I remember him saying to me at one stage that he had 110 got and when I gave him that two that brought him up to 112.

628 Q. When did he tell you that?

A. In '94.

629 Q. Was this the occasion that you have just been telling us about?

A. Yeah.

630 Q. You say you gave him two and it brought it up to 100 and --

A. 12,000.

631 Q. -- 112,000. Okay. Can you say where the other 60,000 came from - I understand your evidence to be that he got £50,000 cash?

A. Um.

632 Q. And he had a cheque, postdated cheque dated the 30th of March of 1990 which was returned to your brother, Michael,

which Michael showed you?

A. Yeah.

633 Q. And you say that Mr. Gogarty would have got £50,000 for that, otherwise he wouldn't have handed over the cheque?

A. Um.

634 Q. Now, can you say where that £50,000 came from?

A. The second 50 or the last 50?

635 Q. Well we know, you say - the first 50 you say came from Anglo Irish Bank?

A. Yeah, and the rest was from --

636 Q. By 1994 Mr. Gogarty was telling you that he had got £110,000 out of the 150; isn't that right?

A. That's right.

637 Q. Now, where did that additional £60,000 come from? Who had paid it to him, in what amounts?

A. The balance?

638 Q. The £60,000 that had been paid to Mr. Gogarty on top of the earlier 50?

A. That came from extras on houses and, possibly we would have changed maybe a cheque as well to get some for him as well.

639 Q. Where are the records of that?

A. What you have in the little book there.

640 Q. The records in the little book, as I understand it, amount to a total of £30,000?

A. Yeah.

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MR. ALLEN: 35, Sir.

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641 Q. MR. GALLAGHER: There is a 5,000, 10,000 and 15,000, that's £30,000, isn't it?

A. Yeah.

642 Q. Now, you say you that you paid, you arranged for the

payment of £5,000, £10,000 and £15,000?

A. Yes.

643 Q. When did you do that?

A. During 1990. This is the kitten book now you are talking about?

644 Q. I am just asking you when you made the payments?

A. I don't know the dates, the dates are written there.

645 Q. And do you have any record of any other payments that was made?

A. Record or a recollection?

646 Q. Record?

A. No.

647 Q. Do you have any recollection of any other payment that was made?

A. Yes, I recall giving him some money in 1996 in his house.

648 Q. We will come to 1996 --

A. Yeah.

649 Q. -- later. Do you recall any other payments that were made in the period prior to 1994?

A. No.

650 Q. Did you have any part in the handing over of the monies to Mr. Gogarty after the meeting in the Royal Dublin Hotel and up to the occasion you have told us about in 1994?

A. As regards meeting him to give it to him?

651 Q. Yes?

A. No. Except for the 3,000 in '94 or '95, whatever year it was.

652 Q. I wonder are you quite accurate about that? You have said that you thought in 1994 he was paid between 3 or £4,000?

A. Yeah.

653 Q. And then I understood you to say that Mr. Gogarty said that to you, that he had been paid £110,000 at that stage and

you gave him £2,000 to bring it up to 112?

A. That's right.

654 Q. How much did you give him, was it, 2, 3 or 4, to the best of your recollection?

A. I think I gave him two that day and sometime later I would have given him another three or two, I am not sure.

655 Q. Did you record that in any book or record?

A. No, I didn't, no.

656 Q. So, so far as you know or so far as you personally were concerned you didn't hand over any monies to Mr. Gogarty in the period 1990 to 1994, the meeting that is referred to?

A. That's correct, yeah.

657 Q. And how come the entries appear in the kitten book in 1990? What do you know about those entries?

A. They were entries I would have told Caroline to write in.

658 Q. That you would have?

A. Yeah.

659 Q. How did you come to know about them?

A. That's the, Mick would have said to me to, "Gogarty was on the phone, we want to get him a few pound".

660 Q. And?

A. And I would get it together for him and just tell Caroline to keep a note of it.

661 Q. And where did you get this money from?

A. From extensions and, some extras on houses.

662 Q. Why didn't you write a cheque to him and say "this is the balance we owe you, we owe you £50,000 and/or whatever the figure happened to be and here is a cheque for it"?

A. He wanted it in cash.

663 Q. Could you not have arranged to write a cheque payable to Bovale Limited or payable to Tom or Michael Bailey and cashed it and given it to him that way?

A. I suppose I could have. Sure I got it the other way.

664 Q. Yes. Sir, it is just after one, Sir.

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CHAIRMAN: Now, I was waiting for you to finish the actual subject. We will break, you are happy to break now?

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MR. GALLAGHER: Yes.

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CHAIRMAN: We will break for lunch. Ten past two.

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

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THOMAS BAILEY RETURNS TO THE WITNESS-BOX AND CONTINUES TO
BE EXAMINED BY MR. GALLAGHER AS FOLLOWS:

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665 Q. MR. GALLAGHER: Mr. Bailey, good afternoon. This morning
you gave evidence about payments that were, you say, agreed
to be made and were made to Mr. Gogarty, James Gogarty.
You understand the importance of this evidence and the
reason why the Tribunal obviously has to look at it very
carefully?

A. Um.

666 Q. And examine it. My understanding of your evidence so far
is that your brother, Michael, told you that £150,000 cash
had been paid to James Gogarty; is that correct?

A. That's correct.

667 Q. And that was to be paid to him as a "finders fee"?

A. That's correct.

668 Q. And that your understanding was that he didn't want a
receipt for, or want to give a receipt for that money,
because it was to be paid to him in cash?

A. That's correct.

669 Q. And you went to the bank, the Anglo Irish Bank, you
collected a cheque and you cashed it in AIB in O'Connell
Street on that day?

A. That's correct.

670 Q. And you then went to, to see Mr. Gogarty in the hotel?

A. Um.

671 Q. Now, my understanding is that you cashed the cheque for
£50,000 in AIB and put the cash into a suitcase or into a

briefcase?

A. That's correct.

672 Q. And you said the briefcase was full?

A. I didn't.

.

MR. HERBERT: He said it was not full.

673 Q. Did you say it was not full? I beg your pardon, you said it was not full?

A. That's correct.

674 Q. Can you say what denominations the money was in?

A. No.

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MR. ALLEN: Chairman, I wonder might I ask why are these questions being put again, or why is Mr. Bailey's evidence being pertive - not only that, but incorrectly put.

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CHAIRMAN: Carry on Mr. Gallagher.

675 Q. MR. GALLAGHER: All right. I am endeavoring -- all right. Now Mr. Bailey, you said, that that money was paid over in a briefcase to Mr. Gogarty, and you say that you have no personal knowledge of monies being handed over to Mr. Gogarty again until 1994; is that right?

A. I have knowledge, yeah.

676 Q. Well, will you tell me, I am saying personal knowledge?

A. Of actually handing it myself.

677 Q. Personal, yes?

A. No, I haven't. That's correct, yes.

678 Q. Now, my understanding is that you were told or asked by Tom or asked by Michael, to get money for James Gogarty on a number of occasions?

A. That's right.

679 Q. And you recorded, you say, or you asked your wife to record

three such amounts?

A. That's correct.

680 Q. And they are recorded in the kitten book on the 19th of June of 1990, the 22nd of June of 1990 and on the 11th of October of 1990; is that correct? In fairness, that is perhaps an unfair question to ask you. I wonder, could I, could Mr. Bailey see the book please. (Book handed to witness)?

A. Thank you.

681 Q. Can I direct you to the 19th of June of 1990 in that book. If my note is correct?

A. The 21st of June? Oh no, 19th yeah, sorry, yeah.

682 Q. The 19th of June. Yes, what does that indicate?

A. That I gave 5,000 to Michael to give to Jim Gogarty.

683 Q. And is the source of that money indicated?

A. It says here that it was from two extensions in Swords.

684 Q. Do you know where those extensions were Mr. Bailey?

A. I-- they were in Swords and whatever site we were at, at the time.

685 Q. I see. I think the next entry you have been referred to is on the 22nd of June of 1990.

A. To what date?

686 Q. I gave you the date, the 26th of June?

A. The 26th of July, is it?

687 Q. Sorry, I beg your pardon, the 26th of July of 1990. That is £10,000; is that correct?

A. That's correct, yes.

688 Q. And that entry on the left-hand side reads "10 road three" is that right?

A. That's correct.

689 Q. "10 K to Gogarty"?

A. Yeah.

690 Q. Whose writing is that?

A. Caroline's writing.

691 Q. Right. And I believe that there is an entry for the 11th of October of 1990; is that correct?

A. Yes, that's correct, yes.

692 Q. What does that say?

A. It says "Gogarty £15,000".

693 Q. And in whose handwriting is that?

A. Caroline's.

694 Q. My understanding is that they are the only entries in that book for 1990 in relation to Mr. Gogarty; is that correct?

To the best of your knowledge?

A. To the best of my knowledge, yes.

695 Q. I mean, do you have any other record of any other payment that you say was made to Mr. Gogarty by your brother in that period or indeed at any other time?

A. No, not a written record.

696 Q. I beg your pardon?

A. Not a written record.

697 Q. Not a written record. What record if any do you have or recollection do you have?

A. That I remember being in his house in 1996 and giving him money at that stage.

698 Q. All right. Where did you visit him in his house? Where was his house?

A. In Sutton.

699 Q. Where in Sutton?

A. Oh Shielmartin Road.

700 Q. And what lead to the visit to Shielmartin Road?

A. Michael asked me to come along and meet him.

701 Q. For what reason?

A. To see the sort of state of mind that Jim Gogarty was in at

the time.

702 Q. What state of mind was he in?

A. Well, he was on to me looking for the balance of the money and he wanted interest on it as well, and he just said that he just wanted me to go along to the meeting.

703 Q. How much money had been paid at that time, as far as you were concerned?

A. 140,000, to the best of my knowledge.

704 Q. Well, earlier today you told us that 50,000 in cash had been paid and the three payments that were referred to in the kitten book of 5,000, 10,000 and £15,000; that comes to a total of £80,000.

A. That's correct.

705 Q. Now, where did the balance of £60,000 come from? When was it paid?

A. As far as I can remember there was 22,000 given to him on the last day that I met him in his house, the last time I met him.

706 Q. Yes?

A. And the rest then was got, was given to him in dribs and drabs.

707 Q. But, at the time you visited him in his house in 1996?

A. Um.

708 Q. You say that £140,000 had been paid to him?

A. That's right.

709 Q. We have identified, as from your evidence, 80,000; in fact 82,000 because you say you paid him 2,000 in 1994?

A. Um.

710 Q. Now, where did the remaining £58,000 comes from?

A. From extras on the sites I was working on at the time.

711 Q. And what records or recollection do you have of any of those payments?

A. I don't have a recollection of them.

712 Q. On what basis then do you say that he was paid that £58,000?

A. Because when he got the balance of the money he was happy enough that that was all that was due to him in his house in 1996.

713 Q. You say that this took place in Shielmartin Road?

A. That's right.

714 Q. What happened at that meeting?

A. Myself and Michael went along to the meeting and went into the house and we sat down and I gave him the balance of the money and he was happy enough with it, and we just had a chat and he talked about the Murphys and he used to get into a rage; he got into a rage and temper when Murphys name was being mentioned, and showed us pellet holes in the window. He started shouting about them as well. Then we went upstairs to see, to show us some files he had laid out in the bedroom and that was the end of the meeting.

715 Q. Tell me, how did you know the balance, what the balance was at that time?

A. Mick had told me that he had agreed to give him 12,000 in interest and that he was due a total of 22 at that stage.

716 Q. And where did this 22 come from?

A. I believe that some of it came from the closing of a sale of a piece of land in Donabate. There was 15,000 from that.

717 Q. What land was that?

A. It was five acres that we sold in Donabate.

718 Q. Where exactly in Donabate was it?

A. Turvey Avenue.

719 Q. I see. And to whom did you sell it?

A. I think Cassidy was the guy's name.

720 Q. Cassidy?

A. I think so. I didn't do the deal on it now, it was Mick that done the deal on it.

721 Q. And how much of the proceeds of that sale do you say were given to Mr. Gogarty?

A. 15,000.

722 Q. Yes; and where did the balance come from?

A. From extras on houses that I was working at.

723 Q. And who had collected those extras?

A. I would have.

724 Q. Had you collected them in cash?

A. Possibly, maybe cheques as well, I don't recall.

725 Q. But did you hand over cash to Mr. Gogarty?

A. Oh, I did, yeah, yeah.

726 Q. And on that occasion did you ask him for a receipt?

A. No, I didn't.

727 Q. Did you ask him for any acknowledgment in writing to confirm that you didn't or Bovale didn't owe him any more monies?

A. I asked him for the cheque, the last cheque.

728 Q. Yes?

A. He said he couldn't find it, he didn't know where it was.

729 Q. Did you not insist on getting it or asking him to search for it?

A. He said that he would look further and give it back to us, it was out of date anyway.

730 Q. And did you leave it at that?

A. We did, yeah.

731 Q. In relation to those payments that you say were made, were they ever recorded in your accounts as being payments made to Mr. Gogarty?

A. No, no.

732 Q. I take that expenditure associated with the acquisition of land would be a cost that would be of significance in tax terms, wouldn't it?

A. That's right, yeah.

733 Q. And here was a cost to you, or your firm, of £150,000?

A. That's correct.

734 Q. Why was that not shown as a cost in the books of the company?

A. Because it was extras that I got from houses and passed it on to him and it wasn't recorded for that reason.

735 Q. But you could have, if you had so wished, I am not suggesting that you would be so minded, but if you had wished you could have retained those monies or dealt with them in some other way, and written a cheque for Mr. Gogarty and put that down as an expense of the company, which would be reflected in the overall balances and taxable income of the company; isn't that right?

A. That's correct.

736 Q. Can you give any explanation as to why that approach wasn't adopted by you or your brother?

A. Because Jim Gogarty didn't want it recorded and we were happy enough to give it to him in cash.

737 Q. When did he tell you that he didn't want this recorded in the accounts of the company?

A. He wouldn't have told me, he would have told Michael.

738 Q. When did he tell Michael?

A. I presume around the time they agreed the deal.

739 Q. Do you know that he told him that he didn't want this recorded in the accounts of the company. Did Michael tell you that?

A. He said he had to get £150,000 in cash, we didn't speak about recording it or that.

740 Q. Did Mr. Gogarty say anything to you when you told him that there were two postdated cheques in the briefcase?

A. No.

741 Q. Did he not comment that there had been an agreement to pay £150,000 cash?

A. Not to me, no.

742 Q. When you were there, were you there at all times during the meeting?

A. That's right. That was agreed with himself and Michael beforehand.

743 Q. Sorry, what was agreed with himself and Michael beforehand?

A. That he would accept the two cheques as postdated.

744 Q. And you have told us that these cheques were signed by you, Michael had a cheque book and you signed them with Michael on that day?

A. Yeah.

745 Q. I think that is your evidence, either in the car or elsewhere?

A. That day, I presume it was that day.

746 Q. Now, to come back again to the meeting in Sutton for a moment. You say that Michael asked you to come along to that particular meeting, and that was the first time that you had been asked to come along to a meeting since the meeting in the Royal Dublin Hotel in November of 1989?

A. That's correct.

747 Q. With Mr. Gogarty?

A. That's right.

748 Q. Was there any particular input you would have into that meeting, or any assistance?

A. I did go along to the meetings in the solicitor's office after the Royal Dublin meeting.

749 Q. Oh, yes?

A. Yeah.

750 Q. Did Michael think that you could have any particular input into this meeting in Sutton in 1996?

A. I suppose it was the last money he was getting and he just wanted me to witness that, that Jim Gogarty was happy enough with it. I presume that was the reason.

751 Q. Well, you knew at that time, did you not, that there was speculation in the newspapers and reports of allegations of monies having been paid to politicians in relation to planning and rezoning in North County Dublin?

A. I would have been aware of that, yeah.

752 Q. And were you aware that Mr. Gogarty was the man who was alleged to be telling stories to the papers or --

A. No.

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MR. COONEY: Mr. Gogarty wasn't named in the papers at that time, Mr. Chairman.

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753 Q. MR. GALLAGHER: That wasn't the question. The question was were you aware that Mr. Gogarty was the man who was alleged to be telling stories to the papers, to the newspapers?

A. No, I wasn't.

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MR. LEAHY: Alleged by whom in 1996? Alleged by whom in 1996?

.

CHAIRMAN: Alleged by whom.

754 Q. MR. GALLAGHER: There were newspapers reports of allegations of payments to politicians; isn't that correct?

A. That's correct, yes.

755 Q. At that stage?

A. Yeah.

756 Q. And these reports had appeared before you met Mr. Gogarty;
is that right?

A. I think that's correct, yeah.

757 Q. Did it occur to you that Mr. Gogarty might be one of the
individuals about whom newspaper articles were appearing?

A. No.

758 Q. You say that Mr. Gogarty showed you a window?

A. That's right.

759 Q. In his house. Was this an upstairs window or downstairs
window?

A. Downstairs window.

760 Q. Was it at the front of the house?

A. Yeah.

761 Q. And what was his reason for showing it to you?

A. He said that, started giving out about Murphys and saying
that; he started making allegations that they had done this
to the window and that.

762 Q. They did what to the window?

A. That these holes in the window.

763 Q. Where were the holes in the window?

A. Up at the top of it.

764 Q. Could you see them?

A. Yes, you could, yeah.

765 Q. They were actual holes in the window?

A. Little, they seemed to be damaged; one from the outside and
the other seemed to be like a small pellet hole.

766 Q. And did he say when that had been done?

A. No.

767 Q. Did he indicate whether it had happened in the recent past
or in the distant past?

A. I think he may have said the distant past, I don't really

recall it.

768 Q. Did he indicate to you whether or not the window had been repaired after the damage had been caused?

A. No, he didn't, no.

769 Q. Well, so far as you could see, it had been repaired?

A. No.

770 Q. In relation to the payment by Anglo Irish bank, or the advance by Anglo Irish Bank to Bovale, my understanding is that there was a total of £280,000 advanced; isn't that right?

A. That's correct, yeah.

771 Q. The first advance was an advance of £50,000, the cheque you told us about was cashed and handed over to Mr. Gogarty?

A. That's correct.

772 Q. And the later cheque was for £230,000 which was the deposit for the lands?

A. That's correct.

773 Q. Can you say how the cheque for £230,000 was dealt with in your company's accounts?

A. I suppose the accountant would answer that better, I don't know how it was dealt with.

774 Q. Well, I take it that as a director of the company you would be aware that whenever a company borrows money it has to be shown and there has to be an indication of how the money was dealt with, how it was spent?

A. Yes.

775 Q. Isn't that right?

A. That's right.

776 Q. Now, do you know how the £230,000 was shown in your company's accounts?

A. I presume it was an expense against the land.

777 Q. All right.

A. I would have to check and see.

778 Q. Were you involved, in any way in the acquisition of land belonging to Grange Developments around that time?

A. Oh, I was, yeah.

779 Q. Yes. Would you tell the Tribunal about that?

A. Well, I signed a contract with Grange Developments with Michael out in land out in Swords.

780 Q. Yes, where was that land?

A. Mountgorry.

781 Q. When was that, approximately?

A. I think it was possibly early '89, I think.

782 Q. I see?

A. I am not sure now.

783 Q. I see. And was it your intention to buy this land and to develop it?

A. That's correct yeah.

784 Q. Was this the land that had been partly zoned for industrial development?

A. I think so, yeah. Yeah.

785 Q. And what was the contract price?

A. I couldn't be one hundred percent sure, but I think it was 2.3 million, I think.

786 Q. Would the normal 10% deposit then apply or was it different in this case; can you remember?

A. No, we paid a deposit of 600,000. Michael paid a deposit of 600,000.

787 Q. Well, when you say Michael paid it, I take it, that you say you signed a contract, that it was on your behalf, on behalf of both of you?

A. Yeah, I think so, yeah, yes.

788 Q. Is there any reason why the normal 10% deposit wasn't paid?

A. I don't know.

789 Q. Do you know when the deposit was paid?

A. No.

790 Q. Do you know where the monies came from to pay that deposit?

A. Michael got it.

791 Q. Where?

A. I don't know.

792 Q. Did you not ask him?

A. No, I didn't - I would have to check it to be sure, I don't even know what company name the contract was signed in.

793 Q. But whatever name it was signed in, you signed it and Michael signed it?

A. I think I signed it. I remember being at a meeting in a solicitor's office late one night and I think I signed the contract as well that time.

794 Q. Where was that solicitors office?

A. Can I say?

795 Q. Yes, where was the solicitor's office, whose solicitors?

A. Miley and Miley's.

796 Q. Were they acting for the vendor?

A. Yes.

797 Q. And did that sale close?

A. No, it didn't.

798 Q. Why not?

A. We decided to forfeit the deposit. We didn't get planning on it. We decided to forfeit the deposit and lose that.

799 Q. Was there any reason why the normal 10% deposit wasn't paid in that case?

A. Not that I know of.

800 Q. Am I correct in thinking that 10% is the normal deposit that is paid when buying or selling land?

A. No. I have seen 15 percent.

801 Q. What is the normal figure?

A. The contracts differ.

802 Q. I see.

A. I recall paying 15 percent lately.

803 Q. Yes. So far as you know, was there any other payment other than the £600,000 paid to Grange?

A. No, other than planning expenses; but there was nothing that I know of paid to Grange other than the 600.

804 Q. Now, when you were asked by; were you asked by your accountant about the £280,000 that had been borrowed towards the end of 1989 from Anglo Irish Bank?

A. Say that again?

805 Q. Were you asked by your accountant about the £280,000 that had been borrowed, towards the end of 1989, from Anglo Irish Bank?

A. I don't recall him asking me, no.

806 Q. How - if he wasn't to ask you, would he know how to deal with it in the accounts?

A. He would be better able to answer that than I would.

807 Q. Right. Well, in any event so far as you were concerned there was a borrowing totalling £280,000 and there was an expenditure of £280,000 towards the end of 1989 in relation to the acquisition of the Murphy lands; isn't that right?

A. That's right.

808 Q. In the working papers for the year ended the 30th of June of 1990, and the reference is BOV MCG 2-64. They are in fact, they are the working papers for the 30th of June of 1991, I should say. They show land at cost, land at cost at the 1st of February 1990. Am I correct in thinking that the financial year for Bovale ended on the 30th of June of 1990, 30th of June of each year?

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MR. ALLEN: Sir, if I might interrupt for a moment. We

have never seen this documentation, I presume it was documentation that was discovered by the accountants?

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CHAIRMAN: I just want to clarify this. I think it has been produced, as far as I know, I want to clarify this; as far as I know it has been discovered by the accountant, Mr. O'Toole, and I think it was in fact, it is the working papers, part of the working papers of Mr. O'Toole. Now, I stand subject to correction on that because I don't have it in front of me.

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MR. ALLEN: I think you are quite correct, Sir, insofar as they would appear to come from Mr. O'Toole's working papers. We certainly haven't had sight of them. They weren't circulated to us, either by the Tribunal or Mr. O'Toole. I make no criticism about this.

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MR. GALLAGHER: If they are not circulated I will leave it for the moment.

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MR. ALLEN: Mr. Smith is quite satisfied they haven't been circulated.

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MR. GALLAGHER: That's all right. Thank you.

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MR. ALLEN: Thank you, Sir.

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809 Q. MR. GALLAGHER: We will circulate that to you.

Did you have any further dealings with Mr. Gogarty after that visit to his home in Sutton in 1996?

A. No.

810 Q. Did you have any telephone conversations with him?

A. After that meeting?

811 Q. Yes?

A. No, not that I can recall anyway.

812 Q. Did you have any telephone conversations with him before that meeting?

A. I would have, he would have rang me once or twice.

813 Q. Pardon?

A. He rang me once or twice, yeah.

814 Q. What was his purpose of ringing you?

A. Trying to get money off me.

815 Q. When was that?

A. Back in '94 or '95.

816 Q. What did he say to you in the course of those conversations?

A. He said that Mick gave me, gave him my number and that Mick said that I might have a few pound for him so, and I got it for him.

817 Q. Well, was he not demanding specific amounts at that stage?

A. I don't recall.

818 Q. Did he give you any explanation as to why he hadn't lodged the cheque for £50,000 which was dated the 30th of September of 1990?

A. No.

819 Q. Did it ever occur to you to suggest that he should cash that in order to obtain whatever monies were due to him at that stage?

A. No.

820 Q. Did you ever hear of a meeting attended by Mr. Gogarty in the Skylon Hotel?

A. I did, when the Tribunal started, yeah.

821 Q. Pardon?

A. When the Tribunal started.

822 Q. Was that the first time you heard about it?

A. Yeah.

823 Q. Who told you about it then?

A. I heard it here at the Tribunal.

824 Q. You heard it in evidence here?

A. Yeah.

825 Q. Whose evidence did you hear that from?

A. I think it was Michael's evidence, or Jim Gogarty, I am not sure.

826 Q. Michael?

A. Michael Bailey's evidence or Jim Gogarty's, I don't know which.

827 Q. That was the first time you heard about that?

A. Yeah.

828 Q. Do I take it from that, that you didn't attend at any such meeting? You weren't aware of any cheque being passed or anything of that nature, at any such meeting?

A. No, I was not. There was no cheque passed anyway.

829 Q. Tell me, what in your view, was Bovale getting in return for the payment of £150,000 finders fee which it had committed itself to pay to Mr. Gogarty?

A. That was the deal that Mick had done with Jim Gogarty for the land, and that's what we were getting.

830 Q. Did you think that it was appropriate to pay £150,000 in those circumstances?

A. That was the deal that was done and I agreed to it.

831 Q. I see. Now, when did you come across the book that has been described as the "kitten book"?

A. When Caroline found it.

832 Q. When was that?

A. Around the time we were making discovery to the Tribunal.

833 Q. I see. Did you look for other books that you would have

kept, either directly or indirectly, in the other years?

A. Did I?

834 Q. Yes. Did you look for those books?

A. I wouldn't have been looking for them. Caroline would have been looking for them.

835 Q. Did you ask her to look for them?

A. No, I didn't.

836 Q. Why did you ask her to just look for this particular book?

A. I am sure she looked herself. I wouldn't have to ask her. She happened to just come across it. It was in a drawer.

837 Q. Is it possible that there are other books relating to other years in the drawer, or other drawers, that might be of assistance to the Tribunal?

A. It is possible. I don't know.

838 Q. MR. GALLAGHER: Sir, I have no more questions for this witness at this time, but I should say that Allied Irish Banks have contacted the Tribunal at lunchtime to say that there were a number of additional accounts which they had, as I understand, and they accepted that it is their responsibility; they had inadvertently failed to disclose or transmit to the Tribunal.

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Now, I know nothing further about it than that, and in the circumstances I would ask that further questioning of Mr. Bailey would be deferred until such time as these documents can be examined.

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I should also say that the computer records referred to and indeed the working papers of Mr. Noel Corcoran are not yet available. I can't, I know that the computer records are to be made available. Mr. Corcoran is out of the country, I gather, until tomorrow. We can not get an answer in

relation to those records until he returns.

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So in the circumstances I would ask that Mr. Bailey would be stood down for the moment until such time as this information can be looked at and we see if any further questions arise.

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CHAIRMAN: Would you indicate to the Tribunal, even approximately, when you would hope to be in a position to proceed?

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Now, I appreciate it is a degree of uncertainty. How long do you anticipate?

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MR. GALLAGHER: I am not quite sure because it depends on how quickly the banks can get whatever documents are involved to the Tribunal. It may be very quickly, it may not. My understanding is that this building, or this room is not available to the Tribunal on Friday. And in any event I understand that you have, the Tribunal has another commitment, or is likely to have another commitment on Friday. But in any case this room would not be available for public sitting on Friday.

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We were endeavoring to locate some witnesses to come tomorrow and I am not quite sure whether they are available. In fact I am told they are not available.

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CHAIRMAN: In those circumstances it would appear that the next appropriate date, or it is likely, when it is likely to have the information and it depends upon the bank and the computer records being forthcoming, would be next

Monday.

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MR. GALLAGHER: I understand that Mr. Joseph Murphy can be available next Monday but won't be available before then.

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CHAIRMAN: Mr. Who?

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MR. GALLAGHER: Joseph Murphy Jnr..

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CHAIRMAN: Well, will there be a witness or witnesses available next Monday?

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MR. GALLAGHER: Indeed yes, all of next week, I understand, yes.

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CHAIRMAN: We would hope all of next week, so far as your information goes at the moment. In the circumstances, the Tribunal will be working in it's office and getting things ready for other aspects of the Tribunal.

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I have a commitment on Friday to another matter and I think the best thing to do is to, now it must be firm, because I mean Mr. Murphy would be coming from London, would that not be so?

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MR. COONEY: Yes, he will.

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CHAIRMAN: I do want a firm date do facilitate Mr. Murphy.

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MR. COONEY: I think this plan was intimated to us before lunch by the Tribunal Counsel. We made inquiries and we

are fairly confident that Mr. Murphy will be available on Monday next. If we can take that as a fixed date.

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CHAIRMAN: That is a fixed date and it is, in this sense if you are, if he can't be here for an appropriate reason

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MR. COONEY: Yes.

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CHAIRMAN: Would you advise us as soon as practical?

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MR. COONEY: Well, our information at the moment, Mr. Chairman, and it is quite certain information, is that he is available and will be here.

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CHAIRMAN: It is a definite date for Monday except for some very adequate reason that he can't appear.

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MR. COONEY: I think I can say to you, Mr. Chairman, that the Tribunal could arrange it's business on the assumption that he will be here.

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CHAIRMAN: Very good Mr. Cooney. Thank you for your help.

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MR. ALLEN: Chairman, just before you rise could I just make one point? And it is for, it is a point of clarification. In relation to the four accounts, or whatever number of accounts which apparently AIB have communicated in relation to. I know that you would want the record to show that AIB have accepted that it was they, on foot --

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CHAIRMAN: Mr. Allen, that has already been stated.

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MR. ALLEN: Just bear with me --

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CHAIRMAN: I accept that statement.

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MR. ALLEN: If you just bear with me for a moment, Sir. I accept that Mr. Gallagher said that, I read in the newspaper this morning that under threat of a subpoena we offered cooperation to you in relation to certain matters. That wasn't accurate.

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I am concerned that my clients not be represented in the newspaper as not having cooperated with the Tribunal. I just want to make sure that the record is clear. We gave an open-ended authority to the banks at your, by agreement with you and it appears their accounts, we have no idea what their accounts are - they could have 50p, they could nothing in them. We don't know anymore than the Tribunal does.

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CHAIRMAN: Well Mr. Allen, all I know is that no threat was issued by this organisation to the banks to produce the documents.

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MR. ALLEN: Absolutely. I accept that fully.

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CHAIRMAN: Nor to you indeed. That is all I know.

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MR. ALLEN: I accept that fully. The only reason that I am under lining it is because I don't wish there to be any

misunderstanding which would adversely reflect on my clients.

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CHAIRMAN: Thank you.

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MR. GALLAGHER: Just so that the record be clear. I don't want to get involved in any argy-bargy. The position as I understand it, I am subject to correction, but my instructions are that an Affidavit of Discovery was sworn by Mr. Bailey, Mr. Thomas Bailey in relation to all accounts held by him, jointly, either jointly on his own behalf, either jointly with his wife or on his own behalf. That affidavit identified a number of accounts in AIB in Navan.

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My understanding is that AIB contacted the Tribunal today and told the Tribunal that AIB had located, or identified additional accounts other than those set out in Mr. Bailey's affidavit. More than that I don't know. It is something that can be dealt with and will perhaps be dealt with at a later stage when we have more information. I think we can leave it at that.

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MR. ALLEN: All of which --

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CHAIRMAN: Just a moment, no inappropriate assumption should be drawn from any of that. We will find out what the situation is, it is quite unfair for anybody to draw an assumption on any part.

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MR. ALLEN: Thank you Sir.

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CHAIRMAN: To Monday morning. 10:30 on Monday morning.

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THE HEARING WAS THEN ADJOURNED TO MONDAY THE 29TH OF
NOVEMBER, 1999.