

1 PLANNING TRIBUNAL - DAY 306

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3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 12TH OF OCTOBER,

4 2001, AT 10:30 A.M.:

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Good morning, Sir.

9 .

10 You will recall, Sir, that there were two disputes
11 yesterday, in relation to two matters. The first being
12 the question as to what Mr. Brennan's evidence was, as
13 to whether or not Mr. Finnegan put in any money, where
14 Mr. Hussey disputed my assertion that Mr. Brennan's
15 evidence was that Mr. Finnegan did put in any money.

16 And I was challenged on that.

17 .

18 And you will recall that we were to search the
19 transcript in relation to that particular issue. We
20 have done that. So if I could deal with that one
21 first.

22 .

23 The first passage that we can find on it, Sir, is at

24 Day 271, question 579. The question was:

25 .

26 "Question: Now, given that somebody did explain it to
27 him, and he decided to become involved, to the extent
28 that he was a beneficial owner to the extent of
29 one-third of Bouganville Investments Limited and
30 Rapallo Limited, what did he provide or what

1 consideration did he put up to get into this deal?

2 Answer: I don't know. I don't recall. That, I am
3 not sure.

4 Question: The money that was used to pay the ú210,000
5 for the freehold was essentially an Irish issue paid by
6 an Irish company, isn't that right?

7 Answer: Yes.

8 Question: He didn't put up any of that money?

9 Answer: No."

10 .

11 At question 583:

12 .

13 "Question: So he didn't put any part of the ú10,000
14 used to buy out the freehold? That is what I am
15 saying.

16 Answer: That is possibly right, but I am not certain.

17 Question: But nonetheless, he was an equal one-third
18 partner of a distribution of ú350,000, after payment of
19 various disbursements, and, in fact, got ú100,000. And
20 not only did he get ú100,000, but he got another bank
21 draft for ú5,000. Now, what did Mr. Finnegan do to get
22 100,000 and another ú5,000?

23 Answer: Just gave advice, and I couldn't tell you
24 anything else. I really don't know."

25 .

26 "Question 588: So, I want to know now, what did Mr.
27 Finnegan bring to the table that warranted a payment to
28 him of ú100,000 for, it would appear, doing absolutely
29 nothing?

30 Answer: Maybe we wanted to be his partner in new

1 business deals.

2 Question: He didn't put his hands in his pocket, he
3 didn't lay out one brass farthing for anything. He
4 couldn't have been giving you advice because he was the
5 advisor to the nuns, we presume. So, what did he bring
6 to the table that warranted a payment to him of
7 ú100,000?

8 Answer: We may want to be his partner in other
9 developments or other business."

10 .

11 Then further down that page, question 593:

12 .

13 "Question: So what I want to know is what did Mr.
14 Finnegan bring to the party?

15 Answer: I really don't know. I think you will
16 definitely have to ask him that himself, other than his
17 expertise in property.

18 Question: Mr. Brennan, that is a totally disingenuous
19 answer. The money effectively flowed from the Brennan
20 and McGowan side to Mr. Finnegan. Of course, ú100,000
21 was sent to you and to Mr. McGowan as well out of this
22 ú300,000, but the fact remains that out of this
23 borrowing from a company in Ireland, owned to a
24 substantial extent by Brennan and McGowan and two other
25 partners --

26 Answer: No, we only had 25 percent of it now."

27 .

28 Then it went on in discussion about that.

29 .

30 The next passage appears to be at page - there is a

1 reference at question 599, where, again, it is a long
2 question, but essentially it is about the 100,000 and
3 the ú5,000: The end of it is:

4 .

5 "But Mr. Finnegan was brought into this setup as a
6 one-third partner, thereby entitling him, on the
7 distribution of this windfall of ú350,000 from Ireland,
8 to ú100,000, plus a further bank draft for ú5,000. And
9 I am asking you to explain to this Tribunal, and I am
10 asking you for the third time now, what did Mr.
11 Finnegan bring to the table that warranted payment to
12 him of ú100,000, and ú5,000?

13 Answer: It is very hard for me to speak on behalf of
14 John Finnegan, what he brought to this thing. He just
15 was an expert on property, and I don't know what else
16 he brought to the thing, other than we were planning
17 maybe to do further business.

18 Question: Well, in effect, it came out of your pocket
19 and Mr. McGowan's pocket, and I want to know why did
20 you and Mr. McGowan pay, effectively, ú50,000 each to
21 Mr. Finnegan?

22 Answer: Well, we done a lot of other deals after that,
23 so the whole thing, as you know, was successful."

24 .

25 And at question 609, Mr. Brennan was asked:

26 .

27 "Question: I want to know what Mr. Finnegan provided
28 to you that warranted a payment of ú50,000 each from
29 yourself and Mr. McGowan?"

30 .

1 And the answer was: "Well, I would say maybe expert
2 and for future developments, which we did do."

3 .

4 And at question 613: "Mr. Brennan, I suggest to you
5 that when this payment was made to Mr. Finnegan, it was
6 made for a reason?"

7 Answer: No reason whatsoever.

8 Question: I suggest that you are not the kind of
9 person to pay out ú50,000 of your own money for no
10 reason?

11 Answer: There was no reason whatsoever, because I
12 hadn't known John Finnegan other than --

13 Question: I am asking you again, now for the fifth
14 time, why did you and Mr. McGowan pay ú100,000 to Mr.
15 Finnegan for apparently absolutely nothing at all?

16 Answer: It is not for nothing at all.

17 Question: He didn't invest a brass farthing in the
18 venture, you already agreed me with on that. He
19 couldn't have been an advisor to yourselves in relation
20 to the deal, because we know he was the advisor to the
21 Sacred Heart Nuns. He didn't, as far as we are aware,
22 do anything in relation to the deal, except be a silent
23 partner and a silent recipient of ú105,000. So I am
24 asking you, why did you and Mr. McGowan pay ú50,000
25 each, or ú52,500 each, in fact, to Mr. Finnegan, in
26 those circumstances?

27 Answer: I couldn't tell you because I don't know.

28 And obviously you will have to ask him that yourself,
29 what --

30 Question: Did he deliver the nuns' property to you?

1 Is that perhaps why?

2 Answer: No, it wasn't negotiated by -- it was

3 negotiated by Joe and another --"

4 .

5 Then on Day 274, where I think we were dealing with the

6 Donnybrook property, although there are some references

7 in it to, references back to the Monkstown property.

8 .

9 "Question 212: As a matter of interest, what did Mr.

10 Finnegan bring to the party, to this particular party?

11 I am talking about Donnybrook now. For you to pay him

12 ú101,000, substantially, out of this loan that was

13 borrowed by Oakpark?

14 Answer: We were John Finnegan's friend. We had done

15 a lot of property deals together. We had done about

16 five or six --

17 Question: I have already asked you why he got

18 ú105,000 out of the distribution out of the Monkstown

19 land. We have now got a situation where he has got

20 another ú101,000 out of the Donnybrook lands. Why?

21 What did he do for it?

22 Answer: He got the same as --

23 Question: He didn't invest any money, but Oakpark

24 Developments Limited borrowed the money, or

25 substantially out of which this distribution came. The

26 figure of ú260,000 was borrowed from Oakpark to - from

27 Lombard and Ulster by Oakpark. Somebody, presumably

28 Oakpark, out of its own resources, or some other

29 Brennan and McGowan company made up the difference.

30 Where did the difference come from, as a matter of

1 interest, between 260 and 304?

2 Answer: I am not sure now, whether it came directly
3 from Oakpark in cash or a cheque.

4 Question: One way or another, it was Brennan and
5 McGowan money, it wasn't Finnegan money?

6 Answer: It would be Oakpark money, I think, myself,
7 totally.

8 Question: Oakpark money. Did Oakpark have money?

9 Answer: Oh, yes.

10 Question: Did Mr. Finnegan put any money in?

11 Answer: I am not sure. I don't think so. I don't
12 think so. I am not sure.

13 Question: I suggest to you he didn't. So, given that
14 he didn't put any money in, and make any investment in
15 this matter, what did he do to merit him getting paid
16 ú101,000?

17 Answer: Well, he was our partner, as I said. I might
18 get one piece of land and somebody else get another
19 one, that was the way we operated.

20 Question: You gave it to him because he was your
21 partner?

22 Answer: Well, we were partners in the different
23 companies.

24 Question: Just take each one in turn. We have dealt
25 with the Monkstown one. We are now on the Donnybrook
26 one. Here we go again. Mr. Finnegan doesn't invest
27 any of his own money, doesn't appear to do anything,
28 and he gets ú101,000.

29 Answer: His expertise, obviously. I don't know who
30 bought the site either in this case. It wasn't me. I

1 didn't buy this one either. I don't know who
2 negotiated the sale or the purchase.

3 Question: Well, are you suggesting that Mr. Finnegan
4 did, and that it was in connection with that that he
5 received this payment?

6 Answer: I am not sure, but it may very well be. So, I
7 will have to ask him that. I am not sure.

8 Question: Did he negotiate it or was it Joe McGowan?"
9 .

10 Then at question 235. Some of these are quite
11 peripheral. I think, for the sake of completeness, I
12 should put them all in.

13 .
14 "Question 235: Well, I am trying to understand what
15 you are saying, Mr. Brennan, because the only
16 indication you have yet given as to why Mr. Finnegan
17 would have been paid \$101,000 is that in some way it was
18 related to the negotiations for the purchase of the
19 property.

20 .
21 What I want you to tell me is in what way did it relate
22 to the negotiations of the property? Did he provide
23 some service for the - in the context of the
24 negotiations, or did he do something on behalf of
25 yourself and Mr. McGowan which merited him being given
26 remuneration to the extent of a one-third interest?

27 Answer: He may very well have mentioned the land, and
28 we may have negotiated it. That could be it. He might
29 have mentioned it to Joe McGowan, or maybe Joe
30 negotiated the purchase. We would be doing that with

1 all lands. Any land that we thought was available, we
2 would obviously try to see if we could buy it."

3 .

4 At question 243, the question is:

5 .

6 "Question: Yes, but are you in a position to give me
7 any indication as to why Mr. Finnegan was given
8 ú101,000 out of the monies that were sent over to
9 Jersey on the 15th of January, 1979?

10 Answer: Just to say that he was a third partner.

11 Question: But when a person becomes a partner in
12 something, they bring something in?

13 Answer: Well, he --

14 Question: They either bring an asset in or they put
15 up one-third of the investment fund, or whatever the
16 nature of the thing is, or they bring in a profit, if
17 it is a partnership of profit, whatever. They have to
18 bring something to the table. Did you bring him in
19 because you liked the look of him?

20 Answer: Because he was - I was his friend. We were
21 his friends, first of all, and we still are, and we did
22 a lot of business over the years. Not all auctioneers,
23 but John Finnegan was our man. Even up to today he
24 sells a lot of land for us."

25 .

26 And at question 250 it says:

27 .

28 "Question: Can I put it to you this way, Mr. Brennan:
29 Mr. Finnegan was brought into the deal for a reason.
30 He was not given ú101,000, ú101,333.33 for no reason.

1 Answer: Well, he was entitled to as a partner,
2 though. That is the way you do business. When you do
3 a deal with people --"

4 .

5 Then, question 251. Now, this is - this is the second
6 part of the question.

7 .

8 "Question: Now, what I would like to know, for my own
9 purposes, is how did you get yourself into a deal where
10 somebody gives you €101,000 for doing nothing and
11 putting up no money?

12 Answer: Well, I can tell you there is a lot of that,
13 a lot of people get involved in a lot of deals that
14 happen like that. I mean, you could go partner with a
15 guy and he might have a super property, and you might
16 have success from the word go. It happened to myself.
17 It happens to everybody. Somebody finds a good
18 property that somebody just wants to sell at the time.

19 Question: Mr. Brennan, isn't it fairly obvious, in
20 fact, inescapably obvious that Mr. Finnegan was given
21 this €101,000, or this share in the deal worth €101,000
22 for a very particular reason, and equally obvious, I
23 suggest to you, that you are declining to inform the
24 Tribunal what that reason is?

25 Answer: I don't know that answer.

26 Question: And that you are, in effect, waffling on
27 about generalities that may be no sense, and in no
28 sense addresses the question that I am putting to you,
29 which is namely why Mr. Finnegan was given €101,000 on
30 this deal?

1 Answer: Well, my best answer for that is he is
2 legally entitled to it.

3 Question: Legally entitled to it?

4 Answer: Well, he is a partner in the company that
5 sells it through his company.

6 Question: That just takes us one stage back. Why was
7 he a partner?

8 Answer: Well, I don't know. That was agreed at the
9 time, and that was - I mean, I get out of that.

10 Question: Of all the people in Ireland, why did you
11 pick Mr. Finnegan to give a partnership to, who would
12 be obliged to put in no money, provide no service and
13 to receive €101,000?

14 Answer: We were a friend of John Finnegan years
15 before that, in and out of the office getting advice."

16 .

17 And at question 270, having dealt with an issue about
18 the €624,000, I said at the end of it - it seems to be
19 a fairly long question:

20 .

21 "Mr. Finnegan received €101,333.33, his one-third equal
22 share, having done nothing, having brought in no money.

23 .

24 What I am trying to get you to inform the Tribunal, and
25 what I suggest you are withholding deliberately from
26 the Tribunal, is why did Mr. Finnegan get paid this
27 money?

28 Answer: I am not trying to hold back on anything from
29 the Tribunal, whatsoever, good, bad or indifferent.

30 .

1 As I understand it to be, he was a partner in the deal,
2 and I can't explain it any better than that."

3 .

4 Then we go on to the argument, as you will recall,
5 about the nature of the partnership and the confined
6 nature of that particular partnership. At question
7 272, the question is:

8 .

9 "Question: This particular deal happened after the
10 Monkstown deal. We know that in the Monkstown deal Mr.
11 Finnegan brought in no money, and on your evidence,
12 provided no service, and received from monies that were
13 sent over thereafter, payment of certain costs or
14 expenses, ú100,000, and a further bank draft for
15 ú5,000."

16 .

17 There is a reference at page, or at question 281:

18 .

19 "Question: I have put the question a sufficient amount
20 of times. And I have now decided I am not going to put
21 the question any longer to you. One last time: Why
22 did you and Mr. McGowan decide to pay ú101,000 out of
23 the monies sent over by Oakpark Developments Limited to
24 Victa?

25 Answer: I have to go back to the thing about, there is
26 no other way out of it. That is the situation, he is
27 entitled to his money.

28 Question: Right. That's, is that your final answer
29 on the point?

30 Answer: Yes, absolutely."

1 .

2 At question 387, the question was:

3 .

4 "And in this case we know that was owned by Herbert

5 Properties Limited, who sold it to Victa?

6 Answer: Yes, that's is what you have said. I have to

7 agree to that. I can't deny that.

8 Question: Is it possible that what Mr. Finnegan was

9 bringing to the table was the ability to free the title

10 to the property, which, in both cases, was the

11 leasehold title, from the constraint of a restrictive

12 covenant which prevented development, by the simple

13 expedient of getting in the freehold title?

14 Answer: That could be possible, now, because I

15 obviously - a solicitor would have to look at that and

16 see.

17 Question: It is clearly possible. What I am really

18 asking you, is that the reason?

19 Answer: I would say so, yes. I would say that is

20 the reason. Mr. McGowan would have to explain that,

21 but I think that's right.

22 Question: That's why you paid him ú105,000 in respect

23 of the Monkstown property, and ú101,000 in respect of

24 the Donnybrook property?"

25 .

26 Then there was an intervention by Mr. Hayden. And

27 question 394:

28 .

29 "Question: You were the one that, with your partner,

30 Mr. McGowan, paid Mr. Finnegan ú105,000 in the

1 Monkstown deal. Is that, in fact, the reason? Was
2 that a difficulty that had to be overcome, for which it
3 was worth your while to pay Mr. Finnegan the €105,000?

4 Answer: I understand from Joe McGowan that's correct;
5 you had to get the things and it had to be done fairly
6 fast, obviously."

7 .

8 Then at question 398: "I am taking it very
9 simplistically, if we may, one-by-one.

10 .

11 We have dealt with the Monkstown one. My question was:

12 Is that the reason that you also involved Mr. Finnegan
13 in the Donnybrook deal, because similarly you had to
14 get over this difficulty with a development prohibition
15 covenant in the leasehold title? Is that why - is that
16 why Mr. Finnegan was brought into the deal, so that he
17 could deal with that difficulty?

18 Answer: That is what Joe McGowan told me. That seems
19 to be correct"

20 .

21 Then on Day 276, I think we are talking about
22 Newtownpark Avenue now, but I am not certain about
23 that. It may appear from the context. Perhaps I will
24 ask the full question.

25 .

26 "Question: Now, we know that the money, when it
27 arrived in Jersey, was distributed as to the 404,500" -
28 yes, it is the Newtownpark Avenue deal - "we have
29 already referred to, but 67,278.54 was sent to Foxtown
30 Investments Limited. So, this is the third instance in

1 which a substantial sum of money is paid out of monies
2 which were sent over from a Brennan and McGowan Dublin
3 company to a Brennan and McGowan Jersey company, if I
4 might put it that way, paid to Mr. Finnegan's company.

5 Again, we know that Mr. Finnegan did not put up any of
6 his own money into this venture, isn't that so?

7 Answer: I am not exactly sure. Maybe not."

8 .

9 MR. HUSSEY: Sorry. Could I just have the question
10 reference? I just missed that.

11 .

12 MR. HANRATTY: 107, Day 276.

13 .

14 MR. HUSSEY: Yes I have the day. Thank you.

15 .

16 MR. HANRATTY: Question 108, then.

17 .

18 "It appears that he didn't. Or to put it properly,
19 there is no indication in any of the documents or
20 evidence we have so far, that he did. And all the
21 indications are that he didn't.

22 .

23 So, why is he being paid ú67,000 out of the monies
24 belonging to Arippe Investments Limited?

25 Answer: I suppose he helped in the negotiations with
26 Joe McGowan again, because that was done by Joe and
27 John Finnegan."

28 .

29 Then at question 110, among other things, there is a
30 statement to the effect: "In circumstances" - perhaps I

1 will read the full question.

2 .

3 "But really, Mr. Brennan, you see, we have this
4 difficulty that this is now the third occasion, the
5 third land deal happening broadly within the same time
6 scale, albeit perhaps in succession to each other,
7 where Mr. Finnegan is in receipt of a very substantial
8 sum of money, even by today's standards, but certainly
9 by the standards of the time that they were paid. We
10 are talking here about November 1978. In circumstances
11 where he doesn't appear to have put up any money, and
12 for reasons that are not apparent.

13 .

14 Now, I would suggest to you, that insofar as you had an
15 agreement with Mr. Finnegan, in the first instance, in
16 connection with lands at Monkstown, that he would share
17 in the distribution of a figure, that it turned out to
18 be ú304,000, but not in the subsequent sale. And
19 again, in the Donnybrook case, that he would share in
20 the distribution of - sorry, it wasn't 304 in the case
21 of Donnybrook. I have temporarily forgotten that
22 figure. It was 304 - yes, it was ú105,000 that he
23 received in Monkstown?

24 Answer: Very close.

25 Question: It was 101 that he received in Donnybrook.

26 .

27 Now, in respect of Newtownpark Avenue, he is getting
28 ú67,000. I just wonder if it is conceivable that you
29 were unaware of the reason that he was getting these
30 monies, given that you have told us that he wasn't a

1 beneficial owner in the true sense of the word, albeit
2 that he was registered as beneficial owner; that would
3 mean that the beneficial owners were, in fact, yourself
4 and Mr. McGowan in all cases, really, and that to the
5 extent that Mr. Finnegan was getting money out of any
6 of these deals, it was seemingly coming straight out of
7 your pocket, because he had not received these monies,
8 it would, presumably, like where the rest of the monies
9 that were distributed to yourself and Mr. McGowan given
10 to both of you. So why were you and Mr. McGowan giving
11 such large sums of money to Mr. Finnegan?

12 Answer: He obviously helped with the negotiations,
13 because in the building business to find the land is
14 always the problem. No matter what advice you have,
15 you have to get the land or you can't develop anything.
16 So that was always a factor and is today, as you know.
17 So it is difficult. And obviously we were delighted to
18 get the deal. I was, anyway."

19 .

20 Then at question 115, the question is:

21 .

22 "It was agreed that he would receive that sum for a
23 particular reason?

24 Answer: For all the support, I obviously - well, we
25 had the company, like, we had an agreement on just more
26 than one piece of land. I think we done about four
27 anyway, more than four. Yes.

28 Question: Yes. Was the agreement - was the agreement
29 between yourself and Mr. Finnegan then? I mean, you
30 seem to be suggesting by that last answer --

1 Answer: A gentleman's agreement."

2 .

3 At question 126, it is a question of - the "67" came up
4 again.

5 .

6 "Well, we have been over the ground, as it were, in the
7 case of Monkstown and Donnybrook, and I have tried to
8 ascertain from you what was it that Mr. Finnegan
9 brought to the table in those cases. I don't propose
10 to over it again, but I am now asking you what was it
11 that Mr. Finnegan brought to the table in the case of
12 the Newtownpark Avenue land that warranted or justified
13 the payment to him of ú67,000?

14 Answer: He may have mentioned to Joe that land was
15 going to be sold or something along the lines, and then
16 we got involved. He probably did."

17 .

18 At question 128: "Well, you have already - the first
19 explanation you have given was that it was - that he
20 helped with the negotiations?

21 Answer: Yes, and I still say that is true. And even
22 by mentioning the fact to Joe that the land was
23 available, obviously we moved to try and make a deal to
24 buy it."

25 .

26 If you just bear with me, Sir, I am trying to find
27 other relevant references.

28 .

29 At question 224, it says: "And you were happy with Mr.
30 Finnegan getting the same as yourself and Mr. McGowan?"

1 Answer: Yes, because he was helping us with the
2 purchase of the lands. I mean, there is no question
3 about that. It is a difficult task to find those
4 lands."
5 .
6 Then moving into Day 277. At question 156 the question
7 was:
8 .
9 "Well, lest there be any misunderstanding about it,
10 what you told us on last Tuesday, I think perhaps -
11 possibly the previous Friday, that Mr. Finnegan did
12 not, in fact, bring any money into the Newtownpark
13 Avenue deal either, no more than he had done in either
14 Monkstown or Donnybrook?
15 Answer: He just sold us the land.
16 Question: And you confirm that that is the position
17 or do you want to resile from that in any way?
18 Answer: I will stay with that, that is pretty
19 accurate.
20 Question: There appears to be no evidence that he
21 ever brought any money into any of these deals, isn't
22 that right?
23 Answer: Yes.
24 Question: And we have been over that ground, and I
25 don't propose to over it again.
26 Answer: Yes."
27 .
28 And at question 396:
29 .
30 "Question: And again, is this a situation that Mr.

1 Finnegan did not himself put up any money for the
2 purchase of the property?

3 Answer: Yes, I think that's correct. Yes.

4 Question: So why was it, then, that he was made a
5 partner in this particular transaction?

6 Answer: Because he helped to negotiate the deal. He
7 probably negotiated it entirely himself. I am not
8 exactly sure of that.

9 Question: Was this in any sense Mr. Finnegan's idea?

10 Answer: To buy the land?

11 Question: Yes?

12 Answer: It could very well be. Yes, he probably
13 found the site himself."

14 .

15 And then moving into Day 278. At question 158 he was
16 asked:

17 .

18 "Question: Perhaps we could just leave the freehold
19 aside, then, and stay with the leasehold, and we will
20 try to understand that bit of it.

21 .

22 Did Mr. Finnegan put up any money to purchase the
23 leasehold, or the Smiths of the Green interest?

24 Answer: I am not exactly sure now. I am not sure.

25 Question: Well, are you aware of him having put up
26 any money?

27 Answer: No."

28 .

29 And at question 250, the question was:

30 .

1 "Well, we will deal with that when we come to deal with
2 the details of the transactions. Just staying with it
3 - as this, as it were, overview.

4 .
5 In fact, what happened in St. Stephen's Green is that
6 there is another change in the nature of the
7 arrangements, as it were, between yourself and Mr.
8 McGowan and Mr. Finnegan, in that for the first time
9 now Mr. Finnegan is actually putting up money?

10 Answer: Yes, because they were buying a freehold in
11 Jersey, and the money was there, and the three
12 companies bought it.

13 Question: And certainly it was the case, in the case
14 of St. Stephen's Green that he was a full one-third
15 beneficial owner of that entire transaction?

16 Answer: That's - you can see yourself that is the way
17 it turned out.

18 Question: And there was no question that the sum into
19 - of which he would get one-third was in any way some
20 partial partnership, as it was in the first three?

21 Answer: Oh no, he didn't share in any of the three.
22 Outside that, each one got whatever we sold the land on
23 at the time.

24 Question: Yes?

25 Answer: A third each.

26 Question: So, please correct me if I am wrong, one
27 can make the statement about the first three
28 transactions in which Mr. Finnegan was involved, that
29 he was not, in fact, a full one-third beneficial owner,
30 that he was --

1 Answer: He did get a third of the money out of the
2 sale at that stage, when the land was ready for sale at
3 that point, you know. It was an offer made and it was
4 accepted. He got a third of that money."

5 .

6 And then, question 630, the question was:

7 .

8 "Question: The one thing Tritonville Avenue, or Road
9 has in common with the previous three, was that in none
10 of those first four cases did Mr. Finnegan actually put
11 up money, but the one --

12 Answer: Yes.

13 Question: But the one thing that all four of those do
14 not have in common with the last two, which is St.
15 Stephen's Green and Sandyford, was that he did put up
16 money?

17 Answer: Yes."

18 .

19 Then there is another reference on Day 282, at question
20 304.

21 .

22 "Question: Well, I don't particularly want to get
23 involved in your personal affairs with Mr. Finnegan, it
24 is entirely a matter for yourself. I am surprised with
25 the reckoning that was done between yourselves and Mr.
26 Finnegan in the context of this deal, because we have
27 already established that, unlike in the first three
28 deals for Morhampton Road, for Donnybrook and for
29 Newtownpark Avenue, where Mr. Finnegan did not bring in
30 any money at all, in this case he did and he was a full

1 one-third equity partner?

2 Answer: Oh, yes.

3 Question: In 1990 the effect of the deal was that his
4 shareholding, or the one-third shareholding held by him
5 through Foxtown, was purchased by, effectively, Brennan
6 and McGowan through a company called Rush Cliff
7 Investments Limited, isn't that so?

8 Answer: That's right."

9 .

10 So those are, as far as I am aware, all of the
11 references in which the question, or issue as to
12 whether or not Mr. Finnegan put up money was dealt with
13 Mr. Brennan. And as you will recall yesterday, Sir, I
14 indicated that Mr. Brennan was cross-examined by Mr.
15 Hussey on behalf of Mr. Finnegan, and he was not
16 challenged on any of that evidence, and certainly, no
17 proposition was put to him that he was incorrect and
18 that he should not have agreed with the propositions
19 put by me to Mr. Brennan to the effect that Mr.
20 Finnegan brought in no money, because Mr. Finnegan did,
21 in fact, bring in money.

22 .

23 And this arose, you will recall, yesterday, in the
24 context of my examination of Mr. Finnegan, when he
25 produced these bank accounts, and one of which included
26 a reference to a figure of ú33,333.33, in which
27 somebody had written in, in longhand, the words "M
28 Town", presumably abbreviating Monkstown.

29 .

30 I was suggesting to Mr. Finnegan that at no time prior

1 to the production of this document had he ever
2 suggested, or suggested to his counsel or lawyers, or
3 indeed in his statement to the Tribunal, that he had
4 ever put in any money or that he was, as it were,
5 hanging his hat on this entry, to try and set up a case
6 which he did not remember, that he had in fact paid
7 money.

8 .

9 If you recall, if I might open to you, Sir, the
10 statement by Mr. Finnegan's own counsel, at the time
11 that these bank statements were introduced and
12 produced. It was on Day - it was on the 21st of
13 September. I think it is 294. Yes.

14 .

15 It occurred at question - it started at question 566.

16

17 "Question: All right. In the first of these
18 transactions, Mr. Finnegan acted on behalf of the
19 Convent of the Sacred Heart in selling the lands at
20 Monkstown.

21 .

22 In the second was transactions at Newtownpark Avenue,
23 he acted on behalf of Mr. Maguire.

24 .

25 In the third transaction at Donnybrook in Bellevue
26 Avenue, Mr. Finnegan was a director, I think of the
27 vendor company, Herbert Properties Company Limited, and
28 in fourth transaction in Tritonville, Mr. Finnegan was
29 a director of Mount Merrion Properties Limited, a
30 vendor of the property in question?

1 Answer: I think there were three vendors or four
2 vendors in that particular site.

3 Question: We'll come back to deal with this in its
4 detail, Mr. McGowan, but in summary that is the
5 position.

6 .

7 Now, Mr. Finnegan did not put up any money --"

8 .

9 And at that stage Mr. Hussey intervened. The following
10 is Mr. Hussey's statement:

11 .

12 "MR. HUSSEY: I am sorry, Sir, I must interrupt here.

13 That cannot be stated as a definite fact at this stage.

14 That has been the evidence."

15 .

16 You will recall that the context was that Mr. McGowan
17 had already given evidence that he believed that Mr.
18 Finnegan hadn't put up any money. Ms. Dillon then
19 said:

20 .

21 "What does his client say about this? What does Mr.

22 Hussey's client say about this? It is about time for

23 Mr. Hussey to come out in the open, Sir. Here. Mr.

24 Finnegan has told the Tribunal nothing about these land

25 transactions. It is not for Mr. Hussey to make

26 suggestions. If his client is saying that he put money

27 up into these transactions, let him say it.

28 .

29 Mr. Brennan was never cross-examined by Mr. Hussey on

30 the basis that Mr. Finnegan put one red penny into any

1 of these transactions, and what I am putting to this
2 witness is the evidence, unchallenged, of Mr. Brennan
3 on at that basis. If Mr. Hussey has other evidence, or
4 his client is going to say something different, the
5 Tribunal has not been told of that to date."

6 .

7 Then, Mr. Hussey replies:

8 .

9 "I am sorry, Sir. I have to - I beg to disagree. This
10 Tribunal, as I have been at pains to explain in the
11 last number of days, has not in any way been misled by
12 Mr. Finnegan in respect of any of these transactions,
13 or any narrative that he has been requested to give to
14 this Tribunal.

15 .

16 He has given as much information as he possibly can,
17 from his own recollection of events. I explained, I
18 think yesterday, that Mr. Finnegan, up until yesterday,
19 was unable to instruct me in any way in relation to
20 these transactions, outside the bounds of the documents
21 which have been furnished from this Tribunal to Messrs.
22 Kennedy McGonagle Ballagh. I have explained this. I
23 have been at pains to explain this. I think I
24 introduced this when I was cross-examining Mr. Brennan,
25 that I had no further information than the Tribunal had
26 in respect of these transactions.

27 .

28 I understand the duty of counsel, when cross-examining
29 witnesses, that it is the duty of counsel not to
30 introduce or not to suggest matters to a witness that

1 counsel cannot support by evidence.

2 .

3 Up until, basically this morning, I was in no position
4 to be able to suggest a contrary view. However, this
5 morning, as you know, certain Foxtown accounts have
6 become available. I have managed to peruse these
7 accounts, not to any great detail, but to a certain
8 extent I have managed to peruse these accounts. I
9 think, in your presence this morning, I alerted Ms.
10 Dillon to matters in those accounts which might suggest
11 - that is all I can say at this point, because I
12 haven't had an opportunity to analyse these documents
13 with my client, and to see if perusal will refresh his
14 memory or bring him to any greater understanding than
15 he had already. However, the documents, as you can see
16 when they - I have already handed the documents to the
17 Tribunal and asked them to copy them in a particular
18 way, because there are certain annotations in red on
19 the documents.

20 .

21 Now, I had suggested to Ms. Dillon, and indeed Mr.
22 Hanratty, when he came over to join me at that table
23 there, and I felt and I suggested that it was important
24 that I should notify her at that stage, even though,
25 even while I had still not finished perusing the
26 documents, that the documents suggested that Mr.
27 Finnegan, had, in fact, contributed.

28 .

29 That is all I could say at that point. And I said it
30 was important for me to alert you to that fact given

1 that you are putting these - your questioning of the
2 witness on the basis of evidence of Mr. - of earlier
3 evidence of Mr. Brennan. And I said it was important
4 to, at least, introduce a contrary, or not so much a
5 contrary, but at least the possibility of something
6 other than the truth of Mr. Brennan's testimony.

7 .

8 I have never, in any respect, sought to mislead Ms.
9 Dillon or this Tribunal, nor has my client, in so far
10 as his understanding of these matters. He has been
11 unable to assist me, or instruct me, in respect of
12 these transactions. Therefore, I was unable until now,
13 to suggest that Mr. Brennan's testimony was untrue. I
14 felt it was my professional standing not to contradict
15 the witness who had given sworn testimony, unless I had
16 a firm basis to do that.

17 .

18 I don't know, as yet, the significance of what
19 documents I have introduced. However, it seems quite
20 clear, and I have pointed out a particular number of
21 entries in the accounts to Ms. Dillon, to suggest that
22 there may well be a difference between my client's
23 position and Mr. Brennan's position. And that is why I
24 am suggesting that this particular question of this
25 witness, to say that Mr. Finnegan introduced no money
26 to this transaction, is - I know it is, it would be
27 accepting it in light of what has transpired already
28 this morning between myself and Counsel for the
29 Tribunal in open session --"

30 .

1 And then you go on to deal with the matter.
2 .
3 So, it is fairly clear from that, Sir, that what Mr.
4 Hussey is telling you, that up until the point in time
5 when he saw this document he was unable to put any
6 proposition to Mr. Brennan contradicting the assertion
7 or the agreement, or however you want to describe it,
8 that Mr. Finnegan had put in no money. And in Mr.
9 Hussey's own words, in reference to his client, "He had
10 been unable to assist me or to instruct me in respect
11 of these transactions."
12 .
13 So that is - the first suggestion from anybody to the
14 effect that Mr. Finnegan had put in money, came from
15 Mr. Hussey before he had consulted with Mr. Finnegan on
16 the matter, or before he had, as he says, an
17 opportunity to consult with Mr. Finnegan on the matter.
18 .
19 Now, that, if Mr. Hussey's statement is correct, is the
20 factual position.
21 .
22 I have opened all of the references that I could find
23 in the transcript. I don't propose to address you in
24 any way, shape or form as to the meaning of those,
25 because in my respectful submission they are
26 self-explanatory. And at the end of the day you are
27 going to have to make your mind up as to what they
28 mean. I am certainly not going to address you on an
29 issue of fact.
30 .

1 MR. HUSSEY: Yes. I wonder, might I just briefly
2 address Your Lordship in respect of the lengthy --
3 .

4 CHAIRMAN: Yes.
5 .

6 MR. HUSSEY: I will be very brief.
7 .

8 It is quite clear from the excerpts read by Mr.
9 Hanratty of Mr. Brennan's evidence - I notice he didn't
10 include what I had referred to yesterday, which was the
11 first introduction of Mr. Brennan into, whether there
12 was any payment made or not. That was at Day 271,
13 question 560 and question 561, where he said he didn't
14 know what Mr. Finnegan brought to the table.
15 .

16 Throughout the cross-examination of Mr. Brennan by Mr.
17 Hanratty, Mr. Brennan repeatedly said, "I don't really
18 know. I would say maybe. I don't know, I am not
19 exactly sure. I am not sure." And as against Mr.
20 Hanratty's questioning, there is no evidence to suggest
21 that he did.

22 .
23 That suddenly became a concrete fact, that there wasn't
24 - just because there wasn't evidence that he did, that
25 means he didn't, even though we haven't seen all the
26 accounts to suggest that. There is no evidence to
27 support it, therefore, it didn't happen.

28 .
29 Can I just draw your attention to one particular
30 exchange. It is on Day 274, question 217 and 218. Day

1 274. Just to illustrate the questioning of Mr. Brennan
2 and the strength of Mr. Brennan's position. And the
3 strength of his evidence.

4 .

5 Sorry, Sir, I will just, I am just getting that
6 reference now.

7 .

8 Day 274, starting at question 217. This is Mr.
9 Hanratty's questioning of Mr. Brennan:

10 .

11 "Did Mr. Finnegan put any money in?

12 Answer: I am not sure. I don't think so. I don't
13 think so. I am not sure.

14 Question: I suggest to you he didn't."

15 .

16 That is fair enough. Then he goes on:

17 .

18 "So, given that he didn't put any money in, what did he
19 do to merit getting paid the money?"

20 .

21 So here we have a question which has brought an answer

22 from, "I am not sure, I don't think so, I am not sure,

23 I don't think so, I am not sure," to a suggestion that

24 he didn't, to a concrete statement, "given that he

25 didn't," and suddenly that becomes the evidence of Mr.

26 Brennan.

27 .

28 What Mr. Hanratty suggested is that he didn't put any

29 money in, there is no evidence to support it, therefore

30 he didn't. Given that he didn't, then where do we go

1 from here?
2 .
3 The rest of the questioning of Mr. Brennan pivots
4 around that cog. That has turned in Mr. Hanratty's
5 mind only, that question shows the full turn, the full
6 circle from the evidence being "I don't know" to "given
7 that he didn't" and suddenly that becomes the basis of
8 every question from there on of Mr. Brennan of Mr.
9 Finnegan's involvement.
10 .
11 I say that is the - to suggest, therefore, that Mr.
12 Brennan's evidence, when it is riddled with "I don't
13 knows. I am not sure. I am not sure what. I am not
14 aware", to being "given that he didn't," that suddenly
15 becomes a concrete fact. That suddenly he then becomes
16 the basis of the residue of the questioning of Mr.
17 Brennan, is, I would suggest, Sir, is unsafe, it is -
18 it is dangerous.
19 .
20 And I had averted to it, I think, not yesterday, but
21 the day before yesterday, it is Mr. Hanratty's style of
22 turning a negative into a positive, with a sweeping
23 movement. And I suggest to you that it is unsafe to
24 suggest, given the non-evidence, really - I mean, the
25 only evidence was "I am not sure, I don't think so"
26 suddenly that turns into "given that he didn't" then,
27 you know what I mean? That then becomes the basis of
28 the evidence of Mr. Brennan. I suggest to you Sir,
29 that is unfair.
30 .

1 As far as the - my instructions were concerned. Of
2 course Mr. Finnegan, and you know, he has given in his
3 narrative statement, he couldn't recollect, he didn't
4 remember whether he put anything in or not. In the
5 light of that, and in the light of the - really, the
6 non-committed evidence of Mr. Brennan, where he, the
7 best he could say is "I didn't know, I am not sure."
8 It was only on the suggestion of Mr. Hanratty that he
9 would go any further than that. I certainly didn't
10 feel that I had enough to support a cross-examination
11 of Mr. Brennan to suggest an alternative view, when I
12 didn't have the evidence to support that. I now have
13 the evidence to support that.

14 .

15 And it is, it seems to be quite clear, that Mr.
16 Finnegan not only contributed into the Monkstown deal,
17 but into the Newtownpark Avenue and the Bellevue deal,
18 and indeed Smiths of the Green deal, out of the Foxtown
19 accounts. It is not just, as Mr. Hanratty suggested,
20 that he pulls the rabbit out of the hat, it isn't to
21 save us in the Monkstown situation. That is not the
22 case. And I vehemently reject any such suggestion.

23 .

24 The accounts and the annotations on the accounts are a
25 clear indication that monies were put in by Mr.
26 Finnegan into these matters, and it is only when these
27 accounts came out, was it safe for me to make, to put
28 up a contrary suggestion, because I am completely in
29 realisation of my duty to you, Sir, and to - and indeed
30 to my client, not to mislead or not to make wild

1 allegations or wild suggestions, unless I have
2 something to support them.

3 .

4 Now, I had something to support this contention, and I
5 could introduce it at that point.

6 .

7 Thank you, Sir.

8 .

9 CHAIRMAN: I note your respective submissions, and
10 thank you. I will have to sit down and think them out.

11 .

12 MR. HANRATTY: I have no intention of addressing you on
13 the facts, as My Friend has just done, at great length,
14 other than to note the interesting fact that he selects
15 one passage out of all of the references in the
16 testimony of Mr. Brennan, and seizes on that as a basis
17 for his assertion.

18 .

19 All I can say, Sir, is that Mr. Brennan was not
20 examined on the basis that he was wrong in his
21 agreement, or in his assertion, which is also contained
22 in his evidence, that no such payment was made.

23 .

24 Mr. McGowan came and gave his evidence, and this was
25 put to him, and he disagreed with it. And Mr. Brennan,
26 as Mr. Hussey, I presume knows, will be coming back to
27 give his evidence, and unfortunately will have the
28 opportunity of dealing with this assertion.

29 .

30 CHAIRMAN: We will leave it there for the moment.

1 .
2 MR. JOSEPH FINNEGAN RETURNS TO THE WITNESS-BOX AND
3 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

4 .
5 1 Q. MR. HANRATTY: Now, Mr. Finnegan, can I ask you first
6 of all, as far as you are aware, have any proceedings
7 yet been instituted in Guernsey in relation to the
8 trustees' documents?

9 A. The position as of yesterday evening, that lawyers are
10 preparing all papers and lodging, you would understand
11 about that, lodging papers next week, and it should be
12 the - should have a hearing on the 26th.

13 2 Q. In court?

14 A. In court.

15 3 Q. Yes.

16 .
17 MR. HUSSEY: I am sorry, could I just correct that. It
18 is either the 26th or before the 26th. Sorry, I just
19 want to clarify that.

20 .
21 4 Q. MR. HANRATTY: Yes. You see, the problem with all of
22 this time that we have wasted over the last two days,
23 arguing about the evidence, would have been resolved
24 very quickly if we had these documents, Mr. Finnegan,
25 because if we had, for example, the audited accounts of
26 Foxtown and the books and records of Foxtown, we would
27 know how they treated this ú33,333. Because the one
28 thing we do know about that sum is that it appears in a
29 bank account which we are told is a Foxtown Bank
30 account, and which does appear to be a Foxtown Bank

1 account in Guinness & Mahon (Guernsey) Limited with a
2 mirror or back-to-back account or whatever it is, in
3 Guinness & Mahon in Dublin. And it appears in both
4 copies of the account.

5 .
6 In the case of the Dublin produced one, with a
7 reference to Bank of Ireland on it.

8 .
9 So it seems fairly clear that this money came out of a
10 bank account owned by Foxtown Investments Limited, or
11 in the name of a reference which appears to refer to
12 Foxtown Investments Limited.

13 .
14 So, one would expect, in the normal way, that in the
15 books and records of Foxtown Investments Limited, there
16 would be records of the company's investments. They
17 would deal with this ú33,333, they would show to whom
18 it was paid, and what it was paid out for. The
19 investment account would, presumably, have a
20 description of the investment into which it was put.

21 And presumably also the trustee documents, that is the
22 documents of the Trust which owns Foxtown Investments
23 Limited, would have records in relation to this matter.

24 And all of these futile arguments about what Mr.
25 Brennan did or did not mean, would be irrelevant,
26 because we could find out for ourselves from a primary
27 source whether or not this was, in fact, an investment
28 in Monkstown, and if it was, in what context or in what
29 way it fitted into the scheme as we know it in
30 Monkstown. Isn't that right?

1 A. Yes, sir.

2 5 Q. And it is rather unfortunate that we have not been able
3 to get these documents since April of this year, so
4 that we could, and this applies not only, of course, in
5 relation to Foxtown, but as I understand your counsel,
6 in relation to assertions you are going to be making
7 about making investments in subsequent transactions as
8 well, is that right?

9 A. Yes, sir.

10 6 Q. And each of these investments, presumably, would have
11 documents and records, as one would normally expect,
12 for any kind of an investment in a trust, showing what
13 the investment was, to whom it was paid, and on what
14 basis it was paid out, isn't that so? All of that
15 would be extremely helpful to this Tribunal and would
16 greatly shorten the length time it takes us to deal
17 with these issues one way or another?

18 A. Yes, sir.

19 .

20 MR. HUSSEY: I would point out as well that it would be
21 greatly helpful to Mr. Finnegan to have these
22 documents, to prove these matters not only to Mr.
23 Finnegan.

24 .

25 7 Q. MR. HANRATTY: There is just one final thing I want to
26 put to you in connection to Monkstown, Mr. Finnegan,
27 and that is that Mr. McGowan gave evidence that the
28 agreement or arrangement, whatever it was, that he and
29 Mr. Brennan had with you, predated the Carrickbrennan
30 deal, predated the sale of the Monkstown lands from the

1 nuns to Brennan and McGowan.

2 A. That is not true, sir.

3 8 Q. Why not?

4 A. Because I say it is not true. They didn't have.

5 9 Q. He said that you had a - they had a sort of an
6 agreement, or understanding with you in connection with
7 land deals generally, and that arrangement or
8 understanding, agreement, whatever you may wish to
9 characterise it as, was definitely before.

10 .

11 He originally started off by saying it was over a year
12 before, but then he drew back from that, but I think
13 was adamant, if I may use that word, that it was
14 definitely before the Carrickbrennan land sale?

15 A. The only discussions I had with Brennan and McGowan
16 regarding a possible deal, or they had with me, was the
17 following, sir: That I had some investment properties
18 in town with other friends, and they always, Brennan
19 and McGowan had said to me, "We would like very much to
20 buy a centre city property, or something, a yielding
21 property. Income-producing." And they did say to me
22 that was something that they wanted to try and get
23 into, if they could. It was something that was already
24 let and on-going.

25 .

26 I did explain to them that I had - at that time there
27 would have been general discussions about that. They
28 knew that I had other properties, such like property.
29 They asked me, would I be interested in something, if a
30 good property came along, would I be interested in

1 going in with them. I said, "Look, let's see what just
2 comes along."

3 10 Q. Can we just put a time on this?

4 A. It is a long time ago, sir. It might have been within,
5 within - it could have been within a year. General
6 discussion. It is hard to put a time limit on it, sir.

7 11 Q. Well, you don't remember when it was, then?

8 A. Well, if that is what you want me to say, sir.

9 12 Q. I don't. I want you to say what you think. I am not
10 trying to put anything into your mouth, Mr. Finnegan.
11 I am trying to identify a point in time.

12 A. Remember something, sir, I am sure you find this
13 yourself, that this is a hell of a long time ago, and
14 sometimes when I try and reflect, recollect twelve
15 months ago, it is hard to remember, but - so, it is a
16 hell of a long time ago. To just remember how long
17 previous to that was it that we had --

18 13 Q. Everybody accepts that much. It is extremely
19 difficult, undoubtedly, to remember things. But
20 Mr. McGowan appears to remember that it was before the
21 Carrickbrennan deal that you had your arrangement.

22 A. The discussion, actually, which we had - he asked if
23 "we could" - "if there was something that we could buy
24 in town, income-producing?" He knew, some way or
25 another, that I had some of these properties. I, as I
26 said earlier on - "if we could get something like
27 that?"

28 .

29 And remember, in one of these discussions that he went
30 down through a little bit of what, being able to - once

1 you have the risk, once you have an income-producing
2 property, that was something he would like to have in
3 the long-term.

4 14 Q. If we just take it in stages, maybe. Do you remember
5 this conversation, or having this conversation?

6 A. Generally. Generally. Now, I can't pin it down to a
7 date, sir, or a time.

8 15 Q. No, let's just take it in stages, Mr. Finnegan. Do you
9 remember having such a conversation?

10 A. I remember having a conversation - I remember
11 discussions taking place about downtown property.

12 16 Q. When you say "discussions", is this more than one event
13 that you are describing or one meeting, or is it one
14 meeting you are describing?

15 A. I don't recollect exactly, sir.

16 17 Q. Who were the discussions with?

17 A. Joe McGowan.

18 18 Q. Yes. And where did they take place?

19 A. I can't remember, sir.

20 19 Q. When did they take place?

21 A. I don't know, sir.

22 20 Q. Well, if you don't know when they took place, then, how
23 can you contradict his testimony to the effect that

24 they took place prior to the Carrickbrennan deal?

25 A. It is quite a long time ago. When - it was a long time

26 ago. This is what they were interested in doing, and

27 that was what - any discussions regarding getting

28 involved with him was involved in, was involved in a

29 centre city property.

30 .

1 Now, trying to go back and say just exactly when that
2 was, sir. I find it hard to - but they did want to do
3 that, to try and buy something, if they could.

4 21 Q. Yes, presumably they did. But the difficulty that the
5 Sole Member has is that he is confronted with two sets
6 of testimony on this issue?

7 A. Yes.

8 22 Q. I don't know how important or unimportant it is, but to
9 the extent that it might be deemed to be so. He has
10 two sets of testimony. He has Mr. McGowan's testimony
11 to the effect that the agreement to that - they reached
12 with you, whether it was a legal agreement or whatever
13 it was, it was prior to the time that you, that they
14 bought this land from the nuns in Monkstown. You
15 started off saying that was not so. Then I asked you,
16 "Well, when was it?" You said you couldn't remember.
17 Quite understandably so. But how is the Sole Member to
18 decide when it was, if he has positive testimony from
19 one witness that it was at a particular point, or
20 sequence, part of a sequence? Do you see my point?

21 A. Mm-hmm.

22 23 Q. Is there any feature of it that you can point to which
23 would assist on the issue of identifying the point in
24 time when it occurred?

25 A. I think it might have been back even further than that,
26 sir, because around about the - in or around about - I
27 think it was '74, we had properties in, we had a
28 portfolio of property, and I think there was some rent
29 reviews around that time. That was one thing. But
30 anyway, I remember McGowan, this is at different times,

1 sir, I can't give you the exact thing, but it was at
2 different times back over a period asking and looking -
3 he was sort of a person who would always go back. He
4 was pushy when it came to things like this at times.
5 He would like to get the opportunity.
6 .
7 Now, there is one thing that - at that time that I
8 would say that commercial, the commercial property
9 would have been one of my fortes, that would be
10 something that I would know, I would have known as much
11 as anybody about.

12 24 Q. They were looking, really, for development land rather
13 than commercial property, isn't that right?

14 A. I think it is like anything else. If you look at the
15 natural progression of a lot of builders, is that
16 whilst they build houses, a lot of them have gone into
17 - it has been a lot of their ambitions to go into
18 commercial property. Some have, and some have done
19 very well, and others have not done so well.

20 25 Q. I take it, it would be fair to say that all house
21 builders would be on the lookout for a prospect of
22 finding land to build some houses. I am quite sure
23 that Brennan and McGowan were not at the back of that
24 particular queue, and would have been making inquiries
25 not only from yourself, but from anybody else that they
26 might have thought might have had a possibility for
27 them. Isn't that right?

28 A. Yes, sir.

29 26 Q. In your case, as we understand the position, some sort
30 of an arrangement or an agreement was entered into at

1 some point in time?

2 A. No, sir. What I am saying to you is this: They did
3 say to me, because I did have a similar circumstances,
4 actually, where I was involved with two parties, where
5 I held a fair amount of commercial property which
6 worked out very well, actually.

7 27 Q. But did you have any particular arrangement of any kind
8 with Brennan and McGowan?

9 A. No, sir, but the only thing is this: They knew the
10 parties, because I am not going to mention now - they
11 said, "Look, if you have anything, we could do
12 something like that." In fact, they did ask, at one
13 stage, would I sell one of the properties we were
14 involved in? I said "no".

15 28 Q. Depending on how one interprets Mr. Brennan's evidence,
16 you might have had an arrangement at the start which
17 covered all of these deals, or under which all of these
18 deals ultimately came, or you could have had a separate
19 agreement for each one?

20 A. Sir, no. The arrangement which I had with Brennan and
21 McGowan, through Hugh Owens, I explained that I was
22 invited in to get - to participate, and what we
23 explained, talked about, the future profits. This is
24 what - that's the arrangement I had with them.

25 29 Q. Mr. McGowan was a little bit more specific, in that he
26 appeared to be suggesting that there was a sort of an
27 overall on-going arrangement entered into sometime, at
28 some point in time, but certainly prior to the
29 Carrickbrennan sale?

30 A. Well, the only thing that we did discuss then, that we

- 1 looked at that, he was looking at - and which was hard
2 to get, by the way, was a commercial property.
- 3 30 Q. Well, did you at any time arrive at an agreement with
4 Brennan and McGowan under which, from then on, you were
5 all going to, as the opportunities arose, embark upon
6 commercial relations with each other, if I might put
7 it that way?
- 8 A. I think that the first - the first transaction which,
9 when we were asked - this was, as I say, the brainchild
10 of Hugh Owens - to get involved, was in the Monkstown -
11 that this was going to be, this was what we call the
12 "front-loading" in and out, sort of proposition.
- 13 31 Q. Is this Mr. McGowan? It was Mr. McGowan?
- 14 A. Sorry?
- 15 32 Q. Was it Mr. McGowan that asked you?
- 16 A. I think it was, actually. It was either McGowan -
17 through Owens, or Owens through McGowan.
- 18 33 Q. Was it Mr. Owens that approached you?
- 19 A. I think you can take it, it was McGowan told us, told
20 me that he had, that Hugh Owens had an idea and a
21 scheme, and asked me, would I participate in it,
22 sir.
- 23 34 Q. And when was that? Was that before the Monkstown sale,
24 for example?
- 25 A. No, sir.
- 26 35 Q. Well, when was it?
- 27 A. That was sometime - it was well after the deal had been
28 done, the sale had been done, had taken place. The
29 contracts had been entered into and the deal was done
30 for the sale of the lands in Monkstown to Brennan and

1 McGowan.

2 36 Q. Well, keeping the focus of your attention on the
3 proposition that was being put to you by Mr. McGowan,
4 what was the proposition?

5 A. The proposition was, which I have explained on many
6 occasions to you, sir, was that the position that they,
7 that his accountant had come up with a scheme, all of
8 which he couldn't explain to me, but it was that he did
9 have, it was an interesting scheme, which was going to
10 take into account with their, whatever, agreement, a -
11 the extraction of the future profits, which I mentioned
12 to you, out of the scheme, and this would have, and
13 that I was invited to --

14 37 Q. The scheme related to what?

15 A. Mmm.

16 38 Q. What did the scheme relate to?

17 A. What we discussed yesterday, sir.

18 39 Q. If you just remind me?

19 A. Well, the scheme was that, that what they would do is,
20 that they would look at extracting calculating what
21 they could sell on to one of their companies,
22 calculating the figure that it would, as much - they
23 could - as much as they could get out of the front
24 loading of that.

25 40 Q. Sell what, Mr. Finnegan?

26 A. What?

27 41 Q. Sell what?

28 A. Their interest.

29 42 Q. In what?

30 A. In the property.

1 43 Q. Which property?

2 A. Mmm?

3 44 Q. Which property?

4 A. They would sell on their interest in the Monkstown
5 property.

6 45 Q. Yes. So that the scheme that was proposed to you
7 related to the Monkstown property?

8 A. The Monkstown property, yes, sir.

9 46 Q. Which you had, on behalf of the nuns, sold to them the
10 previous August?

11 A. Yes, sir.

12 47 Q. We know that the scheme, as you refer to it, that Mr.
13 Owens put together, in relation to this property, and
14 certainly the only scheme that we know about that Mr.
15 Mr. Owens put together in relation to this property,
16 was done in or before June of 1977?

17 A. Mm-hmm. Yes, sir.

18 48 Q. So is it your evidence, then, that the time that you
19 were approached by Mr. McGowan and invited to
20 participate in some scheme involving this land, was
21 after the nuns had signed the contract to sell, but
22 before the sale was closed?

23 A. After the contract, the nuns had signed the contract,
24 the sale of, and the sale of the leasehold and
25 freehold.

26 49 Q. After the sale of the freehold?

27 A. Yes, sir.

28 50 Q. But the freehold wasn't sold until, I think, October?

29 A. Well, I think that may have been --

30 51 Q. Sold, that is - let's be clear now. The nuns agreed to

1 buy it in December, but it was sold from the Estate to
2 Bouganville in October?

3 A. Yes, but I did - I just wanted to remind you, sir, what
4 did happen; that when we, we had advised the nuns to
5 take in the freehold of the property, and we had agreed
6 terms on it. It was - the terms were agreed for the
7 acquisition of it for approximately ú10,000. That
8 formed part of the deal that was done with Brennan and
9 McGowan for the sale - their purchase was for the
10 leasehold and the freehold at that time. Now, it took
11 some time for the legal documentation of that, but the
12 deal was done.

13 52 Q. Yes, I understand that. So that before June of 1977
14 you had agreed to embark upon a, we will use a neutral
15 phrase, a "venture" with Messrs. Brennan and McGowan
16 involving the lands in Monkstown, but involving a
17 scheme being put together by Mr. Owens, is that right?

18 A. Yes, the scheme - yes, sir.

19 53 Q. Yes. Now, is it your evidence, then, that this was
20 the first time that you agreed with Messrs. Brennan and
21 McGowan or had any form of agreement with Messrs.
22 Brennan and McGowan or understanding that you would
23 embark upon a commercial venture with them?

24 A. Yes, sir, this was a special situation.

25 54 Q. Yes. Is it your evidence that at no stage prior to
26 the sale of the nuns' lands in Monkstown, that is prior
27 to August 1976, was there any agreement reached between
28 yourself and Brennan and McGowan about embarking upon
29 any kind of a joint venture or scheme, of a commercial
30 nature?

1 A. To the best of my knowledge and belief, no, sir.

2 55 Q. Yes. Well, that's really all I wanted to find out.

3 .

4 That is not what Mr. McGowan has told us, as you know.

5 Mr. McGowan has told us that there was such an

6 agreement or understanding between you prior to the

7 sale of the nuns' land in Monkstown. That is what he

8 said. If I just refer you to question, Day 291,

9 question 228.

10 .

11 "So in these circumstances how was it agreed that Mr.

12 Finnegan was entitled to share one-third if the profit

13 of the transaction?

14 Answer: Because that is the arrangement we had with

15 Mr. Finnegan. I don't know, it could have been a year

16 or two years prior to that."

17 .

18 And at question 238.

19 .

20 "Question: You said that you had your discussion with

21 Mr. Finnegan some two years approximately prior to this

22 transaction?

23 Answer: It could have been. And it could have been a

24 year and whenever, yes.

25 Question: And you said that from the very moment that

26 Mr. Finnegan introduced this land to you, that it was

27 agreed between the three of you that this was a

28 transaction, of which the profit, if there was any,

29 would be divided one-third, one-third, one-third?

30 Answer: That's correct."

1 .
2 So, Mr. McGowan's evidence is fairly clear, that from
3 the very outset of the transaction, this is the
4 Monkstown transaction, there was an agreement between
5 the three of you that you would each share in the
6 profit, if there was a profit as to one-third each?

7 A. That is not my understanding, sir.

8 56 Q. I see.

9 .
10 Can we move on to the Donnybrook transaction, and could
11 I ask you in the first instance just to tell me --

12 .
13 CHAIRMAN: Well, before you actually move on to that.
14 It is just coming up to 12 o'clock. We will break
15 rather than break in the middle.

16 .
17 MR. HANRATTY: Yes indeed.

18 .
19 CHAIRMAN: A quarter past 12.

20 .
21 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
22 RESUMED AGAIN AS FOLLOWS.

23 .
24 57 Q. MR. HANRATTY: Mr. Finnegan, I was asking you about the
25 Donnybrook deal. Could you just tell us in your own
26 recollection what, how did that come about and how did
27 you come to be involved in it?

28 A. All right, sir.

29 .
30 First of all, the Donnybrook land is land which is off

1 the Merrion Road, the back of that hotel on the Merrion
2 Road, and also, just abutting at some stages the back
3 of Elm Park.

4 .
5 This is - there was a piece of land here which the
6 Pembroke Estate had, and it would have been a balance
7 of land, we would call it, which would be in-hand, so
8 it hadn't been dealt with before by anyone. It would
9 have been a remainder of the other lands around.

10 .
11 There was transactions - under good estate management
12 Pembroke had done an exchange with Elm Park and the
13 adjoining site, which was part of the Sisters of
14 Charity - they exchanged some lands there as well.

15 There was some - and also, there was a question of
16 drainage. So the site, when I say "in-hand", it had
17 been there forever. So having put it together, the
18 Estate having put it together, bits and pieces here and
19 there, we, the Estate made a planning application,
20 which was some time previously, a planning application
21 for a residential development, which was obtained. It
22 was up that laneway. Well, I can't say "that laneway".
23 You probably wouldn't know it. It is up the little
24 road up from the hotel.

25 .
26 Now, when the planning permission came through, there
27 were some questions, though, about actual drainage, and
28 there were wayleaves to be got, and one thing and
29 another, which were obtained. It was then decided by
30 the Estate now that - after this work being put into

1 it, that it should be disposed of.

2 .

3 Now, I think that - I would like to say to you, at this
4 particular time, a decision had been made by Pembroke
5 to run down these sort of properties and to sell them
6 off at the best fair price, once we had done whatever
7 we should do, to put them in order for sale. So this
8 one came under that heading.

9 58 Q. Can you perhaps just explain in this context, Mr.
10 Finnegan, what was your role in the Pembroke Estate?

11 A. In the Pembroke Estate, I was a director of various
12 companies, which were, if you like, managing the
13 Estate.

14 59 Q. Yes. And what was your particular role?

15 A. Well, my particular role would be - I was one of a
16 number of directors, and my particular role would be
17 giving whatever property advice I could along the line.
18 And we did have, also, an in-house staff, within
19 Pembroke, which included a manager as well.

20 60 Q. Was that Mr. Cassidy?

21 A. Yes.

22 61 Q. Yes. He would have been employed by Pembroke Estates
23 Management Limited?

24 A. Yes.

25 62 Q. Yes. And he would be the man dealing with the
26 implementation of the, on a day-to-day basis of the
27 decision of the Board?

28 A. Yes, sir.

29 63 Q. Yes.

30 A. He would be the coordinator, yes, sir.

1 64 Q. Would I be right in thinking that the Pembroke Estate
2 is, in effect, property which is the subject of a
3 series of Pembroke Trust or Pembroke family trusts?

4 A. It is hard to go down through the whole - yes, it is
5 owned by - well, there was a mixture of holdings, sir,
6 that - some which were owned by Lord Pembroke, his
7 Trust, and then there were various other ones.

8 65 Q. Yes. Well --

9 A. They were a mixture.

10 66 Q. There is reference in the documents to the Lord
11 Pembroke 1960 Trust and 1972 Trust and so on. There
12 were other trusts as well, I think, is that right?

13 A. There was a reorganisation of the Estate in around the
14 period of time which you are talking about. This was
15 when the various things --

16 67 Q. In its broadest term, which I think is really
17 sufficient for our purposes, it was a bank of property
18 held on trust, but which was managed by a series of
19 companies which were set up for that purpose. In fact,
20 being held and managed by a series of companies, isn't
21 that right?

22 A. They were transferred into various properties.

23 68 Q. Were those companies owned by the Trusts?

24 A. Yes, sir.

25 69 Q. In some of the - some of the companies were called, for
26 example, Merrion Estates Limited, or Merrion Holdings
27 Limited?

28 A. Mm-hmm.

29 70 Q. "Holdings" suggesting that it might be a holding
30 company to own property; is that the kind of general

1 scheme that they would have had?

2 A. Yes. I think that would - yes, sir, that would be, and
3 that would come into properties that were rent and
4 probably income-producing, and there was a holding and
5 others would have been put into companies that might
6 have been traded.

7 71 Q. Yes. As I understand it, in the early '70s the
8 companies were called Mount Merrion, in one case Mount
9 Merrion Holdings Limited, and in another case Mount
10 Merrion Properties Limited, is that right?

11 A. Yes, sir.

12 72 Q. That was before the reorganisation which gave rise to
13 Herbert Estates Limited and Herbert Properties Limited,
14 would that be right?

15 A. I am not quite sure estates - I thought they were all
16 --

17 73 Q. I won't be dogmatic on the point. For example, Mount
18 Merrion Holdings Limited was an Irish company?

19 A. Oh, yes, sir.

20 74 Q. And the directors of that were yourself, Mr. William
21 Grantham Lewis, Mr. William Forwood, Mr. Mungo Park,
22 and Mr. John Roome. Mr. John Roome, he was a London
23 solicitor?

24 A. Yes, sir.

25 75 Q. And the shareholders of that company were Mars Nominees
26 Limited and the Trinity Trust Agency Company Limited,
27 which were effectively Guinness & Mahon companies,
28 isn't that right?

29 A. Yes, sir.

30 76 Q. Now, does that mean that the Estate belonged to

1 Guinness & Mahon, or what was the role of Guinness &
2 Mahon in it?

3 A. The role of Guinness & Mahon - you see, Mr. Forwood,
4 Mr. William Forwood, who was a London solicitor, he
5 came over to Dublin to take over a senior position in
6 Guinness & Mahon.

7 77 Q. Yes?

8 A. And Mr. Roome was the senior partner in with us.

9 78 Q. Yes. And I think these individuals were also
10 directors of the management company, if you call it
11 that, Pembroke Estates Management Limited, isn't that
12 right?

13 A. Yes, sir.

14 79 Q. Which was the one which employed Mr. Cassidy?

15 A. Yes, that's right.

16 80 Q. What was Mount Merrion Holdings Limited for? What was
17 the business of that company?

18 A. Well, I am not quite sure where the - by the way, when
19 we were dealing with the properties, we were dealing
20 with the properties, and it so happened and they would
21 have designated as so-and-so.

22 81 Q. But it was all done, as we understand it, through
23 Pembroke Estates Management Limited, and perhaps as a
24 secondary consideration somebody would have to figure
25 out which company is dealing with this one when some
26 transaction was effected?

27 A. Yes.

28 82 Q. There was another company we know called Mount Merrion
29 Properties Limited, which was also a Dublin registered
30 company, but in which case, at some stage at least,

1 Herbert Properties Limited was the owner of most of the
2 shares in it?

3 A. Right, sir, if that's --

4 83 Q. Do you have any idea what the difference between the
5 two of them or what the respective functions, to put it
6 that way, was?

7 A. I think that the only thing I could, maybe to help you
8 somewhat on it, to give you an idea, that income
9 producing properties and ground rents, what we had,
10 which we had a lot.

11 84 Q. Yes?

12 A. Were then the income-producing - they were usually in
13 one company.

14 85 Q. Yes?

15 A. And then the others, there were - in the very
16 settlements which I was involved in, there were
17 different properties settled on --

18 86 Q. To cut it short, it seems to be something to separate
19 out different kinds of businesses and different kind of
20 companies?

21 A. The various companies.

22 87 Q. What is the connection with Guinness & Mahon and the
23 Pembroke Estate, in the sense that these Guinness &
24 Mahon companies appear to have owned this company,
25 Mount Merrion Holdings Limited?

26 A. Well, I think the connection between the Pembroke
27 Estate and G&M would be that Mr. William Forwood was
28 the, was brought in, came over to Ireland to run G&M,
29 at one stage, many, many years ago.

30 88 Q. Yes?

- 1 A. So he was the boss of Guinness & Mahon.
- 2 89 Q. In 1971?
- 3 A. Now - yes.
- 4 90 Q. Certainly in 1971 was when this company was
- 5 incorporated?
- 6 A. Well, around that - way back in those days he was the
- 7 boss then of Guinness & Mahon.
- 8 91 Q. Well, was Mount Merrion Holdings Limited a Pembroke
- 9 Estate company?
- 10 A. As far as I recollect, yes, sir.
- 11 92 Q. Yes. And was Mount Merrion Properties Limited a
- 12 Pembroke Estate company?
- 13 A. Yes. Yes, sir.
- 14 93 Q. Because we do know that it had the same directors as
- 15 the other company, but why then did Guinness & Mahon
- 16 own the company?
- 17 A. God, I don't know. One thing I can say to you, G&M did
- 18 not have any interest in the Pembroke Estate, apart
- 19 from any management role there might have been.
- 20 94 Q. Would they have owned it in some kind of a nominee or
- 21 trustee capacity?
- 22 A. Maybe.
- 23 95 Q. I know that Guinness & Mahon did have a trustee
- 24 company, Guinness & Mahon Trust Limited, and Property
- 25 Management Limited, but this isn't the case here.
- 26 These are just Mars Nominees Limited and Trinity Trust
- 27 Agency Limited - Trinity - the Trinity Trust Agency
- 28 Company Limited, which is another Guinness & Mahon
- 29 company?
- 30 A. I think, probably to give you the background, whatever

1 way they were, if they were structured around, that
2 the, the ownership would go back to the Pembroke
3 connection rather than --

4 96 Q. Right?

5 A. You know, Guinness & Mahon having a --

6 97 Q. All right?

7 A. -- owning --

8 98 Q. There was some kind of a reconstruction in 1976 or a
9 rearrangement of the companies, which were involved in
10 the Pembroke Estate?

11 A. Yes, sir.

12 99 Q. And in February of 1976, Mount Merrion Holdings Limited
13 was wound-up, isn't that right? We have been shown
14 records which suggest that Mr. Samuel Field-Corbett was
15 appointed a liquidator of that company?

16 A. Well, this is the sort of thing - by the way, that sort
17 of, this end of the business would have been run by -
18 Mr. Forwood was a lawyer as well.

19 100 Q. Mr. Forwood. Yes?

20 A. He was, in fact, a trust lawyer - anything to do with
21 that sort of structuring would have been done, headed
22 up by him.

23 101 Q. Yes?

24 A. So the fact that I mightn't just be able to remember
25 for you, sir, exactly where, what time of year, because
26 that would be part of his role, but you know, I take
27 --

28 102 Q. I understand what you are saying. But on the 24th of
29 February, 1976, Mr. Field-Corbett, having been
30 appointed, gave notice of his appointment to the

1 Companies Office as liquidator to this company, and he
2 produced subsequently an account showing the
3 distribution of the company's assets, and the assets
4 consisted of preference shares which were distributed
5 as to 17,500 of the Trustees of the Pembroke 1970
6 settlement. So clearly this is something to do with
7 the, at least one of the Pembroke Trusts. In fact, all
8 of the preference shares went to that particular
9 entity. Then the Ordinary Shares, ú296,800 went to a
10 company called Gombrette Limited?

11 A. Which?

12 103 Q. Gombrette - G-O-M-B-R-E-T-T-E.

13 .

14 Now, we have ascertained that Gombrette was a Jersey
15 company that was dissolved in April of 1992.
16 Unfortunately, the file has been destroyed. But who
17 was Gombrette Limited, or at least who owned Gombrette
18 Limited?

19 A. Actually, even when you were just mentioning the name,
20 it doesn't come to - it doesn't come to pass.

21 104 Q. The next biggest tranche in the shareholding of this
22 company was distributed to the Pembroke 1966 Settlement
23 in the sum of ú173,000-odd. Then Mr. Roome got
24 ú40,800. And the total capital at the time was
25 528,500.

26 .

27 So, that is the liquidator's account of Mount Merrion
28 Holdings Limited, and what happened between then and
29 the following month, unfortunately, we don't know, but
30 we do know that the following month Herbert Properties

1 Limited, which is involved in a number of these
2 transactions we are going to be talking about was
3 formed. And Herbert Properties Limited, as you know,
4 was a Bedell & Cristin company, in Jersey?

5 A. Mm-hmm.

6 105 Q. Now, what was the nature of the reorganisation, as you
7 can recall it, that was done which produced Herbert
8 Properties Limited and indeed Herbert Estates Limited?

9 A. I can always try and get more information on this. I
10 think the segregation of the properties that would be
11 there for - I am not quite sure what entity that was,
12 but for disposal. I think that is what was in the mind
13 of what was - you see, there was a view taken that -
14 there was a rundown of certain properties to dispose of
15 as they were fit. But in the general - there was a
16 general decision made to sell, and I think that - but
17 some of them - there would be a bank of
18 income-producing, as I say, ground rents, and I think
19 that this could come in - I am not quite sure which
20 would have been the one that would hold - I think you
21 mentioned earlier there, sir; I think some of them
22 would, were trading companies, some of them were
23 trading companies and some of them were investment. I
24 am not quite --

25 106 Q. I understand that. If I am correct in believing that
26 Mount Merrion Holdings Limited and Mount Merrion
27 Property Limited were, as it were, the predecessors of
28 Herbert Properties Limited and Herbert Estates Limited
29 - am I correct about that, first of all?

30 A. If I seem in any way - it is just having got - if

1 that's the sort of events, because anything that is
2 there would have been what happened.

3 107 Q. You were undoubtedly director of the Mount Merrion
4 companies which were Irish registered companies?

5 A. Yes.

6 108 Q. But, for example, in the case of Herbert Properties
7 Limited, this was registered in Jersey on the 4th of
8 March, 1976, and the subscribers to that company are
9 listed as our old friend Mr. Wheeler, and other
10 partners in the firm of Bedell & Cristin in Jersey, but
11 the shareholders of that company were listed then as
12 four companies:
13 OH Securities Limited, which held most of the shares in
14 that company, in fact, 1,464.
15 R&H Investments Limited.
16 Woodbourne Nominees Limited.
17 And Herbert Estates Limited, which was formed on the
18 same date.

19 .
20 And in the case of Herbert Estates Limited, the
21 shareholders were again OH Securities, R&H Investments,
22 and Woodbourne Nominees, but in this case Tops Trustees
23 Limited.

24 .
25 Now, in general, without necessarily identifying the
26 owner of each of these companies, may I take it that
27 these are nominee companies, first of all?

28 A. I would think so, sir.

29 109 Q. And may I take it that they were nominees ultimately of
30 the Pembroke Estate interests?

1 A. Yes, sir.

2 110 Q. And were you a director of these companies, that is
3 Herbert Estates Limited and Herbert Properties Limited?

4 A. I am getting mixed up in exactly which one --

5 111 Q. Herbert Properties Limited, for example, was the one
6 that was involved in Donnybrook, and I think, if I am
7 not mistaken, Tritonville Avenue as well, and also,
8 perhaps, the Herbert Street Plantation property. So
9 were you a director of the companies that were dealing
10 with those transactions?

11 A. Herbert Street - as far as Herbert Properties, as far
12 as I recollect, yes, sir.

13 112 Q. The reason I ask is that in the case of these
14 companies, in Jersey, for some reason the directors are
15 not listed?

16 A. Oh.

17 113 Q. Therefore, we don't know from the records, but we have
18 inferred or assumed, subject to anything you might tell
19 us to the contrary, that you probably were with Mr.
20 Grantham Lewis, Forwood, Roome and Mungo Park?

21 A. I would, yes, sir. But if there is any clarification,
22 I can try and get it.

23 114 Q. Yes. So, is it the position that for - presumably, on
24 some professional advice, or for some management
25 reasons, the Pembroke Estate decided to move the seat
26 of its base from Ireland to Jersey?

27 A. And trading in Dublin.

28 115 Q. Most of the properties, I think, are held in Ireland?

29 A. The actual sort of background of that, I wouldn't have
30 been - I wouldn't have been a full party. I think that

1 would be the principle.

2 116 Q. I am sure it was for perfectly legitimate tax reasons,
3 perhaps for the purpose of tax legislation, one can
4 speculate. I mean, for its own reasons, this appears
5 to have happened at this point in time, but I take it
6 you would have been involved, you and the Board,
7 presumably, would have been involved in the decisions
8 that were taken at that time, and would have been aware
9 as to what steps would need to be taken to achieve this
10 reorganisation?

11 A. I think you can - you could take it, sir, that the
12 main, the closest person on this would be John Roome.

13 117 Q. Yes?

14 A. John Roome was the senior partner of Withers in London.
15 He was the direct link with the Estate, with Pembroke.

16 118 Q. Yes?

17 A. He was the officer there.

18 119 Q. Well, I did ask you yesterday --

19 A. Yes.

20 120 Q. -- specifically whether you were aware at this point in
21 time, Bedell & Cristin was the new registered office of
22 these new companies, of which you, we believe, were a
23 director, as part of this reorganisation, and I asked
24 you specifically, was it a coincidence that later in
25 1976 Brennan and McGowan entered into a deal involving
26 lands at Monkstown, in respect of which they
27 subsequently set up two Jersey companies in the same
28 firm of solicitors?

29 A. Yes, absolutely, because I think you can - that the
30 main - Withers acted for the, for the Estate in the UK,

1 and definitely whatever - so I would imagine that
2 anything that was coming, that the structuring, the
3 main emphasis on things would have been done from
4 there, there is no doubt about it. John Roome was the
5 - with William Forwood.

6 121 Q. Is it not possible, for example, that when the time
7 came for Messrs. Brennan and McGowan - first of all,
8 when - as you say, sometime prior to June, they
9 approached you with the scheme, that they were,
10 presumably, advised by Mr. Owens would require two
11 Jersey companies, that you might have suggested Bedell
12 & Cristin because you already knew Bedell & Cristin, or
13 at least knew them, were familiar with them, in the
14 sense that they were the company that was dealing with
15 Herbert Properties Limited and Herbert Estates Limited?

16 A. I think you can take it, sir, that would sort have been
17 the thing that would have been glossed, if you liked.

18 I wouldn't have picked up on that in particular --

19 122 Q. So you suggested --

20 A. There is no doubt about it.

21 123 Q. -- that Bedell & Cristin --

22 A. No, I didn't.

23 124 Q. You are clear about that?

24 A. To the best of my knowledge and belief, sir.

25 125 Q. We have had evidence from Mr. Conlon, for example, that
26 the reason that he used them - he is a solicitor who
27 acted for Mr. Ray Burke?

28 A. Yes.

29 126 Q. He said that the reason that he wrote to Bedell &
30 Cristin to set up Mr. Burke's company, called Caviar

1 Limited, or as it ultimately was called Caviar Limited,
2 was that he had previous dealings with Bedell &
3 Cristin, and that therefore he knew them, and that when
4 Mr. Burke wanted an offshore company set up in Jersey,
5 he immediately wrote to a company with which he says he
6 was already familiar.

7 .

8 I take it Mr. Conlon never approached you for any
9 information about Jersey companies?

10 A. No, sir.

11 127 Q. But anyway, you are quite clear you were not the source
12 of the information about Bedell & Cristin?

13 A. No, sir, I wasn't.

14 128 Q. Or involved in the discussions which ultimately lead to
15 this firm being used to set up the Bouganville and
16 Rapallo companies?

17 A. No, sir, I think that they - I understand - as I
18 understand, they are the only people - they are one of
19 the - I think Bedell & Cristin are a fairly big
20 organisation. I think they do most of the work out
21 there.

22 129 Q. Well, there are a number of firms, we understand, in
23 Jersey providing trust and administration services?

24 A. Okay.

25 130 Q. But you may well be correct in suggesting that they are
26 among the biggest. After the two companies were
27 established, we know that that happened sometime
28 subsequent to June of 1977. Presumably, somebody told
29 you at some point that the companies were registered
30 with Bedell & Cristin in Jersey, Bouganville and

1 Rapallo, that is?

2 A. Mm-hmm. Yes, sir.

3 131 Q. And would that have rung a bell in your mind in the
4 sense that, "Oh, that is the same firm that Herbert
5 Estates Limited and Herbert Properties Limited are
6 registered in as well?"

7 A. No, sir, because I tell you, just to give you a
8 flavour, that sort of thing, the reason for this would
9 be that - I wouldn't have been - if I had been involved
10 in a lot of all of this work, I might have recollected
11 it, or maybe there might have been - you see, I wasn't
12 on the front line of any of this. This was all done,
13 the Pembroke business was done by - for that sort of
14 thing - probably, actually, was done out of London,
15 actually.

16 132 Q. Well, most of the business in Ireland was done by
17 Pembroke Estates Management Limited, mainly by Mr.
18 Cassidy?

19 A. Cassidy, yes.

20 133 Q. Almost exclusively by Mr. Cassidy, as far as we can
21 see?

22 A. Yes.

23 134 Q. And, in fact, Pembroke Estates Holdings Limited, which
24 is another company, was a company which was registered
25 in Ireland in the same month as Herbert Estates Limited
26 and Herbert Properties Limited were registered in
27 Jersey, except it was slightly later in the month, it
28 was on the 25th of March of 1976. Can you recall what
29 Pembroke Estates Holdings Limited was set up for?

30 A. Not offhand, sir. It is - to me it would be just part

1 of the overall group. Perhaps I should know more about
2 it, but I don't. I think "Holdings" could be the one
3 which - some properties that might be sold on --

4 135 Q. Yes?

5 A. -- were passed into. You see, there was a bit of
6 segregation which was done, by the way, and a lot of
7 this was done by Philip Cassidy sorting out the various
8 properties that might be put into the various
9 companies.

10 136 Q. Yes. In fact, I have just been given a document which
11 does record the fact that you, yourself and John Mungo
12 Park and William Forwood were, in fact, directors of
13 the Estates Limited, although it is not recorded in the
14 original register. It is Document 4682. In fact, as I
15 recall it, there is another document, I just don't have
16 the page number, where you signed a document in your
17 capacity as a director of this company?

18 A. Right.

19 137 Q. We will come to that in its place, I think, but you can
20 see that the document there is the subsequent register,
21 obviously?

22 A. I see my name on it.

23 138 Q. In fact, I think this may be an extract from the Irish
24 register.

25 .

26 CHAIRMAN: We have a problem with the stenographer.

27 Just a moment.

28 .

29 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
30 RESUMED AGAIN AS FOLLOWS:

1

2 139 Q. MR. HANRATTY: Mr. Finnegan. Yes. The document on
3 screen, Mr. Finnegan, appears to be an extract from the
4 Irish register after a subsequent registration in
5 Ireland of an offshore Jersey company, and it indicates
6 on that page that you and Mr. Forwood and Mr. Mungo
7 Park were the directors of the company. So that
8 appears to confirm what you have already told us.

9 A. Yes, sir.

10 140 Q. Now, Herbert Properties Limited is, in fact, the
11 company that sold this three acre lot to Brennan and
12 McGowan, isn't that right?

13 A. Yes, sir.

14 141 Q. Now, you had started to tell us about that. You had
15 mentioned about getting in various bits and pieces from
16 the Sisters of Charity, sorting out drainage issues,
17 and also an issue with Elm Park, isn't that right?

18 A. Yes, sir.

19 142 Q. Ultimately, I think what was done here was that land
20 which had a number of issues outstanding which would,
21 to a greater or lesser extent, render it not terribly
22 attractive for development, was the subject of
23 arrangements which ultimately made it much more
24 marketable, isn't that right?

25 A. Yes, sir.

26 143 Q. And that involved a right-of-way issue with the Sisters
27 of Charity, who owned adjoining land and Elm Park and
28 so on, and ultimately involved applying for planning
29 permission for houses?

30 A. Yes, sir.

1 144 Q. I think, as far as we can see, the first planning
2 permission that was applied for and obtained was in
3 July of 1974, and that was actually obtained through
4 Finnegan Menton. It was an outline planning
5 permission. And another outline planning permission
6 was obtained in 1975. Can you recall why a second
7 outline permission, or perhaps was it a different
8 outline or something?

9 A. I can't remember the detail, but - I can't remember
10 exactly why, but it might have been they wanted some
11 confirmation at some point.

12 145 Q. Yes. But both of them were obtained through Finnegan
13 Menton. So, not only would you have been acting for
14 the Estate in your capacity as a director of these
15 companies, including the Irish registered management
16 company and the Jersey registered holding companies, if
17 that is what they were, but you would have been acting
18 for the Estate in your capacity as auctioneer as well?

19 A. Yes, sir, I think that the - it may have been just
20 policy that the Estate would, preferred not to make the
21 application themselves, that there be another party,
22 and in those days you could do it.

23 146 Q. Yes, yes. They may have, for commercial reasons, not
24 wished their identity to be associated with the
25 application?

26 A. Yes, and that would be the sort of thing.

27 147 Q. So this is why Finnegan Menton would have made the
28 application?

29 A. Yes, sir.

30 148 Q. But did Finnegan Menton not also act for the Estate in

1 the disposition of the property?

2 A. As in - that I was involved - you can take it as I

3 would have been involved in Pembroke.

4 149 Q. Yes?

5 A. Yes, sir.

6 150 Q. Yes. What happened, or what appears to have happened,

7 is that, on either the 25th of March, 1976, or the 31st

8 of March, 1976, there was a conveyance from the Estate

9 to Herbert Properties Limited. And could you just

10 assist us in what was the purpose of that particular

11 transaction.

12 .

13 The conveyance was from Lord Conyngham and Others with

14 Frances Haskin and Others, from the company which had

15 been recently formed earlier that month, in fact,

16 Herbert Properties Limited, and it was a conveyance in

17 two lots. It was 2.5 acres at Bellevue for ú90,000,

18 and .5 of an acre at Bellevue for ú15,000. If we just

19 look at page 4869.

20 .

21 This appears to be - yes, it is a letter from Mr.

22 Cassidy to Mr. Richardson in Moore Kiely and Lloyd, who

23 were the solicitors acting for the Estate, isn't that

24 right? It is dated the 29th of September, it looks

25 like 1988. And it is: "Re Pembroke Estate and Sisters

26 of Charity, Bellevue Avenue and Lakelands."

27 .

28 "We refer to your letter of the 19th of September and

29 enclose herewith the following as requested:

30 .

- 1 1. Deed of Conveyance dated 25th of March, 1976. Lord
 2 Conynghan and Others with Frances Haskin and Others.
 3 .
- 4 2. Counterpart lease, dated 21st June, 1980. Lord
 5 Pembroke with Margison and Others.
 6 .
- 7 3. Counterpart lease, dated 12th August, 1902. Lord
 8 Pembroke with Kennedy.
 9 .
- 10 4. Counterpart lease, dated 18th November, 1930. Lord
 11 Pembroke with Miss Gladys Roche and Others."
 12 .
- 13 I think the first one is probably the one that we are
 14 dealing with here, and that is a Deed of Conveyance
 15 from Lord Conynghan and Others with Frances Haskin and
 16 Others to Herbert Properties.
 17 .
- 18 Who is Lord Conynghan?
- 19 A. Lord Conynghan, he was one of the old trustees of part
 20 of the Pembroke Estate.
- 21 151 Q. Yes. Well, this is what puzzles me.
 22 .
- 23 Why would the Pembroke Estate be conveying for value a
 24 portion of its property, in fact, this three acres that
 25 we are dealing with in Donnybrook, to a company owned
 26 by the Pembroke Estate?
- 27 A. You just mentioned earlier there, that there were two,
 28 two pieces of land.
- 29 152 Q. Yes, there was two lots, 2.5 acres and .5 of an acre?
 30 A. Yes.

1 153 Q. Yes. And there was a separate value placed on each in
2 the conveyance of 90,000, in the case of the 2.5 acres;
3 and 15,000 in the case of the .5 of an acre. That
4 makes up the full three acres and it amounts in total
5 to ú105,000.

6 .
7 There is another document that might assist. It is
8 page 4873. This is, in fact, on the 28th of March,
9 1977, it is from Mr. Cassidy to Mr. Richardson, where
10 he says:

11 .
12 "I will be sending you instructions within the next few
13 days on a sale to Brennan and McGowan. Their
14 solicitors are Miley & Miley.

15 .
16 In the meantime, would you please send me the following
17 conveyances:

18 .
19 1966 Trustees to Herbert Properties - land at Bellevue
20 (two and a half acres) - ú90,000.

21 .
22 1966 Trustees to Herbert Properties - half an acre at
23 Bellevue - ú15,000."

24 .
25 So that the Trustees of the Pembroke Estate, are, it
26 appears, selling money to a Jersey company owned by the
27 Pembroke Estate?

28 A. Yes, it does. Yes. Yes, sir.

29 154 Q. Why would they do that?

30 A. Well, again, I am afraid I can't say unless I were to

- 1 take a stab at it, unless this was good estate
2 management - good management within the Estate to do
3 this.
- 4 155 Q. But they were charging themselves ú105,000 to do it, if
5 you see my point?
- 6 A. Yes. And where did that go into?
- 7 156 Q. Well, we don't know. All we know is that there were,
8 in fact, or there appear to have been two conveyances,
9 or let's say a conveyance of the two lots, in which a
10 Jersey company, on the face of it, at least, appears to
11 have paid ú105,000 to a Jersey company owned by the
12 Pembroke Estate, appears to have paid ú105,000 to the
13 Pembroke Estate for property owned by the Pembroke
14 Estate?
- 15 A. Yes, sir.
- 16 157 Q. Why --
- 17 A. Why, yeah.
- 18 158 Q. This is, as you are aware, the property that was then
19 subsequently sold by this company to a Brennan and
20 McGowan - to Brennan and McGowan?
- 21 A. The only thing that I might think of is, that perhaps
22 maybe the reasoning for that, it might have been that -
23 one was transferred at 90 - perhaps that --
- 24 159 Q. There is another document in April 1977 that we will
25 just look at. Its 4870. Again, it is from Mr. Cassidy
26 to Mr. Richardson. It relates to Herbert Properties
27 Limited. It is dated, as you can see, the 13th of
28 April, 1977, and it refers to the Bellevue Avenue
29 lands.
30 .

1 "Agreement has been reached on the sale of this plot
2 (approximate three acres) to Brennan and McGowan
3 Limited for a consideration of ú141,000. Outline map
4 is enclosed.

5 .
6 The plot is made up of two areas contained in the
7 following conveyances:

8 .
9 1. Conveyance dated 31st of March, 1976. Trustees to
10 Herbert Properties Limited of two and a half acres
11 approximate between Bellevue Avenue and Bellevue Park.
12 (Coloured blue on map)

13 .
14 2. Conveyance dated 31st of March, 1976. Trustees to
15 Herbert Properties Limited of half acre approximate at
16 Bellevue Avenue. (Coloured pink on map). You are
17 aware that a surrender of the leasehold interest in
18 this plot has yet to be completed.

19 .
20 The sale is subject to, and with the benefit of a grant
21 dated the 4th of September, 1975, from Elm Park Golf
22 Club relating to wayleaves for sewers. The purchasers
23 shall be responsible for erecting a wall or other
24 suitable boundary to be agreed with Elm Park Golf Club
25 along the line BC, and for erecting a suitable boundary
26 along the line DE to be agreed with the Reverend
27 Mother, St. Mary's Home, Merrion. The sale is subject
28 to the grant of planning permission for residential
29 development (with or without conditions). Closing will
30 take place within one week of the grant of planning

1 permission. The deposit will be ú14,000.

2 .

3 Contracts should be sent to Miley & Miley Solicitors.

4 The two conveyances and grant mentioned above are
5 enclosed."

6 .

7 So, it is clearly the same land, and it is quite clear

8 that by April 1977, agreement had already been reached

9 with Brennan and McGowan to transfer the very same land

10 in the same 2.5 acre and .5 acre lots, respectively,

11 which had previously been purchased by this Jersey

12 company from the Pembroke Estate, isn't that so?

13 A. Well, I think that - yes.

14 160 Q. So can you assist as to why the Pembroke Estate would

15 have effectively sold land to itself for ú105,000?

16 A. I don't know really the reason, whether it was -

17 actually, I am only - I am only guessing. I don't know

18 - that sort of structuring would have been done inside

19 - except that, whether the company, whether it was felt

20 that they - it was prudent to divide it from whatever

21 was held into --

22 161 Q. When did you first have discussions with Messrs.

23 Brennan and McGowan about the possible sale to them of

24 this property?

25 A. As far as I recollect, sir, it wasn't a very long time

26 before agreement was reached, so it wouldn't have been

27 - when was this --

28 162 Q. This is 1977?

29 A. Yes.

30 163 Q. Would it have been in 1976?

1 A. No, sir.

2 164 Q. When the land was sold from the Pembroke Estate to
3 Herbert Properties Limited?

4 A. No, no. I wouldn't - no, sir .

5 165 Q. What makes you think that?

6 A. Well, I don't think that - I can always inquire more,
7 by the way, I can try and get some recollection on
8 this, but I would - I would think that this was a
9 structuring within the Estate, that - Herbert
10 Properties was, although it was a Jersey company, was
11 running, was trading in Dublin.

12 166 Q. Yes. I think it subsequently became registered in
13 Dublin. I might be able to get a date on that. Yes.
14 It was registered in Dublin in 1978, on the 25th of
15 July of 1978?

16 A. Oh, I see.

17 167 Q. So it was a good while subsequent to this?

18 A. Right.

19 168 Q. And certainly subsequent to the sale to Brennan and
20 McGowan.

21 A. Well, I am not - I am not quite sure of what the
22 background of --

23 169 Q. Well, is it possible that it may have had something to
24 do with a proposed sale to Brennan and McGowan?

25 A. I wouldn't have thought so, sir.

26 170 Q. Is it possible that Brennan and McGowan would have been
27 aware of this property and had expressed an interest in
28 it at some point previously, maybe years previously?

29 A. I don't recollect that, sir.

30 171 Q. Well, is it not one of those lands that might have come

1 up in your various discussions with Brennan and McGowan
2 as to possible prospects that might be potential
3 development land that they would be interested in?

4 A. I don't recollect and I don't think so, sir.

5 172 Q. Certainly, at any time in the 70s, one would have said
6 that undeveloped land in Donnybrook would have been a
7 fairly serious prospect and a very interesting one,
8 from a builder's point of view?

9 A. Yes. I think - sorry, say that again?

10 173 Q. Well, just in the 70s, that if there was undeveloped
11 land in Donnybrook, in the 1970s, it would have been
12 fairly interesting from a builder's point of view?

13 A. STOP by the way, just to tell you, whilst the - I think
14 that was the old Donnybrook - by the way, it is more of
15 --

16 174 Q. It is beyond RTE?

17 A. No.

18 175 Q. Is it not?

19 A. No, where it is, it is a little bit misleading. It is
20 at the back of Elm Park.

21 176 Q. Oh, I see.

22 A. It is more on the Booterstown Road. Do you know where
23 the hotel, the --

24 177 Q. Tara Towers Hotel --

25 A. Yes.

26 178 Q. Is there?

27 A. There is a laneway beside that.

28 179 Q. It is the housing estate that is in there?

29 A. In behind - what I was saying to you; all of the land
30 that was developed over the last, what? Then, probably

1 50, 40 years, whatever, was previously owned by the

2 Estate.

3 180 Q. Yes?

4 A. And would have been sold long before my time.

5 181 Q. This was a sort of a residue?

6 A. A residue, yes.

7 182 Q. But nonetheless it was virgin land ripe for

8 development?

9 A. Yes, in a good pitch. Yes, sir.

10 183 Q. In that context, would it not have been one of the

11 things that would have come up in any conversations

12 between yourself and Brennan and McGowan in relation to

13 any possible prospects for development? I mean, you

14 would have been aware of it, obviously?

15 A. Oh, yes, I would, and I think we were only getting - in

16 fact, the management company appears to have been

17 active in getting it ready.

18 184 Q. Getting this land into shape, shall we say, from the

19 early 70s?

20 A. Yes.

21 185 Q. So, it is something you would have been aware of?

22 A. Oh, yes, of course I would be aware of that.

23 186 Q. As we have already established as well, in 1974 you had

24 applied for an outline planning permission?

25 A. Yes. Well, that was part of what would happen within

26 the Estate, sir.

27 187 Q. Undoubtedly.

28 A. That would - that is on good estate management, to try

29 and clear up as much as possible.

30 188 Q. Of course. But on the basis that the Estate wasn't

1 going to develop it, would it have been in the business
2 of development?

3 A. No, sir.

4 189 Q. Yes. Well, on the basis that the Estate wouldn't have
5 been - wouldn't have developed it, would it not have
6 formed part of the discussions that you would have had
7 with Brennan and McGowan whenever you may have had them
8 in connection with potential development sites around
9 the City of Dublin?

10 A. I can't say, sir, when exactly that was, but - my vague
11 recollection on this, that I think that when - that it
12 happened reasonably - I don't know. It is only my
13 vague recollection, that it happened reasonably
14 quickly.

15 190 Q. Put it this way: Would you have been in discussions
16 with Brennan and McGowan in relation to this particular
17 site before the Carrickbrennan sale came up?

18 A. No, I wouldn't no, sir, not that I - not that I
19 recollect.

20 191 Q. On the face of it, it would seem to be a surprising
21 omission from your conversations, if you had
22 conversations, in the sense that --

23 A. No, no, no, not at all, sir. We had a lot of property
24 in Pembroke, and anything with Pembroke was Pembroke's
25 business, and that would be - I wouldn't necessarily be
26 discussing any of Pembroke's property with anybody,
27 until such time as a decision was made that we were
28 going to sell.

29 .

30 We were very - actually Pembroke were very strict about

1 that. There wouldn't have been any question of that.
2 So, what could have happened, there could have been a
3 meeting. We had - what happened, maybe three or four
4 times a year, around that period, the people from the
5 UK would come over, sometimes at least maybe a couple
6 of times a year, anyway. Well, Lord Pembroke would
7 come over, and John Roome, who was residing in the UK
8 would come over, and at these meetings, then, there may
9 have been something that would have been accumulating,
10 things would be discussed, "Well, what about so-and-so,
11 what about" - and it could be that at one of those
12 meetings it might then have been decided. That is why
13 there is sometimes gaps within the period of
14 time-making decisions to disclose.

15 .

16 It wouldn't have been - there would be no question of -
17 Mr. Cassidy either wouldn't have taken any steps unless
18 he cleared that this was something that was going to be
19 sold, because it could be that they would either say,
20 "Listen, we are going to hold on to this for a while.
21 It mightn't suit us" - there would be a plan.

22 192 Q. Yes, I understand that.

23 .

24 Would you like to leave this there, Sir?

25 .

26 CHAIRMAN: We will leave it there until a quarter past
27 two.

28 .

29 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

30 .

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2 .

3 193 Q. MR. HANRATTY: So, Mr. Finnegan, could I ask you to
4 tell us, please, how it came to pass, then, that you
5 became involved with Brennan and McGowan in relation to
6 this property, this is this three acres at Bellevue,
7 Donnybrook?

8 A. It's - I think once - the recollection is when there
9 was a decision to sell by Pembroke --

10 194 Q. When did he decide that?

11 A. Recollection - there was - that was sometime in '77,
12 sir.

13 195 Q. Yes.

14 A. As far as I recollect, that the --

15 196 Q. Would it not have been in '76 when they made this
16 conveyance, for whatever reason it was, to Herbert
17 Properties Limited? Would that not have been a step in
18 the context of a proposed sale, or was that entirely
19 unrelated?

20 A. I think that was entirely - I'd say that was unrelated,
21 Sir.

22 197 Q. Right. And so you think then it was 1977? Is that on
23 the basis that you recall that it was 1977, or is there
24 some aspects of it which suggests it was probably 1977?

25 A. I think it's just - I think that's - I recall it was in
26 around about that time, Sir.

27 198 Q. Yes. Well, we know, for example, that planning
28 permission, full planning permission was obtained in
29 1977. Was it sold to Brennan and McGowan before full
30 planning permission came through, or would it have been

1 after that?

2 A. I think - my recollection, that the deal was done - my
3 recollection, that around - when planning permission
4 was granted.

5 199 Q. Yes.

6 A. I would imagine that was it.

7 200 Q. How did it first come up? Did you advertise it?

8 A. No, I wouldn't have advertised it, because - no, I
9 wouldn't, Sir.

10 201 Q. Why would it not have been advertised?

11 A. Well, the reason - that would be Pembroke, Sir, that
12 this is one of the things in Pembroke which they
13 adopted in most transactions. There was a placing
14 rather than open market.

15 202 Q. Why was that?

16 A. It was just very private.

17 203 Q. But they wouldn't have to reveal their identity as the
18 vendor?

19 A. I think you can take it, Sir, that it was the policy of
20 the company, and that is the way they did business.

21 204 Q. Yeah. I mean, one would expect to perhaps - or at
22 least have a possibility of getting a higher price if
23 more people knew about it?

24 A. I think - I just have to say to you, what was the
25 policy of Pembroke, Sir, that when they had a property
26 that came around, and they thought they had done
27 whatever - decision they had done to whatever work that
28 should be done to get it into the stage, or whatever
29 that stage would be --

30 205 Q. Yes.

1 A. -- that they would then - if the decision was made to
2 dispose, they would then dispose of it.

3 206 Q. Well, would their policy have permitted, for example,
4 of the details of the property being circulated to,
5 perhaps, a number of development companies who might be
6 interested in --

7 A. It's quite likely. It's quite likely, yes, sir.

8 207 Q. Was there any tender process with these people?

9 A. No, sir.

10 208 Q. And why would there not be a tender process among a
11 selected number of people, for example?

12 A. There wasn't, Sir and I don't know that it was that
13 much of the trend at the time. But there certainly
14 wasn't.

15 209 Q. All right. Well, then, how did it come to pass that
16 Brennan and McGowan bought it? What was the sequence
17 of events leading to their purchase of it? Did you
18 approach them or did they approach you?

19 A. I suppose, to get into exactly which way it came
20 around, but I think probably the more likely thing is,
21 Sir, that I mentioned it to them.

22 210 Q. Yes. Would you have approached them on behalf of the
23 Pembroke Estate to see if they would be interested in
24 buying it?

25 A. Well, that would be - if that was what I did, that's
26 what it would be, yes, sir.

27 211 Q. Would you have approached them in your capacity as
28 wearing your Finnegan Menton hat, as it were, or
29 wearing your Pembroke Estate hat, if you know what I
30 mean?

1 A. Well, I think that that - I think for the purpose of
2 this chat that - discussion, Sir, I would say that it
3 would probably, probably under the - wearing my
4 Finnegan Menton, I would say, Sir.

5 212 Q. Yes. Finnegan Menton had carriage of sale?

6 A. Mm-hmm.

7 213 Q. And did you approach anybody else?

8 A. We - in times of sale, it was the normal thing that
9 disposals would be negotiated through us, Sir.

10 214 Q. Yes. They had to use some auctioneer to sell the
11 property, and in this case they used Finnegan Menton?

12 A. Yes, sir.

13 215 Q. And it would have been on a normal commercial basis, I
14 assume?

15 A. Yes, sir.

16 216 Q. So you would have been, then, in the business of
17 selling the property. So you approached, was it Mr.
18 Brennan or Mr. McGowan, or can you recall?

19 A. I'd say it's - more than likely it was Mr. McGowan.

20 217 Q. Yes. Did you approach anybody else?

21 A. I would imagine, sir - so, Sir I can't recollect. You
22 see, at the time you wouldn't think specifically of
23 what - but more than likely there were other parties.

24 218 Q. Yes. And what was the nature of the approach that you
25 made to Mr. McGowan?

26 A. Well, that we were considering selling, or we are
27 selling a plot of ground in, wherever it was.

28 219 Q. Yes. And what was the asking price?

29 A. Well, it probably was more than - somewhat more than
30 achieved, because we would normally have a cover of

1 some kind, so I would say --

2 220 Q. Yes. Would the directors of the various Pembroke
3 companies or, perhaps, Pembroke Estates Management
4 Limited have meetings from time to time of the
5 directors, of which they would make various decisions
6 about dispositions and so on?

7 A. They would, yes, sir.

8 221 Q. And where would we find the minutes of those meetings?

9 A. Hum. We could - I don't know, but I can try and find
10 out for you, sir.

11 222 Q. If you wouldn't mind.

12 .

13 Presumably, they would be either with - well,
14 presumably they would be in Pembroke Estates Management
15 Limited, which I understand was the office,
16 essentially, was --

17 A. Well, I will look to see if we --

18 223 Q. We have received some documents from the Pembroke
19 Estates, but they did not include the minutes of the
20 meetings at which any decisions may have been made in
21 respect of the particular transactions that we are
22 looking at, if you know what I mean. Perhaps you might
23 just check that.

24 .

25 You are still associated with that company, I take it?

26 A. Yes, sir.

27 224 Q. In any event, will you just explain to us, then, from
28 your own recollection, as best you can, what exactly
29 the nature and content of your discussion with Mr.
30 McGowan was in connection with this property?

1 A. Sir, I would say that the - by the way, you know, it's
2 a broad brush of - I can't reflect actually what --

3 225 Q. Yes.

4 A. But all I can think of - this was something - that the
5 site here had been put together, so there was bits and
6 pieces of it. It wouldn't have been just the
7 straightforward - I would think that probably what did
8 happen, more than likely, was that they got a map of it
9 and said, "We are interested in selling this and the
10 price we want for it is X."

11 226 Q. Yes. And you have no recollection of precisely what
12 the asking price was?

13 A. No. I think - I would think, Sir, just that it
14 probably was in the region of 150. That would be more
15 than - I think - I don't think I would have asked 140.

16 227 Q. Yes. Well, they actually paid 141?

17 A. Yes. But I wouldn't have asked that figure.

18 228 Q. Yes. Yes. It would have been higher?

19 A. Yes.

20 229 Q. Yes. There was a right-of-way issue with the Sisters
21 of Charity, which was resolved in March of 1976. I
22 take it, it was after that?

23 A. Oh, it would be after that, because --

24 230 Q. The application for full planning permission was made
25 in February of 1976. You had two outline permissions,
26 but the application for full planning permission was
27 made in February 1977, and, in fact, the notification
28 of the decision to grant was made on the 23rd of
29 February, 1977. So the application must have been
30 earlier than that?

1 A. Yeah.

2 231 Q. So you would have had permission in February. Would it

3 have been after you got permission that you first spoke

4 to Mr. McGowan, do you think?

5 A. I think the likelihood is that one would have had

6 planning permission, because - the likelihood is, yes,

7 sir.

8 232 Q. If we could have page 4875.

9 .

10 This is a letter from Mr. Richardson in Moore Kylie

11 Lloyd to Mr. Cassidy, "re lands at Bellevue Avenue.

12 Sale to Brennan and McGowan Limited."

13 .

14 Dated the 2nd of June.

15 .

16 And it says:

17 .

18 "I enclose a contract in duplicate, which I have just

19 received from Miley & Miley. And they tell me that

20 they will exchange immediately that I let them know one

21 has been signed, and hand me a cheque for the deposit.

22 This, of course, will be passed on to Mr. Forwood for

23 placing on deposit receipt.

24 .

25 They point out in the course of their letter, that they

26 have been instructed to inform us that the condition

27 providing for the obtaining of planning permission

28 should be clearly understood to mean a permission which

29 will permit their clients to enter into the site and

30 commence the development work both in relation to the

1 houses and the lands. Please note specially the
2 amendments to the last line in the second schedule on
3 page 10. I may, of course, have misunderstood your
4 instructions in this regard, but I do not think so."

5 .

6 So, clearly, at that stage, that's the 2nd of June,
7 matters had advanced to the point where there were
8 draft contracts?

9 A. Yes, sir.

10 233 Q. In fact, if we look at page 4873, this is dated the
11 28th of March, and it's a memorandum from Mr. Cassidy
12 to Mr. Richardson.

13 .

14 "I will be sending you instructions within the next few
15 days on a sale to Brennan and McGowan. Their
16 solicitors are Miley & Miley. In the meantime, would
17 you please send me the following conveyances."

18 .

19 Then he refers to the two conveyances we had this
20 morning?

21 A. Yes, sir.

22 234 Q. So sometime prior to the 28th of March, then, there
23 was, presumably, agreement in principle between you and
24 Messrs. Brennan and McGowan that they would be buying
25 the property, isn't that right?

26 A. Yes, sir.

27 235 Q. So it would have been within a month, certainly, of the
28 planning permission having been obtained, that
29 presumably being the best time to sell the land.

30 .

1 Now, at that stage was there any discussion between
2 yourself and Mr. McGowan about a joint venture in
3 relation to this property?

4 A. No, Sir it was not until such - it was after we had
5 agreed - I wouldn't have had any discussions with him,
6 or anything until we had the agreed terms, sir.

7 236 Q. Why do you say that?

8 A. I just wouldn't, sir.

9 237 Q. How do you mean? Why wouldn't you?

10 A. They are two different matters, Sir first of all, I
11 doubt very, very, very much - I think that at the time
12 of my negotiations we were selling - we were carrying
13 out negotiations for the sale of the lands, and that's
14 what we confined them to.

15 238 Q. Well, whatever agreements you made with Brennan and
16 McGowan had to have been made before the sale closed,
17 isn't that right?

18 A. I would - yes, Sir I would imagine so.

19 239 Q. Because we know - we know for certain that when the
20 sale closed, it wasn't actually bought by Brennan and
21 McGowan, it was bought by Victa?

22 A. Mm-hmm.

23 240 Q. Victa Investments Limited, which is a company of which
24 you were a one-third beneficial owner?

25 A. Yes, sir.

26 241 Q. In fact, it's one in the same company as Rapallo,
27 except with a change of name?

28 A. Okay. I wasn't quite clear on the dates, sir.

29 242 Q. Well, the conveyance closed on the 16th of August,
30 1978. So, obviously, whatever agreement you reached

1 with Messrs. Brennan and McGowan to enter into a joint
2 venture arrangement with them, had to have been before
3 that date?

4 A. Yes, sir.

5 243 Q. Well, is it possible that it was entered into before
6 they signed a contract to buy?

7 A. I think that - no, Sir no. It's unlikely. I think
8 that - I think there was quite a hole here in this one
9 --

10 244 Q. A what?

11 A. I think there was quite a long hole. There was some
12 delays in the signing after contract.

13 245 Q. There was an outstanding surrender, among other
14 possible things?

15 A. There was something. I can't remember what - exactly
16 what they were.

17 246 Q. What other delays do you remember?

18 A. Just that there were some - I can't recollect - it was
19 just --

20 247 Q. If we just look briefly at page 4886. This is a Moore
21 Kylie Lloyd document. It's, I suppose, an
22 apportionment account on closing.

23 .
24 "Herbert Properties Limited, land at Bellevue Avenue
25 and Bellevue Park. Sale to Victa Investments Limited.
26 Purchase money - ú141,000.
27 Deposit - ú14,000."
28 Leaving a balance of 127.

29 .
30 Deposit receipt in respect of Capital Gains Tax -

1 21,150.

2 Giving a balance of 105,850.

3 And costs and outlay - 1,849.30.

4 And there is a balance cheque herewith, it says, which

5 is ú104,000.70.

6 .

7 What is that document, do you think? Somebody sending

8 a cheque to somebody, and it appears to be signed

9 "Moore Kylie Lloyd"?

10 A. What's - who has it been sent by, sir?

11 248 Q. I'm sorry?

12 A. Who is it being sent by?

13 249 Q. That's what I am asking you. It looks like Moore Kylie

14 Lloyd?

15 A. I'd say --

16 250 Q. They wouldn't have been sending money to anybody. They

17 would have been receiving money from somebody,

18 presumably. Or is it possible, maybe, that they were

19 sending, maybe Moore Kylie Lloyd was sending what they

20 had received to Herbert Properties Limited?

21 A. It's Herbert Properties up at the top, sir.

22 .

23 MR. HUSSEY: If the full document was put up, maybe

24 that would be helpful.

25 A. I saw it there. It's Herbert Properties Limited, Sir .

26 .

27 251 Q. MR. HANRATTY: What do you think this document is? It

28 says "File No. P 879". Would that give you any clue as

29 to whose file it was?

30 A. P? Sorry?

1 252 Q. P 879. Is that a kind of - would that be Pembroke 879,
2 for example?

3 A. I'm not sure that they were numbered like that. It
4 would sound to me as if it would be like - but - yeah,
5 could be. I see here it's a Moore Kylie and Lloyd
6 letter, sir.

7 253 Q. They seem to be sending money to somebody.

8 A. Oh, well - I would imagine, just imagine that - they
9 were Pembroke's lawyers.

10 254 Q. Yes.

11 A. And this must have been on the --

12 255 Q. Maybe sending the money to their client?

13 A. Client, yes.

14 256 Q. Yes. That seems most likely what it is. What's at the
15 top is a description of the transaction in respect of
16 which it's being done, and it would seem to be - costs
17 and outlay would appear to be, presumably, their own
18 costs in respect of this conveyance, and - there seems
19 to be a deposit receipt in respect of Capital Gains
20 Tax. What was that about? Would that mean that this
21 was retained against a possible liability to Capital
22 Gains Tax, which it was anticipated might not arise
23 because it was a Jersey company, but just in case it
24 did?

25 A. Say that again, Sir.

26 257 Q. Well, it describes itself as "Deposit receipt in
27 respect of Capital Gains Tax"?

28 A. Right.

29 258 Q. So there was some kind of a deposit receipt for a sum
30 of money equivalent to what somebody, presumably,

1 calculated as the liability for Capital Gains Tax?

2 A. Mm-hmm.

3 259 Q. And a sum of ú21,150 --

4 A. Yes, sir.

5 260 Q. -- which they deducted, and presumably put on deposit

6 receipt?

7 A. That would appear to be right, sir.

8 261 Q. And would that arise in circumstances where there was,

9 perhaps a doubt as to whether Capital Gains Tax was

10 payable or not, and pending resolution of that issue?

11 A. I don't know what - I couldn't answer that offhand,

12 sir.

13 262 Q. If you don't know, you don't know?

14 A. I don't know. Who had - the purchaser had - yes --

15 263 Q. We have a letter, in fact, page 24 - no, it's actually

16 not in the circulated documents. I'll just read it

17 out. 21st of November, 1983. No, that couldn't be

18 right, then. Anyway, let's see what the letter says.

19 .

20 It says, at the end of it: "I enclose a photostat copy

21 of this conveyance, and of a statement which, although

22 dated the 21st of December, 1978, I had just prepared,

23 and I trust all is now in order."

24 .

25 That's from Moore Kylie Lloyd to Mr. Cassidy.

26 A. Yes, sir.

27 264 Q. So he's obviously just getting the books right. And

28 this was, therefore - appears produced in 1983,

29 although it's dated contemporaneously with the

30 transaction to, I presume, regularise matters.

- 1 .
- 2 Anyway, going back to the issue of when you entered
- 3 into your arrangement with Messrs. Brennan and McGowan.
- 4 Did they approach you about going into such an
- 5 arrangement, or did you approach them? I am not now
- 6 talking about the sale of the property, I am talking
- 7 about the joint venture that you went into with them?
- 8 A. Well, I certainly wouldn't have approached them, so you
- 9 can take it that they would have approached me, sir.
- 10 265 Q. And who approached you?
- 11 A. As far as I recollect, it was Joe McGowan.
- 12 266 Q. And what was his proposal?
- 13 A. That they - again, that they had a scheme here where
- 14 they were going to do a - to create - they were going
- 15 to do something again - that they were going to create
- 16 a profit, do a sale on to extract some of the future
- 17 profit.
- 18 267 Q. But what sort of a scheme were they proposing to you?
- 19 A. Again, it was - it was a scheme of Mr. Owens.
- 20 268 Q. But what did he say to you the scheme was?
- 21 A. That they were - they were going to pass on
- 22 recollection - pass on the property, Sir they were
- 23 going to pass it on to - they were going to calculate -
- 24 there would be some calculations done, and they were
- 25 going to look at taking a forward profit into account
- 26 here, calculating what, the extracting future profits
- 27 again.
- 28 269 Q. But what was the scheme?
- 29 A. I don't know - I can't say to you what exactly the
- 30 scheme was.

1 270 Q. Well, what we do know for certain is that the company
2 that actually - to whom the land was actually conveyed
3 was Victa Investments Limited, of which you were a
4 one-third owner?

5 A. Yes, sir.

6 271 Q. So, presumably, they would at least have said to you,
7 "Well, you know, we are already involved in a company
8 in Jersey called Victa and we actually want this
9 company to become the owner of this land." That seems
10 fairly obvious?

11 A. Yes, yes, yes.

12 272 Q. Would an issue have arisen at that stage in your case
13 on the basis that either you were acting for the vendor
14 or you were actually a director of the vendor company,
15 and therefore you would want to get things squared with
16 other people?

17 A. Well, first of all, Sir, the one thing that was very
18 clear in my mind then, is that we had - actually, that
19 the figure at which we had agreed, had done the deal on
20 Pembroke, that everybody was happy that that was a fair
21 and realistic value for the property, a good price for
22 it, and was accepted by all parties concerned.

23 .

24 So that was the first stage. So I was happy that that
25 was the situation. And this is something that, the
26 forward transaction that was discussed. I was happy,
27 one, that Pembroke would not have got involved in that.

28 273 Q. How did you know?

29 A. Well, I know very well, because they would not get
30 involved in a development - they were very, very, very

1 careful as to how they might be exposed in any way.
2 They were very private in that. And they wouldn't - if
3 they were going to do a development, they would never
4 have sold it.

5 274 Q. Yes.

6 A. And --

7 275 Q. But in the scheme that we know was, in fact, put in
8 place, there wasn't any question of development, in the
9 sense that what happened was a sum of ú304,000 was sent
10 over to Jersey and divided up under the cover of, in
11 this case, a licence agreement, and you received
12 ú101,000 of it?

13 A. Less my investment, sir.

14 276 Q. Yes. We'll come to the investment in a moment. But
15 certainly you received a payment, or at least at your
16 direction a payment of ú101,000 was what was sent over
17 to Foxtown?

18 A. Yes, sir.

19 277 Q. To the extent there was going to be a profit here not
20 involving the development of the property, should the
21 Pembroke Estate not have made that profit?

22 A. No, sir, because that was not - I put it this way:
23 That that was - first of all, let me go back to what I
24 said. One, that the market value of the property at
25 the time was there or thereabouts the figure which we
26 talked about. This would have been discussed very,
27 very openly, and would have had, received Board
28 approval. And all of the parties, including
29 Mr. Cassidy, would have been involved.

30 .

1 So at that stage you can take it that the deal was done
2 at fair - at a fair, open market value.

3 .

4 Now, Pembroke - your question about Pembroke. No,
5 Pembroke would not have got involved. They shied clear
6 of anything like this.

7 278 Q. Would it have been prudent of you to ask them, if you
8 were presented with a proposition involving a potential
9 profit of ú101,000, or whatever it was going to be, to
10 say to them, "You know, there is a collateral deal
11 going here that has been offered to me personally,
12 involving the sale of this property to a Jersey company
13 in which I am involved."

14 A. Well, I think that, first of all, to say that they
15 would be very, very, very particular, not - with
16 whatever else involved in this transaction, about
17 anyone whom they would ever do a partnership deal, or
18 otherwise. They shied away from that completely.

19 279 Q. Did the Pembroke Estate know that the lands were being
20 sold to a company of which you were a one-third owner?

21 A. No, Sir not at that time.

22 280 Q. In fact, on the conveyance, if you look at the
23 Memorial at page 4882. You can see it's the
24 conveyance, it's a Memorial of the Conveyance, maybe it
25 is the conveyance - yes, it is the conveyance.

26 .

27 It's dated the 16th of August, '78, between Herbert
28 Properties Limited and Victa Investments Limited, and
29 ú141,000, as we can see?

30 A. Yes, sir.

1 281 Q. In a sense you are wearing two hats here, aren't you,
2 because you are a director of Herbert Properties
3 Limited, which is the vendor in the transaction, and
4 you are a one-third beneficial owner of Victa
5 Investments Limited, which is the purchaser in the
6 transaction?

7 .

8 MR. HUSSEY: I'm sorry, might I interrupt? As I say, I
9 am trying to hold my peace here.

10 .

11 I think, in fairness to the witness, the actual
12 contract that preceded this is probably a much more
13 fairer document to put before the witness, before it
14 comes to this particular point. And I just leave it at
15 that. I won't say any more.

16 .

17 282 Q. MR. HANRATTY: The contract, sir, as I recall it, and I
18 will be dealing with it in due course, was a contract
19 to sell to Kilnamanagh Estates Limited, but I am
20 dealing with the actual conveyance of the property,
21 which was not to Kilnamanagh Estates Limited, isn't
22 that right? That's clear from this document?

23 A. Yes, sir.

24 283 Q. So, at some point somebody changed, or somebody decided
25 that the party that would take the conveyance would not
26 be Kilnamanagh Estates, but would, in fact, be Victa
27 Investments, this Jersey company. Isn't that so?

28 A. Yes, sir.

29 284 Q. And at what point do you say that happened, or do you
30 know?

1 A. I can't recollect exactly when, sir.

2 285 Q. If I am not mistaken, isn't that what happened in the
3 nuns' case as well? The original contract wasn't to
4 Green Isle, it was to some other Kilnamanagh Estates
5 company, or maybe Brennan and McGowan on trust, or
6 something like that. And then, when they decided which
7 company they were going to use, that was a company that
8 actually took the conveyance, in that case Green Isle
9 Holdings Trust Limited?

10 A. Yes, sir.

11 286 Q. But, in any event, in this - at this point in time a
12 decision had already been made that the purchaser was
13 not going to be the purchaser named in the contract,
14 it's going to be Victa Investments Limited, a Jersey
15 company owned one-third each by the three of you?

16 A. Yes, sir.

17 287 Q. And it was in that context I was suggesting to you that
18 you have/had an involvement on both sides of this
19 transaction, in that you were a director of Herbert
20 Properties Limited, you were also the auctioneer for
21 Herbert Properties Limited, but also on the purchaser
22 side, you were a one-third beneficial owner of the
23 company buying the property?

24 A. Yes. I think that - just, I would like to reiterate,
25 sir, that everybody was absolutely happy with the
26 transaction, and this was not - so they were. It was a
27 sale --

28 288 Q. I am sure they were, Mr. Finnegan, but you've told us
29 that the Pembroke Estate were unaware that you were a
30 one-third owner of the Jersey company that was buying

1 the property?

2 A. Yes, sir.

3 289 Q. So, if they were happy, they were happy in their

4 ignorance of that fact.

5 .

6 MR. HUSSEY: I am sorry, Sir again, I must interrupt.

7 .

8 We know the contract was made sometime before this with

9 a company not associated with Mr. Finnegan. We know

10 that a contract was made with Kilnarnagh Estates. If

11 that contract - that contract may be questioned, but to

12 suggest that contract, having been entered into; to

13 suggest that at sometime after that, that there is

14 still some duties on Mr. Finnegan to his vendor, if the

15 original contract is solid and for market value and for

16 - and everybody is satisfied with it, it doesn't matter

17 one wit what happens thereafter, or who the original

18 purchaser, the only person contracted with, nominates

19 to take the conveyance.

20 .

21 I just make the submission that it is unfair of

22 Mr. Hanratty to rely on this deed, which comes after

23 the contract, when any conveyancer knows that the

24 contracting party may nominate whoever it wishes. It

25 can nominate Mickey Mouse to take the conveyance of the

26 contract, for all the good that this - the actual

27 conveyance means.

28 .

29 If the contract is open to question, well and good, but

30 the conveyance - it's unfair, I say, to question the

1 witness about the conveyance when it's the contract
2 that's the critical document here.

3 .

4 MR. HANRATTY: I can't believe I've heard that
5 submission, Sir I've never heard such a bizarre
6 submission.

7 .

8 We are actually talking about a factual situation, and
9 the line of questioning that I was putting to the
10 witness was to establish a factual situation.

11 .

12 I am actually talking about the conveyance of this
13 property from one legal entity to another. And I am
14 dealing with the fact that Mr. Finnegan was a director
15 of the vendor company, was the auctioneer acting on
16 behalf of the vendor. At the same time, unknown to the
17 vendor company, except himself, he was one-third
18 beneficial owner of the company that bought it.

19 .

20 I mean, that's clear from the deed. And I do not
21 understand what Mr. Hussey is on about.

22 .

23 I know there was a contract, and we all know that the
24 contract and the Herbert Estate thought they were
25 selling to Kilnamanagh. But as is quite common, there
26 was a change. Somebody decided that instead of
27 Kilnamanagh, another company would take it.

28 .

29 What Mr. Hussey appears to be trying to glide over is,
30 in fact, the company that took it, in this case, is one

1 which was one-third owned by Mr. Finnegan. I don't
2 understand that intervention.

3 .

4 Again, Sir, with respect, if Mr. Hussey wishes to clear
5 up any aspect of my questions, he can do so in
6 examination of his own witness. But again, I suggest,
7 Sir, this is one of these interruptions which is not on
8 any legal basis, which is a comment by Mr. Hussey, an
9 interpretation by Mr. Hussey of the events, which he is
10 free to canvass in due course, but which serves no
11 useful purpose, other than to waste time.

12 .

13 MR. HUSSEY: I am sorry, Sir, I reject that completely.

14 .

15 The critical document, when you are dealing with the
16 sale of land, is the contract, and who the contract is
17 with. The deed - as I say, the purchaser on the
18 contract can nominate whoever it wishes to take the
19 conveyance. There is a considerable time gap between
20 the contract and the conveyance. If anybody is gliding
21 over anything here, it's Mr. Hanratty, when he doesn't
22 put up the contract that preceded this deed. And I say
23 it is unfair to extrapolate from the deed, when the
24 contract is with a completely separate entity. And he
25 knows it.

26 .

27 CHAIRMAN: Carry on.

28 .

29 290 Q. MR. HANRATTY: In addition, Mr. Finnegan, you were a
30 signatory on this deed. If we have page 4883.

1 .

2 In this case, you were signing on behalf of the vendor
3 company, isn't that so?

4 A. Yes, sir.

5 291 Q. The signature above yours is whose?

6 A. William Forwood.

7 292 Q. Yes. Is that because it needs to be signed by two
8 directors?

9 A. Appears to be, Sir.

10 293 Q. Am I correct in thinking that's Mr. Laurence Wheeler's
11 signature for the purchaser? I am not sure, but I
12 believe it may be.

13 A. I don't - I don't know, sir.

14 294 Q. All right. I am sorry, you couldn't see it. It has
15 the appearance of "LAW" at the beginning of it, but
16 that's as much as I can say about it. It doesn't
17 really matter. If you don't recognise it, it doesn't
18 matter.

19 A. Hum.

20 .

21 MR. HUSSEY: I think it is Mr. Wheeler. I think we've
22 seen that so many times now, it's beyond --

23 .

24 295 Q. MR. HANRATTY: So here we have a situation now where
25 you are acting, in a sense, in a dual capacity for the
26 vendor, both as an auctioneer, and as a director of the
27 company managing the affairs of the Herbert Estate, but
28 you are also, on your own evidence, unknown to - sorry
29 - to the Pembroke Estate, unknown to the Pembroke
30 Estate, one-third owner of the company that bought the

1 land?

2 A. I think that the - this is the very, very end to the

3 transaction, sir.

4 296 Q. Yes, it's the closing of the sale?

5 A. Yes, the closing of the sale.

6 297 Q. Yes.

7 A. And when - this is the - yes, the end result of it.

8 The contracts were entered into initially by Brennan

9 and McGowan, whoever it was, but this is the

10 conclusion.

11 298 Q. The arrangements which were put in place by Mr. Owens,

12 under which you received ú101,000 --

13 A. Less my investment, sir.

14 299 Q. Less your investment. The arrangements under which you

15 received this payment were arrangements pursuant to

16 which Brennan and McGowan's related company called

17 Oakpark Developments Limited entered into a licence

18 agreement with Victa. Isn't that right? You are aware

19 of that, I take it, from the evidence that you've been

20 hearing?

21 A. Yes, sir.

22 300 Q. And it would appear a licence agreement which was

23 never, in fact, implemented, except that the ú304,000

24 was actually sent over, but the arrangements with

25 regard to the licensing of individual plots and - or

26 licensing to develop individual plots and so on, and

27 all the other arrangements in that agreement were never

28 implemented. And it appears that Mr. Caldwell produced

29 a number of schemes over the years, which it doesn't

30 appear, and I can't put it any higher than that, were

1 ever implemented as well?

2 A. Well, I wasn't involved with anything to do with Mr.

3 Caldwell, Sir.

4 301 Q. No, I think that's correct. I think - as I understand

5 the position, from the documents I have seen, and from

6 the evidence that I have heard, your involvement in

7 this affair appears to have terminated once you

8 received the £101,000. Isn't that right?

9 A. Yes, sir.

10 302 Q. And to the extent that the lands were subsequently sold

11 on, or developed, or whatever was done with them, had

12 nothing to do with you?

13 A. Right.

14 303 Q. So that your arrangements with Messrs. Brennan and

15 McGowan, whatever else they were, certainly did not

16 involve a full partnership in respect of the

17 development of this property, but was a narrower issue,

18 or confined to an arrangement or scheme which Mr. Owens

19 put in place involving a payment to a Jersey company.

20 Isn't that right?

21 A. Yes, sir.

22 304 Q. You are saying that you actually made an investment in

23 this scheme, is that right?

24 A. Yes, sir.

25 305 Q. And how much do you say you invested?

26 A. 50,000, sir.

27 306 Q. And again, are you saying this on the basis of this

28 bank statement which you produced recently?

29 A. Yes, sir.

30 307 Q. And are you saying it on the basis that your colleague

1 wrote in beside the ú50,000 debit, which is dated the
2 10th or 20th of November, 1978, the words "B View"?

3 A. Yes, sir.

4 308 Q. Can you point to any other document - sorry, for the
5 record, the document to which I am referring, which
6 won't go on screen, Sir, is 4844.

7 .

8 Just to be clear, we'll identify it for the formality
9 of identifying it on the record. You see the ú50,000
10 transaction there, which is a debit in November '78?

11 A. Yes, sir.

12 309 Q. Is that the transaction to which you are referring?

13 A. Yes, sir.

14 310 Q. And that's a debit on the account of Foxtown
15 Investments Limited, which you say was an investment of
16 Foxtown Investments Limited in this scheme which
17 Mr. Owens put together?

18 A. Yes, sir.

19 311 Q. Now, can you identify where in this scheme this ú50,000
20 fits in?

21 A. No, sir, but all I can say to you is that this is the
22 sum which was required by the scheme for Mr. Owens -
23 you see, again they were creating a profit which had to
24 be - and then there had to be funding for this, sir.

25 312 Q. Well, with respect, Mr. Finnegan, they weren't. What
26 happened, in fact, was that Oakpark borrowed this 3 -
27 sorry, borrowed most of the 304,000, the rest was made
28 up by Kilmanagh, and it was sent over to Jersey.
29 That's where the money came from that was divvied up in
30 Jersey.

1 .

2 Where does the ú50,000 - was it on the basis, for

3 example, that the other two put in 50, or were you the

4 only one in this instance putting in 50?

5 .

6 MR. HUSSEY: I am sorry, Sir, just before Mr. Finnegan

7 answers that question.

8 .

9 Mr. Hanratty has said that he knows where this money

10 came from. I haven't seen any accounts to show where

11 this money came from, the ú304,000, and I wonder if

12 there are accounts available to show where this money

13 came from? If the Tribunal has them, I would like to

14 see them, but if - it hasn't appeared in the documents

15 that have been circulated.

16 .

17 MR. HANRATTY: I can't keep looking up the transcript.

18 My recollection is that Tom Brennan gave testimony that

19 most of the money was borrowed, and the rest was made

20 up by Kilnamanagh.

21 .

22 CHAIRMAN: That's my recollection also.

23 .

24 MR. HANRATTY: I don't have it at my fingertips, and I

25 don't know where it is.

26 .

27 CHAIRMAN: I am relatively certain that that is

28 correct.

29 .

30 MR. HANRATTY: But again, I suppose we would have to

1 look at it overnight --

2 .

3 MR. HUSSEY: Sorry. I had understood Mr. Hanratty to
4 say that there were accounts that showed these things.

5 If you are relying on Mr. Brennan's testimony, well,
6 then, for what that's worth, I am quite happy to accept
7 it, if that is the basis of the question.

8 .

9 But if there are accounts, I certainly haven't seen
10 them. But if there are not, well --

11 .

12 313 Q. MR. HANRATTY: Could we have page 2254, please. This
13 may or may not explain it. I do not know.

14 .

15 Yes. This is a resolution of Victa Investments Limited
16 to guarantee a loan of ú300,000 which Oakpark
17 Developments Limited was making. And that loan was
18 secured on the security of the land in Donnybrook. If
19 you can see under the heading:

20 "The following resolutions were passed:

21 (A) Minutes of a meeting in November 1978."

22 The date isn't filled in, and - unless - I don't have
23 the second page of it. Obviously, somebody prepared
24 this document at the time.

25 .

26 Yes, there is no signature on the second page. But
27 obviously somebody prepared this document, and it
28 appears to record the following resolutions:

29 .

30 "1. That the company guarantee a loan of ú300,000 to

1 Oakpark Developments Limited, having its registered
2 office at 2 Clare Street in the City of Dublin, in
3 accordance with the terms of the facility letter, dated
4 the blank day of blank, 1978, issued to the said
5 Oakpark Developments Limited.

6 .

7 2. That the company mortgage its lands at Bellevue
8 Park, Bellevue Avenue, Dublin 4 to the said Lombard &
9 Ulster (Banking) Ireland Limited for the purpose of
10 securing the said loan.

11 .

12 3. "That so-and-so" - and that's left blank - "be
13 appointed to execute the necessary mortgage, Memorial
14 Form 47, and guarantee under the seal of the company,
15 and that the company execute a licence agreement in the
16 form produced to the meeting in favour of Oakpark
17 Developments Limited in relation to the 19 sites at
18 Bellevue Park, Bellevue Avenue, Dublin 4. And that the
19 - the seal of the company be affixed to such licence
20 agreement in the presence of" - whoever.

21 .

22 Then that, "Whoever be authorised to execute all other
23 necessary documents in connection with the guarantee of
24 Oakpark Developments Limited."

25 .

26 So what appears from that document, and taking due
27 recognition of the fact that the one we have is an
28 unsigned document, but it does appear that arrangements
29 were contemplated at the time under which ú300,000
30 would be borrowed from Lombard & Ulster, by Oakpark

1 Developments Limited, that that borrowing would be
2 guaranteed by Victa Investments Limited. And I seem to
3 recall that it was, but I don't have at my fingertips
4 the document at the moment.

5 .
6 And I also seem to recall that Mr. Brennan gave that
7 evidence.

8 .
9 If that is correct, Mr. Finnegan, that would suggest
10 that the monies that were sent over to Jersey, or at
11 least a great majority of them - we know that 304,000
12 was, in fact, sent over - that the great majority of
13 them were borrowed by Oakpark Developments Limited and
14 sent over to Jersey?

15 A. All --

16 314 Q. -- was underwritten, as it were, by Victa on the
17 security of the property.

18 A. Well, all I can say to you, sir, because I don't quite
19 understand the way this thing came around, that --

20 315 Q. All right. Do you understand - what is your
21 understanding of where the money came from?

22 A. I tell you, I don't - I can't explain that to you, sir,
23 at the moment, but what I can say to you is this: That
24 when I was asked to get involved in this, the -
25 whatever the sum that I was asked to put in, the part
26 of the integral thing of this transaction was that it
27 needed an injection of ú50,000 from me.

28 .
29 Now, I am sorry, sir, that I can't fill you in on the
30 thing. Because these tax based schemes are not

1 something that would come to me easily. This is,
2 again, the scheme of Mr. Owens.

3 .

4 Now, I don't know, and I don't know what it says here.

5 I don't know where it is recorded, where the monies
6 went to, or how they came in, or otherwise, but I want
7 to tell you that this - what I am saying to you about
8 the - all I can say is that on the date that we have
9 here, that ú50,000 did go in.

10 316 Q. Where?

11 A. Well, it went into the pot.

12 317 Q. What pot?

13 A. Well, whatever the pot that was being arranged by - the
14 scheme that was being initiated by Mr. Owens would take
15 cash to go in.

16 318 Q. Well, the scheme that was being initiated by Mr. Owens
17 envisaged a licence agreement under which Oakpark was
18 liable to pay approximately ú300,000 to Victa?

19 A. Yes, sir.

20 319 Q. We know that ú304,000 was, in fact, paid by Oakpark to
21 Victa. And it appears that that 300, or at least
22 300,000 of that 304,000 was borrowed by Oakpark and
23 guaranteed by Victa. Borrowed, in fact, from Lombard &
24 Ulster.

25 .

26 If we could have page 4117.

27 .

28 As you can see from the heading there, this is an
29 agreement dated the 29th of November, 1978, between
30 Victa Investments Limited and Oakpark. And this is, in

1 fact, the licence agreement.

2 .

3 If one looks at the second page of that page 4118, at

4 paragraph 3 you would see there it says:

5 .

6 "On the completion hereof the grantee shall" - I don't

7 know what that is - "the grantee shall make to the

8 grantor an interest-free loan of ú264,100. This loan

9 shall be repaid by the grantor to the grantee at the

10 rate of ú13,900 from each payment of ú19,000, which the

11 grantor shall receive from the nominees of the grantee

12 for the conveyances referred to at paragraph 2 hereof,

13 as and when such payments are made to the grantor."

14 This is as the sites were progressively sold for

15 ú19,000 each.

16 .

17 And that document, which is the - sorry, if we look at

18 paragraph 4. Just bear with me, Mr. Finnegan, I am

19 trying to find my bearings in the documents.

20 A. All right, sir.

21 320 Q. Yes. The same paragraph continues:

22 .

23 "As security for such loan, the grantor shall mortgage

24 all the lands on the map annexed hereto, and thereon

25 outlined in red, to Lombard & Ulster (Banking) Ireland

26 Limited by way of collateral security for the

27 borrowings of Oakpark Developments Limited.

28 .

29 On the payment to the grantor of the sum of ú13,900,

30 herein before referred to by the nominees of the

1 grantee, the grantor shall pay such sums of money to
2 the account in discharge of the borrowings." And so
3 on.

4 .
5 It's quite clear that that document envisages this very
6 borrowing, and the guarantee of that borrowing that
7 we've just been referring to, and which is reflected in
8 that draft unsigned resolution we've just seen. Isn't
9 that so?

10 A. Yes, sir.

11 321 Q. Now, if we go to the next page of this document, which,
12 as you can see from the bottom of that page, before we
13 just scroll down, is signed partially there by
14 Mr. Wheeler, I think, and then, moving into the next
15 page, where it's again signed by all parties concerned.
16 Michael Foley, I think, is one of the signatures which
17 is recognisable, as a director of Oakpark. And Bernard
18 Cooke, I think.

19 .
20 Then reading below that it says:

21 .
22 "Notwithstanding anything to the contrary appearing in
23 the within licence, Victa Investments Limited hereby
24 authorises Oakpark Developments Limited to collect the
25 payments of ú19,000 directly from its nominees for
26 conveyances, and to pay the entire such payments to
27 Lombard & Ulster (Banking) Ireland Limited until such
28 time as the loan from Lombard & Ulster (Banking)
29 Limited to Oakpark Developments Limited shall have been
30 repaid, provided that on the repayment of such loan all

1 further payments are paid in their entirety to Victa
2 Investments Limited.

3 .
4 Provided further, that any monies in excess of the loan
5 of ú264,100 which are paid to Lombard & Ulster
6 (Banking) Ireland Limited shall be, and remain a debt
7 due from Oakpark Developments Limited to Victa
8 Investments Limited until discharged."

9 .
10 And that's dated the 21st of December, 1978.

11 .
12 So it does appear that the scheme which Mr. Owens put
13 together envisaged that Oakpark Developments Limited
14 would be the Brennan and McGowan company doing the
15 business, as it were. That Victa Investments Limited
16 would become the owner of the property in its capacity
17 as the purchaser of the property, and that it would
18 enter into this agreement with Oakpark, under which
19 Oakpark would, in effect, pay over approximately
20 ú300,000 in the form of an interest-free loan, and also
21 a payment of a licence fee, making up in total
22 approximately ú300,000. That that money would be
23 borrowed by Oakpark, sent over to Victa. Victa would
24 guarantee the borrowing and secure it on the property.
25 That's how it appears in all - and all of these
26 documents appear to be, whether in draft or executed,
27 geared towards the implementation of that arrangement.
28 Isn't that right?

29 A. It appears so, sir.

30 322 Q. We do know, from a purely factual point of view, that

1 ú304,000 was, in fact, sent by Oakpark over to Victa.

2 If we look at page 225.

3 .

4 This is a bank docket dated a few days after this

5 agreement. It appears to confirm the transfer on the

6 27th of December, 1978, of ú304,000 to Bedell & Cristin

7 re Victa. Isn't that so?

8 A. Yes, sir.

9 323 Q. We know from the Bedell & Cristin documentation, the

10 disposition of that ú304,000, I think in January of the

11 following year, of 1979, isn't that right? And as

12 indicated, perhaps, on document - page 231.

13 A. Sorry. Carry on.

14 324 Q. This is in handwriting, perhaps, of Mr. Wheeler. The

15 disposition of the ú304,000, for Guinness &

16 Mahon/Foxtown or Guinness & Mahon account, Foxtown

17 Investments - ú101,333.34.

18 Jersey International Bank - account T Brennan -

19 ú151,480.80.

20 Jersey International Bank - account McGowan -

21 ú50,990.86.

22 And Bedell & Cristin - Brennan settlement - ú225.

23 .

24 That accounts, then, for the entire of the ú304,000.

25 .

26 What do you make of that reference at the top,

27 "Guinness & Mahon G"? Perhaps Guernsey?

28 A. I couldn't say to you, Sir whatever.

29 325 Q. So we can - yeah. Well, there is another document at

30 page 230, also a Chase Bank document, dated the 15th of

1 January. In fact, these are notifications from Chase
2 to Bedell & Cristin as to the disposition in terms of
3 the deposit arrangements of this sum. But this one
4 here indicates, on the bottom of it, if you can see it,
5 it says: "€101,333.34 plus €3.00 telex charge to
6 Guinness & Mahon G. Balance transferred to savings
7 account."

8 .
9 In fact, if you just scroll up to the top of that, can
10 you see somebody else has written in:

11 "Rapallo Limited R.356."

12 .
13 In fact, as we know, the company which was in receipt
14 of the €304,000 had by then had its name changed to
15 Victa, albeit that it bore the same Bedell & Cristin
16 reference of R.356. Do you see that?

17 A. Mm-hmm.

18 326 Q. So it's fairly clear what the scheme was. It's fairly
19 clear that it was, in fact, implemented - it's equally
20 clear that it was only implemented to the extent of the
21 payment of the monies and the distribution of the
22 monies. But all of the other arrangements, in terms of
23 selling off the sites individually and the development
24 of the sites individually by Oakpark were not, in fact,
25 implemented subsequently. A whole pile of different
26 schemes appears to have been contemplated, but you are
27 out of it at that stage.

28 .
29 So --

30 .

1 MR. HUSSEY: I am sorry, Sir again, I know -
2 Mr. Hanratty is making very sweeping statements about
3 the - what he knows about the money.

4 .
5 We know what happened to the ú304,000. We've seen
6 that. And we know that Mr. Finnegan got ú101,000 out
7 of that through the Foxtown - the account in Guernsey.
8 What Mr. Hanratty doesn't seem to have added into this
9 is the actual deed to Victa. The deed to Victa was for
10 consideration of ú141,000, plus whatever expenses,
11 obviously legal expenses involved in that.

12 .
13 MR. HANRATTY: With the greatest of respect, Sir, that
14 is a point for My Friend to make in re-examination.

15 How many times do I have to be interrupted?

16 .
17 I am asking questions which appear, to me, to be
18 relevant to the point that I am seeking to establish
19 information about. And every time I am getting around
20 some point, Mr. Hussey intervenes with some idea that
21 he has, that he thinks is relevant at that time.

22 .
23 With respect, Sir, it's impossible for me to have any
24 kind of meaningful flow in my examination of this
25 witness with these constant irrelevant interruptions,
26 which are obviously designed in aid of the witness, or
27 to make some point which can quite clearly be made in
28 Mr. Hussey's own examination of his own client in due
29 course.

30 .

1 MR. HUSSEY: I promise you, Sir, any interruption I am
2 making is in aid of this Tribunal, to understand
3 exactly where this - where the money went.

4 .

5 Mr. Finnegan has stated that he paid ú50,000 into this
6 scheme. We know where ú300,000 came out of the scheme.

7 And we know, also, that Victa had to pay for this
8 property 141 plus expenses.

9 .

10 It seems to me to be helpful to the Tribunal to point
11 out that not only did money come out of this scheme,
12 but money also went in to the scheme. And if - I would
13 have thought it was helpful for the Tribunal to
14 understand that, before it draws any inferences from
15 questioning to suggest that the ú300,000 is the only
16 money we are talking about in this scheme.

17 .

18 MR. HANRATTY: Well, perhaps Mr. Hussey could help the
19 Tribunal by stating whether he is suggesting, as he
20 appears to be, presumably for the benefit of the
21 witness, that the ú50,000 was part of the ú141,000 paid
22 for the land? Perhaps Mr. Hussey might indicate, is
23 that what he is now saying? Because it is certainly
24 evidence that the witness hasn't given yet.

25 .

26 CHAIRMAN: Mr. Hussey, isn't the real answer to this,
27 that a premises has been advanced. It's a matter for
28 you, in response, when you have your witness, to say -
29 to demolish that premises, if it be demolishable, and
30 to establish it in the manner which you say.

1 .
2 That involves establishing your premises, because if
3 you are going to demolish one, something has to be put
4 in its place.

5 .
6 MR. HUSSEY: I had understood the purpose of this
7 Tribunal was to fact find, not to make premises and
8 have them demolished, but to find out the truth --

9 .
10 CHAIRMAN: Mr. Hussey, I am trying to use reasonably
11 neutral phrases. You are making an argument, if you
12 like to call it that, rather than a premises, and the
13 Tribunal are producing or advancing evidence which
14 leads to a different conclusion.

15 .
16 Now, I don't know, until I hear from your side, what
17 exactly is the basis on which you are advancing the
18 argument, what the proofs are.

19 .
20 I can only balance those when I know them, but at the
21 moment I am trying to hear what one premises is, and
22 await hearing from you what your premises is, and what
23 proof of that is available, whether it be good or bad.
24 And in due course of time, hearing from you your
25 premises. And I am using the word "premises" there.
26 You can call it an argument or anything you like.
27 But having looked at that, I will come to a finding of
28 fact as to what I think did happen. That's the
29 purpose, and my function here, to reach that
30 conclusion. And I can't do it having heard one side

1 only. And likewise, the fact that there exists
2 another, and you say it - depends upon, A, B and C to
3 support your argument, I have to hear that. I have to
4 hear the A, B and C which you say supports it.
5 .
6 MR. HUSSEY: Yes. You see, Sir, as we've been reminded
7 ad nauseam in this Tribunal, this is not litigation.
8 This is not one party putting up one side for the other
9 party to say, "Oh, no, wait a minute, that's not right.
10 This is more correct, and I want you to decide in my
11 favour." This is not what this Tribunal is about.
12 This Tribunal is to find the truth.
13 .
14 It's not for the Tribunal lawyers to put up a premise,
15 to put up an argument. It's for us all, I would
16 submit, to help each other to come to an understanding
17 of the truth of this matter, rather than to be putting
18 up premises and to have them knocked down.
19 .
20 I understood my role to be, as soon as possible, to
21 assist the Counsel for the Tribunal, to come to an
22 understanding, and not to go out to follow false
23 trails. That's what I understood my position to be.
24 If you say it's otherwise, well then, I am quite
25 prepared to keep my peace.
26 .
27 MR. HANRATTY: Well, Sir, I think we better deal with
28 this issue now, once and for all, if we can deal with
29 it once and for all.
30 .

1 I was not putting any premise to the witness. I was
2 exploring with the witness where the £50,000, that he
3 says he put into this scheme, fits into the scheme.
4 .
5 I drew his attention to the nature of the scheme, to
6 the arrangements as they appear from the documents we
7 have, some of which are executed, some of which are
8 not. I drew his attention to the fact that the first
9 part of the scheme involving the payment of the money
10 was, in fact, implemented, in the sense that £300,000
11 was borrowed and sent over. £304,000, in fact, was sent
12 over to Jersey.

13 .
14 Now, while I was exploring with this witness where his
15 £50,000 that he says he invested fits into this, I was
16 interrupted by Mr. Hussey. And Mr. Hussey, without his
17 client ever having made any previous reference to it,
18 introduced the £141,000, or, I presume he meant the
19 balance of the £141,000 that Victa actually paid to buy
20 the land, suggesting to the witness that that is where
21 his £50,000 fitted in.

22 .
23 Now, I want to know now, and since Mr. Hussey wishes to
24 be helpful; is Mr. Hussey saying, and I note
25 specifically that the witness has not yet said. Is it
26 Mr. Hussey's position that the £50,000 his client says
27 he invested went towards the payment of the purchase
28 price, the £141,000? And I think it would be useful,
29 since he has intervened and introduced the £141 before
30 his client has said anything about it, it would be

1 useful if Mr. Hussey indicated to the Tribunal, is that
2 what he is saying?

3 .

4 MR. HUSSEY: I'm sorry, Sir I am merely pointing out -
5 we know what Mr. Finnegan's evidence has been, that he
6 put ú50,000 - he was requested to put in ú50,000 into
7 the scheme. How that ú50,000 was dealt with, we will
8 only know that when we hear from Mr. Owens. I don't
9 know. But what Mr. Hanratty has done, he has
10 concentrated on the monies that came out of the scheme,
11 and we know what happened with those. We've had that
12 with Mr. Brennan and, I think, with Mr. McGowan.

13 .

14 What we don't know is what happened to the monies that
15 were invested, or who invested the monies, and what
16 happened to those.

17 .

18 We know that Mr. Finnegan - Mr. Finnegan's position is
19 that he paid ú50,000 into this scheme on the 8th of
20 November, I think it's the 8th of November, 1978.

21 .

22 CHAIRMAN: As far as I am concerned, I will await the
23 evidence by Mr. Finnegan - by Mr. Finnegan, and the
24 supporting evidence that establishes what he is saying
25 is a fact, that he put in ú50,000, and that it was used
26 as part and parcel of the consideration for the
27 payments out in this instance.

28 .

29 If I don't receive that, well, then, I'll have to
30 choose which is the version I prefer.

1 .
2 350, which was borrowed, sent out, and disbursed. And
3 the lands had to be paid for, there is no doubt about
4 that. The Pembroke Estate got their money. And where
5 they got their money from, we'll have to find out.
6 It's a matter of fact.

7 .
8 327 Q. MR. HANRATTY: Mr. Finnegan, it doesn't appear that
9 your ú50,000 fits into Mr. Owens' scheme. So where do
10 you think it went?

11 A. Well, sir, first of all, in listening to you and going
12 down through the scheme, I must say that - I must say
13 that I don't follow this scheme. I am not one who can
14 follow this sort of thing very easily. All I have to
15 say to you is that - it went - I was - you see, it went
16 into the scheme.

17 .
18 Now, lots of things, I would say, had to happen before
19 the final result came out. And these were probably -
20 what we are talking about here, if they did ever
21 happen, because it seems to me there was a hell of a
22 lot of toing and froing on this thing here. That
23 whatever way it was done, it was done by the man who
24 orchestrated this scheme, and that was --

25 328 Q. Mr. Owens. But we know what he did --
26 A. But how it came in, sir - yes, but I am not the best
27 one to put the argument to you, Sir I say this: That
28 there must be factors on both sides, which I am not in
29 a position to explain to you at the moment, that -
30 like, yes, they are expenses - there was a contract on

1 the land and then there is money taken out.

2 .

3 Now, how, in bringing that around, how that came to

4 pass - you see, this is a fairly sophisticated, I

5 think, fairly sophisticated tax - it's a tax scheme?

6 329 Q. Yes.

7 A. Now, I wouldn't say that I would understand any of

8 those, but this is now - the man has - I would suggest

9 that - I wouldn't suggest it's the wrong way. I would

10 imagine that there are movements that took place in

11 this to arrive at what has happened here. Like,

12 certain things had to be done. It was a land

13 acquisition. And I just say to you, I am sure there

14 were, but where exactly my ú50,000 ended up in the

15 scheme, I don't know.

16 330 Q. All that happened, in practical terms, is: (A) Victa

17 bought the land for ú141,000. And (B), Oakpark sent

18 ú304,000 over to Victa?

19 A. Yes, but then what about - then what about - that was

20 the total consideration, then, for all of the property?

21 331 Q. No, no. The property was bought for ú141,000 --

22 A. Yes, sir.

23 332 Q. -- by Victa. And after Victa had bought the property,

24 Oakpark Developments Limited, a company which was not

25 in any way involved in that transaction at all, sent

26 ú304,000 over to Victa under cover of a licence

27 agreement?

28 A. Yeah.

29 333 Q. That's what happened. And it's very simple, very easy

30 to understand. There may be complicated tax,

1 underlying tax reasons for all of this. Maybe Oakpark
2 were perfectly legitimately, or maybe not, I don't
3 know, but they had certainly a tax scheme under which,
4 presumably, Oakpark claimed the liabilities incurred in
5 borrowing this money in its Profit and Loss Account,
6 whatever way accountants deal with that, and send over
7 the ú300,000, which was to have been repaid out of the
8 sale of the sites progressively, but which didn't
9 happen, as we know. And we'll deal in a few moments
10 with what did happen.

11 .

12 But from the point of view of your involvement in the
13 scheme, you got ú101,000, and that, as I understand it,
14 subject to being corrected by you, was the end of your
15 involvement in this scheme?

16 A. Yes, sir, it was the end of it. I put my money in, got
17 the money out, and that was it. Now, how it came
18 about, though, sir, this is --

19 334 Q. So you put in ú50,000 in November, and you get out
20 ú101,000 in January?

21 A. Yes, sir.

22 335 Q. Now, how did that happen?

23 A. I don't know, sir.

24 336 Q. You mean to tell us, Mr. Finnegan, you have no idea how
25 you made this extraordinary profit in two months?

26 A. No - I think that if you are to ask any ordinary
27 person, sir, to go down through any tax scheme, I
28 couldn't - I never could - it's not within my
29 capabilities of explaining it to you, sir.

30 337 Q. The scheme, so far as it may have related to tax, had

1 no tax implications for you, isn't that right?

2 A. But I -

3 338 Q. You simply were in receipt - sorry, Foxtown Investments

4 Limited simply was in receipt of ú101,000?

5 A. Yes, Sir but I put in ú50,000.

6 339 Q. Right. Well, now, let's stop with that for a minute.

7 Where did you put it into? I know you said you put it

8 into a pot?

9 A. Yes.

10 340 Q. But who did you give it to?

11 A. I would say that wherever it did go, it was either to

12 Mr. Owens or - as to where he directed it would go.

13 341 Q. Do you know where it went?

14 A. I can't say to you at the moment. I can't say exactly

15 where it went, except that it went to - we paid it out,

16 sir.

17 342 Q. Well, obviously there is a debit on the account of

18 ú50,000, but for all we know it could have gone

19 anywhere, and you are relying on the fact that your

20 colleague wrote "B View" beside it as indicating that

21 it was an investment by you into Donnybrook?

22 A. What I might say to you is this, sir: That the

23 document which I have here, is something which was

24 found in my office.

25 343 Q. I know, you've told us this.

26 A. I would like to cover it again, just to explain my

27 position to you, Sir

28 .

29 These notes were made some, whatever, must be 20 years

30 - over 20 years ago, whatever it is.

1 344 Q. Yes.

2 A. So whilst here I am today trying to remember, but the
3 person who made the notes would have known at the time
4 that this was done - it is not as if it was done ages
5 afterwards, but it was done at the time.

6 345 Q. Mr. Finnegan, this gentleman could have written this in
7 for any amount of reasons, the same as all the other
8 entries he made against all the other debits he makes
9 entries against, for any number of reasons. He could
10 have done it for accounting reasons within Foxtown, for
11 any reason. We don't know until we hear it, and he is
12 going to tell us all about it.

13 .

14 What I am saying to you, what I am trying to elicit
15 from you is where did you put the money? What did you
16 physically do it with it? Who received it? What bank
17 account did it go into? Was it paid by cheque? Was it
18 a bank draft?

19 A. I don't know. One thing - not have to - but, Sir, I
20 would suggest to you that one thing - this is an
21 authentic thing, as far as I am concerned. It was
22 something that was noted - I know you did say, sir,
23 that it could have been put in at any time. These are
24 very old, so all you have to do is have them checked.

25 346 Q. That document doesn't prove or disprove anything. What
26 I am trying to elicit from you is what did you do with
27 the ú50,000?

28 A. I don't know. And maybe when you have the opportunity,
29 sir, later, with Mr. Owens or something, you could
30 maybe extract from him how he did - how he dealt with

1 it.

2 347 Q. You see, you didn't even remember that you had put in
3 money until these things were produced?

4 A. I always --

5 348 Q. Both Mr. Brennan and Mr. McGowan said you didn't.

6 A. Let it be, sir, and it's up the judge here to make up
7 his mind on this, sir, when he hears all of the
8 evidence. But as far as I am concerned --

9 349 Q. You see, the difficulty that the Sole Member has,
10 because --

11 A. Sir --

12 .

13 MR. HUSSEY: I wonder, could the witness be allowed to
14 answer.

15 A. Sorry?

16 .

17 350 Q. MR. HANRATTY: Carry on. I put a question to you.

18 .

19 You see, the difficulty the Sole Member has - you say
20 he can decide it, but this 50,000 debit has one thing
21 in common with the previous investment you are saying
22 you made in Monkstown, in that there is not a single
23 trace of it in any of the thousands of documents we
24 have about these transactions. Not a single reference
25 to this 50,000. And there is nowhere where one can
26 identify that it could fit into Mr. Owens' scheme for a
27 start, or indeed, any other aspect of the scheme. .
28 Your counsel has made a suggestion, which you haven't
29 yet taken up, that maybe it went towards the 141,000
30 that was paid for the property?

1 .

2 MR. HUSSEY: I --

3 A. All I would say to you is this, sir: That the money
4 went in. Now, perhaps - what I was going to say to
5 you, that perhaps when you have the opportunity, that -
6 you see, I'd say that, again not being an accountant or
7 anything like it, sir, that there must have been
8 workings of this prepared. You see, these are final
9 documents that you are seeing here, of how this thing
10 was implemented.

11 .

12 Now, there must have been workings of movements around
13 to get to that situation --

14 351 Q. MR. HANRATTY: Do you see the pages on, Mr. Finnegan?

15 A. Well, I would say - yes, sir.

16 352 Q. Do you have it there? There is an entry - it's not on
17 the screen. The hard copy documents that you have.

18 A. Oh, sorry. Yes.

19 353 Q. The entry is either the 10th, or perhaps the 20th of
20 November, 1978. Perhaps the 28th. It looks like the
21 28th. Yes. I think it's the 28th.

22 A. All right.

23 354 Q. Yes. If you look at the "8" beneath it, it's the 28th.
24 If you see, on the right-hand column, under "value
25 date" is "28th2. Do you see that?

26 A. Yes, sir.

27 355 Q. Now, the entry says: "B 1095. Value at 28th November
28 - ú50,000." What does B 1095 mean?

29 A. I have no idea. I don't.

30 356 Q. Pardon?

1 A. I don't know what it represents, sir.

2 357 Q. I mean, you are the one suggesting that this ú50,000 -

3 this indicates that you invested ú50,000 in Bellevue,

4 and you don't even know what the entry means.

5 A. No, sir, I'll tell you - I want to say to you that,

6 relating to this; I am not a person who checks these

7 sort of things. I don't know - I don't know that

8 branding, whatever it is. I don't know what it is. It

9 doesn't come to me, sir, that - so whatever it means,

10 it means, but I don't know. I am sorry about that, but

11 I don't --

12 358 Q. Do you have any idea --

13 .

14 MR. HUSSEY: I am sorry, Sir, can I just interrupt

15 here?

16 .

17 I wonder, do you, Sir, have a hard copy of these

18 documents before you, Sir? It's number 4844. It's not

19 going up on the screen. I think, Sir, it's important

20 that you should say --

21 .

22 CHAIRMAN: I actually have it on one of the computers

23 here. I have the hard copy, and I also have the one on

24 the screen - on our computers.

25 .

26 359 Q. MR. HUSSEY: Page 4484. You can see under "Details",

27 that column there, there is a list of numbers with a

28 letter beside them. I think there is probably --

29 .

30 CHAIRMAN: I see them.

1 .
2 MR. HUSSEY: Probably "B" - it starts off with "B
3 0777". And there is a list of letters and numbers
4 throughout that column of, I'd say probably 30 entries.
5 And just to be fair to the witness, what he is being
6 asked to do is to recollect from an entry of the 28th
7 of November, 1978, one number, B 1098, and asked, what
8 does that mean --

9 .
10 CHAIRMAN: Just a moment.

11 .
12 MR. HUSSEY: B 1095. It's opposite the date, the 28th
13 of November, 1978.

14 .
15 CHAIRMAN: I have that.

16 .
17 MR. HUSSEY: This witness has been asked, does he know
18 what B 1095 is. You can appreciate, this is in a
19 column of a list of numbers of similar provenance, and
20 I suggest to you, it is grossly unfair. It's beyond
21 gross to ask this witness, does he know what B 1095 is,
22 in the context of that list of numbers. It's quite
23 clearly a banking code for transfer or whatever --

24 .
25 MR. HANRATTY: Here again Mr. Hussey is giving
26 evidence, because I haven't heard that --

27 .
28 MR. HUSSEY: He asked this witness what --

29 .
30 MR. HANRATTY: I object to this, Sir I haven't heard

1 this from any witness. Here Mr. Hussey is saying it is
2 a banking code.

3 .

4 CHAIRMAN: Just a moment, please. Just a moment.

5 .

6 Mr. Hussey, you are counsel for this witness. If there
7 is substance in what you are saying, then it is a
8 matter for you either to have written to the Tribunal
9 about, and given a full statement as to how these
10 figures, and what they did, so that we know what your
11 case is, and what your premises is. Or alternatively,
12 when you are examining the witness you can advance this
13 premises, or advance this argument, or whatever phrase
14 you would like to use about it, and you can add, that
15 in due course of time you are welcome to consult with
16 the accountant, that he will establish, A, B and C, and
17 no doubt, if that be the premises, that you will, when
18 he gets into the witness-box - he, as the accountant
19 who dealt with this 50,000, or we believe probably
20 dealt with this 50,000, he's going to explain it.

21 .

22 But at the moment Mr. Hanratty is putting to the
23 witness - I used the words "the premises", he uses the
24 words "the interpretation of the document."

25 .

26 Now, we just can't have interruptions. Either we hear
27 from one side what is being said and hear the opposite
28 in cross-examination. That's the standard method of
29 achieving some degree of capacity to understand what's
30 going on, otherwise, we are just going to --

1 .
2 MR. HUSSEY: What I was trying to bring was some air of
3 reality to the type of question that's been asked. You
4 would want to be an ace memory man to remember a series
5 of numbers of this nature from sometime - November
6 1978. And I suggest it is gross to ask a witness such
7 a question, and to put it on the record that he can't
8 interpret what B 1095 is from a document --

9 .
10 CHAIRMAN: The witness has been saying that he
11 contributed ú50,000. He doesn't have a clear
12 recollection, as I understand it, to whom he gave it,
13 the occasion he gave it, the manner in which he gave
14 it. In other words, cheque, cash or otherwise. And he
15 says: In my documents I found this old file, in which
16 there is - a figure of ú50,000 exists. This is the
17 ú50,000.

18 .
19 Now, Mr. Hanratty is perfectly entitled to inquire into
20 the validity of that claim. And I am perfectly
21 entitled to require the validity of that claim to be
22 substantiated before I come to reach a conclusion as to
23 whether it's right or wrong.

24 .
25 Now, that's all that is being done, and I don't see
26 there is anything unfair about it. As I say, it's a
27 matter for yourself and your client to go through
28 whatever archives are available, and this is the
29 problem which is arising from the failure to get the
30 bank accounts from Jersey.

1

MR. HUSSEY: I fully appreciate that, Sir.

3

CHAIRMAN: And it's not a problem of our making, nor do I necessarily say it's a matter of your making either.

I want to make that clear, at this moment in time.

7

MR. HUSSEY: Thank you, Sir.

9

CHAIRMAN: But we must try and progress this matter with a certain degree of order. And the order that I want to see it progress by is let the premises, the argument, the suggestion be made, this is it. Let it be countered by the witness by saying, "No, this is my £50,000." He either is able to bolster that up by various aspects of his memory, or alternatively from documents, or what his accountant - the accountant says, who has organised this whole transaction. But we have just got to progress along those lines.

20

I am not going to be unfair to the man in any way. If the alternative is manifested, now or at a later point in time, I am not here to choke off any answer that is reasonable and rational. And I am going to be quite clear about that.

26

MR. HUSSEY: Thank you, Sir.

28

CHAIRMAN: Let's try and progress it along - it's now quarter to four. Let's carry on for another quarter of

30

1 an hour.

2 .

3 360 Q. MR. HANRATTY: Mr. Finnegan, on that page, as in the

4 other pages there are a whole list of numbers. You can

5 see that?

6 A. Yes, sir.

7 361 Q. Address yourself to the ones on that page for a moment.

8 Some of them begin with the letter "B," some of them

9 begin with the letter "R" and each of them has a

10 different number. And as far as I can see, none of the

11 numbers are the same. I haven't done an exhaustive

12 check, but it appears, certainly on that page, for

13 example, that none of the numbers are the same?

14 A. Right.

15 362 Q. It appears, in the case of the ones with "B" opposite,

16 they are a debit, and the ones with "R" opposite them,

17 they are a credit?

18 A. All right. Good.

19 363 Q. Now, do you have any idea what these references mean?

20 A. No, sir.

21 364 Q. What they refer to?

22 A. No, I am afraid I don't, Sir.

23 365 Q. They are obviously references?

24 A. Of some kind, yes, they are.

25 366 Q. And they are obviously references to something?

26 A. I would agree with you, yes, sir.

27 367 Q. Well, do you have no idea what they are references to?

28 A. I am afraid I don't, sir.

29 368 Q. Because if you did, it might assist us in figuring out

30 what this \$50,000 is.

- 1 A. I can quite understand your dilemma, sir, but
2 unfortunately they are a long time ago, and anyway,
3 it's not the sort of thing that I would know, but I
4 don't know, unfortunately.
- 5 369 Q. Your counsel has suggested, I don't know on what basis,
6 that they are bank references.
- 7 A. Well, I would only be speculating as to what - if I
8 don't know, sir, and unless I get some more information
9 somewhere, I won't be able to say any more than that.
10 And I am sorry that I don't know, because if I could
11 help you, I would. And it's in my own interest, sir,
12 to help you if I can to clear up this.
- 13 370 Q. Do you have any recollection of giving ú50,000 to
14 Mr. Hugh Owens?
- 15 A. The actual recollection of giving the amount - again, I
16 have to say to you, it's a long, long time ago, but all
17 I can say to you is that I always felt that I had
18 contributed here, and when - at the time, which is
19 whatever, 1978 --
- 20 371 Q. I am just interested at this stage in establishing, do
21 you actually recall giving ú50,000 to Mr. Hugh Owens?
- 22 A. No, I can't recall the instance.
- 23 372 Q. Do you recollect giving ú50,000 to anybody?
- 24 A. I can't - I know that I did - I always thought I put
25 money in, sir, and then this came up to --
- 26 373 Q. The question was: Do you recollect giving 50,000 to
27 anybody?
- 28 A. No, but - sorry. I can't say to you that I absolutely
29 recollect the transaction.
- 30 374 Q. That's all. Do you have any idea, on the basis of your

1 belief that you did give it to somebody, how it would
2 have been done?

3 A. Well, one thing I would say to you, sir, it probably
4 wasn't implemented by me, but I think that it might
5 have been done by way of a transfer, sir.

6 .

7 Again, I am only speculating for you --

8 375 Q. What was the normal way, when monies were required to
9 come from Foxtown's account in Jersey, could you draw
10 them out, for example, through Guinness & Mahon in
11 Dublin, which had these - which appears to have had
12 some involvement in this account from the statements we
13 have here?

14 A. Again, I am not saying to you that - I wouldn't have
15 been involved in the actual transactions like this, but
16 I would imagine that they were --

17 376 Q. Did you have a chequebook, for example, that you could
18 write a cheque?

19 A. No, Sir .

20 377 Q. Were you able to go in to Mr. Traynor and say, "I want
21 ú50,000 out of the Foxtown and Guernsey account,
22 please"?

23 A. The only thing is that if there were - Mr. Traynor had
24 been around, that if he wanted something like that,
25 sir, if I'd asked, he would probably implement it.

26 378 Q. Does that mean, yes, you could have gone into
27 Mr. Traynor, "Look, I need ú50,000 for an investment
28 here, can I have it, please, out of the Foxtown
29 Guernsey account"?

30 A. "Can you arrange it?" Yes.

1 379 Q. And he would produce ú50,000?

2 A. Yes, yes.

3 380 Q. Well, in what form would he give it to you? I presume

4 he wouldn't have given it to you in cash, "I've given

5 you a Guinness & Mahon bank draft," or would he have

6 arranged for it to be transferred into somebody's

7 account?

8 A. I would think that the likelihood is that it would be a

9 transfer.

10 381 Q. You think it was likely it --

11 A. This is just - I think that's probably the - the

12 probable answer to it. But again, I couldn't say

13 absolutely. But for the purposes of this, it is a

14 likely way that it could have been done.

15 382 Q. Can I refer you back to the discussion we had

16 yesterday, and indeed last week about the question of

17 control of this Trust. And you disagreed yesterday

18 with your solicitor's testimony on this point.

19 .

20 But do you see any incongruity in you taking out

21 ú50,000 from the account of Foxtown and putting it in

22 an investment?

23 A. Do I see any?

24 383 Q. Incongruity?

25 A. I would imagine, sir, that - just look at it, that the

26 - if it was an investment in property in Ireland, that

27 the trustees would allow that, sir.

28 384 Q. Well, this is the first we've heard of that, Mr.

29 Finnegan, because if you recall, all of the testimony

30 that we had yesterday about the ú33,333 which was put

1 into the Donnybrook scheme, you were approached by
2 Brennan and McGowan with their scheme, you were
3 required to invest ú33,000, and you agreed to do it,
4 and you say you did it. And in this case you were
5 required, you say, to put in 50,000, and you did.

6 A. Yes, sir.

7 385 Q. These are all investment decisions which one would
8 expect trustees make, not beneficiaries, not people who
9 are not in control?

10 A. I think that whilst - I think, just to try and
11 enlighten you a little bit on that, Sir I think that
12 the trustees would look at - if it was an Irish land
13 transaction, sir, would probably look at it, because I
14 was here, and would probably respect my thoughts on it
15 --

16 386 Q. Well, I understood your evidence to be that you made
17 these agreements with Brennan and McGowan?

18 A. Yes, sir.

19 387 Q. The trustees weren't involved.

20 A. No, but if I had to - you asked me, sir, if I was to
21 get - in getting the - if I agreed, I would have to get
22 the money. And then getting the money, I suppose,
23 would be the proving of what --

24 388 Q. What are you saying?

25 A. If I agreed - agreeing, and then getting the money, I
26 would have to go through whatever sources I had to do
27 to get the money. And the money --

28 389 Q. Would you have to get them out of the Foxtown account
29 through Mr. Traynor?

30 A. Yes, sir.

1 390 Q. What about the trustees?

2 A. Well, I think that if --

3 391 Q. These are the people who are supposed to be making all

4 the investments in this Trust, yet here you are going

5 around making agreements with Brennan and McGowan about

6 Foxtown money?

7 A. Yes, but if I made an agreement, then I would have to

8 get the money.

9 392 Q. Yes. And you got it?

10 A. I got it, yes.

11 393 Q. The point I am putting to you, Mr. Finnegan, is that

12 you were the one making the investment decision, not

13 the trustees?

14 A. No, no. I think that - like everything else, they have

15 people who buy shares, and I suppose they reflect the

16 stockbrokers' advice, if they are going into that, or

17 whoever they get advice about - their financial

18 adviser. When it came down to a property transaction,

19 that I am living here, and they would respect whatever

20 my advices were.

21 394 Q. Did the trustees require a receipt for the 33,333, or

22 for the 50?

23 A. Well --

24 395 Q. -- from Brennan and McGowan or Hugh Owens or anybody?

25 A. Probably the fact that there must have been an

26 acknowledgment of it somewhere, sir.

27 396 Q. Did they have any information from you about the nature

28 of these investments that this trust money was being

29 put into? Did they get a presentation from you or an

30 explanation as to the scheme which you told us

1 yesterday you didn't understand?

2 A. No, Sir again, going back to what exactly I said at
3 the particular time, which is 20 something odd years
4 ago, I can't tell you exactly what I said, but I was
5 able to get - I was able to get the money, sir.

6 397 Q. Well, if you didn't understand it, how do you - did you
7 explain it to the trustees what it's about --

8 .

9 MR. HUSSEY: I'm sorry, sir, that's not a fair
10 question. Mr. Finnegan has given his understanding of
11 it. I know Mr. Hanratty has had difficulty coming to
12 terms with that understanding, but he has given a
13 understanding of the scheme, such as it is. So to --

14 .

15 CHAIRMAN: If this evidence is correct, one would have
16 assumed that you would have heard a discussion or an
17 advice by the trustees or permission, something akin to
18 a permission. I know that the funds were essentially
19 the witness's funds in that sense, but they were in the
20 control of the trustees, as such, broadly speaking.

21 And I would have thought that if he's going to override
22 them or act without their - that he would at least
23 consult them.

24 .

25 I haven't heard any evidence of consulting trustees or
26 anybody else. Apparently, he was operating the account
27 as if it was his own bank account. I mean, his
28 ordinary trading accounts, banks here in Ireland. I am
29 here to look at probabilities. Anybody can offer me
30 anything else to make one probably greater than the

1 other. I would only be too delighted to hear it.

2 .

3 At that stage I am going to rise for the day at four

4 o'clock.

5 .

6 THE TRIBUNAL ADJOURNED TO Tuesday, OCTOBER 16, 2001, AT

7 10:30 A.M.

8

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