

1 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 14TH OF
2 NOVEMBER, 2001, AT 10:30 A.M.:

3 .

4 CHAIRMAN: Good morning everyone.

5 .

6 MS. DILLON: Sir, before Mr. Burke resumes his
7 evidence, there was a matter that I had indicated to
8 Mr. Walsh that I would clarify, if clarification was
9 required, this morning, and that was the receipt of
10 certain documentation from Bank of Ireland in
11 connection with the Whitehall account.

12 .

13 It is correct, and Mr. Walsh was correct when he said
14 yesterday that the Tribunal had received documentation
15 from Bank of Ireland in Whitehall in, I think, May of
16 this year. It would, however, appear from a comparison
17 of the file that was produced on that occasion and the
18 file that was produced last week, from Bank of Ireland,
19 that documents were not included in the first delivery
20 that were included in the second delivery, but the
21 Manchester account was included in the first delivery.
22 The Northern Ireland account did not appear to have
23 been included until last week.

24 .

25 So I am happy to clarify that, that the particulars of
26 the Manchester account were furnished by the bank to
27 the Tribunal in May or June of 2001, but that it would
28 appear, for whatever reason, that other details in
29 relation to the Northern Ireland account, together with
30 some other documentation, were furnished to the

1 Tribunal by the bank last week, and were not included
2 in the first delivery of the documents.

3 .

4 It also appears to be the position, in relation to the
5 document that Mr. Burke was referring to in evidence
6 yesterday, dealing with the sale of his insurance
7 business to Messrs. McMahon Galvin, that that is not a
8 document that we were able to locate as having been
9 furnished by Mr. Burke to the Tribunal.

10 .

11 We did take a copy of it yesterday, but I think, in
12 order to keep the record straight, it might be
13 appropriate for Mr. Shannon to formally send us copy of
14 that document, together with any other documentation
15 that Mr. Burke may have in relation to that
16 transaction.

17 .

18 MR. WALSH: I would just like to formally thank Ms.
19 Dillon for clarifying that matter. She has accurately
20 summarised the position on the bank documentation.

21 .

22 On the other documents concerning the sale of the
23 business, the information on the figures was furnished
24 by Mr. Burke in his statement some months before that
25 document came to light. I think it is in that context
26 that we just overlooked sending it. We will formally
27 send it to the Tribunal's solicitors.

28 .

29 CHAIRMAN: Thank you very much for both - thank you
30 very much to both of you for the clarification. It is

1 on the record now. Thank you.

2 .

3 MS. DILLON: Thank you, Sir.

4 .

5 Mr. Burke please.

6 .

7 MR. RAPHAEL BURKE RETURNS TO THE WITNESS-BOX AND
8 CONTINUES TO BE EXAMINED BY MS. DILLON AS FOLLOWS:

9 .

10 1 Q. MS. DILLON: Mr. Burke, if we could turn to deal with
11 the subject of the purchase or acquisition of your
12 house and premises at Briargate.

13 A. Sure.

14 2 Q. In Swords, County Dublin. Can you outline in as much
15 detail as possible, to the Sole Member, what your
16 recollection of the sequence of the arrangements that
17 you made in relation to the acquisition and building of
18 your house at Briargate?

19 A. Well, I have already given a narrative to the Tribunal
20 in relation to this. It is, very roughly, without
21 quoting every line of it to you, Mr. Chairman, I got
22 married in November of '72. At that time I decided to
23 live in Swords. I was aware that Oakpark Developments
24 had bought two fields on the Malahide Road in Swords.
25 I negotiated to buy one of the fields from Oakpark. I
26 had a house designed and built on the site by Oakpark,
27 and the plans and the drawings were done by Des
28 McCarthy and JP Keenan, architects.

29 .

30 I received a loan approval. If you bear with me for a

1 moment, I will get the details of it.
2 .
3 I received a loan approval from the Property Loan and
4 Investment Company, which was part owned by - which was
5 owned by the Bank of Ireland. All of this transaction
6 was done through the Bank of Ireland in Whitehall,
7 which was my bank at the time. The documentation that
8 I have received in - when I made the statement to the
9 Tribunal on the 24th of May, I hadn't got the
10 documentation from the bank, despite the fact that I
11 had looked for documentation from the bank, but they
12 have since produced some documentation.
13 .
14 And the context is, it appears, is that on the 12th of
15 September, '72, I received loan approval for 15,000.
16 On the 13th of December, '72 they were notified of my -
17 of the intention to avail of the loan. That was done
18 for me through the solicitors, I think.
19 .
20 On the 4th of January, right through the whole
21 procedure, various correspondence went between my
22 solicitor and the solicitors acting on behalf of the
23 bank.
24 .
25 The situation then arose that - in the September period
26 we went through - the house was being built right
27 through 197 - the best part of 1973 up until October,
28 1973. And if you just bear with me a second, I will
29 give you the details of it.
30 .

1 Sorry, I - yes. How is it that you can never find it
2 when you are looking for it. Sorry, Mr. Chairman. It
3 was built, anyway, right through '73. And I moved in
4 to it in October 1973. Just one sec now. I paid
5 22-and-a-half thousand for the house. That was my
6 recollection of it. 15,000 was paid in the manner that
7 I outlined to the Tribunal yesterday, and that we went
8 through yesterday. And the seven-and-a-half was
9 deducted from fees that I had earned on house sales,
10 having sold houses for Oakpark in Swords, right down
11 through the years. So the funds would have come out of
12 there.

13 .

14 But the 15,000 was paid for in the manner which I
15 outlined, and which was gone through with the Tribunal
16 yesterday, on the - what is was referred to yesterday
17 as the Casey letter, which I am just trying to put my
18 hand on at this stage. I have it here.

19 .

20 Yes, sorry about that.

21 .

22 In 1974 there was a controversy resulting from a media
23 report in relation to the portion of land in Mountgorry
24 in Swords. As part of that investigation, Inspector
25 Casey of the Gardai inquired from me in relation to the
26 house. I gave Inspector Casey authority to go to the
27 bank to provide any information, getting a letter
28 saying I give my authority to give any information
29 required to Mr. Casey. That was addressed to the bank
30 in Whitehall.

1 .
2 The bank, then, in August '74, 20th of August '74
3 outlined the letter that we went through in detail
4 yesterday, about the 15,000, Mr. Chairman.

5 .
6 That's the situation on it.

7 3 Q. If we can go back to the very start of your answer,
8 there, Mr. Burke.

9 A. Sure.

10 4 Q. When you say that you negotiated to buy one of the
11 fields.

12 A. That's right.

13 5 Q. Okay. Can you tell us with whom you negotiated and
14 what precisely were the terms of the agreement that you
15 had?

16 A. Well, it was quite a straightforward discussion with
17 Oakpark. It was probably with - it could have been
18 with Jack Foley. It could have been with Tom Brennan.
19 I am not sure who - which of them. I was dealing with
20 them all at that stage on a daily basis because I was
21 selling houses for Oakpark, in Swords, which was a site
22 just literally a half a mile away from where my home
23 was built, so- and I was in and out of the show houses
24 every day selling houses there. So I would have been
25 dealing with the individual directors.

26 .
27 So it would have been with one or two of them, but -
28 there was a general agreement with the directors, that
29 they were prepared to sell the field to me, because
30 they were aware that I was anxious to live in the town

1 of Swords, and they had this one field which had road
2 frontage and which suited my needs perfectly, and they
3 weren't too pushed about it. So that's how I
4 negotiated the sale with them.

5 6 Q. When you say "they weren't too pushed about it," what
6 do you mean?

7 A. They weren't pushed about that, because it was only a
8 small field. There were two fields, but they had -
9 their type of operation, their building was normally in
10 projects of hundreds, rather than individual small
11 fields. So they weren't too pushed about that
12 particular field. I was delighted to be able to get it
13 away from them, because as it was - while it was about
14 a mile away, half a mile or a mile away from their
15 existing big operations, it was only a small field in
16 their context.

17 7 Q. The normal business transacted by Oakpark Developments,
18 as outlined to the Tribunal by Mr. O'Reilly, the
19 solicitor for Oakpark Developments, and indeed the
20 directors subsequently, was that it was their normal
21 practice to engage in fairly significant numbers of
22 house development at a time?

23 A. That is precisely what I am saying to you.

24 8 Q. Are you aware of any other situation in which Oakpark
25 purchased a site of this size?

26 A. They would have been purchasing land everywhere and
27 anywhere. I think their main hope at one stage was
28 that they would - this particular field, these two
29 fields were in the centre of another farm holding. I
30 think their original intention, I can't be sure of

1 this, but I would say their original intention was with
2 the hope of buying the land around it, but they didn't
3 get it, so I bought the field from them.

4 9 Q. The site in question was a two acre site?

5 A. With two fields, yes, two fields.

6 10 Q. And you got married in November of 199 - of 1972?

7 A. That's right, yes.

8 11 Q. And this was your first family home, is that right?

9 A. That's correct.

10 12 Q. And I suppose, Mr. Burke, in common in with most
11 people, everybody remembers their first house?

12 A. Well, I remember the house well. Obviously, I have
13 very many happy memories of that home, yes.

14 13 Q. Did you retain Mr. Jack Keenan to apply for planning
15 permission?

16 A. I would have retained Mr. Keenan, yes.

17 14 Q. When did you retain Mr. Keenan?

18 A. It would have been sometime in 1972. After I had got
19 the site, I would have asked Jack to design the house
20 for me.

21 15 Q. When in 1972 did you agree to buy the site?

22 A. In July of 1972.

23 16 Q. How do you know it was in July of 1972?

24 A. Because I got engaged on the 4th of July of 1972, which
25 was my wife's birthday. We agreed that we - we both
26 went out and looked at the site that day. I told her,
27 introduced her to where she was going to live. That
28 was the date that I did the - that was the date that we
29 decided that we were going to - that she liked the
30 site, and she liked where it was, and we agreed that we

1 would go to live there.

2 .

3 It was at that time that I finalised the decision with
4 the Oakpark people, that yes, I would go ahead with the
5 site.

6 17 Q. When you say you had finalised the decision with the
7 Oakpark people that you would go ahead with the site,
8 does that mean that you had, prior to July of 1972,
9 evinced some interest in the site to Oakpark?

10 A. It would have been around that time, shortly before I
11 showed it to Anne, that I would have said to the - that
12 I would have negotiated with them on the basis of the
13 availability of the site, and if they were prepared to
14 sell it to me. And, of course, it would have been all
15 subject to her sanction, as to where she wanted to
16 live, so we walked the site that day.

17 18 Q. Oakpark Developments became registered as owners of the
18 property themselves on the 20th of April, 1972?

19 A. Yes.

20 19 Q. So they had acquired it within a very short period of
21 time prior to you having your discussion with whoever
22 you had your discussion with in Oakpark about you
23 perhaps buying a portion of the site. Would that
24 appear to accord with your recollection?

25 A. It is according to the records that are shown there,
26 yes.

27 20 Q. So --

28 A. They also got a planning permission, I think, for two
29 or three houses on the front of that site.

30 21 Q. Three houses?

1 A. Yes, two or three houses.

2 22 Q. Three houses. I think we will come to look at the
3 planning permission, Mr. Burke.

4 .

5 But that planning permission, am I correct in thinking,
6 related to the site on which your house was ultimately
7 built?

8 A. On the front of the site, yes.

9 23 Q. On the front of the site?

10 A. Yes, and I built, rather than building on the road
11 itself, I built my home back from the road.

12 24 Q. Mmm. So it would appear from the record that Oakpark
13 had acquired this site some very short period of time
14 prior to you expressing to Oakpark that you had an
15 interest in acquiring it?

16 A. That's what the record shows, yes.

17 25 Q. Who did you deal with Mr. Burke?

18 .

19 MR. WALSH: Sorry. One point of clarification on that.
20 I think the record showed the date upon which Oakpark
21 became registered as owners in the Land Registry, which
22 is the 20th of April 1972. I am not sure if it shows
23 when they actually bought the land, which could have
24 been sometime before the registration went through.

25 That's just a point.

26 .

27 CHAIRMAN: I note your point.

28 .

29 26 Q. MS. DILLON: In any event, Mr. Burke, in 1972 you had a
30 discussion with somebody in Oakpark about buying this

1 site?

2 A. I would have discussed it with a number of the
3 directors, but as to which one of them, I am not
4 particularly sure, but I would have, in the main, have
5 been dealing with Jack Foley or Tom Brennan. But they
6 would have all been subject - they would have all been
7 included in the decision, obviously. It was a company
8 decision made by them to agree to sell it to me.

9 .

10 I would at various times have been meeting the various
11 directors on a regular basis, and it would have been
12 touched on in conversation, that is all. I can't be
13 specific as to which individual at this time, you know.

14 27 Q. What precise arrangement did you make with Oakpark as
15 to how the site would be paid for?

16 A. I agreed that the - that I would secure a loan on it,
17 which I paid to the Property Loan and Investment
18 Company. And that was for ú15,000. And the balance I
19 would have paid for through fees that I worked for on -
20 in my company, PJ Burke (Sales), selling houses for
21 Oakpark.

22 28 Q. If we could have Document 3005, just in relation to the
23 point that Mr. Walsh made.

24 .

25 We will see there that the transfer between Margaret
26 Coleman, who was the owner as personal representative
27 of the estate of Joseph Coleman, Junior, of the site in
28 Oakpark, that Oakpark purchased, that that transfer was
29 completed or that purchase was completed on the 15th of
30 March, 1972, and that by the 20th of April, 1972,

1 Oakpark were registered as full owners. So it would
2 appear that Oakpark purchased the property some very
3 short time, Mr. Burke, prior to you evincing an
4 interest in the particular property?

5 A. Yes. Well, at that time, in March of '72, I had no
6 interest in building a house anywhere. It was only
7 around that time, February, March of '72, that I first
8 met my wife, and I would have had absolutely no
9 interest and no idea of needing a family home at that
10 stage.

11 29 Q. Yes. If we could deal first of all, Mr. Burke, with
12 the site, as opposed to the building of the house.

13 A. Mm-hmm.

14 30 Q. Okay. Can you explain to the Sole Member of the
15 Tribunal the precise arrangements that you made in
16 relation to the purchase of the land and with whom you
17 made them?

18 A. It was all a package, it wasn't one individual, the
19 site and then the house. It was just an overall deal
20 with the - with Oakpark. It was - the nominated figure
21 for the site was seven-and-a-half thousand, and the
22 house was 15,000, but it was an overall package as
23 such.

24 .

25 As far as who I was dealing with, it would have been
26 Tom Brennan or Jack Foley, or Bill Brennan or Jim
27 Lyons. It would have been one of those four guys
28 involved. Bernie Cooke was unlikely the other director
29 of Oakpark. Unlikely because he normally operated in
30 the Leixlip area. It would have been one of those four

1 or a combination of them at any one time.

2 31 Q. It would appear that prior to your discussion in July
3 of 1972, that Oakpark had applied for and obtained
4 planning permission to build three houses on this site?

5 A. They were going to build three small houses on the
6 front, yes.

7 32 Q. 3027, please.

8 .

9 If we start with 3026, Mr. Burke, which is an
10 application for planning permission.

11 A. Sorry, just one second. 3027.

12 33 Q. 26?

13 A. 26.

14 34 Q. The document is on screen beside you, Mr. Burke.

15 A. I have it here, yes. Yes, 3026. Yes.

16 35 Q. You will see this is an application for planning
17 permission which was lodged on the 1st of September,
18 1972, by Mr. John P Keenan?

19 A. Mm-hmm.

20 36 Q. I think you subsequently appointed Mr. Keenan to An
21 Bord Pleanala, isn't that right?

22 A. He was available for appointment. I asked - the
23 government decided they were going to appoint a number
24 of people to An Bord Pleanala. Mr. Keenan, I knew, was
25 a very efficient architect and asked as to his
26 availability, and he was available for appointment, and
27 the government appointed him. I was delighted that he
28 was available.

29 37 Q. That was when you were Minister for the Environment?

30 A. It was when I was Minister for the Environment, in

1 either 1981 or '82. I am not sure what date he was
2 appointed.

3 38 Q. And it is formally the Minister for the Environment at
4 that time who made the appointments to An Bord
5 Pleanala?

6 A. That's correct. In '81 or '82. This is '72 we are
7 talking about here, yes.

8 39 Q. Now, the name of the applicant there is described as
9 Forrest Homes?

10 A. Yes.

11 40 Q. And later in the document you will see it is referred
12 to as Forrest Homes Limited, which was one of the group
13 of companies of which Oakpark was a member, isn't that
14 right?

15 A. That's right.

16 41 Q. It was an associated company with Oakpark?

17 A. Well, it was one of the group of companies, yes.

18 42 Q. The application was made or lodged on the 1st of
19 September, 1972?

20 A. Yes.

21 43 Q. And a decision to grant permission was made on the 29th
22 of September, 1972, and granted on the 13th of
23 November, 1972?

24 A. That is what the documentation shows, yes, I accept
25 that.

26 44 Q. That, in fact, was an application by Mr. Keenan on
27 behalf of you, is that correct?

28 A. That's precisely it, yes.

29 45 Q. Why did you decide to make the application in the name
30 of Forrest Homes?

- 1 A. Well, they had already got the planning permission for
2 the three houses, I think, and it was in their name,
3 Forrest Homes. I am not sure whether it was Oakpark or
4 Forrest Homes. But I just kept my business private in
5 relation to it, Mr. Chairman, as to identifying that
6 fact, that I had made the decision to live locally.
7 .
8 It could have been - in the real political world that
9 we live in, I wasn't leaving myself open to people to
10 object or delay, or anything else. It was just I
11 applied for the planning permission in the manner in
12 which it was done.
- 13 46 Q. If you turn to page 3027, you will see a copy of the
14 grant of planning permission from Dublin County
15 Council?
- 16 A. Mmm.
- 17 47 Q. The Applicant's name is in the name of Forrest Home
18 Limited. It is addressed to Mr. John P Keenan,
19 architect, of South Frederick Street?
- 20 A. Yes.
- 21 48 Q. The decision is a decision to grant approval for the
22 development of a proposed dwelling house at Malahide
23 Road, Swords, subject to the conditions that are set
24 out?
- 25 A. That's correct. If that is what it says here, yes.
26 It is a bad copy. I can't read it very well.
- 27 49 Q. It is quite a poor copy. If you look under the words
28 where it says "Applicant: Forrest Homes Limited."
- 29 A. That's right yes.
- 30 50 Q. You will see beneath, "A permission approval has been

1 granted for the development described below subject to
2 the undermentioned conditions, for a proposed dwelling
3 house at Malahide Road, Swords"?

4 A. That's right.

5 51 Q. And the conditions that are set out there are numbering
6 seven in total. If you turn to page 3028, you will see
7 Condition No. 7?

8 A. Yes.

9 52 Q. "That the proposed connection to the foul sewer shall
10 be made at the developer's expense, in accordance with
11 the drawings submitted to the Council for the previous
12 proposal for three houses on the sites which were
13 approved by Orders Number P 137" - I beg your pardon -
14 "by Order No. P/1347/72, dated the 2nd of June, 1972"?

15 A. Yes.

16 53 Q. So it would appear from that document, that Forrest
17 Homes had, in June of 1972, been granted permission to
18 build three houses on the site?

19 A. Yes.

20 54 Q. Would that have increased significantly the value of
21 the site, the fact that planning permission attached to
22 it, Mr. Burke?

23 A. It would have increased it somewhat, yes, the fact that
24 they had a planning permission for three. But the
25 whole area was zoned for residential, and there would
26 have been no difficulty with the planning permission
27 for them. So they would have bought it knowing that
28 this was residential. They were a construction
29 company, and they would have been buying it on the
30 basis that they would have been going to construct

1 houses on it. So they would have been aware of a
2 market value which would have included the possibility
3 of building homes on it, yes.

4 55 Q. Is it the general - in general, Mr. Burke, that a piece
5 of land with no planning permission attached to it is
6 of a considerably less value than a piece of land
7 without planning permission attached to it?

8 A. Yes, it is, but the variation between the "no planning
9 permission" and the "planning permission" depends on a
10 large extent of the zonings, etc. but quite obviously
11 planning permission is more valuable than not.

12 56 Q. And three houses are more valuable, a planning
13 permission for three house is more valuable to a
14 company than a planning permission for one house?

15 A. That would be correct, yes. That would be sensible,
16 depending on the size of the houses. You are dealing
17 with - if you deal with a planning permission for one
18 house, and it is a fairly large house, compared to
19 planning permission for a couple of semi-detached, it
20 is a different value, obviously.

21 57 Q. Yes. At this stage in September of 1972, you had
22 applied for, and by November of 1972 had been granted
23 planning permission in respect of building a dwelling
24 house on the site?

25 A. That's correct, yes.

26 58 Q. Had you by that stage signed any contract or agreement
27 in connection with the purchase of the site?

28 A. It wasn't a question of signing agreements. These are
29 people that I am dealing with every day of the week.
30 That would be left to lawyers to get on with it. But

1 the - they were honourable people to deal with. I was
2 dealing with them in an honourable way, vice-versa. It
3 was "get on with the work of it," that was it.

4 59 Q. When the planning permission came through, Mr. Burke,
5 did work start on the building of the house?

6 A. Very shortly afterwards. I got married, we talked
7 about it yesterday, I got married on the 29th of
8 November. And some work had started at around that
9 time, or the beginning of December. I can't be precise
10 about the particular day. But it was very shortly
11 after I received the planning permission and the three
12 weeks involved in the delay after that. It would have
13 been around that time that the work started. I can't
14 give you the exact day.

15 60 Q. This work was being done on your behalf?

16 A. It was, yes.

17 61 Q. You were?

18 A. It was my home that was being built. It was done on my
19 behalf, yes.

20 62 Q. Your profession for most of your working life prior to
21 1972 was as an auctioneer?

22 A. Well, prior to that, I suppose in length of years, I
23 would have spent more time as an insurance broker than
24 I was as an auctioneer. From '68 on I was an
25 auctioneer, yes.

26 63 Q. You would have been well familiar with the necessity
27 and importance of signing contracts and reducing to
28 writing any transaction involving the sale or purchase
29 of land?

30 A. Oh, well now, depending on the type of people you are

1 dealing with. I was, for all intents and purposes,
2 part - I was their exclusive agent in the Swords area
3 selling their homes. I was dealing with these men day
4 in, day out. I would meet some of them a couple of
5 times a day with deposits or showing people around show
6 houses, bringing people up through the building sites
7 to show them where their home was going to be built off
8 particular plans, identifying them. So, I would have
9 been meeting these people every day, some of them a
10 couple times a day.

11 .
12 So the question of the necessity for everything to be
13 done with dots, and "Is" dotted and "Ts" crossed, would
14 not arise in that sense.

15 64 Q. Yes. If we can go back to the question that I asked
16 you, Mr. Burke, which is as a professional auctioneer
17 you would have been aware and well familiar with the
18 normal requirements of reducing any transaction in
19 connection with the sale of land to writing?

20 A. And that was reduced to writing as well, but it was
21 just - it was left between solicitors to do it.

22 65 Q. Yes. When did you instruct Mr. Conlon?

23 A. I don't know the exact date. It would have been soon
24 after I - I haven't got the exact date. He may have
25 it. I am not sure. I haven't got it off the top of
26 the head. I just told Oliver to get on with it - hold
27 on, I may have it here - that I was buying the site and
28 just to get on with the work on it. I am sure his name
29 appears at some stage here.

30 66 Q. August of '93, sorry '73, Mr. Burke, an agreement was

1 signed between Oakpark and yourself?

2 A. Sorry?

3 67 Q. In August of 1973 --

4 A. Yes.

5 68 Q. -- an agreement was signed between Oakpark and

6 yourself?

7 A. Yes.

8 69 Q. 1523, please.

9 A. 1523.

10 70 Q. You will see there an agreement dated the 1st of

11 August, 1973, made between Oakpark Developments, the

12 vendor, and Raphael P Burke of 251 Swords Road, Santry,

13 Dublin, the purchaser: "Whereby it is agreed and

14 declared that the vendor shall sell and the purchaser

15 shall purchase for the purchase price specified

16 hereunder the property described in the attached

17 particulars, upon and subject to the attached

18 conditions of sale.

19 .

20 Purchase price - "7,500,

21 Deposit paid - ú1,875.

22 And balance due on completion - ú5,625."

23 .

24 If we scroll down through the page, you will see it is

25 signed by Michael J Foley, who was apparently known as

26 Jack Foley, witnessed by Esmonde Reilly, and signed by

27 yourself and witnessed by Mr. Oliver Conlon.

28 .

29 Do you see that Mr. Burke?

30 A. I see that.

1 71 Q. Do you confirm that is your signature?

2 A. It would be, yes, Raphael P Burke.

3 72 Q. You will see at page 3411 that, "Particulars and tenure
4 of property and any tenancies.

5 .

6 All that part of the land of Barrysparks, Barony of
7 Nethercross, and County of Dublin containing one acre,
8 0 roods and 27 perches, or thereabouts, statute measure
9 being part of the lands comprised in Folio 17423 on the
10 Register of Freeholders, County Dublin, which said
11 piece or plot of ground more particularly described and
12 delineated on the map attached hereto and thereon edged
13 red is the vendor Oakpark Developments Limited."

14 .

15 Do you see that?

16 A. Yes.

17 73 Q. That was your agreement to buy the land, is that right?

18 A. It was the agreement to buy the land, yes.

19 74 Q. Now, was there ever a purchase price of ú7,500?

20 A. As I told you, that was the agreement to buy the land
21 at seven-and-a-half thousand. That was the figure put
22 against the land, and the 15 was against the house.

23 75 Q. The 15 was against the house?

24 A. And the seven-and-a-half, it was a package, an overall
25 package.

26 76 Q. Did you pay ú7,500 to Oakpark for that property?

27 A. Yes.

28 77 Q. Yes. Right. Did you pay a deposit of ú1,875?

29 A. No, I paid the whole lot in one cheque of 15,000, and
30 the balance was paid over. I worked it off against my

1 fees on the seven-and-a-half thousand.

2 78 Q. So that, in fact, there was never a purchase, there was
3 never a deposit paid by you?

4 A. It wasn't a question of a deposit. It was a question
5 of the whole lot was paid, in the sense of the 15,000,
6 which was paid in September, October of 1973, and the
7 balance was worked off on fees.

8 79 Q. So that by August of 1983 (SIC), if I understand your
9 evidence correctly, your house was substantially built,
10 because they had started work towards the end of 1972?

11 A. It wasn't completed until the middle of October '73.

12 80 Q. But it would have been, by August of 1973, well on the
13 way?

14 A. Undoubtedly.

15 81 Q. At that stage you had a verbal agreement with Oakpark
16 Developments Limited and you had nothing reduced to
17 writing, is that correct, in relation to either their
18 obligations to build you a house or your obligations to
19 pay for the land on which the house was being built?

20 A. We had a verbal contract, which was then put on to
21 paper.

22 82 Q. Which --

23 A. I mean, the sort of relationships, human relationships
24 with people that you deal with in the way - in the
25 proximity that I dealt with Oakpark, in dealing with
26 fees and money transferring, from them to me, for fees
27 for the work that I had done in selling their homes
28 etc. and back and forward, this was an on-going
29 operation between us, a daily operation between us.
30 And - so, I mean, not everything was dotted "Is",

1 crossed "Ts". It was just left with the solicitors to
2 get on with it and the house was being built.

3 .

4 I was keeping an eye on the house being built all the
5 time, to see that it was going the way I wanted it to
6 go.

7 83 Q. That document that is on screen at page 1523, provided
8 for a closing date on the contract of the 3rd of
9 September, 1973?

10 A. Yes.

11 84 Q. When did you, in fact, close this sale?

12 A. Well, I moved into the house on the 10th of October of
13 1973, and - so it would have been closed around that
14 particular time. I am not sure of the exact day. If
15 you look at the letter to Mr. Casey from the bank, the
16 bridging loan accommodation was provided to me on the
17 24th of September, and it was on the 12th of October
18 that I switched across the 15,000 of my own money to
19 the account. So it was around that time. But I know
20 that I moved in on the 10th of October. That, I know.
21 But what I don't know is the precise day that I, that
22 the deal was closed.

23 85 Q. Yes. If we could have Document 3010.

24 .

25 You will see that the transaction or the transfer was
26 concluded on the 25th of February, 1974?

27 A. Yes.

28 86 Q. And that is the documentation that one would expect to
29 be provided at a closing of a sale?

30 A. But it is not that sort of relationship, and it wasn't

1 that sort of relationship. I had moved into the house,
2 I had paid for the house, and the lawyers were getting
3 on with the paperwork.

4 87 Q. Both Mr. Conlon and Mr. Esmonde Reilly have described
5 this as a relatively simple and straightforward
6 transaction. The closing of the sale appears to have
7 taken place in relation to the site value only, in
8 February of 1974?

9 A. But I already had the house on it. If you look at 3011
10 on the same documentation, you will see the actual
11 house designed on the middle of it.

12 88 Q. Yes?

13 A. Yes.

14 89 Q. I am not disputing any of that with you, Mr. Burke. I
15 am simply dealing with the transfer in relation to the
16 land. You have told us that the sale closed in October
17 of 1973, and I am pointing out to you that from the
18 legal documentation prepared by your solicitor, the
19 sale appears to have closed, in fact, in February of
20 1974?

21 A. They finalised the documentation, obviously, in
22 February of '94 (SIC). I was in the house from October
23 of 1973, and the paperwork that was given to the Guards
24 from the bank, which thankfully you have found, and
25 that the bank eventually found, despite the fact that I
26 had asked them for it, and they hadn't produced it,
27 shows that 15,000 was paid between the 24th of
28 September and the 12th of October of '73. I moved into
29 the house on the 10th of October.

30 90 Q. Is there anything in the banking documentation, Mr.

1 Burke, to indicate where that €15,000 went?

2 A. No.

3 91 Q. No. Right. And we'll come back to deal with that
4 €15,000 when we are dealing with the cost of building
5 the house. At the moment we are trying to deal with
6 the €7,500 supposed purchase price in relation to the
7 property.

8 A. Not "supposed purchase price". I think we could ask
9 the questions in a manner which is what is on the
10 documentation.

11 92 Q. The document on screen indicates that a sum of €7,500
12 was paid by you, because the transfer acknowledges
13 receipt of that sum, isn't that right?

14 A. That is what it says here, yes, but apparently there is
15 some question about that, which I don't understand the
16 axe - what do you call him - has to grind,
17 Mr. Reilly. But the situation is that this is a
18 standard form contract that they would have used for
19 it.

20 93 Q. So that the position is that both Mr. Conlon and Mr.
21 Reilly have told the Tribunal that in so far as they
22 were concerned, no money changed hands either on behalf
23 of you or going to Oakpark in respect of the land
24 transaction, which is this transaction for the €7,500.
25 And your evidence appears to agree with that,
26 Mr. Burke, in as far as you are saying that you didn't
27 pay any money, but that it was set off against fees?

28 A. What I said to you was that the 22-and-a-half thousand
29 was an overall figure. The 15,000 was the mortgage
30 that I had got, and the balance of the seven-and-a-half

1 was set off against fees.

2 94 Q. And in so far as the ú7,500 --

3 A. The seven-and-a-half - part of the 15 could have been

4 part of the fees or part of the land. The

5 seven-and-a-half, part of the house and the balance,

6 the other way around. It was an overall package of

7 22-and-a-half.

8 95 Q. Yes. But in so far as the legal documentation that we

9 look at is concerned, that sum of ú7,500 is a

10 transaction legally in connection with the purchase of

11 the site on which your house was built?

12 A. As part of the overall package, yes.

13 96 Q. Do you agree with me, Mr. Burke, that the document is

14 that on screen?

15 A. I agree with you, yes, I agree with the document on

16 screen.

17 97 Q. The figure of ú7,500 that is applied in that document

18 is a transaction in connection with the purchase of the

19 site only?

20 A. I agree with that. And on the transaction document it

21 shows not just the purchase of the site, but it shows,

22 in the centre of the site, as part of that

23 documentation, the fact that the house is already on

24 the site.

25 98 Q. That is correct, in so far as there is a map attached

26 to the document, Mr. Burke. But the question I am

27 putting to you: Do you agree that the position is, as

28 was evidenced by this document passing between your

29 solicitors and Oakpark's solicitors, that the sum of

30 ú7,500 that is referred to there is referred to as

1 payment in respect of the site only on which your house
2 was built?

3 A. I accept what you are saying in relation to that, and
4 in supplementary, in answer to what you are saying, is
5 that a further part of that documentation on 3011
6 actually shows the house constructed on the site. And
7 of course that document was also wrong, because it
8 didn't show the full site that I purchased.

9 99 Q. We will come to deal with the 1994 amendment to your
10 title deeds at an appropriate time, Mr. Burke. At the
11 moment we will stay with the document that is on
12 screen.

13 .
14 Are you saying, then, that this document does not
15 accurately reflect the agreement that you had with
16 Oakpark, which was apparently, on your evidence, an
17 agreement for ú22,500 to build and buy the property?

18 A. And that would be the situation. And the allocation
19 that had been decided was seven-and-a-half thousand
20 against the site. That is what this document
21 indicates.

22 100 Q. And in so far as that ú7,500 is allocated against the
23 site, the way you paid for that was not by paying
24 money, but, in fact, by working off fees?

25 A. Well, I paid money through fees, and that is very
26 substantial money, and it is a very substantial way of
27 doing it in relation to working off fees against house
28 sales. I was, at that stage, selling literally of
29 hundreds and hundreds of houses on behalf of Oakpark in
30 the area.

1 101 Q. Okay. So the situation, then, is, on the basis of what
2 you said this morning, is that sometime in July of 1972
3 you entered into a verbal agreement with one or a
4 number of the directors of Oakpark, probably, you
5 think, either Mr. Foley or Mr. Brennan, as a result of
6 which you agreed to buy a field, approximately one acre
7 from them, property they had themselves purchased some
8 two or three or four months prior to that. They had
9 obtained planning permission for three houses. You
10 subsequently applied for planning permission and
11 obtained planning permission for one house. You had no
12 legal documentation or were not in a position to prove
13 any title or interest in the property, until the
14 contract was signed the following year, in August of
15 1973, at which stage your house was partially or
16 substantially completed. Is that right?

17 A. That would be - in the picture, as you paint it there,
18 it would be accurate, but it excludes from the reality
19 the very salient of the point of the very close
20 working relationship between myself and the men
21 involved, that I was dealing with them in the manner in
22 which I have outlined to the Chairman already, on a
23 daily basis, working on a site, working on sites on
24 their behalf, and selling properties and homes on their
25 behalf. So, it wasn't a question of everything being
26 put down on paper. There is such a thing as a word of
27 honour between men, and that's it.

28 102 Q. You were acting as auctioneer for Oakpark?

29 A. I was, yes.

30 103 Q. Yes. Was that you yourself personally or your company?

1 A. It was my company, but in reality it was myself that
2 would have manned the show houses. My secretary would
3 have dealt with the money, as the deposits were coming
4 in, and the transfer of the deposits to Oakpark and
5 back and forward, all of that. But in the main at that
6 stage, in '72, I would have been dealing with most of
7 it myself, manning the show houses on weekends, showing
8 people around the show houses, out through the sites,
9 as I have outlined already to you.

10 104 Q. Was it PJ Burke (Sales) Limited who were providing
11 auctioneering services to Oakpark?

12 A. It was PJ Burke (Sales) Limited, yes.

13 105 Q. So how could Raphael Burke claim ú7,500 on his own
14 behalf?

15 A. Well, PJ Burke (Sales) Limited was 99 percent owned by
16 Raphael Burke.

17 106 Q. Do you have any documentation, invoices, anything --

18 A. No. And thankfully, you found at least the bank, after
19 me looking for it in '98, they eventually produced it
20 in June of this year, the documentation in relation to
21 the 15,000, because I gather there had been - not
22 gather. I had read transcripts here and media coverage
23 that apparently I got the house for nothing, and
24 thankfully you got this documentation to show
25 otherwise.

26 107 Q. With respect --

27 A. I was in a situation, that I haven't got the type of
28 invoices that you are looking for, no.

29 108 Q. All right. That was the question you were asked, Mr.
30 Burke?

1 A. Yes.

2 109 Q. Do you have any documentation to show either a set-off

3 or an arrangement that would have involved PJ Burke

4 (Sales), yourself and Oakpark --

5 A. I don't --

6 110 Q. -- in connection with this transaction involving the

7 €7,500 which is on screen?

8 A. I don't have the records of any of PJ Burke (Sales)

9 Limited. That company is gone since the period I told

10 you about yesterday.

11 111 Q. Can you indicate to the Sole Member when it was and

12 with whom that you sat down and conducted your

13 reconciliation in relation to the fees that were owed

14 to PJ Burke (Sales) that were to be offset against this

15 sum of €7,500?

16 A. I would have dealt mainly with Jack Foley in relation

17 to dealing on fees that I would be owed, and to receive

18 cheques from them that I would have been owed for house

19 sales, right through the years in Oakpark, and in

20 Daleview or in River Valley, and the various sites that

21 were there.

22 .

23 As to sitting down and doing a calculation with them, I

24 would take two-and-a-half thousand this time,

25 two-and-a-half thousand another time, two-and-a-half

26 thousand another time off it, I am not sure. I have a

27 feeling that, reading Jack Foley's evidence, he thinks

28 it was paid for on three lots, but I think he could be

29 wrong on that. I think he is mixing it up with the

30 cheque that was paid across.

1 112 Q. Yes, because, in fact, Mr. Foley attributed the
2 payments as coming from the Irish Permanent?

3 A. Well, there was confusion about Irish Permanent.

4 113 Q. He attributed it to having been paid in three lots,
5 whereas Mr. Tom Brennan's recollection was that it was
6 a singular payment of ú15,000 that possibly involved
7 some loan, whereas the other directors do not appear to
8 have known very much about it?

9 A. No, I wouldn't have been dealing very much with the
10 other directors. The financial side of the thing was
11 either dealt with by Tom or by Jack. I think the -
12 what Jack - reading the transcript and from my own
13 recollections, it would have been in three lots of
14 two-and-a-half thousand out of my fees, but I can't
15 swear to that in the Tribunal, and I am not going to
16 put myself into a position in relation to it. I am
17 giving you my best recollect. I am not going to swear
18 that to you. The 15 is as I have outlined to you. I
19 am sure we will come to it.

20 114 Q. In so far as this part of the transaction is concerned,
21 in order for this figure of ú7,500 to be arrived at and
22 in order for there to be a set-off between PJ Burke
23 (Sales) Limited and Oakpark Limited, there would have
24 to have been a reconciliation that would have been done
25 against invoices that were produced by PJ Burke (Sales)
26 Limited?

27 A. Well, it would be done on the basis of me going through
28 - well, I suppose you could describe it as an invoice
29 on the basis of how many houses I was owed for, and how
30 many had been sold, and I would get a cheque from them,

1 from Jack Foley, on a fairly regular basis in relation
2 to the number of houses, as the houses were sold. You
3 are talking up to about 1,000 houses were sold in River
4 Valley.

5 115 Q. Is it the position, then, that there were no invoices?

6 A. There wouldn't be invoices, in the sense of sending a
7 specific invoice for every specific house as it went
8 through. It would be a question of sitting down
9 occasionally or regularly with Jack and saying "Look,
10 this is what we have sold, bang, bang, bang, and I am
11 paid up-to-date for such-and-such and such, and I owe
12 you money for the house as well." That is the way it
13 would be done.

14 116 Q. It was all done verbally between yourself and Mr.
15 Foley?

16 A. It would be done - pretty well done sitting down in an
17 office and pretty much going through it. This was a
18 rather, a very substantial site that was being sold in
19 River Valley, and I just would go through the sites
20 with him.

21 117 Q. Okay. So the position, then, that in as far as the
22 acquisition of this site is concerned, that you were
23 building a house on it before you had a shred of paper
24 in writing evidencing that you had any interest in it.
25 You paid for it, contrary to what this document says on
26 its face, you in fact paid for it by way of set-off of
27 fees, of which there is not now and was not then any
28 record. Is that right?

29 A. There was at the time, I am sure, but not now. I don't
30 have the details of it. As far as your lead-in to that

1 question, that the house was being built and there no
2 shred of documentation, I mean, in the real world that
3 some of us live in, a man's word is his bond as far as
4 dealing with these people. As I was dealing with them
5 they were dealing with me. It was agreed, they were
6 building the house. It was men from their site that
7 actually built the house, and we were dealing with it
8 on a day-by-day basis.

9 .
10 So it wasn't a question of any misunderstanding, or
11 some sort of an arrangement in which they were going to
12 welsh, or I was going to welsh. That is not the way
13 life was. It was my home that I wanted to build in
14 that particular area, and I mean, I was dealing with
15 honourable people.

16 118 Q. Mr. Burke, you have been - you were at that stage an
17 auctioneer for a considerable period of time. The
18 normal method in which a house is purchased, or a piece
19 of land is purchased, is an agreement is entered into
20 between the parties, a deposit paid, an agreement is
21 signed, the sale closes, the balance of the money
22 changes hand. Isn't that right?

23 A. If it was just a situation of two strangers buying a
24 bit of property, that would be a fair description of
25 the situation, but we are not talking about two
26 strangers buying property, one from the other. Here
27 you are talking about a situation, a straightforward
28 situation of a group - of a company - a company group,
29 Oakpark, and myself, PJ Burke (Sales) Limited, working
30 on a day-by-day basis together.

1 .
2 They bought a site. I decided in July that I am going
3 to get married. I talked to the lads and said, "Look,
4 you have this land over the road. Any chance of
5 getting it?" Making a deal with them that I would live
6 there, build a house on the site, go for planning
7 permission - some of the men from the Oakpark or River
8 Valley site actually worked on the house construction.

9 .
10 I mean, we are dealing with people - it is like one -
11 well, I can't outline it to you. If your mindset
12 cannot understand what I am saying in relation to it, I
13 accept what you are saying, that in a normal two
14 stranger situation, that's what you would be doing.
15 That's not what you had here.

16 119 Q. You were the person who described this transaction to
17 the Dail as a normal commercial transaction, Mr. Burke?

18 A. Yes.

19 120 Q. Yes.

20 A. And it was.

21 121 Q. What you have outlined to this Tribunal this morning in
22 connection with the seven-and-a-half thousand purchase
23 for the site is, in the words of Mr. Esmonde Reilly,
24 one of the solicitors who acted in the matter, an
25 abnormal transaction?

26 A. Well, Mr. Reilly described a lot of things, which I
27 won't get into at this stage, but Mr. - as far as I am
28 concerned, it was a normal commercial transaction, in
29 the sense that a site and a house was built, and I paid
30 for the site and house. That is a normal transaction.

1 122 Q. You didn't pay for the site or the house in a normal
2 manner, Mr. Burke. What you are telling the Tribunal
3 now is that you paid for the site of this house by way
4 of a set-off against fees, of which there is not any
5 record available, isn't that right?

6 A. And there is neither record available to prove it, nor
7 record available to prove that it didn't happen. I am
8 telling you what happened, and I think if you listen to
9 the evidence being given, and look at the evidence
10 being given by the other directors of the company who
11 were in here only about a week or - was it last week or
12 the week before? They outlined the same situation, for
13 what they knew of the situation.

14 123 Q. What they had been told?

15 A. Yes, what they had been told.

16 124 Q. Isn't that right?

17 A. By Jack Foley, who was their partner. I mean, they
18 deal with one another - these are people that deal with
19 one another on a daily basis. They are related to one
20 another. They have been in business for 40 odd years,
21 just as I was with them for many, many years.

22 125 Q. And Mr. Foley is the person who told the Tribunal that
23 you paid for this house by way of three cheques drawn
24 on the Irish Permanent in the sum of ú5,000 each, and
25 you disagree with Mr. Foley in connection with that,
26 isn't that right?

27 A. Well, his memory in relation to it is quite wrong.

28 126 Q. In relation to that, just, is that the point you are
29 making --

30 A. In relation to that portion of it. In relation to the

1 composition of the cheques.

2 127 Q. All right. So that in as far as Mr. Foley has given
3 that evidence, Mr. Foley is incorrect, but the rest of
4 Mr. Foley's evidence you agree with, is that right?

5 A. I agree with the overall figure, and I agree with the
6 way that it was set-off against the fees, and the - he
7 is incorrect and Tom Brennan is correct in relation to
8 the one-off cheque of 15 grand, which the evidence to
9 the Guards show to the bank.

10 128 Q. Because Mr. Foley's evidence was that the sum was
11 €15,000 in total for the house and the site, which was
12 paid by way of three €5,000 cheques drawn on the Irish
13 Permanent?

14 A. Well, he is incorrect in that, as we know from the
15 information here.

16 129 Q. Well, he is incorrect, if you are correct in that the
17 true figure is €22,500, isn't that right?

18 A. That's correct, yes.

19 130 Q. He is incorrect, if you are correct, in how it was paid
20 for, because there were no three cheques drawn on the
21 Irish Permanent?

22 A. There was one cheque drawn on the Bank of Ireland in
23 Whitehall, obviously.

24 131 Q. Right. So that in so far as Mr. Foley gave evidence
25 that is central to this issue as to how the house was
26 bought and paid for, you fundamentally disagree with
27 Mr. Foley's recollection, isn't that right?

28 A. I think he is wrong. I know he is wrong in relation to
29 the three payments. Mr. Brennan's recollection in
30 relation to it, of the one payment, has been proven to

1 be accurate on the basis of the information that we
2 were given from the bank in relation to the 15. As far
3 as the three payments, he is obviously confusing that
4 with the three, what would have been probably three
5 reductions in fees, which I would have been owed by
6 Oakpark.

7 132 Q. So he is confusing three ú5,000s with three ú2,500s,
8 that you would have been allowed off your fees?

9 A. I think that is the way it is, but I can understand his
10 confusion about it. And the general distance in time,
11 we are talking here about a situation going back to
12 1972 and 1973, nearly 30 years ago. For all of us to
13 remember things is very difficult. I was even - I
14 found it difficult in recalling the details of it. It
15 was the bank documentation that helped me with some of
16 it.

17 133 Q. But in so far as the other directors of Oakpark gave
18 evidence, their understanding of what transpired was,
19 in the main premise, on what they had been told by
20 Mr. Foley, isn't that correct?

21 A. That's right. I think their evidence in relation to
22 it, I haven't got it with me here, was in the main, it
23 was 22-and-a-half, and that seven-and-a-half had been
24 worked off. I think that was in the main what was
25 said.

26 134 Q. And that they had been told of this by Mr. Foley?

27 A. Yes, which --

28 135 Q. And this - it would appear to be your evidence, that in
29 so far as you dealt with anybody in connection with
30 this transaction, it was either Mr. Tom Brennan or

1 Mr. Michael Foley, otherwise Jack Foley, and more
2 likely to have been Mr. Jack Foley, with whom you were
3 dealing with on a day-to-day basis?

4 A. On working off fees, and things like that, I would have
5 been dealing with Jack Foley and the payment of fees,
6 etc. In the main, I would have been dealing with Jack
7 Foley because he was the director of the company, the
8 secretary of the company. But he was the man that
9 dealt with the houses and sales and things like that.

10 136 Q. And when you sat down to do your set-off, or your
11 working off of the fees that you were due in terms of
12 houses that were sold, against the money that you had
13 to pay to Oakpark in relation to the site, the person
14 with whom you did this with was Mr. Jack Foley?

15 A. It probably would have been Jack Foley in the main. I
16 would have dealt with Jack in relation to that, or
17 occasionally I would have dealt with Tom in relation to
18 cheques as well.

19 137 Q. But it is most likely that the person to whom you had
20 most dealings in connection with this transaction is
21 Mr. Jack Foley?

22 A. No, the most dealings in relation to the transactions
23 on the sales of houses and commissions and deposits on
24 houses, and all of the usual things that you do when
25 you sell houses on an estate, most of that would have
26 been done with Jack Foley. Occasionally I would have
27 dealt with Tom in relation to commissions and things
28 like that.

29 138 Q. Mm-hmm. But in so far as you did a reconciliation in
30 relation to this sum of ú7,500 as against fees that you

1 were due or your company of due as an auctioneer, with
2 whom did you do that reconciliation?

3 A. My recollection is in the context of what I have just
4 said to you, that most of my dealings would have been
5 with Jack Foley, generally, but we are dealing with
6 something that happened here 29 years ago. As to
7 precisely who I sat down with, on each occasion, I
8 can't swear to you, Mr. Chairman, and I am not going to
9 do it, to swear to you that my recollection is
10 absolutely perfect in relation to each item on it. I
11 can't do that after 29 years.

12 139 Q. But you are in a position to say that Mr. Foley, who is
13 the person with whom you had most dealings, is
14 incorrect in so far as his central evidence in relation
15 to this transaction is concerned, because Mr. Foley has
16 told the Tribunal that the entire deal was worth
17 ú15,000, and that his recollection is that you paid for
18 it through three cheques drawn on the Irish Permanent?

19 A. That is obviously incorrect. His recollection is
20 incorrect in relation to it, and the paperwork that we
21 got from the bank shows that.

22 140 Q. In so far as the payment of the ú15,000 is concerned,
23 Mr. Burke, you obtained loan approval effectively from
24 Property Loan and Investment Company Limited in
25 December, 1972?

26 A. That's right.

27 141 Q. Yes. That was notified to your bank. Page 5374.

28 A. On the 12th of December, '92 I think.

29 142 Q. '72. Property Loan and Investment Company agreed
30 provisionally to make a sum of a ú15,000 loan to you to

1 be repaid at interest over a period of twenty years,
2 bi-monthly installments, and sets out the normal
3 particulars in relation to loan approval that
4 presumably pertained at that time?

5 A. Sorry. Sorry, my apologies.

6 143 Q. You were told by Bank of Ireland in Whitehall, in
7 January of 1973, that you had had this loan approval,
8 isn't that right?

9 A. Yes, that would be correct. Yes.

10 144 Q. Did you ever draw down that loan?

11 A. No, I didn't.

12 145 Q. Up to late in 1974, Property Loan and Investment
13 Company were still writing to Bank of Ireland,
14 Whitehall?

15 A. They were, yes. But can I, Mr. Chairman, elaborate on
16 the circumstances of the situation?

17 .

18 What happened was that the - I got the loan approval,
19 which by the way, if I was - the suggestion seems to be
20 that I was - not the suggestion, it has been made on a
21 number of occasions here that I was getting the house
22 for nothing. If I was doing that, why would I go to
23 the Property Loan and Investment Company looking for a
24 loan approval? I got the loan approval on the 12th of
25 December. I got the Notice of Intention. The house
26 was, at that stage, being built, right through 1973.
27 Eventually the house was completed. And on the 28th of
28 September, there was various correspondence between the
29 solicitors, my solicitors and the solicitors for the
30 loan company, from the Property Loan - Property Loan

1 being the Bank of Ireland company.

2 .

3 And in September of '73 I was extended bridging loan
4 accommodation on the basis of a Letter of Undertaking

5 to lodge a loan cheque on receipt of same by Oliver

6 Conlon, my solicitor with the bank. And this matter

7 was investigated by the - looked at in the course of

8 the investigation by the Guards in 1974. And a letter

9 was given on the 20th of August, 1974, to Inspector

10 Casey, from the bank, from the Assistant Manager. If I

11 could quote it, Mr. Chairman --

12 146 Q. We will be coming to that letter in detail in a moment

13 --

14 A. Sorry.

15 147 Q. Mr. Burke, if we can --

16 A. Sorry, Mr. Chairman.

17 148 Q. Can I just repeat the question that I asked you,

18 Mr. Burke, and let's see where you have given us an

19 answer to it.

20 A. I was asked about the Property Loan and Investment

21 Company --

22 149 Q. The question you were asked, Mr. Burke, which you are

23 still answering, is up to late in 1974 Property Loan

24 and Investment Company were still writing to Bank of

25 Ireland, Whitehall. The answer to the question is

26 either "yes, they were," or "no, they weren't." Right?

27 A. Oh, yes, they were. Right. Okay.

28 150 Q. Fine. What I propose to do is take you through the

29 correspondence in chronological order, Mr. Burke, so

30 that we can get it all on the record, and nobody can be

1 under any illusion about what was written or what was
2 said. We will come to deal with that letter that was
3 written in 1974 by your bank manager, all right?
4 .

5 MR. WALSH: Sorry, Ms. Dillon, might I just make an
6 observation. I think Mr. Burke had answered "yes" to
7 the question, and then had gone on to give an
8 explanation, when Ms. Dillon intervened again. I think
9 he should be allowed to give his explanation.

10 .

11 MS. DILLON: I don't mind if Mr. Burke wants to waste
12 the Tribunal's time in relation to this. It is a
13 matter entirely for you. Mr. Burke has --

14 .

15 CHAIRMAN: Please. Please.

16 .

17 MR. WALSH: I object to that.

18 .

19 CHAIRMAN: Now, please now, Mr. Burke. Mr. Walsh. The
20 question was a simple question. There is, as you know,
21 and as Mr. Burke knows, there is a packet of
22 correspondence which says exactly what Ms. Dillon says;
23 that over a period of time there were writings.

24 .

25 Now, it is a simple a matter to say, "Yes, I didn't
26 draw down the loan, but I didn't inform the bank that I
27 was not taking it up." That is a simple way of getting
28 over all of that. And we would like to get on with
29 progress.

30 .

1 I want Mr. Burke to give his evidence in a sequential
2 way. I want him to have every opportunity. At the
3 same time I don't want a repetition of justification,
4 which he is very entitled to make, but not every time
5 he answers a question.

6 .
7 Now, that is all I am asking for. Nothing more,
8 nothing less. And Mr. Burke is - I want it - I said it
9 yesterday, I have said it repeatedly, if he would be
10 kind enough to either tell me positively or negatively
11 what he is going, what his answer to a question is. He
12 can then say, "Look, there is an element of
13 explanation, which I wish to give. It relates to" -
14 briefly.

15 .
16 I know, you know you have the papers in front of you,
17 that there is a sequence of correspondence from the
18 bank, that the Property and Loan Investments say you
19 haven't drawn it down, you haven't - it is still
20 available. Ultimately they advise him that the loan
21 approval has been withdrawn. And you know that. So
22 does he. I mean, there is the correspondence in front
23 of me too.

24 .
25 MR. WALSH: Exactly.

26 A. There is no secret about that.

27 .
28 CHAIRMAN: No, there is no secret about it. We don't
29 have to take up the entire morning giving a repetitious
30 answer, where the answer is simply "yes", "no" or words

1 to that effect. The correspondence deals with that.

2 Let's get down to business, please.

3 .

4 MR. WALSH: Sorry, Sir. My objection is Ms. Dillon
5 asked the question, Mr. Burke said, "Yes, it wasn't
6 drawn down, they were still writing in 1974." He then
7 went on to give, attempt to give a summary,
8 chronological sequential explanation, skipping out lots
9 of the correspondence and going straight to September
10 of 1973 and the material dates, when Ms. Dillon
11 interrupted and said she would get to that
12 correspondence in due course.

13 .

14 CHAIRMAN: Ms. Dillon is entitled to run her
15 examination in a sequential manner as she wants. The
16 answers to the questions should be simple and direct
17 and not presume on what Ms. Dillon is or is not going
18 to do.

19 .

20 Now, I want to be polite to Mr. Burke, I want to give
21 him every opportunity, but I do not want to spend time
22 unnecessarily.

23 .

24 MR. WALSH: Today is the first day that this topic has
25 been canvassed, Sir. Today is the first day we have
26 gone into this correspondence. And I think it is
27 unfair of Ms. Dillon and inaccurate of her to say that
28 Mr. Burke is wasting the Tribunal's time by referring
29 to these matters in a chronological and sequential
30 manner.

1 .
2 MS. DILLON: In fairness to myself, Sir, in relation to
3 the last comment by Mr. Walsh, the letter that Mr.
4 Burke was seeking to read is a letter that was read
5 into the record yesterday. It was a letter that was
6 written on the 20th of August, 1974, in the course of a
7 Garda inquiry by Mr. Mr. Burke's bank manager. It
8 comes in time sequence after the rest of the
9 correspondence. And after, the question that I had
10 asked him about.

11 .
12 It is incorrect and unfair of Mr. Walsh to say that I
13 or suggest that I would prevent him dealing with this
14 letter which we dealt with yesterday, which was read
15 into the record yesterday, and which we will be coming,
16 if I am permitted to do it, shortly to deal with again
17 in its entirety.

18 .
19 CHAIRMAN: Take your own course.

20 .
21 MS. DILLON: Thank you, Sir.

22 .
23 CHAIRMAN: Please, likewise, please also be brief.

24 .
25 151 Q. MS. DILLON: I will.

26 .
27 I had intended to summarise the correspondence. I
28 think it might be safer to go through it letter by
29 letter, Mr. Burke. The letter that is on screen is a
30 letter of the 12th of September, 1972. It offers loan

1 facilities to you through your manager of Bank of
2 Ireland, Whitehall. It offers you a loan of ú15,000
3 subject to certain terms and conditions, and has a "PS"
4 attached at the end of it. "Finally, notify us when
5 the house is complete and ready for final inspection by
6 our surveyor."

7 .

8 You were away when this letter was received, and your
9 manager on your behalf wrote to the Property Loan and
10 Investment Company, which I will call "PLIC" for short,
11 on the 13th of December, 1972, at page 5421, telling
12 the company that you were on your honeymoon and not due
13 back, but immediately upon your return the necessary
14 Letter of Consent would be obtained.

15 .

16 The Bank of Ireland in Whitehall, Mr. McEvoy, wrote to
17 you on the 4th of January, 1973, setting out the terms
18 and conditions of the loan offer that had been made by
19 PLIC to you. That is at page 5423 and 5424.

20 .

21 And on the 4th of January, 1973, your then manager,
22 Mr. McEvoy, sent a letter, at page 5425, to the
23 Property Loan and Investment Company, accepting the
24 loan, and enclosing your notice of intention to avail
25 of the proposed loan. Isn't that right?

26 A. Mmm.

27 152 Q. Now, that would suggest, Mr. Burke, that as of January
28 of 1973, it was your intention to obtain a loan?

29 A. To take up the loan that I had been offered, yes.

30 153 Q. Yes. Work had commenced on your house, according to

1 your evidence by this stage, is that right?

2 A. That's right.

3 154 Q. But it was not apparently a requirement of the
4 agreement between yourself and Oakpark, that you would
5 have to pay for the money at any particular time, or in
6 any particular fashion, is that right?

7 A. That's right.

8 155 Q. Is it also correct that at this stage, despite the fact
9 that the work was being done on your house, you had no
10 written agreement of any description with Oakpark in
11 connection with either the building of your house or
12 the purchase of the site?

13 A. I had the understanding with them in relation to it,
14 yes.

15 156 Q. Is it the position that you didn't have any
16 documentation in writing in connection with either the
17 building of your house by Oakpark or the purchase of
18 the site by you from them in January of 1973?

19 A. I haven't got the solicitor's records here, but I am
20 sure that would be the situation. It wouldn't have
21 been deemed necessary in the relationship that existed
22 between us.

23 157 Q. All right. In August of 1973, the Property Loan and
24 Investment Company informed the manager of Bank of
25 Ireland, Whitehall - sorry, I beg your pardon. In
26 February of 1973, the Property Loan and Investment
27 Company were looking for copies of the title deeds -
28 page 5428 - because the solicitor to the Property Loan
29 and Investment Company had not yet got them. And Mr.
30 McGloin, who was the manager of the Property Loan and

1 Investment Company, sets out to your manager at Bank of
2 Ireland, in Whitehall:

3 .

4 "I know that you will advise me when the house has been
5 completed, but irrespective of that, it will help to
6 expedite matters leading to the issue of the loan, if
7 Mr. Blacks's investigation of the title can get
8 underway as soon as possible.

9 .

10 I shall be pleased if you will do what you can to
11 arrange for the title to be furnished."

12 .

13 It would appear that Property Loan and Investment
14 Company in February of '73 were looking for title in
15 relation to the property on which the house was being
16 built, isn't that right?

17 A. That's right.

18 158 Q. Yes. Now, were you in a position to furnish title to
19 Property Loan and Investment Company, in February of
20 1973?

21 A. It was the last thing on my mind in February of 1973,
22 to be thinking of title deeds or anything else of the
23 house. The house was going on. Everything was under
24 control.

25 .

26 If you look at the date of that letter, the 28th of
27 February, '73, from Mr. McGloin, to the manager of the
28 Bank of Ireland, it coincides with the date of the
29 General Election in 1973, which was the first time that
30 I stood for election in 1973.

1 .

2 I am afraid, letters between Mr. McGloin looking for

3 title deeds and everything else were not exactly high

4 on my horizon. He wrote to me then --

5 159 Q. Did you understand the question I asked you, Mr. Burke?

6 A. I have answered the question.

7 160 Q. I asked you, were you in a position to furnish title to

8 the Property Loan and Investment Company in February of

9 1973? Could you show them title to the land on which

10 the house was being built in February of 1973?

11 A. I hadn't got the title deeds at that stage because the

12 house was just being built. This was being underway.

13 Can I just elaborate slightly, Mr. Chairman --

14 .

15 CHAIRMAN: Yes.

16 A. -- briefly? I got married in November '73. Sorry,

17 '72. I went away on my honeymoon. I came back, my

18 father had got a stroke, very nearly died. That was

19 Christmas '72.

20 .

21 January '73, Jack Lynch, God be good to him, in his

22 wisdom decided to call a General Election for the 28th

23 of February, '73. I was standing. My father was not

24 going to stand in the election because of his health

25 situation, and I stood for election. I spent the whole

26 of the period of - from most of January into February

27 '73, the election day was the 28th of February, '73,

28 fighting a General Election.

29 .

30 I had got married in November. I was concerned about

1 my father. I am fighting a General Election for the
2 first time in my life in my own name. That's the
3 circumstances. And in the meantime, the house is being
4 built and the last thing in my mind, having received
5 the loan approval, the matter was deemed to be
6 something - was something that I would put into the
7 abeyance and deal with some time in the future when I
8 had time to concentrate on it.

9 .
10 It was not an issue that was high on my agenda of
11 letters between bank managers. Maybe it should have
12 been, but I am just trying to put the thing in context
13 for you, Mr. Chairman.

14 161 Q. Now that you have put it in context, would you mind
15 answering the question, Mr. Burke, which was, as a
16 matter of fact, you were in a position to furnish
17 title, as requested by the bank, in February of 1973?

18 A. No - but I would have been if I went and put my mind to
19 it, with the people I was getting the site from.

20 162 Q. Because you didn't sign a contract of any description
21 in relation to this property until August of 1973,
22 isn't that right, Mr. Burke? Isn't that right?

23 A. But sure, I am not denying that at all.

24 163 Q. So when you are asked the simple question, whether as a
25 matter of fact you were in a position to comply with
26 the requirements of the proposed lending institution,
27 there isn't any need to give us a potted version of
28 your life, Mr. Burke, at the time. It is sufficient to
29 answer the question.

30 A. Hold on a second, Mr. Chairman --

1 .
2 CHAIRMAN: Mr. Burke, thank you very much. No further
3 comment. Please,

4 .
5 Ms. Dillon, let us try and keep this very, very
6 relevant.

7 .
8 164 Q. MS. DILLON: Yes, Sir.

9 .
10 Now, while the Property Loan and Investment Company had
11 written with their requirements to the Bank of Ireland
12 in Whitehall, the Bank of Ireland in Whitehall in turn
13 wrote to you, Mr. Burke, on the 3rd or the 8th of
14 March, it is unclear from the letter, 1973. Page 5429,
15 please. In which they pass on to you directly the
16 requirement of the Property Loan and Investment
17 Company, about the title deeds.

18 .
19 It is addressed to you at 251 Swords Road, Santry,
20 Dublin 9. It is the 3rd or the 8th of March, 1973.
21 .
22 "Dear Sir, I have been requested by the Property Loan
23 and Investment Company Limited to inquire if it would
24 be possible for your solicitors to furnish the bank Law
25 Department at Bank of Ireland, Head Office, Baggot
26 Street, Dublin 2 with the deeds of your new house, so
27 that the investigation on the title can get underway as
28 soon as possible. It would greatly expedite the issue
29 of the loan if these formalities could be completed at
30 an early date.

1 .
2 Perhaps you would let me know what can be done in this
3 regard."

4 .
5 And it is signed by the manager. Did you reply to the
6 manager in connection with that?

7 A. Probably not, because again if you look at the date, it
8 is the 8th of March. I am now a TD for eight days in
9 1973. And I think, Mr. Chairman, you can imagine the
10 circumstances and imagine the atmosphere and the
11 excitement of the whole scenario. So dealing with
12 this, this sort of paperwork was not a matter for me,
13 at that time, of high importance, because the house was
14 going ahead. It wasn't ready. I wasn't going to be in
15 a position to be looking for the loan at that stage,
16 because it would have been - the house was only, I
17 think, at an early stage of construction, so it
18 wouldn't have been high on my agenda.

19 165 Q. Yes. The Property Loan and Investment - I presume the
20 answer to the question did you reply to it, that the
21 answer is "no"?

22 A. Yes, I answered that at the start and then I
23 elaborated.

24 166 Q. All right. On the 8th of June, 1973, the Property Loan
25 and Investment Company wrote again to your manager in
26 connection with this loan, at page 5430, referring to
27 the earlier letter of the 28th of February, and setting
28 out that, "As the title to the stipulated security has
29 not yet been furnished to this company's solicitor, I
30 shall be pleased to know if it is the Applicant's

1 intention to proceed with the loan?"

2

3 So they hadn't received a response to their earlier
4 query. Your manager, on the 11th of June, 1973, sent
5 you a personal letter - at page 5431, please - entitled
6 "Re loan from Property Loan and Investment Company
7 Limited.

8 .

9 Dear Sir, I have today received a letter from the
10 Property Loan and Investment Company Limited, stating
11 that the title to the stipulated property has not yet
12 been furnished to their solicitors and wish to know if
13 it is your intention to proceed with the loan.

14 .

15 Please be good enough to get in touch with your
16 solicitor without delay, asking him to immediately get
17 in touch with Mr. RJ Black, Law Department, Bank of
18 Ireland, Head Office, Lower Baggot Street, Dublin 2,
19 explaining the delay in furnishing the relative title.

20 .

21 Yours faithfully, J McEvoy, Manager."

22 .

23 In June of 1973, were you in a position to furnish
24 title of the property to anybody, Mr. Burke?

25 A. No. If you - according to the next piece of
26 correspondence, which outlines the situation from my
27 own solicitor to Mr. RJ Black in the Law Department,
28 Bank of Ireland, from Mr. Conlon - do you want to read
29 it or will I?

30 167 Q. I am coming to the letter. This is the next letter in

1 the sequence, Mr. Burke. If you just answer the
2 question that you are asked about the letter on screen,
3 we will progress things.

4 .

5 Were you in a position to furnish --

6 .

7 MR. WALSH: Sorry, Ms. Dillon, just before we get on to
8 ask any more questions about this particular letter.

9 .

10 Might I make an observation, Sir. What Mr. Burke is
11 being asked about is solicitors letters often
12 concerning the title. I think, from your days in the
13 Law Library and on the Bench, Sir, you will recall that
14 the crucial thing in the sale of land is whether or not
15 the vendor had title or was registered as title, then
16 somehow or another to prove a link between the vendor
17 and the purchaser. All these matters are normally
18 dealt with by solicitors rather than by people --

19 .

20 CHAIRMAN: Isn't it a simple answer, Mr. Walsh, to this
21 entire correspondence to have picked up the phone and
22 asked Mr. Oliver Conlon to get his finger out and get
23 things moving one way or another?

24 .

25 MR. WALSH: Your Lordship may well be right. There is
26 no evidence of that yet.

27 .

28 168 Q. MS. DILLON: Yes. As we saw earlier this morning, Mr.
29 Burke, the contract in relation to the sale of the land
30 wasn't signed until the 1st of August, 1973, between

1 yourself and Oakpark, isn't that right?

2 A. Yes.

3 169 Q. So up and throughout the tenure of all of this

4 conversation, there was no legal, valid or binding

5 agreement in place between yourself and Oakpark,

6 notwithstanding that the house was under construction,

7 isn't that right?

8 A. There was the most legal --

9 .

10 MR. WALSH: Sorry, Sir, I don't wish to be pedantic,

11 Sir, but Ms. Dillon is correct when she says there was

12 no legal binding agreement. She is not correct when

13 she says that there is no written agreement. You can

14 have an oral agreement.

15 .

16 CHAIRMAN: Enforceable agreement, if you want the

17 actual technical phraseology.

18 .

19 MR. WALSH: There is also the equitable jurisdiction.

20 .

21 CHAIRMAN: We won't go into that. We are going around

22 the mulberry tree sufficiently often without going into

23 that. It is manifestly clear what you are saying is

24 correct.

25 .

26 MR. WALSH: The question should be phrased: Was there

27 any written contract? That is all I am saying.

28 .

29 170 Q. MS. DILLON: There was no legal agreement in place, Mr.

30 Burke, between yourself and Oakpark at the time that

1 this correspondence was written?

2 A. There was no contract signed. There was a much more
3 definite agreement, an agreement between individuals,
4 human beings, people dealing honourably with one
5 another. If you go on, I assume we are going through
6 the correspondence, you are asking about Mr. Conlon and
7 getting his finger out.

8 .

9 You can see the next letter in this sequence of
10 correspondence is the 5th of July, where, in response
11 to the last letter of the 11th of June, Mr. Conlon
12 writes to Mr. Black, me having been asked by the bank
13 to act on it, I went on to Mr. Conlon, obviously from
14 looking at it here, and do you want to read it or will
15 I read it?

16 171 Q. No, you needn't bother, Mr. Burke, because I am coming
17 to it in the sequence. We will just continue dealing
18 with the document that is on screen at the moment.
19 Right.

20 .

21 Is it the position, therefore, that by the 11th of June
22 of 1973, you did not have, as would be normal, a
23 written contract of any description in connection with
24 either the purchase of the land or the building of the
25 house that was then on-going at Briargate?

26 A. That is correct. But as you say, what is normal in the
27 context of which you try to paint it, as distinct from
28 the relationship that I was dealing with. This matter
29 is confirmed for your satisfaction and to you, to the
30 point that you are trying to make, is that - that in

1 Mr. Conlon's letter of the 5th of July he says:
2 .
3 "We confirm that the documents have not as yet been
4 furnished to us by the vendor's solicitor, but
5 immediately on receipt of same we will forward them to
6 you."

7 .
8 This is Mr. Conlon writing to the Law Department of the
9 Bank of Ireland, RJ Black, on the 5th of July.

10 172 Q. This is the letter, at page 5434, which is next in
11 sequence, which is headed up "re Raphael P Burke and
12 Property Loan and Investment Company Limited, premises,
13 Malahide Road, Swords, 5th of July, '73.

14 We act for Mr. RP Burke who has obtained loan sanction
15 from the above company to assist in the purchase of the
16 above property. We have been asked by our client to
17 write to you advising you that the title documents will
18 be forwarded to you in early course.

19 .
20 We confirm that the documents have not as yet been
21 furnished to us by the vendor's solicitors, but
22 immediately on receipt of same we will forward them to
23 you."

24 .
25 When that letter was written, on the 5th of July, 1973,
26 there was no written contract in existence between
27 Oakpark and Raphael P Burke, isn't that correct?

28 A. That would be correct. According to paperwork here,
29 yes, that seems to be correct, yes.

30 173 Q. Do you have any reason to disagree with that paperwork?

1 A. No, I have no reason to disagree with it at all.

2 174 Q. It would appear, on receipt of the letter from the
3 bank, you instructed Mr. Conlon to write to the bank
4 and to advise them that the title deeds would be
5 forwarded in early course, but that he did not have
6 them. Is that right, at that point in time he didn't
7 have them?

8 A. He is just saying that the title deeds - what the
9 letter says --

10 175 Q. We have already read the letter.

11 A. Hold on a second, Mr. Chairman. I am not a lawyer. I
12 am a citizen trying to answer here for himself in this
13 witness-box. I just want to read exactly what he says
14 legally.

15 .
16 "We have been asked by our client to write to you
17 advising that the title documents will be forwarded to
18 you in early course. We confirm that the documents
19 have not as yet been furnished to us by the vendor's
20 solicitor. Immediately on receipt of same we will
21 forward them to you."

22 .
23 That is the answer to the question.

24 176 Q. Does Mr. Conlon in that correspondence disclose that
25 there is no written contract in existence between
26 Oakpark and yourself?

27 A. For God's sake. That isn't touched on in the
28 correspondence because there was a much firmer and much
29 more important contract between two sets of
30 individuals, the directors of Oakpark and myself, in

1 existence. The house was being built by them. We are
2 dancing on the top of a pin here.

3 177 Q. Was it disclosed to the bank at this stage that the
4 only agreement that was in existence in relation to the
5 purchase of this property and the construction of the
6 house on it for your benefit, was in effect a handshake
7 agreement between yourself and Oakpark?

8 A. It was much more than a handshake agreement because the
9 house being constructed on the site was well underway
10 in July of 1973. It was being built by the employees
11 of Oakpark, and it was on a site owned originally by
12 Oakpark, which I had agreed to buy from them. I mean,
13 it is a day-by-day relationship. It is not floating in
14 thin air. This is substance on the ground.

15 178 Q. Yes. You obviously didn't understand the question,
16 Mr. Burke.

17 .

18 Was it disclosed to the bank --

19 A. Now, Mr. Chairman --

20 179 Q. -- at the time of this letter, that there was no legal,
21 written contract in existence, either in relation to
22 the construction of the house or the land on which it
23 was being built between yourself and Oakpark? Was that
24 disclosed to the bank?

25 A. There is no argument about that, Mr. Chairman.

26 .

27 CHAIRMAN: Very good. We will - on that point we will
28 rise for a quarter of an hour.

29 .

30 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

1 RESUMED AGAIN AS FOLLOWS:

2 .

3 180 Q. MS. DILLON: Continuing with the correspondence,

4 Mr. Burke.

5 .

6 Post the letter from Mr. Conlon on the 5th of July,

7 1973, the Property Loan and Investment Company Limited

8 wrote again to your manager in Bank of Ireland in

9 Whitehall, on the 9th of August, 1973 - Document 5435,

10 please - informing them of a revised interest rate,

11 isn't that right?

12 A. That's right.

13 181 Q. On the 15th of August, 1973, page 5436, Mr. Delany,

14 the assistant manager in Bank of Ireland, Whitehall,

15 passed on that information to you, isn't that right?

16 A. That's right.

17 182 Q. Yes. On the 28th of September, 1973, your solicitor,

18 Oliver Conlon of Oliver Conlon and Co., Solicitors,

19 wrote to the manager Bank of Ireland, Whitehall, at

20 Document 5437. And it is entitled "Re Raphael P Burke

21 and Property Loan and Investment Company Limited,

22 premises, Malahide Road, Swords."

23 .

24 "On the instructions of our client, Mr. Burke, and in

25 consideration of facilities afforded by your bank to

26 him, we hereby undertake to lodge the net loan cheque

27 on receipt of same. "

28 .

29 Isn't that right?

30 A. That's right.

1 183 Q. Now, presumably, at this stage, Mr. Burke, a decision
2 had been taken by you to apply to Bank of Ireland for
3 loan facilities?

4 A. Well, I had already received the Property Loan and
5 Investment Company approval for the 15,000, and the
6 house was ready for occupation at that stage.
7 I would have gone to them for bridging loan
8 accommodation. It was granted to me according to other
9 correspondence by the bank on the 24th of September.

10 184 Q. Yes.

11 A. And then a letter was sent by Mr. Conlon on the 28th,
12 securing that loan accommodation, yes.

13 185 Q. Yes?

14 A. Bridging loan accommodation.

15 186 Q. So the undertaking that was given here on your behalf
16 by Mr. Conlon was to lodge the net loan cheque from
17 Property Loan and Investment Company Limited to Bank of
18 Ireland in discharge of any advance that Bank of
19 Ireland might have made to you in connection with the
20 transaction?

21 A. That is what it says there, yes.

22 187 Q. It was your position - at that stage it was your
23 intention to draw down the loan from Bank of Ireland or
24 from Property Loan and Investment Company Limited in
25 connection with this?

26 A. That seems to have been the intention, yes. That was
27 the intention.

28 188 Q. That doesn't appear to have happened, Mr. Burke, isn't
29 that right?

30 A. I beg your pardon?

1 189 Q. You never ultimately drew down any loan from Property
2 Loan and Investment Company?

3 A. No, what happened was that the circumstances, as
4 outlined in the letter of the 20th of August addressed
5 to, that was given to Mr. Casey, outlines the sequence
6 of events.

7 190 Q. So, in so far as the chronological sequence of
8 correspondence is concerned, on the Bank of Ireland
9 file, the next letter appears to be a letter dated the
10 31st of January, 1974?

11 A. That's right.

12 191 Q. At Document 5408. It appears to be the position, that
13 between September the 28th, 1973, when Mr. Conlon sent
14 his Letter of Undertaking in respect of the loan
15 cheque, and January of 1974, there is no documentation
16 and correspondence on the Bank of Ireland file,
17 indicating what happened as a contemporaneous record
18 between September of 1983 and January of 1984, isn't
19 that right?

20 A. That is according to the bank records here, which
21 differs, of course, from what they give to the Guards,
22 but the records are obviously inadequate, in relation
23 to it.

24 192 Q. Yes. So that in so far as there may have been
25 correspondence or negotiations or a draw down of a loan
26 cheque or matters such as that sort occurring at the
27 end of September of 1983 (sic), or early October of
28 1983 (sic) --

29 A. '73.

30 193 Q. '73. I beg your pardon. Other than the letter that is

1 written in August of 1974 by your bank manager, there
2 is no other - there is no contemporaneous record or
3 note on the file in relation to the transaction?

4 A. You would want to talk to the bank about that.

5 194 Q. But you have reviewed the file, Mr. Burke.

6 A. According to the file that I have here, there is
7 nothing, no.

8 195 Q. The next letter in sequence, therefore, would appear to
9 be letter 5408, which is a letter from Oliver Conlon &
10 Co., Solicitors, dictated, apparently, by Mr. Hanby.
11 And it is dated the 31st of January, 1974.

12 .

13 Now I think this is a letter that you furnished to the
14 Tribunal with your statement, Mr. Burke?

15 A. Yes.

16 196 Q. Can you explain to the Sole Member where it was or how
17 it was that you obtained this letter?

18 A. I can't offhand. I came across it somewhere. I don't
19 know where. Just one letter that I found, that's all,
20 in the search that I was making. I wish I had the
21 whole file, but I haven't. It was just one letter.

22 197 Q. You furnished a copy of this letter, which I think had
23 previously been referred to by Mr. Walsh, in the course
24 of the hearings, but you supplied a statement to the
25 Tribunal on the 24th of May, 2001, and attached to that
26 statement is this letter?

27 A. Yes.

28 198 Q. Is that right?

29 A. I think so, yes.

30 199 Q. Yes. Right. Where is the rest of the correspondence,

1 if any, that you might have had with Mr. Conlon in
2 connection with this transaction?

3 A. I have no idea. I haven't a clue where the
4 correspondence is. For some reason this particular
5 letter was amongst papers, and I found it. That's it.
6 That was the only letter I had. I hadn't even got the
7 letters of approval or the letters of - the only
8 reference I had to the Property Loan and Investment
9 Company was that one there, which I gave you.

10 200 Q. So this is the only letter that survived?

11 A. So it seems.

12 201 Q. Isn't that right?

13 A. That's right. I had gone to the bank in '98 looking
14 for the correspondence and anything that they had, so I
15 could send it on to the Tribunal. They never, they
16 didn't supply me with anything. They told me that -
17 they gave me some bank accounts, which you got. But I
18 didn't get any correspondence.

19 .
20 The only correspondence file I got was from yourselves
21 through the - that the bank sent on to you. And then,
22 yes that was in June, and then yesterday the bank sent
23 you additional - no, the day before yesterday the bank
24 gave you additional documentation, which you then gave
25 to us the night before last, and some copies of it
26 yesterday morning as well. That is all I know about
27 it, just that one letter was all I had. I wished I had
28 more, but I hadn't.

29 202 Q. Yes. Presumably, you would have had a file of
30 correspondence with Mr. Conlon in connection with this

1 matter?

2 A. Well, now, I was never the most organised of people in
3 relation to files of correspondence was concerned. I
4 had this one letter, which I was delighted to have,
5 because it showed that I had applied for a loan, and
6 the name was Property Loan and Investment Company
7 Limited, who were the from the Bank of Ireland. That
8 was it.

9 203 Q. Yes. And I think it is fair to say that when Mr. Walsh
10 first produced this letter, introduced this letter, the
11 suggestion was that you had applied for or obtained a
12 loan from Property Loan and Investment Company Limited?

13 A. Well, the point was that, as I recall it, I can't quote
14 the sequence of, of contributions from transcripts, I
15 haven't got the transcript with me. But the point
16 being, that was being made by Mr. Walsh, was "Why would
17 Mr. Burke want to get a loan approval, if he was
18 getting the property for nothing?" Which had been the
19 suggestion that was being made from the Tribunal.

20 204 Q. Yes. But in so far as you may have obtained loan
21 facilities or in so far as you may have drawn down a
22 loan, the position appears to be, Mr. Burke, that you
23 did not ever draw down any loan from Property Loan and
24 Investment Company Limited?

25 A. I didn't bother at the end of the day following it on,
26 because as you see from the correspondence there, there
27 were a number of increases in the interests rates, and
28 I had already paid for the 15,000, I had paid it over
29 in September, October of 1973. This then went on. The
30 interest was going up and I had, in the meantime, sold

1 my insurance brokerage. I had some funds available to
2 me, and I used those funds to pay for the loan. That
3 is shown in the letter from Mr. Delany to Mr. Casey.

4 205 Q. Yes. But in so far as the bank's file or the bank's
5 record is concerned, and the file from which all of
6 these is extracted, is entitled "Raphael P Burke -
7 personal file."

8 .
9 In so far as this transaction is concerned, other than
10 a letter that was written by, I think Mr. Delany, in
11 August of 1974, there is nothing on this file to
12 indicate a drawdown of a loan or the grant of bridging
13 facilities or anything else of that nature, occurring
14 between Mr. Conlon's letter of the 28th of September,
15 1973, and Mr. Conlon's letter to you of the 31st of
16 January, 1974?

17 A. No, because it hadn't been drawn down by Property Loan.
18 But in the sequence, in the file of correspondence
19 dealing with the house, it was at that stage that the
20 20th of August, '74, letter was written by Mr. Delany.
21 It is his part of the sequence of the letters from the
22 bank in relation to the dealings in relation to the
23 house.

24 206 Q. But if you had drawn down a ú15,000 loan, from Bank of
25 Ireland, in September of 1973, and you had discharged
26 all of your indebtedness, to Oakpark Construction, why
27 was your solicitor writing to you in January of 1974
28 and telling you about the increase in monthly
29 repayments to a company, Property Loan and Investment
30 Company Limited, that you were never going to draw down

1 a loan from?

2 A. Quite simple. I had received the bridging loan
3 approval on the 24th of September, 1973. I then
4 discovered at that time that the interest rate that
5 they were going to charge me was at 13 percent. I had
6 money on deposit in the bank of 17,000, on deposit in
7 the bank. I drew 15,000 of that, on the date mentioned
8 in the letter here, which is the 12th of October, '73,
9 thereby, as the letter says, saving myself 4 percent
10 interest in the interim.

11 .

12 I hadn't - the cheque had been paid over. I didn't
13 have to use their bridging facilities. I was saving
14 myself this money. I paid for the cheque to Oakpark on
15 the house.

16 .

17 The question of still drawing down the property loan on
18 the twenty year loan was still in abeyance, whether I
19 would do it or not. I eventually decided, as time went
20 by, that I had already paid for it. I had used up the
21 15, and rather than taking a twenty year mortgage, I
22 would just let it stand as it was, that I had paid for
23 it. That's the situation.

24 207 Q. So is it the position, then, that you had informed Mr.
25 Conlon by January of 1974 that you had in fact paid
26 Oakpark for the house on the 12th of October, 1973?

27 A. But he had already given his Letter of Undertaking at
28 that stage to the bank in relation to the bridging loan
29 for the 15,000, that he would hand over the Property
30 Loan cheque. The documentation was still going on. I

1 still hadn't decided at that stage, in 1974, whether I
2 would still take up the 15,000 or not. It was
3 afterwards I decided. And I can't be precise as to
4 what date, but I just decided, "Look, I am going to let
5 this loan" - forget about it, that loan approval. I
6 have already paid for it. It is taken out, the 15,000
7 is out of my bank, and rather than tying myself to a
8 twenty year loan with interest rates that were going up
9 - and if you look at the correspondence that you've
10 read to me; on the 15th of August, '73, it went from
11 ú162.13 to ú183.31 per month, and went on then from
12 ú188.73 to ú199. And the interest had been increased
13 to 15 percent at that stage.

14 .

15 And I just decided that it was - forget it, I am not
16 going to take up a twenty year mortgage. I have
17 already paid for it out of money that I had.

18 208 Q. Obviously, you didn't understand the question. Had
19 you, by the 31st of January, 1974, told Mr. Conlon that
20 you had, in fact, paid ú15,000 to Oakpark on the 12th
21 of October, 1973?

22 A. I don't know whether I had told him directly or not. I
23 wouldn't have - it would have been the young man,
24 Hanby, who was dealing with the file. I doubt - there
25 is no other correspondence on it. I doubt I would have
26 mentioned it to him. I don't know if I did or I
27 didn't. They had already given the guarantee in
28 relation to the - what I was going to say, to bridging
29 the Letter of Undertaking.

30 209 Q. Because he had given a guarantee or a letter of

1 undertaking in relation to the bridging, if Oakpark had
2 in fact been paid in October of 1973?

3 A. Now, wait a sec. It is not a question of if Oakpark
4 had been paid. They had been paid, as the
5 correspondence shows.

6 210 Q. Well, why didn't you tell your solicitor so his
7 undertaking to the bank could be discharged?

8 A. The undertaking to the bank to be discharged, it was
9 never taken up, as such, because I never went for the -
10 I never took out the Property Loan cheque afterwards,
11 because I had already dealt with it in the way that I
12 had dealt with it. And for the reasons that I
13 mentioned to you in relation to interest going up and
14 my circumstances being as they were, I didn't bother
15 taking up the loan. I had paid for it out of my own
16 15,000 that I had taken out of a deposit of 17.

17 .

18 Maybe, at this stage, Mr. Chairman, as we have gone
19 through correspondence in sequence, and if I could read
20 the full context of that letter. We only read a couple
21 of paragraphs of it yesterday in relation to it.

22 .

23 It reads --

24 211 Q. Sorry, Mr. Burke, I want to stay with this question of
25 the undertaking, that Mr. Conlon gave to the bank on
26 your behalf on the 28th of September, 1973.

27 A. Yes.

28 212 Q. To refresh your memory, we will have page 5437.

29 .

30 This is an undertaking that is given by your solicitor

1 to lodge the net loan cheque in consideration of the
2 bank affording you facilities. Okay? Now, did the
3 bank afford you facilities?

4 A. The bank situation, as exactly outlined, and rather
5 than me responding in my precise way, it is much better
6 that I quote from the --

7 213 Q. No, Mr. Burke, I want your recollection of whether you
8 borrowed ú15,000 from Bank of Ireland in Whitehall in
9 September of 1973, rather than relying upon a letter
10 that was written post the event by your bank manager.

11 It is a simple question.

12 .

13 Your solicitor gave an undertaking to the bank on the
14 28th of September, 1973, and undertook to lodge the net
15 loan cheque, if they granted facilities to you?

16 A. Yes.

17 214 Q. The question is: Did the bank grant you facilities,
18 and if they did, did you draw them down?

19 A. Well, the bank granted me bridging loan accommodation
20 in Whitehall on the 24th of September, '73 to the
21 extent of 15,000. And that was secured by the letter
22 that you referred to of undertaking from my solicitors,
23 Oliver Conlon, over the mortgage granted by the
24 Property Loan and Investment Company, which, as you
25 know, is a subsidiary, direct subsidiary of the Bank of
26 Ireland.

27 .

28 Now, the situation at the time was that the interest on
29 this bridging loan was chargeable at 13 percent. And
30 to alleviate this burden, I transferred ú15,000 on the

1 12th of October, '73 from my personal joint deposit
2 account in that office, which had been accruing
3 interest at the rate of 9 percent. I thereby saved
4 myself 4 percent interest in the interim. That's the
5 situation on it.

6 .
7 Now, the bridging loan was still available to me when I
8 decided to avail of same. And the bridging loan
9 remained there pending, available to me pending the
10 issuance of the cheque from the Property Loan and
11 Investment Company. Instead, I had got the approval
12 for the 15. They were charging me 13 percent. Rather
13 than drawing down their money, I used my own money and
14 saved myself 4 percent.

15 .
16 Now, whether I used it for three or four days, or
17 whether I, having got the loan approval, I decided, or
18 having got the bridging finance and discussed it with
19 the bank manager, the gap between the 24th of September
20 and the 12th of October, that I used my own money
21 rather than the actual drawing down of those few days,
22 I can't recall at this distance. But it is the 15,000
23 that was used, was money that was in my joint deposit
24 account, which came out of the - what was in that
25 account at that time was ú17,559, and from which sum I
26 withdrew 15,000. That's the situation.

27 215 Q. Do I understand your evidence to be, Mr. Burke, that
28 you do not recollect whether the bank, having granted
29 you facilities in September 1973, whether you ever, in
30 fact, utilised those facilities or not?

1 A. They granted me the facilities - according to the
2 bank's own information, they granted me the facilities.
3 I was using the facilities, decided then that - in a
4 few days later, or a week or two later, that rather
5 than using their expensive facilities at 13 percent, it
6 was crazy to be paying them 13 percent when I had money
7 on deposit at 9 percent. I drew down, I transferred
8 the money across to the bank at 15 - the ú15,000. As
9 to whether it was, they then say, in correspondence,
10 that the bridging finance, if I wanted to transfer my
11 own ú15,000 back out again, they would provide me with
12 the bridging finance in between, but the 15,000 had
13 been paid over.

14 216 Q. We will take it in stages --

15 .

16 CHAIRMAN: I want to clarify something. I am totally
17 confused.

18 .

19 Do I understand, to try and net the situation down,
20 that between a date in September and a date in October,
21 you actually borrowed money from the bank, but that you
22 then transferred ú15,000, which is the same, the
23 bridging finance, to the bank from your deposit
24 account, which would leave you in a situation that you
25 were not utilising from thence forward, as I understand
26 you, bridging finance? Have I got it right?

27 A. That is the situation, Mr. Chairman.

28 .

29 CHAIRMAN: So from the date of transfer of the 15,000,
30 from the deposit account, to your current account,

1 while you had in place an offer of bridging finance,
2 you did not take it up?

3 A. I used my own money instead of the bridging finance.
4 .

5 CHAIRMAN: Don't worry about whose money you used. You
6 didn't take up the bridging finance?

7 A. No.
8 .

9 CHAIRMAN: So you had your own 15,000 in your current
10 account?

11 A. It was in a joint deposit account, Chairman. The
12 15,000 was in a joint deposit account. It was
13 transferred into the --
14 .

15 CHAIRMAN: Well, now --

16 A. There was 17,000 in the joint deposit account. I
17 transferred 15,000 in and paid that 15,000 out instead
18 of using their 15,000.
19 .

20 CHAIRMAN: Yes. That's as I understand it.

21 A. That is the situation.
22 .

23 CHAIRMAN: You had no bridging finance from the bank
24 once you lodged your 15,000?

25 A. Once I used my own 15,000.
26 .

27 CHAIRMAN: That is what I wanted to understand. So
28 that 15,000 was a credit balance now in your - in one
29 of your accounts, in the bank.

30 A. They referred to - they refer to it here as being in

1 the bridging loan account.

2 .

3 CHAIRMAN: Call it anything you like. It cancelled the
4 bridging loan account, it put the bridging loan account
5 into credit.

6 A. That's right, 15,000.

7 .

8 CHAIRMAN: Or at least - that is all right. I was
9 getting a little confused in the various ways it was
10 being described. My apologies, Ms. Dillon, for
11 interfering.

12 .

13 217 Q. MS. DILLON: Not at all. The position then is,
14 Mr. Burke, that you never utilised any loan facilities
15 from Bank of Ireland in Whitehall?

16 A. Having - no, that is true.

17 218 Q. So that the ú15,000 that was withdrawn on the 12th of
18 October, 1973, from the joint deposit account and
19 placed in the bridging loan account, was your own
20 money?

21 A. It was from my own joint deposit account, yes.

22 219 Q. And that prior to the 12th of October, 1973, there was
23 no drawdown of ú15,000 at all?

24 A. I can't be absolutely precise, but that seems to be the
25 way it is, yes.

26 220 Q. So that your understanding of the letter of the 20th of
27 August, 1974, is that you were granted a facility by
28 Bank of Ireland, which was secured, in so far as the
29 bank were concerned, on foot of the Letter of
30 Undertaking that is on screen, but that while you were

1 granted that facility you did not, in fact, take it up
2 or draw down the money, but elected to transfer money
3 from the joint deposit account into the bridging loan
4 account?

5 A. That's correct, to save myself the interest that they
6 were going to charge me, they were going to charge me
7 13 percent on my own money, which was on deposit in the
8 bank at 9 percent. I was saving myself 4 percent. I
9 used my own money that was there for the payment of the
10 - for the house.

11 221 Q. Then you took that money out of the bridging loan
12 account, presumably, and made it to Oakpark?

13 A. That's the sequence of events, yes.

14 222 Q. So if you didn't borrow any money at all from Bank of
15 Ireland, why did you transfer the money from the
16 deposit account to the bridging loan account?

17 A. It would have been to get a cheque from them,
18 obviously, just organising a cheque or a draft. I
19 don't know what way it was done at that stage.

20 223 Q. But Mr. Burke, if you hadn't drawn down the money,
21 there wouldn't have been any necessity to transfer
22 money across from your deposit account to the bridging
23 loan account?

24 A. Well, that is what I said to you. I am not sure if
25 there is a day or two, a gap in between. I have
26 explained this to the Chairman already. The approval
27 came on the 24th. The 12th of October was the day that
28 I transferred the money in. As to whether there is an
29 overlap or a gap of a couple of days, I can't be
30 precise. It doesn't spell it out in the letter in

1 relation to it.

2 .

3 CHAIRMAN: Is it in fact that what you are saying is
4 that whoever provided the money, whether it was the
5 bank by way of a temporary bridging loan or you by the
6 transfer of your funds --

7 A. Yes.

8 .

9 CHAIRMAN: -- you had available to you to pay to a
10 third party €15,000, from whichever source it came, and
11 having paid that, to the third party, you were not
12 indebted to the bank on a bridging loan?

13 A. That's correct.

14 .

15 CHAIRMAN: Are we clear about that?

16 A. That's correct, yes.

17 .

18 CHAIRMAN: And you say that whichever - in whichever
19 hand you had the money, at the time that you paid it
20 over to Oakpark, the end product was you were - €15,000
21 of your savings had gone to pay for your house?

22 A. That is precisely it.

23 .

24 CHAIRMAN: Do I clearly understand that that is what
25 you are saying?

26 A. Absolutely. That is what I am saying. That is
27 absolute precisely the situation, Mr. Chairman.

28 .

29 CHAIRMAN: That is the situation as of the date in
30 October. You say you have paid a sum of money of

1 ú15,000 to Oakpark?

2 A. That is precisely it.

3 .

4 CHAIRMAN: You further say that the balance, as I
5 understand your evidence, of ú7,500, was discharged by
6 installments from funds due by Oakpark to you?

7 A. That is precisely it.

8 .

9 CHAIRMAN: Now, do you say that was accumulated funds,
10 or it was over a period of time into what I would
11 describe as the future at that point?

12 A. It would have been the future at that point on the
13 number of sales that I would have --

14 .

15 CHAIRMAN: That is your version of the events, that, as
16 you understand it --

17 A. That is precisely it.

18 .

19 CHAIRMAN: Thank you very much. I just want to
20 understand what you are saying clearly.

21 A. That is exactly the situation. It is interesting, Mr.
22 Chairman, if I may just, in relation to it, to show the
23 situation of that 15,000, that it didn't go back
24 anywhere else, if you --

25 .

26 CHAIRMAN: Wait now, please. Let's continue the
27 examination and perhaps that can be found out by Ms.
28 Dillon. I don't want to get involved in progressing
29 the matter. I don't want to appear to be getting
30 involved personally.

1 A. It is in relation to your questions --

2 .

3 CHAIRMAN: All right. I will leave that to Ms. Dillon

4 to ferret it out.

5 .

6 224 Q. MS. DILLON: It is your position, therefore, that

7 between the 24th of September, 1973, and the 12th of

8 October, 1973, you paid ú15,000 to Oakpark in

9 connection with the house?

10 A. That's correct.

11 225 Q. That cheque was a cheque that was drawn on your

12 bridging loan account with Bank of Ireland?

13 A. So it says here, yes.

14 226 Q. To whom was the cheque made out?

15 A. It would have been made out to Oakpark or to - to

16 Oakpark, I assume. That was who I was buying the --

17 227 Q. Do you remember or do you know?

18 A. It would have been to Oakpark. It is as

19 straightforward as that.

20 228 Q. You recollect the cheque being made out to Oakpark?

21 A. I am afraid, Ms. Dillon, it is 29 years ago, as to

22 whether - who else would it have been made payable to,

23 if it would have been made out to Oakpark? I mean, I

24 can't stand over you here and say "yes".

25 229 Q. It could have been made out to cash, Mr. Burke?

26 A. It could have been. It could have been. It is highly

27 unlikely. It would have been made out to Oakpark more

28 than likely. I am under oath here. I don't want to

29 say to you absolutely categorically because I haven't

30 got the bank records, you haven't got the bank records.

1 We are all working in the dark here. And so I am just
2 saying to you that the money was paid, but as to which
3 account it would have been paid to, I am not sure.

4 230 Q. You don't know to whom the cheque was made payable?

5 A. It would have been made payable to Oakpark. The only
6 thing, the only reservation I am putting in on that
7 answer, which I probably shouldn't have got myself into
8 this at all, is that it is - I don't have a record of
9 it.

10 231 Q. There is nothing in the bank documentation to indicate
11 that the withdrawal of the ú15,000 was attributed by
12 anybody to Oakpark or anybody connected with Oakpark,
13 isn't that the position, Mr. Burke?

14 A. There is nothing to say, but just common sense, Mr.
15 Chairman, the whole correspondence is about a bridging
16 loan on that time. I moved into the house on the 10th
17 of October. The circumstances that we are talking
18 about here, the 15,000, is the 12th of October, the
19 24th of September, it didn't go anywhere else. It went
20 to pay for the house.

21 232 Q. You must remember, Mr. Burke, that you had originally
22 told the Sole Member of this Tribunal, that common
23 sense would dictate that because you withdrew ú15,000
24 on the 9th of April, 1984, and there was a relodgement
25 on the 19th of April, 1984, common sense would dictate
26 that it was the same money.

27 A. Yes.

28 233 Q. Isn't that right?

29 A. You are entitled a cheap jibe, yes.

30 234 Q. Wasn't that your evidence previously in relation to

1 that?

2 .

3 CHAIRMAN: Let's have no further rude comments on
4 anybody's behalf. I am going to insist on that.

5 A. Okay. Right, Mr. Chairman. That circumstance, as
6 outlined by the questioner is correct. I apologise to
7 you in relation to the memory in relation to this.

8 .

9 CHAIRMAN: Can I further ask you this question, because
10 it has been puzzling me all morning.

11 .

12 You had a solicitor acting for you, Mr. Conlon?

13 A. That's right.

14 .

15 CHAIRMAN: Oakpark had a solicitor who was Mr. --

16 .

17 MS. DILLON: Esmonde O'Reilly.

18 .

19 CHAIRMAN: I can't remember what firm he was with at
20 the time.

21 .

22 Now, the normal sequence of that transaction, I call to
23 mind the purchase of my own house, I got a cheque - I
24 drew a cheque, I gave it to my solicitor. He closed
25 the sale, and in due course he went to a closing of the
26 sale, and in due course a deed was sent to me for
27 execution.

28 .

29 Now, that was what I might call a standard manner of
30 doing, closing a sale for a purchase of a house.

1 .
2 In this instance you have the solicitors - you say you
3 sent a cheque to Oakpark, there was no sequence of what
4 I call a closing here, in which €15,000 or any
5 particular sum of money moves. Now, would you like to
6 explain to me what you recall happened?

7 A. Again, Mr. Chairman, the situation is that I was moving
8 into the house in October. The house was completed. I
9 was moving in at the beginning of October, the 10th of
10 October. And the - I got the bridging loan approval.
11 Mr. Conlon gave the Letter of Guarantee. And the
12 circumstances that we've just rehearsed in relation to
13 the 15,000, yourself and myself, took place. I gave
14 the cheque to, I believe it was Tom Brennan, but I am
15 subject to correction on that. That's my recollection
16 of giving it to Tom. It could have been to Jack Foley,
17 but I believe it was to Tom. And that was the
18 circumstances. And the paperwork was completed
19 afterwards.

20 .
21 That, again, is in the context of the relationship that
22 existed between us, and the fact that we were dealing
23 in deposits and commissions, and transactions, on a
24 daily basis. It was - they had built the house, I was
25 moving into it. And the paperwork could come along
26 behind because there was no hurry on the paperwork,
27 because we were dealing as two groups of people that
28 knew one another so well. It is as simple as that.
29 The paperwork would have been handled by the lawyers
30 later on, Mr. Chairman. That was the way it was.

1 .
2 235 Q. MS. DILLON: Yes. Is it your evidence, then, that you
3 have a specific recollection of withdrawing ú15,000
4 from the Bank of Ireland in Whitehall, in a cheque that
5 was probably made payable to Oakpark and giving it to
6 Mr. Tom Brennan?

7 A. That is my recollection of it, but it is 29 years ago,
8 and the circumstances of handing it over to Tom is my
9 memory of it. It could be - I am subject to correction
10 on it, but that's my memory of it in relation to the
11 15,000. As far as the transaction of the 15,000,
12 that's all laid out in the letter there.

13 236 Q. Right. And in so far as the source of that ú15,000 is
14 concerned, it is your best evidence that it was
15 probably a withdrawal from your joint deposit account,
16 but if not that, a temporary drawdown of the bridging
17 loan facilities granting by Bank of Ireland?

18 A. No, what happened was, as the letter of the 20th of
19 August says, the 15,000 came out of the joint deposit
20 account, and it goes on to say:

21 .
22 "The balance of the joint deposit account which stands
23 in the name of Raphael Patrick Burke in October 1973,
24 was 17,559 from which sum Mr. Burke withdrew 15,000 and
25 lodged to the bridging loan account. The deposit
26 balance was made up of an accumulation of lodgements
27 from the date of the opening of same account and in
28 fact which was opened on the 5th of April, 1971."

29 .
30 To show that that money never went anywhere else, if

1 you look at the --

2 237 Q. Yes, if we just stick with this point, Mr. Burke. If
3 you had drawn down the bridging loan account, if right,
4 if you had, on the 24th of September, 1973 taken
5 ú15,000 out of Bank of Ireland and paid it to Oakpark,
6 interest would have been running on the loan, is that
7 right?

8 A. Yes, we went through this yesterday, yes.

9 238 Q. No interest was paid by you in connection with the
10 loan, isn't that right?

11 A. That is precisely it, yes.

12 239 Q. Either one of two things happened in relation to that,
13 Mr. Burke, either you didn't draw down the ú15,000, as
14 you indicated yesterday, on the 24th of September,
15 1973, or you did draw it down, but the bank elected not
16 to charge you interest?

17 A. Well, we went through this, Mr. Chairman, with the
18 sequence of events with yourself a few minutes ago. I
19 have nothing further that I can add to it at this
20 stage, without confusing it even further.

21 240 Q. The fact that interest was not charged to you, Mr.
22 Burke, would indicate that you did not, in fact, draw
23 down the bridging loan facility.

24 A. It would indicate that - it would indicate that the -
25 that instead, that when he told me of the bridging loan
26 facility at being 13 percent, he must have discussed it
27 with me, or obviously discussed it with me what
28 interest rate he was going to be charging me, at 13
29 percent, as the letter says here. I decided to save my
30 interest of 4 percent and use my own money instead of

1 their money.

2 .

3 As to the gap of a few days in between, I can't be

4 precise, Ms. Dillon, with you.

5 241 Q. If you had drawn down ú15,000 from a bridging loan

6 facility, in September of 1973, and repaid that from

7 your deposit account on the 12th of October, 1973,

8 there would have been interest --

9 A. That's true.

10 242 Q. -- running on the account?

11 A. That's true, or he could have decided, look, there

12 might have been the gap from the time that I got the

13 approval on the 24th of September, to the date of the

14 12th of October, when the matter was being discussed

15 with him, and I got the cheque in relation to it. I

16 just drew my own cheque rather than their bridging

17 money at 13 percent. I used my own money, saving

18 myself 4 percent interest, which seems to be sensible.

19 243 Q. Yes. If, in fact, you did not draw down the bridging

20 loan --

21 A. Mmm.

22 244 Q. And if you used your own money to pay Oakpark --

23 A. Yes.

24 245 Q. -- why was the money transferred to the bridging loan

25 account, according to this letter?

26 A. I don't know. I haven't got the documentation. You

27 haven't got the documentation. Nobody has the

28 documentation other than here, and the 15,000 going out

29 of my own money into their account. As to why they did

30 it that way, within the bank, I can't answer you.

1 246 Q. But all you had to do, Mr. Burke, was go into the bank
2 with your deposit account with 17,559.50 in it and say,
3 "Give me a bank draft in favour of or give me a bank
4 cheque in favour of Oakpark"?

5 A. Yes.

6 247 Q. Yes. Now, we do know that that, in fact, did not
7 happen?

8 A. No, because what happened was that they gave me the
9 original intention in the consequence of getting the
10 loan approval from Property Loan and Investment
11 Company. The intention was, in September, the 24th of
12 September, '73, that I would get a bridging loan from
13 them. In hindsight, obviously, or in hindsight I
14 decided that rather than using their very expensive
15 bridging loan, I would use my own money of 15 - by
16 taking 15,000 out of my own money, thereby saving
17 myself interest on it. That's the scenario that took
18 place.

19 248 Q. Why lodge it to a bridging loan account?

20 A. I don't know why he uses that phraseology. I have no
21 idea. I can't explain it to you. I don't understand
22 it. The 15,000 was paid over. It has gone out of the
23 account. It never goes back into the account. That's
24 the end of it.

25 249 Q. So, are you saying, then, that on the 12th of October,
26 1973, when you made the withdrawal from the joint
27 deposit account, that that is the date on upon which
28 you drew a bank draft in relation to Oakpark
29 Developments Limited and paid for your house?

30 A. Well, I moved into the house on the 10th of October, so

1 it would have been - on the night of the 10th - that
2 would have been a day or two later that I would have
3 handed over the cheque.

4 250 Q. Is it your evidence that on the 12th of October, 1973,
5 you drew a bank draft or a bank cheque in favour of
6 Oakpark Developments and paid for the building of your
7 house?

8 A. On the date of the 12th of October, I transferred money
9 from one account to another, out of which I paid
10 Oakpark. Whether it was the date of the 12th or it
11 could have been the following day, on the 13th, I am
12 not precisely sure of the precise date involved, but it
13 was within a day or two either way, a day or two of
14 that 12th of October.

15 251 Q. And was Mr. Conlon involved in any way in connection
16 with this payment or transfer?

17 A. No, I just paid the money over to Oakpark, because I
18 was moving into the house, and I had a debt due to
19 them, and I paid them the cheque of ú15,000. That's
20 the situation. I owed them money, because I was moving
21 into my home.

22 252 Q. Did you get a receipt for it, Mr. Burke?

23 A. No, I have no idea at this stage. That's not the sort
24 of way we would have done business. I would have - a
25 cheque was the receipt in those days, and that would be
26 it. I don't have the details of it going back 29
27 years. The idea of asking for - for me to ask one of
28 them for a receipt for that is - it just doesn't bear
29 thinking about.

30 253 Q. Do I take it from your answer, Mr. Burke, that you did

1 not seek a receipt in connection with this payment?

2 A. No, I wouldn't have sought a receipt in - it was a
3 cheque for 15 grand. I wouldn't be seeking a receipt
4 for it. The cheque itself is a receipt.

5 254 Q. Did you inform Mr. Oliver Conlon or your solicitors
6 that you had concluded the transaction in this fashion?

7 A. But it hadn't been concluded in that fashion. At that
8 stage I was still of the intention of using up the
9 mortgage, that was the Property Loan mortgage that was
10 available to me, but the interest rates were climbing,
11 and later on, as circumstances evolved, I decided, why
12 should I start into a twenty year mortgage onto the
13 house that I had already paid for? The money was
14 transferred over. It was at 9 percent, is what I had
15 been getting for it. Here the interest rates were
16 flying up to 15 percent. I didn't bother doing it, so
17 I doubt I ever mentioned it to Oliver Conlon.

18 255 Q. So you didn't tell Mr. Conlon that you had in fact paid
19 €15,000 in cash or a cheque to Oakpark in connection
20 with the building of your house?

21 A. No, I didn't mention it to Mr. Conlon because the
22 question of the Property Loan mortgage was still there
23 to be taken up by me, and which I would then have had
24 the €15,000 then back to me, but I decided not to
25 bother doing it that way. I had already paid for the
26 house, and for the reasons I have already outlined to
27 you, for the interest rates that were accruing at that
28 stage.

29 256 Q. And this sale, in fact, in so far as the land
30 transaction part of it is concerned, Mr. Burke, did not

1 in fact close until some number of months later on the
2 25th of February, 1974, isn't that right?

3 A. Whatever date it was, I am not sure --

4 257 Q. The transfer of it was the 25th of February, 1974?

5 A. Fair enough. The actual paperwork was completed at
6 that stage, yes.

7 258 Q. So in this transaction that occurred between Oakpark
8 and yourself, you had a purchase of a piece of land
9 which - on which a house was being built. You had no
10 valid contract in relation to the purchase of that
11 house until August of 1973. You paid for the building
12 of the house on the 12th of October, 1973. The sale,
13 in fact, did not close until February of the following
14 year, 1974. Is that the position?

15 A. The paperwork was completed in '74, but there was no
16 rush with paperwork between us at that stage,
17 absolutely no rush whatsoever.

18 259 Q. Would you describe it as a normal commercial
19 transaction?

20 A. Yes, very much so. I paid for the house with the
21 15,000, and the balance of it, the seven-and-a-half, I
22 paid in the normal transaction of a contra entry, which
23 goes on all the time in business between companies that
24 are dealing with one another. That is what happened.
25 That's a normal commercial transaction that takes place
26 every day of the week in contra entries that place in
27 business.

28 .

29 MS. DILLON: Yes, Sir. 2:15.

30 .

1 CHAIRMAN: All right. We will rise for lunch and sit
2 again at a quarter past two. Or do you want to sit
3 earlier?

4 .

5 MS. DILLON: 2:15 is all right with me.

6 .

7 THE TRIBUNAL THEN ADJOURNED FOR THE LUNCH.

8 .

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30 .

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2 .

3 260 Q. MS. DILLON: Before lunch, Mr. Burke, we had seen that
4 between the 28th of September, 1973, and the 31st of
5 January, 1974, which is the period that would have
6 encompassed the payment or the withdrawal of the
7 ú15,000, there are no contemporaneous records on the
8 bank file. Isn't that right?

9 A. That's correct.

10 261 Q. And on the 6th of June, 1974, the Property Loan and
11 Investment Company wrote again to your manager, at page
12 5438?

13 A. 6th of June?

14 262 Q. 1974?

15 A. 26th of June, '74?

16 263 Q. At page 5438. It seems to be the 6th of June. If you
17 can establish it's the 26th of June --

18 A. Oh, the 6th of June. Sorry, Mr. McEvoy wrote to me.

19 The 6th of June, yes.

20 264 Q. The Property Loan and Investment Company wrote to the
21 manager.

22 A. That was a coincidence, the 6th of June, that I got a
23 letter from Mr. McEvoy, yes.

24 265 Q. And referred to a telephone conversation that had
25 apparently taken place between the Property Loan and
26 Investment Company and the Bank of Ireland in
27 Whitehall. And the letter said:

28 .

29 "Dear Sir, with regard to our recent telephone
30 conversation, I have now been informed by this

1 company's solicitor that the completion of the
2 formalities leading to the issue of the proposed loan
3 are not proceeding to his satisfaction. In these
4 circumstances, it will be appreciated if you will
5 please inform Mr. Burke that unless all formalities
6 have been concluded, and the loan cheque issued within
7 one month from today's date, it may be necessary to
8 withdraw the loan facility. As things are, the company
9 cannot continue to earmark funds on an indefinite
10 basis.

11 .

12 I should mention also, that this company's surveyor has
13 not yet certified completion of the property.

14 .

15 Yours faithfully."

16 A. Mm-hmm.

17 266 Q. It's page 5438.

18 A. Yes.

19 267 Q. That letter clearly indicates, Mr. Burke, that as of
20 the 6th of June, 1974, notwithstanding that you had
21 paid for the building of the house in October of 1973,
22 the Property Loan and Investment Company had not been
23 informed that you didn't intend to draw down the loan?

24 A. That's correct. That's what it would indicate, yes.

25 268 Q. And it would appear that the Bank of Ireland in
26 Whitehall hadn't been informed that you had, in fact,
27 paid for the property in October of 1973?

28 A. No, I would have informed them about the bridging loan
29 aspect of it, but I - I assume, but they wouldn't have
30 informed them as to whether I was going to proceed with

1 the
2 loan or not. I had decided, then, that I wouldn't
3 proceed with it, at some stage in the middle of all of
4 this, because of interest rates.

5 269 Q. Notwithstanding you having paid for the building of
6 your house in October of 1973, by the middle of 1974
7 you were still undecided as to whether you would take
8 out a mortgage or not?

9 A. Well, I just hadn't finalised it in my mind, whether I
10 would or not. That's obviously what was happening.

11 270 Q. It wasn't as if you needed the money, Mr. Burke,
12 because as we saw from the bank accounts yesterday, at
13 that time you had substantial funds on deposit?

14 A. There were funds on deposit, yes.

15 271 Q. There was no immediate requirement for a mortgage or
16 for access to funds. You had access to other funds,
17 isn't that right?

18 A. I had access to other funds, but a mortgage is a
19 different kettle of fish, rather than access to funds,
20 because a mortgage would be a long-term thing over
21 twenty years. But I decided that with the funds that
22 were available, and the number of thousands, et cetera
23 that I was selling, in particular because of the
24 interest rates they were charging, as I had said
25 already, I already paid for it. Forget it, I am not
26 going to go into a mortgage situation --

27 272 Q. But you hadn't informed the proposed lending
28 institution of the fact that you had, in fact, paid for
29 the property?

30 A. No, the proposed lending institution was the Bank of

1 Ireland in Whitehall. This was their subsidiary
2 company, the Property Loan. The Bank of Ireland in
3 Whitehall would have known all about that, because it
4 was done through them. They were the ones that
5 provided the situation in September, October of '73.

6 273 Q. The company that agreed to provide you with loan
7 facilities in relation to the purchase of this property
8 was, by letter dated the 12th of December, 1972, the
9 Property Loan and Investment Company?

10 A. Wholly-owned subsidiary of the Bank of Ireland. All my
11 dealings with this would have been dealt with through
12 the Bank of Ireland in Whitehall. And that's why the
13 correspondence, as you will see, is not correspondence
14 from the Property Loan and Investment Company directed
15 to me, it's correspondence directed to the Bank of
16 Ireland in Whitehall, where I was dealing with it.

17 274 Q. Yes. In fact, the Letter of Loan Offer was made to the
18 manager of the Bank of Ireland in Whitehall?

19 A. That's the point.

20 275 Q. But the company that was, in fact, going to advance you
21 the mortgage facilities and provide a mortgage was not
22 Bank of Ireland, Whitehall, it was the Property Loan
23 and Investment Company?

24 A. It was the subsidiary of the Bank of Ireland, the
25 Property Loan and Investment Company, which all of the
26 documentation, all of the paperwork was done in
27 applications and everything else with the Bank of
28 Ireland in Whitehall.

29 276 Q. Who do not appear to have been informed, certainly as
30 of June of 1974, of the fact that you had already

- 1 bought and paid for the property in question?
- 2 A. The Bank of Ireland in Whitehall would know it, but the
3 Property Loan and Investment Company, obviously, I
4 hadn't taken up the mortgage and never - decided never
5 to take up the mortgage.
- 6 277 Q. There is nothing on the Bank of Ireland, Whitehall file
7 to indicate that the funds that you drew down in
8 October 1973 were paid to Oakpark, isn't that right?
- 9 A. Yes, and they have never given us the copy of the - to
10 you or to me, the bridging loan account that they
11 referred to there either. You haven't got a copy of
12 it, I haven't got a copy of it. I have looked at it
13 from correspondence, and it just - it hasn't come to
14 me. It hasn't come to you. The inadequacy of the
15 banking records is something that I think has been the
16 subject of a number of discussions here between AIB and
17 Bank of Ireland, and yourselves and myself.
- 18 278 Q. Yes. It is your evidence, and your evidence alone,
19 that says that the ú15,000 that was withdrawn in
20 October of 1973 was paid to Oakpark, isn't that right?
- 21 A. No, it is the evidence of the letter of Mr. Delany, the
22 assistant manager, given to the Guards at the time, who
23 were inquiring into whether the house had been paid for
24 or not, as part of their overall inquiries into the
25 controversy that arose at that stage. That's where the
26 reassurance --
- 27 279 Q. Does the letter that you are referring to, of the 20th
28 of August, which we'll deal with now very shortly,
29 identify Oakpark Developments Limited as the recipient
30 of the ú15,000?

1 A. No, but Oakpark were the - was a bridging loan
2 accommodation to the extent of 15,000 in relation to a
3 mortgage granted by the Property Loan and Investment
4 Company on my property in Briargate, and this is what
5 it's all about. It's of no - it's not about anything
6 else. That's what we are talking about.

7 280 Q. So it is your evidence, Mr. Burke, and your evidence
8 alone that identifies the recipient of the €15,000 in
9 October 1973 as being Oakpark Developments?

10 A. No, it's not my evidence alone, because if you look at
11 the letter of the 20th of August, it refers to the
12 extent of 15,000 as secured by a Letter of Undertaking
13 from a solicitor over a mortgage granted by the
14 Property Loan and Investment Company. The mortgage
15 that was involved was a mortgage on the property in
16 Briargate in Swords.

17 281 Q. A mortgage that was never taken up, Mr. Burke?

18 A. That - in circumstances that I have already outlined to
19 you on a number of occasions.

20 282 Q. The next letter is a letter of the 26th of June, 1974,
21 addressed to you by Mr. McEvoy.

22 A. Mm-hmm.

23 283 Q. I think, in fact, there is an earlier letter of the 6th
24 of June, '74, at page 5439, referring to the letter
25 from the Property Loan and Investment Company. And the
26 manager there tells you - the letter indicates that
27 "unless matters are satisfactorily resolved within one
28 month, the loan facility could be withdrawn, since the
29 time for taking up this loan has long since passed.

30 .

1 I shall be obliged if you will call to see me at your
2 earliest convenience, and at the same time perhaps you
3 might think it advisable to have a word with your
4 solicitor in relation to whatever items remain
5 outstanding."

6 .

7 Now, if Bank of Ireland, Whitehall knew that you had
8 paid for your house in October of 1973, why would they
9 have been writing to you in this fashion in connection
10 with this proposed mortgage?

11 A. Because it was a bridging loan situation that had been
12 written about in 1973. And you will recall that in the
13 letter of August of '74 they highlight the fact that if
14 I wanted to go back to the bridging loan, as distinct
15 from my own money that I had used, that that was still
16 available to me. And what we were talking about here
17 in August of - in June of '74, was in relation to the
18 twenty year mortgage, as distinct from the bridging
19 finance situation.

20 284 Q. For a house that you had already paid for?

21 A. For a house that I had already paid for. But the
22 mortgage was still available to me, if I wanted to go
23 on a twenty year mortgage, which had been on offer to
24 me. But I decided not to do that.

25 285 Q. But certainly it would appear to be the position that
26 as of the 6th of June, 1974, both the Property Loan and
27 Investment Company and Bank of Ireland, Whitehall
28 appeared to be of the view, or certainly there is
29 nothing in this correspondence to indicate that Bank of
30 Ireland, Whitehall knew you had paid Oakpark for the

1 house --

2 A. That's not correct. What it says is the mortgage is
3 still available to me, and that they would withdraw the
4 facility of the mortgage, if I decided that - unless I
5 proceeded with it. But I decided not to go ahead with
6 the mortgage for the circumstances and the reasons that
7 I outlined to you this morning.

8 286 Q. And one of the requirements, or the criteria of the
9 mortgage would be satisfying the lending institution,
10 in this case Property Loan and Investment Company, as
11 to the title of the property, isn't that right?

12 A. That would be normal procedure, yes.

13 287 Q. And at this stage, in June of 1974, you didn't have
14 title to the property?

15 A. I think - when was it signed? I thought it was
16 February.

17 288 Q. Sorry, in February of '74 you had title to the land,
18 isn't that right?

19 A. That's right. That's correct.

20 289 Q. So why didn't you arrange, then, to have the documents
21 sent in?

22 A. I beg your pardon?

23 290 Q. Why didn't you arrange to have the documents sent in?

24 A. Because I was making my mind up whether I would bother
25 going ahead with the mortgage or not. And I took
26 considerable time on it and I just - I decided not to
27 proceed with the mortgage.

28 291 Q. Did you contact your bank manager in response to this
29 correspondence?

30 A. I am sure I spoke to him. It's 29 years ago. 1974,

1 how many years back is that? It's from 1974 to the
2 year 2001. I would have been talking to the bank
3 manager fairly often, when I would be going in making
4 lodgements and things like that. As to whether we
5 discussed this in detail, I can't recall at this point
6 in time.

7 292 Q. You don't remember whether you spoke to your bank
8 manager?

9 A. Since 1974, as I say, I would have spoken to Mr. McEvoy
10 regularly on different matters, some of them more -
11 just social chitchat, when you go into him. But I
12 don't recall a specific conversation across a desk in
13 relation to this matter. I would have eventually said
14 to him, "Look, John, I am not going ahead with that
15 thing. Forget about it. I am going to leave it the
16 way it is."

17 293 Q. Mr. McEvoy wrote to you again on the 26th of June,
18 1974. 5440.

19 .
20 "I refer to my letter of the 6th of June, and shall be
21 glad to have your confirmation. You have been in touch
22 with your solicitors with regard to the finalisation of
23 whatever items are outstanding with Property Loan and
24 Investment Company in respect of the agreed loan of" -
25 I think it should be ú15,000. "Perhaps you would ring
26 Mr. Delany or me in this regard at your earliest
27 convenience."

28 .
29 That would suggest that you probably hadn't been in
30 touch with him between that date and the date of his

1 earlier correspondence on the 6th?

2 A. Well, it would suggest that, but I have no idea whether
3 I went into him at that time or not in response to a
4 letter. I wasn't one, I am afraid, for running in
5 every time I got a letter from a bank manager. I would
6 deal with it in my own way.

7 294 Q. You then wrote to him on the 12th of August, '74, page
8 5441, asking Mr. Delany of Bank of Ireland, Whitehall:
9 "Dear Mr. Delany, I give my authority to provide any
10 information required to Mr. Casey. Yours, Ray Burke."

11 A. That's right.

12 295 Q. This was a letter that you wrote to your bank in
13 connection with an investigation that was then being
14 conducted by the Gardai, arising out of the Joe
15 McAnthony article?

16 A. About a controversy that arose in 1974, yes.

17 296 Q. And one of the issues that had arisen, or it had arisen
18 in the article, those issues in '74, was whether or not
19 you had paid for your house?

20 A. No, it hadn't arisen in the article, as far as I
21 recall, but it was a matter that was touched on by the
22 Guards in the very thorough investigation that they
23 carried out, and which resulted in the DPP making it
24 quite clear that I had no case to answer about
25 anything.

26 .

27 But as far as my cooperation with that inquiry was
28 concerned, Mr. Casey asked to have a look at the
29 records in relation to my home, and I gave him - gave
30 to Mr. Casey the authority to go to the bank, and

1 requested the bank to cooperate with them in every way.

2 297 Q. There was nothing in the article by Mr. McAnthony to do

3 with the building of your house?

4 A. No, but the Guards in their very thorough investigation

5 --

6 298 Q. Were there - sorry. What I want to know,

7 Mr. Burke, is why were the Gardai --

8 .

9 CHAIRMAN: Just a moment. There is an objection. Yes,

10 Mr. Walsh.

11 .

12 MR. WALSH: I don't think Ms. Dillon can have it both

13 ways. On the one hand she says - she suggests that

14 there is something in the article about the house, then

15 she says to Mr. Burke there was nothing in the article

16 about the house. Then she goes on to talk about

17 rumours.

18 .

19 Rumours are not evidence, Sir. And there has been no

20 evidence called about this matter, and it's, as

21 Mr. Hanratty summarised it, it's not for counsel to

22 speculate, it's for counsel to deal with evidence.

23 .

24 I think Mr. Hanratty said on Day 285, and you agreed

25 with him, when Mr. Hayden was trying to put a theory to

26 a witness, Mr. Hanratty summarised the correct position

27 by saying that, "You cannot unravel an issue on the

28 basis of suggestions put by counsel, rather it must be

29 on the basis of evidence from the witnesses."

30 .

1 And what did - you ruled that that was a correct
2 summary of the position then. I think it probably
3 correctly and cogently summarises the position here.

4 .

5 It's not up to Ms. Dillon to pluck suggestions,
6 scandalous suggestions out of the air and put them to
7 this witness and let him deny it. It's an awful thing
8 to - for a man like Mr. Burke to be subject to these
9 innuendos and rumours. Not even from witnesses, Sir,
10 but from counsel. That's not the role of counsel --

11 .

12 CHAIRMAN: Thank you, Mr. Walsh.

13 .

14 MS. DILLON: No, Sir, we have had evidence about this,
15 and if you allow me one moment I'll find it.

16 Mr. Esmonde O'Reilly gave evidence about rumours that
17 were around at the time, that Mr. Burke had not paid
18 for his house, which were not stopped and not objected
19 to by Mr. Walsh.

20 .

21 And in view of the submission Mr. Walsh has just made,
22 if I could be given two minutes to find it in the
23 transcript?

24 .

25 CHAIRMAN: All right, I will give you the period of
26 time.

27 .

28 MR. WALSH: While Ms. Dillon is finding that
29 transcript. I can't remember if I objected or not, but
30 point is, whatever testimony was given by Mr. Esmonde

1 O'Reilly about rumours, that is gross hearsay. That's
2 worse hearsay --

3 .

4 CHAIRMAN: I just want to find out what the position
5 is, Mr. Walsh.

6 .

7 MS. DILLON: I think it's page 89 of the transcript of
8 the evidence of Mr. Esmonde O'Reilly, Sir.

9 .

10 MR. WALSH: Sorry, what day is that?

11 .

12 MS. DILLON: Day 267, I think. Yes, Day 267, 25th of
13 May, question 459.

14 .

15 "Question: Did you know anything about the building of
16 a house on a site by Oakpark Developments for
17 Mr. Burke?

18 Answer: No, I had no connection with that at all. I
19 did not believe I had any hand, act or part in any sort
20 of building contract or anything to do with that. I
21 did become aware a house was built. And all I can tell
22 you is that rumour had it at the time that it was built
23 by Oakpark Developments for nothing. That was the
24 local rumour, but I have no reason to say whether it is
25 true or false."

26 .

27 So I just, in relation to the fact that there has been
28 no evidence of rumours, I would like to draw that
29 extract from the transcript to the attention of
30 Mr. Walsh, and note that Mr. Walsh did not object to

1 the introduction of that evidence on that occasion.

2 .

3 I take the point, however, that Mr. Walsh has made, Sir

4 - and I will deal with the matter in a different way in

5 ease of the objection that Mr. Walsh has made.

6 .

7 The question was inelegantly put, and I can rephrase

8 the question.

9 .

10 CHAIRMAN: Very good.

11 .

12 299 Q. MS. DILLON: Now, the Letter of Instruction at page

13 5441, Mr. Burke, was a Letter of Instruction directed

14 to your bank in the course of a Garda investigation

15 that arose as a result of the publication of an article

16 in the Sunday Independent by Mr. Joe McAnthony. Is

17 that right?

18 A. That's correct.

19 300 Q. The Gardai's attention was directed, or their inquiry

20 was directed not to a review of your financial affairs,

21 but to seeking information in connection with the

22 purchase or the building of your house. Is that

23 correct?

24 A. Well --

25 301 Q. In so far as this part of it was concerned?

26 A. As far as this part of it is concerned, that is the

27 situation, yes.

28 302 Q. And it is for that reason, is it, that Mr. Delany

29 wrote the letter dated the 20th of August, 1974?

30 A. Well, it was at the request of Mr. Casey that he would

1 have provided the letter, yes.

2 303 Q. But the information in the letter deals with a transfer
3 of money in October, and a bridging loan in September
4 1973?

5 A. It was all to do with the payment for the house.

6 304 Q. For the house. So that the sole purpose of the writing
7 of this correspondence was to set out the position in
8 relation to the payment for the house, is that correct?

9 A. Yes, to clarify that the house had been paid for, yes.

10 305 Q. To clarify that the house had been paid for, and
11 presumably that the money had been paid to Oakpark
12 Developments?

13 A. That's correct, yes.

14 306 Q. All right. So if we have the letter, then, which is at
15 page 5373. And while it's headed up "Raphael Patrick
16 Burke Esquire", it is a letter addressed to "whom it
17 may concern". Isn't that right?

18 A. That's right.

19 307 Q. It wasn't a letter that was being sent to you,
20 Mr. Burke?

21 A. That's correct. I had nothing to do with it.

22 308 Q. And did you receive a copy of it?

23 A. I am not sure at the time. I may have, in the context
24 of the inquiry. I am not sure whether I got a copy of
25 it or not. It was for the bank to cooperate with
26 Mr. Casey. Whether the bank gave me a copy of it at
27 the time, I am not sure.

28 309 Q. So it says: "The above gentleman" - that's referring
29 to yourself - "was granted bridging loan accommodation
30 at this office on the 24th September, 1973, to the

1 extent of ú15,000, and was secured by a Letter of
2 Undertaking from his solicitors, Oliver J Conlon &
3 Company, over a mortgage granted by the Property Loan
4 and Investment Company Limited (a subsidiary company of
5 the Bank of Ireland Group)."

6 .
7 That's the first paragraph in the document, isn't that
8 right?

9 A. That's correct.

10 310 Q. Now, the solicitor's letter that he is referring to
11 there, is a letter of the 28th of September, 1973,
12 isn't that right, that we've seen this morning from Mr.
13 Conlon?

14 A. Yes.

15 311 Q. So it would appear that you were granted bridging loan
16 accommodation on the 24th of September, 1973, but the
17 bank do not appear to have written to you directly in
18 connection with that accommodation, because there is no
19 record of them having written to you on the file in
20 September '73, isn't that right?

21 A. There is no record on the file, but I would have been,
22 obviously, in touch with them about it.

23 312 Q. Well, did you receive a letter from Bank of Ireland in
24 Whitehall granting you bridging facilities on or after
25 the 24th of September, 1973?

26 A. I have no recollection of it. It would have been done
27 in a verbal way, but I am sure they may have written to
28 me, I don't know, but there is no letter of cover from
29 the bank in the correspondence file that they have made
30 available to us. Apparently they didn't, but I would

1 have been talking to them. Obviously, I was with them.

2 313 Q. It would be unusual if a bank were to grant bridging
3 facilities, Mr. Burke, to a customer in these sort of
4 amounts, that they wouldn't write and confirm that to
5 you, if they had dealt with you or negotiated the
6 bridging facilities with you directly?

7 A. Sorry?

8 314 Q. It would be normal banking practice to write to you,
9 confirm the conversation and say they are prepared to
10 grant you bridging facilities, and these are the terms
11 on which they are prepared to grant it?

12 A. Well, I obviously dealt with them on a verbal basis,
13 rather than them writing to me. That would be a matter
14 of judgement for the bank, as to what they were doing,
15 or which way the bank handled it.

16 315 Q. Yes. The Letter of Undertaking that the bank got as
17 security for its bridging finance is dated the 28th of
18 September, 1973, on foot of an accommodation they had
19 given you on the 24th of September, 1973?

20 A. The sequence of events would appear to be that I was in
21 with them on the 24th looking for bridging and they
22 said, "Yes, fine, but get us a Letter of Undertaking
23 from your solicitors." I am speculating, but that
24 seems to be the logic sequence of events.

25 316 Q. But for whatever reason the bank did not write out to
26 you, nor indeed does it appear that the bank wrote out
27 in September of 1973 to Mr. Conlon in connection with
28 this bridging facility, isn't that right?

29 A. Well, would - appears to have happened is that I was in
30 - asked them for a bridging loan, against the approval,

1 and they would have said, "yes, fine, but we need a
2 Letter of Undertaking from your solicitor." I probably
3 rang Oliver Conlon and said, "Listen, will you send in
4 a Letter of Undertaking to the bank. I need the
5 bridging loan." And that seems to have been the
6 sequence of events. It seems to have been - well, it
7 seems to be the sequence of events.

8 317 Q. It - you appear to be accepting, Mr. Burke, that if the
9 bank granted you bridging loan facilities in September
10 of 1973, they did not deal with that in written
11 correspondence with you?

12 A. No, it doesn't seem that way.

13 318 Q. The next paragraph of the letter goes on:

14 .
15 "Interest on this bridging loan at that time was
16 chargeable at 13 percent, and to alleviate this burden
17 Mr. Burke transferred the sum of ú15,000 on the 12th of
18 October, 1973, from his personal joint deposit account
19 in this office, which has been accruing interest at the
20 rate of 9 percent, thereby saving himself 4 percent
21 interest in the interim."

22 .
23 It would be, I suggest, unusual for the bank not to
24 have written out to you and told you what the bridging
25 interest was going to cost you? If the bank were
26 granting you bridging facilities, I suggest, Mr. Burke,
27 it would be normal banking practice for them to have
28 written to you and to have said, "This is the facility,
29 and this is what it's going to cost you."?

30 A. But this is a letter written by Mr. Delany in August of

1 '74 to the Guards of this country. You are not
2 suggesting to me that this is some sort of a
3 manufactured document by the Bank of Ireland to the
4 Gardai of the country? Is that what you are suggesting
5 to me?

6 319 Q. I am drawing to your attention, Mr. Burke, a gap in the
7 bank's correspondence file, which shows no movement on
8 the file in relation to a bridging loan, or otherwise,
9 as a contemporaneous record between September the 28th,
10 1973, and the 31st of January, '74, and pointing out to
11 you that while this letter was prepared on the 20th of
12 August, 1974, there is not, on the correspondence file,
13 the sort of contemporaneous correspondence one would
14 expect to find. And is it a position, or do you agree
15 that there is not, on the correspondence file of Bank
16 of Ireland in Whitehall, any correspondence to you
17 indicating that the bridging facility was available to
18 you at a rate of 13 percent?

19 A. As the correspondence file stands, that we have in
20 front of us, as to the extent of it or not, I can't be
21 sure, but as to what is before it, there is no letter
22 on that file. However, it is, I think - looking at the
23 sequence of the dates, the 24th of September, the 28th
24 of September, the fact of the transfer by me of - on
25 the 12th of October of money from my own bridging, or
26 of my own joint account with my father on the - of the
27 15,000 on the 12th of October, it was obviously done
28 verbally in the bank. And it wouldn't be the first
29 time facilities were organised with the bank manager
30 across a desk with a valued customer.

1 320 Q. No contemporaneous records, you are agreeing with that,
2 Mr. Burke, I presume?

3 A. It's a given.

4 321 Q. Paragraph 3: "We wish to clarify that this bridging
5 loan is still available to Mr. Burke, should he decide
6 to avail of same, pending the issuance of the loan
7 cheque from the Property Loan and Investment Company
8 Limited, which is expected to come to hand in the very
9 near future."

10 .

11 Now, was he correct in that?

12 A. Yes.

13 322 Q. That the loan cheque was expected in the very near
14 future?

15 A. That was in August of 1974, that he would have been
16 talking about me still proceeding with the loan. I
17 obviously hadn't told him at that stage that I was
18 going to not go ahead with the loan.

19 323 Q. But you had been told in June of '74, Mr. Burke, that
20 if you didn't draw down the loan within one month you
21 would lose the facility. If you look at the letter at
22 page 5439, you will see that you were told on the 6th
23 of June, 1974, in relation to the earlier
24 correspondence, that "if matters were not resolved
25 within one month, the loan facility could be withdrawn,
26 since the time for taking up this loan has long since
27 passed."

28 A. That was the letter that we sent to the bank from --

29 324 Q. If you look at the letter on the screen, Mr. Burke,
30 addressed to you. It's addressed to you, Mr. Burke,

1 the letter on screen of the 6th of June?

2 A. Mr. Chairman, may I have the opportunity to reply? The
3 letter was sent from the Property Loan to the bank, and
4 the bank then wrote to me accordingly. And I accept
5 that they wrote to me accordingly. And I never got
6 back to them on it. That was in June of '74. Things,
7 in June of '74, were overtaken by events. There was a
8 local election in June of '74, which I was a candidate.
9 And then this controversy arose in relation to some
10 media articles that had been written. And I just
11 didn't get back to them. And the bank obviously didn't
12 get back to me either at that time.

13 325 Q. The bank wrote to you again on the 26th of June,
14 Mr. Burke, asking you to attend to the matter. If you
15 would like to refresh your memory, at 5540?

16 A. No problem, but this was at the time, the end of June
17 of '74, that this particular period of controversy
18 arose.

19 326 Q. If we go back to what your bank manager said to the
20 Gardai at page 5373.

21 .
22 You see at paragraph 3 he says: "We wish to clarify
23 this bridging loan is still available to Mr. Burke,
24 should he decide to avail of same, pending the issuance
25 of the loan cheque from the Property Loan and
26 Investment Company Limited, which is expected to come
27 to hand in the very near future."

28 A. Yes.

29 327 Q. Isn't the position, Mr. Burke, from the series of
30 correspondence we looked at this morning, that the

1 final letter of correspondence from the Property Loan
2 and Investment Company, prior to this letter being
3 issued on the 20th of August, 1974, had told you that
4 unless you took up the loan it would be withdrawn,
5 probably within one month?

6 A. Yes, but I didn't get a letter telling me that it was
7 withdrawn, or anything else. They were trying to speed
8 things up, and that's all that was happening there.

9 328 Q. There is nothing in the file to indicate that
10 Mr. Delany had any basis for believing that a cheque
11 would issue in the very near future from the Property
12 Loan and Investment Company. In fact, I suggest to
13 you, Mr. Burke, the reverse is the position?

14 A. No, on the contrary, that they - the Property Loan and
15 Investment Company were ready to complete the deal. It
16 was - I was reluctant to complete the deal at that
17 stage. They weren't.

18 329 Q. Yes. You had been told on the 6th of June that you had
19 a month within which to deal with the matter. That
20 month had passed?

21 A. Yeah.

22 330 Q. And yet, on the 20th of August, 1974, your bank manager
23 is telling the Gardai that he expected a loan cheque to
24 come in from the Property Loan and Investment Company
25 within a month?

26 A. Well, the situation is quite simple. In June of 1974,
27 when this correspondence was going on, I was up to my
28 neck in a local election, in 1974. Then a controversy
29 arose over a series of articles that appeared in the
30 media. It started in one media and went into a number

1 of others. So the loan issue, as such, wasn't, again,
2 something that I was dealing with, or wasn't something
3 that I was - very high on my horizon. And I still
4 hadn't finalised whether I would take the loan or not.

5 331 Q. Yes.

6 A. But pending the issue of the loan, which was expected
7 to come to hand in the very near future, and it would
8 have been available in the very near future, because it
9 was only a matter of me closing the deal, if I decided
10 to go ahead with the mortgage. I just decided that I
11 didn't want to go ahead with the mortgage.

12 332 Q. Yes. But from the correspondence that we have looked
13 at, between Property Loan and Investment Company
14 Limited and the bank, and the bank passing the
15 correspondence on to you, culminating with the
16 correspondence of the 26th of June, 1974, there was
17 nothing on the file to indicate that anybody expected a
18 loan cheque to issue shortly?

19 A. Well, it could have issued shortly, on the basis that
20 the - they were threatening that if I didn't proceed,
21 that it would be withdrawn, and we were ready to
22 proceed if I had decided to proceed in that way,
23 subject to, I think, the surveyor going out to the
24 house.

25 .

26 But I later decided that I wasn't going to bother going
27 that road.

28 333 Q. And certainly, in so far as the letters that were
29 written by the bank to you in connection with the
30 urgency of this matter on the 6th and the 26th of June,

1 1974, were not responded to by you?

2 A. I have no doubt they weren't responded to, in the
3 circumstances that I just outlined to you, of a local
4 election in June of '74 and the controversies that
5 arose afterwards. My mind was decidedly focused
6 elsewhere than in the completion of the mortgage.

7 334 Q. Yes. But in so far as we've looked at the
8 correspondence, Mr. Burke, there is nothing on the
9 correspondence from Property Loan and Investment
10 Company to indicate that they intended issuing a loan
11 cheque in this case very shortly or otherwise, isn't
12 that right?

13 A. On the contrary, they are saying that unless I take it
14 up with the correspondence that you were referring to,
15 the 6th of June, they are saying that unless I take up
16 the loan within a month, that they would be considering
17 - that they would cancel - they would withdraw the
18 facility, and would withdraw the offer. And so they
19 were ready to proceed. The only holdup was on my side.

20 335 Q. And you didn't take it up?

21 A. I decided not to take it up, for the reasons that I
22 outlined earlier on to you.

23 336 Q. And the final paragraph of this letter states:

24 .

25 "The balance of the joint deposit account which stands
26 in the name of Raphael and Patrick Burke on the 12th of
27 October, 1973, was ú17,559.50, from which sum Mr. Burke
28 withdrew ú15,000 and lodged to his bridging loan
29 account. This deposit balance was made up of an
30 accumulation of lodgements from the date of the opening

1 of that same account, and, in fact, which was opened on
2 the 5th of April, 1971.

3 .

4 I trust that this is the information that is required.

5 .

6 Yours faithfully, JK Delany, Assistant Manager."

7 .

8 There is nothing in that document to say or suggest in
9 any way that the ú15,000 that you withdrew on the 12th
10 of October, 1973, was paid to Oakpark?

11 A. Well, can I answer you this way --

12 337 Q. Can I - just answer the question, Mr. Burke. Is there
13 anything on that document to indicate that the ú15,000
14 that you took out of the joint deposit account on the
15 12th of October, 1973, was paid to Oakpark?

16 A. On the contrary, I think the whole trend of the letter
17 refers to bridging loan, undertakings, against a
18 mortgage granted on a property, the property, my own
19 property in Swords, my own home in Swords. The whole
20 context of the letter to the - to Mr. Casey is in the
21 context of the - in the context of the - me moving into
22 my home on the 12th of October of '74 - on the 10th of
23 October, '73. That's the scenario.

24 .

25 But the name "Oakpark", I - this is a given, the name
26 "Oakpark" does not appear there.

27 338 Q. The whole purpose of this Gardai inquiry, in so far as
28 it was directed to your bank, according to your
29 evidence, was seeking to establish whether or not, or
30 how you had paid for your house.

1 .
2 And the purpose of Mr. Delany writing this letter,
3 according to your evidence, is to explain how you paid
4 for your house. Is that right?

5 A. That was the - the purpose of it was to - I gave my
6 authority to provide any information required to
7 Mr. Casey. Mr. Casey was investigating in relation to
8 the house aspect at that stage. That's what this
9 obviously refers to. He also looked at my records at
10 the time in relation to my dealings with Oakpark, the
11 number of houses I was selling, et cetera. This
12 investigation went on for some considerable time. And
13 I think it was in August '74, that after the whole
14 investigation, the DPP decided that, having
15 congratulated the Guards on the thoroughness of their
16 investigation, that I had no case to answer, and nobody
17 else had either.

18 339 Q. Yes. The purpose of writing the letter was to deal
19 with the Gardai's queries about how you paid for your
20 house. Therefore, I suggest to you, Mr. Burke, if
21 Mr. Delany knew you had paid Oakpark ú15,000 on the
22 12th of October, 1973, the first thing he would have
23 said, line one, paragraph one, is, "Mr. Burke drew a
24 bank draft on the joint deposit account on the 12th of
25 October, 1973, payable to Oakpark Developments
26 Limited." If that had happened?

27 A. Well, that's your assessment of the situation. All I
28 am saying to you is I gave authority to the bank to
29 give Mr. Casey every cooperation in his investigation.
30 As to the drafting of the letter, I can't comment on

1 the method of the drafting. And may I suggest, I don't
2 think you can comment on the method of the drafting.

3 .

4 This was a matter between Mr. Casey and Mr. Delany in
5 relation to that.

6 340 Q. I suggest to you, Mr. Burke, it's extraordinary, if the
7 purpose of the Garda inquiry was to establish how you
8 paid for your house, and the reason for the inquiry to
9 your bank was in connection with your house, that if
10 Mr. Delany knew that you had paid ú15,000 to Oakpark on
11 the 12th of October, 1973, that he would not have so
12 stated in this letter?

13 A. Well, he has gone all around the houses on it --

14 .

15 MR. WALSH: Mr. Burke - sorry, My Lord, or Sir, I
16 object to the phraseology of that question. The
17 question, commencing with the phrase "I suggest to you
18 that it's extraordinary" is not a proper question.
19 It's calling for a judgement, and it's also Ms. Dillon
20 expressing her judgement, her opinion on the matter.
21 And why this becomes crucial in a tribunal, Sir, is
22 that a transcript of everything that's said or spoken
23 of - questions and answers are recorded in the
24 transcript. Then at some later stage you, as Chairman,
25 will be reviewing the transcript, and you are going to
26 see what Ms. Dillon has expressed as her opinion in the
27 matter. And that could put Mr. Burke at a
28 disadvantage, because she is - could be seen to be
29 expressing her opinion, and as a clue to you as to what
30 opinion you should take. And there should be no clues

1 or leading questions of this nature. And that's why
2 questions of this nature are not permitted questions.

3 .

4 It's not for her - for Ms. Dillon to make suggestions

5 --

6 .

7 CHAIRMAN: I've got the message. Thank you.

8 .

9 Ms. Dillon, could we rephrase it?

10 .

11 341 Q. MS. DILLON: I am not expressing any opinion on the
12 matter, and I reject the submission that I am.

13 .

14 We'll take it in stages again, Mr. Burke.

15 .

16 The purpose of the Garda inquiry was to establish
17 whether or not, or how and in what circumstances you
18 paid for your house?

19 A. That was, I understood, part of the inquiry, yes.

20 342 Q. I understood you to tell the Sole Member this morning
21 that the reason this letter was written was to satisfy
22 the Gardai as to how you had paid for your house?

23 A. That's precisely it, yes.

24 343 Q. So that the whole purpose of Mr. Delany writing this
25 letter on the 20th of August, 1974, was to furnish
26 information to the Gardai as to how, when, and in what
27 circumstances you paid for your house?

28 A. And that's what he did in the letter.

29 344 Q. And I suggest to you, Mr. Burke, that if Mr. Delany had
30 known that you had paid ú15,000 on the 12th of October,

1 1973, to Oakpark Developments for your house, he would
2 have recorded that in this letter to the Gardai, which
3 was written, I think, with your agreement, isn't that
4 right?

5 A. Not with my agreement. I agreed to the - for
6 Mr. Delany to cooperate in every way possible with
7 Mr. Casey. It would have been written with Mr. Casey.
8 I assume Mr. Casey with him at the time. I don't know
9 that. I can't be sure. I am just assuming, like you
10 assume things yourself.

11 .
12 As to the method and the manner in which he drafted the
13 letter, I can't be responsible for how he drafted it,
14 but he was covering the point in the letter about the
15 bridging loan, about the transfer of my - using my own
16 money for the loan. As to why he didn't put in the
17 sentence you've indicated, I don't know. That is a
18 matter for Mr. Casey, or for Mr. Delany at the time,
19 and between himself and Mr. Casey. But the Guards were
20 obviously perfectly satisfied in relation to this
21 peripheral issue to their overall investigation.

22 345 Q. Considering that the focus of the Garda inquiry with
23 Mr. Delany, and the interaction between Mr. Delany and
24 Mr. Casey was focused on one thing and one thing only,
25 how, when and in what circumstances did Mr. Raphael
26 Burke pay for his house; I suggest to you, that had Mr.
27 Delany known that you had paid ú15,000 to Oakpark in
28 1973, he would have recorded that fact on this
29 memorandum, which, I think you will agree,
30 Mr. Burke, he has not done?

1 A. And I suggest to you, in reverse, through you,
2 Mr. Chairman, that it is perfectly clear to any
3 unbiased mind that the situation is that on the 24th of
4 September- I had requested and had received approval
5 on the 24th of September for bridging finance, which
6 was backed up by a letter from Mr. Conlon on the 28th
7 of February - of September, and that that bridging
8 finance, then, was overtaken by a transfer by me to
9 save interest from - 13 percent to 9 percent, saving
10 myself an interest of 4 percent, was overtaken by a
11 transfer by me from money from my father's and my own
12 account, of ú15,000.

13 .

14 CHAIRMAN: Can we just look at this letter? In the
15 first two paragraphs of that letter, saying very
16 clearly that at that date you had available to you,
17 either from your own source or from a bridging finance,
18 ú15,000, and nothing else. Isn't that what the letter
19 says?

20 A. No, I don't accept that, Mr. Chairman. That's not my
21 interpretation of the letter at all.

22 .

23 I think it quite clearly says --

24 .

25 CHAIRMAN: Further, the third paragraph says that the
26 funds are still available.

27 A. No, I think the interpretation of the letter,
28 Mr. Chairman, is quite clear; that it says that I got
29 the bridging loan facility available to me. You can
30 interpret the second paragraph on the basis that I used

1 it for a number of days and then transferred in the
2 15,000. You can interpret it that way, or that the
3 15,000 was used in place of it. I think the first
4 interpretation, there is an argument in relation to it
5 as being the strongest interpretation.

6 .

7 CHAIRMAN: Even if one or other is right, or I beg your
8 pardon, is not appropriate, they go on to say that the
9 bridging loan is still available. Now, how long can we
10 go around this mulberry bush again for?

11 A. Well, Mr. Chairman, what it says, quite clearly, that
12 if I wanted to take out my own money of 15,000, the
13 bridging loan is still available to me to be - rather
14 than - that's the point.

15 .

16 CHAIRMAN: Mr. Burke, I have said that to you about two
17 or three minutes ago, that that was the effect of the
18 letter.

19 A. That I've already used my own 15, but if I wanted to
20 get the 15 back, I could use it. That's what it says.

21 .

22 346 Q. MS. DILLON: There is nothing in the letter to indicate
23 what you used the 15 for, Mr. Burke, isn't that right?

24 A. Well, the 15 was used at the time that I had moved into
25 my home. And when I moved into my home on the 10th of
26 October, 1973. That's the scenario. It's all written
27 for the Guards by the bank in the context of that
28 scenario. The bank - the Guards were there in 1974,
29 and who did such a thorough investigation, and went
30 through it with the bank. They went, on the following

1 day, or two days later to the bank and asked for a
2 further clarification, apparently, on a letter in
3 relation to it, to clarify that the money for this had
4 come from my joint personal account, rather than from
5 any clients' funds, that it was personal money that was
6 being used rather than clients' funds.

7 347 Q. That's at page 5375. Presumably, this was on foot of a
8 clarification that was requested for the Gardai, that
9 the funds, the ú15,000 that had been taken out had been
10 taken out of a joint personal account?

11 A. Yes. That seems to have been what happened, yes.

12 348 Q. Presumably the Gardai knew about your setoff
13 arrangement with Oakpark Construction in relation to
14 the purchase of the site?

15 A. I assume so, yes.

16 349 Q. Did you give that information yourself to the Gardai,
17 Mr. Burke?

18 A. I would have told them all about it, yes. I would have
19 met the Guards many times during that procedure.

20 350 Q. I think the Property Loan and Investment Company wrote
21 to you subsequently - sorry, I beg your pardon. They
22 wrote to the manager again in May of 1975?

23 A. Mm-hmm.

24 351 Q. -- informing them that the facility had been withdrawn
25 because it hadn't been taken up, 5371?

26 A. That's right.

27 352 Q. And you were informed of that on the 12th of May, at
28 5447?

29 A. Mm-hmm.

30 353 Q. By your manager?

1 A. Mm-hmm.

2 354 Q. Because you had not taken up the facility, that the
3 facility had been withdrawn?

4 A. That's right.

5 355 Q. It appears, therefore, Mr. Burke, that it is your
6 evidence that you paid ú15,000 to Oakpark on the 12th
7 of October, 1973, and in substantiation of that
8 evidence you referred to the letter dated the 20th of
9 August, 1974, by Mr. Delany?

10 A. To the Guards.

11 356 Q. To the Guards?

12 A. Yes.

13 357 Q. In connection with that matter?

14 A. That's right.

15 358 Q. Other than that document, Mr. Burke, do you agree that
16 there is no other evidence, independent evidence of a
17 documentary nature that shows that you paid ú15,000 to
18 Oakpark, or indeed that Oakpark received ú15,000 from
19 you?

20 A. I accept that there is no evidence going back, because
21 the records are not available going back to 1974 in
22 relation to it. Because this particular bridging loan
23 account, as I understand it, was not made available in
24 the documentation that has been made available to me,
25 unless you've got something else. I haven't got it,
26 anyway. That's the scenario in relation to it.

27 359 Q. We do, however, have extensive correspondence passing
28 between Oakpark and the Revenue Commissioners in
29 relation to sales of houses and purchases of houses
30 between the period, year end 1971 and 1978, with which

1 you have been circulated, Mr. Burke, isn't that right?

2 A. I am aware of the thrust of them, yes.

3 360 Q. And the effect of that documentation is that, in so far
4 as Oakpark was concerned, this receipt of ú15,000 was
5 never returned to the Revenue as having been received
6 by them, isn't that right?

7 A. That seems to be the way it was. As to why they did it
8 that way, I don't know, but I can't comment on that.

9 .

10 MR. HAYDEN: If I might, in relation to the last
11 question by Ms. Dillon.

12 .

13 As I understand the evidence thus far to be, it was to
14 the effect that the documentation never individualised
15 particular sites or houses. There was annual figures -
16 the numbers were gone into in detail with Mr. Hanratty,
17 but there was never a question on the accounts of an
18 individualisation of them. And I think it's unfair to
19 put that question to Mr. Burke in circumstances where
20 it is not his company, and not to have put it to the
21 directors of Oakpark when they were here.

22 .

23 MS. DILLON: Could we have page 4466, please and we'll
24 deal with the individualisation or lack of it.

25 .

26 First of all, these documents were put - these
27 documents were put --

28 .

29 CHAIRMAN: We can't have two people talking at once.

30 .

1 MS. DILLON: Mr. Hayden had finished, Sir. And the
2 first objection that Mr. Hayden makes is that the
3 individualisation of these sites were not put to
4 Mr. Tom Brennan. They were - first of all these sites
5 were individually described in the correspondence
6 passing between the Revenue and Oakpark.
7 .
8 Secondly, this correspondence, in its entirety, was put
9 to, and dealt with by Mr. Tom Brennan. And after he
10 had given evidence, he was requested by the Tribunal to
11 go and see could he establish whether or not there
12 existed any documentary evidence of a payment by
13 Mr. Burke in connection with this matter.
14 .
15 And you will recollect that when Mr. Brennan came back
16 to give evidence, two and a half weeks ago, in relation
17 to those matters, that he told you that despite having
18 looked, he was unable to source any information.
19 .
20 The documentation detailing the individual houses sold
21 by Oakpark between the period 1971 and 1978 were put in
22 evidence to Mr. Brennan, of which this document is one.
23 And you will see, Sir, that this deals with the sales
24 year end at the 31st October, 1976. It deals with the
25 location at River Valley, and it deals with site
26 numbers on an individual basis, and an individual
27 price.
28 .
29 And all of that documentation was put, in so far as
30 site sales, to Mr. Tom Brennan when he gave evidence in

1 connection with the matters. So I don't understand the
2 thrust of Mr. Hayden's submission.

3 .

4 The point Mr. --

5 .

6 MR. HAYDEN: Given that My Friend is suffering from a

7 lack of understanding, you, Sir, will see what, in

8 fact, was put, and you, Sir, will have to assess

9 whether or not the documentation that was put to

10 Mr. Brennan, in the fashion that it was --

11 .

12 CHAIRMAN: We'll deal with it on that basis.

13 .

14 MR. HAYDEN: What is also equally so;

15 Mr. Brennan indicated that he was not the one

16 personally involved. And we had the particular

17 directors who were involved directly, save in so far,

18 that unfortunately one of the individuals had the

19 injury and therefore wasn't able to personally give

20 evidence.

21 .

22 But the point that is being made, as I understand it,

23 in the form of a question being put by Ms. Dillon, was

24 that there is nothing to identify in the accounts the

25 sale of this particular site to Mr. Burke, and that on

26 that basis it is indicated that Mr. Brennan's return to

27 the witness-box, where he said he could not find

28 anything in the documentation, is in some form or

29 fashion conclusive that there is no payment made,

30 whereas, in fact, the direct evidence which was

1 actually advanced, was that there was on-going
2 correspondence between the Revenue and Oakpark,
3 including reference to the site, including reference to
4 the forgiveness of the - of a part of the site in lieu
5 of fees.

6 .

7 MS. DILLON: We'll just nail this once and for all --

8 .

9 MR. HAYDEN: I find it objectionable, Sir --

10 .

11 CHAIRMAN: Just a moment. That is Mr. Hayden's
12 submission. Have you a response?

13 .

14 MS. DILLON: Yes, Sir. This submission that these
15 documents weren't put to Mr. Brennan, that's the first
16 point.

17 .

18 On Day 270, every single one of these series of
19 documents were put to Mr. Brennan, and it was a Friday
20 - a Thursday, and they were given to Mr. Brennan. He
21 was asked some questions about them, and Mr. Hanratty
22 then said to him, "Look, Mr. Brennan, take them away,
23 consider the documents, and I'll ask you about them
24 again on the next occasion." Which Mr. Hanratty then
25 did.

26 .

27 Ultimately, despite looking at those documents,
28 Mr. Brennan went off to make his inquiries to see what
29 documentation, if any, he could find. And ultimately
30 he came back and he said he had found nothing.

1 .
2 So, on Day 270, all of the Revenue documentation, and
3 Day 269, the Revenue documentation was put to
4 Mr. Brennan by Mr. Hanratty, including this entire
5 series of correspondence passing with the various year
6 ends of Oakpark.

7 .
8 And following on that, Mr. Brennan gave evidence that
9 he had discussed the matter with Messrs. Freaneys, not
10 with people who were in Freaneys at the time, but
11 people who were there now, and he had certain comments
12 to make, but that was as far as Mr. Brennan went.

13 .
14 So, in so far as these documents being put to
15 Mr. Brennan is concerned, they were individually, each
16 and every one of them, put to Mr. Brennan, and he was
17 asked for his comments in relation to them. That's the
18 only point I wanted to make.

19 .
20 MR. HAYDEN: That wasn't the point of my objection, but
21 then, you, Sir, can make of it - Ms. Dillon knows the
22 objection I made. She's answered to a different
23 objection that I didn't make, which is her complaint
24 about every witness, when she asks a question and
25 doesn't get an answer.

26 .
27 CHAIRMAN: Mr. Hayden, can you point to me, from your
28 intimate knowledge of your clients' affairs, a
29 relationship between an entry in the books of your
30 client and the premises now known as Briargate, can you

1 point - it's either "yes" or "no"?

2 .

3 MR. HAYDEN: Sir, if I was to get that far. "No", and

4 I've always said "no". And so has Mr. Brennan.

5 .

6 CHAIRMAN: That's precisely what Ms. Dillon is saying,

7 that there is no documentation. You have the belief -

8 sorry, you have the evidence expressed by the witness

9 in the witness-box, that he paid, and he shows you the

10 sequence - he's been doing it for the last two hours.

11 That's his evidence.

12 .

13 From the point of view of the recipient, as I

14 understand the situation, they cannot, they believe - I

15 think the phrase they say, they believe it was paid,

16 one director, Mr. Foley, said in three lots, in three

17 sums, is my recollection, all emanating from the Irish

18 Permanent, if I am correct in my recollection.

19 .

20 Mr. Brennan said in one lot, in one lump. But he has -

21 and he also says that he - his exercise and his

22 efforts, he has no corroboration, if I may use the

23 phrase, from the books of his account.

24 .

25 Now, that's the issue that's going to have to be

26 determined, as to whether or not - which is acceptable

27 on the balance of probabilities? That's the task which

28 I have to perform. And it is undoubtedly - it depends

29 on which way you are looking at it. The absence of

30 may be suggestive that it wasn't.

1 .
2 It may be a matter that the bookkeeping system failed.
3 It can be a whole number of things. I don't want to,
4 in any way, in addressing any of you, to express an
5 opinion at this point in time.

6 .
7 MR. HAYDEN: I accept that, Sir. In fairness, Sir, I
8 think you have the air of where I am going, despite the
9 suggestion I am going somewhere else. All I am saying,
10 the records that were put to the witnesses show a state
11 of affairs in relation to certain things. It is not
12 the evidence of those records that they individualised
13 all sites. And I think --

14 .
15 CHAIRMAN: That's a different matter. What we need
16 here is a written record that this site was
17 conclusively paid for. That is precisely what would be
18 of the greatest possible assistance. That's not
19 readily available. And I am not saying it's not
20 available, I am saying it's not readily available. I
21 am using the - isn't that the situation? Can we just
22 proceed? It may well be that it's going to have to be
23 dealt with on a whole series of probabilities, and
24 worked out as a matter of probability. I am certainly
25 not going to sit here today and try and resolve that
26 problem.

27 .
28 But if you can assist, I would be delighted to hear it.

29 .
30 MR. HAYDEN: And in fairness, Sir, that --

1 .

2 CHAIRMAN: As far as I understand, you can't --

3 .

4 MR. HAYDEN: I can to this extent: The records do
5 identify the site being transferred for professional
6 fees. What Ms. Dillon is saying is that the list of
7 numbers you now have on the screen doesn't contain the
8 site number for Briargate. That's an entirely
9 different premise. However, Ms. Dillon is presenting
10 it to this witness --

11 .

12 CHAIRMAN: She's entitled to present that as an item of
13 potential proof. Go on.

14 .

15 361 Q. MS. DILLON: Mr. Hayden well knows that the site was
16 dealt with by Oakpark in its accounts, and the transfer
17 of the site, in lieu of professional fees, was dealt
18 with.

19 .

20 Mr. Hayden well knows that the cost of the building of
21 this house is not - or the receipt of £15,000, being
22 the cost of the building of this house, is not
23 reflected in the accounts of Oakpark that were
24 furnished to the Revenue Commissioners. And the
25 itemisation of sites, which deal with the cost of
26 building, that were furnished to the Revenue
27 Commissioners do not include any description of the
28 cost of the building of this house as being a cost to
29 Oakpark, or the receipt of monies in connection
30 thereto.

1 .
2 It is absolutely correct to say that the transfer of
3 the site between Oakpark and Mr. Burke is dealt with on
4 foot of a query that the Revenue raised in relation to
5 the question of writing down "Coleman's lands", which
6 were the lands on which Briargate was ultimately built.
7 And I do not seek to confuse that issue. And if that's
8 what Mr. Hayden is suggesting, he is completely wrong
9 in connection with that. Because it is, and has been
10 the evidence that "Coleman's land" was written down in
11 the books of Oakpark, and when they were asked to give
12 an explanation for - to the Revenue in 1979, they said
13 that they had transferred it in lieu of fees, without
14 identifying the person to whom it had been transferred.
15 And there is no issue in relation to that.

16 .
17 So I just want to make the point, that if Mr. Hayden -
18 there is no need for Mr. Hayden to be as deeply
19 suspicious as he is.

20 .
21 That appears to be the position, Mr. Burke. That if we
22 have Document - thank you, Mr. Hayden. If we could
23 have Document 4471, please. This, I think, is quite
24 difficult to read.

25 .
26 This is an explanation that was given by Oakpark to the
27 Revenue. And I think we have to look at No. 11 on
28 that. No, sorry. 4476. Sorry.

29 .
30 We should be looking for Note 2. And the Revenue

1 raised queries on foot of it. And I thought the answer
2 was at page - sorry, it's at page 4479. My mistake. I
3 think we'll find the ultimate query where Oakpark said
4 it was given in lieu of fees.

5 .
6 Yes, if we look at 11 A, "the area involved is
7 approximately one acre", they are talking about
8 Coleman's land there.

9 .
10 "The plot of land was given by the directors in lieu of
11 sums due by them in respect of professional services."
12 That was the explanation that Oakpark gave to the
13 Revenue in connection with the writing down in their
14 accounts of the value of Coleman's land. And
15 "Coleman's land" is the name by which the land on which
16 Briargate was built, was known, Mr. Burke. You may not
17 have known that.

18 A. I would have known that, yeah.

19 362 Q. It was bought, purchased from a Mrs. Coleman, I think.

20 And --

21 A. Ms. I am not sure.

22 363 Q. In any event, Oakpark told the Revenue Commissioners in
23 1979 that they had given a portion of the site in lieu
24 of fees?

25 A. In respect of professional services.

26 364 Q. In respect of professional services. But you are not
27 identified in that documentation as being the
28 recipient, nor indeed, is the person - the body who
29 provided the professional services, PJ Burke (Sales)?

30 A. Well, I have no knowledge of this document at all. I

1 mean, that's what happened, that I wrote it off against
2 professional services.

3 365 Q. And in so far as Oakpark were accounting for the
4 receipt of money in respect of the sale, building or
5 purchase of houses between the year end 1973 and 1978,
6 there is no record, Mr. Burke, in the Oakpark accounts
7 of - a receipt of a sum of ú15,000 from you?

8 A. If you say that, I accept it. I have no knowledge of
9 the internal accounting of Oakpark.

10 366 Q. That's a matter for Oakpark to deal with?

11 A. That's right.

12 367 Q. Right. So it would appear, then, Mr. Burke, that apart
13 from your testimony and the letter of August 1974
14 written by Mr. Delany - sorry, I beg your pardon. That
15 the letter written by Mr. Delany in August 1974 is the
16 only record in relation to a sum of ú15,000 being
17 withdrawn by you in October of 1973?

18 A. At the time that I moved in to the house on the 10th of
19 October, yes. And the fact that this letter had been
20 given to the Guards, and in knowing the Garda
21 authorities, that they would have gone into it in
22 detail at the time, and were obviously satisfied,
23 because they didn't even refer to it in the Garda
24 inquiry file, a copy of which you got in February of
25 '98, and which was given to us in September last.

26 .

27 So they were obviously perfectly satisfied with the
28 documentation that they saw in 1974.

29 .

30 I haven't got the documentation in here, 2001, other

1 than what's in front of me here.

2 368 Q. You had originally agreed to purchase one acre, 0 roods
3 and 27 perches. And I think you discovered, Mr. Burke,
4 that the area that you had purchased was smaller than
5 the area that you had agreed to buy - in 1994?

6 A. No, what I agreed to buy was one of the two fields. It
7 wasn't a question of one acre or a quarter of an acre
8 or half an acre. I bought the field in the front.
9 There are two fields, and I brought the front field on
10 Malahide Road.

11 369 Q. Could we have page 3011.

12 .
13 This is the map that was attached to the transfer, in
14 February of 1975, between yourself and Oakpark.

15 A. Yes. If we can go the rest of the way down. You'll
16 see the map is the actual field. They made an error,
17 which was clarified and corrected in 1994, when I
18 copped it - I never copped it before. I bought the -
19 yes. You see the field - that's the field I bought,
20 and the adjoining - you see the little "V" area there,
21 that's the entrance into the second field that was
22 owned by Oakpark. If you can see what I mean?

23 370 Q. Yes. The piece that's --

24 A. You see the piece there, that piece, the second piece.

25 371 Q. Immediately beneath the bold black line, Mr. Burke?

26 A. Yes. That is the field I bought. And the second field
27 is the bottom field there at the "V". That's across
28 from the "V", was an entrance into the second field, a
29 little gap.

30 372 Q. Yes. The agreement that you had signed, or the

1 contract that you had signed, at page 3411, please, put
2 the acreage at one acre, 0 roods and 27 perches?
3 A. I don't know the acreage. I gather there were mistakes
4 made in the acreages, but the reality is this,
5 Mr. Chairman, I bought - negotiated with the Oakpark
6 directors for the purchase of the front field. As to
7 the mapping that was done or the registrations that
8 were done, there was a mistake, obviously, made, which
9 was rectified in 1994.

10 .
11 But when I moved in to the house in 1973, some months
12 later, there was a hedge the whole way around the
13 field. But some months later I planted some trees, the
14 whole way around that site, that are there today, some
15 of them 60, 70 foot high, which is the physical
16 boundary as laid out by me. There was never any
17 question between Oakpark and myself as to what had been
18 bought by me, and it had been delineated by me by a
19 bank of trees the whole way around the site.

20 .
21 There was, apparently, some confusion between
22 solicitors. One part of that was sorted out in 1994,
23 when I copped it. And it was rectified. And I think
24 there is even an argument, I saw in some of the
25 correspondence, documentation that went through the
26 Tribunal here, from the Land Registry, as to whether
27 you go to the middle of the road or the side of the
28 road, or anything else. Look, I am not into that. I
29 bought a field, the one field. As to whether it was
30 one acre, two roods, one acre, one rood; I just bought

1 a field. That's the situation.

2 373 Q. You signed a contract for the purchase of this property
3 on the 1st of August, 1983, at which stage the house
4 was substantially, or at least partially built on the
5 property. Isn't that right?

6 A. Sorry, when did you say?

7 374 Q. On the 1st of August, 1973?

8 A. It was pretty well built at that stage.

9 375 Q. Yes. You signed your first legal document in
10 connection with this on the 1st of August, 1973, of
11 which the document that's on screen forms part, in so
12 far as it describes the property that you are
13 purchasing?

14 A. Quite frankly, and quite obviously, I had never looked
15 at it. I just signed it, whatever was put in front of
16 me by the solicitor, because I had bought the full
17 field. The full field had been sold to me, I bought
18 the full field, and that was the situation on it.

19 .
20 As to what mapping errors were made by solicitors, as
21 much respect as I have for the legal profession, I
22 don't think they are absolutely 100 percent on every
23 individual occasion in relation to mapping, et cetera.

24 376 Q. In so far as the transfer was conducted in February of
25 1975, the deal between yourself and Oakpark was
26 completed, isn't that right? The transfer of the land
27 took place in February of 1975. 3010?

28 A. If that's what you say.

29 377 Q. That also described the acreage that you were
30 purchasing as one acre, 0 roods and 27 perches?

1 A. I don't know what it's described as. I accept what you
2 are saying, that's what's there. In reality, what was
3 bought, was the field, nothing else, nothing more. It
4 wasn't a second field. It wasn't part of the first
5 field. It was the field, the full field.

6 378 Q. You signed the document, Mr. Burke. You see, that's
7 your signature there?

8 A. There is no doubt about that. And it would have been
9 put in front of me by the solicitor, and I would have
10 signed the document. I wouldn't have even - it was
11 only in 1994 that I copped the error in relation to it.

12 379 Q. And the document that you signed refers to a map, which
13 is attached and edged in red?

14 A. I would have just signed what was prepared, and that's
15 it. I didn't cop the mistake in relation to it until
16 1994, when a correction was made, a rectification is -
17 what's the word?

18 380 Q. And what you signed as being correct and with the map
19 attached, etched in red, is that 3011?

20 .

21 And this was the map that was attached, Mr. Burke, with
22 that black line, in fact, being a red line?

23 A. Mm-hmm.

24 381 Q. And beneath that is the portion of the field?

25 A. Yes.

26 382 Q. Right. That was not included. So it's clear that on
27 the document that you signed, on the 25th of February,
28 1975, the portion that you were acquiring from Oakpark
29 was clearly identified?

30 A. No, I had acquired the whole field. But the portion

1 shown by those that drew the map was incorrect. And in
2 1975 that line of trees that I mentioned to you, there
3 was already a boundary hedge right around that field.
4 And I had - that was on the outside of the site. And I
5 planted a line of trees, which exist to this day, right
6 down the whole way on the front, down both sides and
7 right across the back at the end of the field,
8 indicating that was my property.

9 .
10 There was never any query between the willing seller
11 and the willing buyer as to what I was buying.

12 383 Q. But, in fact, what you actually bought was the portion
13 that's etched dark on the screen in this document?

14 A. Well, I can't be responsible for the mistakes of the
15 legal profession in relation to it.

16 384 Q. And Mr. O'Reilly said --

17 A. There was a rectification of that at a later stage.

18 385 Q. He didn't make any mistake. There was a rectification
19 on the in November --

20 A. That's correct.

21 386 Q. -- between Oakpark and yourself?

22 A. There was a rectification made, when I copped the map
23 as being wrong.

24 387 Q. And that rectification included, then, or passed on to
25 you the lower portion of the map that's on screen. Is
26 that right?

27 A. No, what it did was it rectified legally what was in
28 reality from the day that I bought the site.

29 388 Q. The total acreage of which, according to the land
30 registry, 4006, please, is now one acre, one rood and

1 21 perches?

2 A. Yes.

3 389 Q. So the two portions together amount to that amount, one

4 acre, one rood and 21 perches. But your contract and

5 your declaration that you had entered into, the

6 contract in '73, and your transfer in '75, had dealt

7 with one acre, 0 roods and 27 perches?

8 A. Well, now, you can ask me about acres and roods and

9 perches all afternoon. All I can tell you is I bought

10 one field. As to what the lawyers put down on bits of

11 paper, I can't be answering you because I don't know.

12 .

13 I bought a field, a simple straightforward deal to buy

14 a field, Mr. Chairman. And what was put down when I

15 copped it, many years later - having looked at the

16 document, I saw that they had made a horse's collar of

17 it, and I got it corrected, rectified.

18 390 Q. It's one of the reasons why it's so important,

19 Mr. Burke, that you deal with your legal documents

20 efficiently, that it's important that you put all your

21 legalities in place, and not be leaving these things to

22 chance. I mean, this would be a perfect example of the

23 importance of having your legal matters tied down, your

24 contracts in place, all the "Is" dotted and the "Ts"

25 crossed --

26 .

27 MR. HAYDEN: Is that a question or a statement --

28 A. If I can assure you, Mr. Chairman, that if I ever

29 realised that I was going to be sitting here in a

30 tribunal, every "I" would have been dotted and every

1 "T" crossed. But in the real life I was out there as a
2 politician going day and night, as a minister going day
3 and night. And the last thing that I was looking after
4 was my own affairs. I should have been. And when I
5 copped it in '94, when I got it corrected, and I am
6 glad I got it corrected.

7 .

8 391 Q. MS. DILLON: So if we look at what the Land Registry
9 said about it. They said that the area to be
10 transferred in 1975, on foot of the deed of transfer,
11 was one acre, 0 roods and 27 perches. They say that
12 the Map Branch calculated that the area of the property
13 on the transferred map, as one acre, 0 rood and one
14 perch, and the area of the property outlined in the map
15 attached to the Deed of Rectification as 0 acres, 1
16 rood and 20 perches. That ultimately gave a total
17 acreage of one acre, one rood and 21 perches.

18 .

19 So what you ultimately got in 1994, when the transfer
20 had been completed, was an acreage of 1 acre, one rood
21 and 21 perches, according to the land - I beg your
22 pardon, the Land Registry?

23 A. Well, if that's what the Land Registry says through
24 you, Mr. Chairman, that's what the Land Registry says.

25 .

26 As far as I am concerned, and there is no doubt about
27 it - there is no question about it - it's not something
28 that appears on a Land Registry map, or appears in a
29 solicitor's map. It actually appears physically on the
30 ground out there, 60 to 70 foot high trees identifying

1 the boundary of the property from the day I moved in,
2 that are still there to this day, which I invite you
3 sometime to have a look at, but are there.

4 .

5 It didn't go down, halfway down the garden. It didn't
6 go halfway or three-quarters way down the garden. It
7 went the full boundary of the field that I bought.

8 .

9 I am sounding like John B Key (phonetic), the gardener

10 --

11 .

12 CHAIRMAN: The reality of the situation is this, let's
13 get down to realities: That the area which you've
14 lived in since 1973, and which you encapsulated or
15 enclosed with the high trees, was the field?

16 A. That's right.

17 .

18 CHAIRMAN: But the map didn't show where the trees are.
19 But you have been in occupation of what you believe you
20 bought. Is that correct?

21 A. Yes.

22 .

23 CHAIRMAN: All right. Let's get on with it, then.

24 .

25 392 Q. MS. DILLON: So that ultimately, contrary to what was
26 stated in the contract, Mr. Burke, you acquired one
27 acre, one rood and 21 perches, despite the original
28 contract having referred to one acre, 0 roods and 27
29 perches. That, apparently, is a difference of 34
30 perches, which is somewhat short of a quarter of an

1 acre. Is that what you agree - what you reckon was
2 left out of the portion of the land that you thought
3 you were buying in 1973?

4 A. Not what I thought I was buying. What I bought was the
5 field. As to what the lawyers did and the mappers did
6 in relation to it, that's another kettle of fish. I
7 bought the field. But I accept what the experts are
8 saying here now, Mr. Hogan of the Land Registry, fine.
9 That's it. But I bought the field. There was no
10 question about that.

11 393 Q. But you didn't, in fact - no point arguing with you,
12 Mr. Burke, in connection with it.

13 .
14 In any event, the effect of the transfer of the
15 additional portion of the property in 1994 was to give
16 you legal title to that extra quarter acre, isn't that
17 right?

18 A. It was known as a rectification document within the
19 Land Registry. That's the document, it was rectified.

20 .
21 My apologies to the stenographer. We are going to
22 fast. Sorry.

23 394 Q. If we look at your statement, Mr. Burke, in relation to
24 the acquisition of Briargate, that you furnished to the
25 Tribunal on the 24th of May, 2001.

26 A. Just give me a moment, please. Yes.

27 395 Q. And do you set out at the beginning:

28 .
29 "I got married in November 1972, and I decided to live
30 in the town of Swords. I was aware that Oakpark

1 Developments had bought two fields on the Malahide
2 Road, and I negotiated to buy one of the fields. I
3 have already furnished to the Tribunal a copy of the
4 contract for sale of this field. The contract was
5 dated August 1973.

6 .
7 Esmonde O'Reilly was the solicitor acting on behalf of
8 Oakpark Developments, and Oliver Conlon acted on my
9 behalf. I had a house built on the site by Oakpark
10 Developments Limited. The plans and drawings of the
11 house were prepared by Des McCarthy and JP Keenan,
12 architects."

13 .
14 Were they plans and drawings prepared by Mr. Keenan, or
15 Mr. McCarthy, or both?

16 A. They would have been done by Mr. Keenan, who designed
17 them with Mr. McCarthy, who worked very closely with
18 Oakpark at the time. And he would have been involved
19 in some of the groundwork things, the piping and things
20 like that, that's why I put his name in, just for
21 accuracy sake, to give you the background on it.

22 396 Q. "This was financed through Bank of Ireland, Whitehall.
23 I received loan approval from the Property Loan and
24 Investment Company Limited, which I understand was part
25 owned by Bank of Ireland. The only copy document I
26 have in relation to this is a letter from my then
27 solicitors concerning the increase in interest
28 installments, copy herewith. Having received the
29 initial loan approval, which I believe was for ú15,000
30 my circumstances changed.

1 .
2 I sold the goodwill of my insurance brokerage to Conor
3 McMahon Limited for ú8,545, and these funds meant I did
4 not have to draw down the full loan which had been
5 approved. I was also involved in a considerable volume
6 of house sales for Oakpark Developments Limited and
7 River Valley, Swords, and the fees earned helped to
8 finance the transaction. All transactions were done
9 through Bank of Ireland, Whitehall. And as to whether
10 the balance of the ú15,000 was drawn down by the bank
11 internally from their subsidiary, or done through
12 overdraft, I am not aware."

13 .
14 Now, in so far as that last sentence there is
15 concerned, Mr. Burke, do you want to clarify what you
16 had said in your statement in relation to what you now
17 know about the --

18 A. Well, with the benefit of - I wasn't aware of the full
19 circumstances of it, having identified the
20 eight-and-a-half thousand. It was after I had signed
21 that, that we got some letters in June from the bank
22 outlining the fact that I was able to draw down the
23 full 15 out of 17. I hadn't got those records at that
24 time.

25 397 Q. Yes. So you didn't recollect transferring ú15,000 from
26 the joint account held between yourself and your father
27 to buy this property?

28 A. I hadn't got the details in my mind at that time. I
29 was working on the basis of the part of the money which
30 was - the money that I had got for the sale of the

1 insurance side of my business.

2 .

3 I hadn't got the full details available to me. I was
4 working on something 29 years ago, and I was giving you
5 my best recollection of it.

6 398 Q. Is it your position, Mr. Burke, that when you were
7 preparing this statement, you did not recollect that
8 the actual source of the finance that paid for the
9 purchase of your house was a joint deposit account held
10 in Bank of Ireland, Whitehall between yourself and your
11 father?

12 A. That's correct. And I was delighted when I got the
13 information.

14 399 Q. The next paragraph, "I do not recall having to avail of
15 bridging finance as the total transaction relating to
16 the loan was done through Bank of Ireland."

17 A. That's correct, yes.

18 400 Q. "I cannot be certain at this stage what was the total
19 cost of the site and the house. My best recollection
20 is the site was ú7,500 and the construction ú15,000.
21 Since I was the auctioneer for the builder selling a
22 couple of hundred houses at nearby River Valley, I
23 would have paid part of the purchase price through fees
24 owed to me."

25 .

26 Mr. Burke, how many houses would you have to sell to
27 make 7,500?

28 A. I had, out there in River Valley, I sold about 1,000 -
29 1,200 houses in River Valley. I sold a couple of
30 hundred houses between Daleview, Elmwood, Pine Grove,

1 Rathgrove, all for Oakpark out in that area. So there
2 was more than sufficient funds. That project went on
3 for a number of years out there.

4 401 Q. "We have requested information concerning this
5 transaction from Bank of Ireland, Whitehall but they
6 have informed us the records do not go back that far."

7 A. That's what they told me at the time. And I think it's
8 what they told you. They gave you some accounts, and
9 it was only in June of this year, and some of them, as
10 late as, as you mentioned yourself this morning, some
11 of them only as late as this week that we got the night
12 before last. They came up with other accounts.

13 .

14 So that's the situation on it.

15 402 Q. "In 1994, while in opposition, I had an opportunity to
16 go through my own personal papers, and I discovered I
17 did not have title to the back quarter of the field,
18 even though I had planted trees and taken occupation of
19 the area from the time I bought the site and built the
20 house."

21 .

22 So you were aware it was a quarter of an acre. The
23 entire site is an acre, isn't that right?

24 A. To the back quarter of the field. I am not saying it's
25 a quarter of an acre. To the back quarter of the
26 field.

27 403 Q. Are you referring to the entire field or just the piece
28 behind the house?

29 A. I am referring to the whole field. And what I didn't
30 have the title on is what we've gone through here only

1 15 minutes ago.

2 404 Q. A quarter of an acre, approximately?

3 A. Well, whatever it is. The back quarter. I am not -
4 look, I am not a mapper. I am not one that can give
5 you the exact, precise details of it. We've been
6 through this already, Mr. Chairman.

7 405 Q. But you knew that you had bought a site of
8 approximately an acre, is that right?

9 A. No, I didn't. I bought a site of a field which was
10 around an acre in size.

11 406 Q. I mean, as an auctioneer with all the experience you
12 had, no one would be better able to stand in a field
13 and assess its size, Mr. Burke?

14 A. I was an auctioneer and I was a negotiator, but I
15 wasn't the engineer or the mapper that would go out and
16 do precise mapping. And even if I can suggest that,
17 even the Land Registry or clarifying in relation to
18 some of the mapping - look, Mr. Chairman, I am not a
19 mapper. I am a civilian politician who is in business
20 as an estate agent. I bought a field which was roughly
21 an acre a land. That's it. I can't give it any more
22 than that.

23 407 Q. And therefore, when you referred to the back quarter of
24 the field, you were referring to the back quarter of
25 one acre which is approximately a quarter of an acre,
26 Mr. Burke?

27 A. Mr. Chairman, I was talking in layman's terms about the
28 back quarter of the field, the portion of the back that
29 wasn't shown on the original map.

30 .

1 If it's to be two roods or how many perches, I don't
2 know. It's the back portion that wasn't shown. The
3 reality is you had the map, so I clarified it for you,
4 Mr. Chairman.

5 408 Q. So the back quarter of the field - still continuing
6 with the quotation from the statement:
7 .
8 "This back quarter of the field had been inadvertently
9 left out of the original transfer and so a new deed of
10 transfer and Family Home Protection Act Declaration was
11 executed by Oakpark Developments Limited to transfer
12 the balance of the site to me. I then became
13 registered owner under separate folio 95315 F of the
14 back portion of the field. I had previously become
15 registered as owner under folio 19968 F, County Dublin
16 of the area on which the house was built. The two
17 folios comprise the holding which I sold to Flynn
18 Flaherty in June of 2000."

19 .
20 That's dated the 24th of May, 2001?

21 A. Yes.

22 409 Q. And signed by you?

23 A. That's right.

24 410 Q. You did not indicate in any portion of this statement,
25 Mr. Burke, that the source of the monies that were used
26 to pay for the €15,000 to Oakpark came from a joint
27 deposit account held in the name of yourself and your
28 father in Bank of Ireland, Whitehall?

29 A. I have no recollection of the joint deposit account,
30 the details of it. I had realised that I had funds

1 available to me. The size of those funds, I wasn't
2 aware of because I hadn't got those records at that
3 time from the bank, despite the fact I had asked for
4 them in '98.

5 A. I hadn't got these records, and they hadn't given them
6 to you either at this particular point in time. And I
7 was attempting to recall the source of the funds, and I
8 knew that I had sold the insurance business. I got the
9 - a precise figure on the sale of that at 8545, but as
10 it turned out, when we did eventually, in June, get
11 from the bank - June of 2001, me having asked for it in
12 September of '98, when I did eventually get the records
13 through yourselves, it showed the information that is
14 outlined there.

15 411 Q. Yes. So if we can just go back to the question that I
16 asked you, Mr. Burke --

17 A. I wasn't aware at that time.

18 412 Q. That you weren't aware, and in fact you attributed the
19 source of the monies, when you were preparing this
20 statement, that you say were paid to Oakpark as being
21 from Conor McMahon Limited in the sum of ú8,545, and
22 then you were unsure as to whether the balance of the
23 money was drawn down by the bank internally or done
24 through overdraft?

25 A. I knew that I had funds available to me. The extent of
26 the funds, I wasn't sure. One part of those funds was
27 the sale of the insurance business, and I was not in a
28 position in May, because I hadn't got the documentation
29 from the bank, to inform you of the precise calculation
30 of it.

1 .
2 It was only when I got the documentation from you in
3 whatever date it is - it's - I had it here a second
4 ago. The date is the - when the bank - sometime in
5 June you gave me the bank records which the bank had
6 failed to give to me from '98.

7 413 Q. So is it the position, then, Mr. Burke, that when you
8 were preparing this statement, it was your belief that
9 you had in fact paid the monies to Oakpark, being
10 sourced at ú8,545, from a sale of your insurance
11 business to Conor McMahon Limited, and the balance was
12 drawn down either by loan or overdraft from Bank of
13 Ireland?

14 A. No, what I have said to you was I sold the goodwill of
15 my insurance -- may I quote?
16 .
17 "Having received the initial loan approval which I
18 believe was for 15,000, my circumstances changed. I
19 sold the goodwill of my insurance brokerage to Conor
20 McMahon Limited for 8,545 and these funds meant that I
21 did not have to draw down the full loan which had been
22 approved." That was my recollection of it.
23 Thankfully, records produced showed the different
24 situation.
25 .
26 I was also involved in a considerable volume of sales.
27 But that was my recollection of the situation.

28 414 Q. If you just concentrate on the question and perhaps
29 answer it this time, Mr. Burke, which is: Is it the
30 position that it was your belief, when you prepared

1 your statement in May of this year, that the source of
2 the funds that were used to pay for the construction of
3 your house was €8,545 from Conor McMahon Limited, and
4 that the balance was financed through Bank of Ireland,
5 Whitehall?

6 A. No. The source of the funds - part of the funds
7 towards it was the eight and a half. I just wasn't
8 sure of how much I had drawn down and how much I hadn't
9 drawn down. It was on the benefit with the - with the
10 benefit of the documentation which has since become
11 available through the bank that I was able to - we had
12 a full clarification of the situation, as per the
13 letter to the Guards.

14 415 Q. If you look at the fourth paragraph, the fifth
15 paragraph in your statement, after you deal with the
16 €8,545 you say:
17 .
18 "All transactions were done through Bank of Ireland,
19 Whitehall and as to whether the balance of the €15,000
20 was drawn down by the bank internally from their
21 subsidiary or done through overdraft, I am not aware."
22 .

23 A. Yes.

24 416 Q. So if I can repeat the question for you now, Mr. Burke,
25 which is: Was it your position or your understanding,
26 when you were preparing this statement, that the source
27 of the €15,000 that was used to pay Oakpark was
28 comprised of a sum of €8,545 from Conor McMahon
29 Limited, and the balance by way of a borrowing or a
30 loan from Bank of Ireland, Whitehall?

1 A. No. If you read what I actually say in the statement,

2 is:

3 .

4 I sold the goodwill of my insurance brokerage to Conor
5 McMahon for 8,545 and these funds meant that I did not
6 have to draw down the full loan which had been
7 approved. I was involved in a considerable volume of
8 house sales for Oakpark Developments Limited in River
9 Valley, Swords, and the fees earned helped to finance
10 the transaction. All transactions were done through
11 the Bank of Ireland, Whitehall and as to whether the
12 balance of the 15,000 was drawn down by the bank
13 internally from their subsidiary, or done through
14 overdraft, I am not aware."

15 .

16 So what I would have paid for was the eight-and-a-half
17 plus there could have been other money. I wasn't aware
18 of it at the time. That's the point I was trying to
19 get across to you in as general a way as I possibly
20 could, because I hadn't got the exact details, the
21 compact information. Thankfully, the information then
22 came available to me, and I was delighted to see that
23 it came out.

24 417 Q. When you say, "All transactions were done through Bank

25 of Ireland, Whitehall, and as to whether the balance of

26 the "15,000 ..." If we just deal with the word

27 "balance" first. Are you referring there to the

28 difference between the 8,545 and the "15,000?"

29 A. The - and whether the balance was - sorry, "the balance

30 of the 15,000 was drawn down by the bank internally

1 from the subsidiary or done through overdraft, I am not
2 aware." I would have been referring to it there,
3 because I wouldn't have been - I hadn't got the
4 documentation available to me. 29 years later I
5 wouldn't have recalled it. But I did then get the
6 documentation, and I was able to clarify it.

7 418 Q. Yes. So what you are saying in the statement,
8 therefore, is that the sum of 8,545 was used as a
9 contribution towards the €15,000, and the difference
10 between the €8,545 and the €15,000 was either drawn
11 down from a subsidiary of Bank of Ireland or done
12 through overdraft?

13 A. That is what I am saying to you there, yes.

14 419 Q. That's what I had asked you, Mr. Burke.

15 .
16 So was it your belief, then, in May of 2001, when you
17 were preparing this statement, that you had financed
18 the building of your house by way of a loan drawn down
19 of a sum of approximately 7 or €8,000 from Bank of
20 Ireland in Whitehall together with the sum of €8,545
21 from Conor McMahon?

22 A. Well, that the eight-and-a-half thousand was available
23 to me, I didn't know how much else was available to me.
24 And I wasn't going to make a statement to you, Mr.
25 Chairman, claiming extra funds. I could identify 8545.
26 I couldn't identify any extra funds because I hadn't
27 got the bank records, despite the fact that I had asked
28 for them.

29 .
30 So that's the situation.

1 420 Q. Yes. So that when you said that you had paid for the
2 balance of the sum being 8,545, it was either drawn
3 down by the bank internally from their subsidiary or
4 done through overdraft, it was by way of a loan?

5 A. Yes. That would have been my recollection. But
6 thankfully, we got clarification. Unfortunately, it
7 took the banks two years to get clarification. But we
8 got the clarification, and it meant that I was able to
9 answer you much more accurately with the benefit of the
10 paper trail.

11 421 Q. Is it the position that in May of this year you didn't
12 know how you paid for it? Is that the position?

13 A. I knew that I had paid cash for - and used cash for it.
14 As to the full extent of it, my recollection wasn't
15 clear on it. I could account for eight-and-a-half
16 thousand, and that is all I could account for. I
17 wasn't in a position to account for more, because I
18 hadn't got the documentation available to me. It was
19 - as I say, the documentation later became available to
20 me, but a month later, as I said to you already, Mr.
21 Chairman, despite the fact that I had asked the bank to
22 give you this documentation, or give it to me to give
23 to you in '98, I hadn't got that documentation.

24 422 Q. You said that you had paid cash for it. I had
25 understood you to tell the Sole Member this morning
26 that you had in fact drawn a cheque and given it
27 probably in favour of Oakpark and given it to Tom
28 Brennan?

29 A. Sorry. What was that?

30 423 Q. You just told the Sole Member of the Tribunal you paid

1 cash for your house, Mr. Burke?

2 A. I am talking about cash in the sense that --

3 424 Q. If I could finish the question, please. You told the
4 Sole Member this morning you drew a cheque probably in
5 favour of Oakpark, but you could not be sure, and you
6 probably gave it to Tom Brennan. Did you pay for the
7 house in cash, or did you pay for it by way of a
8 cheque?

9 A. What I am saying - cash that was available to me. This
10 is the eight-and-a-half thousand. I would have paid
11 for it in cheque, but this was cash that I had
12 available to me in cash in the sense of payment for the
13 - let me use the word "money" instead of "cash". Money
14 that that was available to me instead of having to
15 borrow it. This was money that I got for the sale of
16 my insurance brokerage.

17 425 Q. What you have told the Sole Member today is that the
18 cash that was available to you to pay for this house
19 was €15,000, which was drawn down from a joint deposit
20 account with your father. And what you told the Sole
21 Member in your narrative statement in May of 2000 was
22 that it was partly financed by way of a cheque or a
23 sale of your business from Conor McMahon Limited and
24 partly by a borrowing?

25 A. No, what has happened now --

26 426 Q. If we just concentrate on the question, Mr. Burke --

27 A. I am concentrating on the question. But there were a
28 number of parts to the question, Mr. Chairman - I wish
29 to reply to the number of parts that were asked of me.

30 .

1 I gave you, on the 24th of May, my recollection of the
2 situation without any documentation available to me. I
3 realised that I had money available to me, having sold
4 my insurance brokerage. I did not recall the - the
5 letter of August of '74 to the Guards from the bank,
6 which clarified the whole situation, and which
7 clarified it in relation to the money being taken out
8 of my own account, and the joint deposit account with
9 my father. I didn't recall the aspect of my father's
10 involvement with me in it.

11 .

12 But when I got the information, to be able to have a
13 clearer picture of it, because it made it much clearer
14 for me --

15 427 Q. The evidence that you have give to the Sole Member
16 today, Mr. Burke, as to how you paid for your house, is
17 at significant variance with the statement that you
18 made to the Sole Member in May of this year as to how
19 you paid for your house?

20 A. I don't accept that it's significant at all. Having
21 received initial loan approval, which I believe was for
22 15,000, that was what I said, I said my circumstances
23 changed. That is what I said. I sold the goodwill of
24 my insurance brokerage for eight-and-a-half thousand.
25 That is what I said. The funds meant that I did not
26 have to draw down the full loan which had been
27 approved, those funds, together with other funds. I
28 didn't know of the full extent of the deposit account
29 at that stage when I made this statement to you, 29
30 years later, trying to remember precisely what's in

1 every fund, and having asked the bank for two years and
2 been failing to get the information from the bank.

3 .

4 So there is no difference between it whatsoever. When
5 the documentation came, it showed that I didn't have -
6 that I had the funds available to me. And it's not
7 what I told the Tribunal, Chairman, today. It's what
8 the bank told the Guards in 1974, which I have read
9 into the record here today telling the Chairman.

10 428 Q. And that correspondence between the - your bank manager

11 and the Garda does not state on any interpretation that
12 you paid €15,000 to Oakpark in connection with the
13 building of your house. Isn't that the reality --

14 A. I categorically disagree with you. That is your
15 opinion of what it says. I categorically disagree with
16 you in relation to it, and it's going to be a matter
17 for the Chairman to make a judgement on it. You will
18 have one view. I have another view.

19 .

20 Mr. Chairman, why would I take 15,000 out, on the days
21 that I am moving into the house? And why would the
22 Guards, who did such a thorough investigation of all of
23 my - of the allegations against me at the time, have
24 been told and complimented by the DPP in relation to
25 the manner in which they carried out their work? The
26 suggestion is that the Guards were in collusion with
27 me, that the bank manager was in collusion with me. It
28 doesn't make sense.

29 429 Q. Is it the position that you were making a data

30 connection, Mr. Burke, between the day you moved into

1 your house and the withdrawal in October 1973, as
2 instancing support for the fact that that withdrawal
3 was paid to Oakpark?

4 A. I beg your pardon?

5 430 Q. Are you making a datal, a time connection between the
6 date that you moved into the house and the date of the
7 withdrawal from the joint deposit account as meaning
8 that you paid the money to Oakpark?

9 A. I am making this connection, that I was about to move
10 into my home in October of 1973, that I had - I went to
11 the bank, got bridging loan approval, which was backed
12 up by a letter from the solicitor guaranteeing that
13 when the property loan cheque came through, that he
14 would pass it on, the usual cheque. The usual
15 guarantees. And that on the basis of the levels of
16 interest rates involved, being 13 to 9 percent, that I
17 paid the 15,000 for - to Oakpark, because I moved in on
18 the 10th of October, into my home.

19 431 Q. Do I understand that that's a "yes", Mr. Burke, that
20 you are, in fact, making a time connection between the
21 date you moved into your house and the date of the
22 withdrawal of ú15,000 from the joint deposit account?

23 A. I am not making - I am not only making it. That's what
24 was - the Guards were told at the time it was done.

25 432 Q. Is the answer to my question "yes" or "no"?

26 A. Yes.

27 433 Q. Yes. And this is similar, of course, to the type of
28 time connection that you made about the ú15,000, Mr.
29 Burke?

30 A. Fair enough.

1 .

2 MR. WALSH: Sorry, Sir, that's an inadmissible comment

3 --

4 .

5 CHAIRMAN: All right. I've heard your point.

6 .

7 MR. WALSH: I would ask for it to be stricken from the

8 record.

9 .

10 CHAIRMAN: There is no such thing as striking it from

11 the record. I simply note your objection.

12 .

13 MS. DILLON: I have to go through the diary entries

14 with Mr. Burke.

15 .

16 You will recollect Mr. Burke gave evidence that in May

17 of '85 he was meeting Mr. Brennan on a regular basis in

18 connection with organising canvassers and matters such

19 as that sort in connection with an election. I had

20 indicated to Mr. Burke that I would go through the

21 diaries with Mr. Burke.

22 .

23 It looks like we'll be sitting in the morning,

24 certainly. Other than that, I will be finished this

25 part of the hearings with Mr. Burke, once that is dealt

26 with, and I anticipate there is no more than 15 minutes

27 in it.

28 .

29 You may wish to leave it until the morning, Sir.

30 .

1 I have spoken to my colleagues, and I would anticipate
2 everything will be concluded by lunch time tomorrow.

3 .

4 CHAIRMAN: Gentlemen from the Bar? Is that acceptable
5 to you?

6 .

7 MR. HAYDEN: I must have missed the conversation with
8 Ms. Dillon. Fine by me.

9 .

10 CHAIRMAN: Mr. Walsh?

11 .

12 MR. WALSH: I have no objection to that course, Sir.

13 .

14 CHAIRMAN: You think you will be brief?

15 .

16 MR. WALSH: Relatively brief.

17 .

18 CHAIRMAN: A degree of reserve on that, isn't there?

19 .

20 Very good. I have no objection. It's now five minutes
21 to four. All right. We'll sit tomorrow morning, half
22 past ten?

23 .

24 MS. DILLON: Yes, Sir. I don't anticipate it being
25 more - being ten minutes in so far as these hearings
26 are concerned, Sir.

27 .

28 CHAIRMAN: That's it. 10:30, then, tomorrow morning.

29

30 THE TRIBUNAL ADJOURNED TO THURSDAY, NOVEMBER 15, 2001

1 AT 10:30 AM

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